

STATE OF MINNESOTA  
COUNTY OF HENNEPIN

DISTRICT COURT  
FOURTH JUDICIAL DISTRICT

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Court File No.: 27-CR-20-12953

State of Minnesota,

Plaintiff,

vs.

J. Alexander Kueng,

Defendant.

**DEFENDANT'S MEMORANDUM -  
EFFECT OF  
THE STATE'S *SPREIGL* NOTICE ON  
JOINDER**

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**TO: The Honorable Peter Cahill, Judge of Hennepin County District Court;  
Mathew Frank, Assistant Attorney General.**

The defendant, by and through his attorney objected to the State's motion for joinder of his case with codefendants Derek Chauvin (27-CR-20-12646), Thomas Lane (27-CR-20-12951), and Tou Thao (27-CR-20-12949). Subsequently the State filed *Spreigl* Notices. This memorandum addresses the impact of the State's *Spreigl* Notices on Joinder.

**FACTS**

Mr. Kueng relies on the facts as recited in Mr. Kueng's Objection to Joinder as well as factual recitations from each Co-Defendant as well as their written submissions and arguments before this Court on September 11, 2020.

**ARGUMENT**

Evidence of previous bad acts “is not admissible to prove a person’s character in order to show that on a particular occasion the person acted in accordance with the character.” Minn. R. Evid. 404(b)(1). It is well settled, however, that such evidence (a.k.a. “*Spreigl* evidence”) may be admitted “to show motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident,” or common scheme or plan. *State v. Ross*, 732 N.W.2d 274, 282 (Minn. 2007); *State v. Spreigl*, 139 N.W.2d 167 (Minn. 1965); Minn. R. Evid. 404(b).

If the Court admits the proposed *Spreigl* evidence against Mr. Thao and Mr. Chauvin, the Court cannot join Mr. Kueng with those defendants under the joinder analysis because Mr. Kueng would be in a position to use the evidence in a manner in which the State would be prohibited. That is to argue propensity.

- 1. The State’s proffered evidence is not admissible against all defendants and demonstrates that they did not act in close concert with one another.**

The nature of the offense charged favors joinder where codefendants are charged with the same crimes, a majority of evidence is admissible against all, and the evidence shows that they worked in close concert. *State v. Jackson*, 773 N.W.2d 111, 118-19 (Minn. 2009). However, when one defendant’s role is distinguishable from those of his codefendants, joinder is improper. See, e.g., *State v. Green*, No. A17-1328, 2018 WL 3966343 at \*2 (Minn. App. Aug. 20, 2018, review denied (Minn.

Nov. 13, 2018). Each Defendant has distinguished their alleged role in the charged offenses in the previously memoranda opposing joinder,<sup>1</sup> however, the State's assorted, amended *Spreigl* notices filed today demonstrates the prosecution's intent to offer considerable evidence that will not be admissible against all of the defendants.

It is clear that each defense counsel could and would act as a second prosecutor if the matters are joined. It is also clear that the rules limiting a prosecutor's use of evidence cannot apply to defense counsel. The State's notice of intent to introduce *Spreigl* evidence provides Defense Counsel with valuable evidence to pursue antagonistic defenses that would prevent joinder under current Minnesota case law. See *Santiago v. State*, 644 N.W.2d 425 (Minn. 2002). Just as Mr. Thao's Counsel did in *Santiago*, all counsel would be able to shift the blame and produce a "classic exampl[e] of antagonistic defenses." *Santiago v. State*, 644 N.W.2d 425, 446 (Minn. 2002).

## **2. Prejudice to Mr. Kueng**

Evidence of Messrs. Chauvin and Thao's prior bad acts would not be admitted as *Spreigl* or any other kind of evidence in the case against Mr. Kueng if the trials were to remain singular. To prove Mr. Kueng guilty of Aiding and Abetting in violation of Minn. Stat. § 609.05 subd. 1, the State has the burden of showing – beyond reasonable doubt – that Mr. Kueng (1) knew Mr. Chauvin was

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<sup>1</sup> Mr. Kueng incorporates those arguments by reference.

going to commit a crime and (2) intended his presence to further the commission of that crime. See *State v. Huber*, 877 N.W.2d 519, 524 (Minn. 2016)(citing *State v. Milton*, 821 N.W.2d 789,808 (Minn. 2012)). If the cases were joined, the State would be able to offer evidence not otherwise available against Mr. Kueng to show that he allegedly knew Mr. Chauvin was going to commit a crime. An instruction to the jury not to apply the *Spreigl* evidence admitted against Mr. Chauvin towards the co-defendant's charges could not cure this and would be unnecessarily confusing as to the *mens rea* of Mr. Kueng.

### CONCLUSION

The nature of the offense charged, the potential prejudice to all Co-Defendants and the interests of justice all disfavor joinder. Based on the foregoing, Mr. Kueng respectfully requests that this Court deny the State's joinder motion as to the matter herein.

Respectfully submitted,

Dated: September 25, 2020

/s/ **Thomas C. Plunkett**

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