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STATE OF MINNESOTA DISTRICT COURT

COUNTY OF HENNEPIN FOURTH JUDICIAL DISTRICT

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

State of Minnesota,

Plaintiff,

vs.

DEFENDANT'S MEMORANDUM – IN SUPPORT OF MOTIONS IN LIMINE

J. Alexander Kueng,

Defendant.

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

On May 25, 2022 this Court issued a Trial Scheduling and Management Order and Memorandum Opinion. The Court's order directed that Motions in Limine shall be filed no later than the end of the day on Friday, May 13, 2022. Supporting memoranda shall be filed by the end of the day on Friday, May 20, 2022. Counsel did timely file Motions In Limine and now submits the following in support of the select defense Motions In Limine.

3. *Mr. Keung moves this Court for an order directing that no depictions of a "MRI of pharynx in a normal person" be admitted into evidence or referenced as a demonstrative exhibit without first establishing the actual dimensions of Mr. Floyds pharynx and the area immediately surrounding the same.*

During the testimony of Dr. Tobin he referenced an "MRI of pharynx in normal person." See Chauvin Exh. 937. Minnesota Rules of Evidence Rule 611 permits the Court to "exercise reasonable control over the mode and

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order" of presenting evidence so as to make the procedures effective for determining the truth and to avoid wasting time. "[D]emonstrative or illustrative evidence is "admitted, when properly verified, to illustrate or express the testimony of a competent witness, but [is] not original evidence." *State v. Bauer*, 598 N.W.2d 352, 362 (Minn.1999). "The standard for the admissibility of demonstrative evidence and visual aids is whether the evidence is relevant and accurate and assists the jury in understanding the testimony of a witness. *State v. Stewart*, 643 N.W.2d 281, 293 (Minn. 2002) citing *State v. DeZeler*, 41 N.W.2d 313, 318-19 (1950). This evidence specifically applies to the mechanisms of death for Mr. Floyd. The fact that it is not Mr. Floyd or even based on his body structure is inherently misleading. The exhibit is no longer accurate to the purpose presented. The defense anticipates that this and other demonstrative exhibits may be entered into evidence. No demonstrative exhibit should be admitted absent foundation being laid by the proponent. If the Court allows this or any other animation, the defense asks to examine the actual animator as to foundation.

7. The Defendant moves this Court for an order directing State's witnesses be precluded from testifying as to their personal ethic or applying their personal ethics to intervention and use of force, rather than policy, law or rules.

This motion applies to all witnesses, but in particularly Lt. Richard Zimmerman. In the course of the federal trial Lt. Zimmerman offered his opinion

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that intervention was based on "growing up", "human nature" and simply desire to help people. This is an insertion of this witness's ethereal opinion on what he should do and has no place in testimony before a jury. Interestingly this particular witness gave inaccurate information to FBI investigators during the investigation as part of an apparent personalized effort to bring about criminal charges. Further he has a history of investigative misfeasance. The latter is confirmed by his negligent investigative efforts in *State v. Myon Burrell* which sent a likely innocent young black man to prison.

Motions In Limine 19, 25 and 26 address Mr. Kueng's access to a public trial. The scope of the public trial right must be understood in light of its purposes. The "public trial guarantee" is a right "created for the benefit of the defendant." *Gannett Co., Inc. v. DePasquale*, 443 U.S. 368, 380 (1979). In *People v. Hartman*, 103 Cal. 242, 245, 37 P. 153 (1894) it was explained that "The trial should be 'public,' in the ordinary commonsense acceptation of the term. The doors of the court room are expected to be kept open, [and] the public are entitled to be admitted ...."). This right was explained in *Davis v. United States*, 247 F. 394, 395 (8th Cir. 1917) which held "As the expression necessarily implies, a public trial is a trial at which the public is free to attend." The streamed trial deprives the observer of information regarding the trial participant's demeanor and body language and only allows a participant to see what is on the camera at a given time. While this is a laudable way to get more access, denying all members of the general public

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access to the Court room is a complete closure. Denying the public access to side bars is also a complete closure.

Respectfully submitted,

Dated: May 20, 2022

/s/ Thomas C. Plunkett

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