

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

Court File 27-CR-21-7460

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State of Minnesota,

Plaintiff,

vs.

**DEFENDANT'S MOTION TO  
SUSPEND THE DEADLINE FOR  
THE DISCLOSURE OF EXPERTS**

Kimberly Ann Potter,

Defendant.

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The Defendant, Kimberly Ann Potter, through and by her lawyers, Earl P. Gray and Paul Engh, and in accordance with Rule 10, Subd. 2, Minn.R.Crim.P., moves the Court for an Order suspending the deadlines for disclosure of expert witnesses and their respective reports. Our grounds:

1. This Court's Order of August 9, 2021 accelerated the disclosure of experts and their reports by fourteen days. On August 30, 2021, the names are to be disclosed; by September 15, their respective reports. *Id.* at para. 1.

2. The defense experts have inquired as to what specific charges will be litigated at the forthcoming trial. Our response is that we don't know. The experts ask why there is such charging uncertainty. We don't know the answer to that question, either.

3. Despite this Court's encouragement, the State has declined to announce when the instant Complaint will be amended, though the State has intimated that additional charges will well be filed. The initial reason for the attendant delay was because the Attorney General's Office had taken over the case from the Washington County Attorney's Office and wanted to conduct its own evaluation. This was three months ago.

4. The State has at least five lawyers appearing.

5. The incident in question was video-taped, which runs out less than ten minutes. There are four eye-witnesses – the three officers on the scene, and the passenger in Mr. Wright's borrowed car.

6. The shooting was accidental, with Officer Potter believing that she had her Taser in her hand and that she was attempting to disable Mr. Wright, this during his attempt to flee the police officers. Her innocent mistake was caused by Mr. Wright's decision to obviate an arrest warrant issued by the Hennepin County District Court.

7. Officer Potter had no intent to fatally harm Mr. Wright. Nothing in the thousands of pages provided in discovery suggests that she did.

8. By delaying its decision to amend, the State is, in practical effect, sandbagging the defense (and this Court). The evident preference of the State is to

have the defense experts commit to defending the second degree manslaughter charge, without addressing the additional charges contemplated, which may include third degree murder and second degree felony murder, both with markedly different elements. Both suggested new charges require a differential analysis by our experts.

9. Officer Potter thus moves for an Order suspending the expert witness disclosures until the State either files its amended complaint, or announces that it will litigate the manslaughter charges alone. Thereafter, the disclosures should occur in the time sequence suggested by the August 9<sup>th</sup> Order, namely that the names of the experts be filed two weeks hence, their reports due in thirty-days.

Dated: August 23, 2021

Respectfully submitted,

/s/ Paul Engh

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