

STATE OF MINNESOTA  
COUNTY OF HENNEPIN

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DISTRICT COURT  
FOURTH JUDICIAL DISTRICT

State of Minnesota,

Plaintiff,

v.

Mohamed M. Noor,

Defendant.

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Court File No.: 27-CR-18-6859

**DEFENDANT'S FIRST  
MOTIONS IN LIMINE**

**NOTICE OF MOTIONS**

**PLEASE TAKE NOTICE** that on March 1, 2019, at 9:00 AM, or as soon thereafter as counsel may be heard, before the Honorable **KATHRYN L. QUAINANCE**, Judge of District Court, Defendant, by and through his attorneys, will make the following Motions In Limine:

**MOTIONS**

Defendant, Mohamed M. Noor, by and through his attorneys, and pursuant to Minnesota Rules of Criminal Procedure Rule 12.02 and Minnesota Rules of Evidence Rules 401-404, moves this Court to preclude the State from any mention of the following: (1) testimony that Defendant had conversations about finding a safe place to stay following July 15, 2017; (2) testimony about a felony traffic stop on May 18, 2017; (3) evidence that Defendant followed the advice of his counsel and invoked his *Miranda* rights; and (4) evidence from a "fly through" exhibit.

Defendant further moves this Court to Order the State to disclose pre-trial any exhibits to be used during the opening statement and any “spark of life” evidence.

Finally, Defendant moves the Court for an Order requiring the jury pool to watch a video on unconscious bias; increasing the parties peremptory challenges; sequestering witnesses with the exception of expert witnesses and a case agent; to keep all witnesses under subpoena until the close of evidence; and to require the disclosure of the witnesses for each day of trial.

## **I. MOTION TO EXCLUDE EVIDENCE**

### **1. EVIDENCE THAT MPD SGT. M.A. SUGGESTED DEFENDANT FIND A SAFE PLACE TO STAY OUT OF FEAR FOR HIS SAFETY IS NOT RELEVANT AND IS PREJUDICIAL.**

Evidence that Minneapolis Police Sergeant M.A. suggested Defendant should find a safe place to stay following July 15, 2017, is not admissible under MINN.R.EVID. Rules 401-404 because it is not relevant and highly prejudicial. During the immediate days following July 15, 2017, many people had concerns for the Defendant and his family’s personal safety. As a result, Sergeant M.A. suggested he find a safe place to stay until the immediate media coverage subsided. Any testimony or evidence about Defendant’s conversations to maintain his and his family’s personal safety is not relevant to the elements of the crimes charged and should be excluded.

### **2. EVIDENCE OF DEFENDANT’S INVOLVEMENT IN A FELONY TRAFFIC STOP ON MAY 18, 2017, IS NOT RELEVANT.**

Evidence of Defendant’s involvement in a felony traffic stop on May 18, 2017, is not admissible under MINN.R.EVID. Rules 401-404 because it is not relevant, confusing,

and potentially prejudicial. On May 18, 2017, while on duty Defendant was involved in a felony traffic stop of B.C.O. The video from the traffic stop shows Defendant and his partner following a driver that was driving erratically. After initiating the traffic stop the driver continued for a number of blocks before finally stopping. Once stopped the driver made furtive movements, leaning abruptly to his right in a movement that both officers believed could have indicated the hiding of drugs or the accessing of a weapon. The squad video captures the officers' discussion and concern about the driver's furtive movements. Based on the driving conduct and furtive movement, the officers made the decision to conduct a felony traffic stop.

The squad video then shows Defendant at the driver's side of the car with his gun in "low carry" pointing down between himself and the driver and appearing calm. The squad video further shows that after Defendant determined the driver was not a threat, he holstered his gun; approximately 24 seconds after arriving at the side of the car. The State has suggested in the discovery that Defendant was aggressive compared to his partner by stating that his partner had his gun out, but not pointed at the driver. The State also appears to acknowledge in the discovery that Defendant's partner was actively looking through the windows of the car to try to find the contraband which the officers believed had been stashed by the driver during his furtive movements. The driver was subsequently issued a citation by the officers.

The State's preliminary exhibit list suggests the State intends to introduce evidence of the May 18, 2017, traffic stop to criticize Defendant for his actions as a police officer.

The State's attempt to find fault in Defendant's action is unfounded. The State interviewed the driver in preparing for this case. During the interview the driver states Defendant was the less aggressive officer in this encounter. The driver notes that it was Defendant's partner who was yelling and saying what are you doing and to shut up, while Defendant did not say anything other than what are you doing with your hands. The driver also agreed with the State that the officers had their guns drawn because the officers thought his initial movement was worrisome. The State also criticizes the officers because they did not write a report about the traffic stop, but Minneapolis Police Officers are not required to write a report for minor traffic citations. Neither is there a policy that requires a written report every time an officer removes his or her firearm from its holster. Finally, it appears the State has issue with the Defendant because he did not appear in court at the driver's hearing. Defendant missed the hearing because he was not informed of the hearing by State because Defendant was on leave due to this case.

The discovery suggests the State has spent a great deal of time developing the May 18, 2017, traffic stop into a kind of propensity evidence. But, evidence related to the stop is not relevant to what happened on July 15, 2017. The evidence will only create confusion and require additional unnecessary testimony to explain an unrelated event. And, even assuming the conduct shows Defendant acted inappropriately, the evidence is nothing more than impermissible propensity evidence requiring exclusion.

**3. EVIDENCE THAT DEFENDANT INVOKED HIS MIRANDA RIGHTS AND REMAINED SILENT IS INADMISSIBLE.**

Evidence that Defendant invoked his *Miranda* rights and remained silent is

inadmissible. In State v. Dunkel, 466 N.W.2d 425, 428 (Minn.Ct.App. 1991), the court of appeals prohibited the introduction of a defendant's counseled pre-*Miranda* silence in all incidences, including for impeachment purposes. The court of appeals found that it is a violation of due process to use a defendant's pre-arrest silence against him at trial, when that silence follows a defendant's invocation of his right to counsel. 466 N.W.2d at 428. Additionally, the court of appeals found that due process protection does not evaporate simply because a defendant decides to take the stand. Dunkel, 466 N.W.2d at 428. The Dunkel, court analogized that a defendant's reliance on a counsel's advice is tantamount to reliance on a *Miranda* warning. 466 N.W.2d at 428 (citing, State v. Billups, 264 N.W.2d 137, 139 (Minn. 1978) and State v. Sailor, 289 N.W.2d 500, 503 (Minn. 1980)). In this case, Defendant relied on the advice of counsel and invoked his *Miranda* rights. As a result, the State cannot be allowed to introduce evidence in its case-in-chief, nor via impeachment if Defendant testifies, of his invocation of his rights or his decision to remain silent. The State should be instructed to inform all of its witnesses that they are not to address the fact that Defendant exercised his *Miranda* rights.

**4. A "FLY THROUGH" EXHIBIT OF THE CRIME SCENE SHOULD BE EXCLUDED.**

The State's preliminary exhibit list includes an exhibit created by a Leica Geosystem scanner. The exhibit is a "fly through" of the scene. Defendant submits it is inadmissible because it inaccurately and prejudicially depicts what a person would actually see. The fly through recreates an unrealistic picture of what was visible on the night of July 15, 2017. The fly through also inappropriately uses first names and includes measurements and an

assortment of lines speculating as to possible directions a bullet could have traveled. The fly through packages opinion testimony into a video that unfairly represents the actual evidence and risks confusing the jury. The fly through also encourages the jury to consider the events in slow motion with a field of view that is wider than what a person would actually see. This exhibit creates a 20/20 hindsight view that is not consistent with reality. Defendant asks the fly through exhibit be excluded because it is not accurate, confusing, and prejudicial.

## II. MOTION TO DISCLOSE

### 1. DEFENDANT RESPECTFULLY REQUESTS THE COURT ORDER THE STATE TO DISCLOSE ANY EXHIBITS TO BE USED IN THE OPENING STATEMENT TO ALLOW FOR TIMELY OBJECTIONS.

Defendant respectfully requests the Court order the State to disclose what, if any exhibits, demonstrative or otherwise, to be used in the opening statement so that Defendant, if necessary, may make a timely objection. As this Court is well aware, “[i]t has long been the practice in our trial courts that, in the discretion of the court, photographs, documents, charts, and the like may be displayed during opening statement if they have been preliminarily admitted into evidence or the court otherwise grants leave.” State v. Fairbanks, 842 N.W.2d 297, 306 (Minn. 2014).

### 2. DEFENDANT RESPECTFULLY REQUESTS THE COURT ORDER THE STATE TO DISCLOSE ANY “SPARK OF LIFE” TESTIMONY OR EXHIBITS PRIOR TO TRIAL TO ALLOW FOR TIMELY OBJECTIONS.

Defendant recognizes that the supreme court has allowed the use of “spark of life” evidence in murder trials. In State v. Graham, the supreme court stated, “[t]he prosecution

has some leeway to show that spark and present the victim as a human being.” 371 N.W.2d 204, 207 (Minn. 1985). But, that leeway is not unlimited. “The State may present spark of life evidence so long as it is not an attempt to invoke undue sympathy or inflame the passions of the jury.” State v. Morrow, 834 N.W.2d 715, 727 (Minn. 2013). Due to the potential prejudicial nature of “spark of life” evidence it is appropriate that the State be required to disclose pre-trial what, if any “spark of life” evidence the State intends to introduce so that Counsel for Defendant may, if necessary, make appropriate objections.

### **III. MOTIONS REGARDING TRIAL PROCEEDINGS**

Defendant proposed to the State that prior to the start of jury selection the jury pool be shown a video, developed by the United States District Court, Western District of Washington, on the issue of unconscious bias.<sup>1</sup> The State opposes showing the jury pool the video. The unconscious bias video was developed to address potential jurors' unconscious biases in relation to race, sex, cultural, and religious differences. This case of course contains a number of these issues. The goal of the video is to bring these issues to the forefront of a jurors' minds so that they may recognize their potential biases and avoid allowing their unconscious bias from affecting their decision making.<sup>2</sup> Defendant respectfully requests the jury pool be required to watch the video prior to jury selection.

Rule 26.02, subdivision 6 of the Minnesota Rules of Criminal Procedure sets out that a Defendant in a non-life imprisonment case has five peremptory challenges. Given

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<sup>1</sup> <https://www.wawd.uscourts.gov/jury/unconscious-bias>

<sup>2</sup> <https://www.wawd.uscourts.gov/sites/wawd/files/CriminalJuryInstructions-ImplicitBias.pdf>

the extremely high-profile nature of this case Defendant respectfully request the Court allow increase the peremptory challenges for the Defendant to 15 and for the State to nine.

Pursuant to Minnesota Rule of Evidence 615, Defendant moves the Court for an Order requiring sequestration of witnesses with the exception of expert witnesses and one case agent for each party.

Defendant also requests that all witnesses under subpoena, whether by the State or Defense, remain under subpoena until after the close of all evidence.

Finally, given the large number of potential witnesses Defendant requests the Court to order the parties to disclose the witnesses for the following day at the close of each day of trial.

Respectfully submitted,

Dated: February 14, 2019.

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