

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

State of Minnesota,

Vs. Plaintiff,

Mohamed M. Noor,

Defendant.

**NOTICE OF MOTION
AND MOTION TO EXCLUDE STATE'S
BLIND MMPI 2 RF READING**

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

NOTICE OF MOTION AND MOTION

PLEASE TAKE NOTICE that on March 1, 2019 at 9:00 AM or as soon thereafter as Counsel may be heard, Defendant, Mohamed Noor, by and through his attorneys, will move this Court, for an order excluding any reference to the State's blind reading of Officer Noor's MMPI 2 RF Police Candidate Interpretive Report (PCIR) performed by Dr. Tricia Lynn Aiken, PsyD and any references to the test and the test results because the evidence is not relevant, lacks probative value, poses a substantial danger of unfair prejudice, confusion of the issues, and misleading the jury. Further, the blind interpretation is not based on the type of information reasonably relied upon by experts in psychology in forming opinions or inferences and Dr. Aiken is not competent to interpret the PCIR. Finally admission of the blind interpretation will prejudice Officer Noor based on race, religion and ethnic heritage.

This motion is based upon the files and records in this case, the attached Exhibits A and B (Report of Dr. Matthew Guller and curriculum vitae of Dr. Aiken respectively), Minnesota Statutes, Minnesota Rules of Criminal Procedure, Minnesota Rules of Evidence in particular Minn. R. Evid. 401, 402, 403 and 703(a), the United States and Minnesota Constitutions and upon such other and further points and authorities as may subsequently be presented to the Court.

DISCUSSION

Any reference to the State's blind reading of Officer Noor's outdated test data should be excluded as it fails to address any issue that is of consequence, will be unfairly prejudicial and confuse the issues and does not contain facts and data that can be relied on in making any kind of an ethically derived opinion. Further, the Dr. Aiken's report reflects a racial and ethnic bias because it fails to filter out known test bias.

On December 12, 2017 Tricia Lynn Aiken, PsyD, created a report based on her blind reading of Officer Noor's 29-month-old test data (February 17, 2015 to July 15, 2017) Dr. Aiken did this interpretation at the request of Ms. Amy Sweasy, Senior Assistant Hennepin County Attorney.¹ Dr. Aiken's report self-discloses that she failed to follow the "well established standard of practice" for testing found in the MMPI 2 RF User's Guide for the Police Candidate Interpretive Report². Dr. Aiken states she:

[d]id not review any evaluation information other than the raw test data for the purposes of this write-up. For example, I did not read the original test write-up or psychological evaluation. The following test interpretations are based on the MMPI-2RF results alone, without the incorporation of other collateral data about the test subject.

See Aiken Report at Pg. 1.

Dr. Aiken's report explains that she fed raw data into the Pearson Q-Global test scoring system and received a computer-generated Interpretive Report. This means she fed 338 true/false questions into a computer and waited for a computer-generated report to be sent to her. She completely failed to follow the practices outlined in the User's Guide which call for a clinical interview and review of background information making a conclusion.

¹ Dr. Aitken's Report was previously provided to the Court as a Court Exhibit and is incorporated into this memorandum by reference.

² The User's Guide directs use of multiple test groups, a clinical interview and review of background information.

The State's Reply to the Defense Motion to Dismiss for Lack of Probable Cause references Dr. Aiken's report. The State argues that the test, "illustrates his indifference for human life which led to his actions on July 15, 2017" and "found that he was unsuited for the job" and that the "defendant self-reported that he disliked people, disliked being around people, and was disinterested in interacting with people." None of these claims comports with the truth and none of these claims are supported by Dr. Aiken's improper use of outdated test data. See Exhibit A. Interestingly, the State personally attended Dr. Gratzer's and Dr. Logel's interviews and possessed the User's Guide all explaining the problems with the State's conclusions and Dr. Aiken's practices.³ The State's attorney, having been present for the interviews, was well aware that between 20 and 40% of the minority candidates were receiving elevated scales, which Dr. Logel termed "blips", on the PCIR comparison groups. See Dr. Logel interview at Pg. 9. Having also been present at Dr. Gratzer's interview, the State's attorney knew that the test had limitations when applied to cultural groups. See Dr. Gratzer interview at Pg. 14. Dr. Gratzer told the prosecutor that when a test essentially compares a Somalian to 2000 white police officers, any reported difficulties could be with the test and not the Somalian. *Id.* The blind reading is irrelevant because 20 to 40% of minority candidates fail. The State's blind reading is not evidence it is racism.

1. Dr. Aiken's Report is not Relevant:

The Minnesota Rules of Evidence prohibit the admission of irrelevant evidence. See Minn. R. Evid. 402. Evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be

³ Dr. Gratzer's December 13, 2017 interview and Dr. Logel's January 26, 2018 interview transcripts were previously filed as Court exhibits and are incorporated by reference.

without the evidence is relevant. See Minn. R. Evid. 401. The State's blind reading uses PCIR results in a way they is neither intended nor designed, making the reading irrelevant.

The State's response to Defendant's Motions to Dismiss for Lack of Probable Cause states they will rely on their blind reading to suggest that Officer Noor has an indifference to human life, was not suited for a job in public service and that he self-reported not liking people. The blind reading does not support any of these false claims.

Dr. Guller's report, Exhibit A, explains the many ways the blind reading is unreliable. He explains that Dr. Aiken lacks competence in evaluating police officers, the test data is grossly out of date, the blind interpretation is an improper use of the test, the practice of blind readings fails to protect against misuse of psychological testing, there are deficiencies in the Disaffiliative scale and finally that the State misuses the information in Dr. Aiken's report magnifying all of the failings.

The blind reading fails to support any fact that is of consequence to the determination of the criminal charges against Officer Noor. To be reliable the test must be used in connection with other information. The lynch pin to that MMPI 2's validity is having it interpreted in the context of additional information. Dr. Guller, Dr. Gratzler, Dr. Logel and the PCIR user's manual agree on this point. The Doctors also voice concerns that a blind reading is racially and culturally biased. Dr. Gratzler told the prosecuting attorney that "there was a cultural explanation" for Officer Noor's test results.⁴ The bias was confirmed by Dr. Logel. Impervious to the truth, the State hired Dr. Aiken to do a blind interpretation. Admitting the blind interpretation allows the State to seek a Murder conviction based on Officer Noor's race and religion.

⁴ See Gratzler Interview at Pg. 18

The State's claim that the test shows indifference to human life is false and unsupported by their blind reading. Dr. Guller explains that the test is not capable of evaluating indifference to human life. Dr. Aiken's blind reading, in fact, never uses the words "indifference" "human" or "life". The State fabricated this claim to defame Officer Noor and inflame public sentiment regarding this case. We ask the Court to prevent this at trial. Dr. Aiken's blind interpretation and potential testimony are not relevant to this point.

The State's assertion that the blind interpretation shows Officer Noor was not suited for public service as a police officer is untruthful and racially and ethnically insensitive. Again, Dr. Logel observed that 20 to 40% of minority test takers have a "blip", Dr. Gratzner explains there is a cultural explanation and Dr. Guller points out that the test uses a norm group that is 82% white and non-Muslim. The test is irrelevant because it does not support the State's claims. Worse, it is offered to convict Officer Noor based on race and religion.

The State argues that that blind interpretation shows that Officer Noor self-reported that he is disinterested in interacting with others. This is false and misleading. Dr. Guller explains that these words never came from Officer Noor's mouth. See Exhibit A at Pg. 8. Instead a computer-generated report offered this as an area for further evaluation. Dr. Guller explains the Disaffiliative scale is based on answers to 6 questions, 2 of which were duplicated. See Exhibit A Pg. 6-7. This is a deep flaw in the Disaffiliativeness scale and a clear limitation of the blanket conclusion of the MMPI-2-RF printout quoted by Dr. Aiken. *Id.* at 7. This limitation would be blunted had Dr. Aiken followed the practices outlined in the User's Manual – she did not. The blind reading is not relevant to this point.

The age of the test results also make the blind reading irrelevant to anything that happened 29 months later. See Exhibit A at Pg. 3. The test is intended to provide a "snapshot in

time" regarding the test taker's then functioning. *Id.* Given the issues surrounding the blind interpretation the results are irrelevant.

2. Dr. Aiken's Report will confuse and inflict prejudice on Officer Noor.

The State may argue that the evidence is relevant and it is up to the jury to determine what, if any, weight should be given to the blind reading. Buying into this argument would grant the State's wish to prosecute Officer Noor because he is a minority, an immigrant and a Muslim.

Minn. R. Evid. 403 provides the balancing test for excluding otherwise relevant evidence. The primary question is whether the probative value of the evidence is outweighed by the danger of unfair prejudice. Unfair prejudice refers to the tendency of evidence to improperly influence the jury's decision, usually by appealing to emotions or biases, thus distracting from the proper issues of the case. *State v. Carlson*, 268 N.W.2d 553, 559 (Minn. 1978). "The exposure of a jury to potentially prejudicial material creates a problem of constitutional magnitude because it deprives a defendant of the right to an impartial jury." *State v. Varner*, 643 N.W.2d 298, 304 (Minn. 2002) (quotation omitted). The Minnesota Supreme Court has concluded that, for the purpose of Rule 403, "prejudice" does not refer to the damage that relevant evidence legitimately causes to the opposing party's case; but rather "it refers to unfair advantage that results from the capacity of the evidence to persuade by illegitimate means." *State v. Ferguson*, 581 N.W.2d 824, 834 (Minn. 1998) (quoting *State v. Cermak*, 365 N.W.2d 243, 247, n.2 (Minn. 1985)). The comments to the rule explain that the rule creates a balancing test. Probative value is balanced against other considerations of policy, fairness, and convenience. The rule favors the admission of relevant evidence by requiring a determination that its probative value be "substantially" outweighed by the dangers listed in the rule before relevant evidence will be excluded.

The blind reading is an attempt at persuasion through improper means because the test alone does not filter racial and ethnic bias. Further, the test is not designed to support a conclusion in a vacuum. The blind test interpretation is an unnecessary side show that has no touchstone with the issue of guilt or innocence and should be excluded.

3. Dr. Aiken's Report is inadmissible as an expert opinion

Minn. R. Evid. 703(a) provides that the facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. If the information is of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence. Rule 703(b) provides the caveat that underlying expert data must be independently admissible in order to be received upon direct examination.

Dr. Aiken makes clear that she did nothing more than feed information into a web-portal, receive a computer-generated report, and checked to see if any important areas were missing from the report. She did not follow the procedures found in the User's Guide to the Police Candidate Interpretive Report. This means her report is not based on the type of information reasonably relied on by experts. Dr. Guller outlines other points that confirm the blind reading is not the type of information relied on by experts in psychology.

Neither the information in the report nor the assertions by the State are actually from Dr. Aiken. None of the arguments proffered by the State and attributed to Dr. Aiken are actually offered as opinions in her report. She simply parrots what a computer-generated report told her. Moreover, the State's claim that Dr. Aiken opined that Officer Noor was possessed of an indifference to human life is simply made up.

Additionally Dr. Aiken's blind interpretation is of the Police Candidate Interpretive Report (PCIR) test sample, is a subject she lacks professional experience with. See Exhibit A at Pg. 2 and Exhibit B. The test results are not admissible as an expert opinion. If the Court is not persuaded the Defense requests a Frye-Mack hearing on the issue of the blind interpretation.

Respectfully submitted,

Dated: February 13, 2019

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