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State of Minnesota
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STATE OF MINNESOTA DISTRICT COURT

COUNTY OF HENNEPIN FOURTH JUDICIAL DISTRICT

State of Minnesota,

Plaintiff,

v.

Mohamed M. Noor,

Defendant.

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

DEFENDANT'S RESPONSE TO THE STATE'S MOTIONS IN LIMINE REGARDING RULE 404(B) EVIDENCE

Defendant, Mohamed M. Noor, by and through his attorneys, offers the following response to the State's Motion to Admit Evidence Pursuant to Rule 404(b) of the Minnesota Rule's of Evidence.

1. EVIDENCE OF A PRIOR CALL REGARDING A WOMAN WITH BAGS IS NOT RELEVANT.

The State seeks to introduce evidence of a 911 call one hour and forty minutes prior to the events that form the basis of the charges in this case. The State argues that evidence of a call about a woman with large suitcases who might be lost or have dementia is "intrinsic" to its case. The intrinsic nature of this evidence is apparently found in the State's better than 20/20 hindsight that Defendant should have had this call in his mind for the remainder of the night. And that he should have considered this call in any split second decision he made throughout his shift. The State's argument is counter to Supreme Court law. In *Graham v. Connor*, the Supreme Court instructed,

The 'reasonableness' of a particular use of force must be judged from the

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> perspective of a reasonable officer *on the scene,* rather than with the 20/20 vision of hindsight.... With respect to a claim of excessive force, the [ ] standard of reasonableness *at the moment* applies: 'Not every push or shove, even if it may later seem unnecessary in the peace of a judge's chambers,' violates the Fourth Amendment. The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make *split-second judgments*—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation.

490 U.S. 386, 396-97 (1989). Despite clear instruction from the Supreme Court, the State would still like to substitute its hindsight and argue that an unrelated call one hour and forty minutes prior created a duty that should have controlled Defendant's split second judgment. The law does not support the State's argument. And, the facts do not support the State's hindsight.

What the officers knew one hour and forty minutes prior to the 911 call from Ms. Ruszczyk, was that there was a 911 call reporting an elderly woman walking with bags who might have been lost or suffering from dementia. There was no report the woman was in danger or breaking the law. When Defendant and his partner responded to the area he and his partner requested contact with the original 911 caller. The re-contact indicated the woman was last seen near a bus stop. The officers checked the area twice. They did not locate the woman. The State argues this means the woman must have walked toward Ms. Ruszczyk's home. The State's argument ignores the obvious. The logical conclusion that a reasonable officer would have made is the woman and her bags got on the bus at the bus stop where she was last seen. There was no need for Defendant to remember the incident.

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A call about a woman who likely got on a bus is not relevant to this case. It should be excluded.

Respectfully submitted,

Dated: February 22, 2019.

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