

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

State of Minnesota,

Plaintiff,

v.

Mohamed Mohamed Noor,

Defendant.

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

**REPLY TO STATE'S MOTION
FOR DISCOVERY - ADMISSIONS**

Defendant, Mohamed Noor, by and through his attorneys, hereby replies to the State's Notice of Motion and Motion for Discovery From Defendant and Memorandum on Adoptive Admissions. The State's Motion asks counsel for Officer Noor to comply with discovery obligations and for the Court to find that Officer Noor has adopted inferential arguments of his Counsel as an adoptive admission. The State's Motion should be denied.

- 1. Counsel for Mr. Noor is aware of a defendant's discovery obligations under the Rules of Criminal Procedure and has complied and will continue to comply with the requirements.**

The State has identified two arguments from the Officer Noor's Motion to Dismiss for Lack of Probable Cause and now asserts that the arguments are based on some undisclosed discovery. The two identified arguments are just that, arguments. Counsel for Mr. Noor is well aware of a defendant's discovery obligations under the Rules of Criminal Procedure and will comply with those requirements.

- 2. The arguments the State has asked this Court to deem adoptive**

admissions are arguments rationally inferred from the evidence, not adoptive admissions.

The State has identified two arguments made by Counsel for Officer Noor and has made the unusual request that the arguments be made adoptive admissions. In support of their Motion, the State asserts that the arguments are not supported by the evidence. This is flatly wrong. The inferences in the arguments are based on the statements of Officer Harrity and his grand jury testimony. As to the first argument, Officer Harrity has consistently told the State, through his statements to law enforcement and from questioning during the grand jury proceeding exactly what Counsel argued, that the alley was dark, that there was voice, a thump on the squad, that a body appeared in the driver's side window, that as a result he (Officer Harrity) made a startled announcement of fear and reached for and drew his firearm. It is an entirely reasonable inference from that evidence that Officer Noor reacted. Similarly, the second argument is also supported by the State's evidence. The evidence from Officer Harrity's testimony and the State's reenactment clearly support the inference that Officer Noor fired once, aiming his firearm at the body that appeared in the driver's side window. Counsel's arguments are rational inferences supported by the State's evidence. Counsel's arguments are not adoptive admissions by Officer Noor.

Nevertheless, the State argues that the supreme court's holding in Village of New Hope v. Duplessie, 231 N.W.2d 548, 553 (Minn. 1975) supports the conclusion that Counsel's legal arguments should be considered adoptive admissions. The State has misapplied Duplessie. In Duplessie the supreme court identified the rule courts must

follow when determining whether hearsay constitutes an adoptive admission of a criminal defendant. The supreme court stated,

In summary, we announce the following rule: Where hearsay accusations are sought to be introduced as evidence against a defendant in a criminal proceeding on grounds that the hearsay was ‘adopted’ by defendant as an admission of his guilt, the trial court must first determine that the asserted adoptive admission be manifested by conduct or statements which are Unequivocal, positive, and definite in nature, Clearly showing that in fact defendant intended to adopt the hearsay statements as his own.

As previously argued Counsel does not believe the arguments identified by the State are anything more than arguments, but assuming arguendo, the State has failed to show any adoption by Officer Noor of the arguments beyond the fact that his Counsel submitted a legal motion. Presumably this lack of adoption by Officer Noor is why the State cites State v. Pilcher, 472 N.W.2d 327, 337 (Minn. 1991). But like Duplessie, Pilcher is not applicable in this analysis. Pilcher does not stand for the proposition that a criminal defendant adopts the arguments of defense counsel simply because they are made. The entirety of the supreme court’s opinion on this issue is contained in the following paragraph,

In his pro se brief, Pilcher claims that defense counsel conceded guilt without Pilcher's consent to that trial strategy. The decision whether or not to admit guilt at trial belongs to the defendant, and a new trial will be granted where defense counsel, explicitly or implicitly, admits a defendant's guilt without permission or acquiescence. See State v. Moore, 458 N.W.2d 90, 96 (Minn.1990)(defendant immediately objected at trial); State v. Wiplinger, 343 N.W.2d 858, 860 (Minn.1984) (defendant objected to attorney's representation). Pilcher was present when the concessions were made and, by his own admission, understood but did not dispute the tactic. These circumstances, together with the strong case which makes a concession of guilt an understandable trial strategy, show that Pilcher acquiesced to the conduct of defense counsel in impliedly admitting guilt. Wiplinger, 343 N.W.2d at 861. The remaining issues raised in Pilcher's pro se brief do not merit discussion.

Pilcher, does not stand for the proposition that Officer Noor has adopted as statements his Counsel's legal arguments. The State's assertions to the contrary are unsupported by the law. The State's Motion should be denied.

Respectfully submitted,

Dated: September 21, 2018.

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