

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

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 State of Minnesota,

Plaintiff,

Vs.

Mohamed M. Noor,

Defendant.

**REPLY TO STATE'S MEMORANDUM  
OF LAW IN SUPPORT  
OF MOTION TO ADMIT EVIDENCE  
FROM DEFENDANT'S PRE-HIRE  
PSYCHOLOGICAL EVALUATION**

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

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**FACTS**

This memorandum is a reply to the State's Memorandum in Support of their Motion to Admit Defendant's Pre-Hire Psychological evaluation as character evidence. It appears the State is no longer intending to rely on Dr. Aiken's blind reading and instead is offering the reports from Drs. Gratzler and Logel. Regardless, Dr. Guller's expert report is applicable to the MMPI results as the test results are misleading and should be excluded.

It is important to note that the State does *not* seek to admit the result of Officer Noor's pre-hire psychological evaluation. The State seeks to admit an out-of-context portion of an overall psychological evaluation. Officer Noor's psychological evaluation found:

In my opinion, Mr. Noor is psychiatrically fit to work as a cadet police officer or police officer for the Minneapolis Police Department. There is no evidence of major mental illness, chemical dependency, or personality disorder. There is no pattern of behaviors that would preclude such employment.

See Dr. Gratzler's Report February 23, 2015

In coming to this opinion Dr. Gratzler relied on a Job Description, a background investigation, and the report from Dr. Marvin Logel's application of the MMPI 2 RF – PCIR. Additionally, Dr. Gratzler had the benefit of a full social history and in-person interview with

Officer Noor. The background investigation is 317 pages long and includes information from schools, colleges, employers, references, a credit check, bank verification and other data. The background offers information from many people and discloses that:

All references stated the candidate has the ability to control his temper and when asked to describe the candidate's temper one stated, 'He is very even keeled and kind. He does not have a temper.'

See Background Investigation Summary at Pg. 14

All references stated the candidate gets along with others very well. None of the references have known the candidate to use drugs, commit any crimes, or demonstrate prejudice.

Id.

When asked how the candidate handles stress the references stated, "Noor<sup>1</sup> accepts things as they come and does not let stress misguide or distract him from his work. He is active and releases stress through exercise; bet he also practices mindfulness and is aware of his state of mind-which is crucial in managing stress.

Id. at Pg. 15.

As the State notes, Dr. Gratzer was asked to confirm his Fitness for Duty evaluation report and noted that the abnormalities in the test did not correlate with the clinical history, examination, and collateral information and did not give much weight to the test. His letter confirmed that the MMPI result was not supportable and that Officer Noor was fit to work as a cadet police officer or police officer for the Minneapolis Police Department.

The State now seeks to use the MMPI's speculative and uncorrelated suggestions about Officer Noor as character evidence. The State seeks to argue that Officer Noor was categorically unreasonable, rather than examine the specific events leading to the charges in the complaint from the perspective of an objectively reasonable officer.

## **DISCUSSION**

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<sup>1</sup> Name removed in original

**1. The MMPI is not Character Evidence:**

The MMPI results are not character evidence. The MMPI results are unsupported speculation that was refuted and determined to be unreliable. The test provides no insight into Officer Noor's personality nor is it instructive on any relevant issue. Officer Noor points to his entire background file, Dr. Gratzner's report, Dr. Gratzner's letter to Minneapolis, Dr. Gratzner's interview with the State, Dr. Logel's interview with the State and Dr. Miller's expert report which confirm this point.<sup>2</sup>

State is proffering as character evidence an outdated test, which fails to filter out testing bias based on race. The test is not character evidence because it does not accurately reflect Officer Noor's character. The pre-hire psychological report as a whole is irrelevant to both the charges and the defense and allowing any portion of the evaluation in, and in particular the MMPI, is improper.

**2. The MMPI does not prove an element:**

State argues the evidence is admissible because it is necessary to prove an element of the charge or a defense. The State relies heavily on Minn. Prac., Evidence § 404.03 (4<sup>th</sup> ed.); several case, and 1 unpublished case. This reliance is misplaced.

The Minnesota Practice Series is not authoritative and the portions relied on are not supported by case citations.

The State misapplies the holding in *Choun*. *Choun* is a crime for the benefit of gang case where an expert testified about several facts that supported his conclusion about gangs and the relationship of gang culture to an attempted murder. This was upheld by the Court because gang culture was an element of the offense. Had the expert in *Choun* testified that there was not

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<sup>2</sup> All of these documents are previously provided to the Court as Court exhibits and are incorporated into this memorandum by reference.

enough information to show the crime was for gang benefit, but the defendant has a gang tattoo, the evidence would have been excluded in its entirety. In this case the experts concluded that Officer Noor was psychologically fit for duty. The MMPI results were reviewed and discounted in light of all available information because they do not provide accurate insights into Officer Noor's character. The MMPI does not offer insight into an element of the offense or defense because it is not insightful of character.

The State's reliance on *State v. Yang*, 644 N.W.2d 808, (Minn., 2002) is similarly misplaced. In *Yang* the same gang expert testified as a rebuttal witness. *Yang* is distinguished in the same way as *Choun*. Since the MMPI was considered and given little weight, the Court should not now allow the State to use it to prove an element of the offense in the State's case in chief or on rebuttal. The same is true of the entire pre-hire psychological evaluation. Allowing the state to offer the evaluation for the purpose of discrediting it based on the MMPI result alone is just as improper as offering the MMPI test results by themselves. A pre-hire evaluation is no longer relevant after training and experience takes its place.

*State v. Miller*, 396 N.W.2d 903 (Minn. App., 1986) is not on point. *Miller* looks at when a defendant can offer character evidence in their defense. In *Miller* the Defendant sought to have his probation officer testify that he had grown and changed by being on probation and has become a generally good person. *Miller* holds that there are limits on what character evidence a defendant can offer in their own defense. *Miller's* holding is limited and not applicable to the case before this Court.

The Prosecution relies on *State v. Villanueva*, C2-99-2040, 2000 WL 1281129, at \*2 (Minn. Ct. App. Sept. 12, 2000) for the proposition that a statement to a psychologist was relevant to proving an essential element of the case and therefore its significant prejudice was

outweighed by its highly probative value. In *Villanueva* a defendant met personally with a psychologist and outlined their personal definition of abuse as part of a parental assessment. The *Villanueva Court* held that the statement was not character evidence so Minnesota Rule of Evidence 404 did not apply. Beyond that, the decision in *Villanueva* examined a personally held belief of the defendant. The MMPI is not a statement from Officer Noor. The MMPI looked at 6 questions (2 that were repeated) and, without coming to a conclusion, suggested that certain character traits should be examined further. Following further evaluation, the information was determined to be inaccurate and unreliable. The facts in *Villanueva* are easily distinguished and have no bearing on the issue before the Court.

The MMPI cannot be said to be evidence of an element or rebut the defense because it does not provide insights into the person. Further, it is remote in time and was given well before Officer Noor completed his training, his FTO and his time as a patrol officer.

### **3. Any evidence must make a reasonable inference**

The State argues that any of information, regardless of accuracy, that helps support an element or rebuts a defense is relevant and admissible. The rules of evidence only allow information that makes an inference reasonable.. See *State v. Horning*, 535 N.W.2d 296, 298 (Minn. 1995). *Horning*, and many other cases, explain that evidence is only relevant if it *logically or reasonably* tends to prove or disprove a material fact in issue, or tends to make such a fact more or less probable, or affords the basis for or supports a reasonable inference or presumption regarding the existence of a material fact. The Defense refers to our previously filed memoranda on the issue of relevance and in particular the information explaining the racial bias of the MMPI.

### **4. Objectively Reasonable Standard:**

The MMPI is not properly considered when evaluating the objectively reasonable standard. The objectively reasonable standard is outlined in *Graham v. Conner*, 490 U.S. 386 (1989) and its progeny. The “reasonableness” inquiry is an objective one. The question is whether an officer’s actions are “objectively reasonable” in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation. *Id.* at 387. The Court also cautioned, “The ‘reasonableness’ of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.” *Id.* at 396. Even if an officer is categorically unreasonable, this is not part of a jury’s evaluation of objectively reasonable conduct at a specific moment in time. The MMPI provides an inaccurate picture of a person that can only mislead the jury on the issue of objective reasonableness. Even the pre-hire psychological evaluation fails to consider the impact of training and experience after the evaluation was conducted.

The State must not be allowed to argue that Officer Noor was categorically unreasonable based on the MMPI because it is not relevant to the affirmative defense of authorized use of force. In fact, the argument violates the language of the JIG which instructs the jury to look only at the facts known to the officer at the precise moment of action.

### **CONCLUSION**

The MMPI does not meet the standard of relevant evidence. The State attempts to bootstrap inadmissible evidence into this trial by calling it character evidence despite the fact that the MMPI does not offer any insight into Officer Noor’s character.

Respectfully submitted,

Dated: February 25, 2019

s/ Thomas C. Plunkett  
Thomas C. Plunkett  
Attorney No. 260162  
Attorneys for Defendant  
Suite 1500  
101 East Fifth Street  
St. Paul, MN 55101  
Phone: (651) 222-4357

s/ Peter B. Wold  
Peter B. Wold, ID #118382  
**Wold Morrison Law**  
247 Third Avenue South  
Minneapolis, MN 55415  
Phone: 612-341-2525  
Fax: 612-341-0116