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9/5/2018 1:22 PM

STATE OF MINNESOTA | DISTRICT COURT

COUNTY OF HENNEPIN | FOURTH JUDICIAL DISTRICT

State of Minnesota, Plaintiff, vs. **MOHAMED MOHAMED NOOR,** Defendant.	**STATE'S RESPONSE TO DEFENDANT'S MOTION TO DISMISS FOR PROSECUTORIAL ERROR** MNCIS No: 27-CR-18-6859

TO: THE HONORABLE KATHRYN QUAINTANCE, HENNEPIN COUNTY DISTRICT COURT; COUNSEL FOR DEFENDANT; AND DEFENDANT.

STATEMENT OF FACTS

Shortly before midnight on July 15, 2017, then-Minneapolis Police Officer Mohamed Noor, the defendant, shot and killed Justine Ruszczyk. Ms. Ruszczyk was an unarmed citizen 911 caller who approached the defendant's squad car on the driver's side in an effort to speak with officers who were leaving the area only one minute and 56 seconds after responding to her second 911 call. Before Ms. Ruszczyk had a chance to utter a word to the officers, the defendant fired his 9mm handgun from his passenger seat. The defendant's bullet went through the open driver's side window and into Ms. Ruszczyk's body, killing her before an ambulance could even arrive.

Despite this event occurring in a quiet neighborhood with no witnesses, word of Ms. Ruszczyk's officer-involved shooting death spread quickly across news and social media. Recent cases in which Minneapolis Police officers have shot and killed individuals have received

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State of Minnesota
9/5/2018 1:22 PM

substantial and sometimes saturating media coverage, as has been the case in other cities across the United States. Also generating unusual interest was the fact that Ms. Ruszczyk moved to Minnesota from her native Australia to be with her fiancé only a few years before her death. The result has been literal worldwide media coverage. Interest in the shooting, the investigation, and in this prosecution has remained strong even though more than a year has passed. There is every reason to believe this level of interest will continue throughout the criminal court process.

Because of the significant and persistent interest in this investigation and case, many parties and representatives of agencies have commented or reported about progress and developments in the case since July 15, 2017. On several occasions before the defendant was charged, the Hennepin County Attorney made public comments about the case, the investigation, and parties involved in the investigation. The County Attorney also held a press conference on March 23, 2018, the day the defendant was charged, and commented on public information contained in the murder complaint. The defense has moved this court to dismiss the charges on grounds that those remarks "violated due process."

ARGUMENT

THE COURT SHOULD DENY THE MOTION TO DISMISS THE CHARGES BECAUSE NO PRE-TRIAL EVENTS HAVE PREJUDICED ANY OF THE DEFENDANT'S CONSTITUTIONAL RIGHTS

No comments about the case by the Hennepin County Attorney have affected the defendant's rights or created a situation where he will not be guaranteed a future fair trial. The Minnesota Rules of Professional Conduct govern the conduct of attorneys involved in criminal investigations and cases and acknowledge competing policy interests:

> It is difficult to strike a balance between protecting the right to a fair trial and safeguarding the right of free expression. Preserving the right to a fair trial necessarily entails some curtailment of the information that may be disseminated about a party prior to trial,

Filed in District Court
State of Minnesota
9/5/2018 1:22 PM

> particularly where trial by jury is involved. If there were no such limits, the result would be the practical nullification of the protective effect of the rules of forensic decorum and the exclusionary rules of evidence. On the other hand, there are vital social interests served by the free dissemination of information about events having legal consequences and about legal proceedings themselves. The public has a right to know about threats to its safety and measures aimed at assuring its security. It also has a legitimate interest in the conduct of judicial proceedings, particularly in matters of general public concern. Furthermore, the subject matter of legal proceedings is often of direct significance in debate and deliberation over questions of public policy.

Minn. R. Prof. Conduct 3.6, comment [1]. The rule to which this comment applies is that a lawyer who has participated or is participating in the investigation of a criminal matter may not make an extrajudicial statement about that matter when the lawyer knows or reasonably should know that the statement will be disseminated publicly and will have a substantial likelihood of materially prejudicing a jury trial in a pending criminal matter. *Id.*

The remarks at issue were made about the shooting and killing of an unarmed 911 caller by the police officer assigned to respond to her calls. Shooting deaths and homicides of citizens by police officers are matters of general, and significant, public concern in Minneapolis and in Minnesota. These incidents concern threats to community safety and raise questions about a community's security. As the comment to Rule 3.6 states, the public has a right to receive information about these events and about this case in particular. Officer-involved homicide cases are also matters of general and deserved public concern, raise numerous issues relating to current public policy, and have generated great discourse and interest in change. The community as a whole must be informed about these cases.

While the defendant argues that statements made by the county attorney "denied [the defendant] due process," he points to no specific harm he has suffered nor any that is likely in the future of this prosecution. The case is in its very early stages with discovery by the

Filed in District Court
State of Minnesota
9/5/2018 1:22 PM

prosecution just completed on June 28, 2018. The defense has not yet provided any discovery to the prosecution. No trial date is set. Only very preliminary matters are the subject of current motions.

An analysis of the specific statements the defendant asserts have denied due process to him shows not only that no harm to the defendant's trial rights exist, but also that no prosecutorial error was committed nor are there any violations of the Rules of Professional Conduct. In September 2017, the County Attorney attended a community meeting in the neighborhood where Ms. Ruszczyk and her fiancé lived, a neighborhood understandably and appropriately concerned about the shooting and their own safety. The comments at issue are, "I'm saddened by the death of this fine young woman…It didn't have to happen. It shouldn't have happened." Ms. Ruszczyk's shocking death from being shot by the defendant saddened people in her family, her neighborhood, the local community, and people all over the world. Nothing about the County Attorney expressing the feeling that so many share affects the defendant or his rights in any way. The statement was about Ms. Ruszczyk, not the defendant. The statement that her death did not have to happen, similarly, is not a comment on the defendant or his actions. Most crimes, in fact, do not have to happen and are totally avoidable.

At the same meeting, the County Attorney commented on a case in another Minnesota county where a police officer, Jeronimo Yanez, shot and killed a citizen. He expressed his personal belief that the jury in that case returned an incorrect verdict. This statement is not about the defendant at all and is one person's opinion about another high-profile officer-involved shooting case. The County Attorney's opinions on any other case, including other officer-involved shootings, have no bearing on the defendant's case or any of his trial rights.

In recent years, the length of time it takes to conduct investigations in officer-involved

Filed in District Court
State of Minnesota
9/5/2018 1:22 PM

homicide cases has become a matter of great public interest and debate. Similarly, the public has become increasingly interested in, and vocal about, wanting disclosure of information and transparency in these investigations. Few, if any, other crimes share this degree of public interest. In this case, the pre-charging investigation took eight months, which is longer than investigations in some other officer-involved shooting cases and shorter than many other criminal investigations. Because of the intense interest in this case, the amount of time the investigation was taking was a subject of regular public and media curiosity and the County Attorney was often asked about it.

In December 2017, the County Attorney attended an after-work holiday party where he was approached by people interested in this case who recorded their conversation. Reasonable people can disagree about the extent to which people in today's society should assume their conversations are being recorded, but in this case the video shows very clearly that the parties making the recording intended that the County Attorney not know he was being recorded.

Rule 3.6 is concerned with whether a statement, recorded or not, will be disseminated publicly and will have a substantial likelihood of materially prejudicing a jury trial in a pending criminal matter. Here, the County Attorney did not know, nor reasonably should have known, the conversation would be recorded and put on the Internet the next morning. He was at a private gathering to which he and those making the recording had been invited. He was discussing a public matter his office was involved in and about which he had been asked many times. More importantly, the remarks have not and will not materially prejudice a future jury trial because they were appropriate, factual responses to questions about the investigation, not the defendant.

The County Attorney was asked about the length of time the investigation was taking and

Filed in District Court
State of Minnesota
9/5/2018 1:22 PM

why a charging decision had not been made. He said that at that time, he did not yet have sufficient evidence to make a charging decision[1] in the case and what he needed was evidence from an investigation not yet completed. He went on to assure the interested parties that the investigation would get done and that it would be thorough. Those parties then pressed the County Attorney, making comparisons to another officer-involved shooting death in Minneapolis where the investigation took less time, and continued to ask what was taking so long. The County Attorney replied with an appropriate and accurate statement, "Before I charge somebody I have to have sufficient admissible evidence to prove beyond a reasonable doubt." The County Attorney was commenting on the investigation, not the defendant, and at no time expressed a particular eagerness to either charge or decline the case. Remarks about wanting to see the investigation completed before Christmas had to do with the fact that the conversation was taking place at a casual holiday party and have no other significance.

On December 18, 2017, the County Attorney publicly apologized to the Minnesota Bureau of Criminal Apprehension for making comments critical of the investigation during the holiday party. Those comments did not mention the defendant and did not implicate any of his trial rights. The same is true for remarks made about the Minneapolis Police Federation during the grand jury proceedings in this case. The defendant's position that public information about any real or perceived problems with the investigation is detrimental to him is unusual given that such problems tend to help, not harm, criminal defendants in subsequent prosecutions.

Finally, the press briefing held on the day the defendant turned himself in was a standard and appropriate public information event to convey the information that the defendant had been charged with murder in this very high-profile case. The defendant does not cite, nor were there

[1] The defendant argues that the County Attorney said he did not have enough evidence *"to prosecute Officer Noor,"* but the County Attorney never said that or even mentioned the defendant's name.

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9/5/2018 1:22 PM

any comments made by the County Attorney that were not already public or contained in the criminal complaint, a public document.

The defendant relies on the Minnesota Supreme Court's decision in *State v. Parker,* 901 N.W.2d 917 (Minn. 2017) in support of its argument that the court should dismiss this case for prosecutorial error. *Parker* concerns a murder case prosecuted by the Hennepin County Attorney where a change of venue motion was denied by the trial court and the issue of prosecutorial error was not raised until appeal. The error claim concerned remarks made by the County Attorney at a post-charging press event. The court made no finding that the remarks amounted to prosecutorial error or misconduct, made no finding that the defendant's substantial rights were affected, and did not grant a new trial.

The defendant has established nothing close to the significant prosecutorial error that would require the extraordinary and unprecedented remedy of dismissing a criminal case. The Minnesota Supreme Court has addressed the issue of when a prosecutor's conduct actually affects the defendant's right to a fair trial to such a degree that a court must use its supervisory powers to intervene. In *State v. Porter,* the court found that a prosecutor improperly appealed to the passions and prejudices of the jury, argued consequences of the jury's verdict, distorted the burden of proof, alluded to the failure of the defendant to call witnesses, played on juror's emotions and fears, and suggested to the jurors that they would be "suckers" if they acquitted the defendant. 526. N.W.2d 359, 365 (Minn. 1995). The court reversed the conviction and remanded the case for a new trial; it did not dismiss the charges. No precedent for dismissing a criminal case, even in the extreme circumstances presented by *Porter,* none of which are present here, exists in Minnesota law.

Finally, the impaneling of a jury in this case is a future event; no trial date has even been

Filed in District Court
State of Minnesota
9/5/2018 1:22 PM

set. Certainly there will be prospective jurors who will have been exposed to public information about this case and there will be some who have not. The court and the parties will be responsible for ensuring that a fair and impartial jury is empaneled during the *voir dire* process. In this case, that will involve finding out what and how much information a prospective juror has about the case and whether there are any preconceived opinions about the charges, defendant, or evidence. While the amount of pretrial publicity will be greater than in most other recent Hennepin County cases, the court, defendant and State will find a fair jury and conduct a fair trial.

CONCLUSION

The court should deny the defendant's motion to dismiss the charges in this case because no prosecutorial error or violation of the defendant's constitutional rights has occurred. Remarks made by the County Attorney were accurate and appropriate, balancing the public's right to information with the defendant's rights.

Respectfully submitted,

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Dated: September 5, 2018