

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

STATE OF MINNESOTA,

**ORDER ON DEFENDANT'S
MOTIONS *IN LIMINE***

Plaintiff,

vs.

Court File No. 27-CR-20-12646

DEREK MICHAEL CHAUVIN,

Defendant.

Defendant Derek Michael Chauvin (Chauvin) filed motions in limine on February 8, 2021 [Dk No. 309]. Oral arguments on those motions were heard on March 8-10, 2021.

Matthew Frank, Steven Schleicher, Jerry Blackwell, Sundeep Iyer, and Joshua Larson appeared for the State at one or more of these hearings.

Eric Nelson appeared at all these hearings for Chauvin, who was also present for all of these hearings.

This written order memorializes the Court's oral rulings on the record during the motion in limine arguments on March 8-10, 2021. The Defense motion is listed first, followed by the Court's ruling. All rulings are subject to reconsideration as evidence is received.

General

1. The Defendant moves the Court for an Order to sequester the witnesses.

Already granted. See Trial Management Order, Dk. #354, p.4

2. The Defendant moves the Court for an Order to preclude the State, or any of its witnesses, from referring to George Floyd as the "victim" or "accused" in this matter.

Parties and witnesses may refer to Mr. Floyd as “victim,” “alleged victim,” “the deceased,” or any other respectful term reasonably based on the evidence, but the Court’s preference is that parties and witnesses refer to Mr. Floyd as “Mr. Floyd” or “George Floyd.”

3. The Defendant moves the Court for an Order to preclude the State, or any of its witnesses, from referring to Derek Chauvin as the “Defendant” or “accused” in this matter.

Parties and witnesses may refer to Mr. Chauvin as “Defendant” or “the accused,” but the Court’s preference is that parties and witnesses refer to Mr. Chauvin as “Mr. Chauvin” or “Derek Chauvin.”

4. The Defendant moves the Court for an Order to preclude the State from introducing any prior statements of witnesses, as they are hearsay, unless and until that witness has previously testified. *Crawford v. Washington*, 541 U.S. 36 (2004).

Ruling on this motion is reserved pending further argument and information.

5. The Defendant moves this Court for an Order requiring the State to provide the defense with any documents, information and/or criminal background checks that it obtains regarding any prospective juror.

Granted to the extent that the State will provide any criminal background records in its possession and any other documents or information not available to the defense through publicly available sources.

6. An order directing the State to disclose complete criminal histories of listed witnesses including law enforcement officers.

The State will abide by Minn. R. Crim. P. 9.01, Subd. 1(1)

7. The Defendant moves this Court for an Order requiring the State to provide the defense with any criminal background checks that it obtains regarding any prospective witness.

Granted.

8. The Defendant moves this Court for an Order requiring the State to provide to defense counsel the substance of all conversations between Victim Witness Program personnel and any and all persons having information about this case, and disclose all Victim Witness Program records, reports, notes, files and other documents relating to contact with any and all persons with information about this case. Minn. R. Crim. Pro. 9.01 and *State v. Mussehl*, 408 N.W.2d 844 (Minn. 1987).

The State will disclose the substance of all such conversations to the extent they relate specifically to the substance of the case. In this regard, The State will abide by Minn. R. Crim. P. 9.01, Subd. 1(1) and Crim. P. 9.01, Subd. 1(2).

9. The Defendant moves the Court for an Order compelling the prosecuting attorney to provide defense counsel with the substance of conversations between him, and any and all persons in the Attorney General or Hennepin County Attorney's Office(s) having information about this case, and access to all his notes or other documents relating to her contact with all persons she intends to call as witnesses in this case and with any and all persons having information about this case. Minn. R. Crim. Pro. 9.01 and *State v. Mussehl*, 408 N.W.2d 844 (Minn. 1987).

Denied except at to information that must be disclosed pursuant to Minn. R. Crim. P. 9.01, Subd. 1(1) and Crim. P. 9.01, Subd. 1(2).

10. The Defendant moves the Court for an Order requiring that the State ensure that its witnesses know the limits of permissible testimony. *State v. Underwood*, 281 N.W.2d 337, 342 (Minn. 1979).

Granted.

11. The Defendant moves the Court for an Order prohibiting the State from commenting on the failure of the Defense to call a witness, particularly where the witness is equally available to both parties. *State v. Daniels*, 361 N.W.2d 819, 833 (Minn. 1985); *State v. Swain*, 269 N.W.2d 707 (Minn. 1978).

Granted.

12. The Defendant moves the Court for an Order prohibiting the State from asserting, in the presence of the jury, a personal belief or opinion as to the credibility of a witness. *State v. Strodtman*, 399 N.W.2d 610, 615 (Minn. Ct. App. 1987), *review denied* (Minn. March 25, 1987).

Granted.

13. The Defendant moves the Court for an Order prohibiting the prosecutor from offering his own personal opinion, either directly or indirectly expressed, that the Defendant is guilty. *State v. Parker*, 353 N.W.2d 122 (Minn. 1984); *State v. Eling*, 355 N.W.2d 268 (Minn. 1984); *State v. Snyder*, 375 N.W.2d 518 (Minn. App. 1985).

The State may argue that Defendant is guilty, but not directly or indirectly as an expression of personal opinion.

14. The Defendant moves the Court for an Order directing the State to instruct State witnesses that they are not to assert a personal belief or opinion as to the Defendant's guilt or innocence, or whether or not the Defendant is the type of person who could commit such an offense (Minn. R. Evid. 404).

Granted.

15. The Defendant moves the Court for an Order prohibiting the State from introducing any and all evidence or witnesses related to evidence that has not been fully disclosed, including but not limited to recorded jail calls, additional witness interviews or ongoing investigation (Minn. R. of Crim. P. 7.01 and 9.01).

Granted.

Case Specific

16. The Defendant moves the court for an order directing any person listed as a witness be directed not to view any live stream coverage of the trial absent Court approval.

Granted, with the exception that expert witnesses may watch testimony of other expert witnesses testifying on the same or similar topics (e.g., medical experts may not watch the testimony of law enforcement use-of-force experts).

17. The Defendant moves the Court for an Order prohibiting the State from introducing any evidence pertaining to Washington County Court File #80-CR-20-2813, wherein the Defendant is accused various tax related crimes.

Granted.

18. The Defendant moves the Court for an Order precluding witness police officers from speculating or rendering an opinion on how they would have handled the arrest of Mr. Floyd differently. *Graham v. O'Connor*, 490 U.S. 386 (1989), Minn. R. Evid. 701 and 702.

Granted, except for use-of-force experts with appropriate foundation and explicit permission of the court after a sidebar conference.

19. The Defendant moves the Court for an Order precluding testimony about any police policy and that was not in effect at the time of Mr. Floyd's arrest or any subsequent changes in policies. Minn. R. Evid. 401, 403, and 407.

Granted.

20. The Defendant moves the Court for an Order precluding testimony about medical examinations performed by anyone other than the Hennepin County Medical Examiner Dr. Baker. *State v. Vue*, 606 N.W.2d 719 (Minn. Ct. App. 200); Minn. R. Evid. 401, 403, 602.

Granted. State has disclosed that it does not intend to call any other such witnesses.

21. The Defendant moves the Court for an Order precluding the speculative testimony from Genevieve Hanson that she believes that if she intervened, she could have saved Mr. Floyd. Minn. R. Evid. 602. Additionally, Ms. Hanson should not be allowed to testify as to her understanding of police officer training. Minn. R. Evid. 602.

Granted. Ms. Hanson may testify as to her emergency medical training and experience, what she observed on May 25, 2020, why she believed Mr. Floyd was in medical distress and what emergency intervention she would have provided if allowed to do so.

22. The Defendant moves the Court for an Order precluding the testimony of Donald Williams as to his training, experience and/or expertise in mixed martial arts, boxing or other training on the grounds that it is irrelevant and overly prejudicial. Minn. R. Evidence 401, 403. Further, foundation for expertise cannot be established nor has it been disclosed.

Minn. R. Crim. Pro. 9.01, subd. 1(4)(c). Further, because Williams' training/experience is not the same as the training of Minneapolis Police Officers, it is irrelevant.

Mr. Williams may testify as to his training and experience in martial arts, what he observed on May 25, 2020, why he thought the restraint being placed on Mr. Floyd was a "blood choke" and a "shimmy" and why he believed, based on his martial arts training and experience, that these maneuvers were dangerous. He may not give an opinion as to whether the maneuvers he saw were a cause of death or possibly fatal.

23. The Defendant moves the Court for an Order precluding any member of the Minneapolis Fire Department and paramedics from testifying as to cause and manner of Mr. Floyd's death or any contributing factors to Mr. Floyd's death. Minn. R. Evid. 602, 702.

Paramedics and Minneapolis Fire Department personnel may testify as to their emergency medical training and experience, what they observed on May 25, 2020, including any vital signs that were taken, why they did or did not believe Mr. Floyd was in medical distress and what emergency intervention was performed and why those measures were taken.

24. The Defendant moves the Court for an Order precluding the state from questioning witnesses about aspects of their training that have not been fully disclosed, including C.P.R. training and training on excited delirium. Minn. R. Evid. 401, 403, 602.

Ruling on this motion is reserved pending further argument and information.

25. The Defendant moves the Court for an Order precluding the state from questioning or commenting on Chauvin's right to remain silent, including his pre-Miranda right to remain silent. *State v. Dunkel*, 466 N.W.2d 425 (Minn. Ct. App. 1991).

Granted as to Defendant's silence if the silence was after the incident was deemed by the Minneapolis Police Department to be an officer-involved "critical incident" or if the silence was after Defendant consulted with counsel. Before such time, pre-arrest silence may be used as impeachment of Defendant's testimony, but only after explicit permission is granted by the Court after a sidebar conference.

26. The Defendant moves the Court for an Order precluding testimony about a blue line or wall of silence or about the officer's communications with the Minneapolis Police

Federation or the Minnesota Police and Peace Officers Association. Minn. R. Evid. 401, 403.

Granted. Also, the State shall not inquire or mention anything as to who is paying Defendant's legal fees and whether any counsel for either side are appearing *pro bono*.

27. The Defendant moves the Court for an Order precluding any reference to the David Cornelius Smith Case for lack of relevance and potential to mislead and or prejudice the jury.

Granted.

28. Based on the Court's right to "[e]xercise control over the mode and order of interrogating the witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment." Minn. R. Evid. 611(a). To ensure the efficient presentation of evidence, the Defense requests an order requiring the state to:

(a) Disclose which witnesses the State actually intends to call to testify during the trial at least 2 weeks prior to trial.

Granted.

(b) Require the State to disclose the witnesses they intend to call the next day prior to adjournment.

Granted.

(c) Keeping all witnesses subpoenaed by the State under subpoena, whether issued by the State or the Defense, until the close of all the evidence or agreement by the parties to release the witness from the Court's subpoena.

Granted.

(d) Require the State to identify which Minneapolis Police Department training materials it intends to introduce or rely upon at trial.

Ruling on this motion is reserved pending further argument and information.

- (e) Require the State to identify which Personnel Records they may seek to introduce or elicit testimony regarding.

Ruling on this motion is reserved pending further argument and information.

29. The Defendant moves this court for an order directing any expert witness from referencing their personal clinical experiences and/or anecdotal testimony on the grounds that such information is neither peer reviewed nor available for inspection/verification.

Granted as to anecdotal evidence, but expert witnesses who have clinical experience may describe generally the types of patients and number of patients they have treated.

30. The Defendant moves the Court for an Order precluding any expert from likening the death of George Floyd to the crucifixion of Jesus Christ on the ground that such analogy is prejudicial.

Granted.

31. The Defendant moves the Court for an Order precluding the State from playing, publishing or otherwise relying upon the statements of co-Defendants Thao and Lane on the grounds that the Defense would not be permitted to cross-examine these co-Defendants in violation of his Constitutional rights.

Granted with the exception of statements made on body-worn cameras at the scene.

32. The Defendant moves the Court for an Order precluding the entirety of the proffered testimony of Dr. Sarah Vinson (psychiatric evaluation of George Floyd) on the grounds that the evaluation is speculative, based upon multiple levels of inadmissible hearsay, fails to meet scientific standards, offers no assistance to the jury, or so favors one party. *State v. Nystrom*, 596 N.W.2d 256, 260 (Minn. 1999); *Hanson v. Christensen*, 275 Minn. 204, 217, 145 N.W.2d 868, 877 (1966); *State v. Fitzgerald*, 382 N.W.2d 892, 894-95 (Minn. Ct. App. 1986); *State v. Saldana*, 324 N.W.2d 227, 231 (Minn. 1982); *State v. Deshay*, 609 N.W.2d 878, 888 (Minn. 2003) (expert's testimony about gangs was merely "duplicative and of little real assistance to the jury in evaluation of the evidence."); *State v. Ritt*, 599 N.W.2d 802, 812 (Minn. 1999) (no error to exclude expert's testimony about police interrogation techniques where the testimony added nothing to the jury's ability to evaluate the veracity of the Defendant's statements to the police); *Burkhart v. Wash. Metro. Area Transit Auth.*, 112 F.3d 1207 (D.C. Cir. 1997). In the alternative, the Defendant

moves for an *in camera* review of her report and a Frye-Mack hearing to address the admissibility thereof.

Granted. If the State feels Defendant has opened the door to expert evidence regarding the victim's state of mind, the State may bring this motion back for reconsideration outside the hearing of the jury.

33. The Defendant moves the Court for an Order limiting the scope of "spark of life" testimony to its permissible bounds. The Defendant further moves to introduce evidence of prior bad acts should the State exceed the permissible scope of "spark of life" testimony. *See generally State v. Carney*, 649 N.W.2d 455, 463 (Minn. 2002); *State v. Buggs*, 581 N.W.2d 329, 342 (Minn. 1998); *State v. Hodgson*, 512 N.W.2d 95, 98 (Minn. 1994); *State v. Graham*, 371 N.W.2d 204, 207 (Minn. 1985).

State may call one or two witnesses as described in its oral offer of proof of "spark of life" evidence, limited to the extent necessary to humanize the victim. "Spark of life" evidence of character traits of gentleness or peacefulness is not admissible and would open the door to rebuttal evidence, including the victim's prior acts of violence, if there are any.

34. The Defendant moves the Court for an Order permitting the Defendant to supplement the record by offer of proof with additional information regarding George Floyd's May 2019 arrest and hospitalization.

That supplemental offer of proof has been received and is the subject of a separate order.

35. The Defendant moves the Court for an Order permitting testimony of George Floyd's opiate addiction and medical records pertaining thereto including his hospitalization following his May 2019 arrest. Minn. R. Evid. 803(4).

Ruling on this motion is reserved pending further argument and information.

36. The Defendant moves the Court for an Order precluding any evidence of or reference to citizen complaints filed against Mr. Chauvin in his capacity as a police officer or investigated by the Minneapolis Police Department whether sustained or deemed unfounded. Minn. R. Evid. 608(c).

Granted.

37. The Defendant moves the Court for an order requiring the state to disclose any information it obtains relevant to any and all identified expert witnesses from the National Prosecutor's College. Minn. R. Crim. P. 9.01, subd. 1(3) and 2(1).

Granted, although the State disclosed it has no such evidence.

BY THE COURT

Peter A. Cahill
Judge of District Court