

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

STATE OF MINNESOTA,

Plaintiff,

vs.

DEREK MICHAEL CHAUVIN,

Defendant.

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

Court File No. 27-CR-20-12646

The State filed motions in limine and supporting memoranda of law (and unpublished cases on which it relies) on February 8, 2021 and March 4, 2021 [Dk Nos. 316-319, 360-361]. 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 State's motion is listed first, followed by the Court's ruling. All rulings are subject to reconsideration as evidence is received.

MOTIONS (Filed February 8, 2021)

1. The State moves this Court to prohibit Defendant from impeaching any witness with a statement from a third-party summary—such as a report prepared by the Bureau of Criminal Apprehension (BCA) or Federal Bureau of Investigation (FBI)—if the witness does not adopt that document as his or her prior statement.

Granted.

2. The State moves this Court to prevent any expert witness from testifying regarding the opinion of any other expert he or she consulted who is not testifying at trial. In particular, the State moves to exclude any statement by a testifying expert witness that a nontestifying expert reviewed, supported, or contributed to the testifying expert's opinion, analysis, or conclusions, or that a nontestifying expert agreed with the testifying expert's opinion, analysis, or conclusions.

Expert witnesses may testify that they consulted with other experts, but are limited in their testimony to offering only those opinions that the witness is independently qualified to offer under Minn. R. Evid. 702.

3. The State moves this Court to prohibit Defendant from arguing at trial (i) that the State must show that he intended to kill George Floyd or intended to cause him bodily harm; or (2) that the State must show "but for" causation in order to establish the causation element of the charged offenses. The State also respectfully requests that the Court prohibit Defendant from presenting evidence that specifically addresses whether these incorrect legal standards have been satisfied.

Defendant may not argue that the State bears the burden of proving Defendant intended to kill George Floyd and may not argue that the State bears the burden of proving "but for" causation. Ruling is reserved as to other arguments and evidence pending further argument and information.

4. The State moves this Court to exclude any argument, evidence, or testimony regarding the Minneapolis Police Department's (MPD's) decisionmaking process in terminating Chauvin's employment as an MPD officer. The State also moves the Court to exclude any argument, evidence, or testimony suggesting that MPD may face civil liability stemming from George Floyd's death. To the extent the Court determines that evidence on these topics may be admissible for the limited purpose of attempting to show purported bias on the part of testifying witnesses, the State respectfully requests that the Court properly limit evidence on such extraneous matters.

Granted. Parties may refer to Defendant as a former Minneapolis Police Officer and offer evidence as to his dates of employment without further reference as to the nature of his separation from his employer.

5. The State moves this Court to exclude any argument or evidence regarding changes that were made after May 25, 2020 to the MPD Policy and Procedure Manual or any other MPD training documents.

Granted.

6. The State moves this Court to prohibit Defendant from introducing into evidence the documents labeled Bates 002566 through 002606—a series of slides entitled “Excited Delirium Syndrome”—unless Defendant can lay a proper foundation for their admission.

Granted.

7. The State moves this Court to prohibit Defendant from relying on unauthenticated transcripts at trial, and from admitting any transcripts into evidence absent the State’s agreement.

Granted.

8. The State moves this Court to prohibit Defendant’s counsel from introducing, through direct or cross-examination and during opening statement and closing argument, any hearsay statement of Defendant unless the statement complies with a hearsay exception. Minn. R. Evid. 801-807.

Granted.

9. The State moves this Court to prohibit Defendant’s counsel from commenting at any time during the trial or during closing arguments on the failure or alleged failure of the prosecution to call a witness or introduce evidence equally available to either party. See Minn. R. Evid. 801; *State v. Taylor*, 258 N.W.2d 615, 622 (Minn. 1977).

Granted.

10. The State moves this Court to prohibit Defendant’s counsel from commenting at any time during the trial or during closing arguments on the failure or alleged failure of the

prosecution to call a witness or introduce evidence equally available to either party. *State v. Beranardi*, 678 N.W.2d 465, 471 (Minn. App. 2004) (citing *State v. Thomas*, 232 N.W.2d 766, 768 (Minn. 1975)).

Granted.

11. The State moves this Court to prohibit admission of any testimony or evidence regarding any alleged bad acts committed or allegedly committed by any witness without prior notice to the State; giving the state an opportunity to be heard on and litigate its admissibility; and a prior Court ruling on its admissibility. See Minn. R. Evid. 401-402; 403; 404.

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

12. The State moves this Court to prohibit Defendant's counsel from attempting to ask any witness about any crime, act of dishonesty, or conviction related to that or another witness without prior notice to the State; giving the state an opportunity to be heard on and litigate its admissibility; and a prior court ruling on its admissibility. See Minn. R. Evid. 608-09.

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

AMENDED MOTIONS (Filed March 4, 2021)

13. For an order of the Court prohibiting Dr. David Fowler from testifying regarding the opinions of any other non-testifying experts he consulted in preparation of the Forensic Panel Report or testifying that other experts agree with Dr. Fowler's opinion, analysis, or conclusions.

Expert witnesses may testify that they consulted with other experts, but are limited in their testimony to offering only those opinions that the witness is independently qualified to offer under Minn. R. Evid. 702.

14. For an order of the Court compelling Defendant to disclose the specific opinions of non-testifying experts whose data, analysis, opinions, or conclusions contributed to the opinions, analysis, or conclusions contained in the Forensic Panel Report and conducting

a hearing outside the presence of the jury to have Dr. Fowler identify which opinions in the report are his work alone.

Expert witnesses may testify that they consulted with other experts, but are limited in their testimony to offering only those opinions that the witness is independently qualified to offer under Minn. R. Evid. 702. The motion for a hearing outside the presence of the jury to examine Dr. Fowler is denied.

BY THE COURT

Peter A. Cahill
Judge of District Court