

STATE OF MINNESOTA  
COUNTY OF HENNEPIN

DISTRICT COURT  
FOURTH JUDICIAL DISTRICT

STATE OF MINNESOTA,

**DEFENDANT'S  
RESPONSE AND  
OBJECTIONS TO  
STATE'S MOTIONS IN  
LIMINE**

PLAINTIFF,

V.

TOU THAO,

DEFENDANT.

COURT FILE NO. 27-CR-20-12949

TO: THE HONORABLE PETER A. CAHILL, JUDGE OF DISTRICT COURT, AND  
MR. MATTHEW G. FRANK, ASSISTANT ATTORNEY GENERAL

Mr. Tou Thao ("Mr. Thao" hereinafter), by and through his counsel, makes the following objections to the State's First Set of Motions in Limine filed on April 1, 2022, State's Second Set of Motions in Limine filed on May 13, 2022, and State's Additional Motion In Limine filed May 20, 2022.

**Objections to State's First Set of Motions *In Limine***

1. Mr. Thao does not object to Motion in Limine 1 so long as objection arguments are heard on the headset devices and such arguments are recorded onto the record with a court reporter present. Minn. Stat. § 486.02.
2. Mr. Thao does not object so long as the order applies equally to the State.

3. Mr. Thao objects. Minn. R. Evid. 404(a)(1) does not apply as mention of family does not go to a character trait. Additionally, Minn. R. Evid. 404 is applicable to character witnesses who may testify to characteristics of Mr. Thao such as peacefulness, truthfulness, or law-abiding.
4. Mr. Thao does not object so long as the order applies equally to the State.

**Objections to State's Second Set of Motions *In Limine***

1. Mr. Thao objects. Mr. Thao objects to this motion in its entirety, as it misstates the relevant supreme court precedent. *State v. Anderson*, 666 N.W.2d 696 (Minn. 2003)(felony murder prerequisite must present “special danger to human life”). Additionally, under the particular facts presented here where the defendants were police officers, they are statutorily authorized to commit “assaults” in certain situations such as this incident. See Minn. Stat. § 629.33; Minn. Stat. § 609.66 (authorized use of deadly force). This creates a strict-liability standard which eliminates the element of intent. Finally, this motion is violative of the mandate of *Graham v. Connor*.

The State is attempting to inappropriately limit Mr. Thao's theory of the case and proper legal argument, thus impeding his right to present a complete defense under both the Minnesota and Federal Constitution. *See* Minn. Const. Art. 1 § 6; U.S. Const. amend. 6. Additionally, the State has mistakenly argued incorrect legal standards.

2. Mr. Thao objects to the State's inaccurate presentation of *Graham v. Connor*, 490 U.S. 386 (1989). Mr. Thao agrees to follow Supreme Court precedent when

presenting evidence and arguments in light of *Graham v. Connor*, 490 U.S. 386 (1989).

3. Mr. Thao objects to the disqualification of testimony by Steve Ijames. The State has not met the burden showing that such portions of testimony are irrelevant or lack foundation for an expert such as Mr. Ijames to testify on. Mr. Thao requests the Court to instead require the State to object during testimony should they take issue with the qualifications or subject matter of Steve Ijames.
4. Mr. Thao moves the Court to deem Motion in Limine 4 as moot given Mr. Lane's non-participation in the joint trial.
5. Mr. Thao objects. The State has offered no explanation as to why Dr. Shawn Pruchnicki's testimony would be "unqualified, lacking foundational reliability, unhelpful to the jury, an improper topic for expert testimony, and unduly prejudicial". *See* State's Second Set of Motions in Limine, p. 3. Interestingly the State is moving for disqualification of a defense expert witness who is equally qualified and will testify on similar topics to their *many* expert witnesses. Should the State not wish to have Dr. Pruchnicki testify, Mr. Thao would agree to strike them as a witness only if the State eliminates their own expert medical witnesses and instead relies solely on the only medical professionals who treated/worked on Mr. Floyd – the paramedics, ER personnel, and Dr. Andrew Baker. This would eliminate the need for a battle of experts and speed the trial along significantly.
6. Mr. Thao objects on the same argument as Second Set MIL 5.
7. Mr. Thao objection on the same argument as Second Set MIL 5.

8. Mr. Thao does not object so long as the order applies equally to the State, particularly with regarding to “Spark of Life” evidence.
9. Mr. Thao objects on the same argument as First Set MIL 3.
10. Mr. Thao objects on the grounds that such testimony would be irrelevant in the case of *State v. Thao*.
11. Mr. Thao objects. Such testimony is relevant. Minn. R. Evid. 401. Inspector Blackwell laid proper foundation for her personal knowledge in prior testimony under oath in *United State v. Tou Thao*, 0:21-cr-00108. Minn. R. Evid. 602. This line of testimony is also appropriate under Minn. R. Evid. 405, 406, 607, and 616.
12. Mr. Thao objects. Such an order would be illogical in that it was the State who objected to and prevented full disclosure of such records. It was the State who elicited testimony from Lt. Zimmerman that raised this impeachment area and potential perjury. Mr. Thao has a right to present a complete defense and confrontation and this motion is an action by the State directly attacking such a constitutional right. *See* U.S. Const. amend.VI; Minn. Const. Art. 1 § 6, 7.
13. Mr. Thao objects. Evidence, argument, and testimony regarding the termination of Mr. Thao is relevant to the investigation process, biases, and motivations of police witnesses such as former-Chief of Police Arradondo. Minn. R. Evid. 401, Settlement between the City of Minneapolis and the Floyd family is relevant in that it constitutes an admission from the City of Minneapolis that its police training was faulty and lead to the death of George Floyd, or in the alternative showing that the City of Minneapolis had the ability to change procedure prior to the death of George

Floyd which would have prevented his death, but chose not to. Minn. R. Evid. 401, 407 (allowing for subsequent remedial measures to prove feasibility or precautionary matters or for impeachment purposes); 408 (allowing for compromise or settlements to prove bias or prejudice of a witness or to prove an effort to obstruct a criminal investigation or prosecution).

14. Mr. Thao objects because changes in MPD policy changes after May 25, 2020, are admissible to show feasibility of precautionary measures. Minn. R. Evid. 407.

15. Mr. Thao objects. This survey is admissible evidence. Minn. R. Evid. 401; 803.06.

16. Mr. Thao objects. This report is admissible evidence and proper grounds for cross-examination. Minn. R. Evid. 401; 407 (showing feasibility of precautionary measures); 803.06; 803.08.

17. Mr. Thao does not object so long as objection arguments are heard on the headset devices and such arguments are recorded onto the record with a court reporter present. Minn. Stat. § 486.02.

18. Mr. Thao objects and incorporates the arguments made in opposition to this motion by co-defendant Kueng's filing on June 3, 2022.

19. Mr. Thao objects and asks that the order stand as is. In the alternative, Mr. Thao requests that only expert witnesses may watch *opposing* parties' expert witnesses. Meaning, an expert witness from the State may only watch an expert witness testimony from a defense witness (as opposed to an expert witness viewing testimony of other prosecution expert witnesses or viewing lay person testimony).

20. Mr. Thao requests that this motion be made mandatory, not advisory for jurors because keeping push notifications on would be in violation of the juror's orders to not read the news.

21. Mr. Thao takes no position on this motion and will abide by Minn. R. Evid. 803.18.

22. Mr. Thao opposes this motion as such evidence relevant and is needed for both the State's expert witnesses and defense expert witnesses as a basis to form an opinion. Without such evidence expert opinions are not reliable. Minn. R. Evid. 401; 702.

23. Mr. Thao does not understand this motion and asks for further explanation or a cite to a rule from the State before he may take a position on the motion.

24. Mr. Thao objects to these motions for the following reasons:

- a. It is inappropriate and hypocritical for the State to ask Mr. Thao not to mention race when the two defendants are both men of color.
- b. Such material is appropriate as it goes to bias and motive of witnesses.
- c. Such material is appropriate to comment on as it goes to bias.
- d. Such material is appropriate as it goes to bias and motive of witnesses.
- e. Such material is appropriate as it goes to bias and motive of witnesses.
- f. Such material is appropriate as it goes to bias and motive of witnesses.
- g. Such material is appropriate as it goes to bias and motive of witnesses.

25. Mr. Thao objects to this motion and intends on relying on all bad acts from witnesses and victim that have been disclosed by the State.

26. Mr. Thao objects to the motion as is. Defense will follow the rules of impeachment laid out by the rules and statutes, not the interpretation of the State.

27. Mr. Thao objects. This is inappropriate for an expert witness to do and violates the Minnesota Rules of Evidence. Minn. R. Evid. 403; 611 (the district court “shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth”); 702. Asking or suggesting jurors to follow demonstrations is tantamount to asking jurors to conduct scientific or medical experiments when they are not qualified to do so. Such a demonstration would be likening a defense counsel in a DUI case to tell the jurors they can do the one-legged stand themselves. Mr. Thao further joins Mr. Kueng’s opposition of this motion.
28. Mr. Thao objects because this is not a proper motion in limine, but a procedural decision to be determined by the Court.

**Objections to State’s Additional Motion In Limine**

29. Mr. Thao objects to this motion on the same grounds as Second Set MIL 5.

Respectfully submitted,

Dated: This 3<sup>rd</sup> day of June, 2022

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