

STATE OF MINNESOTA  
COUNTY OF HENNEPIN

DISTRICT COURT  
FOURTH JUDICIAL DISTRICT

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State of Minnesota,  
Plaintiff,

Case Type: Felony  
Judge Regina M. Chu  
Court File No.: 27-CR-21-7460

v.

**ORDER ON MOTIONS  
IN LIMINE**

Kimberly Ann Potter,  
Defendant.

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The above-entitled matter came before the Honorable Regina M. Chu, Judge of District Court, pursuant to parties' motions *in limine*. On October 1, 2021, Matthew G. Frank, Assistant Minnesota Attorney General, submitted several motions *in limine* on behalf of the State of Minnesota. On October 13, 2021, Attorneys Paul C. Engh and Earl P. Gray submitted a reply memorandum and motions *in limine* on behalf of Defendant. The Court took the matter under advisement on October 16, 2021.

**ORDER**

1. The State's Motion to Introduce Evidence of Defendant's Prior Conduct is **GRANTED**.
  - a. The State intends to introduce evidence of: (1) Defendant's prior training with a Taser, (2) two prior instances when Defendant deployed her Taser, and (3) Defendant's practice of carrying her Taser on her reaction side in a straight draw position. Such evidence is relevant and admissible for the purpose of showing Defendant's knowledge regarding the proper use of a Taser. Minn. R. Evid. 402.
2. The State's Motion to Exclude Irrelevant Evidence Pertaining to Daunte Wright and Other Witnesses is **GRANTED**, in part, and **DENIED**, in part.

- a. The State moves to exclude evidence of the alleged prior conduct of Wright: (1) shooting another person in the head, (2) being a member of a street gang, (3) assaulting and robbing a man in March 2021, (4) holding a firearm in a social media video, (5) any pending orders of protection, (6) any pending criminal charges, and (7) any criminal history. It is unknown whether Defendant was aware of any prior conduct of Wright. To the extent she was, evidence of Wright's prior conduct is admissible and relevant to explain her actions and approach toward Wright on the date in question. Minn. R. Evid. 402; *State v. Smith*, 374 N.W.2d 520, 524 (Minn. Ct. App. 1985).
- b. The State moves to exclude any evidence of controlled substance possession by the passenger. Such evidence is only marginally relevant. It does not bear on the passenger's character for truthfulness and poses a risk of confusing the jury. Minn. R. Evid. 402, 608; *State v. Quick*, 659 N.W.2d 701, 715 (Minn. 2003); *State v. Gress*, 84 N.W.2d 616, 624 (Minn. 1957). If there is an indication the passenger was under the influence of drugs, evidence of her drug use may be admissible for the purpose of challenging her perception of the incident.
- c. The State moves to exclude prior convictions of the State's witnesses. On October 26, 2020, Katie Bryant was convicted of second-degree possession of a controlled substance. Ms. Bryant is presumably a "spark of life" witness. Assuming her testimony to be on that topic, questioning her on the prior conviction would appear to be marginally probative to the issues in this case and serve only to harass and embarrass her. Should her testimony encompass other subjects, the Court may reconsider. Any impeachment, if allowed, is to be referenced as an

“unspecified felony.” On November 5, 2007, Aubrey Wright was convicted of third-degree possession of a controlled substance. This offense is a felony-level conviction, but it is stale, and therefore, inadmissible. *Id.*

- d. The State moves to exclude evidence that any witness attended civil demonstrations related to Wright’s death. Such evidence is admissible to show bias.
3. The State’s Motion to Sequester Witnesses is **GRANTED**.
- a. The State moves to sequester all witnesses who will testify at trial. Sequestration of witnesses is within the sound discretion of the trial court. Minn. R. Crim. P. 26.03, subd. 8; *State v. Jones*, 347 N.W.2d 796, 802 (Minn. 1984); *State v. Garden*, 125 N.W.2d 591, 601 (Minn. 1963). As such, all witnesses shall be sequestered prior to testifying.
  - b. Katie Bryant and Aubrey Wright will be permitted in the courtroom after they testify.
  - c. ASAIC C. Michael Phill and the expert witnesses shall be excluded from sequestration.
4. The State’s Motion to Increase the Number of Peremptory Challenges is **DENIED**.
- a. The Court is authorized to conduct jury selection by way of individual questioning. Minn. R. Crim. P. 26.02, subd. 4 (3). Given the charges in this case, the Court is not required to grant additional peremptory challenges. Minn. R. Crim. P. 26.02, subd. 6. As such, the Court will not do so.

5. Defendant's Motion for Production of *Brady* Material is **GRANTED**, in part, and **DENIED**, in part.

- a. Defendant moves for production of evidence pertaining to a civil lawsuit involving the Wright family and Defendant. Generally, a party may cross-examine a witness "to show the pendency of a civil action for damages by the witness against the accused." *State v. Underwood*, 281 N.W.2d 337, 341 (Minn. 1979). "The theory behind this [rule] is that pendency of such a suit indicates possible bias on the witness' part and is relevant to the witness' state of mind when testifying." *State v. Goar*, 249 N.W.2d 894, 895 (Minn. 1977).
- b. Defendant moves for production of any fee agreements, current billings, and ongoing totals for the services of Mr. Seth Stoughton. Such evidence is relevant and admissible. Minn. R. Evid. 402. The State shall disclose this information.
- c. Defendant moves for production of information gathered by the State that is inconsistent with or impeaches Mr. Seth Stoughton's opinions. Such evidence appears to be protected by the work product doctrine. As such, the State is not required to disclose this information.
- d. Defendant moves for production of evidence related to Wright's alleged drug possession and/or use on April 11, 2021. Wright's alleged drug use may be relevant to explain his actions on April 11, 2021. His possession is relevant only if Defendant was aware of his drug possession on April 11, 2021.
- e. Defendant moves for production of evidence from interviews of the officers involved in the stop and attempted arrest of Wright. Such evidence is relevant and admissible. Minn. R. Evid. 402. The State shall disclose this evidence, if any.

f. Defendant moves for production of evidence pertaining to Taser “training warnings,” and “Taser manufacturer required warnings.” Additionally, Defendant moves for production of evidence that Defendant “was not required, by her training, to use her left hand to draw her Taser, which was located on the left side of her duty belt.” Defendant further moves for production of evidence that her Taser holster could be positioned on either side of her duty belt. Such evidence is relevant and admissible. Minn. R. Evid. 402. The State shall disclose this evidence, if any.

**BY THE COURT:**

Dated: October 27, 2021

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Regina M. Chu  
Judge of District Court