

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

State of Minnesota,

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MEMORANDUM OPPOSING JOINDER

Plaintiff,

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vs.

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William Lee Nabors,

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MNCIS File No. 27-CR-22-3553

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Defendant.

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TO: HONORABLE JULIE ALLYN, JUDGE OF DISTRICT COURT; NATASHA YENINA,
ASSISTANT HENNEPIN COUNTY ATTORNEY.

STATEMENT OF FACTS

On February 22, 2022, Minneapolis Police and E.M.S. responded to a report of an assault occurring at a parking ramp located at 1001 2nd Avenue S. in Minneapolis. Security staff reportedly witnessed a male being pursued by up to five individuals and ultimately being assaulted by a subsection of that group. The incident reports and video evidence propagated in connection with the incident suggests that different individuals are accused of engaging in varying levels of participation in this alleged assault. Nonetheless, the State has charged three defendants in this case and now motions the court for joinder.

ARGUMENT

I. THE STATE'S MOTION TO JOIN MR. NABORS' CASE WITH MR. HAWKINS OR MS. OAKGROVES' CASES SHOULD BE DENIED BECAUSE JOINDER IS NOT APPROPRIATE.

When one or more defendants are charged with the same offense, the court has discretion to determine whether the defendants are to be tried separately or jointly. Minn. R Crim. P. 17.03

subd.2. Under Minnesota law, unlike federal law, courts are required to strongly favor holding separate trials. *State v. Swenson*, 221 N.W.2d 706, 708 (Minn. 1974). As described by the Minnesota Practice Series:

The dangers of prejudice in joint trials, however, are often considerable. Since the evidence will usually affect the defendants disproportionately, evidence admissible against one may not be proper as to another. One may have confessed or may testify and another not. One may have a serious admissible prior record and another may not. One's involvement may be much greater, or less, and so on. This will often require special vigilance by judges, and the crafting of effective limiting and cautionary instructions. In such cases, therefore, there is a risk of incurring long-term inconvenience and expense, and perhaps injustice, for perceived short-term efficiencies and conveniences.

Henry W. McCarr and Jack Nordby, 8 Minnesota Practice: Criminal Law & Procedure, sec. 11:12 at 1 (4th ed.). Factors relating to time or economy do not weigh in favor of consolidating codefendants' trials. *Swenson*, 221 N.W.2d at 708. Rather, the court is required to balance four factors to determine whether or not to order joinder: (1) the nature of the offense; (2) the impact on the victim; (3) the potential prejudice to the defendant; and (4) the interests of justice. Minn. R. Crim. P. 17.03 subd. 2.

The Minnesota Supreme Court has reiterated Minnesota's preference for separate trials as opposed to joint trials. *See, e.g., State v. Blanche*, 696 N.W.2d 351, 371 (Minn. 2005) (stating "[n]evertheless, we caution... that Minnesota law does not have a presumption in favor of joinder."). Further, the Court emphasized its adherence to Minnesota's historical preference for separate trials when it stated, "the district court should not have looked to the federal rules and case law to inform its understanding of our rule." *Santiago v. State*, 644 N.W.2d 425, 446 (Minn. 2002). More recently, the Minnesota Court of Appeals and Supreme Court analyzed joinder of cases under an abuse of discretion standard, applying each of the four factors, and focusing heavily on whether joinder substantially prejudiced the defendant. *State v. Martin*, 773 N.W.2d 89, 107 (Minn. 2009); *State v. Johnson*, 811 N.W.2d 136, 144 (Minn. Ct. App. 2012). In *Martin*,

the Court held that the trial court judge did not abuse his discretion in joining the defendants' cases where it found that none of the four factors weighed against joinder. *Martin*, 773 N.W.2d at 99.

Here, joinder of defendants is not appropriate because (1) the straightforward nature of the alleged offense; (2) the minimal impact of testifying about the events in two trials on the alleged victims; (3) the comparatively high likelihood of unfair prejudice to the defendant; and (4) the interest of justice is not served by joining defendants. Therefore, joinder is not appropriate in this case and the State's motion of joinder should be dismissed.

A. The Nature of the Offense Charged does not Weigh in Favor of Joinder.

In the present case, the nature of the offense does not weigh in favor of joinder. Longstanding precedent in Minnesota disfavors joinder, as the Minnesota Supreme Court in *Strimling* reiterated in its ruling in *Duncan*, where it held that separate trials "should be the rule rather than the exception." *State v. Strimling*, 265 N.W.2d 423, 432 (Minn. 1978). Joinder may be required to allow the jurors to fully comprehend each defendant's role. *Id.* However, the court in *Strimling* noted the case required joinder because the defendants were able to "spin a complex web of legal and illegal entrepreneurial activity" and the testifying witnesses were "at worst openly hostile toward the prosecution." *Id.* The State further relies on the holding in *State v. Johnson*, 811 N.W.2d 136, 142 (Minn. Ct. App. 2012), which holds that joinder is proper when "defendants act in close concert with one another." *see also State v. DeVerney* 592 N.W.2d 837, 842 (Minn. 1999).

In the present case, the allegations against Mr. Nabors and the other defendants are not sufficiently complex to warrant a joint trial. Unlike the complexity and long-term joint activity of the defendants in *Strimling*, here the only issue to be determined by a jury is if the defendants

participated in an assault—and, if so, what the resulting level of injury was to the victim. The juries will not be confused about the nature of the allegations by having separate trials. There is nothing that will come out in one trial that will be necessary or helpful in any of the other trials. Here, the state presents no evidence indicating that the trials should be joined due to concerns about potentially hostile testifying witnesses, as in *Strimling*. The State further offers the conclusory assertion that defendants jointly committed the crime, but Mr. Nabors specifically stated that he did not participate in the assault, did not aid in the assault, nor did he even have knowledge of the assault. Due to the separate nature of the behavior alleged between Mr. Nabors vis-à-vis the other defendants and the simplicity of the charges, this factor does not weigh in favor of joinder.

B. Lack of Negative Impact on the Victims does not Favor Joinder.

The Minnesota Supreme Court has approved joint trials in cases where the crime is especially terrifying or where a victim or eyewitness is particularly vulnerable. *State v. Gengler*, 200 N.W.2d 187, 189 (Minn. 1972); *State v. Southard*, 360 N.W.2d 376, 380 (Minn. Ct. App. 1985). Ordinarily, however, “a joint trial may not be ordered to spare the victim the trauma of testifying in multiple trials.” *State v. Stock*, 362 N.W.2d 351, 352 (Minn. Ct. App. 1985). Further, the interests of justice do not mandate a joint trial where the victim was not frail or vulnerable. *Id.* at 353. Additionally, when the trauma to the victim did not rise to the level of “vicious, brutal and dehumanizing,” joinder is not required. *Id.*

The State cites *Strimling* to argue that the negative impact on testifying victim favors joinder. *State Mem. to Support Joinder*, p. 7. However, the facts *Strimling* and of those cases that discuss victim impact as a basis for joinder differ significantly from the present facts. In *Southard*, the facts involved a particularly brutal and dehumanizing crime—specifically, the defendants broke

into the victim's apartment, robbed her, violently sexually assaulted her, cut her with a knife, and threatened to kill and rape her infant child. 360 N.W.2d at 379. In *Martin*, the court upheld joinder, in part due to negative impact on the victims and the "potential trauma" to an intended murder target and a ten-year old who witnessed the murder. *State v. Martin*, 773 N.W.2d 89, 100 (Minn. 2009). In *Blanche*, the court permitted joinder partly because "two of the witnesses were young children who saw the shooting and watched their young friend and cousin die." *State v. Blanche*, 696 N.W.2d 351, 371 (Minn. 2005). Here, the assault victim was kicked and shortly thereafter treated by medical personnel.

The present case differs substantially from the above cases; while the alleged assault was likely frightening and traumatic, this incident does not approach the required standard of "vicious, brutal, and dehumanizing." *Stock*, 362 N.W.2d at 352. The State presents no evidence to demonstrate that the testifying victim or witnesses are particular frail or vulnerable. While the alleged victim in the present case suffered physical injuries and property damage, joinder due to potential negative victim impact is justified in only the most extreme situations. Here, any hardship in having to testify in more than a single trial does not warrant joinder.

C. The Potential Prejudice to Mr. Nabors Greatly Outweighs Any Benefit of a Joint Trial.

Mr. Nabors would be substantially prejudiced if joinder is permitted in the present case. "Joinder is not appropriate when there would be substantial prejudice to the defendant, which can be shown by demonstrating that codefendants presented antagonistic defenses." *State v. Johnson*, 811 N.W.2d 136, 143 (Minn. Ct. App. 2012). Antagonistic defenses exist when "the defenses are inconsistent, and the jury is forced to choose between the defense theories advocated by the defendants." *Id.* at 143. Where codefendants raise inconsistent defenses, or seek to shift blame to one another, substantial prejudice is likely. *State v. DeVerney*, 592 N.W.2d

837, 842 (Minn. 1999). In *Santiago v. State*, the Minnesota Supreme Court held that the district court erred when it denied the defendant's motion for severance, as the two defendants raised "one of the classic examples of antagonistic defenses." *Santiago v. State*, 644 N.W.2d 425, 446 (Minn. 2002). After "applying the standards of *Hathaway*, *Greenleaf*, and *DeVerney*," the court concluded that the two defendants "presented antagonistic defenses because [they] pointed the finger at each other and each sought to shift the blame for the shooting to the other." *Id.*

Even where defendants do not intentionally blame each other, prejudicial evidence can arise in other ways, such as when one defendant's counsel elicits testimony from a witness which the State had previously been barred from delving into because of its damaging effect on the other defendant. *State v. Hathaway*, 379 N.W.2d 498, 502-03 (Minn. 1985). The Minnesota Supreme Court has emphasized the risks of a joint trial even when the trial court agrees to limit the use of evidence to the defendant to whom it directly applies. *State v. Ulferts*, 181 N.W.2d 104, 106 (Minn. 1970).

Here, the State claims that Mr. Nabors and the other defendants' defenses are not antagonistic because there has been no indication that either defendant will present inconsistent defenses. However, the possibility of antagonistic defenses is great, specifically regarding Mr. Nabors' level of involvement and participation in the alleged assault. Similar to *Santiago*, each defendant's defense surrounding their level of involvement in the alleged act could reach the threshold of shifting blame towards the other defendant. Further, the potential for antagonistic defenses is heightened because there is a backstory involving sexual aggression by the victim against one of the other defendants. Such a narrative, whether it is true or not, may result in an unrelated, diverging narrative from each defendant. If joinder is permitted, the jury will then be forced to choose to believe the testimony of one defendant over the other on every relevant issue.

In the present case, Mr. Nabors would be substantially prejudiced by the presentation of antagonistic narratives and/or defenses, and as such, joinder is not appropriate.

D. The Interests of Justice Require that the State's Joinder Motion Be Denied.

In the issue of joinder, the final factor to consider is whether the interests of justice support joining the case in trial, or if they support separate trials. Here, the State argues that a joint trial would promote “judicial economy” by eliminating another trial where all parties would need to double their availability and efforts. However, the State fails to note that efficiency and judicial economy alone should never be so important as to override an individual’s constitutional interest in a fair trial. *State v. Stock*, 362 N.W.2d 351, 535 (Minn. App. 1985). Further, the case cited by the State, *United State v. Zafiro*, 506 U.S. 534 (1993) uses federal rules of criminal procedure. As stated above, in *Santiago v. State*, the Minnesota Supreme Court held that the district court erred when it used the federal standards of criminal procedure, ruling that “the district court should not have looked to the federal rules and case law to inform its understanding of our rule.” *Santiago*, 644 N.W.2d at 446. In the present case, efficiency and judicial economy do not weigh in favor or joinder. Although length of trial is a legitimate factor to consider in joinder cases, as stated in *State v. Powers*, 654 N.W.2d 667, 675 (Minn. 2003), cases with multiple defendants frequently experience longer judicial proceedings.

Rather than joining the trials of Mr. Nabors and the other defendants, the interests of justice are better served by ensuring that Mr. Nabors receives a separate, fair, and unprejudiced trial that he is afforded under both the Constitution of the State of Minnesota and the Constitution of the United States of America. Therefore, the state’s motion for joinder should be denied.

CONCLUSION

The separate nature of the three defendants' charges, the lack of negative impact on victim, the high risk of substantial prejudice to the defendants, and the interests of justice demonstrate that joinder is not appropriate in the present case, as each of the four factors weigh against a joint trial. For the reasons stated above, Mr. Nabors respectfully requests this Court to deny the State's motion for joinder.

Respectfully Submitted,

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Dated: this 27th day of April, 2022