

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

State of Minnesota,

Plaintiff,

**STATE'S NOTICE OF MOTION
AND STANDARD MOTIONS IN LIMINE**

v.

CASE No.: 27-CR-22-4239
CA: 22A02382

PRIEST JESUS DORSEY,

Defendant.

TO: THE COURT AND COUNSEL FOR THE ABOVE-NAMED DEFENDANT.

NOTICE OF MOTION AND MOTIONS

PLEASE TAKE NOTICE that as soon as counsel may be heard at the Hennepin County Government Center, Minneapolis, Minnesota, the State will move the Court as follows:

First, the State hereby advises:

1. **Rule 801(d)(1)(B) and Prior Inconsistent Statements.** Pursuant to the Minnesota Rules of Evidence, Rule 801(d)(1)(B), you are hereby advised that in the above-named case, the prosecution may offer at trial out-of-court statements made by the victim and witness, made to police officers previously disclosed in discovery. These statements may be admissible as prior consistent statements and helpful to the jury in evaluating declarants' credibility.

Should any of the State's witnesses testify at trial inconsistent with their prior statements, the State is still permitted to present the prior statements as substantive evidence pursuant to Minnesota Rules of Evidence Rule 807, *State v. Ortlepp*, 363 N.W.2d 39 (Minn. 1985), *State v. Soukup*, 376 N.W.2d 498 (Minn. App. 1985), *State v. Robinson*, 718 N.W.2d 400 (Minn. 2006), and *State v. Ahmed*, 782 N.W.2d 253 (Minn. App. 2010).

Specifically, if required, the State intends to introduce the following statements:

- a. Recorded statements of a witness to 911 dispatchers.
 - b. Recorded bodyworn camera statements of witnesses to officers.
 - c. Recorded statements of Defendant.
2. **801(d)(2).** Pursuant to Minnesota Rule of Evidence 801(d)(2), you are hereby advised that, in the above-listed case, the prosecution may offer as substantive evidence statements made by the defendant as a party-opponent statement. These statements are admissible non-hearsay. *State v. Lopez-Ramos*, 913 N.W.2d 695 (Minn. Ct. App. 2018).

Second, for orders (**SECTION HEADERS** provided for clarity and convenience of navigation):

VOIR DIRE:

1. Directing Defendant's attorney not to ask prospective jurors either of the following two questions, or any similar questions about whether they have been falsely accused:
 - a. Do you think it is possible for anyone in our society to be arrested and charged for a crime for which he is innocent?
 - b. Have you ever been blamed in your life for something you did not do?

Authority: *State v. Owens*, 373 N.W.2d 313, 315 (Minn. 1985).

2. Prohibiting counsel for the defendant, during voir dire, from asking hypothetical questions if they would reveal in advance a juror's decision regarding a specified set of facts or evidence, thus committing the potential juror before the case is submitted. Such questions relate to what a juror's verdict would be if certain facts were proved; how the juror would apply legal principles; instructing on the law; and/or whether the juror would be willing to follow certain instructions if the Court gave them.

Authority: *Shapiro*, 99 ALR 2d 7 (1965); *State v. Bauer*, 249 N.W. 40 (1933); *State v. Evans*, 352 N.W.2d 824, 826 (Minn. Ct. App. 1984).

3. Prohibiting counsel for the defendant, during voir dire, from asking questions tending or designed to insert race into the jury selection process. In particular, this should bar voir dire questions similar to "Who is your favorite ____ celebrity?" where the qualifier is race-based. Questions inserting race into the jury selection process can only be aimed at begging a *Batson* question where there is no racial component to any charges or alleged aggravators. Such questions, in and of themselves, tend to violate the prospective juror's own equal protection rights and must be removed from courtroom proceedings as much as possible.

Authority: *State v. Varner*, 643 N.W.2d 298 (Minn. 2002) (stating "in cases where race should be irrelevant, racial considerations, in particular, can affect a juror's impartiality and must be removed from courtroom proceedings to the fullest extent possible"); *State v. Seaver*, 820 N.W.2d 627 (1933) (discussing *Batson* challenges); Minn. R. Crim. Pro. 26.02, subd. 4 (examination is only "to discover grounds for challenges for cause and to assist in the exercise of peremptory challenges"); Minn. R. Crim. Pro. 26.02, subd. 7 ("No party may purposefully discriminate on the basis of race or gender").

WITNESSES:

4. Sequestering the witnesses during the course of the trial except when they are testifying, directing that witnesses be prohibited from talking to each other about the substance of their testimony (or other proceedings during the trial), directing counsel for the defendant to admonish the defense witnesses to refrain from such conduct, and directing that the defendant and/or the defendant's agents refrain from discussing previous witness' testimony with witnesses who have yet to testify.

Authority: Minn. R. Crim. P. 26.03, Subd. 8; Minn. R. Evid. 615; *State v. Erdman*, 383 N.W.2d 331 (Minn. 1986); *State v. Miller*, 396 N.W.2d 903 (Minn. App. 1986).

5. Excepting from any sequestration order the principal investigating officer, agent, expert(s), and any identified victim(s).

Authority: Minn. R. Evid. 615. (Committee Comment: While a request for sequestration in criminal cases rarely should be denied, the committee felt that investigating officers, agents, and experts essential to advise counsel in the trial process should not be excluded. *See also*, Judges Criminal Benchbook, Chap. 15, 1504.04 (2014); Minn. R. Crim. Pro. 26.03 subd. 7; & Minn. Stat. Chap. 611A. *State v. Olson*, No. A08-0084 (Minn. Ct. App. 2009, unpublished opinion).

PRE-ADMISSION/DISPLAY OF EXHIBITS

6. Pre-admitting the exhibits listed in the State's exhibit list or, in the alternative, permitting the State to show such exhibits in opening statements as the State has a good faith basis to believe will be admitted during the course of the trial.

Authority: Minnesota Rules of Evidence Rules 103 and 402, et al.; *see also* 23A C.J.S. Criminal Law § 1692 (2006); *cf.* Minnesota General Rules of Practice, Part H, Minnesota Civil Trialbook § 8(a) (permitting display of exhibits in opening); *State v. Fairbanks*, 842 N.W.2d 297 (Minn. 2014).

RESIDUAL HEARSAY

7. Allowing the State to present the recorded statements of a declarant under the residual exception rule on hearsay and/or other pertinent exceptions.

Authority: Minn. R. Evid. 807; *State v. James*, A09-1331 (Minn. App. 2010); and *State v. Plantin*, 682 N.W.2d 653, 659 (Minn. App. 2004).

8. Allowing the State to admit the 911 call/text/dispatch radio traffic reciting statements of a declarant under the excited utterance, residual exception rule, and/or other pertinent exceptions on hearsay.

Authority: Minn. R. Evid. Rules 803(2) & 807; *State v. Taylor*, 650 N.W.2d 190, 205 (Minn. 2002) (affirming admission of taped 911 call as excited utterance); *Beebe v. Kleidon*, 65 N.W.2d 614, 617 (Minn. 1954); *State v. James*, A09-1331 (Minn. App. 2010); and *State v. Plantin*, 682 N.W.2d 653 (Minn. App. 2004).

SPREIGL

9. Permitting the mention of defendant's prior conviction(s), certified copies of which have been or will be disclosed to the Defendant, as evidence of opportunity, intent, knowledge, and/or absence of mistake or accident.

Authority: Minn. R. Evid. 404; *State v. Spreigl*, 585 N.W.2d 385 (Minn 1998).

AGGRAVATION

10. Permitting the State to prove, for the jury to specifically find, such factors in aggravation which have not been stipulated to or had findings waived by Defendant. If not otherwise stipulated or admitted, the State requests a special verdict finding form on these factors.

Authority: Minn. Stat. § 244.10; Minnesota Sentencing Guidelines; MRCP Rule 7; *Blakely v. Washington*, 542 U.S. 296 (2004); *State v. Shattuck*, 704 N.W.2d 141 (Minn. 2005).

DEFENDANT'S ADMISSIONS

11. Allowing the admission, in the State's case-in-chief, statements made by the Defendant as a party opponent statement. These statements are admissible non-hearsay. This includes if the Defendant advised officers pre-arrest that there was evidence helpful to the investigation but then declined officers' request to view the evidence or, in the alternative, allowing the State to impeach the Defendant with such a refusal or offer the refusal in rebuttal.

Authority: Minn. R. Evid. 402; *State v. McDaniel*, 777 N.W.2d 739 (Minn. 2010) (admitting consciousness of guilt evidence).

12. Allowing the admission of the defendant's pre-arrest, pre-Miranda silence.

Authority: Minn. R. Evid. 402; *State v. Borg*, 806 N.W.2d 535 (Minn. 2011).

DEFENDANT'S PRIOR MISCONDUCT

13. Allowing the State to cross-examine the Defendant regarding Defendant's own prior misconduct and reputation.

Authority: Minn. R. Evid. 608(a) & 608(b); *State v. Fallin*, 540 N.W.2d 518, 522 (Minn. 1995); *State v. Fields*, 730 N.W.2d 777 (Minn. 2007).

14. Permitting the State to admit the Defendant's prior conviction(s), certified copies of which have been or will be disclosed to the Defendant, as impeachment evidence should the Defendant choose to testify.

Authority: Minn. R. Evid. 609(a); *State v. Hill*, 801 N.W.2d 646 (Minn. 2011); *State v. Swanson*, 707 N.W.2d 645 (Minn. 2006); *State v. Inholt*, 575 N.W.2d 581 (Minn. 1998); *State v. Brouillette*, 286 N.W.2d 702 (Minn. 1979).

JURY NULLIFICATION

15. Barring any evidence or arguments designed to, or likely to, elicit jury nullification. Specifically, the Government seeks to bar: (1) evidence or arguments suggesting that the Government engaged in outrageous behavior; (2) arguments or questions about the motivation of the officers who investigated and prosecuted the case; (3) arguments or questions suggesting that the investigation or prosecution of the case against Defendant was improperly motivated; or (4) any argument or evidence designed to invoke the sympathy of the jury with respect to the impact of a conviction on Defendant or his family.

Authority: Minn. R. Evid. 402, 404, and 608.

16. Prohibiting any statement or argument by defense which may point the jury towards effectuating jury nullification. Specifically, any statement or argument tending to indicate that the jury may ignore the law. It is the province of the jury to determine the facts of the case and the Court instructs the jury on the law. The jury must follow the law as the Court instructs.

Authority: *State v. McNeil*, 03-CR-12-2934 (unpublished opinion at A14-0554, 2015 WL 303671, Minn. Ct. App. 2015); *State v. Hooks*, 752 N.W.2d 79 (Minn. Ct. App. 2008); Minn. R. Evid. 402, 404, and 608.

17. Prohibiting counsel for the defendant from making any argument calculated to inflame the passions or prejudices of the jury or which may reasonably tend to inflame such passions or prejudices.

Authority: *State v. Salitros*, 499 N.W.2d 815 (Minn. 1993).

COLLATERAL CONSEQUENCES

18. Prohibiting the defense from inquiring, offering evidence, or commenting upon in the presence of potential jurors or the jury, the possible punishment or other adverse effects or collateral consequences which Defendant may face if a conviction results.

Authority: Only relevant evidence is admissible at trial. Minn. R. Evid. 402. The question of punishment is exclusively for the court, *State v. Chambers*, 589 N.W.2d 466 (Minn. 1999); *State v. Finley*, 8 N.W.2d 217, 218 (Minn. 1943). Therefore, it is not relevant to any of the issues which the jury must consider as the finder of fact. In *Chambers*, the Supreme Court held the trial court properly refused to allow voir dire on the consequences of a guilty verdict such as the sentence. *Id.* At 474. In *Finley*, the Supreme Court held:

The responsibility of imposing punishment upon a defendant in a criminal case rests exclusively with the court. *The jury go outside their province as triers of the facts if they include the matter of punishment in their deliberations.*

Id. at 231-2, 8 N.W.2d at 218. (Emphasis added).

The possibility that a conviction in this case will result in probation, jail or imprisonment, has nothing at all to do with the issue of whether defendant committed the crimes charged, which is the sole issue for the jury to consider. Therefore, the defense should be precluded from mentioning it to the jury or asking questions about the possible sentence in voir dire.

WAIVER OF ISSUES

19. Prohibiting the defense from inquiring, offering evidence, or commenting upon issues or questions of law reserved for challenge at an omnibus hearing.

Authority: These matters are questions of the law that must be challenged at the omnibus hearing. They are not issues for the jury to consider as finder of fact. *Cf.*, *State v. Keiser*, 274 Minn. 265, 269, 143 N.W.2d 75, 78 (1966) [partially overruled on other grounds, *State v. Wajda*, 296 Minn. 29, 206 N.W.2d 1 (1973)]. *See also* Minnesota Rules of Criminal Procedure Rule 11.

SELF-SERVING HEARSAY

20. Prohibiting Defendant from referring to, or questioning any witness (other than Defendant) regarding, any self-serving hearsay statement made by Defendant.

Authority: Minn. R. Evid. 801(c), 802; *State v. Taylor*, 258 N.W.2d 615 (Minn. 1977) (trial court properly precluded defendant from introducing statement to police as self-serving hearsay); *State v. Mills*, 562 N.W.2d 276, 287 (Minn. 1977).

MISSTATING LAW

21. Prohibiting misstatements of the burden of proof.

Authority: *State v. Coleman*, 373 N.W.2d 777, 782 (Minn. 1985) (holding “misstatements of the burden of proof are highly improper”), *State v. DeVere*, 261 N.W.2d 604, 606 (Minn. 1977) (stating best practice is to adopt a reasonable doubt definition that has already been generally approved).

WITNESSES NOT TESTIFYING

22. Prohibiting defense counsel from telling the jury that Defendant was instructed or advised not to testify by defense counsel.

Authority: *State v. Harris*, 333 N.W.2d 873, 876 (Minn. 1983).

23. Prohibiting Defendant from commenting on the failure or alleged failure of the prosecution to call a witness, particularly where the witness is equally available to both parties. This should include a prohibition on the Defendant and defense from asserting, arguing, or otherwise putting forth to the jury any adverse inference from the State refraining from calling any witness or offering any tangible evidence equally available to the defendant.

Authority: Minn.R.Crim.P. 9.01 Subd. 1(1)(a); *State v. Wipper*, 512 N.W.2d 92 (Minn. 1994); *State v. Daniels*, 361 N.W.2d 819, 833 (Minn. 1985); *State v. Swain*, 269 N.W.2d 707 (Minn. 1978).

24. Prohibiting Defendant and counsel from referring to the State's failure to produce any evidence equally available to both parties.

Authority: *State v. Daniels*, 361 N.W.2d 819, 833 (Minn. 1985); *State v. Swain*, 269 N.W.2d 707 (Minn. 1978).

IMPROPER QUESTIONING/ARGUMENT

25. Prohibiting defense counsel from asserting, in the presence of the jury, a personal belief or opinion as to the veracity of a witness.

Authority: *State v. Strodtman*, 399 N.W.2d 610, 615 (Minn. Ct. App. 1987), *rev. denied* (Minn. March 25, 1987).

26. Prohibiting defense counsel from asserting a personal belief or opinion as to Defendant's innocence in the presence of the jury.

Authority: ABA Standards for Criminal Justice (2d ed.), "The Defense Function." Standard 4-7. 8.

27. Prohibiting Defense from using charts or other visual aids which misstate the law and/or are misleading to the jury.

Authority: Minn. R. Evid. 402; 403.

28. Prohibiting defense counsel from suggesting that a not guilty plea is the equivalent of testimony to the effect that Defendant did not commit the crimes charged or that Defendant lacked the requisite state of mind.

Authority: *State v. Larson*, 358 N.W.2d 668 (Minn. 1984).

IMPROPER CHARACTER EVIDENCE

29. Prohibiting defense counsel from inquiring of any witness whether they believe or disbelieve the victim(s) or other witnesses.

Authority: *State v. Ferguson*, 581 N.W.2d 824, 835 (Minn. 1998); *State v. Koskela*, 536 N.W.2d 625, 630 (Minn. 1995).

30. Prohibiting the defense from inquiring of any witness about prior arrests, convictions, juvenile adjudications, or other misconduct, without specific prior approval of the Court.

Authority: Minnesota Rules of Evidence 402, 403, 404, 608, 609, and 611.

31. Excluding evidence of the character of any witness called by the State, other than his or her character for truthfulness.

Authority: Minnesota Rules of Evidence 402, 403, 404, and 608.

32. Prohibiting defense counsel from calling character witnesses or soliciting character evidence due to a failure to provide adequate notice (Rule 9.02). If the court permits such witnesses or evidence, an order should issue limiting such presentation to only such as regards a pertinent trait of the defendant's character.

Authority: Minn. R. Crim. Pro. 9.02 subd. 1(3); Minn. R. Evid. 404(a)(1) (only allows admission of character evidence of pertinent traits). *State v. Posten*, 302 N.W.2d 638, 642 (Minn. 1981). *State v. Durfee*, 322 N.W.2d 778 (Minn. 1982).

33. Prohibiting either party from impeaching any witness with evidence of a prior conviction without a prior order of the court allowing such impeachment.

Authority: Minn. R. Evid. 103(c), 404(a), 405(a), 608(a), and 609; *State v. Jones*, 271 N.W.2d 534 (Minn. 1978).

34. Prohibiting Defendant's attorney from introducing any other bad character evidence regarding a victim.

Authority: Minnesota Rules of Evidence 402 & 412; Minn. Stat. § 609.347.

35. Prohibiting the Defendant from offering evidence supporting any defense witness' (or the Defendant's), character for truthfulness unless and/or until the State offers opinion of reputation evidence concerning that witness's, or the Defendant's, character for truthfulness.

Authority: Minnesota Rules of Evidence 608(a).

36. Prohibiting the Defendant from proffering specific instances of conduct of the Defendant.

Authority: Minnesota Rules of Evidence 405; *State v. Posten*, 302 N.W.2d 638 (Minn. 1981).

37. Prohibiting testimony or questions intended or likely to elicit improper vouching for the Defendant or other witnesses.

Authority: Minn. R. Evid. 403, 701; *State v. Koskela*, 536 N.W.2d 625, 630 (Minn. 1995) ("[C]redibility of a witness is for the jury to decide, not a witness."); *State v. Ellert*, 301 N.W.2d 320, 323 (Minn. 1964) (error to permit testimony by police officer as to veracity of Defendant's statement).

DISCOVERY/NOTICE

38. Prohibiting Defendant's attorney from calling any previously undisclosed witnesses.

Authority: Minn. R. Crim. P. 9.02, subd.1 (3); *State v. Patterson*, 587 N.W.2d 45 (Minn. 1998); and *State v. Irwin*, 379 N.W.2d 110 (Minn. App. 1985).

39. Prohibiting Defendant's attorney from asserting any previously undisclosed defense.

Authority: Minn. R. Crim. Pro. 9.02, subd. 1(5). *See, e.g., State v. Ketter*, 364 N.W.2d 459, 463 (Minn. App. 1985) (distinguishing misdemeanor, where defendant does "not lose the right to assert [a Rule 9] defense by failing to give pretrial notice," from felony notice requirements).

40. Requiring disclosure of a written summary of any evidence the defense intends to elicit at trial and identification of the applicable foundation witness (either on direct or cross), requiring an "offer of proof" as to the relevancy of each defense witness' testimony, and barring the admission of any evidence not previously so disclosed.

Authority: Minn. R. Crim. P. 9.02 subd. 1; Minn. R. Evid. 401, 402, 403.

TRANSCRIPTS

41. Allowing the State to provide the jury with copies of transcripts (if prepared) to assist jurors while listening to admitted recordings, and that the Court will provide the jury with an instruction on the appropriate use of these transcripts for purposes of inaudibility or identification of speakers.

Authority: *State v. Olkon*, 299 N.W.2d 89 (Minn. 1980) (finding no error in providing jurors with audio transcripts and properly instructing jurors on transcript use for purposes of inaudibility and/or identification of speakers). *See also* MRCP Rule 11.10 (prohibiting transcription as a condition precedent to admission, allowing transcripts as illustrative exhibits).

CLOSING ARGUMENT

42. Allowing the prosecution to state to the jury as part of its final argument instructions that will be given to the jury by the court.

Authority: Minn. R. Crim. P. 26.03 subd. 19(3).

43. Allowing the prosecution to use a Microsoft PowerPoint visual presentation during closing argument as a multimedia aid, possibly incorporating, as a whole or in part, any exhibit, including but not limited to: pictures, documents, video, and audio files, that have been admitted into evidence during the course of the trial. A printed and/or electronic copy of the presentation will be provided to the Court and to defense immediately prior to the closing argument if such presentation is ultimately used and labeled as a court exhibit.

Authority: *State v. Stewart*, 643 N.W.2d 281 (Minn. 2002).

44. Prohibiting counsel for the defendant from attributing the crime to another person unless such an inference is warranted by the evidence and properly noticed.

Authority: *State v. Salitros*, 499 N.W.2d 815 (Minn. 1993); MRCP Rule 9.02.

INVASION OF PROVINCE OF THE JURY

45. Prohibiting counsel for the defendant from asking, asserting, arguing, or otherwise putting forth to the jury, that the jurors should put themselves, a friend, or a member of their family “in the shoes” of the defendant.

Authority: *State v. Johnson*, 324 N.W.2d 199 (Minn. 1982).

46. Precluding witnesses from offering an opinion as to the guilt or innocence of the Defendant, or any other matter not rationally based on the perception of the witness and helpful to a clear understanding of the witness’ testimony or determination of a fact in issue.

Authority: Minn. R. Evid. 701.

PRIOR RULINGS

47. Prohibiting counsel for the defendant from referencing, mentioning, commenting on, or alluding to the jury, in any way, either in voir dire, opening statement, direct examination, cross-examination, case-in-chief, or closing argument, regarding any item of evidence that was suppressed, any reasons for suppression, or the fact that evidence was suppressed or that any objection was either sustained or overruled and any reason for such.

Authority: Minn. R. Evid. 402; 403.

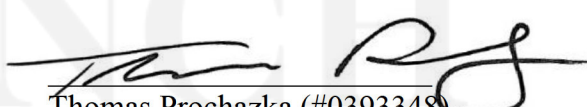
48. For such other relief as the Court deems just and appropriate.

49. For such other orders and relief the State may later seek through supplementary motions.

Respectfully submitted,

Dated: April 24, 2023

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