

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

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State of Minnesota,

Court File No. 27-CR-15-31387

Plaintiff,

vs.

**DEFENDANT'S PRETRIAL MOTIONS**

Jordan S. Kushner,

Defendant.

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**PLEASE TAKE NOTICE** that on May 12, 2016 at 8:30 a.m., or as soon thereafter as counsel may be heard, at the Hennepin County Government Center, 300 South 6<sup>th</sup> Street, Minneapolis, Minnesota 55487, before a judge of the above-named Court to be determined, Defendant Jordan S. Kushner will move the Court for the relief as specified below, and demands a hearing on the same as provided by the Minnesota Rules of Criminal Procedure.

1. For an Order requiring the prosecution to make disclosures required by Minnesota Rules of Criminal Procedure Rule 9.

2. For an Order requiring the prosecution to make disclosures and the University of Minnesota to comply with Defendant's prior subpoena duces tecum as required by the Court's Findings and Order filed on March 23, 2016, to the extent that the parties may have failed to comply with said Order.

3. For an Order requiring the prosecution to provide addresses for witnesses and persons with information relevant to this case which it has failed or refused to provide, including but not limited to J.K. and S.R. Defendant is entitled to such disclosures in order to be able to adequately investigate and prepare his defense. The disclosures with respect to the two named witnesses are necessary because they have information that is pertinent to the defense, including possibly exculpatory information. J.K. may be in possession of video and/or audio recordings of the events underlying this case. Defendant specifically intends to subpoena J.K., both his person and documents, for the May 12 hearing and therefore needs to know his location.

4. For an Order requiring the prosecution and/or the University of Minnesota to disclose the two complaints resulting in discipline against Lt. Troy Buhta and Sgt. Kris Tyra, and documents related to said Complaints and the investigation of said Complaints, to the extent that said documents may not have been disclosed. Said documents are public data under the Data Practices Act, Minn. Stat. § 13.43, subd. 2(a) (2014), and the Court's Findings and Order filed on March 23, 2016 noted that the documents should be "readily available" to the parties.

5. For an Order requiring the prosecution and/or the University of Minnesota to disclose the University of Minnesota police department's policies and procedures, guidelines, and pertinent training materials relating to making arrests, detention of suspects, use of force, handling of protests, and free speech.

6. For an Order disclosing and allowing the opportunity to inspect and reproduce any relevant written or recorded statements made by the Defendant, and the substance of any oral statement made by the Defendant, whether before or after arrest, which the prosecution intends to offer in evidence at the trial.

8. For an Order disclosing and allowing the opportunity to inspect and duplicate any papers, documents, photographs, video and audio recordings, and tangible objects which the prosecution intends to introduce as evidence at the trial.

9. For an Order requiring the prosecution to make any and all disclosures of any relevant and material information which may possibly relate to the guilt or innocence of the Defendants, which may negate or reduce the culpability of the offenses charged, or which may mitigate punishment, and which is not disclosed pursuant to No. 3, above, pursuant to Brady v. Maryland, 373 U.S. 83 (1963) and Kyles v. Whitley, 115 S.Ct. 1565 (1995).

10. To dismiss the charge of Disorderly Conduct under Minn. Stat. § 609.72(2) on the grounds that said statute is unconstitutionally vague and overbroad, both on its face and as applied to the instant case, in violation of Defendant's rights to free speech and due process under the First and Fourteenth Amendments to the United States Constitution, and Article 1, §§ 3 and 7 of the Minnesota Constitution. (This motion is further addressed in the accompanying Memorandum).

11. To suppress all evidence and dismiss all of the charges against

Defendant on the grounds that they constitute and are the result of violations of, and are in retaliation for his exercise of his rights to free speech under the First Amendment to the United States Constitution and Article I, § 3 of the Minnesota Constitution. Specifically, Defendant was engaged in constitutionally protected conduct consisting of verbally challenging police officers' attempted arbitrary and discriminatory removal of a member of the audience from a public lecture, video recording confrontations between protesters and authorities, and then questioning police officers arbitrary and discriminatory removal of Defendant from the lecture for engaging in said protected activities. Police officers responded by forcibly removing Defendant and arresting with use of unnecessary force, and later making fictitious allegations that Defendant was yelling and screaming and resisting arrest to create a pretext for their unlawful actions. Defendant requests an evidentiary hearing to determine whether police violated his rights to free speech, and thereby render the arrest and ensuing charges unconstitutional. (This Motion is further addressed in the accompanying Memorandum).

12. To dismiss all of the charges against Defendant on the grounds that they are the product of selective and discriminatory arrest and prosecution in violation of his rights to free speech and equal protection under the First and Fourteenth Amendments to the United States Constitution and Article 1, §§ 3 and 7 of the Minnesota Constitution. Specifically, police officers and a university staff person have asserted that Defendant's video recording of events during a protest during a planned public lecture were the basis

for his removal from the lecture and his arrest. Yet, the prosecution has disclosed three video clips from one of its witnesses of events during the protest. The difference is that Defendant was identified as being present in opposition the views of the lecturer, whereas the other videographer was present in support. Defendant requests an evidentiary hearing to determine whether police and another official discriminated against him based on his perceived political positions in violation of his rights to free speech and equal protection, and thereby render the arrest and ensuing charges unconstitutional. (This motion is further addressed in the accompanying Memorandum).

13. For an evidentiary hearing to address the motions specified in Nos. 10-12 above. Although Defendant does currently advance a motion to dismiss based on lack of probable cause due to the false statements of the arresting police officers which could arguably give rise to probable cause, in the event that the evidence at the hearing is at variance from the police reports, Defendant reserves his right to challenge probable cause and accordingly demands a combined evidentiary hearing also contesting probable cause pursuant to State v. Florence, 306 Minn. 442, 239 N.W.2d 892 (1976).

Dated: March 25, 2016

LAW OFFICE OF JORDAN S. KUSHNER

By s/Jordan S. Kushner

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