

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

State of Minnesota,

**MOTIONS TO AMEND SCHEDULING
ORDER; FOR WITNESS
CONFIDENTIALITY; AND MISC.
MOTIONS IN LIMINE**

Plaintiff,

vs.

JORDAN SCOTT KUSHNER,

MNCIS Case No. 27CR1531387

Defendant.

SILS Tracking No. 2836819

City Attorney File No. 15-21568

TO: THE ABOVE NAMED COURT; DEFENDANT, DEFENDANT'S ATTORNEY.

PLEASE TAKE NOTICE that the State of Minnesota, by and through its undersigned counsel, brings the attached Motions before the Honorable Judge Chou.

MOTIONS

1. Ordering the defendant to provide discovery to the state, pursuant to the state's previously filed Rule 9 demand and the Court's March 23, 2016, order. Minn. R. Crim. Proc. 9.02; 9.04.
2. To amend the Court's previously issued scheduling order as follows: (1) providing for a due date for the production of discovery in the parties' possession, while recognizing the duty of ongoing discovery as it comes into the parties' possession; (2) requiring that parties provide summaries of statements of witnesses and/or offers of proof as to what a witness will testify to in the absence of a summary; (3) that said statements or offers of proof be provided by June 27, 2016, and/or extending the time for motions in limine to be filed so that parties may object to a witness's testimony by the court's deadline.
3. If an evidentiary hearing is requested by the defendant, granting the state leave to request a date other than May 12, 2016, as there may be issues of witness availability depending upon the nature of the hearing.
4. Granting the State's motion to keep J.K.'s address private.
5. Prohibiting defense counsel from asserting or arguing to the jury any previously undisclosed defense.¹

¹ Typically, this is a motion in limine the state would bring immediately prior to trial. The state is including this quasi-evidentiary motion, as well as well as others that follow, to err on the side of abiding by the court's scheduling order, which requires that "all motions, except motions in limine regarding evidence admissibility at trial," be made by March 25, 2016. Also, by "defense counsel," the state intends to include both the defendant and his attorney, as they are acting as "co-counsel."

6. Prohibiting any and all attorneys, parties, witnesses, jurors, and employees and officers of the court from making extrajudicial statements relating to the case or the issues in the case for dissemination by any means of public communication during the course of the trial. Minn. R. Crim. P. 26.03, subd. 7 (2007).
7. Witnesses may be sequestered or excluded from the courtroom, prior to their appearance, in the discretion of the court. Minn. R. Crim. P. 26.03, subd. 7 (2007).
8. Prohibiting defense counsel from inquiring, offering evidence, arguing, or commenting upon, in the presence of jurors, any internal affairs complaints. Minn. R. Evid. 403 (relevance); Minn. R. Evid. 40 & 405 (Character, past bad acts, methods of proving character); Minn. R. Evid. 608 (character); Minn. R. Evid. 609 (impeachment); Minn. R. Evid. 801-802 (Hearsay); Minn. R. Evid. 901 (authentication); and CrimJig 3.12 (Evaluation of Testimony-Believability of Witnesses).
9. Prohibiting defense counsel from inquiring, offering evidence, arguing or commenting upon in the presence of jurors, issues of discriminatory enforcement or selective prosecution. State v. Hyland, 431 N.W.2d 868, 873 (Minn. Ct. App. 1988) (“A discriminatory enforcement issue should be disposed of at a pretrial hearing.”); City of Minneapolis v. Buschette, 240 N.W.2d 500, 503 (Minn. 1976) (the issue of discriminatory enforcement should be decided prior to a trial on the merits because “it does not go to the guilt or innocence of the particular defendant.”).
10. Prohibiting defense counsel from inquiring, offering evidence, arguing, or commenting upon, in the presence of jurors, issues of the First Amendment, where such issues are a matter of law for the district court to determine and not a fact for the jury, and mention of such issues is therefore irrelevant and will only cause confusion and prejudice to the state. Minn. R. Crim. Proc. 12.03 (constitutional matters are to be determined by court prior to trial); Dennis v. U.S., 341 US 494, 513 (1951) (When facts are found that establish the violation of a statute, the protection against conviction afforded by the First Amendment is a matter of law . . . [subject to] a *judicial determination* of the scope of the First Amendment applied to the circumstances of the case) (emphasis added); Minn. R. Evid. 401-403 (defining relevance and risk of confusing the jury).
11. Prohibiting defense counsel from inquiring, offering evidence, arguing or commenting upon, in the presence of jurors, the legality of his arrest. Minnesota law does not authorize a person to physically resist a legal or allegedly illegal arrest by peace officers. Minn. R. Crim. Proc. 12.03 (constitutional matters to be determined by court prior to trial); State v. Kutchara, 350 N.W.2d 924 (Minn. 1984); State v. Wick, 331 N.W.2d 769, 771 (Minn. 1983) (“Minnesota law does not recognize defendant's asserted right to resist an unlawful arrest or search”); State v. Hoagland, 270 N.W.2d 778 (Minn. 1978), appeal dismissed 440 U.S. 969, 99 S.Ct. 1530, 59 L.Ed.2d 785 (1979). Moreover, the legality of an arrest is a matter of law to be determined by the court prior to trial, not an issue of fact to be decided by the jury. Goldberg v. Hennepin County, 417 F3d 808, n. 2 (8th Cir. 2005) (reasonableness of seizure is not a question for the jury); State v. Horner, 617 N.W.2d 789, 795 (Minn. 2000) (Whether there is probable cause to arrest depends on findings of fact that are reviewed under the clearly erroneous standard, but it is ultimately a question of law to be reviewed de novo). Therefore, the legality of the defendant’s arrest is not properly an issue for the jury.
12. Prohibiting defense counsel from inquiring, offering evidence, arguing or commenting upon, in the presence of jurors, the manner by which he was charged or that the state added charges not originally tabbed at the jail. Minn. R. Crim. P. 401-403 (relevance).

13. Prohibiting defense counsel from commenting on the State's failure to call any previously disclosed witness. State v. Swain, 269 N.W.2d 707, 716-17 (Minn. 1978).
14. Except by the parties' stipulation, prohibiting defense counsel from inquiring, offering evidence or commenting upon, in the presence of jurors, any out-of-court communications between the parties' legal representatives. CrimJig 3.11 & Minn. R. Evid. 801-3.
15. Prohibiting defense counsel from inquiring, offering evidence or commenting upon, in the presence of jurors, the level of the charges, and any possible punishment or other adverse effects which defendant may face if a conviction results. State v. Finley, 8 N.W.2d 217, 218 (Minn. 1943).
16. Prohibiting defense counsel from examining prospective jurors as to their understanding of the law, or to give by defense counsel's questions a course of instruction on the law, or to the extract promises on how to decide the case. State v. Bauer, 249 N.W. 40 (1933); State v. Evans, 352 N.W.2d 824, 826 (Minn. Ct. App. 1984).
17. Granting the State of Minnesota's request for jury instructions.
18. Providing written copies of the jury instructions to the parties prior to closing statements.

These motions are based upon all the files, records and proceedings herein, together with any oral arguments presented at said hearing.

Dated: March 16, 2016

Respectfully Submitted,

/s/ _____
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