

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

Court File No. 27-CR-20-12646

State of Minnesota,

Plaintiff,

vs.

**AFFIDAVIT OF
ERIC J. NELSON**

Derek Michael Chauvin,

Defendant.

STATE OF MINNESOTA)
) ss.
 COUNTY OF HENNEPIN)

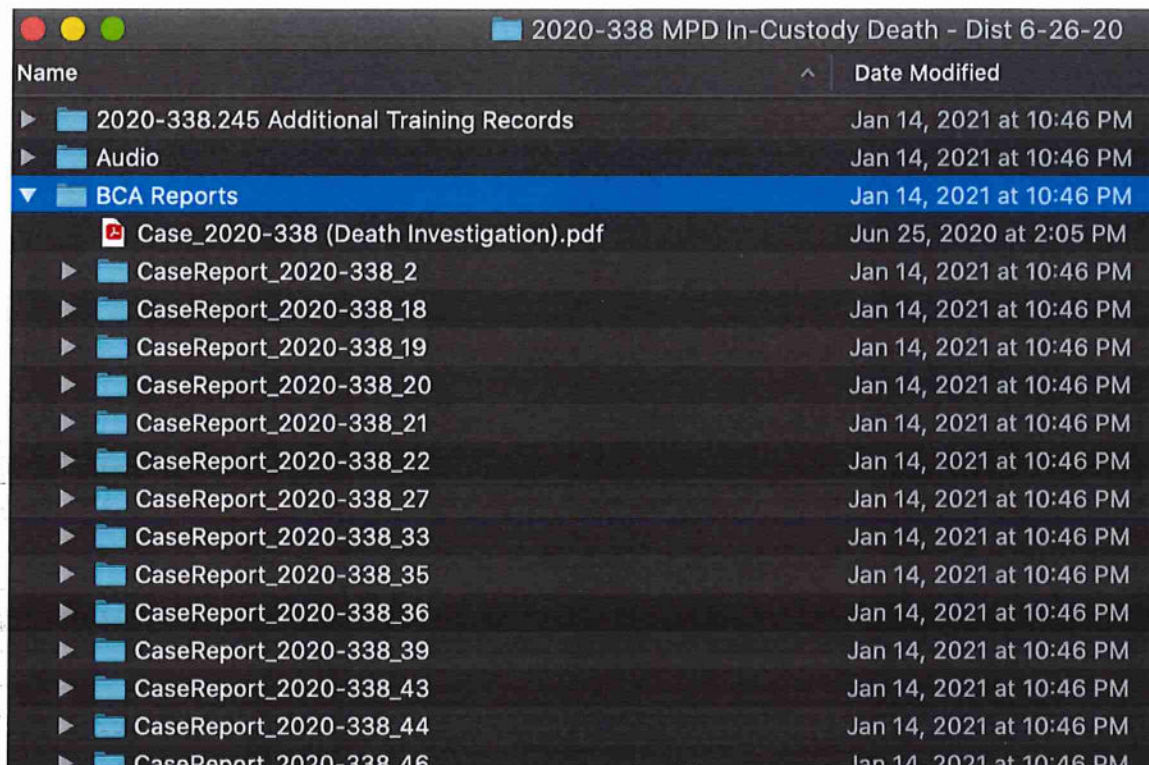
Eric J. Nelson, being first duly sworn, states as follows:

1. I am the attorney for the above-named Defendant.
2. On or about December 17, 2020 the Court issued its order regarding Expert Disclosure Deadlines and Hearing for Defendant's Motions for Trial Continuance. The Court's order requires the Defense to disclose to the State final reports and expert opinions by February 8, 2021.
3. On or about January 11, 2021 the Court issued its order titled Order Regarding Discovery, Expert Witness Deadlines and Trial Continuance. Therein, the Court granted Defendant Chauvin's request for duplicate copies of the BCA disclosures made to the State.
4. On January 12, I emailed Assistant Attorney General Matthew Frank inquiring as to when I could pick up a copy of the files the Court ordered to be disclosed. Mr. Frank called me on or about Thursday, January 14, and left a message indicating

that he had obtained the files and that we needed to discuss certain aspects of the records contained therein.

5. On Friday January 15, 2021, Mr. Frank and I had a telephone conversation wherein we discussed the fact that the hard drive contained certain records that had not be previously disclosed to me. These records included the personnel files of the other co-defendants.
6. Of note and concern, Mr. Frank informed me that the hard drive contained an MPD-prepared PowerPoint presentation regarding the use of and policies surrounding the Lateral Vascular Neck Restraint and other “choke holds” that had not been previously disclosed to the defense. Mr. Frank indicated that it did not appear on the original file they had received from the BCA.
7. Due to the Martin Luther King Day holiday, I was not able to retrieve a copy of the BCA file until Tuesday, January 19, 2021.
8. Upon my initial review of the copy of the BCA disclosures, it was immediately apparent that the manner in which the BCA provided its investigative reports to the Attorney General’s Office was as exactly as I expected it to be. Each of the disclosures from the BCA to the AG was well organized, labeled and easily identifiable as to content. (See attached screen shots below of June 26, 2020 BCA Disclosure to the Attorney General’s Office):

Name	Date Modified	Size
▶ 2020-338.245 Additional Training Records	Jan 14, 2021 at 10:46 PM	
▶ Audio	Jan 14, 2021 at 10:46 PM	
▶ BCA Reports	Jan 14, 2021 at 10:46 PM	
▶ Report 248 - Additional MPD Data	Jan 14, 2021 at 11:05 PM	
▶ Video	Jan 14, 2021 at 11:05 PM	



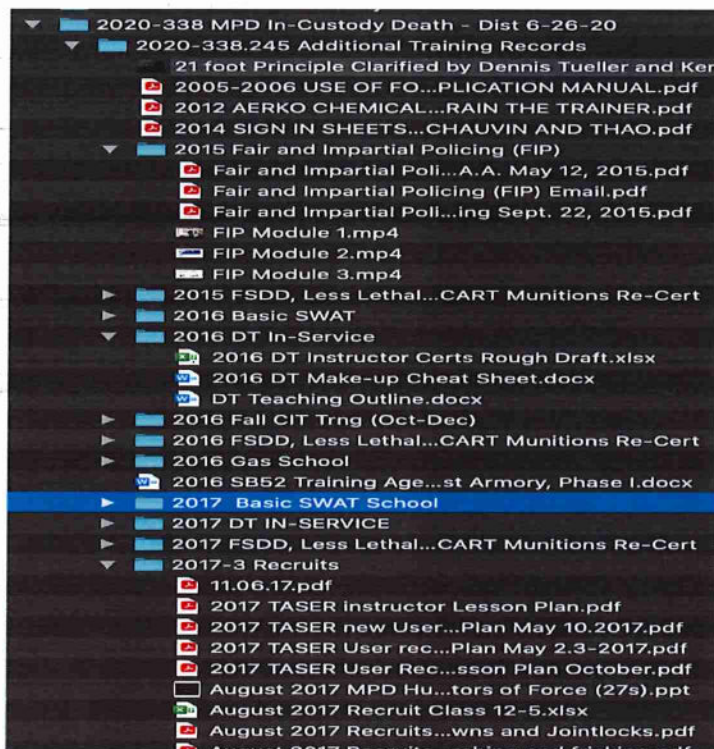
9. However, with regard to this disclosure, these same records were converted from their original formats and disclosed to the Defense in a **SINGLE** PDF file, that was not searchable or otherwise OCR'ed on July 16, 2020. (See screen shot of AG Disclosure of 7/16/20).



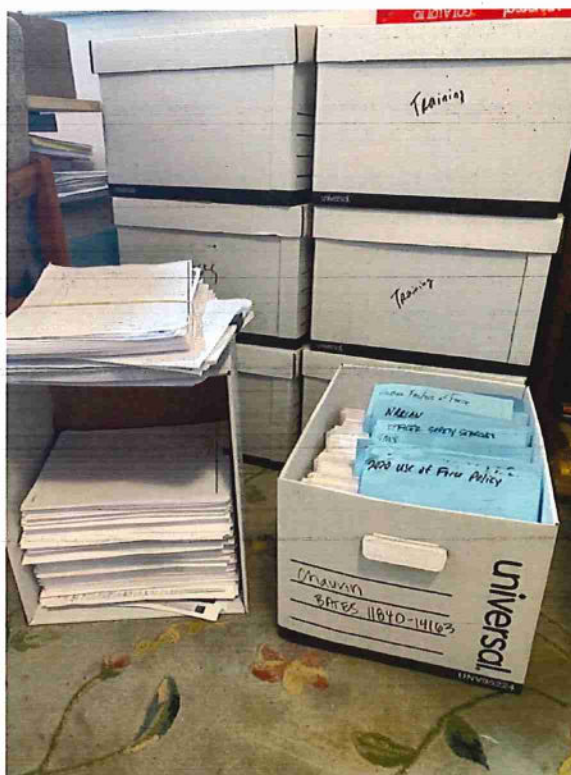
10. The Attorney General received an organized, cohesive and readily searchable case file from the BCA. However, in this instance the AG disclosed to the Defense a

6,032-page, non-searchable PDF file. This has been the same process for every disclosure made to the defense.

11. Of particular note, the manner in which the Defense has received the MPD training and personnel records from the Attorney General's Office was troubling from the beginning. Pursuant to a search warrant issued by the Court, MPD provided thumb drives to the BCA containing their training materials. With each successive request, the MPD continued to respond and provide the requested materials.
12. In the original disclosures from the MPD to the BCA and the BCA to the Minnesota Attorney General, the training materials—which ultimately comprise tens of thousands of pages of the disclosures—provided to the AG's office were organized by date and in their native formats (i.e. PowerPoint, Word, mp4, PDF, etc.). (See screenshot of June 26, 2020 BCA disclosure to AG).



13. Yet again, the Defense received these same records in massive PDF files, interspersed with reports, medical records, personnel records and other materials, organized in no discernible manner, whereas the State had the luxury of BCA's organization and digitization of these records.
14. The manner in which the Attorney General disclosed materials to the defense has required me to print these records and hand sort them in order to simply *organize* the file. Printing and organization of the training records *alone* has resulted in over 150 hours of time and expense to my client. (See photo of training materials):



15. After reviewing the BCA file, it became apparent that (a) certain materials had not previously been disclosed (*i.e.*, the neck restraint PowerPoint discussed above), and (b) other materials that were disclosed were not contained on the BCA hard drive (*i.e.*, Federal 302 of Andrew Baker).
16. On Thursday January 21, 2021, I spoke to Assistant Attorney General Matt Frank and expressed my absolute anger and frustration with the manner in which the State has conducted discovery and made its disclosures in this matter.
17. Mr. Frank explained that the disclosures provided to the Defense needed to be Bates Stamped and he used that process to justify the method of disclosure.
18. While I understand the importance and need for the Bates Stamp process, other files in this case have been issued single bates stamp numbers to identify multiple audio or video files. For example, Bates number 10 included more than a dozen body-worn camera video files for every MPD officer at the scene of Mr. Floyd's death.
19. During the telephone conversation, I questioned Mr. Frank about why the Baker 302 was not contained on the BCA hard drive. Mr. Frank explained that he had received that information directly from the United States Attorney's Office. This remark gave rise to the question of what *other* materials had been given *directly* to the Attorney General's Office (or Hennepin County Attorney) by other agencies.
20. At approximately 4:00 p.m. on Friday January 22, 2021, I received a voicemail message from Mr. Frank that there was an additional flash drive of discovery that he had become aware of that had never been disclosed to the defense in any fashion. I spoke with Mr. Frank at approximately 5:00 p.m. that evening, and he

explained that MPD had labeled the flash drive as “federal grand jury materials,” and as such, they were never sent to the Defense. When the Attorney General’s Office reviewed this flash drive it included over 25 gigabytes of material, consisting of 251 individual files of additional MPD training and personnel records. Many of these materials are duplicates of other materials, however, there are several other files that are “new” to the defense.

21. In addition, Mr. Frank identified that some additional materials that he had received directly had not been disclosed. This material included a video he had obtained from one of the civil plaintiff’s lawyers on “positional asphyxia” that had purportedly been shown to all MPD officers.
22. The Attorney General’s Office hand delivered these new materials to my house on Friday, January 22, 2020 at approximately 6:00 p.m.
23. In addition to the discovery issues noted above, the defense has recently been advised of the State’s intention to conduct additional testing of the identified controlled substances found in Mr. Floyd’s vehicle as well as the availability of slides of specimens taken by Dr. Andrew Baker during the autopsy of Mr. Floyd.
24. This morning I received a request from the Defense-retained forensic pathologist Dr. David Fowler requesting two additional weeks to finalize his report. (See email message and letter, attached hereto, and incorporated herein by reference).
25. Additionally, due to the recent disclosures of additional training records including use of force training materials, I am requesting additional time to give the defense-retained use of force expert an opportunity to review these new materials.

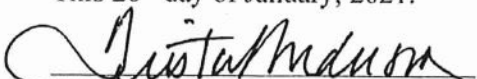
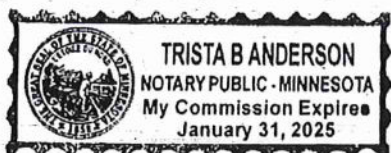
Further your affiant sayeth naught.

Dated: January 26, 2021



Eric J. Nelson

Subscribed and sworn to before me
This 26th day of January, 2021.


Notary Public

David R. Fowler,
MB. ChB. M. Med Path (Forens)

[REDACTED]
[REDACTED]
MD 21131
[REDACTED]

January 26, 2021

RE: State v. Chauvin et al

Dear Mr. Nelson:

As you are aware, I am the primary examiner in Forensic Pathology regarding the above titled cause. The Forensic Panel has been retained on behalf of the Defendants to conduct a Death Investigation into George Floyd's death.

The discovery has been voluminous and I continue to receive and to anticipate receiving new materials that I have requested. For example, I was just informed of having only been granted access today to Dr. Baker's microscopic slides. This is important and welcome, but I am currently in trial in New Mexico and have no access to a microscope. I have requested you to investigate the possibility of my receiving a digital copy of the slides, and am hoping to learn how they can be produced in the alternative, but this has not yet been resolved.

I have not yet received the results of the purity testing on the two pills found in Mr. Floyd's car upon execution of the warrants. They have been sent to a Pennsylvania lab for analysis.

My completed review of the discovery of this case, including the aforementioned anticipated materials, will be subject to the peer review of a number of colleagues. This process, while very efficient, will also require additional time.

I therefore request you to make application for a two week continuance of time to file my report on February 22, 2021.

Thank you for your attention to this matter.

Regards,

A handwritten signature in black ink, appearing to read 'D. Fowler', is positioned below the 'Regards,' text.

David R. Fowler. MBChB. M.Med Path. FNAME, FCAP, FAFS

Fowler Extension

David Fowler [REDACTED]

Tue 1/26/2021 8:35 AM

To: Eric Nelson [REDACTED]; Bonnie Corley [REDACTED]

1 attachments (111 KB)

Application for Continuance to file report..pdf:

Mr. Nelson

Please find attached request.

Regards

Dave Fowler

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David R Fowler, MB.ChB, M.Med. Path (forens), FCAP, FAAFS.