

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

State of Minnesota,

Case Type: Criminal
Court File No. 27-CR-21-7460

Plaintiff,

vs.

**NOTICE OF MOTION AND MOTION
TO ADMIT EVIDENCE OF BIAS**

Kimberly Ann Potter,

Defendant.

TO: The above-named defendant and defendant's counsel, Earl Gray, 1st Bank Building, 332 Minnesota Street, Ste. W1610, St. Paul, MN 55101; Paul Engh, Ste. 2860, 150 South Fifth Street, Minneapolis, MN 55402.

NOTICE OF MOTION AND MOTION

PLEASE TAKE NOTICE that the State hereby moves the Court for an order permitting the State to elicit testimony related to union membership and employment for the purpose of establishing possible bias in various law enforcement witnesses.

INTRODUCTION

Defendant Kimberly Ann Potter is a former Brooklyn Center Police Officer. While employed in that capacity, Defendant also held roles within the police union, including being the president of that union – a role that she held on the day that she shot Daunte Wright. Several of the law enforcement witnesses are current or former Brooklyn Center Police Department employees who are or were members of the same union. One such witness has already testified that he consulted with, worked with, and relied on Defendant in her capacity as the union president many times. For the following reasons, the Court should allow the State to elicit evidence of these facts for the purpose of establishing possible bias to assist the jury in weighing witness credibility.

ARGUMENT

Evidence of a witness' actual or possible bias, prejudice, or interest is admissible to challenge the credibility of a witness. Minn. R. Evid. 616. "Bias is a term used in the common law of evidence to describe the relationship between a party and a witness which might lead the witness to slant, unconsciously or otherwise, [their] testimony in favor of or against another party." *United States v. Abel*, 469 U.S. 45, 52 (1984). It is a "catchall term describing attitudes, feelings, or emotions of a witness that might affect [their] testimony, leading [them] to be more or less favorable to the position of a party for reasons other than the merits." *State v. Lanz-Terry*, 535 N.W.2d 635, 640 (Minn. 1995).

"[B]ias, prejudice, or interest of a witness is a fact of consequence under Rule 401." Minn. R. Evid. 616, comm. cmt. Thus, "[t]he partiality or bias of a witness is always relevant as discrediting the witness and affecting the weight of his testimony," *Lanz-Terry*, 535 N.W.2d at 640 (citation and quotation omitted), because the jury "has historically been entitled to assess all evidence which might bear on the accuracy and truth of a witness' testimony." *State v. Clifton*, 701 N.W.2d 793, 797 (Minn. 2005) (quoting *Abel*, 469 U.S. at 52). "Without the opportunity to hear relevant testimony that reveals a witness's possible prejudice or bias . . . the jury is not able to evaluate that witness's testimony and place it in the proper context." *Bigay v. Garvey*, 562 N.W.2d 695, 702 (Minn. Ct. App. 1997). "After all, jurors like other persons are not likely to believe that a witness has testified falsely or even colored his testimony unless there was some reason for doing so." *State v. Elijah*, 289 N.W. 575, 579 (1940). Relevant evidence is generally admissible and should only be excluded when the danger of *unfair* prejudice or misleading the jury *substantially* outweighs its probative value. Minn. R. Evid. 402, 403.

The State recognizes that “not everything tends to show bias” and that such “evidence must not be so attenuated as to be unconvincing because then the evidence is prejudicial. *Lanz-Terry*, 535 N.W.2d at 640. But there are many types of evidence that are highly probative of a witness’ possible bias. “Bias may be induced by a witness’ like, dislike, or fear of a party, or by the witness’ self-interest.” *Clifton*, 701 N.W.2d at 797 (quoting *Abel*, 469 U.S. at 52). It is also “always permissible to show the bias of a witness as affecting his credibility by such circumstances as family relationship, association, employment, and other facts showing a disposition to give testimony favorable” to one party, “although such matters may not have independent relevancy.” *Esser v. Brophrey*, 3 N.W.2d 3, 6 (Minn. 1942). See also *Bigay*, 562 N.W.2d at 702 (stating that the jury is not able to properly evaluate a witness’ testimony when it is denied the opportunity to hear information about the witness’ association, employment, or other facts). “A witness’ and a party’s common membership in an organization . . . is certainly probative of bias.” *Abel*, 469 U.S. at 52.

Several of the officers who will be testifying are or were members of the same union as Defendant at the Brooklyn Center Police Department. Defendant was the president of that union. As one witness has already explained to the Court and jury, officers consulted with and relied on Defendant for many things in her capacity as president of that union. Defendant’s role as president of the union also afforded her an elevated level of respect and admiration among her co-workers and union members. As such, the common union membership of officer witnesses and Defendant is highly relevant association information that the jury is entitled to learn about and use to assess the credibility of witnesses in its role as factfinder. This is a task the jury will not be able to properly complete if it is denied knowledge of such information. See *Bigay*, 562 N.W.2d at 702.

The probative value of this evidence is not substantially outweighed by the risk of unfair prejudice or misleading the jury. The jury has already received information that Defendant was the president of the police union. The defense may also offer evidence of this fact during its case as background information about Defendant. Defendant's high rank and status in the union, and the respect and admiration that accompanies it, is certainly not the type of information that would unfairly prejudice the jury against her. The union membership of other officers likewise is not prejudicial against Defendant. As such, the Court should permit the State to elicit testimony regarding officers' union membership and their association to Defendant through the union to provide the jury with essential relevant information on which to assess witness testimony and any possible motive to consciously or unconsciously to slant their testimony. *Abel*, 469 U.S. at 52.

CONCLUSION

For the reasons stated above, the State respectfully requests that the Court grant the State's motion to elicit testimony related to union membership and employment for the purpose of establishing possible bias or favor.

Dated: December 13, 2021

Respectfully submitted,

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