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STATE OF MINNESOTA | DISTRICT COURT

COUNTY OF HENNEPIN | FOURTH JUDICIAL DISTRICT

State of Minnesota,

Plaintiff,

Court File No. 27-CR-24-1844

v.

Ryan Patrick Londregan,

Defendant.

DEFENDANT RYAN LONDREGAN'S MEMORANDUM OF LAW IN OPPOSITION TO STATE'S MOTION TO QUASH SUBPOENA TO JEFFREY NOBLE, AND IN SUPPORT OF MOTION TO COMPEL DISCOVERY RELATED TO, AND DEPOSITION OF, JEFFREY NOBLE

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INTRODUCTION

On September 19, 2023, Hennepin County Attorney Mary Moriarty ("Moriarty") issued a written press release stating that her office ("HCAO") received the investigative file regarding Ricky Cobb II's ("Cobb") death. In the same press release, Moriarty stated that the HCAO engaged a "use-of-force expert," and that expert was "critical" to the charging process.

On February 9, 2024, the HCAO filed motions for protective orders and asked this Court to, among other things, require the defense to provide all motion papers to the HCAO before filing them publicly so the HCAO could object to public dissemination of anything in the defense's motion papers. This Court denied the HCAO's motions by Orders dated February 21, 2024.

The next day (i.e., February 22, 2024), the HCAO finally provided some of the discovery in this case to the defense. Within days, defense counsel identified statements regarding the HCAO's communications with its use-of-force expert, Jeffrey Noble ("Noble") of California. The defense learned that on October 13, 2023, Noble told seven members of the HCAO, including Moriarty, that "a reasonable officer in Trooper Londregan's position would have perceived that Trooper [Brett] Seide was in danger of death or great bodily harm, specifically from being dragged by the vehicle as it continued to accelerate." Noble also dismantled the HCAO's other theories of Trooper Londregan's fault in this case. In sum, on October 13, 2023, Noble, the HCAO's handpicked expert, told the HCAO that Trooper Londregan committed no crime.

Despite her press release that the use-of-force expert's opinion was "critical" to the charging process, on January 24, 2024, the HCAO ignored Noble and charged Trooper Londregan with first-degree assault, manslaughter, and murder. Two days later, the lead

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prosecutor in this case called Noble. He told Noble to stop working.

In numerous public statements, Hennepin County Attorney Moriarty has lauded herself for her transparency and accountability. She has indicated, on many occasions, a shift in the HCAO's approach to *Brady v. Maryland*, the U.S. Supreme Court case holding that it is a violation of a defendant's federal and Minnesota constitutional rights to due process for a prosecutor to suppress evidence favorable to the defendant.

But here, Hennepin County Attorney Moriarty moves to quash the subpoena seeking Noble's report and her office's communications regarding Noble. Moreover, the HCAO refuses to produce all Noble-related documents, claiming they are either innocuous, irrelevant, or protected by the work-product doctrine. As is demonstrated below, however, the Minnesota Rules of Criminal Procedure obligate the HCAO to produce all documents "related to the case," and contain no exception for what the HCAO believes is "innocuous," "irrelevant," *or* "not exculpatory." In addition, unequivocal federal and state law hold that because the work-product doctrine is a rule-based protection, it is overcome by the United States and Minnesota Constitutions' due-process protections as announced in *Brady* and its progeny. Further, the State's contentions demonstrate the necessity and reasonableness of the Noble subpoena. Accordingly, the defense respectfully requests that the Court issue an Order: (1) denying the State's motion to quash; (2) compelling disclosure of all documents and information relating to the HCAO's communications with, and regarding, Noble; and (3) authorizing a deposition of Noble, a resident of California, pursuant to Minn. R. Crim. P. 21.01.

FACTS

A. July 31, 2023: The Cobb Incident.

On July 31, 2023, Ricky Cobb II, a repeated convicted felon in possession of a loaded

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gun, was killed as he attempted to speed away with a trooper almost entirely in the driver's side of the car with the door open, consequently putting two Minnesota State Troopers in immediate jeopardy of life and/or serious bodily injury.

B. August 2, 2023: HCAO Engages Jeffrey Noble.

Noble is a former police officer from Ranch Santa Margarita, California.[1] Hennepin County used Noble as an expert witness in the *Chauvin*-related cases.[2] And Ramsey County used Noble as an expert in the prosecution of Officer Jeronimo Yanez relating to the death of Philando Castile.[3]

On Wednesday, August 2, 2023, Senior Assistant HCA Joshua Larson ("Larson") emailed Noble. (Exhibit 1.)[4] In this email, Larson stated that the HCAO "wish[ed] to obtain a use-of-force expert opinion to inform our review of the case." (*Id.*) Larson added that "[i]f the review resulted in charges, I would anticipate we would retain the expert through the pendency of the case and through trial testimony." (*Id.*) Larson confirmed that Noble was available "to work with the HCAO on this case." (*Id.*) Then, "for a next step," Larson stated that he "would email [Noble] and request [his] anticipated terms/ fee sheet for a criminal case," and that Noble "agreed to respond tomorrow with that information." (*Id.*)

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1 Resume of Jeffrey J. Noble at 1 (found at https://www.chandralaw.com/files/blog/Jeff-Noble-CV.pdf). Mr. Noble's website can be found at http://www.policeconduct.net.

2 *See* State's Closing Argument, *State v. Tou Thao*, No. 27-CR-20-12949 at 30 (4th Jud. Dist. Jan. 31, 2023) (citing Noble's expert report) (found at https://www.mncourts.gov/mncourtsgov/media/High-Profile-Cases/27-CR-20-12949-TT/TT-StateClosingArgument.pdf).

3 *See* Expert Report of Jeffrey J. Noble in *State v. Yanez* at ¶ 2 (Apr. 28, 2017) (found at https://www.ramseycounty.us/sites/default/files/County%20Attorney/Noble%20Use%20of%20Force%20Final%20Report.pdf).

4 Pursuant to this Court's Order dated February 14, 2024, defense counsel will bring the exhibits cited herein to the March 21, 2024 hearing.

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C. September 19, 2023: Hennepin County Attorney Moriarty Announces Engagement of "Use-of-Force Expert" That Was a "Critical Part" of the HCAO's Criminal-Charging Process.

On Tuesday, September 19, 2023, the HCAO published a press release regarding its receipt of the investigation from the Minnesota Bureau of Criminal Apprehension ("BCA").[5] In this press release, the HCAO committed to using an independent use-of-force expert, stating:

> We have already identified a use-of-force expert—the type of expert who examines evidence in nearly every case where an officer uses force. Their independent review is a critical part of our process. We selected this expert even before we received the completed investigation so that we could move forward with our work immediately upon receipt of the file.

(*Id.*) The "critical" nature of this independent expert analysis should not be surprising—the Hennepin County Attorney's campaign website acknowledged that she is "not an expert in police tactics and techniques."[6]

The HCAO's press release received much publicity. It was covered by KSTP,[7] WCCO,[8]

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[5] Exhibit 2 (Press Release, *Hennepin County Attorney's Office Receives Case in the Killing of Ricky Cobb II*, Hennepin County Attorney's Office (Sept. 19, 2023) (found at https://www.hennepinattorney.org/news/news/2023/September/cobb-9-19-23).

[6] Exhibit 3 (Moriarty's campaign website under "Vision" and "Police Accountability") (found at (https://web.archive.org/web/20221112073349/https://www.maryforhennepin.com/vision).

[7] *See* Kilat Fitzgerald and Ben Henry, *Hennepin County Attorney's Office reviewing BCA findings in fatal Minnesota State Patrol shooting of Ricky Cobb II*, KSTP (Sept. 19, 2023) (found at https://kstp.com/kstp-news/top-news/hennepin-county-attorneys-office-reviewing-bca-findings-in-fatal-minnesota-state-patrol-shooting-of-ricky-cobb-ii/) (reproducing HCAO's press release).

[8] *See* WCCO Staff, *Hennepin Co. Atty receives Ricky Cobb II case, says some state patrol workers aren't cooperating with BCA*, WCCO (Sept. 19, 2023) (found at https://www.cbsnews.com/minnesota/news/hennepin-co-atty-receives-ricky-cobb-ii-case/) (reproducing HCAO's press release).

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Fox-9,[9] KARE,[10] Minnesota Public Radio,[11] and the *StarTribune*.[12] It appeared in the Associated Press,[13] which was reproduced in numerous media outlines including *U.S. News & World Report*,[14] the *St. Paul Pioneer Press*[15] and *The Canadian Press*.[16] And Moriarty's promise to use

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[9] Katie Wermus, *Hennepin County Attorney reviewing fatal Ricky Cobb II shooting*, Fox 9 (Sept. 19, 2023) (found at https://www.fox9.com/news/hennepin-county-attorney-reviewing-fatal-ricky-cobb-ii-shooting.) ("The county attorney's office is not providing details about the investigation or case review but said they've already selected a use-of-force expert to conduct an independent review.").

[10] Alexandra Simon, *Hennepin County attorney reviewing charges for state troopers in Ricky Cobb II shooting*, KARE-11 (Sept. 19, 2023) (found at https://www.kare11.com/article/news/local/bca-submits-investigation-to-hennepin-county-attorneys-office-shooting-of-ricky-cobb/89-2a19fe1f-87d2-4475-a95c-3e4e7be7241d) ("On Tuesday, the office said in a statement that Hennepin County Attorney Mary Moriarty met with Cobb's family on Monday after learning that the BCA was prepared to submit its investigation.").

[11] *See* MPR News Staff, *Investigation into State Patrol killing of Ricky Cobb II goes to prosecutors*, MPR (Sept. 19, 2023) (found at https://www.mprnews.org/story/2023/09/19/investigation-into-state-patrol-killing-of-ricky-cobb-ii-goes-to-prosecutors) ("Moriarty said her office has identified an independent use-of-force expert to be a part of the review of the BCA's findings.").

[12] *See* Kim Hyatt, *Hennepin County Attorney now considering charges in state trooper shooting of Ricky Cobb*, StarTribune (Sept. 19, 2023) ("Moriarty said her office already identified, but did not disclose the name, of a use-of-force expert to examine evidence, which is typical in nearly every case where an officer uses force. The expert's review is a critical part of the process, she said, adding that they selected this expert even before they received the completed investigation 'so that we could move forward with our work immediately upon receipt of the file.'").

[13] *See* Heather Hollingsworth, *Prosecutor begins to review whether Minnesota trooper's shooting of Black man was justified*, Associated Press (Sept. 19, 2023) (found at https://apnews.com/article/minneota-trooper-shooting-ricky-cobb-ii-e594638aa6715f100e56d3306d8f3abd).) ("Hennepin County Attorney Mary Moriarty vowed in in [sic] a news release to reach a decision 'as quickly as possible' and said a use-of-force expert had been enlisted to help.")

[14] Associated Press, *Prosecutor Begins to Review Whether Minnesota Trooper's Shooting of Black Man Was Justified*, U.S. News & World Report (Sept. 19, 2023) (found at https://www.usnews.com/news/us/articles/2023-09-19/prosecutor-begins-to-review-whether-minnesota-troopers-shooting-of-black-man-was-justified.).

[15] Heather Hollingsworth, *Minnesota BCA completes investigation into trooper's fatal shooting of Ricky Cobb II*, St. Paul Pioneer Press (Sept. 19, 2023) (found at https://www.twincities.com/2023/09/19/minnesota-bca-completes-investigation-into-troopers-fatal-shooting-of-ricky-cobb-ii/).

[16] Heather Hollingsworth, *Prosecutor begins to review whether Minnesota trooper's shooting of Black man was justified*, The Canadian Press (Sept. 19, 2023).

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a use-of-force expert even caused a University of St. Thomas law professor to state, "Saying things like, 'We've got an expert, we've informed the family, we've got people who apparently aren't willing to cooperate,' those are all statements intended to show that [Moriarty] knows what's going on and that she's taking this seriously."[17]

D. September 20, 2023: HCAO Conducts Video Conference with Noble.

The next day, September 20, 2023, the HCAO conducted a video conference with Noble. According to the meeting notes provided by the HCAO, the HCAO played "excerpts of several pertinent videos from the investigative file to jumpstart Mr. Noble's consideration of the case and to assist Mr. Noble in his navigation of the materials after he receives them." (Exhibit 4 (Sept. 20, 2023 Meeting Notes).)

E. October 13, 2023: HCAO Conducts Another Video Conference with Noble, And Noble Opines That Trooper Londregan Acted Reasonably.

On October 13, 2023, the HCAO held another video conference with Noble. According to the statement regarding this video conference provided by the HCAO (the "October 13 Statement"), seven members of the HCAO's office participated in this meeting, including Hennepin County Attorney Moriarty and Larson, the lead prosecutor here. (Exhibit 5 (October 13 Statement) at 1.). According to the October 13 Statement, the purpose of this video conference was to "check in on [Noble's] progress in reviewing the initial investigative material related to the death of Ricky Cobb and to discuss preliminary impressions and questions." (*Id.*) But notably, "Mr. Noble had been in possession of the materials for approximately three weeks" at the time of the October 13, 2023 video conference. (*Id.*)

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[17] Media Mentions, *In the News: Rachel Moran on Investigation Into Fatal Shooting by Minnesota State Trooper*, University of St. Thomas (Sept. 20, 2023) (found at https://news.stthomas.edu/in-the-news-rachel-moran-on-investigation-into-fatal-shooting-by-minnesota-state-trooper/).

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According to the October 13 Statement, Noble—the expert whose independent analysis the Hennepin County Attorney's press release stated would be "critical" to the process—stated at the outset that Trooper Londregan's use of force was reasonable to prevent harm to Trooper Seide from being dragged by the vehicle:

> - Mr. Noble offered that, if Trooper Londregan shot Mr. Cobb simply to prevent him from fleeing, he would deem the use of deadly force to be unreasonable. However, Mr. Noble stated that his opinion would change if Trooper Londregan shot Mr. Cobb because he feared for Trooper Seide's safety. Mr. Noble stated that, given Trooper Seide's position in the vehicle at the time of the shooting; the likelihood that Trooper Londregan perceived that Mr. Cobb was attempting to drive away; and the likelihood that Trooper Londregan perceived that Mr. Cobb's vehicle was in motion, a reasonable officer in Trooper Londregan's position would have perceived that Trooper Seide was in danger of death or great bodily harm, specifically from being dragged by the vehicle as it continued to accelerate.

(*Id.* at 1.)

According to the October 13 Statement, certain HCAO representatives attempted to persuade Noble to change his opinion to support a decision to prosecute. Specifically, the HCAO stated their "concerns about using deadly force at that moment, specifically after Mr. Cobb's vehicle traveled forward, and concerns about whether it was reasonable to believe that using deadly force would incapacitate the immediate threat of Trooper Seide being dragged." (*Id.*) The HCAO also argued about their "additional concerns that there may have been other reasonable alternatives" to using force such as (remarkably) "(1) Doing nothing" (and presumably leaving Trooper Seide to his fate); or "(2) verbally encouraging Trooper Seide to remove himself from Mr. Cobb's vehicle" (even though the exigency of the situation, including Cobb's decision to speed away with Trooper Seide almost entirely in the driver's side of the car with the door open, made this impossible). (Exhibit 5 (October 13 Statement) at 1.) The HCAO apparently argued that these "alternatives" meant that Trooper Londregan's use of deadly force was not "necessary" within the meaning of Minn. Stat. § 609.066. Noble explained that he could not offer an opinion on what "necessary" means under Minn. Stat. § 609.066 but then systematically

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dismantled the HCAO's various theories for their anticipated charges against Trooper Londregan.[18]

First, Noble noted the complexity of the issue and the importance of separating out hindsight:

> • Mr. Noble noted that, generally, when viewed from the perspective of modern police practices and training, the concept of "reasonably perceiving a threat of death or great bodily harm" and the concept of "reasonably believing deadly force is necessary to respond to the threat" are intertwined. Mr. Noble also noted that the necessity of using deadly force frequently is difficult to evaluate in cases because, if deadly force is used in a rapidly-evolving situation, no one can know what would have occurred in its absence.

(Exhibit 5 (October 13 Statement) at 1.)

Second, Noble explained that the relevant question is *not* whether there was a possibility, no matter how remote, that some other course of action could conceivably work, but rather whether deadly force was authorized:

> • Regarding this case, Mr. Noble acknowledged that Trooper Londregan likely believed that, by shooting Mr. Cobb, it would have incapacitated Mr. Cobb and prevented Mr. Cobb's vehicle from dragging Trooper Seide. Ultimately, Trooper Londregan did not incapacitate Mr. Cobb, and Mr. Cobb drove away, knocking down Trooper Seide in the process. However, it is impossible to know what would have happened if Trooper Londregan had not shot Mr. Cobb. The key to the analysis is to determine whether, at the moment force was used, a reasonable officer in Trooper Londregan's position would believe that he needed to act without delay and whether the level of force authorized would include deadly force. Mr. Noble refrained

(*Id*. at 2.)

Third, Noble "listened to [the HCAO's] concerns about the risks inherit [sic] in Trooper Londregan's decision to shoot Mr. Cobb, including the risk that he could have shot Trooper

[18] It appears that the HCAO argued to Noble that Trooper Londregan's use of force was objectively unnecessary because he supposedly could have done nothing (despite the threat of death or serious bodily harm to Trooper Seide) or "verbally encourag[ed] Trooper Seide to remove himself from Mr. Cobb's vehicle" (despite Cobb's earlier refusals and the immediate threat posed by Cobb). (October 13 Statement at 1.) But the Statute is not concerned with whether the use of force was objectively necessary, but whether "an objectively reasonable officer would *believe*, based on the totality of the circumstances *known to the officer at the time* and *without the benefit of hindsight*, that such force is necessary . . . ." Minn. Stat. § 609.066, subd. 2(a) (emphasis added).

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Seide or another vehicle or person on the roadway or the risk that the vehicle still could proceed down the internet [sic] but without anyone controlling it." (Exhibit 5 (October 13 Statement) at 2) According to the Statement, Noble explained that this supposed risk was "'not an important issue in the case'" because "[y]ou could say 'He *shouldn't* shoot because Seide is so far in the car,' but you could also say, 'He *should* shoot because Seide is so far in the car.'" (*Id.*) (emphasis in original).

Fourth, Noble explained that the *Graham* standard[19] requires the State to "grant some deference to Trooper Londregan's decision-making" and that "Trooper Londregan did act in a quickly evolving situation." (*Id.*)

Fifth, Noble "clarified a distinction between mere 'risks' and actual 'threats'" and "opined that, in this case, a reasonable officer in Trooper Londregan's position would have viewed the threat to Trooper Seide to be real":

- Mr. Noble clarified a distinction between mere "risks" and actual "threats." Deadly force cannot be used in response to a "risk" of great bodily harm or death. Instead, such force can be used only in response to actual threats. Mr. Noble opined that, in this case, a reasonable officer in Trooper Londregan's position would have viewed the threat to Trooper Seide to be real. Mr. Noble stated, "The danger was not hypothetical."

(*Id.*)

Sixth, Noble explained that Trooper Londregan did not create the danger to Trooper Seide that resulted in the use of deadly force:

[19] The *Graham* standard is derived from the U.S. Supreme Court decision *Graham v. Connor*, 490 U.S. 386 (1989), where the Court held a claim of excessive force by law enforcement during an arrest, stop, or other seizure of an individual is subject to the objective reasonableness standard of the Fourth Amendment, rather than a substantive due process standard under the Fourteenth Amendment. In other words, the *Graham* Court held that the facts and circumstances related to the use of force should drive the analysis, rather than any improper intent or motivation by the officer who used force.

- Mr. Noble also addressed the troopers' actions prior to the shooting and whether the troopers arguably created the danger which resulted in Trooper Londregan using deadly force. The group viewed several slow-motion videos of the incident and discussed the specific factual sequence of events. Mr. Noble observed that Mr. Cobb's vehicle was moving forward before the troopers entered his vehicle and acknowledged that, if Trooper Seide never entered Mr. Cobb's vehicle, Trooper Longregan would not have been placed in the situation which prompted his use of deadly force.

(Exhibit 5 (October 13 Statement) at 2)

Finally, Noble explained that, while he was prepared to opine that Trooper Seide should not have reached into the car or attempted to pull Cobb out of the car, Trooper Seide's actions did not make Trooper Londregan's use of force unreasonable. (*Id.*) To the contrary, Noble explained that even if Trooper Seide's actions were unreasonable and put himself in danger, "Trooper Londregan still was authorized to reasonably respond to the danger to Trooper Seide":

- Mr. Noble volunteered that he was prepared to opine that Trooper Seide should not have reached into the vehicle. Mr. Noble also offered that, if the plan was pull Mr. Cobb out of his moving car, that was a "bad idea." However, Mr. Noble noted that, even if Trooper Seide's decision to enter Mr. Cobb's vehicle was unreasonable, this determination does not necessarily make Trooper Londregan's use of deadly force unreasonable. Mr. Noble acknowledged that, even if Trooper Seide should not have entered Mr. Cobb's vehicle (because he created the danger to himself), Trooper Londregan still was authorized to reasonably respond to the danger to Trooper Seide.

(*Id.*)[20]

At the conclusion of this meeting, "Mr. Larson offered to check in with Mr. Noble in the next week to discuss the timeline going forward." (Exhibit 5 (October 13 Statement) at 2.) Other than the October 13 Statement, however, the HCAO has produced no other statement from Noble in October, November, or December 2023.

F. December 15, 2023: Larson emails Noble grand-jury information.

On December 15, 2023, Larson emailed Noble again. (Exhibit 6.) In this email, Larson stated that he emailed to "provide a brief update on our investigation here in Minneapolis into the

[20] Before the HCAO charged Trooper Londregan, Trooper Seide told the HCAO that Trooper Londregan saved his life. (*See* Transcript of Dec. 7, 2023 Interview of Trooper Brett Seide, at 36 (attached to Dec. 15 email from Larson to Noble) ("I do know that Trooper Londregan saved, saved my life in, in using force.").)

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death of Mr. Cobb." (*Id.*) Larson told Noble that the HCAO interviewed Trooper Seide as well as Minnesota State Patrol Firearms Instructor Lieutenant Jonathan Wenzel. (*Id.*) Larson also stated that the HCAO "held an investigative grand-jury proceeding" and called six witnesses, including BCA Agent Thomas Roth, Lieutenant Wenzel, Sergeant Troy Morell, Sergeant Jason Halvorson, Trooper Garrett Erickson, and Trooper Brett Seide. (*Id.*) Larson concluded the email with the following:

> We have requested transcripts of the proceeding, which should take approximately 10 business days to complete. Once we receive the outstanding transcripts, we will provide them to you, and, at that point, I believe that our "record" for the purposes of your analysis and review will be closed. At that point, I assume we can/should agree on a deadline for your final report.
>
> If you have any questions or concerns, please let me know.

(*Id.*)

G. December 21, 2023: HCAO Claims It Stopped Sending Noble Discovery.

The only document the HCAO produced to the defense regarding Noble in December 2023 is the above-described email from Larson to Noble on December 15, 2023. (*See supra.*) In its motion to quash, however, the HCAO stated that "the State did not hold another meeting with the witness to discuss his opinions about the case after October 13, 2023, and, on December 21, 2023, the State ceased sending additional discovery materials to the witness. The witness did not receive or review transcripts from the grand jury proceeding or any additional discovery obtained by the State after December 21, 2023." (State's Notice of Motion and Motion to Quash Subpoena for Records Held by Third-Party [sic] at 2 (Mar. 7, 2024).)

It is clear, therefore, that the HCAO sent some communication to Noble between December 15 and 21, 2023 that has not been produced to the defense.

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H. January 3, 2024: HCAO Announces New *Brady/Giglio* policy.

On January 3, 2024, the HCAO issued another written press release. (Exhibit 7.) This press release provides: "Hennepin County Attorney Mary Moriarty today announced several new measures the office has put in place to ensure the office is fulfilling its obligations under the United States and Minnesota Constitutions. These legal requirements, often referred to as '*Brady/Giglio*,' help ensure fair trials and support conviction integrity." (*Id.*) Among other things, Moriarty announced that she: (1) "Created a new process to ensure the office is disclosing *Brady/Giglio* information that is considered non-public under the Minnesota Government Data Practices Act"; (2) "Revised the categories of conduct that may qualify as *Brady/Giglio*"; (3) "Created an interim *Brady/Giglio* process for professional witnesses (e.g., law enforcement officers) that relies on established law"; and (4) "Hired an attorney and paralegal to exclusively focus on compliance with these requirements." (*Id.*) This press release similarly garnered much publicity.[21]

I. January 24, 2024: HCAO charges Trooper Londregan.

Three weeks later, on January 24, 2024, the HCAO filed a criminal complaint charging Trooper Londregan with first-degree assault, manslaughter, and murder. (Complaint at 1–2 (Jan. 24, 2024).) Nothing in the Complaint referenced Noble or any use-of-force expert. (*See id.*)

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[21] *See, e.g.*, Andy Mannix, *Hennepin County Attorney to require law enforcement to disclose more of officers' misconduct history*, StarTribune (Jan. 3, 2024) (found at https://www.startribune.com/hennepin-county-prosecutors-require-police-disclose-more-data-about-an-officers-past-misconduct/600332100/); Ryan Raiche, *Hennepin County Attorney unveils new policy to track officer credibility*, KSTP (Jan. 3, 2024) (found at https://kstp.com/kstp-news/top-news/hennepin-county-attorney-unveils-new-policy-to-track-officer-credibility/); Samantha Fischer & John Croman, *Hennepin County Attorney's Office implements new system to uphold trial, conviction standards*, KARE-11 (Jan. 3, 2024) (found at https://www.kare11.com/article/news/politics/hennepin-county-attorneys-office-moriarty-uphold-trial-conviction-standards/89-287fbe04-4bd0-45ff-9cf9-1cc33295049f).

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J. January 26, 2024: HCAO's Larson Tells Noble to Stop Working.

Two days after the HCAO charged Trooper Londregan, Larson called Noble. (Exhibit 8 (January 26, 2024 Meeting Notes).) During this call, Larson told Noble that the HCAO criminally charged Trooper Londregan and instructed him to stop working:

> **Meeting Notes:**
>
> - Mr. Larson and Ms. Vang called Mr. Noble to confirm that Ryan Londregan was charged in connection to the death of Ricky Cobb, following the receipt of information about how the troopers were trained.
> - Mr. Larson stated that, at this point, the HCAO was asking Mr. Noble to hold off any further work on the case.

(Exhibit 8 (January 26, 2024 Meeting Notes).) The HCAO produced no document or information concerning the time between when Larson promised to send Noble grand-jury materials (i.e., December 15, 2023) and the date Larson told Noble to stop working (i.e., January 26, 2024). It is thus unknown what changed at the HCAO between December 15, 2023 and January 26, 2024.

K. January 29 & 30, 2024: Trooper Londregan's First Appearance & Discovery Requests.

On January 29, 2024, Trooper Londregan made his first appearance in this Court. The next day, he served his First Set of Discovery Requests on the State. These include, *inter alia*, "[a]ll exculpatory information"; "all information required by *Brady v. Maryland*, 373 U.S. 83 (1963) and *Giglio v. United States*, 405 U.S. 150 (1972)"; as well as a request specifically relating to use-of-force experts:

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> **Request No. 3:** All documents relating to each use-of-force expert retained or consulted by the State relating to this Action, including:
>
> a. all documents constituting or containing any belief, characterization, conclusions, findings, judgment, or opinion communicated by the use-of-force expert relating to the Action, including the bases for them;
>
> b. documents sufficient to show the qualifications for the expert;
>
> c. all documents relating to any exclusion or criticism of the expert by any court;
>
> d. all documents constituting or containing any agreement between the use-of-force expert and the State; and
>
> e. all documents constituting or containing any communication between the use-of-force expert and the State.

(Exhibit 9 (Trooper Londregan's First Set of Discovery at 11–12).)

L. February 21, 2024: This Court Files Orders Denying Protective Orders.

On February 21, 2024, this Court filed two orders denying the HCAO's motions for protective orders. (Orders dated February 21, 2024.)

M. February 22, 2024: HCAO Finally Produces Discovery to Defense.

The next day (i.e., February 22, 2024), the HCAO provided the first discovery to the defense in this matter, including 390,409 video files (primarily in 12-second clips), 26 audio files, 1,104 photographs, and 1,585 other documents. (Declaration of Amanda J. Jeffers ("Jeffers Decl.") at ¶ 2.)

The October 13 Noble Statement was included in this voluminous production. (*Id.* at ¶ 3.) Specifically, the discovery provided by the HCAO contained a folder named "Expert

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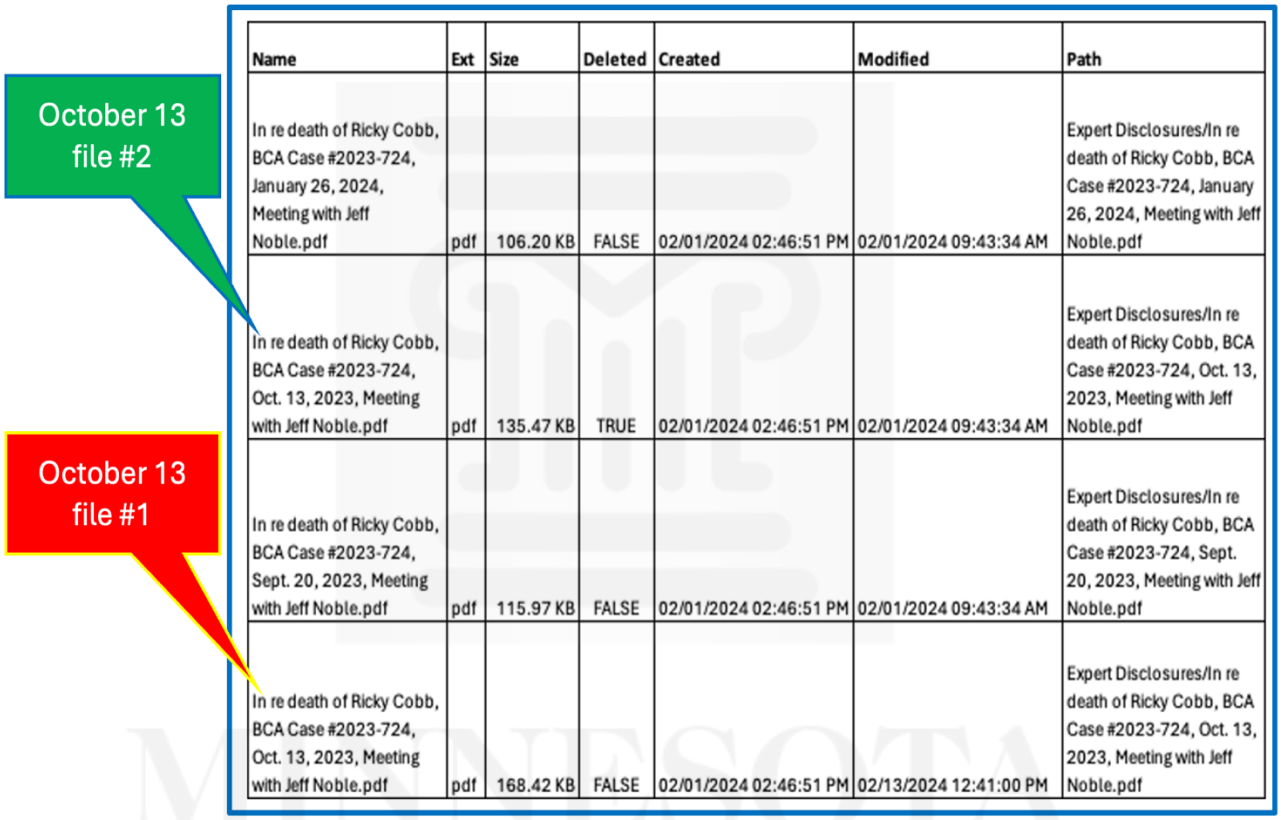
Disclosures." (*Id.*) The defense found four files with Noble's name relating to these expert disclosures:



Name	Ext	Size	Deleted	Created	Modified	Path
In re death of Ricky Cobb, BCA Case #2023-724, January 26, 2024, Meeting with Jeff Noble.pdf	pdf	106.20 KB	FALSE	02/01/2024 02:46:51 PM	02/01/2024 09:43:34 AM	Expert Disclosures/In re death of Ricky Cobb, BCA Case #2023-724, January 26, 2024, Meeting with Jeff Noble.pdf
In re death of Ricky Cobb, BCA Case #2023-724, Oct. 13, 2023, Meeting with Jeff Noble.pdf	pdf	135.47 KB	TRUE	02/01/2024 02:46:51 PM	02/01/2024 09:43:34 AM	Expert Disclosures/In re death of Ricky Cobb, BCA Case #2023-724, Oct. 13, 2023, Meeting with Jeff Noble.pdf
In re death of Ricky Cobb, BCA Case #2023-724, Sept. 20, 2023, Meeting with Jeff Noble.pdf	pdf	115.97 KB	FALSE	02/01/2024 02:46:51 PM	02/01/2024 09:43:34 AM	Expert Disclosures/In re death of Ricky Cobb, BCA Case #2023-724, Sept. 20, 2023, Meeting with Jeff Noble.pdf
In re death of Ricky Cobb, BCA Case #2023-724, Oct. 13, 2023, Meeting with Jeff Noble.pdf	pdf	168.42 KB	FALSE	02/01/2024 02:46:51 PM	02/13/2024 12:41:00 PM	Expert Disclosures/In re death of Ricky Cobb, BCA Case #2023-724, Oct. 13, 2023, Meeting with Jeff Noble.pdf

(*Id.* at ¶ 4.)

As this chart indicates, each of these files contain "Meeting with Jeff Noble" in their filenames. (*Id.* at ¶¶ 3, 4.) Two of the filenames are identical, i.e., "In re death of Ricky Cobb, BCA Case #2023-724, Oct. 13, 2023, Meeting with Jeff Noble.pdf." (*Id.*) But further investigation found differences between the files and their metadata:

- ***October 13 file #1 (the one produced to defense).*** The file "In re death of Ricky Cobb, BCA Case #2023-724, Oct. 13, 2023, Meeting with Jeff Noble.pdf" that has a size of 168.42 KB can be opened and its contents revealed. (*Id.* at ¶ 6.) This file is identical to the October 13 Statement

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described above. (*Id*.). The metadata for this file shows that the file was "created" on February 1, 2024, which was likely the date it was copied onto the drive the HCAO provided to defense counsel. (*Id.* at ¶¶ 6, 7.). Interestingly, though, the metadata reveals that this file *was modified* on February 13, 2024. (*Id.*) A PDF file will not show it being "modified" by opening or printing it. (*Id*. at ¶ 7.) Such a file would only be "modified" if the file was, in fact, changed. (*Id.*)

- ***October 13 file #2 (the one not produced to defense).*** The file "In re death of Ricky Cobb, BCA Case #2023-724, Oct. 13, 2023, Meeting with Jeff Noble.pdf" that has a size of 135.47 KB shows no contents; when one double clicks on this file, one receives an error message. (*Id.* at ¶ 8.) The metadata for this file shows that it was created on February 1, 2024 and modified on the same date; again, this is likely the date it was copied onto the drive the HCAO provided to defense counsel. (*Id.*) In addition, defense counsel's investigation revealed this file was deleted on February 14, 2024. (*Id.*)

Note that the size of the file that was provided to defense counsel (i.e., October 13 file #1) is 24.3% larger than the file size of the identically named deleted file (i.e., October 13 file #2). (*Id*. at ¶¶ 6, 8.) This suggests that additional contents were added to the October 13 file #1 on or about February 13, 2024. (*Id.*) And notably, on February 13, 2024, i.e., the day the October 13 file #1 was modified, this Court held the hearing on the State's motions for protective orders. (*Id*. at ¶ 9.)

Because there is no readable content of the deleted file that defense counsel has been able to view, defense counsel decided to make the specific request for all documents constituting or containing any drafts of, or changes to, the "Meeting Notes" that the HCAO provided to the

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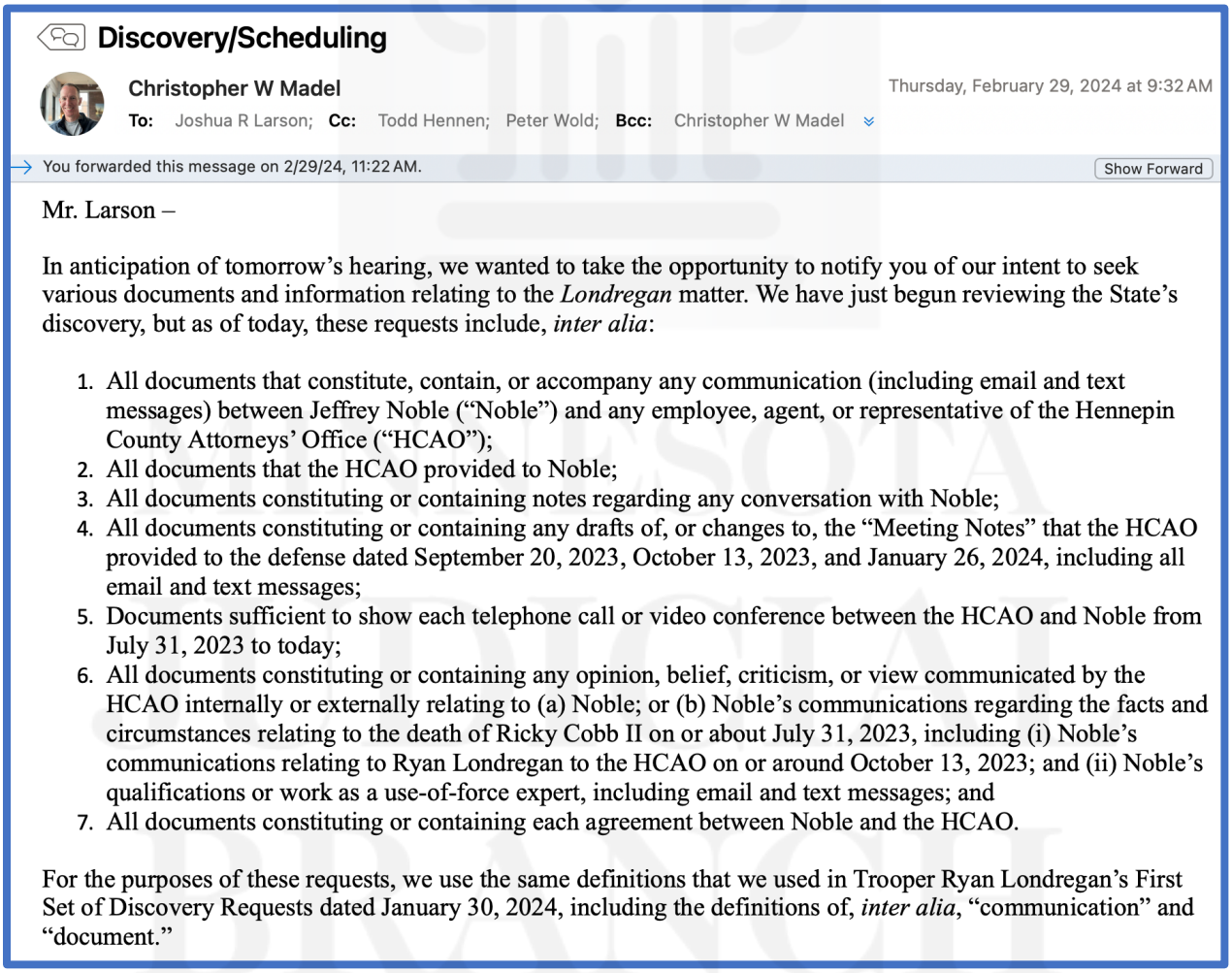
defense dated September 20, 2023, October 13, 2023, and January 26, 2024, including all email and text messages. (*Id.* at ¶ 10.)

N. February 29, 2024: Defense Requests Noble-Related Documents.

One week after receiving the October 13 Noble Statement, on February 29, 2024, defense counsel requested that the HCAO produce seven categories of unproduced documents relating to the October 13 Noble Statement:



Discovery/Scheduling

Christopher W Madel Thursday, February 29, 2024 at 9:32 AM

To: Joshua R Larson; **Cc:** Todd Hennen; Peter Wold; **Bcc:** Christopher W Madel

You forwarded this message on 2/29/24, 11:22 AM. Show Forward

Mr. Larson –

In anticipation of tomorrow's hearing, we wanted to take the opportunity to notify you of our intent to seek various documents and information relating to the *Londregan* matter. We have just begun reviewing the State's discovery, but as of today, these requests include, *inter alia*:

1. All documents that constitute, contain, or accompany any communication (including email and text messages) between Jeffrey Noble ("Noble") and any employee, agent, or representative of the Hennepin County Attorneys' Office ("HCAO");
2. All documents that the HCAO provided to Noble;
3. All documents constituting or containing notes regarding any conversation with Noble;
4. All documents constituting or containing any drafts of, or changes to, the "Meeting Notes" that the HCAO provided to the defense dated September 20, 2023, October 13, 2023, and January 26, 2024, including all email and text messages;
5. Documents sufficient to show each telephone call or video conference between the HCAO and Noble from July 31, 2023 to today;
6. All documents constituting or containing any opinion, belief, criticism, or view communicated by the HCAO internally or externally relating to (a) Noble; or (b) Noble's communications regarding the facts and circumstances relating to the death of Ricky Cobb II on or about July 31, 2023, including (i) Noble's communications relating to Ryan Londregan to the HCAO on or around October 13, 2023; and (ii) Noble's qualifications or work as a use-of-force expert, including email and text messages; and
7. All documents constituting or containing each agreement between Noble and the HCAO.

For the purposes of these requests, we use the same definitions that we used in Trooper Ryan Londregan's First Set of Discovery Requests dated January 30, 2024, including the definitions of, *inter alia*, "communication" and "document."

(Exhibit 10.)

O. March 1, 2024: HCAO Contends Noble Documents Need Not Be Produced Because They Are Protected by the Work-Product Privilege.

After the March 1, 2024 hearing, and per the Court's instruction, the parties' counsel met

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in the juror room adjacent to the courtroom. During this meeting, the parties discussed the seven categories of documents requested by Trooper Londregan's counsel. (*See supra.*) In response, Larson stated that he would provide the documents covered by categories #2 and #7 to the defense. However, he stated that the remaining five categories constituted "work product" and would not be produced.

P. March 6, 2024: Defense Counsel's Conversation with Noble & Subpoenas Served on Him.

On March 6, 2024, defense counsel called Noble. (Declaration of Christopher W. Madel (Mar. 6, 2024) at ¶ 5.) During this call, Noble agreed to accept a copy of a subpoena *duces tecum* via email. (*Id.*) Noble did not object to the notion of the subpoena. (*Id.*) Also during this call, Noble asked defense counsel, "Have you seen a copy of my report?" (*Id.* at ¶ 9.) Defense counsel answered, "No." (*Id.*) Noble, then said, "OK, well, I'll wait to hear from you." (*Id.*) Defense counsel responded, "Yes, I'll email you the subpoenas today." (*Id.*) Defense counsel then emailed the Minnesota and California subpoenas to Noble (hereinafter the "Noble Subpoena"). (*Id.* at ¶ 11.)

Q. March 7, 2024: HCAO Moves to Quash the Noble Subpoena.

Less than 24 hours after defense counsel emailed Noble his subpoena, the HCAO filed a motion to quash the Noble Subpoena. (State's Notice of Motion and Motion to Quash Subpoena for Records Held by Third-Party [sic] (Mar. 7, 2024).) In this motion, the HCAO generally claims that the documents and information Trooper Londregan seeks is "unreasonable," "irrelevant," "overbroad," and "burdensome." (*Id.* at 2-4.) Although Larson claimed the Noble-related documents and information was work-product privileged during the March 1 meeting, (*see supra*), the HCAO's motion does not contain the phrase "work product." (*See id.* at 1-4.)

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R. March 8, 2024: HCAO Produces A Few More Noble-Related Documents.

On Friday, March 8, 2024 at 3:03PM, the HCAO provided (1) Noble's agreement with HCAO dated August 21, 2023; and (2) a document entitled "Items Sent to Jeff Noble."

Noble's agreement provides that it "shall commence on August 21, 2023, and expire on August 20, 2024, unless cancelled or terminated earlier in accordance with the provisions herein." (Noble Agreement at § 1.) It provides that Noble is to be paid an hourly rate ($450) "to be present and available awaiting participation in depositions." (*Id.* at § 3(ii).) It also provides that Noble "shall be paid a flat rate of Three Thousand Dollars ($3,000.00) for the first four (4) hours of deposition/witness services actually provided and Six Hundred Fifty Dollars ($650.00) per hour for every additional hour of deposition/witness services actually provided beyond the initial four (4) hours." (*Id.* at § 3(iv).)

In its motion to quash, the HCAO represented to this Court that "any draft or preliminary opinions held by [Noble] at any point during the developing investigation would be based on an incomplete record." (State's Notice of Motion and Motion to Quash Subpoena for Records Held by Third-Party [sic] at 3 (Mar. 7, 2024).) The document the HCAO sent to defense counsel on March 8, 2024, however, contains 6.25 pages of single-spaced descriptions of documents the HCAO provided to Noble:

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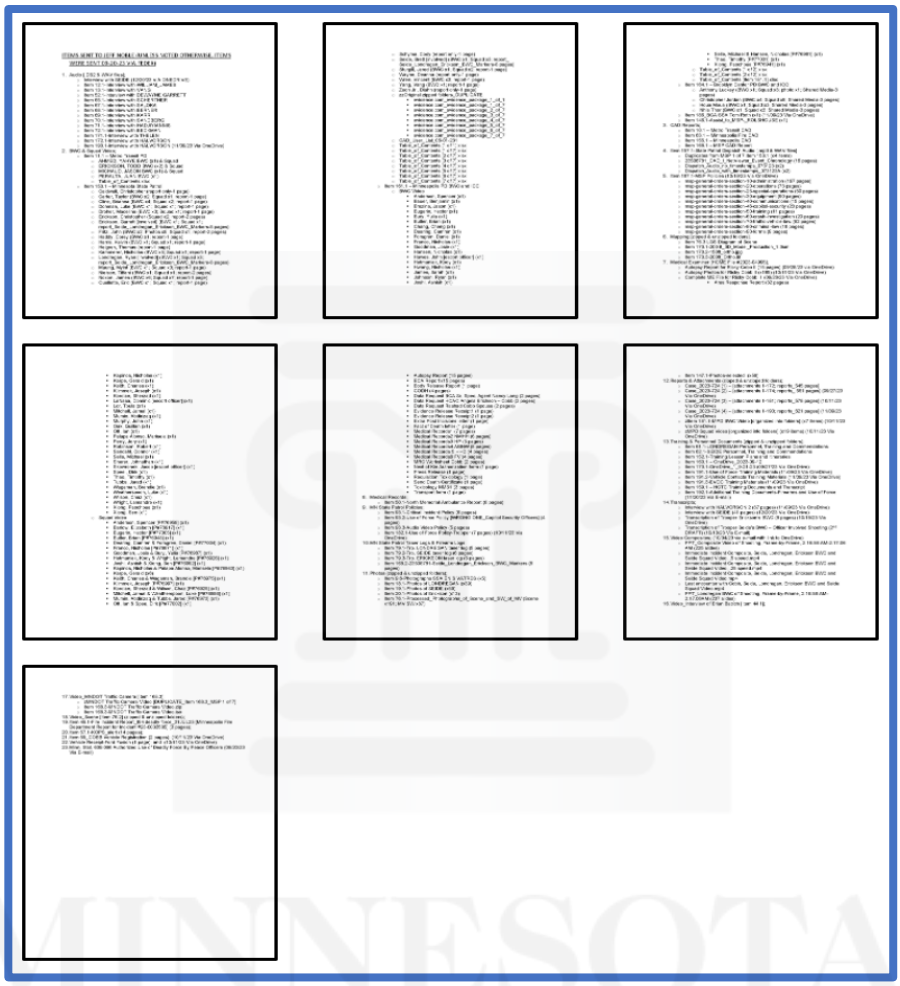

("Items Sent to Jeff Noble." (Mar. 8, 2024).) Given this extensive list, it would be interesting to learn what the HCAO would characterize as "complete."

In addition, on March 8, 2024, the HCAO provided a letter to defense counsel from Larson. In this letter, the HCAO resurrected its claim that certain documents the defense requests regarding Noble constitute non-discoverable work-product.

S. March 11, 2024: The Current State of Noble Documents Produced.

On March 8, 2024, the HCAO produced information covered by categories #2 and #7 of Madel's above email. (*See supra*.) However, the HCAO continues to refuse to produce any document or information covered by categories #1, 3, 4, 5, and 6 of the above-described Madel email, including any report from Noble. (*See infra* (describing the oddities associated with the

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HCAO's contentions regarding the existence of a Noble report).) For ease of reading, the remainder of this memorandum of law refers to categories #1, 3, 4, 5, and 6 of Madel's above email, including all documents subject to the Noble Subpoena, as the "Requested Noble Documents."

ARGUMENT

I. ALL OF THE REQUESTED NOBLE DOCUMENTS ARE DISCOVERABLE AND SHOULD BE PRODUCED.

Minnesota Rule of Criminal Procedure 9.01, subd. 1 provides that the HCAO must produce "all matters within the prosecutor's possession or control that relate to the case, except as provided in Rule 9.01, subd. 3." Minn. R. Crim. P. 9.01, subd 1. This includes "documents," Minn. R. Crim. P. 9.01, subd. 1(3)(a), and "Exculpatory Information," Minn. R. Crim. P. 9.01, subd. 1(6).

A. Because The Requested Noble Documents are "Documents" That "Relate to the Case," They Must Be Produced.

In its motion to quash, the HCAO argues that the documents and information Trooper Londregan seeks from Noble are "unreasonable," "irrelevant," "overbroad," and "burdensome." (State's Notice of Motion and Motion to Quash Subpoena for Records Held by Third-Party [sic] at 2-4 (Mar. 7, 2024).) But Minnesota Rule of Criminal Procedure 9 contains no such limitation; it states that *all* "documents" that "relate to the case" must be produced. Minn. R. Crim. P. 9.01, subd. 1(3)(a). Here, this should be especially easy, as the Requested Noble Documents are within the possession of the HCAO itself, with the apparent exception of Noble's report (as discussed further *infra*).

But more importantly, seeking the Requested Noble Documents does not constitute a "fishing expedition." The Requested Noble Documents represent targeted requests directed at an

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individual that the Hennepin County Attorney herself has described as "critical" to this case. Furthermore, the Requested Noble Documents each relate to exculpatory information communicated by the same *critical* witness, engaged and paid by Hennepin County, who told seven HCAO representatives that Trooper Londregan not only committed no crime, but that he acted "reasonably." (*See* Exhibit 5 (October 13 Statement).)

The HCAO's cited authority in correspondence to defense counsel is misplaced. First, in *State v. Hunter*, 349 N.W.2d 865, 866 (Minn. Ct. App. 1984), the defendant appealed "from a pretrial order compelling the state to turn over to the Neighborhood Justice Center police reports of all rapes, aggravated assaults, and aggravated robberies occurring while defendant was in custody." For good reason, the trial court, and the court of appeals, held that such requests constituted a "fishing expedition." *Id.* Even so, the trial court ordered the State to deliver those documents to the court for an *in camera* inspection. *Id.* The court of appeals, after also reviewing the documents *in camera*, concluded that the reports were "irrelevant." *Id.* Here, Trooper Londregan does not ask this Court to order the production of all reports of all police officers who pulled a gun in 2023, or all reports of suspects who refused to acquiesce to a lawful order in that year. Instead, he asks this Court to order HCAO to produce <u>*its*</u> communications regarding <u>*its*</u> "critical" witness *that Trooper Londregan has now shown exculpates him*. That is hardly "irrelevant" or a "fishing expedition."[22]

Next, the HCAO cited *State v. Glidden*, 459 N.W.2d 136 (Minn. Ct. App. 1990) in its correspondence to defense counsel. At least two things clearly distinguish *Glidden* from the instant case. *First*, in *Glidden*, the court of appeals held that the State's failure to supply business

[22] Moreover, Trooper Londregan has made the alternative request *infra* that this Court review the documents *in camera*, just as the trial court and court of appeals did in *Hunter.* (*See infra.*)

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records from the defendant's employer did not constitute discovery misconduct because the defense failed to make a specific request for the evidence prior to trial. *Id.* at 138. Trooper Londregan has clearly done that here. *And second*, the *Glidden* court stated that the defendant "*had access to all documents in the state's possession*, but requested a plethora of other documents generated by Menards in 1987." *Id.* at 139 (emphasis added). Here, Trooper Londregan does *not* have access to all Noble-related documents in the HCAO's possession. Indeed, when it attempted to subpoena Noble to obtain *some* of them, the HCAO moved to quash the subpoena within 24 hours.

B. Because The Requested Noble Documents Constitute "Exculpatory Information" under Minn. R. Crim. P. 9.01, subd. 1(6), They Must Be Produced.

Minnesota Rule of Criminal Procedure 9.01, subd. 1(6), entitled "Exculpatory Information," provides that "[m]aterial or information in the prosecutor's possession and control that tends to negate or reduce the defendant's guilt" must be produced to the defense. Again, this subdivision contains no exception for "unreasonable," "overbroad," or "burdensome" objections. *See* Minn. R. Crim. P. 9.01, subd. 1(6). Such a limitation would be absurd; it would permit the government to conceal exculpatory information from a criminal defendant because there is so much "great evidence" for the defendant that the government might be overwhelmed.

C. The Requested Noble Documents Are Relevant to this Case.

Although the Minnesota Rules of Criminal Procedure require production of documents that are *related* to the case and not *relevant*, each category of the Requested Noble Documents is actually (1) relevant to this case; and (2) exculpatory.[23] And each category should be considered

[23] The HCAO correctly notes that the documents subpoenaed by Noble are "virtually identical" to the requests Trooper Londregan made directly to the HCAO. (*See* State's Notice of Motion and Motion to Quash Subpoena for Records Held by Third-Party [sic] at 1 (Mar. 7, 2024) ("On February 29, 2024, the defense made virtually identical requests of the State under Minn.

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in the context that the HCAO placed Noble in this case: on September 19, 2023, the HCAO issued a written press release—not "off the cuff" or impromptu—but a *written* press release. (Exhibit 2 (September 19, 2023 press release).) This press release publicly stated how the HCAO had already engaged a use-of-force expert (i.e., Noble) and how that expert was "critical" to the charging process. (*Id.*) And as it was intended, the press release garnered much publicity in Minnesota and elsewhere. (*See supra.*)

Category #1: "All documents that constitute, contain, or accompany any communication (including email and text messages) between Jeffrey Noble ('Noble') and any employee, agent, or representative of the Hennepin County Attorneys' Office ('HCAO')." This is a basic request that seeks the communications with Noble. This same expert has now told the HCAO that Trooper Londregan acted reasonably to save the life of his fellow law-enforcement officer. It is difficult to conceive of *more* exculpatory documents and information than a government-paid expert in a law-enforcement use-of-force case that indicates the law-enforcement officer did nothing wrong.

As shown above, the metadata associated with the October 13 Statement strongly suggests that someone added content to it four months after Noble spoke to the seven representatives of the HCAO. (Jeffers Decl. at ¶¶ 6, 8.) And this content appears to have been added about a week before the document was provided to the defense—and on the same day the State appeared before the Court to attempt to justify its extraordinary request to limit the public's

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R. Crim. P. 9.")). But the HCAO's nefarious allegations of an "end run" are ridiculous. The defense is attempting to obtain exculpatory documents and information that the HCAO refuses to produce. The defense is not only entitled to do that, but its counsel is also *obligated* to do that, especially when the HCAO refuses to produce the same. Moreover, the defense desires Noble to produce documents in his possession to ensure that the defense receives all documents, especially here where the HCAO has, thus far, failed to respect its discovery obligations—and denies knowledge of a report that Noble himself confirmed exists.

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access to information about this case. (*Id.* at ¶¶ 2, 6, 9) This explains why the HCAO is feverishly attempting to persuade this Court to not have to provide the defense with drafts of the October 13 Statement.

It is also notable that the HCAO now claims it "ceased sending additional discovery to the witness" on December 21, 2023. (State's Notice of Motion and Motion to Quash Subpoena for Records Held by Third-Party [sic] at 2 (Mar. 7, 2024).) As stated above, the only Noble document the HCAO produced to the defense dated in December 2023 was Larson's email to Noble on December 15, 2023, wherein Larson stated that he intended to send Noble additional grand-jury transcripts. (*See supra*; Exhibit 6.) This means there must have been other substantive communication with Noble between December 15 and 21, 2023.

Finally, the HCAO claims that certain communications with Noble are "objectively innocuous, routine, and neither inculpatory nor exculpatory." (State's Notice of Motion and Motion to Quash Subpoena for Records Held by Third-Party [sic] at 3 (Mar. 7, 2024).) If this is true, then why try to block their production? Again, the documents *are required* to be produced as they are "relate[d] to the case." Minn. R. Crim. P. 9.01, subd. 1(3)(a). And given the obvious exculpatory nature of Noble's opinions—the HCAO's "critical" witness—as well as the factual discrepancies found in the HCAO's own motion to quash, (*see supra*), prudence dictates that *all* Noble-related documents, whether the HCAO believes them to be "innocuous" or not, be produced to the defense.

The U.S. Supreme Court has noted that, when in doubt, a prudent prosecutor will err on the side of disclosure of potential *Brady* material to "justify trust in the prosecutor" as one who pursues justice rather than convictions. *See, e.g., Kyles v. Whitley*, 514 U.S. 419, 439–40 (1995) (noting the difficulty prosecutors have in deciding pretrial whether evidence will meet the *Brady*

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test because "the character of a piece of evidence as favorable will often turn on the context of the existing or potential evidentiary record"). With this edict in mind, Trooper Londregan, an innocent man charged with murder, should not be compelled to rely on the HCAO's opinion of the usefulness of exculpatory and/or relevant documents and information.

Category #2: "All documents that the HCAO provided to Noble." The HCAO provided the defense with the above-described list of documents provided to Noble on Friday, March 8, 2024. And while these documents are subsumed in category #1, it should be remembered that the HCAO has intentionally withheld its communications with Noble during the period of December 15-21, 2023 wherein the HCAO provided Noble with additional documents. (*See supra*.) The HCAO has concealed these documents while simultaneously representing to this Court that Noble's opinions are "draft," "incomplete," and "preliminary," (*see* State's Notice of Motion and Motion to Quash Subpoena for Records Held by Third-Party [sic] at 2 ("preliminary thoughts"), at 3 ("draft or preliminary opinions") (Mar. 7, 2024)), and even though it has now provided the defense with 6.25 pages of single-spaced descriptions of documents provided to Noble. ("Items Sent to Jeff Noble." (Mar. 8, 2024).)

Category #3: "All documents constituting or containing notes regarding any conversation with Noble." Even though the HCAO plainly possesses notes of its conversations with Noble, it claims that its typewritten summary of the conversation with Noble on October 13, 2023 should be sufficient. Minnesota law holds otherwise. *See State v. Galvan*, 374 N.W.2d 269, 270 (Minn. 1985) ("If a prosecutor interviews a witness, the prosecutor's *notes* summarizing the witness' statement are not work product; if the notes contain the thoughts or opinions of the prosecutor, those parts of the notes may be withheld but the summaries of the witness' statement may not be withheld.") (emphasis added); *State v. Moore*, 493 N.W.2d 606, 608 (Minn. Ct. App.

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1992) ("And in *State v. Galvan*, the supreme court specifically ruled that summaries of witnesses' statements do not represent nondiscoverable work product.") (citation omitted).

The metadata relating to the produced October 13 Statement file was modified. (*See supra*.) And the October 13 Statement contains sentences that appear to be inserted after another person created the first version of the document, and statements that seem unlikely for any reasonable person to speak. For example, the October 13 Statement provides that "Mr. Noble acknowledged that he did not yet have opinions formalized in writing, but he was willing to discuss the case preliminarily." (Exhibit 5 (October 13 Statement) at 1.) It is farcical to state that Noble was "willing to discuss the case preliminarily" when *seven* HCAO representatives were on the call, i.e., it is far more likely that another communication exists that set up the call and informed Noble that the purpose of the call was to obtain his opinions in front of multiple HCAO representatives. Additionally, the modified version of the October 13 Statement the HCAO decided to produce just happened to include a sentence that appears consistent with the HCAO's theory of this case: "Mr. Noble did not acknowledge review of the training materials provided to him except that Mr. Noble asked whether the prosecutors could obtain additional training materials or information on how the troopers were trained on extricating people from vehicles, esp. vehicles which are running and moving." (*Id.* at 2.)[24]

Courts have noted that "certainly we cannot consider it beyond the bounds of possibility that a report be distorted because of overzealousness on the part of the agent preparing it." *United States v. Harrison*, 524 F.2d 421, 430 (D.C. Cir. 1975). This is particularly true where, as here, the metadata shows something was added to the October 13 Statement file on February 13,

[24] Notably, the 6.25-page list of items provided to Noble lists extensive training materials and multiple interviews with State Patrol personnel regarding that training, including the interview with "Trainer A" relied upon in the Complaint. (*See* Items Sent to Jeff Noble at 1, 6 (Mar. 8, 2024).)

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2024, i.e., four months after the seven HCAO representatives spoke with Noble.

There is no legal reason to not provide Trooper Londregan with the HCAO's underlying rough notes relating to its conversations with Noble. This Court should order them produced.

Category #4. "All documents constituting or containing any drafts of, or changes to, the 'Meeting Notes' that the HCAO provided to the defense dated September 20, 2023, October 13, 2023, and January 26, 2024, including all email and text messages." The justification for producing this category #4 is addressed in category #3, *supra.* Again, they are required by *State v. Galvan*, 374 N.W.2d 269, 270 (Minn. 1985).

Category #5. "Documents sufficient to show each telephone call or video conference between the HCAO and Noble from July 31, 2023 to today." The defense maintains that telephone and/or video communications occurred with Noble that have not been produced. *First*, the October 13 Statement ends with "Mr. Larson offered to check in with Mr. Noble in the next week to discuss a timeline going forward." (Exhibit 5 at 2.) No document indicates a conversation with Noble during the week of October 14–21, 2023, or for that matter, *any* oral or video communication between October 13 and January 26, 2024. *Second*, two months after the October 13, 2023 video conference, Larson sent Noble an email on December 15, 2023 and informed Noble of certain interviews and grand-jury appearances. (Exhibit 6.) Then the HCAO charged Trooper Londregan on January 24, 2024, and Larson called Noble two days later (on January 26) to tell him to stop working. (Exhibit 8.) It is implausible that no oral or video communication occurred with Noble between the time of his delivered opinions on October 13 and the time Larson told him to stop working on January 26.

The defense should be permitted to discover what changed in the HCAO's mind to remove Noble from this case. It certainly appears that the true reason is because he exculpated

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Trooper Londregan.

Category #6. "All documents constituting or containing any opinion, belief, criticism, or view communicated by the HCAO internally or externally relating to (a) Noble; or (b) Noble's communications regarding the facts and circumstances relating to the death of Ricky Cobb II on or about July 31, 2023, including (i) Noble's communications relating to Ryan Londregan to the HCAO on or around October 13, 2023; and (ii) Noble's qualifications or work as a use-of-force expert, including email and text messages." Again, each of these documents is relevant to this matter and exculpatory. To the extent that the HCAO fired Noble and is seeking another use-of-force expert, the requested documents will show exactly what the HCAO is doing: expert shopping until the HCAO can find an expert that will say what they want the expert to say. Moreover, such documents likely contain the HCAO's recognition that Trooper Londregan acted reasonably, which will, undoubtedly, be relevant to his upcoming motions pursuant to *State v. Florence*, 239 N.W.2d 892 (Minn. 1976) and its progeny. Therefore, regardless of whether the documents and information constitute work-product (including "the opinions, theories, or conclusions of the prosecutor, the prosecutor's staff or officials, or official agencies participating in the prosecution," Minn. R. Crim. P. 9.01, subd.1(3)(a)), the HCAO must produce all of the Requested Noble Documents.

Category #7. "All documents constituting or containing each agreement between Noble and the HCAO." The HCAO provided a copy of the engagement agreement with Noble on March 8, 2024, but has otherwise not provided any other documents containing this or any other agreement with Noble.

Under these circumstances, *all* communications with that expert are essential. For example, it is plain from reading the October 13 Statement that the HCAO will claim that

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Noble's opinion was preliminary and based on incomplete information. The HCAO, however, played what it believed were the most pertinent videos for Noble on September 20, 2023 to "jumpstart" his review. (Exhibit 4 (September 20, 2023 Meeting Notes).) The HCAO then provided him with literally dozens of videos and documents (as listed in the HCAO's 6.25-page, single-spaced document), and he had three weeks to review whatever the HCAO provided him before he delivered his opinions during the October 13, 2023 video conference. Moreover, the October 13 Statement indicates an intent to "check in" with Noble in the future. No other documents, however, have been provided regarding subsequent "check in's"—except when Larson called Noble two days after the HCAO charged Trooper Londregan and told Noble to stop working.

D. The HCAO's Cited Authority is Inapposite.

In its motion to quash the Noble Subpoena, the HCAO cited one case, *In re B.H.*, 946 N.W.2d 860 (Minn. 2020), to support its motion to quash. There, the Minnesota Supreme Court held that the district court must consider whether compliance with a subpoena is unreasonable "given the totality of the circumstances." *Id*. at 868.

The actual circumstances involved in *B.H.* are very different than those at issue here. There, the defendant subpoenaed the cell phone of the victim in a sexual-assault case. *Id.* The victim independently opposed and moved to squash the subpoena (i.e., not just the State). *Id.* In finding the subpoena unreasonable, the Supreme Court said "[t]his case demonstrates why considering the privacy interests of the victim is critical," *id*. at 869, and detailed at length the massive invasion of privacy inherent in obtaining all cell-phone data over a period of several months, including from well before the alleged assault took place. *See id.* at 869-70 (*quoting Riley v. California*, 573 U.S. 373, 393 (2014) and *Carpenter v. United States*, 138 S. Ct. 2206,

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2217-18 (2018)).

Here, Trooper Londregan seeks targeted information directed at Noble's report and communications with the HCAO regarding Trooper Londregan's case. He does not seek any personal information from Noble. The information he seeks does not implicate any privacy interests of Ricky Cobb II. Moreover, the October 13 Statement reveals that all information relating to Noble constitutes exculpatory information required by not only Minn. R. Crim. P. 9.01, subd. 1(6), but the constitutionally-based *Brady* doctrine as well.

This is particularly true as the HCAO appears to claim it does not possess Noble's report. (*See* State's Notice of Motion and Motion to Quash Subpoena for Records Held by Third-Party [sic] at 3 (Mar. 7, 2024) ("The State has no knowledge that this witness drafted or finalized any report related to this case.").) This is odd for three reasons. *First*, if no such report exists, then why does the HCAO care if Noble is subpoenaed to provide such reports? *Second*, notably, Noble has not proffered any objection to the subpoena in this proceeding. *And third*, Noble appeared to acknowledge the existence of a report, as he asked defense counsel, "Have you seen my report?" (Madel Decl. at ¶ 9.).

All of this underscores the need for this Court to (1) order the State to produce the Requested Noble Documents; *and* (2) ensure that Noble independently produces his documents pursuant to the Noble Subpoena. Under the totality of the circumstances, the subpoena is a reasonable request to make of Noble, who (1) will be well compensated for his time by Hennepin County; and (2) apparently created a report that the HCAO apparently paid for, but claims to not to possess. This is the only way the truth will be revealed.

E. The HCAO's Contention that Noble's Work Was "Draft" or "Incomplete" Is Belied by the Very Few Documents It Produced.

In its motion to quash, the HCAO contends "the defense is seeking the witness's potential

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draft or incomplete work, which would have low materiality, low usefulness, and no admissibility and which, by definition, would not embody the witness's final assessment of the full investigation." (State's Notice of Motion and Motion to Quash Subpoena for Records Held by Third-Party [sic] at 3 (Mar. 7, 2024).) This contention is flawed for at least three fundamental reasons.

First, on September 20, 2023, the HCAO conducted a video conference with Noble. According to the meeting notes provided by the HCAO, the HCAO played "excerpts of several pertinent videos from the investigative file to jumpstart Mr. Noble's consideration of the case and to assist Mr. Noble in his navigation of the materials after he receives them." (Exhibit 4 (Sept. 20, 2023 Meeting Notes).) Twenty-six days later, on October 13, 2023, seven HCAO representatives, including Hennepin County Attorney Moriarty, participated in a video conference with Noble. (Exhibit 5 (October 13 Statement) at 1.) It is silly to contend that (1) Noble did not have sufficient time to review materials before October 13; or (2) that the HCAO provided Noble with incomplete information before October 13, when seven HCAO representatives chose to participate in the video conference, including the chief prosecutor of Hennepin County. And this is setting aside the absurdity of the HCAO's apparent claim that the grand-jury materials somehow provide radically new or different material information that would have any impact on Noble's opinion. Even if they did, the HCAO could just try to make that point during cross examination.

Second, the HCAO's retention of Noble, and communications related to him, are admissible. For example, in *Collins v. Wayne Corp*., 621 F.2d 777, 781 (5th Cir. 1980), the Fifth Circuit found that a district court erred by not allowing an expert's deposition into evidence because the expert was employed by the defendant to investigate the accident made the basis of

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the suit. There, the defendant's expert was hired "two days after the accident" "to investigate the bus accident and to report his conclusions" to the defendant. *Id.* at 780-82. Here, Noble was hired two days after Ricky Cobb II's death and was hired to report his conclusions to the HCAO.[25] Moreover, Noble's statements are non-hearsay under Minnesota Rule of Evidence 801(d(2)(C), as they constitute "a statement by a person authorized by the party to make a statement concerning the subject." Minn. R. Evid. 801(d)(2)(C).

Third, *Brady* information and material is disclosable even if it is contained in a document that itself is protected from disclosure or that would not be admissible at trial. *See Giles v. Maryland,* 386 U.S. 66, 74 (1967); *see also State v. Shaw*, No. 27-CR-21-3390, 2021 Minn. Dist. LEXIS 621, at *28–30 (Minn. Dist. Ct. Sept. 13, 2021) (Engisch, J.) ("*Brady* information and material is disclosable even if it is contained in a document that itself is protected from disclosure or that would not be admissible at trial.").[26] "For example, if a witness statement is

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[25] *See also Brown & Root, Inc. v. American Home Assurance Co*., 353 F.2d 113, 116 (5th Cir. 1965) (allowing into evidence report prepared by a marine surveyor who the cargo underwriter had retained to investigate the casualty and to report his conclusions); *Rawers v. United States,* 488 F. Supp. 3d 1059, 1079 n.29 (D.N.M. 2020) ("When a party introduces its own expert report, courts—including the Court—have held that such evidence is inadmissible hearsay. When a party introduces its opponent's expert report, however, courts have found this evidence admissible as non-hearsay under Rule 801(d)(2) of the Federal Rules of Evidence.") (citations omitted; collecting cases); *In re Chicago Flood Litig*., No. 93 C 1214, 1995 U.S. Dist. LEXIS 10305, 1995 WL 437501, at *11 (N.D. Ill. July 21, 1995) ("A party's pleadings and expert reports often constitute party admissions pursuant to Fed. R. Evid. 801(d)(2).")

[26] *See also Sellers v. Estelle,* 651 F.2d 1074, 1077 (5th Cir. 1981) (finding exculpatory evidence in the form of inadmissible hearsay to be *Brady* material); *United States v. Sudikoff,* 36 F. Supp. 2d 1196, 1200 (C.D. Cal. 1999) ("Thus, the Court holds that it would be incorrect to conclude that only admissible evidence is discoverable under *Brady*."); Paget Barranco, *Match Up: Increasing Disclosure of Facial Recognition Technology with Criminal Discovery Rules*, 18 Duke J. Const. Law & Pub. Pol'y 135, 148 (May 2023) ("[M]any jurisdictions have held that inadmissible content can still be discoverable under *Brady* if it could reveal other evidence that is admissible."); Capt. Elizabeth Cameron Hernandez and Capt. Jason M. Ferguson, *The Brady Bunch: An Examination of Disclosure Obligations in the Civilian Federal and Military Justice Systems*, 67 A.F. L. Rev. 187, 192 (2011) ("Moreover, favorable evidence may be deemed discoverable under *Brady* regardless of whether the evidence is ultimately deemed admissible at trial.").

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contained in protected work product, or if the statement would not be admissible as substantive evidence, the government may still be required to disclose the underlying statement if it could be used to impeach a prosecution witness." *Shaw*, 2021 Minn. Dist. LEXIS 621, at *27 (citing *Giles*, 386 U.S. at 75–76). Here, the HCAO intentionally refuses to produce documents and information that both relate to this case *and* are undoubtedly exculpatory relating to a witness that the *Hennepin County Attorney herself* characterized as "critical."

II. THE REQUESTED NOBLE DOCUMENTS ARE NOT EXEMPTED FROM PRODUCTION BY THE WORK-PRODUCT DOCTRINE.

During the March 1 meeting, the HCAO claimed that it need not produce the Requested Noble Documents because they are protected by the work-product doctrine. In its March 7 motion to quash, however, the HCAO did not advance any work-product objection to this Court. (State's Notice of Motion and Motion to Quash Subpoena for Records Held by Third-Party [sic] at 1-3 (Mar. 7, 2024).) But the next day, on March 8, 2024, the HCAO resurrected its work-product objection in Larson's letter to counsel. Accordingly, Trooper Londregan addresses the HCAO's work-product objection here.

Any work-product objection is misplaced for two primary reasons: (1) Minnesota Rule of Criminal Procedure 9.01, subd. 3(1)(b) carves out the Requested Noble Documents from work-product protection; and more importantly, (2) the United States and Minnesota State Constitutions mandate their production pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963) and *Giglio v. United States*, 405 U.S. 150 (1972).

A. Because All of the Requested Noble Documents Are Covered By Minn. R. Crim. P. 9.01, Subds. 1(2), (3), and (6), They Must be Produced to the Defense.

Minnesota Rule of Criminal Procedure 9.01, subd. 1 provides that the HCAO must produce "all matters within the prosecutor's possession or control that relate to the case, except

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as provided in Rule 9.01, subd. 3." Minn. R. Crim. P. 9.01, subd 1. Minnesota Rule of Criminal Procedure 9.01, subd. 3 is entitled "Work Product." This Rule provides (in full):

> **Subd. 3.Non-Discoverable Information.**
> The following information is not discoverable by the defendant:
> (1) Work Product.
>
> (a) Opinions, Theories, or Conclusions. Unless otherwise provided by these rules, legal research, records, correspondence, reports, or memoranda to the extent they contain the opinions, theories, or conclusions of the prosecutor, the prosecutor's staff or officials, or official agencies participating in the prosecution.
>
> (b) Reports. *Except as provided in Rule 9.01, subd. 1(1) to (7),* reports, memoranda, or internal documents made by the prosecutor or members of the prosecutor's staff, or by prosecution agents in connection with the investigation or prosecution of the case against the defendant.

Minn. R. Crim. P. 9.01, subd. 3(1) (bold emphasis in original; italicized emphasis added).

The HCAO's work-product position is erroneous. The Requested Noble Documents are all documents: (1) constituting communications with Noble; (2) reflecting communications with Noble; or (3) evidencing communications with Noble. Because the Requested Noble Documents are (a) "reports, memoranda, or internal documents made by the prosecutor or members of the prosecutor's staff," (Minn. R. Crim. P. 9.01, subd. 3(1)(b)), and (b) documents and information covered in Minn. R. Crim. P. 9.01, subds. 1(2), (3), and (6), they are not entitled to work-product protection.

Put more specifically, because the Requested Noble Documents are "Statements" (and thus required to be produced under Minn. R. Crim. P. 9.01, subd.1(2)(a), (b), & (c)), "Documents" (and thus required to be produced under Minn. R. Crim. P. 9.01, subd.1(3)(a)), as well as "Exculpatory Information" under Minn. R. Crim. P. 9.01, subd.1(6), ***and*** because Minn. R. Crim. P. 9.01, subd. 3(1)(b) expressly carves out documents and information covered by Minn. R. Crim. P. 9.01 subds. 1(2), (3), and (6) that are "reports," "memoranda," or "internal

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documents made by the prosecutor or members of the prosecutor's staff" from work-product protection, the HCAO cannot claim work-product protection for the Requested Noble Documents.

B. Even if the Requested Noble Documents Are Covered by the Work-Product Rule in Minn. R. Crim. P. 9.01, Subd. 3, the U.S. and Minnesota Constitutions Require Them to be Produced.

In *Brady*, the Supreme Court held that "the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." 373 U.S. at 87. Accordingly, under *Brady* and its progeny, it is a violation of a defendant's federal and Minnesota constitutional rights to due process for a prosecutor to suppress material evidence favorable to the defendant. *See State v. Zeimet*, 310 N.W.2d 552, 553 (Minn. 1981) (reversing conviction for State's failure to disclose *Brady* information). Moreover, evidence affecting credibility and impeachment evidence comes within the scope of *Brady*. *Giglio*, 405 U.S. at 153–54.[27]

"'Work product' is defined as an attorney's mental impressions, trial strategy, and legal theories in preparing a case for trial . . . ." *City Pages v. State*, 655 N.W.2d 839, 846 (Minn. Ct. App. 2003) (quoting *Dennie v. Metro. Med. Ctr.*, 387 N.W.2d 401, 406 (Minn. 1986)) (citations omitted). "The privilege derived from the work-product doctrine is not absolute." *United States*

[27] The Minnesota Supreme Court has even exercised its supervisory powers "in the interests of justice" to order a new trial due to prosecutors' failure to produce exculpatory evidence even when the prejudice was unclear. *See, e.g., State v. Kaiser*, 486 N.W.2d 384, 387 (Minn. 1992) (conceding that it was arguable whether the defense was prejudiced by the prosecutor's failure to disclose potentially exculpatory evidence, but nevertheless, awarding a new trial, "in the interests of justice," when the prosecutor's failure to comply with the discovery rules was clear); *State v. Schwantes*, 314 N.W.2d 243, 245 (Minn. 1982) (awarding a new trial "in the interests of justice" because of prosecutor's negligent failure to disclose information useful to defendant in deciding whether to waive marital privilege, even though the evidence of defendant's guilt was strong).

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v. Nobles, 422 U.S. 225, 239 (1975). Because the work-product doctrine is a rule-based protection, it is overcome by the U.S. and Minnesota Constitutions' due-process protections. As Justice Breyer observed, "[b]ecause *Brady* is based on the Constitution, it overrides court-made rules of procedure. Thus, the work-product immunity for discovery in Rule 16(a)(2) prohibits discovery under Rule 16 but it does not alter the prosecutor's duty to disclose material that is within *Brady*." *United States v. Armstrong*, 517 U.S. 456, 475 (1996) (Breyer, J., concurring) (quoting 2 Charles Alan Wright, FEDERAL PRACTICE AND PROCEDURE § 254.2 (2d ed. 1982)).

C. Federal Law Holds That *Brady* Overcomes All Work-Product Protection.

Following *Brady* and its progeny, federal courts uniformly hold that prosecutors cannot avoid their constitutional *Brady* obligations by claiming information is contained in work-product protected documents.[28] Indeed, federal courts have even held that *Brady* overcomes

[28] *See, e.g.*, *Dickson v. Quarterman*, 462 F.3d 470, 479 n.7 (5th Cir. 2006) ("As discussed in this Court's order compelling production of certain materials contained in Siegler's work product file, the work product doctrine does not excuse Siegler's suppression. As an attorney representing a client, a prosecutor is entitled to rely on the work product, within constitutional limitations."; "[T]he State agreed at oral argument that the prosecutor's assertion of work product in this case was 'obviously wrong.'") (citation omitted); *United States v. Sipe*, 388 F.3d 471, 484 (5th Cir. 2004) (affirming district court's grant of new trial due to prosecution's failure to produce exculpatory evidence, including prosecution memorandum containing witness statements); *Will v. Lumpkin*, No. 15-CV-3474, 2023 WL 2671387, at *8 n.8 (S.D. Tex. Mar. 28, 2023) ("'Because *Brady* is based on the Constitution, it overrides court-made rules of procedure. Thus, the work-product immunity for discovery . . . prohibits discovery . . . but it does not alter the prosecutor's duty to disclose material that is within *Brady*.'") (quoting 2 Charles Alan Wright, FEDERAL PRACTICE AND PROCEDURE § 254.2 (3d ed. 2000)); *United States v. Gupta*, 848 F. Supp. 2d 491, 496 (S.D.N.Y. 2012) (finding work-product protection overcome by *Brady*; "This Rules-based immunity from disclosure, however, is not absolute. It can be overcome, for example, by constitutional commands, like *Brady*."); *United States v. Edwards*, 777 F. Supp. 2d 985, 995 (E.D.N.C. 2011) ("Several courts, including the Supreme Court, have assumed that *Brady* requires disclosure despite work product protections. This is because *Brady* is a constitutional right that overrides the statutorily created work-product privilege."); *United States v. Anderson*, No. CR02-0423C, 2004 U.S. Dist. LEXIS 34553, 2004 WL 7339793, at *1–2 (W.D. Wash. July 23, 2004) ("The Court finds that under the mandates of *Brady* and *Giglio*, the Moran Defendants are entitled to the requested disclosures of the sentencing and downward departure memoranda filed in the criminal matters brought against the cooperating witnesses. Since the memoranda may potentially contain evidence that has bearing on the cooperating

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work-product protection in civil cases.[29]

D. Minnesota Law Similarly Holds that *Brady* Overcomes All Work-Product Protection.

Minnesota courts have reached the same conclusion, i.e., Minnesota courts hold that *Brady* overcomes any of the State's work-product objections. *See, e.g., Pederson v. State*, 692 N.W.2d 452, 459–60 (Minn. 2005) (stating that, under *Brady*, the State was required to disclose work-product summary of a police statement and grand-jury testimony that a state witness used to prepare for trial); *State v. Shaw*, No. 27-CR-21-3390, 2021 Minn. Dist. LEXIS 621, *28–30 (Minn. Dist. Ct. Sept. 13, 2021) (Engisch, J.) ("Thus, the State cannot avoid its constitutional

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witnesses' credibility, they clearly fall within the universe of documents subject to *Brady* disclosure. In addition, even if the memoranda do incorporate the government attorneys' work product normally protected from disclosure under Rule 16(a)(2), that rule only limits the government's discovery duties arising under the Federal Rules of Criminal Procedure, but has no effect on the government's duty under *Brady*, which is rooted in constitutional due process.") (citation omitted); *United States v. NYNEX Corp*., 781 F. Supp. 19, 25 (D.D.C. 1991) ("Cases on this question, albeit without much discussion, suggest that internal materials possibly constituting work product may not automatically be exempt from *Brady* requirements.") (citing cases); *United States v. Goldman*, 439 F. Supp. 337, 350 (S.D.N.Y. 1977) ("Of course, if [work product] material be of a *Brady* nature, then it must be produced."); *Castleberry v. Crisp*, 414 F. Supp. 945, 953 (N.D. Okla. 1976) ("The 'work product' discovery rule cannot, of course, be applied in a manner which derogates a defendant's constitutional rights as propounded in *Brady*."); *see also* 2 Charles Alan Wright, FEDERAL PRACTICE AND PROCEDURE § 254.2 (3d ed. 2000) ("Because *Brady* is based on the Constitution, it overrides court-made rules of procedure. Thus, the work-product immunity for discovery . . . prohibits discovery . . . but it does not alter the prosecutor's duty to disclose material that is within *Brady*."); *Mincey v. Head,* 206 F.3d 1106, 1133 n.63 (11th Cir. 2000) (collecting cases).

[29] *United States ex rel. [Redacted] v. [Redacted],* 209 F.R.D. 475, 481 (D. Utah 2001) ("Defendants urge this court to extend the *Brady* principle to this civil action. Defendants' argument raises two issues: first, whether the *Brady* principle can overcome work product protections and second, whether the *Brady* principle applies in this civil context. The Supreme Court has not decided whether *Brady* requires a prosecutor to turn over work product in a civil case. Several courts and commentators, however, have assumed that *Brady* requires disclosure despite work product protections because *Brady* contemplates a constitutional rather than a statutory right. The Court agrees with this line of cases and holds that the *Brady* principle, if it applies in this civil case, overcomes work product protections.") (citations omitted).

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Brady obligations by claiming the information is contained in work-product documents relating to an ongoing investigation or that the information is private data protected by the Minnesota Government Data Practices Act. . . . [T]he State should identify and disclose any potential impeachment or other exculpatory information under *Brady*, even if the original source of the information is itself protected from disclosure under state law."); *see also State v. Whitcup*, No. A14-1666, 2015 Minn. App. Unpub. LEXIS 829, at *6–7 (Minn. Ct. App. Aug. 24, 2015) ("The duty to disclose includes all documents related to the case and all materials in the possession and control of any person working with the prosecution. The language of the rule is more expansive than that in *Brady* . . .") (citation omitted). Minnesota's approach is somewhat obvious insofar that the Minnesota Supreme Court has regularly provided more constitutional rights under the Minnesota State Constitution than exist under federal law.[30] Other states have reached the same conclusion.[31]

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[30] *See, e.g., Women of the State v. Gomez*, 542 N.W.2d 17, 30 (Minn. 1995) (providing Minnesota constitutional right to women to choose abortion); *Ascher v. Commissioner of Pub. Safety*, 519 N.W.2d 183 (Minn. 1994) (warrantless searches at sobriety checkpoints); *Matter of Welfare of E.D.J.*, 502 N.W.2d 779 (Minn. 1993) (seizure); *Friedman v. Commissioner of Pub. Safety*, 473 N.W.2d 828 (Minn. 1991) (right to counsel at the chemical testing stage of a DWI proceeding); *State v. Russell*, 477 N.W.2d 886 (Minn. 1991) (adopting stricter equal protection rational basis standard than federal courts); *State v. Hershberger*, 462 N.W.2d 393 (Minn. 1990) (religious liberties); *Jarvis v. Levine*, 418 N.W.2d 139 (Minn. 1988) (bodily integrity); *Skeen v. State*, 505 N.W.2d 299 (Minn. 1993) (fundamental right of education); *State v. Hamm*, 423 N.W.2d 379 (Minn. 1988) (right to 12-member jury) (subsequently overruled by constitutional amendment).

[31] *See, e.g., State ex rel. Ogg v. 228th Dist. Court*, 630 S.W.3d 67, 72 (Tex. Crim. App. 2021) ("This is because the work-product privilege is not absolute, and the duty to reveal exculpatory evidence as dictated by *Brady* overrides any privilege under the work-product doctrine."); *Musonda v. State*, 435 P.3d 694, 696 (Okla. Ct. App. 2019) ("'[T]he work-product privilege may not be applied in derogation of a criminal defendant's constitutional rights to disclosure of evidence favorable to the defendant'") (quoting *Nauni v. State*, 670 P.2d 126, 133 (Okla. Ct. App. 1983)); *People v. Angel*, 277 P.3d 231, 238 n.7 (Colo. 2012) ("[E]xculpatory material that is contained in prosecutorial work product is 'automatically discoverable.'" (quoting *People v. Vlassis*, 247 P.3d 196, 198 (Colo. 2011)); *People v. Elzey*, 560 N.E.2d 1107, 1113 (Ill. Ct. App. 1990) ("As an exception to the work product rule, *Brady v. Maryland*,

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Here, the HCAO appears to object to the production of the Requested Noble Documents due to the work-product doctrine. The HCAO's position in this case runs contrary to the Hennepin County Attorney's long-paraded "transparency" and *Brady*-production promises, and more importantly, unequivocal federal and state law. Consequently, this Court should order the HCAO to produce all of the Requested Noble Documents in accordance with Trooper Londregan's Proposed Order.

III. AT A MINIMUM, THIS COURT SHOULD REVIEW THE REQUESTED NOBLE DOCUMENTS *IN CAMERA* TO ASCERTAIN IF THEY SHOULD BE PRODUCED TO THE DEFENSE.

Trooper Londregan maintains that the U.S. Constitution, the Minnesota Constitution, and the Minnesota Rules of Criminal Procedure each independently mandate that the Requested Noble Documents be immediately produced to the defense. Alternatively, Trooper Londregan respectfully requests that this Court order the HCAO to produce the Requested Noble Documents for *in camera* review. Such reviews have been authorized by the U.S. Supreme Court

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requires the disclosure of evidence favorable to the accused. We, however, find no violation of *Brady* since the information defendant sought to reveal to the jury was brought out in open court.") (citation omitted); *Franklin v. State*, 304 S.E.2d 501, 504 (Ga. Ct. App. 1983) ("Work product of the state [is] not subject to compelled discovery except to the extent that such letter may be exculpatory and subject to disclosure under *Brady*." (citation omitted)); *People v. Collie*, 634 P.2d 534, 543 (Cal. 1981) ("Even in civil cases the work-product doctrine is not an absolute bar to discovery; manifestly, it cannot be invoked by the prosecution to preclude discovery by the defense of material evidence, or to lessen the state's obligation to reveal material evidence even in the absence of a request therefor.") (citing *Brady*; internal citation omitted)); *see also State v. Anderson*, 33 So.3d 882, 882 (La. 2010) (Johnson, J. indicating approval of granting writ) ("Clearly, there is no 'work product' exception for *Brady* material in either federal or state law. The accused has a constitutional right to exculpatory material that supersedes state legislative statutory privilege. Considering the recently disclosed evidence of the sole eyewitness' visual impairments, I would grant a stay to allow the defendant his right to compulsory process in order to develop his claims in support of his motion for New Trial. Where a 'witness may labor under a deficiency,' the defense should be afforded some latitude" in exploring the deficiency in order to satisfy the Sixth Amendment.").

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and Minnesota appellate courts to ascertain the scope of applicable privileges. *United States v. Zolin*, 491 U.S. 554, 572 (1989); *see also State ex rel. Humphrey v. Philip Morris*, 606 N.W.2d 676, 692 (Minn. Ct. App. 2000) ("In deciding whether existing discovery rules and caselaw required the district court to examine each document in camera to assess privilege claims, we begin again with the proposition that the district court has considerable discretion in controlling the discovery process, in fashioning protective orders, and in specifying the terms and conditions under which discovery will occur."); *Erickson v. MacArthur*, 414 N.W.2d 406, 409 (Minn. 1987) (involving civil matter regarding production of statements given as part of police internal-affairs investigation; "We hold that the trial court erred in not examining the requested material *in camera* to properly balance the competing interests at stake."); *Hunter*, 349 N.W.2d at 866 (noting trial court as well as court of appeals examined defense-requested documents *in camera*).

IV. THIS COURT SHOULD AUTHORIZE TROOPER LONDREGAN TO DEPOSE NOBLE.

During the March 1 meeting, defense counsel asked Larson if the HCAO would agree that the defense could depose Noble. Larson said that he would think about it and get back to the defense. The defense has received no response.

Minnesota Rule of Criminal Procedure 21.01 provides:

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Rule 21. Depositions

Rule 21.01 When Taken

The court may order that the testimony of a witness be taken by oral deposition before any person authorized to administer oaths, and that any designated book, paper, document, record, recording or other material, not privileged, be produced at the same time and place if all of the following circumstances exist:

(a) there is a reasonable probability that the testimony of the prospective witness will be used at hearing or at trial under any of the conditions specified in Rule 21.06, subd. 1;

(b) a charging document has been filed; and

(c) the requesting party has filed a motion and provided notice of the motion to the parties.

The order must also direct the defendant's presence at the deposition, and if the defendant is disabled in communication, direct the presence of a qualified interpreter.

Each of these three conditions exists. *First,* Trooper Londregan desires to use Noble's testimony as part of his *Florence* motion as well as trial. Minn. R. Crim. P. 21.01(a). Noble resides in California and is thus outside of this Court's jurisdiction. Minn. R. Evid. 804(a)(5) (witness is "unavailable" if witness "is absent from the hearing and the proponent of a statement has been unable to procure the declarant's attendance . . . by process or other reasonable means"); Minn. R. Evid. 804(b)(1) (former testimony of unavailable witness is admissible).

Second, the HCAO filed a charging document on January 24, 2024. Minn. R. Crim. P. 21.01(b).

And third, Trooper Londregan filed this motion and provided notice to the HCAO. Minn. R. Crim. P. 21.01(c). Accordingly, Trooper Londregan respectfully requests that this Court order Noble's deposition to be taken.

CONCLUSION

For the foregoing reasons, Trooper Londregan respectfully requests that this Court deny the HCAO's motion to quash the Noble Subpoena and grant his motion to compel in accordance with his proposed order.

DATED: March 11, 2024

Respectfully Submitted,

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