

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF WINONA

THIRD JUDICIAL DISTRICT

File No. 85-CR-23-937

State of Minnesota,

Plaintiff,

v.

**NOTICE OF MOTION AND
MOTION TO DISMISS STATE'S
AGGRAVATED DEPARTURE
MOTION**

Adam Taylor Fravel,

Defendant.

TO: The Honorable Nancy L. Buytendorp, Judge of District Court, and Karin L. Sonneman, Winona County Attorney's Office, 171 West Third Street, Winona, MN 55987

PLEASE TAKE NOTICE that the above-entitled matter is scheduled for a Contested Omnibus Hearing on March 19, 2023, at 9:00 a.m. At that hearing the Defendant will request an order dismissing the State's upward departure motion that was filed on November 17, 2023, for lack of probable cause pursuant to *State v. Florence*.

PROCEDURAL

On November 17, 2023, the State of Minnesota provided notice to the Defendant of its intent to seek an aggravated sentence pursuant to Minnesota Rule of Criminal Procedure 7.03. The State alleges that the victim/s were treated with particular cruelty for which the offender should be held responsible. Minn. Stat. § 244.10, subd. 5(a)(2); Minn. Sent. Guidelines II.D.3(b)(2). The State of Minnesota also hypothesizes that the offense in this case could have been committed in a location in which the victim had an expectation of privacy. Minn. Stat. § 244.10, subd. 5a(14); Minn. Sent. Guidelines II.D.3 (b)(14); *State v. Mohamed*, 779 N.W.2d 93, 100 (Minn. Ct. App. 2010) (finding the aggravating factor of zone-of-privacy can apply, even when parties share a home, if the crime occurs in the alleged victim's bedroom).

ANALYSIS

1. Particular Cruelty

Within the Minnesota Sentencing Guidelines the Court can find a number of aggravating factors which allow the Court to deviate from the Minnesota Sentencing Guidelines in the most egregious circumstances. The impetus behind the aggravating factors is to punish those individuals whose violation of the law is more serious than the normal charged offense for the same actions.

It is important for the Court to note that the Defendant is not charged with concealment of Ms. Kingsbury's body pursuant to Minn. Stat. § 609.502, subd. 1(1). Prior to *State v. Hicks*, the Court had repeatedly said that it is "unfair" to enhance a sentence based on factors underlying a separate, uncharged offense. *State v. Leja*, 684 N.W.2d 442, 452 (Minn. 2004).

The State of Minnesota encourages an upward departure (if the Defendant is found guilty of 2nd Degree Murder only) based not upon whether the victim was treated with particular cruelty but rather based upon extreme trauma and anguish to the family and friends of Ms. Kingsbury. Just as Justice Page and Justice Wright cautioned the majority in *State v. Hicks*, a departure based on harm to remote third parties is precisely the kind of departure against which the Minnesota Sentencing Guidelines caution. If the suffering of individuals other than the victim justify a determination that a crime was more serious than a typical case, then a departure similar to the one being request by the State in this case would apply to a majority of cases; thus, being contrary to the Minnesota Sentencing Guidelines Commission's instructions. Minn. Sent. Guidelines, 2.D.301. Such a departure would also violate the principles of "uniformity, proportionality, rationality, and predictability" in sentencing.

As Justice Wright concluded in *State v. Hicks*, if the Court finds that a defendant's offense is more serious because it traumatized family members, it also concludes that the murder of an individual without close family and community ties is a less serious offense. This reasoning would defeat the purpose of the Minnesota Sentencing Guidelines and the legislature's intended purpose that sentences should be reasonably related to the conduct of the convicted person.

The Court should note that the alleged behavior in this case more closely parallels the conduct the Minnesota Supreme Court reviewed in *State v. Schmitt*, 329 N.W.2d 56 (Minn. 1983). In *Schmitt*, the Court ruled that, “because defendant made no effort to bargain with information concerning the location of the body, his concealment of the body does not operate as an aggravating factor in sentencing.” *Id.*

In closing, at the contested hearing on March 19, 2024, the Defendant will request that the Court review carefully the caselaw of *State v. Schmitt*, 329 N.W.2d 56; *State v. Folkers*, 581 N.W.2d 321; *State v. Ming Sen Shiue*, 326 N.W.2d 648, 655; and *State v. Griller*, 583 N.W.2d 736 (Minn. 1998).

It is the Defendant’s position that a careful reading of the history of this issue, in conjunction with a review of the Minnesota Sentencing Guidelines, will lead the Court to determine that an upward departure based upon extreme trauma and anguish of third parties that were not present during the alleged offense is not a proper basis for an aggravated upward departure.

2. Zone-of-Privacy

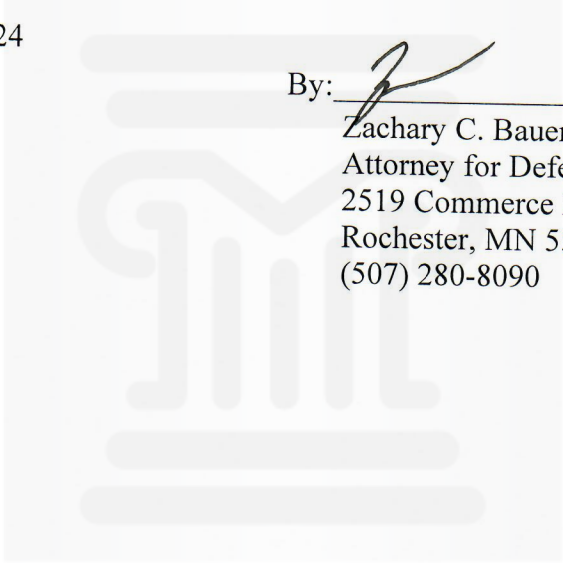
The Minnesota Sentencing Guidelines list zone of privacy as an aggravating factor than can support an upward departure. The zone-of-privacy aggravating factor generally encompasses a victim’s home. *State v. Jones*, 328 N.W.2d 736, 738 (Minn. 1983). But within a shared home, the zone of privacy is limited to an individual’s bedroom. *State v. Mohamed*, 779 N.W.2d 93, 100 (Minn. Ct. App. 2010).

In this case, the State of Minnesota has not presented any evidence that would support the belief that the alleged offense occurred within Ms. Kingsbury’s bedroom. It is accepted by all parties that Ms. Kingsbury and the Defendant resided together at the time of the alleged offense. Given those facts, the State of Minnesota should not be allowed to present an aggravating factor (zone of privacy) before a jury when they have no evidence to support the proposition that Ms. Kingsbury was murdered in her bedroom. Accordingly, the Defendant should not have to stand trial on this aggravated factor pursuant to *State v. Florence*, 239 N.W.2d 892 (Minn. 1976) and *State v. Gayles*, 915 N.W.2d 6 (Minn. Ct. App. 2018)

Respectfully Submitted,

MESHBESHER & SPENCE, LTD.

Dated: January 18, 2024



By: _____

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