STATE OF MINNESOTA
COUNTY OF RAMSEY

DISTRICT COURT
SECOND JUDICIAL DISTRICT

State of Minnesota,

Plaintiff,

vs.

Tamika Suttles,

Defendant.

Court File No. 62-CR-10-1465

DEFENDANT'S MOTIONS *IN LIMINE*

MOTION #1.

That the prosecution be prohibited from inquiring about the criminal history of Mr. Drljic unless and until the Court has considered the *Jones* factors.

MOTION #2.

That the prosecution be prohibited from calling any of the State's witnesses to the witness stand, unless and until it has provided the criminal history for that witness to the defense attorney, and the Court has considered what convictions that witness can be impeached with.

MOTION #3.

Because no *Spriegl* notice was provided by the pretrial, no *Spreigl* evidence can be allowed.

MOTION #4.

Often, police testify that certain behavior constitutes a crime or similar. The prosecutor should be ordered to instruct police witnesses to testify about facts, only, and not draw legal conclusions.[1] These conclusions prejudice the jury, and the defense reserves the right to move for a mistrial if this occurs.

MOTION #5.

The State has not disclosed any gang evidence or documentation/data in discovery. If the State intends to put on *any* evidence of anything to do with gangs, it should be required to give the Defense notice and make an offer of proof. That offer of proof should then be analyzed in light of Minnesota Supreme Court precedent,[2] to determine whether it is valid evidence, and/or whether it would unduly prejudice Jenkins or some other witness.

MOTION #6.

The State may attempt to use video or still pictures of defendants taken by police after their arrest. Defendants move to disallow the use of the word "mug shot" when

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[1] Under Minnesota law, police cannot testify that defendants broke the law, or that conduct is criminal. Those are conclusions based on factual determinations (for the jury), as applied to the law (for the jury or judge). *See, e.g.*, State v. Beihoffer, 129 N.W.2d 918 (Minn. 1964), which held that the comment by an experienced police officer to the effect that a defendant was immediately a suspect was improper, because it was conclusory in nature (about how the facts are applied to the law). To allow police to draw conclusions prejudiced Jenkins with the jury. The jury might believe that, as police officers, it is their job to know whether someone violated the law. And they might simply adopt the conclusion of police, rather than making their own determinations under the jury instructions. *See, e.g.*, Minn. R. Evid. 403 and 404. This would prejudice defendants.

[2] State v. Burrel, 697 N.W.2d 579, 605 (Minn. 2005) (District Court must carefully scrutinize expert testimony from a Gang Strike force police officer to ensure that it

describing lineups, or any picture of them. McCarr, Nordby, Minnesota Criminal Practice and Procedure, (West 2001), includes commentary at §7.2, that the word "mug shot" should never be heard by the jury. *See also* State v. Cermak, 350 N.W.2d 328 (Minn. 1984).

MOTION #7.

Police often try to put hearsay into the record. The Prosecution has already agreed that English's plea proffer cannot be put before the jury unless he is called to testify and available for cross examination. A broader recognition of Crawford should also apply to all police witnesses. In 2004, the United States Supreme Court held in *Crawford v. Washington* that "[w]here testimonial statements are at issue, the only indicium of reliability sufficient to satisfy constitutional demands is the one the Constitution actually prescribes: confrontation." 541 U.S. 36, 68-69, 124 S. Ct. 1354, 1374, 158 L. Ed. 2d 177 (2004). Police should be prohibited from testifying about what others said, unless and until they have been called to testify and cross examined.

ATTORNEYS FOR DEFENDANTS

Dated: November 8, 2010

s/jillclark
by_____
Jill Clark, Esq. (196988)
Jill Clark, P.A.
2005 Aquila Av. N.
Golden Valley, MN 55427
(Tel.) 763 417-9102
(Fax) 763 417-9112

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complies with directives in State v. DeShay, 669 N.W.2d 878 (Minn. 2003), and State v. Lopez-Rios, 669 N.W.2d 603 (Minn. 2003);