

STATE OF MINNESOTA
COUNTY OF OLMSTED

IN THE DISTRICT COURT
CRIMINAL DIVISION
THIRD JUDICIAL DISTRICT

State of Minnesota,

Plaintiff,

vs.

Shane Elroy Roper,

Defendant.

ORDER

Court File No. 55-CR-24-4513

The above-captioned matter came before the Honorable Lisa R. Hayne on February 12, 2025, for a Contested Omnibus Hearing, on Defendant Shane Elroy Roper's omnibus motions. At that hearing, the State was represented by Alan Michael DeBolt, Managing Assistant Olmsted County Attorney and Eric Woodford, Acting Olmsted County Attorney. Defendant, Shane Elroy Roper appeared and was represented by attorney Eric John Nelson, Bloomington Minnesota.

The Court, having reviewed the motion, having heard the testimony, and having considered the arguments of counsel, **HEREBY ORDERS AS FOLLOWS:**

1. Defendant's motion to dismiss charges is **DENIED**.
2. Defendant's motion to exclude *Spreigl* evidence is **DENIED** as premature. Defendant is entitled to renew any *Spreigl* motions at the time of trial.
3. Defendant's motion for an Order directing the State to produce all *Brady* materials is **GRANTED** insofar as the State is ordered to continue meeting its constitutional obligations under *Brady*. The motion is in all other respects **DENIED**.
4. Defendant's motion directing the State and/or the Department of Public Safety to produce all course instructor materials is **DENIED** as moot pursuant to the State's representation that all relevant materials have been disclosed. If the State subsequently discovers previously undisclosed material, the State is obligated to produce these materials to the Defendant.
5. Defendant's motion to strike surplusage from the State's complaint is **DENIED**.
6. Defendant's motion to preclude introduction of evidence that the Defendant was terminated from the Minnesota State Patrol is **DENIED** as

premature, pursuant to the State's representation that it does not intend to introduce direct evidence of Mr. Roper's termination at trial.

Mr. Roper is free to renew his motion to preclude evidence of termination at trial if the State attempts to introduce evidence which indirectly indicates Mr. Roper's termination.

7. Defendant's motion for change of venue is **RESERVED** by the agreement of the parties.
8. Defendant shall appear for a Plea Hearing on **May 29, 2025 at 11:00 a.m.** by **Zoom** in front of Judge Lisa R. Hayne.

<https://courts-state-mn-us.zoomgov.com/j/1614064333?pwd=Smd1ekd1RWEpRHV3eVo2UGRGRTd2UT09>

Meeting ID: 161 406 4333

Passcode: 839973

The court's Memorandum, filed herewith, is incorporated herein.

BY THE COURT

Lisa R. Hayne
Judge of District Court

Memorandum

Factual and Procedural Background

This case arises from a May 18, 2024 traffic collision which resulted in the death of an occupant of one of the vehicles involved and injuries to other occupants. The Defendant Shane Elroy Roper (“Mr. Roper”) was, at the time, a trooper with the Minnesota State Patrol. On May 18, 2024, Mr. Roper was on duty in Rochester Minnesota, conducting speed and traffic enforcement. Mr. Roper’s State Patrol squad, a 2021 Dodge Charger, was parked on the 6th Street ramp entrance to Highway 52, facing southbound. Mr. Roper was standing outside of his squad with a handheld LIDAR gun. Mr. Roper also has a “ride-along” with him, a Rochester Community Technical College Student. At approximately 5:41 p.m., Mr. Roper states that he witnessed a vehicle traveling on Highway 52 at a high rate of speed and the driver was using a cell phone and not wearing a seatbelt. Mr. Roper states he never got the speed of the vehicle via LIDAR because he observed the seatbelt and hands-free violations. Mr. Roper and his ride-along got into his patrol vehicle with the intent to catch up to the suspected violator and conduct a traffic stop. Mr. Roper entered Highway 52, traveling southbound, from the 6th St. ramp entrance. A witness to Mr. Roper’s entrance onto the highway was described by an independent witness as if there “was a murder on the highway.” Data extracted from Mr. Roper’s squad indicates Mr. Roper initially activated his emergency lights and accelerated to 98 miles per hour on Highway 52, between the 6th Street entrance ramp and the Highway 14 (12th Street SW) cloverleaf exit. The distance between that entrance ramp and the exit is about half a mile. Mr. Roper did not activate his siren at any point.

The suspected violator took the Highway 14 cloverleaf exit from highway 52, heading east towards Apache Mall. Mr. Roper initially moved into the middle lane of highway 52 and maintained that lane to pass slower moving right lane traffic. Mr. Roper then attempted to exit last-minute by cutting from the middle lane over to the exit lane. At the same time, a slower vehicle had started into the cloverleaf Mr. Roper arrived at the exit and attempted a cut-in from the left. The car became aware of Mr. Roper and initially applied the break—possibly an instinctive attempt to avoid collision; possibly a deliberate attempt to allow Mr. Roper to cut in. However, Mr. Roper slowed his vehicle in response and did not attempt to cut in front. The vehicle proceeded slowly up the cloverleaf, with Mr. Roper following behind. Squad cam and

body cam video recorded Mr. Roper's audible impatience with the other driver's decision-making; first commenting "alright, GO!" when the vehicle first applied their brakes, and then commenting "you could have pulled over" while following behind on the cloverleaf.

Once off the cloverleaf, Mr. Roper moved his squad into the lefthand lane of 12th Street, heading east towards the mall. Ahead of him was the Apache Drive SW intersection; a busy intersection because it is one of two entrances to all businesses at the mall south of Hwy 14 and to the north of Hwy 14 it is an entrance and exit to Memorial Parkway SW and a busy neighborhood.

When Mr. Roper exited the cloverleaf, he deactivated his lights. He was now driving his squad with no lights or sirens. Once on 12th Street, Mr. Roper fully engaged the throttle. Within a quarter mile, as he was approaching this intersection, his squad reached 83 miles per hour. The speed limit on 12th street is 40 miles per hour.

Roper's squad video indicates he had a green traffic signal as he approached the intersection. A large SUV was also headed eastbound on 12th street, but entered the left turn lane to turn north onto Memorial Parkway. The SUV's position partially obstructed Mr. Roper's view of the left turn lane of oncoming (westbound) traffic waiting to turn into the mall entrance.

The vehicle that Mr. Roper ultimately struck, a Ford Focus, was stationary in the westbound left turn lane, waiting to turn left into the mall entrance. It was occupied by two young adult sisters and a friend who were headed to eat at a restaurant adjacent to the mall. The women had just finished golfing; none had consumed alcohol or controlled substances.

Highway 14 crests at the cloverleaf such that Mr. Roper was driving slightly downhill when he approached the intersection. This crest shortens the line of sight for vehicles in the westbound left turn lane. Data from his vehicle indicates Mr. Roper did not slow at all as he was coming up to the intersection but was continuing to accelerate. 1.4 seconds before the crash, Mr. Roper was traveling at 83 miles per hour. The Focus began a left turn into the mall entrance as Mr. Roper approached the intersection at 83 miles per hour. Due to Roper's speed, he was unable to avoid colliding with the Ford Focus when it entered the intersection. Mr. Roper applied his brakes just before the accident but still struck the Ford Focus broadside ("T-boned" the Focus) on its passenger side, near the back passenger door. Squad data indicates Mr. Roper was traveling at least 55 miles per hour when he struck the Focus. The force of the accident pushed Mr. Roper's squad into a third vehicle waiting to turn out of the mall. That vehicle spun and landed in a ditch.

The back seat passenger of the Focus sustained severe blunt force trauma and never regained consciousness after the accident. She was transported to Mayo Clinic's emergency department but died a day later. The driver of the Focus sustained a liver laceration, a bruised kidney, and numerous additional minor injuries. The front seat passenger sustained a broken pelvis, a lacerated kidney, and numerous additional minor injuries. Both occupants of the vehicle pushed into the ditch sustained Physical pain and minor injuries. Mr. Roper's ride-along passenger sustained bruised ribs and several fractures.

Mr. Roper initially declined to speak to law enforcement without his attorney present, but subsequently agreed to an interview with counsel present. On June 17, 2024, Mr. Roper stated that on May 18, 2024, when he was driving he was attempting the "close the gap" between himself and the suspected violator in order to "catch up" but that he was not in active pursuit of that vehicle. Mr. Roper stated that he was not paying attention to his speed while he was driving. Mr. Roper stated that when he got onto 12th Street, he thought he had turned his squad lights down to "level 2" but had not turned them off. He also stated that he attempted to visually "clear" the intersection before entering it, but that he did not slow his speed because he had the green light. Mr. Roper stated that he routinely patrols the area of the crash and conducts traffic enforcement stops in or around the mall and was familiar with the area.

Minnesota State Patrol discipline records indicate Mr. Roper has had four previous crashes while on duty, caused by excessive speed or inattention. Further, the State has introduced evidence of multiple instances of Mr. Roper reaching excessive speed and/or not activating his lights and sirens, in scenarios where such speed was unwarranted, and proceeding at speed without lights or sirens was dangerous.

On July 9, 2024, the State charged Mr. Roper with nine offenses: one count of second-degree manslaughter, one count of criminal vehicular homicide, five counts of criminal vehicular operation, one count of reckless driving, and one count of careless driving. Mr. Roper has plead not guilty to all charges. On October 24, 2024, Mr. Roper filed seven contested omnibus motions, seeking:

1. Dismissal of counts I to VIII for failure to plead probable cause.
2. Preclusion of any evidence related to prior speeding or traffic incidents.
3. An order directing the State to produce any and all *Brady* material.

4. An Order directing the State to produce Minnesota State Patrol vehicle operation course instructor manuals.
5. An order striking narrative surplusage in the State's complaint.
6. Preclusion of any evidence related to Defendant's termination from the Minnesota State Patrol.
7. An order for a change of venue or venire due to significant pretrial coverage of the collision.

The State opposed all of Mr. Roper's motions. Parties agreed to reserve the change of venue issue for a later date. A contested omnibus hearing was held on February 12, 2025. Parties submitted post-hearing briefs and Mr. Roper's motions were taken under advisement.

Legal Analysis

Probable Cause Standard

Minnesota Rule of Criminal Procedure 11.04, subd. 1, governing probable cause motions, provides as follows:

- (a) The court must determine whether probable cause exists to believe that an offense has been committed and that the defendant committed it.
- (b) The prosecutor and defendant may offer evidence at the probable cause hearing.
- (c) The court may find probable cause based on the complaint or the entire record, including reliable hearsay.

The question on a probable cause challenge is "whether a defendant should stand trial." *State v. Florence*, 239 N.W.2d 892, 902 (Minn. 1976). This depends on a determination of whether, "given the facts disclosed by the record, [it is] fair and reasonable...to require the defendant to stand trial." *Id.* The *Florence* court described the probable cause analysis as follows:

The record before the trial judge consists of the verified complaint and the police report, including statements of witnesses. The prosecutor elects to stand on the record and presents no witnesses or additional evidence. The defendant offers no evidence but challenges the adequacy of the showing to support probable cause. If the trial judge is satisfied that the facts appearing in the record, including reliable hearsay, *would preclude the granting of a motion for a directed verdict of acquittal if proved at trial, [the trial court] will deny the motion.*

Florence at 903 (italics added).

The standard for granting a directed verdict of acquittal is whether:

[A]s a matter of law, the evidence is sufficient to present a fact question for the jury's consideration. In making this decision, the court must view the credibility of the evidence, and every inference which may fairly be drawn therefrom, in favor of the adverse party.

Paradise v. City of Minneapolis, 297 N.W.2d 152, 155 (Minn. 1980).

"The trial court's function at the omnibus hearing [does] not extend to assessing the relative credibility or weight of [the] conflicting evidence." *State v. Hegstrom*, 543 N.W.2d 698, 702 (Minn. App. 1996). This is because "the weight of contradicted evidence and credibility of witnesses are jury questions." *State v. Plummer*, 511 N.W.2d 36, 38 (Minn. App. 1994). *See also State v. Bliss*, 457 N.W.2d 385, 390 (Minn. 1990).

Probable Cause for the Charge Manslaughter in the Second Degree, Count I

Mr. Roper is charged with one count of manslaughter in the second degree. Pursuant to Minn. Stat. Ann. § 609.205 "A person who causes the death of another" by "the person's culpable negligence whereby the person creates an unreasonable risk, and consciously takes chances of causing death or great bodily harm to another by any of the following means is guilty of manslaughter in the second degree." *Id.* For manslaughter in the second degree, the State must prove the following elements:

1. The death of the victim death is proved.
2. The defendant caused the death of the victim.
3. The defendant caused the death by culpable negligence, whereby the defendant created an unreasonable risk and consciously took a chance of causing death or great bodily harm.
4. The Defendant's act took place in Olmsted County.

Minn. Stat. Ann. § 609.205; CRIMJIG 7.21 Manslaughter in the Second Degree, 10 Minn. Prac., Jury Instr. Guides — Criminal CRIMJIG 7.21 (7th ed.). Mr. Roper challenges the sufficiency of facts supporting elements 3 and 4— "culpable negligence" and "causation."

Culpable Negligence

Pursuant to *State v. Frost*, 342 N.W.2d 317 (Minn. 1983), culpable negligence can be defined as an intentional act constituting “gross negligence coupled with an element of recklessness” that caused the death of another. *Id.* at 320. In other words:

Culpable negligence is more than ordinary negligence. It is more than gross negligence...It is intentional conduct...which an ordinary and reasonably prudent person would recognize as involving a strong probability of injury to others.

Id.

To prove culpable negligence, the State must allege facts satisfying both “objective gross negligence on the part of the actor” and “subjective recklessness in the form of an actual conscious disregard of the risk created by the conduct.” *State v. McCormick*, 835 N.W.2d 498, 507 (Minn. App. 2013) (internal quotations omitted).

Objective Gross Negligence

Objective gross negligence may be shown by demonstrating the act in question was ‘a gross deviation from the standard of care that a reasonable person would observe in the actor’s situation.’” *Id.*

Mr. Roper argues that the State has not presented sufficient evidence that Mr. Roper’s conduct exhibited objective gross negligence. Mr. Roper argues his driving conduct was lawful and not grossly negligent because Minn. Stat. Ann. § 169.03, requires that emergency vehicles must obey traffic regulations, but grants an exemption where “such vehicle is operated in response to any emergency call or in the immediate pursuit of an actual or suspected violator of the law.” Mr. Roper argues:

Mr. Roper was clearly acting in the course of his duties in attempting to catch up with and stop the white sedan driven by somebody engaged in active violations of the laws the Defendant was tasked with enforcing. Hence, Mr. Roper was entitled to “special privilege” as he attempted to catch up to the driver.

The sedan’s driving conduct was dangerous, and any reasonable trooper in Mr. Roper’s situation would have engaged in the same response, particularly if they had the duty to do so. Simply put, his attempt to stop the sedan was not a “gross deviation from the standard of care that a reasonable person would observe” given Mr. Roper’s circumstance as an on-duty state trooper.

(Def. Mem., p. 7-8).

The Court cannot agree with the conclusions Mr. Roper draws. Generally, “[w]hether conduct constitutes gross negligence is a question for the trier of fact.” *State v. Al-Naseer*, 690 N.W.2d 744, 751 (Minn. 2005). The court finds that is the case here. While Minn. Stat. §169.03 authorizes emergency vehicles to disobey traffic regulations, it does not also authorize emergency vehicle drivers to act recklessly. For instance, while the statute explicitly authorizes emergency vehicles “to proceed through intersections when they have a red light, it also requires that the vehicle shall slow down as necessary for safety but may proceed cautiously past such red or stop sign or signal after sounding siren and displaying red lights....” Minn. Stat. § 169.03, subd. 2. Nothing within this statute authorizes an emergency vehicle to disregard a traffic regulation if such conduct is reckless.

Similarly, Minn. Stat. § 169.17 exempts emergency vehicles responding to an emergency from Minnesota’s speed limit statute. The statute explicitly states:

Drivers of all emergency vehicles shall sound an audible signal by siren and display at least one lighted red light to the front, except that law enforcement vehicles shall sound an audible signal by siren or display at least one lighted red light to the front. **This provision does not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of persons using the street, nor does it protect the driver of an authorized emergency vehicle from the consequence of a reckless disregard of the safety of others.**

Minn. Stat. Ann. § 169.17 (bold added).

Minnesota State Patrol General Order 22-20-012, effective at the time of Mr. Roper’s collision, reflects the principle that while officers may disregard traffic regulations in response to an emergency, this does not allow them to do so when their driving conduct would be reckless.

The Order states, in relevant part:

A. Members shall keep in mind, **and base their decisions on, the State Patrol mission of traffic safety that aims to protect all those who use our roads from injury or death.**

C. **The decision to start or engage in a pursuit must be made by weighing the risk to the public, members, and the fleeing driver** against any need for immediate apprehension of the fleeing driver and/or other occupants.

D. **The decision-making process must be continuously evaluated during the entire duration of the pursuit.**

E. **There are situations where the risk of personal injury or death associated with a motor vehicle pursuit is too high to justify anything other than discontinuing the pursuit.** No member will be disciplined for making a decision to discontinue a pursuit.

G. **While Minnesota law permits emergency vehicles to disregard traffic signs or signals when in pursuit of an actual or suspected violator of the law (Minn. Stat. sec. 169.03), nothing relieves the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of persons using the street, nor does it protect the driver of an authorized emergency vehicle from the consequences of reckless disregard for the safety of others (Minn. Stat. sec. 169.17).**

(Ex. G, p. 1) (bold added). When deciding whether or not to engage in a pursuit, the General Order States:

A. In the decision to engage in a pursuit, **members must weigh the risks associated with the pursuit against any need for immediate apprehension** of the fleeing driver and/or other occupants and continuously evaluate the decision to continue the pursuit as risk factors may change.

B. **When the risk factors present outweigh any need for immediate apprehension of the fleeing driver and/or other occupants, the pursuit shall be discontinued.** Risk factors to be continuously evaluated include, but are not limited to, the following: **intersections, speed,** duration, likelihood of pedestrians, sight lines, traffic conditions, and weather.

1. **In cases with a nonviolent offense** (e.g., traffic violations, stolen vehicle or other property crime, drugs, or unknown offense), **members shall give strong consideration to quickly discontinuing the pursuit.**

(*Id.*, p. 3). The General Order *also* states that a pursuit “shall be discontinued when” “there is a non-sworn passenger present in the state unit.” (*Id.* p. 2). Finally, the order states that when an officer engages in a pursuit, “members shall be in a pursuit-rated vehicle and **shall use flashing emergency lights and siren.**” (*Id.*, p. 5).

In this case, the court finds that the State has alleged facts sufficient that a reasonable jury could find Mr. Roper’s driving conduct was grossly negligent—that his actions were a gross deviation from the standard of care that a reasonable person would have observed in Roper’s

situation. The State does not allege that Mr. Roper simply disregarded a traffic regulation. They allege facts that, if true, demonstrate reckless driving conduct. Those alleged facts from which a jury could determine objective recklessness are: Roper's speed as high as 98 mph on a busy urban highway with a speed limit of 60 mph; speed of 83 mph until 1.4 seconds before striking the Ford Focus; maintaining that speed on a surface street with a speed limit of 40 mph; speeding towards a busy intersection at a time of day where many people are driving in the area; speeding towards an intersection where oncoming traffic had a limited sightline; speeding towards an intersection with no lights or sirens activated; accelerating towards the approach to the intersection. All drivers understand that high speeds make it harder to control motor vehicles as it reduces reaction time and has potential for greater injury if there is a collision. All drivers also understand that travel through a busy intersection poses more risks than traveling on a straight thoroughfare. As lights change, vehicles must necessarily slow and stop. Further, vehicles must cross paths at intersections, which unavoidably increases the risk of "head-on" or "T-bone" in the vicinity of an intersection. Here, based on the facts alleged by the State, a reasonable jury could find that Mr. Roper's driving conduct on Highway 52 and within in the vicinity of the 12th Street intersection was grossly negligent.

Subjective Recklessness

Subjective recklessness can be defined as "an actual conscious disregard of the risk created by [Mr. Roper's] conduct." *Frost*, 342 N.W.2d at 320. This element goes to Mr. Roper's "state of mind." *Id.* The State must allege facts tending to show that Mr. Roper engaged in "intentional conduct...which an ordinary and reasonably prudent person would recognize as involving a strong probability of injury to others." *Id.* at 320.

Mr. Roper argues that the State failed to allege facts showing Mr. Roper had an actual and conscious disregard for the risk created by his conduct. Mr. Roper argues:

Mr. Roper's "state of mind" at the time was to enforce traffic laws and protect public safety. ... before the incident, [Mr. Roper] initiated his emergency lights, slowed for the vehicle in front of him through the exit ramp, ensured he had a solid green light through the traffic light, and checked to make sure no other traffic was moving through the intersection before approaching the 12th Street SW and Apache Drive SW. After the incident, he rendered aid to the occupants of the Ford Focus, with his efforts focused primarily on Victim 1—hardly evidence that he acted with conscious disregard of the risk.

(Def. Mem., p. 8-9). Mr. Roper argues that the “only action” he took which could “arguably” have created risk was “turning off his emergency lights,” but that the action was “clearly inadvertent (*i.e.*, not “conscious”) (*Id.* at p. 9).

The court finds that the State has alleged sufficient facts for a reasonable jury to find that Mr. Roper intentionally engaged in conduct that a reasonably prudent person would recognize as likely to cause injury to others.

First, the facts allege that Mr. Roper was extremely familiar with the area; that he knew the speed limit was 40 miles an hour; that he knew he was approaching a busy intersection; and that he knew on-coming traffic had a limited sightline. The facts also allege that Mr. Roper knew he was traveling at a high speed, but consciously chose not to “pay attention to” exactly how fast he was traveling because he had a “green light.” The facts also allege he knew he did not have his siren sounding as he approached the intersection, and he knew he was pursuing a vehicle only suspected of routine traffic violations.

Second, the State alleges facts showing Mr. Roper has received significant driving instruction via his employment with the State Patrol. That instruction would have taught him the dangers of the above-described driving conduct. The decision, then, to engage in such conduct *after* receiving this training could indicate, to a reasonable jury, an intentional disregard for risks Mr. Roper had been repeatedly made aware of.

While Mr. Roper argues that his action to turn off his lights was “clearly inadvertent,” the court disagrees. The State seeks to admit evidence that Mr. Roper frequently traveled at high rates of speed without his lights activated—evidence that the switch-off was intentional, not a mistake. Whether or not Mr. Roper is truthful in his assertion that he did not intend to switch his lights all the way off is a credibility determination for the jury.

Finally, there is also evidence in the record of Mr. Roper displaying irritation by the cloverleaf delay. A reasonable jury could find that Mr. Roper consciously approached the intersection in question at over 80 mph with his foot on the accelerator, with no lights or sirens, as an intentional, frustrated reaction to being slowed down. That is, there is evidence he *knew* his driving conduct was reckless and risky but may have chosen to proceed with his conduct out of frustration with being delayed by an interfering vehicle.

The State has alleged sufficient facts to show both objective and subjective elements of culpable negligence, such that dismissal of the charge pursuant to *Florence* is inappropriate on those grounds.

Causation

Under Minn. Stat. Ann. § 609.205, in order to sustain a charge of second-degree manslaughter, the defendant's actions must have caused the victim's death. Causation can be defined as the action of the defendant having a "substantial contributing cause" to the victim's death. *State v. Olson*, 435 N.W.2d 530, 534 (Minn. 1989). A defendant's actions are not the cause of death where there is a superseding cause—"an efficient independent force in which defendant did not participate or which he could not reasonably have foreseen." *State v. Schaub*, 44 N.W.2d 61, 64 (1950). However, such an intervening cause must be the *sole* cause of death. *State v. Gatson*, 801 N.W.2d 134, 146 (Minn. 2011). "When the acts or omissions of two or more persons combine to bring about a harmful result, those acts or omissions are *concurring* causes of harm. *State v. Hofer*, 614 N.W.2d 734, 737 (Minn. App. 2000), *review denied* (Minn. Aug. 15, 2000). As a defendant's actions must only be a "substantial contributing cause," a defendant may still be found guilty for second-degree manslaughter if the defendant's culpable negligence was a concurring cause of the victim's death. *See Hofer*, 614 N.W.2d at 736.

Mr. Roper argues there are insufficient allegations of causation in the record because the facts demonstrate the driver of the Ford Focus caused the accident, not Mr. Roper. Mr. Roper argues he proceeded through the intersection with a green light, and the Ford Focus should have yielded to his vehicle. Mr. Roper argues that the failure to yield caused the accident, not his actions. Mr. Roper similarly argues there are facts in the record suggesting the victim was not wearing her seatbelt at the time of the accident and it was her lack of seatbelt caused her death, not Mr. Roper.

The court finds these arguments unpersuasive. The driver of the Ford Focus did in fact have an obligation to yield to the oncoming traffic, however a jury could find that her actions were completely appropriate, and that the collision would not have occurred if Mr. Roper had not been travelling 43 miles OVER the posted speed limit without lights or sirens. It is reasonable to believe that Ford Focus driver would not have seen Mr. Roper's squad when she entered the intersection to attempt her turn.

Further, while there are facts in the record which show that the victim may not have been wearing her seatbelt at the time of the collision, it has not yet been definitively established—the victim here is deceased and cannot speak to her seatbelt usage at the time of the collision. Further, with the high speed at which Mr. Roper was traveling when he collided with the Ford Focus, a reasonable jury could find that, even if the victim was not wearing her seatbelt, Mr. Roper’s actions were still a substantial contributing cause of her death. It is a question of fact for the jury: (1) whether the deceased victim was wearing her seatbelt, and (2) whether and to what degree the lack of seatbelt contributed to her death. A motion to dismiss charges under *Florence* is therefore inappropriate.

Probable Cause for Gross Negligence Counts II-VII

Counts II-VII of the complaint charge Mr. Roper with criminal vehicular homicide and grossly negligent criminal vehicular operation. All six charges require the same standard:—grossly negligent conduct causing death (criminal vehicular homicide) or injury (criminal vehicular operation), plus causation. For instance, criminal vehicular homicide requires showing that the defendant operated a motor vehicle in a grossly negligent manner, causing the death of the victim. Minn. Stat. § 609.2112, subd. 1(1). (“a person is guilty of criminal vehicular homicide ...if the person causes the death of a human being...as the result of operating a motor vehicle...in a grossly negligent manner.”).

As the court has found probable cause for Count I—which requires allegations sufficient to support a higher standard of culpable negligence—the court necessarily finds there to be probable cause for Counts II-VII, which require only gross negligence. Culpable negligence requires allegations showing objective gross negligence *plus* the additional the additional element of subjective recklessness. Counts II-VII require only gross negligence, which has been satisfied.

Causation is similar—the same showing of causation is required for counts II-VII as was required for count I. The court finds the State has alleged facts sufficient to show both gross negligence and causation of the collision.

Probable Cause for Reckless Driving Count VIII

Under Minn. Stat. § 169.13, subd. 1(a), to demonstrate probable cause, the State must allege facts showing: (1) the defendant drove a motor vehicle (2) while aware of and consciously disregarding a substantial and unjustifiable risk that the driving may result in harm to another or another's property. The State must show the risk was of such a nature and degree that its disregard constitutes a significant deviation from the standard of conduct that a reasonable person would observe in the situation. *Id.*

Mr. Roper argues the State has not alleged sufficient facts to demonstrate reckless driving because “Mr. Roper did not engage in any driving conduct that could be construed as “consciously disregarding” risk.” (Def. Mem. p. 18). Mr. Roper argues that “any less than-perfect driving conduct” was “justified” by Mr. Roper’s attempt to “catch up to a speeding vehicle” and is not a significant deviation from the standard of conduct in which a reasonable person would engage. The Court cannot agree. As analyzed above, the allegation here is that Mr. Roper pursued a suspected speeder at an excessive speed on highway 52 while never engaging his siren; exited onto a busy surface street with a 40 mile-per-hour speed limit; turned his lights off; and accelerated up to 82 miles per hours approaching a busy mall intersection with limited visibility for oncoming traffic. The State further alleges that Mr. Roper approached that intersection without checking his speed or slowing for safety through the intersection, and that the car turning left into the mall entrance had no opportunity to avoid the accident because Mr. Roper was traveling too fast. Finally, the State alleges that Mr. Roper was very familiar with the area and the traffic patterns, and had also received significant training from the Minnesota State Patrol in safe driving. A reasonable jury, when presented with such information, could reasonably find Mr. Roper’s drove recklessly. There is probable cause for this charge.

***Spreigl* Evidence--Admissibility of Prior Driving Conduct**

Under the Minnesota Supreme Court’s decision in *State v. Spreigl*, 139 N.W.2d 167 (1965), evidence of propensity must be excluded except for the purposes of impeachment. Minnesota Rule of evidence 404(b) mandates that “[e]vidence of another crime, wrong, or act is not admissible to prove the character of a person in order to show action in conformity therewith...” Rule 404(b). There are, however, exceptions to inadmissibility of *Spreigl* evidence. Under Minnesota Rule of Evidence 404(b), *Spreigl* evidence may “be admissible for

other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.” Minn. R. Evid. 404(b)(1).

Minnesota has notice requirements for introducing *Spreigl* evidence. Minnesota Rule 7.02 requires:

Subd. 1. Notice of Other Crime, Wrong, or Act. The prosecutor must notify the defendant or defense counsel in writing of any crime, wrong, or act that may be offered at the trial under Minn. R. Evid. 404(b).

Subd. 3. Contents of Notice. The notice required by subdivisions 1 and 2 must contain a description of each crime, wrong, act, or specific instance of conduct with sufficient particularity to enable the defendant to prepare for trial.

Subd. 4. Timing.

(a) In felony and gross misdemeanor cases, the notice must be given at or before the Omnibus Hearing under Rule 11, or as soon after that hearing as the other crime, wrong, act, or specific instance of conduct becomes known to the prosecutor.

Minn. R. Crim. P. 7.02.

On February 11, 2025 the State filed intent to introduce *Spreigl* evidence of four prior collisions Mr. Roper caused while on duty, evidence of Mr. Roper driving with excessive speed, non-use of emergency lights or sirens, or disregard for the safety of other motorists in the traffic stops he conducted on May 18, 2024 in the hours before the fatal collision, and evidence of similar conduct by Mr. Roper on previous occasions when responding to emergent situations while on duty. The notice stated that the State planned to introduce the evidence for the purposes of “proof of motive, opportunity, intent, preparation, plan, knowledge, identity, state of mind, or absence of mistake or accident.” (MNCIS Inv. #30).

Mr. Roper argues that the *Spreigl* notice filed by the State is not sufficiently narrow or specific because it named all exceptions listed in Rule 404(b). Mr. Roper also urges the court to conduct an admissibility analysis of the evidence now, at the contested omnibus stage. Mr. Roper argues:

In determining whether proffered *Spreigl* evidence is admissible, the Court must adhere to a five-step process:

(1) the state must give notice of its intent to admit the evidence; (2) the state must clearly indicate what the evidence will be offered to prove; (3) there must be clear and convincing evidence that the defendant participated in the prior act; (4) the evidence must be relevant and material to the state's case; and (5) the probative value of the evidence must not be outweighed by its potential prejudice to the defendant.

Ness, 707 N.W.2d at 686; Minn. R. Evid. 404(b)(2).

“The prosecutor must specifically articulate to the trial court how the evidence is relevant to an issue in the case and demonstrate that the purpose of the evidence is not improper.” *State v. Billstrom*, 149 N.W.2d 281, 284 (Minn. 1967).

(Def. Reply Mem. p. 19-20).

First, the court finds that the State's notice is adequate and meets all requirements of Rule 7.02. Rule 7.02 requires only that the State provide a description of the prior *incidents* with “sufficient particularity.” The State has done so; it named the specific incidents, including a description and date of occurrence. Rule 7.02 does not require that the State provide *any* information as to which admissibility exception they will argue at trial.

Second, the State argues that the balance of Mr. Roper's request is premature, and the court agrees. Contrary to Mr. Roper's characterization, the five-step process cited by Mr. Roper does not occur simultaneously. Notice is offered first. Later, closer to the trial stage or at trial itself, counsel typically makes arguments as to admissibility under Rule 404(b). The cases cited by Mr. Roper address admissibility analyses made by the trial court *at the time of trial*. For instance, Mr. Roper quoted *State v. Montgomery*, 707 N.W.2d 392 (Minn. App. 2005) for the court's holding that “It is not sufficient simply to recite a 404(b) purpose without also demonstrating at least an arguable legitimacy of that purpose.” (Def. Mem., p. 20). However, *Montgomery's* description of the *Spreigl* process makes clear that those admissibility considerations are made at the time of trial:

Prior to trial, the state notified Montgomery that it would offer *Spreigl* evidence of two past convictions of possession of a controlled substance from 1993 and 1998 respectively. In discussions outside the presence of the jury, the prosecutor noted the court's obligations regarding the offer of the *Spreigl* evidence...Opposing the *Spreigl* offer, defense counsel argued that the prior crimes were for possession and not a sale and thus did not show any pattern of behavior and that they were remote in time.

State v. Montgomery, 707 N.W.2d 392, 398 (Minn. App. 2005). As the State points out, this issue has been directly addressed by the Minnesota Supreme Court in *State v. Hannuksela*, 452 N.W.2d 668, 678 (Minn. 1990):

Appellant first argues that although the state provided grounds for the exception to the exclusionary rule, the notice was meaningless because the state listed every known exception. He argues that this type of “shotgun notice” does not meet the requirement of specificity. The rules of criminal procedure require that counsel for defendant be notified “of any additional offenses, the evidence of which may be offered at the trial under any exceptions to the general exclusionary rule.” Minn.R.Crim.P. 7.02. The prosecutor gave the proper notice on January 27, 1989. **The rule does not require that the prosecutor specify under which exception the evidence fits at the time the notice is filed. Rather, “at the time the evidence is offered, the prosecutor shall specify the exception** to the general exclusionary rule under which it is admissible.” *State v. Matteson*, 287 N.W.2d at 411.

Id. at 678 (bold added). Specific issues of admissibility will be taken up at trial when the record is more developed. The Court declines, at this early stage, to make any rulings on admissibility of evidence. Mr. Roper’s motion to exclude *Spreigl* evidence is denied as premature; Mr. Roper is free to renew these issues at trial.

***Brady* Materials**

Mr. Roper asks that the Court “compel the State to conduct a *Brady* review of the personnel files and all other information regarding law enforcement officers involved, from all law enforcement agencies that have employed such officers, and to disclose any potential exculpatory or impeachment evidence to the Defense.” (Def. Mem., p. 27). *Brady v. Maryland*, 373 U.S. 83 (1963), mandates that the State has an affirmative duty to disclose evidence that is favorable and material to the defense. The duty to disclose includes both exculpatory and impeachment evidence. *United States v. Bagley*, 473 U.S. 667, 676 (1985).

Mr. Roper’s arguments here are general. Mr. Roper does not, for instance, indicate that the State has been refusing to cooperate in the disclosure of certain witness personnel files to Mr. Roper; or that it has been refusing to conduct a *Brady* review of its personnel files; or that Mr. Roper believes the State is shirking its obligations under *Brady* in some manner.

In its response to Mr. Roper, the State asserts that it is aware of their obligations under *Brady* and that “the State will continue to seek out any exculpatory evidence related to law enforcement witnesses connected to this case and disclose any such evidence to the defense

immediately upon learning of it.” In his reply memorandum, Mr. Roper did not address the State’s response regarding *Brady*. This further indicates to the court that Mr. Roper has no particularized suspicion of malfeasance on the part of the State.

The court will make clear here that it expects the State to continue meeting its disclosure obligations under *Brady*, including proactive review of law enforcement witness records. In any event, as the State has explicitly asserted it is already fulfilling their *Brady* obligations, and as Mr. Roper has made no specific accusations regarding the withholding of evidence, the Court will not compel the State to engage in what would amount to a comprehensive, duplicative re-review of their records. If Mr. Roper has some more articulable suspicion of withholding, he may make more targeted motion for disclosure.

Disclosure of Training Materials

Mr. Roper asks the court to compel production of “all course instructor materials related to training in the operation of Minnesota State Patrol vehicles to the Defense.” (Def. Mem., p. 27). Mr. Roper argues that he requested these materials from the State “several months prior to the Omnibus hearing” but that “to date, [t]he State has yet to disclose the requested materials.” (*Id.* p. 28).

The State, however, asserts in its responsive memorandum that it has obtained and disclosed all such materials in their possession. The State describes the volume of these materials as “significant.” Mr. Roper’s reply does not address the State’s representation that it has, in fact, turned over all relevant course materials; that there is no withheld material. The court thus instructs generally that the State must continue to produce any training materials that relate to this case.

Improper Surplusage

Under Minn. R. Crim. P. 17.04, Mr. Roper requests that the Court strike certain portions of the charging document as surplusage. Rule 17.04 states simply that “The court on motion may strike surplusage from the charging document.” Mr. Roper asks that “all details that do not involve Mr. Roper’s specific conduct on the date of the instant alleged offenses must be stricken as improper surplusage. Mr. Roper does not, however, identify which specific language within the charging document he seeks to be struck.

After further review of the charging document, the language Mr. Roper to which Mr. Roper likely refers to are two paragraphs. One regards law enforcement review of Mr. Roper's driving record and driving pattern in the hours leading up to the accident. The second regards Mr. Roper's State Patrol training records.

The term "surplusage" is not defined within the rule, nor does Minnesota case law provide a comprehensive definition—what is objectionable "surplusage" and what is not. Mr. Roper cites to federal law for a description: "immaterial or irrelevant allegations in an indictment or information, which may... be prejudicial." *See* Fed. R. Crim. P. 7, *Advisory Com. Notes* (1944)."

The language to which Mr. Roper objects has been identified by the State as *Spreigl* evidence which they intend to admit (or attempt to admit) at trial. Adopting the definition provided by Mr. Roper, the Court does not find that the paragraphs contained in the Complaint regarding Mr. Roper's prior on-duty driving conduct is "immaterial" or "irrelevant" such that their inclusion in the charging document would be unduly prejudicial. As the State has argued, the evidence outlined in these paragraphs may be admissible *Spreigl* evidence and would be relevant to show: Mr. Roper's knowledge of the dangers of excessive speed, knowledge of the speed his car was traveling right before the accident, intent to drive at a speed known to be dangerous, the dangers of inattentive driving, or lack of mistake as to the position of his lights. As discussed above, one of the elements of second-degree murder is culpable negligence. Culpable negligence requires objective proof of recklessness in the form of conscious disregard of a known risk, and subjective proof of the actor's state of mind. The evidence identified by Mr. Roper as "surplusage" may be relevant to support both those elements. The court does not find those paragraphs to be irrelevant or immaterial surplusage and will not strike them.

Evidence at Trial of Defendant's Termination

Mr. Roper requests a ruling disallowing the State from introducing evidence of the Minnesota State Patrol's termination of Mr. Roper's employment. The State, however, has responded that it "does not intend to introduce evidence of the ultimate determination by the Minnesota State Patrol to terminate the defendant." (State Mem., p. 28). The State does,

however, say it is reserving the right to request admission of evidence the State Patrol may have relied on in reaching the decision to terminate employment. (*see id.*)

As the State has confirmed it does not plan to introduce direct evidence of Mr. Roper's termination, the Court declines to make a ruling on the issue. If the State attempts at trial to admit evidence that is either directly or tangentially related to Mr. Roper's termination from the Minnesota State Patrol, the Court will determine admissibility at that time.

L.R.H.

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