

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

STATE OF MINNESOTA,

Plaintiff,

vs.

**ORDER FOR JUROR
ANONYMITY AND SEQUESTRATION**

**DEREK MICHAEL CHAUVIN,
TOU THAO,
THOMAS KIERNAN LANE,
J. ALEXANDER KUENG,**

Dist Ct. File 27-CR-20-12646
Dist Ct. File 27-CR-20-12949
Dist Ct. File 27-CR-20-12951
Dist Ct. File 27-CR-20-12953

Defendants.

This matter came before the Court on September 11, 2020, on motions for an anonymous jury and for jury sequestration.

Keith Ellison, Minnesota Attorney General, Matthew Frank, Assistant Attorney General and Neal Kumar Katyal, Special Assistant Attorney General, appeared on behalf of the State of Minnesota.

Eric J. Nelson, Attorney at Law, appeared on behalf of Defendant Chauvin. Robert M. Paule and Natalie R. Paule, Attorneys at Law, appeared on behalf of Defendant Thao. Earl P. Gray, Attorney at Law, appeared on behalf of Defendant Thomas Lane. Thomas C. Plunkett, Attorney at Law, appeared on behalf of Defendant Kueng. All Defendants were present.

Based on all the files, records, and proceedings, the Court makes the following:

FINDINGS OF FACT

1. The Defendants are charged with various homicide offenses involving the death of George Floyd on May 25, 2020.

2. The death of George Floyd, subsequent protests, related civil unrest, and the instant criminal litigation have been covered extensively and continually by local media and media around the world. It is unlikely that any person in the State of Minnesota has not been exposed to some publicity regarding this case.
3. Protests have been held frequently in downtown Minneapolis, demanding justice for George Floyd, including a protest on September 11, 2020, outside the Hennepin County Family Justice Center while the motion hearing in the above-captioned cases was being held.
4. From the Court's own observations during breaks, and from media video broadcasts, it is clear that the September 11, 2020 protest was generally peaceful; although chanting could be heard in Family Justice Center hallways and rooms overlooking the protests, chanting could not be heard within Courtroom 630 itself. Although most of the hundred or so participants remained peaceful throughout, at the conclusion of the hearing, some protesters physically and verbally harassed the Defendants and their attorneys as they departed from the Family Justice Center. A Hennepin County Sheriff's Office captain was also harassed as he made his way back to the Family Justice Center after Defendants and their attorneys left the scene. One protester damaged one Defense Counsel's truck by ramming it with a bicycle. After the experience of departing from the September 11 hearing, the defense attorneys have expressed concerns for their personal safety and the safety of their clients. The Court finds those concerns are credible.¹

¹ The trial in this case will be in Courtroom 1856 at the Hennepin County Government Center. While that courtroom is smaller than Courtroom 630 at the Hennepin County Family Justice Center, the Hennepin County Government Center allows the Court and law enforcement greater flexibility to ensure the safety of all participants than was the case at the Family Justice Center.

5. In an obvious attempt to intimidate persons involved in this case, some protesters have picketed the homes of at least one Defendant, the head of the police union and the Hennepin County Attorney.² The County Attorney's home was also vandalized during the period of civil unrest following the death of George Floyd.
6. The undersigned has received many *ex parte* voice mails, e-mails, notes and letters from the general public, suggesting or demanding that the Court decide the case in a certain way, most often against the Defendants. Most of these communications have been respectful, but more than one message has been hostile and threatening.
7. During the September 11, 2020 motion hearing, all the defense attorneys acknowledged receiving many messages from the general public, with almost all of those messages being negative. Counsel for Defendant Chauvin has logged the emails received about this case and reported having received over one thousand negative or threatening emails.
8. Given the high volume of unsolicited *ex parte* communications the Court and counsel have received, it is highly likely that persons with an interest in this case may also attempt to contact jurors in this case to argue for a specific result. Such communication would be improper³ and all reasonable means should be taken to insulate the jury from

² The statutory definition of harassment in the criminal code includes "targeted residential picketing." See Minn. Stat. § 609.748 subds. 1(a)(2), 1(c).

³ See *Sheppard v. Maxwell*, 384 U.S. 333, 350-51, 362 (1966) (citations omitted):

'[l]egal trials are not like elections, to be won through the use of the meeting-hall, the radio, and the newspaper.' . . . [N]o one [should] be punished for a crime without 'a charge fairly made and fairly tried in a public tribunal free of prejudice, passion, excitement,' . . . [Although] 'freedom of discussion should be given the widest range compatible with the essential requirement of the fair and orderly administration of justice' . . . it must not be allowed to divert the trial from the 'very purpose of a court system * * * to adjudicate controversies, both criminal and civil, in the calmness and solemnity of the courtroom according to legal procedures.' . . . Among these 'legal procedures' is the requirement that the jury's verdict be based on evidence received in open court, not from outside sources. . . . Due process requires that the accused receive a trial by an impartial jury free from outside influences.

such contact. Reasonable measures in this case include having an anonymous jury and some sequestration of the jury during the trial and deliberations. Media reports during trial, however, are likely to report on the evidence already presented and unlikely to unduly prejudice the jury, even if some members disregard the Court's usual instruction to avoid all media coverage of the case, so full sequestration is not necessary during the trial itself.

9. Strong reasons exist to believe that threats to jurors' safety and impartiality exist in all four of these cases.

CONCLUSIONS OF LAW

1. Minn. R. Crim. P. 26.02 subd. 2(2) provides that the Court "may restrict access to prospective and selected jurors' names, addresses, and other identifying information if a strong reason exists to believe that the jury needs protection from external threats to its members' safety or impartiality."
2. Minn. R. Crim. P. 26.03 subd. 5(3) requires sequestration of a jury "if the case is of such notoriety or the issues are of such a nature that, in the absence of sequestration, highly prejudicial matters are likely to come to the jurors' attention."
3. Minn. R. Crim. P. 26.02 subd. 4 allows the Court to order that the examination of each juror take place outside of the presence of other chosen and prospective jurors. Such sequestered selection is mandatory if a significant possibility exists of pretrial exposure to prejudicial material. Minn. R. Crim. P. 26.02 subd. 4(2)(b).
4. In a trial where defendants are joined, the Court has discretion to expand the number of peremptory challenges allotted to each side. Minn. R. Crim. P. 26.02 subd. 6. If there is

more than one defendant, the court may permit peremptory challenges to be exercised separately or jointly. *Id.*; *State v. Jackson*, 773 N.W.2d 111 (Minn. 2009).

Therefore,

IT IS ORDERED

1. District Court administration shall not divulge prospective and selected jurors' names, addresses, and other identifying information except to attorneys involved in the litigation of this case.
2. Attorneys who receive prospective and selected jurors' names, addresses, and other identifying information shall not disclose that information to anyone except their clients or employees and contractors working with the attorneys on this case. Anyone receiving this information from the attorneys shall also keep it confidential as required by this Order.
3. Juror questionnaires that are filed as public documents shall be redacted to remove all jurors' names, addresses, and other identifying information and shall identify jurors with sequential numbers reflecting the random order list position of each juror or potential juror.
4. The jurors' names, addresses, and other identifying information shall be kept confidential by the Court and all parties throughout the trial and deliberation. At the conclusion of deliberations, jurors' names and some contact information shall be made public only by the Court and on a date designated by the Court in a subsequent written Order. Anything not expressly made public shall remain confidential.
5. Jury selection will be conducted by sequestered selection as specified in Minn. R. Crim. P. 26.02 subd. 4(3)(d).

6. Each Defendant shall be allowed five peremptory challenges (for a total of twenty peremptory challenges for the Defense). The State shall be allowed twelve peremptory challenges. Defense peremptory challenges, when exercised, shall be exercised at the end of each Defendant's examination of the juror. The Court, on request, may allow a Defendant to exercise a peremptory challenge later if good cause is shown. The order in which defense examinations will be conducted will be determined by the Court and will rotate based primarily on the number of peremptory challenges each Defendant has remaining (*i.e.*, Defendants with fewer remaining will examine after other Defendants). The State will exercise its peremptory challenges at the conclusion of its examination of each individual juror.
7. Up to four alternate jurors will be selected and seated throughout the trial. Alternate jurors shall be selected and serve as set forth in Minn. R. Crim. P. 26.02 subd. 9.
8. Attorneys and the Court will refer to a juror or potential juror only by the number assigned to that juror.
9. Jurors will be partially sequestered during trial.
 - a. The Hennepin County Sheriff's Office (HCSO) will arrange for vehicle parking for jurors at a remote or nearby secure location and escort or transport jurors through a non-public access portal to a designated jury room in the Hennepin County Government Center. Jurors who cannot drive will be reimbursed for taxi or ride-sharing services and follow a security plan set out by HCSO.
 - b. HCSO will keep the jurors secure throughout each day of trial, including during breaks. During the day, jurors will remain in the Hennepin County Government

Center. Court administration will provide lunch for jurors during the midday recess. Jurors may use electronic devices during any recess during trial.

- c. At the conclusion of each day of trial, jurors will be escorted or transported back to their vehicles by HCSO. Jurors will be released each day with an admonition to avoid media coverage of the trial and to report back to the Court any attempts to contact them about the trial.
 - d. The Court may order full sequestration at any time if the partial sequestration plan proves ineffective in keeping the jurors free from outside influence.
10. Jurors will be fully sequestered during deliberation pursuant to Minn. R. Crim. P. 26.03 subd. 5, except that jurors will be allowed to use electronic devices to contact family members as long as the jurors continue to avoid discussion of the trial. HCSO deputy sheriffs will supervise the jury while the jury is sequestered.
11. A daily trial schedule is attached.

BY THE COURT

Peter A. Cahill
Judge of District Court

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DAILY TRIAL SCHEDULE

Dist Ct. File 27-CR-20-12646
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9:00 Legal Issues
9:15 Jury Arrives
9:30 Trial Session
10:40 Break
11:00 Trial Session
12:30 Lunch Break
1:30 Trial Session
3:00 Break
3:20 Trial Session
4:30 Adjourn for the Day or Extended Trial Session or Legal Issues
5:00 Adjourn for the Day or Break before Evening Session if Jury Sequestered
6:00 Trial Session if Jury Sequestered
7:30 Adjourn for the Day