Filed in District Court
State of Minnesota
12/18/2020 4:32 PM

STATE OF MINNESOTA | DISTRICT COURT

COUNTY OF HENNEPIN | FOURTH JUDICIAL DISTRICT

STATE OF MINNESOTA,

Plaintiff,

ORDER DENYING MOTION TO RECONSIDER AND AMEND ORDER ALLOWING AUDIO AND VIDEO COVERAGE OF TRIAL

vs.

DEREK MICHAEL CHAUVIN,	Dist Ct. File 27-CR-20-12646
TOU THAO,	Dist Ct. File 27-CR-20-12949
THOMAS KIERNAN LANE,	Dist Ct. File 27-CR-20-12951
J. ALEXANDER KUENG,	Dist Ct. File 27-CR-20-12953

Defendants.

This matter came before the Court, by written submissions only, on the State's motion, filed November 16, 2020, for reconsideration of the Court's November 4, 2020 order allowing audio and video coverage of the joint trial scheduled in the above-captioned matters.

The State filed a brief (and an attachment) in support of its motion to reconsider on November 25, 2020. Defendants Chauvin, Thao, and Kueng filed briefs in opposition to the State's motion on December 14, 2020 (and Thao also filed an attachment). The Media Coalition filed a brief in opposition to the State's motion on December 14, 2020, supported by Declarations by Grace Wong and Suki Dardarian.

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

ORDER

1. The Court **AFFIRMS** its original order of November 4, 2020, and **DENIES** the motion insofar as it requests the Court to modify its original order allowing audio and video coverage of the joint trial.

Filed in District Court
State of Minnesota
12/18/2020 4:32 PM

2. The attached memorandum and the original order is incorporated herein.

BY THE COURT:

Digitally signed by Cahill, Peter
Date: 2020.12.18 16:22:13
-06'00'

Peter A. Cahill
Judge of District Court

Filed in District Court
State of Minnesota
12/18/2020 4:32 PM

MEMORANDUM

The State urges vacation or, alternatively, amendment of the Court's order allowing audio and video coverage of the joint trial on the grounds that the Court's order violates Minn. Gen. R. Prac. 4.02(d) and that the constitutional rights at issue can adequately be protected by "overflow rooms and closed-circuit cameras." State's Brief, p. 2.

I. Minn. Gen. R. Prac. 4.02(d)

In the November 4, 2020 order, this Court acknowledged that it was allowing more extensive audio and video coverage than is permitted by Minn. Gen. R. Prac. 4.02(d). The Court did not do so lightly, but out of necessity in light of the vicissitudes of the ongoing public health pandemic. In addition to necessity, however, the Court relies on the authority granted the trial courts in Minn. Gen. R. Prac. 1.02. That rule provides that "[a] judge may modify the application of [the General Rules of Practice] in any case to prevent manifest injustice."[1] Without question, deprivation of the constitutional rights that are the hallmarks of a public criminal trial would be a "manifest injustice." The only real issue, then, is whether there is a reasonable alternative to televising the trial that would vindicate the defendants' Sixth Amendment rights and the First Amendment rights of the public and the press. If clearly so, the Court should adopt that alternative and abide by the strictures of Rule 4.02. If not, the flexibility granted the Court by Rule 1.02 supports the Court's original order. The Court concludes that televising the trial is the only reasonable and meaningful method to safeguard the Sixth and First Amendment rights implicated in these cases.

[1] David Herr, Reporter for the Minnesota General Rules of Practice Committee, notes that Rule 1.02 allows flexibility in the application of the rules, but requires a showing that flexibility is required in a particular case. David Herr, *Rules are Rules. Really.* Bench & Bar of Minnesota, Vol. LXXVII, No. X (Nov. 2020), p. 23. It would be hard to imagine a more desperate need for flexibility than here.

Filed in District Court
State of Minnesota
12/18/2020 4:32 PM

The Court in the November 4 order wrote extensively as to the unique circumstances in these particular cases that require variation from Minn. Gen. R. Prac. 4.02(d). Nothing in the State's brief seems to take issue with the Court's conclusion that this is a unique and unprecedented situation. The social distancing requirements in dealing with COVID-19 have forced the Fourth Judicial District to completely remodel one of its largest courtrooms, Courtroom 1856 in the Hennepin County Government Center, to facilitate social distancing of jurors, counsel, defendants, and court personnel in this joint trial. The modified jury box can hold only fourteen jurors, despite the Court's earlier plan to seat sixteen. The public gallery had to be removed entirely to accommodate the multiple counsel tables required for trial counsel and the parties, in keeping with social distancing requirements. In light of this remodeling, only one seat in the courtroom is not designated for use by a trial participant and, if the trial is televised, a technician will occupy that chair. No other seating is available in the trial courtroom. It would be farcical to say that this arrangement, by itself, provides meaningful access to the public or the press or vindicates the defendants' right to a public trial.

The State is correct that there is no constitutional right to televise criminal trials. *See* State's Brief, p. 12. This Court never said there was. This Court merely concluded that audio and video coverage of the trial despite the State's objection is the only reasonable alternative to ensure a truly public trial for the defendants and meaningful access to the trial for the public and the press. Those rights are constitutional in nature and must be protected.

II. The Use of Overflow Courtrooms

The State, with a sincere but historically unsupported concern regarding witness intimidation, opines that Sixth Amendment and First Amendment rights can be vindicated by using overflow courtrooms to supplement the main courtroom. As the Media Coalition points

Filed in District Court
State of Minnesota
12/18/2020 4:32 PM

out, this is more a theoretical solution than a reasonable solution. The Media Coalition accurately points out the deficiencies in the use of overflow courtrooms, including bad video, bad audio, limited seating, jostling for position by members of the media and the public, as well as the likelihood of having hundreds (if not thousands) of members of the public and press assembling at the Hennepin County Government Center every day for the better part of the months of March and April 2020 seeking access to an overflow courtroom, running afoul of and complicating Court administrative and law enforcement efforts to enforce social distancing requirements ordered by Chief Justice Gildea. *See* Declaration of Grace Wong, ¶¶ 5, 7-9, 13-14; Declaration of Suki Dardarian, ¶¶ 4-10. These observations are not speculative, but based on recent experience in other cases such as *State v. Mohamed Noor*, in Hennepin County District Court in April 2019,[2] and the high-profile trial of Harvey Weinstein in New York earlier this year. *See* Dardarian Declaration, ¶¶ 2, 4-7, 9-10; Wong Declaration, ¶¶ 10, 13-15. From this experience, it is difficult to conclude that overflow courtrooms are a reasonable measure to protect the constitutional rights of the defendants, the public, and the press. This is especially true when you consider that even the *Noor* trial, which garnered extensive media coverage, did not capture the degree of national and international attention as has the death of George Floyd and the trial of those charged in his death. The public desire to attend the joint trial in these cases will certainly exceed that in *Noor*.

Even if the technology were improved such that the broadcast of the trial to the overflow courtrooms was of sufficient quality to substitute for the experience of actually being in the courtroom, it begs the question of how many overflow courtrooms would suffice. Keeping in mind that overflow courtrooms would also be subject to social distancing requirements, how

[2] Hennepin County District Court File No. 27-CR-18-6859, Appellate Case No. A19-1089.

Filed in District Court
State of Minnesota
12/18/2020 4:32 PM

many would be enough? Two? Three? Twenty?[4] Should the Fourth Judicial District pause all courtroom activity for the months of March and April 2021 to allow every courtroom in the Hennepin County Government Center to be used as overflow courtrooms for this trial? At what point does this become televising the trial, but just to a select and limited group?

The latter question highlights the flaw in the State's proposal: an overflow courtroom is not truly a courtroom, but merely a venue for the consumption of a televised trial. They are courtrooms in name and appearance only. Nothing in Rule 4.01 or 4.02 permits a closed-circuit audio and video feed to another location for public consumption, even if you call that location a courtroom or an "overflow" courtroom.

The State's suggestion that the Court use overflow courtrooms is itself an admission that cameras in the courtroom are sometimes necessary to broadcast a trial contrary to Rule 4.02(d). The State merely wants a limited audience. The Court, on the other hand, is concerned that the more the audience is limited, especially in a trial with international interest, the more likely that the constitutional rights associated with a public trial are violated. As the United States Supreme Court has stated:

> The value of openness lies in the fact that people not actually attending trials can have confidence that standards of fairness are being observed; the sure knowledge that *anyone* is free to attend gives assurance that established procedures are being followed and that deviations will become known.

[4] To provide additional context. In the majority of the courtrooms in the Hennepin County Government Center, the public gallery contains 28 seats. Given social distancing requirements, those courtrooms can currently accommodate only ten observers. In the *Noor* trial, between Judge Quaintance's courtroom, in which additional chairs were brought into the trial courtroom, and the overflow courtroom, there were 115 total seats available for family members, the press, and the public. That trial, of course, was pre-COVID. The Court expects even greater demand for this trial than for *Noor*, between family members of the Defendants' and the Floyd families, the press, and the public. Given social distancing requirements, just to meet the same seating that was available for the *Noor* trial would necessitate using more than ten overflow courtrooms.

Filed in District Court
State of Minnesota
12/18/2020 4:32 PM

Press-Enterprise Co. v. Superior Court, 464 U.S. 501, 508-09 (1984) (emphasis in original). As the Court noted in its original order, in a typical case, not conducted in the midst of a pandemic, anyone *can* attend. Media representatives and members of the public freely come and go and no camera is necessary to conduct a truly public trial. This is not that typical case.

CONCLUSION

This Court will not reiterate the constitutional analysis from its November 4 Order, but merely finds that the State's suggested procedures to accommodate the Defendants' Sixth Amendment rights and the public's and press' First Amendment rights to a public trial would be, at best, inadequate, and at worst, mere lip-service to the Defendants' and the public's constitutional rights. Accordingly, the State's motion to vacate or amend the Court's November 4, 2020 order allowing audio and video coverage of trial is denied.

PAC