

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

State of Minnesota,

Court File No.: 27-CR-20-12953

Plaintiff,

vs.

**SECOND SUPPLEMENTAL
MEMORANDUM IN SUPPORT OF
MOTION TO CHANGE VENUE**

J. Alexander Kueng,

Defendant.

**TO: The Honorable Peter Cahill, Judge of Hennepin County District Court;
Matthew Frank, Assistant Attorney General; Josh Larson, Asst. Hennepin
County Attorney.**

On August 27, 2020 Mr. Kueng, through Counsel, filed a motion seeking a change of venue. Subsequent filings have been submitted on this issue. This Memorandum supplements the existing briefing and arguments focusing on the events following the October 15, 2020 hearing.

FACTS

On October 15, 2020 an emergency hearing was held – no defendants appeared at this hearing. Counsel has moved to allow videos of these events into the record. That motion was denied. Mr. Kueng makes the following offer of proof in lieu of video evidence and notes his objection to the Court’s practice of excluding video exhibits.

DISCUSSION

The September 11th riot and now the October 15, 2020 criminal harassment of a lawyer along with an armed protestor inside the courthouse support the conclusion that a fair trial cannot be had in Hennepin County. The escalation illustrated in these events leads Counsel to ask this Court to enter an order changing venue before gunfire brings tragedy to these proceedings.

The applicable rules of court, statutes and cases have been briefed and Mr. Kueng incorporates those writings by reference.

Following the October 15, 2020 proceedings an attorney was asked and agreed to make a statement to the press on the atrium level of the Hennepin County Courthouse. In the course of that statement a protestor became belligerent, verbally disruptive and eventually confrontational cutting off the attorney's comments to reporters.¹ The protestor pursued the attorney as he walked away. The situation's intensity grew as the protestor did his best to provoke a violent encounter. The protester, who may have been inebriated, was dismissive of deputies and court security, telling them "you work for me" and simply walking past them. Subsequently counsel observed a Facebook posting showing the events

¹ <https://www.startribune.com/judge-denies-prosecution-request-to-seal-filings-in-george-floyd-case/572756751/>

immediately before this confrontation which were broadcast live on Facebook. In that video the protestor called for “many black men” to come to the courthouse. The protestor suggested that Derek Chauvin would be leaving the courthouse shortly - a statement that was patently false. This protestor’s acts constitute a violation of Minn. Stat. 609.749 Subd. 3 (4) – Harassment, Stalking. This statute forbids harassment with intent to influence or tamper with a judicial proceeding or with intent to retaliate against *inter alia* a defense attorney because of that person's performance of official duties in connection with a judicial proceeding.

After the attorneys had left the building a protest began in the lobby of the courthouse. It is reported that approximately 8 protestors arrived and marched in the atrium yelling F### Chauvin. One protestor reportedly shouted “kill Chauvin”, which could amount to the crime of threatening a crime of violence.² Deputies arrested a protestor based on their belief that he participated in an August 15 riot and property damage incident near the Fifth Precinct police station. Deputies recovered a loaded handgun and several knives from his person. A protestor who yells “kill Chauvin” is little more than an ill-mannered lout. Armed with a loaded gun that protestor becomes a potential shooter in a public building. This person had the spoken desire and the capability to kill Mr. Chauvin along with anyone

² <https://www.startribune.com/defense-attorney-in-george-floyd-case-renews-call-to-move-trial-after-protester-arrests/572774111/>

who may have walked through the public courtyard of the Hennepin County Courthouse.

The intensity accompanying these proceedings has continued to increase as time has passed and grown into the real potential for deadly violence. Historically, public sentiment dissipates as time passes. Not true in this case. The protests surrounding these proceedings have grown from signs and slogans to harsh words and property damage, and now to a heavily armed citizen with a violent history being arrested while calling for the death of a defendant. Another protestor pursued an attorney and disregarded the presence of law enforcement and security personnel. The same protestor asked “many black men” to come to the courthouse and suggested Derek Chauvin would be present. Subsequently an armed man marched in the lobby and shouted “kill Chauvin”. Moving these proceedings to a county that does not have a public thoroughfare passing through the lobby is necessary. This matter cannot be tried in a location where protestors may hop on a bus or train in response to a call for violence, which may have been the case on October 15, 2020.

Counsel respectfully asks that this Court grant the defendant's motions for a change of venue.

Respectfully submitted,

Date: October 20, 2020

/s/ **Thomas C. Plunkett**

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