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10/14/2020 3:10 PM

STATE OF MINNESOTA | DISTRICT COURT

COUNTY OF HENNEPIN | FOURTH JUDICIAL DISTRICT

Court File No: 27-CR-20-12951

State of Minnesota,

Plaintiff,

vs.

Thomas Kiernan Lane,

Defendant.

STATE'S MOTION FOR ORDER RESTRICTING PUBLIC ACCESS TO MOTION AND EXHIBITS

TO**:** The Honorable Peter Cahill, Judge of District Court, and counsel for Defendant: Earl Gray, 1st Bank Building, 332 Minnesota Street, Suite W1610, St. Paul, MN 55101.

PLEASE TAKE NOTICE THAT the State moves to restrict public access to Defendant Thomas Lane's Memorandum Supporting Motion to Admit Floyd May 6, 2019 Incident, filed October 12, 2020, and any supporting exhibits, unless and until this Court finds the evidence admissible, or upon completion of all relevant proceedings in this matter, including any appeals.

This filing and the accompanying exhibits should not be publicly disclosed at this time. This Court held at the September 11, 2020 hearing that the evidence that forms the basis for Lane's motion is inadmissible. The Court did give the parties the opportunity to file additional briefing regarding the admissibility of this evidence after the Defendants received the relevant body-camera footage, and the State intends to file a brief opposing Lane's motion to admit this evidence. But until briefing on this recently-filed motion is complete and unless the Court reverses its earlier determination, this evidence will continue to be inadmissible.

So long as this evidence remains inadmissible, restricting public access is appropriate because publicly releasing this evidence may be prejudicial and taint the jury pool. "[A] trial judge has an affirmative constitutional duty to minimize the effects of prejudicial pretrial

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publicity" and "may surely take protective measures" to prevent such publicity, "even when they are not strictly and inescapably necessary." *Gannett Co., Inc. v. DePasqualle*, 443 U.S. 368, 378 (1979). This includes the authority to deny public access "where court files might . . . become a vehicle for improper purposes." *Minneapolis Star & Tribune v. Schumacher*, 392 N.W.2d 197, 202 (Minn. 1986) (quoting *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 598 (1978)); *cf. State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003) ("Evidentiary rulings rest within the sound discretion of the trial court."). Indeed, restricting public access is particularly appropriate where "[t]he whole purpose of" a particular court procedure is to determine whether to "screen out . . . evidence" so that it "does not become known to the jury." *Gannett*, 443 U.S. at 378. Because this Court has already ruled this evidence inadmissible, it should bar public access to these filings to prevent the information they contain from "becom[ing] known to" and potentially prejudicing the jury. *Id.*

The Minnesota Supreme Court squarely addressed the conflict presented by a criminal defendant's right to a fair trial and the important right of access to the courts in *Minneapolis Star and Tribune Co. v. Kammeyer*, 341 N.W.2d 550, 554 (Minn. 1983). Holding that the right of access is not absolute, the Court adopted "procedural safeguards" for imposing restrictions on the right of access "to preserve the fairness of the trial itself." *Id.* at 556. Those procedural safeguards have been adopted into Minn. R. Crim. P. 25.03.

Here, in accordance with those safeguards, the State has filed a motion and notice has been provided to "interested persons, including the news media." *See Kammeyer*, 341 N.W.2d at 558; Minn. R. Crim. P. 25.03, subd. 2. The Court will hold a hearing open to the public; the media will have a right to present arguments to the court; and the Court will make a record of that hearing. Minn. R. Crim. P. 25.03, subd. 2(a), 3(c); *See Kammeyer*, 341 N.W.2d at 556-57.

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10/14/2020 3:10 PM

The State also requests that the Court make adequate "written findings of the facts and reasons" for any restrictive order it issues. Minn. R. Crim. P. 25.03, subd. 5; *See Kammeyer*, 341 N.W.2d at 556.

Moreover, Rule 25.03 provides, that to restrict public access to records, the court must find that access to the records "will present a substantial likelihood of interfering with the fair and impartial administration of justice." Minn. R. Crim. P. 25.03, subd. 4(a); *see also Kammeyer*, 341 N.W.2d at 556. Here, there is plainly a substantial likelihood that public release of these records before trial will prejudice potential jurors. The criminal cases arising out of the death of George Floyd have garnered significant media attention in every part of the country, and the media regularly reports on filings and hearings in the cases. If the records filed about the victim in this case are made public, they are likely to be widely broadcast, and will have the obvious potential to prejudice the jury pool. The harm is likely to be particularly severe here because evidence of this incident has already been ruled inadmissible. Inadmissible evidence is particularly prejudicial because a court has found that it is not proper evidence for the jury to consider. *See, e.g., Gannett*, 443 U.S. at 378. Other procedural safeguards, such as sequestering witnesses or jurors, also cannot mitigate the prejudice stemming from the public release of this evidence now. *See Kammeyer*, 341 N.W.2d at 556. In short, it is likely that the information in Lane's filings will interfere with a fair trial.

Finally, the order requested by the State is a "reasonable alternative" to a complete restriction, and is "no broader than necessary to protect against the potential interference with the fair and impartial administration of justice." Minn. R. Crim. P. 25.03, subd. 4. Instead of requesting a complete and permanent restriction on the public release of this information, the State's proposal does not preclude public access to the documents after completion of trial and

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10/14/2020 3:10 PM

any appeal. *See Kammeyer*, 341 N.W.2d at 556 (holding that a complete record preserves the values of public access and gives only a temporary infringement of the right to access). In other words, the State seeks to restrict access only until proceedings are complete and there is no longer the same risk of prejudicing the jury pool.

For these reasons, this Court should exercise its "supervisory power over its own records and files" and prevent public disclosure of these filings unless and until the Court finds the evidence admissible, or upon completion of all relevant proceedings in this matter (provided the law so allows). *Schumacher*, 392 N.W.2d at 202 (quoting *Nixon*, 435 U.S. at 598); *see also* Minn. R. Crim. P. 9.03, subd. 5 (courts may "order [discovery] disclosures restricted, deferred, or made subject to other conditions"); Minn. R. Crim. P. 23.03, subd. 1 (authorizing courts to permanently "restrict[] public access to public records" in certain circumstances).

Filed in District Court
State of Minnesota
10/14/2020 3:10 PM

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Respectfully submitted,

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