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STATE OF MINNESOTA | DISTRICT COURT

COUNTY OF HENNEPIN | FOURTH JUDICIAL DISTRICT

State of Minnesota,

Plaintiff,

v.

Derek Michael Chauvin,

Defendant.

Court File No.: 27-CR-20-12646

**STATE'S MEMORANDUM OPPOSING A CONTINUANCE**

TO: The Honorable Peter Cahill, Judge of District Court, and counsel for Defendant, Eric J. Nelson, Halberg Criminal Defense, 7900 Xerxes Avenue South, Suite 1700, Bloomington, MN 55431.

## INTRODUCTION

The Defendant has moved for a continuance of this trial, notwithstanding the fact that the trial is now eight days underway and the Court is more than halfway to seating a jury. A continuance would be inappropriate because the Court has taken careful, considered steps to mitigate any risk of prejudice that pretrial publicity surrounding this trial might present. As the United States Supreme Court has made plain, "'pretrial publicity—even pervasive, adverse publicity—does not inevitably lead to an unfair trial.'" *Skilling v. United States*, 561 U.S. 358, 384 (2010) (quoting *Neb. Press Ass'n v. Stuart*, 427 U.S. 539, 554 (1976)). That is because the trial court "has a major responsibility" to manage trials and can take "measures . . . to mitigate the effects of pretrial publicity." *Stuart*, 427 U.S. at 555. This Court has already acted to discharge that solemn responsibility. It has, for example, collected detailed questionnaires from the venire members, directed them not to consume media related to this case, protected their identities, and carefully questioned them to ensure they can in fact remain impartial. This Court has the ability

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to take further actions as the trial continues, if needed, to mitigate the risk of prejudice, such as by repeating admonishments during trial and, if the Court determines it is necessary, sequestering the jury. The Defendant has received, and will continue to receive, a trial that comports with the law. A continuance is not warranted, both because all of this Court's measures have worked—the jurors seated thus far are either unaware of the settlement or have assured this Court under oath that it would not affect their view of the case—and because this Court would need to repeat these measures to select an impartial jury after any continuance.

**ARGUMENT**

The Defendant's request for a continuance rests, at bottom, on an incorrect premise. The Defendant identifies only the *potential* that reports about, for example, a settlement approved by the Minneapolis City Council, might have prejudiced potential jurors against the Defendant. But even *actual* exposure to this kind of pretrial publicity is "insufficient to show that the publicity affected the minds of" any jurors. *State v. Parker*, 901 N.W.2d 917, 924 (Minn. 2017) (internal quotation marks omitted). That is because "most cases of consequence garner at least some pretrial publicity." *Skilling*, 561 U.S. at 379. What matters is this Court's assessment of "the likelihood that prejudicial publicity would affect the impartiality of the jurors and thereby prevent a fair trial." *State v. Morgan*, 246 N.W.2d 165, 169 (Minn. 1976). This Court has already recognized this legal standard. *See* Preliminary Order Regarding Change of Venue 6 (Nov. 4, 2020) ("prejudice is shown when a juror is unable to set aside his impression or opinion to render an impartial verdict" (internal quotation marks omitted)).

The results of this Court's careful voir dire demonstrate the point. Only 13 of the 27 prospective jurors questioned since the announcement of the settlement had heard anything about it at all and only 2 said that it would influence them. Each of the 9 seated jurors assured this Court

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that they would set aside *all* information they learned from outside the courtroom, including the 5 jurors who heard about the civil settlement. There is no reason to believe this would not continue as the case proceeds with jury selection.

As this Court has also recognized, the Court has many tools to mitigate any prejudice and ensure a fair trial. *See id.* at 7 (discussing the "careful questioning of prospective jurors regarding pretrial publicity").[1] Where a trial court uses these tools, the court is within its discretion to deny a continuance and allow the trial to proceed. For this reason, the Supreme Court of Minnesota has upheld the denial of a continuance where the trial court exercised its "broad discretion" to address the effect of pretrial publicity. *Morgan*, 246 N.W.2d at 169 (noting that the seated jurors had not seen the prejudicial press and the trial court "properly admonished the jury not to read . . . stories about the case" during "the trial"). Here, this Court has similarly and appropriately exercised its broad discretion to remove any risk of prejudice from pretrial publicity in this case.

The steps that this Court has taken mirror those steps that appellate courts have approved for ensuring a fair trial, even in high-profile cases. For example, the Court has screened the venire with a detailed questionnaire designed to test a venire member's ability to be impartial and also warned them against consuming any news related to this case. *See, e.g.*, *Skilling*, 561 U.S. at 388 (rejecting a challenge to the voir dire where the trial court "initially screened venire members by eliciting their responses to a comprehensive questionnaire" that "helped to identify prospective jurors excusable for cause and served as a springboard for further questions"). The parties here have already struck members of the venire for cause based on answers to this questionnaire.

[1] Because the jury selection process has borne out this Court's view that careful questioning during jury selection can ensure an impartial jury, the State continues to take the position that the Court's earlier denial of the motion to transfer venue was correct and that transfer is not warranted.

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The Court has likewise carefully questioned venire members individually about their exposure to potentially prejudicial news reports, about their reaction to any exposure, and about their ability to remain impartial despite any such exposure. *See id.* at 389 ("the court examined each prospective juror individually, thus preventing the spread of any prejudicial information to other venire members"); *see also State v. Waukazo*, 269 N.W.2d 373, 375-376 (Minn. 1978) (noting defense counsel's ability to avoid prejudice from pretrial publicity "by carefully questioning [] prospective jurors [during] voir dire"); *State v. Beier*, 263 N.W.2d 622, 626 (Minn. 1978) (similar).

Nor has this Court "simply" accepted venire members' statements of impartiality; instead, the Court has "followed up with each individually to uncover concealed bias." *Skilling*, 561 U.S. at 395-396. Where this Court has determined that a venire member may not be able to remain impartial, despite their own view that they could, it has struck them. Indeed, this Court—at the Defendant's request—recalled seated jurors to ensure that their impartiality had not changed in light of recent news reports and ultimately struck two seated jurors who had been exposed to those reports.

This Court has also taken steps to avoid the kinds of scenarios that might raise questions of prejudice. It has carefully controlled the press's presence in the physical courtroom in a manner that balances the public's access to the proceedings with the Defendant's right to a fair proceeding. *Compare Estes v. Texas*, 381 U.S. 532, 536 (1965) ("[T]he activities of the television crews and news photographers led to considerable disruption of the hearings."). It has protected venire members' identities and shielded them from media scrutiny. *Compare Sheppard v. Maxwell*, 384 U.S. 333, 353 (1966) ("[T]he jurors were thrust into the role of celebrities by the judge's failure to insulate them from reporters and photographers."). It has gone even further, granting the parties

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extra peremptory strikes (with the defense getting 18 strikes and the State 10) as an additional safeguard to ensure an impartial jury and restricting media reporting on the trial after questions arose about whether certain kinds of reporting was intruding on the courtroom proceedings.

Given all of these measures that this Court has taken to ensure an impartial jury, the Defendant's request for a continuance is unwarranted. The request rests on an assertion that—despite these by-the-book actions—the jury *must* be prejudiced by any publicity about this case.[2] But "[p]rominence does not necessarily produce prejudice, and juror impartiality, [the United States Supreme Court has] reiterated, does not require ignorance." *Skilling*, 561 U.S. at 381 (emphases omitted). The Defendant must do more than speculate as to prejudice. *See, e.g.*, *Stroble v. California*, 343 U.S. 181, 195 (1952) (rejecting a due process challenge where the defendant asked the court "simply to read those [news] stories and then to declare . . . that they necessarily deprived him of due process").

That rule exists for a deep reason: In cases such as this one, there is always going to be pretrial publicity. The principle the Defendant pushes here has no logical stopping point, and can halt a trial in eight weeks or eight months. A continuance would be ineffective here because the media will continue to cover this important case, so this Court would end up questioning any future jury pool to determine their exposure to pretrial publicity.

If this Court decides that a risk of prejudice may arise after the jury is seated, the Court has additional tools at its disposal to address that risk. For example, this Court could—and should—extend its admonition to the next phase of the trial: The jurors should be admonished "not to read, listen to, or watch news reports about the case." Minn. R. Crim. P. 26.03, subd. 9; *State v. Smith*,

[2] The Court could make its already developed record crystal clear on this front by calling each seated juror at the end of voir dire and asking them to reaffirm their ability to remain impartial and to state on the record that nothing has changed their ability to do so since they were seated.

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876 N.W.2d 310, 340 (Minn. 2016) (Stras, J., concurring) (listing safeguards including "sequestering," admonishing jurors to avoid the news, and questioning jurors individually about material disseminated outside of the trial). The Court could require seated jurors to affirm under oath at the start of trial that they would follow that admonition and require that they not access any media that presents a higher risk of exposure to coverage about the trial—such as social media, public radio, internet news sites, or the evening news—during the trial. The Court could also reiterate its admonishments periodically during trial and require jurors to restate on the record that they have adhered to that admonishment. *See, e.g.*, *State v. Miller*, 573 N.W.2d 661, 675 (Minn. 1998) ("We presume that jurors follow a judge's instructions.").[3]

Although sequestration is a measure of last resort that is not needed in light of the Court's questioning and the statements of the seated jurors, it is available to the Court should circumstances change. If the Court thinks even stronger measures are required, or if it becomes apparent such measures are needed during trial, the Minnesota Supreme Court has held that sequestration is one appropriate measure to ensure that seated jurors remain impartial. *See, e.g.*, *Morgan*, 246 N.W.2d at 169 (suggesting that in certain cases sequestration is an appropriate remedy where there is significant pretrial publicity); *State v. Mastrian*, 171 N.W.2d 695, 707-708 (Minn. 1969) (same). This Court has already decided to sequester the jury during deliberations. It has reserved decision on whether to sequester the jury during the trial proceedings and can exercise that option if it determines that doing so would further guarantee an impartial jury.

Finally, there is no merit to Defendant's suggestion that the pretrial publicity around this case merits a so-called "presumption" that the jury is prejudiced. "A presumption of prejudice . . .

[3] The Court could also seat additional alternate jurors if it is concerned that some jurors may accidentally be exposed to publicity during the trial.

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attends only the extreme case." *Skilling*, 561 U.S. at 381; *see also Parker*, 901 N.W.2d at 925 n.5; *State v. Warren*, 592 N.W.2d 440, 448 n.15 (Minn. 1999). This is not one of them, as these proceedings bear absolutely no resemblance to the cases in which a presumption of prejudice has attached. *See, e.g.*, *Sheppard*, 384 U.S. at 358 (describing a "carnival atmosphere at trial"—where media extensively covered the trial of a man accused of bludgeoning his wife, press commandeered the courtroom, jurors' identities were publicized, and the judge and prosecutor were up for election shortly after the trial—that "could easily have been avoided" had the trial court exercised "control" over the courtroom); *Rideau v. Louisiana*, 373 U.S. 723, 724-725 (1963) (noting that the defendant's taped confession was broadcast three times in a small community, that three members of the jury had seen the video and two members of the jury worked for the sheriff's office, and that the defendant's request to strike these jurors for cause had been denied). This case, despite its prominence, has been managed by the Court in a fashion that is the opposite of the "carnival atmosphere" in cases like *Sheppard*. That management, over the last eight days of trial and in the preceding phases of the case, sets this case apart from those where the trial court abdicated its role to ensure a fair trial. And this Court's management of the proceedings to date amply demonstrates that the Court has sufficient tools to guard against the potential impact of any pretrial publicity.

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## CONCLUSION

The Defendant's request for a continuance should be denied.

Dated: March 18, 2021

Respectfully submitted,

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**/s/ Matthew Frank**
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