

STATE OF MINNESOTA  
COUNTY OF HENNEPIN

DISTRICT COURT  
FOURTH JUDICIAL DISTRICT

State of Minnesota,

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

Plaintiff,

vs.

**SUPPLEMENTAL MEMORANDUM  
NOTICE OF MOTION AND 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. Subsequently all Co-Defendant's have sought similar relief. This Memorandum supplements the existing briefing and argument.

**FACTS**

On September 11, 2020 this Court conducted a hearing on several motions which were pending in the above matter and that of the three Co-Defendants, Messrs. Derek Chauvin, Tou Thao and Thomas Lane. No recognizable plan was in place in advance of the hearing to assure the safe and orderly entry of Co-Defendant's or Co-Counsel into the courthouse. Mr. Chauvin, who is in custody, was subjected to a degree of humiliation by being paraded in public dressed in jail cloths and body armor. Attorneys and Defendants were harassed upon arrival and

departure from the courthouse. Mr. Paule and Mr. Thao were followed for several blocks by jeering protestors when departing. Messrs. Gray, Plunkett, and their respective clients were harassed. Gray and Lane were physically assaulted. A privately owned vehicle sustained nearly \$2,000.00 worth of damage from the violent rioters. *See* Exh. A. A rioter also used video from the event to dox one of the parties. The chaotic events outside the courthouse could be heard from inside the building on the first floor.



Protester punches and grabs Gray



Protestors block vehicle



Protestor Damaging vehicle



Protestor Block Mr. Lane



As yet Unidentified rioter - property damage



As yet unidentified rioter - assaulted a party

Before leaving the courthouse, counsel conferred with court security to get advice on how they should safely leave the area. Court security suggested they wait until after The Floyd family and their attorney had addressed the crowd. This advice did not make sense, and, if followed, caused greater concern for attorney and client safety. Counsel rightfully believed that these speeches would incite the crowd making their departure far more risky and tempt rioters to storm the courthouse. The above offer of proof and photographs confirm that the interests of justice would be best served by granting the jointly requested change of venue. The Court should begin the process of selecting a location for the trial that may afford at least a modicum of fairness to the defendants.

## DISCUSSION

In addition to the arguments raised by Kueng and the other codefendants, the riot following the September 11<sup>th</sup> hearing shows that it is not safe for the participants if the trial is held in Hennepin County. In addition to pretrial publicity, a change of

venue may be granted in the interests of justice. See Minn. R. Crim. Pro. 24.02, Subd. 1.c. The Supreme Court has cautioned, “Where there is reason to believe that it will be impossible to obtain a fair and impartial trial in the county selected because of local prejudices, feelings, and opinions, the ends of justice require that a change of venue be granted.” *State v. Thompson*, 266 Minn. 385, 387, 123 N.W.2d 378, 380 (1963) citing *Berry v. North Pine Elec. Co-op, Inc.*, 235 Minn. 562, 569, 50 N.W.2d 117, 123 (Minn. 1951). Here, as demonstrated by the September 11<sup>th</sup> riot accompanying the court hearing, based on local prejudices and feelings, there cannot be a fair trial in this case in Hennepin County.

The riotous crowd outside the courthouse creates numerous issues. *Sheppard* instructs “From the cases coming here we note that unfair and prejudicial news comment on pending trials has become increasingly prevalent. Due process requires that the accused receive a trial by an impartial jury free from outside influences. Given the pervasiveness of modern communications and the difficulty of effacing prejudicial publicity from the minds of the jurors, the trial courts must take strong measures to ensure that the balance is never weighed against the accused.” *Sheppard v. Maxwell*, 384 U.S. 333, 362 (1966). The jury will be influenced by the screaming and yelling of the crowds that could be heard from the first floor during the motions hearing. A jury is supposed to decide the case based on the testimony and exhibits presented during the trial, not based on the

chants of unaccountable rioters. Witnesses will be intimidated as they have to walk the gauntlet before they testify. Defense witnesses will be reluctant to testify if providing exculpatory evidence will subject them to rioting, assaults and dox attacks. The defendants have to reasonably question whether the chants and crowds will impact the decisions of the judge and jury in their case as the people that will decide their case pass through the rioters during weeks of trial.

Finally, the defendants and their lawyers cannot safely enter and exit the courthouse. Parties were physically assaulted after a simple motions hearing. During trial, tensions are going to be even higher. The lawyers will be carrying notebooks, computers, law books and other materials to help defend their clients, which will make it more difficult for them to avoid the angry crowds.

Courthouse and courtroom premises are subject to the control of the court. *See Shepard* at 358. Shepard recognized that a defendant can be deprived of that “judicial serenity and calm to which (he) was entitled.” *Id.* at 355. As demonstrated by the September 11<sup>th</sup> hearing, the Court simply cannot control the rioters and protesters who have taken to the streets of Minneapolis. This Court must grant a change of venue to a county where the defendants can obtain a fair trial free from the riots and crowds that will occur if he is tried in Hennepin County.

Respectfully submitted,

Date: October 1, 2020

/s/ **Thomas C. Plunkett**

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