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STATE OF MINNESOTA

COUNTY OF HENNEPIN

DISTRICT COURT

FOURTH JUDICIAL DISTRICT

Court File No. 27-CR-20-12646

State of Minnesota,

Plaintiff,

vs.

Derek Michael Chauvin,

Defendant.

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT'S POST-VERDICT MOTIONS

TO: THE ABOVE-NAMED COURT; THE HONORABLE PETER A. CAHILL, JUDGE OF HENNEPIN COUNTY DISTRICT COURT; AND MATTHEW FRANK, ASSISTANT MINNESOTA ATTORNEY GENERAL.

INTRODUCTION

On April 20, 2021, Defendant Derek Michael Chauvin was convicted by a jury of one count of second-degree, unintentional murder, one count of third-degree depraved mind murder, and one count of second-degree manslaughter. On May 4, 2021, Mr. Chauvin, through his attorney Eric J. Nelson, Halberg Criminal Defense, moved the Court for a new trial pursuant to Minn. R. Crim, P. 26.04, subd. 1, on several grounds. Mr. Chauvin now submits the following in support of his motions.

ARGUMENT

I. CUMULATIVE ERRORS, ABUSES OF DISCRETION, PROSECUTORIAL AND JURY MISCONDUCT DEPRIVED DEREK CHAUVIN OF A FAIR TRIAL, SUCH THAT A NEW TRIAL MUST BE GRANTED IN THE INTERESTS OF JUSTICE.

After a verdict has been rendered, a new trial may be granted on any of the following grounds: the interests of justice; irregularity of the proceedings, or any order or abuse of discretion that deprived the defendant of a fair trial; prosecutorial or jury misconduct; errors of law at trial; or

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a verdict or finding of guilty that is contrary to law. Minn. R. Crim. P. 26.04, subd. 1(1). In the present case, a new trial must be granted on the following grounds:

A. Pervasive publicity before and during the trial tainted the jury pool and prejudiced the jury itself, depriving Mr. Chauvin of a fair trial in violation of his constitutional right to due process.

1. *The Court abused its discretion when it denied Defendant's motion for a change of venue.*

On August 27, 2020, Defendant Derek Michael Chauvin moved this Court for a change of venue. The Court agreed to reserve its ruling on the issue of venue until after it had decided the State's motion to join Mr. Chauvin's trial with those of his codefendants. On November 4, 2020, this Court granted the State's motion and joined all defendants for trial. In a separate order issued on the same day, this Court preliminarily denied Mr. Chauvin's motion for a change of venue. In its January 11, 2021, order addressing motions for continuance from both the State and Mr. Chauvin, however, this Court *sua sponte* amended its previous motion and severed Mr. Chauvin's trial from those of his codefendants. After leaks by "law enforcement officials" regarding the details of plea negotiations between counsel for Mr. Chauvin and prosecutors were printed in the *New York Times* and the *Star Tribune* on the eve of trial, and after the City of Minneapolis—Mr. Chauvin's former employer—very publicly announced its settlement with George Floyd's family in the midst of *voir dire*, Mr. Chauvin renewed his motions for a change of venue and/or continuance.

The Court denied the motion, and in so doing, stated:

> The purpose of a change of venue is to ensure that the defendant has a fair trial by an impartial jury. The same is true as the basis for the defense's latest motion to continue with the hope that as time passes people forget some of the pretrial publicity. Unfortunately, I think the pretrial publicity in this case will continue no matter how long we continue it, perhaps some of it may with time be forgotten by people.

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> And as far as change of venue, I do not think that that would give the defendant any kind of a fair trial beyond what we are doing here today. I don't think there's any place in the state of Minnesota that has not been subjected to extreme amounts of publicity on this case. ***Change of venue is an option in the rule when there is extensive pretrial publicity that was prejudicial, and there was prejudicial pretrial publicity***, including the latest actions by the City of Minneapolis in settling the case.

(Tr. Trans., Mar. 19, 2021, at 2-3) (emphasis added).

The United States and Minnesota Constitutions safeguard a criminal defendant's right to a "public trial, by an impartial jury of the State and district" in which the crime was committed. U.S. Const., amend. VI; Minn. Const., Art. I, § 6 (specifying an "impartial jury of the county or district" in which the crime was committed). However, when "a fair and impartial trial cannot be had in the county in which the case is pending…[,] in the interests of justice, [or as] provided by Rule 25.02 governing prejudicial publicity" a case "may be transferred to another county." Minn. R. Crim. P. 24.03, subd. 1.

Here, the Court specifically found that "there was prejudicial pretrial publicity," and the global extent of such publicity, across all media and across the globe, cannot be denied. Once the Court made such a finding, it lacked discretion, under Minn. R. Crim. P. 25.03, subd. 3 to deny Mr. Chauvin's motion. In cases where intense pretrial publicity and/or "prejudicial material creates a ***reasonable likelihood*** that a fair trial cannot be had" a defendant's "motion for… change of venue ***must***[1] be granted." Minn. R. Crim. P. 25.02, subd. 3 (emphasis added). "***Actual prejudice need not be shown.***" *Id.* (emphasis added). In spite of the Court's belief that there was no "place in the state of Minnesota that has not been subjected to extreme amounts of publicity on this case," the language of the rule is plain—and mandatory. The Court clearly abused its discretion when it found that the extensive publicity prejudiced Mr. Chauvin's chances of receiving a fair trial and

[1] "Must" is mandatory. Minn. Stat. § 645.44, subd. 15a.

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then denied his motion for a change of venue.

Moreover, the Court's reasoning that Mr. Chauvin could not find a venue with a less tainted jury pool is flawed. Although "it is not required...that jurors be totally ignorant of the facts and issues involved" in a trial, *Irvin v. Dowd,* 366 U.S. 717, 722 (1961), sufficient "adverse publicity can create such a presumption of prejudice in a community that the jurors' claims that they can be impartial should not be believed." *Patton v. Yount,* 467 U.S. 1025, 1031 (1984) (citing *Irvin,* 366 U.S. at 723); *see State v. Beier,* 263 N.W.2d 622, 625-26 (Minn. 1978); *State v. Warren,* 592 N.W.2d 440, 448 n.15 (Minn. 1999); *State v. Fairbanks,* 842 N.W.2d 297, 302 (Minn. 2014) (stating prejudice can be presumed among a jury pool in cases where massive prejudicial publicity surrounds a trial). ***"This is particularly true in criminal cases."*** *Irvin,* 366 U.S. at 723 (emphasis added).

In *Irvin,* the Court observed that, in the six to seven months leading up to trial, "a barrage of newspaper headlines, articles, cartoons and pictures was unleashed against" the defendant. 366 U.S. at 725. Once *voir dire* began in that case, "with remarkable understatement, the headlines reported that 'impartial jurors are hard to find.'" *Id.* at 726. The Court found that the "pattern of deep and bitter prejudice shown to be present throughout the community was clearly reflected in the sum total of the *voir dire* examination." *Id.* at 727 (internal quotation omitted).

"As one of the jurors put it, 'You can't forget what you hear and see.'" *Id.* at 728. Ultimately, the Court concluded that the defendant did not receive a fair trial and reversed his conviction as unconstitutional. "It is not requiring too much that [a defendant] be tried in an atmosphere undisturbed by so huge a wave of public passion and by a jury other than one in which two-thirds of members admit, before hearing any testimony, to possessing a belief in his guilt." *Id.* (internal citations omitted); *see also Rideau v. Louisiana,* 373 U.S. 723 (1963) and *Estes v. Texas,*

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381 U.S. 532 (1965) (cases in which the Supreme Court overturned state-court convictions "obtained in a trial atmosphere that had been utterly corrupted by press coverage," *Murphy v. Florida,* 421 U.S. 794, 798 (1975)).

It was clear from the outset of this trial that the type of pool-wide taint contemplated in *Patton* existed among the potential jurors of Hennepin County. All jurors had some knowledge of the case. Most had formed an opinion of some sort. In preliminarily denying the Defendant's motion for a change of venue, this Court relied on *State v. Parker,* 901 N.W.2d 917, 922 (Minn. 2017). In that case, the Minnesota Supreme Court upheld a district court's denial of a venue change, where the lower court found that so much pretrial publicity was disseminated over the Internet, that "people in every corner could have been exposed to [pretrial publicity] so I'm not sure where in Minnesota someone would not have been exposed to [it] if the material was prejudicial." *Id.* (*see* Preliminary Order re: Change of Venue, Nov. 4, 2020, at 5). This case, however, is considerably different from *Parker*—or any other case regarding change of venue in Minnesota history. In fact, according to Georgetown Professor Paul Butler, the trial of Mr. Chauvin was "the most famous police brutality prosecution in the history of the United States."[2]

The media coverage in this case is like a bomb explosion: Hennepin and Ramsey counties are ground zero and although felt far and wide, the effects of the explosion diminish as they ripple outward from the Twin Cities. The most intense media coverage in the state clearly appeared here, in the Twin Cities. Although it is more than reasonably probable that Mr. Chauvin cannot receive a completely fair and impartial trial in Hennepin or Ramsey counties, or anywhere in the State, the

[2] Available from https://www.nytimes.com/2021/02/10/us/george-floyd-death.html, last accessed May 25, 2021 (A February 10, 2021, *New York Times* article discussing last year's failed third-degree murder plea agreement—which was, coincidentally, leaked by "three law enforcement officials" while this Court was considering the State's motion to reinstate a third-degree murder charge).

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probability that Mr. Chauvin can receive a more-fair and more-impartial trial increases as one travels outward from the Twin Cities.

Ever since the incident, potential jurors in the Twin Cities have been faced with daily, one-sided reminders of the events of May 25, 2020. Signs demanding "Justice for George" are a regular sight in Twin Cities neighborhoods. Crowds have regularly gathered throughout the cities to demonstrate, protest, and remember. George Floyd is memorialized in street art throughout the Twin Cities. At the time of trial, damage from the riots that occurred in May and June 2020 was still apparent in Minneapolis and St. Paul, including the destroyed Third Precinct and 31st Street U.S. Post Office in the former, as well as burnt-out and still-boarded up businesses in both cities. Notably, these sites can all be found within minutes of the downtown courthouses in Hennepin and Ramsey counties.

The site of George Floyd's death is located fewer than four miles from the Hennepin County Government Center, where the trial took place. An individual could drive there by traveling south from downtown on Chicago Avenue or west from the Mississippi River on 38th Street. However, the individual would not be able to reach the site by car. Both streets—formerly thoroughfares in Minnesota's largest city—have been blocked off by protestors, who continue to maintain a sort of "autonomous zone" called "George Floyd Square" in the city blocks surrounding the site.[3] The faces and landscapes of the Twin Cities have been irrevocably changed by those demanding justice for George Floyd, and there is no way a pool of potential jurors could have avoided these reminders. In fact, in order to enter the Hennepin County Government Center, jurors and potential jurors, had to negotiate concrete barriers, topped with fences and razorwire, and walk

[3] *See* https://www.mprnews.org/story/2020/12/11/george-floyds-square-offers-an-alternative-to-police-though-not-all-neighbors-want-one, accessed May 25, 2021.

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