

STATE OF MINNESOTA
IN COURT OF APPEALS

State of Minnesota,

Plaintiff,

vs.

Derek Michael Chauvin,

Defendant.

**STATEMENT OF THE CASE BY
APPELLANT STATE OF
MINNESOTA**

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

1. This case originated in Hennepin County District Court, Honorable Peter Cahill presiding.
2. Jurisdictional statement.
 - (A) Appeal from district court.

Statute, rule or other authority authorizing appeal: Minn. R. Crim. P. 28.04, subd. 1(1); the Court's inherent authority, *see State v. Lessley*, 779 N.W.2d 825, 831-832 (Minn. 2010); the Court's original jurisdiction to grant a writ of prohibition, *see Minn. R. Civ. App. P. 120.01*.

Date of entry of judgment or date of service of notice of filing of order from which appeal is taken: The District Court's original order was entered on January 11, 2021. The District Court denied the State's Motion for Reconsideration by order on January 21, 2021.

Authority fixing time limit for filing notice of appeal (specify applicable rule or statute): Minn. R. Crim. P. 28.04, subd. 2.

Date of filing any motion that tolls appeal time: Not applicable.

Date of filing of order deciding tolling motion and date of service of notice of filing: Not applicable.

(B) Certiorari appeal.

Statute, rule or other authority authorizing certiorari appeal:

Authority fixing time limit for obtaining certiorari review (cite statutory section and date of event triggering appeal time, *e.g.*, mailing of decision, receipt of decision, or receipt of other notice):

(C) Other appellate proceedings.

Statute rule or other authority authorizing appellate proceeding:

Authority fixing time limit for appellate review (cite statutory section and date of event triggering appeal time, *e.g.*, mailing of decision, receipt of decision, or receipt of other notice):

(D) Finality of order of judgment.

Does the judgment or order to be reviewed dispose of all claims by and against all parties, including attorney fees? Yes No

If no:

Did the district court order of entry of a final partial judgment for immediate appeal pursuant to MINN. R. CIV. APP. P. 104.01? Yes No or

If no, is the order or judgment appealed from reviewable under any exception to the finality rule? Yes No

If yes, cite rule, statute, or other authority authorizing appeal: Minn. R. Crim. P. 28.04, subd. 1(1); the Court's inherent authority, *see State v. Lessley*, 779 N.W.2d 825, 831-832 (Minn. 2010); the Court's original jurisdiction to grant a writ of prohibition, *see* Minn. R. Civ. App. P. 120.01.

(E) Criminal only:

Has a sentence been imposed or imposition of sentenced stayed? Yes No

3. State type of litigation and designate any statutes at issue, and critical impact.

This is a felony prosecution for Second Degree Unintentional Felony Murder, Minn. Stat. § 609.19, subd.2(1), and Second Degree Manslaughter, Minn. Stat. § 609.205(1). After ordering that Defendant Chauvin’s trial be joined with those of his three co-Defendants, the District Court *sua sponte* severed Defendant Chauvin’s trial in violation of Minnesota Rule of Criminal Procedure 17.03. The District Court also ordered that Defendant Chauvin’s trial proceed on March 8, 2021, notwithstanding warnings from public health officials that holding this trial in March is dangerous and that holding two separate trials increases public health risks.

This Court has the inherent authority to hear pretrial appeals under Rule 28.04 in certain circumstances even absent a showing of “critical impact.” *See State v. Obeta*, 796 N.W.2d 282, 287 (Minn. 2011); *State v. Lessley*, 779 N.W.2d 825, 831 (Minn. 2010). Because this is such a case, review is warranted irrespective of any critical impact. Alternatively, this Court has jurisdiction to issue a writ of prohibition pursuant to Minnesota Rule of Appellate Procedure 120. This Court accordingly may construe the State’s briefs in this case as a petition for a writ of prohibition.

4. Brief description of claims, defenses, issues litigated and result below. For criminal cases, specify whether conviction was for a misdemeanor, gross misdemeanor, or felony offense.

This case arises from the events surrounding the death of George Floyd on May 25, 2020. The State has charged four Defendants—Derek Michael Chauvin, J. Alexander Kueng, Thomas Kiernan Lane, and Tou Thao—with felony offenses committed in connection with that event. The District Court scheduled one joint trial for all four Defendants to begin on March 8, 2021. In light of public health concerns and the anticipated distribution of the COVID-19 vaccine, the State requested a continuance of that trial date. In support, the State filed an affidavit from a public health expert who opined that holding this trial in March would pose a significant risk to the public health. As that expert explained, a short continuance would substantially decrease these risks.

The District Court denied the State’s motion and *sua sponte* severed Defendant Chauvin’s trial from that of his three co-Defendants, setting two separate trial dates—one in March for Defendant Chauvin, and another in late August for the remaining Defendants. The State moved for reconsideration, filing an affidavit from a second public health expert explaining that proceeding to trial in March 2021 and holding two separate trials in this case would create grave risks to public health.

The District Court denied reconsideration in a one-sentence order on January 21, 2021.

The District Court's decision to proceed to trial on March 8 and to proceed with two separate trials creates a serious public health risk. Regardless of how this Court elects to exercise jurisdiction, relief is warranted here because the District Court's decision violates the law and threatens serious harms to public health. The District Court's decision to proceed with two separate trials, including one in March 2021, was a clear abuse of discretion. The decision to proceed with trial on March 8 also directly conflicts with the Minnesota Judicial Council's order barring in-person criminal trials until March 15, except in situations not applicable here. In addition, because none of the factors in Minnesota Rule of Criminal Procedure 17.03 warrant severance, the District Court's *sua sponte* decision to sever Defendant Chauvin's trial violates Rule 17.03.

5. List specific issues proposed to be raised on appeal.
- I. Did the District Court abuse its discretion by denying the State's motion for a continuance and keeping Defendant Derek Chauvin's trial scheduled for March 8, 2021?
 - II. Did the District Court's decision to *sua sponte* sever Defendant Derek Chauvin's trial from the trials of the other three Defendants violate Rule 17.03 of the Minnesota Rules of Criminal Procedure?

6. Related appeals.

List all prior or pending appeals arising from the same action at this appeal. If none, so state. *State of Minnesota v. J. Alexander Kueng, Thomas Kiernan Lane, and Tou Thao* (notice of appeal filed January 28, 2021).

List any known pending appeals in separate actions raising similar issues to this appeal. If none are known, so state. The State is not aware of any such pending appeals.

7. Contents of record.

Is a transcript necessary to review the issues on appeal? Yes No

If yes, full or partial transcript?

Has the transcript already been delivered to the parties and filed with the trial court administrator? Yes No

If not, has it been ordered from the court reporter? Yes No

If a transcript is unavailable, is a statement of the proceedings under Rule 110.03 necessary? Yes No

In lieu of the record as defined in Rule 110.01, have the parties agreed to prepare a statement of the record pursuant to Rule 110.04? Yes No

8. Is oral argument requested? Yes No

If so, is argument requested at a location other than that provided by Rule 134.09, subd. 2? Yes No

If yes, state where argument is requested:

9. Identify the type of brief to be filed.

Formal brief under Rule 128.02.

Informal brief under Rule 128.01, subd. 1 (must be accompanied by motion to accept unless submitted by claimant for reemployment benefits)

Trial memoranda, supplemented by a short letter argument, under Rule 128.01, subd. 2.

10. Names, addresses, zip codes and telephone numbers of attorney for appellant and respondent.

Attorneys for Appellant, the State of Minnesota:

Keith Ellison
Minnesota Attorney General
Suite 1800, Bremer Tower
445 Minnesota Street
St. Paul, MN 55101-2134

/s/ Matthew Frank
By: MATTHEW FRANK
Assistant Attorney General
Atty. Reg. No. 021940X
445 Minnesota Street, Suite 1400
St. Paul, Minnesota 55101-2131
(651) 757-1448 (Voice)

Attorney for Respondent:

Eric J. Nelson
Attorney License No. 308808
7900 Xerxes Avenue S., Ste. 1700
Bloomington, MN 55431
Phone: (612) 333-3673

Dated: January 28, 2021

KEITH ELLISON

/s/ Matthew Frank
By: MATTHEW FRANK
Assistant Attorney General
Atty. Reg. No. 021940X
445 Minnesota Street, Suite 1400
St. Paul, Minnesota 55101-2131
(651) 757-1448 (Voice)
(651) 297-4348 (Fax)
matthew.frank@ag.state.mn.us

ATTORNEYS FOR APPELLANT