

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

State of Minnesota,

Plaintiff,

vs.

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

Derek Michael Chauvin,

Court File No: 27-CR-20-12646

J. Alexander Kueng,

Court File No: 27-CR-20-12953

Thomas Kiernan Lane,

Court File No: 27-CR-20-12951

Tou Thao,

Court File No: 27-CR-20-12949

Defendants.

TO: The Honorable Peter Cahill, Judge of District Court, and counsel for Defendants; Eric J. Nelson, Halberg Criminal Defense, 7900 Xerxes Avenue South, Suite 1700, Bloomington, MN 55431; Robert Paule, 920 Second Avenue South, Suite 975, Minneapolis, MN 55402; Earl Gray, 1st Bank Building, 332 Minnesota Street, Suite W1610, St. Paul, MN 55101; Thomas Plunkett, U.S. Bank Center, 101 East Fifth Street, Suite 1500, St. Paul, MN 55101.

PLEASE TAKE NOTICE THAT, to prevent confidential, inadmissible, or prejudicial information from improperly being made public, the State hereby moves for an order temporarily restricting public access to all future motions and exhibits in the above-referenced matters for two business days after they are filed with this Court and served on opposing counsel. This will permit the parties to review those filings before they are made available to the public and, if necessary, to notify the Court within two business days of their intent to oppose public disclosure. If one or more parties notify the Court of their intent to oppose public disclosure, the Court may then request briefing and set a briefing schedule on a motion opposing public disclosure.

“Every court has supervisory power over its own records and files.” *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)). This Court may accordingly “order [discovery] disclosures restricted, deferred, or made subject to other conditions.” Minn. R. Crim. P. 9.03, subd. 5; *see* Minn. R. Crim. P. 23.03, subd. 1 (authorizing courts to permanently “restrict[] public access to public records” in certain circumstances); *cf.* *State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003) (“Evidentiary rulings rest within the sound discretion of the trial court.”). This Court also may deny public access “where court files might . . . become a vehicle for improper purposes.” *Schumacher*, 392 N.W.2d at 202 (quoting *Nixon*, 435 U.S. at 598).

An evidentiary protective order is particularly warranted when there is a risk of prejudicial pretrial publicity. “[A] trial judge has an affirmative constitutional duty to minimize the effects of prejudicial pretrial 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). In *Gannett*, for example, the Supreme Court upheld the closure of a pretrial suppression hearing. “The whole purpose of such hearings is to screen out unreliable or illegally obtained evidence and insure that this evidence does not become known to the jury.” *Id.* Publicity concerning those proceedings “could influence public opinion against a defendant and inform potential jurors of inculpatory information wholly inadmissible at the actual trial.” *Id.* Moreover, “it may be difficult to measure with any degree of certainty the effects of such publicity on the fairness of the trial,” in part because it “may never be altogether kept from potential jurors.” *Id.* at 379. Restricting public access to pretrial proceedings is therefore “often one of the most effective methods that a trial judge can employ to

attempt to insure that the fairness of a trial will not be jeopardized by the dissemination of such information throughout the community before the trial itself has even begun.” *Id.*

Similar concerns justify a temporary protective order here. The State anticipates that filings in this case will involve protected or inadmissible evidence. *See, e.g.*, Minn. Stat. §13.82, subd. 7 (protecting law enforcement data from disclosure). If that evidence is nevertheless made public, it could unfairly “influence public opinion.” *Gannett*, 443 U.S. at 379; *see* Minn. R. Crim. P. 25.01, subd. 1 (authorizing closure of pretrial hearings “on the grounds that dissemination of evidence or argument presented at the hearing may interfere with an overriding interest, including disclosure of inadmissible evidence and the right to a fair trial”). Indeed, Defendants should be particularly sensitive to that concern, as they have already moved for a change of venue “because of the [allegedly] excessive amount of pretrial publicity surrounding this case.” *E.g.*, Chauvin Notice of Motions 1 (Aug. 28, 2020). A temporary protective order lasting two business days will ensure the parties and the Court have sufficient time to review future filings and exhibits *before* they are made public—and, if necessary, will permit the parties to object to the public disclosure of that information, and allow the Court to order further briefing and set a briefing schedule on a motion opposing public disclosure. *See* Minn. R. Crim. P. 25.03, subd. 2. If no party objects to public disclosure, the Court may make the filings public on the third business day following filing.

The public has a strong common law right to access court documents, but that “right of access . . . is not absolute.” *Schumacher*, 392 N.W.2d at 202. The proposed temporary protective order strikes the appropriate balance between the need for public disclosure and the need to avoid the disclosure of confidential or inadmissible information. Where no party objects to public disclosure, any restriction on the public right of access would be short and temporary.

Allowing for a temporary screening period would also ensure that parties promptly notify the Court of their intent to object to public disclosure of any information, and ensures that potentially confidential, prejudicial, or inadmissible information is not improperly or prematurely released.

For these reasons, the State respectfully requests that the Court grant this motion and impose a temporary protective order preventing the public release of motions and exhibits for two business days after they are filed with this Court.

October 12, 2020

Respectfully submitted,

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