

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

Court File No. 27-CR-20-12953

State of Minnesota,

Plaintiff,

vs.

**DEFENDANT’S FOURTH MOTION
FOR CHANGE OF VENUE OR
CONTINUANCE**

J. Alexander Kueng,

Defendant.

**TO: THE HONORABLE PETER A. CAHILL, JUDGE OF HENNEPIN
COUNTY DISTRICT COURT; AND KEITH ELLISON, ATTORNEY
GENERAL OF MINNESOTA; MICHAEL FREEMAN, HENNEPIN
COUNTY ATTORNEY.**

The defendant, by and through his attorney, moves the Court for an Order transferring venue in the above matter to another county, preferably Olmsted or Dakota County. Alternatively, Mr. Kueng moves this Court for an order continuing this matter for 1 year. Mr. Kueng joins in the motion and arguments offered by co-defendant Thomas Lane. See 27-CR-20-12951: State vs. Thomas Kiernan Lane, Index 521 and 522. Mr. Kueng joins in the motions and arguments which may be forthcoming from co-defendant Tou Thao on this issue.

Mr. Floyd's death, the criminal charging of Mr. Kueng *et al* and the riots had more media coverage in the Minneapolis/St. Paul area than any event in its history. There was saturation news coverage in the Star Tribune and Pioneer Press and the three TV networks. Nationwide, news coverage was more extensive than any story in fifty years.¹

More importantly, with respect to the riots, the news coverage was oddly favorable to the rioters. *Id.* The volume and prejudicial nature of past coverage of these events has been substantial. Counsel now adds to the record Exhibit A (Declaration by Dr. Bryan Edelman) and Exhibit B (available newspaper articles in Minneapolis and St. Paul). Dr. Edelman, with over 20 years of experience, evaluated the extent and nature of the pretrial publicity covering the death of George Floyd and its potential impact on Mr. Kueng's due process rights. As part of his analysis, he reviewed relevant newspaper coverage, television publicity, and social media content. See Exhibit A.

It is Dr. Edelman's opinion that the jury pool in Hennepin County has been saturated with extensive prejudicial news coverage. The pretrial publicity incorporates powerful and emotional language surrounding the

¹ <https://www.washingtonpost.com/politics/2020/07/06/george-floyd-protests-generated-more-media-coverage-than-any-protest-50-years/>.

death of George Floyd, minute-by-minute accounts of how the tragic incident unfolded, shocking video footage of the encounter, and details from pretrial filings (e.g., autopsy reports). See Exhibit A. The coverage references prejudicial statements from prominent public figures. For example, the Former Chief of Police described the incident as “murder.” See *Id.* Dr. Edelman explains that these types of statements have the capacity to undermine the burden of proof by creating a presumption of guilt within members of the jury pool. See *Id.* The coverage in this matter is starkly different from coverage in *State v. Warren*, 592 N.W.2d 440 (Minn. 1999) which relied on factual accounts that would not affect the minds of a jury. See *Id.* at 447-48.

Dr. Edelman explains that when a venue is inundated with media coverage surrounding a crime, prospective jurors will develop case-specific attitudes, which can have an impact on their evaluations of the evidence and arguments presented at trial. See *Id.* When this occurs, attitudinally supporting arguments will be more closely attended to, evaluated as persuasive, integrated into the existing network of attitudes and beliefs, and made easily accessible during deliberations. See *Id.* In contrast, counterarguments and evidence conflicting with well-established attitudes

may create cognitive dissonance. As a result, jurors will either ignore this evidence or make cognitive efforts to refute it. See *Id.* This evidence will not establish strong links to preexisting attitudes and will not be easily accessible during deliberations. See *Id.* These psychological processes put the defendant at a significant disadvantage, tend to undermine the presumption of innocence, and diminish the prosecution's burden of proof. See *Id.* Simply put – Hennepin County Jurors will ignore defense arguments and await the State's arguments supporting opinions developed based this media coverage.

It is important to note that since Dr. Edelman's declaration and collection of news article several major events have occurred adding to the need for a change of venue. Since this time a Federal Trial has occurred and Mr. Lane recently entered a guilty plea to Count 2 of the Complaint. Further attention has been drawn to this case by a major financial settlement as a result of County Attorney Mike Freeman engaging in a pattern of harassment toward at least one prosecutor for their work on this very matter.² Another recent story reported the Mr. Freeman may have changed his residence to Ramsey County and enrolled in the Safe at Home program

² See <https://www.mprnews.org/story/2022/05/19/hennepin-county-pays-190k-to-settle-top-prosecutors-discrimination-claim>

in response to protests at his former home stemming from this case.³ All of these recent developments occurred after the jury questionnaires were filled out by prospective jurors. The prejudice and bias reflected in the existing questionnaires could have only grown.

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. 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 be granted." Minn. R. Crim. P. 25.02, subd. 3 (emphasis added). "Actual prejudice **need not be shown.**" Id. (emphasis added).

³ <https://alphaneews.org/exclusive-mike-freeman-keeps-address-hidden-from-public-tracked-down-to-ramsey-county-home/>

Minnesota Rule of Criminal Procedure 25.02 provides that a motion for change of venue "must be granted whenever potentially prejudicial material creates a reasonable likelihood that a fair trial cannot be had. Actual prejudice need not be shown." *Id.* The Court's existing order states this standard, but applies the standard applicable to appellate review of decisions on change of venue. Mr. Kueng objects to the standard applied by the Court and argues that the appropriate standard requires that a change of venue must be granted.

Courts reviewing the prejudicial effect of pretrial publicity engage in a two tier analysis: "At the first tier, the question is whether pretrial publicity was so extensive and corrupting that a reviewing court is required to *presume* unfairness of constitutional magnitude." *United States v. Petters*, 663 F.3d 375, 385 (8th Cir. 2011) (emphasis supplied). "In all other cases, the change-of-venue question turns on the second tier of our analysis, whether the *voir dire* testimony of those who became trial jurors demonstrated such actual prejudice that it was an abuse of discretion to deny a timely change-of-venue motion." *Id.*

With respect to the presumption of prejudice requiring a transfer of venue, the Supreme Court has long and consistently held that when the

community from which jurors are drawn is sufficiently poisoned either by adverse publicity, or by the effects of the very events at issue, or both, a presumption of prejudice among potential jurors arises that requires a change of venue because *voir dire* cannot perform its usual function of securing a fair and impartial jury. *Mu'Min v. Virginia*, 500 U.S. 415, 429-30 (1991); *Patton v. Yount*, 467 U.S. 1025, 1031-33, 1040 (1984); *Murphy v. Florida*, 421 U.S. 794, 799 (1975); *Sheppard v. Maxwell*, 384 U.S. 333, 362-63 (1966); *Estes v. Texas*, 381 U.S. 532, 550-51 (1965); *Rideau v. Louisiana*, 373 U.S. 723, 726-27 (1963); *Irvin v. Dowd*, 366 U.S. 717, 725-28 (1961).

Review of jury questionnaires reveal that a majority of the potential jurors have a significant level of knowledge and harbor bias. Even before the latest events relating to this matter. Examples, “I vividly remember the riots after the GF death incident”, I don’t want to be a juror because “I fear retaliation”. See juror questionnaires 1 thru 265. It is important to note that some jurors while claiming to be neutral about the 3 defendants had harsh feelings towards Mr. Chauvin and his actions. These jurors must be considered biased, as the charges against all are closely intermingled.

Mr. Kueng cannot and will not receive a fair and impartial trial in the Twin Cities. A change of venue or venire must be granted. See Minn. R. Crim. P. 25.02, subd. 3.

CONCLUSION

As such, Mr. Kueng respectfully requests that this Court change the venue or grant a continuance until 1 year following the sentencing in the Federal Court Case to allow memories to fade and bias to disappear prior to trial and grant any other appropriate relief to ensure that a fair trial by an impartial jury as guaranteed by the constitutions of the United States and the State of Minnesota.

Respectfully submitted,

Date: May 28, 2022

/s/ *Thomas C. Plunkett*

Thomas C. Plunkett
Attorney No. 260162
Attorneys for Defendant
101 East Fifth Street
Suite 1500
St. Paul, MN 55101
Phone: (651) 222-4357