STATE OF MINNESOTA | DISTRICT COURT

COUNTY OF HENNEPIN | FOURTH JUDICIAL DISTRICT

State of Minnesota,

Plaintiff,

v.

J. Alexander Kueng,

Thomas Kiernan Lane,

Tou Thao,

Defendants.

STATE'S MEMORANDUM OF LAW REGARDING AUDIO VISUAL COVERAGE, SEQUESTRATION, EXPERT DISCLOSURE DEADLINES, AND EXPERT TESTIMONY

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

Court File No.: 27-CR-20-12951

Court File No.: 27-CR-20-12949

TO: The Honorable Peter A. Cahill, Judge of District Court, and counsel for Defendants, 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; Robert Paule, 920 Second Avenue South, Suite 975, Minneapolis, MN 55402; and counsel for Media Coalition, Leita Walker, 2000 IDS Center, 80 South 8th Street, Minneapolis, MN 55402-2119.

INTRODUCTION

In *State v. Chauvin*, this Court presided over one of the most consequential cases in this nation's history. The Court guaranteed the defendant a fair trial, minimized the burden on jurors, ensured widespread public access, protected the health of trial participants, and prevented disruptions to the proceedings. In short, what the Court did the first time worked, and this Court should continue to use the same proven procedures in the second trial. The State specifically requests that the Court: (1) continue audio-visual coverage of the proceedings; (2) only partially sequester the jury; and (3) enforce both the existing expert disclosure deadlines, and required limits on expert testimony.

First, the State reiterates its strong support for audio and video coverage of the proceedings. The *Chauvin* trial demonstrated the benefits of robust public access to this important case and proved that the Court could successfully navigate the concerns animating the State's initial opposition to audio and video coverage. The Court's commendable transparency inspired public confidence in the proceedings and helped ensure calm in Minneapolis and across the country. Subsequent developments—including the *State v. Potter* trial and the Minnesota Supreme Court's efforts to amend the rules of procedure to permit broader audio-video coverage of criminal proceedings—confirm the wisdom of meaningful public access.

The State is particularly concerned about the message this Court could send if it reverses course, after permitting such robust public access in the *Chauvin* trial and initially guaranteeing the public the same degree of access for Defendants' upcoming trial. This case sits in a class of one. It is uniquely related to *Chauvin*, which was already televised. But simply by dint of an unrelated severance motion, this case might be treated radically differently from its companion case. In the public's mind, this trial and *Chauvin* are linked. If this Court eliminates audio-visual coverage at this late hour, the broader public may receive the unintended message that they no longer have the right to observe proceedings. Worse still, the public may wonder what changed to limit their access and potentially lose confidence in the process and its outcome. The State respectfully requests that all Minnesotans and all Americans—not just those who can attend in person—continue to have the ability to watch and evaluate the upcoming proceedings for themselves.

At the same time, broadcasting is necessary because COVID-19 continues to pose dynamic challenges to public health. The State is mindful of Chief Justice Gildea's recent order relaxing masking requirements in light of the current levels of infection. *See* Order Governing the

Continuing Operations of the Minnesota Judicial Branch, ADM20-8001, at 2 (Minn. Mar. 3, 2022) (Gildea, C.J.) ("Continuing Operations Order"). But although cases are low in Minnesota right now, the rapid wave of cases caused by the Omicron variant this past winter and the current emergence of an even more contagious BA.2 variant suggest that infections could increase rapidly in a short timeframe. Chief Justice Gildea's order contemplates that courts will need to reimpose COVID-19 restrictions where necessary. *Id*. Televising the trial as planned will better enable the Court to confront changing circumstances. Meanwhile, even if infections remain low, these proceedings will face unique risks that participants will be exposed to and contract COVID-19 in crowded courtrooms, given the number of people who are likely to attend. If and when trial participants do contract COVID-19—as happened in the Defendants' recent federal trial—it would disrupt the proceedings. This Court can minimize the risks of disruptions by broadcasting the trial and limiting the number of people congregating in the Hennepin County Government Center.

Finally, in the event the Court chooses not to permit public broadcasting, the State requests the Court grant the State and Defendants access to the audio-visual feed for their own uses. In particular, a remote feed will ensure that family members can easily watch the proceedings at all times, that essential expert witnesses can observe the proceedings without needing to be physically present in the courthouse, and that counsel, including those who test positive, can monitor proceedings remotely.

Second, the State fully supports partially sequestering the jury, rather than full sequestration throughout the trial. In *Chauvin*, this Court's partial sequestration order—including escorting the jurors to the courthouse and juror anonymity—avoided the need for full sequestration during the trial and successfully shielded the jurors from risk of exposure to "highly prejudicial matters." Minn. R. Crim. P. 26.03, subd. 5(2). Since *Chauvin*, no new facts have emerged that

require revisiting that proven course. At the same time, research demonstrates that sequestration can impose considerable costs to jurors, particularly for the less privileged and those with child-care or elder-care obligations. The State urges the Court to avoid creating unnecessary burdens for Minnesotans who seek to perform their civic duty.

Third, the State opposes any further extension of the expert disclosure deadline beyond the deadline in the Court's previous scheduling order. Defendants have already had more than a year to analyze the State's expert reports and to prepare responsive motions, expert testimony, and adjust their trial strategy accordingly. And this Court has already offered Defendants five opportunities to disclose experts, including once after *Chauvin*. Granting Defendants a sixth opportunity to disclose further experts right before the deadline for motions *in limine* will substantially prejudice the State.

The State further requests that this Court enter an order limiting the testimony of Dr. David Fowler and any other members of The Forensic Panel. Defendants' only expert medical report is a purported collaboration between Dr. Fowler, the report's primary author, and thirteen contributing specialists of various disciplines. As the Court recognized in *Chauvin*, under Rule of Evidence 702, Dr. Fowler may not testify to topics beyond the scope of his expertise in forensic pathology. And under Rule of Evidence 804 and binding Minnesota Supreme Court precedent, he may not testify to other experts' opinions, or that other members of The Forensic Panel "agreed with his opinion." *State v. Bradford*, 618 N.W.2d 782, 793-794 (Minn. 2000). Accordingly, Defendants may introduce the aspects of the report outside of Dr. Fowler's expertise only by calling other members of The Forensic Panel, and only if they have timely provided the State with a summary of those experts' anticipated testimony, findings, opinions, and conclusions, as required under Minnesota Rule of Criminal Procedure 9.02, subd. 1(2)(b).

ARGUMENT

I. THIS COURT SHOULD CONTINUE TO BROADCAST THIS TRIAL.

1. Two years ago, when this Court initially ordered audio-visual broadcasting of these proceedings, the Court concluded that "audio and video coverage" was the only way to ensure "meaningful access to the trial for the public and the press." Order Denying Mot. to Reconsider and Amend Order Allowing Audio and Video Coverage of Trial 4 (Dec. 18, 2020) ("2020 AV Order"). At that time, the State opposed the Court's decision. But the *Chauvin* trial proved that the Court could successfully navigate the State's concerns while securing the benefits of truly meaningful public access.

As the State recognized last September, the Court's decision to allow the world into its courtroom was the correct one. There is no doubt that audio-visual broadcasting inspired enormous confidence in the proceedings. Millions of Americans judged for themselves whether the "offender[]" was "being brought to account for [his] criminal conduct by jurors fairly and openly selected." *Press-Enter. Co. v. Super. Ct. of Cal., Riverside Cnty.*, 464 U.S. 501, 509 (1984).

In addition, the "community's ability to observe these proceedings" contributed to the "comparative calm" in Minneapolis during those proceedings. State's Mem. of Law Opposing Mots. to Exclude Audio and Video Recording of Proceedings 13 (Sept. 1, 2021) ("State's 2021 Mem."). "Criminal acts, especially violent crimes, often provoke public concern, even outrage and hostility." *Press-Enter. Co.*, 464 U.S. at 508-509. As the United States Supreme Court has recognized, "openness" provides a "community therapeutic value." *Id*. at 508 (internal quotation marks omitted). In *Chauvin*, the ability for every person to see that "the criminal justice system [was] functioning" provided "an outlet" for the public's "understandable reactions and emotions." *Id*. at 509.

This Court's decision has received deserved praise across a diverse spectrum. *See, e.g.*, Editorial Board, *Opinion: The Time Has Come for Cameras in the Courtroom*, Wash. Post (Feb. 6, 2022, 8:00 AM EST) (praising this Court);[1] Kevin S. Burke & Elizabeth A. Stawicki, *Chauvin Case Proved the Value and Efficacy of Cameras in the Courtroom. Let Them In*, Twin Cities Pioneer Press (June 24, 2021, 5:47 AM) ("In the Chauvin trial, Judge Cahill provided a tailored approach to balancing privacy rights with the right to a public trial.");[2] *Our View: Transparency Time to Allow Cameras in Court*, Free Press (June 3, 2021) ("The Chauvin trial demonstrated that rights to a fair trial can be protected at the same time the press and the public are granted unfettered access to view all the court proceedings.");[3] Sen. Chuck Grassley, *Cameras Added Transparency to Derek Chauvin Trial—Now Add Them to All Courtrooms*, USA Today (May 2, 2021, 11:33 AM ET) ("[T]he live feed [in *Chauvin*] delivered unfiltered assurance to the American people. It showed our system of justice at work and affirmed the independence of the judiciary as an impartial arbiter of the rule of law.").[4]

In recent months, other trial courts handling significant cases have likewise recognized the importance of meaningful public access. In an order permitting broadcasting in *State v. Potter*, Judge Chu noted that the "*Chauvin* trial should allay any trepidations about cameras in the courtroom" and adopted "the same" measures this Court pioneered in *Chauvin*. Order Granting A/V Coverage of Trial 3-4, *State v. Potter*, 27-CR-21-7460 (D. Ct. Minn. Nov. 9, 2021) (italics added). Similarly, this past November, a Georgia state court televised the trial of three men for

[1] *Available at* tinyurl.com/mur93bm3.
[2] *Available at* tinyurl.com/2xyjur6n.
[3] *Available at* tinyurl.com/2p8ta6c4.
[4] *Available at* tinyurl.com/2pya75nw.

murdering Ahmaud Arbery. As a result, millions of Americans witnessed firsthand the operations of justice in another high profile case.

This recent trend toward openness has reached the highest levels of the Minnesota and federal judiciaries. In an endorsement of this Court's approach in *Chauvin*, the Minnesota Supreme Court ordered the Advisory Committee on the Rules of Criminal Procedure to consider expanding the rules for audio and video coverage. *See* State's 2021 Mem. 14-15. The Advisory Committee will release its report by July 1, just days before opening statements in this trial are likely to begin; it may well recommend adopting precisely the course this Court charted in *Chauvin*. Meanwhile, for the first time in its history, the United States Supreme Court has provided live audio coverage of oral arguments. That live coverage has fundamentally altered the ability of everyday Americans to engage with the cases being argued in the nation's highest court. Today, nearly half of all Americans report having listened to live audio of the Supreme Court, and many report gaining a more positive view of the Court.[5] In short, greater transparency begets confidence at every level of the legal process.

Reducing public access to Defendants' trial, however, risks the exact opposite. The public watched *Chauvin* gavel-to-gavel and currently expects a similar level of access to these proceedings. Reversing course raises the specter of this Court barring the courtroom door in practice, even if not in fact. The reality is that—for a myriad of reasons—most people cannot attend this trial in person. They may have conflicting obligations or may fear the risk of contracting COVID-19 in a crowded overflow courtroom, to mention just two of many possible impediments. Where a trial even appears to have "been concealed from public view[,] an unexpected outcome

[5] Robert Green, C-SPAN & Pierrepont Consulting & Analytics LLC, *Supreme Court Survey* 13 (Mar. 2022), tinyurl.com/y3zh494t.

can cause a reaction that the system at best has failed and at worst has been corrupted." *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 571 (1980). To be sure, overflow rooms will ensure the bare minimum public access necessary to vindicate Defendants' Sixth Amendment right to a public trial and the public's First Amendment right to attend.[6] *See* State's Mot. for Reconsideration of Order Allowing Audio and Video Coverage of Trial 8-14 (Nov. 25, 2020). But in practical terms, the vast majority of Americans will be unable to view this trial. Previously, they could. Whatever the verdict, a portion of the public may come away less confident in both the process and outcome. This Court can avoid that result by maintaining audio-visual coverage.

2. The Court should also continue to broadcast this trial to minimize the ongoing risks posed by COVID-19. The State acknowledges that case counts are currently low. The State hopes this trend will continue. The inability to predict the future with any accuracy, however, has been an unfortunate hallmark of the COVID-19 pandemic. When the parties addressed this issue in September 2021, the State was concerned that the then-novel Delta variant would lead to a spike in infections. In just a few months, Minnesota and the entire United States experienced the rapid emergence and spread of the "even more contagious" Omicron variant. Order Denying Mot. to Reconsider Nov. 4, 2020 Order Allowing Audio and Video Coverage of Trial 3 (Jan. 11, 2022) ("Jan. 2022 Order"). By early January, Minnesota's test-positivity rate had jumped "nearly 20 percent" and the state saw nearly 10,000 new COVID-19 cases per-day.[7]

Today, Omicron-induced COVID-19 cases have ebbed. As a result, institutions around the country are loosening masking and social-distancing rules. Minnesota's courts are no exception.

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[6] As this Court previously acknowledged, even for those who can attend in person, the quality of their access will be poorer. Overflow rooms suffer from "bad video, bad audio, limited seating, [and] jostling for position." 2020 AV Order 5.

[7] *See* Christopher Magan, *Omicron Driving Minnesota COVID Cases to Unprecedented Levels*, Twin Cities Pioneer Press (Jan. 13, 2022, 3:56 PM), tinyurl.com/3vwbz82w.

See Continuing Operations Order 2. But Chief Justice Gildea's most recent COVID-19 order contemplates that courts will need to reimplement COVID-19 restrictions when cases increase. *Id*. Meanwhile, in an all-too-familiar pattern, the world now faces the virulent BA.2 variant, which has already led to increasing cases across Europe. According to some experts, the United States may see a similar surge "as soon as April, or perhaps later in the spring or the early summer."[8] By maintaining its plans to use audio-visual coverage, this Court can better position itself to address a spike in COVID-19 cases.

Even if cases do remain low, this trial faces unique risks that other, less-prominent proceedings do not face. COVID-19 is still circulating, and those who test positive must isolate until they are no longer infectious. Gathering large numbers of people into poorly-ventilated rooms will greatly increase the chance that one or more trial participants contracts COVID-19. Indeed, during Defendants' federal trial, the court suspended proceedings after one Defendant tested positive for COVID-19. The same or even greater disruptions could occur in this Court. And in the event the Court fully sequesters the jury during trial, lengthy continuances could prove particularly burdensome for jurors, who could be isolated and absent from their families while awaiting the trial's resumption. *See infra* pp. 12-19 (opposing sequestration). This Court can best minimize the risks of disruptions by broadcasting these proceedings and reducing the number of people who need to be physically present in the Hennepin County Government Center.

3. This Court has the authority to ensure robust public access and protect public health. Rule 4.02 requires both parties to consent to broadcasting. Minn. Gen. R. Prac. 4.02(d). As this Court has previously held, however, Rule 1.02 empowers this Court to "modify the application of

[8] *See* Benjamin Mueller, *Another Covid Surge May Be Coming. Are We Ready for It?*, N.Y. Times (Mar. 19, 2022), tinyurl.com/ydphmh7w.

the[] rules in any case to prevent manifest injustice." Minn. Gen. R. Prac. 1.02; *see* 2020 AV Order 3 & n.1. That manifest injustice standard continues to be met here.

Indeed, to use overflow rooms, this Court must already find a manifest injustice requiring a modification of the rules. As this Court also previously noted, "[n]othing in Rule 4.01 or 4.02 permits a closed-circuit audio and video feed to another location for public consumption, even if you call that location a courtroom or an 'overflow' courtroom." 2020 AV Order 6; *see* Minn. Gen. R. Prac. 4.01 ("Except as set forth in this rule, no visual or audio recordings . . . shall be taken in any courtroom."). Thus, "cameras in the courtroom" are "necessary." 2020 AV Order 6. The question is whether it is better to have "a limited audience" "in a trial with international interest" or to provide meaningful public access. *Id*. Once this Court has found a manifest injustice and made the decision to expand broadcasting beyond the strict boundaries permitted in the rules, it should ensure the same robust level of access it facilitated in *Chauvin*.

Moreover, this case presents precisely the kind of circumstance in which the Court should employ the "flexibility" afforded by Rule 1.02 to ensure "consistent administration of justice." David F. Herr, *Rules are Rules. Really.*, Bench & Bar of Minn., Nov. 2020, at 20, 23; *see also* 2020 AV Order 3 n.1 (citing Herr); David F. Herr, 3A Minnesota Practice, General Rules of Practice Annotated, R 1 (June 2021 Update) ("This provision is important to prevent having the rules subvert their purpose of making practice more uniform and just."). If this Court deviates from the procedures it employed during the *Chauvin* trial, the Court would provide the public with an apparent inconsistency: One defendant will have been tried in the public eye, but three others will have stood trial out of view, all regarding the same criminal incident. This Court should avoid that anomalous and potentially harmful result, which would have been brought about by a series of unusual circumstances the drafters of Rule 4.02 could not possibly have contemplated.

Finally, Defendants will not face any kind of prejudice from audio-visual broadcasting. As this Court has previously held, Defendants' conclusory assertion that "some potential expert witnesses do not wish to testify because of the notoriety of the cases" has nothing to do with whether the Court broadcasts the trial. Jan. 2022 Order 4. The "notoriety of these cases is neither enhanced nor diminished by livestreaming." *Id*. The press "will be in the courtroom reporting on the proceedings, with or without livestream." *Id*. at 3. To the extent Defendants truly have difficulty securing expert witnesses, that difficulty reflects the fact that Defendants' theories are supported neither by facts nor science. *See* Minn. R. Evid. 702. And if anything, the appropriate scientific criticism that Dr. Fowler received for his testimony in *Chauvin* highlights the benefits of shining a bright light on the proceedings. "There is no way witnesses can or should hide their testimony from public scrutiny." Jan. 2022 Order 3.

Even if Defendants could offer credible evidence that a witness refused to testify, the Court is able "to enforce defense subpoenas by various means" and has already declared its willingness to do so. *Id*. Additionally, to the extent Defendants present any concrete concerns regarding non-expert witnesses, the Court has signaled its willingness to adopt tailored limitations on audio-visual coverage for specific witnesses where necessary, as "was done during the trial of Derek Chauvin when young witnesses testified." *Id*. In short, there is no compelling reason to deviate from this Court's prior decision to permit audio-visual broadcasting.

4. If this Court does decide to limit audio-visual broadcasting to overflow courtrooms, the State respectfully requests that both parties be given private access to that feed. In addition to highlighting the public benefits of widespread access, *Chauvin* demonstrated that audio-visual broadcasting is extremely useful to trial participants. In particular, audio-visual broadcasting will allow George Floyd's and Defendants' family members to privately view the proceedings without

exposing themselves to COVID-19. Audio-visual broadcasting will also make the trial more efficient. In the prior trial, this Court exempted expert witnesses from sequestration to permit them to prepare their testimony; audio-visual broadcasting enables expert witnesses who are not sequestered to watch the trial remotely. And it will ensure that all lawyers, including those who contract COVID-19, can continue to assist this trial remotely.

II. THIS COURT SHOULD NOT SEQUESTER THE JURY.

The State opposes fully sequestering the jury during trial. Full sequestration is warranted only in the rare circumstance that a "case is of such notoriety or the issues are of such a nature that . . . highly prejudicial matters are likely to come to the attention of the jurors," and less restrictive measures would not adequately insulate the jury. *State v. Blom*, 682 N.W.2d 578, 607 (Minn. 2004) (quoting Minn. R. Crim. P. 26.03, subd. 5(2)); *see State v. Morgan*, 246 N.W.2d 165, 169 (Minn. 1976). To make this finding, Minnesota courts must "properly assess[] the likelihood that prejudicial publicity would affect the impartiality of the jurors and thereby prevent a fair trial." *Blom*, 682 N.W.2d at 608 (quoting *Morgan*, 246 N.W.2d at 169). This Court previously assessed that risk and found that partial sequestration adequately guarded Defendants' trial rights. Order for Juror Anonymity and Sequestration 4-7 (Nov. 4, 2020) ("Nov. 2020 Order"). That was correct, as this Court's experience in *Chauvin* demonstrates. And that decision remains the correct one today.

1. Sequestration is drastic and disfavored. *See Levine v. U.S. Dist. Ct. for Cent. Dist. of Cal.*, 764 F.2d 590, 600 (9th Cir. 1985) ("The negative effects of sequestration are well documented.") (citing J. Van Dyke, *Jury Selection Procedures* 181-183 (1977)). Sequestration "requir[es] the jurors to compensate for the publicized actions of trial participants" and fosters "the bias of resentment" without any prospect of "remov[ing] prejudice from publicity [viewed] prior

to impanelment." *News-Journal Corp. v. Foxman*, 939 F.2d 1499, 1513 n.16 (11th Cir. 1991). And because sequestration places disproportionate burdens on certain members of society, it is a potential "impediment to attempts to further democratize the jury system." James P. Levine, *The Impact of Sequestration on Juries*, 79 Judicature 266, 272 (1996).

Full sequestration is uniquely burdensome. It pulls jurors away from loved ones, jobs, and the comfort of home in exchange for prolonged state custody and continuous monitoring. *Commonwealth v. Hayes*, 414 A.2d 318, 476-477 (Pa. 1980). In some cases, sequestration orders even prohibit jurors from contacting friends and family members. Levine, *supra*, at 266. Serving on a sequestered jury is also a significant source of stress. *See Through the Eyes of the Juror: A Manual for Addressing Juror Stress*, Nat'l Ctr. for State Courts 41 (1998) ("Judges rated sequestration for an entire trial as the second most significant source of juror stress.").[9] As the National Center for State Courts has explained, juror stress can manifest though "physical and psychological reactions, including increased anxiety and frustration, disrupted eating and sleeping routines, nausea, depression, and anger and hostility." *Id.* at 2; Levine, *supra*, at 269 (noting one juror on the Rodney King trial "suffered a breakdown"). It can also negatively affect the trial process or the jury's dynamic. *See* Levine, *supra*, at 269 (recounting example of jury that was so distraught over ongoing sequestration "that the judge declared a mistrial and dismissed the jury"); *see id.* at 272 (explaining that, although sequestration "may bond some juries it may fracture others").

Additionally, "[s]equestration" "can have pernicious impacts" by narrowing the pool of available jurors. *Id.* at 271. Many eligible, thoughtful members of the public may seek to opt out of jury service when they cannot reconcile a month of isolation with family responsibilities,

[9] *Available at* https://bit.ly/3LHz4jI.

childcare needs, medical requirements, or religious practices. *Id.* (noting that concerns about sequestration may account for the fact that approximately three out of five people called for jury service do not show up to court); *see also* Mark Hansen, *Sequestration Little Used, Little Liked*, 10 ABA J. 16, 17 (Oct. 1995) (noting that "95 percent of the nearly 4,500 potential jurors called for duty in the second Rodney King trial said sequestration would impose a prohibitive hardship"). And even those who are willing to serve may be disqualified because of the burdens sequestration would impose on the individual, as well as the State. For instance, a "physically disabled [person] who require[s] special assistance" in the evenings may be unable to serve. *See* Levine, *supra*, at 271.

Women are especially likely to "ask[ ] to be excused from serving on juries due to nighttime child care duties." *Id.* The same is true of "members of religious groups whose beliefs would be compromised if they could not go home on weekends." *See id.* Sequestration also imposes disproportionate burdens on single-parent families, individuals who rely on weekend work to supplement their incomes, and people with mental-health conditions exacerbated by isolation, to name just a few examples.

These harms take on outsized significance in view of sequestration's limited benefits. First, when a jury is not sequestered, it is standard practice to provide a cautionary instruction prior to recessing or adjourning for the day reminding jurors not to discuss the case with others, not to post about their experience to social media, and not to "read or listen to" any media coverage of the case. Minn. CRIMJIG 2.08. These are typically accompanied by a warning that failure to "follow these instructions . . . may jeopardize the trial," and could even require "the whole trial to be redone." *Id.* Courts "presume that jurors follow [these] instructions." *State v. Miller*, 573 N.W.2d 661, 675 (Minn. 1998). Second, there is limited (if any) reason to think that jurors who are

inadvertently exposed to publicity despite these instructions are incapable of setting aside that information and maintaining impartiality. *See* Hansen, *supra*, at 16-17. In fact, the process of rehabilitation during voir dire presumes the exact opposite. *See, e.g.*, *State v. Anderson*, 603 N.W.2d 354, 356-357 (Minn. 1999) (declining to presume that jurors who had been victims of crimes like burglary would be biased against defendant in burglary prosecution); *State v. Thomas*, No. A09-1612, 2010 WL 3543432, at *6-8 (Minn. Ct. App. Sept. 14, 2010) (holding that juror who expressed racial bias during voir dire later provided sufficient assurance that he could be impartial in trial involving Black defendant). Third, sequestration does nothing to counter the potential publicity jurors were exposed to *before* they were empaneled. *News-Journal Corp.*, 939 F.2d at 1513 n.16; Hansen, *supra*, at 17 (noting that there is "evidence to suggest [sequestration] comes too late to do any good in a high-profile case"). Sequestration thus imposes high costs and dubious benefits under these circumstances.

In short, "[t]he negative impacts of sequestration normally appear to outweigh its virtues." Levine, *supra*, at 272. Full sequestration is thus warranted only in the most extreme cases, where it is necessary to safeguard the right to a fair trial or to protect the safety of the jurors themselves. *See How Courts Care for Jurors in High Profile Cases*, U.S. Courts (Jan. 24, 2020) (noting federal courts use sequestration to protect juries from tampering and intimidation).

2. The burdens of full sequestration are not warranted here. This Court has already found that fully sequestering the jury is not necessary to ensure a fair trial: In November 2020, the Court declined to fully sequester the jury. Nothing has changed to warrant reversing course now.

Instead, the Court in *Chauvin* adeptly guarded against the risks of prejudice—while balancing the need for transparency—through a set of carefully-calibrated partial sequestration measures. At that time, in the Court's view, there were "[s]trong reasons . . . to believe that threats

to jurors' safety and impartiality exist[ed] in all four of [Defendants'] cases." Nov. 2020 Order 4. The Court recognized that the case was associated with "extensive[] and continu[ous]" media coverage—both locally and around the world. *Id.* at 2. The Court had "received many *ex parte* voice mails, e-mails, notes and letters from the general public, suggesting or demanding that the Court decide the case in a certain way," and reasoned that "it [was] highly likely that persons with an interest in this case may also attempt to contact jurors . . . [and] argue for a specific result." *Id.* at 3. The Court was also cognizant of the potential influence of "civil unrest." *Id.* at 2. During one hearing, "chanting could be heard in Family Justice Center hallways and rooms overlooking the protests." *Id.* And even though peaceful demonstrations were the norm, the Court identified examples of destructive protest, and credited Defendants' and defense counsels' public safety concerns. *Id.* Between the media and the community engagement, the Court found it "unlikely that any person in the State of Minnesota has not been exposed to some publicity regarding this case." *Id.*

But the Court determined that it was "not necessary" to fully sequester the jury because "[r]easonable measures" short of full sequestration were available and adequate to guarantee Defendants a fair trial. *Id.* at 4; *see Blom*, 682 N.W.2d at 595, 607-609 (court did not abuse its discretion where it used voir dire to determine impartiality of jurors exposed to pretrial publicity instead of ordering full sequestration). The Court maintained juror anonymity, Nov. 2020 Order 5-6; allowed Defendants additional peremptory challenges, *id.* at 6; and required that jurors remain partially sequestered throughout the trial, *id.* at 6-7. Specifically, under the November 2020 plan:

- The Hennepin County Sheriff's Office (HCSO) will arrange for vehicle parking for jurors at a remote or nearby secure location and escort or transport jurors through a non-public access portal to a designated jury room in the Hennepin County Government Center. Jurors who cannot drive will be reimbursed for taxi or ride-sharing services and follow a security plan set out by HCSO.

- HCSO will keep the jurors secure throughout each day of trial, including during breaks. During the day, jurors will remain in the Hennepin County Government Center. Court administration will provide lunch for jurors during the midday recess. Jurors may use electronic devices during any recess during trial.

- At the conclusion of each day of trial, jurors will be escorted or transported back to their vehicles by HCSO. Jurors will be released each day with an admonition to avoid media coverage of the trial and to report back to the Court any attempts to contact them about the trial.

Id.

Those partial sequestration measures worked and effectively guarded the *Chauvin* jurors against prejudicial publicity as soon as they were empaneled. Moreover, although the Court reserved the right to "order full sequestration at any time if the partial sequestration plan prove[d] ineffective in keeping the jurors free from outside influence," *id.* at 7, it consistently determined that there was no need for additional sequestration measures during the *Chauvin* trial. The Court denied Defendant Chauvin's multiple mid-trial requests to fully sequester the jury, finding "no indication" of tampering or outside contact. Apr. 12 Tr. 38, *State v. Chauvin*, No. 27-CR-20-12646 (D. Ct. Minn. Apr. 12, 2021); *see* Mem. of Law in Supp. of Def.'s Post-Verdict Mots. 14, *State v. Chauvin*, No. 27-CR-20-12646 (D. Ct. Minn. June 2, 2021) ("Mot. for New Trial"); *see also State v. Anderson*, 379 N.W.2d 70, 81 (Minn. 1985) (affirming decision not to sequester jury where there was no evidence "of any private communication or contact or any other circumstance suggestive of improper influence or jury tampering, direct or indirect"). And when Defendant Chauvin revived his arguments about publicity in his motion for a new trial, this Court denied Chauvin's motion and again rejected the notion that juror impartiality was in any way compromised. *See* Order Denying Mots. for New Trial and for *Schwartz* Hearing 1-2, *State v. Chauvin*, No. 27-CR-20-12646 (D. Ct. Minn. June 24, 2021).

3. Nothing has changed to warrant reversing course and imposing the extraordinary hardship that full sequestration would entail. Defendants have not articulated a specific reason why full sequestration would be warranted now. In fact, Defendant Thao never renewed his request for a fully sequestered jury; Defendant Lane has never asked for one; and Defendant Kueng has opposed it. Defense's Objection to State's Mot. for Joinder 16, *State v. Kueng* (Sept. 8, 2020).

Nor is there any evidence that the concerns this Court noted in ordering partial sequestration in *Chauvin* are more pressing here. On the contrary, although there is still a high degree of public interest such that broadcasting the trial is warranted, *supra* pp. 5-8, the specific concerns the Court noted in the November 2020 Order are far less prominent today. Protests are fewer and further between than they were in 2020. *See* Nov. 2020 Order 2. There was no unrest related to *Chauvin* or Defendants' federal trial. *Cf. id.* Nor is there any evidence that the jurors in those trials were contacted by "persons with an interest in this case" in an attempt to influence the result. *Cf. id.* at 3. Moreover, as in *Chauvin*, sequestration would only insulate the jury from *new* media coverage, but the passage of time has left the media with fewer developments to report. *Cf. id.* at 2. *Chauvin* was the first trial arising from this incident and took place less than a year after May 25, 2020. By contrast, this is the third trial arising from these events and is taking place more than two years after George Floyd's death. Any uptick in news coverage surrounding the July trial will thus likely center on evidence that was "already presented and [is] unlikely to unduly prejudice the jury." *See id.* at 4.

To be clear, George Floyd's family, his community, and the State of Minnesota's interest in seeing the full measure of justice brought to bear is the same today as it was in May 2020. Neither these strong interests nor the public's continued interest in transparent, fair proceedings, *supra* pp. 5-8, are commensurate with the type of prejudicial publicity that makes full sequestration

appropriate. *See Sheppard v. Maxwell*, 384 U.S. 333, 355, 358 (1966) (describing the type of "carnival atmosphere" that prompts the need for sequestration). The Court's existing partial sequestration plan is more than adequate to safeguard Defendants' right to a fair trial. That plan ensures secure transportation and access to the courthouse, ensures that jurors are partially sequestered during the day, and ensures that jurors are admonished daily to avoid media coverage. Nov. 2020 Order 6-7. It also maintains juror anonymity, *id.* at 5-6, and allows Defendants additional peremptory challenges, *id.* at 6. To the extent the Court or Defendants have specific concerns about additional issues, the Court can impose similarly tailored measures. And, of course, the Court retains the authority to order full sequestration at any point if, but only if, "the partial sequestration plan proves ineffective in keeping the jurors free from outside influence." *Id.* at 7; *see also* Minn. R. Crim. P. 26.03, subd. 5(3). But at this juncture, full sequestration—with all of its attendant burdens and consequences—is unwarranted.

III. THIS COURT SHOULD NOT FURTHER EXTEND THE EXPERT DISCLOSURE DEADLINE BUT SHOULD LIMIT DEFENDANTS' EXPERT TESTIMONY AS APPROPRIATE UNDER THE MINNESOTA RULES.

The State opposes re-extending the expert disclosure deadline. This Court has already given Defendants five separate opportunities to disclose relevant experts. Those deadlines have come and gone, and there is no reason to provide yet another chance to disclose additional experts—particularly so close to trial. Moreover, the State respectfully requests that this Court enter an order limiting Defendants' expert medical testimony as required by Minn. R. Evid. 702 and 802, and Minn. R. Crim. P. 9.02, subd. 1(2)(b).

A. The Court Should Not Extend The Expert Disclosure Deadline.

1. Defendants have had multiple opportunities to disclose experts in this case. In October 2020, the Court ordered the State to provide its initial expert disclosures on December 1, 2020,

and Defendants to provide their initial expert disclosures on December 15, 2020. Notice of Defenses and Expert Witness Disclosure Deadlines 1 (Oct. 8, 2020). The Court established January 19 as the deadline for both parties' full expert disclosures. *Id.*

The State provided its initial expert disclosures on December 1, 2020 as required. But just days before their initial expert disclosure deadline, Defendants Chauvin and Thao moved for an extension. Def.'s Notice of Mot. and Mot. for Continuance, *State v. Chauvin*, No. 27-CR-20-1646 (D. Ct. Minn. Dec. 14, 2020); Mot. for Sanctions and Hearing Regarding Discovery Violations by the State, *State v. Thao* (Dec. 11, 2020). Ultimately, this Court set the following expert disclosure deadlines: December 1, 2020 for the State's initial disclosures; January 15, 2021 for the Defendants' initial disclosures; February 1, 2021 for the State's full disclosures; and February 22, 2021 for the Defendants' full disclosures. *See* Expert Witness Disclosure Deadlines and Hearing on Defs.' Mots. for Trial Continuance 1 (Dec. 17, 2020); Order Regarding Discovery, Expert Witness Deadlines, and Trial Continuance 4 (Jan. 11, 2021); Amended Order Regarding Defense Expert Report Disclosure Deadline 1 (Feb. 4, 2021).

Consistent with that order, on January 14-15, 2021, Defendants provided their initial expert disclosures. Those disclosures identified the following experts:

- Use of force and/or Minneapolis police procedure: Steve Ijames, Greg Meyer
- Medical/scientific: Dr. David R. Fowler; The Forensic Panel; other Experts as yet identified and working in association with The Forensic Panel including but not limited to Toxicologist, Psychologist

Defendants incorporated by reference any experts disclosed by the State or their co-Defendants, including Defendant Chauvin. Def.'s Initial Expert Disclosure 1, *State v. Kueng* (Jan. 14, 2021) ("Kueng Initial Expert Disclosure"); Expert Witness Notice 1, *State v. Lane* (Jan. 14, 2021) ("Lane

Initial Expert Disclosure"); Def.'s Initial Expert Disclosure 1, *State v. Thao* (Jan. 15, 2021) ("Thao Initial Expert Disclosure"). Defendants Thao and Kueng also included an item designating "[o]ther Experts identified following the trial in *State v. Chauvin*." Kueng Initial Expert Disclosure 1 (italics added); Lane Initial Expert Disclosure 1; Thao Initial Expert Disclosure 1.

On June 8, 2021, following the trial for Defendant Chauvin, this Court *sua sponte* set yet another disclosure deadline for additional experts: December 15, 2021. Scheduling Order 2 (June 8, 2021) ("June 8 Order"). On October 6, 2021, the State moved to amend that scheduling order to establish a phased disclosure process for initial and full expert disclosures, similar to what the Court ultimately adopted in *Chauvin*. State's Mot. to Amend Scheduling Order on Expert Disclosures (Oct. 6, 2021). The Court denied that motion on October 11, 2021—more than two months before the December 15 deadline. Order Denying Mot. to Amend Scheduling Order (Oct. 11, 2021) ("Oct. 11 Order").

On December 15, 2021, the State disclosed to Defendants one additional expert and one supplemental expert report. Only one Defendant responded—Kueng. He re-disclosed Steve Ijames, the previously-identified use of force expert.

2. Defendants have had multiple opportunities to disclose experts: their original December 15, 2020 initial disclosure deadline; their revised January 15, 2021 initial disclosure deadline; their original January 19, 2021 full disclosure deadline; their revised February 22, 2021 full disclosure deadline; and their December 15, 2021 supplemental disclosure deadline. Indeed, the Court specifically gave Defendants *nearly eight months* after the verdict came back in *Chauvin* to evaluate and adapt their expert disclosures as necessary. This Court should not grant Defendants another opportunity to disclose additional experts now, less than two months prior to trial.

Allowing Defendants to disclose additional experts at this stage is highly prejudicial. Defendants have had since February 1, 2021—nearly 500 days prior to the start of trial on June 13, 2022—to analyze the vast majority of the State's expert reports, to prepare responsive motions and expert testimony, and to adapt their trial strategy as necessary.[10] By contrast, if Defendants disclose new experts now, the State will have *less than one-tenth* that amount of time to prepare before trial—and little time to prepare responsive motions *in limine* before the May 13 deadline. This presents a distinct risk of prejudice because each of the three Defendants is entitled to retain and present his own experts with unique theories. In fact, at the September 2 hearing, Defendant Kueng informed the Court that he would not be calling his disclosed medical experts; as a result, the State anticipates that at least one Defendant may name supplemental experts, if given yet another opportunity. *See* Tr. of Proceedings 8 (Sept. 2, 2021) (Mr. Plunkett: "At this time I'm withdrawing from my witness list, Dr. Fowler, as well as every expert that signed off on his expert report."). The State's experts cannot fairly predict who Defendants will choose as their experts. And the State's experts cannot possibly address as-yet unknown (and potentially new) theories on as-yet unknown (and potentially new) topics that will be addressed by as-yet unknown (and potentially new) Defense experts.

Further compounding the inequity, the State will have no opportunity to disclose additional experts in response to Defendants' disclosures—despite the fact that Defendants have had over a year to determine which experts to call in response to the State's disclosures.[11] And although the

[10] On December 15, 2021, the State disclosed a supplemental report from Dr. Martin Tobin and one additional expert: Dr. Samuel Stellpflug.

[11] If the Court disagrees with the State and extends the supplemental expert disclosure deadline, that deadline should apply to both the State and Defendants. As this Court recognized in its June 8 and October 11 Orders, simultaneous deadlines best balance the rights and obligations of the parties with respect to expert witnesses with the need to allow the parties a reasonable

State will endeavor to prepare and produce any responsive expert disclosures in a timely fashion, further extending the expert disclosure deadline increases the chance that the Court will need to resolve additional expert-related motions mid-trial.

For these reasons, the State respectfully requests that this Court not alter its prior scheduling order setting December 15, 2021 as the supplemental expert disclosure deadline.

B. This Court Should Limit Defendants' Expert Medical Testimony As Appropriate Under The Rules Of Evidence And Criminal Procedure.

Defendants have disclosed one expert medical report in this case: the report from The Forensic Panel.[12] The report purports to be a "multi-specialist, multi-disciplinary" collaboration between fourteen doctors of varying disciplines. But Defendants have only disclosed the findings, opinions, conclusions, and bases for the expert opinion of one of those fourteen doctors: the report's so-called "primary" author, Dr. Fowler.

As this Court ruled in *Chauvin*, Dr. Fowler may only testify to opinions that he is independently qualified to offer and may not introduce the opinions of other, non-testifying experts through hearsay statements. Order on State's Mots. *In Limine* 2, 4, *State v. Chauvin*, No. 27-CR-20- (March 24, 2021) ("MIL Order"). As a forensic pathologist, Dr. Fowler is generally qualified to testify to the cause and manner of Mr. Floyd's death. But The Forensic Panel's report also touches on topics and conclusions outside of Dr. Fowler's expertise, including but not limited to

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opportunity to prepare for trial. Indeed, the Minnesota Rules of Criminal Procedure contemplate contemporaneous discovery. *See* Minn. R. Crim. P. 9.01, subd. 1 (setting omnibus hearing as target date for prosecution's discovery disclosures); Minn. R. Crim. P. 9.02, subd. 1 (same, for defense); Minn. R. Crim. P. 9.03, subd. 2 (imposing continuing obligation on both sides to disclose matters promptly).

[12] This report was disclosed by Defendant Chauvin on February 22, 2021. Although Defendants Lane, Kueng, and Thao never formally disclosed this report as part of their initial, full, or supplemental expert disclosures, their initial expert disclosures also noticed "[e]xperts that have or will be disclosed in *State v. Chauvin*." Kueng Initial Expert Disclosure 1; Lane Initial Expert Disclosure 1; Thao Initial Expert Disclosure 1.

detailed toxicology findings, comments on Mr. Floyd's and Defendants' psychiatric states, and observations about how medical treatment is administered. Under Rule 702, Dr. Fowler may not independently testify to these findings outside of his expertise. And under Rule 802, he may not introduce the findings and opinions of other members of The Forensic Panel through hearsay statements. Accordingly, if Defendants intend to introduce the aspects of the report outside of Dr. Fowler's expertise, Defendants may do so only if they have specifically identified those individuals and have timely disclosed "a written summary of the subject matter of the expert's testimony, along with any findings, opinions, or conclusions the expert will give, the basis for them, and the expert's qualifications," as required by Minnesota Rule of Criminal Procedure 9.02, subd. 1(2)(b).

1. As relevant here, the scope of expert testimony is limited by two Rules of Evidence. First, under Rule 702, "[i]f scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise." Minn. R. Evid. 702. Second, under Rule 801, an expert's statement is hearsay if it is (1) not made "while testifying at the trial," and (2) is "offered in evidence to prove the truth of the matter asserted." Minn. R. Evid. 801(c). "Hearsay is not admissible" unless an exception applies. Minn. R. Evid. 802.

As the Minnesota Supreme Court has explained, expert "testimony regarding the opinions of . . . nontestifying experts [is] inadmissible hearsay." *Bradford*, 618 N.W.2d at 793-794. In *Bradford*, the medical examiner who performed an autopsy on the victim testified at trial "that, in his opinion, [the victim's] death was a homicide." *Id.* at 790. But he then added that "he had consulted with other experts, *who agreed with his opinion*." *Id.* (emphasis added). The Minnesota

Supreme Court held that this testimony was inadmissible hearsay and "did not fall into any applicable exception." *Id.* at 794. It explained that "[i]f the opinions of the nontestifying experts were to be admitted, [those] experts should have appeared and testified." *Id.*; *see id.* at 793-794 (explaining that Rule of Evidence 703(a) also does not allow an expert to testify "that two other nontestifying experts agreed with his opinion").

As this Court held in *Chauvin*, these rules limit Dr. Fowler's testimony "to what falls within the expertise of a forensic pathologist." Tr. of Proceedings Vol. 6, at 1132, *State v. Chauvin*, No. 27-CR-20-12646 (D. Ct. Minn. Mar. 15, 2021); *accord* MIL Order 2, 4 (explaining that Dr. Fowler's testimony is limited "to offering only those opinions that [he] is independently qualified to offer under Minn. R. Evid. 702"). And although Dr. Fowler was permitted to rely on other information from other experts and may testify that he "consulted with other experts," he may not repeat the substance of the non-testifying experts' opinions, analysis, findings or conclusions under the guise of his own expertise. *See* MIL Order 2, 4.

2. If Defendants wish to introduce the aspects of the report outside of Dr. Fowler's expertise, they must therefore rely on other experts. And Defendants may call those experts at trial only if they have specifically identified the other members of The Forensic Panel they intend to call and have timely produced the disclosures required by Minnesota Rule of Criminal Procedure 9.02, subd. 1(2)(b).

Under the Minnesota Rules of Criminal Procedure, if an expert "created" a report in preparation for trial, the expert's proponent need only disclose the report and underlying tests, experiments, or comparisons. Minn. R. Crim. P. 9.01, subd. 1(4)(a); 9.02, subd. 1(2)(a). But if the expert "created no results or reports in connection with the case," the expert's proponent must disclose "a written summary of the subject matter of the expert's testimony, along with any

findings, opinions, or conclusions the expert will give, the basis for them, and the expert's qualifications." Minn. R. Crim. P. 9.01, subd. 1(4)(c); 9.02, subd. 1(2)(b). This rule applies equally to the defense and prosecution and ensures that, even where the expert does not independently prepare and produce a report, the opposing party has adequate notice of the scope and content of the expert's testimony. As the Minnesota Supreme Court explained, this requirement is founded on "the proposition that the ends of justice will best be served by a system of liberal discovery" that afford both sides "the maximum possible amount of information with which to prepare their cases and thereby reduces the possibility of surprise at trial." *State v. Patterson*, 587 N.W.2d 45, 50 (Minn. 1998) (internal quotation marks omitted).

Defendants must therefore timely disclose the information required by Rule 9.02, subd. 1(2)(b), before calling any of the thirteen members of The Forensic Panel who contributed to Dr. Fowler's report. Although the Rules do not specifically address this situation—where an expert report has one "primary" author and several "contributing" authors—the implication of these requirements is that where the report alone does not provide sufficient notice of an expert's testimony, the defense must provide the disclosures identified under subdivision 1(2)(b). That is the case here for two reasons.

First, Dr. Fowler "created" the disclosed report. The report identifies Dr. Fowler as the "primary" author. The remaining thirteen experts, by contrast, merely "contribut[ed]" to the report. Moreover, Dr. Fowler repeatedly testified in *Chauvin* that this report was his work product. Dr. Fowler stated that he "prepared," "wrote," and "submitted" this report, and that it "contain[ed]" his opinions. Tr. of Proceedings Vol. 25, at 5595, *State v. Chauvin*, No. 27-CR-20-12646 (D. Ct. Minn. Apr. 14, 2021) (Question: "You wrote a report containing your opinions in this case and it is dated on February 22, 2021, right?" Answer: "Yes."); *id.* at 5622 (Question: "And you testified

that your report was submitted on February 22nd of this year; correct?" Answer: "Correct." Question: "Did your report that you prepared include your assessment involving the potential for CO2 or carbon monoxide or carbon dioxide in Mr. Floyd?" Answer: "Yes, it did."); *see id.* at 5596, 5598, 5616, 5618 (Dr. Fowler agreeing that this was "[his] report"). By contrast, Dr. Fowler characterized the other members of The Forensic Panel as "peer reviewers," rather than "authors" of the report. *See, e.g.*, *id.* at 5459, 5461, 5462.

Second, absent the required Rule 9.02, subd. 1(2)(b) disclosures, the State cannot fairly identify and predict what topics each of the thirteen "contributing" authors might address. As Dr. Fowler explained, several other forensic pathologists reviewed his report, along with "additional individuals in behavioral health, pulmonary, pulmonologists, emergency room physicians, toxicologists, that were present as part of the evaluation team." *Id.* at 5461-62. But Dr. Fowler's report does not specify what opinions or findings each of these individuals contributed; what, if any, aspects of Dr. Fowler's opinion or report they agreed or disagreed with; or what information each expert reviewed in reaching those conclusions. *See id.* at 5462 (Dr. Fowler explaining that the "peer reviewers are given a similar but sometimes slightly less onerous package of materials" as the "primary reviewer," and that the peer reviewers "have the opportunity to evaluate and critique [the primary reviewer's] opinion"); *id.* at 5459 (Dr. Fowler explaining that "experts in all sorts of medical fields" can be assigned and contribute to a case); *id.* at 5460 (Dr. Fowler opining "that this was such a complex and difficult case that this would better fit working through The Forensic Panel"). Moreover, even if the State could fairly isolate the topics on which the Defense might call additional experts (such as toxicology), that is still not adequate notice, as the list of contributing authors includes multiple members of certain specialty fields, including three toxicologists (Dr. Gary Kunsman, Dr. Sara Schreiber, and Dr. Ashraf

Mozayani). The Rule 9.02, subd. 1(2)(b) disclosures are therefore necessary to ensure the State has adequate notice of and opportunity to prepare to challenge Defendants' expert testimony.

For these reasons, Defendants should be prohibited from calling other members of The Forensic Panel to introduce the aspects of Dr. Fowler's report outside of his expertise, unless they have timely disclosed the information required by Rule 9.02.

CONCLUSION

For the foregoing reasons, the State respectfully requests that the Court maintain its prior decisions regarding audio-visual broadcasting, sequestration, and the expert disclosure deadline. The State also respectfully requests that the Court enter an order limiting Defendants' expert medical testimony as required under the Minnesota Rules of Evidence and Criminal Procedure.

Dated: April 7, 2022

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