

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

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

State of Minnesota,

Plaintiff,

vs.

J. Alexander Kueng,

Defendant.

**DEFENSE RESPONSE TO THE STATE'S
OBJECTION TO VIDEO AND AUDIO
COVERAGE and REQUEST FOR
RECONSIDERATION**

TO: The Honorable Peter Cahill, Judge of Hennepin County District Court; the State of Minnesota, the Prosecuting Attorney and Other Interested Parties in the above-entitled case.

INTRODUCTION

On June 26, 2020, the state objected to the defense request to have cameras in the courtroom for all pretrial proceedings. *See* Minn. R. General Practice 4.02(d). The Defendant, joined by the other three codefendants, requests that this Court find that the state, through their own actions and the actions of their agents, have forfeited their statutory right to object to cameras in the courtroom. The Defendants requests that the court authorize cameras for all the court proceedings in this case.

ARGUMENT

As argued in previous pleadings, the state and its agents have given public extrajudicial statements that improperly commented on the case and have gone so far as saying the defendants are guilty of murder. The statements were made in violation of Minnesota Rule of Professional Conduct 3.8(f). The Defendant would ask that those

pleadings be incorporated into this motion. Through their own actions, the state has forfeited their statutory right to object to cameras in the courtroom.

Courts have considered a party's conduct to determine whether they have forfeited a right granted to them. For example, Courts have admitted testimonial statements of a witness when the Court has found that the defendant was responsible for the witness's unavailability. "The rule of forfeiture by wrongdoing which we accept extinguishes confrontation claims on essentially equitable grounds; it does not purport to be an alternative means of determining reliability." *State v. Fields*, 679 N.W.2d 341, 347 (Minn. 2004)(internal punctuation omitted). A criminal defendant can waive their right to be present at a trial when they fail to return to the courtroom. *See Taylor v. United States*, 414 U.S. 17 (1973). A criminal defendant can waive their right to an attorney when they repeatedly appear for court without an attorney after assuring the Judge that they will hire an attorney. *State v. Jones*, 755 N.W.2d 341 (Minn. Ct. App. 2008).

An appellate court can dismiss an appeal when the criminal defendant is a fugitive from justice. Part of the rationale for the rule "rests on the notion that those who defy court orders and flout the judicial system forfeit the right to invoke the authority of the courts." *State v. Hentges*, 844 N.W.2d 500, 505 (Minn. 2014). *Hentges*, along with the other cases, show that a party can waive a right based on their actions outside of the courtroom. The Defendant is asking this Court to apply an equitable remedy to the request for cameras in the courtroom. The state, through their actions and the actions of their agents, have flouted the norms and rules of pretrial publicity and waived any objection to cameras in the courtroom by giving public statements regarding the central issue in the case in violation of Minnesota Rule of Professional Conduct 3.8(f) and 3.6.

Cameras are essential so that the public can see the impact of the state's statements on the proceedings and to insure confidence in the results.

Importantly, allowing cameras into the courtroom for all the proceedings will not change how the procedures for presenting evidence or arguments. The proceedings will simply be broadcast to the public. This case is a very important case for the State of Minnesota and the rest of the country. The impact of this case has been felt worldwide. Given the restrictions placed on the courts by the pandemic and the overwhelming interest in the case, the Defendant's Sixth Amendment right to a fair trial can only be secured by allowing media access to all the proceedings.

The defendant would request that the Court make an equitable finding that the state, through the actions of its agents, has waived any objection to media coverage of all the proceedings in this matter. The defendant would request that the Court allow cameras in the courtroom for all pretrial hearings and the trial.

The Court in its June 26th Order noted a concern that more media coverage may make it difficult to empanel a jury. Respectfully, balanced media coverage of pretrial hearings will actually help to counter the state's proclamations of guilt by reporting on defense arguments and theories. Allowing coverage will actually help educate the public that there may be more to the cases than what has been told to them by the state.

Based on the above, the Defendants seek an order allowing video and audio coverage with or without the consent of the State of Minnesota.

Respectfully submitted,

/s/ Thomas C. Plunkett

Dated: June 28, 2020

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