

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

State of Minnesota,

Case Type: Criminal  
Court File No. 27-CR-21-7460

Plaintiff,

vs.

Kimberly Ann Potter,

Defendant.

**STATE'S RESPONSE TO NOTICE OF  
MOTION AND MOTION OF  
MEDIA COALITION TO UNSEAL  
JUROR IDENTITIES AND OTHER  
JUROR MATERIALS**

TO: The Honorable Judge Chu, Judge of District Court, the above-named defendant and defendant's counsel, Earl Gray, 1<sup>st</sup> Bank Building, 332 Minnesota Street, Ste. W1610, St. Paul, MN 55101; Paul Engh, Ste. 2860, 150 South Fifth Street, Minneapolis, MN 55402; Leita Walker, Media Coalition, 2000 IDS Center, 80 South 8<sup>th</sup> Street, Minneapolis, MN 55402-2119; Emmy Parsons, Media Coalition, 1909 K Street NW, 12<sup>th</sup> Floor, Washington DC 20006-1157.

**INTRODUCTION**

During a time of unparalleled national public attention on criminal cases involving the use of force by police officers, the Court in this case, a case involving the use of deadly force by a police officer, took the very reasonable step of ordering that juror identities would not be made public until further Order of the Court. The obvious purposes behind the Court's order were to protect the jurors from potential harassment and help secure a fair trial for the Defendant. Now, just one month after the trial and even before sentencing, and during a federal trial and just before a state trial in another use-of-force case, the Media Coalition has asked this Court to release the identifying information about the jurors. The State submits this memorandum in opposition to the motion. The motion is premature, as the Court has not even held sentencing in this case yet and there will also continue to be public scrutiny of and interest in such cases because of other local, well-known pending cases. The Court should deny the motion at this time.

## ARGUMENT

### **THE COURT SHOULD DENY THE MOTION AT THIS TIME TO CONTINUE PROTECTING JURORS FROM POTENTIAL HARASSMENT AND TO HELP ASSURE JUROR IMPARTIALITY.**

The rules of criminal procedure give the district court discretion to restrict access to the identity of jurors to protect the jurors from harassment and to help secure juror impartiality. Minn. R. Crim. P. 26.02, subd. 2(2). *See also* Minn. R. Gen. Prac. 814(a)(1). Case law precedent supports the authority found in Rule 26.02, subd. 2(2). In *Press-Enter. Co. v. Superior Ct*, for example, the Supreme Court held that a court could close voir dire based on findings that “closure is necessary to preserve higher values and [the closure] is narrowly tailored to serve that interest.” 464 U.S. 501, 510 (1984) (*Press-Enterprise I*). The *Press-Enterprise* Court specifically found that sealing parts of the transcript to preserve the jurors’ anonymity was an acceptable narrow alternative. *Id.* at 513. The Minnesota Supreme Court has also held that a district court may withhold the identity of jurors when there is an identifiable threat to their safety and impartiality. *State v. Bowles*, 530 N.W.2d 521, 530-31 (Minn. 1995). Rule 26.02, subd. 2(2) and precedent provide authority for a district court to restrict access to jurors’ identities to protect the jurors from harassment and to preserve juror impartiality.

The killing of Daunte Wright, which gave rise to this case, occurred during the trial of Derek Chauvin, a former Minneapolis police officer, charged with second-degree murder for the killing of George Floyd during Chauvin’s restraint of Mr. Floyd. To say there was a charged atmosphere in Minnesota over the killing of George Floyd in this manner during the trial is to grossly understate it in many ways. There was considerable public scrutiny on both sides of the case – it was a polarizing event is again to understate it. The intense media coverage of the trial only added to the emotions and the scrutiny. The killing of another citizen by a police officer

added to this atmosphere and refocused public scrutiny. While the heat of this atmosphere may have cooled some with time, it has remained a matter of intense public interest.

The sentencing in this case is scheduled for February 18, 2022. This event will reignite public interest in the case and the larger issues of police use-of-force cases. The media coverage of the sentencing will inflame this interest more. Thus, the need to protect jurors from potential harassment because of this atmosphere is still present.

In addition, the federal trial of Chauvin's three co-defendants is currently proceeding in St. Paul. This trial will also keep public attention and interest in police use-of-force cases in the fore and will enhance interest in questioning the jurors in this case. This in turn could threaten the impartiality of the jurors in the federal trial.

Finally, the state trial for the three co-defendants is scheduled for June 13, 2022. There is of course a great need for a fair and impartial jury in that trial as well. Releasing juror identities from this trial now could place the facts and issues of police use-of-force cases further in the public eye in much greater detail, making it more difficult to get a fair and impartial jury in that case. The release of juror identities now could dissuade other jurors from being willing to serve in that case out of a fear of harassment and negative publicity.

The Court's order here is narrowly tailored in that it restricts only access to identifying information from the public and only for a limited period of time. *See Press-Enterprise I*, 464 U.S. at 513 (endorsing sealing of juror identities as a satisfactory narrow alternative). This Court assured jurors that the parties and the court would keep their identities confidential for a period of time to help them feel safe and to help assure them they could be impartial. *See e.g., Bowles*, 530 N.W.2d at 531 (holding courts may restrict access to jurors' identities to lessen jurors' concerns that a verdict would inflame passions and lead to harassment from the public). The Court should

keep this promise to them for a sufficient period of time for the intense interest in the current police use-of-force cases to moderate. Now is certainly not that time.

### CONCLUSION

For the foregoing reasons, the Court should deny the Media Coalition's motion to unseal identifying information about the jurors and indicate the Court will not consider doing so for at least six months from the sentencing hearing in this case.

Dated: January 28, 2022

Respectfully submitted,

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