

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

State of Minnesota,
Plaintiff,

Case Type: Felony
Judge Regina M. Chu

Court File No. 27-CR-21-7460

v.

**ORDER DENYING AUDIO AND
VIDEO COVERAGE OF TRIAL**

Kimberly Ann Potter,
Defendant.

The above-entitled matter came duly before the Honorable Regina M. Chu, Judge of District Court, on the State's motion for audio and video coverage (A/V Coverage) of the trial in this case.

On June 13, 2021, Paul Engh and Earl Gray, Attorneys at Law, submitted a memorandum on behalf of Defendant Kimberly Ann Potter. Defendant does not consent to A/V Coverage of the trial in this case. On June 30, 2021, Matthew Frank, Assistant Attorney General, submitted a reply memorandum on behalf of the State of Minnesota.

Based upon all the files, records, and proceedings, the Court makes the following:

IT IS HEREBY ORDERED THAT:

1. The jury trial to be held in the above-captioned case commencing November 30, 2021 shall not be recorded, broadcast, or livestreamed in audio and video.
2. The attached Memorandum is incorporated into this Order by reference.

BY THE COURT:

Dated: August 5, 2021

Regina M. Chu
Judge of District Court

MEMORANDUM

The United States and Minnesota Constitutions provide that in all criminal prosecutions, the defendant shall have the right to a public trial. U.S. Const. amend. VI; Minn. Const. art. I, § 6. The right to a public trial is for the benefit of the defendant, not the public. *Gannett Co., Inc. v. DePasquale*, 443 U.S. 368, 381 (1979); *State v. Lindsey*, 632 N.W.2d 652, 660 (Minn. 2001).

Parallel to the defendant's right to a public trial is the press and general public's First Amendment right of access to public trials. *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 573, 580 (1980); *Globe Newspaper Co. v. Superior Court for Norfolk County*, 457 U.S. 596, 605-06 (1982); *Waller v. Georgia*, 407 U.S. 39, 44 (1984). The public has an interest in ensuring that a criminal defendant is "fairly dealt with and not unjustly condemned." *Gannett Co.*, 443 U.S. at 380; *see also Estes v. Texas*, 381 U.S. 532, 538-39. "Public scrutiny of a criminal trial enhances the quality and safeguards the integrity of the factfinding process, with benefits to both the defendant and to society as a whole." *Globe Newspaper*, 457 U.S. at 606 (citation omitted). Essentially, allowing public access to criminal trials serves as a check on the judicial system and promotes the appearance of fairness. *Id.*

With the above-mentioned framework in mind, the Minnesota Supreme Court enacted Minnesota General Rule of Practice 4, which governs the use of A/V Coverage within a courthouse. Specifically, under Rule 4.02, subdivision d, A/V Coverage of a criminal trial is prohibited unless all parties consent. Even if A/V Coverage is granted, any recording or reproduction may be limited by the Court. Under ordinary circumstances, Rule 4 can be applied without concern that it will infringe upon the defendant's right to a public trial or the press and public's right of access to a public trial. During normal times, family, friends, media members, and curious passersby have the ability to attend public trials at the courthouse, in-person.

As stated above, Minnesota law requires the consent of both parties before a court may grant A/V Coverage of a criminal trial. In the instant case, Defendant does not consent.

Therefore, as a matter of law, the Court may outright deny the State's motion for A/V Coverage of the trial in this case. Nonetheless, the Court will detail further considerations for denying the State's motion.

No doubt, the A/V Coverage issue in the instant case will draw comparisons to that of the George Floyd officer cases – in particular, *State v. Chauvin*, 27-CR-20-12646. The circumstances in those cases, however, were substantially different. In the Floyd cases, it was the State that objected to A/V Coverage of the trial while the defendants did not object. The Honorable Peter A. Cahill, Judge of District Court, filed an order on November 4, 2020¹ granting A/V Coverage of the joint trial, slated to commence March 8, 2021. At that time, social distancing requirements were mandated due to the COVID-19 pandemic, requiring six-foot distancing between all jurors and most trial participants. To accommodate the joint trial of all four Floyd defendants with the mandated social distancing requirements and livestream coverage of the trial, the largest of the courtrooms in the Hennepin County Government Center, Courtroom 1856, was redesigned. The redesign left little room for spectators and media members.²

What's more, Judge Cahill was tasked with the difficult job of anticipating the trajectory of the COVID-19 pandemic in Minnesota. As far as the Court can ascertain, at that time, the prognosis of the pandemic was that it would worsen such that it was reasonable to expect social

¹ See Order Allowing Audio and Video Coverage, *State v. Chauvin*, 27-CR-20-12646, Index #193 (Nov. 4, 2020).

² Even after that courtroom redesign, Judge Cahill later had to sever the *Chauvin* trial from the trial of the other three officers, after it was determined that it was not physically possible to lay out the courtroom in a manner consistent with the mandated social distancing requirements while having all four defendants and their expanded trial defense teams and the State's prosecution team in the courtroom. See Order Regarding Discovery, Expert Witness Deadlines, and Trial Continuance, *State v. Chauvin*, 27-CR-20-12646, Index # 253 (Jan. 11, 2021).

distancing would continue into the scheduled trial timeframe of March 2021. Another compelling justification for the A/V Coverage of *Chauvin* was the security concerns.³ With all the publicity surrounding George Floyd’s death, the Court anticipated that thousands would likely gather at the Hennepin County Government Center, seeking access to the trial courtroom or engaging in protesting during the trial. Livestreaming of the *Chauvin* trial, even over the State’s objection, allowed the Court to close the Hennepin County Government Center, thereby ensuring the safety of the parties and counsel, the jurors, court staff, and support staff, as well as affording the public the opportunity to view the trial in what surely is one of the most highly-publicized cases in Minnesota history without unduly jeopardizing public health during the COVID-19 pandemic.

The case at bar does not present the same extraordinary circumstances necessary to evade the restrictions of Rule 4. As the COVID-19 pandemic winds down, the Court has relaxed its mandates on social distancing. Furthermore, the Court does not anticipate any closure of the Hennepin County Government Center during the trial in this case.⁴ To accommodate as many spectators as reasonably possible, the Court has authorized the use of multiple “overflow” rooms within the government center to accommodate additional spectators.⁵

The Court is aware of the public’s interest in the instant case. Following the death of Daunte Wright, there were numerous protests and civil demonstrations in the greater-

³ For example, Judge Cahill conducted a public hearing in the four George Floyd officer cases on September 11, 2020 in a courtroom at the Family Justice Center (FJC). At that hearing, hundreds had gathered on the streets flanking the FJC. At the conclusion of the hearing, as defense counsel and officers Thao, Lane, and Kueng left the FJC, many of the protesters verbally attacked counsel, including Mr. Gray, as they left the courtroom and one of the protesters reportedly rammed a bicycle into one of the defense lawyer’s vehicles. This Court has also been informed that defense counsel in the George Floyd cases as well as members of the State’s prosecution team collectively received thousands of unsolicited, intemperate letters and emails, presenting a threatening environment for all counsel and the defendants.

⁴ The Court does not anticipate there will be any barricades around the government center or any military presence.

⁵ An “overflow” room provides seating for approximately 50 spectators to view the trial by closed-circuit television.

Minneapolis area. Since then, the court proceedings in this case have generated a notable, but not overwhelming, interest. For example, less than 80 individuals (including court staff and parties) attended the omnibus hearing⁶ on May 17, 2021. Under current court guidelines, the Court could reasonably seat all 80 of those participants in the trial courtroom or in the “overflow” rooms.

With respect to the State’s concerns about media attention, the Court understands that local and national media outlets have taken a keen interest in this case. At this point, approximately 12 media entities have filed requests to cover the trial. Media members will have access to the trial by way of seating in the trial courtroom, or seating in the “overflow” rooms.

For the foregoing reasons, the Court does not find sufficient grounds to contradict Minnesota Rule of General Practice 4. Therefore, the State’s motion for A/V Coverage of the trial is denied.

RMC

⁶ This hearing was held virtually, by Zoom.