Filed in District Court
State of Minnesota
1/28/2021 3:01 PM

STATE OF MINNESOTA | DISTRICT COURT

COUNTY OF HENNEPIN | FOURTH JUDICIAL DISTRICT

STATE OF MINNESOTA,

Plaintiff,

vs.

DEREK MICHAEL CHAUVIN,
TOU THAO,
THOMAS KIERNAN LANE,
J. ALEXANDER KUENG,

Defendants.

ORDER DENYING STATE'S MOTION TO RECONSIDER JANUARY 11, 2021 ORDER

Dist Ct. File 27-CR-20-12646
Dist Ct. File 27-CR-20-12949
Dist Ct. File 27-CR-20-12951
Dist Ct. File 27-CR-20-12953

This matter is before the Court on the State's motion, filed January 19, 2021, seeking reconsideration of the Court's January 11, 2021 Order severing the trial in *State v. Chauvin* from the trials in *State v. Thao*, *State v. Lane*, and *State v. Kueng* due to the present impossibility of holding a joint trial with all four defendants even in the largest available courtroom in the Hennepin County Government Center given social distancing requirements in light of COVID, and denying the State's December 31, 2020 motion to continue trial to June 7, 2021.

Matthew Frank, Assistant Attorney General, and Neal Katyal, Special Assistant Attorney General, appeared in writing on behalf of the State of Minnesota.

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

Filed in District Court
State of Minnesota
1/28/2021 3:01 PM

ORDER

1. The State's motion to reconsider the January 11, 2021 Order is **DENIED**.

BY THE COURT:

Digitally signed by Cahill, Peter
Date: 2021.01.20 21:17:08 -06'00'

Peter A. Cahill
Judge of District Court

27-CR-20-12949

Filed in District Court
State of Minnesota
1/11/2021 5:03 PM

STATE OF MINNESOTA | DISTRICT COURT

COUNTY OF HENNEPIN | FOURTH JUDICIAL DISTRICT

STATE OF MINNESOTA,

Plaintiff,

ORDER REGARDING DISCOVERY, EXPERT WITNESS DEADLINES, AND TRIAL CONTINUANCE

vs.

DEREK MICHAEL CHAUVIN,
TOU THAO,
THOMAS KIERNAN LANE,
J. ALEXANDER KUENG,

Dist Ct. File 27-CR-20-12646
Dist Ct. File 27-CR-20-12949
Dist Ct. File 27-CR-20-12951
Dist Ct. File 27-CR-20-12953

Defendants.

This matter came before the Court on January 7, 2021, for a remote Zoom hearing on various defense motions for discovery sanctions (including requests to continue the trial date), and the State's motions for modification of the expert witness disclosure deadlines and to continue the trial dates because of the ongoing COVID-19 pandemic.

Matthew Frank, Assistant Attorney General and Neal Katyal, Special Assistant Attorney General, appeared on behalf of the State of Minnesota.

Eric J. Nelson, Attorney at Law, appeared on behalf of Defendant Derek Chauvin (Chauvin). Robert M. Paule and Natalie R. Paule, Attorneys at Law, appeared on behalf of Defendant Tou Thao (Thao). Earl P. Gray and Amanda Montgomery, Attorneys at Law, appeared on behalf of Defendant Thomas Lane (Lane). Thomas C. Plunkett, Attorney at Law, appeared on behalf of Defendant J. Alexander Kueng (Kueng).

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

27-CR-20-12949

FINDINGS OF FACT

1. The State did not engage in any intentional violations of discovery rules. Any duplication of documents or disorganization of documents is attributable to the source from which the prosecution team received the material. The State has not acted in bad faith. While the discovery is voluminous because the investigation is extensive, it appears the State is providing discovery to the defense as quickly as possible, even if not strictly meeting the Court's 24-hour disclosure mandate.

2. The State had difficulty getting the Federal Bureau of Investigation (FBI) report regarding the FBI interview of Dr. Andrew Baker on July 8, 2020. However, that delay appears to have been due to the FBI's slow response in providing that report to the State, and the State does not have control over the FBI. After receiving the report, though, disclosure of the report was delayed eight or nine days, rather than disclosed within 24 hours as required by the Court. Given that the report dealt with the cause of death of George Floyd, a vigorously disputed issue, and that all counsel were facing approaching expert disclosure deadlines, the eight- or nine-day delay was material and inexcusable. The appropriate sanction is to expand the expert discovery deadlines for the defense.

3. COVID-19 continues to be a public health emergency. Physical spacing limitations and mask requirements continue. While the State believes the situation will be greatly improved by June due to vaccinations,[1] the Court is not so optimistic given news reports detailing problems with the vaccine rollout.

---

[1] The State submitted an "affidavit" from Dr. Ezekiel Emanuel, an oncologist and bioethicist who serves on President-elect Biden's Coronavirus Advisory Board. While Dr. Emanuel appears to be extremely well qualified in his field, the Court is puzzled that the State did not look closer to home and get an opinion from an epidemiologist, specifically epidemiologist Dr. Michael Osterholm, the director of the Center for Infectious Disease Research and Policy (CIDRAP) at the University of Minnesota. Dr. Osterholm is also a member of the President-elect's Coronavirus Advisory Board. Nonetheless, the Court

27-CR-20-12949

Filed in District Court
State of Minnesota

4. Despite this, the Court has courtrooms available for trial that comply with the restrictions put in place by the Minnesota Judicial Council. For most criminal trials involving 14 jurors and multiple defendants, the courtrooms are adequate. For example, if the trial in the above-captioned cases is continued, other trials of similar length and intensity are likely to take place in C-1856, the courtroom assigned for trial in the above-captioned matter.

5. Last week, in discussing physical arrangements in courtroom C-1856 with defense counsel, Chief Judge Barnette was made aware that each Defendant planned to have co-counsel or a legal support person at counsel table. With the exception of defendant Thao, this was the first the Court was aware that more than one person, in addition to the Defendants, would be at counsel table. The State has always been clear it would have two lawyers at counsel table for trial. After examining the physical layout of courtroom C-1856 after this disclosure, Chief Judge Barnette sent the attached email.

6. The physical limitations of courtroom C-1856, the largest courtroom in the Hennepin County Government Center, make it impossible to comply with COVID-19 physical restrictions in a joint trial involving all four defendants beginning March 8, 2021 given the number of lawyers and support personnel the parties have now advised the Court are expected to be present during trial.

Therefore,

IT IS ORDERED

1. The State's motion to continue the trial in the above-captioned matters due to COVID-19 concerns is **GRANTED IN PART AND DENIED IN PART**.

---

accepts Dr. Emanuel's statements. Also, the State is cautioned to file a properly-executed affidavit if it wishes to have the Court consider such expert opinions as part of a motion.

27-CR-20-12949

a. The trial in *State v. Chauvin* shall take place as previously scheduled on March 8, 2021. The Court's November 4, 2020 Order joining all defendants for trial is amended to sever Defendant Chauvin's case.

b. The other defendants remain joined for trial which is hereby continued to **August 23, 2021, at 9:00 a.m.**

2. The Court's November 4, 2020 Order regarding jury selection is amended such that Defendant Chauvin will have fifteen peremptory challenges and the State will have nine peremptory challenges. In the August 2021 joint trial of Defendants Thao, Lane, and Kueng, each Defendant will have five peremptory challenges, for a total of fifteen Defense peremptory challenges, and the State will have nine peremptory challenges. The identities of jurors in both trials will not be public until further order of the Court. Jury selection in *State v. Chauvin* will take place March 8, 2021, through March 26, 2021. Opening statements and the commencement of the State's case will begin no earlier than March 29, 2021.

3. Defendant Chauvin's motion to continue the trial date due to discovery violations is **DENIED**.

4. Defendant Thao's motion to continue the trial date due to discovery violations is **MOOT**.

5. The State and various Defense motions to extend expert witness discovery deadlines are **GRANTED IN PART**. The Court's amended Order of December 17, 2020, extending expert witness disclosure deadlines, shall be amended, but only to allow the State to disclose expert reports and findings and complete written summaries of the subject matter of each expert's testimony by **February 1, 2021**. This Order applies to all defendants except that the State and Defendants Thao, Kueng and Lane may agree to a later date for expert disclosures for the August 2021 trial.

6. Defendant Thao's motion for attorneys' fees and costs is **DENIED**.

27-CR-20-12949

7. Defendant Chauvin's motion for a copy of the Bureau of Criminal Apprehension's investigative file with date stamps is **GRANTED** if such a file exists.

BY THE COURT:

Digitally signed by Cahill, Peter
Date: 2021.01.11 16:56:49 -06'00'

Peter A. Cahill
Judge of District Court

27-CR-20-12949

Filed in District Court
State of Minnesota

From: Barnette, Toddrick
To: Cahill, Peter
Subject: Trials scheduled for March 8, 2021
Date: Friday, January 8, 2021 10:06:15 AM

Good Morning!

I hope you and the family are doing well.

As you know I have been handling most of the logistics of the trials scheduled for the four defendants on March 8, 2021. Prior to the meeting yesterday with the attorneys, I was informed of additional people needed by Mr. Gray and Mr. Nelson for trial. After our meeting with the attorneys, I returned to courtroom 1856 to look at the configuration for the trials. With the additional people needed and the possibility of more support staff needed for the attorneys, courtroom 1856 is not an adequate venue when enforcing social distancing. Therefore, I respectfully ask that you reconsider having all four defendants stand trial on March 8, 2021. I'm not asking that you delay the trials. I'm asking that you separate the trials how every you deem fair. I'm only asking that you consider having less than all four defendants stand trial. Courtroom 1856 can be configured for a trial with social distancing and the additional people needed by the attorneys for up to three defendants.

Thank you for considering this request.

Sincerely,

Toddrick S. Barnette