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State of Minnesota,

Plaintiff,

vs.

J. Alexander Kueng,

Thomas Kiernan Lane

Tou Thao,

Defendants.

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**STATEMENT OF THE CASE BY  
APPELLANT STATE OF  
MINNESOTA**

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

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

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

1. This case originated in Hennepin County District Court, Honorable Peter Cahill presiding.
2. Jurisdictional statement.
  - (A) Appeal from district court.

Statute, rule or other authority authorizing appeal: Minn. R. Crim. P. 28.04, subd. 1(1); the Court's inherent authority, *see State v. Lessley*, 779 N.W.2d 825, 831-832 (Minn. 2010); the Court's original jurisdiction to grant a writ of prohibition, *see Minn. R. Civ. App. P. 120.01*.

Date of entry of judgment or date of service of notice of filing of order from which appeal is taken: The District Court's original order was entered on January 11, 2021. The District Court denied the State's Motion for Reconsideration by order on January 21, 2021.

Authority fixing time limit for filing notice of appeal (specify applicable rule or statute): Minn. R. Crim. P. 28.04, subd. 2.

Date of filing any motion that tolls appeal time: Not applicable.

Date of filing of order deciding tolling motion and date of service of notice of filing: Not applicable.

## (B) Certiorari appeal.

Statute, rule or other authority authorizing certiorari appeal:

Authority fixing time limit for obtaining certiorari review (cite statutory section and date of event triggering appeal time, *e.g.*, mailing of decision, receipt of decision, or receipt of other notice):

## (C) Other appellate proceedings.

Statute rule or other authority authorizing appellate proceeding:

Authority fixing time limit for appellate review (cite statutory section and date of event triggering appeal time, *e.g.*, mailing of decision, receipt of decision, or receipt of other notice):

## (D) Finality of order of judgment.

Does the judgment or order to be reviewed dispose of all claims by and against all parties, including attorney fees? Yes  No

If no:

Did the district court order of entry of a final partial judgment for immediate appeal pursuant to MINN. R. CIV. APP. P. 104.01? Yes   
No  or

If no, is the order or judgment appealed from reviewable under any exception to the finality rule? Yes  No

If yes, cite rule, statute, or other authority authorizing appeal: Minn. R. Crim. P. 28.04, subd. 1(1); the Court's inherent authority, *see State v. Lessley*, 779 N.W.2d 825, 831-832 (Minn. 2010); the Court's original jurisdiction to grant a writ of prohibition, *see* Minn. R. Civ. App. P. 120.01.

## (E) Criminal only:

Has a sentence been imposed or imposition of sentenced stayed?  
Yes  No

3. State type of litigation and designate any statutes at issue, and critical impact.

This is a felony prosecution for Aiding and Abetting Second Degree Unintentional Felony Murder, Minn. Stat. § 609.19, subd.2(1), with reference to Minn. Stat. § 609.05, subd. 1, and Aiding and Abetting Second Degree Manslaughter, Minn. Stat. § 609.205(1), with reference to Minn. Stat. § 609.05, subd. 1. After ordering that Defendants' trial be joined with that of their co-Defendant, Derek Michael Chauvin, the District Court *sua sponte* severed Defendants' trial from Defendant Chauvin's trial in violation of Minnesota Rule of Criminal Procedure 17.03. The District Court also ordered that Defendant Chauvin's trial proceed on March 8, 2021, notwithstanding warnings from public health officials that holding this trial in March is dangerous and that holding two separate trials increases public health risks.

This Court has the inherent authority to hear pretrial appeals under Rule 28.04 in certain circumstances even absent a showing of "critical impact." *See State v. Obeta*, 796 N.W.2d 282, 287 (Minn. 2011); *State v. Lessley*, 779 N.W.2d 825, 831 (Minn. 2010). Because this is such a case, review is warranted irrespective of any critical impact. Alternatively, this Court has jurisdiction to issue a writ of prohibition pursuant to Minnesota Rule of Appellate Procedure 120. This Court accordingly may construe the State's briefs in this case as a petition for a writ of prohibition.

4. Brief description of claims, defenses, issues litigated and result below. For criminal cases, specify whether conviction was for a misdemeanor, gross misdemeanor, or felony offense.

This case arises from the events surrounding the death of George Floyd on May 25, 2020. The State has charged four Defendants—Derek Michael Chauvin, J. Alexander Kueng, Thomas Kiernan Lane, and Tou Thao—with felony offenses committed in connection with that event. The District Court scheduled one joint trial for all four Defendants to begin on March 8, 2021. In light of public health concerns and the anticipated distribution of the COVID-19 vaccine, the State requested a continuance of that trial date. In support, the State filed an affidavit from a public health expert who opined that holding this trial in March would pose a significant risk to the public health. As that expert explained, a short continuance would substantially decrease these risks.

The District Court denied the State's motion and *sua sponte* severed the trial of Defendants Kueng, Lane, and Thao from that of Defendant Chauvin, setting two separate trial dates—one in March for Defendant Chauvin, and another in late August for the Defendants Kueng, Lane, and Thao. The State moved for

reconsideration, filing a supplemental affidavit from a second public health expert explaining that proceeding to trial in March 2021 and holding two separate trials in this case would create grave risks to the public health. The District Court denied reconsideration in a one-sentence order on January 21, 2021.

The District Court's decision to proceed to trial on March 8 and to proceed with two separate trials creates a serious public health risk. Regardless of how this Court elects to exercise jurisdiction, relief is warranted here because the District Court's decision violates the law and threatens serious harms to public health. The District Court's decision to proceed with two separate trials was a clear abuse of discretion. In addition, because none of the factors in Minnesota Rule of Criminal Procedure 17.03 warrant severance, the District Court's *sua sponte* decision to sever Defendants' trial from the trial of co-Defendant Chauvin violates Rule 17.03.

5. List specific issues proposed to be raised on appeal.
- I. Did the District Court abuse its discretion by scheduling one trial for March 2021 and one for August 2021, despite a serious, ongoing public health crisis?
  - II. Did the District Court's decision to *sua sponte* sever the trial of Defendants Kueng, Lane, and Thao from the trial of Defendant Chauvin violate Rule 17.03 of the Minnesota Rules of Criminal Procedure?

6. Related appeals.

List all prior or pending appeals arising from the same action at this appeal. If none, so state. *State of Minnesota v. Derek Michael Chauvin* (notice of appeal filed January 28, 2021).

List any known pending appeals in separate actions raising similar issues to this appeal. If none are known, so state. The State is not aware of any such pending appeals.

7. Contents of record.

Is a transcript necessary to review the issues on appeal? Yes  No

If yes, full  or partial  transcript?

Has the transcript already been delivered to the parties and filed with the trial court administrator? Yes  No

If not, has it been ordered from the court reporter? Yes  No

If a transcript is unavailable, is a statement of the proceedings under Rule 110.03 necessary? Yes  No

In lieu of the record as defined in Rule 110.01, have the parties agreed to prepare a statement of the record pursuant to Rule 110.04? Yes  No

8. Is oral argument requested? Yes  No

If so, is argument requested at a location other than that provided by Rule 134.09, subd. 2? Yes  No

If yes, state where argument is requested:

9. Identify the type of brief to be filed.

- Formal brief under Rule 128.02.
- Informal brief under Rule 128.01, subd. 1 (must be accompanied by motion to accept unless submitted by claimant for reemployment benefits)
- Trial memoranda, supplemented by a short letter argument, under Rule 128.01, subd. 2.

10. Names, addresses, zip codes and telephone numbers of attorney for appellant and respondent.

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Dated: January 28, 2021

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