

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

STATE OF MINNESOTA,

Plaintiff,

vs.

TOU THAO

and

J. ALEXANDER KUENG,

Defendants.

**SECOND AMENDED TRIAL
MANAGEMENT ORDER**

Court File No. 27-CR-20-12949

Court File No. 27-CR-20-12953

This Court has previously filed several orders addressing various trial management-related issues: (1) Trial Scheduling and Management Order and Memorandum Opinion (April 25 2022); (2) Order and Memorandum Opinion Continuing Trial (June 6, 2022); (3) Order (June 22, 2022); and (4) Amended Trial Management Order (Oct. 13, 2022).

Based upon all the files, records, and proceedings herein, having given due consideration to the:

- (i) Hennepin County District Court's (HCDC) available courtrooms at the Hennepin County Government Center (HCGC);
- (ii) space constraints dictated by those courtrooms;
- (iii) parties' needs to present this case effectively and efficiently to the jury;
- (iv) defendants' Sixth Amendment right to an open, public trial;
- (v) Presiding Judge's, Court Administration's, and the Hennepin County Sheriff's Office's (HCSO) concerns about protecting the public health, safety, and security

of the jury, the parties, trial counsel and their support staff, the Court and court staff and other courtroom personnel, as well as that of all public observers throughout this joint trial; and

- (vi) need for meaningful access rights to the general public and the press to attend and observe the trial,

and upon balancing all these competing rights, interests, and considerations with this Court's ultimate obligation to ensure the fair, open, and impartial administration of justice and a just and impartial jury verdict after a fair trial, **IT IS HEREBY ORDERED** as follows:

ORDER

1. **Trial Courtroom, Courtroom 1856.** Jury selection and the trial will be conducted in Courtroom 1856 at the HCGC. Courtroom 1856, the largest trial courtroom in HCGC, was completely remodeled between October 2020 and February 2021. The bar separating the counsel well from the public gallery, the permanent chairs in the former public gallery, and the permanent jury box were all removed, resulting in a completely open courtroom, affording maximal flexibility in courtroom setup for complex and/or multi-party litigation. A dedicated audio/video playback system was also installed with four large monitors arranged throughout the courtroom to facilitate viewing of video evidence by the jury, trial participants, the Court, witnesses, and the public.

- a. **Configuration.** Courtroom 1856 will be configured as follows:

- (i) **Parties, Trial Counsel, and Support Staff.** After consultation with the parties and their anticipated trial needs and trial teams, four counsel tables, with up to three seats at each table, will be set up for trial counsel, the defendants, and associated support staff and technical consultants and advisers.

- 1. The State is allocated two tables.

2. Defendants Thao and Kueng are each allocated one table.

Trial counsel, support staff, and their respective technical consultants and advisers may rotate between the seats at counsel tables allocated to each party. Other members of the parties' trial teams may also use available seating in the parties' respective workrooms or in the overflow courtroom.

(ii) **The Jury.** The jury "box" will consist of 16 portable, temporary juror stations, each comprising a chair and desk, which will occupy the entire left side (bench perspective) of the courtroom. The juror stations will be appropriately spaced as determined by the Presiding Judge and District Court Administration. No public seating will be permitted on the jury box side of the courtroom.

(iii) **Media.** Four seats will be reserved in the public gallery for priority use by representatives of the media, which may include a sketch artist.

1. Media seating will be at seats designated by the Court.

2. Representatives from different media organizations may rotate through the four seats allocated to the media throughout the course of voir dire and the trial.

3. Members of the media must coordinate and must provide the names of the four media representatives designated to attend the following trial day to Court Administration by 1:30 p.m. each day. Persons whose names were not submitted by 1:30 p.m. will not be admitted to the seats in Courtroom 1856 allocated to the media the following trial day.

4. Seats not assigned by the media by 1:30 p.m. for the following trial day will be released to members of the general public on a first-come, first-served basis using a queuing system in which

numbered placeholders on the floor of the 18th Floor will serve as a queuing system for those wanting a seat in Courtroom 1856.

5. Other credentialed media may use the overflow courtroom/ overflow conference room. The only media representatives permitted on the 18th Floor of HCGC on any given trial day are those designated the prior day for one of the four seats allocated to the media in Courtroom 1856 or those queuing for one of the general public seats in Courtroom 1856.
6. Media members may self-organize and share notes with the broader media pool.
7. Media representatives may not conduct or attempt to conduct interviews on the 18th Floor and also may not solicit, while they are on the 18th Floor, any of the trial participants to participate in interviews.

- (iv) **Other Public Seating.** As configured for the jury box, counsel lectern, and counsel tables, the remaining space available for public seating in Courtroom 1856 affords room for 22 public seats. Those 22 public seats—which include the four seats allocated to media representatives (*see supra* ¶ 1(a)(iii))—are the maximum number of seats Court Administration and the Presiding Judge have determined can reasonably be included in Courtroom 1856 as it has been configured for this trial¹ without unreasonably encroaching on counsel tables or the jury and while also maintaining, for safety and security reasons, reasonable

¹ The public seats are not socially distanced; these 22 seats are arranged in three rows in the only remaining available portion of the courtroom for public seating, with the seats placed side by side. Earlier during the COVID-19 pandemic, HCDC maintained social distancing policies in all courtrooms requiring a minimum of six feet between seats for counsel, parties, and any courtroom observers. Those policies are no longer in force, given the waning of the COVID-19 pandemic and relaxation of prior administrative regulations.

ingress and egress to the courtroom from the public hallway. The remaining 18 public seats not allocated to media representatives will be allocated as follows:

1. Five seats are allocated each day on a priority basis for the State, intended for family members or friends of the George Floyd family or other designees.
2. Three seats are allocated each day on a priority basis for Defendant Thao, to include friends, family members, or other invitees.
3. Three seats are allocated each day on a priority basis for Defendant Kueng, to include friends, family members, or other invitees.
4. Each party shall provide to Court Administration by 1:30 p.m. each day the names of the persons designated by that party to occupy the seats allocated to them for the following trial day. Persons whose names were not submitted by 1:30 p.m. will not be admitted to Courtroom 1856 the following trial day to that party's allocated seats.
5. Seats not assigned by the parties by 1:30 p.m. for the following trial day will be released to members of the general public on a first-come, first-served basis using a queuing system in which numbered placeholders on the floor of the 18th Floor will serve as a queuing system for those wanting a seat in Courtroom 1856.
6. Different friends, family members, and invitees/designees of the parties may rotate through the parties' allocated seats throughout the course of voir dire and the trial.

7. The remaining seven seats in the public gallery are available—as well as any additional seats allocated to the media or the parties under this Order that have not been filled on any given day in accordance with the procedures in this Order—to members of the general public on a first-come, first-served basis using a queuing system in which numbered placeholders on the floor of the 18th Floor will serve as a queuing system for those wanting a seat in Courtroom 1856. Any public observers leaving Courtroom 1856 must return to any waiting line for readmittance.
- b. All non-participant observers and spectators shall refrain from communicating orally or by non-verbal gestures, overt facial expressions, or other body language with the Court, potential jurors during jury selection, or sworn members of the jury during the trial, and shall avoid all contact with potential jurors or jurors.
- c. Persons sitting in the public gallery in Courtroom 1856 (as well as in any overflow courtroom/room) may have water, coffee, tea, or soda in a closed/sealed thermos, bottle, or cup.
- d. **Electronic Devices.**
 1. Trial Counsel and their staff and any technical consultants or advisers, court staff, and HCSO staff are permitted to have and to use electronic devices in Courtroom 1856 or elsewhere on the 18th Floor.
 2. Media representatives are permitted to have and to use electronic devices to take notes while in Courtroom 1856 but may not transmit those notes, post on social media, or transmit any other data while on the 18th Floor.
 3. Persons seated in the 18 seats allocated to the parties or to the general public may not have any electronic devices other than cell phones while they are in Courtroom 1856. While in Courtroom 1856, all cell phones must be turned off. The HCSO is instructed to seize any cell phone being

used in any manner not expressly authorized in this Order, including but not limited to any efforts to record any of the proceedings in Courtroom 1856 or anywhere on the 18th Floor.

2. **Media Overflow, HCGC Conference Room C-2350.** An overflow room is also available to credentialed members of the media in Room C-2350 of the HCGC. Seating in C-2350 is at conference tables. Seating in C-2350 is on a first-come, first-served basis. If demand should exceed available seating, numbered placeholders on the floor of the 23rd Floor will serve as a queuing system for media representatives wanting a seat in C-2350. Media observers leaving C-2350 must return to any waiting line for readmittance.

a. **Zoom Feed to Media Overflow.** Jury selection and the trial will be observable in C-2350 via a zoom feed from Courtroom 1856 with audio and video feeds from the court monitoring system currently in place. A large, wall-mounted monitor in C-2350 will display four sector views from the trial courtroom:

(i) During jury selection, the four views displayed will be: (1) the Presiding Judge; (2) the lectern; (3) counsel tables; and (4) evidence (if used).

(ii) During the trial, the four views displayed will be: (1) the Presiding Judge and witness stand; (2) the lectern; (3) counsel tables; and (4) evidence (when used).

No recording by any means is permitted by any media representative (or anyone affiliated with or otherwise working in conjunction with or at the direction of any media representative or organization) from the zoom feed the Court is providing to C-2350. In the event of a determination, in the Court's sole determination and discretion, of any unauthorized recording in violation of this order, the Court reserves the right to impose appropriate sanctions, including but not limited to: barring the offending media representative and his or her organization from HCGC to any further proceedings in this joint trial; terminating the overflow to C-

2350 (or to any other room dedicated to media overflow); and/or any other sanctions as may be appropriate including, but not limited to, contempt.

- b. **Use of Electronic Devices.** Media representatives are permitted to have and to use electronic devices to take notes while in C-2350 (or any other room that may subsequently be designated as overflow for members of the media) and may also transmit notes, post on social media, or transmit other data from C-2350.

3. **General Public Overflow Courtroom, Courtroom 1659.** An overflow room is also available to members of the general public in Courtroom 1659 of the HCGC.

- a. Seating in Courtroom 1659 currently consists of 46 seats:² 34 seats in the public seating gallery and 12 seats in the jury box. Seating in Courtroom 1659 is on a first-come, first-served basis. If demand exceeds available seating, numbered placeholders on the floor of the 16th Floor will serve as a queuing system for those wanting a seat in Courtroom 1659. Any observers leaving Courtroom 1659 must return to any waiting line for readmittance.
- b. Jury selection and the trial will be observable in Courtroom 1659 via a zoom feed from Courtroom 1856 with audio and video feeds from the court monitoring system currently in place. Three monitors, placed in front of each of the three seating areas, will display four sector views from the trial courtroom:
 - (i) During jury selection, the four views displayed will be: (1) the Presiding Judge; (2) the lectern; (3) counsel tables; and (4) evidence (if used).
 - (ii) During the trial, the four views displayed will be: (1) the Presiding Judge and witness stand; (2) the lectern; (3) counsel tables; and (4) evidence (when used).

² Unlike Courtroom 1856, in which there is no possibility for adding additional public seating, depending on actual demand for seating during the trial, it is possible to add additional seating in Courtroom 1659. The Court will monitor attendance in Courtroom 1659 and, if it appears there is consistent demand for additional seating, the Court will make arrangements to have additional seating added to that courtroom.

- c. No recording by any means is permitted by any member of the public or media representative seated in overflow from the zoom feed the Court is providing to Courtroom 1659. The Court reserves the right to terminate immediately the zoom feed in the event of any unauthorized recording as well as to issue other sanctions to any violators as may be appropriate including, but not limited to, contempt.
- d. Observers in Courtroom 1659 may not have or use any electronic devices other than cell phones while they are in that courtroom or on the 16th Floor. While in Courtroom 1659, all cell phones must be turned off. The HCSO or the Court staff person who will be monitoring that overflow courtroom are instructed to seize any cell phone being used in any manner not expressly authorized in this Order, including but not limited to any efforts to record any of the proceedings in Courtroom 1659 or anywhere on the 16th Floor.

4. **Court Administration Retains Discretion to Combine Overflow.** Court Administration may combine the media and general public overflow rooms into a single overflow upon a determination that a single overflow can accommodate the seating demand for this trial from the general public and the media. The Court and the HCSO also reserve the right to direct seating in the overflow room(s) among family members, media representatives, and members of the general public.

5. **Parties' Work Rooms.**

- a. **Defense.** Starting October 25, 2022 and continuing every day court is in session through the end of the trial and return of the jury verdict, Defense Trial Counsel and their support staff as well as any affiliated counsel or other technical consultants or advisers, and any designated friends or family members, may use Courtroom 1853 and its adjacent jury deliberation room (Defense Work Room) for a joint defense work room during hours to be arranged with Court

Administration. Jury selection and the trial will also be observable in the Defense Work Room via a zoom feed from Courtroom 1856 with audio and video feeds from the court monitoring system currently in place. The Defense Teams must provide to Court Administration the names of any persons authorized by Defense Counsel to join the Defense Teams in the Defense Work Room upon which Court Administration will issue credentials allowing any such persons access to the 18th Floor and the Defense Work Room.

- b. **State.** The Court has been advised that the Hennepin County Attorney's Office (HCAO) is making available to the State space in the HCAO offices on the 23rd Floor of the HCGC to be used as the State Work Room. Jury selection and the trial will also be observable in the State Work Room via a zoom feed from Courtroom 1856 with audio and video feeds from the court monitoring system currently in place.
- c. No recording by any means is permitted by any person in either the Defense Work Room or the State Work Room from the zoom feed the Court is providing to those work rooms from Courtroom 1856. The Court reserves the right to terminate immediately the zoom feed in the event of any unauthorized recording as well as to issue other sanctions to any violators as may be appropriate including, but not limited to, contempt.

6. **Juror Anonymity.** By separate orders (which have been posted to the public websites in these cases), the Court has ordered that the jurors and prospective jurors be partially sequestered. *See, e.g.,* Trial Scheduling and Management Order and Memorandum Opinion (April 25, 2022), and Order for Juror Anonymity and Sequestration (Nov. 4, 2020). In the interests of (i) maintaining juror anonymity and protecting jurors' safety and security, (ii) protecting prospective and sworn jurors from improper communications, contacts, or outside influences that might call into question their impartiality, objectivity, and ability to render a fair

and just verdict in these cases, and (iii) ensuring the parties' right to a fair and impartial verdict by a neutral and impartial jury based solely on the evidence received on the record in open court during the trial, no media representative nor any member of the general public shall attempt to follow any prospective juror leaving HCGC after the juror's voir dire questioning or otherwise make contact with any juror until after the conclusion of this trial and after this Court has ordered certain identifying information about jurors be made public. Any violations of this order by a media representative will result in the media representative and the media representative's organization being denied access to Courtroom 1856, the 18th Floor of the HCGC, and any overflow courtroom/room for the duration of all future proceedings in this case, together with any other sanctions as may be appropriate under the law. Any violations of this order by any member of the general public will result in that individual being denied access to Courtroom 1856, the 18th Floor of the HCGC, and any overflow courtroom/room for the duration of all future proceedings in this case, together with any other sanctions as may be appropriate under the law.

7. **Clothing/Logos.** No person will be allowed access to or seating in Courtroom 1856 (or any overflow room(s)) if that person is wearing any mask or article of clothing that contains any outwardly-visible image, logo, or letters, or is otherwise dressed in a coordinated fashion with other attending observers in any manner which, in this Court's sole discretion and opinion, is designed to send a message to the jury hearing this trial.

8. All earlier administrative and trial management and decorum orders addressing other trial logistics and management-related matters, including the November 4, 2020 Order for Juror Anonymity and Sequestration, the April 25, 2022 Trial Scheduling and Management Order

and Memorandum Opinion, the June 6, 2022 Order and Memorandum Opinion Continuing Trial, and the June 22, 2022 Order, remain in effect, except as and only to the extent expressly superseded by this Order.

9. All other rules of decorum found in Minn. Gen. R. Prac. 2 will be followed unless specifically modified by this order or other orders of the presiding judge. The HCSO and court staff are authorized to enforce the rules of decorum.

BY THE COURT:

Peter A. Cahill
Judge of District Court