

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

STATE OF MINNESOTA,

Plaintiff,

vs.

**PRELIMINARY ORDER
REGARDING CHANGE OF VENUE**

**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 September 11, 2020, on all Defendants' motions for a change of venue.

Keith Ellison, Minnesota Attorney General, 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 Chauvin. Robert M. Paule and Natalie R. Paule, Attorneys at Law, appeared on behalf of Defendant Thao. Earl P. Gray, Attorney at Law, appeared on behalf of Defendant Thomas Lane. Thomas C. Plunkett, Attorney at Law, appeared on behalf of Defendant Kueng. All Defendants were present.

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

ORDER

1. Defendants' motions for a change of venue are preliminarily **DENIED**.
2. The Court will rehear the motions subsequent to the presentation of additional evidence and briefs on the issue.

3. The Court will issue a scheduling order for further briefing at a later date.
4. The attached memorandum is incorporated herein.

BY THE COURT:

Peter A. Cahill
Judge of District Court

Memorandum

A criminal case should be tried in the county in which the offense was allegedly committed.¹ Venue may, however, be transferred to a different county for trial under certain circumstances.² Minn. R. Crim. P. 24.03 subd. 1 lists the grounds for transferring venue to another county:

The case may be transferred to another county:

- a. If the court is satisfied that a fair and impartial trial cannot be had in the county in which the case is pending;
- b. For the convenience of parties and witnesses;
- c. In the interests of justice;
- d. As provided by Rule 25.02 governing prejudicial publicity.

As noted above, Minn. R. Crim. P. 25.02 governs motions for continuance or change of venue on the grounds of prejudicial publicity. The rule sets out the type of proof that may be submitted in support of a motion,³ but the proof basically may be anything with probative value.⁴ Under Rule 25.02, a motion for change of venue “must be granted whenever potentially prejudicial material creates a reasonable likelihood that a fair trial cannot be had. Actual prejudice need not be shown.”⁵ When a motion is made pre-trial, the motion must be decided before the jury is sworn.⁶ Even then, a prior denial of a change of venue motion does not prohibit reconsideration and the court granting a change of venue, even after the jury has been sworn.

¹ Minn. Const. Art. I § 6; Minn. R. Crim. P. 24.01.

² Minn. R. Crim. P. 24.03.

³ See Minn. R. Crim. P. 25.02 subd. 2(a), (b).

⁴ See Minn. R. Crim. P. 25.02 subd. 2(c).

⁵ Minn. R. Crim. P. 25.02 subd. 3.

⁶ Minn. R. Crim. P. 25.02 subd. 4.

In these cases, whether the analysis is under Minn. R. Crim. P. 24.03 subd. 1(a) or Minn. R. Crim. P. 25.02, this Court must determine if a fair and impartial trial cannot be had in Hennepin County. On the current record, the Court believes a fair and impartial trial⁷ in Hennepin County can be had. Thus, Defendants' motions for change of venue should be denied unless and until probative evidence is developed to the contrary.

Safety Concerns

Both Defendants Thao and Kueng cite public safety concerns as one reason to change venue. Kueng notes that the attorneys and defendants were physically and verbally harassed following the September 11, 2020, hearing and that a defense attorney was verbally harassed when he stopped on the skyway level of the Hennepin County Government Center to give a statement to the media after the October 15, 2020, hearing. Also, a protester in the Government Center was arrested with a gun on that day. Thao argues that a Hennepin jury might convict out of concern that an acquittal would rekindle riots in Minneapolis.⁸

The safety concerns expressed by Defendants do not argue for a change of venue, but for better safety planning, planning the Court and the Hennepin County Sheriff's Office are currently conducting. The lesson learned from having the September 11, 2020, hearing at the Hennepin County Family Justice Center is that effective security measures are more difficult to put in place in a smaller courthouse with limited entrances and exits. For that reason, if the trial remains in Hennepin County, the trial will take place in the Hennepin County Government Center with floor access and movement of both defendants and attorneys tightly controlled. Moving venue to a smaller county will not assuage the defendants' security concerns but instead

⁷ By separate order issued today, the Court is joining all defendants for trial.

⁸ If this argument is valid, the same could be said of any jury from any county. Jurors might be concerned that protesters will travel to their town or city to engage in civil unrest following an acquittal.

is likely to heighten those concerns because the relevant courthouse would certainly be smaller than the Hennepin County Government Center. The Court believes that safety issues can be mitigated to the point that a fair and safe trial may be had in Hennepin County and a jury can be insulated from outside influence and remain impartial.⁹

Prejudicial Publicity

All Defendants have cited the overwhelming amount of pretrial publicity these cases have generated and argue that the tremendous amount of publicity has tainted a pool of potential jurors in Hennepin County such that a fair trial before an impartial jury cannot be had in Hennepin County.¹⁰

In evaluating a similar claim in *State v. Parker*, the Minnesota Supreme Court affirmed the Court of Appeals' decision to uphold a defendant's second-degree murder conviction where the trial court had denied defendant's motion to change venue.¹¹ The defendant had asserted that a fair trial was impossible due to a "feeding frenzy" of pretrial publicity that served to amplify the prosecution's comments about the victim being a "good Samaritan."¹² The district court reasoned that because the allegedly prejudicial information was found on the internet, there was no other venue in the state that would prove to be a better alternative, stating that "people in every corner could have been exposed to [the pretrial publicity] so I'm not sure where in Minnesota someone would not have been exposed to [it] if the material was prejudicial, where we would move venue, given the type of coverage."¹³ The district court based its denial of

⁹ See the Court's Order for an anonymous jury, also being issued today, for further details.

¹⁰ The Court takes judicial notice that the death of George Floyd has generated thousands of articles, reports, and commentary in Minnesota, the entire United States, and internationally.

¹¹ *State v. Parker*, 901 N.W.2d 917, 922 (Minn. 2017), *aff'g in part and rev'g in part State v. Parker*, 2016 WL 5888672 (Minn. App. Oct. 5, 2016) (unpublished).

¹² *Id.* at 921-22.

¹³ *Id.* at 922.

venue change in part on its plan for voir dire which would “weed out those who have been affected.”¹⁴ While none of the jurors in *Parker* claimed to have any knowledge of the case during voir dire, the Court said that even if the jurors had prior knowledge, their exposure alone to pretrial publicity would not show that they had been prejudiced by it.¹⁵ Instead, the Court said that prejudice is shown when a juror is unable to “set aside his impression or opinion” to “render an impartial verdict.”¹⁶

In *State v. Warren*, the defendant had been convicted on three counts of first-degree murder.¹⁷ The Minnesota Supreme Court reviewed a defendant’s postconviction petition alleging denial of a fair trial due to pretrial publicity. The Court upheld the district court’s decision to deny the defense motion for change of venue despite the fact that fourteen of the fifteen jurors chosen had been exposed to pretrial publicity giving accounts of the murders through television and newspapers.¹⁸ The Court stated that the mere fact a juror was exposed to pretrial publicity reporting on “factual accounts of the crime” does not suffice to show prejudice, concluding that a defendant must demonstrate that pretrial publicity “affect[ed] the minds of the specific jurors involved in the case” in order to receive a new trial based on denial of a motion to change venue.¹⁹ In upholding the district court’s denial of venue change, the Court said that because there was no indication that the jurors would have any difficulty rendering an impartial verdict, the defendant “failed to show that pretrial publicity affected the minds of the jurors or that he was actually prejudiced by the publicity.”²⁰ The Court stressed not only that passage of

¹⁴ *Id.*

¹⁵ *Id.* at 924.

¹⁶ *Id.*

¹⁷ *State v. Warren*, 592 N.W.2d 440 (Minn. 1999).

¹⁸ *Id.* at 448 & n.15.

¹⁹ *Id.* at 447-48.

²⁰ *Id.* at 448.

time between the pretrial publicity and the trial may act to mitigate potential prejudice but also that a defendant can use careful questioning of prospective jurors regarding pretrial publicity to protect against the possibility of prejudicial impact.²¹

In *State v. Blom*, the Minnesota Supreme Court held that the trial court did not abuse its discretion in denying defendant's motion for a second venue change.²² In *Blom*, the defendant kidnapped, murdered, and burned the remains of his victim near Moose Lake, Minnesota.²³ Criminal charges were filed in Carlton County, and the trial court granted defendant's first motion for a change of venue, transferring venue to the City of Virginia in St. Louis County—65 miles from Moose Lake. During jury selection in Virginia, the defendant made a second motion for change of venue, citing concerns about bias of individual jurors and the Virginia community at large, as well as the potential for jury exposure to prejudicial publicity.²⁴ In denying the second motion, the district court acknowledged that although pretrial publicity was extensive, “no evidence had been provided to indicate that any part of Minnesota had been shielded from such publicity.”²⁵ The district court stated that it “could not conclude that the jury had been adversely affected by any exposure to publicity or inadmissible evidence, or that the jury would be unfair,” but would “reconsider Blom's motion if it became necessary.”²⁶ The Supreme Court affirmed, concluding the district court acted appropriately in ascertaining that the seated jurors would be fair and impartial.²⁷

²¹ *Id.* at 448.

²² *State v. Blom*, 682 N.W.2d 578, 626 (Minn. 2004); *see also State v. Morgan*, 246 N.W.2d 165, 169 (Minn. 1976) (“whether the trial court abused its discretion . . . depends on whether [it] properly assessed the likelihood that prejudicial publicity would affect the impartiality of the jurors and thereby prevent a fair trial.”).

²³ *Id.*

²⁴ *Id.* at 595.

²⁵ *Id.*

²⁶ *Id.* at 595-96.

²⁷ *Id.* at 607-09.

Here, even more so than in *Blom*, no corner of the State of Minnesota has been shielded from pretrial publicity regarding the death of George Floyd. Because of that pervasive media coverage, a change of venue is unlikely to cure the taint of potentially prejudicial pretrial publicity. Nevertheless, this is only a preliminary ruling and the parties are free to present the evidence from public opinion surveys they are presently conducting. In addition, this Court is planning to issue jury summonses earlier than usual and to require summoned jurors to fill out questionnaires well before trial to gauge their knowledge of the case and any potential bias. These questionnaires, directed only to members of the actual jury pool summoned for the trial, will certainly be more probative than surveys of the general population of Hennepin County.

Because this Court is not persuaded at this moment that a change of venue is necessary to ensure a fair trial before an impartial jury for the Defendants, the defense motions for a change of venue are denied, although the Court will reconsider as the case develops if circumstances warrant.

PAC