

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

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

State of Minnesota,

Plaintiff,

vs.

J. Alexander Kueng,

**DEFENDANT'S POSITION AS TO
PEREMPTORY CHALLENGES**

Defendant.

TO: The Honorable Peter Cahill, Judge of Hennepin County District Court;
Mathew Frank, Assistant Attorney General; Josh Larson, Asst. Hennepin County
Attorney.

The defendant, by and through his attorney requests that if he is joined for trial with any of the codefendants, that all of the codefendants be allowed more peremptory strikes than allowed by the Rules of Criminal Procedure. Each codefendant joined for trial should have 10 peremptory challenges, but in no case less than a *minimum* of five peremptory challenges.

Defendants in a criminal case are entitled to five peremptory challenges to a potential juror in a case that does not involve a life sentence. Minn. R. Crim. Pro. 26.02, Subd. 6. "In cases involving more than one defendant, the court may allow the defendants additional peremptory challenges and permit them to be exercised separately or jointly." *Id.* In this case, the defendant would request additional peremptory challenges.

The Minnesota Supreme Court has determined that the number of peremptory challenges “belong to a side.” “Where more than one defendant is being tried jointly, peremptory challenges belong to a side, and not an individual defendant. *State v. Jackson*, 773 N.W.2d 111, 120 (Minn. 2009). The Rule does not make sense in a situation like this where, if all four codefendants are joined for trial, each codefendant would get a peremptory challenge and they would have to draw cards for the fifth.

If the Court orders joinder of defendants, each defendant should be granted 10 peremptory challenges, and no less than a minimum of five peremptory challenges. “The peremptory challenge has an important role in the process of impaneling a fair and impartial jury.” *Jackson* at 120. “Peremptory challenges allow a party to strike a prospective juror that the party believes will be less fair than some others and, by this process, to select as final jurors the persons they believe will be most fair.” *State v. Reiners*, 664 N.W.2d 826, 833 (Minn. 2003). Each joined codefendant needs at least five peremptory challenges to impanel a fair and impartial jury although 10 is a more appropriate number given the complexity of the issues in the community stemming from this case.

The unique facts and circumstances of this case require that each defendant be granted peremptory challenges. In *Jackson*, two codefendants were charge with first degree murder for the benefit of a gang. *Jackson* at 116. The district court

denied the defendants request for thirty peremptory challenges and granted the defendants twenty peremptory challenges. Here, as the Court is well aware, this case has attracted world-wide attention and has raised issues related to policing across the country. Because Mr. Floyd was African American, there are also race issues. There will be prospective jurors with strong feelings about law enforcement and race in the justice system. These underlying and complicating social issues were not present in *Jackson*. The defendants need to be able to remove jurors who they feel can be less than fair in the case, given the issues in the case. If the Court joins any of the defendants for trial, each defendant should be allowed 10 peremptory challenges, but in no event less than a minimum of five peremptory challenges.

Respectfully submitted,

Date: September 15, 2020

/s/ *Thomas C. Plunkett*

Thomas C. Plunkett
Attorney No. 260162
Attorneys for Defendant
101 East Fifth Street
Suite 1500
St. Paul, MN 55101
Phone: (651) 222-4357