

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

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

State of Minnesota,

Plaintiff,

vs.

J. Alexander Kueng,

Defendant.

**REPLY TO NOTICE OF VIDEO AND
AUDIO COVERAGE**

TO: The State of Minnesota, the Prosecuting Attorney and Other Interested Parties in the above-entitled case.

On June 5, 2020 Mr. Kueng, the Defendant herein, was served with a Notice of Visual or Audio Coverage filed on behalf of KSTP-TV. This memorandum is a reply to that filing and all subsequent filings from other media outlets seeking Visual or Audio Coverage of the proceedings in this matter.

This reply asks the Court to allow video and audio coverage of all pre-trial and trial proceedings in Mr. Kueng's case as well as the 3 related cases. Counsel has consulted with the attorneys for each defendant and informs this Court that all Defendants are requesting and consenting to video and audio coverage of pre-trial and trial proceedings regardless of any objection from the State of Minnesota. The State of Minnesota has been consulted, but has yet to take a position. The Defendants argue that this relief is necessary to provide the Defendants with a fair trial in light of the State's and other governmental actors multiple inappropriate public comments and to assure an open hearing in light of the ongoing pandemic. Each point shall be addressed in turn.

Minn. Gen. R. Prac., Rule 4.02 (d) applies to proceedings in criminal cases which occur before a guilty plea has been accepted or a guilty verdict has been returned and generally authorizes recording with written or on-the-record consent of the parties. Mr. Kueng and all Co-Defendants (The Defendant's) consent to and request video coverage of all proceedings in this matter.

Right to a Fair Trial:

The Defendants ask this Court to allow video and audio coverage of all proceedings regardless of the lack of consent from the various agencies prosecuting these matters. The Defendants argue that, in response to unethical "leaks" of information and many prejudicial comments from the Governor, Attorney General, Hennepin County Attorney, Mayor of City of Minneapolis, Commissioner of Public Safety and now the Minneapolis Chief of Police, video and audio coverage is necessary to promote the possibility of a fair trial. The Sixth Amendment grants criminal defendants the right to a speedy and public trial by an impartial jury. Under the impartial jury requirement, jurors must be unbiased. Failure to allow real time video coverage of these proceedings will deprive the Defendants of a fair and open trial, a right assured under the Minnesota and United States' Constitutions. Specifically, this relief is necessary to blunt the effects of the increasing and repeated media attacks from the various officials who have breached their duty to the community. These State comments have crescendoed to an extraordinary volume this week with the Chief pronouncing that "[w]hat happened to Mr. Floyd was murder." The State's conduct has made a fair and unbiased trial extremely unlikely and the Defendants seek video and audio coverage to let a cleansing light shine on these proceedings. Doing otherwise allows these public officials to geld the Constitution.

Right to an Open Hearing:

An additional reason for allowing video and audio coverage is the need for a public proceeding. The Sixth Amendment to the United States Constitution and Article I, Section 6, of the Minnesota Constitution provides that all criminal defendants “shall enjoy the right to a . . . public trial.” A closure occurs, and the values sought by a public trial are not protected, when “all or even a significant portion of the public” are excluded from a criminal proceeding. *State v. Lindsey*, 632 N.W.2d 652, 660 (Minn. 2001). The Sixth Amendment’s bedrock right to a public trial is “for the benefit of the accused.” *Waller v. Georgia*, 467 U.S. 39, 46 (1984) (quotation omitted). It reflects the “general rule” that judges, lawyers, witnesses, and jurors will perform their respective functions more responsibly in open court than in secret proceedings.” *Estate v. Texas*, 381 U.S. 532, 588 (1965) (Harlan, J., concurring).

Historically this right has been protected where the court proceedings are open to the public and media to attend in person. Given that the world finds itself in the midst of a pandemic and added restrictions are being placed on attendance of these proceedings a *de facto* deprivation of the Defendant’s rights occurs. Allowing video and audio coverage will prevent this deprivation of a right assured by the United States and Minnesota Constitutions.

Based on the above, the Defendants seek an order allowing video and audio coverage with or without the consent of the State of Minnesota.

Respectfully submitted,

Dated: June 25, 2020

/s/ Thomas C. Plunkett

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