

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

State of Minnesota,
Plaintiff,

Case Type: Felony
Judge Regina M. Chu
Court File No.: 27-CR-21-7460

v.

**ORDER GRANTING
A/V COVERAGE OF TRIAL**

Kimberly Ann Potter,
Defendant.

The above-entitled matter came before the Honorable Regina M. Chu, Judge of District Court, pursuant to the Media Coalition's Motion Objecting to the Denial of Audio/Video Coverage of Trial. On May 17, 2021, Matthew G. Frank, Assistant Minnesota Attorney General, moved for audio and video coverage of trial. On June 29, 2021, the State filed a memorandum in support of its motion for audio and video coverage of trial. On July 13, 2021, Attorneys Paul C. Engh and Earl P. Gray filed a memorandum in opposition on behalf of Defendant Kimberly Ann Potter. On August 5, 2021, the Court filed an Order Denying Audio and Video Coverage of Trial. On October 29, 2021, Attorney Leita Walker submitted a proposed order, motion, memorandum, and four declarations on behalf of the Media Coalition. Both parties rested on their previous submissions. The Court took the matter under advisement on November 1, 2021. On November 5, 2021, the American Civil Liberties Union of Minnesota (ACLU-MN) filed a Request for Leave to Appear as Amicus Curiae and a Letter Brief in support of the Media Coalition's motion.

MEMORANDUM

The Court initially denied audio and video (A/V) coverage of the trial on August 5, 2021. At that time, this Court, like many Minnesotans, anticipated the COVID-19 pandemic would be on the wane by November 30, the trial date. That has not turned out to be the case. The fast-spreading Delta variant has resulted in increasing infections and hospitalizations in the state. The variant poses a threat of infection, even among those fully vaccinated.

Between October 25 and November 7, Hennepin County reported approximately 7,315 new COVID-19 cases. In the last three days, the Minnesota Department of Health has reported 7,173 new COVID-19 cases, marking a continued rise in infection rates. At present, 1,122 Minnesotans are hospitalized with COVID-19, which is the highest figure since 2020. Additionally, approximately one out of every ten COVID-19 tests are coming back positive. If this year's iteration of the pandemic follows the same trajectory as that of 2020, infection rates may very well double by the date of trial.

Ongoing pandemic concerns are front and center in informing this Court to reconsider its original decision prohibiting A/V coverage. Furthermore, public and media interest in the case appears to be more substantial than originally thought. The 45 seats in the "public overflow" courtroom at the Family Justice Center (FJC) will likely be insufficient to accommodate those who wish to view the trial and there is a risk of crowds gathering at the FJC, exposing staff and those who might seek to attend the trial to the risk of infection. It simply does not make sense given the current state of the pandemic to take unnecessary risks to public health and safety.

The recent protest at the presiding judge's home needs to be addressed. The unfortunate timing suggests the protest had an impact on the Court's decision to allow A/V coverage. The honest answer is the protest did not have any impact on the Court's decision, nor should it. The

Court's decision to allow A/V coverage was made before the protest and it is based solely on concerns for public health and safety given the ongoing pandemic.

The bedrock of our democracy is the rule of law and that means we must have an independent judiciary and judges who can make decisions independent of the political winds that are blowing, protests or attempts at intimidation. Judges sometimes properly change their minds because of changed circumstances—the Court has here. The Court's decision most emphatically is not a reflexive response to the recent protests at the presiding judge's home.

The Court recognizes that Defendant does not wish her trial to be televised and has objected to A/V coverage on due process grounds. There is no *per se* rule prohibiting cameras in courtrooms, nor is it an automatic due process violation. *See, e.g., Chandler v. Florida*, 449 U.S. 560, 574 (1981). Courts in other jurisdictions warn against the possibility of conducting a “carnival-like” trial, and thereby prejudicing the defendant. *State v. Smart*, 136 N.H. 639, 657 (1993). The presence of a camera in the courtroom does not compromise the jury's ability to judge a defendant fairly. *Chandler*, 449 U.S. at 581 (citing *Murphy v. Florida*, 421 U.S. 794, 800 (1975)). A defendant must demonstrate with specificity that the “presence of cameras impaired the ability of the jurors to decide the case on only the evidence before them or that their trial was affected adversely by the impact on any of the participants of the presence of cameras and the prospect of broadcast.” *Id.*

Televising the trial will not and does not violate Defendant's right to a fair trial.¹ The Chauvin trial should allay any trepidations about cameras in the courtroom. The Court intends to

¹ Parallel to the defendant's right to a public trial is the press and general public's First Amendment right of access to public trials. *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 573, 580 (1980); *Globe Newspaper Co.*, 457 U.S. at 605-06; *Waller v. Georgia*, 407 U.S. 39, 44 (1984). The public has an interest in ensuring that a criminal defendant is “fairly dealt with and not unjustly condemned.” *Gannett Co.*, 443 U.S. at 380; *see also Estes v. Texas*, 381 U.S. 532, 538-39 (1965). “Public scrutiny of a criminal trial enhances the quality and safeguards the integrity of the factfinding process, with benefits to both the defendant and to society as a whole.” *Globe Newspaper Co.*, 457 U.S. at 606 (citation omitted). Here, the Court need not address the alleged constitutional violation under the First

use a qualified media organization, with the same limitations imposed by Judge Cahill in the Chauvin trial. For the foregoing reasons, A/V coverage of the trial will be allowed, in accordance with the following order.

ORDER

1. The jury trial to be held in the above-captioned case commencing November 30, 2021 may be recorded, broadcast, and livestreamed in audio and subject to the conditions listed below.
2. Audio and video recording, broadcasting, and livestreaming will be allowed only from Courtroom 1856, the trial courtroom, of the Hennepin County Government Center and only during trial sessions. Only matters that are on the record are subject to audio coverage. Sidebar discussions among the Court and counsel will be presumed to be off the record unless the Court indicates otherwise. Off the record matters may be covered by video, but only when the judge is on the bench and the trial is in session.
3. No photography, still photography, or audio recording may be conducted in any other Hennepin County Government Center location where the use of recording devices is otherwise prohibited.
4. Up to three video cameras may be installed in the trial courtroom: one in the back of the courtroom facing the witness stand, one on the wall behind the jury box, and one on or near the bench facing the lectern where counsel examines witnesses. After trial begins, cameras will not be moved from their fixed positions.

Amendment. The Media Coalition's argument on that point is moot. Rather, the current state and trajectory of the COVID-19 pandemic necessitates a deviation from the Minnesota General Rules of Practice.

5. Video cameras will be installed and operated by a single media organization (“Pool Producer”), selected by the Court, that is experienced in televising court proceedings. The Pool Producer will also be responsible for producing a single transmission feed to the Court for use in overflow courtrooms and to media outlets for recording, broadcasting, and livestreaming. The Pool Producer will not be compensated for its operation of the cameras and production of the single transmission feed. Neither the Pool Producer nor any media outlet will hold a copyright or any other intellectual property right for any of the raw footage from cameras or the single transmission feed that is produced that would prevent any other media outlet or entity from using, broadcasting, or sharing the footage or any other free use thereof. The Pool Producer shall also manage an audio, still photography, and video feed from the computers being used to publish exhibits to the jury and may include such footage in its production of the single transmission feed. Finally, the Pool Producer will provide a “YouTube ready” version of the single transmission feed for the Minnesota Judicial Branch to use as it wishes.
6. Pan, tilt, and zoom (PTZ) functions of cameras may be used at the discretion of the Pool Producer, but with the following limitations:
 - a. No juror or potential juror shall appear in any video at any time. Audio of potential jurors during jury selection will be allowed, except that no audio shall be allowed for any in camera examination of a juror pursuant to Minn. R. Crim. P. 26.02 subd. 4(4).
 - b. No witness under the age of 18 shall appear in any video unless the witness and at least one parent or guardian of the witness consents in writing before the witness is called. Audio coverage shall be allowed regardless of whether video is allowed.

- c. No members of the Wright or Potter families shall appear in any video unless they consent in writing or orally on the record. Audio coverage shall be allowed regardless of whether video is allowed.
 - d. With the exception of when a verdict is taken, no video of counsel tables, including video of counsel for the State, the defendant, or defense counsel, shall be allowed unless all tables, counsel and parties are visible in the image (i.e., no zooming in on any one table of participants).
 - e. The camera on or near the bench cannot be positioned or manipulated to view anything on the horizontal surface of either the bench or witness stand.
 - f. Camera PTZ functions shall be performed remotely and as quietly as possible so as to be imperceptible to trial participants.
7. The Pool Producer shall have a technician present in the courtroom during trial to troubleshoot and to facilitate communication between the Court and the Pool Producer.
8. No microphones will be placed at any counsel table and no audio coverage of conversations occurring at counsel tables shall be allowed.
9. Within two weeks of the conclusion of trial, the Pool Producer will provide to the Fourth Judicial District Administrator one copy of the single transmission feed. The District Administrator will file a copy of the single transmission feed as a court exhibit in this case. The format of the copy should be in a format approved by the Court.

BY THE COURT:

Dated: November 9, 2021

Regina M. Chu
Judge of District Court