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Minnesota Court Releases Juror Names from Trial of Ex-Officer Mohamed Noor

By Emmy Parsons

In July 2020, more than one year after a jury convicted former Minneapolis police officer Mohamed Noor of murder in the death of Justine Ruszczyk Damond, a judge ordered the release of the jurors' names, which had been under seal and available only to the parties. Minnesota v. Noor. The decision was a "first" of sorts in Minnesota – specifically considering, and finding, that the press and public have a common law right to juror identities and ordering the release of that information.

Background

In July 2017, Minneapolis Police Department Officer Mohamed Noor and his partner responded to a 911 call reporting a possible assault of a woman in an alley. As the officers neared the area, the woman who had phoned in the report, Justine Ruszczyk Damond, approached the officer's squad car, allegedly startling Noor. Noor fired his gun through his partner's window, striking Damond and killing her. In April 2019, a jury convicted Noor of third-degree murder and second-degree manslaughter.

In the lead up to the trial, the court placed significant restrictions on the press and public's access to the proceedings. In response, a media coalition including Star Tribune Media Company LLC ("Star Tribune") and Hubbard Broadcasting Inc. ("Hubbard"), filed several motions to intervene and assert their First Amendment and common law rights of access.

The latest motion, filed nine months after Noor's conviction, sought access to juror names and addresses and other related materials, including juror profiles and questionnaires and the names of individuals called to jury duty but not empaneled.

On July 10, 2020 Hennepin County Judge Kathryn L. Quaintance issued an order releasing the juror names, the transcript of *in camera* juror *voir dire*, and the jury's original verdict forms. She declined to release the prospective juror list, juror profiles, and juror questionnaires. She also took the unusual step of enlisting the services of a pro bono attorney to represent the interests of any juror regarding media inquiries.

Previous Noor Access Motions

Prior to bringing the motion for access to juror information, Star Tribune and Hubbard, along with other members of the press, formally intervened in the Noor prosecution on two other occasions to challenge orders restricting the press and public's right of access to the proceedings.

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Because another court in the same district is now overseeing the prosecutions of police officers involved in the death of George Floyd, a brief recap is provided here.

First, the media coalition intervened to challenge the court's decision that graphic body-worn camera ("BWC") footage would be shown only to the jury and the court and that television screens would be turned away from members of the press and the public in the courtroom. In the same motion the coalition also challenged the court's decision to prohibit the media sketch artist from depicting members of the jury.

In its order granting the coalition's motion and reversing these restrictions, the court noted with respect to the BWC footage that "[t]he First Amendment provides a constitutional right of the public and the press to attend criminal trials." Slip op. at 13 (citing *Richmond Newspapers v. Virginia*, 448 U.S. 555, 580 (1980)). The court agreed with the media intervenors that it was important for the press and the public to be able to view evidence at the same time it was presented to the jury, finding "a First Amendment interest in contemporaneous access." Slip op. at 15 (citing *Richmond Newspapers*, 448 U.S. at 592).

Regarding the media sketch artist, the court agreed that the restriction constituted a "prior restraint of publication," and that such restraints are "constitutionally infirm absent some compelling justification," particularly "when the prior restraint relates to reporting about criminal proceedings." *Id*. at 21, 22. The court acknowledged that when restraining speech, it must consider: (1) "[t]he gravity of the harm posed by media coverage," (2) whether other, less restrictive, measures would adequately protect defendant's right to a fair trial and any other "undesired effects of unrestrained publicity"; and (3) how effectively a restraining order would operate to prevent the threatened danger." *Id*. at 23-24.

Second, the media intervened to ensure it would be able to copy trial exhibits.

This time, the court partially reversed its decision prohibiting the press from copying trial exhibits. In the order, the court acknowledged "a presumption of favor in copying exhibits received in the course of a criminal trial" embedded in the common-law right of access, and as recognized by the Supreme Court in *Nixon v. Warner Communications, Inc.*, 435 U.S. 58, 597-99 (1978). Slip op. at 2. The court declined to separately find that such a right exists under the First Amendment. *Id*. at 4.

The court limited copy access, however, with respect to portions of the BWC videos. Here, the court said that the images and sounds of the victim's last moments, lying exposed and gasping for air carried "potential for exploitation of that material for improper purposes" and "are of limited value for the accurate reporting purposes for which the Media Coalition seeks to copy the trial exhibits in this case." *Id*. at 5. The court ordered these portions of the videos released, but with the face and exposed breasts of the victim blurred, and her "vocalizations muted to the extent that it does not interfere with the speech of the other people depicted in the video." *Id*. at 6.

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In addition to these formal interventions, members of the media weighed in on court-imposed limitations a third time in connection with Noor's sentencing. Although timing did not allow them to file a formal motion, members of the media objected by letter to restrictions the judge put on coverage of Noor's sentencing. Cameras were allowed at sentencing (though, per Minnesota rules, not at the trial itself), and video feeds from sentencing were transmitted in real time back to newsrooms. Judge Quaintance prohibited the press from reporting about the sentencing, including on social media, while it was in progress, a ruling the media coalition objected to, in a letter sent on the eve of trial, as a prior restraint on speech.

Judge Quaintance never responded to the letter and did not allow the media to be heard on this issue before the sentencing began.

Third, and finally, was Star Tribune and Hubbard's intervention to obtain access to juror information.

The Court Releases Juror Information

Before Noor's trial began in April 2019, Judge Quaintance issued a confidentiality order sealing juror information, explaining that sealing the information was necessary to protect jurors from "unwanted publicity or harassment" that could have impacted their impartiality. She renewed this order five times, explaining in last month's order that she "intended the restriction on access to last as long as there was a likelihood of publication of juror information leading to unwanted harassment." Slip op. at 1.

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Nine months after the verdict, and seven months after Noor's sentencing, Star Tribune and Hubbard intervened. They argued that:

- Continued secrecy regarding the jurors, nine months after Noor was convicted, violated the court's rules, the common law and the First Amendment;
- Because the trial was over, release of the jurors' names could not threaten Noor's right to a fair trial; and
- Withholding the information so long as there was a likelihood of publication of juror information could impermissibly result in the names of jurors in high-profile cases never being released.

A hearing on the motion was delayed because of covid-19 but finally took place, in person, on May 6, 2020. At the end of the hearing, in response to an offer by the media's attorney to provide supplemental briefing, the judge indicated she would rule quickly.

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However, Judge Quaintance did not rule until July 10, 2020. In the interim, of course, George Floyd was killed on May 25, 2020, prompting one of the largest social movements in the country's history, including protests at the Minnesota homes of various public officials, including the county attorney who made the charging decision against the four officers involved. Although Judge Quaintance's order did not refer to these events, it is hard to believe it was not impacted by them.

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The court's release of the jurors' names now stands as one of the only opinions in Minnesota (albeit unpublished and from a trial court) where juror secrecy was successfully challenged. The only other case dealing with a similar issue concerned jurors whose names were withheld not only from the public but also the parties. *See State v. Bowles*, 530 N.W.2d 521 (Minn. 1995). In that case a witness to the crime had been killed and the court believed the jurors' safety was at risk or that their deliberations might be impacted by fear for their safety. The defendant later challenged the secret jury, but no media were involved in that case as interveners. Despite upholding the secrecy jury in *Bowles* and rejecting the defendant's Sixth Amendment challenge, the Minnesota Supreme Court made clear in *Bowles* that anonymous juries are the exception, not the rule, and typically empaneled only in prosecutions of organized crime figures. *Id*. at 531.

Judge Quaintance refused, however, to release the juror profiles and questionnaires and the names of potential jurors who were not chosen to serve. And even as to the names and related information that she ordered released, the court's interpretation of the law is at times problematic, reflecting a reluctant recognition of the press and public's right of access under to criminal proceedings. The order includes the following findings:

- Because the jurors were referred to by numbers rather than by names during *voir dire* and trial, the court said their names and information were "effectively never part of the court record," at 4;

- The information was "collateral," because it was necessary only for "administrative purposes," and therefore not a record of the proceeding, *id.*;

- Because the court only withheld the names from the press and the public, and the jury was not truly "anonymous," such actions were allowed under the Minnesota Rules of Criminal Procedure, at 5;

- The Minnesota General Rules of Practice "create a presumption of non-disclosure" for juror information and questionnaires, because the court restricted access to the information before the media intervened, it did not need to determine whether there was a "strong reason" to withhold the information or whether the information should be withheld "in the interest of justice," at 6-7;

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- In any event, the "interest of justice" standard had been met to-date, at 7;
- Although Supreme Court found that the press and public have a presumptive right of access to *voir dire* under the First Amendment, the precedent was distinguishable on the basis that the Noor *voir dire* was conducted in an open court, at 10; and
- The "facts and circumstances" of each case must be "weighed against the competing rights of juror privacy, public interest, the media's First Amendment rights, and the Sixth Amendment rights of the accused," such that it would be improper to adopt a blanket rule, at 11.

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Pursuant to Judge Quaintance's order, the juror information she ordered disclosed, became public on August 3, 2020. The order further provides that to the extent any jurors indicate they are represented by a lawyer, including the pro bono legal counsel provided to them by the Court, "[a]ny contacts with or inquiries . . . shall be made through their respective attorney." The requirement is not limited to contacts by other attorneys, and it may raise concerns about prior restraint if imposed on non-lawyers, who are not subject to the rules of professional responsibility.

Emmy Parsons is with Ballard Spahr LLP. Leita Walker, also of Ballard, represented the media in the Noor proceedings; together, Leita and Emmy currently represent a coalition of media and open-government organizations regarding access issues in the George Floyd prosecutions.