

Minnesota Court Rules Graphic Videos Shown to Jury Cannot Be Shielded from Public View

By Christopher Proczko

Despite the judge's natural inclination to protect victim and juror privacy, a Minnesota court hearing a high profile murder case concluded that any evidence shown to the jury must also be shown to the members of the press and public attending the trial. [*State v. Noor*](#).

In the same order, the court concluded that it could not prohibit the courtroom sketch artist from sketching members of the jury without running afoul of the First Amendment. In announcing her decision from the bench on April 9, District Judge Kathryn L. Quaintance explained that "The court, like the jury, must follow the law even if I disagree with it." A written order followed on April 10.

Background and Lawsuit

Late in the evening of July 15, 2017, Minneapolis Police Officer Mohamed Noor shot and killed Justine Ruszczyk Damond, an unarmed woman, while he and his partner were responding to a 911 call. Mr. Noor is a member of Minneapolis's vibrant Somali community and was one of the first Somali-Americans in the Minneapolis Police Department. The case received national and international press attention, and several weeks after the incident, Noor was charged with second-degree murder, third-degree murder, and second-degree manslaughter.

After several months of pre-trial proceedings, jury selection began on April 1, 2019. Public interest in the trial remained constant, and multiple media outlets regularly reported on the proceedings. While jury selection was still underway, Judge Quaintance announced her intention to conduct trial with two specific controls in place. First, suggested video screens in the courtroom would be turned away from the public so that only the jury and other trial participants could see body-cam or dash-cam footage recorded by Mr. Noor, his partner, and other officers on the scene of the shooting, as well as photographs from the medical examiner's office. Second, the judge suggested she might limit the courtroom sketch artist from portraying the jurors in the courtroom during the trial.

Shortly thereafter, a media coalition comprising Star Tribune Media Company, LLC, CBS Broadcasting Inc., Minnesota Public Radio, TEGNA Inc., Fox/UTV Holdings, LLC, The Associated Press, Hubbard Broadcasting, and the Minnesota Coalition on Government Information ("the Coalition") filed a motion seeking to ensure that the public and the press would have access to the same information and evidence that was presented to the jury in open court and that no prior restraint would be imposed on the sketch artist.

The court found there had been no showing that allowing the press and public to view the video footage would create a substantial probability of harm to a compelling interest.

Court Decision

The court issued its written order on April 10, 2019. The court held first that restricting the press and public's ability to view evidence presented to the jurors and lawyers participating in the case would be an unconstitutional limitation on the right of public access to criminal trials.

The court stated that the plan to keep the video footage from all but the jury, the defendant, and the lawyers was an effort to balance the press and the public's right of access to public criminal trials, the defendant's Sixth Amendment rights to a fair, public trial and an impartial jury, and the victim's and the victim's family's privacy. The court was troubled by the graphic nature of the body and dash-cam footage, which depicted the victim taking her last breaths and receiving CPR, which required removing some of her clothing and exposing her breast. Ultimately, however, the court was persuaded that the proposed limitation ran afoul of the Constitution.

Specifically, the court found there had been no showing that allowing the press and public to view the video footage would create a substantial probability of harm to a compelling interest, especially in light of the fact that, under Minnesota law, an individual's privacy interests do not survive their death. The court also noted that less restrictive alternatives existed, such as announcing to the gallery that the evidence about to be shown contained disturbing material and giving observers a chance to leave the courtroom. Conducting the trial while showing some of the evidence only to the jurors, the defendant, and the lawyers "would negatively impact the press' ability to observe and report on the video evidence being presented, how the jury reacts to it, and how the evidence might impact the jury's verdict"—all of which, as the court recognized, are journalistic decisions.

The court also held that prohibiting the sketch artist from sketching certain people in the public courtroom would be an unconstitutional prior restraint. The court reviewed the three prongs under *Nebraska Press Association v. Stuart*, 427 U.S. 539 (1976), that a court must consider in deciding whether to enter an order restraining speech: (1) the gravity of the harm posed by media coverage; (2) whether other measures short of a prior restraint would adequately protect the defendant's right to a fair trial and would likely mitigate other undesired effects of unrestrained publicity; and (3) how effectively a restraining order would operate to prevent the threatened danger.

The court held that "[t]he proposed order prohibiting the media sketch artist from sketching jurors in the courtroom during trial does not pass muster under these criteria." The court observed that "even were [it] to proceed with its previously announced plan to prohibit the media sketch artist from sketching the members of the jury during trial, any attending members of the public would be free to record their own images, or describe any of the jurors to a sketch artist outside the courtroom, and this Court could not then prevent the media from publishing or broadcasting such images."

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