



STATE OF MINNESOTA  
COUNTY OF KANDIYOHI

Court File No: 34-CR-24-341

State of Minnesota,  
Plaintiff,  
v.  
Nicholas Robert Rekieta,  
Defendant.

**ORDER FOLLOWING  
MOTION TO INTERVENE**

The above-entitled matter came before the Honorable Stephen J. Wentzell, Judge of District Court based upon a motion to intervene filed by interested party Matthew Hardin for the purpose of asserting right of access to evidence uploaded to MNDES.

**Based upon the files, exhibits, records, proceedings, and being fully advised in the premise, the Court makes the following:**

**FINDINGS OF FACT**

1. On August 18, 2024, Defendant filed prehearing memorandum that identified the contested issues for the omnibus hearing as probable cause for the search warrant, firearm seizure, and admissibility of a third party's statements to law enforcement. Two body worn cameras<sup>1</sup> were referenced in Defendant's prehearing memorandum in the section regarding admissibility of a third party's statements to law enforcement.
2. Prior to the omnibus hearing, Defense counsel uploaded a variety of exhibits to MNDES in preparation for the hearing. Included in the uploaded exhibits was the footage from the two body worn cameras.<sup>2</sup>

<sup>1</sup> "RobbieBraness\_202405230911\_BWC2120187-0.mp4" and "QuinPomplun\_202405230914\_BWC2120153-0.mp4"

<sup>2</sup> In MNDES the files at issue are entitled: "RobbieBraness 202405230911 BWC2120187-0" and "QuinPomplun 202405230914 BWC2120153-0"

3. An omnibus hearing was held on August 21, 2024.
4. At the omnibus hearing, Defense counsel clarified that the search warrant and firearm seizure were the contested issues for the omnibus hearing. Defense withdrew his third issues involving certain statements by a co-defendant made on the body camera videos.
5. The Court discussed with Defense Counsel what records uploaded to MENDES were being offered. Defense counsel stated that he was going to “get rid of first two” which was in reference to the sworn camera exhibits that were uploaded to MNDES.<sup>3</sup>
6. The Court asked the State if there were any objections. The State noted an objection only to a separate video later ruled as admissible by the Court.
7. The body cameras were mistakenly marked as “admitted” in MENDES after the hearing.
8. The Court did not consider the uploaded body worn camera footage in deciding the remaining omnibus issues.
9. On April 22, 2025, Mr. Hardin filed a Minnesota Judicial Branch Copy Request Form (34-CV-AD-25-3) requesting access to the footage of the two body worn cameras that were uploaded to MNDES by Defense counsel and marked as admitted.
10. On May 1, 2025, the Court granted Mr. Hardin’s Minnesota Judicial Branch Copy Request Form (34-CV-AD-25-3) observing they were marked in MENDES as admitted but restricted their viewing only at the courthouse by appointment.
11. On May 29, 2025, the State of Minnesota filed a motion to correct court records in the criminal file. The State moved the Court to correct court records to properly indicate that the two body cameras were never offered nor received as exhibits at the omnibus hearing.

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<sup>3</sup> Transcript Omnibus p. 8.

12. On May 30, 2025, the Court reviewed the transcripts and granted the State's request to correct court records. Both parties agreed that their intent was not to offer the body camera footage marked in MNDES as received, and the Court did not rely on such footage in deciding the limited omnibus issues. The MNDES record was amended to mark the two body camera videos as not accepted so they remain designated as pre-hearing only. On May 30, 2025 and June 1, 2025<sup>4</sup>, Matthew Hardin, filed a notice of motion and motion to intervene for the purpose of asserting right of access to evidence.
13. Mr. Hardin seeks to intervene to consider his briefing on whether the two body camera videos uploaded by Defendant to MNDES are public data.
14. On June 6, 2025, Mr. Hardin filed supplemental memorandum in support of his motion to intervene and cited *Kilmar Armando Abrego Garcia, et al. v. Kristi Noem, et al.* (United States District Court for the District of Maryland )(Civil Case File 8:25-cv-00951-PX June 4, 2025)
15. On June 6, 2025, Defendant filed responsive memorandum in response and opposition to Mr. Hardin's supplemental authority.
16. All facts contained in the Memorandum of the Court are incorporated by reference as Findings of Fact.

### **ORDER**

1. The Court accepts Mr. Hardin's prior motion and filings for limited intervention for the sole purpose of considering the issue of access to records.
2. When uploading the footage from the two body worn cameras to MNDES, the status box was mistakenly checked to indicate the exhibits were admitted. The admitted status of

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<sup>4</sup> The substantive content of these two filings are identical.

these two exhibits was inaccurate and required correction and correction to the access allowed. Therefore, Mr. Hardin's motion to access the two body camera videos in this case is **DENIED**.

3. The Court's May 1, 2025 order granting limited access to these body worn cameras in 34-CV-AD-25-3 was rescinded as a result and the access request is hereby **DENIED**.
4. The Memorandum of the Court is incorporated by reference.

**BY THE COURT:**

**Dated:**

**Honorable Stephen J. Wentzell**  
**Judge of District Court**

### **MEMORANDUM OF LAW**

Mr. Hardin, requests access to the footage from two law enforcement body worn cameras<sup>5</sup> that were uploaded by Defendant in preparation for the omnibus hearing, but never received by the Court as evidence. Mr. Hardin is making a limited request to intervene to access this camera footage under the premise of a common law right of access to judicial records, and related access rights under the First Amendment. Mr. Hardin requests leave to intervene to consider his filed adversarial briefing regarding access to the body camera footage.

#### **Right to Intervene**

In this case, the interested party erroneously invokes Rule 24 of the Minnesota Rules of Civil Procedure to assert intervention rights. This civil procedure rule does not apply to criminal

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<sup>5</sup> "RobbieBraness 202405230911 BWC2120187-0" and "QuinPomplun 202405230914 BWC2120153-0"

matters. Minnesota criminal procedure is governed by the Minnesota Rules of Criminal Procedure, and those rules contains no express provision for third-party intervention for this purpose. The Court is not aware that Minnesota Courts have addressed whether a party may intervene directly in a criminal case to assert a right of access to judicial records as opposed to a separate civil filing. While normally non-party requests would be summarily denied, the Court recognizes the importance of access when permitted. The Court is also aware that several outside jurisdictions have recognized that third parties may intervene in criminal cases for the *limited* purpose of seeking access to records or proceedings, despite the absence of procedural rules adopted for that purpose. Those courts have reasoned that such limited interventions serve to vindicate the constitutional and common law rights of public access. See *Stephens Media, LLC v. Eighth Jud. Dist. Ct. of State ex rel. Cnty. of Clark*, 221 P.3d 1240, 1248 (Nev. 2009) (Public and press have the limited right to intervene in a criminal case to argue constitutional claims concerning access to court proceedings); *Daily Press, LLC v. Commonwealth*, 878 S.E.2d 390, 402 (Va. 2022) (Non-parties in criminal matters can make a special appearance in criminal cases to assert their right of access to the court proceedings and records); *Yakima v. Yakima Herald-Republic*, 246 P.3d 768, 779 (Wash. 2011) (Limited intervention in criminal matters to address access concerns is warranted, despite the absence of express language permitting intervention).

Despite the lack of directly applicable Minnesota authority, the Court finds that it retains discretion to allow limited intervention solely to determine access rights, provided that no disruption occurs to the underlying criminal process. This limited intervention however does not entitle the intervenor to participate more broadly in the proceedings, or to assert any substantive claims unrelated to access.

## **Right of Access**

MNDES is the newly created Minnesota's statewide electronic system for exhibit handling. It was developed to facilitate evidence handling based on recent changes to court appearances allowing for remote appearances for certain hearings. MENDES requires parties to upload and exchange proposed exhibits and facilitates remote and hybrid hearings by eliminating the need for in-person exhibit handling. Parties are required to upload potential exhibits before the hearing. The Court and Court staff are in turn tasked with an additional administrative requirement after hearings to electronically check whether all the proposed exhibits are "pre-hearing", "offered" and/or "admitted." Currently the parties are unable to withdraw their own uploaded exhibits unless they request deletion from those in Court Administration tasked with that authority and special access.

The MNDES system has significantly improved procedural efficiency and remote access but has also introduced challenges, particularly where traditional courtroom practices involving verbal offers and rulings on admissibility are not strictly followed. Traditionally, exhibits have always been offered orally in court by a party introducing physical copies followed by physical acceptance or non-acceptance, after judicial ruling on any objections. This clear delineation ensured well-persevered evidentiary records. MNDES, however, permits pretrial designation of an exhibit's status by the uploading party, which inadvertently creates some potential for ambiguity especially when the same formal procedures for offering and acceptance during busy court calendars are not followed.

Under common-law access rules, first amendment principles, and the Minnesota Rules of Public Access to Records of the Judicial Branch, records that are admitted into evidence and

used in court proceedings are presumed to be accessible to the public, unless classified as confidential, sealed by court order, or statute dictates non-disclosure. Minn. R. Pub. Access to Recs. of Jud. Branch 2, 4, 8; *Minneapolis Star & Trib. Co. v. Schumacher*, 392 N.W.2d 197, 202 (Minn. 1986) (citing *Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 597 (1977) (“It is clear that the courts of this country recognize a general right to inspect and copy ... judicial records and documents”)); *Star Trib. v. Minnesota Twins P’ship*, 659 N.W.2d 287, 295-96 (Minn. Ct. App. 2003). While Minnesota Statute §§ 13.82 and 13.825 controls the classification of body worn camera data held by law enforcement, once that same footage is admitted as an exhibit in a public court hearing, it generally becomes a court record. At that point, judicial access rules apply.

However, when a party merely uploads an exhibit to MNDES during preparation for a hearing it does not automatically convert that potential exhibit into a publicly accessible judicial record. A proposed, potential exhibit stays non-public until it is admitted during the hearing. “[T]he mere filing of a paper or document with the court is insufficient to render that paper a judicial document subject to the right of public access.” *United States v. Amodeo*, 44 F.3d 141, 145 (2d Cir. 1995). Instead, “the item filed must be relevant to the performance of the judicial function and useful in the judicial process in order for it to be designated a judicial document.” *Id.* The Minnesota Supreme Court has held that private documents generated during discovery and not filed with the court are not subject to public access. See *Star Tribune v. Minnesota Twins P’ship*, 659 N.W.2d 287, 296 (Minn. 2003). This principle supports the notion that exhibits not admitted into evidence do not become part of the public record. “Restraints placed on discovered, but not yet admitted, information are not a restriction on a traditionally public source of information.” *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 33 (1984). For an exhibit to

become a judicial record, and therefore accessible by the public, it must be formally admitted or used in proceedings.

In this matter, the footage of two body worn cameras were listed in Defendant's prehearing memorandum, suggesting initial intent to rely on the videos. However, at the omnibus hearing, Defense counsel later withdrew the issue that referenced the body worn cameras. While Defense counsel may not have followed the typical formalities of exhibit offer and acceptance, he indicated he was "getting rid of" the two body worn cameras videos as "not particularly relevant" when asked about his pretrial exhibits in MENDES.<sup>6</sup> Even so, the body cameras were mistakenly electronically marked in the MENDES system as admitted. Subsequent correspondence received by the State and Defendant, and further review of the record clarified that this designation was a mistake, and the videos were not formally offered or admitted.

Because the footage from the body worn cameras in question were not formally offered or admitted, they remain outside the scope of public access. An erroneous clerical marking does not transform an exhibit that was not offered nor received into a judicial record accessible by the public.<sup>7</sup> Therefore, the body worn camera footage is inaccessible under the principles of constitutional or common law access because they are non-public and inaccessible by the interested party.

In summary, the body worn camera footage in this matter is not public judicial record because it was never formally offered or admitted into evidence. The Minnesota Rules of Public Access to Records of the Judicial Branch, do not permit access in this instance because the body

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<sup>6</sup> Transcript Omnibus p. 8.

<sup>7</sup> Mr. Hardin argues that mistaken temporary access requires the Court to allow access. Minnesota's rules of Access do not permit for access if initial access was temporarily granted in error. Unlike the Abrego Garcia case cited by Mr. Hardin, any inadvertent access was not previously openly distributed or copied. The video was only temporarily allowed to be viewed at the Courthouse and not subject to copying unlike the previous publicly marked and available documents in the Abrego Garcia case which were later requested to be sealed.



worn camera footage is not part of the judicial record. The mistaken designation as “admitted” does not convert it into a public record. Therefore, Mr. Hardin’s request to access the footage of the two body worn cameras is respectfully denied. No further briefing or hearing on this limited intervention is required.



**SJW**

MINNESOTA  
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BRANCH