

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

State of Minnesota,

Case Type: Criminal  
Court File No.: 27-CR-20-12949

Plaintiff,

v.

**PROPOSED FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND  
VERDICT IN STIPULATED  
EVIDENCE TRIAL**

Tou Thao,

Defendant.

TO: The Honorable Peter A. Cahill, Judge of District Court and counsel for Defendant, Robert Paule, 920 Second Avenue South, Suite 975, Minneapolis, MN 55402 and Natalie Paule, 101 East Fifth Street, Suite 1500, St. Paul, MN 55101.

**INTRODUCTION**

This matter came before the Honorable Peter A. Cahill, Judge of District Court, on October 24, 2022. Matthew Frank, Assistant Attorney General; Steven Schleicher, Special Assistant Attorney General; Zuri Balmakund, Assistant Attorney General; and Corey Gordon, Special Assistant Attorney General, appeared on behalf of the State of Minnesota (“State”); Robert Paule and Natalie Paule, Attorneys at Law, appeared with and on behalf of Defendant Tou Thao (“Thao”).

At the hearing, Thao expressly waived his right to a jury trial and the parties agreed to submit Count 2, aiding and abetting second-degree manslaughter, to the Court for a trial on stipulated evidence pursuant to Minn. R. Crim. P. 26.01, subd. 3. Thao also signed a waiver of rights before proceeding with the bench trial, and specifically waived his right to a jury, to testify at trial, to have the State’s witnesses testify in open court in Thao’s presence, to question the State’s witnesses, and to require any favorable witness to testify for the defense in court. (Doc. No. 631.)

On December 9, 2022, the State provided exhibits to the Court, which the parties have stipulated comprise the record for this matter. (Docs. No. 639, 640.)

The following are proposed findings of fact and conclusions of law based on the evidence submitted to the Court.

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## FINDINGS OF FACT

### I. BACKGROUND

#### A. Procedural History.

1. The State commenced this matter on June 3, 2020, by filing a complaint charging Thao with Count 1, aiding and abetting second-degree unintentional felony murder, in violation of Minn. Stat. § 609.19, subd. 2(1), and Count 2, aiding and abetting second-degree culpable negligence manslaughter, in violation of Minn. Stat. § 609.205(1). The complaint alleged that Thao, while working as a peace officer for the Minneapolis Police Department (“MPD”), and three other peace officers with the MPD, Derek Chauvin (“Chauvin”), Thomas Lane (“Lane”), and J. Alexander Kueng (“Kueng”), caused the death of George Perry Floyd (“Floyd”) on May 25, 2020. (Doc. No. 1.)
2. The other officers were similarly charged in separate complaints: *State v. Chauvin*, Hennepin County District Court File No. 27-CR-20-12646; *State v. Lane*, Hennepin County District Court. File No. 27-CR-20-12951; *State v. Kueng*, Hennepin County District Court File No. 27-CR-20-12953.
3. The case against Chauvin proceeded to jury trial before the undersigned, commencing with jury selection on March 9, 2021. Testimony began on March 29, 2021, and concluded on April 15, 2021, and the Court received numerous exhibits into evidence. The jury returned guilty verdicts on April 20, 2021. On June 25, 2021, the Court sentenced Chauvin and entered a judgment of conviction on second-degree unintentional felony murder.
4. On May 6, 2021, the United States Attorney for the District of Minnesota charged Chauvin, Thao, Kueng, and Lane by indictment with various counts of deprivation of rights under color of law based on their interaction with Floyd on May 25, 2020. *See United States v. Chauvin, Thao, Kueng, Lane*, 21-cr-108 (D. Minn.). Thao, Kueng, and Lane proceeded to a jury trial on the indictment, with testimony beginning on January 24, 2022, and ending on February 21, 2022. The federal court received numerous exhibits into evidence during the trial.
5. On October 24, 2022, the parties to this matter waived a trial by jury and agreed to a trial on Count 2 by stipulated evidence, with this Court to issue findings of fact and a verdict on Count 2.
6. In reaching these findings of fact and verdict, the Court has not considered nor given any weight to the jury verdicts in the trials set forth above. The Court only mentions those proceedings to explain the sources of the stipulated record. In addition, the Court has neither considered nor given any weight to guilty pleas entered by Chauvin, Kueng, and Lane, nor has this Court considered any sentence imposed in any related matter.

7. This Court has carefully considered the parties' submissions. In reaching these findings, the Court has relied primarily on the transcripts and exhibits of the prior trials, including body-worn camera and bystander videos. Where the Court has found that a portion of testimony or an exhibit lacked relevance to the charge against Thao, this Court has not relied on that evidence. In the prior trials, some exhibits were offered for illustrative purposes only and the Court, in reaching these findings, has likewise considered those exhibits only for their illustrative purpose. Finally, the Court has received supplemental exhibits pursuant to the parties' stipulation, which include additional bystander and hospital videos. The Court also received the recording of the investigative interview of Thao (State's Supp. Ex. 24 (Video of BCA Interview with Tou Thao (#8128))), and the Court has utilized the transcript of that interview (State's Supp. Ex. 23 (Transcript of BCA Video Interview with Tou Thao (#27480-27525))) only as an illustrative aid. (*See* Doc. No. 639 at 2.<sup>1</sup>)

**B. Overview of the Events of May 25, 2020.**

8. The Court provides this abbreviated overview of the incident as background for the factual findings that follow.
9. At approximately 8:02 p.m. on May 25, 2020, MPD officers were called to Cup Foods, located at Chicago Avenue and 38th Street in South Minneapolis, which is within Hennepin County. (Chauvin Exs. 1 (Overhead Photo 38th and Chicago), 10 (Dispatch Audio to Officers), 151 (CAD Report (Bates 434-436); Fed. Gov't Ex. 39 (Dispatch Summary Timeline) at 20:02:13; Chauvin Tr. 2714 (Scurry).<sup>2</sup>)
10. The caller reported that a male, who was sitting on top of a blue Mercedes, had tendered a counterfeit bill to the business and appeared under the influence. (Chauvin Ex. 151 (CAD Report (Bates 434-436)) at 20:02:13, 20:03:46; Fed. Gov't Ex. 39 (Dispatch Summary Timeline) at 20:02:13.)
11. At 8:04 p.m., the call was initially assigned to Squad 330, consisting of Chauvin and Thao. (Fed. Gov't Ex. 39 (Dispatch Summary Timeline) at 20:04:28.) However, at 8:05 p.m., the call was reassigned to Squad 320, consisting of Kueng and Lane. (Fed. Gov't Ex. 39 (Dispatch Summary Timeline) at 20:05:11).
12. Kueng and Lane responded to the call and arrived at Cup Foods at 8:08 p.m. (Chauvin Ex. 151 (CAD Report (Bates 434-436)); Fed. Gov't Ex. 39 (Dispatch Summary Timeline)

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<sup>1</sup> The parties' Joint Stipulation To Record erroneously identifies this document as State's Supplemental Exhibit 22. (Doc. No. 639 at 2.) The correct number is State's Supplemental Exhibit 23, as identified in the Stipulated Evidence List. (Doc. No. 640 at 16.)

<sup>2</sup> The Chauvin Transcript is paginated sequentially. As such, the Court cites specific pages of the Chauvin Transcript herein as "Chauvin Tr. [page number]."

- at 20:08:10.) The manager directed Kueng and Lane to a blue vehicle across the street. (Chauvin Ex. 43 (Kueng BWC) at 20:08:40-20:09:06; Chauvin Ex. 47 (Lane BWC) at 20:08:40-20:09:06.) Kueng and Lane left Cup Foods and approached the vehicle. (Chauvin Ex. 43 (Kueng BWC) at 20:09:06-20:09:28; Chauvin Ex. 47 (Lane BWC) at 20:08:40-20:09:06.)
13. Floyd was sitting in the vehicle's driver's seat. A male passenger, later identified as Morris Hall, sat in the front passenger seat and a female passenger, later identified as Shawanda Hill, sat in the back passenger-side seat. (Chauvin Tr. 3341 (Ross); Chauvin Tr. 3558-59 (Sgt. Pleoger).)
  14. When Lane approached the driver's side of the vehicle, Floyd was speaking to the other passengers. Lane tapped on the driver's side window with his flashlight, and Floyd appeared startled. (Chauvin Ex. 47 (Lane BWC) at 20:09:28-20:09:32.) Floyd cracked his door open and apologized. Lane instructed Floyd to show his hands. (Chauvin Ex. 47 (Lane BWC) at 20:09:33-20:09:40.) Seconds later, Lane pulled his gun, pointed it at Floyd, and yelled "put your fucking hands up right now." (Chauvin Ex. 47 (Lane BWC) at 20:09:41-20:09:45.) Floyd put his hands up and then placed them on the steering wheel. Lane yelled at Floyd to "keep your fucking hands on the wheel," while keeping his gun pointed at Floyd. (Chauvin Ex. 47 (Lane BWC) at 20:09:46-20:09:58.) Floyd immediately complied, at which point Lane instructed Floyd to put his hands on his head. Floyd once again complied, and Lane lowered his gun. (Chauvin Ex. 47 (Lane BWC) at 20:10:00-20:10:22.)
  15. At 8:11 p.m., Lane reported to dispatch that they were "taking one out." (Chauvin Ex. 151 (CAD Report (Bates 434-436)) at 20:11:02; Fed. Gov't Ex. 39 (Dispatch Summary Timeline) at 20:11:02; Chauvin Ex. 47 (Lane BWC) at 20:10:46.) Lane and Kueng ordered all three passengers out of the car, handcuffed Floyd, and asked Floyd to sit down on the sidewalk; Floyd immediately complied with their request. (Chauvin Ex. 43 (Kueng BWC) at 20:11:05-20:14:05.)
  16. At 8:12 p.m., Minneapolis Park Police Officer Peter Chang arrived on scene. (Chauvin Ex. 151 (CAD Report (Bates 434-436)) at 20:12:55; Fed. Gov't Ex. 39 (Dispatch Summary Timeline) at 20:12:06.) At 8:12 p.m., Lane further reported that they were "Code 4," which means the scene is safe. (Fed. Gov't Ex. 39 (Dispatch Summary Timeline) at 20:12:21; Chauvin Ex. 151 (CAD Report (Bates 434-436)) at 20:12:21; Chauvin Tr. 2708 (Scurry).)
  17. Floyd remained compliant, non-threatening, and conversant while seated on the sidewalk. Nevertheless, Kueng and Lane decided to detain Floyd in their squad car. (Chauvin Ex. 43 (Kueng BWC) at 20:13:35.)
  18. Floyd told Kueng and Lane that he was claustrophobic and begged them not to leave him alone. (Chauvin Ex. 43 (Kueng BWC) at 20:14:45-20:14:48; Chauvin Ex. 47 (Lane BWC) at 20:14:45-20:14:48.)

19. Floyd told Kueng and Lane, “I’m not resisting man. I’m not.” (Chauvin Ex. 47 (Lane BWC) at 20:15:12.) Floyd expressed that he would not hurt Kueng and Lane. (Chauvin Ex. 47 (Lane BWC) at 20:15:44.)
20. Kueng and Lane then tried to physically force Floyd into the squad car’s rear driver-side door. (Chauvin Ex. 43 (Kueng BWC) at 20:16:20; Chauvin Ex. 47 (Lane BWC) at 20:16:20.) Floyd pleaded with Kueng and Lane to allow him to get on the ground, or do “anything” other than get in the car. (Chauvin Ex. 43 (Kueng BWC) at 20:17:25-20:17:30; Chauvin Ex. 47 (Lane BWC) at 20:17:25-20:17:30.)
21. Floyd asked that he be allowed to “count to three” before being forced into the back of the squad car. (Chauvin Ex. 47 (Lane BWC) at 20:17:20.)
22. At 8:16 p.m., Chauvin and Thao arrived on scene. (Fed. Gov’t Ex. 39 (Dispatch Summary Timeline) at 20:16:48; Chauvin Ex. 49 (Thao BWC) at 20:17:09.)
23. At 8:18 p.m., Chauvin joined Lane and Kueng’s efforts to force Floyd into the squad car. (Chauvin Ex. 49 (Thao BWC) at 20:18:00.) Floyd yelled “please,” and repeatedly said he could not breathe and was claustrophobic. (Chauvin Ex. 49 (Thao BWC) at 20:17:38-20:18:09.) Chauvin approached the street side of the squad car and stated, “pull him in.” (Chauvin Ex. 45 (Chauvin BWC) at 20:18:00-20:18:11.)
24. As the officers forced Floyd into the backseat of the squad car, Floyd’s head hit the squad car’s interior partition. (Chauvin Ex. 43 (Kueng BWC) at 20:17:54; Chauvin Ex. 45 (Chauvin BWC) at 20:17:54.)
25. At one point, Chauvin placed his left arm around Floyd’s chest and neck, while Lane pulled on Floyd’s torso, both restraining Floyd in the backseat. (Chauvin Ex. 49 (Thao BWC) at 20:18:33.)
26. In the backseat of the squad car, Floyd said that he could not breathe for the first time. (Chauvin Ex. 47 (Lane BWC) at 20:18:07.)
27. Floyd fell partway out of the rear passenger squad door and requested to lie on the ground next to the squad car. (Chauvin Ex. 47 (Lane BWC) at 20:18:18.)
28. As the officers attempted to physically force Floyd back into the squad, Floyd pleaded with the officers and told the officers, “I’m gonna lay on the ground, I’m gonna lay on the ground.” (Chauvin Ex. 47 (Lane BWC) at 20:18:18.)
29. Thao told Floyd to “come on down.” (Chauvin Ex. 49 (Thao BWC) at 20:18:29.)
30. Floyd said to the officers, “I just had COVID, man. I can’t breathe.” (Chauvin Ex. 49 (Thao BWC) at 20:18:47.)

31. Thao told the other officers, “We’re just going to have to hog-tie him.” (Chauvin Ex. 49 (Thao BWC) at 20:18:48.)
32. At 8:19 p.m., Thao instructed Kueng, Lane, and Chauvin to “lay him down.” (Chauvin Ex. 49 (Thao BWC) at 20:19:07.)
33. The officers then proceeded to restrain Floyd in the prone position on the ground. Chauvin pressed his knees into Floyd’s back and neck. (Chauvin Ex. 43 (Kueng BWC) at 20:19:14-20:19:18.) Kueng knelt on Floyd’s back and torso and held Floyd’s wrist. (Chauvin Ex. 47 (Lane BWC) at 20:19:14-20:19:19.) Lane restrained Floyd’s legs. (Chauvin Ex. 42 (Milestone Video) at 08:23:39.) Thao restrained a growing crowd of concerned bystanders. (Chauvin Tr. 3014-15 (A.F.).<sup>3</sup>)
34. In total, the officers restrained Floyd in the prone position on the ground for approximately nine minutes and 29 seconds. (*See* Chauvin Ex. 42 (Milestone Video).)
35. For about four minutes and 40 seconds of the restraint, Floyd repeatedly cried for help. (Chauvin Ex. 47 (Lane BWC) at 20:19:18-20:24:00; Chauvin Ex. 43 (Kueng BWC) at 20:19:18-20:24:00.) Floyd yelled “I can’t breathe” more than twenty times, called out for his mother almost a dozen times, and asked the officers to “tell my kids I love them.” (Chauvin Ex. 47 (Lane BWC) at 20:20:07-20:24:08; Chauvin Ex. 43 (Kueng BWC) at 20:20:07-20:24:08.) Thao, Chauvin, Kueng, and Lane ignored Floyd’s various pleas for help.
36. At approximately 8:20 p.m., Lane requested Emergency Medical Services (“EMS”) “Code 2 for a mouth injury.” (Chauvin Ex. 151 (CAD Report (Bates 434-436)) at 20:20:11; Fed. Gov’t Ex. 39 (Dispatch Summary Timeline) at 20:20:11; Chauvin Ex. 47 (Lane BWC) at 20:19:47-50.) “Code 2” means that the ambulance could proceed without lights and sirens. (Fed. Tr. 525-26, 539 (Scurry).<sup>4</sup>)
37. At 8:20 p.m., Thao stated: “Well, do you wanna hobble him at this point then? We’ll just hold him until EMS. If we hobble him, the sergeant is going to have to come out.” (Chauvin Ex. 49 (Thao BWC) at 20:20:29-20:20:39.)
38. Thao asked Lane and Kueng, “Is he high on something?” to which Kueng responded, “I believe so. We found a [weed] pipe on him.” (Chauvin Ex. 49 (Thao BWC) at 20:20:58-20:21:01.)

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<sup>3</sup> The Court uses initials to refer to witnesses under the age of 18 at the time of the incident.

<sup>4</sup> The Federal Transcript is paginated sequentially. As such, the Court cites specific pages of the Federal Transcript herein as “Fed. Tr. [page number].”

39. At 8:21 p.m., Thao requested “EMS Code 3” with no additional information. (Fed. Tr. 540 (Scurry); Chauvin Ex. 151 (CAD Report (Bates 434-436)) at 20:21:35; Fed. Gov’t Ex. 39 (Dispatch Summary Timeline) at 20:21:35; Chauvin Ex. 49 (Thao BWC) at 20:21:24.) “Code 3” means the ambulance should proceed with lights and sirens. (Fed. Tr. 526 (Scurry).)
40. As the restraint persisted and Floyd continued to tell the officers “I can’t breathe,” Thao told Floyd to “relax.” (Chauvin Ex. 49 (Thao BWC) at 20:21:30.)
41. At 8:21 p.m., passerby Charles McMillian asked the officers to “let him breathe at least.” Thao responded, “he’s talking, so he’s breathing.” (Chauvin Ex. 49 (Thao BWC) at 20:21:34-20:21:39.)
42. At 8:21 p.m. and 53 seconds, Thao asked Floyd “What are you on?” to which Floyd responded, “I can’t breathe.” (Chauvin Ex. 49 (Thao BWC) at 20:21:53-20:21:54.)
43. At 8:23 p.m., passerby Donald Williams asked why the officers continued to restrain Floyd. Thao responded, “he’s being held down.” (Chauvin Ex. 49 (Thao BWC) at 20:23:13.)
44. At 8:23 p.m. and 13 seconds, Floyd said, “they going to kill me” and “I can’t breathe.” (Chauvin Ex. 43 (Kueng BWC) at 20:23:13.)
45. At 8:23 p.m. and 16 seconds, Thao mocked Floyd, stating, “This is why you don’t do drugs, kids.” (Chauvin Ex. 49 (Thao BWC) at 20:23:16-20:23:18.)
46. Over the course of the restraint, Floyd’s cries grew softer and his breathing became increasingly labored. (Chauvin Ex. 43 (Kueng BWC) at 20:23:55-20:24:00; Chauvin Ex. 47 (Lane BWC) at 20:23:55-20:24:00; Chauvin Ex. 49 (Thao BWC) at 20:23:55-20:24:00.)
47. At 8:23 p.m. and 58 seconds, Floyd uttered his last words: “I can’t breathe.” (Chauvin Ex. 43 (Kueng BWC) at 20:23:58; Chauvin Ex. 47 (Lane BWC) at 20:23:58; Chauvin Ex. 49 (Thao BWC) at 20:23:58.)
48. At 8:23 p.m. and 59 seconds, Thao told the bystanders “He’s talking. It’s hard to talk . . . if you’re not breathing.” (Chauvin Ex. 49 (Thao BWC) at 20:23:59-20:24:04.)
49. Even after Floyd had ceased speaking, Chauvin, Kueng and Lane continued to restrain Floyd on the ground in the prone position.
50. At 8:24 p.m. and 21 seconds, Floyd suffered an anoxic seizure. (Chauvin Tr. 4506, 4543 (Dr. Tobin), 4712 (Dr. Smock).)
51. At 8:24 p.m. and 46 seconds, Lane informed the other officers, “I think he’s passing out.” (Chauvin Ex. 47 (Lane BWC) at 20:24:46.)



52. By 8:24 p.m. and 53 seconds, Floyd lost consciousness. (Chauvin Tr. 4528 (Dr. Tobin); *see also* Chauvin Ex. 43 (Kueng BWC) at 20:24:53.)
53. At 8:25 p.m. and 16 seconds, Floyd stopped breathing. (Chauvin Tr. 4530 (Dr. Tobin); *see also* Chauvin Ex. 43 (Kueng BWC) at 20:25:16.)
54. At 8:25 p.m. and 28 seconds, off-duty Minneapolis firefighter Genevieve Hansen arrived on scene and identified herself as a firefighter. (Chauvin Ex. 47 (Lane BWC) at 20:25:28; Chauvin Ex. 49 (Thao BWC) at 20:25:28.) Thao told Hansen to “back off” and “get off the street.” (Chauvin Ex. 49 (Thao BWC) at 20:25:33-20:25:39.) Hansen pleaded with Thao to check for a pulse and to start chest compressions. (Chauvin Ex. 49 (Thao BWC) at 20:25:28-20:27:38, 20:28:39-20:28:52.)
55. At 8:25 p.m. and 41 seconds, Floyd’s oxygen level decreased to zero. (Chauvin Tr. 4531-32 (Dr. Tobin); *see also* Chauvin Ex. 43 (Kueng BWC) at 20:25:41.)
56. Hansen and Williams repeatedly implored Thao to check Floyd’s pulse. (Chauvin Ex. 49 (Thao BWC) at 20:25:43-20:26:05.) In response to their pleas, at 8:26 p.m., Thao told the bystanders, “Don’t do drugs, guys.” (Chauvin Ex. 49 (Thao BWC) at 20:26:04.)
57. Hansen then stepped off the sidewalk and moved into the street. (Chauvin Ex. 49 (Thao BWC) at 20:26:10.) Thao immediately told Hansen to “get back.” (Chauvin Ex. 49 (Thao BWC) at 20:26:10.) Thao then asked Hansen, “Are you really a firefighter?” (Chauvin Ex. 49 (Thao BWC) at 20:26:14.) Hansen confirmed she was indeed a Minneapolis firefighter. (Chauvin Ex. 49 (Thao BWC) at 20:26:15.) Thao responded, “OK, then get on the sidewalk!” (Chauvin Ex. 49 (Thao BWC) at 20:26:18.) Hansen repeated her plea for Thao to “show me his pulse.” (Chauvin Ex. 49 (Thao BWC) at 20:26:19.)
58. Thao repeatedly ordered the bystanders off the street and onto the sidewalk. (Chauvin Ex. 49 (Thao BWC) at 20:26:16-20:26:26, 20:28:59-20:29:05.) Thao prevented the bystanders, including Hansen, from rendering aid to Floyd.
59. At 8:25 p.m. and 52 seconds, Kueng finally checked for a pulse on Floyd’s wrist and stated, “I can’t find one.” (Chauvin Ex. 43 (Kueng BWC) at 20:25:52-20:25:59.)
60. Chauvin responded, “Huh?” and Kueng explained that he was “checking the pulse” and also repeated “I can’t find one.” (Chauvin Ex. 43 (Kueng BWC) at 20:26:00-20:26:12; Chauvin Ex. 47 (Lane BWC) at 20:26:00-20:26:12.) The officers nevertheless remained on top of Floyd.
61. No officer performed any life-saving measures or medical aid of any kind, including CPR or turning Floyd on his side, prior to the arrival of paramedics. (*See generally* Chauvin Ex. 42 (Milestone Video); *see also* Chauvin Tr. 4697 (Dr. Smock).)

62. At 8:26 p.m., when dispatch transmitted over the radio that EMS had been advised, Thao responded with the location, stating “EMS to 38th and Chicago.” (Chauvin Ex. 49 (Thao BWC) at 20:26:44.)
63. At 8:27 p.m. and 8 seconds, Hansen asked Thao again whether Floyd had a pulse, to which Thao responded, “I’m busy trying to deal with you guys right now.” (Chauvin Ex. 49 (Thao BWC) at 20:27:08.)
64. At 8:27 p.m. and 19 seconds, Hennepin EMS paramedics Derek Smith and Seth Bravinder arrived in front of Cup Foods. (Fed. Gov’t Ex. 109 (EMT Records) at 4; Fed Tr. 591 (Smith); Chauvin Tr. 3371 (Bravinder).) At that point in time, Floyd was unconscious, not breathing, and pulseless, and was in full cardiac arrest.
65. At 8:27 p.m. and 21 seconds, 911 dispatcher Jena Scurry, based on what she saw from the city pole camera (Milestone), sent out over the dispatch channel that the officers had a male restrained on the ground: “INFO FOR EMS, PD HAVE MALE RESTRAINED ON THE GROUND.” (Fed. Tr. 544-545 (Scurry); Chauvin Ex. 151 (CAD Report (Bates 434-436)) at 20:27:21; Fed. Gov’t Ex. 39 (Dispatch Summary Timeline) at 20:27:21.) None of the officers requested fire or rescue, or indicated that they had a person restrained on the ground who was pulseless and not breathing. (Fed. Tr. 543-44 (Scurry).)
66. At 8:27 p.m. and 45 seconds, paramedic Smith checked Floyd for a carotid pulse and did not detect one. (Chauvin Ex. 47 (Lane BWC) at 20:27:45-20:27:48; Fed. Tr. 593-594 (Smith); *see also* Chauvin Ex. 28 (A.F. video 3) at 02:45; Chauvin Ex. 15 (D.F. video) at 06:58.) Even as Smith checked Floyd for a pulse, Chauvin continued to restrain Floyd with Chauvin’s left knee on Floyd’s neck. (Chauvin Ex. 15 (D.F. Video) at 06:58; Chauvin Ex. 56 (Still from D.F. video, Smith checking Floyd’s pulse).)
67. Paramedics moved Floyd into the ambulance and began the protocols for a patient in full cardiac arrest. (Chauvin Tr. 3374 (Bravinder), 3441 (Smith).)
68. Floyd’s heart rhythm was asystole (flatline) at the time the paramedics began their treatment of Floyd. (Chauvin Tr. 3384 (Bravinder), 3442 (Smith).)
69. Paramedics Smith directed Lane to conduct CPR in the back of the ambulance. (*See* Chauvin Tr. 3382 (Bravinder), 3413-14 (Bravinder), 3435-36 (Smith).) This was the first time any officer provided medical aid—of any kind—to Floyd. (*See generally* Chauvin Ex. 15 (D.F. Video).)
70. At 8:28 p.m. and 36 seconds, EMS requested “Fire Code 3,” and Minneapolis Fire Department dispatch was contacted seven seconds later. (Chauvin Ex. 151 (CAD Report (Bates 434-436)) at 20:28:36; Fed. Gov’t Ex. 39 (Dispatch Summary Timeline) at 20:28:36, 20:28:43.)

71. Paramedics drove the ambulance a few blocks to Park Avenue and 36th Street and parked at approximately 8:31 p.m. (Chauvin Ex. 151 (CAD Report (Bates 434-436)) at 20:31:12.)
72. At 8:32 p.m., Minneapolis Fire Department Captain Jeremy Norton and his crew arrived at Cup Foods. (See Fed. Gov't Ex. 39 (Dispatch Summary Timeline) at 20:32:49.)
73. At 8:34 p.m., EMS reported that Floyd was in "FULL ARREST." (Chauvin Ex. 151 (CAD Report (Bates 434-436)) at 20:34:10; Fed. Gov't Ex. 39 (Dispatch Summary Timeline) at 20:34:10.)
74. At approximately 8:37 p.m., Minneapolis firefighters arrived at Park and 36th and began assisting with the efforts to resuscitate Floyd. (Chauvin Ex. 66 (Still from Lane BWC in Ambulance (20.37.18)).)
75. At 8:48 p.m., EMS transported Floyd to Hennepin County Medical Center ("HCMC"). Paramedic Smith and firefighters continued to provide care to Floyd en route. (Chauvin Ex. 151 (CAD Report (Bates 434-436)) at 20:48:23; Fed. Gov't Ex. 39 (Dispatch Summary Timeline) at 20:48:23; Fed. Gov't Ex. 109 (EMT Records) at 4; Fed. Tr. 606 (Smith).)
76. Floyd arrived at HCMC at 8:52 p.m. (Fed. Gov't Ex. 109 (EMT Records) at 4 (20:52:46).)
77. At the time he arrived at HCMC, Floyd's heart rhythm was pulseless electrical activity ("PEA"). (Chauvin Tr. 3717-18 (Dr. Langenfeld).)
78. Physicians at HCMC attempted life-saving measures on Floyd for more than 30 minutes after he arrived at HCMC. Floyd remained in cardiac arrest. (Chauvin Tr. 3728-29 (Dr. Langenfeld); State's Supp. Exs. 18 (Stabilization Room Video\_Trauma Bay Clip: 20:54:00/1:31 to 20:55:16/2:48), 19 (Stabilization Room Video\_Trauma Bay Clip, 21:24:53/32:25 to 21:25:28/32:59).)
79. Floyd never regained a pulse and never regained consciousness. (Chauvin Tr. 3450-51 (Smith), 3729 (Dr. Langenfeld).)
80. At HCMC, Floyd's heart rhythm was primarily in PEA; the rhythm ultimately devolved from PEA to asystole. (Chauvin Tr. 3718-19, 3729 (Dr. Langenfeld).)
81. After approximately 30 minutes of attempting life-saving measures at HCMC, Dr. Bradford Langenfeld pronounced Floyd dead on May 25, 2020 at 9:25 p.m. (Chauvin Tr. 3702, 3729 (Langenfeld); State's Supp. Ex. 19 (Stabilization Room Video\_Trauma Bay Clip, 21:24:53/32:25 to 21:25:28/32:59) at 21:25.) Floyd had been in cardiac arrest for approximately 60 minutes before he was officially declared dead. (Chauvin Tr. 3729 (Dr. Langenfeld).)

## II. CREDIBILITY OF RELEVANT WITNESSES.

82. The Court has reviewed the complete transcripts from both trials.
83. The Court provides the following summary of key witnesses who testified in both the state and federal trials. The Court also makes specific credibility determinations about certain witnesses based on the Court’s review of the trial transcripts and other evidence.
84. The fact that the Court has not included a witness in this summary does not mean the Court has not considered that witness’s testimony, nor does it mean that the Court has not evaluated that witness’s credibility. As noted above, the Court has considered only testimony or evidence relevant to the charge against Thao.

### A. Credibility of Key Prosecution Witnesses.

#### (1) Bystanders

85. Donald Williams
- 85.1. Donald Williams (“Williams”) was a bystander witness. Williams has a background in wrestling and martial arts. Williams works in private security, where he often works alongside on- and off-duty MPD officers. (Chauvin Tr. 2836-41.) He has also trained with MPD officers at the Mixed Martial Arts Academy for a decade. (Chauvin Tr. 2844-45.) As part of his martial arts training, Williams trained on “blood chokes,” a restraint tactic that “specifically attacks the side of the neck and it specifically cuts off the circulation of your arteries and stops the different blood flowing . . . from the top of your head to the bottom of your head.” (Chauvin Tr. 2846-47.) If a blood choke continues for too long, “you can lose consciousness . . . because of lack of oxygen.” (Chauvin Tr. 2849.)
- 85.2. Williams testified that he perceived Floyd “speaking in a distressed way,” which was apparent from what Floyd was saying “to the officers. He said my stomach hurt, I can’t breathe, my head hurts, I want my mom.” (Chauvin Tr. 2862-63.) But “the more that [Chauvin’s] knee was blocking on [Floyd’s] neck and shimmying as it was going on, the more you see Floyd fade away.” (Chauvin Tr. 2864.)
- 85.3. Over the course of the restraint, Williams observed that Floyd’s “breathing was getting tremendously heavy” and “you can see him struggling to actually gasp for air while he was trying to breathe.” (Chauvin Tr. 2865.) Williams also could see that Floyd was in “tremendous pain” based on “his face,” “grunting” noises, “his eyes slowly . . . rolling back in his head,” the fact that his mouth was “wide

open” and drooling, and that Floyd was “trying to move his face . . . side to side so he can . . . I’m assuming gasp for more air.” (Chauvin Tr. 2896-97.)

- 85.4. Eventually, Williams saw that Floyd “was lifeless, he didn’t move, he didn’t speak. He didn’t have no life in him no more on his body movements.” (Chauvin Tr. 2865.)
- 85.5. Based on his martial arts experience, Williams testified that Chauvin used his knee on Floyd’s neck to perform a blood choke. (Chauvin Tr. 2867-69.) Williams testified that when he told the officers they were performing a blood choke, Chauvin “looked at me right here. . . . It was the only time he looked up. We looked at each other dead in your eyes, yeah, and when I said it, he acknowledged it.” (Chauvin Tr. 2869.) Williams also testified that, he saw Chauvin performing a “shimmy” maneuver with his knee at several points, meaning Chauvin pushed his knee harder into Floyd’s neck, which helps to “get the choke tighter.” (Chauvin Tr. 2871-76.)
- 85.6. Williams testified that Thao “was the dictator. . . . He controlled the people. He controlled me. And he was the guy that let it go on while it went on.” (Chauvin Tr. 2861.) Williams “did as much as [he could]” and repeatedly spoke up about what was happening, but did not feel like he could physically intervene in the situation. (Chauvin Tr. 2897-98, 2900.)
- 85.7. Williams testified that he raised his voice at the officers and called Thao a “bum,” among other things, because Williams was concerned about the officers’ failure to respond to the dire situation. (Chauvin Tr. 2902; *see* Chauvin Tr. 2939-43.) Williams explained: “[T]hey were not listening to anything I was telling them. I felt like I had to speak out for Floyd because he was speaking out to the officer and there was no feedback, no emotion, no nothing . . . .” (Chauvin Tr. 2952.)
- 85.8. Within minutes after Floyd was loaded into the ambulance, Williams called 911. In his words, he “call[ed] the police on the police” because he believed he “witnessed a murder.” (Chauvin Tr. 2905-06.)
- 85.9. The Court finds Williams’s testimony credible. Williams has more than a decade of wrestling and mixed martial arts experience. Williams’s testimony is consistent with video footage, other exhibits, other testimony, and his contemporaneous 911 call, (Chauvin Ex. 20 (Donald Williams’s 911 Call)), and he had no reason to lie.

86. D.F.
- 86.1. D.F. filmed a widely publicized bystander video of the incident. (Chauvin Tr. 2966.) She was seventeen at the time. (Chauvin Tr. 2960, 2966.)
- 86.2. D.F. was walking to Cup Foods that evening with her young cousin, something she has done “[h]undreds” or “thousands” of times without concern for her safety. (Chauvin Tr. 2960-61; Fed. Tr. 2961-62.)
- 86.3. When she approached Cup Foods, D.F. saw Floyd “on the ground and . . . a cop kneeling down on him.” (Chauvin Tr. 2965; Fed. Tr. 2963, 2965.) Floyd was “terrified, scared, begging for his life.” (Chauvin Tr. 2965; Fed. Tr. 2967.) Based on what she saw, D.F. believed Floyd “needed medical attention” “[t]he moment he went unresponsive.” (Fed. Tr. 2975; *see* Chauvin Tr. 2983.) Yet none of the officers provided Floyd with medical aid on scene. (Chauvin Tr. 2977-78; Fed. Tr. 2974.)
- 86.4. According to D.F., the crowd of bystanders was not “unruly.” (Chauvin Tr. 2972; *see* Fed. Tr. 2972.) The only violence D.F. witnessed was from the police. (Chauvin Tr. 2973.) D.F. also testified that she felt “threatened by the police officers.” (Chauvin Tr. 2977.) When the bystanders tried to approach the officers to assist Floyd, Chauvin and Thao pulled out mace. (Chauvin Tr. 2976.) D.F. testified that as the bystanders called out to Chauvin, Chauvin “just stared at us” with a “cold look, heartless.” (Chauvin Tr. 2980.) Indeed, it appeared to D.F. that Chauvin pushed his knee into Floyd’s neck in response to the crowd’s concerns. (Chauvin Tr. 2978-81.)
- 86.5. D.F. testified that although Thao was “kind of just protecting the area, patrolling the area,” nothing “needed protection or patrolling”—“other than George Floyd.” (Fed. Tr. 2967-69.)
- 86.6. The Court finds D.F.’s testimony credible. D.F. testified consistently in the Chauvin and federal trials; her testimony is consistent with video footage, other exhibits, and other testimony; and she had no reason to lie.
87. A.F.
- 87.1. A.F. recorded one of the bystander videos. She was seventeen at the time of the incident. (Chauvin Tr. 3008, 3011.) A.F. testified that she began recording because she “knew something was wrong” and that Floyd “was in distress,”

based on his statements that he “couldn’t breath[e] and that his stomach hurt, and that he wanted his mom.” (Chauvin Tr. 3011; *see* Fed. Tr. 2610.)

- 87.2. A.F. testified that Floyd “looked like he was fighting to breathe,” based on the fact that he became less vocal, was “talking with . . . smaller and smaller breaths,” and looked “uncomfortable.” (Chauvin Tr. 3012-13.) At some point, A.F. realized that “if he were to be held down much longer he wouldn’t live,” because “you could see in his face that he was slowly not being able to breathe, his eyes were rolling back.” (Chauvin Tr. 3013-14; *accord* Chauvin Tr. 3028-29 (“I knew that time was running out or it had already.”))
- 87.3. A.F. testified that she felt like she was “failing [Floyd].” (Chauvin Tr. 3014.) “I could hear George basically crying and begging them to get off of him; that he was in pain. And I knew that he was hurting.” (Chauvin Tr. 3026.) A.F. explained that, at a certain point she “kind of knew” that Floyd “was dead or not breathing” because “[h]is eyes were closed and he was just laying there no longer . . . [b]reathing.” (Chauvin Tr. 3030.)
- 87.4. A.F. testified that she was “upset because there was nothing that we could do as bystanders except watch them take this man’s life in front of our eyes.” (Chauvin Tr. 3038.) “I couldn’t really do anything physically” because Thao was there “pushing the crowd back, making sure everyone was on the sidewalk and didn’t get close.” (Chauvin Tr. 3014-15.)
- 87.5. A.F. testified that Thao looked back at Floyd and the other officers several times during the incident and that, in her view, Thao was “aware of what’s going on behind him” because you could “hear” what was happening. (Fed. Tr. 2612-13, 2618.)
- 87.6. The Court finds A.F.’s testimony credible. A.F. testified consistently in the Chauvin and federal trials; her testimony is consistent with video footage, other exhibits, and other testimony; and she had no reason to lie.
88. K.G.
- 88.1. K.G. was with A.F. on the day of the incident. K.G. testified that she was initially sitting in a parked car near Cup Foods and could hear “George Floyd yelling still, saying he can’t breathe. And then I heard witnesses that were there saying he was unresponsive.” (Chauvin Tr. 3044-45.) At that point, K.G. exited her car because her “gut feeling” told her the situation was “serious.” (Chauvin

Tr. 3046.) “I got out of the car and I walked up, and that’s when I saw George Floyd unconscious and Derek [Chauvin] on his neck.” (Chauvin Tr. 3046.)

- 88.2. K.G. testified that she believed Floyd was unconscious because “[h]e wasn’t talking anymore, and when we pulled up he was talking. His eyes were closed. He wasn’t moving.” (Chauvin Tr. 3046.) By the time the paramedics arrived and Chauvin got “up off Floyd” for the first time, Floyd “looked kind of purple, like he wasn’t getting enough circulation” and was “really limp.” (Chauvin Tr. 3053.) K.G. testified that she wasn’t sure at the time, but “based on what [she] saw and how his body looked to [her] when [the paramedics] took him away,” she believed Floyd was dead. (Chauvin Tr. 3053-54.)
- 88.3. The Court finds K.G.’s testimony credible. K.G.’s testimony is consistent with video footage, other exhibits, and other testimony; and she had no reason to lie.
89. Genevieve Hansen
- 89.1. Genevieve Hansen (“Hansen”) is a Minneapolis firefighter, who was off-duty when she happened upon the scene. (Chauvin Tr. 3057, 3070.) She is a trained EMT and is CPR-certified. (Chauvin Tr. 3057-65; Fed. Tr. 724-725.) She has “provide[d] resuscitation to someone who was pulseless” “[m]any times.” (Chauvin Tr. 3068; Fed. Tr. 727.)
- 89.2. When Hansen arrived on scene, she saw “a handcuffed man who was not moving with officers with their whole body weight on his back, and a crowd that was stressed out.” (Chauvin Tr. 3074.) Hansen testified that she noted “the officers were leaning over [Floyd’s] body . . . it appeared to be the majority of their weight [was] on Mr. Floyd.” (Chauvin Tr. 3079.) That, along with the officers’ positioning, concerned Hansen because Floyd “wasn’t moving and he was cuffed and . . . three grown men . . . putting all their weight on somebody is too much.” (Chauvin Tr. 3079-80; *see* Chauvin Tr. 3119; Fed. Tr. 732, 772.)
- 89.3. Hansen initially approached the scene from behind the officers and identified herself as a Minneapolis firefighter. (Chauvin Tr. 3072, 3075-76, 3084; Fed. Tr. 732, 735.) At Thao’s command, she stepped onto the sidewalk. (Chauvin Tr. 3116; Fed. Tr. 736.) She later stepped off the curb briefly, but went “back up onto the sidewalk” for the remainder of the restraint after Thao “demand[ed]” she return to the sidewalk. (Chauvin Tr. 3076-78; Fed. Tr. 745.)
- 89.4. Hansen testified that she “identified [herself] right away because [she] noticed that [Floyd] needed medical attention. It didn’t take me long to realize that he was -- had an altered level of consciousness. And in our training, that is . . . the first sign that somebody needs medical attention.” (Chauvin Tr. 3080-81.) Hansen explained that she could tell Floyd “had an altered level of consciousness



to the point that he wasn't responding to painful stimuli," like having someone "leaning into your neck." (Chauvin Tr. 3083.) At that point, what Hansen "needed to know" based on her medical experience and training was "whether or not [Floyd] had a pulse anymore." (Chauvin Tr. 3083-85.)

- 89.5. Had the officers allowed her to provide assistance, Hansen would have "requested additional help" by calling "911 for the paramedics and fire to come"; she would have asked someone to check for an automatic external defibrillator in the gas station; she would have checked Floyd's airway; she would have checked for a pulse; and she would have performed chest compressions. (Chauvin Tr. 3085-86.)
- 89.6. But Hansen was unable to render aid, "[b]ecause the officers didn't let [her] into the scene." (Chauvin Tr. 3086; *see* Fed. Tr. 740-741.) Hansen testified that she recalled trying "different tactics" to convince the officers to allow her to provide medical aid to Floyd. (Chauvin Tr. 3088.) When those efforts failed, she started raising her voice and used "some foul language" because she was "desperate to help." (Chauvin Tr. 3088; Fed. Tr. 744.)
- 89.7. Hansen testified that Thao "could hear [her] talking because he was responding to me directly." (Chauvin Tr. 3121-22; Fed. Tr. 742.)
- 89.8. The Court finds Hansen's testimony credible. Hansen is a trained emergency medical technician ("EMT") and has extensive experience providing CPR and other resuscitative efforts. Hansen testified consistently in the Chauvin and federal trials; her testimony is consistent with video footage, her contemporaneous 911 call, (Chauvin Ex. 25 (Genevieve Hansen's 911 Call)), other exhibits, and other testimony; and she had no reason to lie.

## **(2) First responders**

### 90. Jena Scurry

- 90.1. Jena Scurry ("Scurry") is the 911 dispatcher who dispatched the officers to Cup Foods.
- 90.2. Scurry explained that Code 4 means "scene safe" (Chauvin Tr. 2729), "[C]ode 2" is "nonemergent" (Chauvin Tr. 2731) and "means proceeding without lights and sirens" (Chauvin Tr. 2708), and Code 3 is "emergent," proceeding with lights and sirens (Chauvin Tr. 2709, 2770; *accord* Fed. Tr. 526.) Scurry testified that Squad 320 initially called a Code 4 at 8:12:21, but later called a Code 2 at 8:20:11 for a "mouth injury." (Chauvin Tr. 2769; Fed. Tr. 538.) Squad 330 called a Code 3 at 8:21:35, but the officers never relayed that Floyd was

restrained, unconscious, having trouble breathing, or did not have a pulse. (Chauvin Tr. 2773; Fed. Tr. 540, 543-544.)

- 90.3. Scurry explained that, “if you get a report that someone is unconscious or not breathing,” she was trained to “add rescue or ask [the MPD squad] if they want rescue.” (Fed. Tr. 543.) “Rescue” refers to adding medically trained firefighters to the call, who “can be anywhere in the city in close to within four minutes.” (Chauvin Tr. 2733; Fed. Tr. 541.)
- 90.4. Scurry testified that, although it is atypical to watch “an incident that you’ve dispatched” in real-time, (Chauvin Tr. 2760), she had the opportunity to watch a live video of this incident from a street camera, (Chauvin Tr. 2737-38; Fed. Tr. 547.) She saw the officers “on the ground with” Floyd beginning around 8:19:25. (Chauvin Tr. 2742-43.) Scurry looked back at the live video “multiple times” during the incident, and each time, the scene “had not changed”—the officers and Floyd “were still on the ground.” (Chauvin Tr. 2744.)
- 90.5. Scurry initially thought “the screens had frozen.” (Chauvin Tr. 2744.) When she realized that was not the case, she began to worry that “[s]omething might be wrong,” (Chauvin Tr. 2745), and called the sergeant to report the officers’ use of force, (Chauvin Tr. 2746.) This was the first time she had ever “made a call like that” in her nearly seven years on the job. (Chauvin Tr. 2750; *see* Chauvin Tr. 2700; *accord* Fed. Tr. 551-556.)
- 90.6. The Court finds Scurry’s testimony credible. Scurry testified consistently in the Chauvin and federal trials; her testimony is consistent with video footage, other exhibits, and other testimony; and she had no reason to lie.
91. Derek Smith
- 91.1. Derek Smith (“Smith”) is one of two paramedics who responded to the scene. He testified that the paramedics were originally dispatched as Code 2 (nonemergent, no lights and sirens) for a mouth injury. (Chauvin Tr. 3427.) They were later upgraded to Code 3 (emergent, lights and sirens) en route. (Chauvin Tr. 3427.) They were not given “additional information” about why the call was elevated to Code 3, (Chauvin Tr. 3427-28), which Smith characterized as “unusual,” (Fed. Tr. 591; *see* Fed. Tr. 596.) Upon arriving on scene and determining that Floyd was in cardiac arrest, Smith requested backup from the Minneapolis Fire Department. (Fed. Tr. 602; Chauvin Tr. 3441-42.)
- 91.2. Upon arrival, Smith saw “three officers on top of an individual” who was not moving. (Chauvin Tr. 3428-29.) “The officers were still on [Floyd] when [Smith] approached.” (Chauvin Tr. 3429.) Chauvin remained atop Floyd while Smith checked for a carotid pulse. (Chauvin Tr. 3432, 3452; *accord* Fed. Tr.

609-611.) Smith did not detect a pulse, did not see Floyd's chest "rising and falling," (Fed. Tr. 594), noted that Floyd was not "mentating," (Fed. Tr. 594), and observed that Floyd's pupils were "large and dilated," (Chauvin Tr. 3429-30.) Based on this assessment, Smith "thought [Floyd] was dead." (Chauvin Tr. 3430; *see* Chauvin Tr. 3432; *accord* Fed. Tr. 594.)

- 91.3. Smith determined that the best course of action was to provide care in the ambulance. The ambulance contained the equipment necessary "to deal with something like a cardiac arrest," and it was faster to bring Floyd to the equipment than to bring the equipment to Floyd. (Chauvin Tr. 3430; Fed. Tr. 595.) The ambulance also provides a more "controlled environment" with "better lighting," "no bugs, wind, outside distractions." (Fed. Tr. 595.) Smith further explained that providing care in the ambulance would better "respect the dignity of this patient," because you often need to remove the patient's clothing and provide medical interventions that may appear "grotesque to laypeople." (Fed. Tr. 595.) Smith also determined that the ambulance should move to a secondary location for a variety of reasons, including that "[t]here was a large crowd," Smith "wasn't quite sure what was going on," and he wanted to limit potential distractions. (Fed. Tr. 595, 619.)
- 91.4. Smith explained that "timing" is "important when it comes to someone who is in cardiac arrest," because "the longer [someone's heart] isn't beating, the greater the likelihood this individual will not be resuscitated." (Chauvin Tr. 3435.)
- 91.5. Upon Smith's arrival, Floyd's heart rhythm was asystole, meaning flatline. (Fed. Tr. 602.) After receiving compressions in the ambulance, Floyd's heart rhythm changed to "pulseless electrical activity" (PEA), which occurs when there is "electrical activity, but the heart isn't physically pumping." (Fed. Tr. 602-603.) Smith explained that asystole and PEA are not rhythms that a paramedic can "shock to attempt to revive a patient." (Fed. Tr. 603.)
- 91.6. Although Smith rendered medical aid to Floyd, Smith was never able to detect a pulse, and Floyd never resumed breathing. (Chauvin Tr. 3439, 3450-51.) As Smith put it, Floyd was "still deceased" when they arrived at HCMC. (Chauvin Tr. 3450.)
- 91.7. The Court finds Smith's testimony credible. Smith testified consistently in the Chauvin and federal trials; his testimony is consistent with video footage, other exhibits, and other testimony, including that of the other paramedic (Seth Bravinder); and Smith had no reason to lie.

## 92. Seth Bravinder

- 92.1. Seth Bravinder (“Bravinder”) is one of two paramedics who responded to the scene. Bravinder’s testimony was largely consistent with Smith’s testimony.
- 92.2. Bravinder testified that there were multiple officers on top of the patient when the paramedics arrived. Bravinder “assumed that there was potentially some struggle still.” (Chauvin Tr. 3372.) But as he moved closer, Bravinder realized that Floyd was actually unresponsive and handcuffed. (Chauvin Tr. 3373, 3381.)
- 92.3. After Smith conducted his initial assessment of Floyd, the two paramedics decided to load Floyd into the ambulance and drive to a location a few blocks away for a number of reasons, including to provide better, more focused care, and because of the “general atmosphere” at the scene. (Chauvin Tr. 3374-78, 3410, 3421-22.) Bravinder parked the ambulance and assisted Smith in providing emergency aid to Floyd, but Floyd’s condition did not improve. (See Chauvin Tr. 3384-98.) Bravinder explained that many of these procedures are “time sensitive,” because “the longer the patient goes without receiving resuscitation, the lower likelihood they will be resuscitat[ed].” (Chauvin Tr. 3398.) That is why it is “important to start resuscitative efforts” as soon as possible “after someone does not find a pulse.” (Chauvin Tr. 3398.)
- 92.4. The Court finds Bravinder’s testimony credible. Bravinder’s testimony is consistent with video footage, other exhibits, and other testimony, including that of the other paramedic (Smith); and Bravinder had no reason to lie.

## 93. Captain Jeremy Norton

- 93.1. Jeremy Norton (“Captain Norton”) is a Minneapolis Fire Department Captain who responded to the scene. He explained that the Fire Department is often able to respond to a scene more quickly than paramedics, such that the Fire Department is “able to, on emergency calls, provide the buffer to keep someone alive until . . . the ambulance arrives,” including by “provid[ing] medical aid to someone who does not have a pulse.” (Fed. Tr. 668-669.)
- 93.2. Captain Norton testified that, in this case, paramedics requested support from the Fire Department. (Fed. Tr. 673.) The Fire Department was initially dispatched as “[C]ode 2,” but was elevated to “Code 3” shortly thereafter, meaning “red lights and sirens, emergency response.” (Chauvin Tr. 3463; Fed. Tr. 671-672.) When the firefighters arrived on scene, the firefighters did not see the patient or the ambulance. (Fed. Tr. 684.) Outside Cup Foods, Captain Norton encountered Thao. (Fed. Tr. 684.) Thao did not relay any information to Captain Norton about Floyd’s condition or the patient’s location. (Fed. Tr.

684-685, 691-692.) Thao mentioned only that they had called for EMS to transport someone “who was high.” (Fed. Tr. 687.)

- 93.3. Captain Norton also encountered Genevieve Hansen outside, whom he characterized as visibly upset, “agitated,” and “distraught.” (Chauvin Tr. 3468; Fed. Tr. 690-691.) Captain Norton entered Cup Foods to look for the patient. (Chauvin Tr. 3464-66; Fed. Tr. 684-685.) Captain Norton then learned from dispatch that the ambulance had relocated to 36th and Park. (Fed. Tr. 691-692; *see* Chauvin Tr. 3468, 3473.)
- 93.4. When he arrived at 36th and Park and boarded the ambulance, Captain Norton saw “an unresponsive body on the cot.” (Chauvin Tr. 3475.) Although Captain Norton and the paramedics administered chest compressions to Floyd, checked his pulse several times, supported his airway, administered a shock, and provided other assistive care, Floyd “never regained a pulse” and never resumed breathing on his own. (Fed. Tr. 696; *accord* Chauvin Tr. 3475-78.)
- 93.5. The Court finds Captain Norton’s testimony credible. Captain Norton testified consistently in the Chauvin and federal trials; his testimony is consistent with video footage, other exhibits, and other testimony; and he had no reason to lie.

### **(3) Use of force and police witnesses**

#### 94. Sergeant David Pleoger

- 94.1. Sergeant David Pleoger (“Sgt. Pleoger”)—a 27-year veteran of the MPD—was the Sergeant on duty of the Third Precinct at the time of the incident. (Chauvin Tr. 3489-90, 3493, 3508-09.)
- 94.2. Sgt. Pleoger explained that in certain scenarios, including the use of “any type of force on a handcuffed prisoner,” or when someone sustains an injury necessitating medical aid, the officer is “required to notify” their supervisor of their use of force and the supervisor must then complete a use of force report by the end of the shift. (Chauvin Tr. 3496-3501.) Sgt. Pleoger testified that, if a hobble was used on a subject, a supervisor must be called to evaluate whether the hobble was “properly and necessarily used.” (Chauvin Tr. 3503.)
- 94.3. Sgt. Pleoger testified that, based on his review of the body-worn cameras, the restraint should have ended “[w]hen Floyd was no longer offering up any resistance to the officers,” meaning “after he was handcuffed and on the ground and no longer resisting.” (Chauvin Tr. 3541-42, 3561.)

- 94.4. The Court finds Sgt. Pleoger’s testimony credible. Sgt. Pleoger has extensive experience as an MPD officer, his testimony was consistent with MPD training and policy and the testimony of other officers, and he had no reason to lie.
95. Lieutenant Richard Zimmerman
- 95.1. Lieutenant Richard Zimmerman (“Lt. Zimmerman”) has more than 40 years’ experience as a police officer and was the most senior MPD officer as of February 2022. (Chauvin Tr. 3615; Fed. Tr. 2436, 2508.) Lt. Zimmerman helped coordinate MPD’s initial response on May 25, 2020 and transitioned control of the scene from MPD to the Bureau of Criminal Apprehension (BCA). (Chauvin Tr. 3615-26.)
- 95.2. Lt. Zimmerman testified about MPD’s “use of force continuum,” and explained that the level of appropriate force is “relative to the threat.” (Chauvin Tr. 3628-29.) He also testified that he has never been trained to kneel on someone’s neck when they are handcuffed and in the prone position, and that such force would be considered “deadly” on the use of force continuum. (Chauvin Tr. 3629-30; Fed. Tr. 2462.)
- 95.3. Lt. Zimmerman testified that “it’s well known that the prone position is dangerous,” (Chauvin Tr. 3662), and according to his training, “once you secure or handcuff a person, you need to get them out of the prone position as soon as possible because it restricts their breathing,” (Chauvin Tr. 3632; Fed. Tr. 2464.)
- 95.4. Lt. Zimmerman testified that MPD officers are given basic medical training as first responders, including on CPR. (Chauvin Tr. 3634, 3648-49.) Based on his training, officers have the obligation “to provide medical care for a person that is in distress” based on what they can “reasonably [do] in the moment” in light of various factors that must be continually reassessed, including scene security, the officer’s prior experience, and the need to protect others. (Chauvin Tr. 3634, 3648-52, 3662-63.) An officer “can’t just continue to use force on somebody who says they can’t breathe and then who goes unconscious.” (Fed. Tr. 2466.)
- 95.5. Lt. Zimmerman also testified that the decision to “hold[] for EMS,” meaning keeping the “person there so they can receive medical treatment,” does not “excuse an officer from providing medical attention that they’ve been trained to provide.” (Chauvin Tr. 3664; Fed. Tr. 2530, 2532.)
- 95.6. Based on his training and experience, Lt. Zimmerman testified that Chauvin’s use of force was “[t]otally unnecessary” and the restraint should “have stopped once [Floyd] was handcuffed and thrown on the ground.” (Chauvin Tr. 3638; *see* Fed. Tr. 2462 (“The knee on the neck, the officers should have intervened at that point and stopped it.”).)

- 95.7. Lt. Zimmerman further testified that, based on his review of the body-worn cameras, the bystanders did not present “an uncontrollable threat to the officers at the scene.” In fact, the bystanders “were actually trying to help, with their suggestions, help Mr. Floyd to be able to breathe.” (Chauvin Tr. 3660; Fed. Tr. 2474-75, 2504, 2528.)
- 95.8. The Court finds Lt. Zimmerman’s testimony credible. Lt. Zimmerman has extensive experience as an MPD officer, his testimony was consistent with MPD training and policy and the testimony of other officers, his testimony was consistent across the Chauvin and federal trials, and he had no reason to lie.
96. Chief Medaria Arradondo
- 96.1. Chief Medaria Arradondo (“Chief Arradondo”) was the Chief of MPD on May 25, 2020. He began working at MPD in 1989. (Chauvin Tr. 3742, 3744.)
- 96.2. Chief Arradondo provided an overview of the MPD’s approach to training, which is divided into pre-serving training that is done in the Academy and post-service training, which is provided as continuing education. (Chauvin Tr. 3772-80.) He testified that under MPD policy, all employees are responsible for knowing the contents of MPD’s policy and procedure manual, which includes MPD’s code of ethics and professional policing policy. (Chauvin Tr. 3784-89.)
- 96.3. Chief Arradondo testified about MPD’s mandatory de-escalation policy, and the importance of de-escalation to policing generally. (Chauvin Tr. 3792-3806.) Part of de-escalation can include “calling for backup” or “seeking community help.” (Chauvin Tr. 3798.) Officers must also consider whether a subject’s noncompliance is purposeful or due to an inability to comply, for example because that person has a medical impairment, is experiencing a “behavioral crisis,” or is under the influence of drugs or alcohol. (Chauvin Tr. 3799-3802.)
- 96.4. De-escalation has many components and can include threatening the use of force, placing another officer between an uncooperative subject and an officer, changing to a new position, calling additional resources, etc. (Chauvin Tr. 3858-62.) De-escalation can also extend to crowd safety and control tactics. (Chauvin Tr. 3870-71, 3882-83.) “[O]ne way to de-escalate the crowd who is experiencing something shocking [is] to stop doing the thing that’s shocking them.” (Chauvin Tr. 3893.)
- 96.5. Chief Arradondo testified that MPD officers have basic first-responder medical training, and that MPD officers have a duty to request EMS or an ambulance, and to render medical aid while they are waiting for assistance to arrive. (Chauvin Tr. 3810-13.) This includes providing Narcan to someone suffering from an overdose. (Chauvin Tr. 3813-14.)

- 96.6. Chief Arradondo testified about MPD’s use of force policy. He explained that “sanctity of life is . . . the pillar for our use of force.” (Chauvin Tr. 3815.) MPD authorizes only the use of “objectively reasonable force” under the circumstances, meaning “[t]he amount and type of force that would be considered rational and logical to an objective officer on the scene as supported by facts and circumstances known to an officer at the time the force was used.” (Chauvin Tr. 3816-18.)
- 96.7. Officers using force must assesses various factors, including “the severity of the crime at issue; whether the suspect poses an immediate threat to the safety of the officers or others; and whether he is actively resisting arrest or attempting to evade arrest by flight.” (Chauvin Tr. 3819; 3854-55.)
- 96.8. Chief Arradondo testified that a counterfeiting allegation is not particularly serious. It is not a violent crime and the suspect is not usually taken into custodial arrest. (Chauvin Tr. 3819-21.)
- 96.9. Chief Arradondo also testified about MPD’s critical thinking model, which requires officers to reassess the appropriate use of force as situations evolve. (Chauvin Tr. 3827.)
- 96.10. Chief Arradondo testified about MPD’s defensive tactic training. (Chauvin Tr. 3828-30.)
- 96.10.1. He explained that MPD policy authorized the use of certain neck restraints, meaning compressing on or both sides of the neck with an arm or leg, but not applying direct pressure to the airway. (Chauvin Tr. 3831.)
- 96.10.2. Chief Arradondo explained that a conscious neck restraint, which involves light to moderate pressure and can be used on someone who is actively resisting, is intended to control the subject without rendering them unconscious. (Chauvin Tr. 3831-32.)
- 96.10.3. An unconscious neck restraint—designed to make the person pass out—can only be used when “the officer is in fear of grave bodily harm or death” or to save the person’s own life. (Chauvin Tr. 3832.)
- 96.10.4. Chief Arradondo testified that “neck restraints were not to be used against people that were merely passively resisting.” (Chauvin Tr. 3833.) Moreover, it is “contrary to [MPD] training to indefinitely place your knee on a prone handcuffed individual for an indefinite period.” (Chauvin Tr. 3878.)



- 96.11. Based on his experience and understanding of MPD's policies, Chief Arradondo testified that Chauvin did not follow MPD's de-escalation policy, did not use a trained MPD "defensive tactic[] technique," and violated MPD's reasonable use of force policy by failing to stop his neck restraint once Floyd stopped resisting and was in distress. (Chauvin Tr. 3837-40, 3887.)
- 96.12. Chief Arradondo explained: "[T]here's an initial reasonableness in trying to just get him under control in the first few seconds, but once there was no longer any resistance, and clearly when Floyd was no longer responsive, and even motionless, to continue to apply that level of force to a person prone out, handcuffed behind their back, that -- that in no way, shape or form is anything that is by policy, is not part of our training, and it is certainly not part of our ethics or our values." (Chauvin Tr. 3839-40, 3887-88.)
- 96.13. Chief Arradondo further testified that Chauvin violated MPD policy by failing to provide Floyd with medical aid when he was exhibiting clear signs of medical distress. (Chauvin Tr. 3840-41.)
- 96.14. Chief Arradondo also explained that the hobble is the only MPD-authorized way to employ the maximal restraint technique, but that the officers were "essentially using the maximal restraint technique but not using the hobble"—and instead were using their hands. (Chauvin Tr. 3888-89.) Because of the use of that restraint and "the severity of risk," the officers should "have contacted a supervisor" under MPD policy, even though they did not use the hobble. (Chauvin Tr. 3890.) Moreover, MPD policy requires immediately placing the "individual into a side recovery position to make sure that their airway is not obstructed" when the maximal restraint technique is employed. (Chauvin Tr. 3890.)
- 96.15. The Court finds Chief Arradondo's testimony credible. Chief Arradondo has extensive experience as an MPD officer, his testimony was consistent with MPD training and policy and the testimony of other officers, and he had no reason to lie.
97. Professor Seth Stoughton
- 97.1. Seth Stoughton, Esq. ("Stoughton") is a professor of law, criminology, and criminal justice. (Chauvin Tr. 5079.) He studies "the regulation of policing" and previously worked as a police officer in the Tallahassee Police Department for about five years. (Chauvin Tr. 5080-81, 5152.) He has written several

articles and book chapters and co-authored one book on issues related to policing. (Chauvin Tr. 5085-86.)

- 97.2. Stoughton explained that he uses a four-step framework to assesses the use of force. First, he reviews the relevant facts and circumstances “as viewed through the lens of a reasonable officer on the scene.” (Chauvin Tr. 5097.) Second, he assesses the threat presented by the individual. (Chauvin Tr. 5097.) Third, he “assess[es] the foreseeable effects of the officer’s use of force.” (Chauvin Tr. 5097.) Fourth, he asks whether, “in light of the facts and circumstances, the foreseeable effects of the officer’s use of force were justified and reasonable because they were proportional and appropriate in light of the threat presented by the individual’s actions,” when judged against “generally accepted police practices.” (Chauvin Tr. 5097-98.) The use of force must be reasonable both at the outset and throughout the duration. (Chauvin Tr. 5112-13.)
- 97.3. Stoughton identified “two components of the use of force” by Chauvin: “the knee across Mr. Floyd’s neck” and placing him in the prone position while restrained. (Chauvin Tr. 5110.) The use of force continued for approximately nine minutes and 29 seconds. (Chauvin Tr. 5112.) Stoughton analyzed that force using his four-step framework.
- 97.4. First, Stoughton explained that, upon arriving on scene, a reasonable officer in Chauvin’s position would have “been aware that there was a call, I believe dispatched about counterfeiting; that the individual was described as possibly intoxicated. The individual later identified as Mr. Floyd was identified as possibly intoxicated. That two other officers had taken the call, had, I believe taken someone into custody and called code 4, identified that they had the scene under control and did not need additional resources.” (Chauvin Tr. 5114.) He would have further realized that Floyd was handcuffed, describing himself as claustrophobic and offering alternatives to getting into the squad car. A reasonable officer would have known that Floyd was exhibiting some noncompliance, but would not have perceived Floyd’s behavior as active aggression aimed at the officers. (Chauvin Tr. 5116-17.)
- 97.5. Second, Stoughton explained that a reasonable officer would have understood that it was not necessary to place Floyd in the prone position after the officers had taken Floyd to the ground. Floyd was handcuffed, had been searched, and did not present a credible “threat of harm,” escape, or obstruction. The point of conflict—Floyd’s desire not to be restrained in the backseat—had been resolved. (Chauvin Tr. 5118-20, 5122-23.)
- 97.5.1. Stoughton testified that, in his opinion, Floyd did not present any threat during the nine minute 29 second restraint. (Chauvin Tr.

- 5140.) Moreover, any potential threat Floyd posed further decreased when Floyd passed out and lacked a pulse. (Chauvin Tr. 5138.)
- 97.5.2. With respect to the hobble, Stoughton explained that a hobble is a restraint device “used to limit the motion of someone’s legs.” (Chauvin Tr. 5124.) “[H]obbles are generally appropriate when officers cannot effectively restrain someone using only handcuffs; when they have someone who is continuing to kick or flail or flop around uncontrollably.” (Chauvin Tr. 5125.)
- 97.5.3. Stoughton testified that the need to summon a supervisor is not an appropriate reason to decline to use the hobble. (Chauvin Tr. 5126.)
- 97.5.4. Stoughton concluded that a reasonable officer would have known that, “as soon as an individual is restrained, handcuffs or hobble, you get the person off of their stomach, out of the prone restraint and into a side recovery position.” (Chauvin Tr. 5127.) He further testified that this conclusion is supported by the fact that Lane at one point suggested moving Floyd to his side. (Chauvin Tr. 5128.)
- 97.6. Third, Stoughton explained that a knee across the neck can foreseeably cause “pretty significant serious bodily injury or death.” (Chauvin Tr. 5130.) “[I]t’s generally accepted in policing that you do not put weight down on someone’s neck in [the prone] position because of the potential that the neck won’t be able to handle that weight and you can end up damaging the structures of the neck.” (Chauvin Tr. 5130.) Moreover, it is “very well known in policing for at least going on 30 years” that positional asphyxia is a “foreseeable effect[] of keeping someone in that prone position” because “[y]ou can’t take in over time the amount of oxygen that they need to sustain their life functions.” (Chauvin Tr. 5130-31.) Here, the additional weight on Floyd’s back increased the foreseeable risks to Floyd. (Chauvin Tr. 5131.) These risks became even more foreseeable throughout the prolonged restraint. Floyd said several times that he could not breathe, the changing tenor and cadence of Floyd’s voice indicated increased medical distress, the bystanders and Lane indicated that Floyd was passing out and non-responsive, Floyd ultimately stopped speaking, and Kueng was twice unable to find a pulse. (Chauvin Tr. 5134-39.)
- 97.7. Fourth, Stoughton concluded that the use of force was not reasonable given the circumstances, and given that the foreseeable effect of the force was a substantial likelihood of death or great bodily harm. (Chauvin Tr. 5140-41, 5149-50.) “Both the knee across Mr. Floyd’s neck and the prone restraint were

unreasonable, excessive, and contrary to generally accepted police practices.” (Chauvin Tr. 5150.) The force was unreasonable throughout the restraint; from “[w]hen Mr. Floyd was initially put into the prone restraint position and when [Chauvin’s] knee was placed onto his neck,” until “[w]hen [Chauvin’s] knee was lifted off of Mr. Floyd and he was taken out of the prone position.” (Chauvin Tr. 5150-51, 5172-73.) “No reasonable officer would have believed that was an appropriate, acceptable, or reasonable use of force.” (Chauvin Tr. 5151.)

- 97.8. None of the officers’ possible explanations— Floyd’s size, the possibility that he was under the influence of drugs, the presence of bystanders or the officers’ need to “keep control over him”—justified their use of force. (Chauvin Tr. 5146.)
- 97.9. Stoughton explained that, in his opinion, a reasonable officer would not have seen the bystanders as a threat. (Chauvin Tr. 5144-45.) The crowd became noisier after the officer’s restraint had concluded and the paramedics had arrived. Because that noise occurred *after* the force, that noise could not justify the officer’s earlier use of force against Floyd. (Chauvin Tr. 5134-44.)
- 97.10. Stoughton noted that Thao’s interactions with the crowd confirm that a reasonable officer would not view the crowd as a threat. Thao “did not interpose himself between the bystanders and the other officers until more than six minutes into the prone restraint period.” (Chauvin Tr. 5145.) Thao’s flippant comments to the crowd that “this is why you don’t do drugs, kids” demonstrate that Thao was not actually concerned about the crowd. (Chauvin Tr. 5143.) “[I]f you’re worried about interference from bystanders, you don’t say things that are likely to exacerbate that situation with the crowd.” (Chauvin Tr. 5143.)
- 97.11. Moreover, when bystanders stepped into the street, they returned to the curb quickly at Thao’s direction and when there was physical contact between Thao and a younger bystander, the young man was “swiftly grabbed and pulled away by another one of the bystanders.” (Chauvin Tr. 5145.)
- 97.12. Stoughton further testified that “[t]he failure to render aid to Mr. Floyd both by taking him out of the prone position and by rendering aid as his increasing medical distress became obvious, was unreasonable and contrary to generally accepted police practices.” (Chauvin Tr. 5151.) “It is long and rather loudly been said that the sanctity of human life is the highest priority in policing.” (Chauvin Tr. 5147.) Even if someone is lying about being in medical distress, officers have a duty to render aid.
- 97.13. In deciding whether or not to render aid, an officer considers factors including observations by other people, the individual’s own medical condition, and other contextual clues. Here, the crowd vocally informed officers that Floyd was not

responsive and not breathing. The officers themselves identified that Floyd lacked a pulse. Floyd's behavior indicated that he was in medical distress—he stopped talking, he stopped moving. (Chauvin Tr. 5148-49.) Stoughton concluded that, as a result, the officers' failure to render medical aid in that circumstance was unreasonable.

97.14. The Court finds Stoughton's expert testimony credible. Stoughton has extensive academic experience, as well as personal experience as a police officer; his testimony was well-supported, internally consistent, and persuasive; and he had no reason to lie.

98. Chief Timothy Longo

98.1. Chief Timothy Longo ("Chief Longo") has been in law enforcement for over 40 years. He is the associate vice president for safety and security and the university chief of police at the University of Virginia. He was previously an associate professor in public safety and the chief of the Charlottesville Police Department for about 15 years. (Fed. Tr. 2758-59.) He also served in the Baltimore Police Department's Internal Affairs Investigations Division, audited several police agencies, and served on a monitoring team in at least three matters before federal courts. (Fed. Tr. 2762-65.) Chief Longo reviewed the relevant videos, departmental policies, transcripts, statements, police reports, and training materials. (Fed. Tr. 2775-76.)

98.2. Chief Longo explained that one can identify generally accepted policing practices based on model policies, concept papers supporting those policies, and accreditation councils. (Fed. Tr. 2772-73.) Generally accepted policing practices also require an officer to affirmatively do something to stop another officer using inappropriate or excessive force. (Fed. Tr. 2781-82.) Chief Longo also testified that generally accepted policing practices require an officer to "provide medical attention to the extent that they're trained or capable of doing so" to someone in medical distress—regardless of "years of service or rank." (Fed. Tr. 2784-85.) This collective duty extends to "every [officer] that's there to do something," not just one individual officer. (Fed. Tr. 2784-85.) If someone does not have a pulse, officers are expected to begin chest compressions, regardless of whether an ambulance is en route. (Fed. Tr. 2828.) Chief Longo testified that MPD's policy regarding the duty of care and the duty to render medical aid is consistent with generally accepted policing practices. (Fed. Tr. 2781, 2826-27.)

98.2.1. Chief Longo also testified that generally accepted policing practices require an officer to relay any information to paramedics that "would be helpful to the medical provider to provide the right

medical treatment, but certainly any level of force that was used or any instrumentality of force that might have been used” and the results of any assessments the officer has performed. (Fed. Tr. 2837.) MPD’s policies are consistent with these requirements. (Fed. Tr. 2840.)

- 98.3. Chief Longo testified that, according to generally accepted policing practices, an officer may only use as much force as “is necessary to accomplish whatever the lawful objective might be” and proportionate to the threat or resistance. (Fed. Tr. 2785, 2794-95.) This framework incorporates factors such as the seriousness of an offense, whether the person poses a threat, the level of resistance, the number of officers present, the subject’s size, and environmental conditions. (Fed. Tr. 2785-88.) Officers have a duty to constantly reassess the situation and de-escalate force as appropriate. (Fed. Tr. 2790-96.)
- 98.4. Chief Longo testified that MPD’s use of force policy was consistent with these generally accepted practices. (Fed. Tr. 2796.) Chief Longo also testified that MPD’s duty-to-intervene policy is consistent with generally accepted policing practices. (Fed. Tr. 2816.)
- 98.5. Based on his review of the evidence, Chief Longo testified that Chauvin’s conduct related to this incident “was inconsistent with generally accepted policing practices.” (Fed. Tr. 2777.)
- 98.5.1. Chief Longo testified that officers are trained that the prone position is inherently dangerous because it limits the ability to breathe. (Fed. Tr. 2797-99.) “[T]he only reason to put someone on the ground [in the prone position] is because you can’t control them on their feet.” (Fed. Tr. 2806.)
- 98.5.2. According to generally accepted policing practices, when a person who is proned and handcuffed stops resisting, the person should be removed from the prone position. (Fed. Tr. 2800.) “If the person is proned, handcuffed, and not resisting, it would be contrary to generally accepted policing practices to leave the person in a prone position.” (Fed. Tr. 2801.) Chief Longo testified that MPD policy and training is consistent with these generally accepted practices. (Fed. Tr. 2801-02.)
- 98.5.3. Chief Longo testified that he did not see any information that suggested Floyd posed a threat when the officers were removing Floyd from the car. (Fed. Tr. 2805-06.) Chief Longo did not see any objective reason to place Floyd on the ground. (Fed. Tr. 2807.) Chief Longo acknowledged that a person who is handcuffed can

still resist officers in other ways, for example by kicking or biting. (Fed. Tr. 2922, 2933.) But in Chief Longo's opinion, Floyd was not "resisting at all" and did not present a threat after he was placed on the ground. (Fed. Tr. 2807-08, 2933.) At a minimum, a person who has become unconscious or pulseless cannot bite someone. (Fed. Tr. 2933.)

98.5.4. Chief Longo further explained that he is "not aware of any circumstances in which a knee to the neck is ever appropriate or consistent with generally accepted policing practices once someone has been handcuffed, is non-resistant, and is under control." (Fed. Tr. 2809-10.) If an officer uses a neck restraint that renders someone unconscious, the officer is trained to cease restraining the person and to place that person in the recovery position. (Fed. Tr. 2810.) Chief Longo testified that, in his opinion, MPD's policies are consistent with these general standards. (Fed. Tr. 2811.)

98.6. Chief Longo testified that, in his opinion, Thao's conduct was not consistent with generally accepted policing practices.

98.6.1. Thao "had firsthand knowledge of what was occurring," yet Thao "took no steps to intervene." (Fed. Tr. 2817-19.) Although Thao was not necessarily able to see Floyd during the entire restraint and the bystanders were "loud," Chief Longo testified that these facts did not distract Thao, or relieve Thao of the duty to intercede in the restraint. (Fed. Tr. 2819-21.) Moreover, the bystanders' pleas provided Thao with information that put Thao "on notice" of a potential problem. (Fed. Tr. 2821.)

98.6.2. Chief Longo testified that Thao's conduct was inconsistent with Thao's duty to render medical aid. Thao "could see that Mr. Floyd had become unresponsive" and was told the same by others, yet Thao did not provide Floyd with medical care. (Fed. Tr. 2828-29.)

98.7. The Court finds Chief Longo's expert testimony credible. Chief Longo has extensive professional policing experience; his testimony was well-supported, internally consistent, and persuasive; and he had no reason to lie.

99. Sergeant Jody Stiger

99.1. At the time of his testimony, Sergeant Jody Stiger ("Sgt. Stiger") had been a member of the Los Angeles Police Department for more than 28 years. (Chauvin Tr. 4125-26.) He served on the in-service training team for the tactics unit for

six years where he reviewed used of force policies across the nation and provided use of force training to other officers. (Chauvin Tr. 4128-29, 4132-35.) Sgt. Stiger also served on the use of force review board for his department and has conducted approximately 2,500 use of force reviews during his career. (Chauvin Tr. 4128-29, 4136.) He has also consulted other agencies on their use of force reviews. (Chauvin Tr. 4137.)

99.2. Sgt. Stiger testified that, based on his review of the evidence, Chauvin used excessive force against Floyd under the *Graham v. Connor* framework, meaning force that was objectively unreasonable. (Chauvin Tr. 4138-40, 4272.) Sgt. Stiger testified that various factors informed his conclusion.

99.2.1. First, the offense in question and Floyd’s associated conduct was not particularly serious. (Chauvin Tr. 4142-43, 4175.) Sgt. Stiger did admit, however, that it would be reasonable for Chauvin and Thao to come into the call with a “heightened sense of concern” given the information that dispatch had relayed to those officers. (Chauvin Tr. 4216-17.)

99.2.2. Second, Floyd did not pose an immediate threat once on the ground.

99.2.2.1. Sgt. Stiger testified that, in his opinion, Floyd “was actively resisting” when the officers tried to place Floyd in the back of the squad car. (Chauvin Tr. 4145, 4219.) Although it was not “necessary for the officers to use force” at that point in time, Sgt. Stiger testified that “at that point the officers were justified in utilizing force to try to have him comply with their commands and to seat him in the back of the vehicle.” (Chauvin Tr. 4145, 4151-52; *see* Chauvin Tr. 4218-19.)

99.2.2.2. Sgt. Stiger testified that, once Floyd was on the ground, the only active, aggressive behavior Floyd exhibited was kicking his legs while the officers were “trying to place him down in the prone position.” (Chauvin Tr. 4155-56.)

99.2.2.3. Sgt. Stiger testified that a hobble is typically used to restrain someone who is “actively aggressive” “to control them better and stop them from either harming the officer or breaking property.” (Chauvin Tr. 4155-57.) Once the hobble is applied, the individual must be placed in the side recovery position to “assist them being able to breathe better.” (Chauvin Tr. 4157.)



- 99.2.2.4. Sgt. Stiger testified that the officers' decision not to use the hobble once Floyd was in the prone position suggests that "they felt that he was starting to comply and his aggression was starting to cease," which was consistent with Sgt. Stiger's own observations. (Chauvin Tr. 4158-59.)
- 99.2.2.5. Sgt. Stiger acknowledged that officers are entitled to rely on information preceding the restraint to inform their assessment of Floyd's potential threat during the restraint, and corresponding level of appropriate force. (Chauvin Tr. 4241, 4244-45.) He also acknowledged that a person who is restrained or has become unconscious can "revive agitated and ready to fight." (Chauvin Tr. 4259-60.) But Sgt. Stiger concluded that Floyd no longer presented an immediate threat when he was on the ground. "Because he was in the prone position, he was handcuffed, he was not attempting to resist, and he was not attempting to assault the officers, kick, punch, or anything of that nature." (Chauvin Tr. 4175.) Floyd did not verbalize any threats. (Chauvin Tr. 4176.) Once the officers had Floyd "in the prone position on the ground, he slowly ceased his resistance." (Chauvin Tr. 4146.)
- 99.2.2.6. At that point, the officers should have attempted to de-escalate the situation. (Chauvin Tr. 4146-47.) Instead, "[t]hey continued the force that they were utilizing from the time that they first put him on the ground." (Chauvin Tr. 4147.)
- 99.2.2.7. Moreover, the number of officers present and actively restraining Floyd limited any potential threat Floyd posed. (Chauvin Tr. 4176.)
- 99.2.2.8. Sgt. Stiger testified that, in assessing the totality of the circumstances, a reasonable officer would have considered Floyd's comments and actions indicating that he was in distress. (Chauvin Tr. 4271-72.)
- 99.2.3. Third, Sgt. Stiger testified that Floyd was not actively resisting the officers at the time that Floyd was in the prone position, nor did Floyd communicate an intent to resist the officers. (Chauvin Tr. 4177.)
- 99.3. Sgt. Stiger also explained the concept of proportionality: An officer may only use the force proportional to the seriousness of the crime or the subject's level of resistance. (Chauvin Tr. 4177, 4179-81.) In Sgt. Stiger's professional

opinion, “no force should have been used” once Floyd was handcuffed in the prone position, and not resisting. (Chauvin Tr. 4181.)

99.4. Sgt. Stiger testified that, in his professional opinion, the level of force the officers’ used during the restraint constituted “deadly force,” “[b]ecause at the time of the restraint period, Mr. Floyd was not resisting, he was in the prone position, he was handcuffed, he was not attempting to evade, he was not attempting to resist, and the pressure that he was -- that was being caused by the body weight would -- to cause positional asphyxia, which could cause death.” (Chauvin Tr. 4182.) Sgt. Stiger explained that even if a person is still resisting once handcuffed, officers are trained to “hold them down in the side recovery position, or utilize a hobble,” rather than keep the person prone. (Chauvin Tr. 4258-59.)

99.4.1. Sgt. Stiger explained that the risks of positional asphyxia have been known about for “[a]t least 20 years.” (Chauvin Tr. 4183.) Body weight exacerbates the risks of positional asphyxia. (Chauvin Tr. 4183, 4269.) Sgt. Stiger testified that, based on his experience and training, given Chauvin’s positioning, “the majority of [his] body weight” would have been “pushing down from his knee area” onto Floyd’s neck or neck area. (Chauvin Tr. 4168-71.) Chauvin’s body positioning did not change during the entire nine minute 29 second restraint. (Chauvin Tr. 4171.)

99.4.2. Sgt. Stiger testified that, near the beginning of the restraint, Chauvin also employed a “pain compliance” technique by grabbing and squeezing Floyd’s fingers. (Chauvin Tr. 4171-73.) “[P]ain compliance is a technique that officers use to get a subject to comply with their commands. As they comply, then they are rewarded with a reduction of pain.” (Chauvin Tr. 4172.) But if there is “no opportunity for” the subject to comply, “at that point, it’s just pain.” (Chauvin Tr. 4173.) Sgt. Stiger testified that, in his view, Chauvin did not “discontinue[] the use of this pain compliance technique during the restraint period.” (Chauvin Tr. 4173-74.)

99.5. Sgt. Stiger testified that, in his experience and opinion, the bystanders did not pose a threat. (Chauvin Tr. 4185-86.) As a result, the bystanders did not factor into Sgt. Stiger’s analysis. (Chauvin Tr. 4186.) Even so, the bystanders were of little importance. “[O]fficers can only use force based on the subject’s actions,” not based on the actions of third parties over whom the subject has no control. (Chauvin Tr. 4185-86.) Although Sgt. Stiger acknowledged that crowds can be distracting, (Chauvin Tr. 4250-51), Sgt. Stiger testified that he

did not believe the crowd distracted Chauvin from attending to Floyd, because the videos recorded Floyd expressing pain and discomfort, and Chauvin responding to Floyd. (Chauvin Tr. 4188.)

- 99.6. The Court finds Sgt. Stiger’s expert testimony credible. Sgt. Stiger has extensive professional policing experience; his testimony was well-supported, internally consistent, and persuasive; and he had no reason to lie.
100. Inspector Katie Blackwell
- 100.1. Inspector Katie Blackwell (“Inspector Blackwell”) has been an MPD officer since 2002. (Chauvin Tr. 3899.) She was the commander of MPD’s training center from April 2019 through January 2021 and oversaw all police academy training and in-service training. (Chauvin Tr. 3900; Fed. Tr. 792-93, 808.) Prior to that, Inspector Blackwell worked as a lieutenant in the training division. (Fed. Tr. 793.)
- 100.2. Inspector Blackwell testified that, in order to become a sworn MPD officer, individuals must complete a two- or four-year degree; obtain their peace officer license, which requires completing a 24-26 week skills certification program that covers topics like defensive tactics and medical training; attend the MPD Academy; and participate in MPD’s field training program. (Fed. Tr. 812-816, 821.) Officers must also complete 48 hours of in-service training every three years, which includes 16 hours focused on mental health crisis training. (Chauvin Tr. 3908; Fed. Tr. 813, 817.)
- 100.2.1. Inspector Blackwell explained that the state licensing board for police officers, the Minnesota Board of Peace Officer Standards and Training (“POST”), sets certain minimum requirements to become a police officer. (Fed. Tr. 813.) POST requires officers to renew their peace officer license every three years. (Fed. Tr. 813.)
- 100.2.2. Inspector Blackwell testified that the Academy is an 18-19 week course that includes both classroom lessons and hand-on scenario training. (Fed. Tr. 823-824.) During it, recruits are trained on defensive tactics, including the use of force continuum and de-escalation, and take multiple tests on MPD policies. (Fed. Tr. 826, 829-830.) After an officer graduates from the Academy, they participate in five-to-six month Field Training Officer program. (Fed. Tr. 831-834.)
- 100.2.3. Inspector Blackwell explained that in-service training covers the same topics as the Academy, in a more condensed format.

(Chauvin Tr. 3905-06.) Every year, the in-service training includes training on defensive tactics, the use of force, a medical component, and crisis intervention. (Chauvin Tr. 3914; Fed. Tr. 818.)

- 100.3. Inspector Blackwell explained that all MPD employees are responsible for knowing the information contained in MPD's Policy and Procedure Manual. (Fed. Tr. 867-869.) Updates to the Manual are shared via email, orally, and during in-service training. (Fed. Tr. 864-866.)
- 100.3.1. Inspector Blackwell testified that the Manual requires all employees to immediately report "any violation of rules, regulations or laws," as well as "any misconduct at the scene of an incident," including "unreasonable force." (Fed. Tr. 870-871.)
- 100.3.2. Inspector Blackwell testified that, according to the Manual, "the sanctity of life and the protection of the public shall be the cornerstones of" MPD's use of force policy. (Fed. Tr. 874.)
- 100.3.3. Inspector Blackwell explained that MPD's use of force policy is "based on the Fourth Amendment's reasonable standard that sworn MPD employees shall only use the amount of force that is objectively reasonable in light of the facts and circumstances known to the employee at the time the force is used. Force shall be consistent with current MPD training." (Fed. Tr. 875.) Under this policy, officers must "adjust [their] force depending on what the person you are dealing with is using or doing." (Fed. Tr. 876.) This includes de-escalating force as necessary. (Fed. Tr. 890.)
- 100.3.4. Inspector Blackwell explained that, as part of the de-escalation process and MPD's crisis intervention policy, officers must consider whether "someone's ability to comply with their orders" is impaired, for example due to mental illness or intoxication. (Fed. Tr. 893-894, 974-975.)
- 100.3.5. Inspector Blackwell testified that officers are taught to use the "lowest level of force necessary to detain somebody." (Fed. Tr. 873.) If an officer needs to increase force "to gain compliance," once the subject stops resisting and is compliant, "then the force stops." (Fed. Tr. 873; Fed. Tr. 880.)
- 100.3.6. Inspector Blackwell testified that MPD officers have a "duty to intervene . . . to protect the public and fellow employees from violating policies, laws, to prevent people from getting injured,"

- including to stop another employee from using unreasonable force against someone. (Fed. Tr. 881, 883.)
- 100.3.7. Inspector Blackwell testified that “[w]hen someone is in your custody they’re in your care, meaning regardless of who they are, if they’re in your custody, and it’s our job to protect this person,” including from an unreasonable use of force. (Fed. Tr. 882.) Inspector Blackwell explained that, as part of this, MPD employees shall provide medical aid, including CPR, “as soon as reasonable, practical.” (Fed. Tr. 892.)
- 100.3.8. Inspector Blackwell testified that, according to MPD policy, an officer “needs to let” a paramedic or any other person “receiving” the subject know about the force used on that subject, any injuries, and whether medical aid was rendered. (Fed. Tr. 894-895.)
- 100.4. Inspector Blackwell testified that MPD’s policy on neck restraints technically references “compressing one or both sides of the neck using an arm or leg,” but MPD does not train neck restraints using legs; “what we train is using one arm or two arm[s] to do a neck restraint.” (Chauvin Tr. 3923; Fed. Tr. 895-897, 1213-1214.)
- 100.4.1. Inspector Blackwell testified that MPD trains officers that conscious neck restraints are appropriate when someone is actively resisting; an unconscious neck restraint is only appropriate when someone is “physically combative” or if necessary to save their life (i.e., when trying to pull a suicidal person from the water). (Fed. Tr. 898-899.) “Neck restraints shall not be used against subjects who are passively resisting,” meaning “they’re not really trying to defeat the officer, but they’re not really complying with the” officer’s verbal commands. (Fed. Tr. 900.)
- 100.4.2. Inspector Blackwell testified that MPD trains officers to closely observe an individual after officer’s apply a neck restraint. If the person does not “regain consciousness,” officers must “call EMS right away, roll them on their side for recovery and check for airway, pulse, start rendering medical first aid,” including potentially CPR. (Fed. Tr. 902.)
- 100.5. Inspector Blackwell testified that MPD’s maximal restraint technique involves using the hobble to secure a subject’s feet to their waist to prevent leg movement, like kicking. (Fed. Tr. 904-905.)

- 100.5.1. Inspector Blackwell explained that officers who use the hobble are trained to move the subject from the prone position to “the side recovery position” “[a]s soon as possible” to prevent positional asphyxia. (Chauvin Tr. 3919; Fed. Tr. 905-907.)
- 100.5.2. If an officer uses the hobble, the officer “need[s] to call a supervisor to the scene.” (Fed. Tr. 906.)
- 100.6. Inspector Blackwell testified that the dangers of the prone position and positional asphyxia have been known in the department at least since she joined in 2002 and are discussed throughout MPD policy and training. (Chauvin Tr. 3920; Fed. Tr. 908, 972; *see also* Fed. Tr. 979-980.) She explained that even if officers detain a subject only in handcuffs rather than via a hobble, officers are still trained to place the subject in the “side recovery position” or stand the person upright, to prevent positional asphyxia. (Fed. Tr. 908-909, 971-972.)
- 100.7. Inspector Blackwell testified that officers are trained to begin CPR as soon as someone is not breathing or does not have a pulse, even if EMS is already on the way. (Fed. Tr. 1343-44.)
- 100.8. Inspector Blackwell testified that MPD keeps records on the training individual officers received. (Fed. Tr. 981.)
- 100.8.1. Inspector Blackwell testified that Chauvin received several hours of training in defensive tactics, crisis intervention (including “de-escalation and mental health awareness”), procedural justice, Narcan, and multiple other topics during his in-service trainings over the years. (Chauvin Tr. 3915-18.)
- 100.8.2. Inspector Blackwell testified that Thao completed a total of 1,014 hours of MPD training. (Fed. Tr. 988.) This included medical training including CPR and Narcan, defensive tactics training, procedural justice training, and crisis intervention training. (Fed. Tr. 991-998, 1006.)
- 100.8.3. Inspector Blackwell testified that Thao completed a defensive tactics in-service training in 2018 and 2019 designed to remind officers, among other things, about “the sanctity of life”; “to use the lowest level of force”; the differences between active resistance, active combativeness, and passive resistance; the duty to intervene; the *Graham v. Connor* standards; and the importance of proportional force and de-escalation. (Fed. Tr. 1008, 1010-15, 1023-27, 1029-32.) These trainings also covered the proper application of neck restraints, the importance of using the side

recovery position, and the need to closely monitor someone for medical issues after applying a neck restraint. (Fed. Tr. 1016-20, 1023-27, 1032-34.)

- 100.8.4. Inspector Blackwell testified that Thao attended an excited delirium in-service training in 2018 or 2019. (See Fed. Tr. 1226-1228.) Although this training included videos of officers using various restraint techniques, including leg and knee restraints, Inspector Blackwell explained that this particular training was a “medical” training, not a “[d]efensive tactics” training. (Fed. Tr. 1244-45, 1257, 1271, 1273-1274, 1326.) She also testified that, if an officer suspected someone was suffering from excited delirium, officers were trained to “[p]lace the subject in the recovery position to alleviate positional asphyxia,” “even if you are waiting for EMS.” (Fed. Tr. 1256, 1325, 1327, 1329-30, 1332.) Officers are trained to “stop using any type of force” if someone they suspect has excited delirium “becomes compliant.” (Fed. Tr. 1330-31.)
- 100.9. Inspector Blackwell testified that Chauvin’s actions on May 25, 2020 were not consistent with MPD’s use of force policy. (Fed. Tr. 1093.)
- 100.9.1. Inspector Blackwell explained that Chauvin’s use of his knee in performing a neck restraint was not a “trained” defensive tactics technique. (Chauvin Tr. 3922-23; Fed. Tr. 1095, 1098-99, 1104, 1111-12.) Chauvin’s restraint instead used an “improvised position” that is “not what we train.” (Chauvin Tr. 3923.)
- 100.9.2. Inspector Blackwell explained that Chauvin’s actions were inconsistent with MPD training and policy because Chauvin used disproportionate force in applying a neck restraint when Floyd was passively resisting, and Chauvin continued using that same level of force even when Floyd was no longer resisting, stopped speaking, became unconscious, and did not have a pulse, instead of placing Floyd in the side recovery position and providing medical aid. (Fed. Tr. 1104-05, 1107, 1113, 1116-19, 1336-37.)
- 100.9.3. Inspector Blackwell testified that Chauvin’s actions were not consistent with MPD training and policy, because Chauvin used a pain compliance technique when Floyd was only passively resisting. (Fed. Tr. 1101, 1103-1104.)
- 100.10. Inspector Blackwell testified that Thao’s actions were inconsistent with MPD policy and training on the duty to intervene, and the bystanders did not prevent

Thao from complying with MPD's policy and training. (Fed. Tr. 1120-24.) She further testified that Thao did not do anything "to render medical aid to Mr. Floyd while in police custody." (Fed. Tr. 1341.)

100.11. The Court finds Inspector Blackwell's testimony credible. Inspector Blackwell oversaw MPD's training program and has detailed knowledge of MPD's policies and training. She testified extensively about both policy and training, and she had no reason to lie.

101. Officer Nicole Mackenzie

101.1. Officer Nicole Mackenzie ("Officer Mackenzie") has been an MPD officer for over seven years and serves as the medical support coordinator. (Chauvin Tr. 4079; Fed. Tr. 1789.) She is responsible for Academy and in-service training concerning first aid, medical issues, and Narcan. (Chauvin Tr. 4082-83; Fed. Tr. 1793.)

101.2. Officer Mackenzie explained that, in order to obtain the POST certification required to become a police officer, an officer must be certified as an emergency medical responder. (Chauvin Tr. 4084, 4100, 4102.)

101.3. Officer Mackenzie testified that MPD provides annual medical in-service training to officers on topics including CPR and Narcan. (Chauvin Tr. 4089, 4091-92; Fed. Tr. 1869.)

101.3.1. Officer Mackenzie testified that MPD trains officers to determine whether (1) a person is alert, (2) is responding to verbal prompts, (3) is responding to pain stimuli, or (4) is unresponsive. (Chauvin Tr. 4092-94; Fed. Tr. 1879-80.) If the person is unresponsive, officers are trained to check the person's airway, breathing, and pulse. (Chauvin Tr. 4095-96; Fed. Tr. 1879-80.) "If you don't have a pulse on a person, you'll immediately start CPR" and call EMS. (Chauvin Tr. 4096-97; Fed. Tr. 1880.) Officers must render aid even if they have called EMS and an ambulance is en route. (Fed. Tr. 1881.)

101.3.2. Officer Mackenzie explained that officers are trained that if someone does not have a pulse and the officer has already called EMS, the officer should additionally request assistance from the fire department. (Fed. Tr. 1890-91.) All fire personnel have EMT-level training, and "they could potentially offer a faster response just due to their locations." (Fed. Tr. 1891.)



- 101.3.3. Officer Mackenzie testified that officers must continue providing CPR until someone with more training takes over, it is “not safe” to continue providing CPR, or if the officer is incapable of continuing for some other reason. (Chauvin Tr. 4098, 4107.)
- 101.3.4. Officer Mackenzie testified that MPD does not train officers “that if a person can talk it means that they can breathe.” (Chauvin Tr. 4096-97; Fed. Tr. 1898-99.)
- 101.3.5. Officer Mackenzie testified that MPD trains officers that “agonal breathing”—which is a sign of respiratory distress and is essentially just “an irregular gasp for air”—“is not effective breathing.” (Chauvin Tr. 4105-06.)
- 101.3.6. Officer Mackenzie testified that MPD trains officers about the dangers of positional asphyxia. Once officers have “a reasonable level of control on the person,” officers should place the individual on their side to avoid those risks. (Fed. Tr. 1887-88, 1900.) She likewise explained that officers are trained to put a person into a different position, whether on their side or standing up, when the person says he or she cannot breathe or displays altered levels of consciousness. (Fed. Tr. 1892, 1894-95.)
- 101.3.7. Officer Mackenzie testified that officers are trained to request EMS when they “suspect a person in their custody is under the influence of drugs.” (Fed. Tr. 1894.)
- 101.4. Officer Mackenzie testified that she had never been trained to put her “knee on someone’s neck.” (Fed. Tr. 1941, 1979.)
- 101.4.1. Officer Mackenzie acknowledged that video footage existed of several defensive tactics scenario trainings from 2017 in which a recruit placed a knee on a subject’s neck or used a knee to execute a restraint tactic, and that the instructor did not correct the recruit’s technique. (Fed. Tr. 1989-1991, 1994-1995.) She explained, however, that unless an instructor sees something that’s “terribly unsafe,” an instructor might choose to “let it play out and offer the critique after.” (Fed. Tr. 1994.)
- 101.4.2. Officer Mackenzie testified that there is a key difference between using your knee “momentarily” versus as a tactic to “maintain[] control” over a subject. (Fed. Tr. 2063.)

- 101.5. Officer Mackenzie testified that at a few points in one of MPD's excited delirium trainings, it appears that someone might be using their knee on someone's "upper shoulders or maybe by the neck." (Fed. Tr. 1936; *see* Fed. Tr. 1958.) But she added that this training was not about defensive tactics; "this is just by way of example of showing you just how dangerous this medical condition is." (Fed. Tr. 1959.) "It would be wildly inappropriate for the medical team to train on defense and control techniques." (Fed. Tr. 1959.)
- 101.5.1. Officer Mackenzie testified that MPD trains that, if an officer suspects that someone is experiencing excited delirium, the officer should "get them under control, get EMS there early and put them in the recovery position." (Fed. Tr. 2000-01.)
- 101.5.2. Officer Mackenzie explained that if someone who you believe is suffering from excited delirium is already handcuffed, the appropriate medical response is to place them in the side recovery position. (Fed. Tr. 2057.) If the officer worries that person "might become violent," they should "keep them in the side recovery position in a way that you could gain control quickly if they were to become combative again." (Fed. Tr. 2057.)
- 101.6. Officer Mackenzie testified that Chauvin attended the 2018 in-service Narcan training. (Chauvin Tr. 4108.)
- 101.7. Officer Mackenzie testified that Thao attended the 2019 medical in-service training, which covered Narcan and CPR. (Fed. Tr. 1872-73, 1876.)
- 101.8. Officer Mackenzie testified that, based on her review of the body-worn camera footage, Thao's actions were inconsistent with MPD policies and medical training because Thao never attempted to provide Floyd with medical aid, despite the fact that Floyd was "facedown for an extended period of time with body weight on him for a majority of it." (Fed. Tr. 1907-08.) Based on her review of the body-worn camera footage, Officer Mackenzie further testified that Thao's actions were inconsistent with MPD's policy of "in your custody and in your care" because Thao failed to do "basic assessments to monitor [Floyd's] level of consciousness"; to check Floyd's airway, breathing, or circulation; or to otherwise render aid consistent with Thao's training. (Fed. Tr. 1909.)
- 101.9. The Court finds Officer Mackenzie credible. As the medical support coordinator, she has extensive experience with and knowledge about MPD's medical trainings and policies. Her testimony was well-supported, internally consistent, and persuasive; and she had no reason to lie.

**(4) Medical witnesses**

## 102. Dr. Bradford Wankhede Langenfeld

- 102.1. Dr. Bradford Wankhede Langenfeld (“Dr. Langenfeld”) is the HCMC emergency room physician who provided Floyd’s medical care on May 25, 2020 and ultimately pronounced Floyd dead. (Chauvin Tr. 3702, 3706; Fed. Tr. 911, 914-15, 917, 947.)
- 102.2. Dr. Langenfeld explained that Floyd “was in cardiac arrest” when he arrived at the emergency room. (Chauvin Tr. 3707; Fed. Tr. 915-16.) Dr. Langenfeld testified that “any amount of time that a patient spends in cardiac arrest without immediate CPR markedly decreases the chance of a good outcome.” (Chauvin Tr. 3714.) There is an “[a]pproximately 10 to 15 percent decrease in survival for every minute that CPR is not administered.” (Chauvin Tr. 3714; Fed. Tr. 919, 948-949, 964.)
- 102.3. Dr. Langenfeld explained the difference between PEA arrest and asystole. PEA arrest is the term for when “someone is in cardiac arrest, they do not have a pulse, . . . and they do have some electrical activity on the monitor, and that suggests certain underlying causes that are more common, the most common is someone being in PEA arrest.” (Chauvin Tr. 3717; Fed. Tr. 921-922.) A person in PEA arrest cannot be resuscitated with a “shock,” meaning defibrillation. (Chauvin Tr. 3719; Fed. Tr. 923-924.) Asystole is “flat lining,” meaning “there’s no cardiac activity on the cardiac monitor and the patient is in cardiac arrest.” (Chauvin Tr. 3718; Fed. Tr. 922.)
- 102.4. Dr. Langenfeld testified that, “for the majority of his time in our emergency department, [Floyd] was in PEA arrest,” including when he was pronounced dead. (Chauvin Tr. 3718-19.) There was also a report that Floyd had been in asystole prior to his arrival at HCMC. (Chauvin Tr. 3718.)
- 102.5. Based on the information available to him at the time of treatment, Dr. Langenfeld concluded that the mostly likely cause of Floyd’s cardiac arrest was hypoxia, also known as low oxygen. (Chauvin Tr. 3722-30; Fed. Tr. 929-945.)
- 102.6. Dr. Langenfeld also testified that the level of carbon dioxide in Floyd’s blood was “exceptionally high.” (Chauvin Tr. 3733-34.) Dr. Langenfeld did not find that particularly significant, however, because the level of carbon dioxide “could be consistent with cardiac arrest from any number of causes.” (Chauvin Tr. 3740-41; Fed. Tr. 932.)

- 102.7. Dr. Langenfeld further testified that, although he is familiar with excited delirium, based on his review of the video evidence, Floyd did not have a “level of severe agitation that could lead to a cardiac arrest.” (Fed. Tr. 942-943, 966.)
- 102.8. The Court finds Dr. Langenfeld’s testimony credible. Dr. Langenfeld provided direct treatment to Floyd and observed Floyd’s condition; his testimony was well-supported, internally consistent, and persuasive; and he had no reason to lie.
103. Dr. Daniel Isenschmid
- 103.1. Dr. Daniel Isenschmid (“Dr. Isenschmid”) has been a forensic toxicologist for more than 30 years. (Chauvin Tr. 4605-06.) He currently works at NMS Labs. (Chauvin Tr. 4605.) He reviews approximately 7,000 to 8,000 cases per year involving both post-mortem samples and samples from living patients. (Chauvin Tr. 4608.)
- 103.2. Dr. Isenschmid tested a sample of Floyd’s blood that was drawn at the hospital and a sample of Floyd’s urine, which was collected by the Hennepin County Medical Examiner’s Office at autopsy. (Chauvin Tr. 4609.)
- 103.3. Dr. Isenschmid testified that Floyd’s hospital blood contained fentanyl at a level of 11 nanograms per milliliter (“ng/mL”). (Chauvin Tr. 4610.) The level of norfentanyl in Floyd’s blood was 5.6 ng/mL. (Chauvin Tr. 4610.)
- 103.4. Dr. Isenschmid explained the relationship between fentanyl and norfentanyl: “[W]hen the body gradually eliminates fentanyl, it breaks it down from fentanyl to norfentanyl.” (Chauvin Tr. 4614.) In other words, fentanyl is “the active ingredient” and “norfentanyl is the metabolite.” (Chauvin Tr. 4640.) But, “there’s no way to determine at what point any particular amount of fentanyl was ingested.” (Chauvin Tr. 4642-43.)
- 103.5. Dr. Isenschmid testified that these measurements could indicate one of two things.
- 103.5.1. First, Floyd’s fentanyl and norfentanyl levels could indicate survival time after fentanyl use, meaning that Floyd survived long enough after ingestion to begin metabolizing the fentanyl he consumed. (Chauvin Tr. 4662.) By contrast, in cases involving “very recent deaths with fentanyl” the deceased’s blood “frequently” contains “fentanyl with no norfentanyl whatsoever because after a very acute fentanyl intoxication the body doesn’t have time to break it down.” (Chauvin Tr. 4614-15.)

- 103.5.2. Second, Floyd's fentanyl and norfentanyl levels could mean that "there was survival time from an earlier dose" and that Floyd took "an additional dose" of fentanyl. (Chauvin Tr. 4662.)
- 103.6. Dr. Isenschmid analyzed 2020 data from NMS Labs, which showed the average fentanyl concentration across 19,185 post-mortem cases was 16.8 ng/mL, and the median concentration was 10 ng/mL. (Chauvin Tr. 4624-25.) In the 15,455 cases within that population that had norfentanyl present, the average norfentanyl concentration was 6.01 ng/mL, and the median concentration was 2.2 ng/mL. (Chauvin Tr. 4625.) He further testified that in 2,345 cases of driving under the influence ("DUI") in which all subjects were alive, the average fentanyl level was 9.59 ng/mL, and the median concentration was 5.3 ng/mL; for norfentanyl, it was 5.42 ng/mL and 2.2 ng/L, respectively. (Chauvin Tr. 4627.)
- 103.7. Fentanyl levels can vary widely based on an individual's tolerance. (Chauvin Tr. 4613.) For example, within the DUI population, Dr. Isenschmid found 216 cases with a fentanyl level of 11-15 ng/mL; 109 cases at 16-20 ng/mL; 81 cases at 21-26 ng/mL; 133 cases at 26-50 ng/mL; and 53 living subjects with a concentration greater than 50 ng/mL. (Chauvin Tr. 4627-28.)
- 103.8. Dr. Isenschmid also reported that in 275 cases in the driving population with a fentanyl level between 9 to 13 ng/mL, the average fentanyl to norfentanyl ratio was 3.2 and the median was 2.24; in 3,088 cases in the post-mortem population with the same fentanyl level, the average fentanyl to norfentanyl ratio was 9.05 and the median was 5.88. (Chauvin Tr. 4629-30.) Floyd's fentanyl to norfentanyl ratio was 1.96, "just a little bit below the median in DUI." (Chauvin Tr. 4629-31.)
- 103.9. Dr. Isenschmid also testified that the level of methamphetamine in Floyd's blood was 19 ng/mL. (Chauvin Tr. 4610.)
- 103.10. Dr. Isenschmid explained that this level of methamphetamine is "very low," and comparable with the amount you would find if someone was given a single dose of methamphetamine as a prescribed drug, for example to treat attention deficit hyperactivity disorder. (Chauvin Tr. 4611-12.)
- 103.11. For example, in 3,271 similar cases in the DUI population, the average methamphetamine concentration was 378 ng/mL and the median was 240 ng/mL. (Chauvin Tr. 4633.) Floyd's methamphetamine level was in the "bottom 5.9 percent" of the DUI population. (Chauvin Tr. 4633.)

- 103.12. The level of amphetamine in Floyd's blood, which is the active metabolite of methamphetamine, was below the reporting limit and so was not included in Dr. Isenschmid's report. (Chauvin Tr. 4656-57.)
- 103.13. Dr. Isenschmid also found several other substances in Floyd's blood that he did not deem clinically significant. (Chauvin Tr. 4616-21.)
- 103.14. The Court finds Dr. Isenschmid's testimony credible. Dr. Isenschmid is an experienced forensic toxicologist; his testimony was well-supported, internally consistent, and persuasive; and he had no reason to lie.
104. Dr. William Smock
- 104.1. Dr. William Smock ("Dr. Smock") is an emergency medicine physician, with a specialty in forensic medicine. (Chauvin Tr. 4664.) He spent 21 years working in a level 1 trauma center, teaches emergency medicine, has a background in asphyxial deaths, has edited several textbooks, worked as an assistant medical examiner, and also has a background in clinical forensic medicine. (Chauvin Tr. 4665-69.)
- 104.2. Based on his review of the evidence, Dr. Smock testified that, in his opinion, "Floyd died from positional asphyxia." (Chauvin Tr. 4675.) Dr. Smock testified that someone can die from asphyxia and not have bruising or petechial hemorrhage. (Chauvin Tr. 4690-93.)
- 104.3. Based on his review of the videos, Dr. Smock identified several pieces of evidence that informed his diagnosis. Dr. Smock explained that Floyd can be seen on the video trying to position his body to push "his right side of his chest up off the pavement so that he can bring in air" and "turning his face actually into the pavement to try and get more oxygen in." (Chauvin Tr. 4695-96.) Later on, Floyd's voice grows weaker, Floyd falls unconscious, and he displays symptoms of an "anoxic seizure" when his legs begin to shake. (Chauvin Tr. 4696.)
- 104.4. Dr. Smock ruled out excited delirium as a possible cause of death.
- 104.4.1. Dr. Smock testified that "[e]xcited delirium is a physical and psychiatric state where because of an imbalance in the brain, a patient will exhibit multiple symptoms." (Chauvin Tr. 4676.)
- 104.4.2. Although Dr. Smock acknowledged that excited delirium is "a controversial diagnosis," and that the American Medical Association and American Psychiatric Association do not

recognize it, Dr. Smock believes that excited delirium “is real.” (Chauvin Tr. 4677.)

- 104.4.3. Dr. Smock explained that a person must exhibit a minimum of six of ten possible symptoms to identify excited delirium. Floyd did not display any of the ten symptoms: (1) Floyd was not inappropriately clothed; (2) Floyd was not attracted to the glass surrounding him; (3) Floyd did not fail to respond to the police presence; (4) Floyd was not engaged in “constant or near constant physical activity”; (5) Floyd tired following exertion; (6) Floyd did not have unexpected or unusual strength; (7) Floyd was affected by pain; (8) Floyd’s breathing was not “very rapid”; (9) Floyd was not excessively hot to the touch; and (10) Floyd was not sweating excessively. (Chauvin Tr. 4678-82.)
- 104.5. Dr. Smock testified that, based on his experience, Floyd was not suffering from a fentanyl or methamphetamine overdose.
- 104.5.1. Floyd was alert, talking, oriented, and suffering from air hunger; he was not sleeping, snoring, or otherwise displaying signs of a fentanyl overdose. (Chauvin Tr. 4684-87.)
- 104.5.2. Moreover, because Floyd was a “chronic user,” he had developed a tolerance to opioids, although tolerance can fade when a person stops using a particular type of drug. (Chauvin Tr. 4687-88, 4714-15.)
- 104.5.3. Dr. Smock further testified that the level of methamphetamine in Floyd’s blood was what “you expect to see with a recreational use of methamphetamine. Clinically, that’s an extremely low level.” (Chauvin Tr. 4689-90.)
- 104.6. Dr. Smock acknowledged that the reaction to “methamphetamine and fentanyl combined is different than [the] reaction to fentanyl” alone, and that methamphetamine can increase the demands on the heart. (Chauvin Tr. 4699, 4704, 4710-11.) But Dr. Smock noted “[t]here was absolutely no evidence at autopsy of anything that suggested that Mr. Floyd had a heart attack.” (Chauvin Tr. 4718.) Nor did Floyd have a sudden death that resembled a fatal arrhythmia. (Chauvin Tr. 4718-19.)
- 104.7. Finally, Dr. Smock testified that CPR should have begun “[a]s soon as Mr. Floyd [was] unconscious” and “clearly when they [couldn’t] find the pulse” in order to increase the chances of resuscitation and survival. (Chauvin Tr. 4697.)

- 104.8. The Court finds Dr. Smock’s testimony credible. Dr. Smock is an experienced physician; his testimony was well-supported, internally consistent, and persuasive; and he had no reason to lie.
105. Dr. Jonathan Rich
- 105.1. Dr. Jonathan Rich (“Dr. Rich”) is a board-certified cardiologist and associate professor of medicine. (Chauvin Tr. 4983-84, 4986.) He has substantial clinical experience, including with cardiac patients who die from low oxygen, and has had to determine cause of death in various contexts. (Chauvin Tr. 4988-95.)
- 105.2. Based on his review of the evidence, Dr. Rich testified that, in his opinion, Floyd “died from a cardiopulmonary arrest . . . caused by low oxygen levels,” which were “induced by the prone restraint and positional asphyxiation that he was subjected to.” (Chauvin Tr. 4998-99.)
- 105.3. Dr. Rich explained that the heart pumps oxygenated blood to other parts of your body, but if “the lungs don’t give enough oxygen to the body, the heart then has to pump insufficiently oxygenated blood to the tissues of the body.” (Chauvin Tr. 5002.) In this case, Floyd was “simply unable . . . to get enough oxygen,” and as a result, “the heart thus didn’t have enough oxygen either which means the entire body is deprived of oxygen.” (Chauvin Tr. 5002.)
- 105.4. Dr. Rich testified that he ruled out a primary heart event as a possible cause of death “with a high degree of medical certainty.” (Chauvin Tr. 5004.) Dr. Rich explained that a primary heart event is an event that originates “from the heart itself,” like a heart attack. (Chauvin Tr. 5003.) Based on Floyd’s medical history, Dr. Rich “noted no cardiac problems”—there was no “abnormal heart rhythms” or other “negative heart condition.” (Chauvin Tr. 5008-09.) “[E]very indicator is that Floyd had an exceptionally strong heart.” (Chauvin Tr. 5010.) Although Floyd did suffer from hypertension, “high blood pressure in and of itself is not a heart condition.” (Chauvin Tr. 5009.)
- 105.4.1. Dr. Rich testified that this conclusion was consistent with the video footage he reviewed: Floyd was not in acute distress or suffering from low oxygen during his initial encounter with the police, and there was no other evidence “that there was anything active going on from a cardiac standpoint” until the point where Floyd was pulled into the squad car and restrained on the pavement. (Chauvin Tr. 5011-15.) But once Floyd was on the ground, Dr. Rich observed that “he was restrained in a life-threatening manner.” (Chauvin Tr. 5017.)



- 105.4.2. Dr. Rich also testified that he did not witness the rapid deterioration associated with a “primary cardiac event” during the course of the restraint. (Chauvin Tr. 5017.) Rather, Floyd’s symptoms were consistent with cardiopulmonary arrest from low oxygen levels: “I could see his speech starting to become less forceful, his muscle movements becoming weaker, until, of course, eventually his speech became absent, eventually his muscle movements were absent.” (Chauvin Tr. 5018, 5022-23.)
- 105.4.3. Dr. Rich also testified the autopsy findings supported his conclusion. The autopsy showed “absolutely no evidence at all of heart damage in Mr. Floyd’s heart.” (Chauvin Tr. 5058.) Although Floyd did have coronary artery disease, there was no evidence of platelets, clotting, blockages, or anything else that Dr. Rich would have expected if Floyd had suffered a heart attack on May 25, 2020 or previously. (Chauvin Tr. 5024-27.) Dr. Rich thus ruled out coronary artery disease as a cause of death “with a high degree of medical certainty.” (Chauvin Tr. 5025.) Although there was some evidence of narrowing of the blood vessels, there was no evidence of complete blockages, and the autopsy did not note any “narrowings or disease in the left main coronary artery,” which is the “highest risk blood vessel if it were to get blocked off.” (Chauvin Tr. 5028.) As such, Dr. Rich also eliminated “the blockage in the arteries as a contributing cause to Mr. Floyd’s death.” (Chauvin Tr. 5027-28.)
- 105.4.4. Dr. Rich testified that Floyd’s heart was “mildly thick and mildly enlarged,” which is “an expected finding in somebody that has high blood pressure.” (Chauvin Tr. 5029-30.) Dr. Rich noted that, in fact, such a finding is a “normal response” to high blood pressure, because it means the heart muscle is getting stronger so that it can work more effectively. (Chauvin Tr. 5030.) Although this can become a problem if it persists for decades, “early on, having a mildly thickened heart is not only a normal finding in someone with high blood pressure, it may actually be beneficial in the short term.” (Chauvin Tr. 5030.)
- 105.5. Dr. Rich also testified that he ruled out a drug overdose as a possible cause of death “with a high degree of medical certainty.” (Chauvin Tr. 5004.)
- 105.5.1. Dr. Rich testified that Floyd likely had a “high degree of tolerance” to opiates. (Chauvin Tr. 5032.)

- 105.5.2. Moreover, based on his experience caring for patients suffering from opiate overdoses, Dr. Rich he did not “see any of the signs of an opiate overdose when [he] reviewed the videos.” (Chauvin Tr. 5032.) Floyd was alert, awake, conversant, and walking. (Chauvin Tr. 5032-33.)
- 105.5.3. Dr. Rich also concluded that methamphetamine “played no substantive role at all,” given the “relatively low level” in Floyd’s blood. (Chauvin Tr. 5033-34.)
- 105.6. Dr. Rich testified that, in his opinion, Floyd would have lived, “if not for Mr. Chauvin’s subdual and restraint of him for nine minutes and 29 seconds on the ground.” (Chauvin Tr. 5039.) Dr. Rich viewed Floyd’s death as “absolutely preventible [sic].” (Chauvin Tr. 5034.)
- 105.7. There were several “critical points” where the officers could have altered their actions to save Floyd’s life.
- 105.7.1. First, “was to not subject him to . . . that initial prone restraint positioning . . . if that was not the case, I don’t think he would have died.” (Chauvin Tr. 5034.)
- 105.7.2. Second, when it became clear that Floyd was struggling to breathe, the officers could have repositioned Floyd to “allow him to start to expand his lungs again and bring in oxygen and get rid of carbon dioxide.” (Chauvin Tr. 5034-35.)
- 105.7.3. Third, when the officers learned that Floyd did not have a pulse, the officers should have immediately ceased the restraint and started CPR. (Chauvin Tr. 5036-37.)
- 105.7.4. But by the time the ambulance arrived, “the chance of meaningful survival unfortunately was very low.” (Chauvin Tr. 5038.)
- 105.8. Simply put, in Dr. Rich’s opinion, “there’s no evidence that Mr. Floyd had any type of heart attack.” (Chauvin Tr. 5021-22.) Nor was there any evidence that Floyd died from drugs, high blood pressure, or anything else—standing alone or in conjunction—“in the absence of prone restraint.” (Chauvin Tr. 5059-60.)
- 105.9. The Court finds Dr. Rich’s testimony credible. Dr. Rich is an experienced practicing physician; his testimony was well-supported, internally consistent, and persuasive; and he had no reason to lie.

## 106. Dr. Martin Tobin

- 106.1. Dr. Martin Tobin (“Dr. Tobin”) specializes in pulmonary and critical care medicine. (Chauvin Tr. 4452.) He has been a physician for over 45 years and is board certified in internal medicine, pulmonary medicine, and critical care medicine. (Chauvin Tr. 4454-55.) He also has extensive experience studying sleep apnea, which involves obstructions at the back of the throat, including in the hypopharynx. (Chauvin Tr. 4455-56.) Dr. Tobin has published several articles and books related to breathing. (Chauvin Tr. 4457-59.) Dr. Tobin also has substantial experience in the field of applied physiology, specifically the physiology of breathing. (Chauvin Tr. 4461-63.)
- 106.2. Dr. Tobin testified that he concluded to a reasonable degree of medical certainty that “Floyd died from a low level of oxygen,” which “caused damage to his brain” and “a PEA arrhythmia that caused his heart to stop.” (Chauvin Tr. 4465.) He further explained that he had concluded to a reasonable degree of medical certainty that the cause of Floyd’s low oxygen level was “shallow breathing” as a result of the restraint. (Chauvin Tr. 4466, 4468-70.)
- 106.2.1. Dr. Tobin explained that, in a normal breathing pattern, air circulates down the bronchial tubes until it reaches the alveoli, where the “oxygen is exchanged and the carbon dioxide is removed.” (Chauvin Tr. 4467-68.) When someone experiences shallow breathing, “the air will not be able to reach” the alveoli. (Chauvin Tr. 4468.)
- 106.2.2. Dr. Tobin also testified that we breathe using the diaphragm and the rib cage. When the diaphragm or rib cage contracts, the chest expands, allowing air to flow in (also called inspiration). (Chauvin Tr. 4476-77.) To expand the chest requires “two crucial actions,” which Dr. Tobin referred to as the pump handle and the bucket handle. “[W]hen you contract your diaphragm, you are performing a bucket handle movement of your -- on the rib cage.” (Chauvin Tr. 4477.) The pump hand “refers to the front-to-back movement of the chest wall,” and the fact that a person’s chest expands with each breath. (Chauvin Tr. 4477-78.)
- 106.2.3. Without both the bucket handle (the rib cage expansion) and the pump handle (the front-to-back chest wall expansion), air cannot enter the lungs. (Chauvin Tr. 4478.)
- 106.3. Dr. Tobin testified that four factors contributed to Floyd’s shallow breathing: (1) “he has the handcuffs in place, combined with the street; (2) “he has a knee

on his neck”; (3) Floyd was placed in the prone position; and (4) “he has a knee on his back and on his side.” (Chauvin Tr. 4468-70.)

106.3.1. First, Dr. Tobin testified that the combination of the street pushing against Floyd from one side, and the officers “pushing the handcuffs into his back and pushing them high” on the other side effectively put Floyd’s left side “in a vice.” (Chauvin Tr. 4475-76.)

106.3.1.1. Dr. Tobin testified that “the street totally blocked [Floyd’s] pump handle,” and because the officers were pressing on Floyd’s back, he could not use his bucket handle for the “front-to-back movement.” (Chauvin Tr. 4479-80.) As a result, “there was virtually fairly little opportunity for [Floyd] to be able to get any air to move into the left side of his chest. So he was going to be totally dependant [sic] on what he would be able to do with the right side.” (Chauvin Tr. 4480; *see* Chauvin Tr. 4482-83.)

106.3.1.2. Dr. Tobin noted that Floyd’s behavior—pushing his fingers, knuckles, and shoulder against the ground—was consistent with what Dr. Tobin would expect from someone whose chest was being compressed such that he was unable to breathe. Dr. Tobin explained that when a person cannot breathe with his rib cage and diaphragm, his body naturally attempts to recruit other “types of muscles.” (Chauvin Tr. 4485.)

106.3.1.3. Dr. Tobin explained that the video showed Floyd “using his fingers and his knuckles against the street to try and crank up the right side of his chest” so that he could get air into his right lung because his left lung was being fully compressed due to the interaction of the street and handcuffs. (Chauvin Tr. 4485.)

106.3.1.4. Floyd made similar movements with his shoulder, which again were consistent with a person who had no other options but to try and rely on a shoulder to create the necessary space to breathe. (Chauvin Tr. 4486-87.)

106.3.1.5. Dr. Tobin explained that using a shoulder is “a very poor way of breathing,” but that in his experience, when

“everything else is failing,” patients “call on the use of the shoulder to try and breathe.” (Chauvin Tr. 4487.)

106.3.1.6. Floyd likewise pushed his “forehead and his nose and his chin” into the ground, which Dr. Tobin testified was consistent with an attempt to “help him get air into the right side of his chest.” (Chauvin Tr. 4496; *see* Chauvin Tr. 4559-60.)

106.3.2. Second, Dr. Tobin testified that, based on his review of the evidence, Chauvin’s left knee was on Floyd’s neck for “more than 90 percent” of the first five minutes and three seconds of the restraint. (Chauvin Tr. 4473.) Dr. Tobin testified that he used this time period because five minutes and three seconds is the point at which “we see evidence of brain injury.” (Chauvin Tr. 4473.)

106.3.2.1. Dr. Tobin testified that the hypopharynx is a uniquely vulnerable part of the neck because it is small (the size of a dime), has no cartilage around it, and is “very important” to breathing. (Chauvin Tr. 4489, 4491-92.) As the hypopharynx narrows, it becomes increasingly difficult to breathe. (Chauvin Tr. 4498.)

106.3.2.2. Based on the video evidence, Dr. Tobin testified that Chauvin’s left knee compressed Floyd’s hypopharynx at various points. (Chauvin Tr. 4492-93, 4497.) Dr. Tobin calculated that, at times, Chauvin was applying 91.5 pounds of pressure “directly on Mr. Floyd’s neck.” (Chauvin Tr. 4503.) When that pressure was applied to the side of Floyd’s neck, it caused “huge compression of the hypopharynx.” (Chauvin Tr. 4508.) Even when Chauvin was not applying force directly to Floyd’s hypopharynx, however, his left knee was still compressing part of Floyd’s chest, which continued to make it more difficult to breathe. (Chauvin Tr. 4503-04.)

106.3.2.3. The autopsy did not show any sign of injury to the hypopharynx. Dr. Tobin testified, however, that this made no difference to his analysis because injury to the hypopharynx is not something typically visible on an autopsy. (Chauvin Tr. 4598.) Low oxygen is likewise not visible on an autopsy. (Chauvin Tr. 4599-4600.)

106.3.3. Third, Dr. Tobin testified that placing Floyd in the prone position also contributed to his difficulty breathing. (Chauvin Tr. 4509.)

106.3.3.1. Dr. Tobin testified that, based on Floyd's age, sex, and height, he calculated Floyd's end-expiratory lung volume ("EELV") sitting upright to be 3,840 cubic centimeters. (Chauvin Tr. 4512.) "EELV is basically the volume that is in your lung[s] in between each breath." (Chauvin Tr. 4513-14.) Dr. Tobin calculated Floyd's residual volume at 2,300 cubic centimeters, meaning the air left inside the chest after a person has exhaled as much air as possible. (Chauvin Tr. 4513-14.)

106.3.3.2. Dr. Tobin testified that, based on his calculations, placing someone in the prone position decreases his or her lung volume and oxygen stores by an average of 24 percent. (Chauvin Tr. 4517-18.) Dr. Tobin explained that this reduction was significant in Floyd's case because, as a person's EELV decreases, so does the size of his hypopharynx. (Chauvin Tr. 4519.)

106.3.3.3. Dr. Tobin explained the prone position is not inherently dangerous for the average person. (Chauvin Tr. 4520.) For example, because the average person has sufficient oxygen reserves, sleeping in the prone position is not inherently risky. (Chauvin Tr. 4520-21.)

106.3.3.4. But the situation changes when someone is restrained prone, has his arms restrained, and is sustaining pressure on his hypopharynx. (Chauvin Tr. 4521.)

106.3.4. Fourth, Dr. Tobin testified that, based on his review of the evidence, Chauvin's right knee was on Floyd's back for "57 percent of the" first five minutes and three seconds of the restraint. (Chauvin Tr. 4473.)

106.3.4.1. In Dr. Tobin's opinion, the precise location of Chauvin's right knee did not matter. A knee located on the back, side, or arm will still "markedly impair your ability to be able to move your chest with your bucket handle and your pump handle." (Chauvin Tr. 4521.)

106.3.4.2. Dr. Tobin explained that the combination of the prone position and the placement of Chauvin's knee on

Floyd's back decreased EELV and oxygen reserves by 43 percent, which likewise further decreased the size of the hypopharynx. This made it much harder for Floyd to breathe. (Chauvin Tr. 4523-24, 4527.)

106.3.4.3. Dr. Tobin explained that certain studies that suggest that it is not dangerous to apply weight to someone's back while in the prone position are "highly misleading." (Chauvin Tr. 4532.) Those studies were conducted in a highly-controlled setting and did not analyze decreases in EELV or oxygen reserves. (Chauvin Tr. 4533-34.) The studies also did not involve a knee on the neck. (Chauvin Tr. 4536.) Instead, the studies created pressure on the back using items with a larger surface area, like weight plates. (Chauvin Tr. 4535.) Because a knee has a much smaller surface area, the pressure created by a knee is ten times greater than the pressure created by a weight plate. (Chauvin Tr. 4535-36.)

106.4. Dr. Tobin testified that, "[i]f you stop the flow of oxygen to the brain, you lose consciousness in 8 seconds." (Chauvin Tr. 4541.) Dr. Tobin explained that an anoxic seizure, also known as a myoclonic seizure or hypoxic seizure, occurs when there is "fatal injury to the brain from the lack of oxygen." (Chauvin Tr.,4543.)

106.4.1. Floyd experienced an anoxic seizure at 20:24:21, when he extended his leg backward. (Chauvin Tr. 4543, 4594.) This type of action is consistent with an involuntary reaction that occurs "as a result of a fatally low level of oxygen going to the brain." (Chauvin Tr. 4543-44.)

106.4.2. Dr. Tobin testified that, based on his experience, he can tell from someone's facial features when they become unconscious. (Chauvin Tr. 4528.) Dr. Tobin explained that here, Floyd's facial features at 20:24:53 were consistent with someone who has lost consciousness. (Chauvin Tr. 4528, 4530, 4558-59.)

106.4.3. Dr. Tobin explained that Floyd stopped breathing at 20:25:16. By 20:25:41, Floyd "wouldn't have an ounce of oxygen left in his entire body." (Chauvin Tr. 4530-32.)

106.4.4. Dr. Tobin testified that Chauvin's knee remained on Floyd's neck for 3 minutes and 27 seconds *after* Floyd's last breath, "for another 3 minutes and 2 seconds" *after* "there's not an ounce of oxygen

- left in the body,” and for 2 minutes and 44 seconds *after* the officers determined there was no pulse. (Chauvin Tr. 4532, 4561.)
- 106.4.5. Dr. Tobin testified that a low level of oxygen will eventually manifest in the heart as an abnormal rhythm. (Chauvin Tr. 4544.) In Floyd’s case, it manifested as a “[PEA] arrhythmia.” (Chauvin Tr. 4544.)
- 106.5. Dr. Tobin also explained the relationship between speaking and breathing.
- 106.5.1. Dr. Tobin testified that speaking involves exhaling; speaking thus signifies that someone had previously inhaled and also has sufficient brain function to speak. (Chauvin Tr. 4539-40.) But speaking at a particular moment is no guarantee that a person will be able to continue breathing. (Chauvin Tr. 4541-42, 4578-79.)
- 106.5.2. Dr. Tobin further testified that a person can still speak even when his trachea has narrowed to 15 percent; but “if there is a small increase in the amount of narrowing here, not only will you not be able to speak, you won’t be able to breathe, you won’t be able to live.” (Chauvin Tr. 4546-47.)
- 106.6. Dr. Tobin testified that, in his opinion and to a reasonable degree of medical certainty, any healthy person without Floyd’s preexisting health conditions “subjected to what Mr. Floyd was subjected to would have died.” (Chauvin Tr. 4537.)
- 106.6.1. Dr. Tobin testified that Floyd’s death was not consistent with a death from a paraganglioma. (Chauvin Tr. 4537-39.)
- 106.6.2. Dr. Tobin testified that he was able to count Floyd’s respiratory rate at 22 breaths per minute just before Floyd lost consciousness. (Chauvin Tr. 4550-52.) Dr. Tobin declared this fact “extremely significant” to determining whether Floyd died from fentanyl because fentanyl typically decreases respiration to about 10 breaths per minute. (Chauvin Tr. 4551-52.)
- 106.6.3. Dr. Tobin also testified that the combination of methamphetamine and fentanyl would not “counteract each other” with respect to the respiratory center. (Chauvin Tr. 4588-89.)
- 106.6.4. Dr. Tobin deemed Floyd’s respiratory rate significant to analyzing whether Floyd had heart disease. A person with heart disease typically has a respiratory rate over 30 breaths per minute.



(Chauvin Tr. 4556.) Dr. Tobin testified that if Floyd’s death was affected by his coronary artery disease, “you would expect that he would be complaining of chest pain” and “demonstrating a very rapid respiratory rate. We don’t see either.” (Chauvin Tr. 4583.)

106.6.5. Dr. Tobin testified that blood gas measurements taken in the emergency room showed that Floyd’s blood contained “high level[s]” of carbon dioxide. (Chauvin Tr. 4553.) Dr. Tobin explained that the high level of carbon dioxide resulted from Floyd’s inability to breathe. (Chauvin Tr. 4553-55.)

106.6.6. Finally, Dr. Tobin explained that Floyd did not die from carbon monoxide poisoning. Floyd’s hemoglobin had a 98 percent oxygen saturation rate, meaning that the maximum amount of carbon monoxide in his body was 2 percent—a normal level. (Chauvin Tr. 5679-81.)

106.7. The Court finds Dr. Tobin’s testimony credible. Dr. Tobin is an experienced practicing physician and an eminent scholar; his testimony was well-supported, internally consistent, and persuasive; and he had no reason to lie.

#### 107. Dr. David Systrom

107.1. Dr. David Systrom (“Dr. Systrom”) specializes in pulmonary and critical care medicine. (Fed. Tr. 1612.) He also works in the cardiology intensive care unit. (Fed. Tr. 1613.) Dr. Systrom is board certified in internal medicine and pulmonary medicine, and was previously board certified in critical care. (Fed. Tr. 1619.) Dr. Systrom has spent his “entire” 35-plus-year career “determining whether, for some patients, symptoms such as shortness of breath are being caused by either the lungs or by the heart.” (Fed. Tr. 1614.)

107.2. Dr. Systrom explained that he concluded, to a reasonable degree of medical certainty, that Floyd died from asphyxia, meaning “insufficient breathing,” as a result of the compression of his upper airway by Chauvin’s knee on his neck, and because of the restrictions on his breathing created by being restrained prone and handcuffed, against the pavement. (Fed. Tr. 1634-36.) This compression and restriction resulted in hypoxemia (abnormally low oxygen levels in the arterial blood) and hypercapnia (meaning high carbon dioxide levels in blood or tissue). (Fed. Tr. 1636-37.)

107.2.1. Dr. Systrom testified that Chauvin’s knee can be seen at various points on the back and side of Floyd’s neck, and noted it was “[m]ore on the side of the neck.” (Fed. Tr. 1660-61.) Although both positions would partially block the airway, applying pressure

- to the side of the neck would compress the airway more. (Fed. Tr. 1659, 1661.) That is because the side parts of the neck are made up of soft tissue. (Fed. Tr. 1658.)
- 107.2.2. Dr. Systrom testified that the pressure and occlusion increased when Chauvin lifted his feet off the ground. (Fed. Tr. 1663.)
- 107.2.3. Dr. Systrom testified that this pressure was sufficient to obstruct Floyd's trachea to half the normal size, or less. (Fed. Tr. 1665.)
- 107.2.4. With respect to the effect of these restrictions, Dr. Systrom testified that restrictive pressure decreases lung volume. (Fed. Tr. 1666.) Lung volume is divided into four categories: total lung capacity, tidal volume ("the amount of air that we take in and out with each breath"), EELV ("the amount of air left in the lungs as we passively exhale"), and residual volume ("the amount of air that cannot be expelled as hard as one tries with maximal expiratory effort"). (Fed. Tr. 1667.)
- 107.3. Dr. Systrom testified that the prone position impedes lung function by preventing the diaphragm from moving downward and preventing the rib cage from moving out to the sides, thereby decreasing lung volume. (Fed. Tr. 1668-1669, 1671.) Lying prone on a hard surface like pavement further restricts that movement by creating resistance when a person attempts to take a breath. (Fed. Tr. 1669-1670.)
- 107.3.1. Handcuffing the hands behind the back further exacerbates these problems by limiting the ability to rescue oneself by using one's arms to reposition. (Fed. Tr. 1670.)
- 107.3.2. Dr. Systrom testified that Chauvin's right knee further restricted Floyd's rescue movements by pressing down on Floyd's left elbow and chest cavity, further impeding tidal volume. (Fed. Tr. 1671-72.) The pressure on Floyd's back also prevented him from successfully repositioning himself using his shoulders, hands, and knuckles to assist in breathing. (Fed. Tr. 1686-87.)
- 107.3.3. Dr. Systrom explained that studies concluding the prone position is not inherently dangerous are distinguishable from Floyd's case because the studies involved restrains on cushioned surfaces, not asphalt; the weight applied in those studies was distributed equally across the back, whereas Chauvin's knee on Floyd created a more significant compression point; and none of those studies involved the addition of neck pressure. (Fed. Tr. 1680-81.)

- 107.4. Dr. Systrom explained that hypoxemia and hypercapnia make the heart “more irritable and susceptible to arrhythmias,” including PEA and asystole. (Fed. Tr. 1637.) PEA is a non-shockable rhythm that occurs when “there is some semblance of electrical activity in the heart, but it is not resulting in any effective contraction of the heart.” (Fed. Tr. 1644-45.) Asystole is when there “is no electrical impulses and therefore no contractile function of the heart.” (Fed. Tr. 1645.)
- 107.4.1. Dr. Systrom testified that Floyd’s heart rhythm in the ambulance was asystole and PEA. (Fed Tr. 1645.) This indicated “[t]hat it was more likely than not that the combination of hypoxemia and hypercarbia with associated acidosis was the primary cause of his arrhythmia.” (Fed. Tr. 1645.)
- 107.4.2. Dr. Systrom testified that a normal level of end-tidal carbon dioxide in the blood is 35 to 45 millimeters of mercury. (Fed. Tr. 1646.) Based on readings taken in the ambulance, Floyd’s level was 73 millimeters of mercury. (Fed. Tr. 1647-48.) Dr. Systrom found this measurement very significant to determining the cause of death was asphyxia. (Fed. Tr. 1648-50.) Dr. Systrom explained that, if Floyd died of a “cardiac or heart issue,” or an adrenal or hormonal surge that overwhelmed his heart, his end-tidal carbon dioxide level would be low. (Fed. Tr. 1649-50.)
- 107.5. Dr. Systrom explained that he would not necessarily expect to see physical evidence of asphyxia at autopsy, because it is possible to sufficiently occlude the airway to cause death without creating bruising. (Fed. Tr. 1651, 1653.) Dr. Systrom also did not attach any significance to Floyd’s lack of petechiae, meaning bleeding in “the white part of one’s eyes.” (Fed. Tr. 1652.) Dr. Systrom further testified that the presence of fluid in Floyd’s lungs at autopsy—known as pulmonary edema—which caused the lungs to be heavier, was a result of the cardiac arrest and CPR. (Fed. Tr. 1655.)
- 107.6. Dr. Systrom testified that the idea that “if you can talk, you can breathe” is only partially true, because although talking indicates a person has enough airflow to “phonate,” talking “does not by any means mean that breathing was normal.” (Fed. Tr. 1682.)
- 107.6.1. Dr. Systrom explained that the change in Floyd’s speech during the restraint—from clear-cut to relatively unintelligible—demonstrated that Floyd’s respiration grew less effective over time. (Fed. Tr. 1688.) Dr. Systrom testified that, based on his review of the video, Floyd lost consciousness around 20:24:26 or

20:24:45. (Fed. Tr. 1688.) Dr. Systrom testified that he believes Floyd “lost consciousness when his facial expressions stopped.” (Fed. Tr. 1689.) Dr. Systrom testified that Floyd was breathing a little above normal, at around 22 to 24 breaths per minute, just before he became unconscious. (Fed. Tr. 1690-91.)

- 107.6.2. Dr. Systrom testified that Floyd exhibited symptoms consistent with a myoclonic jerk between 20:24:19 to 20:24:27. (Fed. Tr. 1691.) A myoclonic jerk is “an involuntary movement where the brain sends out a motor discharge” that occurs as a result of low oxygen. (Fed. Tr. 1692.)
- 107.7. Dr. Systrom testified that Floyd did not die as a result of his coronary artery disease or hypertension, and that he did not have a predisposition for heart rhythm disorder. (Fed. Tr. 1693-97.) Dr. Systrom explained that Floyd’s PEA and asystole rhythms were not consistent with a heart attack, Floyd did not exhibit symptoms of a heart attack, and there was no evidence of a heart attack in Floyd’s autopsy. (Fed. Tr. 1698-1700.) Although Floyd did suffer from a slightly enlarged heart, Dr. Systrom testified that this had no bearing on the cause of death. (Fed. Tr. 1701.) Dr. Systrom accordingly concluded that Floyd would not have died from his heart disease on May 25, 2020, absent the restraint. (Fed. Tr. 1698.)
- 107.8. Dr. Systrom also testified that Floyd did not die from fentanyl. Fentanyl slows breathing, but Dr. Systrom observed a slightly elevated breathing rate just before Floyd went into cardiac arrest. (Fed. Tr. 1701-02.) Dr. Systrom also testified that, in his medical opinion, methamphetamine did not cause any significant changes to Floyd’s respiration. (Fed. Tr. 1703.)
- 107.9. Dr. Systrom testified that, before Floyd lost consciousness, his medical issues would have been addressed by “reliev[ing] him of the obstruction and the restrictive impediments to his breathing. It could have been as simple as removal of pressure on the upper airway by a knee. It could have included letting him assume a seated position, even with the handcuffs in place.” (Fed. Tr. 1704-05.) If Floyd had been repositioned, the effects of the restraint would have been quickly reversible if the impediments to breathing were removed, and his odds of survival would have been “[c]lose to a hundred percent.” (Fed. Tr. 1705, 1710.)
- 107.9.1. Dr. Systrom also testified that, based on his experience, administering CPR “immediately following the cardiac arrest” would have doubled or tripled Floyd’s chance of survival. (Fed. Tr. 1706.) Delaying CPR decreased Floyd’s chances of survival

“exponentially,” by about ten percent per minute. (Fed. Tr. 1707-08.)

- 107.10. The Court finds Dr. Systrom’s testimony credible. Dr. Systrom is an experienced practicing physician; his testimony was well-supported, internally consistent, and persuasive; and he had no reason to lie.
108. Dr. Vikhyat Bebarta
- 108.1. Dr. Vikhyat Bebarta (“Dr. Bebarta”) is an emergency physician and medical toxicologist and is board certified in both. (Fed. Tr. 2092, 2098.) He is a tenured professor and has taught medical courses for almost 20 years. (Fed. Tr. 2092-93.) He is also a member of the Air Force and previously served as the chief of medical toxicology at two military medical centers. (Fed. Tr. 2101-03.) Dr. Bebarta also serves as a reviewer for several medical journals and has personally written over 200 peer-reviewed studies. (Fed. Tr. 2110-12.) Dr. Bebarta has treated roughly 10,000 patients suffering from drug intoxication or overdose across 24 years. (Fed. Tr. 2117.)
- 108.2. Dr. Bebarta testified that, in his opinion, Floyd died from asphyxia. (Fed. Tr. 2225.)
- 108.2.1. Dr. Bebarta testified that Floyd exhibited signs of a myoclonic jerk, which occurs when someone lacks oxygen to the brain. (Fed. Tr. 2142-43.)
- 108.2.2. Dr. Bebarta testified that, in his opinion, Floyd lost consciousness at about 8:24:50. (Fed. Tr. 2143.) Prior to that, he exhibited several symptoms of decreased oxygen: decreased movement, slower speech, the myoclonic jerk, and eventually the cessation of movement. (Fed. Tr. 2142-43.) Floyd also became less responsive to pain and other stimulation. (Fed. Tr. 2143-44.)
- 108.2.3. Dr. Bebarta testified that Floyd was “being pushed against the ground, so he could not lift his chest up to breathe.” (Fed. Tr. 2173.) Prior to his loss of consciousness, this issue could have been addressed by lifting Floyd off the ground, reducing pressure on his back, or placing him on his side. (Fed. Tr. 2173-74.) Dr. Bebarta testified to a reasonable degree of medical certainty that Floyd would have lived if he had been repositioned in a way that allowed him to breathe before losing consciousness. (Fed. Tr. 2174.)

- 108.2.4. Dr. Bebarta also testified that Floyd could have been revived and lived if he had been given CPR immediately after cardiac arrest began. (Fed. Tr. 2178.)
- 108.2.5. Dr. Bebarta testified that if “you don’t think [a patient has] a pulse,” “you assume you don’t have a pulse and then start checking for breathing” and performing life-saving interventions, like CPR. (Fed. Tr. 2275-76, 2146.)
- 108.2.6. Dr. Bebarta testified that Chauvin did not remove his knee from Floyd’s neck even after others were unable to locate Floyd’s pulse. (Fed. Tr. 2276; *see* Fed. Tr. 2144-46.)
- 108.3. Dr. Bebarta testified that, in his professional opinion and to a reasonable degree of medical certainty, Floyd did not die of a drug overdose. (Fed. Tr. 2132.)
- 108.3.1. A individual can develop a tolerance to one or more drugs, including mixtures of drugs, over time. (Fed. Tr. 2117-18.) When someone with a history of taking a drug stops taking the drug, the person can lose tolerance, but the person will typically regain tolerance more quickly upon resuming drug use. (Fed. Tr. 2121.) Dr. Bebarta testified that in his opinion, Floyd was tolerant to opioids given Floyd’s documented history of use and abuse. (Fed. Tr. 2130.)
- 108.3.2. Dr. Bebarta explained that when someone’s blood is drawn after death, the cells “leak” out any drugs the person took, meaning “your blood level concentrations rise as you die and after you die.” (Fed. Tr. 2123.) Here, Floyd’s blood was drawn approximately 30 minutes after he had ceased breathing and lacked a pulse. (Fed. Tr. 2123.)
- 108.3.3. Dr. Bebarta testified that the level of methamphetamine in Floyd’s blood was very low. (Fed. Tr. 2125.) Floyd’s level was 19 ng/mL. (Fed. Tr. 2125.) In comparison, people prescribed drugs containing methamphetamine typically have levels around 60 to 80 ng/mL. (Fed. Tr. 2125.) Individuals who die from methamphetamine overdoses typically have concentrations at 200 ng/mL. (Fed. Tr. 2125.) Based on his training and experience, Dr. Bebarta thus concluded that Floyd’s level of methamphetamine would not be lethal, standing alone, to a naive drug user. (Fed. Tr. 2125.) Dr. Bebarta also testified that because Floyd’s methamphetamine level was very low, “it doesn’t really pose a risk

with [Floyd's] hypertension or his coronary [artery] disease.” (Fed. Tr. 2127.)

- 108.3.4. Dr. Bebart testified that, in his experience, the level of fentanyl in Floyd's blood was also low. (Fed. Tr. 2128.) Floyd's level was 11 ng/mL. (Fed. Tr. 2128.) Doctors typically administer 11 to 20 ng/mL when they administer fentanyl to a patient undergoing a complex procedure, “and those patients tolerate that safely.” (Fed. Tr. 2128.) Patients who die from fentanyl overdoses typically have levels of 40 ng/mL or higher. (Fed. Tr. 2128.) Dr. Bebart testified that in his opinion, Floyd was tolerant to opioids given Floyd's documented history of use and abuse. Given that, “for [Floyd], 11 would feel like 1 or 2 because he had a tolerance to fentanyl.” (Fed. Tr. 2130.) Floyd also had norfentanyl, a metabolite of fentanyl, in his blood. (Fed. Tr. 2129.) Norfentanyl would not have any effect on Floyd standing alone. (Fed. Tr. 2129.)
- 108.3.5. Dr. Bebart testified that methamphetamine and fentanyl “actually counteract each other a little bit”; they do not have a “worsening effect” such that they would become a “toxic combination of drugs to increase death.” (Fed. Tr. 2132.)
- 108.3.6. Dr. Bebart testified that, based on his review of the videos, Floyd did not appear to be intoxicated or at risk of an imminent drug overdose. (Fed. Tr. 2134-35, 2138.) Floyd had a “stable gait,” was fairly agile, awake and alert, and able to converse and communicate. (Fed. Tr. 2135-38.) Floyd recalled his date of birth when asked. (Fed. Tr. 2138.) Floyd did not stumble when initially walking to the squad car. (Fed. Tr. 2138-39.)
- 108.4. Dr. Bebart testified that, in his opinion, Floyd's heart disease or high blood pressure had no effect on his death, and that Floyd did not die of a heart attack. (Fed. Tr. 2148.) Moreover, Floyd did not exhibit symptoms of someone about to suffer a “major heart or cardiac event.” (Fed. Tr. 2139.) He was not clutching his chest or exhibiting arm pain, and he did not complain about chest pain even though he complained about pain in other body parts. (Fed. Tr. 2140.)
- 108.5. Dr. Bebart testified that, in his opinion and to a reasonable degree of medical certainty, Floyd did not die from excited delirium. (Fed. Tr. 2157, 2241.)
- 108.5.1. Dr. Bebart explained that excited delirium is not a medical diagnosis, but rather is a catchall of a set of symptoms that occur

as a result of “severe agitation from drugs or stimulants.” (Fed. Tr. 2151; *see* Fed. Tr. 2200-01, 2216-17.)

- 108.5.2. Although methamphetamine is a stimulant, a person would need a much higher concentration than 19 ng/mL to experience excited delirium. (Fed. Tr. 2157.)
- 108.5.3. Based on his review of the videos, Dr. Bebartá testified that Floyd did not manifest any of the clinical symptoms of excited delirium: Floyd did not exhibit an extremely high pain tolerance. (Fed. Tr. 2160-61.) His breathing was not rapid. (Fed. Tr. 2161.) He was not sweating excessively. (Fed. Tr. 2161-62.) He was anxious, but not agitated. (Fed. Tr. 2162-64.) No one commented that his skin was unusually warm. (Fed. Tr. 2164-65.) He did not exhibit standard signs of noncompliance. (Fed. Tr. 2165-67.) He tired quickly after being restrained on the ground. (Fed. Tr. 2167.) He did not exhibit super-human strength. (Fed. Tr. 2167-68.) He was not inappropriately clothed. (Fed. Tr. 2168.) And he did not demonstrate an attraction to mirrors or glass. (Fed. Tr. 2168-69.)
- 108.5.4. Dr. Bebartá testified that, to help decide whether a patient has excited delirium, doctors look for at least seven of the ten symptoms. (Fed. Tr. 2169.)
- 108.5.5. Individuals experiencing excited delirium also typically suffer a sudden death, but Floyd did not suffer a sudden death; rather, Floyd slowly stopped speaking, moving, and breathing over several minutes. (Fed. Tr. 2169-70.)
- 108.5.6. Dr. Bebartá also testified that someone suffering from excited delirium who goes into cardiac arrest can and should be resuscitated using normal procedures. (Fed. Tr. 2170-71, 2273.) If someone is suffering from excited delirium and has a breathing impediment, you should turn him on his side and remove other impediments to breathing. (Fed. Tr. 2172.)
- 108.6. The Court finds Dr. Bebartá’s testimony credible. Dr. Bebartá is an experienced practicing physician; his testimony was well-supported, internally consistent, and persuasive; and he had no reason to lie.

109. Dr. Andrew Baker

- 109.1. Dr. Andrew Baker (“Dr. Baker”) is the Chief Medical Examiner for Hennepin County and has served as either the Chief or Assistant Chief for nearly 20 years.



(Chauvin Tr. 4848-49; Fed. Tr. 1382-83.) He is board certified in anatomic and clinical pathology, with a subspecialty in forensic pathology. (Chauvin Tr. 4849; Fed. Tr. 1384.) He is also the former president of the National Association of Medical Examiners. (Chauvin Tr. 4850; Fed. Tr. 1476.)

- 109.2. Dr. Baker explained that the objective of a death investigation is to certify the “individual’s cause and manner of death.” (Fed. Tr. 1387; Chauvin Tr. 4883.) The cause of death refers to “whatever disease or injury caused the person to die.” (Fed. Tr. 1388.) The cause of death can be divided into the “top line” precipitating cause and “other significant conditions” that contributed to the death but were not the direct cause. (Chauvin Tr. 4890-91; Fed. Tr. 1391.) The manner of death refers to “the medical examiner’s opinion as to the circumstances under which the death occurred.” (Fed. Tr. 1435.) The medical examiner must select from one of five options: homicide, suicide, accident, natural, or undetermined. (Fed. Tr. 1435-36; Chauvin Tr. 4885.)
- 109.3. Dr. Baker conducted Floyd’s autopsy and reviewed the videos of the incident as part of the death investigation. (Chauvin Tr. 4850-51, 4855, 4857; Fed. Tr. 1389, 1396.)
- 109.3.1. Dr. Baker explained that he noted several injuries to Floyd’s face, shoulder, and hands during the autopsy, which were consistent with “being pinned against the asphalt” in the prone position. (Chauvin Tr. 4859-64; Fed. Tr. 1409-1415.)
- 109.3.2. Dr. Baker testified that Floyd’s heart was slightly enlarged but otherwise appeared “perfectly normal.” (Chauvin Tr. 4864; *see* Chauvin Tr. 4902-03.) “Floyd had no visible or microscopic previous damage to his heart muscle” that would indicate he had suffered a heart attack. (Chauvin Tr. 4867, 4873; Fed. Tr. 1418.) Dr. Baker noted that Floyd had a history of high blood pressure. (Chauvin Tr. 4904.) Dr. Baker testified that Floyd’s coronary arteries had narrowing of 75-90 percent in various places. (Chauvin Tr. 4905; Fed. Tr. 1416, 1419.) Dr. Baker did not see any indications, however, that the plaque in Floyd’s arteries had changed suddenly and fractured, as happens with a sudden cardiac event. (Chauvin Tr. 4870-71.) Dr. Baker instead described Floyd’s plaques as “stable plaques.” (Chauvin Tr. 4870-71; *see* Fed. Tr. 1421-22.)
- 109.3.3. Dr. Baker noted that Floyd’s lungs contained quite a bit of fluid, known as pulmonary edema, a fact consistent with efforts to resuscitate Floyd by medical personnel. (Chauvin Tr. 4873-74;

Fed. Tr. 1423-24.) Dr. Baker noted that an opioid overdose can also result in pulmonary edema. (Fed. Tr. 1423-24.)

109.3.4. Dr. Baker also identified several other things that, in his view, did not cause Floyd's death.

109.3.4.1. Dr. Baker explained that, although Floyd had recently tested positive for COVID-19, COVID-19 did not "factor into" Dr. Baker's "cause of death determination." (Chauvin Tr. 4879; Fed. Tr. 1424-25.)

109.3.4.2. Dr. Baker testified that, although Floyd had the sickle-cell trait, that trait did not have "anything to do with why he died." (Chauvin Tr. 4880-81; Fed. Tr. 1427-29.)

109.3.4.3. Dr. Baker testified that Floyd's paraganglioma did not have "anything do to with his death." (Chauvin Tr. 4881; Fed. Tr. 1429.)

109.3.4.4. Dr. Baker testified that because Floyd's carbon monoxide level was a "normal" level consistent with "walking on the street living in a city," in Dr. Baker's opinion, carbon monoxide "played no role in [Floyd's] death." (Fed. Tr. 1426-27.)

109.3.4.5. Dr. Baker testified that although he has listed excited delirium on a death certificate in the past, he did not list it on Floyd's death certificate. (Fed. Tr. 1552.) Dr. Baker deferred to an emergency room physician regarding questions about excited delirium. (Fed. Tr. 1534.)

109.4. Dr. Baker certified Floyd's manner of death as a homicide, meaning "other people were involved [his] death." (Chauvin Tr. 4885; Fed. Tr. 1441.) Dr. Baker listed the immediate or "top line" cause of death as cardiopulmonary arrest, complicating law enforcement subdual restraint and neck compression. (Chauvin Tr. 4888; Fed. Tr. 1390-91.) Dr. Baker explained that, in laymen's terms, Floyd's heart and lungs stopped, which the law enforcement subdual restraint and neck compression "played a key role in precipitating." (Fed. Tr. 1390-91; Chauvin Tr. 4888-90.) Dr. Baker also identified several conditions that, in his opinion, contributed to Floyd's death but were not "the primary cause." (Fed. Tr. 1391.)

- 109.4.1. Dr. Baker testified that, based on his review of the evidence, Chauvin's knee was compressing Floyd's neck during the restraint, although it did not appear to Dr. Baker that Chauvin's knee was occluding Floyd's carotid artery. (Chauvin Tr. 4918.)
- 109.4.2. Dr. Baker explained that, in his view, because Floyd suffered from hypertension and had narrowed arteries, his heart already needed "more oxygen than a normal heart." (Chauvin Tr. 4889.) In addition, the stress of the event and resulting adrenaline increased the body's oxygen demands. (Chauvin Tr. 4889-90.) In his opinion, "the law enforcement subdual restraint and the neck compression was just more than Mr. Floyd could take by virtue of those heart conditions." (Chauvin Tr. 4889-90; *see* Fed. Tr. 1497, 1528.) Nevertheless, Dr. Baker did not consider "Mr. Floyd's narrowed coronary arteries and high blood pressure" to be "the immediate cause of his death." (Fed. Tr. 1422.)
- 109.4.3. Dr. Baker testified that he listed the neck restraint as part of the top-line cause of death because it "was unique. I have seen a lot of deaths in which people have been restrained in different ways. I had never seen this done before, and so that's why I chose to list it along with the subdual and restraint." (Fed. Tr. 1401.)
- 109.4.4. Dr. Baker also testified that, in his opinion, "the placement of Chauvin's knee would [not] . . . anatomically cut off Mr. Floyd's airway." (Chauvin Tr. 4935-36; Fed. Tr. 1509-10.) But Dr. Baker acknowledged that he is not a pulmonologist, cardiologist, or toxicologist, and would defer to individuals in those specialties to answer specific questions about that subject matter, including questions about how hypoxia affects breathing. (Chauvin Tr. 4890, 4907-10, 4926; Fed. Tr. 1406-07.)
- 109.4.5. Dr. Baker explained that he did not list fentanyl or methamphetamine as part of "the top line cause of death" because, although he believed these contributed to Floyd's death, they were not "the direct cause." (Chauvin Tr. 4890-911; Fed. Tr. 1434-35.)
- 109.4.5.1. Dr. Baker testified that Floyd had a "pretty low amount" of methamphetamine in his blood. (Fed. Tr. 1433.) Dr. Baker testified that he was not an expert on the subject, but at a high-level, methamphetamine can make your heart work harder and therefore increase its oxygen demands. (Chauvin Tr. 4909-10.)

- 109.4.5.2. Dr. Baker testified that he is aware that fentanyl is a respiratory depressant, but whether that would increase carbon dioxide as a result was “outside the scope of [his] expertise.” (Chauvin Tr. 4926.) Dr. Baker also testified that, “Had Mr. Floyd been home alone in his locked residence with no evidence of trauma, and the only autopsy finding was that fentanyl level” then Dr. Baker “would certify his death as due to fentanyl toxicity.” (Chauvin Tr. 4932; Fed. Tr. 1432-33.) But Dr. Baker explained that a death investigation—including the review of the videos—is important to determining the cause of death, “because the answers are not always obvious at the autopsy table alone.” (Fed. Tr. 1398; *see* Fed. Tr. 1433.)
- 109.4.6. Dr. Baker testified that, “based on [his] understanding of the medical literature,” the prone position is not inherently dangerous. (Chauvin Tr. 4914; Fed. Tr. 1504.) He also testified that he did not find any bleeding in the subcutaneous tissues of Floyd’s neck and back. (Chauvin Tr. 4914.)
- 109.4.7. Dr. Baker testified that although he did not see any evidence of “hypoxic changes to Mr. Floyd’s brain,” this finding was unsurprising. (Chauvin Tr. 4922.) Someone typically needs to “survive the anoxic brain injury for a considerable period of time before” an autopsy would reveal evidence that the brain had suffered from a lack of oxygen. (Chauvin Tr. 4916.) Instead, Dr. Baker typically looks to other evidence to determine if a person asphyxiated. (Chauvin Tr. 4917.)
- 109.4.8. Dr. Baker testified that Floyd had a bruise on the inside part of his left elbow, consistent with the location of Chauvin’s right knee throughout the restraint. (Fed. Tr. 1415-16.) Dr. Baker did not see evidence of bruising on Floyd’s neck or back, or any petechiae. (Chauvin Tr. 4919-20; Fed. Tr. 1507-08, 1511-12.) Dr. Baker explained, however, that although he sees bruises in his “line of work . . . more often than not,” the lack of bruising did not rule out a finding of asphyxia. (Chauvin Tr. 4920-21.) Dr. Baker also acknowledged that it’s possible for a person to die from mechanical asphyxia—meaning “there was so much weight on a person’s chest or back that they literally cannot move the bellows of their lungs and so they can’t get air in and out”—and for “there to be no evidence at autopsy.” (Fed. Tr. 1404, 1406.) Dr. Baker again acknowledged that he would defer to a pulmonologist,

however, on the specifics of how mechanical asphyxia might work in certain scenarios. (Fed. Tr. 1406-07.)

- 109.5. The Court finds Dr. Baker’s testimony credible. Dr. Baker is an experienced medical examiner; his testimony was well-supported, internally consistent, and persuasive; and he had no reason to lie.
110. Dr. Lindsey Thomas
- 110.1. Dr. Lindsey Thomas (“Dr. Thomas”) has served as a forensic pathologist for over 35 years. (Chauvin Tr. 4740-41.) She is board certified in anatomic pathology, clinical pathology, and forensic pathology. (Chauvin Tr. 4742.) She previously worked at the Hennepin County Medical Examiner’s Office. (Chauvin Tr. 4741.)
- 110.2. Based on her review of the evidence, Dr. Thomas concluded to a reasonable degree of medical certainty that asphyxia was the primary mechanism of Floyd’s death, meaning “Mr. Floyd was in a position because of the subdual restraint and compression where he was unable to get enough oxygen in to maintain his body functions.” (Chauvin Tr. 4753.)
- 110.2.1. Dr. Thomas testified that she probably would not have used the word “asphyxia” on Floyd’s death certificate because, standing alone, “asphyxia” does not explain *why* there was low oxygen. (Chauvin Tr. 4769) Dr. Thomas agreed with Dr. Baker’s description of the immediate cause of Floyd’s death as “cardiopulmonary arrest complicating law enforcement subdual restraint and neck compression.” (Chauvin Tr. 4753.) She explained that this means Floyd died because his heart and lungs stopped “due to” the officers’ restraint of Floyd on the ground in the prone position, while handcuffed, including Chauvin’s compression of Floyd’s neck with Chauvin’s knee. (Chauvin Tr. 4750-51, 4801.)
- 110.2.2. Dr. Thomas testified that the prone position is not inherently dangerous standing alone, “as long as someone can breathe.” (Chauvin Tr. 4820-21.) But because Floyd was restrained prone with several individuals on top of him, Floyd was not able to adequately expand his chest to breathe in oxygen. (Chauvin Tr. 4760-61.)
- 110.2.3. Dr. Thomas testified that Floyd exhibited symptoms consistent with an anoxic seizure, an involuntary reaction that occurs “when the brain no longer has enough oxygen.” (Chauvin Tr. 4761-62.)

- 110.2.4. Dr. Thomas explained that superficial injuries to Floyd’s face, shoulders, and wrists were consistent with injuries from “pushing to try and get to a position where he could breathe” while being restrained against the ground, in handcuffs. (Chauvin Tr. 4772-73, 4775-78.)
- 110.2.5. Dr. Thomas testified that, although the presence of petechiae or bruising at autopsy can indicate someone died of low oxygen, the *lack* of petechiae or bruising does not mean that person did *not* die of low oxygen. (Chauvin Tr. 4771-72, 4822.)
- 110.2.6. Dr. Thomas testified that although a forensic examiner can sometimes see “hypoxic changes” in the brain that result from lack of oxygen over a longer period of time, the lack of such evidence in Floyd’s autopsy was not surprising because Floyd “died too quickly for [hypoxic changes] to show up.” (Chauvin Tr. 4825, 4845.)
- 110.3. Dr. Thomas testified that prolonged “physiologic stress” was a secondary contributor. (Chauvin Tr. 4779, 4782.)
- 110.3.1. When a body experiences sudden, overwhelming stress, the heart races, blood pressure increases, and the body requires more oxygen. (Chauvin Tr. 4781.) Dr. Thomas explained that Floyd’s physiologic stress exacerbated the issues caused by the subdual and restraint, which had already made it more difficult for Floyd to receive sufficient oxygen. (Chauvin Tr. 4783-84.)
- 110.3.2. Dr. Thomas explained that this kind of physiologic stress is not something you can observe or test for on autopsy. (Chauvin Tr. 4782-83.)
- 110.4. Dr. Thomas testified to a reasonable degree of medical certainty that Floyd would not have died on May 25, 2020 “except for the interactions with law enforcement.” (Chauvin Tr. 4778-79.)
- 110.4.1. Based on her review of the autopsy, Dr. Thomas testified that Floyd did not die from COVID, underlying lung disease, a broken neck, a stroke, or an aneurysm. (Chauvin Tr. 4756.)
- 110.4.2. Dr. Thomas explained that Floyd did not die from a heart attack. (Chauvin Tr. 4758, 4765-66, 4842.)

- 110.4.2.1. Dr. Thomas testified that Floyd's heart was "slightly enlarged," and that he had a history of high blood pressure. (Chauvin Tr. 4803, 4805.) Floyd's right coronary artery was 90 percent occluded and his left anterior descending artery was 75 percent occluded. (Chauvin Tr. 4809, 4811.) Dr. Thomas also acknowledged that exertion increases the demands on the heart. (Chauvin Tr. 4809-10.)
- 110.4.2.2. Dr. Thomas further testified that Floyd's death was not sudden, as one would expect from a heart attack. (Chauvin Tr. 4750, 4758, 4841-42.) Nor was there any evidence of a heart attack at autopsy. (Chauvin Tr. 4756-57, 4842-43.)
- 110.4.3. Dr. Thomas explained that she ruled out a drug overdose as the direct cause of death to a reasonable degree of medical certainty. (Chauvin Tr. 4767.)
- 110.4.3.1. Dr. Thomas testified that Floyd's death did not resemble the signs of a fentanyl overdose, because he did not become sleepy and "gradually, calmly, peacefully stop[] breathing." (Chauvin Tr. 4758-59, 4766, 4839-41.)
- 110.4.3.2. Dr. Thomas acknowledged that methamphetamine can cause the heart to work harder and require more oxygen. (Chauvin Tr. 4829-30, 4833.) But the level of methamphetamine in Floyd's blood was "a very low level." (Chauvin Tr. 4767.) Dr. Thomas further testified that Floyd's death was not consistent with a methamphetamine overdose because it was not sudden or accompanied by a "full-blown seizure." (Chauvin Tr. 4766-67.)
- 110.5. Dr. Thomas explained that she agreed with the decision to certify Floyd's death as a homicide. (Chauvin Tr. 4793-94.)
- 110.6. Dr. Thomas testified that certain studies, known as the "Chan studies," that purported to conclude that restraining someone in the "prone position even with some restraint and with weight on their back is perfectly safe" are "irrelevant" to the circumstances here. (Chauvin Tr. 4794-95, 4816-17.)

- 110.6.1. Dr. Thomas explained that these studies “are fine for laboratory purposes, but they bear no resemblance to real world situations,” including Floyd’s death. (Chauvin Tr. 4795, 4797.)
- 110.6.2. Dr. Thomas explained that these studies involve healthy volunteers who know their lives are not really in danger; the restraint occurs on mats instead of the hard pavement; the weight is “evenly distributed” across their back; none of these studies continued past the point where the subject’s breathing and heart stopped; none involved a knee on the neck; and none lasted more than nine minutes. (Chauvin Tr. 4795-97.)
- 110.7. Dr. Thomas acknowledged that another study, known as the “Hall study,” concluded that out of 3,000 or so police interactions where someone was in the prone position, no deaths occurred. (Chauvin Tr. 4818-19.) She explained that study was specific to Canada, however, and was “contrary to the actual experience of [a] forensic pathologist in the United States.” (Chauvin Tr. 4843.)
- 110.8. The Court finds Dr. Thomas’s testimony credible. Dr. Thomas is an experienced medical examiner; her testimony was well-supported, internally consistent, and persuasive; and she had no reason to lie.

**(5) Other witnesses**

111. Courtney Ross

- 111.1. Courtney Ross (“Ross”) was Floyd’s girlfriend. The two met in 2017 while Floyd was working as a security guard at the Salvation Army. (Chauvin Tr. 3319-21.)
- 111.2. Ross explained that both she and Floyd “suffered with an opioid addiction” that stemmed from the use of prescription drugs to deal with chronic pain. (Chauvin Tr. 3327, 3335.) Ross and Floyd used various opioids during their three-year relationship, including their own prescription drugs, other people’s prescriptions, and other types of pills. (Chauvin Tr. 3328-30, 3340.)
- 111.3. Ross testified that Floyd had overdosed in March 2020. (Chauvin Tr. 3343.) That same month, Ross and Floyd used some pills that looked and felt different from typical opioids, which made Ross feel “jittery,” like a “really strong stimulant.” (Chauvin Tr. 3344-45.)
- 111.4. Floyd was “clean” for the majority of the time between March 2020 and May 2020. (Chauvin Tr. 3356-57.) Ross testified that she believed Floyd began using



again about two weeks prior to his death. (Chauvin Tr. 3357.) About a week before Floyd died, Ross and Floyd obtained some pills that gave Ross a similar experience as the pills from March 2020. (Chauvin Tr. 3354, 3361.)

- 111.5. The Court finds Ross’s testimony credible. Ross had a personal relationship with Floyd, and testified credibly as to her personal experience and history with opioid addiction.

## **B. Credibility of Relevant Defense Witnesses.**

### 112. Scott Creighton

- 112.1. Officer Scott Creighton (“Officer Creighton”) worked as an MPD officer for 28 years and has since retired. (Chauvin Tr. 5214.) He executed a traffic stop involving Floyd on May 6, 2019. (Chauvin Tr. 5215, 5218.) Officer Creighton testified that he approached the passenger side, gave several commands, and drew his gun. (Chauvin Tr. 5216.) Officer Creighton acknowledged that Floyd followed some commands, like undoing his seatbelt and placing his hands in the air, but Officer Creighton characterized Floyd as unresponsive and noncompliant and refusing to show his hands. (Chauvin Tr. 5215, 5218-19.) “I reached in finally and grabbed his hand to put it up on the dash,” removed him from the vehicle, and placed Floyd in handcuffs. (Chauvin Tr. 5215-16.) Officer Creighton characterized Floyd’s behavior as “very nervous, anxious.” (Chauvin Tr. 5216.) Officer Creighton testified that Floyd was conscious, awake, was able to walk and talk, and did not appear to be in medical distress, though Officer Creighton also characterized Floyd as “incoherent.” (Chauvin Tr. 5220-21.) After he was removed from the car, Floyd stood next to the car while being handcuffed; he did not fall down. (Chauvin Tr. 5221.)
- 112.2. The Court finds Officer Creighton’s testimony credible. Officer Creighton’s testimony is consistent with video footage of the May 2019 incident, and Creighton had no reason to lie.

### 113. Michelle Moseng

- 113.1. Michelle Moseng (“Moseng”) worked as a paramedic at HCMC for just under 34 years and has since retired. (Chauvin Tr. 5225-36.) She testified that she responded to a call on May 6, 2019 involving Floyd. (Chauvin Tr. 5227.) Moseng explained that Floyd told her that he swallowed approximately seven Percocet throughout the day. (Chauvin Tr. 5232.) When Moseng asked why, Floyd told her that he was addicted. (Chauvin Tr. 5232-33.)
- 113.2. Moseng also assessed Floyd’s vitals, and determined that his blood pressure was 216 over 160. (Chauvin Tr. 5230.) Floyd admitted he had a history of

hypertension and had not been taking his blood pressure medication for months. (Chauvin Tr. 5232.) Based on that and other issues, she recommended that Floyd be transported to the hospital. (Chauvin Tr. 5231.) Moseng testified that Floyd was able to walk and stand; was alert and obeyed commands; had an appropriate reaction to stimulation and was not vomiting; had a normal respiratory and blood oxygen rate, and never stopped breathing; and had a normal EKG, regular heart rhythm, and pulse, and never went into cardiac arrest. (Chauvin Tr. 5233-37.)

113.3. The Court finds Moseng’s testimony credible. Moseng’s testimony is consistent with video footage of the May 2019 incident, and Moseng had no reason to lie.

114. Shawanda Hill

114.1. Shawanda Hill (“Hill”) ran into Floyd at Cup Foods on May 25, 2020. (Chauvin Tr. 5241-42.) Floyd offered Hill a ride, and Hill got into the car. (Chauvin Tr. 5242.) Hill testified that, inside Cup Foods, Floyd was “[h]appy, normal, talking alert,” and walked across the street normally, but once they got into the car, Floyd talked for “a while, then he fell asleep.” (Chauvin Tr. 5242-43, 5346, 5250.) She and others woke him up several times, but Floyd nodded off. (Chauvin Tr. 5243-45, 5246-47.) Hill testified that Floyd ultimately woke up when the police approached the car. (Chauvin Tr. 5245.)

114.2. Hill testified that, after leaving Cup Foods, Floyd did not complain of shortness of breath or chest pain; “other than being sleepy or nodding off a little bit,” he did not seem abnormal to Hill. (Chauvin Tr. 5249.)

114.3. The Court finds Hill’s testimony credible. Hill had a personal relationship with Floyd and her testimony is consistent with the available video evidence.

115. Officer Peter Chang

115.1. Officer Peter Chang (“Officer Chang”) is the Minneapolis Park Police officer who responded to the incident on May 25, 2020. (Chauvin Tr. 5251-52.) Officer Chang was stationed near the blue Mercedes that Floyd was driving for the majority of the incident. (Chauvin Tr. 5256.)

115.2. Because of where he was located on scene, Officer Chang could not “see what was going on with Mr. Floyd” after Kueng and Lane walked Floyd over to their squad car. (Chauvin Tr. 5272-73.) Based on his vantage point, however, Officer Chang described the crowd as “loud and aggressive,” and expressed that this caused him “[c]oncern for the officer safety.” (Chauvin Tr. 5258-60, 5264.) Despite this, Officer Chang remained in place during the restraint because the

officers never “radioed for help,” so he “assumed” that “because there were four of them,” the officers “were okay.” (Chauvin Tr. 5273-74.)

- 115.3. The Court does not find Officer Chang’s testimony to be compelling or persuasive. Officer Chang admitted that he had a limited vantage point of the scene. In addition, Officer Chang’s testimony that he was concerned about officer safety is inconsistent with his testimony that the other officers themselves would have radioed for assistance had they believed the crowd posed a safety threat.
116. Barry Brodd
- 116.1. Barry Brodd (“Brodd”) was a police officer for 29 years and currently owns a company that consults on police practices and the use of force. (Chauvin Tr. 5286-88.) He taught defensive tactics for 35 years, along with crowd control and other topics. (Chauvin Tr. 5288-90.)
- 116.2. Based on his review of the evidence and professional expertise, Brodd testified that he “felt that Derek Chauvin was justified, was acting with objective reasonableness following Minneapolis Police Department policy and current standards of law enforcement and his interactions Floyd.” (Chauvin Tr. 5296.)
- 116.2.1. Brodd testified that he uses a specific methodology to evaluate the *Graham v. Connor* factors. First, he determines whether the officer had “legal authority for a detention.” (Chauvin Tr. 5300.) Second, he considers how the suspect responded to the officer. (Chauvin Tr. 5302.) If the suspect did not comply, Brodd considers the “level of resistance” “the suspect display[ed] to the officer.” (Chauvin Tr. 5302.) Third, he considers “[w]hat the officer did to overcome that resistance” and whether the use of force was proportional to the subject’s resistance under an objective reasonableness standard. (Chauvin Tr. 5304.)
- 116.2.2. Brodd also identified several other factors that influence his analysis. He testified that police officers are “allowed to overcome your resistance by going up a level, or resorting to a different force option to let them accomplish the goal of getting you to comply.” (Chauvin Tr. 5306.) Brodd opined that possible drug influence “has quite a large impact” on the analysis and that Brodd trains officers to keep individuals under the influence of drugs in handcuffs. (Chauvin Tr. 5307.) Brodd felt that it was safer for the officers to keep individuals who are possibly under the influence of drugs in “prone control.” (Chauvin Tr. 5317.) He testified that it would be safer for a subject to be restrained prone, rather than

- on their back, because it minimizes the risk of aspiration if a subject becomes sick. (Chauvin Tr. 5317-18.)
- 116.2.3. According to Brodd, officers must consider “environmental hazards,” such as traffic and onlookers. (Chauvin Tr. 5309.) And officers should take into account comments that their fellow officers make about the subject and what the subject is saying. (Chauvin Tr. 5350, 5366.)
- 116.2.4. Brodd acknowledged that officers are authorized to use force in response to a threat, but not a mere risk. (Chauvin Tr. 5339.) He testified that the possibility of drug use is a risk factor. (Chauvin Tr. 5340.) He acknowledged that drug use itself does not necessarily pose a threat to officers; for example a subject may pass out as a result of drug use. (Chauvin Tr. 5340-41.)
- 116.3. Applying that analysis here, Brodd concluded that Chauvin did not use deadly force against Floyd. (Chauvin Tr. 5304-05.)
- 116.3.1. Brodd agreed that Floyd’s crime was not particularly serious. (Chauvin Tr. 5336-37.)
- 116.3.2. Brodd testified that he believed Chauvin’s use of force in trying to place Floyd into the squad car was reasonable. (Chauvin Tr. 5310, 5312-13.) Brodd also testified that he considered the officers’ actions in placing Floyd on the ground a reasonable use of force. (Chauvin Tr. 5313.) Brodd noted that, in his view, Floyd was initially actively resisting once he was on the ground. (Chauvin Tr. 5313-14.) “Any resister, handcuffed or not, should go to the ground into a prone control position.” (Chauvin Tr. 5315.) In determining whether to use the hobble or MRT at that point, officers can consider whether the person’s legs needed to be controlled, and whether the person can be successfully controlled without a hobble or MRT. (Chauvin Tr. 5315.) Brodd viewed the officers’ decision to call for EMS as “relevant” because a reasonable officer would consider EMS’s response time. (Chauvin Tr. 5316-17.)
- 116.3.3. Brodd does not “consider a prone control as a use of force.” (Chauvin Tr. 5313.) Brodd defined the prone control position as one in which “all you’re doing is putting some minimal body weight to keep their body immobilized,” and stated that a subject in that position would be able to lift and move his head. (Chauvin Tr. 5394-95.)

- 116.3.3.1. Brodd testified that, in his opinion, “if the officer was justified in using the prone control, and now the suspect is on the ground in a prone control,” he views the prone position as a “control technique,” not a “use of force.” (Chauvin Tr. 5319-20.) In Brodd’s opinion, the prone position “doesn’t hurt. You’ve put the suspect in a position where it’s safe for you, the officer, safe for them, the suspect, and you’re using minimal effort to keep them on the ground.” (Chauvin Tr. 5319-20.)
- 116.3.3.2. Brodd acknowledged, however, that if the prone position inflicted pain, the prone position would qualify as a use of force. (Chauvin Tr. 5325.) Brodd conceded that Chauvin’s use of the prone restraint in this case could have produced pain, such that it could qualify as a use of force. (Chauvin Tr. 5329-30.) He also conceded that Chauvin’s conduct constitutes a use of force under MPD policy. (Chauvin Tr. 5335.) Brodd also admitted that “if someone is not resisting and they’re compliant,” the use of a control tactic “that could produce pain is . . . not justified.” (Chauvin Tr. 5349-50.)
- 116.3.4. Brodd testified that, despite MPD training, reasonable police officers might sometimes choose to not move someone from the prone position into the recovery position. (Chauvin Tr. 5321.) He explained: “Mr. Floyd was butted up against the tire of the patrol car, there was traffic still driving down the street. There were crowd issues that took the attention of the officers. Mr. Floyd was still somewhat resisting. So I think those were relatively valid reasons to keep him in the prone [position].” (Chauvin Tr. 5321.) Brodd further testified that he was trained that “a target person for positional asphyxia would be somebody who’s very obese.” (Chauvin Tr. 5320.) But Brodd conceded that the dangers of position asphyxia from the prone restraint are a “known risk,” that the use of a restraint or handcuffs exacerbate the risk of positional asphyxia, and that the side recovery position could alleviate that risk. (Chauvin Tr. 5331-34.) He also testified that drug use and physical exertion can increase the risk of positional asphyxia, which a reasonable police officer would have taken into account. (Chauvin Tr. 5368-69.)

- 116.3.5. Brodd testified that, although he does not have a medical degree and is only trained in first aid, he felt it was reasonable to assume that someone who is talking is able to breathe. (Chauvin Tr. 5318-19.) He also stated that a reasonable officer would consider the context of Floyd's statements that Floyd could not breathe, including that Floyd continued to "actively resist, albeit at a lower level" after saying he could not breathe. (Chauvin Tr. 5400-01.) But Brodd also acknowledged that whether someone is in distress, cannot breathe, has lost consciousness, or does not have a pulse are factors a reasonable officer must consider in deciding whether to maintain, escalate, or de-escalate their use of force. (Chauvin Tr. 5345.) Brodd also confirmed that, if there is ever a point at which the use of force becomes unreasonable, the officer must cease using force or de-escalate. (Chauvin Tr. 5345-46.)
- 116.3.6. Brodd testified that the crowd factored into his analysis because "officers are always trained to deal with what threat is the biggest threat." (Chauvin Tr. 5322.) He noted that, in his view, Chauvin's focus at one point "started to move from Mr. Floyd to the crowd," and cited Chauvin's decision to threaten the crowd with mace. (Chauvin Tr. 5322-23.) But Brodd also testified that the decision to use force against one person does not depend on the actions of a third party over whom the subject has no control. (Chauvin Tr. 5342-43.) And he acknowledged that a reasonable officer should not have been distracted by the bystanders when Floyd was complaining that he could not breathe and was in pain during several periods of the restraint. (Chauvin Tr. 5371, 5374-76; *see* Chauvin Tr. 5387 (acknowledging crowd was not threatening at certain point).)
- 116.3.7. Brodd acknowledged that the use of force must be reasonable throughout the entire restraint. (Chauvin Tr. 5350.) He testified that Floyd was "actively resisting" for "a couple of minutes" after he was placed in the prone position. (Chauvin Tr. 5352, 5397-99.) But Brodd acknowledged that Chauvin rejected Lane's suggestion to roll Floyd on his side and instead maintained his same level of force despite the fact that Floyd was "not exhibiting noncompliance." (Chauvin Tr. 5382-83.)
- 116.3.8. Brodd suggested that Floyd was somewhat noncompliant at one point because he was not "resting comfortably on the pavement" and was instead "still moving around." (Chauvin Tr. 5383.) When pressed, however, he admitted that "attempting to breathe while

restrained is” not “being slightly noncompliant.” (Chauvin Tr. 5384.) Brodd also admitted that Floyd did not appear to be resisting for the latter portion of the restraint, and that it would not be possible to resist while he was passed out. (Chauvin Tr. 5388-90.) But despite this, Chauvin maintained his same general position. (Chauvin Tr. 5389-90.) Brodd also admitted that a reasonable person in Chauvin’s position would have heard Kueng say that he could not find a pulse, and yet Chauvin’s position remained the same. (Chauvin Tr. 5392.)

116.4. The Court finds Brodd’s testimony to be neither credible nor persuasive. Brodd’s testimony is internally inconsistent and does not comport with the facts. For instance, although Brodd initially suggested that the prone restraint cannot constitute a use of force, Brodd later conceded that Chauvin used force. Brodd consistently downplayed the risks of positional asphyxia, contradicting the overwhelming weight of evidence demonstrating that positional asphyxia is a known risk. Brodd’s portrayal of the crowd as threatening is belied by contrary testimony and video evidence. Furthermore, Brodd’s testimony that Floyd should have been “resting comfortably on the pavement” does not reflect a reasoned assessment of the evidence.

117. Dr. David Fowler

117.1. Dr. David Fowler (“Dr. Fowler”) was a forensic pathologist for more than 30 years, but has since retired. (Chauvin Tr. 5446.) He was the Chief Medical Examiner for the State of Maryland for 17 years, and was board certified in anatomic and forensic pathology. (Chauvin Tr. 5448, 5453.) Dr. Fowler is a forensic pathology consultant for the Forensic Panel. (Chauvin Tr. 5458.) He is also a member of the National Association of Medical Examiners. (Chauvin Tr. 5463.) Dr. Fowler acknowledged, however, that he is not a toxicologist, pulmonologist, or cardiologist. (Chauvin Tr. 5579.)

117.2. Dr. Fowler testified that, in his opinion, Floyd’s death was caused by “[c]ardiac arrhythmia due to hypertensive atherosclerotic disease during restraint.” (Chauvin Tr. 5505.)

117.2.1. Dr. Fowler testified that Floyd’s heart was enlarged; it weighed 540 grams, and the top-end of the normal range is 510 grams. (Chauvin Tr. 5481-82.) There was evidence Floyd suffered from hypertension, the most common cause of an enlarged heart. (Chauvin Tr. 5486.) Because Floyd’s heart was enlarged, it needed more oxygen and nutrients to function. (Chauvin Tr. 5482-83.) Dr. Fowler testified that a person with insufficient blood flow to

the heart might experience symptoms like a racing heart or palpitations, shortness of breath, chest pain, or collapse. (Chauvin Tr. 5484.) Dr. Fowler also testified that Floyd had “significant narrowing of all of his coronary arteries close to their origin which really is consistent with all of his heart unfortunately being subject to reduced supply.” (Chauvin Tr. 5489.) The right coronary artery showed the greatest degree of narrowing, however, which Dr. Fowler testified increased the risk of sudden death. (Chauvin Tr. 5495.)

117.3. Dr. Fowler testified that, in his opinion, various other factors contributed to Floyd’s death. (Chauvin Tr. 5475.)

117.3.1. Dr. Fowler testified that carbon monoxide could have contributed to Floyd’s death. (See Chauvin Tr. 5505-06, 5521.) Dr. Fowler testified that Floyd was facing the squad car during the restraint, “directly towards the area where you would expect the tailpipes” to be. (Chauvin Tr. 5506.) There was evidence the vehicle was running during the restraint. (Chauvin Tr. 5507.) Dr. Fowler testified that people can die from various levels of carbon monoxide poisoning. (Chauvin Tr. 5509.) Individuals with risk factors like cardiovascular disease are at a higher risk of carbon monoxide poisoning because, as the level of carbon monoxide in the blood increases, the blood’s oxygen-carrying capacity decreases. (Chauvin Tr. 5519.) Dr. Fowler conceded, however, that he had not seen any laboratory results concerning Floyd’s carbon monoxide levels or any air monitoring data concerning the amount of carbon monoxide that would be in Floyd’s breathing area. (Chauvin Tr. 5565-66.) Nor was he sure whether the squad car was even running during the restraint. (Chauvin Tr. 5568.)

117.3.2. Dr. Fowler testified that methamphetamine has the potential to increase the risk of an arrhythmia, increase heart rate, and also cause arteries to narrow. (Chauvin Tr. 5497.) Still, Dr. Fowler acknowledged that there was only a very low level of methamphetamine in Floyd’s blood. (Chauvin Tr. 5617.)

117.3.3. Dr. Fowler testified that fentanyl slows down breathing, which decreases blood oxygen saturation and also makes it more difficult to fully eliminate carbon dioxide from the blood. (Chauvin Tr. 5548, 5550.) Dr. Fowler acknowledged, however, that a person who dies from a fentanyl overdose tends to be very sleepy and unarousable and essentially falls into a coma before dying, and



Floyd did not manifest any of those “outward symptoms.” (Chauvin Tr. 5614.)

- 117.3.4. Dr. Fowler testified that Floyd had a paraganglioma, a tumor in his lower abdominal area. (Chauvin Tr. 5557.) Dr. Fowler testified that this kind of tumor can suddenly secrete a surge of adrenaline, which can “cause an individual potentially to be hypertensive.” (Chauvin Tr. 5558.) But he admitted that he was not suggesting that Floyd died from a paraganglioma, and that the literature has only documented six deaths “from a sudden heart event from adrenaline released from paraganglioma.” (Chauvin Tr. 5608-09.)
- 117.4. Dr. Fowler testified that, in his opinion, Floyd did not die of asphyxia. (Chauvin Tr. 5522.)
- 117.4.1. Dr. Fowler testified that the prone position is not inherently dangerous, and that certain studies have also found that applying weight to someone in the prone position is not dangerous. (Chauvin Tr. 5524-32.) Relying on these studies, Dr. Fowler testified that Chauvin transferred only 30-35 pounds of body weight onto Floyd, which was less than the 225 pounds used in the studies. (Chauvin Tr. 5533.) Dr. Fowler conceded that this analysis did not include the weight of any equipment or gear. (Chauvin Tr. 5563-64.) He also acknowledged that none of these studies involved someone in the prone position with a knee on their neck, and that the addition of pressure to the neck and torso would make someone more prone to positional asphyxia. (Chauvin Tr. 5590, 5593-94.) Dr. Fowler also testified that he did not calculate Floyd’s EELV at any point during the May 25, 2020 incident, and stated that he would defer to a pulmonologist for a detailed assessment of how EELV relates to the ability to breathe. (Chauvin Tr. 5597-99, 5606-07.)
- 117.4.2. Dr. Fowler testified that, in his opinion, Chauvin’s knee did not impact any of the vital structures of Floyd’s neck. (Chauvin Tr. 5533.) He also testified that Floyd did not suffer any physically-evident injuries in the areas of his body where the knee was present, including bruising or abrasions to the skin. (Chauvin Tr. 5534-38.) Yet Dr. Fowler acknowledged that, in the majority of asphyxia deaths, there are no visible signs of trauma. (Chauvin Tr. 5587-89.) Dr. Fowler agreed that this is why “[t]he scene information” is “very important” in diagnosing positional asphyxia. (Chauvin Tr. 5589.)

- 117.4.3. Dr. Fowler testified that the symptoms of hypoxia are visual changes, shortness of breath, and confusion. (Chauvin Tr. 5539-40.) Floyd did not complain of visual changes and did not appear confused. (Chauvin Tr. 5539, 5541.) Dr. Fowler testified that although Floyd's breathing rate was slightly elevated, he was not breathing rapidly enough to suggest that he was experience shortness of breath. (Chauvin Tr. 5541.) Dr. Fowler also testified that other things—including cardiac issues or phobias—can increase breathing rates. (Chauvin Tr. 5540-42.)
- 117.4.4. Dr. Fowler testified that Chauvin's knee was "nowhere close to [Floyd's] airway." (Chauvin Tr. 5542.) He also testified that he was not aware of any medical literature that compressing the hypopharynx can cause asphyxia. (Chauvin Tr. 5543-44.) Dr. Fowler testified that he did not observe the changes one would expect from a gradual hypoxic death, because "Floyd was coherent and understandable until shortly before there was a sudden cessation of his movement," rather than "disoriented, confused, incoherent." (Chauvin Tr. 5545-47.) Dr. Fowler testified that this "sudden decompensation . . . is much more consistent with a sudden cardiac event." (Chauvin Tr. 5547.) Nevertheless, Dr. Fowler testified that Floyd should have been given immediate emergency attention when he went into cardiac arrest to try and "reverse that process." (Chauvin Tr. 5604.)
- 117.4.5. Dr. Fowler agreed that positional asphyxia also restricts the ability to oxygenate blood because of one's positioning. (Chauvin Tr. 5581.) He agreed that you need to be able to expand your chest to breathe. (Chauvin Tr. 5581.) Dr. Fowler also testified that a person who recently engaged in a struggle would be more susceptible to positional asphyxia because they are already operating at an oxygen deficit. (Chauvin Tr. 5584-85.)
- 117.4.6. Dr. Fowler acknowledged that Floyd exhibited symptoms of an anoxic seizure and PEA arrhythmia, both of which can occur as a result of insufficient oxygen to the brain. (Chauvin Tr. 5604-06.)
- 117.5. The Court finds Dr. Fowler's testimony to be neither credible nor persuasive. Although Dr. Fowler is a qualified forensic pathologist, he lacks expertise and clinical experience in pulmonology, cardiology, and toxicology. Dr. Fowler's testimony is inconsistent with testimony and evidence presented by multiple experts in those fields. Dr. Fowler's testimony also relied heavily on studies

concerning the use of weight in the prone position that have little-to-no application to this case, as explained by other experts.

118. Seng Yang

118.1. Seng Yang (“Yang”) is Thao’s wife and has known him for 17 years. (Fed. Tr. 3370.) Yang testified that, in her opinion, Thao is “a truthful person” who “does not get into trouble with the law.” (Fed. Tr. 3371.)

118.2. Although the Court believes that Yang offered a truthful assessment of her personal opinion of Thao’s character, in light of the weight of evidence, the Court does not find her testimony as to Thao’s character to be compelling.

119. Tou Thao

119.1. Thao was initially hired by Minneapolis as a community service officer. (Fed. Tr. 3055.) After about one and a half years, he completed his degree and obtained his POST license, and enrolled in the MPD Academy. (Fed. Tr. 3056-57.)

119.1.1. After completing the Academy in 2009, he was laid off for “budgetary reasons.” (Fed. Tr. 3057, 3091.) Thao worked security at Fairview Riverside Hospital for almost a year before MPD rehired him in 2011. (Fed. Tr. 3091-92, 3104-05.)

119.1.2. Thao completed a one-month training update after being rehired, then completed the five-to-six month field training officer program. (Fed. Tr. 3105-06.) He became a full-time officer in 2012, and served in that capacity for about eight years. (Fed. Tr. 3139, 3161.)

119.2. Thao testified that he received medical training, including bi-annual CPR in-service training, most recently in 2019. (Fed. Tr. 3165-67.)

119.2.1. Thao acknowledged that if someone has no pulse, you should react by starting CPR immediately because “every second counts.” (Fed. Tr. 3168.)

119.2.2. Thao acknowledged that he was trained to start CPR before the paramedics arrive and to continue performing CPR until the person wakes up or the paramedics take over. (Fed. Tr. 3168-69.)

119.2.3. Thao testified that he was “aware” from his training that “it is a red flag if someone in your custody suddenly stops talking” or becomes unconscious. (Fed. Tr. 3170.) Thao subsequently

- testified that, although “you should take note” when someone stops speaking, that is not always a “red flag.” (Fed. Tr. 3251.) And when asked later if “stopping speaking would be very concerning,” Thao responded: “I suppose it depends.” (Fed. Tr. 3308.)
- 119.2.4. Thao admitted that he was aware that “keeping someone in the prone position can make it harder for them to breathe.” (Fed. Tr. 3170.)
- 119.2.5. Thao acknowledged that he was familiar with positional asphyxia, and that it is more difficult to breathe in the prone position. (Fed. Tr. 3301.)
- 119.2.6. Thao testified that he was taught at the Academy that, if someone can talk, they can also breathe. (Fed. Tr. 3299.) Thao also testified that he had heard doctors, nurses, and paramedics say this while working security at Fairview Riverside Hospital. (Fed. Tr. 3299-3300.)
- 119.3. Thao testified that he was trained that officers can only use appropriate force, meaning “force that is reasonable under the circumstances” and “proportional to the resistance from the subject.” (Fed. Tr. 3162, 3171-73.)
- 119.3.1. Thao agreed that if someone was fighting you before, “once they stop fighting,” you have to de-escalate the use of force. (Fed. Tr. 3174-75.)
- 119.3.2. Thao agreed that it is unnecessary to use force on someone who is unconscious or does not have a pulse. (Fed. Tr. 3177.)
- 119.3.3. Thao testified that, “with excited delirium in particular, you’re trained once they’re handcuffed and under control, you roll them on their side.” (Fed. Tr. 3223.) He also acknowledged that he was trained that positional asphyxia could be an issue with excited delirium. (Fed. Tr. 3223.)
- 119.3.4. Thao acknowledged that “you can’t continue to use force if that person is not resisting,” even if that person has a “drug issue” or is experiencing “excited delirium.” (Fed. Tr. 3223.)
- 119.3.4.1. Thao testified that if someone is in handcuffs and not resisting, you may be able to “keep them in restraints” but you cannot continue to use force. (Fed. Tr. 3173-74.) He acknowledged that you cannot “use force under

a theoretical idea that they might at some later point . . . jump up or something.” (Fed. Tr. 3173-74.)

119.3.4.2. Thao subsequently stated that, “if we’re following protocol, . . . we would have to continue to keep” a subject “on the ground” even if they are “not resisting,” if the subject is “a danger to himself and others.” (Fed. Tr. 3219.) He further testified that, “just from my experience dealing with people who have suspected excited delirium or drug related, they can get up. They can go unconscious and then wake up again and then we’re back at a fight again; or they can get up and run into the middle of the street and get hit by a car.” (Fed. Tr. 3220.) Thao testified that, as a result, you need to hold that person “down for paramedics.” (Fed. Tr. 3219.)

119.3.4.3. Thao acknowledged that, instead of physically holding that person down, you could “stand nearby and at least keep your hands on them.” (Fed. Tr. 3221.) He explained that “[p]otentially you could be in contact, but not much weight being put on.” (Fed. Tr. 3222-23.)

119.4. Thao testified that he received training on using a leg or knee to implement a restraint.

119.4.1. Thao explained that there were photos taken during his time in the Academy of training scenarios in which a person was handcuffed in the prone position, and the trainee possibly had their knee on or near the subject’s neck. (Fed. Tr. 3064-67, 3069.) Thao also testified that there was a photo of him restraining someone in the prone position with his knee on the individual. (Fed. Tr. 3068.) Thao testified that this was consistent with what he was taught at the Academy and that he was never told this was an improper technique. (Fed. Tr. 3069, 3084.)

119.4.2. Thao stated that he was trained that an officer can use a knee when “trying to get control of somebody,” especially when the subject is fighting while you try and put the handcuffs on. (Fed. Tr. 3189-91.) But he also testified that, once the officer has that person handcuffed and under control, the officer is trained to avoid the neck area. (Fed. Tr. 3191-92.)

- 119.4.3. Thao testified that he received in-service training on the use of legs to implement a neck restraint. (Fed. Tr. 3084.) This included training on using legs “around a person’s neck as a means to restrain them.” (Fed. Tr. 3085.)
- 119.4.4. Thao acknowledged that the “primary purpose of using neck restraints was to gain control of someone.” (Fed. Tr. 3196.) But, according to MPD policy, an officer cannot use a conscious neck restraint unless the subject is “actively resisting,” and an officer cannot use an unconscious neck restraint “unless someone is exhibiting active aggression.” (Fed. Tr. 3194-95.)
- 119.5. Thao testified that he received excited delirium training in his POST classes, at the Academy, and during in-service training. (Fed. Tr. 3099-100.)
- 119.5.1. Although he did not receive any training on excited delirium while working at Fairview Riverside Hospital, Thao did occasionally see that term in medical records. (Fed. Tr. 3098-99.) Thao also witnessed nurses and doctors try to de-escalate situations by talking to individuals, rather than immediately restraining them. (Fed. Tr. 3102.) He further witnessed individuals being sedated. (Fed. Tr. 3103-04.)
- 119.5.2. Thao testified that he had previously experienced situations in which someone he believed to be experiencing excited delirium was unconscious, then “jump[ed] out of the gurney,” and needed to be restrained again. (Fed. Tr. 3143-44, 3340-42.)
- 119.5.3. Thao testified that, in his view, if “someone is in excited delirium” and an officer “believe[s] that he might come back up and resist again” the officer can continue to use force against that person, even if that person is not currently resisting. (Fed. Tr. 3366.)
- 119.5.4. Thao testified that whether an officer must roll someone he believes is suffering from excited delirium onto their side once handcuffed and not violent “depends if you believe that person may, especially under the influence, may get up and fight again.” (Fed. Tr. 3218.)
- 119.6. Thao testified that, if an officer sees another police officer committing a crime, including by using excessive force, “you would need to stop that.” (Fed. Tr. 3177-78.) Thao testified that he was aware that rule applies even if the officer using excessive force is a “19-year veteran.” (Fed. Tr. 3323-24.)

- 119.7. Thao testified that he and Chauvin were partners on May 25, 2020, and they were initially dispatched to Cup Foods on “Priority 1,” meaning “get there fast.” (Fed. Tr. 3109-11.) Dispatch informed them it was for a counterfeit bill and the suspect was possibly under the influence. (Fed. Tr. 3196.)
- 119.7.1. Before Thao and Chauvin left the precinct, however, Lane and Kueng were dispatched. (Fed. Tr. 3112.) Dispatch instructed Thao and Chauvin to proceed to the scene to assist Kueng and Lane, but while Thao and Chauvin were en route, Kueng and Lane called “Code 4,” meaning the scene was “okay.” (Fed. Tr. 3113.)
- 119.7.2. “Dispatched cancelled [Thao and Chauvin] out of the call,” but instead of returning to the precinct, they continued to Cup Foods. (Fed. Tr. 3113-14.)
- 119.8. When they arrived, Thao and Chauvin pulled up next to Officer Chang to assist him. (Fed. Tr. 3118-19.) Officer Chang waved them off and pointed them across the street, where Kueng and Lane were trying to get Floyd into the squad car. (Fed. Tr. 3119-20.)
- 119.8.1. Thao testified that, after Kueng and Lane got Floyd “partially in the squad car,” Floyd “launch[ed] himself out the other side of the door.” (Fed. Tr. 3123.) As the officers struggled to get Floyd back into the squad car, Thao heard Floyd say “he couldn’t breathe and he wanted to go down,” so Thao suggested putting Floyd “on the ground.” (Fed. Tr. 3124-25.)
- 119.8.2. Thao testified that, in his experience, people often complain that they cannot breathe when they are being arrested, but that is not actually true. (Fed. Tr. 3201-02.) Still, Thao acknowledged that an officer cannot “ignore” when a person says he or she cannot breathe just “because someone else might say it untruthfully.” (Fed. Tr. 3202-03.)
- 119.8.3. Thao testified that, in his view, “[i]t was obvious that [Floyd] was under the influence of some type of drugs” because Floyd was “very sweaty,” “incoherent, not listening to direction,” and “fighting off three officers consistent with super-human strength.” (Fed. Tr. 3125-26.)
- 119.8.4. Thao admitted that Floyd was aware that the officers wanted him to get into the squad car. (Fed. Tr. 3203-04.)

- 119.9. Thao testified that he decided the officers “might have to escalate force . . . potentially having to use strikes, baton, or Taser on a handcuffed person.” (Fed. Tr. 3126.) Thao also suggested that the officers “hog-tie” Floyd, meaning that they use the hobble to restrain him. (Fed. Tr. 3128-29.)
- 119.9.1. Thao testified that when officers have only one hobble and the subject is in handcuffs, “[y]ou may have to tie his ankle and then bring it up behind him into one of the belt loops of the pants; or if there’s none, then you might have to” connect the hobble to the handcuffs. (Fed. Tr. 3131.)
- 119.9.2. Thao testified that “[a]s soon as you . . . apply [the] hobble, then you can roll them over.” (Fed. Tr. 3133.) Thao explained that this is to mitigate “breathing issues that could result from the person being in the prone position.” (Fed. Tr. 3278-79.)
- 119.9.3. Thao testified that, if an officer uses the hobble, an officer must notify a sergeant, who would conduct a use of force review. (Fed. Tr. 3133-34.)
- 119.9.4. Thao testified that the officers decided not to use a hobble because EMS was en route and if the officers had to remove the hobble when EMS arrived, the act of removal “would [have] delay[ed] medical attention.” (Fed. Tr. 3132, 3230.) Thao also testified that, if the officers had used the hobble, the paramedics would have had to wait to provide medical attention until after the sergeant had documented the use of the hobble for the use of force review. (Fed. Tr. 3134, 3230.)
- 119.10. Thao testified that he called for “Code 3, meaning lights and sirens, get here quick” at about 8:21:23—around two minutes into the restraint. (Fed. Tr. 3140, 3359.) Thao testified that, at that point, he suspected Floyd had a “serious medical condition.” (Fed. Tr. 3359.)
- 119.10.1. Thao testified that he assumed dispatch would handle requesting both EMS and fire when he called in a Code 3. (Fed. Tr. 3337-38.)
- 119.10.2. Thao testified that he did not mention any breathing issues or excited delirium when he called for Code 3. (Fed. Tr. 3360.)
- 119.11. Thao testified that he saw Chauvin’s knee on Floyd’s neck and thought it was “not uncommon” because officers had “been trained on it.” (Fed. Tr. 3141.) But



he also testified that Chauvin was not using “a neck restraint as defined by MPD” or a “trained neck restraint.” (Fed. Tr. 3193-94.)

- 119.11.1. Thao testified that he personally would not use his knee in a restraint because of his small stature. (Fed. Tr. 3345.) But he also testified that he had used his knee on someone’s neck as a restraint technique, but did not “put[] much weight into it.” (Fed. Tr. 3258.)
- 119.12. Thao admitted that even while he was acting as a “traffic cone,” (Fed. Tr. 3144), Thao was still looking at the other officers at several specific points, including at 8:19:14, 8:21:46, 8:22:23, 8:23:00, 8:23:22, 8:23:48, 8:23:56, 8:24:16, and 8:25:04. (Fed. Tr. 3253-54, 3256-57, 3260-61, 3279-81, 3289-90, 3298, 3302, 3306-07.)
- 119.12.1. Thao admitted that the officers stayed in the same position for the first six minutes of the restraint. (Fed. Tr. 3250.)
- 119.12.2. Thao admitted that he could see that Floyd was “being held down,” and that “Chauvin [was] using his knee on Mr. Floyd’s neck.” (Fed. Tr. 3228-30, 3233, 3239, 3308.) Thao also testified that he told the crowd Floyd was “being held down.” (Fed. Tr. 3285.)
- 119.12.3. Thao testified that he was looking down at the officers restraining Floyd and had “a full view of Mr. Chauvin and what he’s doing with his knee on Mr. Floyd’s neck” at 8:23:48. (Fed. Tr. 3289-90.)
- 119.12.4. Nevertheless, Thao maintained that, six minutes into the restraint, it was unclear to Thao whether Chauvin was applying force to Floyd through his knee because his knee could instead “be hovering” over Floyd. (Fed. Tr. 3317-18.)
- 119.12.5. Thao also testified that he could not tell whether Floyd was resisting or not because Thao was “not in contact with Mr. Floyd.” (Fed. Tr. 3287.)
- 119.13. Thao testified that he assumed the other officers were “[t]aking care of [Floyd].” (Fed. Tr. 3145.) Thao testified that he assumed Floyd was “still breathing and fine” and was not “in cardiac arrest” and had a pulse, because Thao was trained to start CPR “[a]s soon as safely possible” if you believe someone does not have a pulse, and the other officers had not started CPR or rolled Floyd onto his side. (Fed. Tr. 3149.)

- 119.13.1. Thao acknowledged that he had “a duty to render medical aid or make sure medical aid is being rendered,” even if there were “other officers with you taking care of” a subject. (Fed. Tr. 3292.)
- 119.13.2. Thao admitted that he did not see anyone roll Floyd onto his side or perform CPR before the ambulance arrived. (Fed. Tr. 3224.)
- 119.13.3. Thao acknowledged that he could generally hear what the crowd was saying and that he verbally responded to the crowd. (Fed. Tr. 3295.)
- 119.13.4. Thao acknowledged that, at 8:23:48, he had heard the bystanders expressing concern about the restraint, heard Floyd “again say he can’t breathe,” and knew that Floyd’s “talking [was] getting weaker.” (Fed. Tr. 3289-90.)
- 119.13.5. Thao testified that the bystanders possessed “[i]ncomplete information” because “[m]ost of them were not there during the struggle.” (Fed. Tr. 3286.)
- 119.13.6. Thao testified that he disregarded the bystanders’ pleas to “[c]heck on Floyd” because of “a different role I have to play.” (Fed. Tr. 3148.)
- 119.13.7. Thao testified that, from his position, he could hear Floyd talking. (Fed. Tr. 3229.) Thao also testified that he could hear Floyd *stop* talking. (Fed. Tr. 3231.)
- 119.13.8. Thao admitted Floyd appeared unconscious to Thao. (Fed. Tr. 3231.)
- 119.13.9. Thao acknowledged that he could have called out to his partners during the restraint. (Fed. Tr. 3331.) And he admitted that there “was nothing preventing [Thao] from communicating with” them. (Fed. Tr. 3333.)
- 119.13.10. Thao admitted that he did not make any effort to communicate with the other officers about the fact that Floyd had stopped speaking or that the bystanders were reporting Floyd was unconscious. (Fed. Tr. 3297-98, 3335-36.)
- 119.13.11. Thao admitted that he did not take any steps to check with the other officers about whether Floyd had a pulse, even after Hansen asked

- repeatedly for the officers to check Floyd's pulse. (Fed. Tr. 3329-31, 3333.)
- 119.13.12. Thao admitted that, as of six minutes into the restraint, he never told Chauvin or the others to get off Floyd. (Fed. Tr. 3320-21.)
- 119.14. At one point, Thao checked with dispatch on the status of the ambulance "to kind of figure out how far away the ambulance was." (Fed. Tr. 3153.) But he never informed dispatch that Floyd was not talking or had gone unconscious. (Fed. Tr. 3360-61.)
- 119.15. Thao testified that MPD policy provides that officers cannot wait for an ambulance if someone needs medical care and "it's safe enough" to provide that care. (Fed. Tr. 3260.) Notably, Thao admitted that it was "safe enough" on May 25, 2020 "to render medical care." (Fed. Tr. 3260.)
- 119.15.1. Thao also admitted that he was trained to roll someone on their side and to provide CPR, and that he could have done either "without EMS being there." (Fed. Tr. 3361.)
- 119.15.2. Thao testified that EMS is authorized to provide certain medical care that police officers cannot provide, including sedating a subject. (Fed. Tr. 3363-64.)
- 119.16. Thao admitted that he "ignored" his training to roll an individual with excited delirium on their side to prevent positional asphyxia. (Fed. Tr. 3367.)
- 119.16.1. Thao testified that he believed it was important to continue restraining Floyd to "save his life." (Fed. Tr. 3345.)
- 119.16.2. Thao testified that he felt "it was necessary to have Mr. Floyd restrained" "[b]ecause we believed he was going through excited delirium, so that was -- just following that protocol of holding him down for EMS to come and give him the medical intervention that he needed." (Fed. Tr. 3343, 3286.)
- 119.16.3. Thao admitted that MPD's excited delirium protocol instructs officers that, when someone is handcuffed and not resisting, you must roll them on their side as soon as possible because of positional asphyxia. (Fed. Tr. 3361-62.) But he testified that his understanding is that "the protocol requires that you roll them on their side *as soon as it's safe to do so.*" (Fed. Tr. 3362 (emphasis added).)

- 119.16.3.1. Thao testified that he used the word “safe” to mean “[s]afe from the crowd, safe from . . . Mr. Floyd being able to potentially get back up and start fighting again.” (Fed. Tr. 3364-65.)
- 119.16.3.2. Thao testified that whether you roll someone suffering from excited delirium onto their side therefore “would be dependent on the officers on the ground” who were in contact with Floyd and who could determine if he was “truly resisting or not.” (Fed. Tr. 3286-87.)
- 119.16.4. Thao acknowledged that you cannot use force on someone who is not resisting. (Fed. Tr. 3313.)
- 119.16.5. Thao admitted that, even if you “believe they’re in excited delirium [and] can come back to consciousness and start fighting again,” you cannot use force on that person “until they come back to life and pose a threat.” (Fed. Tr. 3313.) At most, “you can stay nearby and touch” the person. (Fed. Tr. 3313.)
- 119.17. Thao testified that he did not assist the paramedics when they arrived because he “was full-time crowd control.” (Fed. Tr. 3151-54)
- 119.17.1. Thao testified that he wanted people to stay on the curb “to give the paramedics and officers space to operate.” (Fed. Tr. 3152.) He wanted to prevent the bystanders from “potentially attacking the officers or disrupting the medical attention that they were doing.” (Fed. Tr. 3152-53.)
- 119.17.2. Thao testified that he did not call for law enforcement backup or ask Officer Chang to assist him with crowd control. (Fed. Tr. 3232.)
- 119.18. Thao testified that, based on his “training and experience,” the trachea “is the most important part.” (Fed. Tr. 3291.) Thao testified that, in his view, because Floyd’s “trachea was being protected by the ground,” “it wouldn’t be possible for [Chauvin’s] knee to be pressing down on [Floyd’s] trachea.” (Fed. Tr. 3291.)
- 119.19. Thao testified that he was not aware of “the significance of what was going on with Mr. Floyd medically” until the fire department arrived. (Fed. Tr. 3154-55.) At that point, he “kind of connected the dots. It’s like, oh, okay, so I guess this guy was in critical condition.” (Fed. Tr. 3155.)

- 119.20. The Court finds Thao's testimony to be neither credible nor persuasive. Thao's testimony is internally inconsistent and contradicts the sworn statements from multiple members of MPD regarding the Department's training and policies, as well as Thao's own statements in his BCA interview. For example:
- 119.20.1. Thao testified that an officer cannot continue to use force against someone who is not resisting, even if they have excited delirium. He testified that MPD protocol instructs officers to roll someone with excited delirium on their side as soon as possible to avoid positional asphyxia. And he acknowledged that an officer cannot use force on someone based solely on the suspicion that a person might "come back to life and pose a threat" at a later point.
  - 119.20.2. But Thao also testified that it was appropriate to continue restraining someone with excited delirium even if that person is not resisting, because they could later become a threat to themselves or others. Thao testified that an officer need not roll someone on their side until it's safe to do so, meaning that person could no longer "get back up and start fighting again."
  - 119.20.3. Thao's testimony that Floyd was exhibiting several symptoms of excited delirium contradicts the testimony of multiple medical experts.
  - 119.20.4. Thao testified that Chauvin's use of his knee was "not uncommon," but he also testified that Chauvin's use of his knee was contrary to MPD policy. This testimony also contradicts the testimony of multiple MPD witness. It further contradicts Thao's statements in the BCA interview, where he acknowledged that he had not previously seen the maneuver Chauvin used before, or a "maneuver similar to that." (State's Supp. Ex. 24 (Video of BCA Interview with Tou Thao (#8128)) at 01:05:56.)
  - 119.20.5. Thao acknowledged that he had an independent duty to render medical aid, but testified that he did not attempt to do so because he assumed the other officers were rendering any necessary aid—despite Thao's own observations that Floyd had stopped talking and appeared unconscious, and the bystanders' repeated statements that Floyd was unconscious and in need of medical assistance.
  - 119.20.6. Thao acknowledged the scene was safe enough to provide medical aid to Floyd and that he was trained in providing CPR, but he never

rendered aid or even asked the other officers to confirm Floyd's medical condition.

### **III. THAO COMMITTED THE REQUIRED CONDUCT FOR AIDING AND ABETTING SECOND-DEGREE MANSLAUGHTER.**

#### **A. Chauvin Committed the Required Conduct for Second-Degree Manslaughter.**

##### **(1) George Floyd died on May 25, 2020.**

120. George Floyd died on May 25, 2020.

120.1. While being restrained by Chauvin, Kueng, and Lane on May 25, 2020, Floyd lost consciousness, ceased breathing, and became pulseless.

120.1.1. Floyd lost consciousness at 8:24 p.m. and 53 seconds. (Chauvin Tr. 4528 (Dr. Tobin).)

120.1.2. Floyd stopped breathing at 8:25 p.m. and 16 seconds. (Chauvin Tr. 4530 (Dr. Tobin).)

120.1.3. Floyd's oxygen stores reached a level of zero at 8:25 p.m. and 41 seconds. (Chauvin Tr. 4531-32 (Dr. Tobin).)

120.1.4. At 8:25 p.m. and 52 seconds, Kueng checked for a pulse on Floyd's wrist. Kueng did not feel a pulse. (Chauvin Ex. 43 (Kueng BWC) at 20:25:52-20:25:59.)

120.2. When the paramedics arrived, Floyd was unconscious, not breathing, and pulseless, and was in full cardiac arrest. (Fed. Tr. 593-94, 602 (Smith); *see* Chauvin Ex. 151 (CAD Report (Bates 434-436)) at 3.)

120.3. None of the officers on scene provided any basic medical care or life-saving measures to Floyd, such as turning Floyd on his side or CPR, during the course of the restraint. (*See generally* Chauvin Ex. 42 (Milestone Video).)

120.4. Even as the paramedics arrived on scene and checked Floyd for a pulse, Chauvin continued to restrain Floyd with Chauvin's knee on Floyd's neck. (Chauvin Ex. 15 (D.F. Video) at 06:51.)

120.4.1. Hennepin EMS paramedics Smith and Bravinder arrived in front of Cup Foods at 8:27 p.m. and 19 seconds. (Fed. Gov't Ex. 109 (EMT Records) at 4; Fed Tr. 591 (Smith).)

- 120.4.2. At 8:27 p.m. and 45 seconds, Smith checked Floyd for a carotid pulse and did not find one. (Chauvin Ex. 47 (Lane BWC) at 20:27:45-20:27:48; Fed. Tr. 593-594 (Smith).)
- 120.4.3. While Smith checked for a pulse, Chauvin's left knee was still positioned on Floyd's neck. (Chauvin Ex. 15 (D.F. Video) at 06:58; Chauvin Ex. 56 (Still from D.F. video, Smith checking Floyd's pulse).)
- 120.5. When the paramedics began treating Floyd, Floyd's heart rhythm was asystole (flatline). (Chauvin Tr. 3384 (Bravinder), 3442 (Smith); Fed. Tr. 602 (Smith).)
- 120.6. Paramedics began protocols for treating a full cardiac arrest in the ambulance. (Chauvin Tr. 3441 (Smith), 3374 (Bravinder).)
- 120.7. Paramedics directed Lane to conduct CPR in the back of the ambulance. (*See* Chauvin Tr. 3382, 3413-14 (Bravinder), 3435-36 (Smith).) This was the first time any life-saving measures were performed on Floyd.
- 120.8. The ambulance drove a few blocks away, where paramedics were met by Minneapolis firefighters, who assisted in the efforts to resuscitate Floyd. (Chauvin Ex. 73 (Ambulance Map); Chauvin Tr. 3474-75 (Captain Norton).)
- 120.9. At 8:48 p.m. and 23 seconds, the ambulance began transporting Floyd to HCMC. (Fed. Gov't Ex. 109 (EMT Records) at 4.) Smith and firefighters continued to provide care to Floyd in the ambulance. (Chauvin Ex. 151 (CAD Report (Bates 434-436)) at 20:48:23; Fed. Gov't Ex. 39 (Dispatch Summary Timeline) at 20:48:23; Fed. Gov't Ex. 109 (EMT Records) at 4; Fed. Tr. 606 (Smith).)
- 120.10. Floyd arrived at HCMC at 8:52 p.m. and 46 seconds. (Fed. Gov't Ex. 109 (EMT Records) at 4; *see also* Chauvin Ex. 67 (Ambulance Still - Removing Floyd from Ambulance).)
- 120.11. When Floyd arrived at HCMC, Floyd's heart only produced PEA. (Chauvin Tr. 3717-18 (Dr. Langenfeld).)
- 120.12. Physicians at HCMC attempted life-saving measures on Floyd, who was in cardiac arrest. (Chauvin Tr. 3728-29 (Dr. Langenfeld); State's Supp. Exs. 18 (Stabilization Room Video\_Trauma Bay Clip: 20:54:00/1:31 to 20:55:16/2:48), 19 (Stabilization Room Video\_Trauma Bay Clip, 21:24:53/32:25 to 21:25:28/32:59).)
- 120.13. Floyd never regained a pulse and never regained consciousness. (Chauvin Tr. 3450-51 (Smith), 3729 (Dr. Langenfeld).)

- 120.14. At HCMC, Floyd's heart rhythm was primarily PEA, before devolving again to asystole. (Chauvin Tr. 3718-19, 3729 (Dr. Langenfeld).)
- 120.15. After approximately 30 minutes of attempting life-saving measures at HCMC, Dr. Langenfeld officially pronounced Floyd dead on May 25, 2020 at 9:25 p.m. (Chauvin Tr. 3702, 3729 (Dr. Langenfeld); State's Supp. Ex. 19 (Stabilization Room Video\_Trauma Bay Clip, 21:24:53/32:25 to 21:25:28/32:59).) Floyd had been in cardiac arrest for approximately 60 minutes before Dr. Langenfeld officially declared Floyd dead. (Chauvin Tr. 3729 (Dr. Langenfeld).)

**(2) The officers' restraint caused Floyd's death.**

121. The officers' restraint caused Floyd's death.
- 121.1. The manner of Floyd's death was homicide. (Chauvin Tr. 4885, 4941 (Dr. Baker); Chauvin Exs. 193 (Death certificate), 194 (Hennepin County ME Press Release (#26734)).)
- 121.2. The direct and immediate cause of Floyd's death was cardiopulmonary arrest complicating law enforcement subdual, restraint, and neck compression. (Chauvin Tr. 4888, 4941 (Dr. Baker); Chauvin Exs. 193 (Death certificate), 194 (Hennepin County ME Press Release (#26734)).)
122. The human body cannot survive without adequate oxygen.
- 122.1. Lack of oxygen to the brain can result in a person losing consciousness. (*See, e.g.*, Chauvin Tr. 4541 (Dr. Tobin) ("If you stop the flow of oxygen to the brain, you lose consciousness in 8 seconds."))
- 122.2. Lack of oxygen over an extended period of time can cause anoxic seizure, brain damage, cardiac arrest, and death. (*See, e.g.*, Chauvin Tr. 4712 (Dr. Smock).)
- 122.3. Irreversible brain damage can occur within four to six minutes after cardiac arrest. (*See* Fed. Tr. 948 (Dr. Langenfeld).)
- 122.4. Each minute of delay in rendering CPR decreases a person's chance of survival by approximately 10 to 15 percent. (*See* Fed. Tr. 919 (Dr. Langenfeld).)
123. The officers applied external pressure to Floyd's neck, back, chest, and torso. Their pressure restricted Floyd's ability to breathe, causing asphyxia, whereby Floyd's body was deprived of oxygen, which damaged his brain and caused his heart to stop. (Chauvin Tr. 4465 (Dr. Tobin), 4675 (Dr. Smock), 4749, 4814, (Dr. Thomas), 4999, 5001-02 (Dr. Rich).)



- 123.1. By restraining Floyd in the prone position on the pavement, the officers decreased Floyd's oxygen reserves and increased the effort required for Floyd to breathe. (Chauvin Tr. 4518-19 (Dr. Tobin).)
- 123.1.1. Chauvin placed his left knee on Floyd's neck. Chauvin's knee compressed Floyd's hypopharynx, variably occluded airflow, and narrowed Floyd's airway, making it more difficult for Floyd to breathe. (Chauvin Tr. 4487, 4489, 4493, 4498 (Dr. Tobin).)
- 123.1.2. Chauvin placed his right knee on Floyd's back, arm, and the left side of Floyd's chest. Chauvin's right knee inhibited Floyd's ability to expand his chest to breathe and get air into his left lung. (Chauvin Tr. 4474, 4480 (Dr. Tobin).)
- 123.1.3. Chauvin restrained Floyd in this manner for a total of nine minutes and 29 seconds. (Chauvin Tr. 4597 (Dr. Tobin).)
- 123.1.4. Chauvin and Kueng manipulated Floyd's handcuffs, pushing the handcuffs high into Floyd's back while Floyd was lying on the pavement. Chauvin and Kueng's actions inhibited Floyd's ability to expand his chest to breathe. (Chauvin Tr. 4476-80 (Dr. Tobin).)
- 123.1.5. Kueng placed his knee on Floyd's torso and applied additional weight to Floyd's back. (Chauvin Tr. 4472 (Dr. Tobin); Fed. Tr. 1673 (Dr. Systrom).)
- 123.1.6. Kueng held Floyd's left wrist behind Floyd's back and applied downward pressure on Floyd's chest. This force added to the restrictive pressure and prevented Floyd from changing position to better breathe. (Fed. Tr. 1672-73 (Dr. Systrom).)
- 123.1.7. Kueng applied continuous pressure to Floyd's wrist for approximately six-and-a-half minutes, and applied pressure intermittently thereafter. (Fed. Tr. 1675 (Dr. Systrom).) Kueng's pressure to Floyd's torso further restricted Floyd's breathing. (Fed. Tr. 1677 (Dr. Systrom).)
- 123.1.8. Lane held Floyd's legs at various points throughout the restraint. Lane's actions further precluded Floyd's ability to change position to enhance ventilation. (Fed. Tr. 1675 (Dr. Systrom).)
- 123.2. Floyd's low-level of oxygen damaged Floyd's brain and caused Floyd's heart to stop. (Chauvin Tr. 4465 (Dr. Tobin).)

- 123.2.1. Floyd lost oxygen gradually over a number of minutes. (Chauvin Tr. 4675-76, 4694-95 (Dr. Tobin).)
  - 123.2.2. At 8:24 p.m. and 21 seconds, Floyd suffered an anoxic seizure. An anoxic seizure indicates that the individual is suffering a brain injury as a result of low oxygen. (Chauvin Tr. 4506-07, 4543, 4712 (Dr. Tobin).)
  - 123.2.3. Floyd lost consciousness at 8:24 p.m. and 53 seconds. (Chauvin Tr. 4528 (Dr. Tobin).)
  - 123.2.4. Floyd stopped breathing at 8:25 p.m. and 16 seconds. (Chauvin Tr. 4530 (Dr. Tobin).)
  - 123.2.5. Floyd's oxygen stores reached a level of zero at 8:25 p.m. and 41 seconds. (Chauvin Tr. 4531-32 (Dr. Tobin).)
  - 123.2.6. Floyd lacked a pulse by at least 8:25 p.m. and 52 seconds, at which time, Kueng could not detect a pulse. (Chauvin Ex. 43 (Kueng BWC) at 20:25:52-20:25:59.)
  - 123.2.7. At 8:27 p.m. and 45 seconds, paramedic Smith checked the carotid artery and confirmed Floyd did not have a pulse. (Chauvin Ex. 47 (Lane BWC) at 20:27:45-20:27:48; Fed. Tr. 593-594 (Smith).) While Smith checked for a pulse, Chauvin continued to restrain Floyd with Chauvin's left knee on Floyd's neck. (Chauvin Ex. 15 (D.F. Video) at 06:58; Chauvin Ex. 56 (Still from D.F. video, Smith checking Floyd's pulse).)
  - 123.2.8. Floyd was pronounced dead on May 25, 2020 at 9:25 p.m. after approximately 60 minutes of cardiac arrest. (Chauvin Tr. 3702, 3729 (Dr. Langenfeld); State's Supp1. Ex. 19 (Stabilization Room Video\_Trauma Bay Clip, 21:24:53/32:25 to 21:25:28/32:59) at 21:25.)
124. Floyd would not have died on May 25, 2020, if not for the restraint by Chauvin, Kueng, and Lane.
    - 124.1. Consistent with the testimony of Dr. Tobin, Dr. Smock, and Dr. Langenfeld, among other witnesses—all of whom the Court finds credible—the Court finds that Floyd did not die of excited delirium.

- 124.1.1. Excited delirium is not recognized by the American Medical Association or the American Psychiatric Association and is not a universally accepted diagnosis. (Chauvin Tr. 4677 (Dr. Smock).)
- 124.1.2. Regardless of whether excited delirium is an accepted medical diagnosis, Floyd did not exhibit any of the signs of the condition described as “excited delirium.” (Chauvin Tr. 4682 (Dr. Smock).)
  - 124.1.2.1. Floyd was appropriately dressed. (Chauvin Tr. 4678 (Dr. Smock).)
  - 124.1.2.2. Floyd did not exhibit an attraction to glass. (Chauvin Tr. 4678-79 (Dr. Smock).)
  - 124.1.2.3. Floyd responded appropriately to law enforcement questions. (Chauvin Tr. 4679 (Dr. Smock).)
  - 124.1.2.4. Floyd was not engaged in “constant or near constant physical activity.” (Chauvin Tr. 4679-80 (Dr. Smock).)
  - 124.1.2.5. Floyd tired following exertion. (Chauvin Tr. 4680 (Dr. Smock).)
  - 124.1.2.6. Floyd did not exhibit superhuman strength. (Chauvin Tr. 4680 (Dr. Smock).)
  - 124.1.2.7. Floyd was not impervious to pain. (Chauvin Tr. 4681 (Dr. Smock).)
  - 124.1.2.8. Floyd did not exhibit rapid breathing. (Chauvin Tr. 4681 (Dr. Smock).)
  - 124.1.2.9. Floyd was not excessively hot to the touch. (Chauvin Tr. 4681-82 (Dr. Smock).)
  - 124.1.2.10. Floyd was not excessively sweating. (Chauvin Tr. 4681-82 (Dr. Smock).)
  - 124.1.2.11. Dr. Langenfeld ruled out excited delirium when he treated Floyd on May 25, 2020. (Chauvin Tr. 3728 (Dr. Langenfeld).)
- 124.2. Consistent with the testimony of Dr. Tobin, Dr. Smock, and Dr. Langenfeld, among other witnesses—all of whom the Court finds credible—the Court finds

that Floyd did not die of a drug overdose of any kind. (Chauvin Tr. 4686 (Dr. Smock).)

124.2.1. Floyd did not die from a fentanyl overdose, as indicated by both the measure of fentanyl and norfentanyl in Floyd's blood, and Floyd's presentation and behavior on May 25, 2020. (Chauvin Tr. 4686 (Dr. Smock).)

124.2.1.1. Fentanyl was present in Floyd's blood at a level of 11 ng/mL. (Chauvin Tr. 4629 (Dr. Isenschmid).)

124.2.1.2. By contrast, fentanyl levels in living patients who were found to be driving under the influence had levels measuring at much higher levels, in some cases higher than 50 ng/ml. (Chauvin Tr. 4628-29 (Dr. Isenschmid).)

124.2.1.3. The level of fentanyl in Floyd's blood, 11 ng/mL, was consistent with therapeutic levels used in a hospital setting. (Fed Tr. 2128-29 (Dr. Bebart) ("This is in the range we give medications for procedures in the hospital every day and it's safe, on the low end of that range. . . . [T]heir concentration will be somewhere around 10 to 20 and those patients tolerate that safely.").)

124.2.1.4. Fentanyl levels for overdose patients seen in the hospital are typically 40 ng/mL or higher. (Fed. Tr. 2128 (Dr. Bebart) ("[W]hen we see patients who die from fentanyl, they overdose, their concentrations are 40 and higher.").)

124.2.1.5. Norfentanyl was present in Floyd's blood at a level of 56 ng/mL. (Chauvin Tr. 4629 (Dr. Isenschmid).)

124.2.1.6. The presence of the metabolite norfentanyl can indicate that a person has survived for a period of time *after* the ingestion of fentanyl and did not die from fentanyl. (Chauvin Tr. 4614-15 (Dr. Isenschmid).)

124.2.1.7. Floyd's presentation and behavior were also not consistent with a fentanyl overdose. Unlike in cases of fentanyl overdose, Floyd did not become lethargic and sleepy and "gradually, calmly, peacefully stop[] breathing." (Chauvin Tr. 4758-59, 4766, 4839-41 (Dr. Thomas).)

- 124.2.1.8. Rather, Floyd was alert, talking, and oriented prior to the restraint; during the restraint he appeared to be suffering from air hunger as opposed to sleeping, snoring, or otherwise displaying signs of a fentanyl overdose. (Chauvin Tr. 4684-87 (Dr. Smock).)
- 124.2.2. Floyd did not die from a methamphetamine overdose, as indicated both by the level of methamphetamine in Floyd’s blood, and by Floyd’s presentation and behavior on May 25, 2020.
- 124.2.2.1. Methamphetamine was present in Floyd’s blood at a level of 19 ng/mL. (Chauvin Tr. 4632 (Dr. Isenschmid).)
- 124.2.2.2. This level of methamphetamine is “exceptionally low.” (Chauvin Tr. 4634 (Dr. Isenschmid).)
- 124.2.2.3. Floyd’s death was also not consistent with a methamphetamine overdose; Floyd’s death was not sudden or accompanied by a “full-blown seizure.” (Chauvin Tr. 4766-67 (Dr. Thomas); Fed. Tr. 2132 (Dr. Bebart).)
- 124.2.3. Floyd did not die from the combination of fentanyl and methamphetamine. (Chauvin Tr. 4721 (Dr. Smock).)
- 124.2.3.1. Fentanyl and methamphetamine are not more lethal when consumed in combination. (Fed. Tr. 2132 (Dr. Bebart).)
- 124.2.3.2. In fact, when used in combination, the effects of fentanyl and methamphetamine may counteract one another. As Dr. Bebart explained, these two drugs “actually counteract each other a little bit. So methamphetamines makes a patient a little bit more awake and breathe faster. Fentanyl can make a patient a little sleepier. But they don’t together become like a toxic combination of drugs to increase death.” (Fed. Tr. 2132 (Dr. Bebart).)
- 124.2.4. Floyd did not die from any other substances detected in his blood, including THC and caffeine. (Fed. Tr. 2123-24 (Dr. Bebart).)
- 124.3. Floyd did not die of heart disease, cardiomegaly, or a heart attack.

- 124.3.1. There was no evidence at autopsy that Floyd experienced a heart attack or fatal arrhythmia. (Chauvin Tr. 5020-21 (Dr. Rich), 4718-19 (Dr. Smock); Fed. Tr. 1698-1700 (Dr. Systrom); Chauvin Tr. 4867, 4873, Fed. Tr. 1418 (Dr. Baker).)
- 124.3.2. Floyd's presentation and behavior on May 25, 2020 was not consistent with a sudden cardiac event. He did not rapidly deteriorate, but rather gradually became weaker and quieter. (Chauvin Tr. 5017-18 (Dr. Rich).)
- 124.3.3. Floyd's heart rhythms were not consistent with a heart attack. (Fed. Tr. 1698-1700 (Dr. Systrom).)
- 124.3.4. The size of Floyd's heart was mildly enlarged, which is consistent with high blood pressure, and may offer some protective effect by strengthening the heart muscle. (Chauvin Tr. 5030 (Dr. Rich); *see* Fed. Tr. 1701 (Dr. Systrom).)
- 124.4. Floyd did not die from carbon monoxide poisoning, a paraganglioma, COVID-19, or a sickle cell trait.
  - 124.4.1. Floyd did not die from carbon monoxide poisoning. Floyd's blood gas levels showed oxygen saturation of 98 percent at 9:16 p.m. on May 25, 2020, which meant that his carboxyhemoglobin levels could not have been more than two percent, which is in the normal range. (Chauvin Tr. 5679-80 (Dr. Tobin).)
  - 124.4.2. Floyd did not die from a paraganglioma, which is a tumor. In extremely rare cases, a paraganglioma can cause a sudden death. But Floyd's death was gradual, and not sudden. (Chauvin Tr. 4537-39 (Dr. Tobin).)
  - 124.4.3. Floyd did not die from COVID-19. Dr. Baker found no signs of COVID-19 on autopsy. (Chauvin Tr. 4879 (Dr. Baker).)
  - 124.4.4. Floyd had sickle cell trait, which is typically asymptomatic, and not the same as sickle cell disease. Floyd's sickle cell trait had nothing to do with Floyd's death. (Chauvin Tr. 4880-81 (Dr. Baker).)

**(3) Chauvin and the other officers created an unreasonable risk and consciously took a chance of causing death or great bodily harm.**

**i. MPD has detailed policies and training covering the use of force and medical intervention, among other topics. MPD's policies and training are consistent with generally accepted policing practices.**

125. All MPD employees are required to know MPD policies and procedures. (Chauvin Tr. 3784 (Chief Arradondo); *see* Chauvin Ex. 207 (MPD Policy-Procedure Manual 1-103 (#4787)).)

125.1. The MPD Policy and Procedure Manual requires officers to “maintain a working knowledge of and to obey the code of conduct, civil service rules, Departmental rules, policies, procedures and orders, ordinances of the City of Minneapolis, the laws of the State of Minnesota and the United States. The failure of an MPD employee to comply with the standards of conduct set forth in the Manual and in law will subject the employee to discipline and/or legal action.” (Fed. Gov’t Ex. 45 (MPD Policy and Procedure Manual - 5-101 Code of Conduct and Use of Force) at 1; Fed. Tr. 869 (Inspector Blackwell).)

125.2. MPD officers are provided with a digital copy of their MPD Policy and Procedure Manual, and manual policy and procedure are communicated to officers during the annual in-service training. (Fed. Tr. 864 (Inspector Blackwell).)

125.3. As Chief Arradondo testified, although MPD policies and procedures are evolving, MPD officers sign an acknowledgement recognizing their duty to review and understand new policies. (Chauvin Tr. 3785 (Chief Arradondo).) The acknowledgement states: “I understand that I am accountable for knowing and abiding by all policies and procedures contained within the Minneapolis Policy and Procedure Manual and that I will be held accountable for abiding by the policies and procedures contained herein.” (Chauvin Ex. 274 (Policy Acknowledgement D. Chauvin (#4111)).)

125.4. All updates made to the MPD Policy and Procedure Manual are shared with officers via email, recounted by sergeants orally during shift changes, and taught during annual in-service training. (Fed. Tr. 864-866 (Inspector Blackwell).)

126. MPD provides training to its officers to ensure that officers understand how to apply MPD policy and procedure. (Chauvin Tr., 3780-82 (Chief Arradondo).)

126.1. As Chief Arradondo explained: “It’s important through training that we’re reemphasizing not only our policies but really our values as a police department, and what our community expects of us. It’s to help our officers and also to help

- our communities at the same time.” (Chauvin Tr., 3780 (Chief Arradondo).) This includes practical training. (Chauvin Tr., 3782 (Chief Arradondo).)
- 126.2. Before becoming a sworn MPD officer, individuals must complete a two- or four-year degree; obtain their peace officer license, which requires completing a 24-26 week skills certification program covering topics like defensive tactics and medical training; attend the MPD Academy; and participate in MPD’s field training program. (Fed. Tr. 812-816, 821 (Inspector Blackwell).)
- 126.3. All MPD officers are required to complete 48 hours of annual in-service training which provides officers with refresher training on topics such as crisis intervention, defensive tactics, CPR, and first aid. (Chauvin Tr. 3778-79 (Chief Arradondo); Fed. Tr. 813 (Inspector Blackwell).)
- 126.4. In 2020 alone, MPD spent \$4.5 million dollars providing its experienced officers with in-service training. (Chauvin Tr. 3779-80 (Chief Arradondo).)
127. MPD has detailed policies regarding the use of force and provides officers with extensive use of force training, including on the duty to intervene to stop an improper use of force.
- 127.1. “Sanctity of life and the protection of the public” are “the cornerstones of the MPD’s use of force policy.” (Fed. Gov’t Ex. 46 (MPD Policy and Procedure Manual - 5-300 (All) Use of Force) at 1; *see* Fed. Tr. 874 (Inspector Blackwell); Chauvin Tr. 3815 (Chief Arradondo).)
- 127.2. The MPD Policy and Procedure Manual’s “Use of Force Policy” reflects the *Graham v. Connor* constitutional standard, stating “sworn MPD employees shall only use the amount of force that is objectively reasonable in light of the facts and circumstances known to that employee at the time force is used.” (Fed. Gov’t Ex. 46 (MPD Policy and Procedure Manual - 5-300 (All) Use of Force) at 1; Fed. Tr. 875-877 (Inspector Blackwell); *see* State’s Supp. Ex. 22 (Expert Report of Sergeant Jody Stiger (#42245-42705)) at 19.)
- 127.3. Objectively reasonable force is “[t]he amount and type of force that would be considered rational and logical to an objective officer on the scene as supported by facts and circumstances known to an officer at the time the force was used.” (Chauvin Tr. 3818 (Chief Arradondo); Chauvin Ex. 217 (MPD Policy-Procedure Manual 5-303 (#5016-5017)).) To determine what constitutes reasonable force, “[t]he officer should consider the severity of the crime at issue; whether the suspect poses an immediate threat to the safety of the officers or others; and whether he is actively resisting arrest or attempting to evade arrest by flight.” (Chauvin Tr. 3819 (Chief Arradondo); Chauvin Ex. 217 (MPD Policy-Procedure Manual 5-303 (#5016-5017)).)



- 127.4. MPD officers must use the lowest level of force necessary, must continually reassess their use of force, and must stop their use of force once the subject is compliant and not resisting. (Fed. Tr. 873, 880 (Inspector Blackwell); Chauvin Tr. 3827-28 (Chief Arradondo).)
- 127.5. MPD training and policy instructs that officers should only use force that is proportional to the threat posed by the particular subject they are interacting with. (Fed. Gov't Ex. 61 (2018 Annual Refresher Defensive Tactics PowerPoint), slide 8; Chauvin Ex. 119 (MPD 2018 Use of Force In-Service PPT (#9587-9659)), slide 8.)
- 127.6. “Whenever reasonable according to MPD policies and training, officers shall use de-escalation tactics to gain voluntary compliance and seek to avoid or minimize use of physical force.” (Chauvin Ex. 219 (MPD Policy-Procedure Manual 5-304 (#5018-5019)) at 1.) Furthermore, “[o]fficers shall . . . ensure that the length of any detention is no longer than necessary to take appropriate action for the known or suspected offense.” (Chauvin Ex. 215 (MPD Policy-Procedure Manual 5-101-5-204 (#5003-5014)) at 4.)
- 127.7. Minnesota law “authorizes officers to use deadly force ‘only when necessary’ to ‘protect the peace officer or another from apparent death or great bodily harm,’ to effect the arrest of a person reasonably believed to have committed ‘a felony involving the use or threatened use of deadly force,’ or to effect the arrest of a felony suspect whom officers ‘reasonably believe [] will cause death or great bodily harm if the person’s apprehension is delayed.’ ” (State’s Supp. Ex. 21 (Expert Report of Seth W. Stoughton and Jeffrey J. Noble (#41891-42199)) at 51 (citations omitted); Fed. Gov’t Ex. 46 (MPD Policy and Procedure Manual - 5-300 (All) Use of Force) at 5-6.) Choke restraints that are intended to restrict airflow are an example of deadly force. (Fed. Tr. 896 (Inspector Blackwell); Fed. Gov’t Ex. 46 (MPD Policy and Procedure Manual - 5-300 (All) Use of Force) at 10-11.)
- 127.8. MPD does not train officers to use force by applying their knee to someone’s neck as a restraint technique. (Fed. Tr. 1941, 1979 (Officer Mackenzie); Chauvin Tr. 3922-23 (Inspector Blackwell); Fed. Tr. 1095, 1098-99, 1104, 1111-12 (Inspector Blackwell).)
- 127.8.1. A restraint is a type of force. (Chauvin Tr. 5109-10 (Stoughton).)
- 127.8.2. There are two types of neck restraints: unconscious neck restraints and conscious neck restraints. According to MPD policy and training, neither type of neck restraint is appropriate when the individual is “merely passively resisting.” (Chauvin Tr. 3831,

3833 (Chief Arradondo); Chauvin Ex. 119 (MPD 2018 Use of Force In-Service PPT (#9587-9659)), slide 52-53.)

- 127.8.3. Unconscious neck restraints are intended to cause a person to lose consciousness. According to MPD policy, an officer may only use an unconscious neck restraint when an individual exhibits active aggression or to save a person's life. (Chauvin Tr., 3832 (Chief Arradondo); Chauvin Ex. 224 (MPD Policy-Procedure Manual 5-311 (#5024-5025)) at 2.)
- 127.8.4. A conscious neck restraint involves the application of light to moderate pressure and is used to control an individual without rendering the person unconscious. (Chauvin Tr., 3837-38, 3831-32 (Chief Arradondo).) Conscious neck restraints can be used when an individual is actively resisting. (Chauvin Tr. 3831-32 (Chief Arradondo).)
- 127.8.5. Although there are some examples in MPD training documents where an officer appears to be using a knee on a subject's neck, there is no evidence that this is actually a trained restraint technique.
- 127.8.5.1. As an initial matter, it is unclear whether these examples depict a continued restraint or a snapshot in time.
- 127.8.5.2. Moreover, although an officer may be allowed to use their knee on someone's neck "momentarily" to obtain control, MPD does not train officers to use that tactic to "maintain[] control." (Fed. Tr. 2063 (Officer Mackenzie).)
- 127.8.5.3. With respect to the examples depicted in MPD's 2017 defensive tactics trainings, there may be reasons from a training perspective that an instructor might let an improper restraint technique "play out" and later critique the improper technique. (Fed. Tr. 1994, 1997 (Officer Mackenzie).)
- 127.8.5.4. With respect to the examples depicted in MPD's excited delirium training, this is a medical training—not a defensive tactics training. (Fed. Tr. 1958-59 (Officer Mackenzie).) Moreover, MPD's excited delirium training is clear that officers should place a handcuffed person suspected to be experiencing excited delirium in

the side recovery position—not continually restrain that person in the prone position while applying a knee to their neck. (Fed. Tr. 2057 (Officer Mackenzie).)

- 127.9. MPD officers have a duty to intervene to stop or attempt to stop another officer from using force “inappropriately” and must report any unlawful uses of force to their superiors. (Chauvin Ex. 217 (MPD Policy-Procedure Manual 5-303 (#5016-5017)); Fed. Tr. 870-871, 881 (Inspector Blackwell); Fed. Gov’t Ex. 45 (MPD Policy and Procedure Manual - 5-101 Code of Conduct and Use of Force) at 5.)
- 127.9.1. Indeed, even before MPD translated the “duty to intervene” into written policy in 2016, the “duty to intervene” was an expectation of MPD officers. (Fed. Tr. 883, 887 (Inspector Blackwell).)
128. MPD provides officers with extensive medical training.
- 128.1. MPD officers receive basic first responder training and know to immediately start CPR if someone lacks a pulse, because every second counts when a person is not breathing and has no pulse. (*See* Chauvin Tr. 3778 (Chief Arradondo); Chauvin Tr. 4096-97, Fed. Tr. 1880 (Officer Mackenzie); Fed. Tr. 903 (Inspector Blackwell); Chauvin Exs. 111 (CPR Training Guide), 277 (2012-2014 CPR Card (#21101)), 278 (2014-2016 CPR Card (#5752)).)
- 128.2. MPD officers are trained to provide CPR to a suspect who has ceased breathing before medical personnel arrive. (Fed. Tr. 903 (Inspector Blackwell); Chauvin Tr. 4096-98 (Officer Mackenzie).)
- 128.3. MPD specifically trains officers about the dangers of the prone position and the importance of placing a subject in the side recovery position to prevent positional asphyxia. (Chauvin Tr. 3919-20; Fed. Tr. 908, 972; *see* Fed. Tr. 908-909, 971-972, 979-980 (Inspector Blackwell); Fed. Tr. 1887-88, 1900 (Officer Mackenzie).)
- 128.4. MPD training requires officers to place handcuffed subjects into a recovery position by rolling them onto their side or placing them in a seated position. (Chauvin Tr. 3890 (Chief Arradondo); Chauvin Ex. 119 (MPD 2018 Use of Force In-Service PPT (#9587-9659)), slide 60.)
- 128.5. MPD trains officers that, if someone who you believe is suffering from excited delirium is already handcuffed, the appropriate medical response is to place them in the side recovery position, even if the officer is concerned that the subject could later become violent. (Fed. Tr. 2000-01, 2057 (Officer Mackenzie).)

- 128.6. MPD officers are trained to interact with individuals suffering from behavioral or medical crises, including identifying a crisis situation and responding in ways that de-escalate the interaction. (Chauvin Tr. 3801-02 (Chief Arradondo).)
- 128.6.1. According to MPD policy, officers must provide special care to those in crisis: “The MPD shall handle encounters with individuals in crisis in a manner that reflects the values of protection, safety and sanctity of life, while promoting the dignity of all people. Individuals in crisis may require heightened sensitivity and additional special considerations.” (Fed. Gov’t Ex. 49 (MPD Policy and Procedure Manual - 7-809 Crisis Intervention Policy) at 3.)
- 128.6.2. MPD officers are required by training to provide “crisis intervention” meaning that they must attempt “to de-escalate an individual in crisis or refer or divert the individual to other services when appropriate.” (Chauvin Ex. 231 (MPD Policy 7-809); *see* Chauvin Tr. 3808 (Chief Arradondo).)
129. MPD’s training and policies are consistent with generally accepted policing practices.
- 129.1. MPD’s use of force training and policies, including MPD’s duty-to-intervene policy, are consistent with generally accepted policing practices. (Fed. Tr. 2796, 2816 (Chief Longo).)
- 129.1.1. It is generally understood that “the sanctity of human life is the highest priority in policing.” (Chauvin Tr. 5147 (Stoughton).)
- 129.1.2. It is generally accepted that *Graham v. Connor*, 490 U.S. 386 (1989), provides the framework for determining when the use of force is objectively reasonable. (*See* Chauvin Tr. 4139-40 (Sgt. Stiger); Chauvin Tr. 5100 (Stoughton).) To determine what constitutes reasonable force under that framework, the officer should consider the severity of the crime, whether the suspect poses an immediate threat, and whether the subject is actively resisting. (Chauvin Tr. 4140-41, 4143, 4145 (Sgt. Stiger).)
- 129.1.3. According to generally accepted policing practices, an officer may use only proportional force and should use the minimum amount of force necessary to accomplish their lawful objective. (Fed. Tr. 2784-85 (Chief Longo); Chauvin Tr. 5108 (Stoughton).) Further, it is generally accepted that officers have a duty to constantly reassess the situation and de-escalate force as appropriate. (Fed. Tr. 2790, 2794-96 (Chief Longo).)

- 129.1.4. Generally accepted policing procedure adopts the understanding that the head, neck, and spine are particularly vulnerable parts of the body. (Chauvin Tr. 5129-30 (Stoughton); State's Supp. Ex. 21 (Expert Report of Seth W. Stoughton and Jeffrey J. Noble (#41891-42199)) at 9.)
- 129.1.5. It is generally accepted in policing that an officer should not place weight on a person's neck when in the prone position because of the potential to damage structures in the neck. (Chauvin Tr. 5130 (Stoughton).) Placing a knee on a person's neck "can kill them." (Chauvin Tr. 3630 (Lt. Zimmerman).)
- 129.1.6. It is generally accepted in policing that a restraint constitutes force. (*See* Chauvin Tr. 4140 (Sgt. Stiger).)
- 129.1.7. It is generally accepted in policing that officers have a legal and professional duty to intervene in the use of excessive force by another officer. (Fed. Tr. 2781-82 (Chief Longo); State's Supp. Ex. 21 (Expert Report of Seth W. Stoughton and Jeffrey J. Noble (#41891-42199)) at 11.)
- 129.2. MPD's medical training and policies are consistent with generally accepted policing practices. (Fed. Tr. 2781, 2826-27 (Chief Longo).)
- 129.2.1. It is generally accepted in policing that officers are expected to provide CPR if someone does not have a pulse, and to continue providing medical aid until EMS arrives. (Fed. Tr. 2828 (Chief Longo).)
- 129.2.2. "It is well known and generally accepted in policing that keeping a restrained subject in the prone position can contribute to serious bodily injury or death in the form of positional asphyxia." (State's Supp. Ex. 21 (Expert Report of Seth W. Stoughton and Jeffrey J. Noble (#41891-42199)) at 8; Chauvin Tr. 5130-31 (Stoughton).)
- 129.2.3. A reasonable police officer would generally understand that the officer should move a person who is restrained and handcuffed from the prone position into the side recovery position as soon as possible. (Chauvin Tr. 5128 (Stoughton).)

**ii. The officers restrained Floyd prone for over nine minutes, could perceive that he was in substantial distress, and failed to render Floyd medical aid.**

130. The officers restrained Floyd prone on the ground for over nine minutes.
- 130.1. At 8:19 p.m., Chauvin, Kueng, and Lane placed Floyd in the prone position on hard pavement. (Chauvin Ex. 42 (Milestone Video) at 08:19:14; Chauvin Ex. 47 (Lane BWC) at 20:19:14.) Chauvin and Kueng knelt on Floyd's upper back and torso. (Chauvin Ex. 43 (Kueng BWC) at 20:19:18; Chauvin Ex. 47 (Lane BWC) at 20:19:18.) Lane held Floyd's legs down. (Chauvin Ex. 47 (Lane BWC) at 020:19:187.) This collective restraint pinned Floyd to the ground in a stationary position.
- 130.2. Chauvin and Kueng each grabbed Floyd's handcuffed hands and pulled them up, further restricting Floyd's movement. (Chauvin Ex. 47 (Lane BWC) at 20:19:38-20:20:44; Chauvin Ex. 43 (Kueng BWC) at 20:19:28-20:25:06.)
- 130.3. Chauvin positioned himself near Floyd's head and placed his left knee across Floyd's neck. (Chauvin Ex. 15 (D.F. Video) at 00:05; Chauvin Tr. 5176-77 (Stoughton); Chauvin Ex. 47 (Lane BWC) at 20:19:14; Chauvin Ex. 43 (Kueng BWC) at 20:19:14.) Chauvin placed his right knee on top of Floyd's back, right arm, and against Floyd's chest, further restricting Floyd's ability to move and breathe. (Chauvin Ex. 27 (A.F. Video) at 00:21; Chauvin Ex. 43 (Kueng BWC) at 20:19:14.)
- 130.4. Chauvin leaned his body weight forward onto his bent knee, to the point of lifting his left foot to hover off the ground. This added to the total weight on Floyd. (Chauvin Ex. 15 (D.F. Video) at 00:40, 01:17; Chauvin Tr. 5176-77 (Stoughton.) The following image shows Chauvin's left foot lifted off the ground, visually indicating the body weight Chauvin placed on Floyd.



(Chauvin Ex. 15 (D.F. Video) at 2:33.)

- 130.5. Kueng knelt on Floyd's torso holding his handcuffed wrist. (Chauvin Ex. 47 (Lane BWC) at 20:19:19.)
- 130.6. Lane restrained Floyd's legs by kneeling on them and using his hands to press them down. (See e.g., Chauvin Ex. 42 (Milestone Video) at 08:23:39; State's Supp. Ex. 22 (Expert Report of Sergeant Jody Stiger (#42245-42705)) at 11, 13-18; Chauvin Ex. 47 (Lane BWC) at 20:19:15-20:19:45, 20:23:38-20:23:41.)
- 130.7. The pressure from the weight of Chauvin and Kueng on Floyd's back forced Floyd's face against the pavement. The force was so great that Floyd sustained injuries to his face as he struggled to turn or lift his head to try to breathe. Floyd also sustained injuries to his knuckles as he tried to push himself up or turn his body to help him breathe. (Chauvin Tr. 4484-85, 4496 (Dr. Tobin); Chauvin Exs. 185 (Autopsy, Face), 186 (Autopsy, Left Side of Face), 187 (Autopsy, Right Shoulder), 188 (Autopsy, Left Shoulder), 189 (Autopsy, Left Hand), 190 (Autopsy, Right Hand), 191 (Autopsy, Close Up of Right Hand).)
131. The officers could perceive that Floyd was in obvious distress as a direct result of their collective restraint.
- 131.1. For the first four minutes and 51 seconds of the officers' restraint, Floyd could speak. (Chauvin Tr. 4504-05, 4540, 4545 (Dr. Tobin); see also Chauvin Tr. 4693-96 (Dr. Smock).)

- 131.2. Floyd told the officers—in a voice loud enough to be heard by all four of them—that he was not able to breathe 27 times during the restraint. (Chauvin Tr. 5136-37 (Stoughton); *see e.g.*, Chauvin Ex. 47 (Lane BWC) at 20:20:13.)
- 131.3. At 8:19 p.m. and 38 seconds, Floyd called out for his mother. (Chauvin Ex. 47 (Lane BWC) at 20:19:38.)
- 131.4. At 8:20 p.m. and 7 seconds, Floyd called out for someone to tell his kids that he loved them. (Chauvin Ex. 47 (Lane’s BWC) at 20:20:07.)
- 131.5. At 8:22 p.m. and 25 seconds, Floyd complained that he was in pain. (Chauvin Ex. 47 (Lane BWC) at 20:22:25.)
- 131.6. After being held prone for four minutes and 45 seconds, Floyd fell silent. (Chauvin Ex. 11 (Milestone Video) at 08:24:53; State’s Supp. Ex. 10 (Still Image of All 4 Officers – Billy Jones Video @ 00:50); Chauvin Ex. 47 (Lane BWC) at 20:24:00; Chauvin Ex. 43 (Kueng BWC) at 20:24:00; Chauvin Ex. 49 (Thao BWC) at 20:24:00; Chauvin Ex. 45 (Chauvin BWC) at 20:24:00; Chauvin Ex. 15 (D.F. Video) at 03:23.) Lane asked Chauvin and Kueng whether the officers should roll Floyd onto his side. Chauvin rejected Lane’s suggestion stating, “No. He’s staying put where we got him.” (Chauvin Ex. 43 (Kueng BWC) at 20:23:48-20:23:52.)
- 131.7. Lane informed Chauvin that Floyd was “passing out” at 8:24 p.m. and 46 seconds, but still Chauvin did not move. (Chauvin Ex. 47 (Lane BWC) at 20:24:46.)
- 131.8. At 8:25 p.m. and 52 seconds, Kueng told Chauvin that Kueng could not find a pulse on Floyd. A few seconds later, Kueng repeated: “I can’t find one.” But still Chauvin did not move off Floyd. (Chauvin Ex. 43 (Kueng BWC) at 20:25:52-20:26:12.)
- 131.9. After learning that Kueng could not find a pulse, Chauvin squeezed Floyd’s fingers, attempting a pain compliance technique. Floyd did not respond. (Chauvin Ex. 47 (Lane BWC) at 20:26:12-20:26:20; Chauvin Tr. 4171-72 (Sgt. Stiger); *see* State’s Supp. Ex. 22 (Expert Report of Sergeant Jody Stiger (#42245-42705)) at 15-16.)
- 131.10. Chauvin’s knee remained on Floyd’s neck even while Lane reported to EMS that Floyd was unresponsive, and while EMS checked Floyd for a pulse. (Chauvin Ex. 15 (D.F. Video) at 6:51, 6:58; Chauvin Ex. 56 (Still from D.F. video, Smith checking Floyd’s pulse); Chauvin Tr. 2982 (D.F.).)



- 131.11. The bystanders, including an off-duty firefighter and several juveniles, repeatedly made Chauvin and the other officers aware that Floyd was passing out, was not speaking or breathing, and appeared unresponsive, and asked Chauvin and his fellow officers to check Floyd's pulse and render medical aid. Thao heard the bystanders' pleas. (Chauvin Tr. 5128 (Stoughton), 3083 (Hansen); Chauvin Ex. 49 (Thao BWC) at 20:22:49-20:28:46.)
- 131.12. From their respective positions, all four officers could clearly hear the bystanders' concerns and were able to observe Floyd's condition as it deteriorated. (Chauvin Ex. 45 (Chauvin BWC) at 20:22:48-20:28:46; Chauvin Ex. 43 (Kueng BWC) at 20:22:48-20:28:46; Chauvin Ex. 49 (Thao BWC) at 20:22:48-20:28:46; Chauvin Ex. 47 (Lane BWC) at 20:22:48-20:28:46.)
132. Chauvin and the other officers failed to render any aid to Floyd.
- 132.1. Chauvin and the other officers placed Floyd, whose hands were fully handcuffed behind his back, prone on the ground. The officers never turned Floyd on his side. (Chauvin Tr. 5127-29 (Stoughton).)
- 132.2. At one point, Thao even retrieved a hobble, with which the officers could have restrained Floyd and placed Floyd in the recovery position. But Thao instead encouraged Chauvin, Kueng, and Lane to continue to restrain Floyd and discouraged the use of the hobble. (Chauvin Ex. 49 (Thao BWC) at 20:20:29-20:20:39 (stating "Well, do you wanna hobble him at this point then? We'll just hold him until EMS. If we hobble him, the sergeant is going to have to come out."))
- 132.3. The officers knew that Floyd was not speaking or breathing, was unconscious, and did not have a pulse, both from their own observations of Floyd as well as the observations and comments of their fellow officers. (Chauvin Ex. 47 (Lane BWC) at 20:24:46, 20:26:00-20:26:12; Chauvin Ex. 49 (Thao BWC) at 20:22:49-20:28:46; Chauvin Ex. 43 (Kueng BWC) at 20:25:52-20:25:59, 20:26:00-20:26:12; *see* Chauvin Tr. 3083 (Hansen) ("I had already assessed that he had an altered level of consciousness. What I needed to know is whether or not he had a pulse anymore."))
- 132.4. Despite this, Chauvin and the other officers failed to stop their restraint, place Floyd in the side recovery position, or provide CPR. (Chauvin Ex. 47 (Lane BWC) at 20:24:00-20:28:46; *see* Chauvin Tr. 4096 (Officer Mackenzie); Fed. Tr. 903 (Inspector Blackwell); Chauvin Exs. 111 (CPR Training Guide (#21833-21863)), 277 (2012-2014 CPR Card (#21101)), 278 (2014-2016 CPR Card (#5752)).)

**iii. Chauvin’s use of force grossly deviated from the standard of care a reasonable officer would have exhibited and consciously disregarded the risk to Floyd.**

133. Chauvin’s use of force—using a knee to restrain Floyd in conjunction with Kueng’s and Lane’s additional physical restraint—grossly deviated from the standard of care a reasonable officer would have exhibited on May 25, 2020. (*See, e.g.*, Chauvin Tr. 4147, 4181 (Sgt. Stiger) (officers should have de-escalated force, and no force should have been used after Floyd was in the prone position); Chauvin Tr. 5151 (Stoughton) (“No reasonable officer would have believed that that was an appropriate, acceptable, or reasonable use of force.”); Chauvin Tr. 4096 (Officer Mackenzie) (“If you don’t have a pulse on a person, you’ll immediately start CPR.”); Fed. Tr. 903 (Inspector Blackwell) (“If [someone] stopped breathing, then you would start CPR while you are waiting for medical to arrive.”).)
- 133.1. Chauvin completed 866 hours of training and continued education credits while employed by MPD after completing the MPD Academy. (Chauvin Ex. 203 (Chauvin Career Training Records).) This included the training referenced above on defensive tactics, crisis intervention, de-escalation, mental health awareness, procedural justice, medical interventions, and CPR. *Supra* ¶¶ 127-128.6.2; (Chauvin Tr. 3915-18 (Inspector Blackwell); *see* Chauvin Ex. 111 (CPR Training Guide (#21833-21863)).)
- 133.2. Chauvin—like all MPD officers—was trained that “[w]hen someone is in your custody they’re in your care.” (Fed. Tr. 882 (Inspector Blackwell).) Floyd was in the officers’ custody. But instead of caring for Floyd, Chauvin restrained Floyd facedown with a knee on Floyd’s neck, caused Floyd obvious distress, and ultimately killed Floyd. This grossly deviated from the standard of care a reasonable officer would have exhibited.
- 133.3. Chauvin—like all MPD officers—was trained on MPD’s use of force policies, including proper restraint techniques, the importance of reasonable and proportional force, and de-escalation tactics. *Supra* ¶¶ 127-127.9.1. But Chauvin employed a dangerous unconscious neck restraint by applying a knee to Floyd’s neck, a tactic which MPD does not teach, which MPD’s policy and procedure manual did not authorize, and which is not generally accepted in policing. (Fed. Tr. 895-902 (Inspector Blackwell); State’s Supp. Ex. 21 (Expert Report of Seth W. Stoughton and Jeffrey J. Noble (#41891-42199)) at 82-85; Chauvin Tr. 3922-23; Fed. Tr. 1095, 1098-99, 1104, 1111-12 (Inspector Blackwell).) Chauvin’s use of force was also not proportional, and he failed to engage in de-escalation tactics. (Chauvin Tr. 4146-47, 4178-81 (Sgt. Stiger).) Chauvin’s force was all the more disproportionate in light of the additional physical force Kueng and Lane applied to Floyd. (*See* Chauvin Tr. 4176. (Sgt.

Stiger) (“So another factor that’s considered when evaluating a use of force is the number of officers versus the number of subjects.”.) Chauvin’s actions grossly deviated from the standard of care a reasonable officer would have exhibited.

- 133.3.1. Chauvin’s use of force was not proportional to the severity of the crime at issue, the threat posed by Floyd, or Floyd’s resistance. The crime at issue, counterfeiting, is not particularly serious. (Chauvin Tr. 3819-21 (Chief Arradondo).) Even if Floyd did pose a minimal threat to the officers at the start of the restraint, Floyd posed no threat once he was restrained, and certainly did not pose a threat once he had stopped resisting, was rendered unconscious, and lacked a pulse. (Chauvin Tr. 5118-20, 5138 (Stoughton); Fed. Tr. 2807-08, 2933 (Chief Longo); Chauvin Tr. 4155-56, 4175-76 (Sgt. Stiger).)
- 133.3.2. Chauvin did not apply the light to moderate pressure characteristic of a conscious neck restraint. Instead, Floyd’s facial expressions indicate that Chauvin applied considerably more force characteristic of a more dangerous unconscious neck restraint. (Chauvin Tr. 3837-38 (Chief Arradondo).) But Floyd was not actively aggressive, and Chauvin was not trying to save Floyd’s life—or anyone else’s. (*See* Chauvin Ex. 15 (D.F. Video) at 00:01-07:57.)
- 133.3.3. Contrary to his training, Chauvin did not stop using the neck restraint when Floyd stopped resisting or was only passively resisting. (*See* Chauvin Tr. 3833 (Chief Arradondo); Chauvin Ex. 216 (MPD Policy-Procedure Manual 5-301-5-302 (#5015-5016)); Chauvin Ex. 119 (MPD 2018 Use of Force In-Service PPT (#9587-9659)), slide 53.) Instead, Chauvin continued to use deadly force long after Floyd had stopped moving, was no longer speaking, was no longer breathing, and did not have a pulse. (*See, e.g.*, Chauvin Tr. 3888 (Chief Arradondo).)
- 133.3.4. As Chief Arradondo explained: “[O]nce Mr. Floyd had stopped resisting, and certainly once he was in distress and trying to verbalize that, that should have stopped. There’s – there’s an initial reasonableness in trying to just get him under control in the first few seconds, but once there was no longer any resistance, and clearly when Mr. Floyd was no longer responsive, and even motionless, to continue to apply that level of force to a person prone out, handcuffed behind their back, that – that in no way,

shape or form is anything that is by policy, is not part of our training, and it is certainly not part of our ethics or our values.” (Chauvin Tr. 3839-40 (Chief Arradondo).)

- 133.4. Chauvin—like all MPD officers—was trained to place a subject in the side recovery position as soon as possible to alleviate asphyxia. (Chauvin Tr. 4156-57 (Sgt. Stiger); Chauvin Ex. 124 (2018 In-Service Training Attendance Log (#20618-20620)); Chauvin Ex. 119 (MPD 2018 Use of Force In-Service PPT (#9587-9659)), slide 60.) Indeed, Lane twice suggested moving Floyd to his side. (Chauvin Ex. 43 (Kueng BWC) at 20:23:48-20:23:52, 20:25:40-20:25:41.) But Chauvin never moved Floyd into the side recovery position—even despite Lane’s suggestion. This grossly deviated from the standard of care a reasonable officer would have exhibited.
- 133.5. Chauvin—like all MPD officers—was trained to start CPR or otherwise render emergency aid when a subject stops breathing. (*See e.g.*, Fed. Tr. 903 (Inspector Blackwell); Chauvin Tr. 4096-98 (Officer Mackenzie); Chauvin Ex. 111 (CPR Training Guide (#21833-21863)).) But Chauvin never rendered medical aid to Floyd, even though Chauvin was aware from his observations and the bystanders’ comments that Floyd was not breathing, (Chauvin Ex. 49 (Thao BWC) at 20:22:49-20:28:46), and even though Kueng informed Chauvin that Floyd did not have a pulse. (Chauvin Ex. 43 (Kueng BWC) at 20:25:52-20:26:12.) This grossly deviated from the standard of care a reasonable officer would have exhibited.
- 133.6. Chauvin—like all MPD officers—was trained on the standard of care for handling a person in crisis. (Chauvin Tr. 3915-18 (Inspector Blackwell).) Chauvin was aware based on Floyd’s comments and his own observations that Floyd was in crisis. (Chauvin Ex. 43 (Kueng BWC) at 20:22:25-20:22:31.) But instead of treating Floyd with the special care required in that circumstance, Chauvin continued to restrain Floyd handcuffed and prone for nine minutes 29 seconds. (*See generally* Chauvin Ex. 42 (Milestone Video).) This grossly deviated from the standard of care a reasonable officer would have exhibited.
- 133.7. Chauvin—like all MPD officers—was trained that these policies and standards apply to all individuals in MPD’s custody and care. (Chauvin Tr. 3815 (Chief Arradondo).) Although factors like Floyd’s size and suspected recent drug use may affect what constitutes a reasonable use of force, they do not excuse Chauvin’s decision to apply an unlawful restraint well past the point at which Floyd stopped resisting, stopped speaking, stopped breathing, and had no pulse. (Chauvin Tr. 5103-04 (Stoughton).) This grossly deviated from the standard of care a reasonable officer would have exhibited.

134. Chauvin consciously disregarded the risk to Floyd.
- 134.1. Based on his training, Chauvin knew the dangers of prone restraint and the importance of the side recovery position. *Supra* ¶ 128.3. Yet Chauvin made the conscious decision to hold Floyd in the prone position and rebuffed Lane’s suggestion to place Floyd on his side. *Supra* ¶ 133.4.
- 134.2. Chauvin could hear Floyd’s pleas for help, acknowledged them, and ignored them. (Chauvin Ex. 47 (Lane BWC) at 20:19:25-20:24:00.) In particular, Chauvin acknowledged Floyd’s cries that Floyd could not breathe. (Chauvin Ex. 47 (Lane BWC) at 20:18:41-20:22:50.) Yet Chauvin continued his restraint.
- 134.3. Chauvin could tell when Floyd’s voice grew weaker and ultimately fell silent. (Chauvin Ex. 47 (Lane BWC) at 20:23:42-20:24:00.) Yet Chauvin continued his restraint.
- 134.4. Chauvin—who was physically holding Floyd—could tell when Floyd had ceased to move or breathe. (Chauvin Ex. 47 (Lane BWC) at 20:24:50.) Yet Chauvin continued his restraint.
- 134.5. Chauvin could hear bystanders, including a trained firefighter and several minors, telling him that Floyd was not moving or breathing. (Chauvin Ex. 15 (D.F. Video) at 04:22-06:52.) Yet Chauvin continued his restraint.
- 134.6. Chauvin could hear bystanders, including a trained firefighter and several minors, repeatedly pleading with Chauvin and the other officers to take Floyd’s pulse. (Chauvin Ex. 15 (D.F. Video) at 04:46-05:49.) Yet Chauvin continued his restraint.
- 134.7. Chauvin knew that Kueng had tried and failed to find Floyd’s pulse. (Chauvin Ex. 43 (Kueng BWC) at 20:25:52-20:25:59.) Based on his training, Chauvin knew the importance of CPR as soon as possible. *Supra* ¶ 128.1. Yet Chauvin continued his restraint, even after Floyd had stopped talking, stopped moving, stopped breathing, and no longer had a pulse. (Chauvin Ex. 47 (Lane BWC) at 20:24:00-20:28:46.)

**B. Chauvin's Actions Were Objectively Unreasonable From the Perspective of a Reasonable Police Officer Under the Totality of the Circumstances.**

135. For many of the same reasons that Chauvin's use of force grossly deviated from the standard of care a reasonable officer, *supra* ¶¶ 133-134.7, Chauvin's actions were objectively unreasonable under the totality of the circumstances.
136. Chauvin was trained on MPD's use of force and medical policies, which are consistent with generally accepted policing practices. *Supra* ¶¶ 127-129.2.3, 133.1.
137. Chauvin's use of force against Floyd was objectively unreasonable.
- 137.1. Chauvin's actions were disproportionate to any perceived threat, rendering his conduct objectively unreasonable. (State's Supp. Ex. 22 (Expert Report of Sergeant Jody Stiger (#42245-42705)) at 2.)
- 137.2. Chauvin's use of an untrained neck restraint was both excessive force and objectively unreasonable. (Chauvin Tr. 5150 (Stoughton); State's Supp. Ex. 21 (Expert Report of Seth W. Stoughton and Jeffrey J. Noble (#41891-42199)) at 9-10.)
- 137.3. Chauvin used excessive force by keeping Floyd in the prone position for an extended period of time, which was objectively unreasonable. (Chauvin Tr. 5150-51 (Stoughton); State's Supp. Ex. 21 (Expert Report of Seth W. Stoughton and Jeffrey J. Noble (#41891-42199)) at 8-9.)
- 137.4. Chauvin's failure to de-escalate his use of force proportionate to Floyd's threat level was objectively unreasonable. (Chauvin Tr. 5119-20 (Stoughton); State's Supp. Ex. 21 (Expert Report of Seth W. Stoughton and Jeffrey J. Noble (#41891-42199)) at 8.)
- 137.5. Chauvin's continued use of force against Floyd—who was handcuffed and became unconscious during the restraint—was objectively unreasonable. (Chauvin Tr. 5137-39 (Stoughton); State's Supp. Ex. 22 (Expert Report of Sergeant Jody Stiger (#42245-42705)) at 2 (“[U]se of force against a handcuffed and unresponsive George Floyd was contrary to generally accepted policing best practices.”).)
138. Chauvin's use of force was all the more unreasonable in light of the fact that Chauvin was assisted by three other officers. Kueng and Lane were physically restraining Floyd, while Thao stood closely nearby. A Park Police officer was also across the street if necessary. *Supra* ¶¶ 115.1, 133.3.

139. Chauvin’s use of force was all the more unreasonable in light of the fact that Chauvin should have been rendering medical aid to Floyd. *Supra* ¶¶ 134-134.7.

**C. Thao Knew That Chauvin’s Conduct Grossly Deviated From the Standard of Care, and Was Objectively Unreasonable.**

140. Thao knew Chauvin—physically assisted by Kueng and Lane—created an unreasonable risk of causing Floyd’s death or great bodily harm.

141. Thao was aware of the restraint and the other officers’ actions.

141.1. Video evidence clearly shows Thao could directly perceive the restraint. (*See e.g.*, Chauvin Ex. 9 (Alisha Oyler video 2 + Composite Video) at 8:20:04-8:20:12; 8:20:27-8:20:44; 8:20:57-8:21:18; 8:21:25; 8:21:29-8:21:39; 8:21:43; 8:22:12; 8:22:21; 8:22:23; 8:22:27-8:22:36; 8:22:55; 8:23:10; 8:23:16-8:23:17; 8:23:21-8:23:27.)

141.1.1. In his sworn federal trial testimony, Thao admitted that he was looking at the other officers at several specific points while acting as a “traffic cone,” (Fed. Tr. 3144 (Thao)), including at 8:19:14, 8:21:46, 8:22:23, 8:23:00, 8:23:22, 8:23:48, 8:23:56, 8:24:16, and 8:25:04. (Fed. Tr. 3253-54, 3256-57, 3260-61, 3279-81, 3289-90, 3298, 3302, 3306-07.)

141.1.2. Thao also testified that he had looked down at the officers restraining Floyd and had “a full view of Mr. Chauvin and what he’s doing with his knee on Mr. Floyd’s neck” at 8:23 p.m. and 48 seconds. (Fed. Tr. 3289-90 (Thao).)

141.1.3. Thao admitted that he could see that Floyd was “being held down,” and that “Chauvin [was] using his knee on Mr. Floyd’s neck.” (Fed. Tr. 3228-30, 3233, 3239, 3308 (Thao).) Thao also testified that he told the crowd Floyd was “being held down.” (Fed. Tr. 3285 (Thao).)

141.1.4. Even in moments Thao could not completely see the other officers, Thao could still see Floyd and how Floyd was responding to the restraint. (*See e.g.*, Chauvin Ex. 9 (Alisha Oyler video 2 + Composite Video) at 8:23:29; 8:23:34; 8:23:38; 8:23:41; 8:23:44; 8:23:48; 8:23:55; 8:24:09; 8:24:13; 8:24:15; 8:24:24; 8:24:34; 8:24:47; 8:24:53; 8:25:03; 8:25:15; 8:26:44; 8:26:50.)

- 141.1.5. The following composite image shows illustrative moments of Thao looking at the restraint, and clearly perceiving the officer's interactions.



(Fed. Gov't Ex. 21 (Combined Milestone and D.F. video/audio).)

- 141.2. Thao directly interacted with the officers and advised them on their restraint, indicating that Thao was aware of their actions.

- 141.2.1. For instance, Thao located a hobble in the back of the squad car, asked the other officers whether they “want[ed] to hobble [Floyd] at this point,” but personally suggested against using the hobble. (Chauvin Ex. 49 (Thao BWC) at 20:19:26-20:20:39.) Instead, Thao suggested “we’ll just hold him until EMS” arrived, and stated “If we hobble him, the sergeant is going to have to come out.” (Chauvin Ex. 49 (Thao BWC) at 20:20:29-20:20:39.)

142. Thao was aware that Floyd was in medical distress.

- 142.1. Thao admitted that he could hear Floyd talking and could tell when Floyd ceased talking. (Fed. Tr. 3229, 3231 (Thao).)
- 142.2. Thao heard Floyd say that he could not breathe. (Chauvin Ex. 49 (Thao BWC) at 20:18:37.)



- 142.3. Thao admitted that Floyd appeared unconscious to Thao during the restraint. (Fed. Tr. 3231 (Thao).)
- 142.4. Thao heard and acknowledged the bystanders' repeated pleas that Floyd was in medical distress and needed medical care. For instance:
- 142.4.1. Thao heard Williams yell, "he's non-responsive, right now. (Chauvin Ex. 49 (Thao BWC) at 20:25:33-20:25:49.) Thao heard the bystanders say, "He's not moving." (Chauvin Ex. 15 (D.F. Video) at 05:39:00-5:40:00.)
- 142.4.2. Thao heard Hansen ask whether Floyd had a pulse. (Chauvin Ex. 15 (D.F. Video) at 04:54:00-05:47:00.)
- 142.4.3. Thao heard Williams say Floyd was "not even resisting arrest right now." (Chauvin Ex. 49 (Thao BWC) at 20:24:40-20:24:45.)
- 142.4.4. Thao heard A.F. say that Floyd was "passed out." (Chauvin Ex. 49 (Thao BWC) at 20:24:45.)
- 142.4.5. Thao heard the bystanders yell, "Get the fuck off him." (Chauvin Ex. 49 (Thao BWC) at 20:25:16-20:25:18.)
- 142.4.6. Thao heard the bystanders yell, "Get off his neck." (Chauvin Ex. 49 (Thao BWC) at 20:21:41, 20:22:49.)
- 142.4.7. Thao heard the bystanders yell, "Look at him [Floyd]." Thao later explained that he took this to mean the officers needed to check on Floyd. (Chauvin Ex. 49 (Thao BWC) at 20:24:25; State's Supp. Ex. 24 (Video of BCA Interview with Tou Thao (#8128)) at 01:11:20; *see also* State's Supp. Ex. 23 (Transcript of BCA Video Interview with Tou Thao (#27480-27525)) at 27510.)
- 142.4.8. Thao heard Hansen and Williams repeatedly demand that the officers check for a pulse. (Chauvin Ex. 49 (Thao BWC) at 20:25:45-20:26:03.)
- 142.4.9. Thao acknowledged that he could generally hear what the crowd was saying and that he verbally responded to the crowd. (Fed. Tr. 3295 (Thao).)
- 142.4.10. Thao also acknowledged that, at 8:23 p.m. and 48 seconds, he had heard the bystanders expressing concern about the restraint, heard Floyd "again say he can't breathe," and knew that Floyd's "talking [was] getting weaker." (Fed. Tr. 3289-90 (Thao).)

- 142.4.11. Nearly a minute later, Thao heard the bystanders telling him that Floyd was not talking. (Chauvin Ex. 49 (Thao BWC) at 20:24:20-20:24:25.)
- 142.5. At a minimum, Thao’s actions reflected a subjective knowledge that Floyd was in medical distress.
- 142.5.1. Thao increased the emergency call code from a Code 2 to a Code 3, meaning the ambulance should use lights and sirens. Thao testified that he increased the code because Thao believed Floyd was undergoing excited delirium, which he characterized as a “serious medical condition.” (Fed. Tr. 3140, 3359 (Thao).) Thao knew that positional asphyxia can be a concern with excited delirium. (Fed. Tr. 3223, 3367 (Thao).)
- 142.5.2. Thao also testified that he checked with dispatch on the status of the ambulance “to kind of figure out how far away the ambulance was.” (Fed. Tr. 3153 (Thao).)
- 142.5.3. In his post-incident BCA interview, Thao stated that he thought it was “a possibility” that Floyd was experiencing a drug overdose. (State’s Supp. Ex. 24 (Video of BCA Interview with Tou Thao (#8128)) at 01:02:03; *see* Fed. Tr. 3125-26 (Thao).) Based on his training, Thao knew that a person experiencing a drug overdose is in medical distress. (*See* Chauvin Ex. 111 (CPR Training Guide (#21833-21863)), slide 16.)
143. Thao’s contrary testimony implying Thao had more limited knowledge of the events is not credible and is contradicted by overwhelming evidence and Thao’s own admissions.
- 143.1. Thao maintained that, six minutes into the restraint, it was unclear to Thao whether Chauvin was applying force to Floyd with his knee because Chauvin’s knee could instead “be hovering” over Floyd. (Fed. Tr. 3317-18 (Thao).) Thao also testified that he could not tell whether Floyd was resisting or not because Thao was “not in contact with Mr. Floyd.” (Fed. Tr. 3287 (Thao).)
- 143.2. But Thao personally saw the officers restrain Floyd. *Supra* ¶¶ 141.1-141.5. The notion that Thao thought Chauvin’s knee was merely hovering over Floyd is not credible.
- 143.3. Thao testified that he assumed Floyd was “still breathing and fine,” had a pulse, and was not “in cardiac arrest.” (Fed. Tr. 3149 (Thao).) Thao also testified that he did not understand the medical significance of Floyd’s condition until the fire department arrived. (Fed. Tr. 3154-55 (Thao).)

- 143.4. But Thao received a “play-by-play” of the restraint from the bystanders and dismissed their pleas for Thao to intervene. *Supra* ¶¶ 142.4-142.4.11. Thao also knew that Floyd had fallen silent, and Thao admitted that Floyd appeared unconscious and that he did not see anyone roll Floyd on his side or perform CPR before the ambulance arrived. (Fed. Tr. 3229, 3231, 3224 (Thao).) And Thao warned Minneapolis Park Police Officer Peter Chang that EMT was providing CPR to Floyd, and that Chang should write a supplemental report in case Floyd dies and this becomes a critical incident. (State’s Supp. Ex. 24 (Video of BCA Interview with Tou Thao (#8128)) at 00:42:11-00:42:52; *see also* State’s Supp. Ex. 23 (Transcript of BCA Video Interview with Tou Thao (#27480-27525)) at 27498.) The idea that Thao failed to act because he did not understand the gravity of Floyd’s medical situation is not credible.
144. Thao knew that the restraint he witnessed—and intentionally assisted, *see infra* ¶¶ 145-146.4—grossly deviated from the standard of care and risked death.
- 144.1. Thao received a total of 1,014 hours of MPD training on the topics discussed above, including procedural justice training, crisis intervention training, defensive tactics training, and CPR training. (Fed. Tr. 988-89, 996 (Inspector Blackwell); Fed. Gov’t Exs. 59 (Thao Workforce Training), 61 (2018 Annual Refresher Defensive Tactics PowerPoint), 75 (April 2012 Administrative Announcement to Show Positional Asphyxia Training Video), 76 (April 2012 Positional Asphyxia Training Video); Chauvin Ex. 111 (CPR Training Guide (#21833-21863)); *see supra* ¶¶ 127-128.6.2 (summarizing MPD training and policies).
- 144.2. Thao was trained to place a subject in the side recovery position as soon as possible to alleviate the risk of positional asphyxia. (Chauvin Tr. 3919; Fed. Tr. 905-907, 1035-1037 (Inspector Blackwell); Fed. Gov’t Exs. 75 (April 2012 Administrative Announcement to Show Positional Asphyxia Training Video), 76 (April 2012 Positional Asphyxia Training Video).) Thao admitted that he was also trained to place a person suffering from excited delirium in the side recovery position to avoid positional asphyxia. (Fed. Tr. 3367 (Thao); *see* Fed. Tr. 1299-1330 (Inspector Blackwell); Fed. Thao Ex. T-12 (2019 Phase I Excited Delirium PowerPoint) at 31.) Yet Thao knew that the officers instead restrained Floyd in the prone position for nine minutes and 29 seconds.
- 144.3. Thao was regularly trained on how to provide CPR. (Fed. Gov’t Ex. 60 (Thao CPR Card 2012); *see also* Chauvin Tr. 4084-4085 (Officer Mackenzie).) Because Thao received MPD’s training, Thao knew the importance of performing CPR as quickly as possible, including while waiting for EMS to arrive. (Fed. Tr. 1343-44 (Inspector Blackwell); Fed. Tr. 3149 (Thao); Chauvin Tr. 3812-13 (Chief Arradondo).) And Thao also acknowledged that an officer

cannot “ignore” when a subject says they cannot breathe and that “it is a red flag if someone in your custody suddenly stops talking.” (Fed. Tr. 3202-03, 3170 (Thao).) Yet Thao knew that no one was performing CPR on Floyd, even after Floyd stopped talking, and even after Floyd appeared unconscious.

- 144.4. Thao was trained to only use appropriate force proportional to the subject’s resistance, and to evaluate the use of force and de-escalate as necessary throughout a restraint. (Fed. Tr. 3162, 3171-73 (Thao); Fed. Gov’t Ex. 61 (2018 Annual Refresher Defensive Tactics PowerPoint); Chauvin Ex. 119 (MPD 2018 Use of Force In-Service PPT (#9587-9659)).) Thao also acknowledged that an officer cannot continue to use force on someone who is not resisting—even if you suspect that person is suffering from excited delirium. (Fed. Tr. 3313, 3223 (Thao).) Thao was also trained that it is unnecessary to use force on someone who is unconscious or does not have a pulse. (Fed. Tr. 3177 (Thao).) Yet Thao knew the officers continued restraining Floyd after he stopped resisting, was no longer speaking, and appeared unconscious.
- 144.5. Thao was trained on the risk of injury when officers administer force to a person’s head, neck, and sternum. (Fed. Tr. 1015-17 (Inspector Blackwell); Fed. Gov’t Ex. 61 (2018 Annual Refresher Defensive Tactics PowerPoint).) And Thao knew that MPD policy prohibits using a conscious neck restraint unless the subject is “actively resisting.” (Fed. Tr. 3194-95 (Thao).) Yet Thao knew that Chauvin had his knee on Floyd’s neck, and that Chauvin’s knee remained on Floyd’s neck even after Floyd was no longer resisting or speaking. *See supra* ¶¶ 141.1, 143.1-143.2, 143.4; (*see also* State’s Supp. Ex. 24 (Video of BCA Interview with Tou Thao (#8128)) at 01:05:29-1:05:54, 01:08:17-01:08:26 (Thao acknowledging he could see Chauvin’s left knee on Floyd’s neck and back).) Indeed, Thao acknowledged that at some point during the restraint Floyd was not resisting and “was just laying there.” (State’s Supp. Ex. 24 (Video of BCA Interview with Tou Thao (#8128)) at 01:32:18-01:32:38.)
- 144.6. Thao knew that Chauvin was not using a trained neck restraint. (State’s Supp. Ex. 24 (Video of BCA Interview with Tou Thao (#8128)) at 01:05:56-01:06:06; *see also* State’s Supp. Ex. 23 (Transcript of BCA Video Interview with Tou Thao (#27480-27525)) at 27507.) And Thao admitted that he was obligated to stop another police officer if he saw that officer using excessive force. (Fed. Tr. 3177-78 (Thao).) Yet Thao stood by and did not stop Chauvin during the entire nine minute and 29 second restraint.

**D. Thao Intentionally Aided Chauvin and the Other Officers' Deadly Restraint.**

145. Thao intentionally aided the deadly restraint in at least two ways.

145.1. *First*, Thao actively discouraged his fellow officers from using the hobble, which the officers could easily have placed on Floyd in the prone position. Instead, Thao encouraged all three officers to continue restraining Floyd face down on the ground because using the hobble might result in a superior officer reviewing their use of force. Thao also encouraged the officers' throughout the restraint to maintain their positions and to ignore Floyd's increasingly desperate pleas for help.

145.1.1. A hobble allows police officers to restrain suspects in the prone position.

145.1.2. Thao located a hobble in the back of the squad car and asked the other officers whether they "want[ed] to hobble [Floyd] at this point." (Chauvin Ex. 49 (Thao BWC) at 20:20:29-20:20:39.)

145.1.3. Thao encouraged Chauvin and the other officers to hold Floyd in the prone position for an extended period of time, by suggesting the officers not use the hobble. (Chauvin Ex. 49 (Thao BWC) at 20:20:29-20:20:39.)

145.1.4. Instead, Thao suggested to his fellow officers: "We'll just hold him until EMS" arrived. (Chauvin Ex. 49 (Thao BWC) at 20:20:29-20:20:39.)

145.1.5. Thao also explained why the officers should not use a hobble: "If we hobble him, the sergeant is going to have to come out." (Chauvin Ex. 49 (Thao BWC) at 20:20:29-20:20:39.)

145.1.6. Under MPD policy, an officer must notify their supervisor when they use a hobble so that the supervisor can review their use of force and complete a report. (Chauvin Tr. 3496-3500 (Sgt. Pleoger); Fed. Tr. 3133-34 (Thao).)

145.1.7. Thao's defense for discouraging the use of the hobble is not credible.

145.1.7.1. In his interview with BCA, Thao stated that the officers decided against using a hobble on Floyd, and instead held Floyd until the ambulance arrived, because the officers would otherwise have to undo the hobble when

the ambulance arrived. (State’s Supp. Ex. 24 (Video of BCA Interview with Tou Thao (#8128)) at 00:34:26-00:36:29; *see also* State’s Supp. Ex. 23 (Transcript of BCA Video Interview with Tou Thao (#27480-27525)) at 27496-97.)

145.1.7.2. In his federal testimony, however, Thao claimed that, if the officers had used the hobble, the paramedics would have had to wait to provide medical attention until after the sergeant had documented the use of the hobble for the use of force review. (Fed. Tr. 3134, 3230 (Thao).)

145.1.7.3. This testimony is internally inconsistent and not credible. The “pillar” of MPD’s use of force policy is the “sanctity of life.” (Chauvin Tr. 3815 (Chief Arradondo); *accord* Fed. Tr. 874, 881 (Inspector Blackwell); Fed. Gov’t Ex. 49 (MPD Policy and Procedure Manual - 7-809 Crisis Intervention Policy) at 3.) It is inconceivable that MPD policy would require officers to leave a hobble in place, thereby delaying life-saving medical attention, in order to allow a supervisor to document the use of a hobble. Indeed, Chief Arradondo testified that, “[w]hile awaiting EMS, MPD employees assisting an individual having an acute medical crisis shall provide any necessary first aid consistent with our MPD training as soon as practical.” (Chauvin Tr. 3812 (Chief Arradondo).)

145.1.8. Thao also encouraged the officers to maintain their positions and to ignore Floyd’s pleas for help through other statements.

145.1.8.1. For instance, Thao dismissed Floyd’s complaints by telling him to “relax,” suggested Floyd was to blame for the restraint because Floyd was on drugs, and rebuffed calls for aid by saying (incorrectly) that because Floyd could speak Floyd could sufficiently breathe. (Chauvin Ex. 49 (Thao BWC) at 20:21:37-20:21:40, 20:21:47-20:21:53, 20:23:00-20:23:41, 20:23:40-20:23:50; *see, e.g.*, Fed. Tr. 1682 (Dr. Systrom).)

145.2. *Second*, Thao intentionally prevented the bystanders, including a trained firefighter, from providing medical aid to Floyd. These actions intentionally

assisted Chauvin and the others in order to continue the restraint. Indeed, Thao's presence was intended to assist the officers' unreasonable restraint.

- 145.2.1. Thao positioned himself between Chauvin, Kueng, and Lane and the group of concerned citizens. (Chauvin Ex. 42 (Milestone Video) at 08:21:34-08:29:53.)
  - 145.2.2. Thao actively ensured that the bystanders remained on the sidewalk. (Chauvin Ex. 49 (Thao BWC) at 20:25:18; *see* Fed. Tr. 3144 (Thao).)
  - 145.2.3. Thao even antagonized the bystanders by making comments like "This is why you don't do drugs, kids." (Chauvin Ex. 49 (Thao BWC) at 20:23:16-20:23:18.)
  - 145.2.4. Thao refused to allow Hansen—a trained firefighter—to tend to Floyd and shouted for her to "back off!" (Chauvin Ex. 49 (Thao BWC) at 20:25:33.)
146. Thao's failure to intervene to prevent the officers' unreasonable force and his own failure to render medical aid to Floyd further indicates Thao's intent to assist the officers' unreasonable and dangerous restraint.
- 146.1. MPD policy provides: "It shall be the duty of every sworn employee present at any scene where physical force is being applied to either stop or attempt to stop another sworn employee when force is being inappropriately applied or is no longer required." (Fed. Tr. 881 (Inspector Blackwell); Fed. Gov't Ex. 46 (MPD Policy and Procedure Manual - 5-300 (All) Use of Force) at 3.)
  - 146.2. But instead of intervening, Thao instead stood by—and further enabled—his fellow officers as they restrained Floyd. *Supra* ¶¶ 145-145.2.4. Thao's failure to intervene indicates his intent to aid the officers through his presence and actions.
  - 146.3. Thao had also a professional and legal obligation to render medical aid to Floyd, who was exhibiting medical distress. *Supra* ¶¶ 128.1-128.2, 129.1.7.
  - 146.4. But Thao did not attempt to provide first aid to Floyd. *Supra* ¶ 61; (*see, e.g.*, Fed. Tr. 1341 (Inspector Blackwell).) Thao's failure to provide medical aid indicates his intent to aid the officers through his presence and actions.
147. Thao's contrary rationalizations are not credible, and do not undermine the weight of the evidence demonstrating Thao possessed the intent to assist the officers' unreasonable and dangerous restraint.

- 147.1. In his federal testimony, Thao suggested that his actions (or lack thereof) were justified because his job was merely to deal with the bystanders. (*See* Fed. Tr. 3144, 3148 (Thao).)
- 147.1.1. Thao characterized the bystanders as hostile because they were “cursing” at him. (State’s Supp. Ex. 24 (Video of BCA Interview with Tou Thao (#8128)) at 01:10:46-01:10:58; *see also* State’s Supp. Ex. 23 (Transcript of BCA Video Interview with Tou Thao (#27480-27525)) at 27510.)
- 147.1.2. But although the bystanders were outspoken in their concern for Floyd’s life, they were not threatening or violent. (Chauvin Tr. 5144-45 (Stoughton).) Indeed, Thao acknowledged that the crowd was trying to inform him of a change in Floyd’s behavior and admitted that it was “safe enough” to provide medical care to Floyd. (Chauvin Ex. 49 (Thao BWC) at 20:24:20-20:24:25; Fed. Tr. 3260 (Thao); State’s Supp. Ex. 24 (Video of BCA Interview with Tou Thao (#8128)) at 01:11:22-01:12:20; *see also* State’s Supp. Ex. 23 (Transcript of BCA Video Interview with Tou Thao (#27480-27525)) at 27497.)
- 147.1.3. Thao’s actions demonstrate that he was not actually concerned that the bystanders posed a real threat to the officers or Floyd. MPD officers are trained to call for backup and communicate with officers on scene when they feel a crowd of bystanders poses a risk. (Fed. Tr. 1125 (Inspector Blackwell).) But Thao also testified that he did not call for law enforcement backup or ask Officer Chang to assist him with crowd control, which undercuts his suggestion that the bystanders were truly hostile. (Fed. Tr. 3232 (Thao).)
- 147.1.4. Thao’s flippant comments to the crowd likewise demonstrate that he was not actually concerned about any potential threat from the bystanders. (Chauvin Tr. 5143 (Stoughton).)
- 147.1.5. Even if the bystanders had been unruly, however, that would not have justified Thao’s actions. Officers are trained to use a level of force proportional to the danger presented, meaning officers are required to lower the level of force where a situation can safely be controlled at a lower level. (*See* Fed. Tr. 1120-24 (Inspector Blackwell testifying that the bystanders did not prevent Thao from complying with MPD’s policy and training); Fed. Gov’t Ex. 61 (2018 Annual Refresher Defensive Tactics PowerPoint).)



- 147.2. Thao suggested that, because he assumed the others officers were “[t]aking care of [Floyd],” Thao did not need to provide Floyd with medical aid. (Fed. Tr. 3145 (Thao).)
- 147.2.1. But Thao acknowledged that, consistent with MPD training, he had “a duty to render medical aid or make sure medical aid is being rendered,” even if there were “other officers with you taking care of” a subject. (Fed. Tr. 3292 (Thao); *see* Chauvin Ex. 111 (CPR Training Guide (#21833-21863).) Thao further admitted that he could have, but did not, attempt to call out to the other officers or otherwise communicate with them about whether Floyd had a pulse or whether the officers were rendering medical aid. (Fed. Tr. 3297-98, 3329-31, 3333, 3335-36 (Thao).)
- 147.2.2. As summarized above, *supra* ¶¶ 141-142.5.3, Thao was aware from his direct observations, Floyd’s actions and comments, and the bystanders’ comments that Floyd was in medical distress as a result of the restraint, and that the other officers were not rendering Floyd medical aid.
- 147.2.3. Despite this, Thao did not check Floyd’s pulse, provide CPR, or otherwise provide aid to Floyd. *Supra* ¶ 61; (*see, e.g.*, Fed. Tr. 1341 (Inspector Blackwell).)
- 147.3. Thao claimed that he believed Chauvin was using a trained neck restraint.
- 147.3.1. Thao admitted that he saw Chauvin’s knee on Floyd’s neck. (State’s Supp. Ex. 24 (Video of BCA Interview with Tou Thao (#8128)) at 01:08:16-01:08:26; *see also* State’s Supp. Ex. 23 (Transcript of BCA Video Interview with Tou Thao (#27480-27525)) at 27508.) Thao also observed Chauvin positioned at Floyd’s head, with his knees on the back of Floyd’s back, neck, and shoulder blades. (State’s Supp. Ex. 24 (Video of BCA Interview with Tou Thao (#8128)) at 01:05:10-01:05:50.)
- 147.3.2. Thao testified that he thought Chauvin’s knee on Floyd’s neck was “not uncommon” because officers had “been trained on it.” (Fed. Tr. 3141.)
- 147.3.3. But Thao also testified that Chauvin was not using “a neck restraint as defined by MPD” or a “trained neck restraint.” (Fed. Tr. 3193-94.) Thao testified that although he was trained that an officer can use a knee when “trying to get control of somebody,” once the

officer has that person handcuffed and under control, the officer is trained to avoid the neck area. (Fed. Tr. 3189-92 (Thao).)

- 147.3.4. Thao admitted that he had not seen the maneuver Thao observed Chauvin using on Floyd or a maneuver similar to that used previously. (Fed. Tr. 3193-94 (Thao); State’s Supp. Ex. 24 (Video of BCA Interview with Tou Thao (#8128)) at 01:05:56; *see also* State’s Supp. Ex. 23 (Transcript of BCA Video Interview with Tou Thao (#27480-27525)) at 27507-08.)
- 147.3.5. Thao acknowledged that MPD policy prohibits using a conscious neck restraint unless the subject is “actively resisting,” and prohibits using an unconscious neck restraint “unless someone is exhibiting active aggression.” (Fed. Tr. 3194-95 (Thao); *see* Fed. Gov’t Ex. 61 (2018 Annual Refresher Defensive Tactics PowerPoint).)
- 147.3.6. Multiple MPD officers testified that MPD does not train officers to use their knee to implement a neck restraint in the manner performed by Chauvin. (Fed. Tr. 1941, 1979 (Officer Mackenzie); Chauvin Tr. 3922-23, Fed. Tr. 1095, 1098-99, 1104, 1111-12 (Inspector Blackwell); Chauvin Tr. 3629-30, Fed. Tr. 2462 (Lt. Zimmerman).)
- 147.4. Thao suggested that his actions (or lack thereof) were justified because he believed Floyd was suffering from excited delirium. (Fed. Tr. 3343, 3286.)
- 147.4.1. Thao offered contradictory testimony on this point. Thao testified that officers should restrain a person potentially suffering from excited delirium until paramedics arrive, even if that person is not currently resisting, because there is a risk that person could later pose a threat. (Fed. Tr. 3173-74, 3219-20 (Thao).) Thao further testified that whether to roll someone suffering from excited delirium on their side once they are handcuffed and not violent “depends if you believe that person may, especially under the influence, may get up and fight again.” (Fed. Tr. 3218 (Thao).)
- 147.4.2. But Thao also acknowledged that an officer cannot use force on a person that is not resisting, even if the officer suspects that person is suffering from excited delirium and might later pose a threat. (Fed. Tr. 3223, 3173-74, 3313 (Thao).) And he testified—consistent with MPD training—that if someone suffering from excited delirium is in handcuffs and not resisting, the officer must place that person in the side recovery position. (Fed. Tr. 3223,

3361-62 (Thao).) Thao further admitted that he “ignored” his training to roll an individual with excited delirium on their side to prevent positional asphyxia. (Fed. Tr. 3367 (Thao).)

- 147.5. Thao suggested that his actions (or lack thereof) were justified because he believed Floyd was experiencing a drug overdose.
- 147.5.1. According to MPD training and policy, officers are required to consider whether a subject’s lack of compliance is deliberate or due to an inability to comply, for example because of a mental impairment or physical limitation. (Chauvin Tr. 3799 (Chief Arradondo); Fed. Tr. 893-894, 974-975 (Inspector Blackwell).) Officers are also trained that individuals in crisis may require special care. (Fed. Gov’t Ex. 49 (MPD Policy and Procedure Manual - 7-809 Crisis Intervention Policy) at 3.)
- 147.5.2. Thao knew from the dispatch call that Floyd was possibly intoxicated. (Chauvin Ex. 151 (CAD Report (Bates 434-436)); State’s Supp. Ex. 24 (Video of BCA Interview with Tou Thao (#8128)) at 00:48:56; *see also* State’s Supp. Ex. 23 (Transcript of BCA Video Interview with Tou Thao (#27480-27525)) at 27500.)
- 147.5.3. Thao thought Floyd was on drugs, and perhaps experiencing a drug overdose, which is why he thought calling the ambulance was necessary. (Chauvin Ex. 49 (Thao BWC) at 20:21:24; State’s Supp. Ex. 24 (Video of BCA Interview with Tou Thao (#8128)) at 00:57:10-00:57:22, 01:02:05-01:02:11; *see also* State’s Supp. Ex. 23 (Transcript of BCA Video Interview with Tou Thao (#27480-27525)) at 27503-05; Fed. Tr. 3125-26 (Thao).)
- 147.5.4. But rather than seriously considering whether this affected Floyd’s perceived noncompliance, Thao mocked Floyd, telling bystanders: “This is why you don’t do drugs, kids.” (Chauvin Ex. 49 (Thao BWC) at 20:23:16-20:23:18; *accord* Chauvin Ex. 49 (Thao BWC) at 20:26:04 (“Don’t do drugs, guys.”).)

**E. Thao’s Actions Were Objectively Unreasonable Under the Circumstances.**

148. For many of the same reasons already discussed, Thao’s actions—discouraging the use of the hobble, encouraging the dangerous prone restraint, and interposing himself between the bystanders rather than intervening to prevent the officers’ unreasonable force or rendering aid to Floyd—were objectively unreasonable under the totality of the circumstances.
149. Thao perceived the excessive restraint. *Supra* ¶¶ 141-141.2.1.

150. Thao was trained on MPD's use of force and medical policies, which are consistent with generally accepted policing practices. *Supra* ¶¶ 127-129.2.3, 144.1.
- 150.1. Thao was trained on the dangers of positional asphyxia and knew to place a subject—including one suffering from excited delirium—in the side recovery position. *Supra* ¶¶ 128.3-128.5, 144.2.
- 150.2. Thao was trained about the importance of rendering medical aid and the fact that MPD officers have an additional duty of care to individuals in crisis. *Supra* ¶¶ 128.1-128.2, 128.6-128.6.2, 144.2-144.3. Based on his own observations and admissions, Thao believed that Floyd was suffering from a medical or drug-related crisis. *Supra* ¶¶ 142.5-142.5.3, 147.5-147.5.3.
- 150.3. Thao was trained on proper restraint tactics, including the use of conscious and unconscious neck restraints. *Supra* ¶¶ 127.8-127.8.4, 144.5-144.6.
- 150.4. Thao was trained that officers may use only proportional force, and must continually reevaluate their use of force and de-escalate as necessary. *Supra* ¶¶ 127.5-127.6, 144.4. Thao also knew that MPD policy prohibits using force against someone who is not resisting. *Supra* ¶ 127.4.
- 150.5. Thao knew that he had an affirmative duty to intervene to prevent fellow officers from using unreasonable force. *Supra* ¶¶ 127.9-127.9.1.
151. But despite Thao's training and knowledge, Thao did not seek to place Floyd into the side recovery position, render any kind of medical aid, dissuade the officers from excessive force, or otherwise intervene to mitigate the obvious danger to Floyd. *Supra* ¶ 61; (*see, e.g.*, Fed. Tr. 1341 (Inspector Blackwell).)
152. Instead, Thao discouraged the other three officers from using the hobble, encouraged the other three officers to restrain Floyd prone on the ground, interposed himself between the officers and bystanders, actively prevented Hansen—a trained firefighter—from rendering medical aid, and actively antagonized the bystanders. *Supra* ¶¶ 145-145.2.4. Thao's actions contravened his training and were objectively unreasonable under the circumstances.
153. Thao's contrary justifications for his actions are not credible, and do not make his actions objectively reasonable under the circumstances. *Supra* ¶¶ 147-147.5.4.

**F. The Acts of Thao, Chauvin, Kueng, and Lane Took Place on or About May 25, 2020 in Hennepin County.**

154. The interaction between the officers and Floyd occurred on May 25, 2020.
- 154.1. Officers arrived on scene in the evening of May 25, 2020. (Chauvin Tr. 2740 (Scurry); Chauvin Ex. 10 (Dispatch Audio to Officers).)
- 154.2. The officers' restraint of Floyd occurred from approximately 8:19 p.m. to approximately 8:28 p.m. on May 25, 2020. (Chauvin Ex. 42 (Milestone Video).)
- 154.3. Floyd was declared dead at 9:25 p.m. on May 25, 2020. (Chauvin Tr. 3702-03, 3729 (Dr. Langenfeld); State's Supp. Ex. 19 (Stabilization Room Video\_Trauma Bay Clip, 21:24:53/32:25 to 21:25:28/32:59); Chauvin Ex. 194 (Hennepin County ME Press Release (#26734)).)
155. The interaction between the officers and Floyd occurred in Hennepin County.
- 155.1. The interaction between the officers and Floyd took place outside Cup Foods at the intersection of 38th and Chicago in the City of Minneapolis. (Chauvin Tr. 2714 (Scurry); Chauvin Ex. 10 (Dispatch Audio to Officers).)
- 155.2. The City of Minneapolis is located in Hennepin County. (Chauvin Tr. 2714 (Scurry).)

**CONCLUSIONS OF LAW**

**I. THE ELEMENTS OF THE CRIMES AND THE STATE'S BURDEN.**

1. Minnesota's aiding and abetting statute provides that: "A person is criminally liable for a crime committed by another if the person intentionally aids, advises, hires, counsels, or conspires with or otherwise procures the other to commit the crime." Minn. Stat. § 609.05, subd. 1.
2. The Minnesota Supreme Court has "long held that aiding and abetting is not a separate substantive offense. Instead, it is a theory of criminal liability" which "makes accomplices criminally liable as principals." *State v. Ezeka*, 946 N.W.2d, 393 407 (Minn. 2020) (internal quotation marks and citation omitted). In other words, an accomplice who "intentionally aids" another's crime is criminally liable as if the accomplice committed the crime himself. Minn. Stat. § 609.05, subd. 1.
3. The phrase "intentionally aids" encompasses two "important and necessary" *mens rea* elements. *State v. Milton*, 821 N.W.2d 789, 805 (Minn. 2012). These elements ensure the accomplice has the same criminal culpability as the principal.

*First*, the defendant must know that his “alleged accomplices were going to [commit] or were committing a crime.” *State v. Smith*, 901 N.W.2d 657, 661 (Minn. Ct. App. 2017) (internal quotation marks and citation omitted). Critically, the defendant does not need to have “knowledge of an accomplice’s criminal intent before the crime commences.” *Id.* at 662. Because the statute only “requires knowledge of the crime at the time of the acts or presence amounting to aid,” “[a] defendant who acquires the requisite knowledge while the accomplice is in the process of committing the offense” can be found liable for aiding and abetting. *Id.*

*Second*, the defendant must “intend[] his presence or actions to further the commission of that crime.” *Milton*, 821 N.W.2d at 808 (internal quotation mark omitted). In other words, the defendant must “make[] the choice to aid in its commission either through [his] presence or [his] actions.” *Smith*, 901 N.W.2d at 662. Although “it is rare for the State to establish a defendant’s state of mind through direct evidence,” the jury may properly “infer the requisite state of mind for accomplice liability through circumstantial evidence,” including, for example, “the defendant’s presence at the scene of the crime” or “a close association with the principal offender before and after the crime.” *State v. McAllister*, 862 N.W.2d 49, 53 (Minn. 2015).

4. “Knowledge and intent are both necessary elements that the state must prove beyond a reasonable doubt.” *Smith*, 901 N.W.2d at 663. Together, the twin knowledge and intent *mens rea* elements hold culpable accomplices liable, but ensure that unwitting accomplices do not face undeserved liability. As set forth above, aiding and abetting liability does not require “knowledge of an accomplice’s criminal intent before the crime commences,” but instead requires “knowledge of the crime at the time of the acts or presence amounting to aid.” *Id.* at 662. “A defendant who acquires the requisite knowledge while the accomplice is in the process of committing the offense, and makes the choice to aid in its commission either through [his] presence or [his] actions, is guilty as an accomplice under the plain language of Minn. Stat. § 609.05.” *Id.*
5. Minnesota specifically holds a defendant liable for aiding and abetting second-degree manslaughter. *See Matter of S. W. T.’s Welfare*, 277 N.W.2d 507, 514 (Minn. 1979) (upholding conviction for “aiding criminally negligent manslaughter” because defendants “acted together with conscious disregard of a risk”). When an accomplice has knowledge of a principal’s criminally negligent act and intentionally aids that criminally negligent act, the accomplice is himself as negligent and culpable as the principal. *See id.*
6. A principal is guilty of second-degree manslaughter if “by the person’s culpable negligence whereby the person creates an unreasonable risk, and consciously takes chances of causing death or great bodily harm to another,” he “causes the death of another.” Minn. Stat. § 609.205(1); *see* CRIMJIG 11.56 (providing elements of second-degree manslaughter, tracking directly the statutory language).

Second-degree manslaughter therefore requires proof of: (i) “objective gross negligence on the part of the actor”; and (ii) “subjective ‘recklessness in the form of an actual conscious disregard of the risk created by the conduct.’ ” *State v. McCormick*, 835 N.W.2d 498, 507 (Minn. Ct. App. 2013) (quoting *State v. Frost*, 342 N.W.2d 317, 320 (Minn. 1983)). The objective gross negligence component “is satisfied by demonstrating that the act was ‘a gross deviation from the standard of care that a reasonable person would observe in the actor’s situation.’ ” *Id.* (quoting *Frost*, 342 N.W.2d at 319). The subjective recklessness component requires proof of the “actor’s state of mind.” *Id.* That is usually established through circumstantial evidence, “by inference from words or acts of the actor both before and after the incident.” *Id.* (quoting *State v. Johnson*, 616 N.W.2d 720, 726 (Minn. 2000)).

7. To prove that Thao is guilty of aiding and abetting second-degree manslaughter, the State must prove the following elements beyond a reasonable doubt:

(1) Chauvin<sup>5</sup> committed second-degree manslaughter, meaning that that Chauvin caused Floyd’s death by culpable negligence, whereby he created an unreasonable risk and consciously took a chance of causing death or great bodily harm, Minn. Stat. § 609.205(1); *see* CRIMJIG 11.56;

(2) Thao knew Chauvin was committing an objectively grossly negligent act;

(3) Thao intended that his presence or actions aided Chauvin’s commission of that grossly negligent act, and Thao made no reasonable effort to prevent the crime before it was committed; and

(4) Thao’s acts took place on or about May 25, 2020 in Hennepin County.

The State need not prove that Thao intended for Floyd’s death to occur. The State also need not prove that Thao knew Chauvin consciously disregarded the risk created by Chauvin’s conduct (although the State has proved this beyond a reasonable doubt, *see infra* ¶ 11).

If Thao intentionally aided Chauvin in committing a crime, or intentionally advised, hired, counseled, conspired with, or otherwise procured Chauvin to commit it, Thao is also guilty of any other crime Chauvin committed while trying to commit the intended crime, if that

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<sup>5</sup> The elements for accomplice liability include that “the defendant knew that (another person) (others) (was) (were) going to commit or (was) (were) committing a crime.” CRIMJIG 4.01. The Court notes that, as such, the underlying “crime” need not be limited to the acts of a single principal, and may include multiple actors. The Court, however, specifically identifies Chauvin in these elements with respect to the underlying crime, as the Court finds that, at a minimum, the evidence is sufficient to establish Chauvin’s liability as a principal and Thao’s conduct with respect to Chauvin satisfies each of the elements set forth herein.

other crime was reasonably foreseeable to Thao as a probable consequence of trying to commit the intended crime. *See* CRIMJIG 4.01.

“To cause” means to be a substantial causal factor in causing Floyd’s death.

Chauvin is criminally liable for all consequences of his actions that occur in the ordinary and natural course of events, including those consequences brought about by one or more intervening causes, if such intervening causes were the natural result of Chauvin’s acts.

The fact that other causes contribute to Floyd’s death does not relieve Chauvin of criminal liability. However, Chauvin is not criminally liable if a “superseding cause” caused Floyd’s death. A “superseding cause” is a cause that comes after Chauvin’s acts, alters the natural sequence of events, and produces a result that would not otherwise have occurred. “Culpable negligence” is intentional conduct that Chauvin may not have intended to be harmful, but that an ordinary and reasonably prudent person would recognize as involving a strong probability of injury to others.

“Great bodily harm” means bodily injury that creates a high probability of death, or causes serious permanent disfigurement, or causes a permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily harm.

*See* CRIMJIG 11.56.

8. A peace officer does not commit a crime, and a peace officer’s actions are justified, when the peace officer uses reasonable force in the line of duty in effecting a lawful arrest or executing any other duty imposed upon the peace officer by law.

The kind and degree of force a peace officer may lawfully use in executing his duties is limited by what a reasonable peace officer in the same situation would believe to be necessary. Any use of force beyond that is not reasonable. To determine whether or not the actions of the peace officer were reasonable, the factfinder must look at those facts known to the officer at the precise moment he acted with force.

In evaluating the reasonableness of a peace officer’s actions, the factfinder should consider the totality of the circumstances, without regard to his own state of mind, intention, or motivation.

If a principal’s conduct is authorized, the principal cannot be found guilty—and the accomplice cannot be found guilty either. Similarly, even if the principal’s force is unreasonable and unauthorized, an accomplice’s actions may nonetheless be reasonable and justified under the totality of the circumstances.

CRIMJIG 4.01; CRIMJIG 7.19, *Graham v. Connor*, 490 U.S. 386 (1989).



9. The State has the burden of proving all elements of a crime beyond a reasonable doubt. Minn. Stat. § 611.02 (“Every defendant in a criminal action is presumed innocent until the contrary is proved and, in case of a reasonable doubt, is entitled to acquittal . . .”). In a case involving a peace officer’s use of force, this includes the obligation to prove beyond a reasonable doubt that the use of force was not authorized by law. CRIMJIG 7.19.

Proof beyond a reasonable doubt consists of “such proof as ordinarily prudent men and women would act upon in their most important affairs. A reasonable doubt is a doubt based upon reason and common sense. It does not mean a fanciful or capricious doubt, nor does it mean beyond all possibility of doubt.” CRIMJIG 3.03.

Even though a jury has found Chauvin guilty beyond a reasonable doubt in a separate proceeding, the State must prove Chauvin’s guilt beyond a reasonable doubt in this proceeding. As stated above, the Court has not considered any such verdict in reaching its findings, conclusions of law, and verdict in this case and has only considered the relevant record before it with respect to the charge against Thao.

## **II. THAO AIDED AND ABETTED SECOND-DEGREE MANSLAUGHTER.**

10. **Element One:** Chauvin committed second-degree manslaughter.

10.1. Based on the Court’s factual findings, there is proof beyond a reasonable doubt that Floyd died on May 25, 2020.

10.2. Based on the Court’s factual findings, there is proof beyond a reasonable doubt that Chauvin caused Floyd’s death by culpable negligence, whereby Chauvin created an unreasonable risk and consciously took a chance of causing death or great bodily harm.

10.2.1. Based on the Court’s factual findings, there is proof beyond a reasonable doubt that Chauvin caused Floyd’s death on May 25, 2020. Restraining Floyd in the prone position while applying pressure to Floyd’s neck, back, arm, and the left side of Floyd’s chest and while manipulating Floyd’s handcuffs substantially decreased Floyd’s ability to obtain sufficient oxygen. Floyd’s low level of oxygen damaged his brain and caused Floyd’s heart to stop. Chauvin’s conduct was a substantial causal factor in bringing about Floyd’s death on May 25, 2020.

10.2.2. Based on the Court’s factual findings, there is proof beyond a reasonable doubt that Chauvin consciously disregarded the unreasonable risk created by his conduct. Chauvin was aware from his own observations, the observations and comments of his fellow officers, and the comments from the bystanders that Floyd was not breathing, had lost consciousness, was not responsive, and did not have a pulse. Despite this, Chauvin did not alter

his restraint technique, Chauvin did not provide Floyd with medical care, nor did Chauvin allow others to provide Floyd with medical care. Instead, Chauvin continued to press his knee in Floyd's neck for a full four minutes and 45 seconds after Floyd stopped talking and moving. Indeed, Chauvin did not even move from his position when the ambulance arrived; he remained in place—with his knee on Floyd's neck—while the paramedic checked Floyd's pulse. That demonstrates that Chauvin consciously disregarded the risk to Floyd that his conduct created.

10.2.3. Based on the Court's factual findings, there is proof beyond a reasonable doubt that Chauvin's conduct grossly deviated from the standard of care a reasonable person would have observed during the interaction with Floyd on May 25, 2020. Consistent with the training given to MPD and generally accepted policing standards, a reasonable police officer would have (among other things) placed Floyd in the side-recovery position to alleviate positional asphyxia as soon as possible, ceased using a neck restraint when Floyd stopped resisting or was only passively resisting, and started CPR when it became apparent that Floyd was not breathing and did not have a pulse.

11. **Element Two:** Based on the Court's factual findings, there is proof beyond a reasonable doubt that Thao knew Chauvin was creating an unreasonable risk to Floyd. Thao was aware of the restraint, the officers' actions, and the fact that Floyd was in medical distress. Based on his training, Thao was actively aware that the restraint he witnessed grossly deviated from the standard of care, was extremely dangerous, and risked Floyd's death. For example, Thao was aware that Chauvin was not using a trained neck restraint; Thao was trained to place a subject in the side-recovery position to avoid the risk of positional asphyxia; Thao was trained to provide CPR to someone in medical distress; and Thao was trained to only use proportional force—and to not use force on someone who is not resisting. Thao was also aware that Chauvin's conduct grossly deviated from that training. Finally, like Chauvin, Thao consciously disregarded the risk that the restraint posed to Floyd, and Thao perceived that Chauvin consciously disregarded that risk. Thao perceived Chauvin's actions in real time and both knew of the potential harm.
12. **Element Three:** Based on the Court's factual findings, there is proof beyond a reasonable doubt that Thao intended that his presence or actions to aid Chauvin's commission of second-degree manslaughter. By actively discouraging his fellow officers from using the hobble, Thao effectively encouraged them to continue restraining Floyd prone on the ground in an inherently dangerous manner. Thao's presence as a so-called "human traffic cone" between the officers and Floyd and the bystanders also intentionally assisted the other officers, by allowing the other officers to continue the restraint and by preventing the bystanders from providing medical aid to Floyd. Thao's own failure to intervene and prevent the officers' unreasonable use of force or to render medical aid to Floyd further

indicates that Thao possessed the intent to aid Chauvin's unreasonable and dangerous restraint.

13. **Element Four:** Based on the Court's factual findings, there is proof beyond a reasonable doubt that the acts of Thao, Chauvin, Kueng, and Lane took place on May 25, 2020, in Hennepin County.

**III. THE OFFICERS' USE OF FORCE WAS NOT AUTHORIZED BY LAW.**

14. Chauvin's actions were not authorized by law. Based on the Court's factual findings, there is proof beyond a reasonable doubt that Chauvin's actions were objectively unreasonable from the perspective of a reasonable police officer, when viewed under the totality of the circumstances. Chauvin was trained on MPD's use of force and medical policies, which are consistent with generally accepted policing practices. Under those policies and practices, it was objectively unreasonable to (among other things) use disproportionate force; use an untrained neck restraint, let alone use one for nine minutes 29 seconds; and continue to restrain Floyd (instead of providing medical aid) after Floyd was not breathing, not moving, unconscious, and did not have a pulse.
15. Thao's actions were not authorized by law. Based on the Court's factual findings, there is proof beyond a reasonable doubt that Thao's actions were objectively unreasonable from the perspective of a reasonable police officer, when viewed under the totality of the circumstances. Thao was trained on MPD's use of force and medical policies, which are consistent with generally accepted policing practices. Under those policies and practices, it was objectively unreasonable to (among other things) encourage fellow officers to engage in a dangerous prone restraint for nine minutes and 29 seconds, encourage those officers not to use a hobble, actively assist their restraint by acting as a "human traffic cone," and prevent bystanders from rendering medical aid. Thao's actions were even more unreasonable in light of the fact that he was under a duty to intervene to stop the other officers' excessive use of force and was trained to render medical aid.

**VERDICT**

The Court finds Defendant Tou Thao **GUILTY** of aiding and abetting second-degree manslaughter pursuant to Minn. Stat. § 609.205(1) and § 609.05, subd. 1.

BY THE COURT:

Dated: \_\_\_\_\_

\_\_\_\_\_  
Peter A. Cahill  
Judge of District Court

Date: January 31, 2023

Respectfully submitted,

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Attorney General  
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/s/ Matthew Frank  
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