STATE OF MINNESOTA | DISTRICT COURT

COUNTY OF HENNEPIN | FOURTH JUDICIAL DISTRICT

STATE OF MINNESOTA,

Plaintiff,

vs.

TOU THAO,

Defendant.

VERDICT, FINDINGS OF FACT, CONCLUSIONS OF LAW, AND MEMORANDUM OPINION IN STIPULATED EVIDENCE TRIAL

Court File No. 27-CR-20-12949

This matter is before the Court for decision pursuant to a stipulated evidence trial.

This matter was set for jury trial on October 24, 2022. On that date, Defendant Tou Thao (Thao) waived his right to a jury trial pursuant to Minn. R. Crim. P. 26.01 subd. 1(2) and the parties stipulated that the issue of Thao's innocence or guilt on the charge in Count II of aiding and abetting second-degree manslaughter in violation of Minn. Stat. §§ 609.05 subd. 1, 609.205(1) would be submitted to the Court for decision on stipulated evidence pursuant to Minn. R. Crim. P. 26.01 subd. 3. A Waiver of Rights and Agreement Regarding Rule 26.01 Subd. 3 Trial on Stipulated Evidence was filed at that time (Dk No. 631), and the Court finds that Thao made a knowing, intelligent, and voluntary waiver of his right to a jury trial and other rights as set out in Minn. R. Crim. P. 26.01 subd. 3. The parties also stipulated that the charge in Count I of aiding and abetting unintentional second-degree murder while committing the felony of third-degree assault in violation of Minn. Stat. § 609.19 subd. 2(1) would be dismissed by the State at the time the Court filed its verdict or at sentencing, whichever proved applicable.

On January 30, 2023, the parties filed a Joint Stipulation to Record and a Stipulated Evidence List listing the evidence upon which this case is being submitted to the Court for decision on the stipulated evidence trial. (Dk Nos. 639, 640)

On January 31, 2023, the parties filed their proposed findings of fact, conclusions of law, and written closing arguments (Dk Nos. 641-644), and the matter was taken under advisement. The parties previously agreed on the record during the October 24, 2022, hearing, that the Court's verdict would not be due for ninety days after the matter was taken under advisement, and expressly waived the more circumscribed times limits set forth in Minn. R. Crim. P. 26.01 subd. 2(a)-(b) for the issuance of the Court's verdict and findings of fact.

Matthew Frank, Erin Eldridge, Zuri Balmakund, Joshua Larson, Steven Schleicher, Corey Gordon, Neal Katyal, Danielle Stempel, and Nathaniel Zelinksy appeared on behalf of the State at the October 24, 2022, hearing, on the papers, or both.

Robert Paule and Natalie Paule appeared on behalf of Thao, at the October 24, 2022, hearing and on the papers. Thao was also present at the October 24, 2022, Hearing.

Based upon all the files, records, and proceedings herein, and the parties' written submissions, the Court enters the following Verdict and Order and Supporting Memorandum Opinion (which contains the supporting factual findings and conclusions of law).

VERDICT AND ORDER

1. Defendant Tou Thao committed and is **GUILTY** of the offense of aiding and abetting second-degree manslaughter in violation of Minn. Stat. §§ 609.05 subd. 1, 609.205(1) in connection with the death of George Floyd on May 25, 2020, as charged in Count II of the Complaint, and is hereby convicted of that offense.

2. A finding of guilt and judgment of conviction shall be entered as to Court II.

3. The parties shall appear in person for sentencing on August 7, 2023, at 9:00 a.m. in a courtroom to be assigned at the Hennepin County Government Center.

4. Defendant Tou Thao shall cooperate with the preparation of an in-custody Tier 4 presentence investigation report.

5. Count I of the Complaint is hereby dismissed pursuant to the State's motion and the parties' agreement regarding submission of the charge in Count II to the Court for trial on stipulated evidence.

6. This verdict is based on the findings of fact and conclusions of law in the following Memorandum Opinion, which is incorporated herein.

BY THE COURT:

____

Peter A. Cahill
Judge of District Court

MEMORANDUM OPINION

TABLE OF CONTENTS

INTRODUCTION AND SUMMARY ... 6

STIPULATED EVIDENCE RECORD ... 9

FACTUAL BACKGROUND ... 10

A. Procedural History ... 10

B. Prefatory Notes ... 12

C. Lane and Kueng Arrive at Cup Foods and Detain Floyd ... 14

D. Lane's and Kueng's Initial Efforts to Place Floyd in Their Squad ... 18

E. Chauvin and Thao Arrive as Lane and Kueng Continue Trying to Force Floyd into the Squad ... 20

F. Chauvin Joins Lane and Kueng in the Effort to Force Floyd into the Squad ... 20

G. The Critical Nine-Plus Minutes (8:19:18 - 8:28:42 P.M.): Floyd Is Subdued and Restrained Prone on Chicago Avenue; Chauvin Kneels on the Back of Floyd's Neck, Pinning Floyd's Face to the Street; Kueng and Lane Assist Chauvin in Restraining Floyd by Pinning Floyd's Back and Legs to the Street; and Thao Maintains Watch, Observing the Other Three Officers Kneeling on Floyd as Well as the Gathering Bystander Crowd ... 21

H. Floyd's Death ... 35

I. MPD Policies and Training ... 38

J. Bystanders and Other Lay Witness Testimony ... 41

1. Darnella Frazier ... 41

2. Alyssa Funari ... 42

3. Kaylynn Gilbert ... 43

4. Shawanda Hill ... 43

5. Donald Williams ... 44

K. Findings Regarding Culpable Negligence and Use of Force During the Subdual and Restraint of Floyd Based on Testimony from Law Enforcement and Expert Law Enforcement Witnesses ... 46

1. MPD Chief Medaria Arradondo ... 46

2. MPD Inspector Katie Blackwell ... 49

3. Barry Brodd ... 55

4. Park Police Officer Peter Chang ... 60

5. Timothy Longo ... 61

6. MPD Officer Nicole Mackenzie ... 65

7. MPD Sgt David Pleoger ... 68

8. LAPD Sgt. Jody Stiger ... 69

9. Law Professor Seth Stoughton ... 72

10. MPD Lt. Richard Zimmerman ... 77

L. Findings Regarding Cause of Death Based on Testimony from Toxicologists, Medical Doctors, and Forensic Pathologists ... 79

1. Toxicologists ... 79

(1) Dr. Vikhyat Bebarta ... 79

(2) Dr. Daniel Isenschmid ... 83

2. Medical Doctors/Experts—Various Specialties ... 86

(1) Dr. Bradford Wankhede Langenfeld ... 86

(2) Dr. Jonathan Rich ... 87

(3) Dr. William Smock ... 91

4. Dr. David Systrom ... 93

(5) Dr. Martin Tobin ... 97

3. Pathologists ... 104

(1) Dr. Andrew Baker ... 104

(2) Dr. David Fowler ... 109

(3) Dr. Lindsey Thomas ... 114

M. Defendant Tou Thao's Trial Testimony ... 118

1. Background ... 118

2. Training ... 118

(1) Use of Force ... 118

(2) Knee/Leg Restraints ... 119

(3) Duty to Render Medical Aid/CPR ... 120

(4) Excited Delirium ... 121

3. The May 25, 2020 Floyd Incident ... 122

4. Evaluation of Thao's Credibility ... 127

N. Thao Committed the Required Conduct for Aiding and Abetting Second-Degree Manslaughter. ... 130

1. Chauvin Committed the Required Conduct for Second-Degree Manslaughter ... 130

(1) George Floyd died on May 25, 2020. ... 130

(2) The officers' restraint caused Floyd's death. ... 132

(3) Chauvin and the other officers created an unreasonable risk and consciously took a chance of causing death or great bodily harm. 137

2. Chauvin's Actions Were Objectively Unreasonable From the Perspective of a Reasonable Police Officer Under the Totality of the Circumstances. 150

3. Thao Knew That Chauvin's Conduct Grossly Deviated From the Standard of Care and Was Objectively Unreasonable. 151

4. Thao Intentionally Aided Chauvin and the Other Officers' Deadly Restraint. 158

5. Thao's Actions Were Objectively Unreasonable Under the Circumstances. 165

6. The Officers' Acts Took Place on May 25, 2020 in Hennepin County. 167

CONCLUSIONS OF LAW 167

I. ELEMENTS OF THE CRIME 167

A. Second-degree Manslaughter 167

B. Aiding and Abetting Liability 168

C. Definitions and General Propositions of Criminal Law 170

D. Officers' Legal Right to Use Reasonable Force 171

E. Elements of Aiding and Abetting Second-degree Manslaughter 172

II. THAO AIDED AND ABETTED SECOND-DEGREE MANSLAUGHTER. 173

A. Element One: Chauvin committed second-degree manslaughter. 173

B. Element Two: Thao knew Chauvin was creating an unreasonable risk to Floyd 175

C. Element Three: Thao intended that his presence and actions aided Chauvin's commission of second-degree manslaughter. 176

D. Element Four: Venue Is Established. 176

III. THE OFFICERS' USE OF FORCE WAS NOT AUTHORIZED BY LAW. 176

INTRODUCTION AND SUMMARY

On May 25, 2020, George Floyd died in front of the Cup Foods store at 38th and Chicago in south Minneapolis while being restrained by Minneapolis police officers trained and sworn to look after and take care of men like Floyd in their custody. Although dispatch had sent the officers to the scene on the report of the attempted use of a counterfeit $20 bill to purchase goods at Cup Foods, three MPD officers, Derek Chauvin, J. Alexander Kueng, and Thomas Lane, forcibly restrained Floyd prone on the unyielding concrete of Chicago Avenue for almost nine

and a half minutes: Chauvin pressed his left knee onto the back of Floyd's neck and his right knee into Floyd's side, mid torso; Kueng knelt on Floyd's lower back and held his arms (which had been handcuffed) behind his back; Lane restrained Floyd's legs. Although Floyd had resisted the officers' prior request to take seat in their squad car, and had physically struggled with them, resisting their physical efforts to force him into the squad, by the time the officers had subdued and restrained him on the street, at 8:19:18 p.m., Floyd was no longer offering any active resistance, was struggling to breathe, and quickly began complaining, in response to the three officers' physical restraints and the weight they were collectively pressing down upon him, that he could not breathe and was in pain.

Meanwhile, Defendant Tou Thao actively encouraged his three colleagues' dangerous prone restraint of Floyd while holding back a crowd of concerned bystanders begging the officers to render medical aid. Thao knew, as the minutes passed and the restraint continued unimpeded, that Floyd had stopped talking and fallen silent, had stopped moving altogether, and had become totally non-responsive. In fact, by about six minutes into the restraint, Floyd stopped breathing, lost consciousness, and became pulseless.

By the time an ambulance crew arrived and placed Floyd on a stretcher ten minutes after the restraint had started, Floyd had "flat-lined." Despite efforts by the EMT paramedics in the ambulance and later by the emergency room staff at Hennepin County Medical Center (HCMC), Floyd was never resuscitated and he was pronounced dead at 9:25 p.m.

Thao, Chauvin's partner on that night, was an experienced Minneapolis police officer with almost a decade's experience. He knew that the officers' prone restraint could kill. Like the other officers, Thao had been trained specifically to turn an individual onto his side to avoid

positional asphyxia, the very thing that several eminent medical specialists who testified at trial concluded caused Floyd's death. Like the bystanders, Thao could see Floyd's life slowly ebbing away as the restraint continued. Yet Thao made a conscious decision to actively participate in Floyd's death: he held back the concerned bystanders and even prevented an off-duty Minneapolis firefighter from rendering the medical aid Floyd so desperately needed.

Thao also directly insisted upon continuing the restraint that took Floyd's life that night. Soon after Floyd had been subdued prone on the street, Thao retrieved a device called a "hobble" from Lane's and Kueng's squad. If properly employed, that hobble would have saved Floyd's life. But Thao encouraged the other officers not to use the hobble and instead to "hold on" and continue the physical restraint by which his three fellow officers were bearing down on Floyd, forcing him into the unyielding concrete of the street, drastically inhibiting his ability to breathe effectively. Thao's stated reason? "If we hobble him, the sergeant is going to have to come out" to complete paperwork for a "use of force review" mandated by MPD policy whenever the hobble device was deployed. The short of it: Tou Thao did not want to follow the proper protocol and the work it would entail. George Floyd died as a result.

Because of Thao's callous acts on the evening of May 25, 2020, the State charged him as an accomplice for second-degree manslaughter pursuant to Minn. Stat. §§ 609.205(1), 609.05 subd. 1 for aiding and abetting Chauvin's and the other officers in Floyd's death from the manner in which he was subdued and restrained for those nine and a half minutes.

Under Minnesota law, a person is liable for aiding and abetting manslaughter in the second degree when he knowingly and intentionally aids a principal's grossly negligent act that

results in a death. Where the principal and the knowing and intentional accomplice act together with conscious disregard of a risk, both are culpable for their respective actions.

In this case, the evidence overwhelming proves that Tou Thao aided and abetted manslaughter in the second degree on May 25, 2020. Thao knew his three fellow officers were on top of Floyd, restraining Floyd in the prone position with knees forcefully and unrelentingly pinning down his neck, his middle back, and his lower back and with arms also restraining Floyd's legs and his handcuffed arms (held behind his back while he was in the prone position). Thao knew that this prone restraint was extremely dangerous because it can cause asphyxia—the inability to breathe—the exact condition Floyd repeatedly told the officers he was suffering. Yet Thao made the conscious decision to aid that dangerous restraint: he actively encouraged the other three officers and assisted their crime by holding back concerned bystanders, declining to render medical aid to Floyd, not instructing any of the other three officers to render medical aid to Floyd, and not permitting any of the bystanders to render medical aid to Floyd, including the off-duty Minneapolis firefighter on the scene trained in CPR. Accordingly, the Court concludes the State has proven Thao's guilt beyond a reasonable doubt on the charge of aiding and abetting second-degree manslaughter in the death of George Floyd.

STIPULATED EVIDENCE RECORD

The record upon which this stipulated evidence trial is based consists of:

(1) 14 days of trial transcripts and 240 trial exhibits from the trial in *State v. Derek Chauvin*, Henn. Cty Court File No. 27-CR-20-12646, conducted March 8-April 20, 2021;

(2) 17 days of trial transcripts and 147 trial exhibits from the trial in *United States v. Tou Thao, Thomas Lane, and J. Alexander Kueng*, United States District Court for the District of Minnesota, Court File Nos. 21-cr-108 PAM/TNL (2)-(4), conducted

January 24-February 21, 2022; and

(3) 24 supplemental exhibits submitted by the State.

The complete list of exhibits and evidence comprising the record for this stipulated evidence trial is found in the Stipulated Evidence List filed January 30, 2022 (Dk No. 640), which is incorporated herein by this reference.

FACTUAL BACKGROUND

A. Procedural History

This case arises from the death of George Floyd (Floyd) on May 25, 2020, while in the custody of Derek Chauvin (Chauvin), Tou Thao, J. Alexander Kueng (Kueng), and Thomas Kiernan Lane (Lane), all of whom were police officers with the Minneapolis Police Department (MPD). The State commenced this action against Thao on June 3, 2020, charging him with two crimes:

(1) aiding and abetting second-degree unintentional felony murder, in violation of Minn. Stat. § 609.19 subd. 2(1) [Count I]; and

(2) aiding and abetting second-degree culpable negligence manslaughter, in violation of Minn. Stat. § 609.205(1) [Count II].

The State also charged former MPD officers Chauvin, Lane, and Kueng, who participated with Thao in Floyd's detention, arrest, subdual, and restraint on May 25, 2020.[1]

[1] Chauvin was charged with second- and third-degree unintentional murder and second-degree culpable negligence manslaughter in *State v. Derek Chauvin*, Court File No. 27-CR-20-12646. Lane and Kueng, like Thao, were each charged with aiding and abetting second-degree unintentional felony murder and second-degree culpable negligence manslaughter in *State v. Thomas Lane*, Court File No. 27-CR-20-12951, and *State v. J. Alexander Kueng*, Court File No. 27-CR-20-12953.

Trial in *State v. Chauvin* commenced on March 8, 2021. Jury selection took place from March 9 to March 24, 2021. Testimony began on March 29, 2021, and concluded on April 15, 2021. During the fourteen days of trial, the jury heard testimony from 44 witnesses and 245 exhibits were received in evidence. Closing arguments and jury instructions took place on April 19, 2021, and the jury returned guilty verdicts on all three charges on April 20, 2021. On June 25, 2021, the Court sentenced Chauvin, convicting him on the second-degree unintentional felony murder charge,[2] and sentencing him to a prison term of 270 months. Chauvin's conviction and sentence have since been affirmed on appeal. *See State v. Chauvin*, __ N.W.2d __, 2023 WL 2960366 (Minn. App. April 17, 2023).

On May 6, 2021, the United States Attorney for the District of Minnesota charged Chauvin, Thao, Kueng, and Lane by indictment with several counts of federal civil rights violations based on their actions in detaining Floyd on May 25, 2020 and failing to render medical assistance. *United States v. Chauvin, Thao, Kueng, Lane*, 21-cr-108 PAM/TNL (1)-(4) (D. Minn.). Chauvin pleaded guilty to two federal criminal civil rights charges on December 15, 2021 involving the excessive use of force and failure to render medical care – one relating to Floyd -- and was sentenced by United States District Judge Paul Magnuson to a prison term of 252 months on July 7, 2022.

Thao, Kueng, and Lane proceeded to a jury trial in the United States District Court for the District of Minnesota, which was conducted between January 24 and February 21, 2022. During 17 days of testimony in the federal trial, the jury heard testimony from 32 witnesses and

[2] The jury's guilty verdicts on the other two charges were not adjudicated in accordance with Minnesota law.

more than 100 exhibits were received in evidence. The jury found Thao, Kueng, and Lane guilty on all charges. Judge Magnuson sentenced Thao, Kueng, and Lane to prison terms of 42, 36, and 30 months, respectively, in late July 2022.

B. Prefatory Notes

In reaching this verdict, the Court has not given any weight to the jury verdicts in *Chauvin* or the federal trial of Thao, Kueng, and Lane. The Court only mentions those proceedings to explain the sources of evidence that comprise the stipulated evidence record for this stipulated evidence trial. In addition, in reaching this verdict, the Court has not given any weight to the guilty pleas entered by Chauvin in the federal court action or by Kueng and Lane to this Court, nor has this Court considered any of the prior sentences imposed on Chauvin, Thao, Kueng, or Lane.

This Court has carefully considered the parties' submissions in light of the stipulated evidence record from both the *Chauvin* and the federal trials. Where the Court has found that a portion of testimony or an exhibit lacked relevance to the charge against Thao, the Court has not relied on that evidence. In the prior trials, some exhibits were offered for illustrative purposes only and the Court, in reaching its verdict, 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 video recording of the Minnesota Bureau of Criminal Apprehension's (BCA) investigative interview of Thao (State's Supp. Exh. 24), and the Court has utilized the transcript

of that interview (State's Supp. Exh. 23 [Transcript of BCA Video Interview with Tou Thao]) only as an illustrative aid. (*See* Doc. No. 639 at 2.[3])

The Court also extensively summarizes trial testimony from many witnesses in both the *Chauvin* and federal trials pertinent not only to the underlying factual background but also to the key issues of (1) the reasonableness or unreasonableness of the force used in the officers' subdual and restraint of Floyd, (2) the culpable negligence of maintaining that restraint, and whether doing so created an unreasonable risk of causing death or great bodily harm or of consciously taking chances of causing death or great bodily harm to Floyd, and (3) the cause of Floyd's death. The Court also makes specific credibility determinations about certain witnesses based on the Court having observed some of the witnesses during the *Chauvin* trial as well as based on review of the trial transcripts of other witnesses who testified only in the federal trial and considering that trial testimony in the totality of all the evidence before the Court on this stipulated evidence trial.

Although the Court makes findings based on some of the conclusions drawn by some of the lay witnesses, the Court is not relying upon any of those lay witness conclusions as medically diagnostic of Floyd's condition at any given point during the almost nine and a half minutes he was being restrained lying prone on Chicago Avenue by Chauvin, Kueng, and Lane. Rather, the point of those findings is to underscore that any reasonable, objective, trained police officer in the positions Thao, Chauvin, Kueng, and Lane occupied during the nine-and-a-half-minute restraint of Floyd on May 25, 2020 would have been at least as aware as those

---

[3] The parties' Joint Stipulation To Record erroneously identifies this document as State's Supp. Exh. 22. (Dk No. 639, at 2) The correct number for this exhibit is State's Supp. Exh. 23. (*See* Stipulated Evidence List. (Dk No. 640, at 16)

bystander lay witnesses of Floyd's increasingly dire medical condition, his slowing and increasingly labored and shallow respiration, his decreasing verbalizations, and eventually the cessation of his breathing and his loss of consciousness notwithstanding their refusal to terminate their restraint actions and render medical assistance/CPR to Floyd.

The omission of a witness in this summary does not mean the Court has not considered that witness's testimony nor evaluated that witness's credibility. As noted above, the Court has considered only testimony or evidence relevant to the aiding and abetting second-degree manslaughter charge against Thao. All witnesses whose testimony is summarized in this Memorandum Opinion were called by the prosecution at the *Chauvin* or the federal trial, or both, unless it is expressly noted that the witness was called by the one of the Defense teams.

C. <u>Lane and Kueng Arrive at Cup Foods and Detain Floyd</u>

On the evening of May 25, 2020, Cup Foods, located at Chicago Avenue and 38th Street in south Minneapolis, reported the use of a counterfeit $20 bill to purchase merchandise. MPD Officers J. Alexander Kueng and Thomas Lane responded to the dispatch report, arriving at Cup Foods about 8:08 p.m.[4] (Scurry, Chauvin Tr. Trans. at 2714; Chauvin Tr. Exhs. 1 [Overhead Photo of Minneapolis at 38th Street South & Chicago Avenue], 10 [Dispatch Audio], 151 (CAD Report, at pp. 434-436); Fed. Tr. Exh. 39 [Dispatch Summary Timeline] at 20:02:13, 20:08:10.)

Upon arriving, Kueng and Lane entered Cup Foods to check in with the store manager. The manager showed them a $20 bill he believed was counterfeit. The manager explained two

[4] After initially being assigned to Chauvin's and Thao's squad [Squad 330] (Fed. Tr. Exh. 39 [Dispatch Summary Timeline] at 20:04:28), the call was reassigned to Lane's and Kueng's squad [Squad 320]. (*Id*. at 20:05:11)

men had been involved: one had used a counterfeit $20 bill to purchase cigarettes (the manager showed Lane and Kueng that bill); the other had tried to use a counterfeit $20 bill which the cashier had rejected.[5] The manager informed Kueng and Lane that the men involved were sitting in a blue vehicle across 38th Street from the store. (Kueng & Lane BWC Videos [Chauvin Tr. Exhs. 43 & 47] at 8:08:40-8:09:06 p.m.)[6] Kueng and Lane did not inspect the bill. Instead, they left Cup Foods and crossed 38th Street to approach the vehicle, which was parked on 38th Street next to the Dragon Wok restaurant. (*Id*. at 8:09:06-:28.)

As Lane and Kueng crossed 38th Street and approach the vehicle, George Floyd was sitting in the vehicle's driver's seat; a male passenger, Morries Hall, was in the front passenger-side seat; and a woman passenger, Shawanda Hill, was in the back passenger-side seat. (Ross, Chauvin Tr. Trans. at 3341; Pleoger, Chauvin Tr. Trans. at 3558-3559)

Lane approached on the driver's side and tapped on the driver's side window with his flashlight. Floyd, who had been speaking to the other passengers, appears startled. (Lane BWC Video at 8:09:28-:32 p.m.) When Floyd cracked his door open and apologized, Lane instructed

---

[5] Later, the Cup Foods manager told Kueng that Floyd had used a counterfeit $20 bill to purchase cigarettes but that a Cup clerk had detected forged currency when the other man with Floyd attempted to use a counterfeit $20 bill to purchase other merchandise. (Kueng BWC Video at 8:32:20-8:36:30 p.m.)

[6] MPD officer body-worn camera (BWC) videos reflect time in so-called "military" time, showing the hour, minutes, and seconds. That is, times in the range from 00:00:00 to 11:59:59 denote a.m. times and times in the range from 12:00:00-23:59:59 denote p.m. times. The key events for present purposes recorded in the Lane, Kueng, and Thao BWC videos occur in roughly a 21-minute span from 20:08:00 to about 20:29:00 in military time, or between 8:08 and 8:29 p.m. on May 25, 2020. (The Lane BWC video records events from 8:08:00-8:42:16 p.m.; the Kueng BWC video records events from 8:08:00-8:38:33 p.m.; and the Thao BWC video records events from 8:16:37-8:38:42 p.m.) In this Memorandum Opinion, the military times shown on the BWC videos have been converted to the analogous "p.m." time for the reader's convenience.

Floyd to show his hands. (*Id*. at 8:09:33-:40.) Seconds later, Lane pulled his gun, pointed it at Floyd, and yelled at him to "put your f_ _ _ _ _ g hands up right now." (*Id*. at 8:09:41-:45.) Although asking what he had done wrong, Floyd put his hands up and then placed them on the steering wheel, complying with Lane's instructions. Intensifying the situation, Lane yelled at Floyd to "keep your f _ _ _ _ _ g hands on the wheel" while keeping his gun trained on Floyd. (*Id*. at 8:09:46-:58.) Floyd immediately complied, at which point Lane instructed Floyd to put his hands on his head; when Floyd once again complied, Lane lowered his gun. (*Id*. at 8:10:00-:22.) Lane did not tell Floyd at any point during this initial interaction why he and Kueng had approached Floyd's vehicle.

Floyd, clearly upset, can be heard saying several times that he was "sorry"; he also started crying. (Lane BWC Video at 8:09:35-8:10:20 p.m.) Floyd told Lane several times that he had been shot before, even reporting that he had been shot "the same way." (*Id*. at 8:09:50-8:10:25.) Sobbing, he pleaded: "Mr. Officer, please don't shoot me." (*Id*. at 8:10:35-:37.) Over the next half minute or so, Floyd begged Lane not to shoot him several times. (*Id*. at 8:10:35-8:11:05.) He also explained to Lane that "I just lost my mom."

Lane told Floyd to step out of the car, while Kueng -- on the passenger side – told both passengers to do the same. Kueng then walked around to the driver's side, and Kueng and Lane handcuffed Floyd while Kueng told Floyd to stop resisting. (Lane & Kueng BWC Videos at 8:11:05-:35 p.m.) Kueng walked the hand-cuffed Floyd to the sidewalk and told him to sit down on the ground with his back against the wall at the Dragon Wok restaurant. Floyd did so, immediately becoming calmer and saying "thank you" to Kueng.[7] (Kueng BWC Video at

---

[7] While Floyd was seated on the sidewalk talking to Floyd, Lane interviewed the other two

8:11:35-8:12:15.) While seated on the sidewalk outside the Dragon Wok, Floyd was compliant and conversational with Kueng. (Kueng BWC Video at 8:13:35.)

Minneapolis Park Police Officer Peter Chang arrived on scene at 8:12. (Chauvin Tr. Exh. 151, at 20:12:55; Fed. Tr. Exh. 39, at 20:12:06.) At that time, Lane also reported that they were "Code 4," meaning the scene was safe.[8] (Fed. Tr. Exh. 39, at 20:12:21; Chauvin Tr. Exh. 151, at 20:12:21; Scurry, Chauvin Tr. Trans. at 2708.)

While sitting on the sidewalk, Floyd pleaded with Kueng to talk to him. Floyd responded to Kueng's questions (while Lane was questioning the other passengers several feet away), telling Kueng his name and date of birth and reiterating he was scared because he had been shot before. (Kueng BWC Video at 8:12:15-8:13:05) It was only at this point, almost four minutes after Lane had first tapped on Floyd's window, that Kueng first explained to Floyd that they were detaining him because Cup Foods had reported that Floyd had used a fake bill in the

---

passengers. (Lane & Kueng BWC Videos at 8:11:45-8:14:05 p.m.) One of the passengers explained to Lane that Floyd was scared of police officers and likely had been scared when Lane pointed his handgun at Floyd because Floyd had been shot before. (Lane BWC Video at 8:12:50-8:13:10.)

[8] Jenna Scurry is the 9-1-1 dispatcher who initially dispatched officers to Cup Foods. Scurry explained that Code 4 means "scene safe" (Chauvin Tr. Trans. at 2729), "Code 2" is "nonemergent" (*id*. at 2731) and "means proceeding without lights and sirens" (*id*. at 2708), and Code 3 is "emergent," instructing responders to approach with lights and sirens. (*Id*. at 2709, 2770; *accord* Fed. Tr. Trans. at 526.) Scurry testified that Squad 320 – Lane's and Kueng's squad -- 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. Trans. at 2769; Fed. Tr. Trans. at 538.) Squad 330 – Chauvin's and Thao's squad -- 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. Trans. at 2773; Fed. Tr. Trans. at 540, 543-544.) 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. Trans. at 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. Trans. at 2733; Fed. Tr. Trans. at 541.)

store.[9] (*Id*. at 8:13:20-:25.) Floyd responded that he "didn't know what was going on" when Lane had approached him and drawn his weapon.

D. <u>Lane's and Kueng's Initial Efforts to Place Floyd in Their Squad</u>

Although Floyd remained compliant while seated on the sidewalk conversing with Kueng, Kueng and Lane decided to detain Floyd in their squad car. (Kueng BWC Video at 8:13:35 p.m.) When Kueng stood Floyd up to walk him over to their squad, Floyd told Kueng he was in pain and that his wrists hurt from the handcuffs. (*Id*. at 8:13:55-8:14:10.) Lane asked Floyd if he was "on something right now"; Kueng noted there was foam around Floyd's mouth and that Floyd was "acting real erratic." (Lane & Kueng BWC Videos at 8:14:05-:16.) Floyd responded that he was "scared." (*Id*. at 8:14:12-:16.) Lane and Kueng walked the hand-cuffed Floyd from the Dragon Wok restaurant back across 38th Street to their squad parked on Chicago Avenue outside Cup Foods. (*Id*. at 8:14:05-:40.)

When they reached the squad car, Floyd stated: "I just want to talk to you, man." (Lane BWC Video at 8:14:55 p.m.) Kueng responded: "Man, you ain't listening to nothing we're saying, so we're not going to listen to nothing you're saying." (Kueng BWC Video at 8:14:57-8:15:01.) Floyd told Lane and Kueng several times that he was scared to get into the squad, told them repeatedly that he was "claustrophobic," and kept pleading with them "please, man." (Lane & Kueng BWC Videos at 8:14:45-8:15:10.) Kueng and Lane responded that they would have a conversation with Floyd only after he got into the squad car. They placed Floyd

---

[9] It appears none of the officers told Floyd that he was under arrest for forgery for another five and a half minutes. (Kueng BWC Video at 8:18:57 p.m.) And this was at the point at which Lane and Kueng, joined by Chauvin, had been trying for force Floyd into the back seat of Lane's and Kueng's squad for more than two and a half minutes.

against the squad car and patted him down. While being patted down, Floyd stated: "I'm not resisting, man. I'm not." (Kueng BWC Video at 8:15:10-:15.) The pat search revealed a small pipe in Floyd's pocket but no weapons. (*Id*. at 8:15:15-:55.)

As Floyd stood outside the squad car, he asked Kueng and Lane not to leave him alone in the car and stated he would not do anything to hurt them. (Lane & Kueng BWC Videos at 8:15:30-:45 p.m.) Floyd repeatedly told Lane and Kueng that he was claustrophobic. (*Id*. at 8:14:45-8:15:05.) Lane responded: "Well, you're still going in the car." (Lane BWC Video at 8:15:40.)

After more than ninety seconds standing on the sidewalk outside their squad car (Lane & Kueng BWC Videos at 8:14:45-8:16:20 p.m.), Kueng and Lane tried to force a non-compliant Floyd inside the squad's open rear driver-side door. (*Id*. at 8:16:20.) Floyd exclaimed: "I'ma die in here, I'ma die man," noting that he "just had COVID" and didn't "want to go back to that." (*Id*. at 8:16:40-:45.) As Floyd struggled with Lane and Kueng for about half a minute, Charles McMillian, who was watching from the sidewalk outside the Cup Foods Store, engaged in a dialogue with Floyd, telling Floyd he should get in the car because "you can't win," to which Floyd responded that he wasn't trying "to win" or hurt the officers but only that he was claustrophobic and had anxiety. (*Id*. at 8:17:00-:30.) Floyd repeated that he was "scared as f _ _ k" and worried that his anxiety might make it hard for him to breathe in the back of the squad car. (*Id*. at 8:17:10-:20.) Floyd asked Kueng and Lane to allow him to count to three before getting into the back of the squad car, again insisting that he was not trying "to win." (*Id*. at 8:17:20-:25.) He pleaded for Kueng and Lane to allow him to get on the ground or do "anything" other than get in the car. (*Id*. at 8:17:25-:30.)

E. Chauvin and Thao Arrive as Lane and Kueng Continue Trying to Force Floyd into the Squad

Chauvin and Thao arrived on scene at 8:17 p.m. in response to a dispatch call for back-up. (Thao BWC Video at 8:17:09.) When Chauvin and Thao approached Lane, Kueng, and Floyd at 8:17:30, Lane and Kueng had been engaged with Floyd at the squad for more than two and a half minutes and had been physically trying to force Floyd into the squad's back seat for more than a minute.

While Chauvin and Thao stood by watching upon their initial approach, Kueng and Lane continued trying to force Floyd into their squad. Lane walked around to the passenger side of the squad and began trying to pull Floyd into the back seat through the passenger-side door while Kueng tried to push Floyd into the squad through the rear driver-side door. (Lane & Kueng BWC Videos at 8:17:30-:55 p.m.) During this struggle, Floyd hit his head on the glass dividing the front and back seats of the squad. (Kueng & Chauvin BWC Videos at 8:17:52-:58)

F. Chauvin Joins Lane and Kueng in the Effort to Force Floyd into the Squad

After observing for about 30 seconds, Chauvin joined Lane on the passenger side (street side) of the squad at 8:18, struggling to pull on Floyd, with Chauvin instructing Lane to help "pull him [Floyd] in." (Thao BWC Video at 8:18:00-8:18:11) Chauvin had his arm around Floyd's upper chest and neck, with Lane pulling on Floyd's torso, collectively pinning Floyd against the back seat of the squad. At 8:18:06, Floyd is heard for the first time exclaiming "I can't breathe." (Lane & Kueng BWC Videos) At 8:18:15, Kueng walked around to the passenger side of the squad to assist Lane and Chauvin, at which point Chauvin and Kueng attempted to lift Floyd into

the back seat of the squad.[10] In the ensuing struggle, Floyd fell partway through the rear passenger side door and asked to be laid on the ground. (Lane BWC Video at 8:18:15-:20.) Thao responded, "come on down." (Thao BWC Video at 8:18:29.)

This struggle continued for about a minute, during which Floyd continued to yell "please," continuously telling the Defendants that he had just had COVID, was claustrophobic, and couldn't breathe. (Kueng, Thao & Lane BWC Videos at 8:18:00-8:19:00) When the futility of the three officers continuing their efforts forcibly to seat Floyd in the squad's back seat became clear, Thao is heard saying "we'll have to hogtie him" and "lay him down," with Lane responding: "Let's take him out and just MRT."[11] (Lane, Kueng & Thao BWC Videos at 8:18:45-8:19:05.) The others agreed, and Floyd was pulled from the squad and made to lie down in the street next to the squad. (Lane, Kueng & Thao BWC Videos at 8:19:00-:15.)

G. The Critical Nine-Plus Minutes (8:19:18 - 8:28:42 P.M.): Floyd Is Subdued and Restrained Prone on Chicago Avenue; Chauvin Kneels on the Back of Floyd's Neck, Pinning Floyd's Face to the Street; Kueng and Lane Assist Chauvin in Restraining Floyd by Pinning Floyd's Back and Legs to the Street; and Thao Maintains Watch, Observing the Other Three Officers Kneeling on Floyd as Well as the Gathering Bystander Crowd

At 8:19:18 p.m., Chauvin, Kueng, and Lane had subdued Floyd, and forced him to lie prone on the concrete of Chicago Avenue, with all three officers kneeling on him:[12]

---

[10] Thao was watching from the driver's side and his BWC captures Chauvin and Kueng wrestling with Floyd, as Lane is off to the side.

[11] MRT is an acronym for "Maximal Restraint Technique," which employs a "Hobble" device to "secure a subject's feet to their waist in order to prevent the movement of legs." A Hobble "limits the motion of a person by tethering both legs together." (Minneapolis Police Department Policy & Procedure Manual (MPDPPM) § 5-316(III)) The Maximal Restraint Technique is accomplished by using two Hobbles connected together. (MPDPPM § 5-316(IV)(A)(2))

[12] The Lane and Kueng BWC videos show that Chauvin, Kueng, and Lane subdued Floyd after an almost three-minute struggle in which they had attempted to force a resistant Floyd into the

- Chauvin pressed his left knee into the back of Floyd's neck and his right knee into Floyd's upper back, forcing Floyd's face, throat, and upper chest against the concrete
- Kueng knelt on Floyd's lower back, with his hand on Floyd's handcuffed left wrist
- Lane restrained Floyd's legs, kneeling on them as well as pressing down on Floyd's legs with his hands

(Lane & Kueng BWC Videos at 8:19:15-:45 p.m.) Shortly after Floyd had been subdued in this manner, Lane called in an EMS code 2, which signaled that emergency medical services were needed on the scene but that emergency personnel were not required to use their lights and sirens to reach the scene.[13] (Lane BWC Video at 8:19:48-:50.)

While Chauvin, Kueng, and Lane knelt on Floyd, Thao located a Hobble in the back of the squad and asked the other Defendants if they "want[ed] to hobble [Floyd] at this point." (Thao, Kueng & Lane BWC Videos at 8:19:22-8:20:30 p.m.) When the others did not answer immediately, after asking if we are calling for EMS, Thao suggested "why don't we just hold him until EMS" arrives, adding "if we hobble a Sergeant's going to have to come over."[14] (Thao BWC Video at 8:20:25-:40.) After deciding not to use the Hobble, Chauvin, Kueng, and Lane continued to maintain their positions directly on top of Floyd, keeping him pinned face-down on the street, while Thao stood watch, positioning himself between the three officers on top of

---

rear seat of the Lane/Kueng squad car incident to his arrest before eventually subduing and restraining him by pinning him face-down on the Chicago Avenue concrete at 8:19:18.

[13] Thao later upgraded that to an EMS code 3, requiring emergency services to use red lights and sirens to reach the scene. (Thao BWC Video at 8:21:12-27; Scurry, Fed. Tr. Trans. at 526, 540.)

[14] Under MPD policy, whenever a Hobble is used in connection with the Maximal Restraint Technique, "[a] supervisor shall be called to the scene where a subject has been restrained," and the supervisor is required to "complete a Supervisor's Force Review." (MPDPPM § 5-316(IV).)

Floyd and a gathering group of concerned citizens, observing from the sidewalk in front of Cup Foods.

(Chauvin Tr. Exh. 42 [Milestone Video], at 8:21:45
Officers, from L to R: Thao, Chauvin, Kueng, Lane)

During the first four minutes and forty seconds after Chauvin, Kueng, and Lane had pinned Floyd face-down to the street, Floyd repeatedly cried for help, albeit with diminishing frequency and vigor as time wore on. (Lane & Kueng BWC Videos 8:19:18-8:24:00 p.m.) Floyd yelled "I can't breathe" more than two dozen times, called out for his deceased mother almost a dozen times, and asked the Defendants to "tell my kids I love them." (*Id*.) Chauvin twice responded to Floyd's repeated cries of not being able to breathe:

"You're doing a lot of talking, man." (Lane & Thao BWC Videos at 8:20:19-:21.)

"You're talking fine." (Lane & Thao BWC Videos at 8:21:35.)

Meanwhile, Thao told Floyd to "relax" and rebuked the on-looking bystanders:[15] "He's [Floyd] talking so he's breathing." (Thao BWC Video at 8:21:30, 8:21:39.)

Floyd continued to plead with Chauvin, as Chauvin continued pressing his left knee onto Floyd's neck: "I can't breathe. Please, your knee in my neck." (Lane BWC Video at 8:21:53-:57.) Thao asked the other three officers if Floyd "was high on something?" (Thao, Chauvin & Lane BWC Videos at 8:20:55) prompting a discussion between Lane and Chauvin, with Lane commenting that Floyd's "got to be on something" -- and speculating, because they'd found a "weed pipe," that Floyd might be on "PCP or something" -- in response to which Chauvin asked Floyd "What are you on?" (Lane & Thao BWC Videos at 8:21:53-8:22:20.)

Floyd continued complaining that he was in significant pain: "My knee, my neck . . . I'm claustrophobic. My stomach hurt. My neck hurt. Everything hurt." (Lane & Kueng BWC Videos at 8:22:15-:30.) Floyd told the Defendants almost ten times that he feared he would die lying on the ground while being subdued in this manner, including the following remarks:

"I'll probably just die this way."

"I'm through, I'm through."

"They're gonna kill me, they gonna kill me, man."

"They'll kill me."

(Lane BWC Video at 8:21:45-:47; 8:22:19-:22, 8:22:42-:45; 8:23:14.)

Defendants continued ignoring Floyd's pleas for help. Chauvin responded dismissively: "You're doing a lot of talking, a lot of yelling. . . . It takes a heck of a lot of oxygen to say things."

---

[15] Charles McMillian, who had been watching for several minutes, asked the officers to "let him [Floyd] breath at least." (Thao BWC Video at 8:21:35.)

(Lane, Kueng & Thao BWC Videos at 8:22:40-:50.) Kueng reacted to Chauvin's comment with a smirk. (Thao BWC Video at 8:22:48-:49.)

Meanwhile, as the gathered bystanders began echoing Floyd's pleas for help and noting that Floyd was not resisting arrest, Thao continued to stand guard, watching his fellow officers while telling the crowd: "He's talking, so he's fine" and mocking Floyd: "This is why you don't do drugs, kids." (Thao BWC Video at 8:23:15-:40 p.m.) When Williams expressed concern that Chauvin was "trapping" and "stopping" Floyd's breathing, Thao responded: "He's talking. . . . It's hard to talk if you're not breathing." (*Id*. at 8:23:40-:59.)

Between 8:19:20 and 8:24:00, the frequency and volume of Floyd's pleas for help diminished and his breathing became increasingly labored. As time wore on, Floyd's audible words turned into mumbling, with the mumbling later degenerating into grunts. Floyd uttered his final words "Please," at 8:23:55, and "I can't breathe," at 8:23:59. (Lane, Kueng & Thao BWC Videos at 8:23:55-8:24:00 p.m.) Floyd then fell silent.[16]

Even after Floyd had become non-responsive, ceased talking and moving, all four of the officers maintained their positions, with Chauvin continuing to press his knee into Floyd's neck, with Kueng and Lane continuing to restrain Floyd's back and legs. Thao, meanwhile, while observing Chauvin, Kueng, and Lane keeping Floyd pinned face-down in the street, continued to stand between the other three officers kneeling on Floyd and the bystanders gathered on the sidewalk in front of Cup Foods, ensuring that the bystanders remained on the sidewalk and did

---

[16] After his last words "I can't breathe" at 8:23:59-8:24:00, Floyd can be heard making a few grunts, "ahs" and then finally some gurgling sounds until about 8:24:49 p.m. From that point on, he appears – from the Lane, Kueng, and Thao BWC Videos – to have been totally silent, apparently having lapsed into unconsciousness.

not physically intervene to come to Floyd's aid. (Thao BWC Video at 8:24:00-8:26:43 p.m.)

As Floyd appeared to have lost consciousness and shortly before uttering his final words, Lane asked Chauvin and Kueng: "Should we roll him on his side?" citing a concern "about the excited delirium or whatever." (Lane & Kueng BWC Videos at 8:23:48-:56.) Chauvin rejected Lane's suggestion, stating the ambulance was en route.[17] (Lane BWC Video at 8:23:48-8:24:02.) Neither Lane nor Kueng challenged Chauvin's response, instead maintaining their positions, holding down Floyd's back and legs. (Lane & Kueng BWC Videos at 8:24:00-:30.)

In their trial testimony in the *Chauvin* trial, pulmonologist Dr. Tobin and emergency medicine physician Dr. Smock pinpointed the approximate time of Floyd's anoxic seizure at 8:24:21. (Tobin, Tr. Trans. at 4506, 4543; Smock, Tr. Trans. at 4712)

By this point, the half-dozen or so bystanders gathered on the sidewalk had begun yelling at the officers. Donald Williams yelled that Floyd was "not even resisting arrest right now" and was "passed out." (Thao BWC Video at 8:24:40-:45.) In apparent agreement, Lane is heard saying "I think he's [Floyd] passed out." (Lane & Kueng BWC Videos at 8:24:43-:48.)

Floyd lost consciousness by 8:24:53. (Tobin, Tr. Trans. at 4528; *see also* Kueng BWC Video at 8:24:53.) Even so, as Chauvin and Kueng maintained their restraints on Floyd as they had for more than five and a half minutes by this time; Lane continued to hold down Floyd's right leg with his arm, reporting to Chauvin and Kueng that even though his own "knee might be a little scratched . . . I'll survive." (Lane BWC Video at 8:25:00-:04.) The following photo is from about this time:

[17] A call had been made earlier, requesting an ambulance.

(Chauvin Tr. Exh. 42 [Milestone Video], at 8:25:04 p.m.
Officers, from L to R: Thao, Chauvin, Kueng, Lane)

Meanwhile, bystander Donald Williams was becoming more animated and insistent, yelling at Chauvin, Kueng, Lane, and Thao that Floyd was not "breathing right now," "he's not responsive," and "he's not moving," to which Lane and Kueng responded, "he's breathing." (Lane & Kueng BWC Videos at 8:25:08-:15 p.m.) The BWC videos appear to show that Floyd's shallow breaths stopped within seconds of those remarks. (*E.g.*, Kueng BWC Video at 8:25:16-:31.) In this regard, the Court expressly credits Dr. Tobin's trial testimony that Floyd stopped breathing at 8:25:16. (Tobin, Tr. Trans. at 4530)

At 8:25:28, Genevieve Hansen, an out-of-uniform, off-duty Minneapolis firefighter, arrived at the scene, crossing Chicago Avenue from the west. (Lane & Thao BWC Videos; Chauvin Tr. Trans. at 3057, 3070, 3075-76, 3084; Fed. Tr. Trans. at 732, 735.) Hansen is a

trained EMT, is CPR-certified, and has resuscitated pulseless individuals "[m]any times."[18] (Chauvin Tr. Trans. at 3057-3065, 3068; Fed. Tr. Trans. at 724-725, 727.)

Upon her arrival on the scene, Hansen observed a handcuffed Floyd, who was not moving by this time, being restrained by Chauvin, Kueng, and Lane; she observed that the three officers appeared to be placing a majority of their body weight on Floyd's back, which she believed to be inappropriate given the circumstances she was observing. (Chauvin Tr. Trans. at 3074, 3079-3080, 3119; Fed. Tr. Trans. at 732, 772.) According to Hansen, "It didn't take me long to realize that he was -- had an altered level of consciousness. . . . in our training, that is . . . the first sign that somebody needs medical attention." (Chauvin Tr. Trans. at 3080-81.) Hansen explained that she could tell Floyd "had an altered level of consciousness" because "he wasn't responding to painful stimuli," like having someone "leaning into your neck." (*Id*. at 3083.) Based on her medical experience and training as a firefighter, Hansen wanted to know if Floyd had a pulse. (*Id*. at 3083-85.)

Recognizing that Floyd needed medical attention, Hansen immediately identified herself as a firefighter, asked the officers if Floyd had a pulse, and demanded they check for a pulse and tell her what it was. (Thao BWC Video at 8:25:30-:52.) Hansen asked to provide Floyd medical assistance,[19] but Chauvin and Thao refused to allow her to tend to Floyd; Thao shouted

---

[18] Jeremy Norton is a Minneapolis Fire Department Captain who also responded to the scene. He explained that the Fire Department is often able to respond to a scene more quickly than paramedics, such that, on emergency calls, the Fire Department offers a "buffer to keep someone alive until . . . the ambulance arrives," including by providing medical aid to someone who does not have a pulse. (Fed. Tr. Trans. at 668-669.)

[19] Hansen was ultimately unable to render medical aid to Floyd because the officers refused to allow her to do so, despite her persistence in trying to convince the officers to allow her to attend to Floyd. (Chauvin Tr. Trans. at 3086, 3088; *see* Fed. Tr. Trans. at 740-741, 744.) Had

at her to "back off" and "get off the street," commanding her to step onto the sidewalk where the other bystanders had gathered.[20] (Lane & Thao BWC Videos at 8:25:32-:47; Chauvin Tr. Trans. at 3116; Fed. Tr. Trans. at 736.) Over the next few minutes, Hansen pleaded with Thao to check for a pulse and to start chest compressions.[21] (Thao BWC Video at 8:25:28-8:27:38, 8:28:39-:52; Chauvin Tr. Trans. at 3121-3122; Fed. Tr. Trans. at 742.)

Dr. Tobin testified – and the Court finds his testimony credible – that Floyd's oxygen level had decreased to zero by 8:25:41. (Tobin, Tr. Trans. at 4531-4532)

In light of concerns about Floyd's lack of responsiveness, Lane again asked Chauvin and Kueng: "should we roll him [Floyd] on his side." (Lane & Kueng BWC Videos at 8:25:38-:41.) Although none of the three other officers appears to have responded, once again Lane did not press the matter, but continued holding Floyd's legs down with his right arm. Chauvin, Kueng, and Thao likewise continued to maintain their positions. (Lane BWC Video at 8:25:40-8:26:00.)

The bystanders, led by Donald Williams and Genevieve Hansen, grew increasingly vocal about Floyd's lack of responsiveness, yelling at Chauvin, Kueng, Lane, and Thao that Floyd was

---

Thao and the other officers allowed her to provide assistance, Hansen would have (i) sought additional help by calling 9-1-1 requesting paramedics and fire crew and asking someone to check for an automatic external defibrillator in the gas station across the street from Cup Foods, (ii) checked Floyd's airway and checked for a pulse, and (iii) performed chest compressions on Floyd. (Chauvin Tr. Trans. at 3085-3086.)

[20] Although she later stepped off the curb briefly, she returned to the sidewalk for the remainder of the restraint after Thao demanded that she do so. (Chauvin Tr. Trans. at 3076-78; Fed. Tr. Trans. at 745.)

[21] The Court finds the portions of her testimony summarized above credible, based on her training as a Minneapolis firefighter and EMT, her experience providing CPR and other resuscitative efforts, and because her testimony summarized above is corroborated by video and audio recordings at the scene as well as other testimony and exhibits and her own 9-1-1 call. (Chauvin Tr. Exh. 25.)

"not moving" and was "not responsive"; they asked the officers if Floyd was breathing and demanded they check Floyd's pulse. (Lane & Kueng BWC Videos at 8:25:40-8:26:05.) After hearing the bystanders' pleas to check Floyd for a pulse, Lane asked Kueng if he could detect a pulse.[22] After checking Floyd's wrist for about ten seconds, Kueng reported: "I can't find one [a pulse]." (Kueng & Lane BWC Videos at 8:25:45-8:26:00.) Thao responded by remarking to the bystanders: "Don't do drugs, guys." (Thao BWC Video at 8:26:04.) Chauvin responded: "Huh?" Kueng clarified that he was "check[ing] [Floyd] for a pulse." (Kueng & Lane BWC Videos at 8:26:00-:05.) After again checking for a pulse, Kueng sighed, leaned back slightly, and repeated: "I can't find one." (Kueng & Lane BWC Video at 8:26:07-:12.) Upon learning that Kueng could not find a pulse, Chauvin squeezed Floyd's fingers. Floyd did not respond. (Lane BWC Video at 8:26:12-:18.)

At 8:26:10, Hansen stepped off the sidewalk, moving into the street. (Thao BWC Video.) Thao yelled at Hansen to "get back," challenging her: "Are you really a firefighter?" (*Id*. at 8:26:10-:14.) After Hansen confirmed that she was a Minneapolis firefighter (*id*. at 8:26:15), Thao instructed her: "OK, then get on the sidewalk!" (*Id*. at 8:26:18.) Hansen repeated her plea for Thao to "show me his pulse." (*Id*. at 8:26:19.)

After 8:26:30, the bystanders' pleas to all four officers became increasingly vocal and emphatic. At 8:26:43, there was confirmation with EMS of the upgrade to Code 3. (Lane & Kueng BWC Videos at 8:26:43.) Thao responded with the location, instructing EMS to report to

---

[22] In an interview following Floyd's death, Lane noted that he "might've" checked for a pulse "on [Floyd's] leg," but that he "said maybe to Kueng at that point, you know, 'See if you can find something up there. Just double check.'" (Lane BCA Interview Transcript, at 53.) Consistent with Lane's statement, Lane appears to have checked for a pulse on Floyd's leg after Kueng said he could not find one. (Lane BWC Video at 8:26:53-57.)

38th and Chicago. (Thao BWC Video at 8:26:44)

Even though Floyd remained unresponsive, the Defendants did not move from their positions but continued to restrain Floyd -- Chauvin with his left knee pressed firmly into Floyd's neck, Kueng kneeling on Floyd's back, and Lane holding Floyd's legs -- while Thao kept bystanders back on the sidewalk.[23] All four officers ignored Hansen's urgent demands that they check Floyd for a pulse and begin chest compressions if he had no pulse. (Thao BWC Video at 8:28:39-:48.) None of the officers ever attempted CPR while Floyd was restrained on the ground. During this period, Thao time and again ordered the bystanders to stay off the street and remain on the sidewalk and prevented any of them, including firefighter Hansen, from rendering first aid to Floyd. (Kueng BWC Video at 8:26:16-8:29:05)[24]

The ambulance with Hennepin EMS paramedics Derek Smith and Seth Bravinder arrived on the scene shortly after 8:27 p.m. (Bravinder, Chauvin Tr. Trans. at 3371; Smith, Fed. Tr. Trans. at 591; Lane, Kueng & Thao BWC Videos at 8:27:19.) Smith testified they were originally dispatched as Code 2 (non-emergency, no lights and sirens) for a mouth injury, which was later

---

[23] 9-1-1 Dispatcher Scurry testified that, although it is atypical to continue watching in real-time an incident once it has been dispatched" (Chauvin Tr. Trans. at 2760), she did watch a live video of this incident from a street camera. (*Id*. at 2737-38; Fed. Tr. Trans. at 547.) She saw the officers "on the ground with" Floyd beginning around 8:19:25. (Chauvin Tr. Trans. at 2742-43.) Scurry looked at the live video several times during the incident and each time the scene "had not changed": the officers and Floyd "were still on the ground." (*Id*. at 2744.) Scurry initially thought "the screens had frozen" but when she realized that was not the case, she began to worry something might be wrong. (*Id*. at 2744-2745) She called the sergeant to report the officers' use of force, the first time she had ever done so in her nearly seven years on the job. (*Id*. at 2746, 2700, 2750; *accord* Fed. Tr. Trans. at 551-556.)

[24] Just after 8:27, after yet another of Hansen's repeated queries if Floyd had a pulse, rather than seeking to intervene himself or ask Chauvin, Kueng, or Lane to check, Thao retorted: "I'm busy trying to deal with you guys right now." (Thao BWC Video at 8:27:08)

upgraded to Code 3 (emergency, red lights and sirens)[25] en route although they were not given "additional information" about why the call was elevated to Code 3 (Chauvin Tr. Trans. at 3427-3428), which Smith characterized as "unusual." (Fed. Tr. Trans. at 591, 596.) Although Bravinder and Smith assumed on their arrival that there was likely still some struggle underway based on the fact that the three officers were on top of Floyd, as they moved closer, they realized that Floyd was unresponsive albeit still handcuffed. (Chauvin Tr. Trans. at 3372-3373, 3381, 3428-3429.) At this point, Floyd was unconscious, was not breathing, had no pulse, and was in full cardiac arrest, as Smith confirmed after checking Floyd for a carotid pulse at 8:27:45 (while Chauvin was still pressing his knees into Chauvin's upper back and neck) but was unable to detect one. (Fed. Tr. Trans. at 593-594, 609-611; Chauvin Tr. Trans. at 3432, 3452; Lane & Kueng BWC Videos at 8:27:45-:48; Darnella Frazier Video [Chauvin Tr. Exh. 15] at 6:58.[26]) Smith believed Floyd was dead, based on his failure to detect a pulse, and his observations that Floyd's chest was not "rising and falling," that Floyd was not "mentating," and that Floyd's pupils were "large and dilated." (Chauvin Tr. Trans. at 3429-3430, 3432; Fed. Tr. Trans. at 594.) Upon determining that Floyd was in cardiac arrest (*i.e.*, his heart rhythm was asystole), Smith

---

[25] This is corroborated by Captain Norton's testimony that paramedics requested support from the Fire Department, initially as a Code 2, thereafter elevated to Code 3. (Chauvin Tr. Trans. at 3463; Fed. Tr. Trans. at 671-673.)

[26] Unlike the officers' BWC videos, which have time stamps showing the actual time of events (in military time, as previously noted), the video recorded by Darnella Frazier was taken on her cell phone, and that video reports only the running time of her video recording, without reference to the actual clock time.

requested backup from the Minneapolis Fire Department.[27] (Fed. Tr. Trans. at 602; Chauvin Tr. Trans. at 3441-3442.)

Still, despite the ambulance's arrival and the lack of movement or any sounds from Floyd, Chauvin, Kueng, Lane, and Thao did not move from their positions but continued restraining Floyd as they had been doing since 8:19:18. (Lane BWC Video at 8:27:00-:24.) Indeed, even as Lane explained to emergency personnel that Floyd was "not responsive right now," Chauvin kept his knee on Floyd's neck. (*Id*. at 8:27:36-:38.) The crowd, which by this point had grown to nearly a dozen concerned onlookers, continued to plead with the officers, asking Thao if he was "gonna let [Chauvin] kill that man in front of you." (Thao BWC Video at 8:28:05-:13.) Still, all four officers continued to maintain their positions: for more than a minute after emergency personnel arrived, Chauvin and Kueng continued to press Floyd face-down into the pavement, with Chauvin continuing to press his knee into the back of Floyd's neck, Kueng and Lane holding down Floyd's back and legs, and Thao continuing to push back the crowd, holding them at bay. (Lane, Kueng & Thao BWC Videos at 8:27:25-8:28:45.) Despite having radioed for an ambulance, and despite their awareness that Floyd had not been breathing and had no detectable pulse, not only had none of the four officers sought directly to provide medical assistance to Floyd but none of them sought to radio to EMS, fire, or other rescue personnel that Floyd had ceased breathing and had obviously lost consciousness. (Scurry, Fed. Tr. Trans. at 543-544.)

---

[27] The Court finds Smith's and Bravinder's testimony credible. They testified consistently in the *Chauvin* and federal trials and their testimony is consistent with each other as well as with the video footage, other exhibits, and other testimony.

It was not until 8:28:42, when the stretcher was ready, that Chauvin finally stood up, removing his knee from Floyd's neck. (*See* Lane & Kueng BWC Videos.) Floyd remained unresponsive as Chauvin, Kueng, and Lane rolled Floyd onto the stretcher, after which Bravinder and Smith loaded Floyd into the ambulance. (Lane, Kueng & Thao BWC Videos at 8:28:50-8:29:00.)

Lane got into the ambulance with Floyd and the EMTs. (Lane BWC Video at 8:29:40-8:42:15.) Kueng returned to Cup Foods for further discussions with the Cup store manager. (Kueng BWC Video at 8:32:30-8:36:30.)

When the MFD arrived at the scene, Captain Norton encountered Thao outside Cup Foods. (Fed. Tr. Trans. at 684.) Thao did not relay any information to Captain Norton about Floyd's condition or his location.[28] (Fed. Tr. Trans. at 684-685, 691-692.) Thao mentioned only that they had called for EMS to transport someone "who was high." (*Id*. at 687.) Chauvin and Thao then departed from the scene in their squad. (Thao BWC Video.)

In total, Chauvin, Kueng, and Lane kept Floyd continuously restrained, pinned face-down on the concrete apron of Chicago Avenue in the same manner -- with Chauvin's knee pressing into the back of Floyd's neck, Kueng and Lane restraining Floyd's back and legs, while Thao stood guard, preventing the crowd of concerned citizens from interceding -- for more than nine minutes and twenty seconds. (8:19:18-8:28:42 p.m.) They did so notwithstanding that:

- Floyd neither moved nor spoke during the final four minutes and forty seconds. (8:24:00-8:28:42)
- Floyd appeared not to be breathing for almost three and a half minutes. (8:25:15-

[28] By this time, the ambulance had already departed the scene, moving to Park and 36th. (Norton, Fed. Tr. Trans. at 684, 691-692 & Chauvin Tr. Trans. at 3468, 3473.)

8:28:42)

- Chauvin, Kueng, and Lane were unable to detect a pulse for more than two and a half minutes. (8:26:10-8:28:42)

None of the four officers performed any life-saving measures or attempted any medical assistance to Floyd -- including performing CPR or even rolling Floyd onto his side, into a side-recovery position -- during the critical few minutes after Floyd became unresponsive, stopped breathing, and lost consciousness before the paramedics arrived and assumed control at 8:28:42. (*See, e.g.*, Lane, Kueng & Thao BWC Videos; Milestone Video, Tr. Exh. 42; Smock, Chauvin Tr. Trans. at 4697.)

H. <u>Floyd's Death</u>

After conducting their initial assessment, Smith and Bravinder determined that the best course of action was to provide care to Floyd in the ambulance -- the ambulance was a more "controlled environment" with better lighting and no outside distractions; it 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; and providing care inside the ambulance offered better respect to the dignity of the patient -- so Bravinder and Smith moved Floyd into the ambulance and commenced protocols for a patient in full cardiac arrest. (Chauvin Tr. Trans. at 3374, 3430, 3441; Fed. Tr. Trans. at 595.) Floyd's heart rhythm was asystole (flatline) when the paramedics began their treatment. (Bravinder, Chauvin Tr. Trans. at 3384; Smith, Chauvin Tr. Trans. at 3442.)

Lane joined the paramedics in the back of the ambulance, and Smith directed Lane to conduct CPR in the back of the ambulance. (Smith, Chauvin Tr. Trans. at 3435-3436; *see also*

Bravinder, Tr. Trans. at 3382, 3413-14.) This was the first time any of the officers had provided medical assistance of any kind to Floyd.

At 8:28:36, EMS requested "Fire Code 3" and Minneapolis Fire Department dispatch was contacted seven seconds later. (Chauvin Tr. Exh. 151, at pp. 434-436; Fed. Tr. Exh. 39, at 20:28:36, 20:28:43.)

Bravinder and Smith decided to move the ambulance to a location a few blocks away to provide more focused care due to the "general atmosphere" at the scene and to limit potential distractions due to the crowd of bystanders at the scene in front of Cup Foods. (Chauvin Tr. Trans. at 3374-3378, 3410, 3421-3422; Fed. Tr. Trans. at 595, 619.) Bravinder drove the ambulance a few blocks to Park Avenue and 36th Street, parking at 8:31:12. (Chauvin Tr. Exh. 151, at pp. 434-436.) Despite the emergency aid by Smith, Bravinder, and Lane, Floyd's condition did not improve. (Chauvin Tr. Trans. at 3384-98.) Bravinder and Smith explained that many such procedures are "time sensitive": the longer a patient remains in cardiac arrest before resuscitative efforts are undertaken, the lower likelihood they will be resuscitated, which is why it is imperative to start resuscitative efforts as soon as possible upon determination that a person does not have a pulse. (*Id*. at 3398, 3435.)

At 8:34:10, EMS reported that Floyd was in "FULL ARREST." (Chauvin Tr. Exh. 151, at pp. 434-436; Fed. Tr. Exh. 39, at 20:34:10.) At approximately 8:37, Minneapolis firefighters – who had initially arrived at Cup Foods at 8:32 (Fed. Tr. Exh. 39, at 8:32:49) -- arrived at Park and 36th and began assisting paramedics Smith and Bravinder with the efforts to resuscitate Floyd, including administering chest compressions, supporting his airway, administering a shock, providing other assistive care, and continuing to check for a pulse. (Chauvin Tr. Exh. 66 [Still

from Lane BWC in ambulance, at 20.37.18; Norton, Fed. Tr. Trans. at 696 & Chauvin Tr. Trans. at 3475-3478.)

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.) According to Smith, asystole and PEA are not rhythms that a paramedic can "shock to attempt to revive a patient." (Fed. Tr. 603.) Despite their efforts in rendering medical aid to Floyd, the paramedic EMTs and MPD firefighters were never able to detect a pulse and Floyd never resumed breathing. (Chauvin Tr. Trans. at 3439, 3450-3451.)

At 8:48, EMS transported Floyd to HCMC. Paramedic Smith and the Minneapolis firefighters continued to provide care to Floyd en route. (Chauvin Tr. Exh. 151, at pp. 434-436, at 20:48:23; Fed. Tr. Exhs. 39 at 20:48:23 & 109 [EMT Records] at 4; Smith, Fed. Tr. Trans. at 606.)

Floyd arrived at HCMC at 8:52:46. (Fed. Tr. Exh. 109 [EMT Records] at 4.) Upon arrival at HCMC, Floyd's heart rhythm was PEA. (Langenfeld Tr. Trans. at 3717-18.) Physicians at HCMC attempted life-saving measures on Floyd for more than 30 minutes but Floyd remained in cardiac arrest throughout those efforts. (*Id*. at 3728-29; State Supp. Exhs. 18-19 [Stabilization Room Video Trauma Bay Clips.) Floyd never regained a pulse and never regained consciousness. (Langenfeld, Chauvin Tr. Trans. at 3729; Smith, Chauvin Tr. Trans. at 3450-51.)

At HCMC, Floyd's heart rhythm was primarily in PEA; the rhythm ultimately devolved from PEA to asystole. (Langenfeld, Tr. Trans. at 3718-19, 3729.) After approximately 30 minutes of attempting life-saving measures at HCMC, Dr. Langenfeld pronounced Floyd dead at

9:25 p.m. on May 25, 2020. (*Id*. at 3702, 3729; State Supp. Exh. 19 [Stabilization Room Video Trauma Bay Clip] at 21:24:53-21:25:28.) Floyd had been in cardiac arrest for approximately 60 minutes before he was officially declared dead. (Langenfeld, Tr. Trans. at 3729.)

According to Dr. Andrew Baker, the Hennepin County Medical Examiner (HCME), Floyd's death resulted from "cardiopulmonary arrest complicating law enforcement subdual, restraint, and neck compression" (*see* HCME Autopsy Report & HCME Press Release Report), and the "manner of death" was "homicide."[29] *Id*. A separate autopsy review by the federal Armed Forces Medical Examiner System agreed with the HCME's autopsy findings and cause of death certification, concluding that Floyd's "death was caused by the police subdual and restraint in the setting of severe hypertensive atherosclerotic cardiovascular disease, and methamphetamine and fentanyl intoxication," and that the "subdual and restraint had elements of positional and mechanical asphyxiation."

I. <u>MPD Policies and Training</u>

As MPD officers, Chauvin, Thao, Lane, and Kueng held positions of public trust and were trained not to "willfully mistreat or give inhumane treatment to any person held in custody." (MPDPPM § 5-107.3.) Upon joining the MPD, Chauvin, Thao, Lane, and Kueng agreed to abide by a code of ethics that bound them to "enforce the law courteously and appropriately" and "never [to] employ[] unnecessary force or violence." (*Id.* § 5-102.)

[29] The Press Release Report indicated that Floyd experienced cardiopulmonary arrest while he was being restrained by law enforcement officers and reported as other significant conditions Floyd's "arteriosclerotic and hypertensive heart disease," "fentanyl intoxication," and "recent methamphetamine use." That Report is also careful to note that the HCME's classification of the manner of death as a homicide is a statutory function of the medical examiner's office for purposes of vital statistics and public health but does not constitute a legal determination of culpability or intent, which are left to the judicial system.

According to the MPDPPM, "sanctity of life and the protection of the public" are "the cornerstones of the MPD's use of force policy." (MPDPPM § 5-301.A.) Consistent with those principles, it is "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." (*Id.* § 5-303.01(B).) Officers may use only "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," and their use of force must "be consistent with current MPD training." (*Id.* § 5.301.01.) Before using force, officers must first consider various de-escalation tactics short of force. (*Id.* § 5-304(B).) When evaluating whether the use of force is appropriate, officers must "[c]onsider whether a subject's lack of compliance is a deliberate attempt to resist or an inability to comply based on factors including, but not limited to":

(i) medical conditions;

(ii) mental impairment;

(iii) developmental disability;

(iv) physical limitation;

(v) language barrier;

(vi) influence of drug or alcohol use; or

(vii) behavioral crisis.

(*Id.* § 5-304(B)(1)(b).)

Under MPD policies in effect at the time of Floyd's death, the most extreme uses of force -- MRT, Neck Restraints, and Deadly Force -- are reserved for the most extreme situations. Officers are trained to use the MRT only "where handcuffed subjects are combative and still

pose a threat to themselves, officers or others, or could cause significant damage to property if not properly restrained." (*Id.* § at 5-316(IV)(A)(1).) "As soon as reasonably possible, any person restrained using the MRT who is in the prone position" -- that is, on his or her stomach -- "shall be placed" in "the side recovery position" if "the hobble restraint device is used." (*Id.* § 5-316(IV)(B)(1).) Officers are instructed that, "as soon as possible," they must "[p]lace a restrained subject on their side in order to reduce pressure on his/her chest and facilitate breathing." (2019 MPD Use of Force Manual, at 3.)

Officers are also trained not to employ a "neck restraint"—"[d]efined as compressing one or both sides of a person's neck with an arm or leg"—"against subjects who are passively resisting." (MPDPPM § 5-311(I), (II)(C).) MPD policy defines "passive resistance" as "behavior initiated by a subject, when the subject does not comply with verbal or physical control efforts, yet the subject does not attempt to defeat an officer's control efforts." (*Id.* § 5-302.) "An officer who has used a neck restraint or choke hold shall inform" emergency medical personnel "accepting custody of the subject[] that the technique was used on the subject." (*Id.* § 5-311(II)(D)(2).) And if unconsciousness occurs, officers are to "request EMS immediately by radio." (2019 MPD Use of Force Manual, at 2.)

In applying a Neck Restraint, MRT, or any other use of force, officers must render medical aid when their use of force necessitates it. (MPDPPM 5-306 [all MPD officers who "use[] force shall," "[a]s soon as reasonably practical," "determine if anyone was injured and render medical aid consistent with training and request Emergency Medical Service (EMS) if

necessary"]).[30] MPD officers are trained to check the subject's "airway [and] breathing," and "start CPR if needed." (2019 MPD Use of Force Manual, at 2, 4.)

J. Bystanders and Other Lay Witness Testimony[31]

1. Darnella Frazier

Darnella Frazier, a bystander on the sidewalk outside Cup Foods during a portion of the incident, filmed a widely publicized video of the incident with her cellphone. (Chauvin Tr. Exh. 15.) Frazier was seventeen on May 25, 2020 and eighteen when she testified at the *Chauvin* trial. (Chauvin Tr. Trans. at 2960, 2966.)

Frazier was walking to Cup Foods that evening with her young cousin. (Chauvin Tr. Trans. at 2960-2961; Fed. Tr. Trans. at 2961-2962.) As they approached Cup Foods, Frazier saw Floyd "on the ground and . . . a cop kneeling down on him." (Chauvin Tr. Trans. at 2965; Fed. Tr. Trans. at 2963, 2965.) Frazier concluded Floyd "needed medical attention" as soon as he became unresponsive (Fed. Tr. Trans. at 2975; Chauvin Tr. Trans. at 2983) but observed that none of the officers provided Floyd with medical aid at the scene. (Chauvin Tr. Trans. at 2977-2978; Fed. Tr. Trans. at 2974.) Frazier also testified that she felt "threatened by the police officers," noting specifically that when any of the bystanders tried to approach the officers to

---

[30] This policy, which was in effect when Floyd died, was subsequently updated on June 16, 2020.

[31] The State called Floyd's brother, Philonise Floyd, and Courtney Ross at the *Chauvin* trial and the Defense called Seth Yang at the federal trial. Ross was Floyd's girlfriend and Yang is Thao's wife. Philonise Floyd essentially provided what is known as "spark of life" testimony. None of the three was present for any portion of the incident on May 25, 2020 or had any conversations with any of the principals having any relevance to the issues before the Court, so the Court does not find it necessary to address their trial testimony.

assist Floyd, Chauvin and Thao pulled out mace, warning them to stay back. (Chauvin Tr. Trans. at 2976-2976.)

Much of Frazier's testimony is corroborated from video and audio recordings at the scene (including her own cell phone video), other testimony and exhibits, and she also appears to have testified consistently in the *Chauvin* and federal trials. As a result, the Court finds those aspects of Frazier's testimony summarized above credible.

2. <u>Alyssa Funari</u>

Alyssa Funari, another bystander on the sidewalk outside Cup Foods during a portion of the incident, also recorded portions of the incident with her cellphone. (Chauvin Tr. Exhs. 26-28.) Like Frazier, she was seventeen on May 25, 2020 and eighteen when she testified at the *Chauvin* trial. (Chauvin Tr. Trans. at 3008, 3011.)

Funari began recording because she observed that Floyd "was in distress" and "fighting to breathe," based on his statements that he "couldn't breath[e] and that his stomach hurt, and that he wanted his mom" as well as the fact that he became less vocal as minutes passed and his breathing became more labored and shallow. (Chauvin Tr. Trans. at 3011-3013; Fed. Tr. Trans. at 2610.) Like Williams, Funari also observed Floyd's eyes slowly rolling back, and concluded as time passed that Floyd's "time was running out or it had already." (Chauvin Tr. Trans. at 3013-3014, 3028-3029) Although she did not pinpoint a specific time, as the restraint continued, Funari believed that Floyd was dead because "[h]is eyes were closed and he was just laying there no longer . . . [b]reathing." (Chauvin Tr. Trans at 3026, 3030.) She observed that there was nothing the bystanders could do because Thao was there "pushing the crowd back, making sure everyone was on the sidewalk and didn't get close." (Chauvin Tr. 3014-3015.)

Funari also observed – as corroborated by the cell phone and body-worn camera videos – that Thao occasionally turned around to look at Floyd and the other officers and that Thao as well as the bystanders, all standing just feet from where Chauvin, Kueng, and Lane were restraining Floyd on the street, could hear what was happening. (Fed. Tr. Trans. at 2612-2613, 2618.)

As with Frazier, much of Funari's testimony is corroborated from video and audio recordings at the scene (including her own cell phone video), other testimony and exhibits, and she also appears to have testified consistently in the *Chauvin* and federal trials. As a result, the Court finds those aspects of Funari's testimony summarized above credible.

3. *Kaylynn Gilbert*

Kaylynn Gilbert was with Funari. After initially sitting in a parked car near Cup Foods, Gilbert left the car and approached as she heard Floyd yelling that he couldn't breathe and then heard bystanders exclaiming that Floyd had become unresponsive. (Chauvin Tr. Trans. at 3044-3046.) Gilbert believed Floyd was unconscious because "[h]e wasn't talking anymore . . . . His eyes were closed. He wasn't moving." (*Id*. at 3046.) By the time the paramedics arrived, and Chauvin, Kueng, and Lane got off Floyd, Gilbert observed that Floyd "looked kind of purple, like he wasn't getting enough circulation" and was "really limp." (*Id*. at 3053.) She concluded Floyd had probably died. (*Id*. at 3053-54.) The Court finds Gilbert's testimony summarized above credible for the same reasons as Frazier and Funari.

4. *Shawanda Hill*

Shawanda Hill ran into Floyd at Cup Foods on May 25, 2020. (Chauvin Tr. Trans. at 5241-5242.) While inside Cup Foods with Floyd, Hill described Floyd as "[h]appy, normal, talking alert; she reported that Floyd was walking normally as he crossed the street to return to

his car after they left Cup Foods. According to Hill, Floyd did not complain of shortness of breath or chest pain; nothing seemed abnormal to Hill at that point. (*Id*. at 5249.) Floyd offered Hill a ride, so Hill got into his car. (*Id*. at 5242.)

Once inside the car, Floyd fell asleep after a brief conversation. (Chauvin Tr. Trans. at 5242-5243, 5346, 5250.) Hill and Floyd's other passenger, Morries Hall, woke Floyd up several times, but Floyd kept nodding off. (*Id*. at 5243-5245, 5246-5247.) Floyd ultimately woke up when Lane and Kueng approached the car. (*Id*. at 5245.)

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

5. Donald Williams

Donald Williams was a bystander witness, observing the officers' subdual and restraint of Floyd from the sidewalk in front of Cup Foods. Williams has a background in martial arts and wrestling. He works in private security, where he often works alongside on- and off-duty MPD officers. (Williams, Chauvin Tr. Trans. at 2836-2841.) He has trained with MPD officers at the Mixed Martial Arts Academy for a decade. (*Id*. at 2844-2845.) As part of his martial arts training, Williams trained on "blood chokes," a restraint tactic he described as attacking the side of the neck, cutting off blood flow and circulation to the head. (*Id*. at 2846-2847.) If a blood choke is continued for too long, he reported it can cause loss of consciousness due to the lack of oxygen. (*Id*. at 2849.)

Williams testified that he perceived Floyd "speaking in a distressed way," apparent from Floyd's repeated comments to the officers that he couldn't breathe, that his stomach and head hurt, and that he wanted his mom. (*Id*. at 2862-2863.) Over the course of the restraint,

Williams observed that Floyd's "breathing was getting tremendously heavy," that he was "struggling to . . . gasp for air while he was trying to breathe," and that his eyes were "slowly . . . rolling back in his head." (*Id*. at 2865, 289628-97.) Eventually, Williams observed that Floyd "was lifeless, he didn't move, he didn't speak." (*Id*. at 2865.)

Based on his martial arts experience, Williams testified that he believed Chauvin used his knee on Floyd's neck to perform a blood choke. (*Id*. at 2867-2869.) Williams also testified that Chauvin performed what he described as a "shimmy" maneuver with his knee at several points, meaning Chauvin was pushing his knee harder into Floyd's neck, which helps to "get the choke tighter." (*Id*. at 2871-2876.) That testimony is corroborated by the Kueng, Lane, and Thao BWC video as well as the Frazier cell phone video.

Williams testified that Thao "controlled the people. . . . And he was the guy that let it go on while it went on." (*Id*. at 2861.) Despite his constant verbal reproving of the officers' actions in continuing to restrain Floyd – including his repeated references to Thao as a "bum" -- and their failure to respond to what he believed was an increasingly dire situation, Williams concluded he could not intervene physically to come to Floyd's aid. (*Id*. at 2897-2898, 2900, 2902, 2939-2943, 2952.) Within minutes after Floyd was loaded into the ambulance, Williams called 9-1-1 because he believed he had "witnessed a murder." (*Id*. at 2905-2906; Chauvin Tr. Exh. 20 [Williams' 9-1-1 call].)

Much of Williams' testimony is corroborated from video and audio recordings at the scene as well as by other testimony and exhibits. As a result, the Court finds those aspects of Williams' testimony summarized above credible.

K. Findings Regarding Culpable Negligence and Use of Force During the Subdual and Restraint of Floyd Based on Testimony from Law Enforcement and Expert Law Enforcement Witnesses[32]

1. *MPD Chief Medaria Arradondo*[33]

Chief Medaria Arradondo was Chief of the Minneapolis Police Department on May 25, 2020 and had served at the MPD since 1989. (Chauvin Tr. Trans. at 3742, 3744.)

Chief Arradondo provided an overview of the MPD's approach to training, which is divided into pre-service training at the Academy and post-service training, which is provided as continuing education. (Chauvin Tr. Trans. at 3772-80.) 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. (*Id*. at 3784-89.)

The MPD has a mandatory de-escalation policy, and Chief Arradondo stressed the importance of de-escalation to policing generally. (Chauvin Tr. Trans. at 3792-3806.) De-escalation can include "calling for backup" or "seeking community help," and officers must also consider if a subject's noncompliance is purposeful or due to an inability to comply, the latter of

---

[32] The Defense in the *Chauvin* trial also called MPD Officer Scott Creighton and HCMC paramedic Michelle Moseng. However, their testimony related solely to a prior incident involving Floyd and the MPD and EMS/HCMC personnel on May 6, 2019. Because Chauvin, Thao, Kueng, and Lane were not involved in the May 6, 2019 incident and had no knowledge of it, the Court does not find it necessary to address Creighton's and Moseng's testimony or other evidence relating to that incident in detail, other than to note that it found both of them credible. The Court further observes that although Floyd displayed some initial indications of noncompliance in the May 6, 2019 incident (Off. Creighton had executed a traffic stop on Floyd's vehicle), the MPD officers on the scene responded very differently than did Chauvin, Thao, Kueng, and Lane on May 25, 2020 and although Floyd was also initially detained in the May 6, 2019 incident, none of the officers involved during that incident found it necessary to engage in use of force.

[33] The Court finds Chief Arradondo credible.

which can include medical impairment, a subject experiencing a "behavioral crisis," or a subject under the influence of drugs or alcohol. (*Id*. at 3798-3802.)

De-escalation has many components; it can include:

(1) threatening the use of force;

(2) placing another officer between an uncooperative subject and an officer,

(3) changing to a new position;

(4) calling additional resources; and

(5) crowd safety and control tactics.

(Chauvin Tr. Trans. at 3858-3862, 3870-3871, 3882-3883.) As Chief Arradondo observed: "[O]ne way to de-escalate [a] crowd . . . experiencing something shocking [is] to stop doing the thing that's shocking them." (*Id*. at 3893.)

MPD officers have basic first-responder medical training, and policy imposes on them a duty to request EMS or an ambulance and to render medical aid while they are waiting for assistance to arrive. (Chauvin Tr. Trans. at 3810-3813.) This duty includes providing Narcan to someone suffering from an overdose. (*Id*. at 3813-3814.)

In terms of MPD's use of force policy, Chief Arradondo explained that "sanctity of life is . . . the pillar for our use of force." (Chauvin Tr. Trans. at 3815.) MPD policy authorizes only the use of "objectively reasonable force" under the circumstances; this means "[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." (*Id*. at 3816-3818.) Officers using force must assesses various factors, including "the severity of

the crime at issue;[[34]] 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."[35] (*Id*. at 3819; 3854-3855.)

In terms of MPD's defensive tactic training, Chief Arradondo explained that MPD policy authorizes the use of certain neck restraints: officers may compress on one or both sides of the neck with an arm or leg but may not apply direct pressure to the airway. (Chauvin Tr. Trans. at 3828-3831.) A "conscious neck restraint," which involves light to moderate pressure and which is authorized for use on a subject actively resisting, is intended to control the subject without rendering them unconscious. (*Id*. at 3831-32.) An "unconscious neck restraint," which is designed to cause the subject to pass out, is authorized only when "the officer is in fear of grave bodily harm or death" or to save the person's own life. (*Id*. at 3832.) Under MPD policy, "neck restraints [are] not to be used against people . . . merely passively resisting" (*id*. at 3833) and it is "contrary to training [for an officer] to indefinitely place [his] knee on a prone handcuffed individual for an indefinite period." (*Id*. at 3878.)

Chief Arradondo expressed his opinion, based on his experience as MPD Chief and his knowledge of the MPD's policies and procedures and training, that Chauvin:

(1) did not follow MPD's de-escalation policy;

(2) did not use a trained MPD "defensive tactic[] technique";

[34] According to Chief Arradondo, a counterfeiting allegation is not particularly serious in the context of Minnesota's criminal code. Counterfeiting is not a violent crime, and counterfeiting suspects are not typically taken into custodial arrest. (Chauvin Tr. Trans. at 3819-3821.) The Court concurs with Chief Arradondo's assessment in this regard.

[35] Chief Arradondo observed that MPD's critical thinking model requires officers to reassess the appropriate use of force as situations evolve. (Chauvin Tr. Trans. at 3827.)

(3) violated MPD's reasonable use of force policy by failing to stop his neck restraint once Floyd stopped resisting and was in distress and by failing to provide Floyd with medical aid when he was exhibiting clear signs of medical distress; and

(4) and the other officers were "essentially using the maximal restraint technique" by the manner in which they were restraining Floyd even though they did not use the hobble device.[36]

(Chauvin Tr. Trans. at 3837-3841, 3887-3890.) According to Chief Arradondo:

> [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 proned 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.

(*Id*. at 3839-3840, 3887-3888.)

2. <u>MPD Inspector Katie Blackwell</u>[37]

Inspector Katie Blackwell, an MPD officer since 2002, was the commander of MPD's training center from April 2019 through January 2021, during which she oversaw all police academy training and in-service training. (Chauvin Tr. Trans. at 3899-3900; Fed. Tr. Trans. at 792-793, 808.) Before that, she was as a lieutenant in the training division. (*Id*. at 793.)

---

[36] According to Chief Arradondo, the hobble is the only MPD-authorized way to employ the maximal restraint technique. Even though the officers did not actually use the hobble device, Arradondo expressed the view that the techniques they were using to restrain Floyd were functionally equivalent to a maximal restraint technique which, coupled with the severity of risk, meant they should have contacted a supervisor as required by MPD policy when engaging in maximal restraint of a suspect even though they did not use the hobble device. (Chauvin Tr. Trans. at 3890.) In any event, as noted above, Chief Arradondo also observed that 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, which was not done in this case. (Chauvin Tr. Trans. at 3890.)

[37] The Court finds Inspector Blackwell credible.

To become a sworn MPD officer, individuals must: (1) complete a two- or four-year degree; (2) obtain their peace officer license, which requires completing a 24-26 week skills certification program that covers topics like defensive tactics and medical training; (3) attend the MPD Academy; and (4) participate in MPD's field training program.[38] (Fed. Tr. Trans. at 812-816, 821.)

The MPD Academy is an 18–19-week course that includes both classroom lessons and hand-on scenario training. (Fed. Tr. Trans. at 823-824.) Recruits are trained on defensive tactics, including the use of force continuum and de-escalation, and take multiple tests on MPD policies. (*Id*. at 826, 829-830.) Upon graduation from the Academy, officers participate in a five-to-six-month Field Training Officer program. (*Id*. at 831-834.)

Officers must also complete 48 hours of in-service training every three years,[39] including 16 hours focused on mental health crisis training. (Chauvin Tr. Trans. at 3908; Fed. Tr. Trans. at 813, 817.) In-service training covers the same topics as the MPD Academy, in a more condensed format. (Chauvin Tr. Trans. at 3905-3906.) Every year, the in-service training includes training on defensive tactics, the use of force, a medical component, and crisis intervention. (Chauvin Tr. Trans. at 3914; Fed. Tr. Trans. at 818.)

All MPD employees are responsible for knowing the information contained in MPD's Policy and Procedure Manual (MPDPPM). (Fed. Tr. Trans. at 867-869.) Updates to the

---

[38] 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. (Blackwell, Fed. Tr. Trans. at 813.)

[39] POST requires officers to renew their peace officer license every three years. (Fed. Tr. Trans. at 813.)

MPDPPM are shared via email, orally, and during in-service training. (*Id*. at 864-866.) The MPDPPM requires all employees to report immediately "any violation of rules, regulations or laws," as well as "any misconduct at the scene of an incident," including "unreasonable force." (*Id*. at 870-871.) The MPDPPM provides that "the sanctity of life and the protection of the public shall be the cornerstones of" MPD's use of force policy. (*Id*. at 874.)

The 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. Trans. at 875.) Under this policy, officers must "adjust [their] force depending on what the person you are dealing with is using or doing" (*id*. at 876), including de-escalating force as necessary. (*Id*. at 890.)

As part of the de-escalation process and MPD's crisis intervention policy, MPD officers must consider whether "someone's ability to comply with their orders" is impaired, for example due to mental illness or intoxication. (Fed. Tr. Trans. at 893-894, 974-975.) Officers are taught to use the "lowest level of force necessary to detain somebody." (*Id*. at 873.) If an officer needs to increase force "to gain compliance," the officer must cease using force once the subject stops resisting and is compliant. (*Id*. at 873, 880.) Officers are trained 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 . . . it's our job to protect this person," including from an unreasonable use of force. (*Id*. at 882.) 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. (*Id*. at 881, 883.)

MPD policy also requires employees to provide medical aid, including CPR, "as soon as reasonable, practical." (Fed. Tr. Trans. at 892.) 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. (*Id*. at 1343-44.) MPD policy provides that 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. (*Id*. at 894-895.)

According to Inspector Blackwell, even though MPD's policy on neck restraints technically references "compressing one or both sides of the neck using an arm or leg," the 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. Trans. at 3923; Fed. Tr. Trans. at 895-897, 1213-1214.) The 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. Trans. at 898-899.) Policy also provides that "Neck restraints shall not be used against subjects who are passively resisting," meaning subjects who are not complying with an officer's verbal commands but who are "not really trying to defeat the officer." (*Id*. at 900.) MPD officers are trained to closely observe an individual after a neck restraint has been employed. 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. Trans. at 902.)

According to MPD policy "maximal restraint technique" (MRT) involves using the hobble device to secure a subject's feet to their waist to prevent leg movement, like kicking. (Fed. Tr.

Trans. at 904-905.) When using the hobble, officers 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. Trans. at 3919; Fed. Tr. Trans. at 905-907.) Officers using MRT/the hobble are supposed "to call a supervisor to the scene." (Fed. Tr. Trans. at 906.)

The dangers of the prone position and positional asphyxia have been known in the MPD at least since Inspector Blackwell joined the force in 2002 and they are discussed throughout MPD policy and training. (Chauvin Tr. Trans. at 3920; Fed. Tr. Trans. at 908, 972, 979-980.) Inspector Blackwell 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. Trans. at 908-909, 971-972.)

MPD keeps records on the training individual officers receive. (Fed. Tr. Trans. at 981.) Thao completed a total of 1,014 hours of MPD training. (*Id*. at 988.) This included medical training including CPR and Narcan, defensive tactics training, procedural justice training, and crisis intervention training.[40] (*Id*. at 991-998, 1006.) Thao also 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. (*Id*. at 1008, 1010-1015, 1023-1027, 1029-1032.) These trainings also covered the proper application of neck restraints, the importance of using the side recovery position, and the need to closely monitor

[40] Chauvin, too, had received several hours of training in defensive tactics, crisis intervention (including "de-escalation and mental health awareness"), procedural justice, Narcan, and other topics during his in-service trainings over the years. (Chauvin Tr. Trans. at 3915-3918.)

someone for medical issues after applying a neck restraint. (*Id*. at 1016-1020, 1023-1027, 1032-1034.) Thao also attended an excited delirium in-service training in 2018 or 2019. (*Id*. at 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. (*Id*. at 1244-1245, 1257, 1271, 1273-1274, 1326.) She also explained that officers were trained that, upon suspecting someone was suffering from excited delirium, they should "[p]lace the subject in the recovery position to alleviate positional asphyxia," "even if you are waiting for EMS." (*Id*. at 1256, 1325, 1327, 1329-1330, 1332.) Officers are also trained to "stop using any type of force" as soon as someone they suspect has excited delirium "becomes compliant." (*Id*. at 1330-1331.)

Inspector Blackwell expressed her opinion, based on her knowledge of the MPDPPM and her experience training MPD officers, that:

(1) Chauvin's use of his knee in performing a neck restraint was not a "trained" defensive tactics technique, but that Chauvin had instead used an "improvised position" that is "not what we train." (Chauvin Tr. Trans. at 3922-3923; Fed. Tr. 1095, 1098-1099, 1104, 1111-1112);

(2) Chauvin's actions on May 25, 2020 were inconsistent with MPD training and use of force policy because he (i) used disproportionate force and a pain compliance technique in applying a neck restraint when Floyd was passively resisting, and (ii) continued using that same level of force even when Floyd was no longer resisting, had 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. Trans. at 1093, 1101, 1103-1105, 1107, 1113, 1116-1119, 1336-1337);

(3) Thao's actions were inconsistent with MPD policy and training on the duty to intervene (*id*. at 1120-1124);

(4) the bystanders on the sidewalk outside Cup Foods did not prevent Thao from complying with MPD's policy and training (*id*.); and

(5) Thao did not do anything "to render medical aid to Mr. Floyd while in police custody." (Fed. Tr. 1341.)

3. *Barry Brodd*

Barry Brodd was called as a use of force expert by the Defense during the *Chauvin* trial. Brodd served as a police officer in California for 29 years, taught defensive tactics (along with crowd control and other topics) for 35 years, and currently owns a company that consults on police practices and the use of force. (Chauvin Tr. Trans. at 5286-5290.)

Brodd employs the following methodology to evaluate the *Graham v. Connor* factors. First, he determines whether the officer had "legal authority for a detention." (Chauvin Tr. Trans. at 5300.) Second, he considers how the suspect responded to the officer. (*Id*. at 5302.) If the suspect did not comply, Brodd considers the "level of resistance" the suspect displayed to the officer. (*Id*.) 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. (*Id*. at 5304.)

Brodd also identified several other factors that influence his analysis:

(1) 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. Trans. at 5306);

(2) possible drug influence "has quite a large impact" on the analysis and he himself trains officers to keep individuals under the influence of drugs in handcuffs (*id*. at 5307);

(3) it is safer for the officers as well as for the subject to keep individuals who are possibly under the influence of drugs in "prone control," rather than on their back, because it minimizes the risk of aspiration if a subject becomes sick (*id*. at 5317-5318);

(4) officers must consider "environmental hazards," such as traffic and onlookers (*id*. at 5309); and

(5) officers should take into account comments their fellow officers make about the subject and what the subject is saying. (*Id*. at 5350, 5366.)

Brodd acknowledged that officers are authorized to use force in response to a threat, but not simply to a mere risk. (Chauvin Tr. Trans. at 5339.) He also acknowledged that although the possibility of drug use is a risk factor, drug use itself does not necessarily pose a threat to officers, noting, for example, that a subject may pass out as a result of drug use. (*Id*. at 5340-41.)

Brodd expressed his ultimate opinions that, in connection with the events of May 25, 2020, Derek Chauvin:

(1) "was justified, was acting with objective reasonableness following Minneapolis Police Department policy and current standards of law enforcement in his interactions Floyd"; and

(2) did not use deadly force against Floyd.

(*Id*. at 5296, 5304-5305.)

Brodd agreed that Floyd's crime was not particularly serious. (Chauvin Tr. Trans. at 5336-5337.) Brodd believed Chauvin's, Kueng's, and Lane's use of force in trying to place Floyd into the squad car and then onto the ground was reasonable. In Brodd's view, Floyd was initially actively resisting even after he was initially placed on the street and "[a]ny resister, handcuffed or not, should go to the ground into a prone control position."[41] (*Id*. at 5313-5315.)

---

[41] In determining whether to use the hobble or MRT at that point, Brodd observed that 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. Trans. at 5315.) Brodd also

Brodd does not consider putting a suspect in a prone control position as a use of force but rather a "control technique." (Chauvin Tr. Trans. at 5313, 5319-5320.) 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. (*Id*. at 5394-5395.) Brodd expressed the view that 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." (*Id*. at 5319-5320.) Brodd acknowledged, however, that if the prone position inflicts pain, it qualifies as a use of force. (*Id*. at 5325.) Brodd conceded that Chauvin's use of the prone restraint in this case could have produced pain, and therefore could qualify as a use of force. (*Id*. at 5329-5330.) He also conceded that Chauvin's conduct constitutes a use of force under MPD policy. (*Id*. at 5335.) He 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." (*Id*. at 5349-5350.)

Brodd testified that, despite MPD training, reasonable police officers might sometimes choose to not move someone from the prone position into the recovery position, explaining:

> 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" but conceded that the dangers of

---

viewed the officers' decision to call for EMS as "relevant" because a reasonable officer would consider EMS's response time. (*Id*. at 5316-5317.)

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. (*Id*. at 5320, 5331-5334.) He also acknowledged that drug use and physical exertion can increase the risk of positional asphyxia, which a reasonable police officer would have to consider. (*Id*. at 5368-5369.)

Although he does not have a medical degree and is only trained in first aid, Brodd presumes – as Chauvin and Thao explicitly stated more than once during Floyd's restraint -- that someone who is talking is able to breathe. (Chauvin Tr. Trans. at 5318-5319.) He also observed that a reasonable officer could consider, in the context of Floyd's statements that he could not breathe, that Floyd was continuing to "actively resist, albeit at a lower level." (*Id*. at 5400-5401.) Brodd conceded that whether a restrained suspect 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. (*Id*. at 5345.) Brodd also admitted that an officer must cease using force or must de-escalate at the point at which the use of force becomes unreasonable. (*Id*. at 5345-5346.)

The crowd also factored into Brodd's analysis because "officers are always trained to deal with what threat is the biggest threat." (Chauvin Tr. Trans. at 5322.) Brodd observed that Chauvin's focus at one point "started to move from Mr. Floyd to the crowd," citing Chauvin's decision to threaten the crowd with mace. (*Id*. at 5322-5323.) But Brodd conceded 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. (*Id*. at 5342-5343.) 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 at several points during the restraint, and further conceded that the bystanders were not threatening at a certain point. (*Id*. at 5371, 5374-5376, 5387.)

Although expressing the view that Floyd was "actively resisting" for "a couple of minutes" after he was placed in the prone position, Brodd acknowledged that the use of force must be reasonable throughout the entire restraint. (Chauvin Tr. Trans. at 5350, 5352, 5397-5399.) Brodd acknowledged that Chauvin rejected Lane's suggestion to roll Floyd on his side into the side-recovery position and maintained the same level of force despite the fact that Floyd was "not exhibiting noncompliance." (*Id*. at 5382-5383.)

Although suggesting that Floyd remained noncompliant at one point during the restraint because he was not "resting comfortably on the pavement" and was instead "still moving around" (Chauvin Tr. Trans. at 5383), Brodd admitted that "attempting to breathe while restrained is" not "being slightly noncompliant." (*Id*. at 5383-5384.) Brodd also conceded that Floyd was not resisting for the latter portion of the restraint and that it is not possible for a subject who has passed out to resist. (*Id*. at 5388-5390.) Despite the obvious changes in Floyd during the course of the restraint, Brodd admitted that Chauvin maintained his same general position. (*Id*.) Brodd also admitted that a reasonable person in Chauvin's position would have heard Kueng say that he could not find a pulse. Brodd conceded that Chauvin's position remained the same even after hearing Kueng state that he could not detect a pulse and even after Floyd was no longer verbalizing or moving. (*Id*. at 5392.)

The Court finds Brodd's ultimate opinions neither credible nor persuasive. Brodd's testimony was at times internally inconsistent and failed to consider indisputable facts from the video evidence. For instance, although initially suggesting 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 the video evidence. Brodd's testimony that Floyd was "resting comfortably on the pavement" defies credulity. And, whatever credibility Brodd might have had in characterizing Floyd's initial actions upon being taken to the street as "resisting" – rather than accurately portraying the pain he was experiencing and the difficulties he was having breathing – expressing the opinion that Chauvin's and the other officers' use of force was objectively reasonable throughout the entire nine and a half minute restraint destroyed Brodd's credibility in view of Lane's requests, after Floyd had ceased moving and talking, to roll him into the side-recovery position, Kueng's statement that he was no longer able to detect a pulse, Chauvin's own awareness that Floyd had stopped moving and talking altogether, and the increasingly insistent entreaties from the bystanders observing that Floyd was no longer moving or breathing and had passed out.

4. *Park Police Officer Peter Chang*

Officer Peter Chang is a Minneapolis Park Police officer who responded to the incident on May 25, 2020. (Chauvin Tr. Trans. at 5251-5252.) He was called by the Defense in the *Chauvin* trial.

For the majority of the incident, Officer Chang was stationed near the blue Mercedes Floyd was driving, parked next to the Dragon Wok restaurant. (*Id*. at 5256.) Because of his location, on the south side of 38th Street, across from the Cup Foods, 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. Trans. at 5272-5273.) Officer Chang described the crowd as "loud and aggressive." Despite testifying at trial that this caused him "[c]oncern for the officer safety" (*id*. at 5258-5260, 5264) Officer Chang remained in place throughout the entirety of the restraint: because the officers never "radioed for help," he "assumed" that "because there were four of them," the officers "were okay." (*Id*. at 5273-5274.)

The Court does not find Officer Chang's testimony either compelling or persuasive. Officer Chang admitted he had only a limited view of the scene at which Chauvin, Kueng, and Lane restrained Floyd, with Thao maintaining watch over the bystanders. In addition, Officer Chang's testimony that he had some concern about officer safety is inconsistent with his testimony that despite his proximity to the scene, he never walked the less than half block to the site where Floyd was being restrained to assist Thao in maintaining crowd control and his admission that he would have expected any of the four officers to have radioed for assistance had they believed the crowd posed an actual safety threat.

5. <u>Timothy Longo</u>

Timothy 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. Trans. at 2758-2759.) 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. (*Id*. at 2762-65.) Chief Longo testified as a use of force expert in the federal trial, based on his

review of the relevant videos, MPD departmental policies, transcripts, statements, police reports, and training materials. (*Id*. at 2775-2776.)

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. Trans. at 2772-2773.) Generally accepted policing practices also require an officer to affirmatively do something to stop another officer using inappropriate or excessive force. (*Id*. at 2781-2782.) 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." (*Id*. at 2784-2785.) This duty extends collectively to "every [officer] that's there to do something," not just to any individual officer. (*Id*. at 2784-2785.) If a subject does not have a pulse, officers are expected to begin chest compressions, regardless of whether an ambulance is en route. (*Id*. at 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. (*Id*. at 2781, 2826-2727.)

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. Trans. at 2837.) MPD's policies are consistent with these requirements. (*Id*. at 2840.)

With respect to use of force, 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 as proportionate to the threat or resistance. (Fed. Tr. Trans. at 2785, 2794-2795.) That requires consideration of 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. (*Id*. at 2785-2788.) Officers have a continuing duty to reassess the situation and to de-escalate force as appropriate. (*Id*. at 2790-2796.) Chief Longo opined that MPD's use of force and duty-to-intervene policies were consistent with these generally accepted policing practices. (*Id*. at 2796, 2816.)

Chief Longo's ultimate opinion is that Chauvin's conduct relating to the George Floyd incident of May 25, 2020 "was inconsistent with generally accepted policing practices." (Fed. Tr. Trans. at 2777.)

Officers are trained that the prone position is inherently dangerous because it limits the ability to breathe (Fed. Tr. Trans. at 2797-2799) and "the only reason to put someone on the ground [in the prone position] is because you can't control them on their feet." (*Id*. at 2806.)

Generally accepted policing practices require that when a person who is proned and handcuffed stops resisting, the person should be removed from the prone position. (Fed. Tr. Trans. at 2800-2801.) MPD policy and training is consistent with these generally accepted practices. (*Id*. at 2801-2802.)

From his review of the evidence, Chief Longo he did not see any information suggesting Floyd posed a threat when officers Chauvin, Kueng, and Lane were removing Floyd from the squad car, and did not see any objective reason to place Floyd on the ground. (Fed. Tr. Trans. at 2805-2807.) Although acknowledging that a person who is handcuffed can still resist officers in other ways, for example by kicking or biting, 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. 2807-2808, 2922, 2933.) And, obviously, a person who has become unconscious or pulseless is unable to bite someone. (*Id*. at 2933.)

Chief Longo 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. Trans. at 2809-2810.) 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. (*Id*. at 2810.) In Chief Longo's opinion, MPD's policies are consistent with these general standards. (*Id*. at 2811.)

Chief Longo also expressed his opinion that Thao's conduct was not consistent with generally accepted policing practices:

(1) Although Thao "had firsthand knowledge of what was occurring," he "took no steps to intervene" (Fed. Tr. Trans. at 2817-2819);

(2) Although -- due to his position to the side and slightly in front of the position in which Chauvin, Kueng, and Lane had Floyd restrained prone on the street and, for the most part (particularly during the past few minutes of the restraint), facing the gathered bystanders on the sidewalk in front of Cup Foods -- Thao was not looking directly at Floyd during the entire restraint and even though the bystanders were "loud," these facts neither distracted Thao nor relieved him of the duty to intercede in the restraint[42] (*Id*. at 2819-2821);

(3) Thao's conduct was inconsistent with Thao's duty to render medical aid: Thao "could see that Mr. Floyd had become unresponsive" and was being told that by some of the bystanders, including Williams and Hansen, yet Thao did not provide Floyd with medical care. (Fed. Tr. 2828-2829.)

[42] Indeed, in Chief Longo's view – as well as this Court's -- the bystanders' pleas provided Thao with information that put Thao "on notice" of a potential problem. (Fed. Tr. Trans. at 2821.)

The Court finds Chief Longo's expert testimony credible: his testimony was well-supported, internally consistent, corroborated by the extensive video evidence, and persuasive.

6. MPD Officer Nicole Mackenzie

Officer Nicole Mackenzie has been an MPD officer for over seven years and serves as the medical support coordinator. (Chauvin Tr. Trans. at 4079; Fed. Tr. Trans. at 1789.) She is responsible for Academy and in-service training concerning first aid, medical issues, and Narcan. (Chauvin Tr. Trans. at 4082-4083; Fed. Tr. Trans. at 1793.)

MPD provides annual medical in-service training to officers on topics including CPR and Narcan. (Chauvin Tr. Trans. at 4089, 4091-4092; Fed. Tr. Trans. at 1869.) To obtain the POST certification required to become a police officer, an officer must be certified as an emergency medical responder. (Chauvin Tr. Trans. at 4084, 4100, 4102.)

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. (*Id*. at 4092-4094; Fed. Tr. Trans. at 1879-1880.) If the person is unresponsive, officers are trained to check the person's airway, breathing, and pulse. (Chauvin Tr. Trans. at 4095-4096; Fed. Tr. Trans. at 1879-1880.) "If you don't have a pulse on a person, you'll immediately start CPR" and call EMS. (Chauvin Tr. Trans. at 4096-4097; Fed. Tr. Trans. at 1880.) Officers are also trained to request EMS when they "suspect a person in their custody is under the influence of drugs." (*Id*. at 1894.)

Officers must render aid even if they have called EMS and an ambulance is en route. (*Id*. at 1881.) Officers are also 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,

because all fire personnel have EMT-level training, and "they could potentially offer a faster response just due to their locations." (Fed. Tr. Trans. at 1890-1891.) 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. Trans. at 4098, 4107.)

MPD does not train officers "that if a person can talk it means that they can breathe." (Chauvin Tr. Trans. at 4096-4097; Fed. Tr. Trans. at 1898-1899.) MPD does train officers that "agonal breathing"—a sign of respiratory distress, essentially just "an irregular gasp for air"—"is not effective breathing." (Chauvin Tr. Trans. at 4105-4106.)

MPD also 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. Trans. at 1887-1888, 1900.) 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. (Id. at 1892, 1894-1895.)

Officer Mackenzie has never been trained to put her "knee on someone's neck." (Fed. Tr. Trans. at 1941, 1979.) While acknowledging video footage 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 in which the instructor did not correct the recruit's technique (*id*. at 1989-1991, 1994-1995) Officer Mackenzie explained that unless an instructor sees something that's "terribly unsafe," an instructor might choose to "let it play out and offer the critique after." (*Id*. at 1994.) She further explained that there is a key difference between using one's knee "momentarily" versus as a tactic to maintain control over a subject. (*Id*. at 2063.)

Officer Mackenzie acknowledged that, at a few points in one of MPD's excited delirium trainings, it appears someone may be using their knee on a subject's "upper shoulders or maybe by the neck," but she pointed out that training was not about defensive tactics but instead was an "example . . . showing you just how dangerous this medical condition is," also observing that "[i]t would be wildly inappropriate for the medical team to train on defense and control techniques." (Fed. Tr. Trans. at 1936, 1958-1959.) The MPD trains that, if an officer suspects someone is experiencing excited delirium, the officer should "get them under control, get EMS there early and put them in the recovery position." (*Id*. at 2000-2001.) In addition, the appropriate medical response to a handcuffed subject an officer suspects may be suffering from excited delirium is to place them in the side recovery position. (*Id*. at 2057.) Even if the officer worries that person "might become violent," officers are trained to "keep them in the side recovery position in a way that you could gain control quickly if they were to become combative again." (*Id*.)

Chauvin attended the 2018 in-service Narcan training. (Chauvin Tr. Trans. at 4108.) Thao attended the 2019 medical in-service training, which covered Narcan and CPR. (Fed. Tr. Trans. at 1872-1873, 1876.)

Officer Mackenzie expressed the opinions, based on her review of the body-worn camera footage, that:

(1) 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. Trans. at 1907-1908); and

(2) 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. (*Id*. at 1909.)

The Court finds Officer Mackenzie credible. As MPD's medical support coordinator, she has extensive experience with and knowledge about MPD's medical trainings and policies. Her testimony was well-supported, internally consistent, corroborated by video evidence, and persuasive.

7. MPD Sgt David Pleoger

Sergeant David Pleoger, a 27-year veteran of the MPD, was the Third Precinct's Sergeant on duty at the time of the Floyd incident on May 25, 2020. (Chauvin Tr. Trans. at 3489-3490, 3493, 3508-3509.)

In certain scenarios, including the use of "any type of force on a handcuffed prisoner," or when someone sustains an injury necessitating medical aid, MPD policy requires the officer 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. Trans. at 3496-3501.) If a hobble was used on a subject, a supervisor must be called to evaluate whether the hobble was "properly and necessarily used." (*Id*. at 3503.)

Based on his review of the body-worn cameras video evidence, Sgt. Pleoger expressed the opinion that 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. Trans. at 3541-3542, 3561.) The Court finds Sgt. Pleoger's testimony credible.

8. *LAPD Sgt. Jody Stiger*

Sergeant Jody Stiger, called by the State in the *Chauvin* trial as a use of force expert, was a 28-year member of the Los Angeles Police Department. (Chauvin Tr. Trans. at 4125-4126.) He served on the in-service training team for the tactics unit for six years where he reviewed use of force policies across the nation and provided use of force training to other officers. (*Id*. at 4128-4129, 4132-4135.) He also served on the use of force review board for his department, has consulted other agencies on their use of force reviews, and has conducted approximately 2,500 use of force reviews over his career. (*Id*. at 4128-4129, 4136-4137.)

Based on his review of the evidence, Sgt. Stiger expressed the opinion that Chauvin used excessive force against Floyd under the *Graham v. Connor* framework, meaning force that was objectively unreasonable. (Chauvin Tr. Trans. at 4138-40, 4272.) Various factors informed his conclusion.

First, the alleged counterfeiting offense in question and Floyd's associated conduct was not particularly serious.[43] (Chauvin Tr. Trans. at 4142-4143, 4175.)

Second, even though it was not ***necessary***, in Sgt. Stiger's view, for the officers to use force to attempt to achieve Floyd's compliance with their commands that he take a seat in the back of Lane's and Kueng's squad, he believed the officers were ***justified*** in using force because he viewed Floyd's struggling with the officers to avoid being seated in the squad as active

[43] Sgt. Stiger admitted it was reasonable for Chauvin and Thao to arrive at the scene with a "heightened sense of concern" given the information dispatch had relayed to them to assist after Lane and Kueng had initially responded. (Chauvin Tr. Trans. at 4216-4217.)

resistance. (Chauvin Tr. Trans. at 4145, 4151-4152, 4218-4219.) However, once prone on the street, Floyd did not pose an immediate threat given that the only active, aggressive behavior Floyd was then exhibiting was kicking his legs while the officers were "trying to place him down in the prone position."[44] (Chauvin Tr. 4155-4156.)

Sgt. Stiger concluded that Floyd slowly ceased his resistance and no longer presented an immediate threat when he was in the prone position on the ground[45] because "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" and he was not verbalizing any threats or any intent to resist. (Chauvin Tr. Trans. at 4146, 4175-4177.) With Chauvin, Kueng, and Lane actively restraining Floyd and with Thao standing just a couple feet away, attending the scene and watching over the bystanders, Floyd no longer posed any potential threat. (*Id*. at 4176.) At that point, Sgt. Stiger opined that the officers should have de-escalated the situation but instead "[t]hey continued the force that they were utilizing from the time that they first put him on the ground" even though a reasonable officer, assessing the totality of the circumstances, would have considered Floyd's comments and actions indicating that he was in distress. (*Id*. at 4146-

[44] 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. Trans. at 4155-4157.) In Sgt. Stiger's view, the officers' decision not to use the hobble once Floyd was in the prone position suggests "they felt that he was starting to comply and his aggression was starting to cease," which was consistent with Sgt. Stiger's own observations. (*Id*. at 4158-4159.)

[45] 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 the corresponding level of appropriate force. (Chauvin Tr. Trans. at 4241, 4244-4245.) He also acknowledged that a person who is restrained or has become unconscious can "revive agitated and ready to fight." (*Id*. at 4259-4260.)

4147, 4271-4272.) Sgt. Stiger 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. (*Id*. at 4177, 4179-4181.) In Sgt. Stiger's opinion, "no force should have been used" once Floyd was handcuffed in the prone position and not resisting.[46] (*Id*. at 4181.)

Sgt. Stiger also opined that the level of force the officers used during the restraint constituted "deadly force" because "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 -- . . . cause positional asphyxia, which could cause death." (Chauvin Tr. Trans. at 4182.) Sgt. Stiger explained that the risks of positional asphyxia have been known for "[a]t least 20 years." (*Id*. at 4183.) Body weight exacerbates the risks of positional asphyxia. (*Id*. at 4183, 4269.) Based on his experience and training, given Chauvin's positioning, Sgt. Stiger concluded that the majority of Chauvin's body weight was "pushing down from his knee area" onto Floyd's neck or neck area (Chauvin Tr. 4168-7411) and he further observed that Chauvin's body positioning did not change during the entire nine minute 29 second restraint.[47] (*Id*. at 4171.)

---

[46] 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. Trans. at 4258-4259.)

[47] Throughout the *Chauvin* trial and in its papers, the State repeatedly refers to the restraint as lasting nine minutes and 29 seconds. The State appears to consider the restraint as having been in place from 8:19:13 to 8:27:42 or from 8:19:14 to 8:27:43. In this Court's view, the restraint was actually nine minutes and 24 seconds, from 8:19:18 to 8:27:42, because, although Floyd may have been lying prone on Chicago Avenue a few seconds earlier, Chauvin, Kueng, and Lane did not settle into their positions on top of Floyd until 8:19:18 (based on the BWC Video and Milestone Video evidence), which is when this Court considers the forceful restraint to have begun.

Sgt. Stiger also pointed out that, near the beginning of the restraint, Chauvin also employed a "pain compliance" technique by grabbing and squeezing Floyd's fingers. (Chauvin Tr. Trans. at 4171-4173.) "[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." (*Id*. at 4172.) But if there is "no opportunity for" the subject to comply, "at that point, it's just pain." (*Id*. at 4173.) In Sgt. Stiger's view, Chauvin never discontinued the use of this pain compliance technique during the restraint period. (*Id*. at 4173-4174.)

Finally, Sgt. Stiger testified that, based on his experience and opinion, the bystanders did not pose a threat to the officers, and therefore did not factor into his analysis. (Chauvin Tr. Trans. at 4185-86.) In any event, Sgt. Stiger observed that bystanders are of little importance to the issue at hand: "officers 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. (*Id*. at 4185-4186.) Although crowds can be distracting (*id*. at 4250-4251), Sgt. Stiger did not believe the crowd distracted Chauvin from attending to Floyd because the video evidence plainly shows Floyd expressing pain and discomfort and Chauvin responding to Floyd. (*Id*. at 4188.)

The Court finds Sgt. Stiger's expert testimony credible.

9. Law Professor Seth Stoughton

Seth Stoughton is a professor of law, criminology, and criminal justice. (Chauvin Tr. Trans. at 5079.) He studies "the regulation of policing" and previously worked as a police officer in the Tallahassee Police Department for about five years. (*Id*. at 5080-5081, 5152.) He has written several articles and book chapters and co-authored one book on issues related to policing. (*Id*. at 5085-5086.)

Stoughton uses a four-step framework to assesses use of force. (Chauvin Tr. Trans. at 5097-5098.) First, he reviews the relevant facts and circumstances "as viewed through the lens of a reasonable officer on the scene." Second, he assesses the threat presented by the individual. Third, he "assess[es] the foreseeable effects of the officer's use of force." 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." The use of force must be reasonable both at the outset and throughout the duration. (*Id*. at 5112-5113.)

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. Trans. at 5110.) The video evidence shows the use of force continued for approximately nine minutes and 29 seconds. (*Id*. at 5112; Thao, Lane & Kueng BWC Videos.) Stoughton analyzed that force using his four-step framework.

First, Stoughton explained that, upon arriving on scene, a reasonable officer in Chauvin's position would have been aware that there was a dispatch call about counterfeiting, that the suspect was described as possibly intoxicated, that two other officers had taken the call and had taken the suspect into custody and called a code 4 indicating that they had the scene under control and did not need additional resources. (Chauvin Tr. Trans. at 5114.) Furthermore, the reasonable officer would have observed that Floyd was handcuffed, was describing himself as claustrophobic, and was offering alternatives to getting into the squad car. A reasonable officer

would have perceived that Floyd was exhibiting noncompliance but would not have perceived Floyd's behavior as active aggression aimed at the officers. (*Id*. at 5116-5117.)

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 of the squad—had been resolved. (Chauvin Tr. Trans. at 5118-5120, 5122-5123.)

In Stoughton's opinion, Floyd did not present any threat during the nine minute 29 second restraint. (Chauvin Tr. Trans. at 5140.) In any event, whatever potential threat any reasonable officer may once have perceived based on Floyd's earlier noncompliance, no reasonable officer could have perceived that Floyd posed a threat during the second half of the restraint after he ceased breathing and had passed out and lacked a pulse. (*Id*. at 5138.)

Stoughton concluded that a reasonable officer would have known that, "as soon as an individual is restrained, handcuffs or hobble,[[48]] you get the person off of their stomach, out of the prone restraint and into a side recovery position." (Chauvin Tr. Trans. at 5127.) As support, he noted that Lane had suggested rolling Floyd onto his side to the recovery position. (*Id*. at 5128.)

Third, Stoughton explained that a knee across the neck can foreseeably cause "pretty significant serious bodily injury or death." (Chauvin Tr. Trans. at 5130.) "[I]t's generally

---

[48] Stoughton explained that a hobble is a restraint device "used to limit the motion of someone's legs," which is 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. Trans. at 5124-5125.) The need to summon a supervisor is not, however, an appropriate reason to decline to use the hobble. (*Id*. at 5126.)

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." (*Id*.) 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." (*Id*. at 5130- 5131.) Here, the additional weight on Floyd's back increased the foreseeable risks to Floyd. (*Id*. at 5131.) These risks became even more foreseeable throughout the prolonged restraint based on Floyd's repeated verbalizations that he could not breathe, the changing tenor and cadence of Floyd's voice indicating increased medical distress, the bystanders and Lane reporting that Floyd was passing out and becoming non-responsive, the fact that Floyd stopped speaking altogether midway through the restraint, and Kueng twice reporting that he was not able to detect a pulse. (*Id*. at 5134-5139.)

Fourth, Stoughton concluded that the use of force throughout the restraint 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: "[b]oth the knee across Mr. Floyd's neck and the prone restraint were unreasonable, excessive, and contrary to generally accepted police practices"; "[n]o reasonable officer would have believed that was an appropriate, acceptable, or reasonable use of force." (Chauvin Tr. Trans. at 5140-5141, 5149-5151, 5172-5173.) None of the officers' 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 [Floyd]"—justified their use of force. (*Id*. at 5146.)

Stoughton noted that Thao's interactions with the crowd confirm that a reasonable officer would not have viewed 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. Trans. at 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. (*Id*. at 5143.) As Stoughton observed, "if you're worried about interference from bystanders, you don't say things that are likely to exacerbate that situation with the crowd." (*Id*. at 5143.) Moreover, when bystanders – like Hansen -- 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." (*Id*. at 5145.)

Finally, Stoughton 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. Trans. at 5151.) "It is long and rather loudly been said that the sanctity of human life is the highest priority in policing." (*Id*. at 5147.) Even if someone is lying about being in medical distress, officers have a duty to render aid.

In deciding whether to render aid, a reasonable officer should consider factors including the subject's medical condition, observations by other people, and other contextual clues. Here, Kueng and Lane reported as the restraint wore on that it appeared Floyd had passed out and that they were unable to detect a pulse. Floyd's behavior indicated that he was in medical distress: in contrast to his behavior during the first ten minutes of his interactions with the

officers[49] when he was talking constantly and vigorously physically resisted for almost two minutes their efforts to seat him in the back of the squad, as the restraint wore on, Floyd ceased talking, ceased moving (and ceased breathing and went into cardiac arrest). The bystanders, standing only a few feet away on the sidewalk, persistently and with increasing volume informed the officers as the restraint moved into the fifth and sixth minutes that Floyd had become non-responsive and was not breathing. (Chauvin Tr. 5148-5149.) In light of all the circumstances, Stoughton concluded that the officers' failure to render medical aid to Floyd was unreasonable.

The Court finds Stoughton's expert testimony credible.

10. *MPD Lt. Richard Zimmerman*

Lieutenant Richard Zimmerman has more than 40 years' experience as a police officer and was the MPD's most senior officer as of February 2022. (Chauvin Tr. Trans. at 3615; Fed. Tr. Trans. at 2436, 2508.) Lt. Zimmerman helped coordinate MPD's initial response on May 25, 2020 and transitioned control of the scene from MPD to the BCA. (Chauvin Tr. Trans. at 3615-3626.)

Lt. Zimmerman testified about MPD's "use of force continuum," explaining that the level of appropriate force is "relative to the threat." (Chauvin Tr. Trans. at 3628-3629.) He 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. Trans. at 3629-3630; Fed. Tr. Trans. at 2462.) Because "it's well known

[49] That is, from when Lane and Kueng first approached Floyd sitting in his vehicle just after 8:09 until Chauvin, Lane, and Kueng ceased trying to force Floyd into the back seat of the Lane/Kueng squad and decided to take him down on the street.

that the prone position is dangerous," Zimmerman observed that he'd been trained that "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. Trans. at 3632, 3662; Fed. Tr. Trans. at 2464.)

As did other officers who testified at the trials, Lt. Zimmerman testified about the basic medical training MPD officers receive as first responders, including on CPR. (Chauvin Tr. Trans. at 3634, 3648-3649.) Given that 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. (*Id*. at 3634, 3648-3652, 3662-3663.) An officer "can't just continue to use force on somebody who says they can't breathe and then who goes unconscious." (Fed. Tr. Trans. at 2466.)

Lt. Zimmerman also testified that the decision to "hold for EMS"-- meaning holding a subject so they can receive medical treatment -- does not "excuse an officer from providing medical attention that they've been trained to provide." (Chauvin Tr. Trans. at 3664; Fed. Tr. Trans. at 2530, 2532.)

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. Trans. at 3638; Fed. Tr. Trans. at 2462.)

Lt. Zimmerman also concluded, based on his review of the body-worn camera videos, that the bystanders did not present "an uncontrollable threat to the officers at the scene," but

"were actually trying to help, with their suggestions, help Mr. Floyd to be able to breathe." (Chauvin Tr. Trans. at 3660; Fed. Tr. Trans. at 2474-2475, 2504, 2528.)

The Court finds Lt. Zimmerman's testimony credible.

L. Findings Regarding Cause of Death Based on Testimony from Toxicologists, Medical Doctors, and Forensic Pathologists

1. Toxicologists

(1) Dr. Vikhyat Bebarta

Dr. Vikhyat Bebarta is a board-certified emergency physician and medical toxicologist. (Fed. Tr. Trans. at 2092, 2098.) He is a tenured professor and has taught medical courses for almost 20 years. (*Id*. at 2092-2093.) He is also a member of the Air Force and previously served as the chief of medical toxicology at two military medical centers. (Id. at 2101-2103.) Dr. Bebarta also serves as a reviewer for several medical journals and has written over 200 peer-reviewed studies. (*Id*. at 2110-2112.) Dr. Bebarta has treated roughly 10,000 patients suffering from drug intoxication or overdose over 24 years. (*Id*. at 2117.)

Dr. Bebarta testified that, in his opinion, Floyd died from asphyxia. (Fed. Tr. Trans. at 2225.)

According to Dr. Bebarta, Floyd lost consciousness at about 8:24:50. (Fed. Tr. Trans. at 2143.) Before losing consciousness, Floyd exhibited several symptoms of decreased oxygen: decreased movement, slower speech, a myoclonic jerk (which occurs when someone lacks oxygen to the brain), and eventually the cessation of movement. (*Id*. at 2142-2143.) Floyd also became less responsive to pain and other stimulation. (*Id*. at 2143-2144.)

From his review of the video evidence, Dr. Bebarta opined that Floyd was "being pushed against the ground, so he could not lift his chest up to breathe." (Fed. Tr. Trans. at 2173.)

Before he lost consciousness, this issue could have been addressed by lifting Floyd off the ground, reducing pressure on his back, or placing him on his side. (*Id*. at 2173-2174.) Dr. Bebarta testified to a reasonable degree of medical certainty that Floyd would have lived had he been repositioned in a way that allowed him to breathe before losing consciousness. (*Id*. at 2174.) Dr. Bebarta also testified that Floyd could have been revived and would have lived had he been given CPR immediately after cardiac arrest began. (*Id*. at 2178.) However, Chauvin did not remove his knee from Floyd's neck even after Kueng and Lane were unable to locate a pulse on Floyd. (*Id*. at 2144-2146, 2276.)

According to Dr. Bebarta, 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. Trans. at 2275-2276, 2146.)

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. Trans. at 2132.) Individuals can develop a tolerance to one or more drugs, including mixtures of drugs, over time. (*Id*. at 2117-2118.) When a person with a drug-taking history stops taking the drug, the person can lose tolerance, but the person typically regains tolerance more quickly upon resuming drug use. (*Id*. at 2121.) In Dr. Bebarta's opinion, Floyd was tolerant to opioids given his documented history of use and abuse. (*Id*. at 2130.)

When someone's blood is drawn after death, the cells "leak" out any drugs the person took; the result is that "your blood level concentrations rise as you die and after you die." (Fed. Tr. Trans. at 2123.) Here, Floyd's blood was drawn approximately 30 minutes after he had ceased breathing and lacked a pulse. (*Id*. at 2123.)

The level of methamphetamine in Floyd's blood, 19 nanograms per milliliter (ng/mL), was very low. (Fed. Tr. Trans. at 2125.) In comparison, people prescribed drugs containing methamphetamine typically have levels around 60 to 80 ng/mL whereas individuals who die from methamphetamine overdoses typically have concentrations at 200 ng/mL. (*Id*.) Based on his training and experience, Dr. Bebarta concluded that Floyd's methamphetamine level would not be lethal, standing alone, to a drug user. (*Id*.) 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." (*Id*. at 2127.)

The level of fentanyl in Floyd's blood, 11 ng/mL, was also low. (Fed. Tr. Trans. at 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." (*Id*.) Patients who die from fentanyl overdoses typically have levels of 40 ng/mL or higher. (*Id*.) In Dr. Bebarta's opinion, Floyd was tolerant to opioids given his documented history of use and abuse. Given his tolerance, the 11 ng/mL found in Floyd's blood "would feel like 1 or 2 [to a non-user] because he [Floyd] had a tolerance to fentanyl." (*Id*. at 2130.) Floyd also had norfentanyl, a metabolite of fentanyl, in his blood. (*Id*. at 2129.) Norfentanyl, standing alone, would not have any effect on Floyd. (*Id*.)

According to Dr. Bebarta, 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. Trans. at 2132.)

Moreover, based on his review of the videos, Dr. Bebarta opined that Floyd did not appear to be intoxicated or at risk of an imminent drug overdose. (Fed. Tr. Trans. at 2134-2135,

2138.) Floyd had a "stable gait," was fairly agile, was awake and alert, and was able to converse and communicate. (*Id*. at 2135-2138.) Floyd recalled his date of birth when asked and did not stumble when initially walking to the squad car. (*Id*. at 2138-2139.)

In Dr. Bebarta's opinion, Floyd's heart disease or high blood pressure had no effect on his death and Floyd did not die of a heart attack. (Fed. Tr. Trans. at 2148.) Moreover, Floyd did not exhibit symptoms of someone about to suffer a "major heart or cardiac event": 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. (*Id*. at 2139-2140.)

Dr. Bebarta testified that, in his opinion and to a reasonable degree of medical certainty, Floyd did not die from excited delirium. (Fed. Tr. Trans. at 2157, 2241.) Excited delirium is not a medical diagnosis, but rather is a catchall term for a set of symptoms that occur as a result of "severe agitation from drugs or stimulants." (*Id*. at 2151, 2200-2201, 2216-2217.) Although methamphetamine is a stimulant, according to Dr. Bebarta, a person would need much higher concentrations than the 19 ng/mL found in Floyd's blood posthumously to experience excited delirium. (*Id*. at 2157.) To help decide if a patient has excited delirium, doctors look for at least seven of the ten symptoms. (*Id*. at 2169.) Based on his review of the video evidence, Dr. Bebarta concluded that Floyd did not manifest any of the clinical symptoms of excited delirium: (1) Floyd did not exhibit an extremely high pain tolerance; (2) his breathing was not rapid; (3) he was not sweating excessively; (4) he was anxious, but not agitated; (5) no one commented that his skin was unusually warm; (6) he did not exhibit standard signs of noncompliance; (7) he tired quickly after being restrained on the ground; (8) he did not exhibit super-human strength; (9) he was not inappropriately clothed; and (10) he did not demonstrate an attraction to

mirrors or glass. (*Id*. at 2160-2169.) 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. (*Id*. at 2169-2170.) Finally, Dr. Bebarta noted that someone suffering from excited delirium who goes into cardiac arrest can and should be resuscitated using normal procedures. (*Id*. at 2170-2171, 2273.) A person suffering from excited delirium who has a breathing impediment should be turned on his side and any other impediments to breathing should be removed. (*Id*. at 2172.)

The Court finds Dr. Bebarta's testimony credible.

(2) *Dr. Daniel Isenschmid*

Dr. Daniel Isenschmid, currently employed at NMS Labs, has been a forensic toxicologist for more than 30 years. (Chauvin Tr. Trans. at 4605-4606.) He reviews approximately 7,000 to 8,000 cases per year involving both post-mortem samples and samples from living patients. (*Id*. at 4608.)

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. Trans. at 4609.) The levels of fentanyl and norfentanyl in Floyd's hospital blood were 11 ng/mL and 5.6 ng/mL, respectively.[50] (*Id*. at 4610.) These measurements could indicate one of two things.

[50] 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. Trans. at 4614.) In other words, fentanyl is "the active ingredient" and "norfentanyl is the metabolite." (*Id*. at 4640.) But "there's no way to determine at what point any particular amount of fentanyl was ingested." (*Id*. at 4642-4643.)

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. Trans. at 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." (*Id*. at 4614-4615.)

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. Trans. at 4662.)

Dr. Isenschmid analyzed 2020 data from NMS Labs. That data 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. Trans. at 4624-4625.) 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. (*Id*. at 4625.) 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. (*Id*. at 4627.)

Fentanyl levels can vary widely based on an individual's tolerance. (Chauvin Tr. Trans. at 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. (*Id*. at 4627-4628.)

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. Trans. at 4629-4630.) Floyd's fentanyl to norfentanyl ratio was 1.96, "just a little bit below the median in DUI." (*Id*. at 4629-4631.)

The level of methamphetamine in Floyd's blood was 19 ng/mL, which Dr. Isenschmid described as "very low," comparable to the amount one 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. 4610-4612.) For context, in 3,271 similar cases in the DUI population, the average methamphetamine concentration was 378 ng/mL and the median was 240 ng/mL. (*Id*. at 4633.) Based on this data set, Floyd's methamphetamine level was in the "bottom 5.9 percent" of the DUI population. (*Id*.)

The level of amphetamine, the active metabolite of methamphetamine, in Floyd's blood was below the reporting limit and so was not included in Dr. Isenschmid's report. (Chauvin Tr. Trans. at 4656-4657.)

Dr. Isenschmid also found several other substances in Floyd's blood that he did not deem clinically significant. (Chauvin Tr. Trans. at 4616-4621.)

The Court finds Dr. Isenschmid's testimony credible.

2. Medical Doctors/Experts—Various Specialties

(1) Dr. Bradford Wankhede Langenfeld

Dr. Bradford Wankhede Langenfeld is the HCMC emergency room physician who provided Floyd's medical care during the evening of May 25, 2020 and ultimately pronounced Floyd dead. (Chauvin Tr. Trans. at 3702, 3706; Fed. Tr. Trans. at 911, 914-915, 917, 947.)

Floyd "was in cardiac arrest" when he arrived at the HCMC emergency room. (Chauvin Tr. Trans. at 3707; Fed. Tr. Trans. at 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. Trans. at 3714.) There is an "[a]pproximately 10 to 15 percent decrease in survival for every minute that CPR is not administered." (Chauvin Tr. Trans. at 3714; Fed. Tr. Trans. at 919, 948-949, 964.)

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. Trans. at 3717; Fed. Tr. Trans. at 921-922.) A person in PEA arrest cannot be resuscitated with a "shock," meaning defibrillation. (Chauvin Tr. Trans. at 3719; Fed. Tr. Trial at 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. Trans. at 3718; Fed. Tr. Trans. at 922.)

Dr. Langenfeld observed that, "for the majority of his time in our emergency department, [Floyd] was in PEA arrest," including when he was pronounced dead. (Chauvin Tr. Trans. at 3718-3719.) There was a report that Floyd had been in asystole prior to his arrival at

HCMC. (Chauvin Tr. Trans. at 3718.) 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. Trans. at 3722-3730; Fed. Tr. Trans. at 929-945.)

Although the level of carbon dioxide in Floyd's blood was "exceptionally high" (Chauvin Tr. Trans. at 3733-3734), Dr. Langenfeld did not find that particularly significant because the level of carbon dioxide "could be consistent with cardiac arrest from any number of causes." (Chauvin Tr. Trans. at 3740-3741; Fed. Tr. Trans. at 932.)

Finally, although he is familiar with excited delirium, based on his review of the video evidence, Dr. Langenfeld believed Floyd did not have a "level of severe agitation that could lead to a cardiac arrest." (Fed. Tr. Trans. at 942-943, 966.)

The Court finds Dr. Langenfeld's testimony credible. Dr. Langenfeld provided direct treatment to Floyd and observed Floyd's condition.

(2) *Dr. Jonathan Rich*

Dr. Jonathan Rich is a board-certified cardiologist and associate professor of medicine at Northwestern University. (Chauvin Tr. Trans. at 4983-4984, 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. (*Id*. at 4988-4995.)

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. Trans. at 4998-4999.)

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. Trans. at 5002.) Here, Floyd was "simply unable . . . to get enough oxygen"; as a result, "the heart thus didn't have enough oxygen either which means the entire body is deprived of oxygen." (*Id*.)

Dr. Rich ruled out a primary heart event as a possible cause of death "with a high degree of medical certainty." (Chauvin Tr. Trans. at 5004.) A primary heart event is an event that originates "from the heart itself," like a heart attack. (*Id*. at 5003.) From Floyd's medical history, Dr. Rich "noted no cardiac problems," no "abnormal heart rhythms" or other "negative heart condition"; "every indicator is that Floyd had an exceptionally strong heart." (*Id*. at 5008-5010.) Although Floyd did suffer from hypertension, "high blood pressure in and of itself is not a heart condition." (*Id*. at 5009.)

Dr. Rich explained that this conclusion was consistent with the video evidence 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. Trans. at 5011-5015.) But once Floyd was on the ground, Dr. Rich observed that "he was restrained in a life-threatening manner." (*Id*. at 5017.)

Dr. Rich did not witness the rapid deterioration associated with a "primary cardiac event" during the course of the restraint. (Chauvin Tr. Trans. at 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." (*Id*. at 5018, 5022-5023.)

According to Dr. Rich, the autopsy findings supported his conclusion. The autopsy showed "absolutely no evidence at all of heart damage in Mr. Floyd's heart." (Chauvin Tr. Trans. at 5058.) Although Floyd had coronary artery disease, there was no evidence of platelets, clotting, blockages, or anything else Dr. Rich would have expected if Floyd had suffered a heart attack on May 25, 2020 or previously. (*Id*. at 5024-5027.) Based on those findings, Dr. Rich ruled out coronary artery disease as a cause of death "with a high degree of medical certainty." (*Id*. at 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." (*Id*. at 5028.) For that reason, Dr. Rich also eliminated "the blockage in the arteries as a contributing cause to Mr. Floyd's death." (*Id*. at 5027-5028.)

Floyd's heart was "mildly thick and mildly enlarged," which Dr. Rich explained is "an expected finding in somebody that has high blood pressure." (Chauvin Tr. Trans. at 5029-5030.) 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. (*Id*. at 5030.) Although this can become a problem if it persists for decades, according to Dr. Rich "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." (*Id*. at 5030.)

Dr. Rich also ruled out a drug overdose as a possible cause of death "with a high degree of medical certainty," noting that Floyd likely had a "high degree of tolerance" to opiates.

(Chauvin Tr. Trans. at 5004, 5032.) Furthermore, 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": Floyd was alert, awake, conversant, and walking. (*Id*. at 5032-5033.) Because of the "relatively low level" of methamphetamine found in Floyd's blood, Dr. Rich also concluded that methamphetamine played no substantive role in Floyd's death. (*Id*. at 5033-5034.)

Dr. Rich viewed Floyd's death as absolutely preventable, opining that 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. Trans. at 5034, 5039.) He pointed to several "critical points" where the officers could have altered their actions to save Floyd's life:

(1) Dr. Rich opined that Floyd would not have died but for the prone restraint positioning (Chauvin Tr. Trans. at 5034);

(2) when it became clear that Floyd was struggling to breathe, Dr. Rich opined that the officers should have repositioned Floyd to "allow him to start to expand his lungs again and bring in oxygen and get rid of carbon dioxide" (*id*. at 5034-5035); and

(3) the officers should immediately have ceased the restraint and started CPR upon realizing that Floyd did not have a pulse. (*Id*. at 5036-5037.)

Due to the passage of time, by the time the ambulance arrived, "the chance of meaningful survival unfortunately was very low." (*Id*. at 5038.) Simply put, in Dr. Rich's opinion, "there's no evidence that Mr. Floyd had any type of heart attack." (*Id*. at 5021-5022.) Nor was there any evidence that Floyd died from drugs, high blood pressure, or anything else in the absence of the prone restraint. (*Id*. at 5059-5060.)

The Court finds Dr. Rich's testimony credible.

(3) Dr. William Smock

Dr. William Smock is an emergency medicine physician, with a specialty in forensic medicine. (Chauvin Tr. Trans. at 4664.) He spent 21 years working in a level 1 trauma center, teaches emergency medicine, has a background in asphyxia deaths, has edited several textbooks, worked as an assistant medical examiner, and also has a background in clinical forensic medicine. (*Id*. at 4665-4669.)

Based on his review of the evidence, Dr. Smock opined that "Floyd died from positional asphyxia." (Chauvin Tr. Trans. at 4675.) He pointed out that someone can die from asphyxia and not have bruising or petechial hemorrhage. (*Id*. at 4690-4693.)

Dr. Smock identified several pieces of evidence that informed his ultimate opinion regarding the cause of death. Dr. Smock explained how the videos show that Floyd was 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 . . . into the pavement to try and get more oxygen in." (Chauvin Tr. Trans. at 4695-4696.) As the minutes pass by under the continuing restraint, Floyd's voice becomes increasingly weaker, he falls unconscious, and he displays symptoms Dr. Smock characterized as "anoxic seizure" when his legs begin to shake. (*Id*. at 4696.)

Although Dr. Smock acknowledged that excited delirium is "a controversial diagnosis" – pointing out that the American Medical Association and American Psychiatric Association do not recognize it -- he believes that excited delirium "is real," describing it as a "physical and psychiatric state where because of an imbalance in the brain, a patient will exhibit multiple symptoms." (Chauvin Tr. Trans. at 4676-4677.) However, Dr. Smock ruled out excited delirium as a possible cause of Floyd's death. Whereas, a diagnosis of excited delirium requires that a

person exhibit at least six of ten possible symptoms, like Dr. Bebarta, Dr. Smock concluded that Floyd did not display any of the ten symptoms: (1) he was not inappropriately clothed; (2) he was not attracted to the glass surrounding him; (3) he did not fail to respond to the police presence; (4) he was not engaged in "constant or near constant physical activity"; (5) he tired following exertion; (6) he did not exhibit unexpected or unusual strength; (7) he was affected by pain; (8) his breathing was not "very rapid"; (9) he was not excessively hot to the touch; and (10) he was not sweating excessively. (*Id*. at 4678-4682.)

Dr. Smock also opined that Floyd was not suffering from a fentanyl or methamphetamine overdose, noting that Floyd was alert, talking, oriented, suffering from "air hunger," and that he was not sleeping, snoring, or otherwise displaying signs of a fentanyl overdose. (Chauvin Tr. Trans. at 4684-4687.) In addition, because Floyd was a "chronic user," he had developed a tolerance to opioids. (*Id*. at 4687-4688, 4714-4715.) According to Dr. Smock, 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." (*Id*. at 4689-4690.) While acknowledging 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, Dr. Smock noted "[t]here was absolutely no evidence at autopsy of anything that suggested that Mr. Floyd had a heart attack." (Chauvin Tr. 4699, 4704, 4710-4711, 4718.) Nor did Floyd experience a sudden death resembling a fatal arrhythmia. (*Id*. at 4718-4719.)

Like other medical experts who testified, Dr. Smock observed 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. Trans. at 4697.)

The Court finds Dr. Smock's testimony credible.

4. Dr. David Systrom

Dr. David Systrom specializes in pulmonary and critical care medicine, and also works in the cardiology intensive care unit. (Fed. Tr. Trans. at 1612-1613.) He is board certified in internal medicine and pulmonary medicine and was previously board certified in critical care. (*Id*. at 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." (*Id*. at 1614.)

Dr. Systrom opined, to a reasonable degree of medical certainty, that Floyd died from asphyxia (insufficient breathing) as a result of the compression of his upper airway by Chauvin's knee on his neck and the restrictions on his breathing created by the manner in which he was restrained prone and handcuffed against the pavement. (Fed. Tr. Trans. at 1634-1636.) The combination of the compression of his upper airway and the restrictions on his breathing resulted in hypoxemia (abnormally low oxygen levels in the arterial blood) and hypercapnia (high carbon dioxide levels in blood or tissue). (*Id*. at 1636-1637.)

From his review of the video evidence, Dr. Systrom observed that Chauvin's knee can be seen at various points on the back and side of Floyd's neck, noting in particular times when it was "[m]ore on the side of the neck." (Fed. Tr. Trans. at 1660-1661.) Although both positions can partially block the airway, applying pressure to the side of the neck compresses the airway more because the side parts of the neck are made up of soft tissue. (*Id*. at 1658-1659, 1661.)

According to Dr. Systrom, the pressure and occlusion increased when Chauvin lifted his feet off the ground when the pressure became sufficient to obstruct Floyd's trachea to half the normal size, or less. (Fed. Tr. Trans. at 1663, 1665.) The restrictive pressure also decreases lung volume. (*Id*. at 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"). (*Id*. at 1667.)

Dr. Systrom explained how 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. Trans. at 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. (*Id*. at 1669-1670.) Handcuffing the hands behind the back further exacerbates these problems by limiting the ability to rescue oneself by using one's arms to reposition. (*Id*. at 1670.) By also using his right knee to press down on Floyd's left elbow and chest cavity, Chauvin further restricted Floyd's rescue movements, consequently further impeding tidal volume. (*Id*. at 1671-1672.) The pressure on Floyd's back also prevented him from successfully repositioning himself using his shoulders, hands, and knuckles to assist in breathing. (*Id*. at 1686-1687.)

Dr. Systrom explained that studies concluding the prone position is not inherently dangerous are distinguishable from Floyd's case because those studies involved restraints on cushioned surfaces, not asphalt; the weight applied in those studies was distributed equally across the back, whereas Chauvin's knees on Floyd created a more significant compression

point; and none of those studies involved the addition of neck pressure. (Fed. Tr. Trans. at 1680-1681.)

Hypoxemia and hypercapnia make the heart "more irritable and susceptible to arrhythmias," including PEA[51] and asystole.[52] (Fed. Tr. Trans. at 1637.) Floyd's heart rhythm in the ambulance was asystole and PEA. (*Id*. at 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." (*Id*.)

A normal level of end-tidal carbon dioxide in the blood is 35 to 45 millimeters of mercury. (Fed. Tr. Trans. at 1646.) Based on readings taken in the ambulance, Floyd's level was 73 millimeters of mercury. (*Id*. at 1647-1648.) According to Dr. Systrom, that level is very significant in determining that the cause of death was asphyxia because, 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. (Id. at 1648-1650.)

Dr. Systrom also 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. Trans. at 1651, 1653.) He did not attach any significance to Floyd's lack of petechiae, which is the term for bleeding in "the white part of one's eyes." (*Id*. at 1652.) Dr. Systrom further explained that Floyd's pulmonary edema (the presence of fluid in

---

[51] 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. Trans. at 1644-1645.)

[52] Asystole is when there "is no electrical impulses and therefore no contractile function of the heart." (Fed. Tr. Trans. at 1645.)

Floyd's lungs, which causes the lungs to be heavier) revealed by the autopsy was a result of the cardiac arrest and CPR. (*Id*. at 1655.)

Dr. Systrom explained why the idea that "if you can talk, you can breathe" is only partially true and is misleading: although talking indicates a person has enough airflow to "phonate," talking by itself does not establish that breathing is normal. (Fed. Tr. Trans. at 1682.) In fact, 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. (*Id*. at 1688.)

Floyd exhibited symptoms consistent with a myoclonic jerk[53] between 8:24:19 and 8:24:27. (Fed. Tr. Trans. at 1691.) Based on his review of the video evidence, Dr. Systrom opined that Floyd lost consciousness around 8:24:26 or 8:24:45, the point at which Floyd's facial expressions stopped. (*Id*. at 1688-1689.)

Dr. Systrom opined that 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, explaining that Floyd's PEA and asystole rhythms were not consistent with a heart attack, that Floyd did not exhibit symptoms of a heart attack, and there was no evidence of a heart attack in Floyd's autopsy. (Fed. Tr. Trans. at 1693-1700.) Although Floyd did suffer from a slightly enlarged heart, that had no bearing on the cause of death. (*Id*. at 1701.) Absent the manner and the length of his prone restraint on the street by the three officers on May 25, 2020, Dr. Systrom opined that Floyd would not have died from his heart disease on May 25, 2020. (*Id*. at 1698.)

---

[53] 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. Trans. at 1692.)

Dr. Systrom concluded that Floyd did not die from fentanyl poisoning. Fentanyl slows breathing, but Dr. Systrom observed a slightly elevated breathing rate just before Floyd went into cardiac arrest. (Fed. Tr. Trans. at 1701-1702.) Dr. Systrom also opined that methamphetamine did not cause any significant changes to Floyd's respiration. (*Id*. at 1703.)

Until the point at which Floyd lost consciousness, Dr. Systrom explained that Floyd's 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. Trans. at 1704-1705.) Had the officers repositioned Floyd, the effects of the restraint would have been quickly reversible once the impediments to breathing were removed and, in Dr. Systrom's view, Floyd's odds of survival would have been "[c]lose to a hundred percent." (*Id*. at 1705, 1710.) 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. (*Id*. at 1706.) Delaying CPR decreased Floyd's chances of survival "exponentially," by about ten percent per minute. (*Id*. at 1707-1708.)

The Court finds Dr. Systrom's testimony credible.

(5) *<u>Dr. Martin Tobin</u>*

Dr. Martin Tobin specializes in pulmonary and critical care medicine. (Chauvin Tr. Trans. at 4452.) He has been a physician for over 45 years and is board certified in internal medicine, pulmonary medicine, and critical care medicine. (*Id*. at 4454-4455.) He also has extensive experience studying sleep apnea, which involves obstructions at the back of the throat,

including in the hypopharynx. (*Id*.) Dr. Tobin has published several articles and books related to breathing. (*Id*. at 4457-4459.) Dr. Tobin also has substantial experience in the field of applied physiology, specifically the physiology of breathing. (*Id*. at 4461-4463.)

Dr. Tobin opined, to a reasonable degree of medical certainty, that "Floyd died from a low level of oxygen" resulting from the shallow breathing due to the manner and length of his prone restraint on the street which, in turn, "caused damage to his brain" and "a PEA arrythmia that caused his heart to stop."[54] (Chauvin Tr. Trans. at 4465-4466, 4468-4470.)

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. Trans. at 4467-4468.) When someone experiences shallow breathing, "the air will not be able to reach" the alveoli. (*Id*. at 4468.) We breathe using the diaphragm and the rib cage. When the diaphragm or rib cage contracts, the chest expands, allowing air to flow in (inspiration). (*Id*. at 4476-4477.) To expand the chest requires "two crucial actions," 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." (*Id*. at 4477.) The pump handle "refers to the front-to-back movement of the chest wall" and the fact that a person's chest expands with each breath. (*Id*. at 4477-4478.) 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. (*Id*. at 4478.)

---

[54] 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. Trans. at 4553.) Dr. Tobin explained that the high level of carbon dioxide resulted from Floyd's inability to breathe. (*Id*. at 455345-55.)

Dr. Tobin identified four factors from the manner of the officers' restraint of him on May 25, 2020 that 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) he was placed in the prone position; and

(4) "he has a knee on his back and on his side."

(Chauvin Tr. Trans. at 4468-4470.)

First, Dr. Tobin explained how 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. Trans. at 4475-4476.) Because "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." (*Id*. at 4479-4480.) Consequently, "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 dependent on what he would be able to do with the right side." (*Id*. at 4480, 4482-4483.)

Dr. Tobin observed that Floyd's behavior—pushing his fingers, knuckles, and shoulder against the street—was consistent with what Dr. Tobin would expect from someone whose chest was being compressed in a manner obstructing his breathing. When a person cannot breathe with his rib cage and diaphragm, the body naturally attempts to recruit other "types of muscles." (Chauvin Tr. Trans. at 4485.) Dr. Tobin pointed out how the videos show 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, handcuffs, and the knees in his back and upper back/neck. (*Id*.) Floyd made similar movements with his shoulder, again consistent with a person with no other options other than trying to rely on a shoulder to create the necessary space to breathe. (*Id*. at 4486-4487.) Although using a shoulder is "a very poor way of breathing," in Dr. Tobin's experience, when "everything else is failing," patients "call on the use of the shoulder to try and breathe." (*Id*. at 4487.) The video evidence also shows Floyd pushing his "forehead and his nose and his chin" into the ground, which Dr. Tobin testified was consistent with Floyd's attempt to "help him get air into the right side of his chest." (*Id*. at 4496, 4559-4560.)

Second, Dr. Tobin observed 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. Trans. at 4473.) Dr. Tobin used this time period because five minutes and three seconds is the point at which he discerned "evidence of brain injury" from the video evidence. (*Id*.) 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. (*Id*. at 4489, 4491-4492.) As the hypopharynx narrows, it becomes increasingly difficult to breathe. (*Id*. at 4498.)

Based on the video evidence, Dr. Tobin testified that Chauvin's left knee compressed Floyd's hypopharynx at various points. (Chauvin Tr. Trans. at 4492-4493, 4497.) Dr. Tobin calculated that, at times, Chauvin was applying 91.5 pounds of pressure "directly on Mr. Floyd's neck." (*Id*. at 4503.) When that pressure was applied to the side of Floyd's neck, it caused "huge compression of the hypopharynx." (*Id*. at 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. (*Id*. at 4503-4504.) Although the autopsy did not show any sign of injury to the hypopharynx, that made no difference to Dr. Tobin's analysis because injury to the hypopharynx is not something typically visible on an autopsy. (Chauvin Tr. Trans. at 4598.) Low oxygen is likewise not visible on an autopsy. (*Id*. at 4599-4600.)

Third, Floyd's being restrained by the officers in the prone position also contributed to his difficulty breathing. (Chauvin Tr. Trial at 4509.) Based on Floyd's age, sex, and height, Dr. Tobin calculated Floyd's end-expiratory lung volume (EELV)[55] sitting upright to be 3,840 cubic centimeters and his residual volume (meaning the air left inside the chest after a person has exhaled as much air as possible) at 2,300 cubic centimeters. (*Id*. at 4512-4514.) 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. (*Id*. at 4517-4518.) 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. (*Id*. at 4519.) Although the prone position is not inherently dangerous for the average person,[56] the situation changes in the situation in which Floyd was restrained on May 25, 2020, where he was restrained prone on a hard surface, had his arms restrained, and was sustaining pressure on his hypopharynx. (*Id*. at 4520-4521.)

---

[55] "EELV is basically the volume that is in your lung[s] in between each breath." (Chauvin Tr. Trans. at 4513-4514.)

[56] Dr. Tobin provided the example that sleeping in the prone position is not inherently risky for the average person due to the sufficient oxygen reserves. (Chauvin Tr. Trans. at 4520-4521.)

Fourth, based on his review of the evidence, Dr. Tobin determined that 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. Trans. at 4473.) The precise location of Chauvin's right knee did not matter. The concern is that a knee located on the back, side, or arm will still "markedly impair [one's] ability to be able to move your chest with your bucket handle and your pump handle." (*Id*. at 4521.) 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, making it much harder for Floyd to breathe. (*Id*. at 4523-4524, 4527.)

Dr. Tobin explained why certain studies suggesting it is not dangerous to apply weight to someone's back while in the prone position are "highly misleading." (Chauvin Tr. Trans. at 4532.) According to Dr. Tobin, those studies were conducted in a highly controlled setting and did not analyze decreases in EELV or oxygen reserves, they did not involve a knee on the neck but instead created pressure on the back using items with a larger surface area, like weight plates. 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. (*Id*. at 4533-4536.)

According to Dr. Tobin, "[i]f you stop the flow of oxygen to the brain, you lose consciousness in 8 seconds." (Chauvin Tr. Trans. at 4541.) 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." (*Id*. at 4543.) Floyd experienced an anoxic seizure at 8:24:21, when he extended his leg backward. (*Id*. at 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."

(*Id*. at 4543-4544.) Based on his experience, Dr. Tobin can discern from a person's facial features when they become unconscious. (*Id*. at 4528.) Here, Floyd's facial features at 8:24:53 were consistent with someone who has lost consciousness. (*Id*. at 4528, 4530, 4558-4559.)

Floyd stopped breathing at 8:25:16. According to Dr. Tobin, by 8:25:41, Floyd "wouldn't have an ounce of oxygen left in his entire body." (Chauvin Tr. Trans. at 4530-4532.) Chauvin's knee remained on Floyd's neck for 3 minutes and 27 seconds after Floyd's last breath, for 3 minutes and 2 seconds after there was "not an ounce of oxygen left in the body," and for 2 minutes and 44 seconds after Kueng and Lane determined Floyd had no pulse. (*Id*. at 4532, 4561.) Dr. Tobin explained that a low level of oxygen will eventually manifest in the heart as an abnormal rhythm. (*Id*. at 4544.) In Floyd's case, it manifested as a "[PEA] arrythmia." (*Id*.)

Dr. Tobin also explained the relationship between speaking and breathing. Speaking involves exhaling; speaking thus signifies that someone had previously inhaled and also has sufficient brain function to speak. (Chauvin Tr. Trans. at 4539-4540.) But speaking at a particular moment is no guarantee that a person will be able to continue breathing. (Id. at 4541-4542, 4578-4579.) Although a person may still be able to speak even when his trachea has narrowed to 15 percent, "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." (*Id*. at 4546-4547.)

In Dr. Tobin's 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. Trans. at 4537.)

Dr. Tobin opined that Floyd's death was not consistent with a death from a paraganglioma. (Chauvin Tr. Trans. at 4537-4539.)

Dr. Tobin was able to count Floyd's respiratory rate at 22 breaths per minute just before he lost consciousness. (Chauvin Tr. Trans. at 4550-4552.) Dr. Tobin explained that fact was "extremely significant" in determining if Floyd died from fentanyl because fentanyl typically decreases respiration to about 10 breaths per minute. (*Id*. at 4551-4552.) 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. (*Id*. at 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." (*Id*. at 4583.)

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. Trans. at 5679-5681.)

The Court finds Dr. Tobin's testimony credible.

3. <u>Pathologists</u>

(1) <u>Dr. Andrew Baker</u>

Dr. Andrew 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. Trans. at 4848-4849; Fed. Tr. Trans. at 1382-1383.) He is board certified in anatomic and clinical pathology, with a subspecialty in forensic pathology. (Chauvin Tr. Trans. at 4849; Fed. Tr. Trans. at 1384.) He is

also the former president of the National Association of Medical Examiners. (Chauvin Tr. Trans. at 4850; Fed. Tr. Trans. at 1476.)

The objective of a death investigation is to certify the "individual's cause and manner of death." (Fed. Tr. Trans. 1387; Chauvin Tr. Trans. at 4883.) The cause of death refers to "whatever disease or injury caused the person to die." (Fed. Tr. Trans. at 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. Trans. at 4890-4891; Fed. Tr. Trans. at 1391.) The manner of death refers to "the medical examiner's opinion as to the circumstances under which the death occurred." (Fed. Tr. Trans. at 1435.) The medical examiner must select from one of five options: homicide, suicide, accident, natural, or undetermined. (Fed. Tr. Trans. at 1435-1436; Chauvin Tr. Trans. at 4885.)

Dr. Baker conducted Floyd's autopsy and reviewed the videos of the incident as part of the death investigation. (Chauvin Tr. Trans. at 4850-4851, 4855, 4857; Fed. Tr. Trans. at 1389, 1396.)

Dr. Baker 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. Trans. at 4859-4864; Fed. Tr. Trans. at 1409-1415.)

Floyd's heart was slightly enlarged but otherwise appeared "perfectly normal." (Chauvin Tr. Trans. at 4864, 4902-4903.) "Floyd had no visible or microscopic previous damage to his heart muscle" that would indicate he had suffered a heart attack. (Chauvin Tr. Trans. at 4867, 4873; Fed. Tr. Trans. at 1418.) Although Floyd had a history of high blood pressure (Chauvin Tr. Trans. at 4904) and Floyd's coronary arteries had narrowing of 75-90 percent in

various places (Chauvin Tr. Trans. at 4905; Fed. Tr. Trans. at 1416, 1419) Dr. Baker saw no indications that the plaque in Floyd's arteries had changed suddenly and fractured, as happens with a sudden cardiac event. (Chauvin Tr. Trans. at 4870-4871.) Rather, Dr. Baker described Floyd's plaques as "stable plaques." (*Id*. at 4870-4871; Fed. Tr. Trans. at 1421-1422.)

Dr. Baker noted that Floyd's lungs contained quite a bit of fluid, known as pulmonary edema, a fact he explained is consistent with efforts of medical personnel to resuscitate Floyd. (Chauvin Tr. Trans. at 4873-4874; Fed. Tr. Trans. at 1423-1424.)

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

(1) Although Floyd had recently tested positive for COVID-19, COVID-19 did not "factor into" Dr. Baker's "cause of death determination." (Chauvin Tr. Trans. at 4879; Fed. Tr. Trans. at 1424-1425.)

(2) Although Floyd had the sickle-cell trait, that trait did not have "anything to do with why he died." (Chauvin Tr. Trans. at 4880-4881; Fed. Tr. Trans. at 1427-1429.)

(3) Floyd's paraganglioma did not have "anything to do with his death." (Chauvin Tr. Trans. at 4881; Fed. Tr. Trans. at 1429.)

(4) Because Floyd's carbon monoxide level was a "normal" level consistent with "walking on the street living in a city," carbon monoxide "played no role in [Floyd's] death." (Fed. Tr. Trans. at 1426-1427.)

(5) Although Dr. Baker has listed excited delirium on a death certificate in the past, he did not list it on Floyd's death certificate. (Fed. Tr. Trans. at 1552.) Dr. Baker deferred to an emergency room physician regarding questions about excited delirium. (*Id*. at 1534.)

Dr. Baker certified Floyd's manner of death as a homicide, meaning "other people were involved [his] death." (Chauvin Tr. Trans at 4885; Fed. Tr. Trans. at 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. Trans. at 4888; Fed. Tr. Trans. at 1390-1391.) In laymen's terms, Dr. Baker explained this means that Floyd's heart and lungs stopped, which the law enforcement subdual, restraint, and neck compression "played a key role in precipitating." (Fed. Tr. Trans. at 1390-1391; Chauvin Tr. Trans. at 4888-4890.)

Dr. Baker also identified several conditions that, in his opinion, contributed to Floyd's death but were not "the primary cause." (Fed. Tr. 1391.) Although Chauvin's knee was compressing Floyd's neck during the restraint, Dr. Baker did not conclude that Chauvin's knee was occluding Floyd's carotid artery.[57] (Chauvin Tr. Trans. at 4918.)

Because Floyd suffered from hypertension and had narrowed arteries, his heart already needed "more oxygen than a normal heart." (Chauvin Tr. Trans. at 4889.) In addition, the stress of the event and resulting adrenaline increased his body's oxygen demands. (*Id*. at 4889-4890.) Although Dr. Baker opined that "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. Trans. at 4889-4890; Fed. Tr. Trans. at 1497, 1528), 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. Trans. at 1422.)

[57] Dr. Baker testified that, "based on [his] understanding of the medical literature," the prone position is not inherently dangerous. (Chauvin Tr. Trans. at 4914; Fed. Tr. Trans. at 1504.) He also testified that he did not find any bleeding in the subcutaneous tissues of Floyd's neck and back. (Chauvin Tr. Trans. at 4914.)

In Dr. Baker's opinion, "the placement of Chauvin's knee would [not] . . . anatomically cut off Mr. Floyd's airway."[58] (Chauvin Tr. Trans. at 4935-4936; Fed. Tr. Trans. at 1509-1510.) Dr. Baker 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. Trans. at 1401.)

Dr. Baker did not list fentanyl or methamphetamine[59] 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. Trans. at 4890-4911; Fed. Tr. Trans. at 1434-1435.) Although Dr. Baker is aware that fentanyl is a respiratory depressant, he acknowledged that the question whether that would increase carbon dioxide as a result was "outside the scope of [his] expertise."[60] (Chauvin Tr. Trans. at 4926.)

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. Trans. at 4922.) Someone typically

---

[58] But Dr. Baker acknowledged that he is not a pulmonologist, cardiologist, or toxicologist, and would defer to specialists in those areas to answer specific questions about that subject matter, including questions about how hypoxia affects breathing. (Chauvin Tr. Trans. at 4890, 4907-4910, 4926; Fed. Tr. Trans. at 1406-1407.)

[59] Dr. Baker testified that Floyd had a "pretty low amount" of methamphetamine in his blood. (Fed. Tr. Trans. at 1433) but again acknowledged that he was not an expert on the subject beyond the general knowledge that at a high-level methamphetamine can make your heart work harder and therefore increase its oxygen demands. (Chauvin Tr. Trans. at 4909-4910.)

[60] Dr. Baker admitted that, "[h]ad Mr. Floyd been home alone in his locked residence with no evidence of trauma, and the only autopsy finding was that fentanyl level" he "would certify his death as due to fentanyl toxicity." (Chauvin Tr. Trans. at 4932; Fed. Tr. Trans. at 1432-1433.) 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. Trans. at 1398, 1433.)

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. (*Id*. at 4916.) Dr. Baker typically looks to other evidence to determine if a person asphyxiated. (*Id*. at 4917.)

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. Trans. at 1415-1416.) Dr. Baker did not see evidence of bruising on Floyd's neck or back, or any petechiae. (Chauvin Tr. Trans. at 4919-4920; Fed. Tr. Trans. at 1507-1508, 1511-1512.) 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. Trans. at 4920-4921.) Dr. Baker also acknowledged that it is 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. Trans. at 1404, 1406.) Dr. Baker again acknowledged that he would defer to a pulmonologist on the specifics of how mechanical asphyxia might work in certain scenarios. (Fed. Tr. Trans. at 1406-1407.)

The Court finds Dr. Baker's testimony credible.

(2) Dr. David Fowler

Dr. David Fowler was a forensic pathologist for more than 30 years but has since retired. (Chauvin Tr. Trans. at 5446.) He was the Chief Medical Examiner for the State of Maryland for 17 years, and was board certified in anatomic and forensic pathology. (*Id*. at 5448, 5453.) Dr. Fowler is a forensic pathology consultant for the Forensic Panel. (*Id*. at 5458.) He is also a

member of the National Association of Medical Examiners. (*Id*. at 5463.) Dr. Fowler acknowledged that he is not a toxicologist, pulmonologist, or cardiologist. (*Id*. at 5579.)

Dr. Fowler was called by the Defense in the *Chauvin* trial to offer expert testimony as a pathologist on Floyd's cause of death. 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. Trans. at 5505.) Dr. Fowler testified that, in his opinion, Floyd did not die of asphyxia. (*Id*. at 5522.)

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. Trans. at 5481-5482.) There was evidence Floyd suffered from hypertension, the most common cause of an enlarged heart. (*Id*. at 5486.) Because Floyd's heart was enlarged, it needed more oxygen and nutrients to function. (*Id*. at 5482-5483.) 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. (Id. at 5484.) Dr. Fowler stressed 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" and that his right coronary artery showed the greatest degree of narrowing, which Dr. Fowler testified increased the risk of sudden death. (*Id*. at 5489, 5495.)

In Dr. Fowler's opinion, several other factors also contributed to Floyd's death. (Chauvin Tr. Trans. at 5475.)

First, Dr. Fowler testified that carbon monoxide could have contributed to Floyd's death. (Chauvin Tr. Trans. at 5505-5506, 5521.) Dr. Fowler observed that Floyd was facing the squad

car during the restraint, "directly towards the area where you would expect the tailpipes" to be*,* and there was evidence the vehicle was running during the restraint. (*Id*. at 5506-5507.) Not only do people occasionally die from various levels of carbon monoxide poisoning but Dr. Fowler pointed out that 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. (*Id*. at 5509, 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, nor was he sure whether the squad car was even running during the restraint. (*Id*. at 5565-5566, 5568.)

Second, Dr. Fowler testified that methamphetamine has the potential to increase the risk of an arrhythmia, increase heart rate, and also cause arteries to narrow but he did concede that there was only a very low level of methamphetamine in Floyd's blood. (Chauvin Tr. Trans. at 5497, 5617.)

Next, Dr. Fowler explained 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. Trans. at 5548, 5550.) However, he acknowledged that a person who dies from a fentanyl overdose tends to be very sleepy and unarousable -- essentially falling into a coma before dying -- and conceded that Floyd did not manifest any of those "outward symptoms." (*Id*. at 5614.)

Dr. Fowler also pointed to Floyd's paraganglioma, a tumor in his lower abdominal area. (Chauvin Tr. Trans. at 5557.) Dr. Fowler testified this kind of tumor can suddenly secrete a

surge of adrenaline, which can "cause an individual potentially to be hypertensive." (*Id*. at 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." (*Id*. at 5608-5609.)

Dr. Fowler testified that the prone position is not inherently dangerous, pointing to studies finding that applying weight to someone in the prone position is not dangerous. (Chauvin Tr. Trans. at 5524-5532.) Relying on these studies, Dr. Fowler testified that Chauvin transferred only 30-35 pounds of body weight onto Floyd, less than the 225 pounds used in the studies. (*Id*. at 5533.) Dr. Fowler conceded that this analysis did not include the weight of any equipment or gear. (*Id*. at 5563-5564.) 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. (*Id*. at 5590, 5593-5594.) Dr. Fowler conceded he did not calculate Floyd's EELV at any time during the May 25, 2020 incident, indicating he would defer to a pulmonologist for a detailed assessment of how EELV relates to the ability to breathe. (*Id*. at 5597-5599, 5606-5607.)

Dr. Fowler opined that Chauvin's knee did not impact any of the vital structures of Floyd's neck. (Chauvin Tr. Trans. at 5533.) Dr. Fowler found it noteworthy that the autopsy did not reveal that Floyd had suffered any evident physical injuries in the areas of his body where the knee was present, including bruising or abrasions to the skin although he did acknowledge that, in the majority of asphyxia deaths, there are no visible signs of trauma. (*Id*. at 5534-5538, 5587-5589.) Dr. Fowler agreed that this is why "[t]he scene information" is "very important" in diagnosing positional asphyxia. (*Id*. at 5589.)

Dr. Fowler testified that the symptoms of hypoxia include visual changes, shortness of breath, and confusion. (Chauvin Tr. Trans. at 5539-5540.) Floyd did not complain of visual changes and did not appear confused. (*Id*. at 5539, 5541.) Although Floyd's breathing rate was slightly elevated, in Dr. Fowler's view, Floyd was not breathing rapidly enough to suggest he was experiencing shortness of breath. (*Id*. at 5541.) Dr. Fowler also pointed out that other things—including cardiac issues or phobias—can increase breathing rates. (*Id*. at 5540-5542.)

In Dr. Fowler's view, Chauvin's knee was "nowhere close to [Floyd's] airway." (Chauvin Tr. Trans. at 5542.) Dr. Fowler was not aware of any medical literature that compressing the hypopharynx can cause asphyxia. (*Id*. at 5543-5544.) Dr. Fowler 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." (*Id*. at 5545-5547.) In Dr. Fowler's view, this "sudden decompensation . . . is much more consistent with a sudden cardiac event." (*Id*. at 5547.) Dr. Fowler conceded that Floyd should have been given immediate emergency attention when he went into cardiac arrest to try and "reverse that process." (*Id*. at 5604.)

Dr. Fowler agreed that positional asphyxia restricts the ability to oxygenate blood because of one's positioning. (Chauvin Tr. Trans. at 5581.) He agreed a person must be able to expand one's chest to breathe. (*Id*.) He did concede 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. (*Id*. at 5584-5585.) Dr. Fowler also 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. (*Id*. at 5604-5606.)

The Court finds Dr. Fowler's ultimate conclusions and opinions unpersuasive. 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 the testimony and evidence presented by multiple experts in those fields, as summarized above. Dr. Fowler's testimony 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. Dr. Fowler's suggestion that carbon monoxide poisoning might have had some contributing role in Floyd's death not only flies in the face of the testimony by other experts, as summarized above, but also ignores the fact that it was the officers who chose to subdue Floyd in that precise location and keep him restrained in that position in proximity to the Lane/Kueng squad tailpipe.

(3) *Dr. Lindsey Thomas*

Dr. Lindsey Thomas has served as a forensic pathologist for more than 35 years. (Chauvin Tr. Trans. at 4740-4741.) She is board certified in anatomic pathology, clinical pathology, and forensic pathology. (*Id*. at 4742.) She previously worked at the Hennepin County Medical Examiner's Office. (*Id*. at 4741.)

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. Trans. at 4753.) Dr. Thomas agreed with Dr. Baker's decision to certify Floyd's death as a homicide (*id*. at 4793-4794) and also 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." (*Id*. at 4778-4779.)

Dr. Thomas testified that prolonged "physiologic stress" was a secondary contributor (Chauvin Tr. Trans. at 4779, 4782) while acknowledging that this kind of physiologic stress is not something you can observe or test for on autopsy. (*Id*. at 4782-4783.) When a body experiences sudden, overwhelming stress, the heart races, blood pressure increases, and the body requires more oxygen. (*Id*. at 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. (*Id*. at 4783-4784.)

Dr. Thomas 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. Trans. at 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." (*Id*. at 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 his knee. (*Id*. at 4750-4751, 4801.)

Although recognizing that the prone position is not inherently dangerous, standing alone, "as long as someone can breathe," Dr. Thomas explained that 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. Trans. at 4760-4761, 4820-4821.) Dr. Thomas observed that Floyd exhibited symptoms consistent with an anoxic seizure, an involuntary reaction that occurs "when the brain no longer has enough oxygen." (*Id*. at 4761-4762.)

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. Trans. at 4772-4773, 4775-4778.) Although the presence of petechiae or bruising at autopsy can be diagnostic that the decedent died of low oxygen, Dr. Thomas stated that the lack of petechiae or bruising does not mean that person did not die of low oxygen. (*Id*. at 4771-4772, 4822.)

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. Trans. at 4825, 4845.)

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, an aneurysm, or a heart attack. (Chauvin Tr. 4756, 4758, 4765-4766, 4842.) As noted above, Floyd's heart was "slightly enlarged" and he had a history of high blood pressure. (*Id*. at 4803, 4805.) Floyd's right coronary artery was 90 percent occluded and his left anterior descending artery was 75 percent occluded. (*Id*. at 4809, 4811.) Dr. Thomas also acknowledged that exertion increases the demands on the heart. (*Id*. at 4809-4810.) However, Dr. Thomas explained that Floyd's death was not sudden, as one would expect from a heart attack. (*Id*. at 4750, 4758, 4841-4842.) Nor was there any evidence of a heart attack at autopsy. (*Id*. at 4756-4757, 4842-4843.)

Dr. Thomas also ruled out a drug overdose as the direct cause of death to a reasonable degree of medical certainty. (Chauvin Tr. Trans. at 4767.) She concluded that because Floyd did not become sleepy and "gradually, calmly, peacefully stop[] breathing," his death did not

resemble a typical death from a fentanyl overdose. (*Id*. at 4758-4759, 4766, 483948-41.) Although acknowledging, as other of the medical experts had, that methamphetamine can cause the heart to work harder and to require more oxygen because the methamphetamine found in Floyd's blood was at "a very low level" and because Floyd's death was not sudden or accompanied by a "full-blown seizure" Dr. Thomas also concluded that Floyd's death was not consistent with a methamphetamine overdose. (*Id*. at 4766-4767, 4829-4830, 4833.)

Dr. Thomas testified that the "Chan studies," which concluded 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. Trans. at 4794-4795, 4816-4817.) In her view, although the Chan studies may be "fine for laboratory purposes," "they bear no resemblance to real world situations" like those leading to Floyd's death. (*Id*. at 4795, 4797.) Dr. Thomas explained that the Chan studies involve healthy volunteers who know their lives are not really in danger; the restraint occurs on mats not hard pavement; the weight is "evenly distributed" across the volunteer's back; none of these studies continued past the point where the subject's breathing and heart stopped; none of the studies involved a knee on the neck; and in none of the studies did the restraints last more than nine minutes. (*Id*. at 4795-4797.) Dr. Thomas also acknowledged that another study, known as the "Hall study," concluded that no deaths had occurred in more than 3,000 police interactions in which a suspect was in the prone position. (*Id*. at 4818-4819.) She explained that study was specific to Canada, however, and was "contrary to the actual experience of [a] forensic pathologist in the United States." (*Id*. at 4843.)

The Court finds Dr. Thomas's testimony credible.

M. Defendant Tou Thao's Trial Testimony[61]

1. Background

Thao was initially hired by Minneapolis as a community service officer. (Fed. Tr. Trans. at 3055.) After a year and a half of service, he completed his degree, obtained his POST license, and enrolled in the MPD Academy. (*Id*. at 3056-3057.)

After completing the Academy in 2009, he was laid off for budgetary reasons. (Fed. Tr. Trans. at 3057, 3091.) He worked security at Fairview Riverside Hospital for almost a year before MPD rehired him in 2011. (*Id*. at 3091-3092, 3104-3105.) After being rehired, Thao completed a one-month training update and the five-to-six-month field training officer program. (*Id*. at 3105-3106.) He became a full-time MPD Officer in 2012 and served in that capacity for about eight years. (*Id*. at 3139, 3161.)

2. Training

(1) Use of Force

Thao 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. Trans. at 3162, 3171-3173.) Thao knows that an officer cannot use force on someone who is not resisting. (*Id*. at 3313.) Thao conceded that if someone was fighting you before, "once they stop fighting," you have to de-escalate the use of force. (*Id*. at 3174-3175.) Thao admitted it is unnecessary to use force on someone who is unconscious or does not have a pulse. (*Id*. at 3177.)

---

[61] Thao testified in the federal trial but not during the *Chauvin* trial. All references to his trial testimony are to the federal trial transcript.

Thao testified that if someone is in handcuffs but not resisting, officers may be able to "keep them in restraints" but cannot continue to use force. (Fed. Tr. Trans. at 3173-3174.) He acknowledged that officers are not permitted to "use force under a theoretical idea that they [a detained, handcuffed suspect] might at some later point . . . jump up or something." (*Id*. at 3173-3174.) He also acknowledged that, instead of continuing physically to hold a suspect down in such circumstances, you could "stand nearby and at least keep your hands on them," explaining that "[p]otentially you could be in contact, but not much weight being put on." (*Id*. at 3221-3223.)

However, Thao also testified 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. Trans. at 3219.) He testified that based on his "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." (*Id*. at 3220.) Thao testified that, as a result, you need to hold that person "down for paramedics." (*Id*. at 3219.)

(2) <u>Knee/Leg Restraints</u>

Thao testified that he received training on using a leg or knee to implement a restraint. Thao pointed to 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. Trans. at 3064-3067, 3069.) Thao mentioned a photo of him restraining someone in the prone position with his knee on the individual. (*Id*. at 3068.) Thao

claimed this was consistent with what he was taught at the Academy and that he was never told this was an improper technique. (*Id*. at 3069, 3084.) Thao also testified to having received in-service training on the use of legs to implement a neck restraint. (*Id*. at 3084.) This included training on using legs "around a person's neck as a means to restrain them." (*Id*. at 3085.)

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. Trans. at 3189-3191.) He acknowledged, however, that once the officer has that person handcuffed and under control, the officer is trained to avoid the neck area. (*Id*. at 3191-3192.) He conceded the "primary purpose of using neck restraints [is] to gain control of someone." (*Id*. at 3196.) In fact, MPD policy provides that 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." (*Id*. at 3194-3195.)

Thao knew that if an officer sees another police officer committing a crime, including by using excessive force, "you would need to stop that." (Fed. Tr. Trans. at 3177-3178.) Thao knew that rule applies even if the officer using excessive force is a "19-year veteran."[62] (*Id*. at 3323-3324.)

(3) *Duty to Render Medical Aid/CPR*

Thao received medical training, including bi-annual CPR in-service training, most recently in 2019. (Fed. Tr. Trans. at 3165-3167.) Based on his training, he knew that any time someone presents with no pulse, officers are supposed to react by starting CPR immediately because "every second counts," and even if EMS has been called, that officers are supposed to

[62] That is an implicit reference to Chauvin.

start CPR before the paramedics arrive and continue with CPR efforts until the person has been revived or paramedics have arrived on the scene and taken over. (*Id*. at 3168-3169.) Thao knew MPD policy provides that officers cannot wait for an ambulance if someone needs medical care and "it's safe enough" to provide that care. (*Id*. at 3260.)

Thao knew, from his training, that "it is a red flag if someone in your custody suddenly stops talking" or becomes unconscious. (Fed. Tr. Trans. at 3170.) Thao conceded that "you should take note" when someone stops speaking but opined that is not always a "red flag." (*Id*. at 3251.) Upon being pressed on whether it would be very concerning if a subject who had been talking suddenly stopping speaking, Thao responded: "I suppose it depends." (*Id*. 3308.)

Thao knew that "keeping someone in the prone position can make it harder for them to breathe." (Fed. Tr. Trans. at 3170.) Thao was also familiar with positional asphyxia and was aware that it is more difficult to breathe in the prone position. (*Id*. at 3301.)

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.)

(4) Excited Delirium

Thao testified that he received excited delirium training in his POST classes, at the Academy, and during in-service training. (Fed. Tr. Trans. at 3099-100.) Although he did not receive any training on excited delirium while working at Fairview Riverside Hospital, he occasionally saw that term in medical records. (*Id*. at 3098-3099.) Thao witnessed nurses and doctors trying to de-escalate situations by talking to individuals rather than immediately

restraining them and also witnessed individuals being sedated.[63] (*Id*. at 3102-3104.) He has 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. (*Id*. at 3143-3144, 3340-3342.)

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. Trans. at 3223.) He acknowledged having been trained that positional asphyxia could be an issue with excited delirium. (*Id*. at 3223.) Thao admitted 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." (*Id*. at 3223.) 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." (*Id*. at 3313.) At most, "you can stay nearby and touch" the person. (*Id*.)

3. <u>The May 25, 2020 Floyd Incident</u>

Thao and Chauvin were partners on May 25, 2020. They were initially dispatched to Cup Foods on "Priority 1," meaning "get there fast." (Fed. Tr. Trans. at 3109-3111.) Dispatch informed them it was for a counterfeit bill and that the suspect was possibly under the influence. (*Id*. at 3196.) However, Lane and Kueng wound up being dispatched before Thao and Chauvin left the precinct. (*Id*. at 3112.) After Dispatch instructed Thao and Chauvin to proceed to the scene to assist Kueng and Lane, as Thao and Chauvin were en route to the

---

[63] Thao knew that EMS is authorized to provide certain medical care that police officers cannot provide, like sedating a subject. (Fed. Tr. Trans. at 3363-3364.)

scene, Kueng and Lane called "Code 4," meaning the scene was "okay." (*Id*. at 3113.) Even though Dispatch cancelled them out of the call to Cup Foods, Thao and Chauvin continued to Cup Foods instead of returning to the precinct.[64] (*Id*. at 3113-3114.)

Upon arriving at the scene, Thao and Chauvin pulled up next to Officer Chang to assist him. (Fed. Tr. Trans. at 3118-3119.) Officer Chang waved them off and pointed them across the street, to where Kueng and Lane were trying to get Floyd into their squad car. (*Id*. at 3119-3120.) After Kueng and Lane were able to force Floyd "partially in the squad car," Floyd "launch[ed] himself out the other side of the door." (*Id*. at 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," leading Thao to suggest putting Floyd "on the ground." (*Id*. at 3124-3125.)

Thao testified that, in his experience, people often complain that they cannot breathe when they are being arrested, even if that is not actually true. (Fed. Tr. Trans. at 3201-3202.) 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." (*Id*. at 3202-3203.)

In Thao's view, "[i]t was obvious that [Floyd] was under the influence of some type of drugs" because he was "very sweaty," "incoherent, not listening to direction," and "fighting off three officers consistent with super-human strength." (Fed. Tr. Trans. at 3125-3126.) Under the circumstances, Thao decided the officers "might have to escalate force . . . potentially having to use strikes, baton, or Taser on a handcuffed person." (*Id*. at 3126.)

---

[64] Both Lane and Kueng were "rookies" and had only recently completed their field officer training with one of them just being in their first week in the field. Chauvin had been Kueng's FTO (Field Training Officer).

This is what led Thao to suggest "hog-tying" Floyd, meaning that the officers would use the hobble device to restrain Floyd. (Fed. Tr. Trans. at 3128-3129.) According to Thao, when officers have only one hobble device and the subject is already 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. (*Id*. at 3131.)

Thao testified that "[a]s soon as you . . . apply [the] hobble, then you can roll them over." (Fed. Tr. Trans. at 3133.) Thao explained that this is to mitigate "breathing issues that could result from the person being in the prone position." (*Id*. at 3278-3279.) Under MPD policy, Thao knew that an officer employing the hobble device must notify a sergeant, who would then conduct a use of force review. (*Id*. at 3133-3134.)

According to Thao, after considering use of the hobble with Floyd, the officers decided not to use a hobble because EMS was already 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. Trans. at 3132, 3230.) According to Thao, had they used the hobble on Floyd, upon EMS' arrival at the scene, the paramedics would have to wait to provide medical attention to Floyd until after the sergeant had documented the use of the hobble for the use of force review. (*Id*. at 3134, 3230.)

At 8:21:23 (just over two minutes into the restraint), Thao called for "Code 3, meaning lights and sirens, get here quick." (Fed. Tr. 3140, 3359.) He did so because, by this point, Thao suspected Floyd had a "serious medical condition." (*Id*. at 3359.) During his call to Dispatch updating to Code 3, Thao did not mention Floyd's breathing issues or make any reference to

possible excited delirium. (*Id*. at 3360.) Thao assumed Dispatch would handle requesting both EMS and fire in response to his calling in the Code 3. (*Id*. at 3337-3338.)

Although Thao saw Chauvin's knee on Floyd's neck, he did not think that "uncommon" because officers had "been trained on it." (Fed. Tr. Trans. at 3141.) However, Thao conceded that Chauvin was not using "a neck restraint as defined by MPD" or a "trained neck restraint." (*Id*. at 3193-3194.) Thao testified that he personally would not have used his knee in a restraint because of his small stature (*id*. at 3345) while admitting he had in the past used his knee on someone's neck as a restraint technique, although he did not "put[] much weight into it." (*Id*. at 3258.)

Although characterizing his role at the scene as being a human "traffic cone"[65] (Fed. Tr. Trans. at 3144), Thao admitted – unsurprisingly, as this was captured on his own BWC video as well as on the Frazier and Funari videos -- looking at the other officers many times during the course of their lengthy restraint of Floyd, 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. Trans. at 3253-3254, 3256-3257, 3260-3261, 3279-3281, 3289-3290, 3298, 3302, 3306-3307.) Thao admitted he could see that Floyd was "being held down," and that "Chauvin [was] using his knee on Mr. Floyd's neck," as, for example, he 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. Trans. at 3228-3230, 3233, 3239, 3289-3290, 3308.) Thao was standing only a couple steps from the bystanders who had gathered on the sidewalk in

[65] Thao wanted the bystanders to stay on the curb "to give the paramedics and officers space to operate"; in his "human traffic cone" role, he sought to prevent the bystanders from "potentially attacking the officers or disrupting the medical attention that they were doing." (Fed. Tr. Trans. at 3152-3153.)

front of Cup Foods, and clearly could hear their protests about the manner in which Floyd was "being held down," which is also established by the officers' BWC videos. (*Id*. at 3285.)

Thao admitted that Chauvin, Kueng, and Lane maintained their identical positions for the first six minutes of the restraint. (Fed. Tr. Trans. at 3250.) However, he claimed at that point, six minutes into the restraint, that it was unclear to him if Chauvin was applying force to Floyd through his knee because his knee might instead "be hovering" over Floyd. (*Id*. at 3317-3318) Thao claimed that he could not tell if Floyd was resisting as the restraint continued because Thao was "not in contact with Mr. Floyd." (*Id*. at 3287.)

Thao admitted he made no 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. Trans. at 3297-3298, 3335-3336.) He acknowledged that he could have called out to his partners at any time during the restraint, and that there "was nothing preventing him from communicating with" them. (*Id*. at 3331, 3333.) He admitted he did nothing to check with the other officers about whether Floyd had a pulse, despite Hansen's repeated requests for the officers to check Floyd's pulse. (*Id*. at 3329-3331, 3333.) Thao admitted that he never told Chauvin, Kueng, and Lane to get off Floyd. (*Id*. at 3320-3321.)

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. Trans. at 3153.) But Thao never informed Dispatch that Floyd was not talking or had lost consciousness. (*Id*. at 3360-3361.)

Thao testified that he assumed the other officers were "[t]aking care of [Floyd]" and that Floyd was "still breathing and fine," had a pulse, and was not "in cardiac arrest" because Thao had been trained to start CPR "[a]s soon as safely possible" if you believe someone does

not have a pulse, and the other officers never started CPR or rolled Floyd onto his side at any point until after the ambulance arrived and the paramedics took over. (Fed. Tr. Trans at 3145, 3149, 3224) Thao did acknowledge 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. (*Id*. at 3292.) Incredibly, Thao testified that he believed it was important to continue restraining Floyd to "save his life." (*Id*. at 3345.) Thao claimed "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." (*Id*. at 3343, 3286.)

4. <u>Evaluation of Thao's Credibility</u>

The Court finds Thao's testimony on many of these points not credible, if not disingenuous. As noted, even though Thao was standing watch over the crowd, he continued occasionally to look over at the officers and Floyd as the restraint continued. Thao knew how voluble Floyd had been when he and Chauvin arrived at the scene and how he continued talking for the first few minutes. (*E.g.*, Fed. Tr. Trans. at 3229; BWC Videos.) Thao was standing just feet from where Floyd was being restrained on the street and was certainly aware that Floyd had stopped talking. (*E.g.*, Fed. Tr. Trans. at 3231; BWC Videos.) Thao could tell from his occasional glances that Floyd was no longer moving. Thao certainly heard the plaintive pleas and complaints from the bystanders, including Williams, Hansen, and Funari, growing louder and more insistent as time wore on, based on their observations just feet from where Floyd was being restrained that they believed Floyd was "not responsive," that Floyd was no longer breathing, and that he had passed out. Thao acknowledged that he could hear what the crowd

was saying -- which he could not have credibly denied given the video recordings – and admitted responding to the bystanders.[66] (Fed. Tr. Trans. at 3295.)

For example, Thao acknowledged that, at 8:23:48, he heard 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. Trans. at 3289-3290.) Indeed, Thao admitted that at one point, Floyd appeared to him to be unconscious. (*Id*. at 3231.) Lane and Kueng, just feet from him, engaged in conversation several times, with Lane inquiring if they should roll Floyd into the side-recovery position, expressing the view that Floyd had passed out, and suggesting Kueng check Floyd for a pulse, with Kueng responding he was unable to detect a pulse.

In addition, Thao's testimony is internally inconsistent and contradicts the sworn statements from multiple members of MPD regarding MPD training and policies, as well as Thao's own statements in his BCA interview. For example:

(1) Thao's testimony that Floyd was exhibiting several symptoms of excited delirium contradicts the testimony of multiple medical experts this Court finds credible that Floyd was not suffering from excited delirium on the evening of May 25, 2020, as summarized above.

(2) Notwithstanding actual MPD policy regarding excited delirium as summarized earlier as well as his own admissions that he (i) knew an officer cannot continue to use force against someone who is not resisting, even if they have excited delirium, (ii) was also aware that MPD policy instructs officers to roll someone with excited delirium who is handcuffed and not resisting on their side as soon as possible to avoid the risk of positional asphyxia (Fed. Tr.

[66] Thao attempted to justify his inaction, claiming he disregarded the bystanders' pleas to "[c]heck on Floyd" because of "a different role I have to play." (Fed. Tr. Trans. at 3148.)

Trans. at 3361-3362), and (iii) also knew MPD policy is that an officer cannot use force on someone solely on the suspicion that person might "come back to life and pose a threat" at a later point, in seeking to justify his and the other officers' conduct in their restraint of Floyd on May 25, 2020, Thao expressed the view that 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 to prevent them from later becoming a threat to themselves or others. (Fed. Tr. Trans. at 3366-3367.) Contrary to actual policy, Thao also claimed 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." (*Id*. at 3218.)

(3) Thao testified that Chauvin's use of his knee was "not uncommon," but contradicted that in his testimony that Chauvin's use of his knee was contrary to MPD policy. That testimony also contradicts the testimony of multiple MPD witnesses regarding MPD policy and training and the MPDPPM, as summarized earlier in this Memorandum Opinion, which testimony this Court finds credible. It further contradicts Thao's statements in his BCA interview, in which he acknowledged that he had not previously seen the maneuver Chauvin used before, or a "maneuver similar to that." (State's Supp. Exh. 24 (BCA Video Interview with Thao), at 01:05:56.)

(4) Although acknowledging that he had an independent duty to render medical aid, Thao contradicted himself by seeking to justify his inactions – Thao knew from his own observations that Floyd had stopped talking and appeared unconscious as well as from the

bystanders' repeated statements that Floyd was unconscious and in need of medical assistance -- claiming he assumed the other officers would render any necessary aid.

(5) Thao sought to justify his inactions, testifying 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. Trans. at 3362.) 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." (*Id*. at 3364-3365.) He 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." (*Id*. at 3286-3287.) However, Thao admitted that, even with the bystanders on the sidewalk, it was "safe enough" on May 25, 2020 "to render medical care." (*Id*. at 3260.) His admission on that point is corroborated by the fact that he never called for law enforcement backup or asked Officer Chang to assist him with crowd control. (*Id*. at 3232.) 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." (Id. at 3361.)

N. Thao Committed the Required Conduct for Aiding and Abetting Second-Degree Manslaughter.

1. <u>Chauvin Committed the Required Conduct for Second-Degree Manslaughter</u>.

(1) <u>George Floyd died on May 25, 2020</u>.

While being restrained by Chauvin, Kueng, and Lane on May 25, 2020, Floyd lost consciousness at 8:24:53, stopped breathing at 8:25:16, his oxygen stores were depleted by 8:25:41, and he was pulseless no later than 8:26 [Kueng did not detect a pulse when checking

between 8:25:52-:59]. (Tobin, Chauvin Tr. Trans. at 4528-4532; Chauvin Tr. Exh. 43 [Kueng BWC Video], at 8:25:52-8:25:59.)

When EMS paramedics Smith and Bravinder arrived at the scene at 8:27:19, Floyd was unconscious, not breathing, pulseless, and was in full cardiac arrest. (Smith, Fed. Tr. Trans. at 591, 593-594, 602; Chauvin Tr. Exh. 151 (CAD Report at 3).) Despite this, none of the officers on scene provided any basic medical care or life-saving measures to Floyd, such as turning Floyd on his side into the side-recovery position or performing CPR, as prescribed by MPD policy and training. Indeed, even as Smith checked Floyd's carotid for a pulse at 8:27:45, Chauvin continued the position he had held since the restraint started at 8:19:18, restraining Floyd with his knee on the back of Floyd's neck. (Lane BWC Video, Chauvin Tr. Exh. 47 & Frazier Video [Chauvin Tr. Exh. 15], at 06:51, 6:58.)

When the paramedics began treating Floyd, Floyd's heart rhythm was asystole (flatline), so they began treating him in the ambulance as full cardiac arrest. (Bravinder, Chauvin Tr. Trans. at 3374, 3384; Smith, Chauvin Tr. Trans. at 3441-3442 & Fed. Tr. Trans. at 602.) This was the first time any life-saving measures were performed on Floyd. After efforts by the paramedics, assisted by Lane and Minneapolis firefighters, to resuscitate Floyd while the ambulance was parked at 36th and Park, the ambulance began transporting Floyd to HCMC at 8:48:23 while Smith and the firefighters continued providing care to Floyd. (Fed. Tr. Exhs. 39 & 109, at 4; Smith, Fed. Tr. Trans. at 606.)

Floyd arrived at HCMC at 8:52:46. (Chauvin Tr. Exh. 67.) Upon arrival, Floyd's heart only produced PEA. (Langenfeld, Chauvin Tr. Trans. at 3717-3718.) Physicians at HCMC attempted life-saving measures on Floyd, who was in cardiac arrest. (*Id*. at 3728-3729; State's Supp. Exhs.

18-19.) Floyd never regained a pulse and never regained consciousness. (Smith, Chauvin Tr. Trans. at 3450-3451; Langenfeld, Chauvin Tr. Trans. at 3729.) At HCMC, Floyd's heart rhythm was primarily PEA, before devolving again to asystole. (*Id*. at 3718-3719, 3729.) 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., by which point he had been in cardiac arrest for roughly an hour. (*Id*. at 3702, 3729; State's Supp. Exh. 19.)

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

The manner of Floyd's death was ruled a homicide. (Baker, Chauvin Tr. Trans. at 4885, 4941; Chauvin Tr. Exhs. 193, 194.) The direct and immediate cause of Floyd's death was cardiopulmonary arrest complicating law enforcement subdual, restraint, and neck compression. (Baker, Chauvin Tr. Trans. at 4888, 4941; Chauvin Tr. Exh. 193.)

The human body cannot survive without adequate oxygen. Lack of oxygen to the brain can result in a person losing consciousness in as little as eight seconds. (Tobin, Chauvin Tr. Trans. at 4541.) Lack of oxygen over an extended period of time can cause anoxic seizure, brain damage, cardiac arrest, and death. (Smock, Chauvin Tr. Trans. at 4712.) Irreversible brain damage can occur within four to six minutes after cardiac arrest. (Langenfeld, Fed. Tr. Trans. at 948.) Each minute of delay in rendering CPR decreases a person's chance of survival by approximately 10 to 15 percent. (Id. at 919.)

The officers restrained Floyd prone on the concrete surface of Chicago Avenue, with Chauvin[67] and Kueng[68] applying external pressure to Floyd's neck and upper back, chest, the left side of his torso, and his lower back while also holding his handcuffed arms,[69] while Lane pressed down on Floyd's legs.[70] The collective pressure from this restraint 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. Trans. at 4465 (Dr. Tobin), 4675 (Dr. Smock), 4749, 4814, (Dr. Thomas), 4999, 5001-5002 (Dr. Rich).) 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. (*Id*. at 4518-19 (Dr. Tobin).) Floyd lost oxygen gradually over several minutes due to the restraint, with the low oxygen levels damaging Floyd's brain and causing his heart to stop. (*Id*. at 4465, 4675-4676, 4694-4695.)

---

[67] Chauvin placed his left knee on the back of Floyd's neck and upper back at the base of the neck. Chauvin's knee compressed Floyd's hypopharynx, variably occluded airflow, and narrowed Floyd's airway, making it more difficult for Floyd to breathe. (Tobin, Chauvin Tr. Trans. at 4487, 4489, 4493, 4498.) Chauvin placed his right knee on Floyd's left arm and torso in the mid-back region. Chauvin's right knee inhibited Floyd's ability to expand his chest to breathe and get air into his left lung. (*Id*. at 4474, 4480.) Chauvin restrained Floyd in this manner from 8:19:18 until 8:28:42, a total of nine minutes and 24 seconds. (*Id*. at 4597.)

[68] Kueng placed his knee on Floyd's lower back/torso, thereby applying additional weight to that Chauvin was also applying. (Tobin, Chauvin Tr. Trans. at 4472; Systrom, Fed. Tr. Trans. at 1673.) Kueng also held Floyd's left wrist behind Floyd's back and applied downward pressure on Floyd's chest, the force of which added to the restrictive pressure and prevented Floyd from changing position thereby inhibiting his efforts to breathe. (*Id*. at 1672-1673.) Kueng applied continuous pressure to Floyd's wrist for approximately six-and-a-half minutes, and applied pressure intermittently thereafter. (*Id*. at 1675.) Kueng's pressure to Floyd's back, torso, and arms further restricted Floyd's breathing. (*Id*. at 1677.)

[69] Chauvin and Kueng manipulated Floyd's handcuffs, pushing the handcuffs high into Floyd's back while Floyd was lying on the pavement. Chauvin's and Kueng's actions inhibited Floyd's ability to expand his chest to breathe. (Tobin, Chauvin Tr. Trans. at 4476-4480.)

[70] Lane held Floyd's legs at various points throughout the restraint, which further precluded Floyd's ability to change position to enhance ventilation. (Systrom, Fed. Tr. Trans. at 1675.)

Floyd would not have died on May 25, 2020 if not for the restraint by Chauvin, Kueng, and Lane.

Based on the testimony of Drs. Tobin, Smock, Bebarta, and Langenfeld—all of whom the Court finds credible—the Court finds that Floyd did not die of excited delirium. Excited delirium is not recognized by the AMA or the American Psychiatric Association and is not a universally accepted diagnosis. (Smock, Chauvin Tr. Trans. at 4677.) In any event, Floyd did not exhibit any of the ten signs of the condition described as "excited delirium." (*Id*. at 4682; Bebarta, Fed. Tr. Trans at 2157, 2160-2170, 2241.)

Based on the testimony of Drs. Tobin, Smock, Rich, Bebarta, and Systrom—all of whom the Court finds credible—the Court finds that Floyd did not die of a drug overdose of any kind.

Floyd did not die from a fentanyl overdose, as indicated by both the measure of fentanyl (11 ng/mL)[71] and norfentanyl (56 ng/mL)[72] in Floyd's blood, and Floyd's presentation and behavior on May 25, 2020. (Smock, Chauvin Tr. Trans. at 4686.) 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." (Thomas, Chauvin Tr. Trans. at 4758-4759, 4766, 4839-4841.) Rather, Floyd was

---

[71] For example, fentanyl levels in living patients found to be driving under the influence had much higher levels, in some cases higher than 50 ng/ml. (Isenschmid, Chauvin Tr. Trans. at 4628-4629.) The level of 11 ng/mL found posthumously in Floyd's blood was consistent with therapeutic levels used in a hospital setting. (Bebarta, Fed Tr. Trans. at 2128-29.) Fentanyl levels for overdose patients seen in the hospital are typically 40 ng/mL or higher. (*Id*. at Fed. Tr. 2128.)

[72] Norfentanyl was present in Floyd's blood at a level of 56 ng/mL. (Isenschmid, Chauvin Tr. Trans. at 4629.) 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. (*Id*. at 4614-15.)

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. (Smock, Chauvin Tr. Trans. at 4684-4687.)

Floyd did not die from a methamphetamine overdose, as indicated both by the level of methamphetamine in Floyd's blood (19 ng/mL), and by Floyd's presentation and behavior on May 25, 2020. That is a low level of methamphetamine. (Isenschmid, Chauvin Tr. Trans. at 4634.) Floyd's death was also not consistent with a methamphetamine overdose as his death was not sudden or accompanied by a "full-blown seizure." (Thomas, Chauvin Tr. Trans. at 4766-4767; Bebarta, Fed. Tr. Trans. at 2132.)

Floyd did not die from the combination of fentanyl and methamphetamine. (Smock, Chauvin Tr. Trans. at 4721.) Fentanyl and methamphetamine are not more lethal when consumed in combination. (Bebarta, Fed. Tr. Trans. at 2132.) In fact, when used in combination, the effects of fentanyl and methamphetamine may counteract one another, as methamphetamine renders patients more awake and breathing faster whereas fentanyl tends to make patients a little sleepier. (*Id*. at 2132.)

Floyd did not die from any other substances detected in his blood, including THC and caffeine. (Bebarta, Fed. Tr. Trans. at 2123-24.)

Floyd did not die of heart disease, cardiomegaly, or a heart attack. There was no evidence at autopsy that Floyd experienced a heart attack or fatal arrhythmia. (Chauvin Tr. Trans. at 5020-5021 (Dr. Rich), 4718-4719 (Dr. Smock) & 4867, 4873 (Dr. Baker); Fed. Tr. Trans. at 1698-1700 (Dr. Systrom) & 1418 (Dr. Baker).) 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. Trans. at 5017-5018 (Dr. Rich).) Floyd's heart rhythms were not consistent with a heart attack. (Fed. Tr. Trans. at 1698-1700 (Dr. Systrom).) 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. Trans. at 5030 (Dr. Rich); Fed. Tr. Trans. at 1701 (Dr. Systrom).)

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. Trans. at 5679-5680 (Dr. Tobin).)

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, not sudden. (Chauvin Tr. Trans. at 4537-4539 (Dr. Tobin).)

Floyd did not die from COVID-19; Dr. Baker found no signs of COVID-19 on autopsy. (Chauvin Tr. Trans. at 4879.)

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 his death. (Chauvin Tr. Trans. at 4880-4881 (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.

All MPD employees are required to know MPD policies and procedures. (Arradondo, Chauvin Tr. Trans. at 3784; Chauvin Tr. Exh. 207 (MPD Policy-Procedure Manual 1-103)[73].)

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. (Blackwell, Fed. Tr. 864.) Although MPD policies and procedures are continually evolving, MPD officers sign an acknowledgement recognizing their duty to review and understand new policies. (Arradondo, Chauvin Tr. Trans. at 3785; Chauvin Tr. Exh. 274.)

All updates made to the MPDPPM are shared with officers via email, recounted by sergeants orally during shift changes, and taught during annual in-service training. (Blackwell, Fed. Tr. Trans. at 864-866.)

MPD provides training to its officers to ensure they understand how to apply MPD policy and procedure, including practical training. (Arradondo, Chauvin Tr. Trans. at 3780-3782.) 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

[73] The MPDPPM 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. Tr. Exh. 45 [MPD Policy and Procedure Manual, 5-101 Code of Conduct and Use of Force] at 1; Blackwell, Fed. Tr. Trans. at 869.)

program covering topics like defensive tactics and medical training; attend the MPD Academy; and participate in MPD's field training program. (Blackwell, Fed. Tr. Trans. at 812-816, 821.) 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. (Arradondo, Chauvin Tr. Trans. at 3778-3779; Blackwell, Fed. Tr. Trans. at 813.) In 2020 alone, MPD spent $4.5 million dollars providing its experienced officers with in-service training. (Arradondo, Chauvin Tr. Trans. at 3779-3780.)

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. The MPDPPM's "Use of Force Policy" reflects the *Graham v. Connor* constitutional standard, meaning "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. Tr. Exh. 46 [MPDPPM, 5-300, Use of Force, at 1]; Blackwell, Fed. Tr. Trans. at 875-877.)

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." (Arradondo, Chauvin Tr. Trans. at 3818; Chauvin Tr. Exh. 217 [MPDPPM, 5-303].) In determining 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." (*Id.*; Arradondo, Chauvin Tr. Trans. at 3819.) 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. (Blackwell, Fed. Tr. Trans. at 873, 880; Arradondo, Chauvin Tr. Trans. at 3827-3828.)

MPD training and policy requires officers (1) to use only force that is proportional to the threat posed by the particular subject they are interacting with, (2) to use de-escalation tactics to gain voluntary compliance, (3) to avoid or seek to minimize the use of physical force, and (4) to ensure that the length of detention is no longer than necessary to take appropriate action for the suspected offense. (Fed. Tr. Exh. 61 [2018 Annual Refresher Defensive Tactics PowerPoint], slide 8; Chauvin Tr. Exhs. 119 [MPD 2018 Use of Force In-Service PPT, slide 8], 219 [MPDPPM, 5-304, at 1] & 215 [MPDPPM, 5-101 to 5-204].)

Officers may 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.'" (Fed. Tr. Exh. 46 [MPDPPM, 5-300, at 5-6].) Choke restraints that are intended to restrict airflow are an example of deadly force. (Blackwell, Fed. Tr. Trans. at 896; Fed. Tr. Exh. 46 [MPDPPM, 5-300, at 10-11].)

A restraint is a type of force. The MPD does not train officers to use force by applying their knee to someone's neck as a restraint technique. (Mackenzie, Fed. Tr. Trans. at 1941, 1979; Blackwell, Chauvin Tr. Trans. at 3922-3923 & Fed. Tr. Trans. at 1095, 1098-1099, 1104, 1111-1112.) As noted earlier in this Memorandum Opinion, there are two types of neck restraints: "conscious" (the application of light to moderate pressure to control an individual

actively resisting) and "unconscious" (intended to cause the subject to lose consciousness, to which resort is permissible only when a subject exhibits active aggression or to save person's life). Under MPD policy and officer training, neither type of neck restraint is appropriate when the individual is "merely passively resisting." (Arradondo, Chauvin Tr. Trans. at 3831-3833, 3837-3838; Chauvin Tr. Exhs. 119 [MPD 2018 Use of Force In-Service PPT, slide 52-53] & 224 [MPDPPM, 5-311, at 2].) Notwithstanding the presence of some photos in some MPD training documents appearing to show an officer using a knee on a subject's neck, there is no evidence that this is actually a trained restraint technique taught by the MPD: officers may be allowed to use their knee on someone's neck "momentarily" to obtain control but are not trained to use that tactic to "maintain[] control." (Mackenzie, Fed. Tr. Trans. at 2063.)

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. (Blackwell, Fed. Tr. Trans. at 870-871, 881; Chauvin Tr. Exh. 217 [MPDPPM, 5-303]; Fed. Tr. Exh. 45 [MPDPPM, 5-101 Code of Conduct and Use of Force, at 5].) Even before MPD translated the "duty to intervene" into written policy in 2016, the "duty to intervene" was an expectation of MPD officers. (Blackwell, Fed. Tr. Trans. at 883, 887.)

MPD provides officers with extensive medical training. 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. (Arradondo, Chauvin Tr. Trans. at 3778; Mackenzie, Chauvin Tr. Trans. at 4096-4097 & Fed. Tr. Trans. at 1880; Blackwell, Fed. Tr. Trans. at 903; Chauvin Tr. Exhs. 111 [CPR Training Guide], 277 [2012-2014 CPR Card], 278 [2014-2016 CPR Card].) MPD officers are trained to provide CPR to a suspect who has ceased

breathing before medical personnel arrive. (Blackwell, Fed. Tr. Trans. at 903; Mackenzie, Chauvin Tr. Trans. at 4096-4098.)

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. (Blackwell, Chauvin Tr. Trans. at 3919-3920 & Fed. Tr. Trans. at 908-909, 971-972, 979-980; Mackenzie, Fed. Tr. Trans. at 1887-1888, 1900.) 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. (Arradondo, Chauvin Tr. Trans. at 3890; Chauvin Tr. Exh. 119 [MPD 2018 Use of Force In-Service PPT, slide 60].)

MPD trains officers that, if someone an officer believes 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. 2000-2001, 2057 (Officer Mackenzie).)

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. (Arradondo, Chauvin Tr. Trans. at 3801-3802, 3808; Chauvin Tr. Exh. 231 [MPDPPM, 7-809].) 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. Tr. Exh. 49 [MPDPPM, 7-809 Crisis Intervention Policy, at 3].)

MPD's use of force training and policies,[74] including the duty-to-intervene policy, and its medical training and policies[75] are consistent with generally accepted policing practices. (Chief Longo, Fed. Tr. Trans. at 2781-2785, 2790, 2794-2796, 2816, 2826-2828; Stoughton, Chauvin Tr. Trans. at 5100, 5108, 5129-5131.)

(ii) The officers restrained Floyd prone for more than nine minutes, actually knew that he was in substantial medical distress halfway into the restraint, yet failed to render Floyd medical aid.

The officers restrained Floyd prone on the ground between 8:19:18 and 8:27:42, a total of 9 minutes and 24 seconds.

At 8:19:14 p.m., Chauvin, Kueng, and Lane placed Floyd in the prone position on the concrete portion of Chicago Avenue. (Chauvin Tr. Exhs. 42 [Milestone Video] & 47 [Lane BWC Video].) Chauvin and Kueng knelt on Floyd's upper back and torso. (Chauvin Tr. Exhs. 43 [Kueng BWC Video] at 8:19:18 & 47 [Lane BWC Video] at 20:19:18.) Lane held Floyd's legs down. (Chauvin Tr. Exh. 47 [Lane BWC Video] at 8:19:18.) This collective restraint pinned Floyd to the ground in a stationary position. Chauvin and Kueng each grabbed Floyd's handcuffed hands and pulled them up, further restricting Floyd's movement. (Chauvin Tr. Exhs. 47 [Lane BWC Video] at 8:19:38-8:20:44 & 43 [Kueng BWC Video] at 8:19:28-8:25:06.)

---

[74] 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), 3630 (Zimmerman) (observing that placing a knee on a person's neck "can kill them").)

[75] These include the policies and training that officers are expected to provide CPR to a subject who does not have a pulse and to continue providing medical care until EMS arrives, to know that keeping a restrained subject in the prone position can contribute to serious bodily injury or death from position asphyxia, and to know that any person handcuffed and restrained in the prone position should be moved into the side recovery position as soon as possible.

Chauvin positioned himself near Floyd's head and placed his left knee across Floyd's neck. (Chauvin Tr. Exhs. 15 [Frazier Video] at 00:05, 47 [Lane BWC Video] at 8:19:18-8:28:42 & 43 [Kueng BWC Video] at 8:19:18-8:28:42.) Chauvin placed his right knee on top of Floyd's back, left arm, and against Floyd's chest, further restricting Floyd's ability to move and breathe. (Chauvin Tr. Exhs. 15 [Frazier Video] at 00:21, 43 [Kueng BWC Video] at 8:19:18-8:28:42.)

Chauvin leaned his body weight forward onto his bent left knee, occasionally to the point of lifting his left foot to hover off the ground. This added to the total weight bearing down on Floyd's upper back, neck, and head. (Chauvin Tr. Exh. 15 [Frazier Video] at 00:40, 01:17; Stoughton, Chauvin Tr. Trans. at 5176-77.) The image below shows Chauvin's left foot lifted slightly off the street, visually depicting the body weight Chauvin placed on Floyd.

(Chauvin Exh. 15 [Frazier Video] at 2:33.)

Kueng knelt on Floyd's torso holding his handcuffed wrist. (Chauvin Tr. Exh. 47 [Lane BWC Video] at 8:19:19.) Lane restrained Floyd's legs by kneeling on them and using his hands to

press them down. (Chauvin Tr. Exhs. 42 [Milestone Video] at 08:23:39 & 47 [Lane BWC Video] at 8:19:15-20:19:45, 8:23:38-8:23:41.)

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. (Tobin, Chauvin Tr. Trans. at 4484-4485, 4496; Chauvin Tr. Exhs. 185-191 [Autopsy photos of Floyd's face, left side of face, right shoulder, left shoulder, left hand, right hand, and close up of right hand, respectively).)

The officers could perceive that Floyd was in obvious distress as a direct result of their collective restraint.

For the first four minutes and 51 seconds of the officers' restraint – as the video evidence shows -- Floyd could speak. (Tobin, Chauvin Tr. Trans. at 4504-4505, 4540, 4545; Smock, Chauvin Tr. Trans. at 4693-4696.) Floyd told the officers, in a voice loud enough to be heard by all four officers, that he was not able to breathe 27 times during the restraint. (Stoughton, Chauvin Tr. Trans. at 5136-5137; Chauvin Tr. Exh. 47 [Lane BWC] at 8:20:13.) He complained that he was in pain. (Chauvin Tr. Exh. 47 [Lane BWC Video] at 8:22:25.)

About halfway through the restraint, Lane asked Chauvin and Kueng if they should roll Floyd onto his side. Chauvin rejected Lane's suggestion stating, "No. He's staying put where we got him." (Chauvin Tr. Exh. 43 [Kueng BWC Video] at 8:23:48-8:23:52.)

Almost immediately thereafter, after being held prone for about four minutes and 40 seconds, Floyd fell silent. (Chauvin Tr. Exhs. 11 [Milestone Video] at 08:24:53, 47 [Lane BWC Video] at 8:24:00, 43 [Kueng BWC Video] at 8:24:00 & 49 [Thao BWC Video] at 8:24:00.)

Forty-five seconds later – at 8:24:46 -- Lane informed Chauvin that Floyd was "passing out," but still Chauvin did not move. (Chauvin Tr. Exh. 47 [Lane BWC Video] at 8:24:46.)

A minute later -- at 8:25:52 -- Kueng told Chauvin he was not able to detect a pulse on Floyd. A few seconds later, Kueng repeated: "I can't find one." Chauvin still did not move off Floyd, cease the restraint, roll him into the side recovery position, and start CPR. (Chauvin Tr. Exh. 43 [Kueng BWC Video] at 8:25:52-8:26:12.)

After learning that Kueng could not find a pulse, Chauvin squeezed Floyd's fingers, attempting a pain compliance technique. Floyd did not respond. (Chauvin Tr. Exh. 47 [Lane BWC Video] at 8:26:12-8:26:20; Stiger, Chauvin Tr. Trans. at 4171-4172.)

Chauvin maintained the restraint, pressing his left knee on Floyd's neck even after the ambulance arrived, while Lane reported to EMS that Floyd was unresponsive, and while paramedic Smith was checking Floyd's carotid for a pulse. (Chauvin Tr. Exhs. 15 [Frazier Video] at 6:51, 6:58 & 56 (Still from video of Smith checking Floyd's pulse).)

The bystanders, including most notably Hansen, an off-duty Minneapolis firefighter, and Williams, the most vocal of the bystanders, repeatedly made Chauvin and the other officers aware that Floyd had become non-responsive, was passing out (and later, had passed out), was not speaking, and, later, also no longer appeared to be breathing, and demanded that Chauvin and Thao check Floyd's pulse and render medical aid. Thao heard the bystanders' pleas. (Chauvin Tr. Trans. at 5128 (Stoughton) & 3083 (Hansen); Chauvin Tr. Exh. 49 [Thao BWC Video] at 8:22:49-8:28:46.)

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 Tr. Exhs. 43

[Kueng BWC Video] at 8:22:48-8:28:46, 49 [Thao BWC Video] at 8:22:48-8:28:46 & 47 [Lane BWC Video] at 8:22:48-8:28:46.)

Despite all they were observing and hearing from the bystanders, none of the officers rendered any aid to Floyd until Lane joined Smith and Bravinder in the ambulance after the paramedics loaded Floyd into the ambulance on the stretcher. As the Thao, Lane, and Kueng BWC Videos and the Frazier cell-phone video show, they never turned Floyd onto his side into the recovery position and never sought to perform CPR; they terminated the restraint only at 8:28:46 when Bravinder and Smith prepared to load Floyd onto the stretcher.

(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.

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 under all the circumstances. (Stiger, Chauvin Tr. Trans. at 4147, 4181 (officers should have de-escalated force and no force should have been used after Floyd was in the prone position); Stoughton, Chauvin Tr. Trans. at 5151 ("No reasonable officer would have believed that that was an appropriate, acceptable, or reasonable use of force."); Mackenzie, Chauvin Tr. Trans. at 4096 ("If you don't have a pulse on a person, you'll immediately start CPR."); Blackwell, Fed. Tr. Trans. at 903 ("If [someone] stopped breathing, then you would start CPR while you are waiting for medical to arrive.").)

Chauvin completed 866 hours of training and continued education credits while employed by MPD after completing the MPD Academy, including training on use of force policies, including proper restraint techniques, the importance of reasonable and proportional

force, defensive tactics, crisis intervention, de-escalation, mental health awareness, procedural justice, medical interventions, and CPR. (Chauvin Tr. Exhs. 203 [Chauvin Career Training Records] & 111 [CPR Training Guide]; Blackwell, Chauvin Tr. Trans. at 3915-3918.)

Like all MPD officers, Chauvin was trained that "[w]hen someone is in your custody they're in your care." (Blackwell, Fed. Tr. Trans. at 882.) Although Floyd was in the officers' custody, instead of caring for Floyd, Chauvin restrained Floyd facedown with a knee on Floyd's neck, in what amounted to a dangerous unconscious neck restraint, a tactic the MPD does not teach, the MPDPPM does not authorize, and which is not generally accepted policing practice. (Blackwell, Fed. Tr. Trans. at 895-902, 1095, 1098-1099, 1104, 1111-1112 & Chauvin Tr. Trans. at 3922-3923.) Chauvin's use of force was also not proportional, which was all the more disproportionate in light of the additional physical force Kueng and Lane applied to Floyd, and he also failed to engage in de-escalation tactics. (Stiger, Chauvin Tr. Trans. at 4146-4147, 4176, 4178-4181 ("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.

Chauvin's use of force was not proportional to the severity of the crime at issue, the threat Floyd posed, or Floyd's resistance. As Chief Arradondo observed – and with which this Court agrees -- the crime that led to the dispatch to Cup Foods (the use and attempted use of a counterfeit $20 bill) is not particularly serious.

Even if Floyd did pose a minimal threat to the officers at the start of the restraint, he posed no threat once he was restrained prone on the Chicago Avenue concrete with three officers on top of him, and certainly did not pose a threat a few minutes into the restraint when

he had stopped moving altogether, lacked a pulse, and had lapsed into unconscious. (Stiger, Chauvin Tr. Trans. at 4155-4156, 4175-4176; Stoughton, Chauvin Tr. Trans. at 5118-5120, 5138; Longo, Fed. Tr. Trans. at 2807-2808, 2933.)

Chauvin did not apply the light to moderate pressure characteristic of a conscious neck restraint. Floyd's facial expressions indicate that Chauvin applied considerably more force characteristic of the more dangerous unconscious neck restraint. (Arradondo, Chauvin Tr. Trans. at 3837-3838.) But Floyd was not actively aggressive, and Chauvin was not trying to save Floyd's life, or anyone else's.

Contrary to his training, Chauvin did not stop using the neck restraint when Floyd stopped resisting. 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. (Arradondo, Chauvin Tr. Trans. at 3888;[76] *see also* Thao, Lane & Kueng BWC Videos and Frazier cell-phone video.)

Like all MPD officers, Chauvin was trained to place a subject in the side recovery position as soon as possible to alleviate asphyxia. Indeed, Lane twice suggested moving Floyd to his side. (Chauvin Tr. Exh. 43 [Kueng BWC Video] at 8:23:48-8:23:52, 8:25:40-8:25:41.) But

---

[76] As Chief Arradondo explained (Chauvin Tr. Trans. at 3839-40):

> [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 proned 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 never moved Floyd into the side recovery position. This grossly deviated from the standard of care a reasonable officer would have exhibited.

Like all MPD officers, Chauvin was trained to start CPR or otherwise render emergency aid when a subject stop breathing. 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, and even though Kueng informed Chauvin that Floyd did not have a pulse. This grossly deviated from the standard of care a reasonable officer would have exhibited.

Like all MPD officers, Chauvin was trained on the standard of care for handling a person in crisis. Chauvin was aware based on Floyd's comments and his own observations that Floyd was in crisis. But instead of treating Floyd with the special care required in that circumstance, Chauvin continued to restrain Floyd handcuffed and prone for 9 minutes 24 seconds. This grossly deviated from the standard of care a reasonable officer would have exhibited.

Like all MPD officers, Chauvin was trained that the MPD policies and standards apply to all individuals in MPD's custody and care. 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 moving, stopped breathing, and had no pulse. This grossly deviated from the standard of care a reasonable officer would have exhibited.

Chauvin consciously disregarded the risk to Floyd.

From his training, Chauvin knew the dangers of prone restraint and the importance of the side recovery position. Yet Chauvin made the conscious decision to hold Floyd in the prone position and rebuffed Lane's suggestion to place Floyd on his side.

Chauvin could hear Floyd's pleas for help, including his repeated claims that he could not breathe. He acknowledged them, but ignored them, and continued his restraint.

Chauvin could tell when Floyd's voice grew weaker and ultimately fell silent. Yet Chauvin continued his restraint.

Chauvin, kneeling on Floyd with his left knee on the back of Floyd's neck and his right knee in the left side of Floyd's torso/mid-back, could tell when Floyd had ceased to move or breathe. Yet Chauvin continued his restraint.

Chauvin could hear bystanders telling him that Floyd was not responsive, not moving, did not appear to be breathing, and pleading with him and his fellow officers to check Floyd's pulse. Yet Chauvin continued his restraint.

Chauvin knew that Kueng had tried and failed to find Floyd's pulse. From his training, Chauvin knew the importance of CPR as soon as possible. Yet Chauvin continued his restraint, even after Floyd had stopped talking, stopped moving, stopped breathing, and no longer had a pulse.

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

Chauvin's actions and use of force against Floyd were objectively unreasonable under the totality of the circumstances:

(1) Chauvin's actions were disproportionate to any perceived threat.

(2) Chauvin's use of an untrained neck restraint was both excessive force and objectively unreasonable.

(3) Chauvin used excessive force by keeping Floyd in the prone position for an extended period of time, which was objectively unreasonable given that Floyd was not resisting

from the time the officers took him to the street and were restraining him prone on the Chicago Avenue concrete. His small wriggling – but ever diminishing -- movements for the first few minutes of the restraint were struggles to seek to breathe.

(4) Chauvin's failure to de-escalate his use of force proportionate to Floyd's threat level was objectively unreasonable.

(5) Chauvin's continued use of force against Floyd—who was handcuffed and became unconscious during the restraint—was objectively unreasonable.

(6) 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 assisting Chauvin in physically restraining Floyd while Thao stood closely nearby. A Park Police officer was also across the street and could have been summoned the few yards to the location in which Floyd was being restrained in seconds, if necessary.

(7) 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.

3. Thao Knew That Chauvin's Conduct Grossly Deviated From the Standard of Care and Was Objectively Unreasonable.

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

Thao was aware of the restraint and the other officers' actions.

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

In his federal trial testimony, Thao admitted that he was looking at the other officers at several specific points while acting in his role as a self-described human “traffic cone” 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. (*See* Fed. Tr. Trans. at 3144, 3253-3254, 3256-3257, 3260-3261, 3279-3281, 3289-3290, 3298, 3302, 3306-3307.) Thao further admitted 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 8:23:48. (Fed. Tr. Trans. at 3289-90.) Thao admitted he could see that Floyd was “being held down” and that “Chauvin [was] using his knee on Mr. Floyd’s neck.” (*Id*. at 3228-3230, 3233, 3239, 3308.) Thao also admitted telling the bystanders that Floyd was “being held down.” (Id. at 3285.)

Even during the moments Thao could not completely see the other officers, Thao could still see Floyd and how Floyd was responding to the restraint. (Chauvin Tr. Exh. 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.)

The following composite image shows illustrative moments of Thao looking at the restraint, and clearly perceiving the interactions with Floyd.

(Fed. Tr. Exh. 21 [Combined Milestone and Frazier video].)

Thao directly interacted with Chauvin, Kueng, and Lane and advised them on their restraint, indicating he was aware of their actions. For instance, Thao located a hobble in the back of Lane's and Kueng's squad car, asked the other officers if they "want[ed] to hobble [Floyd] at this point," but personally advocated against using the hobble, suggesting "we'll just hold him until EMS" arrives, noting that "[i]f we hobble him, the sergeant is going to have to come out." (Chauvin Tr. Exh. 49 [Thao BWC] at 8:19:26-8:20:39.)

Thao was aware that Floyd was in medical distress.

Thao admitted that he could hear Floyd talking and could tell when Floyd ceased talking. (Fed. Tr. Trans. at 3229, 3231.)

Thao heard Floyd say that he could not breathe. (Chauvin Tr. Exh. 49 [Thao BWC] at 20:18:37.)

Thao admitted that Floyd appeared unconscious during the restraint. (Fed. Tr. Trans. at 3231.)

Thao heard and acknowledged the bystanders' repeated pleas that Floyd was in medical distress and needed medical care. For instance:

(1) Thao heard Williams yell, "he's non-responsive, right now. (Chauvin Tr. Exh. 49 [Thao BWC] at 8:25:33-:49.) Thao heard the bystanders say, "He's not moving." (Chauvin Tr. Exh. 15 [Frazier Video] at 05:39:00-5:40:00.)

(2) Thao heard Hansen repeatedly asking him if Floyd had a pulse. (Chauvin Tr. Exh. 15 [Frazier Video] at 04:54:00-05:47:00.)

(3) Thao heard Williams say Floyd is "not even resisting arrest right now." (Chauvin Tr. Exh. 49 [Thao BWC Video] at 8:24:40-:45.)

(4) Thao heard Funari say that Floyd was "passed out." (Chauvin Tr. Exh. 49 [Thao BWC Video] at 8:24:45.)

(5) Thao heard the bystanders yell, "Get the f _ _ k off him." (Chauvin Tr. Exh. 49 [Thao BWC Video] at 8:25:16-:18.)

(6) Thao heard the bystanders yell, "Get off his neck." (Chauvin Tr. Exh. 49 [Thao BWC] at 8:21:41, 8:22:49.)

(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 Tr. Exh. 49 [Thao BWC Video] at 8:24:25; State's Supp. Exh. 24 [BCA Video Interview with Thao], at 01:11:20; *see also* State's Supp. Exh. 23 (Transcript of BCA Video Interview with Thao, at 27510).)

(8) Thao heard Hansen and Williams repeatedly demand that the officers check for a pulse. (Chauvin Tr. Exh. 49 [Thao BWC Video] at 8:25:45-20:26:03.)

(9) Thao acknowledged that he could generally hear what the crowd was saying and admitted responding to the crowd. (Fed. Tr. Trans. at 3295.)

(10) Thao also 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. Trans. at 3289-3290.)

(11) Nearly a minute later, Thao heard the bystanders telling him that Floyd was not talking. (Chauvin Tr. Exh. 49 [Thao BWC Video] at 8:24:20-:25.)

At a minimum, Thao's actions reflected a subjective knowledge that Floyd was in medical distress.

Thao increased the emergency call code from a Code 2 to a Code 3, meaning the ambulance should use lights and sirens. Thao testified he did so because he believed Floyd was undergoing excited delirium, which he characterized as a "serious medical condition." (Fed. Tr. Trans. at 3140, 3359.) Thao knew positional asphyxia can be a concern with excited delirium. (*Id*. at 3223, 3367.)

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. Trans. at 3153.)

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. Exh. 24 [BCA Video Interview with Thao], at 01:02:03; *see* Fed. Tr. Trans. at 3125-26.) Based on his training, Thao knew that a person experiencing a drug overdose is in medical distress.

Thao's contrary testimony implying he had more limited knowledge of the events is not credible and is contradicted by overwhelming video evidence as well as by Thao's own admissions.

Thao maintained that, six minutes into the restraint, it was unclear to him if Chauvin was applying force to Floyd with his knee because Chauvin's knee might instead "be hovering" over Floyd. (Fed. Tr. Trans. at 3317-18.) Thao also testified that he could not tell whether or

not Floyd was resisting because Thao was "not in contact with Mr. Floyd." (*Id*. at 3287.) But, as previously noted, Thao personally watched as Chauvin, Kueng, and Lane restrained Floyd. The notion that Thao thought Chauvin's knee was merely hovering over Floyd is not credible.

Thao testified that he assumed Floyd was "still breathing and fine," had a pulse, and was not "in cardiac arrest." (Fed. Tr. Trans. at 3149.) Thao also testified that he did not understand the medical significance of Floyd's condition until the fire department arrived. (*Id*. at 3154-55.) But Thao received a "play-by-play" of the restraint from the bystanders and dismissed their pleas for Thao to intervene. 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. (*Id*. at 3229, 3231, 3224.) Moreover, Thao warned Minneapolis Park Police Officer 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. Exh. 24 [BCA Video Interview with Thao], at 00:42:11-00:42:52; *see also* State's Supp. Exh. 23 [Transcript of BCA/Thao Video Interview], at 27498.) The idea that Thao failed to act because he did not understand the gravity of Floyd's medical situation is not credible.

Thao knew that the restraint he witnessed, and intentionally assisted, grossly deviated from the standard of care and risked death.

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. (Blackwell, Fed. Tr. Trans. at 988-989, 996; Fed. Tr. Exhs. 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 Tr. Exh. 111 [CPR Training Guide].)

Thao was trained to place a subject in the side recovery position as soon as possible to alleviate the risk of positional asphyxia. 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. Trans. at 3367.) Despite his training, Thao knew that Chauvin, Kueng, and Lane had restrained Floyd in the prone position with all three atop of him for many minutes, including for minutes after Floyd was no longer talking, moving, and appeared to have passed out.

Thao was regularly trained on how to provide CPR. 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. Trans. at 3149.) 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." (*Id*. at 3202-3203, 3170.) Yet Thao knew that no one was performing CPR on Floyd even after Floyd stopped talking and even after Floyd appeared unconscious.

As with the other officers, Thao had been trained only to use appropriate force proportional to a subject's resistance and to evaluate the use of force and de-escalate as necessary throughout a restraint. (Fed. Tr. Trans. at 3162, 3171-73; Fed. Tr. Exh. 61 [2018 Annual Refresher Defensive Tactics PowerPoint]; Chauvin Tr. Exh. 119 [MPD 2018 Use of Force In-Service PPT].) Thao also acknowledged that an officer cannot continue to use force on someone who is not resisting, even a person suspected to be suffering from excited delirium.

(Fed. Tr. Trans. at 3313, 3223.) Thao was also trained that it is unnecessary to use force on someone who is unconscious or does not have a pulse. (*Id*. at 3177.) Yet Thao knew Chauvin, Kueng, and Lane continued restraining Floyd after he stopped resisting, was no longer speaking, and appeared unconscious.

Thao was trained on the risk of injury when officers administer force to a person's head, neck, and sternum. Thao knew that MPD policy prohibits using a conscious neck restraint unless the subject is "actively resisting." (Fed. Tr. Trans. at 3194-3195.) Yet Thao knew that Chauvin had his knee on Floyd's neck and that Chauvin's knee remained on Floyd's neck long after Floyd was no longer resisting or speaking. (State's Supp. Exh. 24 [BCA Video Interview with Thao], at 01:05:29-:54, 01:08:17-: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." (*Id*. at 01:32:18-01:32:38.)

Thao knew that Chauvin was not using a trained neck restraint. (State's Supp. Exh. 24 (BCA Video Interview with Thao], at 01:05:56-01:06:06; *see also* State's Supp. Exh. 23 [Transcript of BCA Video Interview with Thao], at 27507.) And Thao admitted that he was obligated to stop another police officer if he saw that officer using excessive force. (Fed. Tr. Trans. at 3177-3178.) Yet Thao stood by and did not stop Chauvin during the entire 9 minute and 24 second restraint.

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

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

First, Thao actively discouraged his fellow officers from using the hobble, which the officers could have used to restrain Floyd in the prone position. Instead, Thao encouraged all

three officers to continue restraining Floyd face down on the ground until EMS arrived because using the hobble might result in a superior officer reviewing their use of force. Thao also encouraged Chauvin, Kueng, and Lane throughout the restraint to maintain their positions and to ignore Floyd's increasingly desperate pleas for help during the first half of the restraint (Floyd was silent, no longer talking during the second half of the restraint).

Thao's defense for discouraging the use of the hobble is not credible. In his interview with the BCA, Thao stated that the officers decided against using a hobble on Floyd, deciding to maintain their personal physical restraint of him until the ambulance arrived, because the officers would otherwise have to undo the hobble when the ambulance arrived. (State's Supp. Exh. 24 [BCA Video Interview with Thao], at 00:34:26-00:36:29; *see also* State's Supp. Exh. 23 [Transcript of BCA Video Interview with Thao], at 27496-27497.) In his testimony at the federal trial, 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. Trans. at 3134, 3230.)

This testimony is internally inconsistent and not credible. As noted earlier, the "pillar" of MPD's use of force policy is the "sanctity of life." 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. Trans. at 3812.)

Thao also encouraged Chauvin, Kueng, and Lane to maintain their positions and to ignore Floyd's pleas for help through other statements. 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 Tr. Exh. 49 [Thao BWC] at 20:21:37-:40, 20:21:47-:53, 20:23:00-:41, 20:23:40-:50; *see also* Systrom, Fed. Tr. Trans. at 1682.)

Second, Thao intentionally prevented the bystanders from providing medical aid to Floyd. Thao expressly refused to allow Hansen—a trained Minneapolis firefighter—to tend to Floyd and shouted at her to "back off!" (Chauvin Tr. Exh. 49 [Thao BWC Video] at 8:25:33.)

These actions intentionally assisted Chauvin, Kueng, and Lane in continuing the restraint.

Thao positioned himself between Chauvin, Kueng, and Lane and the group of concerned citizens. (Chauvin Tr. Exh. 42 [Milestone Video] at 08:21:34-08:29:53.) By doing so, Thao ensured that the bystanders remained on the sidewalk. (Chauvin Tr. Exh. 49 [Thao BWC Video] at 8:25:18; Thao, Fed. Tr. Trans. at 3144.)

Thao even antagonized the bystanders by making comments like "This is why you don't do drugs, kids." (Chauvin Tr. Exh. 49 [Thao BWC Video] at 20:23:16-:18.)

Thao's failure to intervene to prevent Chauvin and the other officers' unreasonable force and his own failure to render medical aid to Floyd further supports a finding of Thao's intent to assist the officers' unreasonable and dangerous restraint.

Notwithstanding MPD policy that imposes a duty on every MPD officer present at any scene where physical force is being applied either to stop or attempt to stop another officer

when force is being inappropriately applied or is no longer required, rather than intervene, Thao instead stood by—and further enabled—his fellow officers as they continued restraining Floyd. Thao's failure to intervene indicates his intent to aid the officers through his presence and actions.

Thao also had a professional and legal obligation to render medical aid to Floyd, who was exhibiting medical distress. Thao's failure to provide first aid to Floyd also supports a finding of his intent to aid the officers through his presence and actions.

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.

In his federal testimony, Thao suggested that his actions (or lack thereof) were justified because his job was merely to deal with the bystanders. (Fed. Tr. Trans. at 3144, 3148.) Thao characterized the bystanders as hostile because they were "cursing" at him. (State's Supp. Exh. 24 [BCA Video Interview with Thao], at 01:10:46-:58; *see also* State's Supp. Exh. 23 [Transcript of BCA Video Interview with Thao], at 27510.) But although the bystanders were outspoken in their concern for Floyd's life, they were not threatening or violent, as Thao himself acknowledged that the crowd was simply 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 Tr. Exh. 49 [Thao BWC Video] at 20:24:20-:25; Fed. Tr. Trans. at 3260; State's Supp. Exh. 24 [BCA Video Interview with Thao], at 01:11:22-01:12:20; *see also* State's Supp. Exh. 23 [Transcript of BCA Video Interview with Thao], at 27497.)

Thao's actions demonstrate that he was not actually concerned that the bystanders posed a real threat to the officers or Floyd. Although MPD officers are trained to call for backup and communicate with officers on scene when they feel a crowd of bystanders poses a risk, Thao did not call for law enforcement backup or ask Officer Chang to assist him with crowd control, undercutting any implication that the bystanders were truly hostile. (Fed. Tr. Trans. at 3232.)

Thao's flippant comments to the crowd – *e.g.*, "this is why you don't do drugs, kids"; "he's talking so he's breathing" -- likewise demonstrate that he was not actually concerned about any potential threat from the bystanders.

Even had some of the bystanders truly 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.

Thao also suggested that, because he assumed the other officers were "[t]aking care of [Floyd]," he did not need to provide Floyd with medical aid. (Fed. Tr. Trans. at 3145.) That flies in the face of MPD policy and his own training. Thao himself 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. Trans. at 3292.) Thao admitted that he could have, although he did not, attempt to call out to the other officers or otherwise communicate with them about whether Floyd had a pulse or whether any of them was rendering medical aid to Floyd. (*Id*. at 3297-3298, 3329-3231, 3333, 3335-3336.)

As summarized above, 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 Chauvin, Kueng, and Lane were not rendering medical aid to Floyd. Despite this, Thao did not check Floyd's pulse, provide CPR, or otherwise provide aid to Floyd.

Thao claimed that he believed Chauvin was using a trained neck restraint. But Thao admitted that he saw Chauvin's knee on Floyd's neck. (State's Supp. Exh. 24 [BCA Video Interview with Thao], at 01:08:16-:26; *see also* State's Supp. Exh. 23 [Transcript of BCA Video Interview with Thao], 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. Exh. 24 [BCA Video Interview with Thao], at 01:05:10-:50.)

Thao testified that he thought Chauvin's knee on Floyd's neck was "not uncommon" because officers had "been trained on it." (Fed. Tr. Trans. at 3141.) But Thao also testified that Chauvin was not using "a neck restraint as defined by MPD" or a "trained neck restraint." (*Id*. at 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. (*Id*. at 3189-92.)

Furthermore, Thao admitted that he had not seen the specific maneuver he observed Chauvin using on Floyd or a maneuver similar to that used previously. (Fed. Tr. Trans. at 3193-3194; State's Supp. Exh. 24 [BCA Video Interview with Thao], at 01:05:56; *see also* State's Supp. Exh. 23 [Transcript of BCA Video Interview with Thao], at 27507-27508.)

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. Trans. at 3194-3195 (Thao); *see* Fed. Gov't Ex. 61 (2018 Annual Refresher Defensive Tactics PowerPoint).)

Testimony at both the Chauvin and federal trials consistently established that the MPD does not train officers to use their knee to implement a neck restraint in the manner performed by Chauvin. (Mackenzie, Fed. Tr. Trans. at 1941, 1979; Blackwell, Chauvin Tr. Trans. at 3922-3923 & Fed. Tr. Trans. at 1095, 1098-1099, 1104, 1111-1112; Zimmerman, Chauvin Tr. Trans. at 3629-3630 & Fed. Tr. Trans. at 2462.)

Thao suggested that his actions (or lack thereof) were justified because he believed Floyd was suffering from excited delirium. (Fed. Tr. Trans. at 3343, 3286.) 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. Trans. at 3173-3174, 3219-3120.) 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." (*Id*. at 3218.)

But Thao also acknowledged that an officer may not, under MPD policy, use force on a person who is not resisting, even if the officer suspects that person is suffering from excited delirium and might later pose a threat. (Fed. Tr. Trans. at 3223, 3173-3174, 3313.) 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. (*Id*. at 3223, 3361-3362.) Thao further admitted that he "ignored" his training to roll an individual with excited delirium on their side to prevent positional asphyxia. (*Id*. at 3367.)

Thao suggested that his actions (or lack thereof) were justified because he believed Floyd was experiencing a drug overdose. As described earlier, under MPD training and policy, officers are required to consider if 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. Officers are also trained that individuals in crisis may require special care.

Thao knew from the dispatch call that Floyd was possibly intoxicated. From his observations after arriving at the scene, Thao thought Floyd was on drugs, and perhaps experiencing a drug overdose, which is why he thought calling the ambulance was necessary. (Chauvin Tr. Exh. 49 [Thao BWC Video] at 20:21:24; State's Supp. Exh. 24 [BCA Video Interview with Thao], at 00:57:10-:22, 01:02:05-:11; *see also* State's Supp. Exh. 23 [Transcript of BCA Video Interview with Thao], at 27503-05; Fed. Tr. Trans. at 3125-3126.)

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 Tr. Exh. 49 [Thao BWC Video] at 20:23:16-:18; *see also id.* at 20:26:04 ("Don't do drugs, guys.").)

5. Thao's Actions Were Objectively Unreasonable Under the Circumstances.

For many of the same reasons already discussed, Thao's actions—discouraging use of the hobble, encouraging the dangerous prone restraint, and interposing himself between the bystanders rather than intervening to prevent Chauvin's, Kueng's and Lane's unreasonable

force or rendering aid to Floyd—were objectively unreasonable under the totality of the circumstances.

Thao perceived the excessive restraint. Thao was trained on MPD's use of force and medical policies, which are consistent with generally accepted policing practices. 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. 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. Based on his own observations and admissions, Thao believed that Floyd was suffering from a medical or drug-related crisis.

Thao was trained on proper restraint tactics, including the use of conscious and unconscious neck restraints. Thao was trained that officers may use only proportional force and must continually reevaluate their use of force and de-escalate as necessary. Thao also knew that MPD policy prohibits using force against someone who is not resisting. Thao knew that he had an affirmative duty to intervene to prevent fellow officers from using unreasonable force.

But despite his training and knowledge, Thao did not seek to place Floyd into the side recovery position, render any kind of medical aid, dissuade Chauvin, Kueng, or Lane from excessive force, or otherwise intervene to mitigate the obvious danger to Floyd. 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 Minneapolis firefighter—from rendering medical aid, and

actively antagonized the bystanders. Thao's actions contravened his training and were objectively unreasonable under the circumstances.

Thao's contrary justifications for his actions are not credible, and do not make his actions objectively reasonable under the circumstances.

6. The Officers' Acts Took Place on May 25, 2020 in Hennepin County.

The interaction between the officers and Floyd occurred on May 25, 2020 outside Cup Foods at the intersection of 38th and Chicago in the City of Minneapolis. All four officers arrived on scene after 8:00 p.m. that evening. The officers' restraint of Floyd occurred from 8:19:18 to 8:28:42 that evening. Floyd was declared dead at 9:25 p.m. on May 25, 2020 at HCMC, in downtown Minneapolis. The City of Minneapolis is located in Hennepin County.

CONCLUSIONS OF LAW

I. ELEMENTS OF THE CRIME

A. Second-degree Manslaughter

A person 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."[77] Minn. Stat. § 609.205(1); *see* CRIMJIG 11.56 (elements of second-degree manslaughter).

Second-degree manslaughter thus requires proof of:

(a) "objective gross negligence on the part of the actor"; and

(b) "subjective 'recklessness in the form of an actual conscious disregard of the risk created by the conduct.'"

[77] "To cause" means to be a substantial causal factor in causing Floyd's death.

State v. McCormick, 835 N.W.2d 498, 507 (Minn. App. 2013) (citation omitted).

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.' " *McCormick*, 835 N.W.2d at 507 (citation omitted).

The subjective recklessness component requires proof of the "actor's state of mind." *McCormick*, 835 N.W.2d at 507. That is usually established through circumstantial evidence, "by inference from words or acts of the actor both before and after the incident." *Id.* (citation omitted).

B. <u>Aiding and Abetting Liability</u>

Minnesota's aiding and abetting statute provides:

> 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.

Aiding and abetting is not a separate substantive offense under Minnesota law. Rather, it is a theory of criminal liability that "makes accomplices criminally liable as principals." *State v. Ezeka*, 946 N.W.2d 393 407 (Minn. 2020). Stated otherwise, 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.

The phrase "intentionally aids" encompasses two "important and necessary" *mens rea* elements which ensure the accomplice has the same criminal culpability as the principal. *State v. Milton*, 821 N.W.2d 789, 805 (Minn. 2012).

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. App. 2017). Critically, a defendant charged criminally with aiding and abetting need not 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" 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.*

Second, the defendant must "intend[] his presence or actions to further the commission of that crime." *Milton*, 821 N.W.2d at 808. 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).

"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 criminally liable but ensure that unwitting accomplices do not face undeserved criminal liability.

Under Minnesota law, a defendant may be found criminally 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*.

C. <u>Definitions and General Propositions of Criminal Law</u>

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.

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).

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.

D. <u>Officers' Legal Right to Use Reasonable Force</u>

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.

E. Elements of Aiding and Abetting Second-degree Manslaughter

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

(1) Chauvin[78] committed second-degree manslaughter, meaning 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;

(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.

---

[78] 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. As such, the underlying crime is not necessarily limited to the acts of a single principal but may include multiple actors. The Court, however, specifically identifies Chauvin as the principal who perpetrated the underlying crime: the jury in the *State v. Chauvin* trial found Chauvin liable as a principal on the charges of unintentional second-degree murder and second-degree manslaughter and Chauvin's conviction and sentence on the charge of unintentional second-degree murder was affirmed on appeal two weeks ago, *see State v. Chauvin*, __ N.W.2d __, 2023 WL 2960366, at *9-*11 (Minn. App. April 17, 2023), and this Court concludes that Thao's conduct with respect to Chauvin satisfies each of the requisite elements of aiding and abetting liability.

Minn. Stat. § 609.205(1); *see* CRIMJIG 11.56.

The State is not required to prove that Thao intended for Floyd's death to occur. The State also is not required to prove that Thao knew Chauvin consciously disregarded the risk created by Chauvin's conduct (although the Court does conclude that the State has proved this beyond a reasonable doubt).

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

Although the jury found Chauvin guilty beyond a reasonable doubt in the trial in *State v. Chauvin*, the State must nevertheless prove Chauvin's guilt beyond a reasonable doubt in this proceeding. The Court is not relying on the jury's verdict in *State v. Chauvin* in reaching its findings, conclusions of law, and verdict here and has only considered the relevant stipulated evidence before it with respect to the charge against Thao.

II. THAO AIDED AND ABETTED SECOND-DEGREE MANSLAUGHTER.

A. <u>Element One: Chauvin committed second-degree manslaughter.</u>

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

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.

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.

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.

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.

B. <u>Element Two: Thao knew Chauvin was creating an unreasonable risk to Floyd</u>

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:

(a) Thao was aware that Chauvin was not using a trained neck restraint;

(b) Thao was trained to place a subject in the side-recovery position to avoid the risk of positional asphyxia;

(c) Thao was trained to provide CPR to someone in medical distress; and

(d) 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.

C. Element Three: Thao intended that his presence and actions aided Chauvin's <u>commission of second-degree manslaughter.</u>

Based on the Court's factual findings, there is proof beyond a reasonable doubt that Thao intended that his presence or actions 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.

D. <u>Element Four: Venue Is Established.</u>

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.

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 9 minutes and 24 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.

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 9 minutes and 24 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.

PAC