

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

State of Minnesota,

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

Plaintiff,

vs.

**STATE'S NOTICE OF INTENT TO SEEK AN
UPWARD SENTENCING DEPARTURE**

Tou Thao,

Defendant.

To: Judge Peter A. Cahill, Judge of District Court, the above-named Defendant and Defendant's attorney, Robert Paule, 920 Second Avenue South, Ste. 975, Minneapolis, MN 55402.

PLEASE TAKE NOTICE THAT, pursuant to Minn. Stat. § 244.10, Minn. R. Crim. P. 7.03, the Minn. Sent. Guidelines, *Blakely v. Washington*, 542 U.S. 296 (2004), and pertinent case law, the State will seek an upward-sentencing departure in the above-entitled case. There are at least five bases for an upward departure.

1. George Floyd, the victim, was particularly vulnerable because officers had already handcuffed him behind his back and then placed him chest down on the pavement, and Mr. Floyd clearly and repeatedly told the officers he could not breathe. Minn. Sent. Guidelines 2.D.3.b(1); *State v. Givens*, 544 N.W.2d 774, 776 (Minn. 1996).

2. Mr. Floyd was treated with particular cruelty. Despite Mr. Floyd's pleas that he could not breathe and was going to die, as well as the pleas of eyewitnesses to get off Mr. Floyd and help him, Defendant and his codefendants continued to restrain Mr. Floyd. Defendant suggested to his codefendants that they restrain Mr. Floyd face-down on the ground. Defendant's codefendants then kept their knees and hands on Mr. Floyd's neck, back, and legs to

hold him prone on the ground for approximately nine minutes, during at least four minutes of which Mr. Floyd was motionless. Defendant, meanwhile, pushed back the crowd of concerned bystanders, dismissed their concerns, and prevented them from intervening to provide Floyd medical assistance. The actions of Defendant and his codefendants inflicted gratuitous pain on Mr. Floyd. Those eyewitnesses, of whose presence Defendant was aware, had to watch Mr. Floyd die. Defendant also did not provide Mr. Floyd with any medical assistance and discouraged the efforts of others to provide such assistance. Minn. Sent. Guidelines 2.D.3.b(2); *State v. Hicks*, 864 N.W.2d 153, 159-60 (Minn. 2015); *Tucker v. State*, 799 N.W.2d 583, 587-99 (Minn. 2011); *State v. Smith*, 541 N.W.2d 584, 590 (Minn. 1996); *State v. Harwell*, 515 N.W.2d 105, 109 (Minn. Ct. App. 1994).

3. Defendant abused a position of authority in that he was a licensed police officer in full uniform who, in conjunction with other officers, took full custody of Mr. Floyd. *State v. Lee*, 494 N.W.2d 475, 482 (Minn. 1992).

4. Defendant committed the crime as part of a group of three or more offenders who all actively participated in the crime. Minn. Sent. Guidelines 2.D.3.b.(10).

5. Defendant committed the crime in the presence of multiple children, and Defendant's criminal conduct was witnessed by children. Minn. Sent. Guidelines 2.D.3.b(13); *State v. Profit*, 323 N.W.2d 34, 36 (Minn. 1982).

Dated: August 28, 2020

Respectfully submitted,

KEITH ELLISON
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State of Minnesota

/s/ Matthew Frank
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