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August 3, 2023

The Honorable Peter A. Cahill
Hennepin County Government Center
300 South Sixth Street
Minneapolis, MN 55487

Re: *State v. Tou Thao*, Court File No.: 27-CR-20-12949
State's Letter Brief Regarding Sentencing

Dear Judge Cahill,

On May 25, 2020, George Floyd (“Floyd”) died, face-down on a public street, at the hands of law enforcement officers who had sworn to protect his life. Then Minneapolis Police Department (“MPD”) Officer Derek Chauvin pressed his knees into Floyd’s neck and back. Another officer, J. Alexander Kueng, knelt on Floyd’s lower back and held his arms. A third officer, Thomas Lane, restrained Floyd’s legs. The fourth officer, Tou Thao (“Thao”)—the defendant in this case—actively encouraged his fellow officers’ dangerous prone restraint, dismissed Floyd’s pleas, and mocked Floyd’s condition. Thao held back a group of concerned bystanders, including an off-duty firefighter, among others, who pleaded with Thao to check Floyd’s pulse, yet Thao physically prevented them from rendering aid.

With the unrelenting weight of the officers on top of him, and the hard pavement beneath him, Floyd struggled to breathe and begged for his life. The excruciating encounter persisted for over 9 minutes, throughout which Floyd’s desperate pleas were ignored; he begged for air, he became unresponsive, he lost consciousness, he stopped breathing, and his heart stopped beating. And even then, the officers maintained their positions. Only when paramedics arrived to lift Floyd’s lifeless body off the pavement did the restraint finally cease.

On October 24, 2022, Thao waived his right to a jury and agreed to a stipulated evidence trial on Count II, aiding and abetting manslaughter in the second degree. On May 1, 2023, this Court found Thao guilty of aiding and abetting second-degree manslaughter and adjudicated guilt on Count II.¹ (*See* Verdict, Findings of Fact, Conclusions of Law, and Memorandum Opinion in Stipulated Evidence Trial (May 1, 2023).)

The presumptive sentence for aiding and abetting second-degree manslaughter, a severity level 8 offense, with a criminal history score of 0, is 48 months’ imprisonment, with a discretionary

¹ The Court dismissed Count I pursuant to the parties’ agreement. (*See* Verdict, Findings of Fact, Conclusions of Law, and Memorandum Opinion in Stipulated Evidence Trial (May 1, 2023).)

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guideline range of 41 to 57 months. The State requests that the Court impose a sentence of 51 months' imprisonment on Count II, to be served concurrently with Thao's federal sentence.² An executed 51-month term of imprisonment falls within the discretionary guideline range and is an appropriate sentence for several reasons.

First, Thao's conduct was calculated, deliberate, and directly facilitated and perpetuated the restraint that led to Floyd's death. Throughout the encounter, Thao was aware of Floyd's distress and the dangerousness of the ongoing prone restraint. Thao discouraged the officers from using a hobble—a device that, if properly utilized, would have saved Floyd's life. (*Id.* at 8.) Instead, Thao actively encouraged his fellow officers to continue to restrain Floyd prone on the ground. (*Id.* at 8, 158-60.) Thao also “expressly refused to allow” “a trained Minneapolis firefighter” “to tend to Floyd,” despite Floyd's obvious distress. (*Id.* at 160.) In short, Thao bears personal responsibility for what happened that day. This Court should impose a punishment that reflects Thao's culpability.

Second, Thao's conduct was even more egregious in light of his extensive experience and training. Thao completed the police academy in 2009, and became a full-time officer in 2012, serving in that capacity for 8 years. (*Id.* at 118.) Over the course of his multi-year career, Thao completed 1,014 hours of MPD training, including medical training, defensive tactics training, procedural justice training, and crisis intervention training. (*See id.* at 53, 156.) Above all, Thao had been trained about the importance of placing individuals in the side recovery position to alleviate the risk of positional asphyxia. (*Id.* at 53, 157.) Yet despite his extensive on-the-job experience and copious training, Thao intentionally encouraged the use of a dangerous prone restraint, discouraged the use of a hobble, and prevented an off-duty firefighter from rendering aid. In short, Thao knew better, but did not do better.

Third, Thao acted callously and cruelly. Thao mocked Floyd, telling the concerned bystanders: “This is why you don't do drugs, kids.” (*Id.* at 25.) Thao dismissed Floyd's pleas: “He's talking, so he's fine.” (*Id.*) And Thao encouraged the dangerous behavior for selfish reasons: In Thao's words, if the officers used a hobble, “a sergeant's going to have to come [to the scene].” (*Id.* at 22.) This Court put it best: “Tou Thao did not want to follow the proper protocol and the work it would entail. George Floyd died as a result.” (*Id.* at 8.)

Fourth, a significant term of incarceration would serve as a deterrent for similar misconduct. Police officers enforce the law; they are not above the law. A 51-month prison sentence will discourage other public servants from engaging in similar criminal behavior or abuses of authority.

² Thao was previously convicted in the United States District Court for the District of Minnesota of 18 U.S.C. § 242 (deprivation of rights under color of law) offenses related to this same incident. The federal district court sentenced Thao to 42 months' imprisonment. Assuming he receives good time credit, Thao will likely serve about 85% of his federal sentence in custody, or approximately 35.7 months. *See* 18 U.S.C. § 3624(b) (good time credit of “up to 54 days for each year”). If the Court sentences Thao to 51 months' imprisonment in this matter (concurrent with his federal sentence), Thao would likely serve two-thirds, i.e., 34 months in custody on his state sentence. Minn. Stat. § 244.101, subd. 1.

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Fifth, Thao has neither accepted responsibility nor shown any remorse for his actions.

For all of the foregoing reasons, the State asks the Court to impose a 51-month executed sentence of imprisonment on Count II for Tou Thao's role in the death of George Floyd.³

Respectfully submitted,

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cc: Robert Paule (via e-service)

³ The Court should also impose appropriate fines, fees, and conditions. The State requests the Court impose fines and fees consistent with those imposed for the codefendants in this matter in the total amount of \$128 (\$50 fine, \$75 surcharge, \$3 library fee). This Court also imposed conditions on codefendants to include requiring a DNA sample and a lifetime prohibition on the possession of firearms and ammunition. The State has not received a request for restitution.