

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

State of Minnesota,

Case Type: Criminal
Court File No. 27-CR-20-12951

Plaintiff,

vs.

Thomas Kiernan Lane,

Defendant.

**STATE'S RESPONSE OPPOSING
DEFENDANT'S MOTION TO DISMISS
FOR LACK OF PROBABLE CAUSE****INTRODUCTION**

Defendant Thomas Kiernan Lane is charged by complaint with aiding and abetting second-degree murder, in violation of Minn. Stat. § 609.19, subd. 2(1) and § 609.05, subd. 1, and aiding and abetting second-degree manslaughter, in violation of Minn. Stat. § 609.205(1) and § 609.05, subd. 1. Lane and three codefendants, Derek Chauvin, J. Alexander Kueng, and Tou Thao, are former police officers charged in connection with the death of George Floyd. Lane has filed a motion to dismiss the complaint for lack of probable cause. His motion should be denied.

There is probable cause for both offenses. On May 25, 2020, Chauvin, Kueng, and Lane pinned Floyd to the ground, face down, after he was suspected of using a counterfeit \$20 bill to purchase a pack of cigarettes. Chauvin pressed his knee into Floyd's neck. Kueng knelt on Floyd's back and held Floyd's handcuffed arms in place. Lane, for his part, restrained Floyd's legs with his hands and knees. And Thao—who saw what the other officers were doing, heard Floyd's cries for help, and suggested that the other officers continue pinning Floyd to the ground

in that position—stood watch nearby, pushing back a group of concerned citizens who had gathered at the scene and preventing them from intervening to save Floyd.

In the first five minutes Floyd was on the ground, he told the officers at least twenty times that he could not breathe. He told them nearly ten times that he was dying. And then he fell silent. He stopped moving. He stopped breathing. And the officers could not find a pulse. Nonetheless, the officers continued to pin him to the ground—with Chauvin kneeling on Floyd’s neck, Kueng on Floyd’s back, Lane on Floyd’s legs, and Thao standing watch to prevent the bystanders on the sidewalk from approaching the other officers and Floyd.

All told, the officers pinned Floyd in that position for about nine minutes—approximately five times longer than the national anthem, and four times longer than President Lincoln’s Gettysburg Address. During that time, Lane continued to restrain Floyd’s legs for about three minutes after telling the other officers that Floyd was “passing out,” and for a minute and a half after Kueng said Floyd did not have a pulse. Lane continued to kneel over Floyd’s legs even after telling emergency personnel who arrived on the scene that Floyd was “not responsive.”

Probable cause is manifest. The facts here “would lead a person of ordinary care and prudence to hold an honest and strong suspicion” that Lane aided and abetted second-degree murder and second-degree manslaughter. *State v. Ortiz*, 626 N.W.2d 445, 449 (Minn. App. 2001). The evidence is more than sufficient to establish probable cause for both offenses.

This Court should therefore deny Lane’s motion to dismiss.

STATEMENT OF FACTS

The following statement of facts is drawn from the complaint filed on June 3, 2020, and has been supplemented with other available record evidence. The State incorporates here the statement of probable cause and finding of probable cause contained in the complaint.

A. The Events of May 25, 2020

1. At approximately 8:08 p.m. on May 25, 2020, Thomas Lane and J. Alexander Kueng—both police officers at the time—responded to a report that an individual had used a counterfeit bill at Cup Foods on the corner of 38th Street and Chicago Avenue in Minneapolis. When the officers entered the store, the manager of Cup Foods showed them a \$20 bill that he believed was counterfeit. He stated that the man who had passed the \$20 bill was sitting in a blue vehicle across the street. (Kueng & Lane, Body Worn Camera (“BWC”) at 20:08:47-20:09:06.)¹ Lane and Kueng did not inspect the bill. *See* Lane Mot. to Dismiss Ex. 1, at 23. Instead, they immediately approached the vehicle. (Kueng & Lane, BWC at 20:09:06-28.)

George Floyd was sitting in the vehicle’s driver’s seat. When Lane approached the driver’s side, Floyd was speaking to the two other passengers in the car. Floyd was startled when Lane tapped on the window. (Lane, BWC at 20:09:28-32.) He cracked the door open and apologized. Lane instructed Floyd to show his hands. (Lane, BWC at 20:09:32-40.) Seconds later, Lane pulled his firearm on Floyd, pointed it at Floyd, and yelled at him to “put your fucking hands up right now.” (Lane, BWC at 20:09:41-44.) Visibly shaken, Floyd asked Lane what he had done wrong, put his hands up, and placed them on the wheel, complying with Lane’s instructions. Instead of answering Floyd’s question, Lane continued to curse at Floyd, telling him to “keep your fucking hands on the wheel.” (Lane, BWC at 20:09:45-58.) Floyd immediately complied. Lane instructed Floyd to put his hands on his head, and Floyd again complied. Lane then lowered his gun. (Lane, BWC at 20:10:17-22.)

Floyd, clearly upset, repeated at least five times that he was “sorry.” (Lane, BWC at 20:09:36-20:10:04.) He also repeated at least five times that he had been shot before, and even

¹ Lane submitted the Lane and Kueng BWC videos in support of his motion as Exhibits 3 and 5.

told Lane that he had been shot “the same way.” (Lane, BWC at 20:09:50-20:10:09.) Sobbing, he pleaded: “Mr. Officer, please don’t shoot me.” (Lane, BWC at 20:10:35-37.) Over the next 30 seconds, he begged Lane not to shoot him four more times, and he repeated the word “please” nearly a dozen times. As he pleaded for his life, he also explained to Lane that “I just lost my mom.” (Lane, BWC at 20:10:35-20:11:02.)

Lane told Floyd to step out of the car, while Kueng told the other two passengers in the vehicle to do the same. Kueng then came around to the driver’s side, and Lane and Kueng handcuffed Floyd. (Kueng, BWC at 20:11:10-49.) Kueng walked Floyd to the sidewalk and told him to sit down on the ground. Floyd did so, immediately becoming calmer and saying “thank you” to Kueng three times. (Kueng, BWC at 20:11:49-20:12:15.) While Floyd was seated on the sidewalk, Lane interviewed the other two passengers. (Lane, BWC at 20:12:14-20:14:02; Kueng, BWC at 20:12:14-20:13:54.) One of the passengers explained to Lane that Floyd was scared of police officers, and was likely scared when Lane pointed his weapon at Floyd because he had been shot before. (Lane, BWC at 20:12:52-20:13:07.)

Meanwhile, Floyd pleaded with the officers to talk to him. While sitting on the sidewalk, Floyd responded to Kueng’s questions. He provided Kueng with his name and date of birth, and reiterated that he was scared because he had been shot before. (Kueng, BWC at 20:12:24-20:13:01.) Kueng then told Floyd that he was accused of giving “a fake bill” to the employees at Cup Foods—the first mention of the counterfeit bill in the three minutes and 45 seconds since Lane had first approached Floyd—and that they had pulled him from the car because he was “not listening to anything we told you.” (Kueng, BWC at 20:13:13-23.) Floyd responded that he “didn’t know what was going on” when Lane approached Floyd’s vehicle and drew his weapon. (Kueng, BWC at 20:13:23-25.)

2. Although Floyd remained compliant and conversant while seated on the sidewalk, Lane and Kueng decided to detain Floyd in their squad car. (Kueng, BWC at 20:13:35-36.) When Floyd stood up to walk to the squad car, he said that he was in pain and that his wrists hurt from the handcuffs. (Kueng, BWC at 20:13:57-20:14:11.) Lane asked whether Floyd was “on something right now,” and Kueng said Floyd was “acting real erratic” while walking in handcuffs to the squad car. (Lane, BWC at 20:14:10-13.) Floyd responded that he was “scared.” (Lane, BWC at 20:14:13-15.)

When they reached the squad car, Floyd stated: “I just want to talk to you, man.” (Lane, BWC at 20:14:56-58.) 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 at 20:14:57-20:15:01.) Floyd told Lane and Kueng several times that he was scared to get into the squad car, and he stated five times that he was “claustrophobic.” (Lane, BWC at 20:14:47-20:15:06.) But Lane and Kueng insisted they would have a conversation with Floyd only after he got into the squad car. They pinned Floyd against the squad car and patted him down. While being patted down, Floyd stated: “I’m not resisting, man. I’m not.” (Kueng, BWC at 20:15:11-15.) Kueng found a small pipe in Floyd’s pocket, but found no weapons on his person. (Kueng, BWC at 20:15:15-54.)

As Floyd stood outside the squad car, he asked Lane and Kueng not to leave him alone in the car. He stated that he would not do anything to hurt them. And he begged them not to “leave me by myself, man, please. I’m just claustrophobic.” (Kueng, BWC at 20:15:34-44.) In response, Lane told Floyd: “Well, you’re still going in the car.” (Lane, BWC at 20:15:39-41.)

Lane and Kueng then began forcing Floyd inside the open rear driver’s side door of the squad car. (Lane, BWC at 20:16:20.) Floyd exclaimed: “I’m a die in here, I’m a die man.” (Lane, BWC at 20:16:40-43.) Floyd also noted that he “just had COVID,” and that he didn’t

“want to go back to that.” (Lane, BWC at 20:16:44-46.) A bystander yelled to Floyd that he should get in the car because “you can’t win.” (Lane, BWC at 20:17:01-02.) Floyd responded he did not want to “win” or hurt the officers; he was simply “claustrophobic” and had “anxiety.” (Lane, BWC at 20:17:02-10.) Floyd repeated that he was “scared as fuck” and worried that his anxiety might make it hard for him to breathe in the back of the squad car. (Lane, BWC at 20:17:12-20.) And he asked Lane and Kueng 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.” (Lane, BWC at 20:17:20-26.) He pleaded for the officers to allow him to get on the ground or do “anything” other than get in the car. (Lane, BWC at 20:17:26-29.)

By this point, Derek Chauvin and Tou Thao had arrived on scene. (Thao, BWC at 20:17:25.)² Although the dispatcher informed Chauvin and Thao before they arrived at the scene that the request for backup had been canceled, they had still proceeded to the scene. (Thao, Bureau of Criminal Apprehension (“BCA”) Interview at 27:54-28:40, submitted herewith as Exhibit 2.)

Lane and Kueng continued trying to force Floyd into the car. Lane went to the passenger side of the squad car and began to pull Floyd into the vehicle through the rear passenger’s side door. Kueng, meanwhile, pushed Floyd through the rear driver’s side door. As the officers forced Floyd into the squad car, Floyd hit his head on the glass that divided the front and back seats of the squad car. (Kueng, BWC at 20:17:54-57; Lane Mot. to Dismiss Ex. 1, at 36.) Floyd fell partway through the rear passenger’s side door, and he asked to be laid on the ground. (Lane, BWC at 20:18:15-20.) Lane and Chauvin, however, pinned Floyd against the back seat.

² The State has submitted the Thao BWC video with this memorandum of law as Exhibit 1.

During this time, Floyd continued to yell “please,” and repeatedly said he couldn’t breathe. (Kueng, Thao, & Lane, BWC at 20:17:59-20:19:01.)

After Kueng circled to the passenger’s side of the squad car to assist Lane and Chauvin, Kueng and Chauvin attempted to lift Floyd into the back of the squad car. When that did not work, Lane said: “Let’s take him out and just MRT”—referring to the Maximal Restraint Technique, which utilizes a “Hobble” device to “secure a subject’s feet to their waist in order to prevent the movement of legs.”³ MPD Policy & Procedure Manual 5-316(III) (submitted herewith as Exhibit 3); Lane Mot. to Dismiss Ex. 7, at 3. (Lane, BWC at 20:19:02-04.) The others agreed.

3. At 8:19 p.m., Chauvin, Kueng, and Lane pinned Floyd to the pavement, face-down. Chauvin pressed his knee into the back of Floyd’s neck. Kueng knelt on Floyd’s back, with his hand on Floyd’s handcuffed left wrist. Lane restrained Floyd’s legs, kneeling on them and pressing them down with his hands. (Lane, BWC at 20:19:14-45.) Shortly after they pinned Floyd to the ground, 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.⁴ (Lane, BWC at 20:19:48-52.)

Thao then located a Hobble in the back of the squad car, and asked the other officers whether they “want[ed] to hobble him at this point.” (Thao, BWC at 20:20:28-31.) When the other officers did not answer immediately, Thao suggested “why don’t we just hold him until

³ A Hobble “limits the motion of a person by tethering both legs together.” Ex. 3, MPD Policy & Procedure Manual 5-316(III); *see* Lane Mot. to Dismiss Ex. 7, at 3. The Maximal Restraint Technique is accomplished using two Hobbles connected together. *See* Ex. 3, MPD Policy & Procedure Manual 5-316(IV)(A)(2); Lane Mot. to Dismiss Ex. 7, at 3.

⁴ Thao later upgraded that to an EMS code 3, requiring emergency services to use red lights and sirens to reach the scene. (Thao, BWC at 20:21:12-27.)

EMS” arrives, and added that “if we hobble a Sergeant’s going to have to come over.”⁵ (Thao, BWC at 20:20:32-39.) The officers—Lane included—decided against using the Hobble. Chauvin, Kueng, and Lane therefore continued to maintain their positions directly on top of Floyd. Thao stood watch and guarded against any interference with the officers’ actions by, among other things, positioning himself between the other officers and the gathering group of concerned citizens, which included several children. (Thao, BWC at 20:21:38-20:22:40.)

For the first five minutes the officers pinned Floyd to the ground, Floyd repeatedly cried for help. He yelled “I can’t breathe” more than *twenty* times. He called for his deceased mother almost a *dozen* times. He pleaded with Chauvin, who continued to kneel on his neck:

I can’t breathe. Please, your knee in my neck.

(Lane, BWC at 20:21:53-57.) Floyd screamed that he was in significant pain:

My knee, my neck . . . I’m claustrophobic. My stomach hurt. My neck hurt.
Everything hurt.

(Lane, BWC at 20:22:16-29.) He asked the officers to “tell my kids I love them.” (Lane, BWC at 20:20:07-08.) And he told the officers almost ten times that he feared he would die while lying on the ground, saying:

I’ll probably just die this way. . . . I’m through, I’m through. . . . They’re gonna kill me, they gonna kill me, man.

(Lane, BWC at 20:21:45-47, 20:22:19-22, 20:22:42-45.)

⁵ Under MPD policy, whenever a Hobble is used in connection with the Maximal Restraint Technique (MRT), “[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.” Ex. 3, MPD Policy & Procedure Manual 5-316(IV).

The officers, however, ignored Floyd's desperate 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." (Kueng, BWC at 20:22:39-50.) Kueng reacted to Chauvin's comment with a smirk. (Thao, BWC at 20:22:48-49.) Meanwhile, as the gathered crowd of bystanders began echoing Floyd's pleas for help, Thao continued to stand guard, watching his fellow officers while telling the crowd: "He's talking, so he's fine" and "This is why you don't do drugs, kids." (Thao, BWC at 20:23:00-26.) And when a bystander 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." (Thao, BWC at 20:23:40-20:24:04.)

After four minutes, Floyd's cries for help became softer. His screams turned into grunts, and his grunts into mumbles. Floyd then said what would be his final words: "I can't breathe." (Lane & Kueng, BWC at 20:23:58-20:24:00.) He soon fell silent and lost consciousness.

But even after Floyd went limp, the officers—Lane included—continued to restrain him. Chauvin continued to press his knee into Floyd's neck, and Kueng and Lane continued to restrain Floyd's back and legs. Thao, meanwhile, continued to stand between the other officers and the bystanders gathered on the sidewalk, pushing back anyone who stepped off the sidewalk and moved toward Floyd and the other officers. Each time he turned back to check on Chauvin, Kueng, and Lane, they were in the same positions: Chauvin on Floyd's neck, Kueng on his back, and Lane on his legs. (Thao, BWC at 20:24:00-20:26:43.) As Floyd lost consciousness, Lane asked the other officers: "Should we roll him on his side?" Lane cited his "worry about the excited delirium or whatever."⁶ Chauvin rejected Lane's suggestion, stating that the

⁶ Minnesota Police Department trainings define excited delirium as "[a] condition that manifests as a combination of delirium, psychomotor agitation, anxiety, hallucinations, speech (Footnote Continued on Next Page)

ambulance was en route. (Lane, BWC at 20:23:48-20:24:02.) Lane did nothing to challenge Chauvin's answer. Not one thing. Instead, he remained in the same position, and continued to hold down Floyd's legs with his hands. (Lane, BWC at 20:24:00-20:24:30.)

By this point, the half-dozen or so bystanders gathered on the sidewalk had begun yelling at the officers, expressing concern that Floyd was struggling to breathe. One bystander yelled that Floyd was "not even resisting arrest right now." (Thao, BWC at 20:24:40-44.) He also yelled that Chauvin was responsible for "stopping [Floyd's] breathing." (Thao, BWC at 20:25:08-10.) When a bystander screamed that Floyd was about to "pass out," Lane remarked—in apparent agreement with the bystander—that Floyd was indeed "passing out." (Lane & Kueng, BWC at 20:24:43-48.) Even so, Lane continued to hold down Floyd's right leg with his arm, noting nonchalantly to the other officers that his own "knee might be a little scratched, but I'll survive." (Lane, BWC at 20:25:00-04.) Meanwhile, when a bystander said that Floyd was not "breathing right now," Lane and Kueng both responded "he's breathing." (Lane & Kueng, BWC at 20:25:10-15.) But the body camera videos appear to show that Floyd's shallow breaths stopped about 10 seconds later. (Kueng, BWC at 20:25:20-31.)

At 8:25 p.m., an out-of-uniform, off-duty Minneapolis firefighter arrived on scene and asked to provide Floyd medical assistance. Lane ordered her to stay away, telling her to go "[u]p on the sidewalk." (Lane, BWC at 20:25:28-30.) Chauvin and Thao likewise refused to allow her to tend to Floyd, with Thao shouting "back off." (Thao & Kueng, BWC at 20:25:26-20:26:47.) Given the witnesses' concerns about Floyd's lack of responsiveness, Lane asked again whether the officers should "roll him on his side." (Lane, BWC at 20:25:39-41.) This time, no one

(Footnote Continued from Previous Page)

disturbances, disorientation, violent and bizarre behavior, insensitivity to pain, elevated body temperature and superhuman strength." Lane Mot. to Dismiss Ex. 7, at 18.

responded. Once again, Lane did not press the matter, and continued to hold down Floyd's legs with his right arm. Chauvin, Kueng, and Thao likewise continued to maintain their positions. (Lane, BWC at 20:25:40-20:26:00.)

As the bystanders grew increasingly vocal about Floyd's lack of responsiveness, the off-duty firefighter urged the officers to take Floyd's pulse. Another bystander also repeatedly pleaded for Thao to check Floyd's pulse. (Thao, BWC 20:25:53-20:26:03.) After hearing the bystanders' pleas to check Floyd for a pulse, Lane asked Kueng whether he could find a pulse.⁷ Kueng checked and said "I can't find one." (Kueng & Lane, BWC at 20:25:45-20:26:00.) Chauvin responded: "Huh?" Kueng clarified for Chauvin that he was "check[ing] [Floyd] for a pulse." (Kueng & Lane, BWC at 20:26:00-05.) Kueng continued to check Floyd for a pulse. About ten seconds later, Kueng sighed, leaned back slightly, and repeated: "I can't find one." (Kueng & Lane, BWC at 20:26:07-12.) After learning that Kueng could not find a pulse, Chauvin squeezed Floyd's fingers. Floyd did not respond. (Lane, BWC at 20:26:12-18.)

Even as Floyd remained unresponsive, the officers did not move from their positions. They continued to restrain Floyd—with Chauvin on his neck, Kueng on his back, and Lane holding his legs—while Thao pushed bystanders back onto the sidewalk. They also ignored the off-duty firefighter's plea for them to begin chest compressions. (Thao, BWC at 20:28:39-48.) None of the officers ever attempted CPR while Floyd was on the ground.

At 8:27 p.m., an ambulance arrived on scene—about three and a half minutes after Lane first asked whether they should turn Floyd onto his side, about two minutes after Floyd stopped

⁷ 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 Mot. to Dismiss Ex. 1, 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 at 20:26:53-57.)

breathing, and about a minute and a half after Kueng first stated that he could not find Floyd's pulse. But Chauvin, Kueng, Lane, and Thao did not move from their positions. (Lane, BWC at 20:27:00-24.) Indeed, even as Lane explained to emergency personnel that Floyd was "not responsive right now," Chauvin kept his knee on Floyd's neck. (Lane, BWC at 20:27:36-38.) The crowd, which had grown to nearly a dozen horrified onlookers, continued to plead with the officers, asking Thao whether he was "gonna let [Chauvin] kill that man in front of you." (Thao, BWC at 20:28:05-13.) Yet the officers continued to maintain their positions: For over a full minute after emergency personnel arrived, Chauvin and Kueng continued to press Floyd face-down into the pavement, Lane knelt over Floyd's legs, and Thao continued to push back the crowd. (Lane, Kueng & Thao, BWC at 20:27:25-20:28:45.)

At 8:28 p.m., when the stretcher was ready, Chauvin finally removed his knee from Floyd's neck. (Lane, BWC at 20:28:45.) Floyd was still unresponsive. Chauvin, Kueng, and Lane rolled Floyd onto the stretcher and loaded him into the ambulance.

In total, Floyd was pinned to the ground—with Chauvin's knee pressing into his neck, and Kueng and Lane restraining his back and legs—for approximately nine minutes. For over four and a half of those minutes, Floyd did not speak. For at least three of those minutes, Floyd appeared not to be breathing. And for at least two and a half minutes, the officers were unable to locate Floyd's pulse. Yet over that entire time period, the officers remained in the same position: Chauvin still continued to kneel on Floyd's neck, Kueng and Lane remained atop Floyd's back and legs, and Thao continued to prevent the crowd of concerned citizens from interceding.

4. Lane asked emergency personnel whether they wanted him "to ride with" them in the ambulance, and they said yes. (Lane, BWC at 20:29:27-33). Lane therefore joined emergency personnel in the ambulance. At that point, Lane was "concerned" that Floyd was "maybe dead."

Lane Mot. to Dismiss Ex. 1, at 47. Lane explained to emergency personnel that Floyd “kicked his way” out of the squad car and that the officers were “basically restraining him until you guys got here.” (Lane, BWC at 20:30:13-39.) He did not mention to emergency personnel that Chauvin had been kneeling on Floyd’s neck for nine minutes, that Kueng had twice checked for a pulse minutes earlier and could not find one, or that Lane had been concerned enough about Floyd’s condition to ask twice whether they should roll him onto his side.

Nearly five minutes after Kueng was unable to locate a pulse, and over a minute after Lane had joined emergency personnel in the ambulance, emergency personnel instructed Lane to perform CPR. Lane began doing so. (Lane, BWC at 20:30:47.) But that intervention was too late. Floyd was pronounced dead at the hospital that evening.

According to the Hennepin County Medical Examiner, Floyd’s death resulted from “cardiopulmonary arrest complicating law enforcement subdual, restraint, and neck compression,” Hennepin County Medical Examiner’s Office, Autopsy Report for George Floyd, at 1 (June 1, 2020) (“Hennepin County Autopsy Report”), and the “manner of death” was “homicide,” Hennepin County Medical Examiner, Press Release Report (June 1, 2020).⁸ A separate autopsy review conducted by the federal government’s Armed Forces Medical Examiner System concluded that Floyd’s “death was caused by the police subdual and restraint,” and that the “subdual and restraint had elements of positional and mechanical asphyxiation.” Armed Forces Medical Examiner System, Autopsy Report for George Floyd, at 2 (June 10, 2020) (“Armed Forces Medical Examiner Autopsy Report”).⁹

⁸ The Hennepin County Medical Examiner’s Autopsy Report and Press Release Report are submitted herewith as Exhibits 4 and 5 respectively.

⁹ The Armed Forces Medical Examiner Autopsy Report is submitted herewith as Exhibit 6.

B. Minneapolis Police Department Policies and Training

As officers in the Minneapolis Police Department (MPD), Chauvin, Kueng, Lane, and Thao held a position of public trust and were trained not to “willfully mistreat or give inhumane treatment to any person held in custody.” Ex. 3, MPD Policy & Procedure Manual 5-107.3. All officers agree to abide by a code of ethics that binds them to “enforce the law courteously and appropriately” and to “never employ[] unnecessary force or violence.” *Id.* at 5-102.

“Sanctity of life and the protection of the public” are “the cornerstones of the MPD’s use of force policy.” *Id.* at 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.* at 5-303.01(B).¹⁰ Officers are also permitted to 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.* at 5.301.01. Before using force, officers are required to consider using various de-escalation tactics short of force. *Id.* at 5-304(B). And in 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.* at 5-304(B)(1)(b).

Under MPD policies in effect at the time of Floyd’s death, the most extreme uses of force—Maximal Restraint Technique (MRT), Neck Restraints, and Deadly Force—were reserved for the most extreme situations. Officers are trained to use the MRT only “where

¹⁰ This policy, which was in effect when Floyd died, was subsequently updated on June 16, 2020.

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.* at 5-316(IV)(B)(1). Officers are trained to “[p]lace the subject in the recovery position to alleviate positional asphyxia,” which occurs when the subject is unable to take in enough oxygen because of his or her body position. Lane Mot. to Dismiss Ex. 7, at 21.

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.” *Id.* at 5-311(I), (II)(C); *see* Lane Mot. to Dismiss Ex. 7, at 12. 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.* at 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.* at 5-311(II)(D)(2). And if unconsciousness occurs, officers are to “request EMS immediately by radio.” Lane Mot. to Dismiss Ex. 7, at 12.

In applying a Neck Restraint, MRT, or any other use of force, officers are required to render medical aid when their use of force necessitates it. 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.” Ex. 3,

MPD Policy & Procedure Manual 5-306.¹¹ And they are trained to check the subject's "airway [and] breathing," and "start CPR if necessary." Lane Mot. to Dismiss Ex. 7, at 12.

ARGUMENT

The facts overwhelmingly demonstrate that probable cause exists to believe that Lane aided and abetted second-degree murder and second-degree manslaughter.

Probable cause exists if "the facts would lead a person of ordinary care and prudence to hold an honest and strong suspicion that the person under consideration is guilty of a crime." *Ortiz*, 626 N.W.2d at 449. So long as the evidence "brings the charge against the prisoner within reasonable probability," the motion to dismiss for lack of probable cause must be denied. *State v. Florence*, 239 N.W.2d 892, 896 (Minn. 1976) (quoting *State ex rel. Hastings v. Bailey*, 116 N.W.2d 548, 551 (Minn. 1962)). Thus, to defeat a motion to dismiss for lack of probable cause, "[i]t is not necessary for the state to prove the defendant's guilt beyond a reasonable doubt." *Id.* at 896 (quoting *Bailey*, 116 N.W.2d at 551). This rule reflects the strong public interest in having adjudications of guilt and innocence take place before a jury, drawn from the community, after the extensive adversarial testing of a criminal trial. *See State v. Trei*, 624 N.W.2d 595, 598 (Minn. App. 2001) (noting that a probable cause challenge should be rejected so long as it is "fair and reasonable to require the defendant to stand trial").

In evaluating a motion to dismiss for lack of probable cause, the court must examine the "entire record, including reliable hearsay." Minn. R. Crim. P. 11.04, subd. 1(c). That includes, among other things, "the complaint, the police reports, the statements of witnesses and the representations of the prosecutor, who is an officer of the court." *State v. Dunagan*, 521 N.W.2d 355, 356 (Minn. 1994) (quoting *State v. Rud*, 359 N.W.2d 573, 579 (Minn. 1984)).

¹¹ This policy, which was in effect when Floyd died, was subsequently updated on July 17, 2020.

Critically, the court must “view the evidence and all resulting inferences in favor of the State.” *State v. Peck*, 773 N.W.2d 768, 782 n.1 (Minn. 2009). In deciding the motion, “the trial court is not to invade the province of the jury,” *Trei*, 624 N.W.2d at 598, and may not assess “the relative credibility or weight of . . . conflicting evidence,” *State v. Barker*, 888 N.W.2d 348, 353 (Minn. App. 2016) (quoting *State v. Hegstrom*, 543 N.W.2d 698, 702 (Minn. App. 1996)). So long as “the prosecutor possesses substantial evidence that will be admissible at trial and that would justify denial of a motion for a directed verdict of acquittal,” “the court should deny the motion to dismiss without requiring the prosecutor to call any witnesses.” *Dunagan*, 521 N.W.2d at 356 (quoting *Rud*, 359 N.W.2d at 579). In other words, the “test” for probable cause, as with a directed verdict of acquittal, is “whether the evidence is sufficient to present a fact question for the jury’s determination, after viewing the evidence and all resulting inferences in favor of the state.” *State v. Slaughter*, 691 N.W.2d 70, 74-75 (Minn. 2005). If the answer is yes, the “production of exonerating evidence by a defendant at the probable cause hearing does not justify the dismissal of the charges.” *Rud*, 359 N.W.2d at 579.

Here, viewing the record in the light most favorable to the State, the evidence is more than “sufficient to present a fact question for the jury’s determination.” *Slaughter*, 691 N.W.2d at 75. The Court therefore should deny Lane’s motion to dismiss for lack of probable cause.

I. THERE IS PROBABLE CAUSE TO BELIEVE THAT LANE AIDED AND ABETTED SECOND-DEGREE UNINTENTIONAL MURDER.

Lane is guilty of aiding and abetting second-degree unintentional murder so long as the State can show that (i) Chauvin committed second-degree unintentional murder; and (ii) Lane aided third-degree assault. The State can make both of these showings. The available evidence brings this charge “within reasonable probability,” *Florence*, 239 N.W.2d at 896, and is

“sufficient to present a fact question for the jury’s determination,” *Slaughter*, 691 N.W.2d at 75. Lane’s motion to dismiss for lack of probable cause should be denied.

A. Standards Governing Aiding and Abetting Second-Degree Murder

1. Minnesota law provides that a person is guilty of second-degree unintentional murder if he “causes the death of a human being, without intent to effect the death of any person, while committing or attempting to commit a felony offense other than criminal sexual conduct in the first or second degree with force or violence or a drive-by shooting.” Minn. Stat. § 609.19, subd. 2(1). As relevant here, the elements of that offense are: (i) the victim’s death; (ii) the person’s conduct was a “substantial causal factor” in the death; and (iii) the person, at the time of causing the death, “was committing or attempting to commit” a felony. 10 Minn. Dist. Judges Ass’n, Minnesota Practice Jury Instruction Guides, Criminal 11.29 (6th ed.) (“CRIMJIG”).¹²

With respect to the third element, the felony offense that gives rise to the second-degree murder charge in this case is third-degree assault. A person is guilty of third-degree assault if he “assaults another and inflicts substantial bodily harm.” Minn. Stat. § 609.223, subd. 1. As relevant here, the elements of third-degree assault are: (i) an assault, defined as “the intentional infliction of or attempt to inflict bodily harm” upon the victim; and (ii) the infliction of “substantial bodily harm” upon the victim, defined as “bodily injury which involves a temporary but substantial disfigurement, or which causes a temporary but substantial loss or impairment of the function of any bodily member or organ, or which causes a fracture of any bodily member.” CRIMJIG 13.16; Minn. Stat. §§ 609.02, subd. 7a, 609.02, subd. 10(2).

¹² For each of the relevant offenses in this case, the model jury instructions also list an additional element: that “the defendant’s act took place on (*or about*) ___ in ___ County.” *E.g.*, CRIMJIG 11.29. There is no dispute, however, as to the time or place of the defendants’ acts.

Thus, putting these pieces together, the relevant elements of the second-degree unintentional murder charge in this case are: (i) the victim's death; (ii) the accused's conduct was a "substantial causal factor" in the death; (iii) the intentional infliction of bodily harm upon the victim; and (iv) "substantial bodily harm" to the victim.

2. The State has charged Lane with aiding and abetting second-degree murder. The statute governing aiding-and-abetting liability 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.

The phrase "intentionally aids" encompasses two "important and necessary" *mens rea* elements. *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) (internal quotation mark omitted). Critically, the defendant does not need to have "knowledge of an accomplice's criminal intent before the crime commences." *Id.* at 662. Because the statute only "requires knowledge of the crime at the time of the acts or presence amounting to aid," "[a] defendant who acquires the requisite knowledge while the accomplice is in the process of committing the offense" can be found liable for aiding and abetting. *Id.*¹³

Second, the defendant must "intend[] his presence or actions to further the commission of that crime." *Milton*, 821 N.W.2d at 808 (internal quotation mark omitted). In other words, the

¹³ To have "knowledge of the crime," the defendant must know that his accomplice satisfies the elements of the crime. The defendant need not know, however, that his accomplice's conduct was criminal at the time it was committed. See Minn. Stat. § 609.02, subd. 9(5) (noting that the law "does not require proof of knowledge of the existence or constitutionality of the statute under which the actor is prosecuted or the scope or meaning of the terms used in that statute"); see also 1 Wayne R. LaFave, *Substantive Criminal Law* § 5.6 (3d ed. 2019 update).

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 “[i]t 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).

3. Based on the elements of aiding and abetting liability, Lane may be held criminally liable for aiding and abetting second-degree unintentional murder so long as the State can prove that Chauvin committed second-degree unintentional murder and that Lane aided and abetted third-degree assault.¹⁴ In other words, to prove that Lane is guilty of aiding and abetting second-degree murder, the State must establish that Chauvin is guilty of second-degree murder, and must then prove that (i) Lane knew that Chauvin was intentionally committing an assault that inflicted substantial bodily harm on Floyd; and (ii) Lane intentionally aided in the assault on Floyd. Lane appears to agree that the State must prove these elements, and does not identify any other disputed elements the State must prove to establish that Lane is criminally liable on this charge.

¹⁴ Lane does not dispute that he is liable for aiding and abetting second-degree murder so long as he is liable for aiding and abetting third-degree assault. *See* Lane Mot. to Dismiss 13. That is with good reason. It is black-letter law that “one who intentionally aids or encourages the actor in the underlying crime may likewise be convicted of felony-murder . . . notwithstanding his lack of intent that death result.” 2 LaFave § 13.2(c). Courts in Minnesota, moreover, have concluded that third-degree assault is a felony offense that necessarily involves “a special danger to human life.” *See, e.g., State v. Trevino*, No. A14-0252, 2015 WL 1401464, at *8 (Minn. App. Mar. 30, 2015) (“The level of violence present in a third-degree assault—resulting in substantial bodily harm—easily meets the danger-to-human-life threshold.”).

B. The Aiding and Abetting Second-Degree Unintentional Murder Charge Is Supported By Probable Cause.

Viewed in the light most favorable to the State, the evidence here “would lead a person of ordinary care and prudence to hold an honest and strong suspicion” that Lane aided and abetted second-degree unintentional murder. *Ortiz*, 626 N.W.2d at 449.

1. As noted, the underlying second-degree murder charge against Chauvin is a necessary predicate for holding Lane criminally liable for aiding and abetting that crime. The relevant elements of unintentional second-degree murder are: (i) Floyd’s death; (ii) Chauvin’s conduct was a “substantial causal factor” in the death; (iii) Chauvin intentionally inflicted bodily harm on Floyd; and (iv) Chauvin’s actions inflicted “substantial bodily harm” on Floyd. *See supra* pp. 17-18. Lane does not meaningfully dispute probable cause as to any of these elements.

Nor could he. Floyd died. The Hennepin County Medical Examiner concluded that Floyd’s cause of death was “cardiopulmonary arrest complicating law enforcement subdual, restraint, and neck compression,” and another autopsy report identified “asphyxiation” as a cause of death. Hennepin County Autopsy Report, at 1; Armed Forces Medical Examiner Autopsy Report, at 2. And Chauvin’s actions—pressing his knee into Floyd’s neck for approximately nine minutes—intentionally inflicted substantial bodily harm on Floyd. *See State v. Larkin*, 620 N.W.2d 335, 337 (Minn. App. 2001) (even “temporary loss of consciousness” constitutes “substantial bodily harm” for purposes of third-degree assault). Indeed, for more than three minutes after Floyd became nonresponsive, and for more than two minutes after Kueng indicated that he could not find Floyd’s pulse, Chauvin continued to kneel on Floyd’s neck. He did so even as concerned citizens pointed out that Floyd was not resisting or moving, and even as they pointed out that Floyd was no longer breathing. And he did so for a full minute after an ambulance arrived on the scene, and even while one of the emergency medical technicians tried

to check Floyd's pulse. At a minimum, these facts prove that the second-degree murder charge against Chauvin is "within reasonable probability." *Florence*, 239 N.W.2d at 896.

As for Lane's actions: To establish Lane's guilt on the aiding-and-abetting charge, the State must prove that (i) Lane knew that Chauvin was intentionally committing an assault on Floyd; and (ii) Lane intentionally aided in the assault. *See supra* p. 20. The evidence readily proves that probable cause supports both of these elements.

First, the evidence is more than sufficient for a jury to conclude that Lane knew Chauvin was intentionally inflicting substantial bodily harm on Floyd. During the first five minutes Floyd was pinned to the ground, Lane heard Floyd yell "I can't breathe" at least twenty times, and heard him tell the officers nearly ten times that he feared he would die. He also saw Chauvin's knee pressed into Floyd's neck, as the footage from his body camera shows at multiple points. He heard Floyd tell Chauvin: "I can't breathe. Please, your knee in my neck." (Lane, BWC at 20:21:53-57.) And he heard Chauvin's dismissive response to Floyd's cries for help: "It takes a heck of a lot of oxygen to say things." (Kueng, BWC at 20:22:46-50.) Those facts by themselves are sufficient to raise a fact question for the jury as to whether Lane had the requisite knowledge—that is, whether Lane knew Chauvin's conduct satisfied the elements of assault.

Moreover, regardless of whether Lane possessed the requisite knowledge in the first moments after Floyd was pinned to the ground, he certainly possessed that knowledge once Floyd lost consciousness a few minutes later. *See Smith*, 901 N.W.2d at 661 (concluding that a defendant may "acquire[] the requisite knowledge while the accomplice is in the process of committing the offense"). Lane's own comments at that time confirmed that he was aware that Chauvin was intentionally and unjustifiably causing substantial bodily harm to Floyd. For instance, as Floyd started to show signs of losing consciousness, Lane asked Chauvin whether

they should “roll [Floyd] on his side” because he was “worr[ied] about the excited delirium or whatever,” and Chauvin said no. (Lane, BWC at 20:23:48-20:24:02.) Less than a minute later, he remarked that Floyd was “passing out.” (Lane, BWC at 20:24:45-50.) Another minute later, Lane asked again whether the officers should “roll [Floyd] on his side,” and received no response from Chauvin or the other officers—even as bystanders cried out that Floyd was not resisting or moving. (Lane, BWC at 20:25:39-41.) Lane then asked Kueng whether he could find a pulse, and Kueng said twice that he could not. (Kueng, BWC at 20:25:50-20:26:12.) Even though Lane knew that Floyd was in an inherently dangerous position, that he had become nonresponsive, and that he no longer had a pulse, Lane and the other officers persisted in pinning him to the pavement face-down. And when emergency personnel arrived to provide medical aid, Lane acknowledged to them what he certainly knew as he continued to hold Floyd to the ground: that Floyd was “not responsive.” (Lane, BWC at 20:27:36-38.) As Lane later stated, he was “concerned” by this point that Floyd was “maybe dead.” Lane Mot. to Dismiss Ex. 1, at 47.

Lane’s comments show that he knew Floyd was not resisting and did not appear to have a pulse. His questions about changing Floyd’s body position show his knowledge that Chauvin’s actions were harming Floyd, and that Chauvin was continuing to press ahead despite the harm. And his body camera shows that Lane saw Chauvin had continued to press his knee into Floyd’s neck for several minutes after Floyd stopped resisting. (Lane, BWC at 20:24:30-20:28:46.) These facts together establish probable cause to believe that Lane knew Chauvin was intentionally inflicting substantially bodily harm on Floyd.

Lane’s training, moreover, reinforces that he knew Chauvin was applying unlawful force. Officers are trained to “[p]lace the subject in the recovery position to alleviate positional asphyxia.” Lane Mot. to Dismiss Ex. 7, at 21. They are told that a “neck restraint” is not

permissible on a subject who is “passively resisting,” or who is not resisting at all. Ex. 3, MPD Policy & Procedure Manual 5-311(II)(3). And they are told to check the subject’s “airway [and] breathing,” and to cease a neck restraint and “start CPR” if the subject stops breathing. Lane Mot. to Dismiss Ex. 7, at 12. Chauvin and Lane, however, ultimately disregarded all of that training. *See* Lane Mot. to Dismiss Ex. 1, at 37-38 (Lane noting that kneeling on the neck was not a technique he had “seen before” or “been trained in . . . at all”). Indeed, the question Lane repeated twice to the other officers—whether they should roll Floyd onto his side—shows that Lane remembered his training, and that he knew Chauvin’s actions were unjustified.

Thus, viewed in the light most favorable to the State, the evidence is more than “sufficient to present a fact question for the jury’s determination” as to whether Lane knew that Chauvin was intentionally inflicting substantial bodily harm. *Slaughter*, 691 N.W.2d at 75.

Second, the evidence is more than sufficient for a jury to conclude that Lane intended to aid Chauvin in the assault on Floyd. A jury may properly “infer the requisite state of mind for accomplice liability through circumstantial evidence.” *McAllister*, 862 N.W.2d at 53. Such circumstantial evidence may include “the defendant’s presence at the scene of the crime” or “a close association with the principal offender before and after the crime.” *Id.* Here, the circumstantial evidence is even stronger.

Police body camera footage demonstrates that, while Chauvin knelt on Floyd’s neck for about nine minutes, Lane used his knees and hands to pin down Floyd’s legs during Chauvin’s concerted action. Lane restrained Floyd for approximately three minutes after he told the other officers that Floyd was “passing out,” and for about a minute and a half after Kueng stated twice that he could not find a pulse. Indeed, Lane continued to maintain his position even as onlookers pointed out that Floyd was not resisting, moving, or breathing; even as onlookers yelled that

Chauvin was responsible for “stopping [Floyd’s] breathing” and was going to “kill that man in front of you” (Thao, BWC at 20:25:08-10, 20:28:05-13); and even as an ambulance arrived on the scene to provide medical aid to Floyd.¹⁵ (Lane, BWC at 20:24:24-20:27:32; Lane Mot. to Dismiss Ex. 1, at 52 (Lane agreeing that he was “[h]olding [Floyd’s] legs down” the “entire time”).) Lane also waved off an off-duty emergency firefighter who sought to provide medical assistance to Floyd, telling her to go “[u]p on the sidewalk.” (Lane, BWC at 20:25:28-30.) In taking these actions, Lane made “the choice to aid in [the offense’s] commission.” *Smith*, 901 N.W.2d at 662. At a minimum, his actions enabled Chauvin to maintain control over Floyd and to continue kneeling on Floyd’s neck. A jury could therefore conclude that Lane “intended his presence or actions to further” Chauvin’s assault on Floyd. *Milton*, 821 N.W.2d at 808.¹⁶

That conclusion also follows from Lane’s questions to the other officers—and his subsequent actions—as Floyd was losing consciousness. Twice, Lane asked whether Floyd should be rolled over on his side. (Lane, BWC at 20:23:48-20:24:02, 20:25:39-41.) Lane also asked Kueng to check Floyd’s pulse. (Kueng, BWC at 20:25:50-20:26:00; *see also* Lane Mot. to Dismiss Ex. 1, at 53 (noting that Lane “might’ve” checked for a pulse himself “on [Floyd’s]

¹⁵ The evidence demonstrates that Lane was paying attention to the bystanders’ comments, and that he was taking cues from their reactions. For instance, Lane remarked that Floyd was “passing out” in response to a similar observation from one bystander, and he asked Kueng to check Floyd’s pulse based on a request from another bystander. *See supra* pp. 10-11. That evidence underscores that Lane heard and credited the bystanders’ comments, and that their reactions are relevant in establishing Lane’s knowledge and intent during the incident.

¹⁶ Lane asserts that aiding and abetting requires a “high level of activity” by the accomplice. Lane Mot. to Dismiss 11 (citing *State v. Ulvinen*, 313 N.W.2d 425 (Minn. 1981)). That alleged requirement is not supported by recent case law. *See State v. Bahtuoh*, 840 N.W.2d 804, 812-813 (Minn. 2013) (“presence” in some circumstances may establish aiding-and-abetting liability). In any event, Lane does not argue that *his* level of activity failed to meet that alleged requirement. That is not surprising: Pinning a victim down while the principal commits an assault is textbook aiding-and-abetting activity. *See* 2 LaFave § 13.2(a).

leg”); *supra* p. 11 n.7.) Those questions demonstrate that Lane knew both the proper protocol and the consequences of keeping Floyd pinned face-down to the ground. *See supra* p. 23. But Lane ignored all of that. Each time, after hearing the responses of his fellow officers, Lane chose to stay the course, reapplying pressure to restrain Floyd’s legs. He did not seek to begin performing CPR once Floyd stopped moving or breathing—and, indeed, only performed CPR at the request of emergency personnel in the ambulance nearly five minutes after learning that Kueng could not find Floyd’s pulse. He did not attempt to move Floyd into a different position on the ground. And he did not try to remove himself from the situation or move away from Floyd’s legs. Viewing Lane’s actions in the light most favorable to the State, a jury could readily conclude that Lane intended to aid Chauvin in assaulting Floyd.

The bottom line: On each of the elements of aiding and abetting second-degree murder, the evidence is more than “sufficient to present a fact question for the jury’s determination, after viewing the evidence and all resulting inferences in favor of the state.” *Slaughter*, 691 N.W.2d at 75. There is therefore probable cause to believe that Lane committed that offense.

2. Lane’s main response in his motion to dismiss is that he “did not have knowledge” that Chauvin was committing third-degree assault because “[t]he decision to restrain Floyd was reasonably justified.” Lane Mot. to Dismiss 14. According to Lane, Floyd was “uncooperative” and “was actively resisting and acting erratic for over 10 minutes.” *Id.* That, Lane contends, gave Chauvin and Lane license to pin Floyd to the ground face-down, even after Floyd was no longer moving, had stopped breathing, and did not have a pulse.

Lane’s argument fails for two reasons. *First*, it ignores the critical question for the jury: Whether the actions of Lane and his codefendants were reasonably justified for the *entirety* of their interaction with Floyd. *See* Minn. Stat. § 609.06, subd. 1 (authorizing only the use of

“reasonable force”); *Graham v. Connor*, 490 U.S. 386, 396 (1989) (listing factors relevant to whether force is reasonable); Ex. 3, MPD Policy & Procedure Manual 5-303 (same). It does not matter whether the officers were reasonably justified in restraining Floyd when they first pinned him to the ground. After all, Lane is guilty of aiding and abetting second-degree unintentional murder so long as he “acquire[d] the requisite knowledge” while the officers were “in the process of committing the offense.” *Smith*, 901 N.W.2d at 662. In other words, as long as pinning Floyd to the ground face-down with a knee pressed into his neck became unjustified at some point during the incident, and as long as Lane knew as much, he cannot escape criminal liability. And that is the case here. For the first five minutes after Chauvin began kneeling on Floyd’s neck, Floyd cried for help, declaring over twenty times that he could not breathe. *See supra* p. 8. Floyd then went silent. Nonetheless, Chauvin continued to press his knee into Floyd’s neck, with Kueng and Lane restraining his back and legs, for over four more minutes. During the last three of these minutes, Floyd lay motionless, offering no resistance at all. *See supra* pp. 9-12. By that point, any plausible justification for restraining Floyd in that manner had evaporated. Even Lane recognized as much, as his comments to the other officers about Floyd’s body position and lack of responsiveness illustrate. *See supra* pp. 22-23. The evidence therefore supports the existence of probable cause for the aiding-and-abetting charge regardless of whether the initial “decision to restrain Floyd was reasonably justified.” Lane Mot. to Dismiss 14.

Second, and in any event, the jury could find that the officers’ actions were not reasonably justified even at the initial moment they restrained Floyd face-down on the ground. For one thing, the charge for which Floyd was arrested—passing a counterfeit \$20 bill—was a gross misdemeanor offense. *See* Minn. Stat. §§ 609.632, subd. 4(b)(4), 609.02, subd. 4. The “severity of the crime at issue”—a nonviolent property crime—thus did not support the level of

force used against Floyd. Ex. 3, MPD Policy & Procedure Manual 5-303; *see id.* at 9-103 (“[a]dult misdemeanor violators” generally “shall be issued citations in lieu of arrest”).

The jury could also find that the nature of Floyd’s alleged “resistance” to the officers’ commands did not support the application of a neck restraint. Lane and Kueng were required by their training to consider whether Floyd’s alleged “lack of compliance” was a “deliberate attempt to resist” or just “an inability to comply” based on Floyd’s self-identified claustrophobia and anxiety, his assertion that he had been shot before and was “scared,” and the “influence of drug or alcohol use.” *See* Ex. 3, MPD Policy & Procedure 5-304(B)(1)(b); *see supra* p. 14. Floyd also did not offer any resistance when he was initially questioned by Kueng while sitting on the sidewalk. (Kueng, BWC at 20:12:17-20:13:52.) Based on those factors, a jury could conclude that the officers should have known that Floyd was, at most, engaged in “passive resistance,” and that a reasonable officer therefore would have known not to use a neck restraint on Floyd. *See* Ex. 3, MPD Policy & Procedure 5-302 (defining “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.* at 5-311(II)(3) (forbidding the use of a “neck restraint against subjects who are passively resisting”). Moreover, to the extent Lane asserts that the evidence shows that Floyd’s resistance justified the initial neck restraint, the court should not weigh that evidence itself. Rather, it should deny the motion and reserve that question for the jury. *See Trei*, 624 N.W.2d at 598 (“[T]he trial court is not to invade the province of the jury.”).

3. Lane’s other arguments for dismissing the second-degree murder charge against him fare no better. Lane contends that he relied on the experience of Chauvin, “a 20 year veteran” who told Lane—then on his “fourth day on the job”—to “hold Floyd where he was.” Lane Mot.

to Dismiss 15-16 & n.4. But for a host of important reasons, there is no free pass under state law for rookies who choose to disregard their training at the suggestion of a senior officer. MPD policy itself compelled Lane to do what was right: “It shall be the duty of every sworn employee present at any scene where physical force is being applied to either stop or attempt to stop another sworn employee when force is being inappropriately applied or is no longer required.” Ex. 3, MPD Policy & Procedure Manual 5-303.01(B). And Lane, far from being an untrained rookie, had extensive training prior to Floyd’s death: He was hired 15 months before the incident and then spent about five months receiving skills training at a technical college, four months in the Minneapolis Police Academy, and four and a half months doing field training with other officers. *See* Lane Mot. to Dismiss Ex. 1, at 5-6. Indeed, Lane’s questions signaled that he knew Chauvin had disregarded the training officers received on the proper use of force. *See supra* pp. 22-23. Yet Lane did not challenge Chauvin’s answers. Rather, he continued to pin down Floyd’s legs. In light of Lane’s training and Chauvin’s manifest disregard for Floyd’s condition, a jury could readily find that it was far from “reasonable for Lane to believe Chauvin and follow his direction.” Lane Mot. to Dismiss 16. And this, too, is a “fact question for the jury’s determination.” *Slaughter*, 691 N.W.2d at 75.

Lane also speculates that “[i]t would have been total chaos” if he had decided not to follow Chauvin’s instructions. Lane Mot. to Dismiss 16 n.4. But Lane points to nothing in the record supporting that bare assertion. Lane could have disagreed with Chauvin’s instructions—either at the time they were given, or after Lane learned that Kueng was unable to find a pulse—and demanded that the officers turn Floyd on his side or use a Hobble restraint. Or he could have tried to perform CPR once he realized that Floyd was nonresponsive and no longer moving. There is no reason to believe that these responses would have created any more “chaos” than the

officers' actions did. In any event, under Minnesota law, this consideration is largely irrelevant in determining whether Lane is criminally liable as an accomplice. By statute, Lane can escape aiding-and-abetting liability only if he "abandon[ed]" the crime "and ma[de] a reasonable effort to prevent the commission of the crime prior to its commission." Minn. Stat. § 609.05, subd. 3. Lane does not contend here that he "abandon[ed]" the crime or made a "reasonable effort" to prevent it before it happened. And the evidence makes clear he did not. Far from "abandon[ing]" the crime or "prevent[ing] . . . its commission," Lane furthered it: He continued to hold down Floyd's legs while Chauvin pressed his knee into Floyd's neck. *Id.*

Finally, Lane contends that "the force used by Chauvin by kneeling was not substantial" because "there were no physical findings of asphyxia." Lane Mot. to Dismiss 15. That is wrong for several reasons. Minnesota law does not require "the force used" to be "substantial"; it requires the "bodily harm" to be "substantial." Minn. Stat. § 609.223, subd. 1; CRIMJIG 13.16. And here, Lane does not dispute that Floyd suffered "substantial bodily harm." *See Larkin*, 620 N.W.2d at 337 (even temporary loss of consciousness is "substantial"). Moreover, at least one autopsy report found evidence of asphyxiation, while another concluded that "law enforcement subdual, restraint, and neck compression" was a cause of Floyd's death. *See Ex. 6, Armed Forces Medical Examiner Autopsy Report*, at 2; *Ex. 4, Hennepin County Autopsy Report*, at 1. That is strong evidence of "substantial bodily harm." And, once again, the task of weighing that evidence should fall to the jury. *See Barker*, 888 N.W.2d at 353.

At best, then, Lane's arguments raise fact questions for the jury. But under the probable cause standard, that is nowhere close to enough to warrant dismissal. Because the evidence brings the charge of aiding and abetting second-degree murder "within reasonable probability," Lane's motion to dismiss should be denied. *Florence*, 239 N.W.2d at 896.

II. THERE IS PROBABLE CAUSE TO BELIEVE THAT LANE AIDED AND ABETTED SECOND-DEGREE MANSLAUGHTER.

To establish aiding-and-abetting liability on second-degree manslaughter, the State must show that Chauvin committed second-degree manslaughter, that Lane had knowledge of the crime, and that Lane intentionally aided in the crime. The evidence plainly demonstrates that there is probable cause to believe that each of these elements has been satisfied here.

A. Standards Governing Aiding and Abetting Second-Degree Manslaughter

1. The statute governing second-degree manslaughter provides: “A person who causes the death of another . . . 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” is “guilty of manslaughter in the second degree.” Minn. Stat. § 609.205(1). The statute defines “great bodily harm” as “bodily injury which creates a high probability of death, or which causes serious permanent disfigurement, or which causes a permanent or protracted loss of impairment of the function of any bodily member or organ.” *Id.* § 609.02, subd. 8.

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

N.W.2d 720, 726 (Minn. 2000)). The fact-finder may infer that “a person intends the natural and probable consequences of their actions.” *Id.* at 507 (quoting *Johnson*, 616 N.W.2d at 726).

2. Lane has been charged with aiding and abetting second-degree manslaughter. *See In re Welfare of S.W.T.*, 277 N.W.2d 507, 514 (Minn. 1979) (“[A] person may be criminally liable for aiding . . . manslaughter.”). As noted, to establish aiding and abetting liability, the State must prove that Chauvin committed the underlying offense, that Lane had knowledge of the crime, and that Lane intentionally aided in the crime. *See supra* pp. 18-19. In other words, the State must prove that Chauvin committed second-degree manslaughter and must then establish the following elements: (i) Lane knew that Chauvin grossly deviated from the standard of care a reasonable person would have observed; (ii) Lane knew that Chauvin consciously disregarded the risk of death created by his conduct; and (iii) Lane intentionally aided in the crime.

B. The Aiding-and-Abetting Second-Degree Manslaughter Charge Is Supported By Probable Cause.

1. For the same reasons there is probable cause to believe that Lane aided and abetted second-degree unintentional murder, there is also probable cause to believe that Lane aided and abetted second-degree manslaughter. To begin, the evidence strongly supports the conclusion that Chauvin committed second-degree manslaughter, which is a necessary predicate for holding Lane liable for aiding and abetting that crime. Lane does not contend otherwise. In kneeling on Floyd’s neck for nine minutes, and for more than three minutes after Floyd became unresponsive, Chauvin “cause[d] the death” of Floyd. *See* Minn. Stat. § 609.205(1); *supra* p. 20-21. Chauvin’s conduct also “gross[ly] deviat[ed] from the standard of care that a reasonable person” would observe in the situation. *McCormick*, 835 N.W.2d at 507. Indeed, the training given to all police officers, including Chauvin, required him to “[p]lace the subject in the recovery position to alleviate positional asphyxia,” and to do so “[a]s soon as reasonably

possible”; to stop using a “neck restraint” when the subject is not resisting or only passively resisting; and to “start CPR” if he or she stops breathing. Ex. 3, MPD Policy & Procedure Manual 5-311(II)(3), 5-316(IV)(B)(1); Lane Mot. to Dismiss Ex. 7, at 12. Chauvin did none of those things. Chauvin’s conduct, moreover, reflected his “actual conscious disregard of the risk created by his conduct.” *McCormick*, 835 N.W.2d at 507. Even as bystanders were screaming that Floyd was not responsive and was not breathing, and even as Kueng confirmed twice that he could not find Floyd’s pulse, Chauvin continued to press his knee into Floyd’s neck—for a matter of *minutes*, not seconds. *See supra* pp. 9-11. That evidence readily establishes that Chauvin committed second-degree manslaughter.

With respect to Lane’s conduct, the evidence—viewed in the light most favorable to the State—is also more than “sufficient to present a fact question for the jury’s determination” on the elements of aiding and abetting second-degree manslaughter. *Slaughter*, 691 N.W.2d at 75.

First, Lane knew that Chauvin’s conduct was a “gross deviation from the standard of care that a reasonable” officer would observe in that situation. *McCormick*, 835 N.W.2d at 507 (quoting *Frost*, 342 N.W.2d at 319). Lane’s comments to Chauvin and the other officers—along with the body camera footage—demonstrate Lane’s knowledge that Floyd was not resisting and did not appear to have a pulse; his knowledge that Chauvin continued to press his knee into Floyd’s neck after he became unresponsive; and his knowledge that Chauvin’s actions violated the use-of-force protocol Lane had learned during police training. *See supra* pp. 22-23.

Second, Lane knew that Chauvin was consciously disregarding the risk of death created by his conduct. He knew that Chauvin could hear the screams of bystanders who cried out that Floyd was not moving, because Lane could hear them too. *See supra* p. 24-25 & n.15. He knew that Chauvin could hear Lane’s statement that Floyd was “passing out,” Kueng’s statements that

he could not find Floyd's pulse, and Lane's statement that Floyd was "not responsive right now." (Lane & Kueng, BWC at 20:24:45-48, 20:25:49-20:26:12, 20:27:34-38.) He knew that Chauvin continued to keep his knee on Floyd's neck for several minutes after Floyd stopped talking, responding, or moving, and even as Lane became concerned that Floyd was "maybe dead." *See supra* p. 12. And he knew that Chauvin was not following the use-of-force protocols mandated by the MPD's officer training. *See supra* p. 23-24.

Finally, for the same reasons Lane intentionally aided in the commission of second-degree unintentional murder, Lane also intentionally aided in the commission of second-degree manslaughter. *See supra* pp. 24-25.

Thus, at a minimum, the facts "would lead a person of ordinary care and prudence to hold an honest and strong suspicion" that Lane is guilty of aiding and abetting second-degree manslaughter. *Ortiz*, 626 N.W.2d at 449. There is probable cause for this charge.

2. Lane contends that the "circumstantial evidence proves Lane's innocence, his lack of knowledge, and no criminal intent." Lane Mot. to Dismiss 17. He points to a list of 13 "facts" that allegedly "cannot be disputed by the State." *Id.* at 17-18. But most of those "facts"—for instance, that Lane received "Minneapolis Police training," that Lane was "on the job for four days," that Lane offered "to turn the air conditioning on" in the police car, and that Floyd "requested to be moved to the ground"—have little or nothing to do with whether Lane's actions violated the law.¹⁷ *Id.* at 17. And a jury could infer from several of the other listed facts—for instance, that "Lane questioned Chauvin twice about rolling Floyd on to his side" and that "Lane went in the ambulance and started CPR on Floyd"—that Lane was aware that Chauvin's actions

¹⁷ The State can easily disprove that Lane was only "on the job for four days." As noted, Lane was hired more than a year before the incident, had been in the police academy for four months, and had been working on the streets with another officer for over four months. *See supra* p. 29.

had created an unreasonable risk of death. In any event, Lane’s cherry-picked “facts” ignore the mountain of evidence—for instance, Lane’s comments to the other officers during the incident, and what Lane’s body camera video shows he saw and did—supporting the conclusion that probable cause exists for the aiding and abetting second-degree manslaughter charge.

Lane also asserts that he “did not know what Chauvin was thinking while restraining Floyd.” *Id.* at 18. But such knowledge has never been a prerequisite to aiding-and-abetting liability. Here, the State must show that Lane knew Chauvin grossly deviated from the standard of care a reasonable person in Chauvin’s situation would have observed, and that Lane knew Chauvin consciously disregarded the risk of death created by his conduct. *See supra* p. 31. Lane did not need to “know what Chauvin was thinking” to know that Chauvin was consciously disregarding the risk of death. That conscious disregard was evident from Chauvin’s “words” and “acts” during the incident. *McCormick*, 835 N.W.2d at 507. Among other things, Lane knew that Chauvin ignored the repeated cries of bystanders. He heard Chauvin say to Floyd that “[i]t takes a heck of a lot of oxygen to say things” as Floyd repeatedly told the officers that he could not breathe. (Kueng, BWC at 20:22:47-50.) And he knew that Chauvin disregarded the other officers’ statements that Floyd did not have a pulse and was not breathing. Viewing that evidence in the light most favorable to the State, a jury could easily conclude that Lane knew that Chauvin was consciously disregarding the risk of death.

CONCLUSION

For the foregoing reasons, Defendant Thomas Lane's motion to dismiss the charges against him for lack of probable cause should be denied.

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