Filed in District Court
State of Minnesota
8/17/2020 2:02 PM

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF HENNEPIN FOURTH JUDICIAL DISTRICT
27-CR-20-12951

State of Minnesota,

Plaintiff,

vs.

DEFENDANT'S REPLY TO THE STATE'S RESPONSE TO HIS MOTION TO DISMISS

Thomas Kiernan Lane,

Defendant.

The State's Response is a narrative fiction, wrong on the facts, misreading the law. Officer Lane did nothing wrong.

Facts

The discovery has now reached 20,000 pages. Since our Motion to Dismiss was filed, we've learned additional facts that this Court should consider, which the State has not mentioned.

We begin with the crimes of Mr. Floyd, his lies to the Police, and the arrest he himself caused. The State would have this Court view him as only "suspected of using a counterfeit $20.00 bill," Brief at p. 1; someone, given his background, that the Police should have believed in toto when he declared his innocence: "I'm not that kind of guy," Def. Exh 1, at p. 29; Def. Exh. 2 at p. 8. "I didn't do

Filed in District Court
State of Minnesota
8/17/2020 2:02 PM

anything wrong man." Def. Exh. 2, at p. 3. When asked by Officer Lane, "What are, are you on something right now?" Mr. Floyd responded, "No, nothing," Def. Exh. 4, at p. 12. He was sober, of course.

He was told by the passenger in the car to "Stop resisting Floyd." Def. Exh. 2, at p. 3. But he did anyway.

He was also told by a bystander to "Give them a win." Def. Exh. 4, at p. 19. Mr. Floyd's reply: "I can't believe this, I can't believe this." Id. at p. 26.

All lies.

The 911 call Officer Lane responded to, originating at the Cup Foods Store and indicated that Mr. Floyd was "awfully drunk" and "not in control of himself." "A forgery [was] in progress," with the "suspect still on the scene." Def. Exh. 1, at p. 13. When Officer Kueng spoke with the store manager, he was told Mr. Floyd had negotiated a fake $20.00 bill and that he, Floyd, was in a blue Mercedes outside. Defense. Exh 4. at p. 1. The State advances the thought that "Lane and Kueng did not inspect the bill," without providing authority that they had to. Brief at p. 3. The manager later told Kueng that one of the bills "was getting rejected," and in the cash register "they found the other one." Def. Exh. 4, at p. 52. "We lost a 20, because $10 for cigarettes, $10 with change." Id. at 52.

In Mr. Floyd's Mercedes were the twenty-dollar bills he had stuffed

Filed in District Court
State of Minnesota
8/17/2020 2:02 PM

between the seats, a confirmation of his dishonesty. Def. Exh. 6.

Hence Mr. Floyd's inquiry as to "what he had done wrong," Brief at p.3, was disingenuous. He was the thief. By walking up to the cash register and passing the phony bill, this done in less than thirty seconds, he uttered and possessed "counterfeit" "United States currency," a twenty-year felony. Minn. Stat. 609.532, Subds. 3 and 4. He violated the companion federal law, another twenty-year felony. 18 U.S.C. 472. To the odd claim that Mr. Floyd's crimes were not serious and of the misdemeanor kind, Brief at p. 27, the state and federal legislatures have disagreed.

The probable cause was overwhelming. The Officers had an obligation to arrest Mr. Floyd for these felonies, and were authorized to do so. Minn. Stat. 629.34, Subd. 1 (c)(2)and (3). All Mr. Floyd had to do was cooperate. But he would not.

Mr. Floyd refused Officer Lane's command to keep his hand up. Look closely at Mr. Floyd's mouth; there is a white spot on the left side of his tongue, at 20:29:41-44. Def. Exh. 9. Mr. Floyd rather than comply with Officer Lane's reasonable instructions, turns his head away at 20:09:45; at 20:09:48, the white spot is gone. Def. Exhs. 10-12. Def. Exh. 13 is illustrative of what 2 milligrams of fentanyl, a lethal dose, looks like.

Filed in District Court
State of Minnesota
8/17/2020 2:02 PM

This Court may draw inferences from the facts. State v. Peck, 773 N.W.2d 768, 782 n. 1 (Minn. 2009). The toxicology reports confirmed the presence in Mr. Floyd's blood of Fentanyl 11 ng/ml; Methamphetamine 19 ng/ml; 11-Hydroxy Delta-9 TCH (the active ingredient of marijuana/hashish). Hennepin County Autopsy Report at p. 1.

The NMS Lab report, attached to the autopsy, indicates that fentanyl, a "DEA Schedule II synthetic morphine substitute" is "reported to be 80 to 200 times as potent as morphine." NMS Lab Report at p. 3. Signs associated with "fentanyl toxicity" the report notes, "include severe respiratory depression" and "death"; that "fatalities from Fentanyl, blood concentrations are variable and have been reported as low as 3 ng/ml", almost four times less than the Mr. Floyd's ingested level (11).

Mr. Floyd's death featured a mixture of causes: "Cardiopulmonary arrest," "subdual restraint, and neck compression." The autopsy report emphasizes, though, that the "[m]anner of death is not a legal determination of culpability or intent, and should not be used to usurp the judicial process." State's Exh. 5. Notably Officer Chauvin's "restraint" did not cause any area "of contusion or hemorrhage within the musculature" of the neck. That the "larynx is lined with intact mucosa. The thyroid is symmetrical and red-brown, without cystic or

Filed in District Court
State of Minnesota
8/17/2020 2:02 PM

modular change."

Our post-motion filing investigation has revealed that Mr. Floyd was, as the Officers had suspected, an addict. He was worse than that.

On May 6, 2019, a year earlier, Mr. Floyd was arrested in North Minneapolis during a narcotics investigation. He was a passenger in a Maroon Ford Explorer "with unlicensed plates," and was stopped on a tip. Just as he behaved a year later at 38th and Chicago, Officers who approached his car found Mr. Floyd "moving all around and acting extremely nervous," how "he wouldn't listen to my commands." How he "continued to order him several times to stop moving around and to see his hands." How "AP Floyd had also put something in his mouth and was attempting to eat them." Def. Exh. 14 at p. 6, Bates 6530. Just like our case, Mr. Floyd had to be "physically remove[d] from the vehicle. He "then began to cry." Id. A pat down search revealed $594.00 on his person. Oxycodin pillsfell out of his pant leg to the ground. He "appeared to be under the influence of narcotics." Id. at 8 and 9. There were 274 pills found inside the car, in a leather bag, along with 17.95 grams of field tested cocaine, and 3.10 grams of "field test positive rock cocaine." Id. at 14. The pills were of a distribution quantity, confirming the informant's tip.

Mr. Floyd's Texas ID and birth certificate were also found inside the bag

Filed in District Court
State of Minnesota
8/17/2020 2:02 PM

holding the narcotics, the drugs his. Id. at 14. Mr. Floyd "denied any involvement with selling narcotics nor being addicted to them." Id. at p. 8. Applying the State's factual theories, the arresting Officer should have believed Mr. Floyd's denials, assumed his abject innocence.

Mr. Floyd was taken to the hospital, where he admitting to snorting "Oxycodone daily." The medical staff found him to be "agitated and confused, hypertensive." Id. p. 27. He was restrained, for being "physically threatening, and showing the "risk of harming another." Later, calmed down, Mr. Floyd admitted to injecting 7-8 Oxycodone shortly before his arrest, and stated that "he's been addicted to opiates for approx. 1.5 years . . ." Id.

Mr. Floyd arrived here from Texas, where he had been convicted of strong arm robbery. On August 9, 2007, Mr. Floyd arrived in a Ford Explore at a private residence. He wore a blue uniform, knocked on the door, and when the female resident opened, a total of six Black males stormed in and robbed her. From a photo-line up, the female resident "tentatively identified Defendant George Floyd as being the largest of the suspects who initially forced his way into her home, pulled the pistol into her abdominal area . . ." Mr. Floyd was convicted of this Aggravated Robbery with a Deadly Weapon (his gun), and sentenced, on April 3, 2009, to five years in prison. Defendant's Exh. 15.

Filed in District Court
State of Minnesota
8/17/2020 2:02 PM

Our further review of the Texas Court records reveals a life of sustained chemical dependence and its accompanying criminality.

On September 6, 2006, Mr. Floyd was convicted of possession of cocaine, and served ten months in the State jail. Def. Exh. 16.

On July 21, 2004, he was convicted of "transfer of cocaine", an offense plea bargained down, the State waiving enhancements, and received ten more months. Def. Exh. 17.

On March 3, 2003, Mr. Floyd was convicted of possession of cocaine, and received 8 months in jail. Def. Exh. 18.

With this background in mind, the State's suggestion that Officer Lane was required somehow to believe Mr. Floyd's denial of culpability invites an adventure into Pollyana land.

In Officer Thao's statement to The BCA, he comments that 38th and Chicago and the Cup Food Store is "a known Blood Gang hangout, especially hostile to police."

Mr. Floyd's willingness to deny chemical use, to announce his confusion, that he wasn't resisting when he done so just a year earlier, to say he "didn't know what was going on," that he said he was "sorry" but not for what, Brief at pp. 3 and 4 – was all unbelievable, and the Officers had every right to discount

Filed in District Court
State of Minnesota
8/17/2020 2:02 PM

anything this man said.

In light of his continuous criminal conduct, Mr. Floyd could not possibly been "startled" when Officer Lane tapped on his window. Brief at p. 3. Officer Lane had good reason to point his gun when Mr. Floyd did not comply and would not show his hands.

Mr. Floyd claimed "I can't breathe" at least six times in the back seat of the squad. Mr. Floyd was lying about that too.

The State cannot dispute that Mr. Floyd should have been arrested. Once arrested, and his record run, he well knew jail would be his destination, a part of his ongoing cycle of chemical dysfunction, violence, theft, he was an addict, a distributor of drugs, and evident danger to the community.

That a ex-con and violent defendant ought to be able to avoid getting into a squad car by declaring claustrophobia, Brief at p. 5, is found nowhere in the case law, or for that matter common sense.

The Officers are at fault, so the argument continues, for somehow pushing Mr. Floyd into a squad car. Brief at p. 6. It's a ridiculous posit. He would not comply with Officer Lane's soft approach: "Ill stay with you. I'll put the windows down, I'll put the air on." Def. Exh. 1 at p. 35. Mr. Floyd, by struggling to get out of the squad car, forced his ongoing and enhanced restraint.

Filed in District Court
State of Minnesota
8/17/2020 2:02 PM

The best record of Officer Lane's actual conduct is found within his body camera footage, frame by frame. The State's essential argument is that Officer Lane, by holding down Mr. Floyd's legs without release, aided and abetted an assault he Lane did not wish to take place.

Note at 20:24:18 Officer Lane's hands were not on Mr. Floyd, let alone pinning him down. Hence the State's argument, that after Mr. Floyd lost consciousness, Officer Lane "continued to restrain him," Brief at p. 9, is not true. When Officer Lane said, "I think he's passing out," he had only his right hand loosely on Mr. Floyd's right ankle. See the body camera still at 20:23:46, Def. Exh. 19.

Mr. Lane's hand is off Mr. Floyd entirely at 20:24:18, when, the State continues, he had Mr. Floyd restrained. Brief at p. 9. Images from 20:25:16 and 20:26:-3 confirm that status, contrary to the State's false generalization as to his conduct. Def. Exh. 19.

Officer Lane, the cam shows, stopped restraining Mr. Floyd at the time he asked whether he should be rolled over on his side at 20:23:49. Thus the State's claim that, throughout the nine minutes, Officer Lane "chose to stay the course" is not true. Brief at p. 26. At 20:26:12 of Officer Kueng's bodycam, and 11 seconds after Keung states he cannot find a pulse, neither of Officer Lane's hands were

Filed in District Court
State of Minnesota
8/17/2020 2:02 PM

even on Mr. Floyd's body. Def. Exh. 19.

The State's Panglossian trope that the Officers should then have relied on the observations of the witnesses on the scene, Brief at p. 12, is without authority, indeed naive. Walk down Lake Street to see what an unrestrained crowd can do.

Graham, Lombardo and Reasonableness

Before reaching the two counts, several observations need to be made as to what is the reasonable use of force, defined by Minn. Stat. 609.06. Graham v. Connor, 490 U.S. 386, 396 (1989) is cited, Brief, p. 27, but tellingly not discussed. In Graham, the Supreme Court provided the framework used to evaluate whether an police officer's conduct is excessive, in turn judged "by reference to the specific constitutional standard that which governs that right, rather than to some generalized 'excessive force' standard." Id. at 394. "The calculus of reasonable must embody allowance for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation." Id. at 397. The test is whether the officer's conduct is "objectively reasonable." Id. The Graham gold standard appears in the MPD training manual, at Sec. 5-303. The Officer's perspective is not measured, as the State has inferred, by "the 20/20 vision of hindsight." Id.

Filed in District Court
State of Minnesota
8/17/2020 2:02 PM

The Graham progeny has addressed what happened here. Officer Lane's conduct was far from wanting. In Lombardo v. City of St. Louis, 956 F.3d 1009 (8th Cir. 2020), cited in our opening motion but also left unmentioned by the State, one Mr. Gilbert was arrested and held in a local jail, where he soon tried to hang himself. The jailors discovered Mr. Gilbert naked with clothing tied around his neck, and when they attempted to cuff him, he struggled, "thrashed his head" was then "cuffed" and placed "to the prone position on the floor." Id. at 1011. Though asked to stop, he continued to kick and thrash, and, critical to our case, stopped breathing. The cause of Mr. Gilbert's death was "arteriosclerotic heart disease exacerbated by methamphetamine and forcible restraint." Id. at 1012.

Mr. Gilbert's Sec. 1983 claim of unreasonable restraint was rejected by the Eighth Circuit, just as Mr. Floyd's should be here, with this holding: "the use of prone restraint is not objectively unreasonable when a detainee actively resists officer directives and efforts to subdue the detainee." Id. at 1013. Given Mr. Gilbert's erratic conduct, the fact that he was held in a prone restraint for "fifteen minutes" was reasonable, the Circuit explained. That Mr. Gilbert was handcuffed while prone did not, as a matter of law, "eliminate a person's ability to perform harmful acts." Id. at 1014 (quoting United States v. Pope, 910 F.3d 413, 417 (8th Cir. 2018), cert. denied, 140 S.Ct. 160 (2019)). The fact that Mr. Gilbert

Filed in District Court
State of Minnesota
8/17/2020 2:02 PM

announced to the jailors that they were hurting him (read "I can't breathe") was interpreted "as ongoing resistence." Id. at p. 6 (citing Ehlers v. City of Rapid City, 846 F.3d 1002, 1011 (8th Cir. 2017)). Mr. Gilbert's "expert testimony that the use of prone restraint was the principal cause of Gilbert's death is less significant in light of Gilbert's ongoing resistance, his extensive heart disease, and the large quantity of methamphetamine in his system." Id. (emphasis added). Mr. Floyd's profile, not coincidentally.

Much is made in the State's brief of Officer Lane's training, omitting mention of our Exh. 7, training materials from the Minneapolis Police Department. Mr. Lane, like all the other rookies, was shown the photograph that appears in Bates stamp 2596, titled "Ok they are in handcuffs now what." The photograph is familiar. The officer has his knee on the subject's neck, just like Office Chauvin did, at the same location in fact. Having seen that image, Officer Lane would assume, as this Court should, that placing a knee on a neck to effectuate an arrest, even of a cuffed defendant, is permitted by the MPD. Note, too, that the Officer pictured at Bates stamp 2596, is not applying pressure to the "trachea or airway." Bates 1229. Nor, does it appear, did Officer Chauvin. The alleged Chauvin assault, the knee, was, by this picture, encouraged, standard, not to be questioned, particularly by an Officer who had finished his training that Wednesday before

Filed in District Court
State of Minnesota
8/17/2020 2:02 PM

Memorial Day, Def. Exh. 1, at p. 7. For only four days, on May 25th, could Officer Lane engage in sole patrol. He was a rookie. Id.

To the extent the State claims a failure to follow protocol, Brief at pp. 15-16, that does not lead ipso facto to a conclusion that Mr. Lane intended to commit felonies and ruin his budding career.

Aiding and Abetting and Murder in the Second Degree

The State misreads the law of aiding and abetting, attempts to lower the crime as defined by case law, suggesting Officer Lane's mere presence suffices. Brief at p. 25, n. 16 (citing State v. Bahtuoh, 840 N.W.2d 804, 812-813 (Minn. 2013)). We disagree.

The seminal Minnesota decision remains State v. Ulvinen, 313 N.W.2d 425 (Minn. 1981), which has not been, as suggested by the State, overruled. Brief at p. 25, n. 16. Ulvinen holds that aiding and abetting mandates "something more of a person than mere inaction to impose liability as a principal." Id. Proof is needed of "a high level of activity . . . in the form of conduct that encourages another to act." Id. at 428.

The State wishes to sweep Ulvinen away, its time-honored ruling that an aider and abetter must "influence" the decision of another to commit a crime (as if Officer Chauvin could be), imposing "liability for actions which affect the

Filed in District Court
State of Minnesota
8/17/2020 2:02 PM

principal, encouraging him to take a course of action which he might not otherwise have taken." Id. at 428. Instead, Ulvinen points to the central problem with the State's memorandum – the claim of an absence of action is aiding and abetting, i.e., that Lane should have done more, should have called out Officer Chauvin, should have listened to the crowd – when what he did was remain present, ask to turn over Mr. Floyd, release his hands from Mr. Floyd's legs, and try to save him with CPR. Office Chauvin did not need, as the State argues, Officer Lane's leg restraint to put his knee on Mr. Floyd's neck area. Brief at p. 25.

More recent law does not vary. What proof of aiding and abetting did require on May 25th, is that Officer Lane actually "knew" Officer Chauvin was going to assault Mr. Floyd, and that, beforehand he, Lane, "intended by his actions or presence to further the commission of that offense." State v. Huber, 877 N.W.2d 519, 525 (Minn. 2016) (citation omitted). Our own High Court was quite clear: Officer Lane had to have "intentionally aided or assisted [Officer Chauvin] in committing a crime." Id. at 524. Remember that Officer Lane had called for an ambulance. Def. Exh. 1 at p. 15.

The State's understanding of aiding and abetting law was refuted in Rosemond v. United States, 572 U.S. 64 (2014). In that case, the Supreme Court

Filed in District Court
State of Minnesota
8/17/2020 2:02 PM

explained the "centuries-old" common law proof predicate required for the companion federal statute, 18 U.S.C. 2, to our own, Minn. Stat. 609.05, Subd. 1. Id. at 70. The opinion affirms Judge Learned Hand's black letter definition of what must be the aider and abettor's intention. "To aid an abet a crime, a defendant must not just 'in some sort associate himself with the venture,' but also 'participate in it as in something he wishes to bring about' and 'seek by his action to make it succeed.'" Id. at 76 (quoting Nye & Nissen v. United States, 336 U.S. 613, 619 (1949)). The defendant's intention must go not just one element, our Supreme Court observed, but to the "entire crime charged." Id. "What matters for purposes of gauging intent, and so what jury instructions should convey, is that the defendant has chosen, with full knowledge, to participate in the illegal scheme – that, if all had been left to him, he would have planned the identical crime." Id. at 79. To aid and abet, then, the defendant has to have "advance" knowledge that a crime is being committed, Id. (emphasis added), i.e., that Officer Chauvin had decided to assault Mr. Floyd. Officer Lane could not have opted just "to walk away" when he was unaware of what his FTO was about to do. Id. at 78.

Citing State v. Smith, the State suggests that Officer Lane's aiding and abetting may have arisen while Officer Chauvin was "committing a crime." 901 N.W.2d 657, 661 (Minn. App. 2017). Nothing in the body camera evidence

Filed in District Court
State of Minnesota
8/17/2020 2:02 PM

suggests such knowledge, nor will a like instruction given here. The CRIMJIG for aiding and abetting speaks of the required proof that the defendant "made no reasonable effort to prevent the crime before it was committed." Sec. 4.01 (emphasis added); see also Bahtuoh, 840 N.W.2d at 810 (requiring the state to prove the defendant knew his alleged accomplice[] "were going to commit a crime.") and State v. Mahkuk, 367 N.W.2d 675, 683 (Minn. 2007)(requiring proof that the defendant "knew that his alleged accomplices were going to commit a crime.") . The Smith holding is factually sui generis. The instruction was that the defendant could aid and abet a co-defendant who is "committing" a crime featured a defendant who acted as a look out during what had to have been a planned robbery. Id. at 660.

State v. McAllister, the second case cited, Brief at 20, featured three men who, together, at the same time, beat, disrobed, robbed and eventually killed a man in a South Minneapolis alley. 862 N.W.2d 49, 54 (Minn. 2015). The decision was that Mr. McAllister "knew" his co-defendants "were going to commit a crime and intended his presence and actions to further the commission of that crime." Id. at 55. Hardly our setting.

In sum, the State's claim that Officer Lane "need not know, however, that his accomplice's conduct was criminal at the time it was committed," Brief at 19,

Filed in District Court
State of Minnesota
8/17/2020 2:02 PM

n. 13, is not the law. The Supreme Court, in Rosemond, rejected that theory. 572 U.S. at 81. Rosemond also found reversible error in an aiding and abetting instruction that did not require proof of "advance knowledge." 572 U.S. at 82.

As to the factual merits of the Murder in the Second Degree charge, the State alleges that the assault of Mr. Floyd took place at 8:19 PM, Brief at 7. There is no proof in the discovery, nor will there ever be, that Officer Lane knew, beforehand, that Officer Chauvin was about to put his knee on Mr. Floyd's neck. That Chauvin had intended to inflict substantial bodily harm.

The calls out by Floyd, "I can't breathe," the premise of the State's argument, Brief at pp. 21-22, need not have been believed, and were interpreted as Mr. Floyd's ongoing resistance. Lombardo, 956 F.3d at 1014. Mr. Floyd said he couldn't breathe at least six times while in the squad.

Officer Lane's calls for an ambulance, and his subsequent attempt to save Mr. Floyd's life, by CPR in the ambulance, is inconsistent with a desire to aid and abet his death. Def. Exh. 1 at pp. 16-17.

We do not concede, as the State suggests we did, that Officer Chauvin is guilty of an Assault in the Third Degree in any event. Minn. Stat. 609.223, Subd. 1. Brief at p. 10, n. 14. It appears, from our viewing, that Officer Chauvin did not intend the infliction of harm upon Mr. Floyd. The autopsy reports confirm no

Filed in District Court
State of Minnesota
8/17/2020 2:02 PM

damage done to Mr. Floyd's neck.

Manslaughter in the Second Degree

Count 2, Manslaughter in the Second Degree, is defined as "culpable negligence whereby the person creates an unreasonable risk, and consciously takes chances of causing death . . ." Minn. Stat. 609.205 (1)(emphasis added). The person's negligence must be "gross" coupled with an element of an individualistic recklessness. State v. Frost, 342 N.W.2d 317, 320 (Minn. 1983).

For this offense, "the victim's negligence is relevant on questions of whether the defendant was negligent, and, if so, whether that negligence was the proximate cause of the victim's [death]." State v. Crace, 289 N.W.2d 54, 60 (Minn. 1979). Did, in other words, Mr. Floyd's negligence at least contribute to this tragedy; was his conduct, in other words, an intervening factor. State v. Schaub, 44 N.W.2d 61, 64 (Minn. 1950); Crace, 289 N.W.2d at 60. Yes.

All he had to do is sit in the police car, like every other defendant who is initially arrested. While attempting to avoid his arrest, all by himself, Mr. Floyd overdosed on Fentanyl. Given his intoxication level, breathing would have been difficult at best. Mr. Floyd's intentional failure to obey commands, coupled with his overdosing, contributed to his own death.

As for Officer Chauvin, proof is required of his very own and unique

Filed in District Court
State of Minnesota
8/17/2020 2:02 PM

"subjective recklessness." State v. McCormick, 835 N.W.2d 498, 507 (Minn. App. 2013). Ergo for Officer Lane, there must be probable cause that he knew Officer Chauvin consciously disregarded the risks to Mr. Floyd, and that he, Lane, knew beforehand that he would be doing so.

We don't agree, as the State infers, that Chauvin committed second-degree manslaughter. Brief at p. 32. He's told Mr. Floyd was uncooperative, and Floyd says he can't breathe, which is what he's said when he was not on the ground. Def. Exh. 4, at p. 22. Officer Chauvin tells Mr. Floyd, "You're under arrest guy." Id. at p. 25. When Mr. Floyd continues to say he can't breathe, Officer Kueng observes, "You're doing fine. You're talking fine." Id. at 29. The ambulance has been summoned long before Mr. Floyd appears to not be breathing. Id. at 33. Officer Chauvin appears surprised when Officer Keung announces that he can't find a pulse. Id. at 36.

The State claims, for this Count as well, that the commands of the bystanders should have swayed Lane, Brief at p. 33. Again, there is no such requirement in law.

For Count 2, the State's brief does not discuss the impossibility of Officer Lane's aiding and abetting, which, as noted above, requires his intentionality, his certain anticipated predictability of what will happen, his wanting to make it so.

Filed in District Court
State of Minnesota
8/17/2020 2:02 PM

There is no case cited for the theory that a defendant intentionally joins what is not intentional but rather reckless. Officer Lane could not have known Officer Chauvin's unstated thought process before he placed his knee on Mr. Floyd's neck.

The Complaint should be dismissed.

Dated: August 17, 2020

Respectfully submitted,

/s/ Earl P. Gray

Earl P. Gray, Lic. 37072
332 Minnesota Street
Suite W-1610
St. Paul, MN 55101

Lawyer for Officer Lane

Filed in District Court
State of Minnesota
8/17/2020 2:02 PM