No. _____

In The

Supreme Court of the United States

DEREK MICHAEL CHAUVIN,

Petitioner,

vs.

STATE OF MINNESOTA,

Respondent.

On Petition For Writ Of Certiorari To The Court Of Appeals Of Minnesota

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Although a slightly similar question was presented to this Court in *Skilling v. U.S.*, 558 U.S. 945 (2009), questions remained unresolved regarding the presumption of presumed prejudice and the meaning of an "extreme case." While *Skilling* identified four non-exclusive factors to presume prejudice and warrant a change of venue, issues related to community harm and juror vested interests as presumptive bias factors prior to *voir dire* were not addressed. A community from which the jurors will be chosen experienced catastrophic violent riots resulting from a police officer's acts and believed that further rioting or harm to them or their families will result if they acquit the police officer as a criminal defendant. The defendant's motion for a change of venue was denied. The questions presented are:

1. Whether catastrophic-widespread community harm and threat of harm is a presumed community bias and must be considered as a singular inquiry as an extreme case creating circumstances so inherently prejudicial that jury bias must also be presumed because jurors have a vested interest in the outcome of the case, thereby narrowing a trial court's discretion and mandating a change of venue, without *voir dire*, to ensure a constitutionally fair trial under the Sixth Amendment.

QUESTIONS PRESENTED—Continued

2. Whether when evidence of juror prejudice and voir dire misconduct found after trial indicates a juror stereotyped, prejudged, or carried an undisclosed animus against the criminal defendant, the Sixth Amendment requires the trial court to consider that evidence and any resulting denial of the right to trial by an impartial jury.

PARTIES TO THE PROCEEDINGS

Petitioner is Derek Michael Chauvin, defendant-appellant below.

Respondent State of Minnesota, plaintiff-appellee below.

CORPORATE DISCLOSURE STATEMENT

Petitioner is an individual. There is no parent company nor subsidiary involved.

LIST OF RELATED CASES

The citation to the state court criminal case is *State of Minnesota, v. Derek Michael Chauvin*, 2021 WL 2604508 (Minn. Dist. Ct.), District Court of Minnesota, Fourth Judicial District. Hennepin County, No. 27-CR-20-12646. The jury returned a guilty verdict against Chauvin on April 20, 2021. App. 61.

The citation to the state appellate court is *State of Minnesota, v. Derek Michael Chauvin*, 989 N.W.2d 1, (Minn. App. 2023). Judgment was entered on April 17, 2023. App. 1-60.

The State Supreme Court order denying review of the state appellate court decision is *State of Minnesota, v. Derek Michael Chauvin*, Minnesota Supreme Court (A21-1228, July 18, 2023). App. 64.

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Petitioner Derek Michael Chauvin petitions for a writ of certiorari to review the judgment of the Minnesota Court of Appeals. The Minnesota Supreme Court denied review.

OPINIONS BELOW

The Minnesota Supreme Court's denial of review dated July 18, 2023 is not published and is reproduced in the Appendix (App.) at 64. The decision of the Minnesota Court of Appeals is a published decision available at *State v. Chauvin*, 989 N.W.2d 1 (Minn. App. 2023) and is reproduced at App. 1–60. The decision of the trial court is an unpublished decision and is reproduced at App. 61–63.

JURISDICTION

The Minnesota Supreme Court denied review of the Minnesota Court of Appeals' decision on July 18, 2023. App. 64. This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

The Constitution's Sixth Amendment:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law. . . .

STATEMENT OF THE CASE

A. Introduction.

From May 26, 2020 to June 1, 2020, violent riots consumed Minneapolis, the county seat of Hennepin County, following the release of a video showing Minneapolis police officers restraining a black man resisting arrest on May 25 who died in the encounter. The riots caused $500 million in property damage and led to two deaths. The riots did not end until after the deployment of thousands of National Guard troops. Chauvin App. Br. at 3–4. One of the police officers, petitioner Derek Michael Chauvin, was immediately fired and charged with second degree felony murder. Mr. Chauvin's trial began less than ten months later on March 8, 2021. Chauvin App. Br. at 55. From May 26, 2020 through the end of trial, the pretrial publicity regarding Mr. Chauvin, Mr. Floyd and the riots would be described as the most extensive in 50 years. Chauvin App. Br. at 7. From the date of the police incident on May 25, 2020, to the date trial commenced on March 8,

2021—287 days—local media saturated the community with literally daily coverage regarding Mr. Chauvin. Chauvin App. Br. at 6–12.

Indeed, government officials presumed that community passions were so inflamed that rioters may invade the courthouse itself during the trial. As a result, the courthouse was surrounded by barbed wire and concrete block and protected by the National Guard troops and two armored personnel carriers. Chauvin App. Br. at 13. All other activities in the courthouse were suspended during the trial. *Id.*[1] Because government officials further presumed that riots may break out if the jury acquitted Mr. Chauvin, thousands of additional National Guard troops were deployed throughout Minneapolis on April 14—five days prior to closing arguments. Chauvin App. Br. at 29. The jurors, who were not sequestered until after closing arguments, were exposed to this protection every day as they came to the courthouse from March 8 through the April 20 verdict in police vehicles after gathering in undisclosed locations in Hennepin County.[2] Chauvin App. Br. at 13. News media described the courthouse

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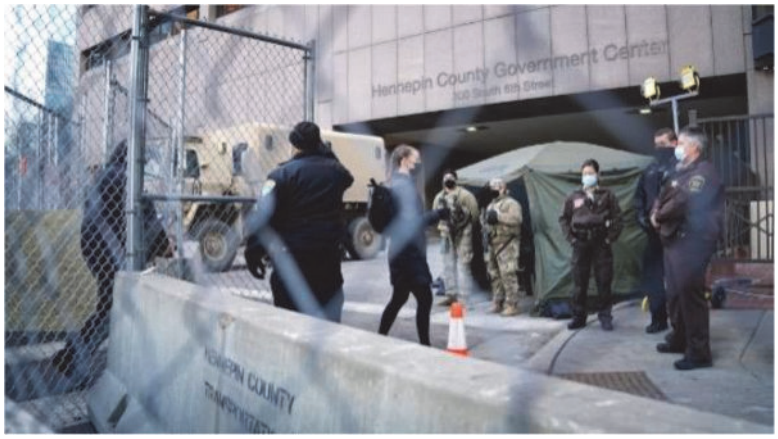
[1] The courthouse is part of large complex called the "Hennepin County Government Center" which also contains the administrative functions for Hennepin County.

[2] Jurors were not sequestered until jury deliberation began on Monday, April 19, 2023. The jury returned a verdict the next day.

as a "fortification" "reminiscent of Cold War-era Berlin. *See*, *id.*"[3]



[4]

[3] "For Jacob Frey, It's Been a Tumultuous Year," Bloomberg Opinion, Adam Minter (Mar. 8, 2021), https://www.bloomberg.com/opinion/articles/2021-03-08/for-minneapolis-mayor-jacob-frey-it-s-been-a-tumultuous-year (last visited Feb. 8, 2022).

[4] https://www.officer.com/investigations/expert-testimony/news/21213333/judge-pauses-trial-of-former-minneapolis-police-officer-accused-of-killing-george-floyd (last visited Sept. 15, 2023).

[5]

As the trial began, hundreds of storefronts and office buildings were boarded-up in anticipation of the jury's verdict: "This City feels like it's occupied by the military."[6] Jurors were concerned about their own and their family's safety. One juror testified of being "terrified" to serve and another stated that "I do [have concerns for my personal safety] for afterwards because I know [my identity] would be public information, and it really depends on how the trial—end results." Chauvin App. Br. at 17–18. Another testified that he had concerns not only for himself, but the physical safety of friends who worked downtown. *Id.* Finally, after Juror 27 learned he been identified during *voir dire* based on

[5] https://www.latimes.com/world-nation/story/2021-04-20/photos-a-nation-reacts-to-verdict-in-chauvin-trial-in-death-of-george-floyd (last visited Sept. 15, 2023).

[6] https://www.washingtontimes.com/news/2021/apr/19/in-minneapolis-a-fortified-city-awaits-chauvin-ver/ (last visited Oct. 12, 2023).

recognition of his voice on Court TV, he emailed the trial court requesting to be released from the jury based on the failure to protect his identity. The trial court refused stating "your concerns are perfectly understandable. All of us on this case whose names are out in the public understand the concerns." Chauvin App. Br. at 18.

The trial court, moreover, acknowledged the protests and riots following the death of Mr. Floyd. In addition, the trial court noted how protestors physically and verbally harassed Chauvin and his attorney, including the other involved defendants and their attorneys, as they departed the courthouse. Other incidents occurred; protestors picketing the homes of at least one defendant, and a county attorney's home suffering vandalism during the riots. Even the court received numerous *ex parte* communications from the general public regarding what the outcome of the trial should be—often against the defendants. Counsel for Mr. Chauvin received over a thousand negative or threatening emails alone. With the trial court's concern that people with similar attitudes toward defense counsel and the court, it nevertheless decided not to fully sequester the jury for the trial itself (only partially as it related to law enforcement providing rides)) but, did sequester jury selection (while in the courthouse) and fully sequestered the jury during deliberations. Or. for Juror Anonymity and Sequestration (Henn. Cty. Dist. Ct., No. 27-CR-20-12646 (Nov. 4, 2020).

Despite this, the trial court denied Mr. Chauvin's requests for the change of venue. The Minnesota Court

of Appeals affirmed the lower court's decisions finding no presumed prejudice because:

> [T]he district court took numerous steps to prevent the trial from becoming "utterly corrupted by press coverage" by sequestering jurors during jury selection and deliberation as well as controlling media access to the trial by precluding video and audio coverage of pretrial hearings.

App. at 22.

The appellate court further stated: "[w]hile there was substantial security around the courthouse during trial, it was put into place to ensure a safe trial for the parties as well as the general public." *Id.* What the appellate court failed to address was whether the circumstances requiring this extensive security to "ensure a safe trial" resulted in a presumption of prejudice under *Skilling*.

The appellate court ignored the community harm and hence, the presumed prejudice as a result of the destructive riots before Mr. Chauvin's trial and the threat of renewed riots dependent upon the verdict—all confirmed by the jurors' expression of genuine concerns for their own safety, the safety of their families, and others. Despite this, the appellate court expressed satisfaction with the trial court's efforts to mitigate press coverage and through *voir dire*, believing jurors could deliver a fair and impartial verdict. App. 22–23.

The appellate court's decision cannot stand.[7] Its decision reflects the inconsistency of a court's wide discretion when and if the court applies standards applicable to extreme cases under *U.S. v. Skilling*, 561 U.S. 358 (2010). Mr. Chauvin's case shows the profound difficulties trial courts have to ensure a criminal defendant's right to an impartial jury consistently when extreme cases arise. Mr. Chauvin's case demonstrates how a presumption of jury bias and community bias is a necessary stand-alone constitutional inquiry. This was particularly true here when the jurors themselves had a vested interest in finding Mr. Chauvin guilty in order to avoid further rioting in the community in which they lived and the possible threat of physical harm to them or their families.

The error of failing to change venue without consideration of presumed bias, is compounded by evidence of juror stereotyping of policer officers and animus to the Mr. Chauvin. The appellate court affirmed the trial court's decision not to hold a hearing to inquire about the juror's acts or actions, or influence on the jury during deliberations.

B. Widespread violent rioting engulfs the Twin Cities after video of police officer's killing of a black man goes viral.

On May 25, 2020, Petitioner Mr. Chauvin, a Minneapolis police officer, knelt on George Floyd's back for over nine minutes while Mr. Floyd was handcuffed and

[7] The Minnesota Supreme Court denied review. App. 64.

lying face down on the street because Mr. Floyd resisted arrest. App. 4–5. With three other officers present, Mr. Floyd died at the scene. App. 4. Bystanders witnessing the event took videos on their smart phones which were uploaded to the internet and immediately went viral.[8]

The next day, the Minneapolis police chief met with leaders of the African-American community and immediately terminated the four officers involved. Chauvin App. Br. at 2. Political leaders also expressed their opinions of the incident: for example, Minneapolis Mayor Jacob Frey: "Why is the man who killed George Floyd not in jail? If you had done it or I had done it, we would be behind bars right now"[9] . . . "Being black in America should not be a death sentence . . . "[10] and Minnesota Governor Tim Waltz: "George Floyd did not deserve to die, but he deserves justice. . . ."[11]

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[8] "One week that shook the world: George Floyd's death ignited protests far beyond Minneapolis," Anna Boone, Star Tribune (June 7, 2020), https://www.startribune.com/george-floyd-death-ignited-protests-far-beyond-minneapolis-police-minnesota/569930771/ (last visited Feb. 8, 2022).

[9] "The Mayor Of Minneapolis Is Calling For The Officer Who Knelt On George Floyd's Neck To Be Arrested," BuzzFeed.News (May 27, 2020), https://www.buzzfeednews.com/article/salvadorhernandez/minneapolis-derek-chauvin-george-floyd-arrest (last visited Feb. 8, 2022).

[10] "George Floyd: Minnesota clashes over death in police custody," BBC News (28 May 2020), https://www.bbc.com/news/world-us-canada-52817097 (last visited Feb. 8, 2022).

[11] "Walz calls for prompt investigation in Floyd death, Minnesota's governor called the citizen video of George Floyd's final moments shocking, lacking humanity," KARE 11 News (May 27,

Later on May 26, 2020, protests began at the police precinct to which Mr. Chauvin was assigned. The protests almost immediately turned into violent and destructive riots engulfing Minneapolis. Chauvin App. Br. at 3. A police squad car at the precinct was burned and Minneapolis police officers surrounding the precinct ultimately had to fire rubber bullets and tear gas to disburse the rioters. *Id.*

On May 27, things then went from bad to worse. Rioters burned numerous buildings in Minneapolis to the ground and looted numerous businesses. Governor Walz failed to deploy National Guard troops despite a request from Mayor Frey. *Id.*

On May 28, the riots continued. Late on May 28, Governor Walz activated 7,100 National Guard troops—the largest deployment since World War II.[12] Governor Walz admitted: "if the issue was the state should've moved faster, yeah that is on me." Moreover, Governor Walz ordered curfews for Minneapolis and Saint Paul. Other cities in the metropolitan area would follow suit. *Id.* at 4.

Deployment of thousands of National Guard troops into the Twin Cities did little to quell the violent rioting as more buildings were destroyed. *Id.* The

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2020), https://www.kare11.com/article/news/politics/walz-calls-for-prompt-investigation-in-floyd-death/89-e9ca9723-8602-49a4-aff3-39e9e024c288 (last visited Feb. 8, 2022).

[12] "Guard mobilized quickly, adjusted on fly for Floyd unrest," Brian Bakst, MPR News (July 10, 2020), https://www.mprnews.org/story/2020/07/10/guard-mobilized-quickly-adjusted-on-fly-for-floyd-unrest (last visited Feb. 8, 2022).

rioting continued and did not end until June 1. The aftermath resulted in two deaths and an estimated $500 million in damage—representing the second most destructive riots in American history. *Id.* The pretrial publicity regarding the protests alone would be described as the most extensive in 50 years. *Id.* at 7.

Governor Walz then appointed Minnesota's Attorney General, Keith Ellison, as the prosecutor supplanting the Hennepin County prosecutors.[13] Although the County prosecutors originally charged Chauvin with third-degree murder and second-degree manslaughter, Mr. Ellison upped the charges to second-degree murder based on Minnesota's felony murder statute.[14] *Id.* at 5.

C. Pretrial publicity saturates the community demonizing Mr. Chauvin and the police officers' attorneys are assaulted during a pretrial hearing.

News media coverage was relentless and demonized Mr. Chauvin. There was saturation news coverage in Minnesota's two most widely circulated newspapers,

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[13] The City of Minneapolis is located in Hennepin County. The appointment of the Attorney General as the prosecutor would not change the venue of the trial.

[14] Minnesota is one of a minority of jurisdictions that allows an assault to be the predicate felony for a felony murder charge. The majority of jurisdictions have adopted the "merger doctrine" merging the assault into the murder itself and thereby preventing a felony murder charge when the predicate felony is an assault. This is obviously disturbing to Minnesota police officers who must use some degree of force when a suspect resists arrest.

the Star Tribune and Pioneer Press, as well as the three major TV networks—WCCO, KARE-11 and KSTP. Chauvin App. Br. at 6–7. More importantly, with respect to the riots, the news coverage was oddly favorable to the rioters. *Id.* Between Mr. Floyd's death on May 25, 2020 and the start of Mr. Chauvin's criminal trial on March 8, 2021—287 days—news media sources published stories literally every day about either the riots, Mr. Chauvin, or Mr. Floyd. *Id.* at 7–11.

Moreover, this coverage glorified Mr. Floyd and demonized Mr. Chauvin. The stories are too numerous to list; however, a few deserve special attention. Minneapolis Police Chief and Minnesota's head of the Department of Public Safety called the incident a "murder" on June 4, 2020. Numerous news stories said Chauvin had his knee on Mr. Floyd's neck and Mr. Floyd could not breathe. In fact, Black Lives Matter began campaign protests using the slogans "get your knee off our neck" and "I can't breathe" insinuating Mr. Chauvin caused Mr. Floyd's death by suffocating Mr. Floyd (at trial, the State's medical expert testified Mr. Floyd died from a cardiac arrhythmia caused by the pressure of Mr. Chauvin's knee on Mr. Floyd's back). Chauvin App. Br. at 33. Stories also emphasized the "menacing" look on Mr. Chauvin's face in the "viral" videos. In fact, it was menacing—as Minneapolis Police Department officers testified was proper in order to intimidate the crowd threatening to interfere with the officers' arrest of Mr. Floyd. Mr. Chauvin deployed his mace and told the crowd to "don't come over here" because of the threats. Chauvin App. Br. at 10–11.

On September 11, 2020, the trial court held a hearing on all four officers' cases at the Hennepin County Family Court because the Hennepin County Government Center could not provide adequate security from anticipated violence. Nonetheless, security failed. Protestors outside the courthouse physically assaulted one officer and his attorney as they left the courthouse and caused $2,000.00 of property damage. Chauvin App. Br. at 12–13

D. The trial court denies Mr. Chauvin's motions to change venue, delay the trial or sequester the jury.

Despite the riots, violence to the police officers' attorneys and pretrial publicity, the trial court denied Mr. Chauvin's motions to change venue, delay the trial or sequester the jury. Chauvin Br. at 12. In fact, the trial court accelerated the start date to March 8, 2021 despite the fact that the Minnesota Supreme Court had suspended in-person jury trials through March 15, 2021 due to Covid-19 unless the chief judge of the district court granted an exception. Minnesota Supreme Court Order ADM20-8001 (Jan. 21, 2021).

Moreover, for the first time in Minnesota history, the trial court ordered that the trial be televised on the Court TV channel which would only exacerbate juror concerns for their safety. Chauvin App. Br. at 12. In an effort to protect the jurors, the trial court ordered that the jurors be identified only by number and prevented the TV cameras from focusing cameras on the jurors'

faces including during *voir dire*. Chauvin App. Br. at 21–22. However, the TV coverage would still contain audio of juror *voir dire* testimony which could result in individuals identifying jurors by their voice—as happened to one of the seated jurors. *Id.* Finally, news media during the trial reported on courthouse security measures and revealed Chauvin's counsel's private notes seen at counsel table. Chauvin App. Br. at 24.

E. During *voir dire* jurors testified to concerns for their personal safety and further riots in their community if they acquitted Mr. Chauvin.

Jury *voir dire* began on March 8, 2021. Prior to *voir dire*, jurors completed a juror questionnaire including questions on what the jurors knew about the incident, whether the jurors had a negative impression of Mr. Chauvin and whether the jurors had seen the video of Mr. Floyd's arrest. Several of the seated jurors in answering question no. 1 inquiring what the jurors knew about the incident stated that they believed Mr. Chauvin kneeled on Mr. Floyd's neck rather than his back leading to the belief Mr. Chauvin suffocated Mr. Floyd. Juror questionnaire answers for seated Jurors 2, 9, 19, 27, 44, 52, 55, 79, 85, 89, 91 and 92 and alternate jurors 96, 118 and 131. Eight of the twelve seated jurors answered question no. 2 that they held a negative impression of Mr. Chauvin. Every seated juror answered yes to question no. 5 on whether they had seen the viral video.

During *voir dire* examination, jurors testified to their concerns for their own safety, their family's safety and the safety of their community if they acquitted Mr. Chauvin. One seated juror testified "I do [have concerns for personal safety] for afterwards because I know [my personal identity] would be public information, and it really depends on how the trial—the end results." *Id.* at 17 (Juror 55). Another seated juror testified to being concerned about the physical safety of friends who worked downtown. *Id.* at 18 (Juror 85). Another testified as being "surprised" and "shocked" by the protestors present for jury selection. *Id.* at 17 (Juror 9). Most troubling, after Juror 27 was seated, Juror 27 learned that his voice had been recognized during *voir dire* from Court TV. As a result, Juror 27 emailed the trial court requesting to be excused due to concerns for his safety. The trial court refused stating that if it did remove him, the trial court would have to remove all jurors for the same reason. *Id.* at 18.

Potential jurors expressed similar concerns. One expressed concerns about "harm" or "destruction to property" after trial. *Id.* at 15 (Juror 8). Courthouse barricades made one potential juror "anxious," another raising concerns once seeing the military troops, police, and fencing around the courthouse, which another saw security as reminding him of "Iraq." *Id.* (Jurors 17, 37, 48). Others were aware of the impact an acquittal would have on their community: "I want to be truthful to myself and not be naïve with if certain outcomes were what it would mean for our country"; concerns about the personal safety and the safety of the city; and

"If chaos in the city happened again, would I be safe?" *Id.* at 16 (Pot. Jurors 60, 87, 109).

F. Days into Mr. Chauvin's trial, Minneapolis publicly announces a $27,000,000 wrongful-death settlement with the Floyd family.

On the fourth day of Mr. Chauvin's trial, the City of Minneapolis publicly announced it had entered into a $27,000,000 settlement agreement with Mr. Floyd's family. *Id.* at 22; App. 8. Notably, Mr. Floyd's family attorney, Ben Crump, publicly stated that Mr. Floyd's death was unjust, horrific, and torture.[15]

Mr. Chauvin's counsel immediately moved to change venue. *Id.* The trial court found the settlement announcement "unfortunate" and a "legitimate concern." Notably, it was reported that the district court's Chief Judge Toddrick Barnette, had consulted with Minneapolis officials and *authorized* the City to announce the settlement. *Id.* at 22–23. As a result, the trial court called back the seven jurors it had seated

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[15] "Minneapolis City Council approves record $27M civil settlement in George Floyd's death," KARE11, https://www.kare11.com/article/news/local/george-floyd/george-floyd-family-ben-crump-minneapolis-settlement-derek-chauvin-trial/89-4443d30d-0f3c-4d96-873b-aa944ff74604 (last visited Feb. 9, 2022). *See also e.g.*, NPR (Mar. 13, 2021), https://www.npr.org/2021/03/13/976785212/minneapolis-agrees-to-pay-27-million-to-family-of-george-floyd; CBS (Mar. 13, 2021), https://www.cbsnews.com/news/george-floyd-city-minneapolis-settlement-27-million/; NBC (Mar. 12, 2021), https://www.nbcnews.com/news/us-news/city-minneapolis-considering-settlement-george-floyd-s-family-n1260868 (Feb. 9, 2021).

and reexamined them regarding whether they had heard of the settlement. Despite the fact that the trial court had ordered the seated jurors not to view any news regarding Mr. Chauvin or Mr. Floyd after they were seated, four seated jurors testified they saw the news coverage of the settlement. Nonetheless, the trial court only excused two of the jurors. Of the remaining jurors, one testified that he "wasn't surprise[ed] that the City made this settlement." *Id.* at 23. The trial court denied Mr. Chauvin's motion to change venue. App. 9.

G. The trial court refuses to change venue or sequester the jury after another riot engulfs Hennepin County in the middle of trial due to another police killing.

On April 11, 2021, in the middle of trial, another police incident occurred in Brooklyn Center, a city bordering Minneapolis, in which a black man was killed while resisting arrest. Riots began immediately and ensued for a week requiring deployment of National Guard troops and curfews for Minneapolis and surrounding communities. Chauvin App. Br. at 23–24. On April 16, 2021, Congresswoman Maxine Waters travelled to Minneapolis to speak to the rioters. Representative Waters told the rioters that if the jury did not convict Mr. Chauvin, the rioters should "stay in the street" to "fight for justice." *Id.* at 30. Waters continued telling the rioters "we've got to get more active, we've got to get more confrontational. We've got to make sure that they know that we mean business." *Id.* Chauvin

immediately moved again to sequester the jury and for further *voir dire* as an alternate juror resided in Brooklyn Center and others were subject to the curfew order. The trial court denied Chauvin's motion. *Id.* at 23–24.

H. On April 14, Governor Walz deploys the National Guard throughout Minneapolis to protect against rioting if Mr. Chauvin is acquitted.

On April 14, 2021, before Mr. Chauvin had even rested his case, Governor Walz deployed National Guard troops in Minneapolis and Saint Paul in anticipation of post-verdict riots. *Id.* at 29. This happened before the jury was sequestered five days later on April 19, 2021. *Id.* Moreover, in anticipation of the verdict, Minneapolis schools cancelled all after-school activities, downtown businesses closed and businesses were boarded up for fear of unrest. *Id.*

I. The Minnesota Court of Appeals affirms the decisions of the trial court regarding the denial of a change of venue and juror misconduct.

On April 20, 2021, the jury found Mr. Chauvin guilty on all three counts—second-degree murder, third-degree murder, and second-degree manslaughter. *Id.* at 31. No riots occurred in Minneapolis. On the contrary, the community celebrated. *Id.* Moreover, while the jurors expressed concern for their personal safety and the trial court kept their names anonymous,

Juror 52 immediately volunteered to be interviewed on *Good Morning America* and seven jurors volunteered to be interviewed by Don Lemon on CNN.[16] *Id.* at 39–41.

Mr. Chauvin appealed on numerous issues including the two critical issues now before this Court: denial to change venue due to prejudicial pretrial publicity and physical pressure on the court proceedings and the denial of a *Schwartz* hearing for juror misconduct. App. 2. A *Schwartz* hearing takes its name from *Schwartz v. Minneapolis Suburban Bus Co.*, 258 Minn. 325, 104 N.W.2d 301 (1960).

First, Mr. Chauvin argued that the trial court abused its discretion when it denied a motion to change venue because "pervasive publicity before and during the trial tainted the jury pool and prejudiced the jury," depriving him of a fair trial. App. 10. Mr. Chauvin also argued that the fortification of the courthouse, supported by military troops, confronting the non-sequestered jury on a daily basis, sent a message that a "wrong verdict would have consequences for the Twin Cities." *Id.* The state appellate court relied upon this Court's decisions in *Rideau v. State of La.*, 373 U.S. 723, 726 (1963), *Irvin v. Dowd*, 366 U.S. 717, 722 (1961), and *Sheppard v. Maxwell*, 384 U.S. 333, 335–36 (1966) to show that the pretrial publicity Mr. Chauvin encountered were unlike the facts demonstrated in those cases. However, the appellate court made no legal

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[16] https://www.cnn.com/2021/10/28/us/derek-chauvin-george-floyd-trial-jurors/index.html (last viewed on Oct. 12, 2023).

analysis of the factual circumstances Mr. Chauvin faced and did not fully analyze *Skilling*. App. 22. Despite the factual record of community-wide harm due to violent riots, the appellate court concluded that "associated publicity was not so corrupting as to raise a presumption of jury partiality under either Minnesota or Supreme Court precedents." *Id.* The appellate court merely concluded the trial court took "sufficient steps to mitigate the publicity" and presumed any other court "would unlikely be able to accommodate . . . necessary security measures. . . ." *Id.*

Second, the appellate court upheld the trial court's denial of Mr. Chauvin's motion for a *Schwartz* hearing. In Minnesota, "[a] *Schwartz* hearing provides a party an opportunity to impeach a verdict due to juror misconduct or bias." App. 23 (citation omitted). When prima facie evidence shows juror misconduct or bias, a court may conduct an examination of the juror. *Id.* 23–24. Here, Juror 52 answered "No" to the following three questions in the jury questionnaire: (i) [h]ave you . . . ever helped support or advocated in favor of or against police reform?," (ii) "[h]ave you . . . participated in protests about police use of force or police brutality?" and (iii) "The defendants in this case were officers for the Minneapolis Police Department. Is there anything about their employment with the MPD that would prevent you from rendering a fair and impartial verdict in this case?" Chauvin App. Br. at 35. The jury questionnaire also asked Juror 52 if police officers make him feel safe and Juror 52 responded "somewhat agree." During *voir dire* examination, Juror 52 was asked to

explain this response and Juror 52 only identified an encounter somebody else had with police—not Juror 52. Juror 52 failed to identify any encounters he had with police. *Id.* at 35–36.

After trial, Chauvin's trial counsel learned that Juror 52's responses were false. Chauvin's trial counsel learned that Juror 52 had participated in a Washington, D.C. "Commitment March: Get Your Knee Off our Necks" in August 2020 which march arose from the death of Mr. Floyd. Chauvin App. Br. at 37. A photo of Juror 52 at the march showed Juror 52 attended the march and wore a "Get Your Knee Off Our Necks-BLM" t-shirt and a "Black Lives Matter" baseball cap. *Id.* at 38–39. Moreover, immediately after the trial, Juror 52 gave an April 27 radio interview and stated he "had been pulled over by Minneapolis police regularly—probably 50 times—for no good reason," and one time having a "cop . . . pull[] a gun on him while he was changing a tire on the freeway." *Id.* at 36–37. Juror 52's statements on the radio interview directly contradicted his testimony on jury *voir dire* where he failed to identify these incidents with the Minneapolis Police Department. *Id.*

The appellate court found Mr. Chauvin's arguments unavailing. App. 26. The court believed the challenged juror had answered prospective juror questions truthfully, implying defense counsel should have asked more probing questions during *voir dire* and that available preemptory strikes could have prevented any seemingly biased juror from serving on the jury. App. 26–27.

The Minnesota Supreme Court denied Mr. Chauvin's timely filed petition for review of Court of Appeals decision. App. 64.

REASONS FOR GRANTING THE PETITION

I. The questions presented are important because they are fundamentally significant, recurring, and will resolve existing conflicts regarding extreme cases to ensure impartial juries under the Sixth Amendment.

A. After *Skilling*, questions remain unresolved regarding the presumption of prejudice when community harm or threat of harm occurs in the charging venue where jurors have a vested interest.

The question presented regarding presumed jury bias due to riots and saturating pretrial publicity in the jury's community is important because conflicts in the circuits exist, which influences state court determinations when considering factors for extreme cases to change a criminal trial's venue. Cases with similar circumstances, and the wide discretion given to lower courts, has resulted in inconsistent conclusions as to when to change venues. This is particularly critical when, regardless of pretrial publicity, riots arising out of the incident leading to the criminal trial and threat of riots from an acquittal leading jurors to have a personal vested interest in a guilty verdict because of (i)

the likelihood of riots in the community in which they live and (ii) threats of violence to them or their family if the jury acquits.

This Court has not addressed the issue of community harm or a juror's vested interest as an independent factor of an extreme case. In *Skilling v. U.S.*, 561 U.S. 358 (2010), this Court outlined how a lower court might find a matter an "extreme case" when prejudice is presumed based on the facts in *Skilling* which did not involve community wide riots. *Id.* at 381. A presumption of [jury] prejudice" prior to *voir dire* "attends only to the extreme case." *Id.*

This Court in *Skilling* reviewed four non-exclusive factors to consider based on the *Skilling* facts. The first factor, the size and characteristics of the community, this Court, while presenting examples, drew no line as to numbers nor did it expand upon the "characteristics" of the community. *Id.* This discretion is left to the trial court on the basis of a presumption of the lower court being in the best position to make that decision.

The *Skilling* second factor appears to require a confession of the criminal defendant "or other blatantly prejudicial information of the type readers or viewers could not reasonably be expected to shut from sight." *Id.* at 382. It relies upon a juror's ability not to be influenced by the opinion of others or other prejudicial information presented prior to a trial. This is particularly relevant as it relates to pretrial publicity and presumes publicity can be less memorable or non-prejudicial. *Id.*

Skilling's third factor relates to time between the criminal charge and trial noting that the longer the time period between the criminal charge and the commencement of trial, the less likely the pretrial publicity will influence the jury. *Id.* The presumption is that the "time" factor plays a role particularly when years would diminish the overall effect of the previous factors when considering if a matter is an extreme case.

Finally, this Court determined that the steps the trial court took reduced the risk of prejudice. *Id.* at 383. This included delaying the trial and *voir dire.* Satisfaction of juror's responses would not require an automatic presumption of prejudice. *Id.*

However, not all courts agree to the number of factors. For instance, in *U.S. v. Casellas-Toro*, 807 F.3d 380, 386 (1st Cir. 2015) the First Circuit identified another factor eliminating *voir dire*, although citing *Skilling*. *Casellas-Toro* determined the four factors to be "the size and characteristics of the community, the nature of the publicity, the time between the media attention and the trial, and whether the jury's decision indicated bias." *Id.*

Nevertheless, this Court's decision in *Skilling* upholds a lower court's wide discretion to decide what is or is not an extreme case and if or when a change of venue is warranted. Hence, there are conflicting discrepancies of trial court decisions regarding a change of venue even in similar cases.

Here, the Petitioner suggests *Skilling* did not explore incidents of catastrophic-widespread riots

occurring as a result of the incident leading to the criminal charges or the likelihood of riots and threats of harm to the jurors if the jury acquits the criminal defendant. In such circumstances, it is a presumed community bias and as such, must be considered as a singular inquiry in an extreme case so inherently prejudicial that jury bias must also be presumed. This is because potential jurors had a vested interest in the outcome of the case—preventing a resumption of riots in their community and possible threats of harm to themselves or their family. Hence, a lower court's otherwise wide discretion to change venue must be narrowed because the circumstances mandate a change of venue, without *voir dire*, to ensure a constitutionally fair trial under the Sixth Amendment.

B. Conflicts in the circuits under the *Skilling* factors to assess an extreme case also ignore presumed prejudice where community harm is present.

In *United States v. Yousef*, 327 F.3d 56, 155 (2d Cir. 2003), the Second Circuit upheld the denial of venue transfer in the prosecution of the 1993 World Trade Center bomber, whose actions killed six and injured thousands. Yousef moved for a change of venue prior to trial because of pretrial negative publicity. Although *Skilling* had not yet been decided, the appellate court's rationale embraced a couple of factors this Court would expound upon in *Skilling*; the subsiding of press coverage and *voir dire*. 327 F.3d 56, 155.

The Second Circuit had concluded that the time between the first World Trade Center bombing trial, "had taken place two years earlier, press coverage had substantially subsided by the time Yousef was brought to trial, and there was minimal publicity in the months immediately preceding his trial." *Id.* Moreover, the court found that the news stories about Yousef relied upon on appeal were not about Yousef's involvement in the bombing, but rather speculation of his involvement in other similar crimes. *Id.*

Key to the Second Circuit's analysis, acknowledged by Yousef, was the "searching *voir dire* of the members of the jury pool." *Id.* During *voir dire*, the jurors who eventually served on the jury had never heard of Yousef nor of his alleged involvement in the bombing of the World Trade Center. *Id.* (citation omitted). Notably, Yousef neither challenged the district court's *voir dire* nor suggested that the jury was tainted by pretrial publicity. Moreover, Yousef did not renew his motion for a change of venue after *voir dire*, suggesting to the court that Yousef's attorney was satisfied with the *voir dire* that resulted in a jury not tainted by pretrial publicity. *Id.*

In *United States v. Casellas-Toro*, 807 F.3d 380 (1st Cir. 2015), the First Circuit reversed a district court's denial of a change of venue transfer in a criminal case charging Casellas with making false statements to the FBI of a reported "carjacking." Just months before the federal trial, Casellas was convicted and sentenced for the murder of his wife. Both events took place in Puerto Rico.

Prior to the federal trial on the false statement charges, as the government would agree, the media coverage was "massive" and "sensational" regarding the murder of Casellas' wife for which he previously stood trial. As the appellate court would reiterate, the news media made the murder its primary focus "continuously, intensely and uninterruptedly . . . virtually on a daily basis." *Id.* at 383. Facts about the murder investigation apparently were leaked to the media. In addition, the media would publish false criminal-related rumors of Casellas' background. *Id.* When Casellas was convicted, people outside the courthouse and a stadium filled with people watching a baseball game cheered the announcement of the guilty verdict. *Id.* Casellas' sentencing was broadcast live on television, the internet, and radio. *Id.* at 384.

In *Casellas-Toro*, the appellate court began its analysis regarding Casellas' federal fair trial claim on venue with two questions: "first, whether the district court erred by failing to move the trial to a different venue based on a presumption of prejudice and, second, whether actual prejudice contaminated the jury which convicted him." 807 F.3d at 385. It concluded that prejudice should have been presumed. *Casellas-Toro*, 807 F.3d at 386.

The First Circuit began its analysis with the district court's acknowledgement of Puerto Rico's community size. Although the island had a population of 3,000,000 which might mitigate the potential for prejudice of the jury selected, the district court found the island "a compact, insular community that is 'highly

susceptible to the impact of local media.'" *Casellas-Toro*, 807 F.3d at 387. During *voir dire*, the district court also agreed with defense counsel that Puerto Rico was "small island." *Id.*

The court found that "[a] jury may be able to disbelieve unfounded opinions of the media or other people. However, it may have difficulty disbelieving or forgetting the opinion of another *jury*, twelve fellow citizens, that a defendant is guilty in an intertwined, just-concluded case" thus, inviting prejudgment culpability. *Id.* at 387–88 (original emphasis).

While *Casellas-Toro* found that "pretrial publicity did prejudice Casellas' ability to be judged by a fair and impartial jury," that did not end the court's inquiry. The controlling issue, which this Court did not reach in *Skilling*, was whether the presumption is rebuttable. *Id.* at 388. Relying on what occurred during *voir dire*, the appellate court found that "62 percent of the venire was dismissed for cause." Citing *Irvin v. Dowd*, 366 U.S. 717, 727 (1961) ("[T]he 'pattern of deep and bitter prejudice' shown to be present throughout the community" was "clearly reflected in the sum total of the *voir dire* examination of a majority of the jurors finally placed in the jury box.").

Casellas-Toro would then describe that "[w]here a high percentage of the venire admits to a disqualifying prejudice, a court may properly question the remaining jurors' avowals of impartiality, and choose to presume prejudice." *Casellas-Toro*, 807 F.3d at 390, quoting *U.S. v. Angiulo*, 897 F.2d 1169, 1181–82 (1st Cir. 1990).

Thus, *Casellas-Toro* concluded that Casellas was not tried by an impartial jury: "The *voir dire* confirms 'an *ever-prevalent risk* that the level of prejudice permeating the trial setting [was] so dense that a defendant [could not] possibly receive an impartial trial.'" *Id.* at 390, quoting *U.S. v. Quiles-Olivo*, 684 F.3d 177, 182 (1st Cir. 2012) (citing *Skilling*, 561 U.S. at 378–79) (original emphasis).

Moreover, the Minnesota appellate court decision conflicts with state and other federal court decisions granting motions to change venue based on presumed prejudice in criminal trials involving police officers who killed or harmed suspects while effectuating an arrest. *Lozano v. State*, 584 So. 2d 19, 22–23 (Fla. Dist. Ct. App. 1991) *subsequent mandamus proceeding sub nom. State v. Gary*, 609 So. 2d 1291 (Fla. 1992) (Miami police officer killed two black males fleeing police generating riots in Miami); *Nevers v. Killinger*, 990 F. Supp. 844 (E.D. Mich. 1997) (police officer killed a suspect generating riots in Detroit—later reversed by the Sixth Circuit); *Powell v. Superior Court*, 232 Cal. App. 3d 785, 790, 283 Cal. Rptr. 777, 779 (Ct. App. 1991), *modified* (July 30, 1991) (after catching a suspect following a high speed chase police officers beat the suspect with night sticks caught on video which was played on national TV—the Rodney King case); *People v. Boss*, 261 A.D.2d 1, 3, 701 N.Y.S.2d 342, 343 (1999) (police officers kill a suspect firing 41 shots—the Amadou Diallo case).

As *Lozano* succinctly stated with respect to community wide riots affecting a jury pool:

> We simply cannot approve the result of a trial conducted, as was this one, in an atmosphere in which the entire community—including the jury—was so obviously, and, it must be said, so justifiably concerned with the dangers which would follow an acquittal, but which would be and were obviated if, as actually occurred, the defendant was convicted. Surely, the fear that one's own county would respond to a not guilty verdict by erupting into violence is as highly "impermissible [a] factor," *Estelle v. Williams*, 425 U.S. [501, 505 (1976)], as can be contemplated.

Lozano, 584 So. 2d at 22–23.

C. The decision below failed to consider as an extreme case presumed prejudice to the community where violence and threat of violence dependent on the verdict existed.

In stark contrast, regardless of the massive pretrial publicity experienced, Mr. Chauvin was denied a change of venue within the factual context of violent and destructive riots and threat of harm to the community if a guilty verdict was not reached. *Skilling* did not provide the framework for the presumption of community bias and jury bias where jurors have a vested interest in the verdict. Indeed, the *voir dire* during Mr. Chauvin's trial revealed the concern of jurors

dependent on the verdict regarding their own safety and safety of others.

Instead, the Minnesota state appellate court initially announced the lack of *any* state appellate court precedent that reversed a conviction based on a presumption of prejudice due to pretrial publicity. App. 20. The appellate court would then narrowly apply the *Skilling* factor of pretrial publicity through a brief review of specific facts from *Rideau, Irvin*, and *Sheppard* which did not address the facts of Mr. Chauvin's pretrial publicity and the riots and threat of violence from an acquittal. App. 21–22, citing *Skilling*, 561 U.S. at 380–81. It also found the "substantial security around the courthouse" as essentially, non-consequential. App. 22.

An example of implied prejudice upon an entire community, prior to trial, is *U.S. v. McVeigh*, 918 F. Supp. 1467 (W.D. Okla. 1996), the Oklahoma City bombing case in which the federal courthouse in Oklahoma City was bombed causing 168 deaths and destruction or damage to federal buildings. *McVeigh* found the *entire* State of Oklahoma presumptively biased resulting in the criminal trial moving to Colorado. *McVeigh* described the 1995 bombing in Oklahoma with "measurable effects" that included the deaths of 168 men, women, and children, hundreds more injured, the complete destruction of one federal building and collateral damage to others, including the federal courthouse. With the numerous federal criminal charges against the defendants, Timothy McVeigh and

Terry Nichols, the government also announced it would seek the death penalty. *Id.* at 1469.

In its analysis, the *McVeigh* district court examined pretrial evidence and testimony associated with the bombing. As much as *McVeigh* believed *voir dire* might minimize the adverse pretrial publicity or noting that extensive pretrial publicity of itself does not preclude fairness, *McVeigh* concluded that there are times properly motivated and carefully instructed jurors to disregard their prior awareness is not enough. *McVeigh* explained a juror's identification with the community is so immersed with a sense of obligation to reach a result to satisfy the community view, impartiality is not possible:

> Trust in [the jurors] ability to [disregard their prior awareness] diminishes when the prior exposure is such that it evokes strong emotional responses or such an identification with those directly affected by the conduct at issue that the jurors feel a personal stake in the outcome. That is also true when there is such identification with a community point of view that jurors feel a sense of obligation to reach a result which will find general acceptance in the relevant audience.

Id. at 1473. *McVeigh* concluded an implied bias upon the entire community—the entire State of Oklahoma—without the need to have a litigant prove actual bias on the part of any challenged juror.

McVeigh demonstrated an extreme case of catastrophic community harm with the need for the

application of implied bias upon an entire community and threat of harm to also imply juror bias without further inquiry prior to trial. Mr. Chauvin's experience is similar. Trial *voir dire* in his case confirmed what the trial court should have recognized; jurors had not only expressed concern for their own safety as well as the safety of their family and others, but also had an apparent obligation to the community to reach a particular result—a guilty verdict—to avoid harm to themselves and the community. In other words, Mr. Chauvin's state trial court should have concluded that there was a likelihood that Mr. Chauvin could not receive a fair trial based upon facts related to community harm, threat of harm, and the jurors' vested interest.

Skilling did not provide the framework for the presumption of community bias when jurors have a vested interest in the verdict and community harm exists. As Justice Sotomayor noted in dissent, "the more intense the public's apathy toward a defendant, the more careful a court must be to prevent that sentiment from tainting the jury." *Skilling*, 561 U.S. at 427 (Sotomayor, J., dissenting). Under such circumstances, *voir dire* would serve no purpose because juror bias is presumed from the outset and requires a *mandated* change of venue. In other words, the presumption of prejudice is so high that any rebuttal *voir dire* is inconceivable. *Voir dire* would not give the trial court a sturdy foundation of impartiality free from "the deep-seated animosity that [would] pervade[] the community at large." *Id.* at 364. Hence, as a stand-alone constitutional inquiry, narrowing a trial court's otherwise wide

discretion regarding change of venue motions is appropriate.

Finally, the presumption of prejudice under the principle suggested here, reflects "the commonsense understanding that as the tide of public enmity rises, so too does the danger that the prejudices of the community will infiltrate the jury." *Id.* at 439. Under such circumstances, prejudice should be considered as a matter of law prior to *voir dire*.

Indeed, Mr. Chauvin was prosecuted under similar circumstances as Timothy McVeigh albeit the pervasive community harm and threat of harm occurred within the metropolitan area of the Twin Cities and not attributed to the entire state. Mr. Chauvin was denied a change a venue that should have occurred as a matter of law, without the need of *voir dire*. The circuit splits reveal the inconsistency of what is an extreme case or otherwise assess the significance of community harms and a juror's vested interest related to the trial outcome under catastrophic circumstances. However, even then, some district courts rely upon *voir dire* to cure doubt. *See Mayola v. Alabama*, 623 F.2d 992, 994, 997 (5th Cir. 1980) (concept of presumption of prejudice could be rebutted); *Cotton v. Mabry*, 674 F.2d 701, 705 n.4 (8th Cir. 1982) ("[S]tate should have the opportunity to show" that actual prejudice resulted from the publicity.). Even so, as the sufficiency of rebuttable *voir dire* continues to remain an issue, there is no need for its application where community harm is established since *voir dire* cannot perform its usual function of securing a fair and impartial jury. This is true because

when it is shown the community harm is so pervasive where jurors have a vested interest in the outcome of the trial, a criminal defendant cannot receive a fair trial under the Sixth Amendment.

II. The Court should grant review to address whether evidence of juror bias and *voir dire* misconduct found after trial requires the lower court to hold a hearing for verdict impeachment purposes.

The question regarding evidence of juror bias and *voir dire* misconduct, found after trial, is important because the Minnesota appellate court has established a principle of law contrary to this Court's precedents regarding juror bias to hold verdict impeachment hearings. Instead of ensuring impartiality of a verdict due to statements of acts of prejudice or bias, the lower court precludes such hearings solely because of *voir dire*. The state appellate court would conclude that "if a defendant had the opportunity to question a juror and prevent a juror from serving, then a district court does not abuse its discretion by denying a *Schwartz* hearing, *even if there is a basis to hold a hearing.*" App. 24 (emphasis added). This standard precludes a hearing, regardless of the evidence of juror bias or misconduct, as long as *voir dire* occurred. The appellate court's principle of law is misplaced given the fact that it is the juror's answers to *voir dire* questions that gives rise to the grounds for a new trial.

In *McDonough Power Equip, Inc. v. Greenwood*, 464 U.S. 548, 556 (1984), this Court wrote that "[d]emonstrated bias in the responses to questions on *voir dire* may result in a juror being excused for cause; hints of bias not sufficient to warrant challenge for cause may assist parties in exercising their peremptory challenges. The necessity of truthful answers by prospective jurors if this process is to serve its purpose is obvious." *Id.* at 554. Under such circumstances, "to obtain a new trial in such a situation, a party must first demonstrate that a juror failed to answer honestly a material question on *voir dire*, and then further show that a correct response would have provided a valid basis for a challenge for cause. The motives for concealing information may vary, but only those reasons that affect a juror's impartiality can truly be said to affect the fairness of a trial." *Id.* at 556. Finally, this Court has long held that the remedy for obtaining knowledge of a juror's false responses in *voir dire* is for the trial court to conduct a hearing to determine if (i) the juror's responses were false and (ii) if the juror would have then been removed based on truthful responses.

In *Dyer v. Calderon*, 151 F.3d 970, 973 (9th Cir. 1998), the Ninth Circuit reversed the defendant's four murder convictions because a juror had falsely answered that neither she nor her relatives were victims of a crime or accused of a crime. *Dyer* found "a perjured juror is unfit to serve even in the absence of such vindictive bias." *Id.* at 983. As *Dyer* explained, "[t]he individual who lies in order to improve his chances of serving has too much of a stake in the matter to be

considered indifferent. Whether the desire to serve is motivated by an overactive sense of civic duty, by a desire to avenge past wrongs . . . or by some other unknown motive, this excess of zeal introduces the kind of unpredictable factor into the jury room that the doctrine of implied bias is meant to keep out." *Id.* at 982. *Dyer* reversed the district court, remanding the matter for further proceeding, essentially providing the defendant with a new trial.

Here, Juror 52 failed to disclose (i) he traveled to Washington, D.C. to attend an anti-police "George Floyd" rally and (ii) that he had over 50 encounters with the Minneapolis Police Department—all of them negative. A photo revealed Juror 52 attending the march and wearing a "Get Your Knee Off Our Necks-BLM" t-shirt and a "Black Lives Matter" baseball cap. Chauvin App. Br. at 38–39. If Juror 52 had answered the jury questionnaire and *voir dire* examination truthfully, which would have revealed he had 50 negative encounters with the Minneapolis Police Department and had traveled over 1,000 miles to participate in a George Floyd march in Washington, D.C., Juror 52 would have been excused for cause by the trial court.

Nonetheless, the appellate court specifically held that the trial court's denial of a post-trial evidentiary hearing to determine if a juror lied in responses to the jury questionnaire and *voir dire* examination was not an abuse of discretion if *voir dire* occurred. Based on the appellate court's analysis, a juror's false answers to *voir dire* questioning could never be grounds for a post-trial hearing because the juror was subject

to questioning. A perjured juror is "unfit to serve" and the appellate court's denial of a hearing "even if there is a basis to hold a hearing" is contrary to the right to a fair trial under the Sixth Amendment.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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