STATE OF MINNESOTA | DISTRICT COURT

COUNTY OF HENNEPIN | FOURTH JUDICIAL DISTRICT

Katie Blackwell,

Plaintiff,

v.

Liz Collin, an individual; Dr. J.C. Chaix, an individual; Alpha News, a Minnesota non-profit corporation; and White Birch Publishing, LLC, d/b/a Paper Birch Press, a Minnesota limited liability company,

Defendants.

Honorable Edward T. Wahl

ORDER REGARDING SPECIAL MOTION FOR EXPEDITED RELIEF UNDER MINN. STAT. § 554.09 AND FOR FEES AND COSTS UNDER MINN. STAT. § 554.16

Case Type: Civil Other/Misc.
Court File No. 27-CV-24-15500

This matter came before the Honorable Edward T. Wahl on Defendants' special motion for expedited relief to dismiss all counts in the Complaint with prejudice under Minnesota's Uniform Public Expression Protection Act ("UPEPA"), Minn. Stat. § 554.07, *et seq*., and specifically Minn. Stat. § 554.09. Defendants move the Court for all relief outlined in Defendants' Notice of Motion and Motion to Dismiss Pursuant to Minn. R. Civ. P. 12.02(e). Jennifer Moore, Christopher L. Paul, and Daniel J. Wilcox of Trautmann Martin Law PLLC represented Plaintiff Katie Blackwell ("Blackwell"). Christopher W. Madel, Jennifer M. Robbins, and Thomas J. Knecht of Madel PA represented Defendants Liz Collin, Dr. J.C. Chaix, Alpha News, and White Birch Publishing, LLC, d/b/a Paper Birch Press.

Based on all the testimony and evidence presented by the parties in these motions, along with all files, records, and proceedings herein, the Court makes the following **ORDER:**

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INTRODUCTION

This is a civil defamation case. It arises from statements in a book and documentary about Plaintiff Katie Blackwell's testimony in the trial of the criminal case of *State v. Chauvin*, 989 N.W.2d 1 (Minn. App. 2023), *rev. denied* (Minn. July 18, 2023), *cert. denied*, 144 S.Ct. 427 (2023). In this matter, the Court considers Defendants Liz Collin's and Alpha News's special motion for expedited relief arising under Minn. Stat. § 554.09. The claims at issue arise solely from public commentary about Blackwell's testimony in the *Chauvin* state court trial, not the subsequent federal trial of the other three officers. The Court applies well-established principles of defamation law under the recently enacted Uniform Public Expression Protection Act ("UPEPA"), Minn. Stat. § 554.01 *et seq*.

After careful consideration, the Court dismisses Blackwell's defamation claims for the reasons stated in detail in the following opinion. Some of the claims are time-barred under Minnesota's applicable statute of limitations. In addition, as explained below, none of the statements Blackwell challenges are defamatory as a matter of law, given the well-established caselaw assessing commentary by media figures on matters of high public interest involving limited-purpose public figures. In her role as a key government witness in a high-profile prosecution, Blackwell assumed the status of a limited-purpose public figure under longstanding First Amendment jurisprudence.

Many who watched Blackwell's testimony during the livestream of the *Chauvin* trial—and heard other evidence concerning Minneapolis Police Department ("MPD") policies, procedures, and training on use of force, including the "Maximal Restraint Technique" and the "hobble" device—might reasonably conclude that Collin's and Alpha News's characterizations of some of

Blackwell's statements were misleading or taken out of context.[1] But based on the record before the Court, and based on civil statutory and common law, Blackwell did not establish that Collin or Alpha News made actionable defamatory statements or acted with the actual malice required to overcome the motion to dismiss under UPEPA or common law and proceed to trial.

For context, the Court emphasizes several important issues. The decision in this case applies the high standard recently established by the legislature for certain defamation cases. The decision is limited to the narrow facts alleged in the Complaint and to the specific law cited in this opinion. The Court neither finds nor implies that any of Blackwell's testimony in the *Chauvin* trial was false, improper, or misleading. Indeed, as noted above, many who watched the *Chauvin* trial might reasonably take strong exception to Collin's and Alpha News's position on isolated statements by Blackwell in her testimony. The Court reaches no conclusion on the merits of this debate. Rather, the Court is evaluating the defamation implications of the public debate about the specific pieces of testimony and considering whether statements in that debate are defamatory under UPEPA.[2]

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[1] MPD Chief Brian O'Hara observed that every reasonable officer knows that "kneeling on the neck of a handcuffed, non-resistant suspect for more than nine minutes to the point where he is lifeless, is not proper policing, nor is it a trained technique." Brian O'Hara, *The truth about the tragic actions of Derek Chauvin*, STAR TRIBUNE (Feb. 11, 2025, 5:29 PM), https://www.startribune.com/the-truth-about-the-tragic-actions-of-derek-chauvi/601220668.

[2] The dispute between the parties in this civil defamation case regarding whether Blackwell testified misleadingly (or mistakenly) during the *Chauvin* trial about MPD policies should not obscure what the *Chauvin* trial was about.

Chauvin's state trial was not on civil or administrative charges based on his allegedly violating MPD use of force policy for his actions in restraining Floyd by kneeling on the back of his neck. Rather, Chauvin's state trial was on three homicide charges in the wake of Floyd's death after Chauvin continued his knee-on-the-back-of-Floyd's-neck restraint, while two fellow officers also pinned down Floyd's back and legs, restraining him prone, arms handcuffed-behind-his-back on the concrete of Chicago Avenue on May 25, 2020 for almost nine minutes and a half minutes (from 8:19:18 p.m. to 8:28:42 p.m.). By the time EMTs arrived at the scene and rolled Floyd onto a stretcher, Floyd was unconscious and in full cardiac arrest, with no electrical impulses and no contractile function of his heart. Because of this, the State charged Chauvin with three homicide charges: (1) unintentional second-degree murder while committing a felony (third-degree assault), in violation of Minn. Stat. § 609.19 subd. 2(1); (2) third-degree murder, perpetrating an eminently dangerous act and evincing a depraved mind, in violation of Minn. Stat. § 609.195(a); and (3) second-degree manslaughter, culpable negligence creating an unreasonable risk of causing death

BACKGROUND

I. The Parties

Plaintiff Katie Blackwell is an Assistant Chief of the Minneapolis Police Department ("MPD").[3] At the time of the events in this case, Blackwell was Commander of the MPD's Training Division, responsible for overseeing the department's officer training curriculum and training programs between April 14, 2019, and January 31, 2021.[4] She also serves in the Minnesota Army National Guard as Brigade Command Sergeant Major.[5]

Defendant Liz Collin is a journalist and author of the book *They're Lying: The Media, the Left, and the Death of George Floyd* (hereafter "*They're Lying*"), published on October 18, 2022. She also produced and starred in a documentary entitled *The Fall of Minneapolis*, released in November 2023, which critiques the official account of Floyd's murder and the subsequent trials of MPD officers.

Defendant Dr. J.C. Chaix edited *They're Lying* and directed and wrote *The Fall of Minneapolis*.

Defendant Alpha News is a Minnesota-based nonprofit media organization that distributed and promoted *The Fall of Minneapolis*, amplifying its content through its website and social media

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or great bodily harm, in violation of Minn. Stat. § 609.205 subd. 1. *See* Amended Complaint (June 3, 2020 [Dk 4]). These are the charges on which Chauvin was tried in March and April 2021. On June 25, 2021, Chauvin was convicted and sentenced to a 270-month prison sentence on the second-degree murder charge. Chauvin's conviction and sentence were affirmed on the direct appeal, in a thorough 38-page opinion from the Minnesota Court of Appeals. *See State v. Chauvin*, 989 N.W.2d 1 (Minn. Ct. App. April 17, 2023), *rev. denied* (July 18, 2023), *cert. denied*, 144 S. Ct. 427.

[3] *Blackwell v. Collin* et al., Plaintiff's Opening Brief, at 2; Transcript of Proceedings, *State of Minnesota v. Chauvin*, Vol. 18, File 27-CR-12646, at 3897:10-15, 3900:2-19 (April 5, 2021) ("*State v. Chauvin* Transcript") (Lund Decl. at Ex. 4).

[4] Pl. Brief at 2.

[5] *Id.*

platforms.

Defendant White Birch Publishing, LLC (d/b/a Paper Birch Press) is the publisher of *They're Lying*.

II. The Book *They're Lying* and the Documentary *The Fall of Minneapolis*

Liz Collin's book *They're Lying* was published on October 17, 2022. The book criticizes the account presented by state witnesses in Chauvin's trial and questions the accuracy of Blackwell's trial testimony. *They're Lying* at 207 and 211.

The documentary *The Fall of Minneapolis* was released in November 2023. It reiterates many of the themes and factual arguments presented in the book. In the film, Collin interviews Chauvin's mother, Carolyn Pawlenty, and juxtaposes portions of Blackwell's testimony with MPD manuals that show techniques involving knee-on-neck pressure. After footage from Blackwell's trial testimony, Pawlenty responds on camera, "When I heard that part of the testimony, I really wanted to get up off my Chair and yell bullshit […] How can you say that's not part of the training?" Compl. ¶ 31.

III. Blackwell's Testimony in the *Chauvin* Trial[6]

At the *Chauvin* trial, the prosecution called Katie Blackwell on April 5, 2021 to testify as in her capacity as former Commander of the MPD Training Division.[7] She explained the

[6] The State presented testimony at Chauvin's trial from four other MPD officers addressing MPD policies regarding the use of force—Chief Medaria Arrandondo, Lts. Richard Zimmerman and Johnny Mercil, and Sgt. David Pleoger—and expert witnesses LAPD Sgt. Jody Stiger and University of South Carolina law professor Seth Stoughton. *See Chauvin*, 989 N.W.2d at 28-29.

[7] Here is Blackwell's testimony about her training experience at MPD: "[Officer Blackwell]: I was promoted to commander of training on April 14, 2019, where I was on the police athletic league, police explorers, community service officers, the Academy, the in-service training, overseeing the subject matter experts, the medical support team, range control operations, the crisis intervention team, and the use of force team, as well as recruitment, hiring and background, the 911 call center, court liaison in adult and homeless population." […] "[Prosecutor Schleicher] Q. And were you also familiar with the various staff and components who provided training at that center? [Blackwell] A. Yes." *See State v. Chauvin* Transcript 3900:10-19; 3901: 1-4.

department's training protocols. She testified about how officers were trained to handle prone suspects and she addressed the importance of placing them in the side recovery position to avoid positional asphyxia. Blackwell also testified regarding Exhibit 17, an image of Derek Chauvin with his knee on the back of Floyd's neck.[8]

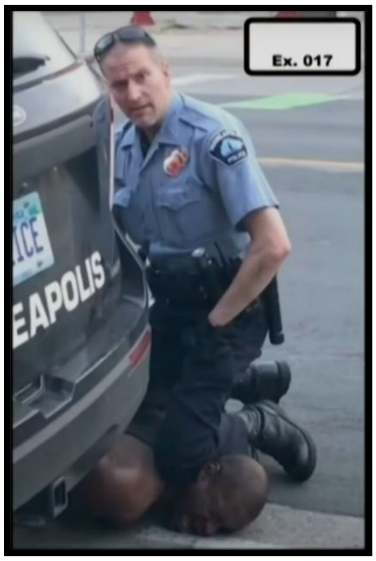


Exhibit 17 – *State v. Chauvin*

Blackwell's testimony on this subject consisted of short answers to three questions:[9]

> **Prosecutor Schleicher**: I'd like to show you what's been received as Exhibit 17. I'm going to ask you, Officer, as you look at Exhibit 17, is this a trained technique that's by the Minneapolis Police Department when you were overseeing the training unit?
>
> **Officer Blackwell**: It is not.
>
> **Prosecutor Schleicher**: Why not?
>
> **Officer Blackwell**: Well, use of force, according to policy, has to be consistent with MPD training. And what we train are neck restraints, the conscious and unconscious neck restraint. So per policy, a neck restraint is compressing one or both sides of the neck using an arm or leg, but what we train is using one arm or two arm to do a neck restraint.[10]
>
> **Prosecutor Schleicher**: And how does this differ?

[8] *They're Lying* at 109-10.

[9] *State v. Chauvin* Transcript 3923:12-13.

[10] The *State v. Chauvin* transcript states "one arm or two arm," not "arms."

Officer Blackwell: I don't know what kind of improvised position that is. So that's not what we train.

IV. Minneapolis Police Department's (MPD) Training and Use-of-Force Policies

At the time of Floyd's murder on May 25, 2020, the Minneapolis Police Department followed its Use of Force Policy, § 5-300 of the MPD Policy & Procedure Manual. It included key sections on general use of force, neck restraints (§ 5-311),[11] and the Maximal Restraint Technique ("MRT") (§ 5-316).[12]

Section 5-301 outlined the foundational principles of MPD's use of force framework. The policy emphasized that sanctity of life and the protection of the public are cornerstones of MPD's use of force policy. It required that MPD officers "only use 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 that the force "shall be consistent with current MPD training."

Although Blackwell was not asked questions about any specific provision of the policy, her testimony apparently referred to § 5-311, the section of the policy providing guidelines on the use of neck restraints and choke holds.

Under "DEFINITIONS," in that section, "Neck Restraint" is a "non-deadly force option" that involves "compressing one or both sides of a person's neck with an arm or a leg."[13] The policy allowed for two types of neck restraints: Conscious and Unconscious. A "Conscious Neck Restraint" allowed an officer to gain control of a subject by applying light-to-moderate pressure

[11] Ex. 9 (MPD Policy Manual at § 5-311).

[12] Note that Blackwell commanded the MPD training division when §§ 5-311 and 5-316 were in effect at MPD. Chaix Decl. at ¶¶ 71-72; s*ee, e.g., They're Lying* at 26, 109-10, 202, 206-12 (Collin Decl. at Ex. A).

[13] *Supra* note 11 at DEFINITIONS I.

with a knee or arm to the shoulder and neck.[14] A Conscious Neck Restraint was authorized when a subject was actively resisting. An "Unconscious Neck Restraint" authorized adequate pressure to render the subject unconscious and was only authorized when the subject was exhibiting active aggression, when a life was at risk, or when it was used to gain control of a subject who was exhibiting active resistance.[15]

5-311 USE OF NECK RESTRAINTS AND CHOKE HOLDS (10/16/02) (08/17/07) (10/01/10) (04/16/12)

DEFINITIONS I.

Choke Hold: Deadly force option. Defined as applying direct pressure on a person's trachea or airway (front of the neck), blocking or obstructing the airway (04/16/12)

Neck Restraint: Non-deadly force option. Defined as compressing one or both sides of a person's neck with an arm or leg, without applying direct pressure to the trachea or airway (front of the neck). Only sworn employees who have received training from the MPD Training Unit are authorized to use neck restraints. The MPD authorizes two types of neck restraints: Conscious Neck Restraint and Unconscious Neck Restraint. (04/16/12)

Conscious Neck Restraint: The subject is placed in a neck restraint with intent to control, and not to render the subject unconscious, by only applying light to moderate pressure. (04/16/12)

Unconscious Neck Restraint: The subject is placed in a neck restraint with the intention of rendering the person unconscious by applying adequate pressure. (04/16/12)

PROCEDURES/REGULATIONS II.

A. The Conscious Neck Restraint may be used against a subject who is actively resisting. (04/16/12)

B. The Unconscious Neck Restraint shall only be applied in the following circumstances: (04/16/12)

1. On a subject who is exhibiting active aggression, or;
2. For life saving purposes, or;
3. On a subject who is exhibiting active resistance in order to gain control of the subject; and if lesser attempts at control have been or would likely be ineffective.

C. Neck restraints shall not be used against subjects who are passively resisting as defined by policy. (04/16/12)

D. After Care Guidelines (04/16/12)

1. After a neck restraint or choke hold has been used on a subject, sworn MPD employees shall keep them under close observation until they are released to medical or other law enforcement personnel.
2. An officer who has used a neck restraint or choke hold shall inform individuals accepting custody of the subject, that the technique was used on the subject.

Subsection D of § 5-311 is entitled "After Care Guidelines" and required that an individual subject to a neck restraint or choke hold shall be closely supervised until the subject was released to medical or other law enforcement personnel.

In the book and documentary, Liz Collin and the other named Defendants focus on § 5-316 governing the use of the Maximal Restraint Technique ("MRT"). MPD Policy § 5-316; Chaix Decl.

[14] *Id.*

[15] *Id*. at PROCEDURES/REGULATIONS II (B).

¶ 69; Ex. 9.

Section 5-316 is entitled "MAXIMAL RESTRAINT TECHNIQUE" and states that the "PURPOSE" of this technique is to "establish a policy on the use of 'hobble restraint devices' and the method of transporting prisoners who have been handcuffed with a hobble restraint applied." MRT typically included a "hobble restraint device," described as a tether system used to bind the subject's ankles and connect them to the waist.[16] Under "DEFINITIONS," the policy defines MRT

5-316 MAXIMAL RESTRAINT TECHNIQUE (05/29/02) (06/13/14) (07/13/17) (04/02/18)

(B-C)

I. PURPOSE

To establish a policy on the use of "hobble restraint devices" and the method of transporting prisoners who have been handcuffed with a hobble restraint applied.

II. POLICY

The hobble restraint device may be used to carry out the Maximal Restraint Technique, consistent with training offered by the Minneapolis Police Department on the use of the Maximal Restraint Technique and the Use of Force Policy.

III. DEFINITIONS

Hobble Restraint Device: A device that limits the motion of a person by tethering both legs together. Ripp Hobble ™ is the only authorized brand to be used.

Maximal Restraint Technique (MRT): Technique used to secure a subject's feet to their waist in order to prevent the movement of legs and limit the possibility of property damage or injury to him/her or others.

Prone Position: For purposes of this policy, the term Prone Position means to lay a restrained subject face down on their chest.

Side Recovery Position: Placing a restrained subject on their side in order to reduce pressure on his/her chest and facilitate breathing.

IV. RULES/REGULATIONS

A. Maximal Restraint Technique – Use (06/13/14)

1. The Maximal Restraint Technique shall only be used in situations where 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.

2. Using the hobble restraint device, the MRT is accomplished in the following manner:
   a. One hobble restraint device is placed around the subject's waist.
   b. A second hobble restraint device is placed around the subject's feet.
   c. Connect the hobble restraint device around the feet to the hobble restraint device around the waist in front of the subject.
   d. **Do not** tie the feet of the subject directly to their hands behind their back. This is also known as a hogtie.
3. A supervisor shall be called to the scene where a subject has been restrained using the MRT to evaluate the manner in which the MRT was applied and to evaluate the method of transport.

[16] Ex. 9 (MPD Policy Manual at § 5-316).

B. Maximal Restraint Technique – Safety (06/13/14)

1. As soon as reasonably possible, any person restrained using the MRT who is in the prone position shall be placed in the following positions based on the type of restraint used:
   a. If the hobble restraint device is used, the person shall be placed in the side recovery position.
2. When using the MRT, an EMS response should be considered.
3. Under no circumstances, shall a subject restrained using the MRT be transported in the prone position.
4. Officers shall monitor the restrained subject until the arrival of medical personnel, if necessary, or transfer to another agency occurs.
5. In the event any suspected medical conditions arise prior to transport, officers will notify paramedics and request a medical evaluation of the subject or transport the subject immediately to a hospital.
6. A prisoner under Maximal Restraint should be transported by a two-officer squad, when feasible. The restrained subject shall be seated upright, unless it is necessary to transport them on their side. The MVR should be activated during transport, when available.
7. Officers shall also inform the person who takes custody of the subject that the MRT was applied.

C. Maximal Restraint Technique – Reporting (06/13/14)

1. Anytime the hobble restraint device is used, officers' Use of Force reporting shall document the circumstances requiring the use of the restraint and the technique applied, regardless of whether an injury was incurred.
2. Supervisors shall complete a Supervisor's Force Review.
3. When the Maximal Restraint Technique is used, officers' report shall document the following:
   - How the MRT was applied, listing the hobble restraint device as the implement used.
   - The approximate amount of time the subject was restrained.
   - How the subject was transported and the position of the subject.
   - Observations of the subject's physical and physiological actions (examples include: significant changes in behavior, consciousness or medical issues).

as a technique used to secure a subject's feet to their waist to prevent the movement of legs and limit the possibility of property damage or injury to him/her or others.[17] That same section of the policy then gives definitions for "Prone Position" and "Side Recovery Position." Under the subsection "RULES/REGULATIONS," the policy provides that MRT could only be applied in situations where a handcuffed person was combative and still posed a threat to people or property.[18]

Although the policy focused on the use of "hobble restraints" in every subsection, under Part II, entitled "Policy," it suggests the use of hobble restraints is discretionary. Part II states: "The hobble restraint device *may* (emphasis added) be used to carry out the Maximal Restraint Technique . . . ."[19] The subsection on "Safety," also includes a sentence suggesting that the MRT can be used without a hobble restraint. It states: "If the hobble restraint device is used, the person shall be placed in the side recovery position."[20]

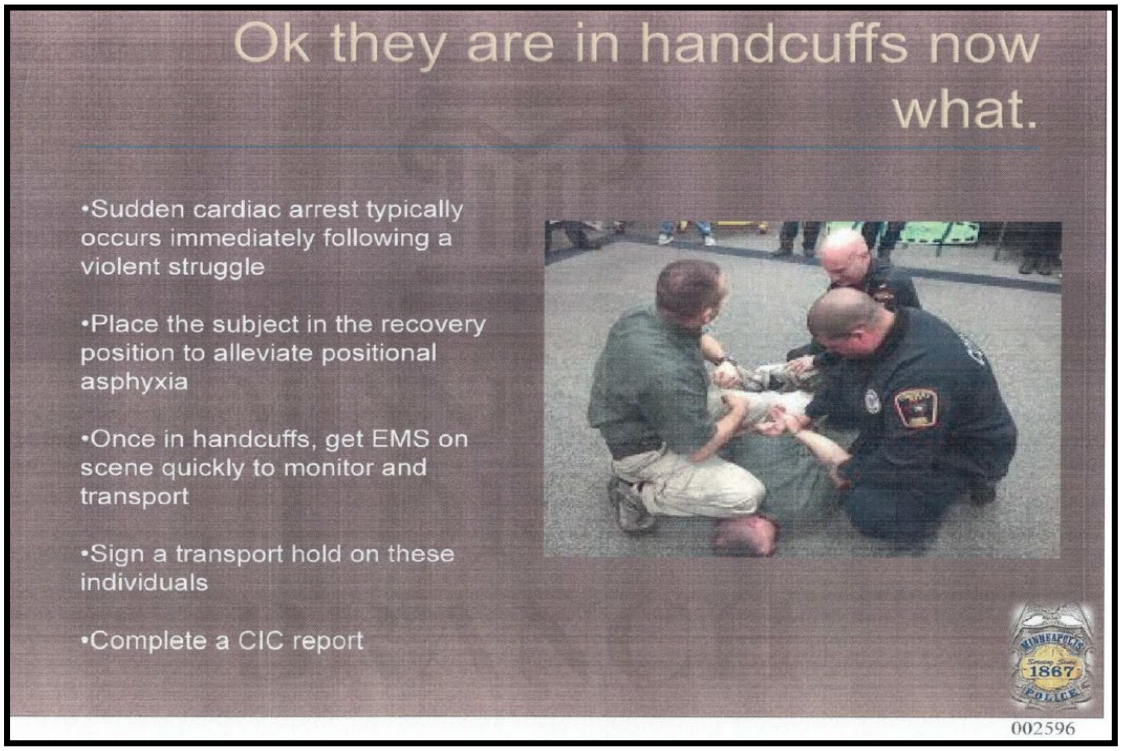
[17] Ex. 9 (MPD Policy Manual at § 5-316 Part III).

[18] Ex. 9 (MPD Policy Manual at § 5-316 Part IV(1)).

[19] Ex. 9 (MPD Policy Manual at § 5-316 Part II).

[20] Ex. 9 (MPD Policy Manual at § 5-316 Part IV (B)(1)(a)).

MPD's internal training materials, including PowerPoint presentations from 2018-2019, showed knees on the neck, shoulders, or upper back area. *See* Lund Decl. Ex. 6 at 002596; Lund Decl. Ex. 8 at 010586; and Collin Decl. at Ex. B (Training Slides).



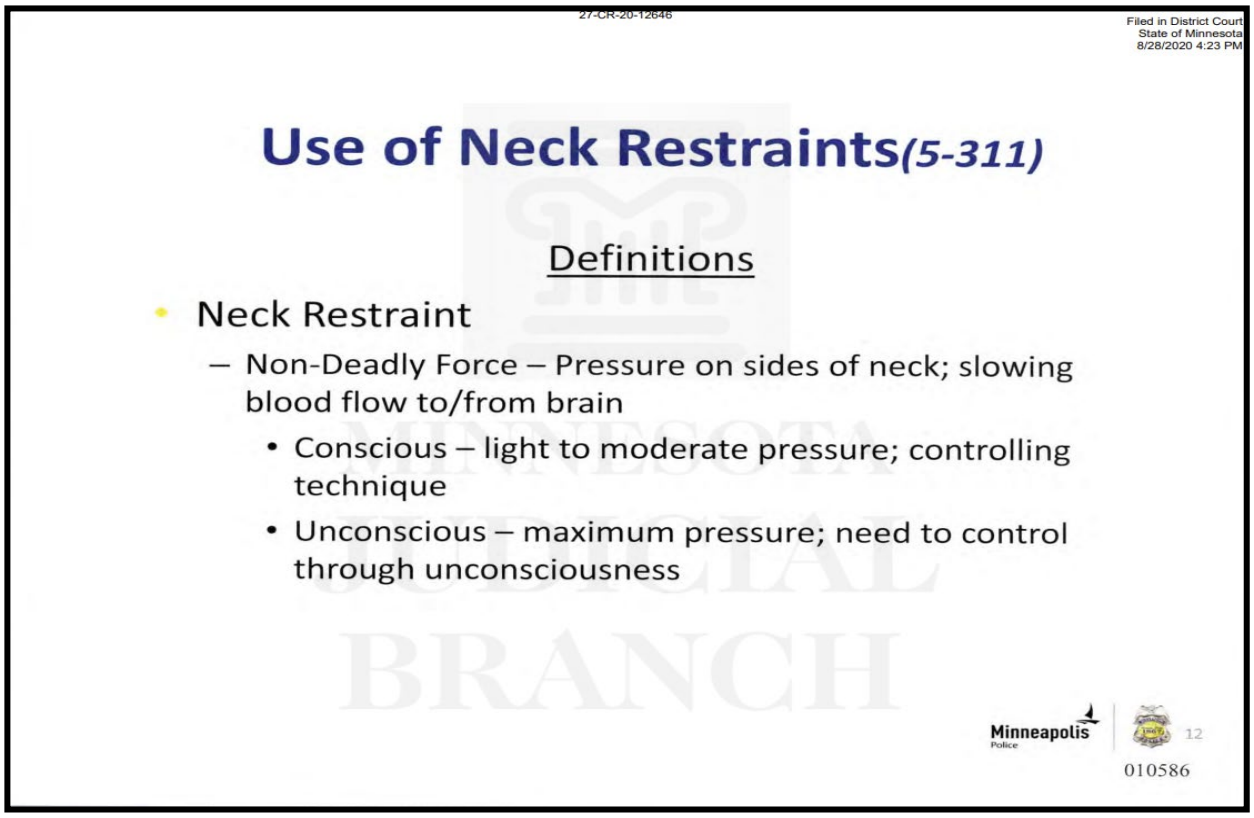
Lund Decl. Ex. 6 at 002596

Slides that show the use of the knee included captions like "MPD Policy" and cited § 5-311, confirming the alignment with written policy. *Id.* Additionally, 34 MPD officers swore, under oath, that MPD trained them to use a knee-on-neck restraint in several situations, including as part of the MRT process, as depicted in the photograph above (Lund Decl. Ex. 6 at 002596). [21]

[21] Lund Decl. Ex. 6 at 002596 for photograph used in PowerPoint training. Thirty-four MPD officers stated that they received training on the Maximal Restraint Technique (MRT), including the use of a knee-to-neck or upper shoulder restraint, and that the photograph from the PowerPoint shown was used during their instruction. Specifically, each officer confirmed the following when asked: "During my training at the MPD, I was trained about how to use the Maximal Restraint Technique, or 'MRT.' During my training at the MPD, I was trained that the MRT included a 'hobble' restraint. As part of that MRT 'hobbling' process, I was trained that the MRT included a knee-to-neck/upper shoulder restraint, which is shown in the below photograph."

The following declarations reflect these statements: Decl. of Lindsay Herron at ¶ 7 (Oct. 21, 2024); Decl. of Darrin Waletzki at ¶ 6 (Oct. 23, 2024); Decl. of Scott Creighton at ¶ 6 (Oct. 23, 2024); Decl. of Jason Reimer at ¶ 6 (Oct.

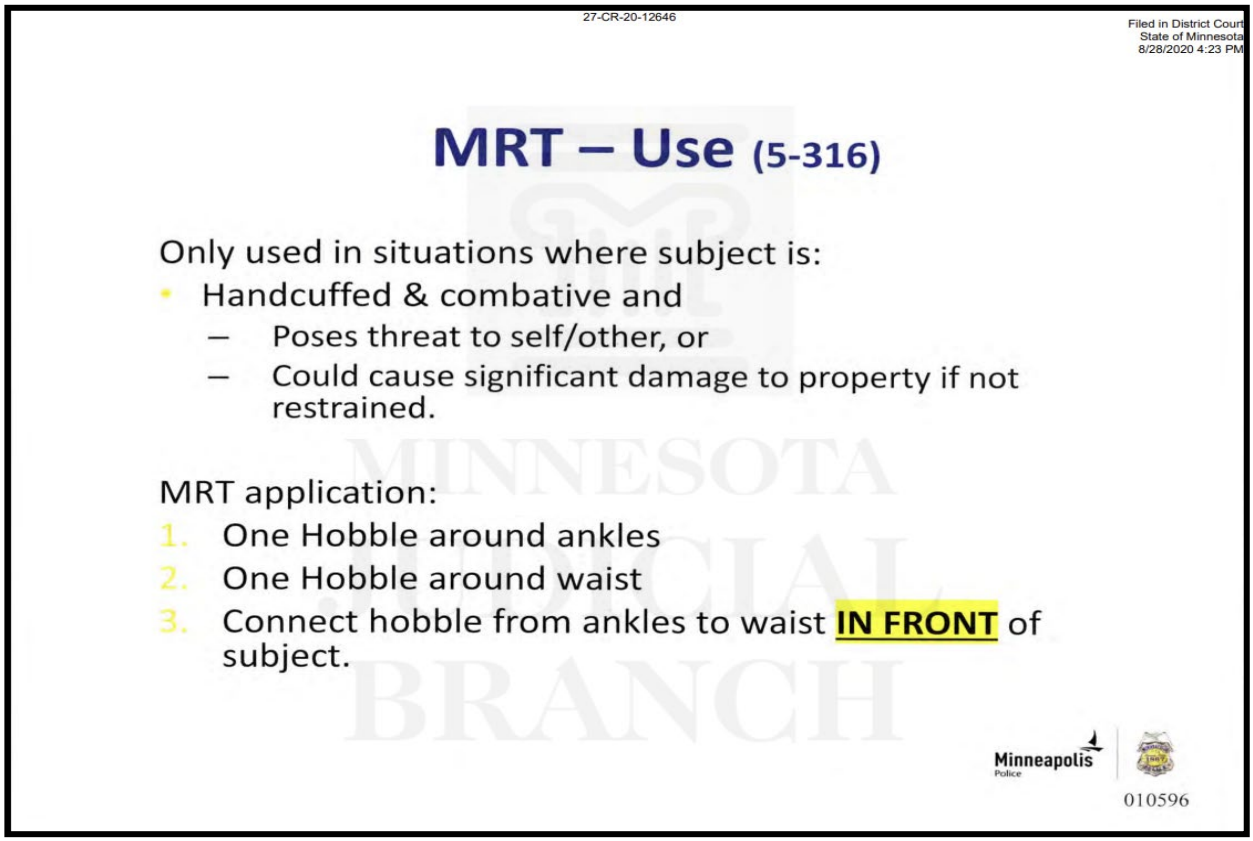
During Blackwell's tenure as commander of MPD training, department instruction incorporated materials referencing the MPD Policy Manual, including § 5-311 (neck restraints) and § 5-316 (Maximal Restraint Technique, or MRT). For instance, a 2019 training slide titled "2019 MPD Policy" explicitly cites and summarizes the provisions of § 5-311 and § 5-316. Notably, the slide explicitly references "pressure on sides of neck" but does not limit the technique to the use of an officer's arms, as opposed to arms and legs. In fact, as discussed above, the MPD Policy Manual in effect on May 25, 2020, expressly permitted the use of arms and legs in applying



23, 2024); Decl. of Kurt Radke at ¶ 6 (Oct. 24, 2024); Decl. of Bill Kenow at ¶ 6 (Oct. 24, 2024); Decl. of Joel Kimmerle at ¶ 6 (Oct. 28, 2024); Decl. of Marvin Schumer at ¶ 7 (Oct. 28, 2024); Decl. of Thomas Mack at ¶ 6 (Oct. 29, 2024); Decl. of James Carlson at ¶ 6 (Oct. 29, 2024); Decl. of David Voss at ¶ 6 (Oct. 29, 2024); Decl. of Kim Voss at ¶ 6 (Oct. 29, 2024); Decl. of Matthew Alberts at ¶ 6 (Oct. 30, 2024); Decl. of Charles Peter at ¶ 6 (Oct. 30, 2024); Decl. of Stephen Moore at ¶ 8 (Oct. 31, 2024); Decl. of Paul Hatle at ¶ 7 (Oct. 31, 2024); Decl. of David Roiger at ¶ 7 (Nov. 1, 2024); Decl. of Carl Blad at ¶ 6 (Nov. 4, 2024); Decl. of Scott Grabowski at ¶¶ 6, 8 (Nov. 8, 2024); Decl. of Anna Hansen at ¶ 7 (Nov. 13, 2024); Decl. of Alan Williams at ¶ 6 (Nov. 13, 2024); Decl. of Michael Geere at ¶ 7 (Nov. 14, 2024); Decl. of Clint Letch at ¶ 10 (Nov. 18, 2024); Decl. of Aaron Morrison at ¶ 6 (Nov. 22, 2024); Decl. of Ken Tidgwell at ¶ 9 (Nov. 26, 2024); Decl. of Mark Kaspszak at ¶ 6 (Dec. 3, 2024); Decl. of Chris Steward at ¶ 6 (Dec. 4, 2024); Decl. of David Pleoger at ¶ 7 (Dec. 4, 2024); Decl. of Joe Will at ¶ 5 (Dec. 9, 2024); Decl. of Jeremiah Kocher at ¶¶ 6, 9 (Dec. 11, 2024); Decl. of Brandy Steberg at ¶ 7 (Dec. 12, 2024); Decl. of Christopher House at ¶¶ 6, 9 (Dec. 12, 2024); Decl. of Robert (Bob) Kroll at ¶¶ 15, 17 (Dec. 30, 2024).

neck restraints. The same PowerPoint presentation also contains multiple slides addressing the Maximal Restraint Technique (MRT):[22]

When Floyd resisted getting into the squad car, Officer Lane suggested they "take him out and just MRT."[23] After Officers Lane, Kueng, and Chauvin subdued and restrained Floyd in the prone position, Officer Chauvin asked, "Do you got your ah, restraint, hobble?"[24] Officer Thao then retrieved a hobble restraint device from Officer Lane's and Kueng's squad car. When he returned with the hobble, Officer Lane asked if they should "put his legs up," to which Chauvin responded: "Nope, just leave them."[25] After about three minutes, Officer Lane then asked, "Should



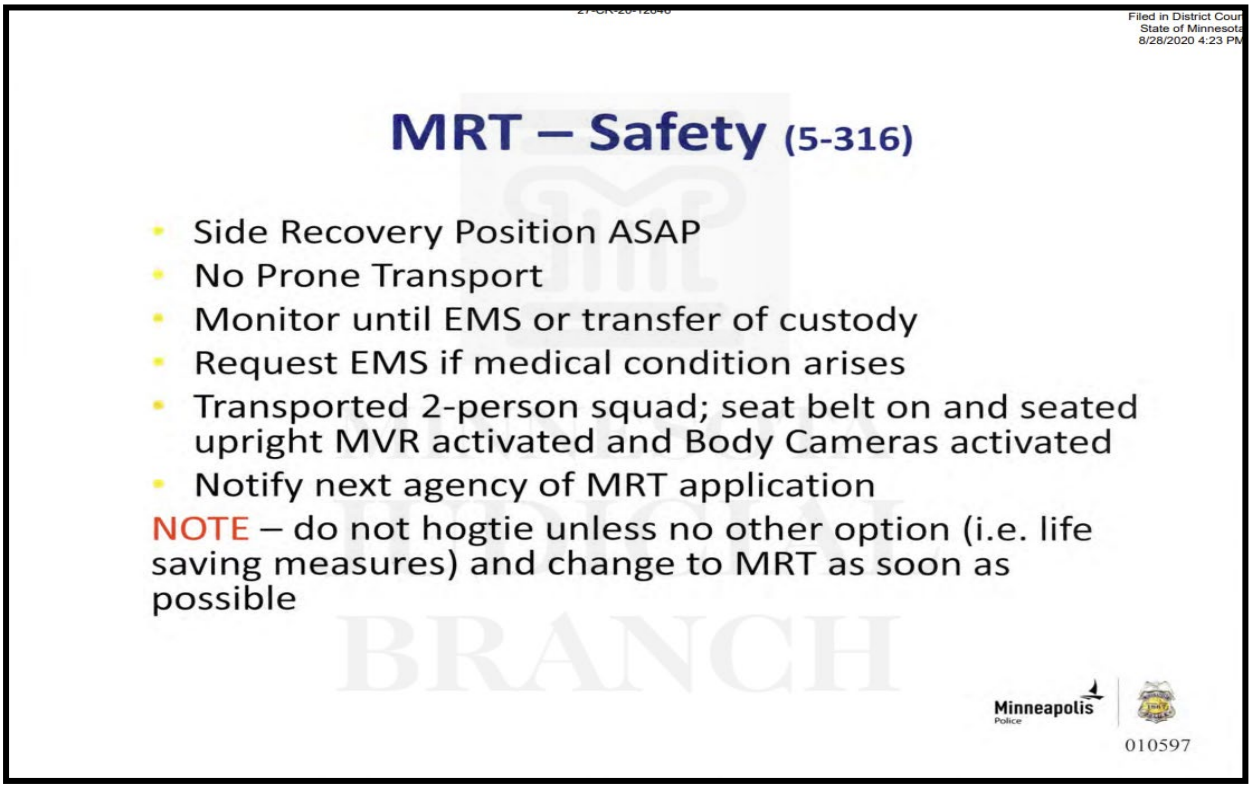
[22] Lund Decl. Ex. 8 at 010596-98.

[23] Chaix Decl., Ex. 7 at 13.

[24] *Id*.

[25] *Id*.

I roll him on his side?" to which Officer Chauvin responded, "No, he's staying put where we got him."[26]



V. Blackwell's Testimony as Discussed in *They're Lying* and *The Fall of Minneapolis*.

In *They're Lying*, Collin criticizes the account presented by state witnesses in Chauvin's trial and questions the accuracy of testimony provided by Blackwell and other MPD officials. *They're Lying* alleges that Blackwell and other witnesses misrepresented MPD training policies regarding neck restraints and use of force. The relevant passage in *They're Lying* states Collin's position:[27]

> While there were plenty of 'experts' who testified about the policies and training of MPD officers, Chief Arradondo's testimony on the topic seems the most suspicious. One might expect that as the chief of police, Arradondo could recognize the policies and training of

[26] Chaix Decl. Ex. 7 at 16.

[27] Liz Collin, *They're Lying: The Media, The Left, and The Death of George Floyd*, at 207 (Dr. J.C. Chaix ed., 2022).

his own department. But this didn't seem to be the case. For example, when questioned by the prosecution about Exhibit 17, Arradondo testified: 'That is not part of our policy, that is not what we teach and that should not be condoned…' Let's give Arradondo the benefit of the doubt.

Besides if anyone should be able to recognize MPD training techniques, it would be the person in charge of MPD training. That would be Inspector Katie Blackwell. She was in charge of the Minneapolis Police training division during Chauvin's trial. When the prosecution asked her about how Chauvin and the other officers were trying to restrain Floyd, she testified:

"I don't know what kind of improvised position that is. So that's not what we train."

While that sounds perfectly reasonable, it doesn't seem like Inspector Blackwell knows how MPD officers are trained—or maybe she was lying. The procedure the four officers were following was and still is a part of MPD training. It was clearly written in MPD policy. To be a bit more specific, again, it's policy 5-316, "Maximal Restraint Technique."

The Fall of Minneapolis follows a similar approach. The relevant section from the documentary states:[28]

Prosecutor Schleicher: I'd like to show you what's been received as Exhibit 17. I'm going to ask you, Officer, as you look at Exhibit 17, is this a trained technique that's by the Minneapolis Police Department when you were overseeing the training unit?

Officer Blackwell: It is not.

Prosecutor Schleicher: And how does this differ?

*[**Officer Blackwell**: Well, use of force, according to policy, has to be consistent with MPD training. And what we train are neck restraints, the conscious and unconscious neck restraint. So per policy, a neck restraint is compressing one or both sides of the neck using an arm or leg, but what we train is using one arm or two arm to do a neck restraint.*

Lines 3923:3-10 of the transcript from Blackwell's trial testimony omitted from The Fall of Minneapolis].

Officer Blackwell: I don't know what kind of improvised position that is. So that's not what we train.

VI. The Alleged Defamatory Statements in *They're Lying* and *The Fall of Minneapolis*.

Plaintiff's Complaint challenges three statements in *They're Lying*:

Statement No. 1: "…it doesn't seem like Inspector Blackwell knows how MPD officers

[28] *The Fall of Minneapolis* at 01:00:05-01:00:33.

are trained—or maybe she was lying." Compl. at ¶ 28.

Statement No. 2: "With that in mind, it doesn't seem like Blackwell, Arradondo, Mercil, and other so-called expert witnesses, were telling the truth." Compl. at ¶ 28.

Statement No. 3: "It seems more like they were lying by omission, if not lying outright." Compl. at ¶ 28.

Blackwell argues that these statements falsely accuse her of lying under oath about MPD's training policies and they suggest that she deliberately misled the court.

Plaintiff challenges two more issues in the *The Fall of Minneapolis*. The documentary presents Blackwell's trial testimony and immediately juxtaposes it with visual and testimonial material suggesting that her description of MPD policy was false or misleading. Unlike the book, where the challenged statements are contained in discrete sentences, the documentary's allegedly defamatory content unfolds through editing choices, sequencing, and imagery:

Statement No. 4: The documentary's juxtaposition of Blackwell's trial testimony with MPD training materials, implying inconsistency or dishonesty. Compl. at ¶ 31.[29]

Statement No. 5: The filmed interview with Carolyn Pawlenty (Chauvin's mother), in which she reacts, after references to Blackwell's and Chief Arradondo's trial testimony, "When I heard that part of the testimony, I really wanted to get up off my Chair and yell bullshit […] How can you say that's not part of the training? Compl. at ¶ 31.[30]

[29]*See The Fall of the Minneapolis* at 01:02:08—01:06:37. The film shows Blackwell testifying at Chauvin's trial, stating that MPD did not train officers to restrain a subject by placing a knee on the neck. Immediately afterwards, the film cuts to visuals from MPD training materials, including PowerPoint slides and images depicting knee-on-neck pressure as part of MRT (including the PowerPoint slide from Lund Decl. Ex. 6 at 002596 at 1:05:01). These training materials display techniques that appear in contrast Blackwell's testimony. *See also* Compl. at ¶ 31 ("Collin interviewed Derek Chauvin and stated that Blackwell testified that the technique Chauvin used was not part of police training. She then asks Chauvin whether MRT was part of police training. Chauvin replies that MRT was part of the written policy manual. The film shows a page from the manual entitled Maximal Restraint Technique. In the film's deceptive framing and editing, Collin and Chaix lie about the nature of Blackwell's testimony with the hope that the viewer will believe that Blackwell perjured herself by stating that the MRT was not part of police policy. In reality, Blackwell testified that she did not recognize the technique used by Chauvin as any technique officers are trained to use, including the MRT.").

[30] *See* Compl. at ¶ 31. ("Collin states that "several witnesses" testified that the MRT or the Maximal Restraint Technique "was not a part of Minneapolis Police Policy". This statement conveys the impression that Blackwell herself testified to that effect, which is plainly untrue. Pawlenty shows Collin a manual and says that the technique was "in the manual". Collin shows a picture that is ostensibly the page Pawlenty was referring to, that shows a police officer positioned with his knees on a defendant's back. Pawlenty says that the police told a "fricken lie.").

VII. The Alleged Impact on Blackwell's Career and Reputation

Blackwell alleges that the book and documentary severely damaged her reputation in the MPD and beyond. Within the MPD, officers reportedly distanced themselves from her, questioning her credibility and integrity. In the National Guard, she alleges that she faced attempted reassignments following the book's publication, allegedly due to concerns about the controversy surrounding her testimony. Blackwell claims she has suffered emotional distress. Additionally, Blackwell argues that Defendants deliberately targeted her out of retaliation for her testimony and past actions holding officers accountable for misconduct. She contends that Collin's connection to MPD union officials, including her husband, Bob Kroll, influenced the book's portrayal of her.

VIII. Procedural Posture

Blackwell filed her Complaint on October 15, 2024, asserting claims for defamation and defamation *per se*.

Defendants moved to dismiss under § 554.09 of Minnesota's Uniform Public Expression Protection Act ("UPEPA"), arguing that:

1. The statements are protected opinions and not actionable facts.

2. The statements are substantially true and supported by evidence.

3. The statements are covered by the fair-reporting privilege.

4. As a public official, Blackwell, must prove actual malice, which she failed to do.

The Court considers Defendants' motion to dismiss, evaluating whether the statements in question are defamatory, substantially true, protected by privilege, or constitute actual malice.

DISCUSSION

I. The defamation claims are partially time-barred.

Under Minnesota law, defamation claims are subject to a two-year statute of limitations.[31] Minnesota follows the single publication rule, under which the statute of limitations begins to run from the date of first publication of the allegedly defamatory statement, rather than from when the plaintiff discovers the harm. *McGovern v. Cargill, Inc.*, 463 N.W.2d 556, 558 (Minn. App. 1990) (observing that, in Minnesota, "the statute of limitations for defamation begins to run on publication, not on discovery."). This applies to written defamation, such as books, and to broadcast defamation, such as documentaries. *See McGuire v. Bowlin,* 932 N.W.2d 819, 824 (Minn. 2019); *Jadwin v. Minneapolis Star & Tribune Co.*, 367 N.W.2d 476, 483 (Minn. 1985).

An action is not "commenced" under Minnesota law merely by filing a complaint. Under Minn. R. Civ. P. 3.01, a civil action is commenced when: "(a) . . . the summons is served upon that defendant; or (b) when the summons is delivered to the sheriff in the county where the defendant resides, if service is made upon that defendant within 60 days after the delivery." *See also Meeker v. IDS Prop. Cas. Ins. Co.*, 862 N.W.2d 43, 47 (Minn. 2015) (noting that "an action is commenced when the summons and complaint are served."). Thus, to be timely, a lawsuit must be served within the statutory period. If plaintiff completes service after the statute of limitations expires, the claim is time-barred, regardless of when the complaint was filed. *McKenzie v. Lunds, Inc.*, 63 N.W.2d 225, 228 (Minn. 1954).

They're Lying was published on October 17, 2022.[32] *The Fall of Minneapolis* was released

[31] Minn. Stat. § 541.07(1) provides: "The following actions shall be commenced within two years: (1) for libel, slander, assault, battery, false imprisonment, or other tort resulting in personal injury…."

[32] Blackwell argues the book was published on October 18, 2022. Compl. ¶ 3. Regardless of which date, Blackwell should have served Collin by October 17, 2024, or October 18, 2024. Even if the Court accepts Blackwell's date of October 18, 2024, her Complaint is untimely because Blackwell did not serve Collin until October 28, 2024.

in November 2023. Blackwell filed her lawsuit on October 15, 2024, three days before the two-year limitations period for *They're Lying* expired. Liz Collin was served on October 28, 2024, when her husband, Bob Kroll, accepted service on her behalf. Because this occurred ten days after the statute of limitations for *They're Lying* expired, the defamation claim against Collin related to *They're Lying* is time-barred. But because the documentary was published in November 2023, and the two-year limitations period for that claim runs through November 2025, the defamation claims against Collin related to *The Fall of Minneapolis* are timely.

Blackwell has not served Chaix. Under Minn. R. Civ. P. 3.01, and without service, there is no valid claim against Chaix. Because more than two years have passed since *They're Lying* was published, any future attempt to serve Chaix for the book would be untimely. A claim against Chaix for *The Fall of Minneapolis* could be timely, depending on the date of service, because the two-year limitations period runs through November 2025.

Blackwell properly served Alpha News and White Birch Publishing within the applicable limitations period. Blackwell properly served White Birch Publishing, which published *They're Lying*, before October 18, 2024; meaning the claims against it related to the book are timely. Likewise, Alpha News, which distributed *The Fall of Minneapolis*, was served within two years of the documentary's release, so the defamation claims against it are timely.[33]

The Court determines that the defamation claims related to *They're Lying* against Liz Collin are time-barred due to untimely service, but the claims against White Birch Publishing are timely because it was properly served within the limitations period. Claims against Chaix for *They're*

[33] Defendants' counsel offered to accept service for Collin and Chaix after Alpha News and White Birch were properly served on October 10, 2024, and October 11 2024, respectively. But Blackwell refused. Madel Decl. at ¶ 2 and Ex. A. To date, Chaix still has not been served.

Lying are time-barred due to untimely service. Claims against Chaix for *The Fall of Minneapolis* are not barred because, even though he has not yet been served, the statute of limitations on those claims has not expired. The defamation claims related to *The Fall of Minneapolis* against Liz Collin and Alpha News are timely, as service was properly executed within the allowable period.

II. Minnesota's Uniform Public Expression Protection Act ("UPEPA") applies to this action.

This case is a matter of first impression for how the Court addresses Minnesota defamation law and a new statute called the Uniform Public Expression Protection Act enacted in Minnesota in 2024. Minn. Stat. §§ 554.07–554.19 (2024). The statute applies to the "exercise of the right of freedom of speech or of the press . . . guaranteed by the United States Constitution or the Minnesota Constitution on a matter of public concern." Minn. Stat. § 554.08(b)(3) (2024). UPEPA provides for the early adjudication of meritless claims aimed at preventing a person from exercising the constitutional right to free speech. UPEPA incorporates standards for adjudication that mirror those used in Minnesota Rules of Civil Procedure 12 and 56.

Under section 554.09, a party may file a special motion for expedited relief to dismiss any cause of action "to which this chapter applies" within 60 days of service of the complaint. Chapter 554 applies to any claim asserted against a person based on the person's: (1) communication in a legislative, executive, judicial, administrative, or other governmental proceeding; (2) communication on an issue under consideration or review in a legislative, executive, judicial, administrative, or other governmental proceeding; or (3) exercise of the right of freedom of speech or of the press, the right to assemble or petition, or the right of association, guaranteed by the United States Constitution or the Minnesota Constitution on a matter of public concern. Minn. Stat. § 554.08(b)

Section 554.08(c) creates exceptions to this rule. UPEPA also requires that all provisions

of the act "be broadly construed and applied to protect the exercise of the right of freedom of speech and of the press, the right to assemble and petition, and the right of association, guaranteed by the United States Constitution or Minnesota Constitution." Minn. Stat. § 554.17. UPEPA also requires that, "[i]n applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it." Minn. Stat. § 554.18.

In evaluating the Defendants' special motion, the Court engages in a three-step analysis required under section 554.13. First, UPEPA applies to a complaint or cause of action when it is asserted against a person based on the person's "[e]xercise of the right of freedom of speech or of the press, the right to assemble or petition, or the right of association, guaranteed by the United States Constitution or Minnesota state Constitution, on a matter of public concern." Minn. Stat. 554.08(b)(3).

Here, the parties concede *They're Lying* and *The Fall of Minneapolis* represent matters of public concern. Pl. Brief at 24; Def. Brief at 89.[34] Specifically, Blackwell bases her claims on Defendants' statements in the book and documentary concerning a judicial government proceeding, i.e., the *State v. Chauvin* trial. And none of the exceptions under section 554.13(a)(2) apply. Thus, UPEPA applies.

Under the second step of the UPEPA analysis, Blackwell (the responding party) must show that the case has merit ("*prima facie* case"). Minn. Stat. § 554.13(a)(3)(i). A court must take the evidence as true and is encouraged to grant "a certain degree of leeway" to the responding party

[34] "The determination of whether speech involves a matter of public or private concern is based on a totality of the circumstances." *Maethner v. Someplace Safe, Inc.*, 929 NW 2d 868, 881 (Minn. 2019). "[C]ourts may consider dissemination of the statements in the news media as one of many relevant factors in determining whether the statements involve a matter of public concern." *Id*.

"due to the early stage at which the motion is brought . . . and the limited opportunity to conduct discovery."[35] If Blackwell cannot establish a *prima facie* case, the court must grant the motion, and the cause of action (or portion of the cause of action) must be dismissed. If Blackwell establishes a *prima facie* case, then the court moves to step three of the motion procedure.

Under step three of the UPEPA analysis, the burden shifts back to the Defendants, as the moving party, to show either that:

(1) Blackwell failed to state a cause of action upon which relief can be granted;[36] or

(2) There is no genuine issue as to any material fact, and Defendants are entitled to judgment as a matter of law on the cause of action or part of the cause of action.[37]

If Defendants meet this burden, then the cause of action is dismissed with prejudice. Minn. Stat. § 554.13(a)(3)(ii).[38] Because the statute's applicability has been established, UPEPA requires Blackwell (under step two) to establish a *prima facie* case for her defamation claims. Minn. Stat. § 554.13(a)(3)(i).

III. The Book: *They're Lying: The Media, the Left, and the Death of George Floyd.*

A. Blackwell's defamation claims as to *They're Lying* do not establish a legally cognizable basis for relief under Minn. Stat. § 554.13(a)(3)(ii)(A).

To prevail on a defamation claim, Blackwell must establish four elements: "(1) the defendant[s] made a false and defamatory statement about the plaintiff; (2) the statement was an

[35] UNIF. PUB. EXPRESSION PROT. ACT § 7 cmt. 4 (UNIF. LAW COMM'N 2020) (quoting *Integrated Healthcare Holdings, Inc*. v. Fitzgibbons, 44 Cal. Rptr. 3d 517, 529 (2006)).

[36] Minn. Stat. § 554.13(a)(3)(ii)(A).

[37] Minn. Stat. § 554.13(a)(3)(ii)(B).

[38] The responding party may appeal after the case. If the moving party fails to meet its burden (the court finds the responding party's case to be viable as a matter of law), then the moving party will lose the motion and may appeal immediately (Section 9).

unprivileged publication to a third party; (3) the statement had a tendency to harm the plaintiff's reputation in the community; and (4) the defendant was at fault." *DeRosa v. McKenzie*, 936 N.W.2d 342, 345 (Minn. 2019) (citing *McGuire v. Bowlin*, 932 N.W.2d 819, 823 (Minn. 2019)).

In defamation *per se* cases, when the plaintiff is a public figure, the plaintiff must support her defamation claim with "clear and convincing proof that the defendant acted with actual malice," meaning that the defendant "willfully or recklessly disregarded the truth or falsity of the allegedly defamatory statements." *MacDonald v. Brodkorb*, 939 N.W.2d 468, 475 (Minn. Ct. App. 2020) (citing *Metge v. Central Neighborhood Improvement Ass'n*, 649 N.W.2d 488, 496-97 (Minn. Ct. App. 2002)).

In *Gertz v. Robert Welch, Inc.*, the United States Supreme Court specified three categories of public figures: (i) involuntary public figures, where the persons attain their status through no purposeful action; (ii) all-purpose public figures, such as celebrities; and (iii) limited-purpose public figures, where the persons have "thrust themselves to the forefront of particular public controversies in order to influence the resolution of the issues involved." For limited-purpose public figures, Minnesota courts use the three *Gertz* criteria to determine whether the person qualifies a limited-purpose public figure: "(1) whether a public controversy existed; (2) whether the plaintiff played a meaningful role in the controversy; and (3) whether the allegedly defamatory statement related to the controversy." *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 339-40 (1974).

Here, both parties concede Blackwell is a limited-purpose public figure. Pl. Brief at 37; Def. Brief at 91. Because Blackwell is a limited-purpose public figure, she must also prove actual malice, meaning she must prove that Collin either knew the statement was false or that Collin acted with reckless disregard for the truth. *MacDonald*, 939 N.W.2d at 475.

1. Statements 1-3 are substantially true.

In cases where a public official or figure brings a defamation claim, the United States Supreme Court holds that plaintiff bears the burden of proof to prove the falsity of the statement. *See Philadelphia Newspapers, Inc. v. Hepps*, 475 U.S. 767, 776-77 (1986). The plaintiff "cannot succeed in meeting the burden of proving falsity by showing only that the statement is not literally true in every detail. If the statement is true in substance, inaccuracies of expression or detail are immaterial." *Jadwin v. Minneapolis Star and Tribune Co.*, 390 N.W.2d 437, 441 (Minn. Ct. App. 1986). But falsity does not require absolute inaccuracy—rather, a statement is false if it is not substantially true, meaning that it would create a different effect in the mind of the recipient than the actual truth would have produced. *McKee,* 825 N.W.2d at 730.

For purposes of defamation, "falsity" means that the alleged statement is not "substantially true." *Range Development Co. of Chisholm v. Star Tribune*, 885 N.W.2d 500, 510 (Minn. Ct. App. 2016) (quoting *McKee v. Laurion*, 825 N.W.2d 725, 730 (Minn. 2013)). "A statement is substantially true if it would have the same effect on the mind of the reader or listener as that which the pleaded truth would have produced." *McKee*, 825 N.W.2d at 730 (citing *Masson v. New Yorker Magazine, Inc.*, 501 U.S. 496, 517 (1991)); *Jadwin*, 390 N.W.2d at 441 ("A statement is substantially accurate if its gist or sting is true, that is, if it produces the same effect on the mind of the recipient which the precise truth would have produced.") (citing *Williams v. WCAU-TV*, 555 F. Supp. 198, 202 (E.D. Pa. 1983); *Prosser and Keeton on the Law of Torts* § 116, at 842 (W. Keeton ed. 5th ed. 1984)). Statements that are substantially true "are incapable of carrying a defamatory meaning, even if a reasonable jury could find that the statements were mischaracterizations." *Hunter v. Hartman*, 545 N.W.2d 699, 707 (Minn. Ct. App. 1996). Determining whether a statement is "substantially true" is a question of law. *See Jirak v. Eichten,*

No. A11-1388, 2012 WL 2505748, at *1 (Minn. Ct. App. July 2, 2012) (unpublished) (stating that questions of law include determining whether a statement constitutes fact or opinion, and whether the statement is substantially true).

The Minnesota Supreme Court has held that there is no "meaningful difference" between the two versions of statements sufficient to create a genuine issue regarding the falsity when "the substance or gist of the two versions is the same." *McKee*, 825 N.W.2d at 731. Courts acknowledge "the "substantial truth" test is broad: if any "reasonable person" could find the statements to be "supportable interpretations" of their subjects, the statements are incapable of carrying a defamatory meaning, even if "a reasonable jury" could find that the statements were mischaracterizations. *Hunter*, 545 N.W.2d at 707 (citations omitted), *rev. denied* (Minn. June 19, 1996).

The omission of additional favorable information from an otherwise true publication does not necessarily render a statement materially false. "[T]he First Amendment prohibits a rule that holds a media defendant liable for broadcasting truthful statements and actions because it failed to include additional facts which might have cast plaintiff in a more favorable or balanced light." *Corp. Training Unlimited, Inc. v. Nat'l Broad. Co., Inc.*, 981 F. Supp. 112, 122 (E.D.N.Y. 1997) (quotations omitted) (citing *Machleder v. Diaz*, 801 F.2d 46, 55 (2d Cir. 1986), *cert. denied*, 479 U.S. 1088 (1987)). Thus, "[a]s long as the matter published is substantially true, the defendant [is] constitutionally protected from liability [based on falsity], regardless of its decision to omit facts that may place the plaintiff under less harsh public scrutiny." *Goodrich v. Waterbury Republican-American, Inc*., 188 Conn. 107, 448 A.2d 1317, 1331 (Conn. 1982).

(a) Statement 1: "…it doesn't seem like Inspector Blackwell knows how MPD officers are trained—or maybe she was lying." (Compl. ¶ 30(a)).

Statement 1 has two key parts: (1) an assertion that Blackwell does not appear to understand MPD training, and (2) a speculative suggestion that she might be lying. The "gist" or "sting" of the statement is that Blackwell's testimony was inconsistent with the actual training practices of MPD officers—to such an extent that she either misunderstood them or misrepresented them. This conveys the opinion that Blackwell's trial statements were either ignorant or deceptive, both of which relate to Blackwell's credibility and judgment. To defeat the defense of truth, Blackwell must show that Collin's statement created a materially different impression than the facts.

At trial, Blackwell testified that the knee-on-the-back-of-the-neck restraint technique used by Chauvin on Floyd on May 25, 2020 was "not what we train."[39] Although Blackwell was not questioned specifically about MRT in her trial testimony, she addressed the knee-on-the-back-of-the-neck restraint Chauvin used on Floyd and characterized it as inconsistent with MPD training, although she acknowledged it was included in the MPD policy manual. Compl. ¶ 28.

This testimony functionally described and rejected the technique that Defendants and the MPD policy materials identified as MRT or related restraint control tactics. Although Blackwell did not label the method by name, her testimony implied either that (1) MPD never trained officers to perform the kind of maneuver Chauvin used—that is, restraining a prone subject with sustained knee pressure on the neck or upper back—or (2) that MPD training did not address the way Chauvin performed the maneuver, or perhaps the sustained time period (almost nine and a half minutes) that Chauvin applied the restraint—even after Floyd stopping talking and stopped

[39] *State v. Chauvin* Transcript at 3923: 12-13.

moving.[40]

In this passage of *They're Lying*, Collin excludes a portion of Blackwell's testimony that provides additional context. The omitted portion reads as follows:

> **Officer Blackwell:** Well, use of force, according to policy, has to be consistent with MPD training. And what we train are neck restraints, the conscious and unconscious neck restraint. So per policy, a neck restraint is compressing one or both sides of the neck using an arm or leg, but what we train is using one arm or two arm to do a neck restraint.
>
> *State v. Chauvin* Transcript at 3923:3-10.

MPD Policy § 5-311, in effect at the time, defined neck restraints to include compression of the neck with an arm or leg under certain resistance conditions. Chaix Decl. Ex. 9. Blackwell's testimony explicitly acknowledged that MPD Policy § 5-311 provided written authorization of neck restraints involving an arm or leg but clarified that actual training only taught use of an arm—not a leg. *State v. Chauvin* Transcript at 3923:6-10 ("So per policy, a neck restraint is compressing one or both sides of the neck using an arm or leg, but what we train is using one arm or two arm to do a neck restraint.").

Collin's defamation defense hinges on whether the "sting" of Collin's statement—that Blackwell did not know MPD training or was lying about it—is substantially true. That standard remains, but the question becomes whether Collin's omission of this testimony—as recorded on lines three through ten on page 3923 of the trial transcript —materially altered the reader's understanding. Blackwell could argue that, without this quote associated with Collin's statement, readers could believe Blackwell *entirely denied* that leg restraints are part of policy or training. By including the omitted testimony, however, it becomes clear Blackwell recognized the policy's

[40] "The period of restraint lasted approximately nine minutes and 29 seconds in total, from the time that the officers initially placed Floyd into the prone position until the time that Chauvin lifted his knee off Floyd's neck and released him." *State v. Chauvin*, 989 N.W.2d 1, 14-15 (Minn. Ct. App.), *rev. denied* (July 18, 2023), *cert. denied*, 144 S. Ct. 427, 217 L. Ed. 2d 237 (2023).

language but clarified a distinction between policy and actual training practices to omit use of a leg.

This omitted excerpt shows that Blackwell did not testify that MPD policy prohibited leg-based neck restraints; rather, she testified that actual training did not instruct officers to use their legs for such restraints. Thus, Blackwell could argue that Collin created a false binary between "policy" and "training" that misled the reader into thinking Blackwell denied that the policy itself authorized leg-based neck restraints. Therefore, the statement "maybe she was lying" was based on a distorted representation of what Blackwell said.

But even with this additional testimony, the following facts still support the substantial truth of Collin's statement. For example, MPD in-service training PowerPoints from 2018 and 2019 included slides showing officers applying their knees to the neck or upper back area of prone subjects; these slides had citations to MPD Policy § 5-311 and § 5-316, the very sections governing neck restraints and MRT. *See* Lund Decl. Ex. 6 at 002596; Lund Decl. Ex. 8 at 010586; Collin Decl. at Ex. B. The slide decks were labeled "MPD Policy," indicating the techniques were being taught as they were compliant with departmental rules. Lund Decl. Ex. 8 at 010586. Thus, even if Blackwell did not use the acronym "MRT," her testimony implicitly disclaimed the techniques shown in those by slides by stating those were not trained techniques.[41]

So, although the omitted testimony may show that Blackwell knew of the policy language

[41] Though MRT is typically associated with hobbling, the actual use of the technique often included pressure with a knee to control a combative subject's upper body, pending full restraint or transition to the recovery position. MPD Policy § 5-311, in effect at the time, explicitly defined neck restraints to include compression of the neck with an arm or leg, under certain resistance conditions: "Neck Restraint" is a "non-deadly force option" that involves "compressing one or both sides of a person's neck with an arm or a leg." *See* Chaix Decl. Ex. 9 (MPD Policy Manual at § 5-311). Though MRT is typically associated with hobbling, the actual use of the technique often included pressure with a knee to control a combative subject's upper body, pending full restraint or transition to the recovery position.

and did not completely deny neck restraints, the core implication of Collin's statement—that Blackwell's account was inconsistent with MPD policy—remains supported. Even if Blackwell accurately described the distinction between training and policy, her overall testimony could lead one to believe that Chauvin's technique was unauthorized and foreign to MPD practice—a characterization that, as Collin put it, amounted to "lying by omission." It is clear that the gist or sting of the challenged statement—that Blackwell misrepresented MPD policy and training—may be at least substantially true.

Additionally, the use of the words "seems" and "maybe" helps to avoid a materially false impression. The statement includes clear qualifying language— "it doesn't seem like" and "maybe she was lying"—which signals to the reader that the author is offering an opinion or impression, not asserting a provable fact. Courts consistently hold that rhetorical and speculative statements, especially those framed with qualifiers, do not meet the standard for falsity. *See McKee*, 825 N.W.2d at 731; *Hunter*, 545 N.W.2d at 706.

Blackwell could argue that her trial testimony should be understood as narrowly confined to her personal knowledge and responsibilities during her tenure as Commander of MPD's training division, which began on April 14, 2019—just over a year before Floyd's death. During her examination, Blackwell stated she was familiar with the basic curriculum offered during that time, and she gave limited testimony about positional asphyxia and other topics directly relevant to training under her command.[42]

When shown Exhibit 17—an image of Chauvin using a knee restraint—Blackwell

[42] *State v. Chauvin* Transcript at 3918:12-3921:13

unequivocally stated that it was "not what we train."[43] She did not qualify that answer to reflect the scope of her tenure, nor did she acknowledge the possibility that such a technique may have been part of MPD training prior to her promotion. Her testimony did not address MRT or the hobble device, and no questions were posed to her on those topics. *See* Pl. Brief at 7-10.

But although it is true that Blackwell's testimony explicitly referenced only the training she oversaw beginning in April 2019, her answers in response to Exhibit 17 were unqualified, creating the impression that the technique shown in the image was not part of MPD training. Her statement that "that's not what we train" and her dismissal of the image as an "improvised position" are not limited by temporal qualifiers. Her answer reasonably invites viewers, jurors, and now the public to conclude that the depicted technique was never trained by MPD.

That impression is undermined by evidence in the record showing that MPD training materials from 2018-2019—the period of Blackwell's tenure—included images of officers applying knees to the neck or upper back. Lund Decl. Ex. 6 at 002596. Although the date of the photograph from the training materials is unknown, 34 officers swore they were trained or saw knee-to-neck training.[44] Furthermore, MPD's own Policy Manual (§ 5-311), in effect at the time, defined a neck restraint as including compression "with an arm or leg." This conflicts with Blackwell's suggestion that MPD neck restraints were trained using only arms.

The argument that Blackwell was only testifying about what occurred during her 13-month tenure as Commander of the Training Division to Floyd's death in May 2020 is further weakened by her broad testimony about MPD's training curriculum generally, including her statement that

[43] *Id.* at 3923:12-13.

[44] *Supra* note 21.

she was "familiar with the basic curriculum" offered during the time she oversaw operations.[45] She did not limit her answers to materials she personally approved or authored, and when asked about whether the technique shown in Exhibit 17 was trained by MPD, she answered definitively, not conditionally.

Finally, the fact that defense counsel did not cross-examine Blackwell on this point does not shield her testimony from post-trial public scrutiny. The standard for substantial truth under Minnesota law does not require that the documentary present a comprehensive rebuttal of Blackwell's testimony, only that it convey a materially accurate impression. Because the documentary evidence contradicts the unequivocal nature of her statements, the implication that her testimony was inconsistent with MPD's policy and training is supportable and not defamatory.

(b) Statement 2: "With that in mind, it doesn't seem like Blackwell, Arradondo, Mercil, and other so-called expert witnesses were telling the truth." (Compl. ¶ 30(b)).

This statement refers broadly to the testimony of Blackwell and other MPD witnesses, suggesting that they misrepresented the scope and curriculum of department training. As shown above, MPD policy and training materials were at odds with key aspects of their testimony. *See* Def. Brief at 13-14.

The assertion that "it doesn't seem like" these witnesses were telling the truth generally aligns with the record's substance. MPD's neck restraint policy included use of the leg. Chaix Decl. Ex. 9. Training slides showed applications using the leg that resembles Chauvin's actions. Lund Decl. Ex. 6. Officers testified that such techniques were permitted and were regularly taught and demonstrated. Def. Brief at 12-14. Given these facts, the statement accurately reflects the author's interpretation of conflicting testimony and is thus not false under the substantial truth doctrine. *See*

[45] *State v. Chauvin* Transcript at 3918:12-3921:13.

Hunter, 545 N.W.2d at 706.

The phrase "so-called expert witnesses" is classic rhetorical commentary, conveying not a factual assertion but rather a value judgment about the subject's credibility. Likewise, "it doesn't seem like they were telling the truth" mirrors the speculative, opinion-based phrasing found in protected speech. This context confirms that the statement cannot be proven false as defamation law requires. *See Chapin v. Knight-Ridder, Inc.*, 993 F.2d 1087, 1098 (4th Cir. 1993) (noting that "a magnifying glass is no aid to appreciating a Seurat," and that complex patterns may only be discernible "at some distance.").

(c) Statement 3: "It seems more like they were lying by omission, if not lying outright." (Compl. ¶ 30(c))

This statement focuses on what Blackwell and others failed to say, rather than any affirmative falsehood. As discussed, Blackwell testified that MPD did not train Chauvin's technique. Def. Brief at 13–14; Chaix Decl. ¶¶ 67–70.

The book critiques these omissions in the context of what information was publicly available at the time. MPD policies authorized neck restraints using a leg. Chaix Decl. Ex. 9. Training slides depicted the application of a knee to the upper back and neck area. Lund Decl. Ex. 6 at 002596. Officers understood such techniques to be policy-consistent and part of their training.

Under these facts, it is possible to interpret Blackwell's testimony as incomplete or misleading by omission. Therefore, the challenged statement is substantially true, and Blackwell cannot establish falsity. *See Jadwin*, 390 N.W.2d at 441; *see also* RESTATEMENT (SECOND) OF TORTS § 581A at cmt. f (1977) ("Slight inaccuracies of expression are immaterial provided that the defamatory charge is true in substance."). Moreover, like the earlier statements, this one is framed with the words "It seems more like…, " which marks the sentence as interpretive, not

factual. Defamation law does not prohibit value-laden or speculative interpretations of public testimony, especially in matters of public concern.[46]

Accordingly, each of the three statements challenged by Blackwell are not actionable because (1) they accurately reflect the gist of the available record; (2) they are supported by MPD policies, training materials, and sworn officer declarations; and (3) they use qualifying, rhetorical language that marks them as opinions or interpretations—not provable falsehoods.

2. Statements 1-3 are non-actionable expressions of opinion.

A central issue in this case is whether the statements made in *They're Lying* are defamatory statements of fact or are instead protected opinion. Under Minnesota defamation law and First Amendment jurisprudence, statements that express subjective viewpoints, rhetorical hyperbole, or unverifiable assertions are not actionable as defamation. *McKee*, 825 N.W.2d at 731.[47]

To determine whether a statement is fact or opinion, courts consider: (1) the specificity and precision of the language, *Hunt v. Univ. of Minn.*, 465 N.W.2d 88, 94 (Minn. Ct. App. 1991); (2) whether the statement is objectively verifiable, *Chafoulias v. Peterson*, 668 N.W.2d 642, 654 (Minn. 2003); (3) the context in which the statement was made, *Fine v. Bernstein*, 726 N.W.2d 137, 144 (Minn. Ct. App. 2007); and (4) the broader social or public setting in which the statement was published, *Janklow v. Newsweek, Inc.*, 788 F.2d 1300, 1302 (8th Cir. 1986). Determining whether a statement is an opinion or a fact is a question of law. *Lund v. Chicago & Nw. Transp.*

[46] *See generally Bowman v. Pulaski Cty. Special Sch. Dist.*, 723 F.2d 640, 644 (8th Cir. 1983) (noting that "media coverage" is "a good indication" that the challenged speech involves a matter of public concern).

[47] *See also Marchant Inv. & Mgmt. Co. v. St. Anthony W. Neighborhood Org., Inc.*, 694 N.W.2d 92, 95 (Minn. Ct. App. 2005) (*"*It is plain that the speaker is expressing a 'subjective view, an interpretation, a theory, conjecture, or surmise,' rather than claiming to be in possession of 'objectively verifiable facts,' the statement is not actionable."); *Jadwin v. Minneapolis Star and Tribune Co.*, 390 N.W.2d at 441) ("Expressions of opinion, rhetoric, and figurative language are generally not actionable if, in context, the audience would understand the statement is not a representation of fact.") (citations omitted).

Co., 467 N.W.2d 366, 368 (Minn. App.1991); *Fine v. Bernstein*, 726 N.W.2d 137, 144 (Minn. Ct. App. 2007).

Applying this test, the statements in *They're Lying* that suggest Blackwell was "lying" or "lying by omission" are best understood as protected opinions rather than factual assertions.

(a) Statement 1: "…it doesn't seem like Inspector Blackwell knows how MPD officers are trained—or maybe she was lying." (Compl. ¶ 30(a)).

(i) Use of "Seems" and "Maybe" Suggests Opinion.

Courts consistently hold that statements prefaced by qualifiers such as "seems" or "maybe" signal speculation rather than definitive assertions of fact. [48] Courts view these phrases as indicia of a subjective interpretation rather than a claim of objective truth. For example, in *McKee v. Laurion*, the Minnesota Supreme Court ruled that describing a doctor as a "real tool" was not defamatory because it was an impression rather than a provable statement of fact. *Id*. at 730. Similarly, the phrase "it doesn't seem like" signifies that Collin is offering an opinion based on interpretation, rather than making a verifiable claim.[49]

(ii) Whether Blackwell "Knows" MPD Training Method is Not Objectively Verifiable.

The assertion that Blackwell "doesn't know" MPD training methods is not a provable fact because knowledge is inherently subjective. Courts repeatedly hold that accusations regarding a person's knowledge or intent are not actionable unless they can be objectively verified. *Hunt v.*

[48] *See Madison v. Frazier*, 539 F.3d 646 (2008) (concluding that statements prefaced with "maybe" implicate subjective judgment and fail to amount to verifiable assertions of fact); *Gray v. St. Martin's Press, Inc.,* 221 F.3d 243 (2000) (stating that speculative statements, such as those prefaced with "may have," are protected as opinion if they are understood as purely speculation rather than implying concrete facts); *Cottrell v. Smith*, 299 Ga. 517, 529 (Ga. 2016) (stating comment in a web post stating "seems like a scam artist is on the loose Beware ladies—he's a sly one...." is "opinion"); *Jevremovic v. Courville*, 2023 WL 5127332, at *7 (D.N.J. Aug. 10, 2023) (trial court dismissing a defamation claim stating "Defendant signals" their statement of opinion "by using words such as "I think" and "it seems") (citing *McCafferty v. Newsweek Media Grp., Ltd.*, 955 F.3d 352, 356 (3d Cir. 2020) ("If it is plain that the speaker is expressing a subjective view, an interpretation, a theory, conjecture, or surmise, rather than claiming to be in possession of objectively verifiable facts, the statement is not actionable")).

[49] *Id.*

Univ. of Minn., 465 N.W.2d at 94 (determining that a "hybrid statement" containing opinion and underlying facts that cannot be objectively verified as true or false is "absolutely protected").

Additionally, the phrase "maybe she was lying" does not state a fact but raises a question for the reader. Courts rule that raising doubts about someone's honesty—particularly in public discourse—is a protected form of opinion. In *Phantom Touring, Inc. v. Affiliated Publ'ns*, 953 F.2d 724 (1st Cir. 1992), the court found that statements questioning whether a performance was a "real" Broadway show were protected opinions because they invited subjective debate. Similarly, questioning whether Blackwell "knows" MPD policies or is "lying" invites debate rather than asserting a provable fact.

(iii) Social and Literary Context: A Critical Book on Public Controversies.

Context also matters. The book *They're Lying* is a political critique of mainstream views surrounding Floyd's murder. Courts consistently hold that statements made in the context of a political or social debate are more likely to be understood as opinion rather than fact.[50] This is important here, as *They're Lying* is not a neutral chronicle. Rather, it is a pointed critique of legal, media, and cultural accounts surrounding Floyd's death and the prosecutions that followed. The book's tone, structure, and purpose make clear that it is a counter-narrative, written to challenge the reader's assumptions and raise doubts about the institutions and individuals involved in Chauvin's prosecution and conviction.

[50] *Janklow v. Newsweek, Inc.*, 788 F.2d 1300, 1303 (8th Cir. 1986) ("'[T]he concept of a public, political arena is crucial to a proper understanding of the analysis…") (quoting (*Ollman v. Evans*, 750 F.2d 970, 983 (D.C. Cir. 1984) ("Besides looking to the immediate context of the allegedly defamatory statement, courts should examine, finally, the broader social context into which the statement fits.").

(b) Statement 2: "With that in mind, it doesn't seem like Blackwell, Arradondo, Mercil, and other so-called expert witnesses, were telling the truth."

(i) The term "So-Called Expert Witnesses" is a Rhetorical Flourish and Not A Factual Claim that Can Be Disproved.

The phrase "so-called expert witnesses" signals skepticism and criticism, not an assertion of falsity. Courts routinely find that sarcastic or rhetorical language is a form of protected commentary rather than a factual claim. For example, in *Diesen v. Hessburg*, 455 N.W.2d 446, 451 (Minn. 1990), the court found that characterizations of public figures using pejorative terms were non-actionable opinions.[51] Similarly, calling someone a "so-called expert" is a judgment about their credibility, not a factual claim that can be disproven.

(ii) The Statement is Not Objectively Verifiable.

Accusations that a person "wasn't telling the truth" in a subjective context are typically protected as opinions. Statement 2 can be broken up into the following parts: (1) "With that in mind…" This phrase serves as a transition, referencing earlier material (presumably, factual content such as training materials or testimony). It provides context, not substance, and has no independent truth value. It signals that the speaker is about to draw a conclusion based on what was just discussed; (2) "...it doesn't seem like…" This introductory clause is critical. It expressly signals that the following observation is an opinion or impression, not a statement of fact; (3) "…Blackwell, Arradondo, Mercil, and other so-called expert witnesses…" This part names specific individuals and uses the qualifier "so-called expert witnesses." That phrase is rhetorical and pejorative, not an objectively measurable label. Calling these leaders within MPD "so-called" expert witnesses suggests the speaker questions their credibility or expertise, not their formal role.

[51] *Diesen v. Hessburg*, 455 N.W.2d 446, 447 (Minn. 1990) (determining that an allegedly false implication arising out of true statements is generally not actionable in defamation by a public official plaintiff against a media defendant).

(4) "...were telling the truth." This clause might appear to make a factual claim, but within the full sentence and the preceding qualifiers ("it doesn't seem like…", "so-called"), it functions as a subjective interpretation of credibility. Courts generally find that accusations of dishonesty are not verifiable unless they assert specific facts. *See*, *e.g.*, *Weissman v. Sri Lanka Curry House, Inc.*, 469 N.W.2d 471, 471 (Minn. Ct. App. 1991) (describing plaintiff employee to prospective employer as "unreliable," "dishonest" and had "walked out" was actionable defamation because it implied the commission of specific acts of dishonesty and may have deterred prospective employers from hiring plaintiff). No specific "lie" is identified; the speaker merely expresses doubt about whether these individuals were truthful in their general testimony. *See id*.

(c) Statement 3: "It seems more like they were lying by omission, if not lying outright."

(i) The phrase "lying by omission" is an expression of viewpoint.

The assertion that Blackwell was "lying by omission" is not a provable falsehood, because whether a person omits relevant facts is inherently a matter of interpretation. Courts routinely hold that accusations of misleading conduct are subjective statements rather than factual claims. *Bose Corp. v. Consumers Union of U.S., Inc.*, 466 U.S. 485, 511 (1984). For example, in *Standing Comm. on Discipline v. Yagman*, 55 F.3d 1430 (9th Cir. 1995), the Ninth Circuit held that accusations such as calling a judge "dishonest" or "intellectually dishonest" constituted rhetorical hyperbole or subjective opinion, not capable of objective verification and therefore protected under the First Amendment, whereas a specific factual allegation like claiming a judge was "drunk on the bench" could be actionable if supported by proof of falsity, which the committee in that case failed to provide. *See Yagman*, 55 F.3d 1430, 1439-42 (9th Cir. 1995).

Here, the statement that Blackwell was "lying by omission" falls within the category of subjective criticism protected under *Yagman*. The book does not claim that Blackwell made a

specific false statement under oath or that she fabricated evidence. Rather, the accusation focuses on her selective framing of MPD training policies and the absence of discussion about materials that others, including many MPD officers, viewed as relevant. In that sense, the critique amounts to an argument that Blackwell's testimony was incomplete or slanted, not that it was objectively false.

This kind of evaluative statement—questioning whether a witness omitted context or framed testimony in a misleading way—is precisely the type of protected rhetorical interpretation that courts routinely shield from defamation liability. Just as in *Yagman*, where calling a judge "intellectually dishonest" merely reflected disagreement with judicial reasoning, stating that Blackwell "lied by omission" reflects a belief that she presented testimony in a way that concealed material information.

(ii) The Context: A Book Critiquing the Media and Public Officials

As stated above, context is key. Courts recognize that critical books and investigative journalism often contain interpretative statements that are not intended to be factual allegations. *See generally Moldea v. New York Times Co.*, 22 F.3d 310, 315 (D.C. Cir. 1994). Given that *They're Lying* was purportedly written to challenge the mainstream account about Floyd's murder, a reasonable reader would expect opinions and critiques, not strictly neutral reporting.

In conclusion, applying Minnesota's fact-opinion test, the statements in *They're Lying* qualify as protected opinion because: (1) they use qualifying language ("seems," "maybe") that signals interpretation rather than fact; (2) they express skepticism about Blackwell's testimony, which is inherently subjective and cannot be objectively proven false; (3) they appear in a book critiquing mainstream views, reinforcing the conclusion that they are part of public discourse rather than factual reporting; and (4) the context—a book challenging public officials—indicates

that these are rhetorical arguments rather than provable falsehoods. Because these statements are expressions of opinion and interpretation, they are not actionable as defamation under Minnesota law or the First Amendment.

3. Statements 1-3 are protected as matters of public concern but may not be covered by the fair-reporting privilege.

Even if the statements in *They're Lying* were considered actionable, they may be shielded from liability under the constitutional protection for opinion and commentary on public officials and matters of public concern. The fair-reporting privilege protects fair and accurate reports of official proceedings, including judicial proceedings. Under Minnesota law, this privilege applies if (1) the publication reports on an official proceeding, and (2) the report is a fair and accurate summary of that proceeding. *Moreno v. Crookston Times Printing Co.*, 610 N.W.2d 321, 329 (Minn. 2000).

(a) Fair Reporting Privilege

(i) The Statements Concern a Judicial Proceeding.

The statements in *They're Lying* directly reference Blackwell's testimony in the trial of *State v. Chauvin*. Courts consistently hold that media reports, books, or other publications summarizing trial testimony fall within the fair-reporting privilege. *Larson v. Gannett Co.*, 940 N.W.2d 120, 133 (Minn. 2020).

Here, Blackwell was an important witness for the State, and *They're Lying* critiques the accuracy and completeness of her testimony. Whether the book's characterization of Blackwell's testimony is favorable or unfavorable is irrelevant to the privilege's application as long as the summary is substantially accurate.

(ii) Collin's Omissions of a Key Portion of Blackwell's Testimony Undermines a Fair and Accurate Summary.

The privilege does not require a verbatim recitation of testimony; it allows for summaries

capturing the gist of the proceeding. *Jadwin v. Minneapolis Star & Tribune Co.*, 390 N.W.2d 437, 441 (Minn. Ct. App. 1986). The key inquiry is whether the publication "conveys the same effect" as the official record. *McKee v. Laurion*, 825 N.W.2d 725, 730 (Minn. 2013). Here, the book describes Blackwell's testimony while examining Exhibit 17 and contrasts it with MPD policies and sworn statements from officers:

> Besides, if anyone should be able to recognize MPD training techniques, it would be the person in charge of MPD training. That would be Inspector Katie Blackwell. She was in charge of the Minneapolis Police training division when George Floyd was arrested and died. She also testified during Chauvin's trial. When the prosecution asked her about how Chauvin and the other officers were trying to restrain Floyd, she testified:
>
> I don't know what kind of improvised position that is. So that's not what we train.

They're Lying, 207.

But Collin omits a critical portion of Blackwell's testimony by removing the context of questioning (italicized lines in brackets were omitted from *They're Lying*):

> *[**Prosecutor Schleicher**: I'd like to show you what's been received as Exhibit 17. I'm going to ask you, Officer, as you look at Exhibit 17, is this a trained technique that's by the Minneapolis Police Department when you were overseeing the training unit?*
>
> ***Officer Blackwell**: It is not.*
>
> ***Prosecutor Schleicher**: Why not?*
>
> ***Officer Blackwell**: Well, use of force, according to policy, has to be consistent with MPD training. And what we train are neck restraints, the conscious and unconscious neck restraint. So per policy, a neck restraint is compressing one or both sides of the neck using an arm or leg, but what we train is using one arm or two arm to do a neck restraint.*
>
> ***Prosecutor Schleicher**: And how does this differ?]*
>
> **Officer Blackwell**: I don't know what kind of improvised position that is. So that's not what we train.
>
> *State v. Chauvin Transcript* at 3922:20-3923:15.

The omitted lines from Blackwell's testimony are not incidental or minor; the omission goes to the heart of the accusation. It directly addresses the distinction between policy authorization and training implementation, which is critical to evaluating whether Blackwell was, in fact, misleading

in her testimony. Without that context, *They're Lying* risks presenting a partial and slanted version of Blackwell's testimony—one that makes Blackwell appear dishonest in a manner that the full transcript does not support.

While the fair reporting privilege generally protects summaries of judicial proceedings, it is limited by the requirement of fairness and accuracy, particularly under the fair abridgment doctrine. In this case, the omission of Blackwell's testimony acknowledging MPD's written policy inclusion of leg-based neck restraints—while clarifying that training focused on arm-only techniques (i.e., "but what we train is using one arm or two arm to do a neck restraint") —may be viewed as material and misleading. By selectively editing the testimony to enhance the appearance of deception, Collin forfeited the protection of the fair reporting privilege for that portion of the book.

(b) The Statements Are Protected as Opinions and Commentary on a Public Official.

The statements are also protected under the First Amendment and Minnesota constitutional law, which provide broad protection for opinions and commentary on public officials and matters of public concern.

(i) Blackwell is a Public Official.

Minnesota courts apply the public-official doctrine broadly, particularly in cases involving high-ranking law enforcement officers. *Maethner v. Someplace Safe, Inc.*, 929 N.W.2d 868, 876 (Minn. 2019). Whether a person is a "public official" is a question of law. *O'Donnell v. City of Buffalo*, 2008 WL 314366, at *4 (Minn. Ct. App. Feb. 5, 2008) (unpublished) (citing *Lund v. Chicago & Nw. Transp. Co.*, 467 N.W.2d 366, 369 (Minn.App.1991), *rev. denied* (Minn. June 19, 1991)).

In *Weinberger v. Maplewood Review*, 668 N.W.2d 667 (Minn. 2003), the Minnesota Supreme Court held that public employees in positions of influence must meet a higher threshold to prove defamation.[52] Blackwell qualifies as a public official under this standard: she was a high-ranking MPD official overseeing training policies. She played a prominent role in the *Chauvin* trial, describing her own testimony as "instrumental" and "pivotal" in the case. She continued in high-profile public service after the trial, ultimately being promoted to Assistant Chief of MPD. As a public official, Blackwell is subject to a higher level of scrutiny and must prove actual malice—meaning a showing that Collin knew her statements were false or acted with reckless disregard for the truth. *New York Times Co. v. Sullivan,* 376 U.S. 254, 280 (1964).

(ii) Opinions and Interpretations of Public Testimony Are Constitutionally Protected.

Statements about public figures and public controversies are entitled to heightened constitutional protection. Even statements that could be misconstrued as factual are not defamatory if they are reasonably interpreted as opinion.[53] Minnesota courts apply a multi-factor test to determine whether a statement is protected opinion, considering: (1) the precision and specificity of the language, *McKee v. Laurion*, 825 N.W.2d at 733; (2) whether the statement is objectively verifiable, *Hunt v. Univ. of Minn.*, 465 N.W.2d 88, 94 (Minn. Ct. App. 1991); and (3) the context in which the statement was made. *Fine v. Bernstein*, 726 N.W.2d 137, 144 (Minn. Ct. App. 2007).

Here, the book's statement (such as "it doesn't seem like Inspector Blackwell knows how

[52] *See also Britton v. Koep*, 470 N.W.2d 518, 522 (Minn. 1991) (holding that a government employee qualifies as a public official under *New York Times* if they (1) perform governmental duties directly related to the public interest, (2) hold a position to significantly influence public issues, or (3) appear to have substantial responsibility over government conduct; finding county probation officers met this standard due to statutory authority including law enforcement powers, supervisory duties, and influence on court proceedings).

[53] *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 339-40 (1974) ("Under the First Amendment there is no such thing as a false idea. However pernicious an opinion may seem, we depend for its correction not on the conscience of judges and juries but on the competition of other ideas.").

MPD officers are trained—or maybe she was lying") is protected because the use of "seems" and "maybe" signals an interpretation rather than a definitive assertion of fact.[54] The statement is not objectively verifiable; it is an opinion about the credibility of trial testimony. The context of the book—which explicitly critiques mainstream accounts—makes it clear that the statements are commentary rather than neutral reporting. *Janklow*, 788 F.2d at 1302-03.

4. There is No Proof That The Book's Statements Were Made with Actual Malice.

Even if Blackwell could argue that the statements contained false implications, she must prove actual malice to succeed on her defamation claim. Under *St. Amant v. Thompson*, 390 U.S. 727, 731 (1968), actual malice requires evidence that the defendant had serious doubts about the truth of the statements. There is no such evidence here. Collin and Chaix conducted extensive research, including MPD[55] training materials, sworn officer statements, and legal filings. Courts have repeatedly rejected defamation claims where competing interpretations of complex issues exist, as long as the author had a basis for their view. *Chafoulias v. Peterson*, 668 N.W.2d at 654.

In conclusion, the constitutional privilege for opinion protects statements expressing skepticism about a public official's credibility, but the fair-reporting privilege does not protect the book's coverage of Blackwell's trial testimony.

IV. The Documentary: *The Fall of Minneapolis*

A. Blackwell's defamation claims as to *The Fall of Minneapolis* do not establish a legally cognizable basis for relief under Minn. Stat. § 554.13(a)(3)(ii)(A).

As previously mentioned, to prevail on a defamation claim, Blackwell must establish four elements: "(1) the defendant made a false and defamatory statement about the plaintiff; (2) the

[54] *Supra* note 48.

[55] *St. Amant v. Thompson*, 390 U.S. 727, 731 (1968) ("There must be sufficient evidence to permit the conclusion that the defendant in fact entertained serious doubts as to the truth of his publication.").

statement was an unprivileged publication to a third party; (3) the statement had a tendency to harm the plaintiff's reputation in the community; and (4) the defendant was at fault." *DeRosa v. McKenzie*, 936 N.W.2d 342, 345 (Minn. 2019) (citing *McGuire v. Bowlin*, 932 N.W.2d 819, 823 (Minn. 2019)).

Under Minnesota law, a defamation claim must be pled with particularity. As the Minnesota Court of Appeals explained in *Stead-Bowers v. Langley*, 636 N.W.2d 334, 342 (Minn. Ct. App. 2001), plaintiffs must "specifically plead the alleged defamatory statements." The Minnesota Supreme Court has long required that "the defamatory matter be set out verbatim" or with equivalent clarity. *See Moreno v. Crookston Times Printing Co.*, 610 N.W.2d 321, 326 (Minn. 2000) (citing *American Book Co. v. Kingdom Pub. Co.*, 71 Minn. 363, 366, 73 N.W. 1089, 1090 (1898)). Federal courts applying Minnesota law adopt a similar view. In *Sagehorn v. Independent School District No. 728*, 122 F. Supp. 3d 842, 868 (D. Minn. 2015), the court held that specificity requires pleading: (1) who made the alleged defamatory statement, (2) to whom it was made, and (3) where it was made.

Here, Paragraph 31 of Blackwell's Complaint challenges content from the documentary *The Fall of Minneapolis*, but does not identify a single, discrete, defamatory statement.[56] Instead,

[56] Compl. ¶ 31. "This theme was continued in *The Fall of Minneapolis*. The film showed a clip of testimony by Blackwell, truthfully testifying that the technique used by Chauvin was not a technique trained by the Minneapolis Police Department. Immediately thereafter, Collin is shown interviewing Carolyn Pawlenty (Derek Chauvin's Mother). Collin states that "several witnesses" testified that the MRT or the Maximal Restraint Technique "was not a part of Minneapolis Police Policy." This statement conveys the impression that Blackwell herself testified to that effect, which is plainly untrue. Pawlenty shows Collin a manual and says that the technique was "in the manual." Collin shows a picture that is ostensibly the page Pawlenty was referring to, that shows a police officer positioned with his knees on a defendant's back. Pawlenty says that the police told a "fricken lie." Thereafter, Collin interviewed Derek Chauvin and stated that Blackwell testified that the technique Chauvin used was not part of police training. She then asks Chauvin whether MRT was part of police training. Chauvin replies that MRT was part of the written policy manual. The film shows a page from the manual entitled Maximal Restraint Technique. In the film's deceptive framing and editing, Collin and Chaix lie about the nature of Blackwell's testimony with the hope that the viewer will believe that Blackwell perjured herself by stating that the MRT was not part of police policy. In reality, Blackwell testified that she did not recognize the technique used by Chauvin as any technique officers are trained to use, including the MRT. The film reinforces this lie in subsequent interviews with co-workers of the

Paragraph 31 discusses the documentary's general presentation, including its editing choices, intercutting of video clips, and overall narrative tone. The complaint references an interview with Chauvin's mother, video clips of Blackwell's testimony, and training materials. But it does not isolate a specific, verbatim quote or timestamp that constitutes the allegedly defamatory statement. This lack of precision places an interpretive burden on the Court (and the Defendants) to analyze Blackwell's defamation under the applicable legal standard. The Court had to isolate and determine which portions of the film could reasonably be construed as a basis for Blackwell's defamation claims.

The Court identified two composite "statements" from the film as being fairly encompassed within Plaintiff's Complaint:

> **Statement No. 4**: The documentary's juxtaposition of Blackwell's trial testimony with MPD training materials, implying inconsistency or dishonesty.
>
> **Statement No. 5**: The filmed interview with Carolyn Pawlenty (Chauvin's mother), in which she reacts, after references to Blackwell's and Chief Arradondo's trial testimony, "When I heard that part of the testimony, I really wanted to get up off my Chair and yell bullshit […] How can you say that's not part of the training?[57]

The core question is whether Collin's selective editing of Blackwell's testimony created a false impression that harmed Blackwell's reputation, and whether that false implication was substantially true or capable of a supportable interpretation.

officers who state that the MRT was trained by the MPD. Though it is true that the MRT was trained by the MPD, it is not true that the MRT was the "technique" Chauvin used. The documentary specifically concludes that Blackwell (identified as "the Assistant Chief") turned her back on the City of Minneapolis and implies that Blackwell's testimony was responsible in part for a whole host of public safety concerns, including police officer attrition, rising crime, and general deterioration of the city."

[57] Blackwell's Complaint at paragraph 31 mischaracterizes Pawlenty's quote in the documentary. Pawlenty states, "So, the Chief of Police at that time told a fricken lie." *The Fall of Minneapolis* at 1:05:55. But Blackwell's Complaint states "Pawlenty says that the police told a "fricken lie." Compl. ¶ 31, Pawlenty did not refer to police generally; rather, she specifically referred to the Chief of Police. At the time, that was Chief Arradondo.

1. Statements 4-5 are substantially true.

Statement 4 arises from a sequence in *The Fall of Minneapolis* that combines Blackwell's trial testimony with MPD training materials. The film shows Blackwell testifying that the technique used by Derek Chauvin was "not something we train," immediately followed by MPD training slides and officer interviews suggesting that knee-on-neck techniques were, in fact, taught and used. The effect of this juxtaposition implies that Blackwell's testimony was misleading or inaccurate.

Statement 5 is a remark made by Carolyn Pawlenty, Derek Chauvin's mother, during an on-camera interview in the documentary. After reviewing training materials presented to her by Liz Collin, and being told that multiple officials—including Plaintiff Blackwell—testified that Chauvin's actions were not trained by MPD, Pawlenty responds: "When I heard that part of the testimony, I really wanted to get up off my Chair and yell bullshit […] How can you say that's not part of the training?"

Minnesota defamation law requires that the challenged statement be false. But, as established in *McKee*, a statement is not considered false if it is substantially true—that is, if it does not create a different effect on the reader's or viewer's mind than would the literal truth. *McKee*, 825 N.W.2d at 733. Similarly, in *Jadwin*, the court held that "minor inaccuracies do not amount to falsity so long as the substance, the gist, the sting of the libelous charge is justified.[58]

Applying this standard, the gist of Statement 4 is that Blackwell's testimony conflicted with MPD's own training materials and policies, creating a strong impression that her account of what MPD did or did not train was incomplete or inaccurate. The film does not fabricate words

[58] *Jadwin*, 390 N.W.2d at 441; *see also* RESTATEMENT (SECOND) OF TORTS § 581A at cmt. f (1977) ("Slight inaccuracies of expression are immaterial provided that the defamatory charge is true in substance.").

or invent falsehoods; rather, it uses real footage of Blackwell's testimony, followed by actual MPD officer and materials perspectives. The "statement" is conveyed through visual and narrative structure, not a single line of dialogue, but it nonetheless communicates a critique: that Blackwell's testimony did not reflect what was actually being taught in the department.

Similarly, the gist of Statement 5 is an accusation: that officials misled the public (or the jury) about what MPD actually trained—specifically, that they misrepresented the existence or scope of training involving knee-on-neck restraint techniques. Although the statement is broadly worded—" When I heard that part of the testimony, I really wanted to get up off my Chair and yell bullshit […] How can you say that's not part of the training?"—it is understood in the immediate context to reference (1) the MPD training materials just shown to the viewer and to Pawlenty; (2) earlier courtroom testimony from officials, including Blackwell, denying that Chauvin's technique was trained; and (3) the allegation of a contradiction between those claims and the documents shown in the film. In effect, the statement is a conclusion drawn from the juxtaposition of Blackwell's testimony and MPD policy materials. The film sets this up for the viewer and allows a third party—Pawlenty—to say what many viewers may think: that there is a gap between what officials said and what the documents show.

The available record supports this implication for Statements 4 and 5. MPD Policy § 5-311, in effect at the time of Floyd's death, defined neck restraints to include "compressing one or both sides of a person's neck with an arm or leg," clearly permitting leg-based neck restraints in specific situations. Chaix Decl. Ex. 9; Collin Memo at 12. MPD in-service training slides from 2018–2019, used while Blackwell led the Training Division, contain images of officers applying knees to the neck and upper back, labeled "MPD Policy," and citing sections 5-311 and 5-316. Lund Decl. Ex. 6 at 002596; Lund Decl. Ex. 8 at 010586; and Collin Decl. at Ex. B (Training

Slides). Thirty-four sworn declarations from current and former MPD officers confirm they were taught to use knee-on-neck techniques, and that these methods were commonly taught and practiced during Blackwell's tenure.[59] Lund Decl. Ex. 6 at 002596. In her testimony, Blackwell stated that the restraint used by Chauvin was "not something we train." Yet MPD's own policy manual and other officers indicate that similar techniques were part of MPD's training materials and policies. Even if Blackwell attempted to distinguish MRT from what Chauvin did, the overall record supports the film's implication that her testimony was at odds with MPD's institutional policy manual and the training some MPD officers claim they received.

In her testimony, Blackwell stated unequivocally that what Chauvin did was "not something we train." She did not acknowledge that MPD's written policy permitted such a technique or that its training materials had historically included it. Whether or not this omission was intentional, the sting of Statement 5—that she and others misled the public—is not materially false.

The substantial truth standard does not require that the documentary present a perfectly balanced or neutral summary of Blackwell's testimony. Rather, it asks whether the film creates a materially different impression than the truth. Here, it does not. The viewer is left with the impression that Blackwell's statements about MPD training are contradicted by MPD's own materials and officers, which is accurate in substance, even if not exhaustive.

This case presents issues like those addressed in *Diesen v. Hessburg*, where the plaintiff alleged that a newspaper acted maliciously by presenting facts "out of context," rearranging information, and selectively highlighting negative commentary while minimizing favorable

[59] *Supra* note 21.

content. *Diesen v. Hessburg*, 455 N.W.2d 446, 447 (Minn. 1990). The court in *Diesen*, relying on *Janklow v. Newsweek, Inc.*, 788 F.2d 1300, 1304 (8th Cir. 1986), and *Strada v. Connecticut Newspapers, Inc.*, 193 Conn. 313, 326, 477 A.2d 1005, 1012 (1984), held that such editorial structuring falls within a publisher's discretion so long as the reporting is not done with reckless disregard for the truth. In *Diesen*, the court found no evidence that the publisher doubted the accuracy of the underlying facts. On the contrary, the record showed that quotations and documents had been carefully verified, interviews had been reviewed, and cautionary language had been included to avoid overstating conclusions.

A similar editorial process appears in *The Fall of Minneapolis*. The filmmakers juxtapose footage of Blackwell's trial testimony with MPD training materials and officer declarations in a way that raises questions about her credibility—but they do so using accurate source material that is disclosed directly to the viewer. There is no indication that the filmmakers fabricated content or relied on information they knew to be false. The challenged segment of the documentary constructs a critical narrative by presenting contrasting public records and inviting viewers to interpret the discrepancy. As in *Diesen*, the arrangement of facts may be pointed or selective, but such narrative framing does not amount to actionable defamation absent a showing of actual malice or materially false statements. The implication that Blackwell's testimony was incomplete or misleading arises not from invention, but from the editorial use of public documents, which is protected under both First Amendment principles and established defamation precedent.

Finally, Statement 5, though emotionally charged, is best understood as a reaction to disclosed evidence. It reflects a layperson's interpretation of visible contradictions between official testimony and department materials. In fact, the layperson is the mother of Chauvin. Given the broader context and evidentiary record, the suggestion that officials, including Blackwell, misled

the public or the court is not materially false.

Accordingly, even if the documentary does not present a comprehensive account of Blackwell's testimony, its core message—that her statements conflicted with MPD's policy manual—is substantially true. That is sufficient, under Minnesota law, to defeat the falsity element required to sustain a defamation claim.

2. Statements 4-5 are protected opinion.

Statements that cannot reasonably be interpreted as stating facts are not actionable. *Hunt v. University of Minnesota*, 465 N.W.2d 88, 94 (Minn. Ct. App. 1991) ("Only statements that present or imply the existence of fact that can be proven true or false are actionable under state defamation law." (citations omitted). "The First Amendment protects statements of pure opinion from defamation claims." *McKee*, 825 N.W.2d at 733 (citations omitted). If it is plain that the speaker is expressing a 'subjective view, an interpretation, a theory, conjecture, or surmise,' rather than claiming to have 'objectively verifiable facts,' the statement is not actionable. *See also Thomas v. United Steelworkers Local 1938*, 743 F.3d 1134, 1142 (8th Cir. 2014).

In deciding whether a statement is one of opinion or one of fact, courts consider various factors, including: "(1) a statement's precision and specificity; (2) a statement's verifiability; (3) the social and literary context in which the statement was made; and (4) a statement's public context." *Fine,* 726 N.W.2d at 144 (citing *Janklow*, 788 F.2d at 1302–03). Nevertheless, there is no "wholesale defamation exemption for anything that might be labeled 'opinion.'" *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 18 (1990). "[S]tatements couched as opinions may be unprotected if they imply a defamatory factual assertion" when viewed in context. *Hunter*, 545 N.W.2d at 706.

The Court applies these factors to *The Fall of Minneapolis*'s presentation of Blackwell's testimony to determine whether the film's portrayal of her statements was a factual assertion or a

protected opinion.

Blackwell argues that *The Fall of Minneapolis* does not merely offer an interpretation of Blackwell's testimony but instead presents a false and defamatory factual claim that she misrepresented MPD policy. Specifically, Blackwell contends that she never testified that MRT was not part of MPD policy—her testimony focused on MPD training versus MPD policy and whether Chauvin's technique aligned with MPD's actual training curriculum.

The Defendants argue that the documentary's portrayal of Blackwell's testimony is not a false statement of fact but a reasonable interpretation of her words, making it a protected opinion. Defendants assert that, because *The Fall of Minneapolis* does not contain an explicit false statement of fact, but rather presents information that allows viewers to draw their own conclusions, the statements are protected under the First Amendment as opinion.

The documentary's framing of Blackwell's testimony is opinion that cannot be objectively verified as false for the foregoing reasons.

(a) Precision and Specificity: The Documentary Does Not Make a Clear, Verifiable Accusation.

A statement that is vague or rhetorical is more likely to be protected opinion, while a statement that is specific and precise can be objectively verified and thus considered factual. *Fine*, 726 N.W.2d at 144.

Unlike a direct quote, Statement 4 is constructed through editing, sequencing, and juxtaposition. There is no direct accusation such as "Blackwell lied." Instead, the film shows Blackwell's statements, then immediately contrasts them with contradictory materials. This implied commentary lacks the precision and specificity of a factual claim. The viewer is not told what conclusion to draw, but is invited to infer inconsistency.

The language of Statement 5 is imprecise, informal, and emotionally charged. It does not identify a particular statement, document, or official. Nor does it specify what the "lie" was, who precisely "you" refers to, or whether the alleged lie was intentional or negligent. The use of the slang modifier "bullshit" and lack of attribution reinforce that this is colloquial rhetoric, not a forensic accusation.

(a) Verifiability: The Documentary's Statements Cannot be Verified in a True or False Sense.

As previously stated, courts repeatedly hold that accusations regarding a person's knowledge or intent are not actionable unless they can be objectively verified. *Hunt v. Univ. of Minn.*, 465 N.W.2d at 94 (determining that a "hybrid statement" containing opinion and underlying facts that cannot be objectively verified as true or false is "absolutely protected."). Courts hold that raising doubts about someone's honesty—particularly in public discourse—is a protected form of opinion. In *Phantom Touring, Inc. v. Affiliated Publ'ns*, 953 F.2d 724 (1st Cir. 1992), the court found that statements questioning whether a performance was a "real" Broadway show were protected opinions because they invited subjective debate. *Phantom Touring, Inc.* 953 F.2d at 728 (holding that terms like "fake" or "phony" are figurative and incapable of objective verification, and thus non-actionable opinion; "[t]he lack of precision makes the assertion 'X is a scam' incapable of being proven true or false.").

Here, Statement 4's implication is that Blackwell's testimony did not reflect the full reality of MPD training. But that implication is not verifiable. Whether Blackwell misled the jury depends on the interpretation of complex materials: MPD policy (§ 5-311), training slides, use-of-force techniques, and institutional practices. Blackwell stated that Chauvin's restraint was "not something we train." But training slides do depict similar techniques, and multiple officers swore they were trained in knee-on-neck control. Whether her testimony was accurate is thus a matter of

degree and interpretation, not clear-cut fact. As in *McKee*, where the court found a doctor's interpretation of a patient interaction to be non-verifiable, Statement 4 invites viewers to weigh competing evidence, not to accept a provable fact. *McKee*, 825 N.W.2d at 730. That lack of verifiability supports classification as protected opinion.

Statement 5 also fails verifiability for several reasons. First, it lacks specificity. Pawlenty does not identify who it refers to—whether it is Blackwell alone, multiple MPD witnesses, the prosecutors, or someone else. Pawlenty's statement does not identify what exactly was said that constitutes the alleged violation. Without a specific, clearly attributable statement or speaker, there is no definable fact to prove true or false.

Second, the statement reflects a subjective judgment about what the materials shown in the film mean. Whether Blackwell's testimony was inconsistent with MPD training practices is itself a matter of interpretation. MPD policies, training slides, and officer declarations present a complex and sometimes conflicting picture of what was formally taught versus what was practiced. Pawlenty's remark is not a statement of fact based on personal knowledge but an opinion based on viewing that tension unfold onscreen.

Accordingly, both statements cannot support a defamation claim because they fail the verifiability prong.

(b) Social and Literary Context: The Documentary Presents Itself as Opinion Commentary.

Statements 4 and 5 appear in a documentary film that is overtly critical of the prosecution and investigation of Chauvin and the Minneapolis Police Department. In this setting, viewers expect critique, interpretation, and advocacy. The presentation of contrasting footage and material is editorial, not presented with the neutrality of a news broadcast or judicial summary.

Statement 5 presents Pawlenty, a non-expert, reacting to her son's conviction, not asserting

a provable factual claim about Blackwell. Her words, while pointed, do not meet the legal threshold for verifiability under the *McKee* standard. Viewers are likely to interpret her statement not as a journalistic or factual finding, but as a subjective reaction of a mother, placed in an advocacy-based media format. Minnesota courts emphasize that, when a statement appears in a setting of public commentary or advocacy, it is more likely to be understood as opinion. *See Hunter*, 545 N.W.2d at 706 (Minn. Ct. App. 1996)). The literary context here reinforces that the statement was meant—and understood—as opinionated reaction, not a statement of fact.

(c) Public Context

The statements concern Blackwell (a public official) testifying under oath in a high-profile criminal trial about MPD's official practices. In this setting—debate over police policy, public trials, and government accountability—vigorous commentary is not only expected, but constitutionally protected. *See Janklow,* 788 F.2d at 302 (8th Cir. 1986) (emphasizing speech "about government and its officers…lies at the very heart of the First Amendment."). A filmmaker's critical take on an official's testimony, especially based on publicly disclosed documents, is precisely the kind of civic discourse the First Amendment guards.

3. Blackwell cannot establish the first and essential element of her defamation claim—falsity—as to Statements 4 and 5, so the Court need not reach the remaining elements of privilege.

Because Plaintiff Katie Blackwell cannot establish the first and essential element of her defamation claim—falsity—as to Statements 4 and 5, the Court need not reach the remaining elements, including whether the statements are protected by statutory or common law privileges. Under Minnesota law, a plaintiff must make a prima facie showing of a false and defamatory statement. Here, the record demonstrates that the challenged statements are either substantially true, protected opinion, or at most, non-actionable implications arising from the presentation of disclosed and accurate facts. As such, Blackwell failed to meet her burden at the threshold stage,

and her claim cannot proceed.

4. Defamation by implication.

Defamation by implication arises when a defendant either juxtaposes facts to suggest a defamatory link or omits key facts to create a misleading impression. *Metge*, 649 N.W.2d at 498. Courts are generally reluctant to recognize such claims when brought by public figures, holding that true statements cannot form the basis for implied defamation, particularly when addressing official conduct. *Price*, 881 F.2d at 1432; *Diesen*, 455 N.W.2d at 451; *Janklow*, 788 F.2d at 1302.

In *MacDonald v. Brodkorb*, 939 N.W.2d 468, 480 (Minn. App. 2020), the Minnesota Court of Appeals declined to recognize a defamation-by-implication claim brought by a public official, reaffirming the principle that such claims are particularly disfavored when the underlying statements are true. The court quoted with approval the reasoning from *Diesen v. Hessburg*, emphasizing that *"*speech about government and its officers, about how well or badly they carry out their duties, lies at the very heart of the First Amendment*." Diesen v. Hessburg, 455* N.W.2d 446, 451-52 (Minn. 1990). In doing so, the court confirmed that, where the statements at issue involve public officials and matters of public concern, even sharp criticism or implied wrongdoing falls within the broad protections of the First Amendment.

Although Statements 4 and 5 may contain implied criticisms of Blackwell's testimony, they arise from the kind of fact-based narrative construction and public discourse the First Amendment protects—particularly when discussing public officials. Even if the film "implied" that Blackwell "perjured herself by stating that the MRT was not part of police policy," that claim "cannot be maintained by a public official." *See MacDonald*, 939 N.W.2d at 480; *Diesen*, 455 N.W.2d at 451-52); Compl. ¶ 31. Although Blackwell does not plead a defamation-by-implication theory, and even if such a theory were available to her, the statements are non-actionable.

CONCLUSION

Blackwell failed to establish a prima facie case for defamation, as required under section 554.13(a)(3)(i) of the Minnesota Uniform Public Expression Protection Act as to *They're Lying* and *The Fall of Minneapolis*. Blackwell's claims do not meet the minimum threshold—particularly as to the falsity element and the protected nature of the challenged statements. Because Blackwell has not satisfied Minn. Stat. § 554.13(a)(3)(i), the Court is precluded from considering the remaining elements under § 554.13(a)(3)(ii)(A) and § 554.13(a)(3)(ii)(B).

As a result, the Defendants' special motion to dismiss must be granted, and the claims dismissed.

ORDER

1. Defendants' special motion to dismiss is **GRANTED** with prejudice.

IT IS SO ORDERED, LET JUDGMENT BE ENTERED ACCORDINGLY.

Date: April 8, 2025

Edward T. Wahl
Judge of District Court