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STATE OF MINNESOTA DISTRICT COURT

COUNTY OF HENNEPIN FOURTH JUDICIAL DISTRICT
Criminal/Traffic Division

Derek Michael Chauvin,	)	
	)	
Petitioner,	)	**MEMORANDUM IN SUPPORT OF PETITION FOR**
	)	
v.	)	**POSTCONVICTION RELIEF**
	)	
State of Minnesota,	)	Minn. Stat. § 590.01
	)	
Respondent.	)	District Court File #27-CR-20-12646

Procedural History

1. **On April 20, 2021, Mr. Chauvin was convicted of unintentional second degree murder in violation of**
2. **On June 25, 2021, Mr. Chauvin was sentenced to 270 months imprisonment.**
3. **On September 20, 2021, Mr. Chauvin filed a pro se Notice of Appeal to the Minnesota Court of Appeals, alleging the following:**
    a. The District Court abused its discretion when it denied Appellant's motion for change of venue or a new trial;
    b. The District Court abused its discretion when it denied Appellant's motion for a continuance or a new trial;
    c. The District Court abused its discretion when it denied Appellant's motions to sequester the jury throughout trial;
    d. The State committed prejudicial prosecutorial misconduct;
    e. The District Court prejudicially erred when it concluded that the testimony of Morries Hall, or in the alternative Mr. Hall 's statements to law enforcement, did not fall under Minn. R. Evid. 804(b)(3) and was not a violation Appellant's constitutional confrontation rights;
    f. The District Court prejudicially erred when it permitted the State to present cumulative evidence with respect to use of force;
    g. The District Court abused its discretion when it ordered the State to lead witnesses on direct examination;
    h. The District Court abused its discretion when it failed to make an official record of the numerous sidebar conferences that occurred during trials;
    i. The District Court abused its discretion when it failed to allow Appellant to exercise several cause strikes for clearly biased jurors during voir dire;
    j. The District Court abused its discretion when it permitted the State of amend its complaint to add the charge of third-degree murder;
    k. The District Court abused its discretion when it strictly limited and undercut the

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admissibility of George Floyd's May 6, 2019 arrest;

l. The District Court abused its discretion when it submitted instructions to the jury that materially misstated the law;
m. The District Court abused its discretion when it by denying Appellant's motion for a *Schwartz* hearing;
n. The District Court abused its discretion when it denied Appellant's post-verdict motion for a new trial due to juror misconduct.

4. **On April 17, 2023, the Minnesota Court of Appeals affirmed Mr. Chauvin's conviction.**
5. **On May 17, 2023, Mr. Chauvin Petitioned for Review by the Minnesota Supreme Court.**
6. **On July 18, 2023, The Minnesota Supreme Court denied review.**
7. **On October 16, 2023, Mr. Chauvin Petitioned for Certiorari Review by the United States Supreme Court.**
8. **On November 20, 2023, the United States Supreme Court denied review.**
9. **On November 23. 2024, Mr. Chauvin brought a Petition for Postconviction Relief, requesting leave to amend the Petition.**
10. **On April 7, 2025, the Court dismissed the Petition without prejudice to Mr. Chauvin's filing a new Petition within the time permitted by Minnesota Law.**

This Petition is brought within the two years required in Minn. Stat. § 590.01, Subd. 4.

INTRODUCTION

In Spring 2020 a bystander video depicting a police encounter in the City of Minneapolis was posted to Facebook. The events captured on the video, which was viewed millions of times across the world, involved four officers from the Minneapolis Police Department ("MPD") arresting George Perry Floyd on May 25, 2020 on a public street before a small crowd.

The footage includes MPD Officer Derek Chauvin cooperating with other officers to restrain Floyd in a prone position using a knee-to-neck restraint in connection with the Maximal Restraint Technique ("MRT"), a tactic that was trained, authorized, and consistent with MPD policy for use by all MPD Officers at that time.[1] The technique, also referred to as the

[1] *See Index #113 at 17-18, Exhibit 13 to Index #113*, BATES 2596, Ex. 01: Order for Dismissal Blackwell v Collin, Affidavits, Policy Manual at §5-311, §5-316.

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"hobble,"[2] involved placing his left knee at various times on Floyd's upper back or neck area, while MPD Officers J. Alexander Kueng and Thomas Lane restrained Floyd's midsection and legs as they awaited the arrival of paramedics. Floyd died during the encounter.

The State alleged that Chauvin killed Floyd by asphyxiating him while he was on the ground being restrained and charged him with three offenses: Second Degree Unintentional Murder – Minn. Stat. §609.19.2(1) during commission of a separate felony, with a predicate felony offense of Third Degree Assault; Third Degree Murder – Minn. Stat. §609.195(a); and Second Degree Manslaughter – Minn. Stat. §609.205(1). After a trial by a Hennepin County jury, Chauvin was convicted of all three offenses. He was sentenced on the top count of Second Degree Murder on June 25, 2021 to 270 months' incarceration, an upward departure from guidelines.

State v. Chauvin changed the fabric of the State of Minnesota. The jury rendered its verdict amid widespread protests, international media attention, the COVID-19 pandemic, and ever-present armed security. And, of course, the video.

Five years removed, this case simply never made sense. None of the officers here, including Chauvin, appeared to realize that a criminal act had been committed at all. Few murders take place before a crowd of witnesses while talking with emergency personnel over a police radio. But what truly set this case apart was that in most cases, the opposing sides argue about the facts, and whether there is room for reasonable doubt.

In this case, video[3] and still frames told a single story.

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[2] *See* EX. 02.

[3] Unless otherwise specified, "video" is used in the general sense as it applies to all relevant video evidence in *State v. Chauvin*. Interpretation of the events in a video is the role of the finder of fact.

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This case resolved to two issues: (1) intent -- was the restraint of George Floyd consistent with MPD policy and practice, and (2) causation – did the way the officers restrain George Floyd cause his death. This memorandum will focus on those two issues - - how the prosecution presented false testimony in violation of *Napue* that the restraint violated MPD policy, and how State medical witnesses convinced the jury that the death of Floyd was due to "asphyxia" while the Hennepin County Medical Examiner refused to reach that conclusion.

While the postconviction relief stage of many criminal cases is generally something of an afterthought, this Court is removed from the hysteria of the day and can finally look at the facts and evidence through a clear lens. It is the first time a judicial officer can view the case without the pressure of the public mood. More than anything, this case illustrates the incredible persuasive power of video evidence and its potential for misuse. It is also demonstrates the devastating effect of false testimony on the judicial process.

Derek Chauvin was deprived of his right to due process under the Fourteenth Amendment of the US Constitution and Article I of the Minnesota Constitution, as set forth herein. He requests vacation of his sentences and a new trial. In the alternative, he requests an evidentiary hearing to address the issues raised in this Petition and memorandum.

RELEVANT FACTS

Chauvin adopts the facts in a light most favorable to the verdict as found by the Minnesota Court of Appeals, with the exception of two sentences.[4] The Opinion is attached hereto. Chauvin further provides the following facts and argument in support of this Petition:

[4] First, Chauvin does not adopt the sentence "He tried to push himself up with his fingers, knuckles, and forehead *so that he could breathe*" because it is inherently speculative. Second, Chauvin does not adopt the sentence: "The officers ignored the advice, and Chauvin continued to press his knee into Floyd's neck *with most of his body weight.*" Video is "fundamentally

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May 25, 2020

The encounter between Floyd and law enforcement On May 25, 2020 lasted less than twenty minutes, from the time MPD Officers J. Alexander Kueng and Thomas Lane arrived at the scene until Floyd was transported to the Hennepin County Medical Center ("HCMC").[5] Every moment of the encounter was captured on video from multiple perspectives.

MPD Officers J. Alexander Kueng and Thomas Lane responded to Cup Foods in South Minneapolis on a report that George Floyd had attempted to pass a counterfeit $20 bill.[6] Upon their arrival, the two officers approached a blue Mercedes-Benz outside the store to find Floyd behind the wheel of the vehicle.[7] Almost immediately, the officers relayed that they suspected Floyd was under the influence of controlled substances.[8]

Officer Lane approached the driver's side of the vehicle and explained his reason for being there.[9] Floyd refused to exit the vehicle voluntarily, and Lane drew his firearm and demanded he exit.[10] Floyd continued to refuse to comply and Lane replaced his firearm in its holster as he prepared to physically remove him.[11]

At this point, a physical struggle lasting roughly 45 seconds ensued.[12] Officer Kueng, noticing the difficulty Lane was having in his subdual of Floyd, hurried to assist his partner.[13] It took the cooperation of both men to successfully wrestle Floyd out of the car and secure his

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constrained in its ability to convey… pressure measurements or weight distribution, which cannot be inferred from visual data alone." *See* attached Ex. 3 Borden Expert Report.
[5] Transcript "T" *T2687, T2695*.
[6] *T3198*.
[7] Trial Exhibit ("TE") 43.
[8] TE-151.
[9] TE-47.
[10] *Id.*
[11] *Id.*, *TE-35*.
[12] *TE-35*.
[13] *Id.*

hands behind his back.[14] Once handcuffed, Kueng waited with Floyd on the sidewalk while Lane quickly gathered information from the other occupants of the Mercedes-Benz, and Floyd was then led to Squad #320.[15]

As the three approached Squad #320, Floyd became progressively and visibly more agitated while he shouted at the officers and breathed more heavily.[16] Another physical struggle ensued while Floyd refused to be placed in the rear of the vehicle.[17] Officers Chauvin and Thao, who had arrived moments earlier, approached the vehicle to assist Lane and Kueng in their attempts to subdue Floyd.[18] For roughly a minute and a half, a full-blown wrestling match ensued, such that the three officers had to work together to bring him through the back of the vehicle and onto the ground.[19] Floyd began saying he could not breathe while in the rear of Squad #320, a phrase he repeated several times throughout the encounter.[20]

Floyd continued to resist physically, kicking Chauvin's Body-Worn Camera ("BWC") off his chest.[21] The three MPD Officers were ultimately successful in bringing Floyd through the rear of the vehicle and then onto the street.[22] Chauvin, Kueng, and Lane, cooperated to restrain Floyd on the ground while Thao managed a growing crowd of bystanders.[23]

In executing the restraint tactic, Officer Chauvin placed his left knee on Floyd's back, upper back, or neck area, depending on the perspective of the video. His right knee was

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[14] *Id.*
[15] *TE-35.*
[16] *Id.*
[17] *Id.*
[18] Id.
[19] Id.
[20] Id.
[21] Id.
[22] Id.
[23] TE-43, 47, 49.

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primarily on Floyd's left arm.[24] Meanwhile, Officer Kueng restrained Floyd's upper legs and buttocks area, and Lane controlled Floyd's legs to restrict any further ability to kick the officers during the restraint.[25] As seen in the video, Mr. Chauvin's position did not substantially change for the entirety of his application of the MRT while the officers awaited the arrival of paramedics.[26]

Fire and paramedics were initially dispatched under a "Code 2" to address the officers' concerns that Floyd had suffered a mouth injury and was under the influence of controlled substances.[27] The officers upgraded the urgency of their request to a "Code 3" and asked for "lights and sirens" - - immediate assistance at the scene.[28] The video evidence revealed that Floyd was held in place by Officers Chauvin, Kueng, and Lane, for more than nine minutes while Officer Thao controlled the crowd.[29] The placement of Mr. Chauvin's left knee on Floyd's upper back or neck area remained consistent, as did the positions of the other two officers while they continued their restraint.[30]

The jury was told at trial by State expert witnesses that the video reflected Floyd's death at 20:24:53.[31] At 8:27pm, paramedics finally arrived to transport Floyd to the Hennepin County Medical Center ("HCMC").[32] Emergency personnel were unable to detect a pulse when they transferred Floyd to the rear of the ambulance to begin care.[33]

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[24] TE-43, 37, 49.
[25] Id.
[26] Id.
[27] T3416-17.
[28] T3415-16.
[29] TE-43, 47, 49.
[30] Id.
[31] T4558.
[32] Id.
[33] T3429-30.

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Floyd arrived at HCMC at approximately 8:53pm the night of May 25th.[34] Two doctors attended to him in the emergency room that evening: Dr. Ashley Strobel, and Dr. Bradford Langenfeld.[35] Strobel was the supervising physician, as Langenfeld had received his license to practice medicine that same month, just days before Floyd presented.[36] Dr. Strobel was "directly supervising Dr. Langenfeld while he provided aid to Floyd… and was ultimately responsible for the care of the patient."[37]

At trial, Dr. Langenfeld explained the procedures he undertook when attending to Floyd in the emergency room, and his conclusion that Floyd was in cardiac arrest when he presented.[38] Langenfeld examined Floyd's abdomen via ultrasound and noted no evidence of hemorrhage, and "…no obvious significant external trauma that would have suggested that he suffered anything that could produce bleeding sufficient to lead to a cardiac arrest."[39] He explained that cardiac arrest could be caused by several different factors including drugs.[40] Specifically, Dr. Langenfeld told the jury that fentanyl, methamphetamine, or a combination of both could cause cardiac arrest, but at the time he rendered care to Floyd he was not made aware of any potential drug use.[41]

After 30 minutes in the emergency room, Dr. Langenfeld pronounced Floyd dead at HCMC.[42] Dr. Strobel and Dr. Langenfeld "came to the same conclusions" at the hospital, that "cardiac arrest and acidosis [are] the potential causes of death," specifically identifying "severe

[34] T3738.
[35] BATES 043284.
[36] T3704.
[37] T3706.
[38] T3710-3730.
[39] T3727.
[40] T3722-3, 3726-7, 3731.
[41] T3731-2; T3735, T3741.
[42] T3729.

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agitation causing cardiac arrest…"[43] They agreed that the "mechanism that caused his death was unknown."[44]

Prosecutors met separately with each physician prior to trial on March 12, 2021.[45] Each was shown the entirety of the Frazier and Milestone videos during their respective individual meetings with the State.[46] At the time he examined Floyd, Langenfeld had not seen the Facebook video.[47] After being shown the video, "Langenfeld stated that what he witnessed in the video, the knee was sufficient to decrease the amount of air and oxygen to cause his death…"[48] However, "Dr. Strobel stated that she can't determine cause of death from watching a video."[49] Langenfeld took the stand for the State,[50] Strobel did not.

Langenfeld told the jury he had "evaluated his assessments about George Floyd in light of the videos."[51] He agreed with the State on direct that Floyd's cardiac arrest and death by "asphyxia" was "one of the more likely possibilities."[52]

May 26, 2020

Hennepin County Chief Medical Examiner Dr. Andrew Baker performed the autopsy on George Floyd the day after Floyd died.[53] Dr. Baker told the jury he "was aware that at least one video had gone viral on the internet, but as he explained: "I intentionally chose not to look at that

[43] BATES 043285.
[44] BATES 043273.
[45] BATES 043285, 043277.
[46] BATES 043273, 043285.
[47] T3709-3710.
[48] BATES 043273
[49] BATES 043285.
[50] T3701.
[51] T3710.
[52] T3729-3730.
[53] T4848.

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until I had examined Floyd. I did not want to bias my exam by going in with any preconceived notions that might lead me down one pathway or another."[54] He also told the jury: "I did see the video that the entire world saw later that day after Floyd's autopsy. *I did not release his body until the following morning,* so had I seen something on the video that triggered yet another thought in my mind, I still had the chance to act on it.*"*[55]

Baker found no medical evidence on May 26th supporting the conclusion that Floyd died of asphyxiation: "I don't know what my specific language is, but, yes, that is what I conveyed to them was the lack of anatomical findings that would support that conclusion."[56] [57]

Dr. Baker called the prosecuting attorney assigned to the case, Assistant Hennepin County Attorney Amy Sweasy, after he finished the autopsy on May 26, 2020:

> He called me later in the day on that Tuesday and he told me that there were no medical findings that showed any injury to the vital structures of Floyd's neck. There were no medical indications of asphyxia or strangulation. He said to me "Amy, what happens when the actual evidence doesn't match up with the narrative that everyone's already decided on?" And then he said, "This is the kind of case that ends careers."[58]

Neither this conversation nor an earlier conversation that took place *before* the autopsy was performed, were disclosed to the defense.

The results of the autopsy showed George Floyd suffered from severe heart disease (which all the medical experts agreed upon at trial), specifically:

- 75% proximal narrowing of the of the left anterior descending coronary artery;

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[54] Id.
[55] T4899-4900.
[56] T4929, see also T4914 *(*No evidence of bruising or bleeding in the subcutaneous tissues or muscles of the neck or back); T4915 ("There's a special paragraph that specifically describes me dissecting his back and not finding anything"); (T4917 (No broken hyoid bone, no damage to the thyroid cartilage); T4919-20 (No petechiae present).
[57] *See also* BATES 022935-022944, attached hereto as EX. 04.
[58] *Amy Sweasy Tamburino v. County of Hennepin*, #27-CV-22-16364, Index #126 at Rough Draft Page 58-59 (Henn. Co. 2022).; EX. 05.

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- 75% mid narrowing of the left anterior descending coronary artery;
- 75% narrowing of the first diagonal branch of the left anterior descending coronary artery; and
- 90% proximal narrowing of the right coronary artery.[59]

He told the jury that he had certified deaths due to atherosclerotic cardiovascular disease under similar conditions.[60]

Insofar as an arrythmia, Dr. Baker explained that "an arrhythmia is an electrical phenomenon, not an anatomic one, and so I really can never diagnose an arrhythmia postmortem. We just have to infer that from the circumstances and from the condition of the coronaries."[61] Baker testified that Floyd's heart "was enlarged by weight,"[62] and it "turns out that the weight of the heart is a very good predictor to whether the heart is normal or not. People who have high blood pressure for a long period of time, their heart will actually get heavier."

He further testified: "I did not notice any acute injury to the brain in the sense of physical trauma, nor did I note any injury to his brain in the sense of it being deprived of blood or oxygen."[63]

Floyd's blood was submitted by Dr. Baker for an "expanded panel" toxicology screen as part of his death investigation process.[64] The results of the test led Dr. Baker to conclude that both fentanyl and methamphetamine were contributing factors in the death of George Floyd,[65] agreeing that he had certified deaths by fentanyl overdose where "he had seen levels as low as 3

[59] T4868-4870, T4905.
[60] T4912.
[61] T4905-06.
[62] T4864.
[63] T4873.
[64] T4876.
[65] T4928.

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nanograms per ML and possibly lower."[66] Floyd's fentanyl levels measured at 11 nanograms per milliliter.[67]

Ultimately Dr. Baker's scientific examination led him to conclude that Floyd's death was a multifactorial process.[68] As he explained to the jury on direct examination:

> Q. So, Dr. Baker, can you tell us how it is physiologically that the subdual restraint and neck compression caused Mr. Floyd's death?
>
> A. In my opinion, the physiology of what was going on with Mr. Floyd on the evening of May 25th is -- you've already seen the photographs of his coronary arteries, so you know he had very severe underlying heart disease. I don't know that we specifically got to it, counselor, but Mr. Floyd also had what we call hypertensive heart disease, meaning his heart weighed more than it should. So he has a heart that already needs more oxygen than a normal heart by virtue of its size, and it's limited in its ability to step up to provide more oxygen when there's demand because of the narrowing of his coronary arteries. Now, in the context of an altercation with other people that involves things like physical restraint, that involves things like being held to the ground, involves things like the pain that you would incur from having, you know, your cheek up against the asphalt, an abrasion on your shoulder, those events are going to cause stress hormones to pour out into your body, specifically things like adrenaline. And what that adrenaline is going to do is it's going to ask your heart to beat faster. It's going to ask your body for more oxygen so that you can get through that altercation. And, in my opinion, the law enforcement subdual restraint and the neck compression was just more than Mr. Floyd could take by virtue of those heart conditions."[69] [70]

Dr. Baker, as Chief Medical Examiner, is required by law to perform the death investigation.[71] He must furnish data to the Minnesota Department of Health related to the cause of death of those decedents in his charge as part of that process.[72] The data he provided to the

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[66] T4927-28.
[67] T4640.
[68] T4939.
[69] T4888-4890, *see also* T4934 ("It was the stress of that interaction that tipped him over the edge, given his underlying heart disease and his tocological (*sic*) status.)"
[70] These questions came shortly after the autopsy photos were revealed to the jury.
[71] *See gen*. Minn. Stat. §390.11.
[72] T4882-4884

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State listed "Cardiopulmonary arrest, complicating law enforcement subdual, restraint, and neck compression" as the cause of death.[73] This language was included on the Death Certificate.[74]

The manner of death was "homicide," and as Dr. Baker explained: "So as a medical examiner, we apply the term "homicide" when the actions of other people were involved in an individual's death… Homicide in my world is a medical term, it's not a legal term."[75] "I don't even know what the legal standard is, but they are two different worlds."[76] When asked by the State about the term "complicating," Dr. Baker testified that the term "complicating" in the context of his autopsy report, means "occurring in the setting of."[77] Throughout his testimony, Baker referred to "subdual, restraint, and neck compression" together.[78]

At trial, Dr. Baker was asked to opine on the video as to the location of Chauvin's knee during the deployment of the MRT on Floyd.[79] He testified:

> So in my impression from the video, and ***I want to be very clear, I have no special expertise in looking at videos, I'm just looking at them as another person trying to figure out what happened.*** In my opinion, it would appear that Mr. Chauvin's knee was primarily on the back or the side or the area in between on Mr. Floyd's neck.[80]

THE STATE EXPERTS

Four expert witnesses testified for the State on causation: pulmonologist Dr. Martin Tobin, forensic pathologist Dr. Lindsey Thomas, emergency medicine physician Dr. William Smock, and cardiologist Dr. Jonathan Rich (the "State Experts"). None of these physicians

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[73] T4888.
[74] TE-193.
[75] T4885.
[76] T4934.
[77] Id.
[78] *See, e.g.*, T4889, T4934, T4941.
[79] T4918.
[80] T4918.

performed an autopsy on Floyd,[81] nor did they rely on Baker's findings from his medical examination in reaching their conclusions. Dr. Baker did not seek their assistance in his evaluation of Floyd.

Dr. Martin Tobin

Dr. Martin Tobin was the first causation physician to testify for the State; Dr. Baker would be called four witnesses later. Tobin had never testified in a criminal trial before.[82] He was contacted by the State and asked to review Floyd's medical records, but "primarily… to look[ ] at a large number of different videos."[83] He had "watched the videos and certain segments of the videos hundreds of times" in preparation for his testimony.[84] He agreed that he had "watched them from all different angles," and that he "had the luxury of slowing things down, moving it into slow motion, still framing, various times."[85] Dr. Tobin's CV does not reflect any knowledge, skill, experience, training, or education, in video analysis generally, or its specific use as a foundation to determine medical cause of death.[86] He did not use any specialized equipment to analyze the images in the videos.[87]

Dr. Tobin told the jury that: "Officer Chauvin's left knee is virtually on the neck for the vast majority of the time."[88] He clarified:

> It's more than 90 percent of the time in my calculations. There's certain times where it becomes difficult because you don't get a good view of where it is. So, for example, I know that Officer Chauvin's right knee is on his back 57 percent of the time. The reason I'm not able to say for the 43 percent is that I don't get a good view. Other times I don't have a good view of exactly where it is.[89]

The report reveals Tobin's method of reaching various medical conclusions using mathematical formulas based on scenes from the videos.[90] It is not clear from his report, but he

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[81] *See infra*.
[82] T4463.
[83] T4464.
[84] T4470.
[85] T4565.
[86] See Ex. 06.
[87] See Ex. 07.
[88] T4473.
[89] *Id., see also* T4508 ("…for most of that other time, I don't get a good view, the cameras move around; it's the body cameras and so I can't see it.").
[90] *Id.*

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appears to have used a still-frame from Exhibit 15 - - the Darnella Frazier Video - - as the basis to calculate the amount of pressure applied to Floyd throughout the encounter.[91]

Tobin was unsure of Chauvin's actual weight.[92] This is borne out in his expert report as well, as he measured neither Chauvin nor his equipment prior to inserting these numbers into his formulas: "Officer Chauvin's estimated total weight was 83 kg [180 lb]: body weight 70 kg [154 lb] plus gear weight ~13 kg [~30 lb]."[93] Tobin's calculations also assumed a static applied force throughout the encounter,[94] and an equal weight distribution between the right and left legs for its duration.[95]

In his words, "Officer Chauvin's torso had a near vertical orientation; as such, he applied a gravitational force of 39.4kg (86.9 lb) (half his total weight) on Mr. Floyd's neck."[96] His report includes dozens of additional examples of his observations, with time stamps, and the medical meanings he ascribed to them.[97]

The end-expiratory lung volume of George Floyd, variously referred to as his "EELV," his "oxygen reserves," "lung volume," or "lung capacity," was determined using this video-based method.[98] After determining the image of Floyd's EELV based on Chauvin's assumed weight,[99] the assumed weight of his equipment,[100] the assumed initial EELV of a person of

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[91] Petitioner believes the time used for these calculations to be 8:21pm and 44 seconds based on the significance placed on this time during his direct examination. T4471, *See gen*. Ex. 07.
[92] T4579.
[93] BATES 041658, Ex. 7 at 7.
[94] T4599.
[95] T4580.
[96] Ex. 06 Tobin Report at 7.
[97] Ex. 07 at 3-9.
[98] Ex. 07 at 9-12.
[99] T4579.
[100] Ex. 07 at 7.

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Floyd's height, age, and gender,[101] the assumed weight distribution,[102] the assumed static application of force from a still-frame from one of the videos,[103] and the assumed "near-vertical" posture of Chauvin during the encounter,[104] Tobin deployed a series of formulas to conclude with "medical certainty" that the video proved Floyd's death "when airflow was totally shut off (by strangulation)." [105]

Through another series of equations, Tobin concluded that the video proves that "[b]y the time Officer Chauvin lifted his knee, *not one molecule of oxygen would have remained in the body."*[106] These conclusions were presented to the jury using scenes from the video as the basis for his medical causation testimony.[107]

Tobin used the following language to describe the encounter to the jury:

- The pressure applied to Floyd was "like the left side is *in a vice* (*sic*). It's totally being pushed in, squeezed in from each side, from the street at the bottom, and then from the way that the handcuffs are being manipulated."[108]
- "[B]ecause of the knee that was *rammed in* against the left side of his chest… So basically on the left side of his lung, it was almost like a *surgical pneumonectomy. It was almost to the effect if a surgeon had gone in and removed the lung*; not quite, but along those lines."[109]
- That Floyd's breathing was "like *breathing through a drinking straw, but it's much worse than that*. Because breathing through a drinking straw, I mean, is somewhat unpleasant but not that unpleasant. And then it gets *much worse than that*."[110]

These statements were repeated for the jury during closing arguments.[111]

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[101] Ex. 07 at 9
[102] T4580, Ex. 07 at 7.
[103] T4599
[104] Ex. 07 at 7.
[105] Ex. 07 at 11 (citations omitted).
[106] Id. at 14.
[107] *See, e.g*. T4465, 4468,4473, 4485, 4487; T4491-4492; 4500-4502; 4496-97; 4506; 4515; 4523; T4530-4532; 4538-39; 4542-45; 4550-52; 4554-55; 4559-60.
[108] T4475.
[109] T4480.
[110] T4497.
[111] T5747-5748.

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Dr. Tobin told the jury that he had formed an opinion "to a reasonable degree of medical certainty" on the cause of Floyd's death, that being "a low level of oxygen. And this caused damage to his brain that we see, and it also caused a PEA arrhythmia that caused his heart to stop."[112] He clarified, again with "medical certainty:" "The cause of the low level of oxygen was shallow breathing, small breaths, small tiny volumes, shallow breaths that weren't able to carry the air through his lungs down to the essential areas of the lungs that get oxygen into the blood and get rid of the carbon dioxide; that's the alveoli at the bottom of the lung."[113]

His conclusions were sharply at odds with Dr. Baker's medical conclusions in several regards, including:

Baker: Floyd's "very severe underlying heart disease" made it more difficult for blood to flow through his arteries during Floyd's altercation with law enforcement.[114]

Tobin: "No, not really. It's not going to do that… you would expect that he would be complaining of chest pain and you would expect that he would be demonstrating a very rapid respiratory rate. We don't see either."[115]

. . .

Baker: Fentanyl and methamphetamine were factors in Floyd's death.[116]

Tobin: No evidence he died from methamphetamine,[117] no evidence that fentanyl affected his ability to breathe.[118]

. . .

Baker: Floyd's underlying heart condition significantly contributed to Floyd's death and was the topline cause, something Baker explained "you would know walking out of the autopsy suite."[119]

[112] T4465.
[113] T4466.
[114] T4888-4890.
[115] T4583.
[116] T4928.
[117] T4601.
[118] T4601-4602.
[119] T4888, T4931.

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Tobin: Asked whether Floyd's preexisting health conditions "have anything to do with the cause of Mr. Floyd's death in your professional opinion whatsoever," Tobin replied "None, whatsoever."[120]

. . .

Baker: "I did not notice any acute injury to the brain in the sense of physical trauma, nor did I note any injury to his brain in the sense of it being deprived of blood or oxygen."[121]

Tobin: "And that is something we see when somebody suffers major brain lack of oxygen… you're seeing here fatal injury to the brain from the lack of oxygen."[122]

After his review of all the videos, and the application of his method of determining medical causation by videotape,[123] Dr. Tobin told the jury that *"a healthy person subjected to what Mr. Floyd was subjected to would have died as a result of what he was subjected to*."[124]

Dr. Baker did not share this opinion. As he told the FBI in an interview on July 8, 2020, "Baker could not provide an answer on a "but for" cause. Baker did not know when someone's heart disease would become lethal… Baker could not opine at what point the subdual and restraint became a problem for Floyd."[125]

Dr. William Smock

The next State Expert to testify was Dr. William Smock, an "emergency medicine physician with specialized training in forensic medicine" who followed toxicologist Dr. Daniel Isenschmidt.[126] His background was in "the same training that the forensic pathologist gets from

[120] T4600.
[121] T4873.
[122] T4542-43.
[123] *See gen*. EX. 07.
[124] T4537.
[125] BATES 044288-88, Ex. 08.
[126] T4664.

autopsy… but applying it to the patient that is in front of you that's still alive."[127] His CV reflects no background in video analysis.[128]

Like the other State Experts, the foundation for his opinion was first and foremost "videotapes, body-camera videos, bystander videos, police videos…."[129] While Smock reviewed the evidence normally relied upon when forming a medical conclusion like the other State Experts, it was of no use to him, either.[130] He had watched the various videos "multiple times,"[131] spending by his estimate ten hours watching the incident "from multiple different camera perspectives,"[132] "studying and analyzing the videos."[133] Smock could tell by the video alone that fentanyl did not cause Floyd's death.[134]

Asked whether any evidence was found at autopsy of significant force used to keep Floyd in the prone position, Smock replied: "The evidence is not at autopsy, it is on the videotape, sir."[135] Smock also admitted that there was no other evidence of airway obstruction, other than those he saw depicted in the events on the video.[136]

[127] T4668-4669.
[128] Id.
[129] T4674.
[130] Id., see also T4700-01.
[131] T4686; T4706 ("Many times.").
[132] T4706.
[133] *Id.*
[134] T4686.
[135] T4701
[136] T4722.

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Dr. Lindsey Thomas

Dr. Lindsey Thomas took the stand next for the State.[137] In her 37 years in the field, she had performed roughly 5,000 autopsies herself and assisted in another thousand or so.[138] She did not examine Floyd's body herself, but testified that she looked at Baker's autopsy report, toxicology results, photographs, HCMC records and Floyd's medical history, among other things.[139] But Thomas did not rely on any of these sources in making her determination on cause and manner of death.[140]

Instead, she "looked at… many, many videos including body-worn camera videos, bystander views, surveillance videos, still photographs…"[141] Thomas's CV reflects no background in video analysis.[142] She told the jury her use of videos was "absolutely unique,"[143] in this case, and that the video was the foundation for her medical conclusions:

> …often I would just review the medical examiner case file and that would provide information about what the cause and manner of death is. But in this case, the autopsy itself didn't tell me the cause and manner of death, and it really required getting all of this other additional information, specifically the video evidence of the terminal events to conclude the cause of death and manner of death.[144]

Dr. Thomas agreed with Dr. Baker's determination listed on the certificate but explained that the language "cardiopulmonary arrest… doesn't provide a lot of clarifying information because in a way everyone dies when your heart stops and your lungs stop, that's

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[137] T4732.
[138] T4741.
[139] T4746-47.
[140] T4752, 4756, 4825.
[141] T4747.
[142] See Ex. 09.
[143] T4748; *see also* T4752.
[144] T4752; *see also* T4756 ("So the way the autopsy really helps is it's great for ruling things out."); T4765-67 (Rules out other potential causes of death by watching video, specifically heart disease, fentanyl, and methamphetamine.); T4755 (reaches conclusion that low oxygen was mechanism of death from scene in video.)

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cardiopulmonary arrest."[145] Thomas, too, reached the conclusion that the "primary mechanism, I think, is asphyxia… and the secondary mechanism is this physiologic stress."[146] This was also a departure from Baker, who never mentioned asphyxia in any report or on the stand.

She testified that her experience as a forensic pathologist is with dead "patients," and not live ones: "So you have to understand this is strictly my perspective as a forensic pathologist and everyone I see is dead, so that's kind of a different perspective."[147] Except in this case, where video of a living, non-patient was determinative.[148]

Dr. Jonathan Rich

Cardiologist Dr. Jonathan Rich testified on April 12th for the State. He told the jury "there is no substitute to actually putting your hands on a patient, that's still preferable, in my opinion..."[149] However, after reviewing "the videos, the different angles from the day he died on May 25, 2020,"[150] his conclusion was also that Floyd had died from "low oxygen levels. And those low oxygen levels were induced by the prone restraint and positional asphyxiation that he was subjected to."[151] Rich also held this opinion with "medical certainty."[152]

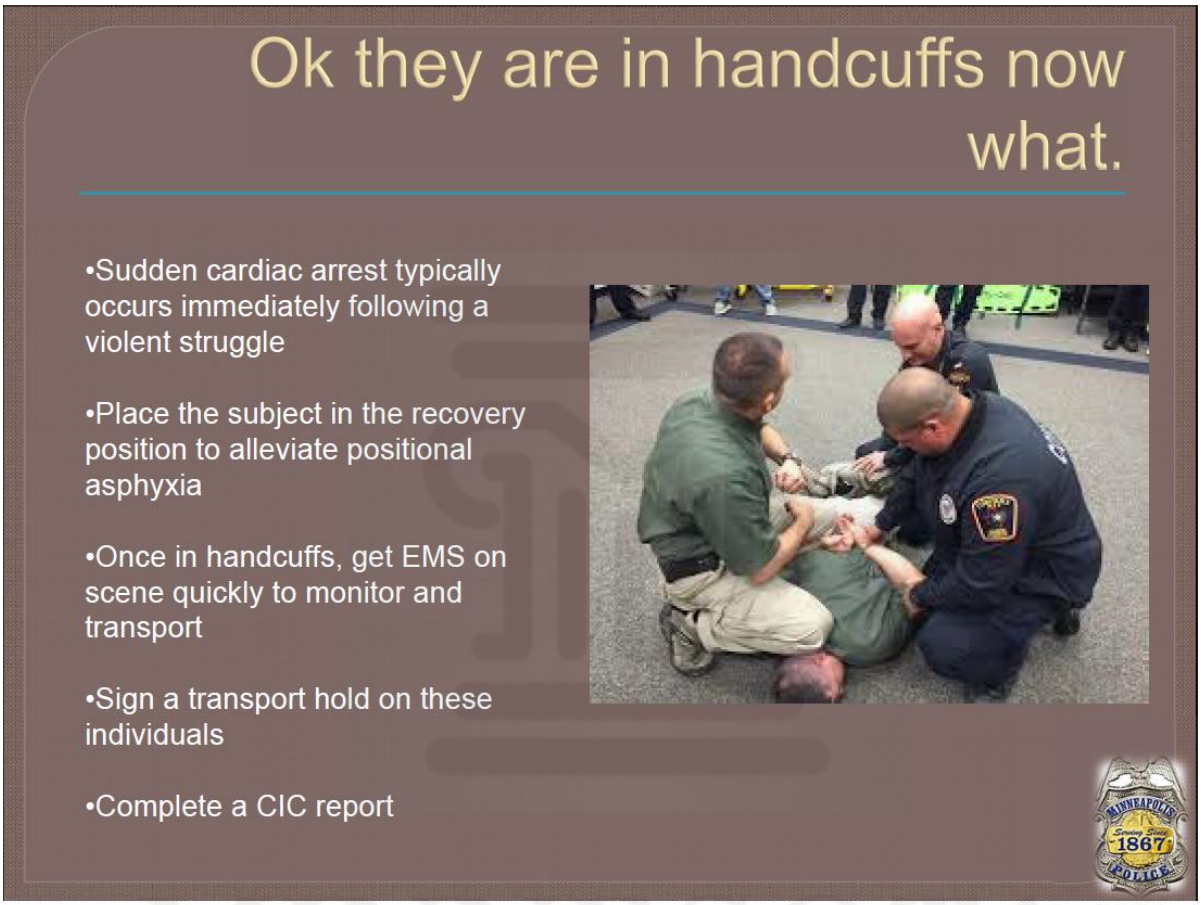
THE MPD SUPERVISORS

[145] T4750.
[146] T4782.
[147] T4807.
[148] T4755.
[149] T5014.
[150] T5004.
[151] T4999.
[152] Id.

Three witnesses with supervisory authority over MPD tactics, training, and policy would testify at trial on behalf of the State: Chief Medaria Arradondo, Inspector Katie Blackwell, and Lieutenant Johnny Mercil (the "MPD Supervisors"). Arradondo had been Chief since 2017 and was responsible for the entire MPD operation, including the rules set forth in the Manual.[153] Blackwell directly reported to Chief Arradondo in her duties as Commander of Training. Those duties included the training of street cops pursuant to written policies, including the Manual.[154] Finally, Lieutenant Mercil oversaw defensive tactics training focusing on the use of force in arrests. [155]

Two relevant policies were in place on May 25, 2020: MPD Policy § 5-311, and § 5-316.[156] These two policies authorized knee-to-neck restraint techniques by MPD Officers, to include "compression of the neck with an arm or a leg."[157] On August 28, 2020, defense counsel made a Motion to Dismiss for lack of probable cause Counts one through three of the Complaint against Chauvin, citing Policies § § 5-311, 5-316, and a photograph in a PowerPoint training slide presented to MPD Officers during their training, BATES 2596:[158]

[153] *Blackwell v. Collin*, Henn Co. #27-CV-24-15500 Index #67 at Ex. 9, *available at* https://www.thefallofminneapolis.com/research, last accessed November 3, 2025.
[154] Id.
[155] T3992.
[156] *See Blackwell v. Collin*, 2025 Minn. Dist. LEXIS 3210, *11-17,
[157] *Blackwell v. Collin*, 2025 Minn. Dist. LEXIS 3210, *37.
[158] *See* Ex. 11.



Trial Exhibit 17 consists of a still-frame taken from the Frazier video of the encounter on May 25, 2020:[159]

[159] While Lane and Kueng are not visible in this still-frame, they can be seen in positions similar to those in BATES 2596 in TE-47 and other videos.

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The State filed a Motion in Limine to keep the photograph in BATES 2596 out of evidence on February 8, 2021.[160] The primary argument prosecutors advanced is that "Chauvin never saw the presentation in which it was included during his time as an MPD Officer," and "he never saw BATES 2566 through 2606 or the image featured in BATES 2596 at any time prior to Floyd's death."[161] Further, the State told the trial court that "Chauvin would not have received

[160] *Index #317* at 33-37, Ex. 12 at 33-37.
[161] *Id.*

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the training in which this image was included," and "that "this presentation" has never "been included in the in-service training" provided "for the purpose of continuing education" for existing officers."[162] "As a result, Chauvin would never have seen or been trained using this slide or photograph prior to Floyd's death."[163]

The State was quoting from an August 18, 2020 email sent from MPD Officer Nicole Mackenzie to DPS Agent James Reyerson, on which Blackwell was copied.[164] The full relevant portion of the email states:

> It has been brought to my attention there has been a request to provide additional information about a particular slide that is included within the Excited Delirium presentation… The Excited Delirium presentation in question was originally created in 2018 for the *MPD Academy*. Cadets and recruits receive this classroom training while they are participating in the *MPD Academy*. To my knowledge, this presentation has never been included in the in-service training that we conduct for the purpose of continuing education credits for our Officers.[165]

Trial Exhibit 275 is a Training Attendance Log dated 11/30/18. Under "Training Course Name" is "Defensive Tactics (*As taught in academy*)."[166] On the second line from the top is Derek Chauvin's handwritten name, POST number, and badge number.[167]

On March 9, 2021, a month after the State filed its Motion in Limine, Inspector Katie Blackwell met with prosecutors to prepare for trial.[168] She told those present "the neck restraint *was technically authorized* but would have stopped it if she had seen it performed on May 25th 2020 by Derek Chauvin."[169] Further, "Inspector Blackwell was showed (sic) the photograph on

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[162] *Id.,* Quotation marks in original.
[163] Id.
[164] See Ex. 13, BATES 033872-3.
[165] See Id.
[166] Id.
[167] Id.
[168] (BATES 043149-043162)
[169] BATES 043160-043161 (emphasis added).

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the PowerPoint noting a knee on the neck. Blackwell agreed that placing someone in a recovery position should have happened within seconds."[170]

On March 12, 2021, Mercil and a team of nine prosecutors from the Attorney General's Office met to prepare for trial.[171] He told those present: "…that they got away with putting knees on the person back in time but have since changed protocol." Mercil was shown BATES 2596 and another image from the Floyd incident, and noted only a difference in weight placement, not a violation of policy. [172]

The State was successful in keeping BATES 2596 out of evidence, but trial counsel did not learn of that until two weeks after voir dire had begun. Thus, trial counsel could only impeach with BATES 2596 in order to get the photograph in front of the jury. However, the trial court ruled that BATES 2596 could only be used for that purpose if the MPD Supervisors testified that they had never *personally* been trained on the tactic.[173] That did not happen, and the jury never saw the photo in BATES 2596.

Trial Testimony of MPD Witnesses Arradondo, Blackwell, and Mercil

In the wake of this ruling on April 5, 20201, prosecutors called Arradondo to testify.[174] The State presented Exhibit 17 and carefully asked:

The State: As you reflect on Exhibit 17, I must ask you, is this a trained Minneapolis Police Department defensive tactics technique?
Arradondo: It is not.
…
The State: So is it your belief then that this particular form of restraint, if that's what we'll call it, in fact violates departmental policy?

[170] Id.
[171] (BATES 044121-044133).
[172] *See* Ex 19.
[173] *See T3692-94.*
[174] T3742.

Arradondo: I absolutely agree that violates our policy… when I look at the face of Mr. Floyd, that does not appear in any way, shape, or form that that is light to moderate pressure."[175]

The State returned to Exhibit 17 again on redirect:

The State: Looking at Exhibit 17. Is it your testimony that Exhibit 17 is not a trained MPD neck restraint?
Arradondo: Correct, that is my testimony… when I look at the facial expression of Mr. Floyd, that does not appear in any way, shape or form that that is light to moderate pressure.[176]

The State made no attempt to correct this testimony.

Blackwell took the stand for the State later in the day:[177]

State: 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?
Blackwell: It is not.
State: Why not?
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: And how does this differ?
Blackwell: *I don't know what kind of improvised position that is. So that's not what we train.*[178]

The State made no attempt to correct this testimony.

The next day, Mercil was asked:

State: I'd like to republish Exhibit 17. Sir, is this an MPD trained neck restraint?
Mercil: No, sir.
State: Has it ever been?
Mercil: Not to my - - a neck restraint? No, sir.[179]

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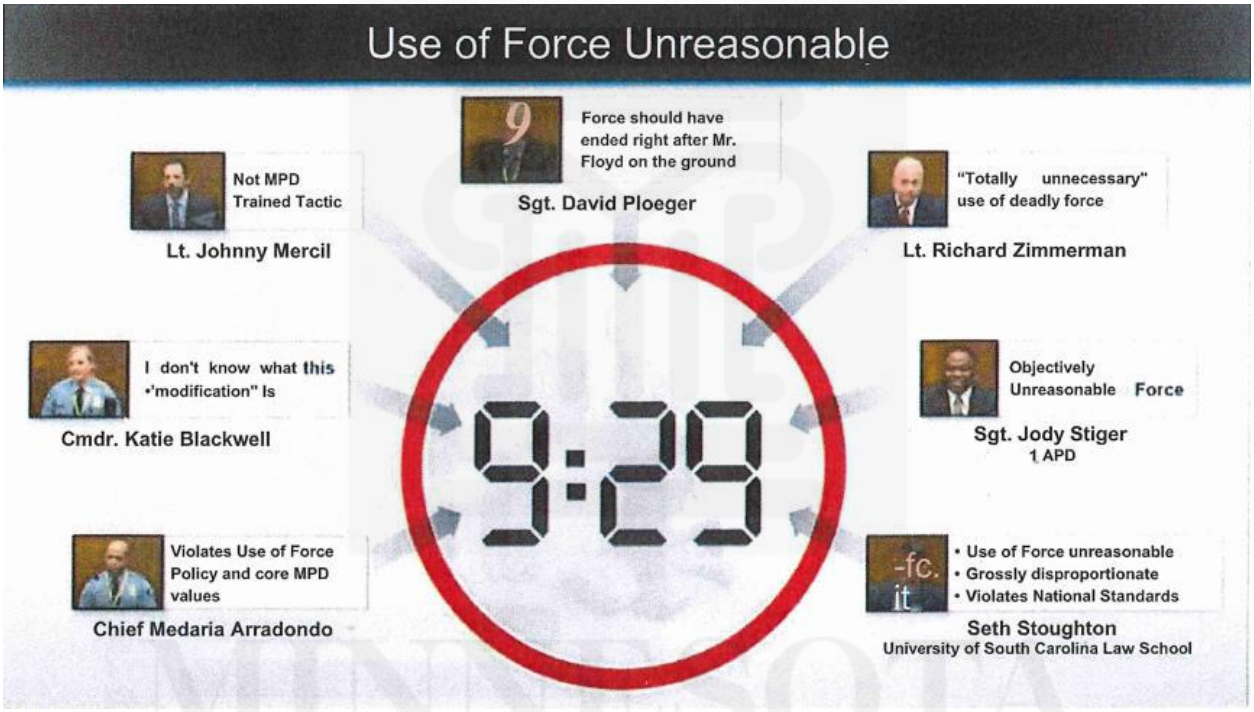
[175] *T3837-38*.
[176] *T3838*.

[177] *T3896*.
[178] T3922-23.
[179] T4021.

The State made no attempt to correct this testimony.

The State returned to the testimony of Arradondo, Blackwell, and Mercil, in a graphic during closing arguments:[180]



And told the jury:

State: Remember Commander now Inspector Katie Blackwell who was in charge of all training, looked at this and said I don't even know what this is. I don't know what this modification is. This isn't how they train. These aren't the rules. Lieutenant Mercil looked at this and he said without equivocation not an MPD trained tactic, it is not.[181]

. . .

Unreasonable force. Unreasonable. Not proportional, excessive. It violated policy, it violated the law. It violated everything that the Minneapolis Police Department stood for.[182]

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[180] T5772; Index 570.
[181] *Id.*
[182] *T5775.*; see also T5908 ("So there really aren't two sides to the story about whether this use of force was unreasonable. This was not authorized by the Minneapolis Police Department.").

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After *State v. Chauvin*

On October 17, 2022, Liz Collin and Dr. JC Chaix published "*They're Lying: The Media, the Left, and the Death of George Floyd*."[183] The book was critical of the testimony presented by Katie Blackwell and other State MPD witnesses in State v. Chauvin, specifically calling into question Blackwell's testimony related to the restraint Chauvin, Lane, and Kueng deployed on May 25, 2020 as shown in Exhibit 17.[184]

The Book made three statements in connection with the testimony outlined above:[185]

1) "…it doesn't seem like Inspector Blackwell knows how MPD Officers are trained – or maybe she was lying."
2) "With that in mind, it doesn't seem like Blackwell, Arradondo Mercil, and other so-called expert witnesses were telling the truth."
3) "It seems more like they were lying by omission, if not lying outright."

In late 2024, Katie Blackwell filed a lawsuit alleging defamation of character against Collin and Chaix for their representations in The Book.[186]

Since that time, thirty-four current and former MPD Officers have come forward to provide sworn statements that MPD trained them to use a knee-to-neck restraint in a variety of situations, including as part of the MRT process.[187] All 34 are attached hereto and incorporated herein. A representative sample, in the words of the MPD Officers:

- "Not only was the knee-to-neck/upper shoulder restraint trained, its use was common knowledge and part of MPD policy."[188];

[183] *Blackwell v. Collin*, 2025 Minn. Dist. LEXIS 3210, *7. (Hereinafter "The Book.").
[184] Id. at 7-8.
[185] *Blackwell v. Collin*, 2025 Minn. Dist. LEXIS 3210, *8.
[186] *See gen. Blackwell v. Collin*, 2025 Minn. Dist. LEXIS 3210, *8.
[187] *See* Ex. 20.
[188] House Decl. at ¶ 11

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- "Besides me, numerous Minneapolis Police Officers participated in the training that I described in this declaration. It certainly wasn't a secret;"[189]

- "Besides me, I know that numerous MPD officers were trained to place their knee on the side of a subject's neck when dealing with a combative subject. It was common knowledge; it was trained in the open; and I saw numerous MPD officers perform it in training and in the field."[190]

- "Besides me, numerous Minneapolis Police Officers participated in the training that I described in this declaration. There was both classroom and hands-on training that involved the restraints that I described in this declaration;"[191]

- "Besides me, numerous Minneapolis Police Officers participated in the training that I described in this declaration. It certainly wasn't a secret. It is necessary for an officer to pin a person to the ground while handcuffing the same person, and officers' use of knee-to-neck/upper shoulder restraint was common during use-of-force training when I was at the MPD. That use-of-force training was mandatory by the Minnesota Board of Peace Officer Standards and Training ('POST')."[192]

The suit against *Collin, et al*. was dismissed this April 8th by Hennepin County Judge Edward Wahl pursuant to a Special Motion under Minnesota's Uniform Public Expression Protection Act ("UPEPA").[193] The Memorandum to the Special Motion is attached hereto and incorporated by reference herein.[194] It contains several images of MPD Officers that were taken during training while performing the knee-to-neck restraint used by Chauvin in Exhibit 17 on May 25, 2020.[195] It also includes a photograph of Blackwell performing the same restraint during the "U of M Hockey Riots, ca. 2014."[196]

[189] Creighton Decl. at ¶ 8:
[190] Kroll Decl. at ¶ 17:
[191] Tidgwell Decl. at ¶ 13:
[192] Reimer Decl. at ¶ 8:
[193] *See Blackwell v. Collin*, 2025 Minn. Dist. LEXIS 3210.
[194] *See* Ex. 21.
[195] *Id.* at 4, 5, 6, 14, 22, 72.
[196] Id. at 72.

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In its Order, the *Blackwell* Court specifically addressed the testimony during *State v. Chauvin* by Katie Blackwell, Medaria Arradondo, and Johnny Mercil as it related to MPD Policy, the MRT, Exhibit 17, and BATES 2596.[197] The *Blackwell* Court found Statements 1) – 3) above to be "substantially true."[198]

The question was addressed at length in the opinion. Specific findings include:

- "MPD policy and training materials were at odds with key aspects of their testimony."[199]
- "Her [Blackwell's] statement that "that's not what we train" and her dismissal of the image[200] 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."[201]
- "…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. 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."[202]
- "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."[203]

On May 5, 2025, Katie Blackwell signed a Declaration attesting as follows:

> I, Katie Blackwell, acknowledge, agree, and affirm that everything in the Honorable Edward T. Wahl's Order Regarding Special Motion for Expedited relief under Minn. Stat. § 554.09 and for fees and Costs Under Minn. Stat. § 554.16 dated April 8, 2025 is accurate, true, and correct.[204]

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[197] *See Id.*
[198] *Blackwell v. Collin*, 2025 Minn. Dist. LEXIS 3210, *32.
[199] Id. at 33.
[200] "The image" is Exhibit 17.
[201] *Blackwell v. Collin*, 2025 Minn. Dist. LEXIS 3210, *32.
[202] *Id.*
[203] *Id.* at 50.
[204] *See* Ex. 22.

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At the close of trial, the jury was instructed by the trial court on the elements of each offense, and the jury retired to deliberate. Chauvin also advances an argument in connection with the jury instructions in this case, the factual support for which will be addressed later in this memorandum.[205]

ARGUMENT

I. ERRONEOUS ADMISSION OF IMPROPER OPINION TESTIMONY BY THE STATE EXPERTS DENIED CHAUVIN HIS RIGHT TO A FAIR TRIAL AND DUE PROCESS UNDER THE SIXTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND ARTICLE I, SECTIONS 6 AND 7 OF THE MINNESOTA CONSTITUTION.

II. THE STATE'S ABUSE OF THE VIDEO EVIDENCE VIOLATED CHAUVIN'S RIGHT TO A FAIR TRIAL AND DUE PROCESS UNDER THE SIXTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND ARTICLE I, SECTIONS 6 AND 7 OF THE MINNESOTA CONSTITUTION.

"Courts have traditionally proceeded with great caution when admitting testimony of expert witnesses, especially in criminal cases."[206] "This is necessary to guard against the expert's "potential to influence a jury unduly" with his court-recognized "special knowledge" and to "ensure that the defendant's presumption of innocence does not get lost in the flurry of expert testimony."[207] This rule was written for cases like *State v. Chauvin*.

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[205] *See* IV., *infra.*
[206] *State v. Nystrom*, 596 N.W.2d 256, 259-60 (Minn. 1999), citing *State v. Grecinger*, 569 N.W.2d 189, 193 (Minn. 1997).
[207] *State v. Vue*, 606 N.W.2d 719, 722 (Minn. Ct. App. 2000), *citing Grecinger at 193.*

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At the outset, the four experts retained by the State are well-respected physicians with impressive resumes in their respective professions. Dr. Thomas in particular has provided many years of excellent work in criminal and civil cases, and the arguments in this Petition are not intended to disparage them. But their testimony in this case did not involve their respective professions. In the words of Dr. Thomas, this case was "absolutely unique."[208] In other words, they fail the test under Rule 702, and their testimony was improper.

A. The State Experts' video-based medical testimony lacked foundation.

The trial court failed to delineate between the practice of medicine and the subjective viewing of a video. In doing so, it abused its discretion. In the presence of medical evidence, this is a different case. But there was no medical evidence of asphyxia here, and the State Experts did not rely on any of Baker's work in reaching their conclusions, anyway. "Even where the proposed expert testimony is not scientific, in the classical sense, the trial judge is required to ascertain whether the expert employs in the courtroom the same level of intellectual rigor that characterizes the practice of an expert in the relevant field.[209]

"A doctor's opinion regarding causation which is based on an inadequate factual foundation is of little evidentiary value."[210] "Testifying about observations gleaned from reviewing three days' worth of video recordings is clearly outside the scope of a medical doctor's expertise."[211]

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[208] T4748; *see also* T4752.
[209] *Feltz v. Regalado*, No. 18-cv-0298-SPF-JFJ, 2023 U.S. Dist. LEXIS 74636, at *11 (N.D. Okla. Mar. 16, 2023)(citation omitted).
[210] *Welton v. Fireside Foster Inn*, 426 N.W.2d 883 (Minn. 1988).
[211] *Martinez v. Corrhealth, Pro. Ltd. Liab. Co.*, No. 1:22-cv-00288-WJ-SCY, 2023 U.S. Dist. LEXIS 209447, at *14-16 (D.N.M. Nov. 21, 2023); citing *Conroy v. Vilsack*, 707 F.3d 1163 (10th Cir. 2013) (explaining expert testimony must be "within the reasonable confines" of his

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The State's case for causation turned on the distinction between personal and professional opinion – subjectivity versus objectivity. In the words of Dr. Baker, the only person to examine the body of Floyd: "I want to be very clear, I have no special expertise in looking at videos, I'm just looking at them as another person trying to figure out what happened."[212] This was the line between proper and improper expert testimony, and Baker would not cross it.[213] The same goes for HCMC Emergency Room physicians Dr. Ashley Strobel and defense expert Dr. David Fowler.

This means one of two things: either Baker was lying (he was not), or Tobin, Thomas, Smock, and Rich, must have some "special expertise in looking at videos" that Baker lacks. If so, it is not evident from their qualifications as medical experts.

Physicians cannot be expected to understand the nuances of Rules 702 and 403. But the State certainly did.[214]

Qualification as an expert in the *subject matter* of a video means that the expert is "qualified in an *abstract* sense, but not sufficiently qualified in the *specific* sense regarding the

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expertise); *see also See Lujan v. Exide Techs.*, No. 10-4023, 2012 U.S. Dist. LEXIS 13893, at *52-53 (D. Kan. Feb. 6, 2012) (excluding a doctor's opinions based on reviewing video evidence as "unreliable"); *Rowley v. Morant*, No. 10-cv-1182, 2014 U.S. Dist. LEXIS 186535, at *24-26 (D.N.M. Dec. 19, 2014) (disallowing expert testimony on video recordings where the proffered expert "merely viewed the recordings").

[212] T4918.

[213] *See* also T4899-4900: ("*I did not release his body until the following morning,* so had I seen something on the video that triggered yet another thought in my mind, I still had the chance to act on it.) "Act on it" meant "*re-examine the body*," not rewrite the conclusion.

[214] See T55-56:

State:	…this case can be about asphyxiation… There will be testimony in this case about asphyxiation.
The Court:	Proper.
State:	Proper testimony about that.
The Court:	Right.

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totality of their opinions as is required."[215] And the role of the expert is not to take the role of the trier of fact.

The trial court recognized this principle, it simply wasn't applied:

> THE COURT: "…I'm going to grant the request to exclude that testimony. It's not a proper topic for expert testimony. The video is what it is. The jury can listen to it, they can make up their own mind …That's a witness opining on a videotape, telling the jury what they should see or hear, and that's not a proper topic for expert testimony. And the fact that he had to slow it down and use subtitles I think is an indication this is not a proper topic. It's for the jury to decide. They can listen to it. I mean, I have experience in listening to a lot of body-worn cameras, that doesn't make me an expert. I have to make factual findings off of body-worn cameras in Rasmussen hearings, doesn't make me an expert, nor is it appropriate that I would -- When I sit listening to body-worn cameras, I'm doing so as a finder of fact, just like this jury should."[216]

This is correct in Minnesota, and it has been widely recognized in many other jurisdictions as well.[217] In this case, however, the line between video and reality was never identified.

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[215] *See Feltz v. Regalado*, No. 18-cv-0298, 2023 U.S. Dist. LEXIS 74636, at *13-14 (N.D. Okla. Mar. 16, 2023) (citing *Berry v. City of Detroit*, 25 F.3d 1342, 1351 (6th Cir. 1994))(emphasis added).

[216] T4957-58. In context, this was the ruling when the State sought to have a professor tell the jury what Floyd said in a scene from a video.

[217] "Mere narration of a video would so invade the province of the jury and offer nothing of value to help the jury understand the evidence." *Richards v. Cty. of San Bernardino*, No. 5:17-cv-00497-HDV-SPx, 2025 U.S. Dist. LEXIS 118018, at *4-5 (C.D. Cal. June 10, 2025), *citing Lauderdale v. NFP Retirement, Inc.*, No. 8:21-cv-00301-JVS-KES, 2022 U.S. Dist. LEXIS 214042, 2022 WL 17324416, at *9 (C.D. Cal. Nov. 17, 2022) ("The rationale is that experts who merely narrate factual events based on the record are not offering their 'expertise and qualifications' to assist a jury in reaching a conclusion, but rather displacing the jury as the factfinder."); *A.B. v. City of San Diego*, No. 18-cv-1541, 2020 U.S. Dist. LEXIS 136761, 2020 WL 4430971, at *2 (S.D. Cal. July 31, 2020) ("Plaintiffs agree that [the expert] should not be able to narrate the video evidence for the jury or opine on the relative significance of depicted events in the video that he deems significant."); *Jones v. City of Los Angeles*, No. 2:20-CV-11147-FWS-SK, 2023 U.S. Dist. LEXIS 46869, 2023 WL 2559230, at *3 (C.D. Cal. Feb. 24, 2023) ("[An expert's] testimony regarding his mere observations drawn from the video evidence would be unhelpful to the jury, because the jurors can watch the videos for themselves and make their own factual determinations In that sense, [the expert] is not permitted to testify by narrating and/or instructing the jury regarding what actually took place, as a factual matter, during the

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Foundational reliability is a concept that looks to the theories and methodologies used by an expert.[218] "The testimony must be based on "scientifically valid principles," as evinced by "whether the theory or technique employed...is generally accepted in the scientific community; whether it's been subjected to peer review and publication; whether it can be and has been tested; and whether the known or potential rate of error is acceptable."[219]

A video is direct evidence of the images and acts contained within the video,[220] but it is circumstantial evidence of causation. None of the video evidence sheds any light on the events that took place inside Floyd's body on May 25, 2020, to include the chemical reactions in his blood and brain, the size of his arteries, his heart's ability to transmit blood through his body, or the amount of air in his lungs. Expert testimony is required to establish medical causation, and it must be based on results from the scientific method. Such testimony to support the theory of asphyxia is absent in this case. The causation testimony by Tobin and the State Experts was *ipse dixit,* based only on their subjective view of the video and with no corroboration.

The Minnesota Supreme Court has held that video evidence alone, without any support in medical findings, is not an adequate foundation for a causation conclusion. *Gianotti v. Indep. Sch. Dist. 152* involved a school bus monitor who struck her head on the console when the bus

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incidents captured in the videos he edited and reviewed."), cited in *Qualey v. Pierce Cty.*, No. 3:23-cv-05679-TMC, 2025 U.S. Dist. LEXIS 10371, at *12 (W.D. Wash. Jan. 21, 2025).

[218] *See Doe v. Archdiocese of St. Paul & Minneapolis*, 817 N.W.2d 150, 169 (Minn. 2012) (explaining that the "underlying reliability, consistency, and accuracy of the theory" of an expert lie at "the heart of the foundational reliability question"); *Goeb v. Tharaldson*, 615 N.W.2d 800, 816 (Minn. 2000) (requiring a proponent of scientific evidence to show that the "methodology used [by the expert] is reliable and in the particular instance produced reliable results"); *Kedrowski v. Lycoming Engines*, 933 N.W.2d 45, 56 (Minn. 2019).

[219] *Daubert v. Merrell Dow Pharms., Inc.*, 43 F.3d 1311, 1316 (9th Cir. 1995) ("*Daubert* II").

[220] See *State v. Blevins*, 10 N.W.3d 29, 40 (Minn. 2024) ("videos provide direct evidence of what they show.").

came to a sudden stop.[221] A CT scan was conducted, and no evidence of a concussion was found.[222] The report prepared by the treating physician also noted no symptoms consistent with a concussion.[223] In the ensuing months she would visit several other physicians, ultimately finding one that diagnosed her with post-concussion syndrome.[224]

The determinative factor was the video. The lower court accepted the diagnosis of a physician who had not seen the video. His opinion was based on her medical records and test results. Gianotti appealed. The Workers' Compensation Court of Appeals reversed, finding that the physician who had not watched the video, lacked the proper foundation for his medical opinion.[225]

The Minnesota Supreme Court reversed the WCCA, finding:

> The WCCA's decision that not viewing the video was somehow dispositive on the adequacy of the foundation for Dr. Arbisi's opinion perplexes us. The WCCA did not explain why the video was probative on the medical consequences of an admitted blow to the head. Nor did it explain why, if the video was determinative of an adequate foundation for a medical opinion, none of Gianotti's treating physicians viewed it.[226]

Here, as in *Gianotti*, Baker did not view the video prior to his autopsy, nor did he change his opinion after watching it. There has never been medical evidence to support the conclusion of asphyxia, just as there was no evidence to support the concussion in *Gianotti*. There is only the video. It is not probative on the medical consequences of the admitted act deployed by Chauvin, Lane, and Kueng, on May 25, 2020, and the State Expert opinions lack a proper foundation.

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[221] *Gianotti v. Indep. Sch. Dist. 152*, 889 N.W.2d 796, 798 (Minn. 2017).
[222] Id.
[223] Id.
[224] Id. at 798-800.
[225] Id. at 802.
[226] *Id*. at 802.

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State v. Lee also involved the use of video evidence by a medical examiner, but is critically distinguishable.[227] There, at autopsy, the medical examiner discovered "multiple recent bruises and damage to the left side of the victim's face… and internal bleeding was noted. The medical examiner concluded that the multiple bruises or "blunt force injuries" were consistent with an assault."[228] After he had completed the examination, he then referred to a surveillance video, saw that the assaultive act took place 10 minutes prior to the patient's arrival, and corroborated his findings. He declared "arrythmia in the context of an assault" to be the cause of death.[229]

This case bears little resemblance to *Lee* because there was nothing to corroborate. Baker finished his autopsy and found none of the signs of asphyxia. In other words, asphyxia failed the test. *State v. Chauvin* is a far cry from matching a time stamp with internal bleeding found at autopsy. Had Floyd's death not been captured on video, asphyxia would have been impossible to diagnose.

The reliance on video for supporting facts and medical conclusions creates an endless feedback loop, with events in the video serving as proof of still other events, as perceived through the eyes of the expert.[230] Chauvin had no way to disprove or impeach it. The decision to allow the testimony of Tobin and the State Experts was plain error and affected the outcome of the trial.

B. Dr. Martin Tobin's method of calculating "EELV," "lung volumes," or "oxygen reserves," was not evaluated under *Frye-Mack* and it would fail.

[227] *State v. Lee*, No. A11-978, 2012 Minn. App. Unpub. LEXIS 531, at *3 (June 18, 2012).
[228] Id. at *3.
[229] Id. at 4.

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Throughout the latter stages of the trial, Dr. Martin Tobin's novel scientific method of calculating lung volumes based on scenes from the video is not generally accepted practice in the fields of either medicine or forensic video analysis.

"[W]hen novel scientific evidence is offered, the district court must determine whether it is generally accepted in the relevant scientific community."[231] "[W]hether a scientific technique is novel is determined based on whether the technique is new.[232]

The results of the mathematical equations deployed by Tobin are only as good as their inputs. Even a basic review of Tobin's expert report reveals that the method is replete with words like "commonly," "most of the time," "at times," on several occasions," "some of this time," and other terminology that lacks scientific precision.[233] Even Chauvin's weight was assumed. No one, whether a pulmonologist or a forensic video analyst, can measure the volume of air in someone's lungs with any degree of precision by watching a video of a police encounter.[234] This should have been evaluated by the trial court before it was ever allowed before the jury.

The principle behind all of this was rejected by the Minnesota Supreme Court long ago. "Based solely on photographs and blueprints," an expert witness sought to "appl[y] Newton's Laws regarding the conservation of energy, the importance of elasticity and elastic limits in in a collision between two bodies, and the mathematical basis or method to be used to determine the length of a side of a triangle,"[235] to prove that two vehicles had not collided with one another.[236]

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[231] *Goeb v. Tharaldson*, 615 N.W.2d 800, 814 (Minn. 2000)(citation omitted).
[232] *State v. Garland*, 942 N.W.2d 732, 747 (Minn. 2020)
[233] Ex. 07 at 3-9.
[234] *See* T4512, T4500-01; T4547-48; T4560.
[235] *Dunshee v. Douglas*, 255 N.W.2d 42, 48 (Minn. 1977).
[236] Id.

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The expert had not witnessed the accident or conducted any scientific tests, and the Court found his testimony "would have been little more than an interpretation of photographs in evidence and we question whether this would appreciably aid the jury."[237]

Tobin's method bears a striking resemblance to that of the expert in *Dunshee*. Tobin did not examine the body of Floyd, he did not conduct any tests, and he did not use any of Baker's medical findings to arrive at his conclusion. Deploying his own, unevaluated, unimpeachable formula on the images on the screen, he determined with "medical certainty"[238] that Floyd had died of asphyxia under the knee of Derek Chauvin. This was not helpful to the jury and it destroyed Chauvin's right to a fair trial.

This is not a case involving the "cutting edge" of scientific research, "where fact meets theory and certainty dissolves into probability."[239] No specialized equipment was used, and this was not the rare case where a pioneer in scientific research has developed a new way of evaluating evidence. Slowing down, pausing, rewinding, and watching a video has been done for decades, and the methods deployed here were not meaningfully different from anything the jury itself does on a daily basis when watching an on-demand service.

The decision to allow the EELV before the jury was plain error, and the Court must hold an evidentiary hearing under Frye-Mack to address this issue. The EELV and forms thereof had a substantial effect on the trial.

C. Tobin and the State Experts' testimony and the State's abuse thereof directly impacted the verdict such that the trial was fatally infected.

[237] Id.
[238] T4465-66.
[239] *Daubert v. Merrell Dow Pharm.*, 43 F.3d 1311, 1316 (9th Cir. 1995).

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"[W]hen evidence is introduced that is so unduly prejudicial that it renders the trial fundamentally unfair, the Due Process Clause of the Fourteenth Amendment provides a mechanism for relief."[240] "A deprivation of due process is established when an error is gross, conspicuously prejudicial or of such import that the trial was fatally infected."[241] Denial of due process is established in relation to prosecutorial misconduct in the same fashion.[242]

"For claims of prosecutorial misconduct to which a defendant did not object, we apply a modified plain-error test. The defendant must show that the misconduct is error and that it is plain. The burden then shifts to the State to demonstrate that the error did not affect the defendant's substantial rights.[243]

Prosecutorial misconduct is not an accusation that Chauvin makes flippantly or without careful consideration. But the record in this case reveals the inescapable conclusion that the difference between proper and improper expert witness testimony was exploited by prosecutors to gain the conviction of Chauvin, and not to do justice.

> "Justice is a process, not simply a result."[244] This process requires the entire criminal justice system, including judges, prosecutors, and defense lawyers to be responsible for the fair administration of justice.[245] The prosecutor's obligation as 'a minister of justice . . . is to guard the rights of the accused as well as to enforce the rights of the public.'[246] As the Supreme Court has explained, a government lawyer "is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its

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[240] *Andrew v. White*, 604 U.S. 86, 88, 145 S. Ct. 75, 78 (2025); citing *Payne* v. *Tennessee*, 501 U. S. 808, 825, 111 S. Ct. 2597, 115 L. Ed. 2d 720 (1991).
[241] *Logan v. Lockhart*, 994 F.2d 1324, 1329 (8th Cir. 1993), citing *Rhodes v. Foster*, 682 F.2d 711, 714 (8th Cir. 1982)(citation and quotations omitted).
[242] *State v. Sanders*, 775 N.W.2d 883, 887 (Minn. 2009), citing *State v. Scott,* 501 N.W.2d 608, 619 (Minn. 1993).
[243] *State v. Yang*, 774 N.W.2d 539, 559 (Minn. 2009) (citations omitted).

[244] *State v. Beecroft*, 813 N.W.2d 814, 847 (Minn. 2012), *citing State v. Lefthand*, 488 N.W.2d 799, 802 (Minn. 1992).
[245] *Id., citing State v. Windish*, 590 N.W.2d 311, 319 (Minn. 1999)(internal quotations omitted).
[246] *Id., citing State v. Ramey*, 721 N.W.2d 294, 300 (Minn. 2006)(citation omitted).

> obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done."[247] In other words, "[t]he duty of the prosecutor is to seek justice, not merely to convict."[248]

The court does not allow the "battle of the experts" to limit the rights of criminal defendants, but this case was unlike any such battle Minnesota has ever seen.[249] This was a battle between the State Experts and the Hennepin County Medical Examiner to ensure that Derek Chauvin was convicted of Murder.

a. The State's case for causation was weak.

The State's case for medical causation by asphyxia hinged on two things: the video, and the State Experts' opinions on the video. There is no other supporting evidence. Tobin's causation testimony was not cumulative to other corroborating evidence;[250] it was the basis for the conviction. While the presence of several eyewitnesses at the scene serves as corroborating *circumstantial* evidence of the act, the act itself is not in dispute in this context. Causation is.

There is a glaring lack of medical evidence in this case to support the theory of asphyxia. Dr. Baker didn't watch the video before the autopsy because he "did not want to bias [his] exam by going in with any preconceived notions that might lead [him] down one pathway or another."[251] When the examination was finished, he called the county attorney and asked "Amy, what happens when the actual evidence doesn't match up with the narrative that everyone's

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[247] Id., *citing Berger v. United States*, 295 U.S. 78, 88, 55 S. Ct. 629, 79 L. Ed. 1314 (1935) (emphasis added)
[248] Id., *citing Ramey*, 721 N.W.2d at 300.
[249] "While [courts] tolerate the "battle of experts" in other areas of the law, we do not allow such battles to limit the rights of criminal defendants." *State v. Lopez-Rios*, 669 N.W.2d 603, 613 (Minn. 2003), citing *State v. Myers*, 359 N.W.2d 604, 609-10 (Minn. 1984) (stating that even though an expert's testimony may arguably provide the jury with potentially useful information, "in most cases * * * the possibility that the jury may be unduly influenced by an expert's opinion mitigates against admission.").
[250] *See State v. Bauer*, 598 N.W.2d 352, 367 (Minn. 1999) (error cumulative to substantial evidence of guilt reduces impact on verdict).
[251] *T4848.*

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already decided on?"[252] The State built its case for causation on this very bias, in support of this very narrative.

Dr. Baker provided Chauvin with his only hope for exoneration – science. His multifactorial process cited many things that contributed to Floyd's cardiopulmonary arrest: his chronic heart disease, enlarged heart, fentanyl, methamphetamine, and the adrenaline released during the struggle with police. Baker never used the term "asphyxia" to describe Floyd's death. That term only came about through prosecutors the State Experts, who testified to a *single cause*. The only tie that binds are the words "neck compression" on the Death Certificate, which appear to have come about via a personal threat.[253]

Throughout his testimony, Baker was careful to use each one of the three processes together – subdual, restraint, and neck compression – consistently refusing to isolate any one of the three as a primary mechanism for the failure of Floyd's heart.[254] The facts demonstrate that the "subdual" and "restraint" processes began at Floyd's vehicle, long before the restraint on the ground, and includes the two physical struggles with law enforcement leading up to the MRT. The release of adrenaline is consistent with physical struggle, not a restraint on the ground. There was ample room for reasonable doubt here.

The State knew all of this, and the only logical reason to bring in additional experts to contradict these findings is because prosecutors knew that Baker's findings alone would not get them beyond the reasonable doubt they needed to convict Chauvin.

[252] *See Ex. 5*.
[253] *See* Ex. 23
[254] *See, e.g., T4889, T4934, T4941*.

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The strategy was to replace the jury as finders of fact, use the video to inflame their prejudices, and fill in causation despite the lack of proof. This meant discrediting the medical examiner. So, Baker was called to testify fifth among causation witnesses.

Baker took the stand on April 9th. After he described the process that caused Floyd's heart failure, the State impeached him:

> "So, Dr. Baker, just a point of clarification, it, frankly, occurs to me as you were talking. As a forensic pathologist, it's not part of what you do within the four corners of your job to try to calculate what Mr. Floyd's either lung volumes or oxygen reserves, or that sort of thing would have been…"[255]

Baker agreed that he could not perform those calculations, and he would be prompted to agree with the State three more times that a pulmonologist like Tobin was in a better position to make lung-related assessments than he.[256]

On another occasion, the State impeached one of its own experts, Dr. Lindsey Thomas, when her testimony in support of asphyxia was not strong enough.[257] She too deferred to Tobin, and did so a second time at the close of her direct examination when asked whether she could calculate lung volumes or oxygen reserves.[258]

This was borne out again in the cross examination of defense expert Dr. David Fowler. He was extensively impeached with his inability to calculate lung volumes or "EELV" using the video. For example: "I'd like to talk with you about what specifically you have done to actually assess what Mr. Floyd's actual oxygen reserves would have been during the subdual, restraint

[255] T4890.
[256] See T4926, 4939, 4940.
[257] T4739.
[258] T4797.

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and compression on May 25th of 2020 while he was underneath the body of Mr. Chauvin…"[259]

[260] Because he would not speculate on the images in the video, he could not answer.

The State discredited Baker again on rebuttal. It emphasized Tobin's testimony and the State Experts' asphyxia conclusions, the EELV, lung volumes, and oxygen reserves, at length.[261] For example:

> Now, Dr. Baker will tell you that -- that this stress to which Mr. Floyd was subjected in the subdual and the restraint by Mr. Chauvin and others was enough in, of and by itself to explain Mr. Floyd's demise. When asked the question, what about his oxygen levels? Did he have insufficient oxygen? That's not something I can calculate as a forensic pathologist, said Dr. Baker. That's not something I can calculate as a forensic pathologist, said Dr. Fowler. And Dr. Thomas said the same thing. But they said they would defer to pulmonologists in every case, which is who and what we have in Dr. Tobin who did the calculations, who can tell you how much oxygen was in Mr. Floyd's body.[262]

"Unfair prejudice" does not simply mean "the damage to the opponent's case that results from the legitimate probative force of the evidence; rather, it refers to the unfair advantage that results from the capacity of the evidence to persuade by illegitimate means."[263]

The video evidence in this case was damning, and that was the burden of the defense to bear. But when it became elevated to "medical certainty," all hope of a fair trial was lost.

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[259] T5595.
[260] Other examples include: T5579 (Never measured anybody's respiration); T5606-07 (Never did any quantitative measurements of oxygen levels or EELV like Tobin).
[261] *T5882-3* (Studies on safety of prone position were unreliable because they never actually measured the oxygen reserve); T5889 ("There's evidence here of low oxygen… that is medically - - unstable medically); T5892 ("Now, if it's dismissed as theoretical, which is a word I think I heard, theoretical. Well, that's the same theoretical that Dr. Fowler said that he would defer to someone else to create because he can't do it. And that's exactly what Dr. Tobin did.")
[262] T5890-91.
[263] *State* v. *Hahn,* 799 N.W.2d 25, 33 (Minn. App. 2011) (quoting *State v. Bolte,* 530 N.W.2d 191, 197 n. 3 (Minn. 1995)).

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b. The effect of the improper testimony was pervasive throughout the trial.

Because petitioner argues that Rule 702 was improperly applied to qualify the State Experts writ large, it is not possible to list every example of the improper video-based testimony here because it is ubiquitous. Their testimony failed the helpfulness test and usurped the role of the jury.

To name a few examples:

- "And so here you're seeing that the EELV is now really squashed down. And so behind the combination of turning him prone and also having the knee on the back you're seeing a 43 percent reduction in the EELV. Which means that there's also a 43 percent reduction in his oxygen reserves, which means there is also a huge reduction in the size of the hypopharynx because this is directly linked to the hypopharynx and you will see how this is linked."[264]
- "And in this position there's going to be far greater compression of the hypopharynx in this region here compared with what you were seeing on the left side. On the left side there's no compression of the hypopharynx, but on the right side – and if you watch the videos, over time you'll see…"[265]

These statements are speculative and lack foundation.

. . .

- The scrapes on his knuckles were "from [Floyd] pushing to try and get to a position where he could breathe."[266]
- Floyd "turn[ed] his face actually into the pavement to try and get more oxygen in."[267]

These statements are speculative, more prejudicial than probative, and lack foundation.

Tobin narrated video evidence throughout the trial, and the examples are too many to list in this petition. A few include:[268]

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[264] (T4523).
[265] (T4496-4497).
[266] (T4773).
[267] T4695.

[268] T4957-58

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As trial Exhibit 43 played for the jury:

Tobin: "You're seeing that he's making respiratory rate here, then another. And so we need to play it back. Because I needed to tell you first where to focus. If you focus down there, you will be able to count out the rates."[269]

State: "We will play it once more so you can count the rates."

Tobin: "One, two, three, four, five, six, seven, eight."

This fails the helpfulness test in Rule 702

. . .

Exhibit 15 was played for the jury so Tobin could "tell us what it shows."[270] Tobin told the jury this was the moment of Floyd's death.[271]

Tobin: "At the beginning you can see he's conscious, you can see slight flickering, and then it disappears. So one second he's alive and one second he's no longer."

State: "And could we just once more in case, Brett, it went pretty fast, so the jurors can see it. . . And the speed is slowed down by a third just so we can see it."

(Video Played)

State: "Is that the flicking?"

Tobin: "Yes. You can see his eyes, he's conscious, and then you see that he isn't. That's the moment the life goes out of his body."[272]

This fails the helpfulness test, is more prejudicial than probative, and constitutes misconduct.

. . .

Thomas told the jury: "I could clearly see from watching the video what happens to Mr. Floyd during this subdual restraint and compression, and what happens to his breathing is it gradually becomes more difficult and then stops."[273]

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[269] T4550.
[270] T4558.
[271] Id.
[272] T4558-59.
[273] T4759; *see also* T4761 ("So initially when he's in the prone position he's breathing and speaking, and it might look like, oh, he's at that point getting enough air exchange. But over time you can see that his breathing is getting more and more difficult and he's saying less and less.");

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Tobin's calculations of lung volumes, oxygen reserves, or EELV were referred to a total of 73 times during his initial testimony alone. The State used it during closing argument and rebuttal at length, for example:

> Dr. Tobin knows because he is a pulmonologist. He's a lung doctor. He's a lung doctor. He's also a respiratory physiologist. He's the only person who testified he was able to calculate lung capacity, lung volume. He could do that. Dr. Baker couldn't do it, didn't do it. He deferred to the pulmonologist, the pulmonologist Dr. Tobin.[274]

The improper testimony by the State Experts based on their review of the video was the pivotal deciding factor between Chauvin's guilt and exoneration on the question of causation.

A "prosecutor must avoid inflaming the jury's passions and prejudices against the defendant."[275]

The State returned to Tobin's testimony earlier at trial during closing:

> "The knees pushing on his neck and back downward, the pavement -- force of the pavement being unyielding, *it was like he was in a vice; that he was being squeezed in a vice.* And he calculated, right, between Chauvin, the defendant, Officer Kueng pushing down on him, approximately 90 pounds of force. And the position and the force combined such that it was if -- *it was as if George Floyd's left lung has been surgically removed.* That's how much of a reduction of air capacity there was here…
> it *reduced the capacity of airflow such that it was as if Mr. Floyd was breathing through a straw.* And shallow breaths did not produce enough oxygen, not enough oxygen could get to the lungs, and that's what killed George Floyd."[276]

This statement constitutes misconduct.

c. Chauvin did not have any meaningful opportunity to respond.

T4773 (scrapes on knuckles were from Floyd trying to breathe); T4773 (injuries to face were from Floyd trying to breathe); T4776 (same).

[274] Other examples at T5739; *T5744*; T5750; *T5745-48*; T5882-3; T5889.

[275] *State v. Morton*, 701 N.W.2d 225, 236 (Minn. 2005), *citing State v. Porter*, 526 N.W.2d 359, 363 (Minn. 1995).

[276] *T5747-5748*.

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The nature of the State Experts' testimony rendered it unimpeachable in the same way a juror's personal opinion is unimpeachable.[277] Because it lacks any foundation in the field or the scientific method, the defense could offer no rebuttal. Any proper testimony based in the practice of medicine became indistinguishable from the prejudicial personal opinions.

It is true that trial counsel could have pursued Tobin's method further. "But, most criminal defense lawyers have insufficient training and background in scientific methodology, and they often fail to fully comprehend the approaches employed by different forensic science disciplines and the reliability of forensic science evidence that is offered in trial."[278]

During closing argument, trial counsel did make an attempt to counter the testimony offered by Tobin. He admitted that Tobin was the only person who calculated the EELV, but urged the jury to "analyze the evidence in the broader context."[279] But because Chauvin's expert Dr. Fowler could not compute lung volumes, trial counsel could only attempt to draw attention away from Tobin's results and emphasize the medical evidence.

Only Tobin knew that Floyd's lung volume had decreased by 24%, then 43%, before his hypopharynx narrowed to 15%, prior to his death.[280] Because of the nature of the improper opinion testimony itself, the defense had no meaningful opportunity to respond to the results of Tobin's novel scientific method of lung volume calculation. These figures, in the presence of the

[277] "The judge is "supposed to screen the jury from unreliable nonsense opinions, but not exclude opinions merely because they are impeachable." *Alaska Rent-A-Car, Inc. v. Avis Budget Grp., Inc.*, 738 F.3d 960, 969 (9th Cir. 2013).
[278] *Richards v. Cty. of San Bernardino*, No. 5:17-cv-00497-HDV-SPx, 2025 U.S. Dist. LEXIS 118018, at *2 (C.D. Cal. June 10, 2025) (citation omitted).
[279] T5856-57.
[280] *T5890-92*.

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inflammatory video, were simply too powerful to persuade the jury to look at the medical evidence.

The admission of the improper expert testimony and the State's conduct constitute violations of Chauvin's Sixth and Fourteenth Amendment rights to due process. Chauvin seeks a new trial, or an evidentiary hearing to address the claims herein. If the Court grants an evidentiary hearing, he also requests leave to amend this Petition to add additional examples of improper testimony on the video evidence.

Minnesota should adopt Daubert in evaluating expert witness testimony and abandon Frye-Mack.

Chauvin preserves for appellate purposes the argument that Minnesota courts should abandon the *Frye-Mack* test to evaluate the reliability and methods of expert testimony in favor of the *Daubert* standard. While the Court should not be expected to become an "amateur scientist," "[a]dopting the *Daubert* trilogy ensures that assessment of all expert testimony in Minnesota is assessed consistent with the gatekeeping obligation."[281] Minnesota's adherence to *Frye-Mack* means that trial court judges will continue to "delegate their responsibility under Minnesota Rules of Evidence 104(a) to scientists or other technical experts."[282]

Proper evaluation of expert testimony has proven particularly problematic in criminal courts, where prosecutors "are in the best position to make the necessary changes, since they are the ones who offer the scientific evidence in question."[283] This has not happened, however, and

[281] *ARTICLE:SIFTING THE DROSS: EXPERT WITNESS TESTIMONY IN MINNESOTA AFTER THE DAUBERT TRILOGY*, 26 Wm. Mitchell L. Rev. 93, 109 (2000).
[282] *Id.* at 107.
[283] "The Disappointing History of Junk Science in the Courtroom; Frye, Daubert, and the Ongoing Crisis of "Junk Science" in Criminal Trials," Hilbert, Jim, 71 Oklahoma Law Review at 819 (2019)(citation omitted), available at: chrome-

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any change to evaluation of the manner and method of expert testimony has been consistently rejected by prosecutors across the country.[284] This Court should make the change to *Daubert* and reject *Frye-Mack* in order to add a more stringent judicial gatekeeping function to the admission of expert testimony in Minnesota.

III. THE FALSE TESTIMONY OF BLACKWELL, ARRADONDO, AND MERCIL, IS A VIOLATION OF *NAPUE* AND DEPRIVED CHAUVIN OF HIS RIGHT TO DUE PROCESS UNDER THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND ARTICLE I OF THE MINNESOTA CONSTITUTION.

The State was aware that both Exhibit 17 and BATES 2596 reflected a trained tactic by the Minneapolis Police Department.[285] Prosecutors were successful in keeping the image in BATES 2596 out of evidence because Chauvin was unable to demonstrate that he was *personally* trained to deploy it. But when the MPD Supervisors told the jury that the tactic in Exhibit 17 was not trained *at all*, Chauvin's right to due process was destroyed. Simply put, the State presented false evidence and failed to correct it. Chauvin must be granted a new trial.

The United States Supreme Court has made clear that deliberate deception of a court and jurors by the presentation of known false evidence is incompatible with "rudimentary demands of justice."[286] This maxim also holds true any time the State fails to correct false evidence presented at trial if any member of the prosecution team is aware that the testimony is false.[287] "[A] conviction obtained by the knowing use of perjured testimony is fundamentally unfair, and

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extension://efaidnbmnnnibpcajpcglclefindmkaj/https://open.mitchellhamline.edu/cgi/viewcontent.cgi?article=1461&context=facsch, also Attached hereto as Exhibit ***.

[284] *Id.*

[285] BATES 043149-043162; BATES 044120-32; *See* Exhibit 13.

[286] *Giglio v. United States*, 405 U.S. 150, 153, 92 S. Ct. 763, 766 (1972), quoting *Mooney* v. *Holohan*, 294 U.S. 103, 112 (1935); *see also Pyle* v. *Kansas*, 317 U.S. 213 (1942).

[287] *See Napue v. Illinois*, 360 U.S. 264, 269 (1959).

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must be set aside if there is any reasonable likelihood that the false testimony could have affected the judgment of the jury."[288]

State v. Chauvin contained *five* false answers by the MPD Supervisors, and prosecutors knowingly failed to correct any of them. While the State's questions and the MPD Supervisors' responses contained slight semantic differences, "the argument that the presentation of false testimony, carefully orchestrated to avoid perjury, does not offend the Constitution flies in the face of" precedent and there is "an affirmative duty on the part of the prosecution to correct false testimony at trial, even when the testimony is unsolicited.[289]

A. The false and misleading testimony offered by Katie Blackwell, Medaria Arradondo, and Johnny Mercil meets the Larrison standard for a new trial.

When it is alleged that false testimony was given at trial, the court evaluates the claim under the three-prong test in *Larrison v. United States*.[290] To satisfy this test, a postconviction petitioner must be able to establish the following by a fair preponderance of the evidence: (1) the court must be reasonably well-satisfied that the testimony in question was false; (2) without that testimony the jury might have reached a different conclusion; and (3) the petitioner was taken by surprise at trial or did not know of the falsity until after trial.[291] The first two prongs are compulsory, but the third prong is not required in order to grant a new trial.[292]

All three prongs are satisfied here.

1. The Court must be reasonably well-satisfied that the testimony by Blackwell, Arradondo, and Mercil in State v. Chauvin was false, and that the prosecution knew or should have known it was false.

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[288] *United States v. Agurs,* 427 U. S. 97 at 103 (1976).
[289] *Hayes v. Brown*, 399 F.3d 972, 981 (9th Cir. 2005).
[290] *Dukes v. State, 621 N.W.2d 246, 257-58 (Minn. 2001).*
[291] *Williams v. State*, 692 N.W.2d 893, 896 (Minn. 2005).
[292] *Opsahl v. State (Opsahl III)*, 710 N.W.2d 776, 782 (Minn. 2006).

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It is true that the *Blackwell v. Collin* Court explained that it "neither finds nor implies that any of Blackwell's testimony in the Chauvin trial was false, improper, or misleading."[293] But it was not the responsibility of the *Blackwell* Court to make that determination for purposes of *State v. Chauvin*. It is the responsibility of this Court, and it should recognize the effect of the false testimony on Chauvin's rights and grant a new trial.

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 their falsity when "the substance or gist of the two versions is the same."[294] The five answers from the MPD Supervisors contain minor semantic differences. But in context, the questions and answers were designed to get the same response – "Prohibited." Whether Exhibit 17 depicted "a trained Minneapolis Police Department defensive tactics technique,"[295] or "violates departmental policy,"[296] or reflects "a trained MPD neck restraint,"[297] the Court must not allow subtle semantics to be the tipping point between guilt and exoneration.[298] None of the witnesses were asked whether Exhibit 17 depicted a portion of a trained tactic, leaving the jury to assume that none of the tactic was authorized.

Prosecutors knew BATES 2596 and Exhibit 17 depicted a trained tactic because Blackwell and Mercil told them before the trial.[299] The State's Motion in Limine was successful,

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[293] *Blackwell v. Collin*, 2025 Minn. Dist. LEXIS 3210, *6.
[294] *Blackwell v. Collin*, 2025 Minn. Dist. LEXIS 3210, *34, *citing McKee v. Laurion*, 825 N.W.2d 725, 731 (2025); *Jadwin v. Minneapolis Star & Tribune Co.*, 367 N.W.2d 476, 483 (Minn. 1985)("Minor inaccuracies" do not distinguish falsity from truth so long as "the substance, gist, the sting" is the same.).
[295] T3837.
[296] *T3837-38*.
[297] *T3838*.
[298] *Hayes,* 399 F.3d at 981.
[299] BATES 043149-043162; BATES 044120-32, see Ex. **

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and BATES 2596 was kept out of evidence, because Chauvin couldn't prove he personally never received the training, not because it wasn't trained by the MPD. The August 18, 2020 email, which copied Blackwell and was cited by prosecutors, reflects that BATES 2596 was used at the MPD Academy for training, and the Training Log in TE-275 signed by Chauvin says "Defensive Tactics as trained in academy."

Katie Blackwell signed a sworn statement acknowledging the accuracy, truthfulness, and correctness of Judge Wahl's findings that specifically addressed her testimony during *State v. Chauvin*.[300] The Order finds her answer "I don't know what kind of improvised tactic that is, so that's not what we train,"[301] to "reasonably invite[ ] viewers, jurors, and now the public to conclude that the depicted technique was never trained by MPD."[302]

In addition to the thirty-four sworn statements provided earlier this year, an additional 23 affidavits by current and former MPD Officers are included with this Petition. These statements make the specific connection between Exhibit 17 and BATES 2596, and demonstrate that the knee-to-neck tactic was trained, authorized, consistent with policy, and used routinely by MPD Officers on May 25, 2025.

These sworn declarations, the Order in *Blackwell v. Collin*, and the admission by Blackwell herself, demonstrate conclusively that the neck restraint deployed by Chauvin on May 25, 2020 and depicted in Exhibit 17 was authorized, trained, and consistent with MPD Policy at the time of the encounter with Floyd.[303] The "sting" of the responses by the MPD Supervisors is

[300] Ex. 22.
[301] *T3922-23*.
[302] *Blackwell v. Collin*, 2025 Minn. Dist. LEXIS 3210, *32
[303] See Ex. 24.

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the same as the statement by Blackwell. The Court must be reasonably well-satisfied that their testimony during trial was false.

2. Without the false testimony, the jury might have reached a different conclusion.

For an evidentiary hearing to be required, Chauvin need only show that the false testimony *might* have made a difference to the jury's verdict if the testimony had not been presented at trial.[304] The Court "has held that "might" means "something more than an outside chance although much less than . . . 'would probably.'"[305] "In cases in which recanted testimony comprises the only evidence of guilt, or is a substantially important part of the testimony as to the defendant's guilt, [the Court has] held that the second Larrison prong is satisfied and an evidentiary hearing should be granted."[306]

The defense built its case on the protections of Minn. Stat. § 609.06 subd. 1. As the jury was told, "No crime is committed if a police officer's actions were justified by the police officer's use of reasonable force in the line of duty in effecting a lawful arrest…" If the image in Exhibit 17 was part of a process that was authorized by law, then the jury was to render a verdict "without regard to the officer's own subjective state of mind, intentions, or motivations."[307] "To prove guilt, the State must prove beyond a reasonable doubt that the Defendant's use of force was not authorized by law."[308]

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[304] *Ortega v. State*, 856 N.W.2d 98, 104 (Minn. 2014).
[305] *Id., citing State v. Caldwell*, 322 N.W.2d 574, 585 n.8 (Minn. 1982) (citations omitted).
[306] *Id.*, *citing* Martin v. State, 825 N.W.2d 734, 744 (Minn. 2013); *Dobbins v. State*, 788 N.W.2d 719, 735 (Minn. 2010) (noting that the State had "little other direct evidence");*Ferguson v. State*, 645 N.W.2d at 444 (holding that it was "quite possible, maybe even probable, that the jury might have reached a different verdict" when there was very little evidence tying the defendant to the crime outside of the recanted testimony).
[307] Id.
[308] Id. at 9.

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Blackwell, Arradondo, and Mercil were the only ones with supervisory authority over MPD tactics that were "authorized by law." Physical confrontations during lawful arrests are not unusual for MPD Officers. But, for a jury, the images they saw during the Chauvin trial were foreign and jarring. Written policies in a manual are one thing, but seeing the tactic *in the field* is quite another. The jury took the word of the MPD Supervisors.

Their testimony was critical for another reason: the length of time Chauvin deployed the tactic. Chauvin's position on Floyd did not change throughout the encounter. As the *Blackwell* Court found, "Blackwell's statement was not limited by temporal qualifiers." None of the other three witnesses' statements were, either, and Mercil told the jury that "use of force" and "defensive tactics" are "interchangeable."[309] The "sting" of all three statements was that no part of the tactic in Exhibit 17 was consistent with MPD Policy. This meant the false testimony had the dual prejudicial effect: Not only did it render the tactic in Exhibit 17 inconsistent with MPD training, but it also invited the jury to conclude that an untrained, "improvised" position was held for nine minutes and twenty-nine seconds in an act that could only be considered assaultive or worse.

Chauvin's right to due process was destroyed in another sense. His position remained static throughout the encounter. Had the MPD Supervisors testified truthfully, the jury would have been faced with the difficult decision of determining *at what point* the trained MPD tactic shown in Exhibit 17 transformed from an authorized use of force, into an assaultive act. As it was, the decision was easy - - Chauvin's act was assaultive *ab initio*, and his choice to maintain it for as long as he did demonstrated not only an assault, but a "depraved mind."

[309] T3993.

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It is true that "when significant additional evidence of a defendant's guilt was presented at trial, besides the recanted testimony, we have concluded that the second Larrison prong is not satisfied."[310] That is not the case here. While there are many witnesses to the act itself, this does not by itself demonstrate intent - - far from it. Chauvin, Kueng, Lane, and Thao plainly believed the tactic they were deploying to be lawful and consistent with MPD policy and procedure. The only intent that can be inferred comes as a result of the false testimony itself – that the duration of the restraint was unreasonable *per se* because the tactic was not trained or authorized by the MPD. The State used the graphic images in the video and still-frame to inflame the prejudices of the jury to fill in the rest.

The Minnesota Supreme Court has recognized that "police officers are impressive witnesses whose testimony may have great impact on the jury."[311] This is especially true if the testimony concerns an issue that is central to the case.[312] When the MPD Supervisors told the jury the tactic in Exhibit 17 was not trained, the jury believed them.

The State also emphasized and amplified the false testimony at length during closing argument, and destroyed any semantic differences. Prosecutors used an image with photographs of the officers who presented it along with their quotes: "Not Trained MPD Tactic - Lt. Johnny Mercil;" "I don't know what this 'Modification' is – Cmdr. Katie Blackwell;" "Violates Use of Force Policy and core MPD values – Chief Medaria Arradondo."[313] Red arrows pointed to 9:29. This unmistakably conveyed to the jury "He used an unauthorized 'modification' against Floyd

[310] *Ortega v. State*, 856 N.W.2d 98, 104 (Minn. 2014)
[311] *Thurman v. Pepsi-Cola Bottling Co.*, 289 N.W.2d 141, 146 (Minn. 1980), *citing Bradley v. Shaw*, 309 Minn. 442, 244 N.W.2d 666 (1976); *Montagne v. Stenvold*, 276 Minn. 547, 148 N.W.2d 815 (1967).
[312] *See Id.*
[313] *T5772*; Index 570.

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for nine minutes and twenty-nine seconds." Without the false testimony this argument could not have been made, because BATES 2596 was never brought before the jury. This misstatement of fact

The State also substituted the term "modification" for Blackwell's "improvised tactic." The difference is significant. Several witnesses testified that MPD Officers were authorized to "improvise" or adapt their tactics, including restraint tactics, in light of changing circumstances on the ground. But the State's term 'modification' as imputed to Blackwell implies that Chauvin had developed his own technique; something that was never authorized by the MPD at all.

The State had to exploit the false testimony because nothing else in this case demonstrates an intent to commit a criminal act. False testimony removing Chauvin's act from the protections of Minn. Stat. § 609.06 subd. 1 was the only way to satisfy this element. Chauvin's Constitutional right to due process under the Fourteenth Amendment was destroyed.

3. The testimony took defense counsel by surprise.

Katie Blackwell was the Commander of training. She was the key witness directly responsible for the training MPD Officers received, and had unique knowledge of whether Chauvin had been trained on the tactic in Exhibit 17. But he knew, and the State knew, that Chauvin had no way to visually demonstrate that Blackwell was not telling the truth. After the false testimony, the cross examination by defense counsel lasted for less than three minutes.[314] This is indicative of surprise, or perhaps more accurately, resignation.

Because of the evidentiary decisions leading up to the false testimony, it carried special weight. The State's Motion in Limine kept the image in BATES 2596 out of evidence. Chauvin

[314] T3923-3926.

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could not prove at trial that he was trained to deploy the tactic in Exhibit 17 because of the vague training records. The evidentiary ruling restricted the use of BATES 2596 for impeachment, unless the MPD Supervisors claimed they were never *personally* trained on it. This is why the MPD Supervisors were asked if it was "*a* trained tactic." This could have been couched as trial strategy, but for the falsehoods.

Still, the jury knew Chauvin was up-to-date on his training.[315] It would have made the connection that he received the training on the knee-to-neck shown in Exhibit 17, so long as the MPD Supervisors testified truthfully. They did not, and he had no way to counter it.

Chauvin is entitled to a new trial under the rule set forth in *Napue v. Illinois.* In the alternative, he requests an evidentiary hearing to address this claim. He will present testimony from the witnesses in the sworn statements attached to this Petition.

IV. THE JURY INSTRUCTIONS VIOLATED CHAUVIN'S RIGHT TO DUE PROCESS UNDER THE SIXTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND ARTICLE I OF THE MINNESOTA CONSTITUTION.

"While district courts have broad discretion to formulate appropriate jury instructions, a district court abuses its discretion if the jury instructions confuse, mislead, or materially misstate the law."[316] Jury instructions must "adequately instruct the jury on the State's burden to prove defendant's guilt beyond a reasonable doubt."[317] If a defendant does not object to an instruction

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[315] *Ex. 19.*
[316] *State v. Taylor*, 869 N.W.2d 1, 14-15 (Minn. 2015) (quotation omitted).
[317] *State v. Caine*, 746 N.W.2d 339, 353 (Minn. 2008), *citing State v. Auchampach*, 540 N.W.2d 808, 816 (Minn. 1995).

at trial, we will reverse for plain error "if the instructions were misleading or confusing on fundamental points of law."[318]

First, the instructions in this case embrace definitions for both felony Third Degree Assault and a mutated form of Attempted Third Degree Assault which removes the required specific intent element and permits a conviction for conduct that encompasses elements of either. Second, it permits conviction for an "attempt to attempt" to inflict bodily harm, which flatly contradicts statutory and case law. Finally, read together, the instructions as a whole permit conviction on a dizzying array of conduct which, if the possible combinations are capable of being deciphered at all, had the effect of depriving Chauvin of his fundamental right to due process.

The relevant portion of the instructions in *State v. Chauvin* provides as follows:

Definition

Under Minnesota law, a person causing the death of another person, Without intent to cause the death of any person, while committing *or attempting to commit* a felony offense is guilty of the crime of Murder in the Second Degree.

The Defendant is charged with committing this crime *or intentionally aiding* the commission of this crime.

Elements

The elements of the crime of Murder in the Second Degree while committing a felony are:

First Element: The death of George Floyd must be proven.

Second Element: The Defendant **caused the death** of George Floyd.

Third Element: The Defendant, at the time of **causing the death** of George Floyd, was committing *or attempting to commit* the felony offense of Assault in the Third Degree. It is not necessary for the State to prove the Defendant had an **intent to** kill George Floyd, but it must prove that the Defendant committed *or **attempted** to commit* the underlying felony of Assault in

[318] *Id., citing State v. Ihle*, 640 N.W.2d 910, 916 (Minn. 2002)

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the Third Degree.

There are two elements of Assault in the Third Degree:

(l) Defendant assaulted George Floyd.

"Assault" is the intentional infliction of **bodily harm** upon another *or the attempt to inflict* **bodily harm** upon another. The intentional infliction of **bodily harm** requires proof that the Defendant **intentionally** applied unlawful force to another person without that person's consent and that this act resulted in **bodily harm**.

(2) Defendant inflicted substantial bodily harm on George Floyd. *It is not necessary for the State to prove that the Defendant intended to inflict substantial bodily harm*, or knew that his actions would inflict substantial bodily harm, only that the Defendant intended to commit the assault and that George Floyd sustained **substantial bodily harm** as a result of the assault.

Fourth Element: The Defendant's act took place on or about May 25, 2020 in Hennepin County.

Index #494 at 5-6 (bold in original, emphasis in italics added throughout). The trial court defined "Attempted" as follows:

"**Attempt**" means that the Defendant did an act which was a substantial step toward, and more than mere preparation for, causing the result, and that the Defendant did that act with intent to cause that result."[319]

Third Degree Assault under Minn. Stat. § 609.223 subd. 1 provides: "Whoever assaults another and inflicts substantial bodily harm" commits a felony. "Assault" is defined as (1) an act done with intent to cause fear in another of immediate bodily harm or death; or (2) the intentional infliction of or attempt to inflict bodily harm upon another.[320] This definition is mirrored in the misdemeanor Fifth Degree Assault Statute.[321]

[319] Id. at 3 (bold in original).
[320] Minn. Stat. §609.02 Subd. 10(2).
[321] Minn. Stat. §609.224 Subd. 1.

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Attempt, as applied to Third Degree Assault, comes from Minn. Stat. §609.17 Subd. 1: "Whoever, with intent to commit a crime, does an act which is a substantial step toward, and more than preparation for, the commission of the crime is guilty of an attempt to commit that crime…"

The instructions in State v. Chauvin constitute plain error. Neither Third Degree Assault nor Attempted Third Degree Assault, distinct felony offense, were separately charged.

"Under the plain-error doctrine, the appellant must show that there was (1) an error; (2) that is plain; and (3) the error affected substantial rights."[322] "An error is plain if it contravenes case law, a rule, or a standard of conduct. A defendant may obtain review and relief from plain errors affecting substantial rights if those errors had the effect of depriving the defendant of a fair trial."[323] A district court commits plain error if it fails to properly instruct the jury on all the elements of a charged offense.[324]

A. The Errors are Plain.

Minnesota courts review "the jury instructions as a whole to determine whether the instructions accurately state the law in a manner that can be understood by the jury."[325] Read together, the instructions in this case are dizzying. Chauvin could commit the predicate felony offense of "Third Degree Assault" for at least any of the following:

- Intentional Infliction of bodily harm upon George Floyd, and substantial bodily harm resulted (Third Degree Assault);
- Attempt to inflict bodily harm on George Floyd, with the intent to inflict substantial bodily harm, and substantial bodily harm resulted;
- Attempt to inflict bodily harm on George Floyd, without the intent to inflict substantial bodily harm, and substantial bodily harm resulted;

[322] *State v. Huber*, 877 N.W.2d at 522 (Minn. 2016).
[323] *State v. Litzau*, 650 N.W.2d 177, 182 (Minn. 2002)(internal citations and quotations omitted).
[324] *State v. Peltier*, 874 N.W.2d 792, 797 (Minn. 2016).
[325] State v. *Kelley,* 855 N.W.2d 269, 274 (Minn. 2014)

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- Attempt to attempt to inflict bodily harm upon George Floyd, with intent to inflict substantial bodily harm, and substantial bodily harm resulted;
- Attempt to attempt to inflict bodily harm upon George Floyd, without intent to inflict substantial bodily harm, and substantial bodily harm resulted;
- Aiding and abetting the intentional infliction of bodily harm upon George Floyd, and substantial bodily harm resulted;
- Aiding and abetting the attempt to inflict bodily harm upon George Floyd, with intent to cause substantial bodily harm, and substantial bodily harm resulted;
- Aiding and abetting the attempt to inflict bodily harm upon George Floyd, without intent to cause substantial bodily harm, and substantial bodily harm resulted;
- Aiding and abetting the attempt to attempt to inflict bodily harm upon George Floyd, with intent to inflict substantial bodily harm, and substantial bodily harm resulted; OR
- Aiding and abetting the attempt to attempt to inflict bodily harm upon George Floyd, without intent to inflict substantial bodily harm, and substantial bodily harm resulted.

The instructions contain material misstatements of law.

First, "Attempt to attempt" is not a crime in Minnesota and constitutes plain error.[326] As the Minnesota Supreme Court explained in *State v. Noggle*:

> It is nonetheless true that, as a matter of criminal-law theory, attempt is an inchoate crime that must be connected to an uncompleted substantive crime that was attempted. This connection is necessary to determine whether a defendant took a "substantial step toward" committing the uncompleted crime, Minn. Stat. § 609.17, subd. 1, and to determine the presumptive sentence for an attempt conviction, *see* Minn. Stat. § 609.17, subd. 4… But this connection does not mean that an attempt is not a separate offense—and it does not mean that a conviction of attempt and a conviction of a completed substantive crime are one and the same.[327]

[326] *See DeGidio v. State*, 289 N.W.2d 135, 136 (Minn. 1980) ("One of the questions frequently litigated is whether there can be an attempt to attempt. As an abstract proposition of law the construction has been condemned by the majority of cases considering the issue, and it seems as a matter of sound analysis that the construction is not necessary.")

[327] *State v. Noggle*, 881 N.W.2d 545, 549 (Minn. 2016); *See also State v. Oliver*, 11 N.W.3d 817, 822 (Minn. Ct. App. 2024).

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"Attempt" was not connected to an uncompleted substantive crime; it was connected to yet another attempt. This is contrary to *Noggle* and Minn. Stat. § 609.17. If this is Constitutional, it would open the door to an "attempt to attempt to attempt."[328]

The instructions permit conviction of a felony under a misdemeanor standard.

The clause "…must prove that the Defendant committed *or attempted to commit* the underlying felony of Assault in the Third Degree," is irreconcilable with "It is not necessary for the State to prove that the Defendant intended to inflict substantial bodily harm." The level of *resulting harm* is the only factor that distinguishes Third Degree Assault from misdemeanor simple assault-attempt under Minn. Stat. §609.224 Subd. 1(2). The instructions are contrary to statute and permit conviction of a felony under a misdemeanor standard.

The Court of Appeals heard *State v. Oliver* last year, and that case is under review by the Minnesota Supreme Court at the time of this writing.[329] As the Court of Appeals explained, assault-harm is a general intent crime,[330] but felony attempted assault in the Third or First Degree are specific intent crimes.[331] The steps taken toward a misdemeanor infliction of bodily harm, and those taken toward a felony-level infliction of bodily harm, are identical because resulting harm is not an element of either offense.[332] Thus, because "assault-attempt" is already defined in the misdemeanor assault statute, it cannot serve as the predicate felony offense of Attempted

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[328] "Attempt to attempt" was not before the Court in *Oliver*, but was discussed at oral argument: https://mncourts.gov/supremecourt/oralargumentwebcasts/2025/state-of-minnesota-vs.-lisa-dawn-oliver, last accessed November 19, 2025.
[329] *State v. Oliver*, 11 N.W.3d 817 (Minn. Ct. App. 2024).

[330] A defendant who assaults someone by inflicting bodily harm is liable for whatever amount of bodily harm they inflict, regardless of how much harm they may have intended. *State v. Dorn*, 887 N.W.2d 826, 831-33 (Minn. 2016).
[331] Minn. Stat. §609.17.
[332] *Id.* at 824.

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Third Degree Assault regardless of resulting harm. Attempted Third Degree Assault is not a crime in Minnesota.

Chauvin requests leave to amend this Petition pending the Minnesota Supreme Court's holding in State v. Oliver.

The instructions permit a non-unanimous verdict.

Verdicts in criminal cases must be unanimous.[333] The unanimity rule "requires jurors to be in substantial agreement as to just what a defendant did as a step preliminary to determining whether the defendant is guilty of the crime charged."[334] The jury must reach a "subjective state of certitude on the facts in issue."[335] For this reason, the Minnesota Court of Appeals has specifically admonished against use of the disjunctive "or" in jury instructions: "If the state feels it has the evidence to charge a defendant with a specific count, the jury should be instructed as to all the essential elements on that count and a separate verdict form for that count should be submitted."[336]

Here, the disjunctive "or" is used twice in the instructions, leading to the array of "felonies" above. Further, the jury form reveals only that *something* Chauvin or one of the other officers did constituted "a felony."[337] The instructions embrace both Assault in the Third Degree and Attempted Assault in the Third Degree and permit a conviction on either one, a blend of elements of both, or elements which are not a part of the crime (resulting bodily harm as it applies to Attempted Third Degree Assault).

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[333] Minn. R. Crim. P. 26.01, subd. 1(5), see also *State v. Pendleton*, 725 N.W.2d 717, 730 (Minn. 2007).
[334] *United States v. Gipson*, 553 F.2d 453, 457-58 (5th Cir. 1977).
[335] *In re Winship*, 397 U.S. at 364, 90 S. Ct. at 1072, 25 L. Ed. 2d at 375.
[336] *State v. Hart*, Minn.Ct.App. 477 N.W.2d 732, 739 (1991).
[337] "We, the jury in the above-entitled matter, as to Count I: Unintentional second-degree murder while committing a felony, find the Defendant: Guilty." *Index #504*.

This permitted a non-unanimous verdict and violated Chauvin's rights under the Sixth Amendment.

B. The Errors Affected Chauvin's Substantial Rights.

An erroneous jury instruction affects an appellant's substantial rights if there is "a reasonable likelihood" that giving the instruction had a significant effect on the jury's verdict.[338] If it "prevents the consideration of constitutionally relevant evidence," it is unconstitutional.[339] This is a heavy burden,[340] but it is satisfied here.

At trial, as discussed infra, intent to commit Third Degree Assault was only satisfied through the false testimony of Blackwell, Arradondo, and Mercil. This case is unique, because the *act* by Chauvin was not in dispute. The case turned on how the policy and law were applied to it. This placed even more weight on clarity in the instructions, and that was not present here. Instead, the instructions shifted focus away from the law, and back toward the video and the tragic death of Floyd.

These instructions served to unlawfully broaden the meaning of Third Degree Assault to encompass the "substantial steps" taken toward the act - - the attempt - - while at the same time eliminating the required *mens rea* to constitute a felony attempt crime under Minn. Stat. §609.17.

Worse, the "attempt to attempt" language serves to sweep in a "substantial step toward a substantial step," toward infliction of harm. This was exacerbated by the State's repeated representations to the jury during closing argument that its only burden of proof was to show that

[338] *State v. Carridine*, 812 N.W.2d 130, 143 (Minn. 2012) (quotation omitted)
[339] *Boyde v. California*, 494 U.S. 370, 380, 110 S. Ct. 1190, 1198 (1990).
[340] *State v. Kelley*, 855 N.W.2d 269, 283 (Minn. 2014).

Chauvin's act was "not an accident."[341] The instruction prevented consideration of the intent element.

A juror recalled a question asked of one another during deliberations: "Does the intended act of harm have to be the death of George Floyd, or can it be him not providing the life support? And all of a sudden, light bulbs just went on for those people who were undecided or on the not guilty side."[342] Another juror continued: "This is not what he did, but more or less what he didn't do."[343] To be clear, these are the *fruits* of the error, not the basis for relief.

The jury instructions constitute a violation of Chauvin's right to due process.

V. THE CUMULATIVE EFFECT OF THE ERRORS IN *STATE V. CHAUVIN* DEPRIVED HIM OF HIS RIGHT TO DUE PROCESS UNDER THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND ARTICLE I OF THE MINNESOTA CONSTITUTION.

The cumulative effect of trial errors can deprive a criminal defendant of his due process right to a fair trial.[344] "[W]hen the errors and indiscretions, none of which alone might have been enough to tip the scales, operate to the defendant's prejudice by producing a biased jury," a new trial is warranted.[345] The cumulative effect of errors in a "very close factual case," warrants a new trial, even though individually none of the errors necessarily would have."[346]

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[341] See T5908, T5724, T5755.
[342] "*Inside the Jury Room: Chauvin Trial Jurors Speak Exclusively to Don Lemon*," at 6:40, CNN, Original air date October 28, 2021, available at https://www.youtube.com/watch?v=iGlcM2J90hE&t=445s, last accessed October 29, 2025.
[343] Id. at 7:20.
[344] *Chambers v. Mississippi*, 410 U.S. 284, 285, 93 S. Ct. 1038, 1041 (1973).
[345] *State v. Davis*, 820 N.W.2d 525, 538 (Minn. 2012), *citing State v. Hill*, 801 N.W.2d 646, 659 (Minn. 2011) (internal quotations and citation omitted).
[346] *State v. Erickson*, 610 N.W.2d 335, 340 (Minn. 2000).

Each of the Constitutional violations presented in this Petition is sufficient by itself to justify a new trial. Taken together, *State v. Chauvin*.

Uniquely damaging in this case was the way the false testimony of Blackwell, Arradondo, and Mercil, in combination with the jury instructions and the improper expert testimony, functioned together to destroy the State's burden of proof on *two* elements of the crime of Second Degree Murder. This is a violation of due process. This case was never about the facts. Instead, it came down to distortion of MPD Policy, manipulation of the emotions of the jury, and misstatements of the law.

Chauvin alleges the cumulative effect of the errors above deprived him of due process, specifically:

- The *Napue* violation by the State, Blackwell, Arradondo, and Mercil in presenting false testimony and failing to correct it;
- The material misstatements of law in the jury instructions

The first key element missing in the State's case against Chauvin was intent to commit an assault. As outlined above, the false testimony of Blackwell, Arradondo, and Mercil in violation of *Napue* removed his MPD-trained conduct from the protections of Minn. Stat. § 609.06 subd. 1. Further, as demonstrated herein, the State was aware that BATES 2596 reflected the same tactic as that in Exhibit 17, and did nothing to correct the false testimony.

But the State's burden of proof was further destroyed through the misstated and unconstitutional jury instructions, which permitted a conviction on an "attempt to attempt" to inflict harm. Between these two errors, Chauvin's right to due process was violated.

VI. THE TRIAL COURT'S UPWARD DEPARTURE MUST BE VACATED IN LIGHT OF THE FALSE TESTIMONY BY BLACKWELL, ARRADONDO, AND MERCIL.

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Postconviction relief includes the ability to petition the court to challenge sentencing departures.[347] In this case, the false testimony of Blackwell, Arradondo, and Mercil was cited as a basis for the trial court's decision to depart from guidelines:

> Mr. Chauvin's continuing insistence that he believed "he was simply performing his lawful duty in assisting other officers in the arrest of George Floyd" and was acting "in good faith reliance [on] his own experience as a police officer and the training he had received," was rejected by every supervisory and training officer of the Minneapolis Police Department who testified at trial[348] as well as by the jury.

The additional grounds cited by the trial court included "Abuse of a position of trust and authority," and "Mr. Chauvin's treating George Floyd with particular cruelty." Both rest on the premise that his tactic was not trained by the MPD, based again on the false testimony of the three MPD Supervisors. In light of the affidavits attached hereto, the evidence brought forth in the *Blackwell v. Collin* litigation, and the signed admission by Blackwell herself, the Court must vacate the departure from guidelines. If the Court does not grant the new trial sought in this Petition, it must re-sentence Chauvin to the presumptive guideline 150-month sentence.

A postconviction petitioner is entitled to an evidentiary hearing "[u]nless the petition and the files and records of the proceeding conclusively show that the petitioner is entitled to no relief." Minn. Stat. § 590.04, subd. 1.

"[T]he district court is required to conduct a *Frye-Mack* hearing on the general acceptance of scientific techniques that are novel before evidence may be introduced at trial."[349]

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[347] *Jackson v. State*, 329 N.W.2d 66, 67 (Minn. 1983).
[348] In the trial court's words: "This includes MPD Chief Medaria Arradondo, MPD Sgts. David Pleoger and Jon Edwards, MPD Lt. Johnny Mercil, and MPD Commander Katie Blackwell." Sent. Memo at 6.
[349] *State v. Roman Nose*, 649 N.W.2d 815, 823 (Minn. 2002).

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"[A] postconviction hearing is particularly important when the petition "attacks" important evidence in a circumstantial case."[350] The State's case for causation is entirely circumstantial, and the Court must hold a hearing to address these claims.

To the extent that Knaffla applies to these arguments, these claims are supported by newly discovered evidence in the form of:

- The Order in Blackwell v. Collin;
- The sworn statement signed by Katie Blackwell attesting as follows:
  I, Katie Blackwell, acknowledge, agree, and affirm that everything in the Honorable Edward T. Wahl's Order Regarding Special Motion for Expedited relief under Minn. Stat. § 554.09 and for fees and Costs Under Minn. Stat. § 554.16 dated April 8, 2025 is accurate, true, and correct.
- The documents herein filed with the Court in connection with *Amy Sweasy Tamburino v. County of Hennepin*, #27-CV-22-16364;
- 57 sworn statements from current and former MPD Officers;
- *State v. Oliver*, 11 N.W.3d 817 (Minn. Ct. App. 2024).

Chauvin asks that the Court apply the interest-of-justice exception to the *Knaffla* rule to hear all the claims presented in this petition. *State v. Chauvin* is not a routine case. Causation has never been addressed.

Each of these claims has substantive merit, and it could not have been a strategic decision on the part of appellate counsel in failing to raise them, it was simply overlooked.

In light of all the facts of this case, there is not substantial evidence of Chauvin's guilt; far from it. His conviction rested on the two thin strands of intent and causation, both of which are addressed directly in this petition. Since the trial and the direct appeal, substantial new information has come to light in both the *Sweasy* and *Blackwell* litigation which was not and could not have been available to Chauvin on direct appeal. It is the nature of that information, particularly in light of the allegations in this petition, that merits a hearing before this Court.

[350] *Wilson v. State*, 726 N.W.2d 103, 107 (Minn. 2007) (citations omitted).

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Before the Court are two conflicting Orders: One that put Derek Chauvin and three other MPD Officers in prison, and another finding that key testimony putting them there was false. In the interest of justice and the integrity of the judiciary, the Court must hear these claims.

Chauvin relies on the doctors of the Forensic Panel, whose Affidavit is attached hereto.[351] They will testify at an evidentiary hearing that Dr. Martin Tobin's method of calculating lung volumes is outside the generally accepted practice of medicine, including the field of pulmonology. Chauvin also relies on the expert report of forensic video analyst James Borden to establish that calculations of the type Tobin used are not only outside the generally accepted practice of forensic video analysts, but are also impossible for anyone to reach with any meaningful degree of precision.

Both will testify at an evidentiary hearing, which the Court should hold.[352]

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Dated: November 20, 2025.

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[351] Ex. 25.

[352] Courts must resolve any doubts about whether to conduct an evidentiary hearing in favor of the defendant seeking relief. *State v. Nicks*, 831 N.W.2d 493, 504 (Minn. 2013).