

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

STATE OF MINNESOTA,

Plaintiff,

vs.

**VERDICT AND FINDINGS OF FACT
REGARDING AGGRAVATED
SENTENCING FACTORS****DEREK MICHAEL CHAUVIN,**

Court File No. 27-CR-20-12646

Defendant.

The Court, acting as the trier of fact with regard to sentencing facts, finds that the following facts supporting an aggravated durational departure have been proven beyond a reasonable doubt:

1. Defendant abused a position of trust and authority.
 - a. On May 25, 2020, Defendant was employed as a licensed peace officer by the City of Minneapolis Police Department, and was working as a police officer in full uniform on that date, when he restrained George Floyd in the prone position on the concrete apron of Chicago Avenue, a restraint that the jury has determined, in returning its guilty verdicts on all three counts, ultimately caused George Floyd's death.
 - b. As a police officer, Defendant held a position of trust and authority with respect to the community and its members with which he had contact. The trust placed in Defendant included trust that anyone

arrested would be treated with respect and only with reasonable force and that medical needs would be addressed in a timely fashion.

- c. Defendant abused his position of authority by using force that the jury has determined in returning its guilty verdicts on all three counts was unreasonable and exceeded the authority granted peace officers by statute and other law. Specifically, Defendant, with two other officers, held a handcuffed George Floyd in a prone position on the street for an inordinate amount of time (more than nine minutes and forty seconds), a position that Defendant knew from his training and experience carried with it a danger of positional asphyxia. The prolonged use of this technique was particularly egregious in that George Floyd made it clear he was unable to breathe and expressed the view that he was dying as a result of the officers' restraint. In addition, one of the other officers involved in the restraint twice checked Floyd's pulse after Floyd had been restrained in this position for more than six and one-half minutes and informed Defendant that he was unable to detect a pulse. In addition, the other officers involved in the restraint also twice inquired during the restraint if they should roll Floyd onto his side, i.e., into a "recovery position" and later also informed Defendant that he believed Floyd had passed out. Thus, not only was the danger of asphyxia theoretical, it was communicated to the Defendant as actually occurring with George Floyd but Defendant continued his

restraint of Floyd until EMS personnel arrived and prepared to load Mr. Floyd onto a stretcher.

- d. When it became clear even to the bystanders that George Floyd was in medical distress, was no longer responsive, and had ceased breathing, Defendant further abused his position of trust and authority by not rendering aid, by declining two suggestions from one of his fellow officers to place George Floyd on his side, and by preventing bystanders, including an off-duty Minneapolis fire fighter, from assisting. The failure to render aid became particularly abusive after Mr. Floyd had passed out, and was still being restrained in the prone position, with Defendant continuing to kneel on the back of Mr. Floyd's neck with one knee and on his back with another knee, for more than two and a half minutes after one of his fellow officers announced he was unable to detect a pulse.
- e. The use of a knee on the back of the neck while restraining a suspect in the prone position was not a technique that was part of any training by the Minneapolis Police Department and was not an authorized use of force.
- f. Defendant's placement of his knee on the back of George Floyd's neck was an egregious abuse of the authority to subdue and restrain because the prolonged use of this maneuver was employed after George Floyd had already been handcuffed and continued for more than four and a

half minutes after Mr. Floyd had ceased talking and had become unresponsive.

2. Defendant treated George Floyd with particular cruelty.
 - a. The facts found in Paragraph One are incorporated herein.
 - b. It was particularly cruel to kill George Floyd slowly by preventing his ability to breathe when Mr. Floyd had already made it clear he was having trouble breathing.
 - c. The slow death of George Floyd occurring over approximately six minutes of his positional asphyxia was particularly cruel in that Mr. Floyd was begging for his life and obviously terrified by the knowledge that he was likely to die but during which the Defendant objectively remained indifferent to Mr. Floyd's pleas.
 - d. Restraining an individual in the prone position against the hard street surface by kneeling on the back of Mr. Floyd's neck with his other knee in Mr. Floyd's back, all the while holding his handcuffed arms in the fashion Defendant did for more than nine minutes and forty seconds is by itself a particularly cruel act.
 - e. The prolonged nature of the asphyxiation was by itself particularly cruel.
3. Children were present during the commission of the offense.
 - a. Children were present on the sidewalk adjoining Chicago Avenue standing only a few feet from where Defendant and the other officers were restraining George Floyd prone in the street and observed Mr.

Floyd being asphyxiated as he begged for his life. Three were seventeen years old at the time and one was nine years old.

- b. Although these four children did not observe all the events, they did observe a substantial portion of the Defendant's use of force and witnessed the last moments of Mr. Floyd's life.
4. Defendant committed the crime as a group with the active participation of at least three other persons.
- a. Officers Lane and Kueng were actively involved in the restraint of George Floyd that ultimately resulted in his death. Officer Thao was actively involved by keeping bystanders away from Mr. Floyd and, in so doing, allowed the other officers to continue an unreasonable use of force and to prevent bystanders from rendering medical aid to Mr. Floyd.
 - b. No finding is made as to whether the active participation of Officers Lane, Kueng and Thao was accompanied by the intent and knowledge necessary to establish that they are "offenders" subject to criminal liability under Minn. Stat. § 609.05.

The Court, acting as the trier of fact with regard to sentencing facts, finds that the following facts have not been proven beyond a reasonable doubt:

5. The victim was particularly vulnerable.
 - a. Although George Floyd was handcuffed, he had still been able to resist arrest and to prevent three police officers from seating him in a squad car

before he was placed in the prone position, so that, by itself, did not create a particular vulnerability.

- b. In this case, Mr. Floyd's drug intoxication did not render him particularly vulnerable compared to other victims of murder.
- c. Restraining George Floyd in the prone position with the weight of three police officers on him for a prolonged period did not create a vulnerability that was exploited to cause death; it was the actual mechanism causing death.

BY THE COURT:



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Peter
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Peter A. Cahill
Judge of District Court