

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

State of Minnesota,

Court File No. 27-CR-20-12951

Plaintiff,

v.

**MEMORANDUM SUPPORTING
MOTION TO DISMISS**

Thomas Kiernan Lane,

Defendant.

INTRODUCTION

It is not fair and reasonable to require the defendant to stand trial on the charges of (1) Aiding and Abetting Second Degree Murder - Unintentional - While Committing a Felony and (2) Aiding and Abetting Second Degree Manslaughter – Culpable Negligence Creating Unreasonable Risk. There is no probable cause for the charges based on the entire record and the law.

FACTS

The probable cause portion of the complaint when supplemented by the following defense exhibits establishes that there is no probable cause.

EXHIBITS

1. THOMAS LANE BODY WORN CAMERA (BWC) (Exhibits 2 and 3)

Lane's Axon Body 3 Video 2020-05-25_2008 (Exhibit 3) is the footage from Lane arriving on scene and initially encountering George Floyd. This BWC along with transcript (Exhibit 2) provide a complete view of how the encounter went from arrival on the scene to after Floyd was put into an ambulance, in which Lane rode along to assist.

Lane initially notices movement in the car when approaching (Transcript, P. 1 of 25). He

demands to see Floyd's hands at least ten times while Floyd is seated in the vehicle. *Id.* at 1-2 of 25. Floyd attempts to leave the vehicle before being asked to exit. *Id.* at 2 of 25. Upon then exiting when asked to, Lane is yelling demands to Floyd as to hand placement and where to stand. *Id.* at 2-3 of 25. Floyd continues to move around until he is eventually cuffed and moved to the sidewalk where he is seated. *Id.* at 3-4 of 33.¹

Lane and Kueng are dealing with Floyd and two other passengers at the scene now. The two other passengers exited the vehicle without being asked to. Lane and Kueng ask questions of the passengers, as well as Floyd, regarding Floyd being under the influence of something based on his behavior. *Id.* at 5-7 of 25. Floyd is acting erratic and has foam around his mouth. *Id.* at 7 of 25. Lane and Kueng begin to walk Floyd to the squad vehicle to control the scene. Floyd continues to move around and falls down. *Id.* at 7 of 25. When approaching the squad car Floyd tells the officers he is claustrophobic, Lane tells Floyd he will crack the window and turn on the air conditioning for him. *Id.* at 7-10 of 25.

The officers attempt to get Floyd into the squad car and tell him multiple times to take a seat. Floyd does not take a seat and starts saying he is going to die. *Id.* at 10 of 25. He also tells officers he just had COVID. *Id.* The struggle continues and Floyd says "I'll get on the ground, anything." *Id.* at 11 of 25. He is asked several more times to get in the car. Floyd tells officers "I can't breathe" and "I want to lay on the ground" a couple of times. *Id.* at 12 of 25. Lane eventually responds with "get him on the ground". *Id.* Prior to getting Floyd to the ground he says he can't breathe multiple times. *Id.* at 12-13 of 25. Lane says "Let's take him out and MRT". *Id.* at 13 of 25.

¹ Floyd is moved to the sidewalk by Officer Kueng, contrary to what the Complaint states.

Floyd is brought to the ground at 20:19:14 and continues to move around and says he can't breathe. Lane calls for EMS code 2. *Id.* at 14 of 25. Ambulance is on the way (see Exhibit 3 at 20:20:28). Lane asks other officers "should we get his legs up, or is this good?" (Exhibit 2 at 14 of 25). Chauvin says "leave him". *Id.* 15 of 25. As Floyd continues to yell out, Lane tells the other officers "he's got to be on something." *Id.* The video footage at this time shows Lane is near Floyd's feet, Kueng is in the middle of Floyd's body, and Chauvin is near his back and head. Lane asks "should we roll him on his side" at 20:23:49. *Id.* at 16 of 25. Chauvin responds "no, he's staying put where we got him." *Id.* Lane then says "Okay. I just worry about the excited delirium or whatever." (20:23:57) *Id.* Chauvin responds "well that's why we got the ambulance coming." *Id.* Lane observes that he is breathing (20:25:14). *Id.* at 17 of 25. The video footage shows Floyd still moving his legs, where Lane is positioned (Exhibit 3, 20:25:36). Then Lane asks again, "should we roll him on his side?" (20:25:40) *Id.* at 17 of 25. Radio is heard on BWC saying EMS is at Portland and 36 (approximately 4 blocks from Cup Foods) (20:26:39). (Exhibit 2 at P. 18 of 25). At 20:27:02 Lane says "there we go" when the ambulance is arriving (Exhibit 3); (Exhibit 2 at P. 19 of 25). EMS walks up to check Floyd at 20:27:41 (Exhibit 3). Lane asks EMS "you want one of us to ride with?" Lane goes in the ambulance to help with CPR (Exhibit 2 at 19 of 25).

2. THOMAS LANE INTERVIEW TRANSCRIPT (Exhibit 1)

Lane gave a voluntary statement to the BCA with counsel present. He provided background information about his employment and details of the events which occurred on May 25, 2020.

Lane was hired by Minneapolis Police Department end of February 2019 (Transcript of Interview, P. 4 of 60). He started as a cadet and after completing four months with the Academy

he started the field training officer (FTO) process, which is another four plus months. *Id.* at 5 of 60. During the FTO process, Lane explained, you ride with the training officer and work through calls together. *Id.* Lane worked specifically with three different officers during the FTO process. *Id.* at 6 of 60. After the FTO process, Lane explained, that you have an attendant period where you do 10 shifts as an able squad. *Id.* at 7 of 60. During this period your FTO rides along with you and you can't ask them any questions, they don't do anything, they are just there as backup. *Id.* Lane finished the 10 day attendant period the Wednesday (May 20, 2020) before this incident, which was a Monday. *Id.*

Lane stated that Officer Derek Chauvin was a Field Training Officer (FTO), although he was not Lane's FTO. *Id.* at 11 of 60. Chauvin was a FTO in the precinct that Lane worked in. *Id.* Lane had interaction with Chauvin before the incident, and Chauvin had given Lane guidance on how to handle certain calls. *Id.* During the 10 day attendant period you cannot ask your own FTO questions but you can ask other officers on scene or call other officers for guidance and best practices. *Id.* Lane did this with Chauvin, and Chauvin gave him advice on how to best handle a call. *Id.* at 11-12. Chauvin was "always training" according to Lane's knowledge as to where he worked. *Id.* at 35 of 60.

Lane explained the incident with George Floyd. From the initial interaction with Floyd and his vehicle, Lane noticed the driver and passenger in the vehicle digging underneath the seat, as if reaching for something. *Id.* at 13 of 60. Floyd had his hands down below the seat, leaning forward. *Id.* After not showing his hands upon command, Lane drew his gun. *Id.* Floyd moved his hand up quickly and attempted to step out of the vehicle. *Id.* Once Floyd's hands were up, Lane put his gun away. *Id.* Lane continued to make commands regarding Floyd's hands and stepping out of the

vehicle. Floyd was not complying. *Id.* There was concern he would drive off. *Id.* at 14 of 60. Lane then pulled him out of the vehicle and was commanding him to turn around. *Id.* Floyd again was not complying. *Id.* Floyd was finally handcuffed. *Id.* While cuffing Floyd the other two passengers stepped out of the car on their own. *Id.* There were three civilians and two officers so Lane decided to move Floyd to the squad car to get him secured. *Id.* Lane stated he wanted to come back and search the car and try to figure out what was going on and why he was digging around and also get the other two people from the vehicle properly ID'd. *Id.*

Upon attempting to get Floyd to the vehicle, he was dragging his feet, pushing back, saying he did not want to go in there. *Id.* Lane could still see the other two passengers, who were now moving toward the vehicle of interest. *Id.* Floyd was searched and a pipe was located on his person. *Id.* Floyd started saying he was claustrophobic, don't put me in the car, he was refusing, and kept pushing back, trying to get out, and officers were trying to push him in. *Id.* Lane was assuring Floyd he would stay in the car with him, roll the windows down, and turn the air on. *Id.* at 15 of 60. Floyd refused to get in the car. *Id.* Lane went to the other side of the squad to try and pull Floyd through that way. *Id.* Floyd started to thrash back and forth at that point. *Id.* Floyd was hitting his face on the glass in the squad and began to bleed from his mouth. *Id.* When Lane was pulling, Floyd was pushing, Floyd came through the other side of the squad, and he was fighting with the officers trying to not go back in the squad. *Id.*

Officers ended up bringing Floyd to the ground after the struggle to get him in the car because Floyd was out of control. *Id.* Chauvin, Lane, and Kueng restrained him on the ground. *Id.* Lane said let's use the "MRT", Maximum Restraint Technique, which is what you use on someone who is handcuffed and not complying. *Id.* Lane suggested using the hobble because he learned that

that is what to use when you have someone who is handcuffed that is physically resisting. *Id.* Lane was trying to get Floyd's legs into a leg cross for that. *Id.* Floyd was kicking around at that point. *Id.* Chauvin had his knee "up around the shoulders and neck area" according to Lane. *Id.* at 35 of 59.

At that point an ambulance had been started "code 2" for the mouth bleeding. *Id.* at 15 of 60. Lane remained at Floyd's feet area. *Id.* Officers continued to hold him there because an ambulance was on its way and he was still fighting and moving around. *Id.* The plan was to restrain him so he couldn't move and hurt himself anymore, he had just been banging his head on the glass and started bleeding in the squad. *Id.* The ambulance was stepped up to "code 3". Lane thought Floyd was on drugs based on his behavior. *Id.* at 16 of 60. Lane also thought he might be in medical distress. *Id.* at 39 of 60.

When Floyd had stopped actively kicking, Lane asked if Floyd should be rolled to his side. *Id.* at 16 of 60. Lane was thinking of excited delirium. *Id.* He learned in the Academy when someone is on drugs, they work themselves up and they can have issues from that. *Id.* Lane asked another time if "we should roll him onto his side." *Id.* Chauvin responded that they would leave him there because the ambulance was coming. *Id.* Lane listened to FTO Chauvin and thought it made sense because there are times when a person who is OD'ing or passed out one minute but then comes back really aggressive. *Id.* Lane watched for Floyd to still be breathing until the ambulance came. *Id.* Lane suggested to Kueng at one point to check Floyd's pulse because he had stopped moving for a while, then the ambulance arrived. *Id.*

Lane helped the EMT personnel load Floyd into the ambulance and asked if they wanted him to go with, they said yes. *Id.* Lane rode with and started CPR. *Id.* Lane continued to offer any

help needed in the ambulance. *Id.* at 17 of 60. Lane went back to the scene after his help was no longer needed. *Id.* At the scene he talked to the Sergeant, who then went down to the hospital. *Id.* Chauvin then directed Lane and other officers to wait on the car. *Id.*

This was the first day Lane and Kueng rode together as partners. *Id.* at 19-20 of 60. During the encounter with Floyd, Lane was “going off Officer Chauvin’s experience and what he was saying”, hold him here until EMS arrives. *Id.* at 40 of 60. Lane was aware that Chauvin had 20 years on. *Id.* at 41 of 60. Through the FTO process, you trust and go to your senior officers for experience and help on calls, and the best thing to do in a situation, they give direction and you follow their lead. *Id.* Another expectation is to call senior officers “sir” when you are a new officer. *Id.* at 56 of 60.

3. KUENG BODY WORN CAMERA (Exhibits 4 and 5)

Kueng’s Axon Body 3 Video 2020-05-25_2008 (Exhibit 5) is the footage from Kueng arriving on scene and initially encountering George Floyd. This BWC along with transcript (Exhibit 4) provide a complete view of how the encounter went from arrival on scene to after Floyd left the scene by ambulance and Kueng remained at the scene.

Kueng and Lane worked together to address the three people found in the vehicle. Kueng tells Floyd to stay in the car, stand up, stop resisting and sit down from the very beginning of the encounter. (Exhibit 4, P. 5-8 of 57). Kueng confronts Floyd about passing a fake bill and Floyd says “yeah”. *Id.* at 10 of 57. Kueng tells Floyd why he was pulled from the car “because you was not listening to anything we told you.” *Id.* And Floyd responds “right, but I didn’t know what was going on.” *Id.* at 10 of 57. Kueng confronts Floyd about moving around in the car and that it makes them think something more is going on. *Id.* at 11 of 57. Kueng then tells Floyd he is going to be

put in the back of the squad to sort everything out. *Id.*

During the pat down at the squad, Kueng says “you’re still able to reach to your side. You’re making me nervous.” *Id.* at 12 of 57. He goes on to say “you acting real erratic”. *Id.* At this time the struggle starts of trying to get Floyd into the vehicle, Kueng says “stop moving around... stand up...stop falling down...you ain’t listening...sit still...why are you having trouble walking...take a seat (multiple times)...I’m hearing you but you’re not working with me, you’re talking fine.” *Id.* at 13-29 of 57. Later while on the ground, Chauvin is also heard telling Floyd “you’re doing a lot of talking” and “you’re doing a lot of talking, a lot of yelling” in response to Floyd saying he can’t breathe. *Id.* at 26 and 31 of 57. And then towards the end of the encounter with Floyd, Kueng is commenting that Floyd is still breathing. *Id.* at 35 of 57. Kueng and Thao are commenting to the crowd to keep distance, get on the sidewalk. *Id.* at 35 of 57.

Later on in the recording, Kueng is talking to the store manager where the fake money was used by Floyd. The store manager explains what happened and that they confiscated one – twenty dollar bill but that he had a lot more with him. *Id.* at 48 of 57. The manager also included that they seemed “high off stuff”. *Id.* at 50 of 57. Kueng explains to Chauvin more of the original encounter and stated “but we pulled him out because when we tried to talk to him he started fidgeting around and grabbing for things. So we pulled him out, but he was not cooperative.” *Id.* at 56 of 57. “He was fighting us the whole time.” *Id.*

4. PICTURES INSIDE FLOYD VEHICLE (Exhibit 6)

During the investigation pictures were taken of inside Floyd’s vehicle. The pictures were provided to the defense by the State. The pictures in this exhibit show crumpled up money, two – counterfeit twenty dollar bills, and two –one dollar bills, lodged in between the center console and

the passenger seat. Right where Lane saw Floyd put his right hand.

5. MINNEAPOLIS POLICE DEPARTMENT TRAINING MANUAL (Exhibit 7)

The State provided hundreds of pages regarding Minneapolis Police Training. Some important topics found in the manual (Exhibit 7) and taught to Lane include:

- Multi-officer response options – pointing out head, arm, and leg control by multiple officers;
- Maximum restraint technique or hobble;
- Active resistance;
- Authorized use of force;
- Neck restraint – definition, using arm or leg, during active resistance;
- When to handcuff – flight risk;
- Removing non-compliant subject from vehicle;
- When force may be used to make arrest;
- Vehicle extraction scenarios;
- Excited delirium – symptoms, risk factors, restraint with multiple officers, recovery position and sudden cardiac arrest (photo), and law enforcement control with sedative medical intervention.

See Exhibit 7 to review these topics taken from the training materials.

ARGUMENT

There is not substantial admissible evidence to survive a motion for a directed verdict that Thomas Lane aided and abetted second degree murder or manslaughter.

LEGAL STANDARD FOR MOTION

The Minnesota Supreme Court held in *State v. Florence* that the purpose of a motion to dismiss is to protect defendants who are unjustly or improperly charged from being compelled to stand trial. 306 Minn. 442, 446, 239 N.W.2d 892, 896 (1976). A neutral and detached judge must make the determination of whether probable cause exists in a complaint. *State v. Burch*, 284 Minn. 300, 305, 170 N.W.2d 543, 548 (1969). In determining whether to dismiss a complaint under Rule 11.04 for lack of probable cause the trial court is not simply reassessing whether or not probable cause existed to warrant the arrest, rather, under *Florence*, the trial court must determine based upon the facts disclosed by the record whether it is fair and reasonable to require the defendant to stand trial. *Florence* at 904. Where the state cannot present evidence supporting some elements of the crimes charged, probable cause does not exist. *State v. Flicek*, 657 N.W.2d 592, 597 (Minn. App. 2003). To establish probable cause, it is not necessary that a defendant's guilt be established beyond a reasonable doubt. *State v. Knoch*, 781 N.W.2d 170, 177 (Minn. App. 1010).

Where a defendant produces evidence that, if viewed in isolation and believed, would exonerate defendant, the prosecutor need convince the court, based on the entire record including the prosecutor's own representations as an officer of the court, that there is substantial admissible evidence for trial and a conviction. *State v. Rud* 359 N.W.2d 573, 579 (Minn. 1981). The production of exonerating evidence by a defendant at the probable cause hearing does not justify the dismissal of the charges if the record establishes that the prosecutor possesses substantial evidence that will be admissible at trial and that would justify denial of a motion for a directed verdict of acquittal. *State v. Koenig*, 666 N.W.2d 366, 372 (Minn. 2003). The test to determine whether a case will survive a motion for directed verdict of acquittal is: "whether the evidence is sufficient to present a fact question for the jury's determination, after viewing the evidence and all

resulting inferences in favor of the state.” *State v. Slaughter*, 691 N.W.2d 70, 74-75 (Minn. 2005).

LIABILITY FOR CRIMES OF ANOTHER

Officer Lane is charged with two crimes under the liability for crimes of another, aiding and abetting, theory. Minnesota Statute 609.05, Subdivision 1 reads: Aiding, abetting; liability. A person is criminally liable for a crime committed by another if the person intentionally aids, advises, hires, counsels, or conspires with or otherwise procures the other to commit the crime. Minn. Stat. 609.05, Subd. 1(1980) implies a high level of activity on the part of an aider and abettor in the form of conduct that encourages another to act. *State v. Ulvinen*, 313 N.W.2d 425 (1981). Minn. Stat. 609.05, Subd. 1(1980), imposes liability for actions which affect the principal, encouraging him to take a course of action which he might not otherwise have taken. *Id.*

To impose liability under the aiding and abetting statute, the state must show that the defendant played a knowing role in the commission of the crime. M.S.A. § 609.05(1). *State v. Crow*, 730 N.W.2d 272 (Minn. 2007). Mere presence at the crime scene does not alone prove that a person aided or abetted, because inaction, knowledge, or passive acquiescence do not rise to the level of criminal culpability. *Id.*

There are two mens rea requirements that must be proven in order to find a defendant guilty as an accomplice. *State v. Huber*, 877 N.W.2d 519, 524 (Minn. 2016). To be criminally liable for the crimes of another, the State must prove that the defendant “knew his alleged accomplice was going to commit a crime and the defendant intended his presence or actions to further the commission of that crime.” *Id.* citing *State v. Milton*, 821 N.W.2d 789, 808 (Minn. 2012).

In *Huber*, the defendant was charged under the accomplice liability theory for murder. *Huber* at 525. Huber was convicted of aiding and abetting, however, the jury instructions were found to be plainly erroneous because they did not explain the meaning of “intentionally aiding.” *Id.* at 525. The court found that the instructions given erroneously allowed the jury to convict Huber for his mere presence near the commission of the crime or because his actions assisted Delbert (his father) in committing the crime, regardless of Huber’s mens rea. *Id.* There was no direct evidence that Huber knew Delbert intended to commit any crime against Larson on the morning of the murder or that Huber was nearby when the altercation or the shooting occurred. *Id.* at 526.

The model criminal jury instruction provides:

CRIMJIG 4.01 Liability for Crimes of Another

The defendant is guilty of a crime committed by another person when the defendant has played an intentional role in aiding the commission of the crime and made no reasonable effort to prevent the crime before it was committed. “Intentional role” includes intentionally aiding, advising, hiring, counseling, conspiring with, or procuring another to commit the crime.

The defendant's presence or actions constitute(s) intentionally aiding if:

First, the defendant knew (another person)(others) (was)(were) going to commit or (was)(were) committing a crime.

Second, the defendant intended that (his) (her) presence or actions aid the commission of the crime(s).

There is no evidence in the voluminous discovery that Officer Lane played an intentional role in aiding the commission of a crime. There is no circumstantial evidence Lane knew that Chauvin was committing a crime. The two mens rea requirements cannot be met.

(1) SECOND DEGREE MURDER – UNINTENTIONAL

The State must produce evidence to meet the elements of second degree murder in regard

to Chauvin, namely, that (1) the death must be proven, (2) the defendant (Chauvin) caused the death, (3) at the time of causing the death, the defendant (Chauvin) was committing or attempting to commit a felony (third degree assault in this case), and (4) the acts took place in Hennepin County, Minnesota on May 25, 2020. See Minn. Stat. 609.19.2(1) and CRIMJIG 11.29 Murder in the Second Degree—While Committing a Felony—Elements. And then the state must produce evidence that Lane aided and abetted that crime.

The allegation is that Chauvin was committing or attempting to commit a felony, third degree assault, and Lane aided and abetted that crime.

CRIMJIG 13.16 Assault in the Third Degree—Substantial Bodily Harm—Elements

The elements of assault in the third degree are:

First, the defendant assaulted.

CRIMJIG 13.02 Assault—Infliction of Bodily Harm

The term “assault,” as used in this (charge) (case) is the intentional infliction of bodily harm upon another [or the attempt to inflict bodily harm upon another].

“Bodily harm” means physical pain or injury, illness, or any impairment of a person's physical condition. [In order for an assault to have been committed, it is not necessary that there have been any physical contact with the body of the person assaulted.¹]

“Intentionally” means that the actor either has a purpose to do the thing or cause the result specified, or believes that the act performed by the actor, if successful, will cause the result. In addition, the actor must have knowledge of those facts that are necessary to make the actor's conduct criminal and that are set forth after the word “intentionally.” [To “have knowledge” requires only that the actor believes that the specified facts exist.]

[“Attempted” means that the actor did an act which was a substantial step toward, and more than mere preparation for, causing the result, and that the actor did that act with intent to cause that result. “With intent to” means that the actor either had a purpose to do the thing or cause the result specified, or believed that the act, if successful, will cause that result. [Here insert CRIMJIGs 5.01 and 5.02 on Attempt if appropriate.]]

Second, the defendant inflicted substantial bodily harm on (). “Substantial bodily harm” means bodily harm that involves a temporary but substantial disfigurement, causes a temporary but substantial loss or impairment of the function of any bodily

member or organ, or causes a fracture of any bodily member. It is not necessary for the State to prove that the defendant intended to inflict substantial bodily harm, but only that the defendant intended to commit the assault.

Third, the defendant's act took place on (or about) in () County.

Lane did not have knowledge Chauvin was committing a crime, third degree assault, while they were restraining Floyd. The decision to restrain Floyd was reasonably justified. Prior to approaching the vehicle, officers saw furtive movement in the vehicle. Officers did not know if there was a gun involved or if the occupants of the vehicle were planning to flee. It was later learned that it was counterfeit money that Floyd was shoving into the side of the seat where officers saw him reaching, as evidenced by the pictures in Exhibit 6. Floyd was uncooperative from the second officers approached his vehicle. Floyd was actively resisting and acting erratic for over 10 minutes.

The officers, Lane and Kueng, attempted to secure Floyd in the squad car to further investigate what had happened. This decision was made based on Floyd's conduct, his condition, and the officers being outnumbered. Floyd had just committed a felony, he was not being cooperative, and appeared to be under the influence of drugs. There was a lengthy struggle to get 6 foot four, 223 pound Floyd into the car. Floyd initially claimed he was claustrophobic and Lane offered to stay with him, roll the windows down, and turn the air conditioning on. Floyd still would not comply. He continued to yell and kick back, and began bleeding during the struggle in the squad vehicle. While in the squad vehicle, Floyd was yelling that he was going to die and he could not breathe. Then there was a decision, based on Floyd's request, to bring him to the ground, when they could not get him fully in the vehicle.

When moving Floyd to the ground, Lane suggested using the MRT (Maximum Restraint

Technique) which is used when a handcuffed person is actively resisting, as he was trained to do (Exhibit 7). Once on the ground, Lane was at the feet of Floyd while he continued to kick and yell out for several minutes. In the middle of Floyd's body was Kueng, holding Floyd's hands and body down. At the head area of Floyd was FTO Chauvin. As is apparent in the BWC of Lane, Lane did not have a direct clear view of where Chauvin was exactly placed, but he thought near the neck and back area of Floyd.²

Officer Lane did not know there was a felony being committed or attempted when Chauvin was kneeling on Floyd. If in fact a felony was committed or attempted. The training material supports that neck restraint was something taught to officers (Exhibit 7). Lane is a trained police officer who, although new to the job, knew that officers are allowed to use reasonable force when needed. *Id.*³ Based on Floyd's actions up to this point, the officers had no idea what he would do next – hurt himself, hurt the officers, flee, or anything else, but he was not cooperating.

Lane asked, twice, if Floyd should be moved to his side. Chauvin a 20 year veteran and FTO told Lane, no, keep him where he is at until the ambulance arrives. Chauvin assured Lane that Floyd was fine where he was. There was no visible intentional infliction of harm. There was no active punching or kicking or even intense pressure that was visible to Lane. As seen in the body camera footage, Chauvin was calmly positioned near Floyd's neck and back area. Further evidence that the force used by Chauvin by kneeling was not substantial, is that there were no physical findings of asphyxia (see Complaint). Also, May 25, 2020 was Lane's fourth day on the job. Kueng, who responded with Lane to the scene, was three days on the job, and positioned in

² See picture in training materials (Exhibit 7) where officer is positioned with knee on neck of suspect.

³ See Exhibit 8 (Lombardo; Gilbert v. City of St. Louis, et. al., 956 F.3d 1009 (8th Cir. 2020)).

between Lane and Chauvin. It was certainly reasonable for Lane to believe Chauvin and follow his direction.

Lane did not intentionally aid, advise, hire, counsel, or conspire with Chauvin or otherwise procure Chauvin to commit second degree murder. Lane did not encourage any alleged criminal actions of Chauvin. He did not know and had no reason to believe that a third degree assault was being committed, and he certainly did not intend his actions (restraining his legs/feet) to further a crime.⁴

(2) SECOND DEGREE MANSALUGHTER – CULPABLE NEGLIGENCE

“Culpable negligence” is “more than ordinary negligence” and “more than gross negligence.” *State v. Back*, 755 N.W.2d 866, 869 (Minn. 2009), citing: *State v. Beilke*, 267 Minn. 526, 534, 127 N.W.2d 516, 521 (1964). It is “gross negligence coupled with the element of recklessness.” *Id.*; see *State v. Grover*, 437 N.W.2d 60, 63 (Minn.1989) (explaining that criminal negligence requires more than the negligence giving rise to a civil cause of action).

CRIMJIG 11.56 Manslaughter in the Second Degree—Elements

The elements of manslaughter in the second degree are:

First, the death of () must be proven.

Second, the defendant caused the death of (), by culpable negligence, whereby the defendant created an unreasonable risk and consciously took a chance of causing death or great bodily harm.

“To cause” means to be a substantial causal factor in causing the [death]. The defendant is criminally liable for all the consequences of (his) (her) actions that occur in the ordinary

⁴ Lane asked FTO Chauvin about moving Floyd to his side twice, Chauvin responded that they were going to hold Floyd where he was until the ambulance arrived. Lane had no basis to believe Chauvin was wrong in making that decision. The ambulance arrived approximately one minute and 20 seconds after Lane last asked about rolling Floyd to his side. But what would have happened if Lane did not follow Chauvin’s direction and went up and attempted to shove Chauvin off of Floyd? Floyd could have jumped up, become aggressive, and/or run. The crowd may have jumped in. The other three officers would have reacted in any plethora of ways, guns may have been drawn, tasers, etc. It would have been total chaos. Lane trusted Chauvin’s judgment as a 20 year veteran and waited for the ambulance to arrive. His trust was reasonable and not criminal.

and natural course of events, including those consequences brought about by one or more intervening causes, if such intervening causes were the natural result of the defendant's acts. The fact that other causes contribute to the [death] does not relieve the defendant of criminal liability. However, the defendant is not criminally liable if a "superseding cause" caused the [death]. A "superseding cause" is a cause that comes after the defendant's acts, alters the natural sequence of events, and produces a result that would not otherwise have occurred. "Culpable negligence" is intentional conduct that the defendant may not have intended to be harmful, but that an ordinary and reasonably prudent person would recognize as involving a strong probability of injury to others. "Great bodily harm" means bodily injury that creates a high probability of death, or causes serious permanent disfigurement, or causes a permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily harm.

There is no probable cause that Lane aided and abetted second degree manslaughter. As in count one, the circumstantial evidence proves Lane's innocence, his lack of knowledge, and no criminal intent. The following evidence cannot be disputed by the State:

- 1) Minneapolis Police training received by Lane;
- 2) Lane on the job for four days;
- 3) Chauvin, field training officer, 20 years' experience;
- 4) Lane put his gun away immediately once Floyd showed his hands;
- 5) Floyd's resistance being hand cuffed, Floyd's resistance walking to the squad, Floyd's resistance getting into the squad;
- 6) Lane offered to sit with Floyd, to roll down the windows, to turn the air conditioning on in the squad;
- 7) Floyd initially claimed he couldn't breathe when officers were attempting to put him in the squad vehicle, before he was moved to the ground;
- 8) Floyd requested to be moved to the ground;
- 9) Floyd continued to yell and move around while on the ground;
- 10) Lane questioned Chauvin twice about rolling Floyd on to his side;

- 11) Lane went in the ambulance and started CPR on Floyd;
- 12) Lane's consistent statement to the Sergeant at the scene; and
- 13) Lane voluntarily giving a statement, corroborated by video.

Lane did not know what Chauvin was thinking while restraining Floyd. Chauvin did not verbally tell Lane anything about his intentions other than waiting for the ambulance to arrive. Lane knew Floyd needed to be restrained and he knew Chauvin was authorized to use reasonable force to restrain.

CONCLUSION

The defendant produced evidence of innocence, evidence that was not part of the Complaint. This shifts the focus of the Court to the State which is in turn required to convince the Court that it has substantial admissible evidence for trial such that the Court would be justified in denying a motion for directed verdict of acquittal. It is not fair or reasonable for the defendant to stand trial on the charges. Based on the lack of evidence to establish probable cause this case must be dismissed.

Dated this 7th day of July, 2020.

Respectfully Submitted,

s/ Earl Gray

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