

STATE OF MINNESOTA
IN COURT OF APPEALS

Filed In District Court
State of Minnesota

SEP 23 2021

CASE NO. _____

Derek Michael Chauvin,

Appellant,

v.

State of Minnesota,

Respondent.

**STATEMENT OF THE
CASE OF APPELLANT**

TO: Clerk of The Appellate Courts
305 Minnesota Judicial Center
25 Rev. Dr. Martin Luther King
Jr.
Saint Paul, Minnesota 55155

Clerk of District Court
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ATTORNEY FOR RESPONDENT

1. Court of case origination and name of presiding judge:

Hennepin County District Court-Criminal Division, the Honorable Peter A. Cahill,
Judge of District Court, presiding.

2. Jurisdictional statement (appeal from District Court/criminal):

This appeal is taken from the Appellant's conviction, and the District Court's pretrial, trial, post-trial, and sentencing orders and rulings.

Statute, rule or other authority authorizing appeal: Minn. R. Crim. P. 28, subd. 2.

Date of entry of judgment or date of service of notice of filing of order from which appeal is taken: June 25, 2021 (and other pre-trial, trial, and post-trial order dates prior to the final judgment).

Authority fixing time limit for filing notice of appeal: "In felony...cases, an appeal by the defendant must be filed within 90 days after final judgment or entry of the order being appealed." Minn. R. Crim. P. 28.02, subd. 4(3)(a).

Has a sentence been imposed or imposition of sentence stayed? Yes (X) No ()

3. State type of litigation and designate any statutes at issue.

Type of litigation: Criminal

Statutes at issue: Minn. Stat. §§ 609.19, subd. 2(1); 609.195(a); 609.205(1); U.S. Const. amend. IV; U.S. Const. amend. V; U.S. Const. amend. VI; U.S. Const. amend. XIV; Minn. Const. art. I, §§ 6, 7, 10; Minn. R. Crim. P. 9.01, 9.03, 24.03, 25.02, 25.03, 26.02, 26.03, 26.04; Minn. R. Evid. 401, 402, 403, 404, 412, 601, 602, 608, 701, 802, 803, 804.

4. Brief description of claims, defenses, issues litigated and result below. For criminal cases, specify whether conviction was for a misdemeanor, gross misdemeanor, or felony offense.

On May 29, 2020, Appellant was charged with one count of Murder in the Third Degree—Perpetrating Eminently Dangerous Act and Evincing Depraved Mind and one count of Manslaughter in the Second Degree—Culpable Negligence Creating Unreasonable Risk. On June 30, 2020, Appellant's charges were amended to include Murder in the Second Degree—Unintentional—While Committing a Felony.

On August 28, 2021, Appellant filed a Notice of Motion and Motion to dismiss all three counts of the Complaint on the grounds that the State failed to plead sufficient probable cause to sustain the charge, as required by *State v. Florence*. See *State v. Rud*, 359 N.W.2d 573, 579 (Minn. 1984) and Minn. R. Crim. P. 2.01. On October 21, 2020, the District Court granted Appellant's motion to dismiss Count II (Third-

Degree Murder) for lack of probable cause, and denied Appellant's motion to dismiss Counts I (Second-Degree Murder) and Count III (Second-Degree Manslaughter).

On September 10, 2020, the State filed a Notice of Intent to Offer Other Evidence relating to other police incidents involving Appellant from March 15, 2014; February 15, 2015; August 22, 2015; April 22, 2016; June 25, 2017; September 4, 2017; March 12, 2019; and July 6, 2019.

On September 11, 2020, the State moved the District Court for an order to joining *State v. Derek Michael Chauvin*, Court File No. 27-CR-20-12646; *State v. J Alexander Kueng*, Court File No. 27-CR-20-12953; *State v. Thomas Kiernan Lane*, Court File No. 27-CR-20-12951; and *State of Minnesota v. Tou Thao*, Court File No. 27-CR-20-12949. On November 4, 2020, the District Court granted the State's joinder motion. Said motion was granted by the District Court on November 4, 2020.

On September 11, 2020 and October 12, 2020, the State filed notice of intent to seek an upward sentencing departure against defendant pursuant to *Blakely v. Washington*, 542 U.S. 296 (2004). On January 26, 2021, the District Court that of the State's proposed Blakely factors were appropriate.

On September 11, 2020, Appellant moved the District Court for an order to change venue on the basis of a tainted Hennepin County jury pool due to excessive pretrial publicity and in light of the protests, riots, and looting occurring primarily in Hennepin and Ramsey counties. On November 4, 2020, the District Court denied Appellant's motion.

On September 11, 2020, Appellant moved the District Court for an order for an anonymous jury and sequestration. On November 4, 2020, the District Court ordered that the jury will be anonymous, and that sequestration will occur only during deliberation and not during Appellant's trial.

On September 11, 2020, Appellant moved the District Court for an order disqualifying the Hennepin County Attorney's Office from prosecuting Appellant's case on the grounds that several assistant county attorney's violated Minn. R. Prof. Resp. 3.7 by making themselves witnesses and conducting an inappropriately conducted interview with the Hennepin County Medical Examiner, Dr. Andrew Baker on May 27, 2020. An additional basis for the motion was that the Hennepin County Attorney's Office was also engaging in inappropriate pretrial publicity campaigns by leaking detailed and specific information regarding an alleged plea agreement to the media. The District Court granted Appellant's motion and disqualified Hennepin County Attorney Michael Freeman; his Chief Deputy Andrew LeFevour; Managing Assistant County Attorney Amy Sweasy, and Senior Assistant County Attorney Patrick Lofton from participating in the prosecution of Appellant's case. On November 4, 2020, upon request for reconsideration by the State, the District Court

vacated its September 11, 2020 disqualification order and permitted the previously disqualified attorneys to participate in a supportive background capacity.

On September 11, 2020, Appellant moved the District Court for an order allowing Appellant to present 404(b) evidence against George Floyd from a Minneapolis May 6, 2019 arrest and a Harris County, Texas incident from August 9, 2007.

On October 16, 2020, Appellant adopted and joined in Thomas Lane's motion for an order to admit George Floyd's May 6, 2019 arrest incident.

On January 7, 2020, the State moved to continue Appellant's trial due to COVID-19 safety concerns.

On January 11, 2021, Appellant moved the District Court for an order to continue Appellant's trial on the basis that it was necessary to combat rampant pretrial publicity and that the State was intentionally impeding Appellant's trial preparation by way of its continued violations of the discovery rules and the court's discovery order.

Appellant also moved the District Court for an order requiring the Attorney General's Office to product an exact copy of BCA disclosures to the attorney general on the basis that a significant amount of discovery appeared to be missing, and that discovery provided to Appellant was unnecessarily disorganized, deceptively Bates stamped, and buried amongst irrelevant documents.

On January 11, 2021, the District Court Appellant's motion for continuance, but granted the State's motion in part by severing Appellant's case from the other three companion cases and setting those cases further out for trial. The State subsequently filed a motion for reconsideration, which was again denied by the District Court.

The District Court also found that the State did not engage in intentional discovery violations, but granted Appellant's September 11, 2020 motion for an exact copy of BCA disclosures to the attorney general's office.

On January 26, 2021, the District Court denied Appellant's September 11, 2020 motion to admit 404(b) evidence relating to George Floyd's May 6, 2019 arrest and Texas incident. The District Court granted the State's motion to admit incidents from August 22, 2015 and June 25, 2017.

In response to the District Court's denial of the State's motion for continuance, the State filed a pretrial appeal on January 28, 2021 (A21-0133).

On February 4, 2021, the State moved to reinstate Third-Degree Murder in light of *State v. Noor*, 955 N.W.2d 644 (Minn. App. 2021). On February 11, 2021, the District Court denied the State's motion.

On February 12, 2021, this Court dismissed the State's pretrial appeal in case no. A21-0133.

On February 12, 2021, in response to the District Court's denial of the State's motion to reinstate Third-Degree Murder, the State filed a Notice of Appeal (A21-0201). On February 16, 2021, Appellant moved to dismiss the appeal. On February 23, 2021, the Minnesota Court of Appeals denied Appellant's motion to dismiss and heard oral arguments on March 1, 2021.

On March 5, 2021, the Minnesota Court of Appeals reversed and remanded the District Court's denial of the State's motion to reinstate Third-Degree Murder, and on March 8, 2021, the State moved this Court to stay proceedings in the district court until such time as the appellate order became final.

On March 8, 2021, Appellant petitioned for further review, and on March 10, 2021, the Minnesota Court of Appeals denied Appellant's petition.

On March 8, 2021, Appellant's jury voir dire and trial commenced.

On March 11, 2021 the District Court reinstated Third-Degree Murder.

On March 18, 2021, after the City of Minneapolis announced its settlement with the family of George Floyd and two seated jurors were dismissed because they no longer could be impartial, Appellant again moved for a change of venue and a new trial, on the ground of prejudicial publicity. On March 19, 2021, the court denied the motions.

After allowing Appellant to make an offer of proof, on March 24, 2021, the District Court limited the admissibility of the May 6, 2019, Floyd arrest

After service of subpoena, on March 31, 2021, Morris Hall filed a Notice of Intent to Invoke the Fifth Amendment Privilege and Motion to Quash Subpoena.

On April 11, 2021, Appellant moved the District Court to exclude Professor Seth Stoughton as cumulative evidence.

On April 19, 2021, Appellant verbally moved the District Court for a new trial on the grounds of prosecutorial misconduct during closing argument. The District Court denied Appellant's motion.

On April 20, 2021, Appellant was found guilty of one count of Murder in the Third Degree—Perpetrating Eminently Dangerous Act and Evincing Depraved Mind, one count of Murder in the Second Degree—Unintentional—While Committing a Felony,

and one count of Manslaughter in the Second Degree—Culpable Negligence Creating Unreasonable Risk. Appellant waived a jury trial regarding aggravating factors.

On April 30, 2021, the parties filed their *Blakely* memoranda regarding application of aggravating factors.

May 4, 2021, Appellant filed a number of post-verdict motions, including an order requiring *Schwartz* hearing. On June 24, 2021, the District Court denied Appellant's motions in their entirety and without memorandum.

On May 11, 2021, the District Court issued its verdict and findings of fact regarding aggravating factors, finding that four of the five factors championed by the State were present.

On June 2, 2021, the parties filed their sentencing memoranda, and Appellant moved for mitigated dispositional and durational departures.

On June 25, 2021, Appellant was sentenced to 270 months of imprisonment.

5. List specific issues proposed to be raised on appeal.

- (1) The District Court abused its discretion when it denied Appellant's motion for change of venue or a new trial;
- (2) The District Court abused its discretion when it denied Appellant's motion for a continuance or a new trial;
- (3) The District Court abused its discretion when it denied Appellant's motions to sequester the jury throughout trial;
- (4) The State committed prejudicial prosecutorial misconduct;
- (5) 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;
- (6) The District Court prejudicially erred when it permitted the State to present cumulative evidence with respect to use of force;
- (7) The District Court abused its discretion when it ordered the State to lead witnesses on direct examination;

- (8) The District Court abused its discretion when it failed to make an official record of the numerous sidebar conferences that occurred during trials;
- (9) The District Court abused its discretion when it failed to allow Appellant to exercise several cause strikes for clearly biased jurors during voir dire;
- (10) The District Court abused its discretion when it permitted the State of amend its complaint to add the charge of third-degree murder;
- (11) The District Court abused its discretion when it strictly limited and undercut the admissibility of George Floyd's May 6, 2019 arrest;
- (12) The District Court abused its discretion when it submitted instructions to the jury that materially misstated the law;
- (13) The District Court abused its discretion when it by denying Appellant's motion for a *Schwartz* hearing;
- (14) The District Court abused its discretion when it denied Appellant's post-verdict motion for a new trial due to juror misconduct.

6. Related appeals.

List all prior or pending appeals arising from the same action as this appeal:

State v. Chauvin, no. A21-0133, *dismissed* (Minn. App. Feb. 12, 2021).

State v. Chauvin, 955 N.W.2d 684 (Minn. App. 2021), *review denied* (Minn. Mar. 10, 2021).

List any known pending appeals in separate actions raising similar issues to this appeal:
None.

7. Contents of record.

Is a transcript necessary to review the issues on appeal? Yes (X) No ()

If yes, full (X) or partial () transcript?

Has the transcript already been delivered to the parties and filed with the trial court administrator? Yes () No (X)

If not, has it been ordered from the court reporter? Yes () No (X)

In lieu of the record as defined in Rule 110.01, have the parties agreed to prepare a statement of the record pursuant to Rule 110.04? Yes () No (X)

8. Is oral argument requested? Yes (X) No ()

If so, is argument requested at a location other than that provided in Rule 134.09, subd. 2? Yes () No (X)

9. Identify the type of brief to be filed.

Formal brief under Rule 128.02. (X)

Informal brief under Rule 128.01, subd. 1 (must be accompanied by motion to accept unless submitted by claimant for reemployment benefits). ()

Trial memoranda, supplemented by a short letter argument, under Rule 128.01, subd. 2. ()

10. Names, addresses, zip codes and telephone numbers of attorneys for Appellant and Respondent.

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