

**STATE OF MINNESOTA,**

Plaintiff,

vs.

**DEREK MICHAEL CHAUVIN,**

Defendant.

**MEMORANDUM OPINION ON  
STATE'S *SPREIGL* MOTION**

Court File No. 27-CR-20-12646

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On January 26, 2021, this Court filed its Order on *Spreigl* Motions. [Dk # 269] That order set forth this Court's rulings on the numerous *Spreigl* motions<sup>1</sup> filed by all parties in all four of the George Floyd officer cases and indicated that a Memorandum Opinion would follow at a later date. This Memorandum Opinion addresses the State's *Spreigl* motion by which the State seeks to introduce at trial in this case evidence of use-of-force conduct by Defendant Derek Michael Chauvin (Chauvin) during his employment by the Minneapolis Police Department on eight occasions between 2014 and 2019. A separate Memorandum Opinion will be filed addressing Chauvin's *Spreigl* motions.<sup>2</sup>

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<sup>1</sup> See *State v. Spreigl*, 272 Minn. 488, 139 N.W.2d 167 (Minn. 1965), and Minn. R. Evid. 404(b).

<sup>2</sup> A Memorandum Opinion will follow after the conclusion of the trial in *Chauvin* addressing the *Spreigl* motions by the State and the Defendants in *State v. Tou Thao*, 27-CR-20-12949, *State v. Thomas Kiernan Lane*, 27-CR-20-12951, and *State v. J. Alexander Kueng*, 27-CR-20-12953.

## TABLE OF CONTENTS

BRIEFS AND EXHIBITS.....	3
STATEMENT OF FACTS .....	5
<b>A. Lane and Kueng Arrive at Cup Foods and Detain Floyd</b> .....	5
<b>B. Lane and Kueng’s Initial Efforts to Place Floyd in Their Squad</b> .....	8
<b>C. Chauvin and Thao Arrive As Lane and Kueng Continue Trying to Force Floyd into the Squad</b> ....	10
<b>D. Chauvin Joins Lane and Kueng in the Effort to Force Floyd into the Squad</b> .....	10
<b>E. The Critical Nine Plus Minutes (8:19:18 - 8:28:42 P.M.): Floyd Is Subdued and Restrained Prone on Chicago Avenue; Chauvin Kneels on the Back of Floyd’s Neck, Pinning Floyd’s Face to the Street; Kueng and Lane Assist Chauvin in Restraining Floyd by Pinning Floyd’s Back and Legs to the Street; and Thao Maintains Watch, Observing the Other Three Officers Kneeling on Floyd as Well as the Gathering Bystander Crowd</b> .....	12
<b>F. Floyd’s Death</b> .....	20
<b>G. MPD Policies and Training</b> .....	20
DISCUSSION.....	23
<b>I. GENERAL STANDARDS ON <i>SPREIGL</i> MOTIONS</b> .....	23
<b>II. THE STATE HAS SATISFIED THE FIRST AND SECOND 404(b) PRONGS.</b> .....	24
<b>III. THE COURT WILL ALLOW INTRODUCTION AS <i>SPREIGL</i> EVIDENCE OF INCIDENTS THREE (AUGUST 22, 2015) AND FIVE (JUNE 25, 2017) AT TRIAL.</b> .....	30
A. Third Prong: Clear and convincing evidence.....	30
B. Fourth Prong: The State’s <i>Spreigl</i> Evidence for Incident Nos. 3 and 5 Is Relevant and Is Offered for a Permissible Purpose.....	30
1. Modus Operandi/Common Plan or Scheme .....	32
2. Intent.....	34
3. Knowledge.....	35
4. Pertinent Elements of the Charges and Chauvin’s Defenses.....	35
5. Temporal proximity.....	37
6. Geographic location .....	38
7. Incident No. 3 -- The August 22, 2015 incident .....	38
8. Incident No. 5 -- The June 25, 2017 Incident .....	41
C. Fifth Prong: The Potential Prejudice Does Not Outweigh the Probative Value. ....	44
<b>IV. THE COURT WILL NOT ALLOW INTRODUCTION AS <i>SPREIGL</i> EVIDENCE AT TRIAL OF THE OTHER SIX INCIDENTS.</b> .....	46
A. The State Cannot Establish the Fourth Prong For Any of These Six Incidents.....	47

1. Incident Nos. 2, 4, and 6-8 Are Not Relevant to Establish <i>Modus Operandi</i> or Common Scheme or Plan.....	47
2. Incident No. 1 Is Not Relevant to Establish Knowledge. ....	51
B. In Any Event, for Purposes of the Fifth Prong, Any Probative Value of Any of This <i>Spreigl</i> Evidence Is Outweighed by Its Potential for Unfair Prejudice.....	52

**BRIEFS AND EXHIBITS**

On September 10, 2020, the State filed Notice of Intent to Offer Other [*Spreigl*] Evidence [Dk # 128] at trial relating to eight incidents involving use of force by Chauvin between 2014 and 2019 as a licensed police officer with the Minneapolis Police Department (MPD). On September 25, 2020, the State filed an Amended Notice of Intent to Offer Other [*Spreigl*] Evidence [Dk # 155] summarizing the eight prior incidents involving Chauvin it was seeking to introduce at trial and listing the purpose for which it seeks to introduce such “other acts” evidence as required by Minn. R. Evid. 404(b)(1).

On October 12, 2020, the State filed a 44-page Memorandum of Law in Support of its Motion to Admit Other [*Spreigl*] Evidence. [ Dk # 174] On November 16, 2020, Chauvin filed a 22-page Memorandum of Law (styled “Defendant’s Objection to State’s Proposed Introduction of *Spreigl* Evidence”) opposing the State’s *Spreigl* motion. [ Dk # 205] Also on November 16, 2020, the State filed a 9-page Supplemental Memorandum of Law in Support of Other [*Spreigl*] Evidence, focused on Incident No. 6. [Dk # 204]

The following exhibits filed in connection with Chauvin’s motion to dismiss for lack of probable cause have some relevance to the *Spreigl* motions:

- Chauvin Exh. 1: Body-worn camera video [BWC] of Off. Lane recording events during Floyd’s May 25, 2020 detention, arrest, subdual, and his resulting death
- Chauvin Exh. 2: BWC video of Off. Kueng recording events during Floyd’s May 25, 2020 detention, arrest, subdual, and his resulting death

- Chauvin Exh. 3: BWC video of Off. Thao recording events during Floyd’s May 25, 2020 detention, arrest, subdual, and his resulting death
- Chauvin Exh. 4: BCA Investigative Supplement No. 2020-338/77 re: interview of Shawanda Hill (6/18/2020) [29 pages]
- Chauvin Exh. 5: BCA Investigative Supplement No. 2020-338/183 re: interview of Morris Hall (7/27/2020) [61 pages]
- Chauvin Exh. 7: Page from Minneapolis Police Department manual on “Impact Weapon Striking Chart” and “Defense & Control – Response Training Guide”
- Chauvin Exh. 8: History of EXD [Excited Delirium], from Minneapolis Police Department training materials [7-page slide presentation]
- Chauvin Exh. 9: Four screen-shots from Lane BWC video at 8:09:41, 8:09:44, 8:09:45 and 8:09:48 p.m., May 25, 2020
- Chauvin Exh. 10: Surveillance video from Dragon Wok restaurant
- Chauvin Exh. 13: Minneapolis Police Department Defensive Tactics Training Video
- Chauvin Exh. 15: Pages from Minneapolis Police Department Policy Manual regarding “authorized use of force,” “use of deadly force,” “proportional force,” “use of neck restraints,” “MRT [Maximal Restraint Technique] – USE, - Safety, and – Reporting,” and “Reporting & Post Incident Requirements,” among others. [32 pages]
- Chauvin Exh. 16: Pages from Minneapolis Police Department Training Manual, “2019 Defensive Tactics In-Service Phase 3” covering, inter alia, “proportional force,” “authorized use of force,” “duty to intervene,” “threatening force & de-escalation,” “use of deadly force,” “choke holds,” “taser, chemical agents, impact weapons, neck restraints,” “use of neck restraints,” “MRT – Use, - Safety, - Reporting,” “Reporting & Post Incident Requirements,” and “Supervisor Force Review” [76 pages]
- Chauvin Exh. 19: U.S. Armed Forces Medical Examiner Report of Case Consult on HCME Floyd Autopsy (June 10, 2020) [2 pages]
- Chauvin Exh. 20: Hennepin County Medical Examiner Autopsy Report on George Floyd death June 1, 2020) [22 pages]
- State Exh. 1: Minneapolis Police Department Policy and Procedures Manual, Policies 5-100 to 5-107, 5-300 to 5-318, 7-100 to 7-121, and 9-100 to 9-115 regarding code of conduct/ethics, use of force, communications, and adult arrests [52 pages]

- State Exh. 2: Cell phone video recorded by Darnella Frazier on May 25, 2020
- State Exh. 3: Minneapolis Police Department Use of Force Manual: Academics and Techniques (2019) [4 pages]

### **STATEMENT OF FACTS**

The following statement of facts is drawn from the Amended Complaint filed on June 3, 2020, supplemented with other available record evidence.

#### **A. Lane and Kueng Arrive at Cup Foods and Detain Floyd**

On the evening of May 25, 2020, Cup Foods, located at Chicago Avenue and 38<sup>th</sup> Street in South Minneapolis, reported the use of a counterfeit \$20 bill to purchase merchandise. Kueng and Lane responded to the dispatch report, arriving at Cup Foods about 8:08 p.m.<sup>3</sup> The manager explained two men had been involved: one had used a counterfeit \$20 bill to purchase cigarettes (the manager showed Lane and Kueng that bill); the other had tried to use a counterfeit \$20 bill which the cashier had rejected.<sup>4</sup> The manager informed Kueng and Lane that the men involved were sitting in a blue vehicle across the street.

(Kueng & Lane BWC Videos at 8:08:40-8:09:06)<sup>5</sup>

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<sup>3</sup> Chauvin and his partner and co-defendant Tou Thao had also been dispatched, but before they made their way to the scene, they were informed by dispatch that co-defendants J. Alexander Kueng and Thomas Lane would be handling the call. (Thao BWC Interview, at 25:40-57)

<sup>4</sup> Later, the Cup Foods manager told Kueng that Floyd had used a counterfeit \$20 bill to purchase cigarettes but that a Cup clerk had detected forged currency when the other man with Floyd attempted to use a counterfeit \$20 bill to purchase other merchandise. (Kueng BWC Video at 8:32:20-8:36:30)

<sup>5</sup> MPD officer body-worn camera (BWC) videos reflect time in so-called “military” time, showing the hour, minutes, and seconds. That is, times in the range from 00:00:00 to 11:59:59 denote a.m. times and times in the range from 12:00:00-23:59:59 denote p.m. times. The key events for present purposes recorded in the Lane, Kueng, and Thao BWC videos occur in roughly a 21-minute span from 20:08:00 to about 20:29:00 in military time, or between 8:08 and 8:29 p.m. on May 25, 2020. (The Lane BWC video records events from 8:08:00-8:42:16

Kueng and Lane left Cup Foods and crossed 38<sup>th</sup> Street to approach the vehicle, parked on 38<sup>th</sup> Street next to the Dragon Wok restaurant. (Kueng & Lane BWC Videos at 8:09:06-:28) George Floyd was in the vehicle's driver's seat; a male passenger was in the front passenger-side seat; and a woman passenger was in the back passenger-side seat.

Lane approached on the driver's side and tapped on the driver's side window with his flashlight. Floyd appears startled. (Lane BWC Video at 8:09:28-:32) When Floyd cracked his door open and apologized, Lane instructed Floyd to show his hands. (*Id.* at 8:09:33-:40) Seconds later, Lane pulled his gun, pointed it at Floyd, and yelled at him to "put your fucking hands up right now." (*Id.* at 8:09:41-:45) Although asking what he had done wrong, Floyd put his hands up and then placed them on the steering wheel, complying with Lane's instructions. Intensifying the situation, Lane yelled at Floyd to "keep your fucking hands on the wheel" while keeping his gun trained on Floyd. (*Id.* at 8:09:46-:58) Floyd immediately complied, at which point Lane instructed Floyd to put his hands on his head; when Floyd once again complied, Lane lowered his gun. (*Id.* at 8:10:00-:22) Lane did not tell Floyd at any point during this initial interaction why he and Kueng had approached Floyd's vehicle.

Floyd, clearly upset, can be heard saying several times that he was "sorry"; he also started crying. (Lane BWC Video at 8:09:35-8:10:20) Floyd told Lane several times that he had been shot before, even reporting that he had been shot "the same way." (*Id.* at 8:09:50-8:10:25) Sobbing, he pleaded: "Mr. Officer, please don't shoot me." (*Id.* at 8:10:35-:37) Over

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p.m.; the Kueng BWC video records events from 8:08:00-8:38:33 p.m.; and the Thao BWC video records events from 8:16:37-8:38:42 p.m.) In this Memorandum Opinion, the military times shown on the BWC videos have been converted to the analogous "p.m." time for the reader's convenience.

the next half minute or so, Floyd begged Lane not to shoot him several times. (*Id.* at 8:10:35-8:11:05) He also explained to Lane that “I just lost my mom.”

Lane told Floyd to step out of the car, while Kueng -- on the passenger side -- told both passengers to do the same. Kueng then walked around to the driver’s side, and Kueng and Lane handcuffed Floyd while Kueng told Floyd to stop resisting. (Lane & Kueng BWC Videos at 8:11:05-:35) From this moment on, Floyd’s hands remained cuffed for the duration of the incident.

Kueng walked the handcuffed Floyd to the sidewalk and told him to sit down on the ground with his back against the wall at the Dragon Wok restaurant. Floyd did so, immediately becoming calmer and saying “thank you” to Kueng.<sup>6</sup> (Kueng BWC Video at 8:11:35-8:12:15) Floyd responded to Kueng’s questions, telling Kueng his name and date of birth and reiterating he was scared because he had been shot before. (*Id.* at 8:12:15-8:13:05) It was only at this point, almost four minutes after Lane had first tapped on Floyd’s window, that Kueng first explained to Floyd that they were detaining him because Cup Foods had reported that Floyd had used a fake bill in the store.<sup>7</sup> (*Id.* at 8:13:20-:25) Floyd responded

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<sup>6</sup> While Floyd was seated on the sidewalk talking to Floyd, Lane interviewed the other two passengers. (Lane & Kueng BWC Videos at 8:11:45-8:14:05) One of the passengers explained to Lane that Floyd was scared of police officers and likely had been scared when Lane pointed his handgun at Floyd because Floyd had been shot before. (Lane BWC Video at 8:12:50-8:13:10) While speaking with the passengers, Lane reported a “Code 4” to dispatch; “Code 4” means the “[s]ituation [is] under control” and that “[r]esponding squads that have not arrived may clear.” (Minneapolis Police Department Policy and Procedure Manual, § 7-103; Lane BWC at 8:12:14-16) Dispatch then radioed Chauvin and Thao that the request for backup had been canceled.

<sup>7</sup> It appears the Defendants did not tell Floyd he was under arrest for forgery for another five and a half minutes. (Kueng BWC Video at 8:18:57) And this was at the point at which Lane and

that he hadn't known what was going on when Lane had approached with his gun drawn.

**B. Lane and Kueng's Initial Efforts to Place Floyd in Their Squad**

Although Floyd remained compliant while seated on the sidewalk conversing with Kueng, Kueng and Lane decided to detain Floyd in their squad car. (Kueng BWC Video at 8:13:35) When Kueng stood Floyd up to walk him over to their squad, Floyd told Kueng he was in pain and that his wrists hurt from the handcuffs. (*Id.* at 8:13:55-8:14:10) Lane asked Floyd if he was "on something right now," while Kueng noted there was foam around Floyd's mouth and that Floyd was "acting real erratic." (Lane & Kueng BWC Videos at 8:14:05-:16) Floyd responded that he was "scared." (Lane BWC Video at 8:14:12-:16) Lane and Kueng walked the hand-cuffed Floyd from the Dragon Wok restaurant back across 38<sup>th</sup> Street to their squad parked outside Cup Foods. (Lane & Kueng BWC Videos at 8:14:05-:40)

When they reached the squad car, Floyd stated: "I just want to talk to you, man." (Lane BWC Video at 8:14:55) Kueng responded: "Man, you ain't listening to nothing we're saying, so we're not going to listen to nothing you're saying." (Kueng BWC Video at 8:14:57-8:15:01) Floyd told Lane and Kueng several times that he was scared to get into the squad, told them repeatedly that he was "claustrophobic," and kept pleading with them "please, man." (Lane & Kueng BWC Videos at 8:14:45-8:15:10) Kueng and Lane responded that they would have a conversation with Floyd only after he got into the squad car. They placed Floyd against the squad car and patted him down. While being patted down, Floyd stated: "I'm not resisting, man. I'm not." (Kueng BWC Video at 8:15:10-:15) The pat search revealed a small

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Kueng, joined by Chauvin, had been trying for force Floyd into the back seat of Lane and Kueng's squad for more than two and a half minutes.



pipe in Floyd's pocket but no weapons. (*Id.* at 8:15:15-:55)

As Floyd stood outside the squad car, he asked Kueng and Lane not to leave him alone in the car and stated he would not do anything to hurt them. (Lane & Kueng BWC Videos at 8:15:30-:45) Floyd repeatedly told Lane and Kueng that he was claustrophobic. (*Id.* at 8:14:45-8:15:05) Lane responded: "Well, you're still going in the car." (Lane BWC Video at 8:15:40)

After more than ninety seconds standing outside the squad (Lane & Kueng BWC Videos at 8:14:45-8:16:20), Kueng and Lane tried to force a non-compliant Floyd inside the squad's rear seat. (*Id.* at 8:16:20) Floyd exclaimed: "I'ma die in here, I'ma die man," noting that he "just had COVID" and didn't "want to go back to that." (*Id.* at 8:16:40-:45) As Floyd struggled with Lane and Kueng for about half a minute, a bystander engaged in a dialogue with Floyd, with the bystander telling Floyd to get into the car because "you can't win" and Floyd responding that he wasn't trying "to win" or hurt the officers but only that he was claustrophobic and had anxiety. (*Id.* at 8:17:00-:30) Floyd repeated that he was "scared as fuck" and worried that his anxiety might make it hard for him to breathe in the back of the squad car. (*Id.* at 8:17:10-:20) Floyd asked Kueng and Lane to allow him to count to three before getting into the back of the squad car, again insisting that he was not trying "to win." (*Id.* at 8:17:20-:25) He pleaded for Kueng and Lane to allow him to get on the ground or do "anything" other than get in the car. (*Id.* at 8:17:25-:30)

**C. Chauvin and Thao Arrive As Lane and Kueng Continue Trying to Force Floyd into the Squad**

Chauvin and Thao arrived on scene at 8:17 p.m.<sup>8</sup> (Thao BWC Video at 8:17:09) When Chauvin and Thao approached Lane, Kueng, and Floyd at 8:17:30, Lane and Kueng had been engaged with Floyd at the squad for about two minutes and forty-five seconds, and had physically been trying to force Floyd into the squad's back seat for more than a minute.

While Chauvin and Thao stood by watching upon their initial approach, Kueng and Lane continued trying to force Floyd into their squad. Lane walked around to the passenger side of the squad and began trying to pull Floyd into the back seat through the passenger-side door while Kueng tried to push Floyd into the squad through the driver-side door. (Lane & Kueng BWC Videos at 8:17:30-:55) Floyd continued pleading with the officers, exclaiming "please, Mr. Officer, please," and "I'm not a bad guy." (Thao BWC Video at 8:17:49-8:18:00)

**D. Chauvin Joins Lane and Kueng in the Effort to Force Floyd into the Squad**

After observing for about 30 seconds, Chauvin joined Lane on the passenger side of the squad at 8:18 p.m., struggling to pull on Floyd. (Thao BWC Video at 8:18:00) Chauvin had his arm around Floyd's upper chest and neck, with Lane pulling on Floyd farther down on his body, collectively pinning Floyd against the back seat of the squad. At 8:18:06, Floyd is heard for the first time exclaiming "I can't breathe." (Lane & Kueng BWC Videos) At 8:18:15, Kueng walked around to the passenger side of the squad to assist Lane and Chauvin, at which point Chauvin

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<sup>8</sup> Lane had asked dispatch for backup after he had instructed Floyd to step out of his vehicle. (Lane BWC at 8:10:45; Lane BCA Interview at 58:00-15; Thao BCA Interview at 27:30-35) Although the call for dispatch had been cancelled after Lane reported a "Code 4" roughly five minutes earlier while he was interviewing the passengers in Floyd's vehicle, Thao and Chauvin had continued to the scene.

and Kueng attempted to lift Floyd into the back seat of the squad.<sup>9</sup> In the ensuing struggle, Floyd fell partway through the rear passenger side door and asked to be laid on the ground. (Lane BWC Video at 8:18:15-:20)

This struggle continued for about a minute, during which Floyd continued to yell “please,” continuously telling the Defendants that he was claustrophobic and couldn’t breathe. (Kueng, Thao & Lane BWC Videos at 8:18:00-8:19:00) Chauvin can be heard to respond: “You’re talking . . . . It takes a lot of oxygen to . . . say ‘I can’t breathe.’” (Thao BWC Video at 8:18:40-:46) When the futility of the three officers continuing their efforts forcibly to seat Floyd in the squad’s back seat became clear, Thao is heard saying “we’ll have to hogtie him,” and Lane said: “Let’s take him out and just MRT.”<sup>10</sup> (Lane, Kueng & Thao BWC Videos at 8:18:45-8:19:05) The others agreed, and Floyd was pulled from the squad and made to lie down in the street next to the squad. (Lane, Kueng & Thao BWC Videos at 8:19:00-:15)

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<sup>9</sup> Thao was watching from the driver’s side, and his BWC captures Chauvin and Kueng wrestling with Floyd, as Lane is off to the side.

<sup>10</sup> MRT is an acronym for “Maximal Restraint Technique,” which employs a “Hobble” device to “secure a subject’s feet to their waist in order to prevent the movement of legs.” A Hobble “limits the motion of a person by tethering both legs together.” (Minneapolis Police Department Policy & Procedure Manual (MPDPPM) § 5-316(III)) The Maximal Restraint Technique is accomplished using two Hobbles connected together. (MPDPPM § 5-316(IV)(A)(2))

**E. The Critical Nine Plus Minutes (8:19:18 - 8:28:42 P.M.): Floyd Is Subdued and Restrained Prone on Chicago Avenue; Chauvin Kneels on the Back of Floyd’s Neck, Pinning Floyd’s Face to the Street; Kueng and Lane Assist Chauvin in Restraining Floyd by Pinning Floyd’s Back and Legs to the Street; and Thao Maintains Watch, Observing the Other Three Officers Kneeling on Floyd as Well as the Gathering Bystander Crowd**

At 8:19:18 p.m., Chauvin, Kueng, and Lane managed to subdue Floyd, and forced him to lie prone on the concrete of Chicago Avenue, with all three officers kneeling on him:<sup>11</sup>

- Chauvin pressed his left knee into the back of Floyd’s neck, forcing Floyd’s face, throat, and upper chest against the concrete
- Kueng knelt on Floyd’s back, with his hand on Floyd’s handcuffed left wrist
- Lane restrained Floyd’s legs, kneeling on them as well as pressing down on Floyd’s legs with his hands

(Lane & Kueng BWC Videos at 8:19:15-:45)

While Chauvin, Kueng, and Lane knelt on Floyd, Thao located a Hobble in the back of the squad and asked the other Defendants if they “want[ed] to hobble [Floyd] at this point.”

(Thao, Kueng & Lane BWC Videos at 8:19:22-8:20:30) When the others did not answer immediately, after asking if we are calling for EMS, Thao suggested “why don’t we just hold him until EMS” arrives, adding “if we hobble a Sergeant’s going to have to come over.”<sup>12</sup> (Thao BWC Video at 8:20:25-:40) After deciding not to use the Hobble, Chauvin, Kueng, and Lane continued to maintain their positions directly on top of Floyd, keeping him pinned face-down

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<sup>11</sup> Thus, the Lane and Kueng BWC videos show that Chauvin, Kueng, and Lane had subdued Floyd after a struggle of almost three full minutes in which they had attempted to force a resistant Floyd into the rear seat of Lane and Kueng’s squad car incident to his arrest before eventually subduing him, and restraining him by pinning him face-down in the street at 8:19:18.

<sup>12</sup> Under MPD policy, whenever a Hobble is used in connection with the Maximal Restraint Technique, “[a] supervisor shall be called to the scene where a subject has been restrained,” and the supervisor is required to “complete a Supervisor’s Force Review.” MPDPPM § 5-316(IV).

on the street, while Thao stood watch, positioning himself between the other Defendants on top of Floyd and a gathering group of concerned bystander citizens, observing from the sidewalk adjoining Chicago Avenue. Shortly after they had subdued Floyd on the street in this position, Lane called in an EMS “Code 2” signaling that emergency services were needed but that emergency personnel did not need to use their sirens to reach the scene urgently.<sup>13</sup> (Lane BWC Video at 8:19:48-:52)

During the first four minutes and forty seconds after Chauvin, Kueng, and Lane had pinned Floyd face-down to the street, Floyd repeatedly cried for help, albeit with diminishing frequency and vigor as time wore on. (Lane & Kueng BWC Videos 8:19:18-8:24:00) Floyd yelled “I can’t breathe” more than two dozen times, called out for his deceased mother almost a dozen times, and asked the Defendants to “tell my kids I love them.” (*Id.*) Chauvin twice responded to Floyd’s repeated cries of not being able to breathe:

“You’re doing a lot of talking, man.” (Lane & Thao BWC Videos at 8:20:19-:21)

“You’re talking fine.” (*Id.* at 8:21:35)

Meanwhile, Thao rebuked the on-looking bystanders “He’s [Floyd] talking so he’s breathing.” (Thao BWC Video at 8:21:39)

Floyd continued to plead with Chauvin, as Chauvin continued pressing his left knee onto Floyd’s neck: “I can’t breathe. Please, your knee in my neck.” (Lane BWC Video at 8:21:53-:57) Lane and Chauvin then engaged in a discussion with Lane stating that Floyd’s “got to be on something,” and speculating – because they’d found a “weed pipe” – if Floyd was on “PCP or

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<sup>13</sup> A couple minutes later, Thao upgraded to an EMS “Code 3” (Thao BWC Video at 8:21:12-:27), which does require emergency services to activate their red lights and siren when traveling to the scene.

something” in response to which Chauvin asked Floyd “What are you on?” (Lane & Thao BWC Videos at 8:21:53-8:22:20)

Floyd continued complaining that he was in significant pain: “My knee, my neck . . . I’m claustrophobic. My stomach hurt. My neck hurt. Everything hurt.” (Lane & Kueng BWC Videos at 8:22:15-:30) Floyd told the Defendants almost ten times that he feared he would die lying on the ground while being subdued in this manner, including the following remarks:

“I’ll probably just die this way.”

“I’m through, I’m through.”

“They’re gonna kill me, they gonna kill me, man.”

“They’ll kill me.”

(Lane BWC Video at 8:21:45-:47; 8:22:19-:22, 8:22:42-:45; 8:23:14)

Defendants continued ignoring Floyd’s pleas for help. Chauvin responded dismissively: “You’re doing a lot of talking, a lot of yelling. . . . It takes a heck of a lot of oxygen to say things.”

(Lane, Kueng & Thao BWC Videos at 8:22:40-:50)

Meanwhile, as bystanders began echoing Floyd’s pleas for help and noting that Floyd was not resisting arrest, Thao continued to stand guard, watching his fellow officers while telling the crowd: “He’s talking, so he’s fine” and “This is why you don’t do drugs, kids.” (Thao BWC Video at 8:23:15-:40) When a bystander expressed concern that Chauvin was “trapping” and “stopping” Floyd’s breathing, Thao responded: “He’s talking. . . . It’s hard to talk if you’re not breathing.” (*Id.* at 8:23:40-:59) Chauvin, meanwhile, can be observed periodically looking up at the crowd as they were shouting to get off Floyd’s neck and repeatedly exclaiming that Floyd was not resisting. (Darnella Frazier Cellphone Video at 2:38-3:32)

Between 8:19:20 and 8:24:00 p.m., the frequency and volume of Floyd’s pleas for help diminished and his breathing became increasingly labored. As time wore on, Floyd’s audible words turned into mumbling, and the mumbling then degenerated into grunts. Floyd uttered his final words “Please,” at 8:23:55, and “I can’t breathe,” at 8:23:59. (Lane, Kueng & Thao BWC Videos at 8:23:55-8:24:00) Floyd then fell silent.<sup>14</sup>

Even after Floyd ceased talking and moving and had become non-responsive, Defendants maintained their positions, with Chauvin continuing to press his knee into Floyd’s neck, and with Kueng and Lane continuing to restrain Floyd’s back and legs. Thao, meanwhile, while observing Chauvin, Kueng, and Lane keeping Floyd pinned face-down in the street, continued to stand between the other Defendants kneeling on Floyd and the bystanders gathered on the sidewalk, ensuring that the bystanders remained on the sidewalk and did not physically intervene to come to Floyd’s aid. (Thao BWC Video at 8:24:00-8:26:43)

As Floyd appeared to have lost consciousness and shortly before uttering his final words, Lane asked Chauvin and Kueng: “Should we roll him on his side?” citing a concern “about the excited delirium or whatever.” (Lane & Kueng BWC Videos at 8:23:48-:56) Chauvin rejected Lane’s suggestion, stating the ambulance was en route, and telling Lane and Kueng to “stay[] put where you got him.” (Lane & Kueng BWC Videos at 8:23:48-8:24:02) Neither Lane nor Kueng challenged Chauvin’s response, instead maintaining their positions, holding down Floyd’s back and legs. (Lane & Kueng BWC Videos at 8:24:00-:30)

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<sup>14</sup> After his last words “I can’t breathe” at 8:23:59-8:24:00 p.m., Floyd can be heard making a few grunts, “ahs” and then finally some gurgling sounds until about 8:24:49. From that point on, he appears – from the Lane, Kueng, and Thao BWC Videos – to have been totally silent, apparently having lapsed into unconsciousness.

By this point, the half-dozen or so bystanders gathered on the sidewalk had begun yelling at Defendants. One bystander yelled that Floyd was “not even resisting arrest right now” and was “passed out.” (Thao BWC Video at 8:24:40-:45) In apparent agreement with the bystander, Lane is heard saying “I think he’s [Floyd] passed out.” (Lane & Kueng BWC Videos at 8:24:43-:48) Even so, Lane continued to hold down Floyd’s right leg with his arm, reporting to Chauvin and Kueng that even though his own “knee might be a little scratched . . . I’ll survive” in response to Chauvin’s inquiry to Lane asking if Lane was alright. (Lane BWC Video at 8:24:59-8:25:04)

Meanwhile, one of the bystanders was becoming more animated and insistent, yelling at Chauvin, Kueng, Lane, and Thao that Floyd was not “breathing right now,” “he’s not responsive,” and “he’s not moving,” to which Lane and Kueng responded “he’s breathing.” (Lane & Kueng BWC Videos at 8:25:08-:15) Another bystander stepped toward Floyd, asking Thao if he was “just gonna let [Chauvin] choke [Floyd] like that.” (Thao BWC Video at 8:25:17-:19) In response, Chauvin pulled the mace from his belt and pointed it at the bystanders. (Darnella Frazier Cellphone Video at 4:28:37) The BWC videos appear to show that Floyd’s shallow breaths stopped within seconds of those remarks. (Kueng BWC Video, at 8:25:20-:31)

At 8:25:28 p.m., an out-of-uniform, off-duty Minneapolis firefighter arrived on scene and asked to provide Floyd medical assistance. The firefighter asked the Defendants if Floyd had a pulse and demanded they check for a pulse and tell her what it was. (Thao BWC Video at 8:25:30-8:26:03) Chauvin and Thao refused to allow her to tend to Floyd, with Thao shouting at her to “back off” and “get off the street” (Lane & Thao BWC Videos at 8:25:32-:47), and Chauvin warning her “Don’t come over here.” (Darnella Frazier Cellphone Video at 4:33-:46) In light of



concerns about Floyd's lack of responsiveness, Lane again asked Chauvin and Kueng: "should we roll him [Floyd] on his side." (Lane & Kueng BWC Videos at 8:25:38-:41) Although none of the other three Defendants appears to have responded, once again Lane did not press the matter, but continued holding Floyd's legs down with his right arm. Chauvin, Kueng, and Thao likewise continued to maintain their positions. (Lane BWC Video at 8:25:40-8:26:00)

The bystanders grew increasingly vocal about Floyd's lack of responsiveness, yelling at Chauvin, Kueng, Lane, and Thao that Floyd was "not moving" and was "not responsive"; they asked Defendants if Floyd was breathing and demanded that Defendants check Floyd's pulse. (Lane & Kueng BWC Videos at 8:25:40-8:26:05) After hearing the bystanders' pleas to check Floyd for a pulse, Lane asked Kueng if he could detect a pulse. After checking Floyd's wrist for about ten seconds, Kueng reported: "I can't find one [a pulse]." (Kueng & Lane BWC Videos at 8:25:45-8:26:00) Thao responded by remarking to the bystanders: "Don't do drugs." (Thao BWC Video at 8:26:04)

Chauvin responded: "Huh?" Kueng clarified that he was "check[ing] [Floyd] for a pulse." (Kueng & Lane BWC Videos at 8:26:00-:05) After again checking for a pulse, Kueng sighed, leaned back slightly, and repeated: "I can't find one." (Kueng & Lane BWC Video at 8:26:07-:12) Upon learning that Kueng could not find a pulse, Chauvin squeezed Floyd's fingers. Floyd did not respond. (Lane BWC Video at 8:26:12-:18)

After 8:26:30, the bystanders' pleas to the Defendants became increasingly frantic and emphatic:

"He's not fucking moving." (Thao BWC Video at 8:27:11-17)

"What are you doing? He's dying." (*Id.* at 20:27:35- 36)

“Why is he still on him? . . . [W]hat is wrong with you?” (*Id.* at 20:27:36-40)

“Get off of his fucking neck, bro. . . . You’re still on him . . . why?” (*Id.* at 20:27:41-46)

Even though Floyd remained unresponsive, the Defendants did not move from their positions but continued to restrain Floyd -- Chauvin with his left knee pressed firmly into Floyd’s neck, Kueng kneeling on Floyd’s back, and Lane holding Floyd’s legs -- while Thao kept bystanders back on the sidewalk. The Defendants ignored the off-duty firefighter’s urgent demands that they check Floyd for a pulse and begin chest compressions if he had no pulse. (Thao BWC Video at 8:28:39-:48 p.m.) None of the Defendants ever attempted to place Floyd on his side in the recovery position or attempted CPR while Floyd was restrained on the ground.

An ambulance arrived on the scene after 8:27 p.m., about three and a half minutes after Lane first asked if they should turn Floyd onto his side, almost two minutes after Floyd appears to have stopped breathing, and well over a minute after Kueng first stated he could not detect a pulse. Despite the ambulance’s arrival and the lack of any movement or sounds from Floyd, Defendants continued restraining Floyd in the same manner they had since 8:19:18, with Chauvin continuing to press his knee into the back of Floyd’s neck, Kueng and Lane holding down Floyd’s back and legs, and Thao watchfully keeping the crowd on the sidewalk. (Lane, Kueng & Thao BWC Videos at 8:27:00-8:28:40) Even as Lane explained to emergency personnel that Floyd was “not responsive right now,” Chauvin continued to press his knee into Floyd’s neck. (Lane BWC Video at 8:27:36-38) Even as emergency personnel leaned down and attempted to check Floyd’s neck for a pulse, Chauvin did not remove his knee from Floyd’s neck. (*Id.* at 8:27:43-50; Darnella Frazier Cellphone Video 6:50-59)

The crowd, which by this point had grown to nearly a dozen concerned onlookers,

continued pleading with the officers, asking Thao if he was “gonna let [Chauvin] kill that man in front of you.” (Thao BWC Video at 8:28:05-:13)

Chauvin, Lane, and Kueng continued to maintain their positions, pinning the motionless and unresponsive Floyd face-down in the street, with Thao holding the crowd at bay, for more than a minute after the ambulance crew arrived on the scene. (Lane, Kueng & Thao BWC Videos at 8:27:25-8:28:40) It was not until 8:28:42, when the stretcher was ready, that Chauvin finally stood up, removing his knee from Floyd’s neck. (See Lane & Kueng BWC Videos.) Floyd remained unresponsive as Chauvin, Kueng, and Lane rolled Floyd onto the stretcher. (Lane, Kueng & Thao BWC Videos at 8:28:50-8:29:00) Lane got into the ambulance after the EMTs had loaded Floyd into the ambulance (Lane BWC Video at 8:29:40-8:42:15), Kueng returned to Cup Foods for further discussions with the Cup store manager (Kueng BWC Video at 8:32:30-8:36:30), and Chauvin and Thao departed in their squad. (Thao BWC Video)

In total, the Defendants kept Floyd continuously restrained, pinned face-down on the concrete apron of Chicago Avenue in the same manner -- with Chauvin’s knee pressing into the back of Floyd’s neck, Kueng and Lane restraining Floyd’s back and legs, and Thao preventing the crowd of concerned citizens from interceding -- for more than nine minutes and twenty seconds. (8:19:18-8:28:42) Defendants did so notwithstanding that:

- Floyd neither moved nor spoke during the final four minutes and forty seconds. (8:24:00-8:28:42)
- Floyd appeared not to be breathing for almost three and a half minutes. (8:25:15-8:28:42)
- Defendants were unable to detect a pulse for more than two and a half minutes. (8:26:10-8:28:42)

**F. Floyd's Death**

Floyd was taken by ambulance to the Hennepin County Medical Center (HCMC) in downtown Minneapolis where he was pronounced dead at 9:25 p.m. on May 25, 2020. According to the Hennepin County Medical Examiner (HCME) Dr. Andrew Baker, Floyd's death resulted from "cardiopulmonary arrest complicating law enforcement subdual, restraint, and neck compression," HCME Autopsy Report & HCME Press Release Report, and the "manner of death" was "homicide."<sup>15</sup> *Id.* A separate autopsy review by the federal Armed Forces Medical Examiner System agreed with the HCME's autopsy findings and cause of death certification, concluding that Floyd's "death was caused by the police subdual and restraint in the setting of severe hypertensive atherosclerotic cardiovascular disease, and methamphetamine and fentanyl intoxication," and that the "subdual and restraint had elements of positional and mechanical asphyxiation."

**G. MPD Policies and Training**

As MPD officers, the State contends that Chauvin, Thao, Lane, and Kueng held positions of public trust and were trained not to "willfully mistreat or give inhumane treatment to any person held in custody." MPDPPM § 5-107.3. Upon joining the MPD, Chauvin, Thao, Lane, and Kueng agreed to abide by a code of ethics that bound them to "enforce the law courteously and appropriately" and "never [to] employ[] unnecessary force or violence." *Id.* § 5-102.

According to the MPDPPM, "sanctity of life and the protection of the public" are "the

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<sup>15</sup> The Press Release Report indicated that Floyd experienced cardiopulmonary arrest while he was being restrained by law enforcement officers and reported as other significant conditions Floyd's "arteriosclerotic and hypertensive heart disease," "fentanyl intoxication," and "recent methamphetamine use."

cornerstones of the MPD’s use of force policy.” MPDPPM § 5-301.A. Consistent with those principles, it is “the duty of every sworn employee present at any scene where physical force is being applied to either stop or attempt to stop another sworn employee when force is being inappropriately applied or is no longer required.” *Id.* § 5-303.01(B). Officers may use only “the amount of force that is objectively reasonable in light of the facts and circumstances known to that employee at the time force is used,” and their use of force must “be consistent with current MPD training.” *Id.* § 5.301.01. Before using force, officers must first consider various de-escalation tactics short of force. *Id.* § 5-304(B). When evaluating whether the use of force is appropriate, officers must “[c]onsider whether a subject’s lack of compliance is a deliberate attempt to resist or an inability to comply based on factors including, but not limited to”:

- (i) medical conditions;
- (ii) mental impairment;
- (iii) developmental disability;
- (iv) physical limitation;
- (v) language barrier;
- (vi) influence of drug or alcohol use; or
- (vii) behavioral crisis.

*Id.* § 5-304(B)(1)(b).

Under MPD policies in effect at the time of Floyd’s death, the most extreme uses of force -- MRT, Neck Restraints, and Deadly Force -- are reserved for the most extreme situations. Officers are trained to use the MRT only “where handcuffed subjects are combative and still pose a threat to themselves, officers or others, or could cause significant damage to property if

not properly restrained.” *Id.* § at 5-316(IV)(A)(1). “As soon as reasonably possible, any person restrained using the MRT who is in the prone position” -- that is, on his or her stomach -- “shall be placed” in “the side recovery position” if “the hobble restraint device is used.” *Id.* § 5-316(IV)(B)(1). Officers are instructed that, “as soon as possible,” they must “[p]lace a restrained subject on their side in order to reduce pressure on his/her chest and facilitate breathing.” 2019 MPD Use of Force Manual, at 3.

Officers are also trained not to employ a “neck restraint”—“[d]efined as compressing one or both sides of a person’s neck with an arm or leg”—“against subjects who are passively resisting.” MPDPPM § 5-311(I), (II)(C). MPD policy defines “passive resistance” as “behavior initiated by a subject, when the subject does not comply with verbal or physical control efforts, yet the subject does not attempt to defeat an officer’s control efforts.” *Id.* § 5-302. “An officer who has used a neck restraint or choke hold shall inform” emergency medical personnel “accepting custody of the subject[] that the technique was used on the subject.” *Id.* § 5-311(II)(D)(2). And if unconsciousness occurs, officers are to “request EMS immediately by radio.” 2019 MPD Use of Force Manual, at 2.

In applying a Neck Restraint, MRT, or any other use of force, officers must render medical aid when their use of force necessitates it. MPDPPM 5-306 (all MPD officers who “use[] force shall,” “[a]s soon as reasonably practical,” “determine if anyone was injured and render medical aid consistent with training and request Emergency Medical Service (EMS) if necessary”).<sup>16</sup> MPD officers are trained to check the subject’s “airway [and] breathing,” and “start CPR if needed.” 2019 MPD Use of Force Manual, at 2, 4.

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<sup>16</sup> This policy, which was in effect when Floyd died, was later updated on June 16, 2020.

## DISCUSSION

### I. GENERAL STANDARDS ON SPREIGL MOTIONS

Under Rule 404(b)(1) of the Minnesota Rules of Evidence, "[e]vidence of another crime, wrong, or act is not admissible to prove the character of a person in order to show action in conformity therewith." As the Minnesota Supreme Court observed in *State v. Ness*, 707 N.W.2d 676, 685 (Minn. 2006) (citation omitted):

This general exclusionary rule is grounded in the defendant's constitutional right to a fair trial. . . . The danger in admitting such evidence is that the jury may convict because of those other crimes or misconduct, not because the defendant's guilt of the charged crime is proved. . . . [T]he 'overarching concern' over the admission of *Spreigl* evidence is that it might be used for an improper purpose, such as suggesting that the defendant has a propensity to commit the crime or that the defendant is a proper candidate for punishment for his or her past acts.

However, Rule 404(b)(1) also incorporates various exceptions to the general exclusionary rule that had earlier been recognized at common law, explicitly acknowledging that such "other acts" evidence may be admissible for other purposes such as "proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident." Minn. R. Evid. 404(b)(1); *see also State v. Bartylla*, 755 N.W.2d 8, 20 (Minn. 2008); *Ness*, 707 N.W.2d at 685; *State v. Kennedy*, 585 N.W.2d 385, 389 (Minn. 1998); *State v. Spreigl*, 139 N.W.2d 167 (Minn. 1965).

The trial court has broad discretion to determine whether *Spreigl* evidence of other crimes or "bad acts" is admissible as an exception to the general rule against the admissibility of such evidence. *State v. Asfeld*, 662 N.W.2d 534, 542 (Minn. 2003); *State v. Nunn*, 561 N.W.2d 902, 907-08 (Minn. 1997). Such discretion notwithstanding, the Supreme Court has instructed that if the admission of evidence of other misconduct is

a close call, the benefit of the doubt should be given to the party opposing its admission, and the evidence should be excluded. *Ness*, 707 N.W.2d at 685; *Kennedy*, 585 N.W.2d at 389.

In criminal prosecutions, so-called "bad" or wrongful acts, also referred to as *Spreigl* evidence, is not admissible unless the State:

- (1) gives notice of its intent to admit such evidence;
- (2) clearly indicates what such evidence will be offered to prove;
- (3) establishes, by clear and convincing evidence, the other crime, wrong, or act and the defendant's participation in that crime, wrong, or act;
- (4) demonstrates the relevance of such other evidence to the State's case against the defendant; and
- (5) establishes that the probative value of such evidence is not outweighed by its potential for unfair prejudice to the defendant.

Minn. R. Evid. 404(b)(2); *see also State v. Ross*, 732 N.W.2d 274, 282 (Minn. 2007); *Ness*, 707 N.W.2d at 686.

## II. **THE STATE HAS SATISFIED THE FIRST AND SECOND 404(b) PRONGS.**

With respect to the first prong of the *Spreigl*/404(b)(2) analysis, the State gave notice on September 10 and 25, 2020 of its intent to offer as *Spreigl* evidence evidence of Chauvin's conduct in the following eight incidents:

### **Incident No. 1 -- March 15, 2014:**

"On March 15, 2014, Defendant Chauvin restrained an arrested male in the prone position by placing his body weight on the male's upper body and head area to control the man's movement and to get him handcuffed. After placing handcuffs on



both of the male's hands, Chauvin had the male move to a seated position. See MPD CCN 2014-082863 (Bates 26570)."<sup>17</sup>

Incident No. 2 -- Feb. 15, 2015:

"On February 15, 2015, Defendant Chauvin attempted to restrain a male, and when the male turned to face him, Chauvin applied pressure to the male's lingual artery below the male's chin bone. Chauvin told the man he was under arrest, and as the male was actively resisting, Chauvin pushed the male against a wall and applied a neck restraint and pressure. Chauvin then pulled the male to the ground, placed him in a prone position, and placed handcuffs on the male with the assistance of other security officers. Defendant kept the male handcuffed in the prone position until other officers arrived to aid him in placing the male in a squad car. See MPD CCN 2015-054320 (Bates 26580-81)."<sup>18</sup>

Incident No. 3 -- Aug. 22, 2015:

"On August 22, 2015, Defendant Chauvin participated with other officers in rendering aid to a suicidal, intoxicated, and mentally-disturbed male. Chauvin observed other officers physically struggle with the male and one officer used a Taser on the male, to little avail. Eventually, the officers were able to put the male on the ground and place handcuffs on him. Chauvin and the other officers then immediately put the male in the side-recovery position, consistent with training. Chauvin rode with the male to the hospital for medical care. Officers involved in the response received a recommendation for an award for their appropriate efforts and received feedback from medical professionals that, if officers had prolonged their detention of the male or failed to transport the male to the hospital in a timely

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<sup>17</sup> The State provides a more detailed narrative of this Incident in its Supporting Memorandum of Law [Dk # 174] at pp. 23-25, as does Chauvin in his Opposing Memorandum of Law [Dk # 205] at pp. 6-7. Because the Court is precluding the State from offering evidence of this incident at trial for the reasons set forth in Part IV, *infra*, it is not necessary to present a more detailed exposition of the facts and circumstances of this incident in this opinion and the Court incorporates herein by this reference the parties' more detailed presentation of the facts from their briefs.

<sup>18</sup> The State provides a more detailed narrative of this Incident in its Supporting Memorandum of Law [Dk # 174] at pp. 25-28, as does Chauvin in his Opposing Memorandum of Law [Dk # 205] at pp. 11-12. Because the Court is precluding the State from offering evidence of this incident at trial for the reasons set forth in Part IV, *infra*, it is not necessary to present a more detailed exposition of the facts and circumstances of this incident in this opinion and the Court incorporates herein by this reference the parties' more detailed presentation of the facts from their briefs.

manner, the male could have died. See MPD CCN 2015- 317385 (Bates 26590, 3746-47).”

Incident No. 4 -- April 22, 2016:

“On April 22, 2016, Defendant Chauvin informed a male that the male was not allowed to return to the property. When the male responded that he would not stay away, Chauvin restrained the male by placing both of his hands around the male’s neck and applying pressure to both sides of the male’s neck. Chauvin then forced the male backwards onto the sidewalk, handcuffed him, and then stood the male up and walked him to a squad car. A small crowd of concerned citizens gathered to view Chauvin’s conduct with the male. The male later complained of asthma, and paramedics were called to the scene. See MPD CCN 2016-141710 (Bates 26606).”<sup>19</sup>

Incident No. 5 -- June 25, 2017:

“On June 25, 2017, Defendant Chauvin went to place a female under arrest in her home. As the female walked by, Chauvin grabbed one of her arms and told her she was under arrest. The female tried to pull away, and Chauvin applied a handcuff to one wrist. As the female tried to twist away, Chauvin pulled her down to the ground in the prone position and kneeled on her body to pin her to the ground. After being handcuffed, the female refused to stand, so Chauvin carried her out of the house in a prone position and set her face down on the sidewalk. Even though the female was not physically resisting in any way, Chauvin kneeled on her body, using his body weight to pin her to the ground while another officer moved the squad car closer. Chauvin then directed the other officer to apply a Hobble restraint to the female even though she was not providing any physical resistance. Chauvin’s conduct in kneeling on the female during this entire time was more force than was reasonably necessary under the circumstances. See MPD CCN 2017-235836 (Bates 27883, 26427).”

Incident No. 6 -- Sept. 4, 2017:

“On September 4, 2017, Defendant Chauvin responded to a domestic assault call with another officer. They attempted to arrest a juvenile male, and the male resisted. Chauvin applied a neck restraint to the juvenile male and rolled him

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<sup>19</sup> The State provides a more detailed narrative of this Incident in its Supporting Memorandum of Law [Dk # 174] at pp. 31-32, as does Chauvin in his Opposing Memorandum of Law [Dk # 205] at pp. 12-13. Because the Court is precluding the State from offering evidence of this incident at trial for the reasons set forth in Part IV, *infra*, it is not necessary to present a more detailed exposition of the facts and circumstances of this incident in this opinion and the Court incorporates herein by this reference the parties’ more detailed presentation of the facts from their briefs.

onto his stomach. Chauvin used his own body weight to pin the juvenile male to the floor. Defendant continued to restrain the juvenile in this position beyond the point when such force was needed under the circumstances. See MPD CCN 2017-337738 (Bates 26632-33).”<sup>20</sup>

Incident No. 7 -- March 12, 2019:

“On March 12, 2019, Defendant Chauvin directed a male to move away from a witness Chauvin and another officer were talking with. When the male refused, Chauvin approached the male, but the male pulled away, flailing his arms and struggling with the other officer. Chauvin sprayed mace at the male. The other officer directed the male to lay on the ground, and when he only kneeled, Chauvin applied a neck restraint to control the male. Chauvin forced the male to the ground and sat on the male’s back to pin him to the ground so he could be handcuffed. Chauvin restrained the male in this position beyond the point when such force was needed or reasonable under the circumstances. See MPD 2019-71230 (Bates 25828).”<sup>21</sup>

Incident No. 8 -- July 6, 2019:

“On July 6, 2019, Defendant Chauvin and another officer responded to a domestic assault call. When the male suspect dropped his arms down to his sides, Chauvin, concerned about access to knives, grabbed one of the male’s arms and delivered a kick to the male’s lower midsection to back him away. Chauvin thought the man had tensed up, so Chauvin applied a neck restraint. The male made a brief snoring

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<sup>20</sup> The State provides a more detailed narrative of this Incident in its Supporting Memorandum of Law [Dk # 174] at pp. 34-35 as well as in its Supplemental Memorandum [Dk # 204], as does Chauvin in his Opposing Memorandum of Law [Dk # 205] at pp. 15-16. Because the Court is precluding the State from offering evidence of this incident at trial for the reasons set forth in Part IV, *infra*, it is not necessary to present a more detailed exposition of the facts and circumstances of this incident in this opinion and the Court incorporates herein by this reference the parties’ more detailed presentation of the facts from their briefs.

<sup>21</sup> The State provides a more detailed narrative of this Incident in its Supporting Memorandum of Law [Dk # 174] at pp. 35-37, as does Chauvin in his Opposing Memorandum of Law [Dk # 205] at pp. 16-17. Because the Court is precluding the State from offering evidence of this incident at trial for the reasons set forth in Part IV, *infra*, it is not necessary to present a more detailed exposition of the facts and circumstances of this incident in this opinion and the Court incorporates herein by this reference the parties’ more detailed presentation of the facts from their briefs.

noise, indicating the male had gone unconscious. During that time, Chauvin fully handcuffed the male. See MPD 2019-197549 (Bates 25863).”<sup>22</sup>

This notice satisfies the notice required by the first prong of the rule.

With respect to the second prong of the *Spreigl/404(b)(2)* analysis, in its September 25 Amended Notice, the State provided the following statements of the specific purposes for which it seeks to introduce each of the eight *Spreigl* incidents:

Incident No. 1 -- March 15, 2014:

“This incident is offered to prove intent and knowledge. This incident shows that Chauvin has knowledge that a person should be moved from the prone position after handcuffing and his intent to assault Mr. Floyd by keeping his body weight on Mr. Floyd’s neck beyond the need for any such force.”

Incident No. 2 -- Feb. 15, 2015:

“This incident is offered to prove intent, common scheme or plan, and modus operandi. This incident demonstrates Chauvin’s intent to continue assaulting Mr. Floyd beyond that necessary for reasonable force, as well as common scheme or plan in that this is a markedly similar incident in which Chauvin held a handcuffed person in the prone position to the ground until Chauvin could place the male in a squad car.”

Incident No. 3 -- Aug. 22, 2015:

“This incident is offered to prove knowledge and intent. The incident demonstrates Chauvin’s knowledge of proper training to move a handcuffed person from the prone position to the side-recovery position and immediately seek medical aid. This incident proves that Chauvin intended to assault Mr. Floyd by continuing to hold Mr. Floyd in the prone position even after handcuffed and while Mr. Floyd was not resisting, or even responding.”

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<sup>22</sup> The State provides a more detailed narrative of this Incident in its Supporting Memorandum of Law [Dk # 174] at pp. 37-38, as does Chauvin in his Opposing Memorandum of Law [Dk # 205] at pp. 17-18. Because the Court is precluding the State from offering evidence of this incident at trial for the reasons set forth in Part IV, *infra*, it is not necessary to present a more detailed exposition of the facts and circumstances of this incident in this opinion and the Court incorporates herein by this reference the parties’ more detailed presentation of the facts from their briefs.

Incident No. 4 -- April 22, 2016:

“This incident is offered to prove modus operandi. In markedly similar circumstances, Chauvin used a neck restraint to subdue a person Chauvin believed was uncooperative beyond force that was reasonably necessary.”

Incident No. 5 -- June 25, 2017:

“This incident is offered to prove intent through modus operandi. In markedly similar circumstances, Chauvin pinned a handcuffed individual, who was not physically resisting, to the ground by placing his body weight through his knee to the person’s neck and upper back to maintain control of the person.”

Incident No. 6 -- Sept. 4, 2017:

“This incident is offered to prove modus operandi. In a markedly similar situation, Chauvin applied a neck restraint to subdue an individual and then used his body weight to pin the person to the ground beyond force reasonably necessary.”

Incident No. 7 -- March 12, 2019:

“This incident is offered to prove modus operandi, in that in markedly similar circumstances Chauvin applied a neck restraint and pinned a person to the ground beyond what was reasonably necessary.”

Incident No. 8 -- July 6, 2019:

“This incident is offered to prove modus operandi. In a markedly similar fashion, Chauvin applied a neck restraint to render an individual unconscious so Chauvin could control him, using force beyond what was reasonably necessary. This incident will also be offered to show Chauvin’s awareness of the risks of neck restraints, and Chauvin’s knowledge of the need to discontinue the neck restraint upon the person losing consciousness and the person being handcuffed.”

These statements clearly indicate which of the 404(b)(1) reasons the State seeks to prove by offering the *Spreigl* evidence.

Accordingly, the Court need not discuss either of these elements further. The balance of this analysis will address the three remaining elements regarding the two prior *Spreigl* incidents the Court is permitting the State to introduce at trial, Incident Nos. 3 and 5, and the six prior *Spreigl* incidents the Court is precluding the State from introducing at

trial, Incident Nos. 1-2, 4, and 6-8.

**III. THE COURT WILL ALLOW INTRODUCTION AS *SPREIGL* EVIDENCE OF INCIDENTS THREE (AUGUST 22, 2015) AND FIVE (JUNE 25, 2017) AT TRIAL.**

A. Third Prong: Clear and convincing evidence

The "clear and convincing" evidence required by the third prong of the required showing is a lower standard of proof than proof beyond a reasonable doubt. *State v. Kennedy*, 585 N.W.2d 385, 389 (Minn. 1998). The clear and convincing evidence standard is met if "it is highly probable that the facts sought to be admitted are truthful." *Ness*, 707 N.W. 2d at 686. Corroboration is not required, and the clear and convincing standard can be met by a single witness the Court finds credible. *Kennedy*, 585 N.W.2d at 389-90; *State v. Oates*, 611 N.W.2d 580,585 (Minn. App. 2000), *rev. denied* (Minn. Aug. 22, 2000).

The State maintains that it will be able to prove, by clear and convincing evidence, Chauvin's conduct in the *Spreigl* incidents it seeks to admit through witnesses identified in the reports and by body-worn camera video evidence. The Court is tentatively ruling that the State may introduce evidence of Incident No. 3, the August 22, 2015 incident, provided the Court is satisfied that evidence presented by the State at trial satisfies the clear and convincing evidence standard that Chauvin was present when a medical professional made the remarks summarized in the State's offer of proof. *See* Part III.B.7, *infra*.

B. Fourth Prong: The State's *Spreigl* Evidence for Incident Nos. 3 and 5 Is Relevant and Is Offered for a Permissible Purpose.

The threshold question for admissibility of evidence under the fourth prong of the required showing is relevance: evidence is relevant if it has any tendency to make the existence of a fact that is of consequence to the determination of the action more or less

probable than it would be without the evidence. Minn. R. Evid. 401, 402; *State v. Guzman*, 892 N.W.2d 801, 811-12 (Minn. 2017); *State v. Tanksley*, 809 N.W.2d 706, 709 (Minn. 2012). The principal concern with admitting evidence of other “bad acts” or prior crimes<sup>23</sup> is that even if such evidence meets the technical definition of relevance – *i.e.*, the evidence may tend to show that the person committed the charged crime – the limited probative value of the evidence is far outweighed by potential unfair prejudice to the defendant. *See Michelson v. United States*, 335 U.S. 469, 475-76 (1948); *Spreigl*, 139 N.W.2d at 172 (quoting 1 Wigmore, *Evidence* (3d ed.) §§ 193, 194). That prejudice arises from the concern that the jury may use the evidence to conclude the defendant has a mere propensity to commit crimes apart from whatever relevance it has to the crime for which he is on trial or that the defendant is a proper candidate for punishment due to crimes or other bad or wrongful acts he has committed in his past. *See, e.g., Ness*, 707 N.W.2d at 685; *Spreigl*, 139 N.W.2d at 172. If offered for either such purpose, the relevance of such evidence is only for an improper purpose, “inferring propensity from character.” *State v. Frisinger*, 484 N.W.2d 27, 32 (Minn. 1992).

In *State v. Wermerskirchen*, 497 N.W.2d 235 (Minn. 1993), for example, the Minnesota Supreme Court referred to the “improper purpose of showing the defendant was a bad person in order to raise an inference that he acted in conformity with his bad character or to persuade the jury to convict on some improper basis.” *Id.* at 241-42. But when the evidence has probative value and relevance other than for these improper purposes, its admission is not

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<sup>23</sup> The State here is not seeking to introduce evidence of any prior crimes for which Chauvin has been convicted, for *Spreigl* purposes, but rather evidence the State characterizes as evidence of “bad” or “wrongful” acts which, in the State’s view, constitute the use of unauthorized force or, in situations in which use of force may have been legally authorized, Chauvin’s use of force that was unreasonable in the circumstances.

barred by Rule 404(b),<sup>24</sup> because the Supreme Court has long recognized at common law “various exceptions to this general exclusionary rule” of evidence of other crimes, wrongs, or acts where the evidence is not offered for this improper purpose. *Ness*, 707 N.W.2d at 685.

For purposes of Rule 404(b) and *Spreigl*, the trial court must first identify the precise, specific disputed fact to which the evidence would be relevant. *State v. Fardan*, 773 N.W.2d 303, 317 (Minn. 2009); *Ness*, 707 N.W.2d at 685. It must then determine whether the evidence is offered for a permissible purpose, such as to prove motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident,” rather than to “prove the character of a person in order to show action in conformity therewith.” Minn. R. Evid. 404(b)(1). When determining the relevance and materiality of proffered *Spreigl* evidence to the State’s case, the trial court must examine the reasons and need for the evidence and whether there is a sufficiently close relationship between the charged offenses and the *Spreigl* evidence in time, place, or *modus operandi*. *Kennedy*, 585 N.W.2d at 390; see *State v. Clark*, 738 N.W.2d 316, 345-47 (Minn. 2007). Before *Spreigl* evidence can be admitted, the State must demonstrate that such evidence is necessary to support its burden of proof. See *Billstrom*, 149 N.W.2d at 285; *State v. DeWald*, 464 N.W.2d 500,504 (Minn. 1991). If such evidence is cumulative or unnecessary to the State’s case, it should not be admitted. *Ture v. State*, 681 N.W.2d 9, 16 (Minn. 2004).

1. *Modus Operandi/Common Plan or Scheme*

One of the Rule 404(b)(1) exceptions is common scheme or plan, which includes

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<sup>24</sup> The *Wermerskirchen* Court noted that Minn. R. Evid. Rule 404(b) is a “specific application of the ‘rule of multiple admissibility’”: evidence that may not be admissible for one purpose should not be excluded if properly admissible for some other purpose. 497 N.W.2d at 239-40.



evidence of a common *modus operandi* in the other acts and the charged crime to prove the charged crime and disprove defenses. *Ness*, 707 N.W.2d at 687-88; *Kennedy*, 585 N.W.2d at 391; *State v. Rainer*, 411 N.W.2d 490, 497 (Minn. 1987); *Spreigl*, 139 N.W.2d at 170. This proper purpose for the introduction at trial of *Spreigl* evidence applies when the other wrongs or “bad acts” are “substantially similar to the charged offense” in terms of time, place, and *modus operandi*. *Kennedy*, 585 N.W.2d at 390. While the other crimes, wrongs, or acts need not be identical in every way to the charged crime – *i.e.*, they need not be sufficiently unique as to constitute a so-called “signature crime” -- they “must have a marked similarity in *modus operandi* to the charged offense.” *State v. Wright*, 719 N.W.2d 910, 917 (Minn. 2006); *Ness*, 707 N.W.2d at 688; *State v. Blom*, 682 N.W.2d 578, 612 (Minn. 2004); *Kennedy*, 585 N.W.2d at 391; *State v. Johnson*, 568 N.W.2d 426, 434 (Minn. 1997), *State v. Cogshell*, 538 N.W.2d 120, 123-24 (Minn. 1995); *Wemerskirchen*, 497 N.W.2d at 241-42 (other crimes evidence admissible under common plan or scheme “to establish that the conduct on which the charged offense was based actually occurred or to refute the defendant's contention that the victim's testimony was a fabrication or a mistake in perception”). Although absolute similarity is not required between the facts of the *Spreigl* incident and the charged offense for which the defendant is being tried, *State v. DeWald*, 464 N.W.2d 500, 503 (Minn. 1991), the more closely the *Spreigl* acts resemble the charged offense the greater the likelihood that the *Spreigl* acts are relevant. *Rainer*, 411 N.W.2d at 497 (Minn. 1987). The Supreme Court in *Ness* warned that the *modus operandi*/common scheme or plan exception “may have been applied more broadly than it should be.” 707 N.W.2d at 688.

Evidence that a defendant committed other acts in a manner markedly similar to the conduct in question is relevant to proving the crime in question, including refuting similar defenses. *See, e.g., Ness*, 707 N.W.2d at 687-88; *State v. Robinson*, 427 N.W.2d 217, 227 (Minn. 1988); *State v. Morrison*, 310 N.W.2d 135, 137 (Minn. 1981); *State v. Makela*, 309 N.W.2d 295, 298 (Minn. 1981). When the defendant's other "bad acts" are markedly similar to the charged crime, the evidence of the other bad acts establishes a *modus operandi* that is relevant to proving the charged crime. *Robinson*, 427 N.W.2d at 227 (holding other crimes evidence was admissible because the "evidence shows a pattern of operation."). The evidence of markedly similar crimes is relevant to corroborate the commission of the charged crime and to disprove or refute defenses because it establishes this common *modus operandi*. *State v. Welle*, 870 N.W.2d 360, 364-65; *Ness*, 707 N.W.2d at 688.

## 2. Intent

Although intent is also a proper purpose for introducing *Spreigl* evidence, *Fardan*, 773 N.W.2d at 317, admission of *Spreigl* evidence to prove intent requires analysis "of the kind of intent required and the extent to which [intent] is a disputed issue in the case." *Ness*, 707 N.W.2d at 687. In *Fardan*, a murder prosecution, evidence that somebody with Fardan had fired the gun earlier in the evening was properly admitted to prove Fardan intentionally fired the gun during the course of the murder. 773 N.W.2d at 318. In this context, the evidence can also be relevant to the state of mind requirement by rebutting a defense. *See State v. Grilli*, 230 N.W.2d 445, 450-51 (Minn. 1975). The court in *Grilli* held that evidence of other drug sales was admissible to prove predisposition in rebuttal of the entrapment defense. The evidence related to the intent statutory element because the essence of the entrapment defense is the

claim that the defendant had no intent to commit the crime until the government entrapped him. *Id.* at 451.

### 3. Knowledge

Another proper purpose for *Spreigl* evidence is to prove knowledge. *See State v. Coleman*, 944 N.W.2d 469, 481-82 (Minn. App. 2020), *rev. granted* (Minn. June 30, 2020). For example, in *Coleman* the defendant was charged with third-degree murder after drinking alcohol and driving his snowmobile at a high rate of speed on a frozen lake, crashing into and killing a child and seriously injuring the child's father. 944 N.W.2d at 474-75. One element of the third-degree murder charge is the defendant's awareness that his conduct "created a substantial and unjustifiable risk to human life." *Id.* at 479. The Court of Appeals upheld the trial court's admission of Coleman's previous alcohol-related offense because it was "relevant to Coleman's knowledge of the dangers of driving while intoxicated." *Id.* at 481.

### 4. Pertinent Elements of the Charges and Chauvin's Defenses

Each of the charged offenses contains a state of mind element that will be disputed at trial. For the second-degree unintentional murder, the State will be required to prove that Chauvin caused Floyd's death while committing a felony offense, here, as charged by the State, third-degree assault. Minn. Stat. § 609.19 subd. 2(1). A person is guilty of third-degree assault if he "assaults another and inflicts substantial bodily harm." Minn. Stat. § 609.223 subd. 1. One manner in which a defendant commits an assault is by intentionally inflicting (or attempting to inflict) bodily harm. Minn. Stat. § 609.02 subd. 10(2); *State v. Dorn*, 887 N.W.2d 826, 830 (Minn. 2016) ("assault-harm" – as distinguished from "assault-fear" -- requires proof of intent to commit the physical act). The operative state of mind is the intent to commit the physical

act that causes harm.

Liability for third-degree murder arises when a person “without intent to effect the death of any person, causes the death of another by perpetrating an act eminently dangerous to others and evincing a depraved mind, without regard for human life.” Minn. Stat. § 609.195(a). The operative state of mind element for third-degree murder is the depraved mind -- an awareness that the acts are dangerous to others and the person disregarded that risk. *See* CRIMJIG 11.38.<sup>25</sup>

Liability for second-degree manslaughter arises when a “person . . . causes the death of another . . . by the person’s culpable negligence whereby the person creates an unreasonable risk, and consciously takes chances of causing death or great bodily harm to another.” Minn. Stat. § 609.205(1). Second-degree manslaughter requires proof of (i) “objective gross negligence on the part of the actor”; and (ii) “subjective ‘recklessness in the form of an actual conscious disregard of the risk created by the conduct.’” *State v. McCormick*, 835 N.W.2d 498, 507 (Minn. App. 2013) (quoted citation omitted). The objective gross negligence component “is satisfied by demonstrating that the act was ‘a gross deviation from the standard of care that a reasonable person would observe in the actor’s situation.’” *Id.* The subjective recklessness component requires proof of the “actor’s state of mind.” *Id.* That is usually established

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<sup>25</sup> As the comment to CRIMJIG 11.38 explains, the phrase “depraved mind” in the statute is “not susceptible of definition, except in terms of an ‘eminently dangerous’ act and the lack of regard for human life.” CRIMJIG 11.38 n.2. Because the drafters of the CRIMJIGS concluded that “the further use of the words ‘depraved mind’ is unnecessary and possibly prejudicial,” the model jury instructions for third-degree murder do not use them. *Id.* In *State v. Coleman*, the Court of Appeals held that the mens rea element requires that the defendant was aware that his conduct created a substantial and unjustifiable risk of death to another person and consciously disregarded that risk. 944 N.W.2d 469 at 479 (Minn. App. 2020).

through circumstantial evidence, “by inference from words or acts of the actor both before and after the incident.” *Id.* In conducting this inquiry, the fact-finder may infer that “a person intends the natural and probable consequences of their actions.” *Id.* The operative state of mind is this subjective recklessness: an actual disregard of the objective risks. But also with regard to the manslaughter charge, the evidence is relevant to the objective component: that the act was a gross deviation from a reasonable standard of care.

Finally, the Defense will argue reasonable use of force as a defense. Minnesota law allows police officers to use reasonable force in performing their lawful duties. Minn. Stat. § 609.06 subd. 1(1). Whether the force used in any given situation was reasonable is determined by evaluating the totality of the circumstances. *Graham v. Connor*, 490 U.S. 386, 396 (1989). The MPD requires that any force applied be reasonable in accord with these standards. See MPD Policy & Procedure Manual § 5-303. Thus, an operative element at trial will be whether the force Chauvin used was reasonable under the totality of circumstances.

##### 5. Temporal proximity

Generally speaking, the greater the time gap between the charged incident for which the defendant is being tried and the *Spreigl* incidents for which the State seeks to introduce evidence at the trial the less relevant the *Spreigl* incidents and the greater the need for the State to establish greater similarity between the charged offense and the *Spreigl* incidents. *State v. Washington*, 693 N.W.2d 195, 201 (Minn. 2005). However, there are no “bright-line” rules for determining when the *Spreigl* acts are too remote in time and have lost their relevance. *Ness*, 707 N.W.2d at 687. In *Washington*, for example, the Supreme Court surveyed Minnesota cases in which time gaps between 15 and 19 years

were not deemed too distant to have lost their relevance. 693 N.W.2d, at 201-02.

6. Geographic location

As with temporal proximity, there are no bright-line rules regarding how geographically close the alleged *Spreigl* incidents must be to the location of the charged offense for which a defendant is being tried. *State v. Bartylla*, 755 N.W.2d 8, 21-22 (Minn. 2008) (approving admission of *Spreigl* evidence where the conduct occurred in a different county than the charged offense); *State v. Rucker*, 752 N.W.2d 538, 549 (Minn. App. 2008) (*Spreigl* acts occurring in Minneapolis apartment sufficiently geographically close to acts occurring in other Hennepin County locations). Indeed, in *State v. Crocker*, 409 N.W.2d 840, 843 (Minn. 1987), the Minnesota Supreme Court affirmed a conviction in which *Spreigl* evidence of sexually assaultive conduct in Iowa had been admitted.

This factor looks not only to the geographical proximity of the alleged *Spreigl* conduct to the charged offense but also to the types of locations in which the crimes were committed. In *Wermerskirchnen*, the Court approved the admission of *Spreigl* conduct in which the defendant had sexually abused another of his daughters as well as his nieces in a family home he was renting at the time where the sexual assault for which he was being tried involved another of his daughters which occurred in a different apartment he was renting.

7. Incident No. 3 -- The August 22, 2015 incident

According to the State, MPD officers were dispatched on a call about a possible emotionally-disturbed person who was screaming in an apartment building. Upon arrival at the scene, officers observed a man walking back and forth between an enclosed porch area and the

main living area continually “screaming in an unknown gibberish language foreign to officers.” The man was unresponsive to the officers, “with a flat affect on his face and appearing to be completely unaware of his surroundings.” (Bates 26592)

Upon arriving with other officers, Chauvin observed that the man “was yelling and making sounds that did not sound like actual language” and “was clenching his fists as he stood up and was not wearing a shirt.” Chauvin took up a position at the front door as other officers arrived. (Bates 26590)

A sergeant arrived and, after being briefed, concluded that the man was “a danger to himself and to others.” The sergeant then authorized a forced entry into the man’s apartment. When officers entered the apartment, the man retreated to a tiny bathroom in which the bathtub was full of water. As officers commanded the man to exit the bathroom, he was observed “clenching his fists and standing in a fighting stance towards the bathroom mirror as he continued an unknown biblical style chant.” (Bates 26590) Although one officer instructed the man to come out of the bathroom and lie on the ground, the man continued yelling and talking “gibberish.” Another officer moved toward the man, instructing him to get on the ground and warning that if he refused, the officer would deploy his Taser. The officer stated he would count to three and then deploy the Taser. However, even after the officer counted to three, the man did not comply but continued standing, yelling, and “flexing all of his muscles with his fists clenched.” (Bates 26591)

The sergeant ordered an officer to use his Taser on the man In view of the close confines of the bathroom, the man’s demeanor, the fact that the bathtub was full of water, and the man’s muscular build and his flexing of his muscles. Even after observing his fellow officer

deploying his Taser for several cycles on the man,” Chauvin noted that the Taser had “very little effect” on the man. (Bates 26590, 26591)

The other officer then grabbed the man, attempting to take him to the ground. Tensing up every muscle in his body, the man started resisting the officers and refused to go to the ground. One officer grabbed the man’s arm and tried to force him to the ground, but slipped on the wet floor and fell. Other officers joined in and were eventually succeeded in handcuffing the man. (Bates 26591-92)

According to the sergeant, after a struggle of about a minute, and after the man had been handcuffed, the man was then immediately placed in the rescue position and a Code 3 request for an ambulance was sent.<sup>26</sup> (Bates 2659) The sergeant noted that the man “was so excited that he was chemically sedated by on scene paramedics for his own safety.” Chauvin observed his fellow officer using his Taser on the man, described the man as being in an “extremely agitated state,” and noted the man had been secured after a struggle. (Bates 26590)

The next day, the sergeant submitted a recommendation for a Lifesaving Award for the officers involved in the incident, including Chauvin. The sergeant had learned from hospital staff that the man’s condition could have turned fatal had the officers not taken the necessary steps to ensure the man got to the hospital safely, and that the man’s “elevated cardiac condition could have been fatal if officers on scene would have prolonged the detention or if they would have done nothing at all.” The sergeant noted that “Officer Bjork placed the male

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<sup>26</sup> Another officer noted that the man “was eventually handcuffed and placed on his side and kept in that position until paramedics arrived.” (Bates 26593)



in the rescue position where he was monitored by Officer[s] Merrill, Dean and Chauvin until medical arrived.” ( Bates 3746-47)

So long as the State presents evidence that Chauvin heard medical professionals making the statements about the potentially fatal risks to the man in those circumstances had he not been immediately placed into the rescue position by officers after being handcuffed and emergency medical professionals summoned, evidence of this incident is relevant to proving Chauvin’s knowledge about the importance and propriety of moving a handcuffed person from the prone position to the “rescue position” and obtaining immediate medical attention. That evidence would be relevant to establish Chauvin’s knowledge of the limits of reasonable force in analogous circumstances to those Floyd was manifesting on May 25, and thus could be relevant to the jury’s assessment of whether Chauvin’s conduct on May 25 constituted an assault when Chauvin chose to maintain his position kneeling on Floyd’s upper back and the back of his neck for some four minutes and forty seconds after Floyd had ceased resisting and uttering any sounds, had become motionless and non-responsive, and even after it appeared Floyd had stopped breathing and had no pulse. It may also be relevant to the jury’s assessment of whether Chauvin also deviated from the objective standard of care for the second-degree manslaughter charge. Finally, this evidence could be relevant to establishing Chauvin’s knowledge that failing to put a detained suspect exhibiting characteristics like those Floyd exhibited on May 25 into the recovery position is unreasonable and carries with it a serious risk of harm.

8. Incident No. 5 -- The June 25, 2017 Incident

According to the State’s proffer, Chauvin was dispatched to a domestic assault call in

this incident. The victim reported to Chauvin and another officer that she had gotten into an argument with her adult daughter, who may have been intoxicated, in which her daughter had tried to strangle her with an extension cord before leaving the residence. While the officers were speaking with the victim, a woman entered the back door and the victim identified her as the daughter who had just assaulted her. Chauvin told the daughter she was under arrest.

As the daughter walked past the officers, Chauvin grabbed her left arm and the other officer grabbed her other arm. The daughter pulled away and turned to face the officers. As the other officer pushed her chest against the wall, Chauvin put a handcuff on her left wrist. In his report, Chauvin indicated that the daughter “kept twisting her body and trying to pull her arms in front of her,” so he “pulled her down to floor face first and kneeled on her to pin her body so we could finish handcuffing her.” (Bates 27883, 27884)

Although Chauvin then instructed the daughter to stand up, she refused. After getting her on her feet, as they tried to walk her out of the apartment, the daughter dragged her feet on the floor and at one point hooked her foot behind a television stand. Chauvin and his fellow officer wound up carrying the daughter through and outside the house. (Bates 27883, 27884) According to the State’s proffer, body-worn camera video shows the officers carrying the daughter face down, hands cuffed behind her back, by her arms and feet while other family members were in the home. Once outside the house, the officers wrote in their reports that they had placed the daughter face down, “safely” on the grass near the sidewalk in front of the house. (Bates 27883-27884) However, the State represents that the body-worn camera video shows that the officers placed the daughter face down mostly on the cement sidewalk.

Chauvin wrote in his report that he “kept body weight” on the female to “pin” her down

while the other officer moved the squad car closer. The body-worn camera video shows, according to the State's proffer, that Chauvin kneeled on the female's back during this time, even though she was by this time offering no physical resistance. Chauvin directed the other officer to apply a Hobble restraint around her wrists and ankles even though she was no longer being physically aggressive. The body-worn camera video shows that Chauvin directed the other officer to apply the Hobble restraint in the "hog-tie" position, and Chauvin can be heard saying "perfect." After applying the Hobble restraint, the officers placed the daughter in the back seat of the squad car on her side. (Bates 27883, 27884, 26427)

In his report, Chauvin indicated that the female was 5'6" tall with a "LI" build.<sup>27</sup> For the field requesting the "Type of Resistance Encountered," Chauvin entered "Commission of Crime." ( Bates 27880)

The State contends this evidence is relevant to common scheme or plan through *modus operandi*. Chauvin told the daughter she was under arrest and then grabbed her as she walked by. When she did not fully comply, Chauvin and the other officer forced her to the ground to handcuff her. Chauvin used his body weight to pin her to the ground while she was handcuffed. When she then refused voluntarily to walk out of the house, Chauvin and his fellow officer picked her up by the arms and carried her out of the house. According to the State's proffer, the only resistance the daughter offered was dragging her feet on the floor and briefly hooking a foot behind the television stand. When they had her out of the house, Chauvin placed her in the prone position on the sidewalk and kneeled on her back, directing the

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<sup>27</sup> The State represents that the BWC video reveals the daughter to have been very thin, and of slight build.

other officer to hog tie her even though by this time the woman was not making any threats and was not physically aggressive toward the officers. The State maintains Chauvin's conduct in this incident is consistent with his behavior toward Floyd, who was fully handcuffed and, after several minutes after having been subdued prone on the street by Chauvin, Kueng, and Lane, had ceased offering any physical aggression. According to the State, Chauvin's conduct in Incident No. 5 and during the encounter with Floyd on May 25, 2020 shows a common way of acting with suspects he believes may be intoxicated and who display any level of noncompliance while being taken into custody; in the State's view, Chauvin operates in disregard for the particular circumstances of a given situation in determining appropriate reasonable force and simply fully restrains the suspect with no regard for their well-being until he can turn them over to someone else.

The State contends evidence of this incident is relevant not only to demonstrate Chauvin's modus operandi in similar circumstances but may also be relevant to demonstrate his intent to assault Floyd and to rebut his reasonable use of force defense by showing that Chauvin does not consider the individual circumstances in any given situation in deciding how much force to use or for how long but simply forces arrestees in the prone position to restrain them even after they have ceased resisting.

C. Fifth Prong: The Potential Prejudice Does Not Outweigh the Probative Value.

For purposes of the fifth element, the trial court "must identify the precise disputed fact to which the *Spreigl* evidence would be relevant" and then determine the relationship of the *Spreigl* evidence to that precise disputed fact. *Ness*, 707 N.W.2d at 686. The court must balance the relevance and probative value of the evidence with the State's

need for the evidence, the danger that the evidence will be used for an improper purpose by the jury, and the danger that the evidence will create the type of unfair prejudice Minn. R. Evid. 403 protects against. *State v. Gomez*, 721 N.W.2d 871, 878-79 (Minn. 2006); see also *State v. Scruggs*, 822 N.W.2d 631, 644 (Minn. 2012) (courts are to “balance the relevance of the [other acts], the risk of the evidence being used as propensity evidence, and the State’s need to strengthen weak or inadequate proof in the case.”). The question is whether the evidence is *unfairly* prejudicial, meaning that it “persuades by illegitimate means.” *State v. Schultz*, 691 N.W.2d 474, 478 (Minn. 2005).

For these purposes, evidence creates unfair prejudice if it persuades by illegitimate means, giving one party an unfair advantage, not simply because it is damaging. *Schulz*, 691 N.W.2d at 478. The probative value of the *Spreigl* evidence must outweigh the danger or potential for unfair prejudice. *Kennedy*, 585 N.W.2d at 391-92. The Court may also appropriately take into account the necessity to the State of introducing the *Spreigl* evidence, as that it is proper consideration in determining that evidence’s probative value. *Ness*, 707 N.W.2d at 689-90.

The distinction between improper propensity evidence and permissible common plan or scheme evidence is that propensity evidence seeks to attack the defendant’s character and presents the risk that a jury may find the defendant guilty not because his guilt for the charged offense has been proved but to punish him for the other “bad acts” or misconduct and that such evidence may be used for the improper purpose of suggesting that the defendant has the general propensity or inclination to commit the crime with which he is charged because he has committed similar crimes in the past. *Ness*, 707

N.W.2d at 685; *Washington*, 693 N.W.2d at 200-01. In contrast, common plan or scheme evidence seeks to demonstrate that the particular manner in which a defendant has conducted himself in a highly similar context in the past may assist the jury in determining whether the defendant committed the criminal act with which he is charged. *Spreigl*, 139 N.W.2d at 170-71; *State v. Harris*, 560 N.W.2d 676, 677 (Minn. 1997).

The possibility that the jury could potentially use the *Spreigl* evidence improperly to convict Chauvin based solely on his character and as propensity evidence can be overcome by the use of the common jury instruction that explicitly instruct the jury on the appropriate use of evidence and that cautions that they may not convict Chauvin of the charges in this case based on his alleged conduct regarding the *Spreigl* incidents. *State v. Clark*, 755 N.W.2d 241,261 (Minn. 2008); *Rucker*, 752 N.W.2d at 550; *State v. Courtney*, 696 N.W.2d 73, 84 (Minn. 2005); *State v. Robinson*, 604 N.W.2d 355, 363-64 (Minn. 2000) (court should give cautionary instruction before the other acts evidence is admitted and in the final jury instructions); *Kennedy*, 585 N.W.2d at 392 (the trial court's cautionary instructions lessened the probability of prejudice); *State v. Billstrom*, 276 Minn. 174, 149 N.W.2d 281, 285 (Minn. 1967). Courts presume that jurors follow the court's instructions. *Fardan*, 773 N.W.2d at 320. Chauvin would not be unfairly prejudiced by the introduction of *Spreigl* evidence; any prejudice would obtain only by virtue of the "legitimate probative force" of that evidence. *State v. Bolte*, 530 N.W.2d 191, 197 (Minn. 1995).

#### **IV. THE COURT WILL NOT ALLOW INTRODUCTION AS SPREIGL EVIDENCE AT TRIAL OF THE OTHER SIX INCIDENTS.**

In considering the State's proffered *Spreigl* evidence and the stated reasons for which the State seeks to introduce such evidence at trial, the Supreme Court has instructed trial

courts “not simply [to] take the prosecution’s stated purposes . . . at face value” but to ascertain “the real purpose for which [the evidence] is offered.” *Ness*, 707 N.W.2d at 686. In this Court’s view, the real purpose for which the State seeks to introduce evidence of eight prior incidents in which it contends Chauvin exercised unreasonable force is simply to depict Chauvin to the jury as a “thumper,” an officer who knowingly and willingly relishes “mixing it up” with suspects and who routinely escalates situations and engages in the use of unreasonable force not warranted under the circumstances to subdue a resisting (or non-compliant) suspect. Stated otherwise, the actual purpose for which the State seeks to introduce evidence of all these prior incidents is as propensity evidence, portraying Chauvin as an officer who routinely resorted to unreasonable and disproportionate force when confronting noncompliant suspects in order to show that Chauvin’s conduct toward Floyd on May 25, 2020 likewise constituted the use of unreasonable and unauthorized force. That, of course, is improper and the evidence the State seeks to offer at trial of these other six incidents is therefore not admissible.

A. The State Cannot Establish the Fourth Prong For Any of These Six Incidents.

1. Incident Nos. 2, 4, and 6-8 Are Not Relevant to Establish *Modus Operandi* or Common Scheme or Plan.

The State indicates that the purpose for which it seeks to introduce as *Spreigl* evidence evidence of Chauvin’s conduct in Incident Nos. 2, 4, and 6-8 is to establish a *modus operandi* or common scheme or plan, contending Chauvin’s conduct in each of these five incidents was

markedly similar<sup>28</sup> to his conduct with respect to Floyd on May 25, 2020 which the State charges constitutes the use of unreasonable and legally unauthorized force. See State Mem. [Dk # 174], at pp. 27-28 (re: Incident No. 2), 32 (re: Incident No. 4), 35 (re: Incident No. 6), 37 (re: Incident No. 7), and 38 (re: Incident No. 8).

This Court disagrees. Not only are none of these five prior incidents “remarkably similar” to the Floyd incident on May 25, 2020 but in fact Chauvin’s conduct in each of these prior incidents was dissimilar to his actions on May 25, 2020. The only similarity the Court is able to discern is the State’s present view, in the context of its interest in prosecuting Chauvin for the death of George Floyd, that Chauvin is prone to engage in unreasonable force.

With respect to the Floyd incident on May 25, 2020, by the time Chauvin and Thao arrived at the scene, Lane and Kueng had been engaged with Floyd for seven and a half minutes and Floyd had already been in handcuffs for about six minutes. In Incident Nos. 2 and 4, in contrast, Chauvin was working off-duty at a nightclub and the Midtown Global Market, respectively, and was the only MPD officer present at the scene.

In all five of these prior incidents, use of force was applied in the process of seeking to handcuff a suspect actively resisting arrest in contrast to the Floyd incident in which Lane and Kueng had handcuffed Floyd (encountering no active resistance from Floyd to being handcuffed)<sup>29</sup> several minutes before Chauvin had arrived on the scene, and the use of force

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<sup>28</sup> See *supra* Part III for discussion of the standards applied in analyzing the admissibility of *Spreigl* evidence offered for Minn. R. Evid. 404(b)(1) purposes of modus operandi or common scheme or plan.

<sup>29</sup> As described in the Statement of Facts, Floyd’s noncompliance or active resistance – depending on Floyd’s or the defendants’ perspective – came about when Lane and Kueng



arose in the context of subduing an already handcuffed Floyd who was resisting the defendants' attempt to seat him in the squad for transport to the jail. In addition, in Incident Nos. 4, 6 and 8, the underlying arrest involved domestic assaults or trespassing and threats of assault, and in Incident No. 7 the suspect was obstructing process by interfering with the investigation of a stolen vehicle report. Moreover, in Incident No. 8, the suspect was reported to have a knife and there were scissors close at hand in the home as Chauvin and other responding officers sought to handcuff the suspect. In contrast, the context of Floyd's arrest was a nonviolent charge of using a counterfeit \$20 bill to try to purchase merchandise at Cup Foods.

Finally, in all five of these prior incidents, the use of force involved a neck restraint during efforts to handcuff and secure the suspect, not the use of a body weight technique to subdue an already handcuffed and unarmed Floyd who had been flailing about and resisting the defendants' efforts to seat him in the squad car.

In summary, about the only actual similarity between any of these five prior incidents the State proposes to introduce as *modus operandi Spreigl* evidence and the Floyd incident is that all of them involve the use of force with suspects who were non-compliant with officers' instructions.

Finally, the Court observes that not only was Chauvin not convicted of assault in any of these prior incidents – thus constituting a legal determination of the use of unreasonable and unlawful force under the circumstances of each incident – but the State offers no evidence that Chauvin was ever charged by the State with assault in any of those cases or even that he was

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sought to seat Floyd in the rear of their squad, which was the context when Chauvin and Thao arrived on the scene.

disciplined by the MPD for engaging in the use of unreasonable and unauthorized force in any of these incidents. In their memoranda,<sup>30</sup> the parties report that use of force reports were submitted in each of these five prior incidents, and that Chauvin's reviewing supervisors approved the use of force in each of these incidents. See Chauvin Mem. [Dk # 205], at pp. 12, 13, 16, 17, and 18. Cf. *State v. Wakefield*, 278 N.W.2d 307, 309 (Minn. 1979) ("under no circumstances is evidence of a crime other than that for which a defendant is on trial admissible when the defendant has been acquitted of that offense). In contrast, Chauvin's employment by the MPD was terminated on May 26, 2020 in the wake of Floyd's death.

Because scrutiny of the details of Incident Nos. 2, 4, and 6-8 reveals no actual marked similarity between Chauvin's use of force in any of those instances and his use of force on May 25, 2020 with Floyd and the only actual thing in common is that all incidents involved use of force in instances involving resistance from or struggles with suspects, these prior incidents are not admissible and any evidence of them shall be excluded from the Chauvin trial. See *State v. Clark*, 738 N.W.2d 316, 346 (Minn. 2007) (if prior crime sought to be introduced as *Spreigl* evidence "is simply of the same generic type as the charged offense, it ordinarily should be excluded); *State v. Wright*, 719 N.W.2d 90, 91 (Minn. 2006) (same); *Ness*, 707 N.W.2d at 685 (cautioning that the "overarching concern" with admission of *Spreigl* evidence "is that it might be used for an improper purpose, such as suggesting that the defendant has a propensity to commit the crime or that the defendant is a proper candidate for punishment for his or her past

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<sup>30</sup> Although the parties reference some of the underlying documents produced in discovery addressing these incidents, none of the underlying documents – the MPD CCN Files, Chauvin's or other responding officers' supplemental police reports, Use of Force reports, or specific actions and conclusions of the supervisors reviewing the use of force in each incident – has been submitted to the Court or filed as exhibits into the record.

acts” and that a jury might convict because of the other crimes or misconduct, not because of the defendant’s guilt for the crime charged).

2. Incident No. 1 Is Not Relevant to Establish Knowledge.<sup>31</sup>

The State contends the purpose for which it seeks to introduce evidence of the March 15, 2014 incident is to show Chauvin’s knowledge that reasonable use of force requires an officer to remove body weight from a suspect and to move the suspect from a prone to a seated position once they are in handcuffs and not actively resisting as well as his knowledge of the risk to human life by keeping his body weight on Floyd long after Floyd had been handcuffed and had stopped moving. State Mem. at 25.

In this Court’s view, Incident No. 1 is substantially different from the Floyd incident. In the March 15, 2014 incident, Chauvin had been working off duty at the Midtown Global Market and was notified shortly after midnight that a couple men who had been drinking alcohol in the restroom had been escorted off the property. Upon learning from a security guard at 4:30 a.m. that a man was sleeping by one of the restaurants at the Market, Chauvin recognized him as one of the men who had been escorted off the premises earlier, and woke the man up with the intention of taking him to a detox center. From the parties’ description of this incident, it appears that the man was heavily intoxicated, so intoxicated that as Chauvin began walking the man, with his [Chauvin’s] hand on one of the man’s arms, to his squad intending to take the

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<sup>31</sup> Although the State, in its September 10, 2020 Notice and its September 25, 2020 Amended Notice, indicated that it was seeking to introduce evidence of Incident No. 1 to show Chauvin’s intent to assault Floyd by keeping his body weight on Floyd’s neck beyond the need for such force, because the State does not argue intent as a purpose for the introduction of evidence of Incident No. 1 in its supporting brief – see Dk # 174, at pp. 23-25 -- the Court is not considering intent as a permissible other basis for the introduction of evidence of that incident.

man to detox, the man “spun around” – apparently in an effort to escape Chauvin’s grip on his arm -- and fell to the sidewalk, hitting his head and sustaining an injury to his forehead from which he was bleeding. While the man was lying on the sidewalk after he had fallen, Chauvin was able to handcuff his hands behind his back. He then sat the man up while waiting for an ambulance to arrive.

According to Chauvin, the only evidence the State has provided of this incident is a single report of less than a page written by Chauvin. There is no indication of any prolonged restraint of the man by Chauvin after the man had fallen, apparently due to his drunken state, on the sidewalk after Chauvin was able to handcuff him. It appears the arrestee in this instance was cooperative and had stopped struggling after Chauvin had handcuffed him. In the Court’s view, this incident is no more probative of Chauvin’s knowledge than the State presumably will offer of the MPD’s policies and procedures and the training Chauvin received from the MPD. And, it would simply be cumulative of such evidence the State will be offering at trial in this regard based on expert witnesses regarding the use of force in addition to Chauvin’s training and MPD policies and procedures.

B. In Any Event, for Purposes of the Fifth Prong, Any Probative Value of Any of This *Spreigl* Evidence Is Outweighed by Its Potential for Unfair Prejudice.

One of the considerations that weighs in favor of admitting appropriate *Spreigl* evidence is if the State has a weak case based on the direct and circumstantial evidence and admission of *Spreigl* evidence in necessary to support the State’s burden of proof. *State v. Scruggs*, 822 N.W.2d 474, 478 (Minn. 2005); *State v. DeWald*, 464 N.W.2d 500, 504 (Minn. 1991); *State v. Hinkle*, 310 N.W.2d 97, 99 (Minn. 1981); *State v. Billstrom*, 276 Minn. 174, 149 N.W.2d 281, 284 (Minn. 1967).

The State does not contend here that it has a weak case. The crimes with which Chauvin is charged occurred on a public street, during daylight hours, in front of a group of bystanders a few feet away on the sidewalk, and was recorded on the body-worn cameras of Lane, Kueng, and Thao as well as on the cellphone video recorded by Darnella Frazier. As Chauvin observes in his brief, the State has produced in discovery tens of thousands of documents, interviewed dozens of witnesses and police officers. The State identified more than 360 potential witnesses on its Prospective Witness List (filed Feb. 8, 2021). In addition to the autopsy performed by the Hennepin County Medical Examiner, a consulting opinion was also obtained from the U.S. Armed Forces Medical Examiner. The State has also provided the Court with expert reports from more than a dozen potential expert witnesses.

More typical uses of *Spreigl* evidence occur in crimes that take place in private, without witnesses, the classic case being sexual assaults. The issues in this case do not involve the identity of the alleged perpetrator or whether Chauvin acted with intent, as Chauvin himself concedes that he acted intentionally in his actions in working with Lane and Kueng to subdue Floyd on the street and in pressing his knee into Floyd's upper back and the back of his neck. The central issues in this case the jury will have to decide are whether the force Chauvin used in the context of all the circumstances in this case was reasonable or unreasonable and whether the use of force played a substantial part in bringing about Floyd's death.

In this Court's view any conceivable probative value of any of the evidence of Incident Nos. 1-2, 4, and 6-8 involving Chauvin's use of force is outweighed by its potential for unfair prejudice, including the danger that the jury would consider any of this additional *Spreigl* evidence, were it to be admitted, as propensity evidence and might return a guilty verdict not

based solely on its evaluation of the charges Chauvin is defending in this case but as punishment for his past actions involving use of force. Moreover, because the Court will allow the State to present *Spreigl* evidence of Incident Nos. 3 and 5 – provided the evidence offered by the State at the trial establishes Chauvin’s behavior suggested in the State’s proffer by clear and convincing evidence -- permitting the State to introduce any of these additional incidents not only risks becoming unduly cumulative but also further increases the risk of the jury using any such additional evidence improperly as propensity evidence rather than considering whether Chauvin is guilty of the three crimes for which he has been charged by the State based on his actual conduct on May 25, 2020 toward George Floyd.

**BY THE COURT:**

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Peter A. Cahill  
Judge of District Court