

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

State of Minnesota,

Case Type: Criminal  
Court File No. 27-CR-20-12951

Plaintiff,

vs.

**STATE'S NOTICE OF INTENT TO  
SEEK AN UPWARD SENTENCING  
DEPARTURE**

Thomas Kiernan Lane,

Defendant.

TO: Judge Peter A. Cahill, Judge of District Court, the above-named Defendant and Defendant's attorney, Earl Gray, 1st Bank Building, 332 Minnesota Street, Suite W1610, Saint Paul, Minnesota 55101.

PLEASE TAKE NOTICE THAT, pursuant to Minn. Stat. § 244.10, Minn. R. Crim. P. 7.03, the Minn. Sent. Guidelines, *Blakely v. Washington*, 542 U.S. 296 (2004), and pertinent case law, the State will seek an upward-sentencing departure in the above-entitled case. There are at least five bases for an upward departure.

1. George Floyd, the victim, was particularly vulnerable because officers had already handcuffed him behind his back and then placed him chest down on the pavement, and Mr. Floyd clearly and repeatedly told the officers he could not breathe. Minn. Sent. Guidelines 2.D.3.b(1); *State v. Givens*, 544 N.W.2d 774, 776 (Minn. 1996).

2. Mr. Floyd was treated with particular cruelty. Despite Mr. Floyd's pleas that he could not breathe and was going to die, as well as the pleas of eyewitnesses to get off Mr. Floyd and help him, Defendant and his codefendants continued to restrain Mr. Floyd. Defendant kept his knee and hands on Mr. Floyd's legs to hold him prone on the ground for approximately nine minutes, during at least four minutes of which Mr. Floyd was motionless. This maneuver

inflicted gratuitous pain on Mr. Floyd. Those eyewitnesses, of whose presence Defendant was aware, had to watch Mr. Floyd die. Defendant also discouraged the efforts of others to provide Floyd with medical assistance. Minn. Sent. Guidelines 2.D.3.b(2); *State v. Hicks*, 864 N.W.2d 153, 159-60 (Minn. 2015); *State v. Smith*, 541 N.W.2d 584, 590 (Minn. 1996); *State v. Harwell*, 515 N.W.2d 105, 109 (Minn. Ct. App. 1994).

3. Defendant abused a position of authority, as he was a licensed police officer in full uniform who, in conjunction with other officers, took full custody of Mr. Floyd. *State v. Lee*, 494 N.W.2d 475, 482 (Minn. 1992).

4. Defendant committed the crime as part of a group of three or more offenders who all actively participated in the crime. Minn. Sent. Guidelines 2.D.3.b.(10).

5. Defendant committed the crime in the presence of multiple children, and Defendant's criminal conduct was witnessed by children. Minn. Sent. Guidelines 2.D.3.b(13); *State v. Profit*, 323 N.W.2d 34, 36 (Minn. 1982).

Dated: August 28, 2020

Respectfully submitted,

KEITH ELLISON  
Attorney General  
State of Minnesota

/s/ Matthew Frank  
MATTHEW FRANK  
Assistant Attorney General  
Atty. Reg. No. 021940X

445 Minnesota Street, Suite 1400  
St. Paul, Minnesota 55101-2131  
(651) 757-1448 (Voice)  
(651) 297-4348 (Fax)  
matthew.frank@ag.state.mn.us

NEAL KUMAR KATYAL (*pro hac vice*)  
Special Attorney for the State of Minnesota  
Hogan Lovells U.S. LLP  
555 Thirteenth Street, N.W.  
Washington, D.C. 20004  
(202) 637-5600 (Voice)  
neal.katyal@hoganlovells.com

ATTORNEYS FOR PLAINTIFF