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STATE OF MINNESOTA | DISTRICT COURT

COUNTY OF HENEPIN | FOURTH JUDICIAL DISTRICT

Court File No. 27-CR-20-12646

State of Minnesota,

Plaintiff,

Vs.

Derek Michael Chauvin,

Defendant.

DEFENDANT'S MOTIONS FOR MITIGATED DEPARTURE AND SENTENCING MEMORANDUM

TO: THE ABOVE-NAMED COURT; THE HONORABLE PETER A. CAHILL, JUDGE OF HENNEPIN COUNTY DISTRICT COURT; AND MATTHEW FRANK, ASSISTANT MINNESOTA ATTORNEY GENERAL.

MOTIONS

The Defendant, Derek Michael Chauvin, by and through his attorney, Eric J. Nelson, Halberg Criminal Defense, hereby moves the Court for a downward dispositional departure or, in the alternative, a downward durational departure. This motion is made pursuant to the Minnesota Sentencing Guidelines, Minnesota Statutes, and other applicable law.

INTRODUCTION

The sentencing hearing in this matter is scheduled for June 25, 2021, and follows Mr. Chauvin's April 20, 2021, convictions, after a lengthy jury trial, of one count of second-degree, unintentional felony murder, in violation of Minn. Stat. § 609.19, subd. 2(1); one count of third-degree, "depraved mind" murder, in violation of Minn. Stat. § 609.195(a); and one count of second-degree, culpably negligent manslaughter, in violation of Minn. Stat. § 609.205, subd. 1.

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The Defense argues that the requisite substantial and compelling circumstances for a downward dispositional departure are present in this case and urges this Court to grant its motions and impose a probationary sentence, limiting his incarceration to time served, or in the alternative, a downward durational departure in crafting its sentence for Mr. Chauvin.

FACTS

On May 25, 2020, Defendant Derek Michael Chauvin, then a Minneapolis Police officer, and his partner responded to a call for backup from fellow officers who were attempting to arrest George Floyd outside the Cup Foods Store at 38th Street and Chicago Avenue in Minneapolis. He arrived to find the officers on the scene struggling to place Mr. Floyd in the back of their squad. Mr. Chauvin assisted the other officers in restraining Mr. Floyd as they waited for an ambulance to arrive. During the restraint, Mr. Floyd ceased breathing. Paramedics attempted resuscitation after they placed Mr. Floyd into the ambulance. Mr. Floyd was later pronounced dead at Hennepin County Medical Center.

Four days after the incident, the Hennepin County Attorney's Office charged Mr. Chauvin with one count of third-degree, "depraved mind" murder, in violation of Minn. Stat. § 609.195(a); and one count of second-degree, culpably negligent manslaughter, in violation of Minn. Stat. § 609.205, subd. 1. The following week, the Minnesota Attorney General's Office took over the prosecution and added an additional count of second-degree, unintentional felony murder, in violation of Minn. Stat. § 609.19, subd. 2(1). On April 20, 2021, after several weeks of a globally-televised trial, the first in Minnesota's history, a jury convicted Mr. Chauvin on all three counts.

Prior to trial, the State had filed a *Blakely* notice, alleging five grounds for an

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aggravated sentencing departure. Mr. Chauvin waived a separate jury trial on the *Blakely* issues and, instead, left the matter to the Court. After briefing from both parties, on May 11, 2021, the Court found that four of the five alleged aggravating factors were present: abuse of a position of trust and authority; particular cruelty; the presence of children; and the Defendant committed the crime as part of a group with the active participation of at least three other persons. The Court found that Mr. Floyd was not a "particularly vulnerable" victim.

A presentencing investigation (PSI) was completed, and the officer who conducted the PSI concluded that Mr. Chauvin's criminal history score is zero. Because all three crimes of conviction arose from the same behavioral incident, they merge, and the Court must pronounce a sentence only on the highest-level offense, which, in this case, is second-degree, unintentional felony murder. The sentencing range for this offense is 128 months to 180 months, with a presumptive duration of 150 months. (*See, e.g.,* Sentencing Worksheet). Any sentence outside the guidelines range would be considered a departure.

Mr. Chauvin asks the Court to look beyond its findings, to his background, his lack of criminal history, his amenability to probation, to the unusual facts of this case, and to his being a product of a "broken" system. Mr. Chauvin respectfully requests that this Court grant his motion for a mitigated dispositional departure or, in the alternative, a downward durational departure.

ARGUMENT

The Minnesota Sentencing Guidelines were promulgated "to establish rational and consistent sentencing standards that promote public safety, reduce sentencing disparity, and ensure that the sanctions imposed… are proportional to the severity of the … offense

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and the offender's criminal history." Minn. Sent. Guidelines 1.A. The presumptive guidelines ranges are "deemed appropriate for the felonies covered by them." *Id.* at 1.A.6. A district court must impose the presumptive guidelines sentence absent "identifiable, substantial, and compelling circumstances to support a departure." *Id.* at 2.D.1; *see State v. Misquadace,* 644 N.W.2d 65, 69 (Minn. 2002). The "sanctions used in sentencing convicted felons should be the least restrictive necessary to achieve the purposes of the sentence." *Id.* at 1.A.5. Here, a stringent probationary sentence with incarceration limited to time served would achieve the purposes of the sentence in this case.

I. IDENTIFIABLE, SUBSTANTIAL, AND COMPELLING CIRCUMSTANCES WARRANT A DOWNWARD DISPOSITIONAL DEPARTURE IN THE PRESENT CASE.

The Sentencing Guidelines recognize that there are cases where the guideline sentence is not appropriate due to substantial and compelling factors. "When such factors are present, the judge may depart from the presumptive disposition or duration provided in the guidelines and stay or impose a sentence that is deemed to be more appropriate than the presumptive sentence." M.S.G. 2.D.01. "A departure is not controlled by the Guidelines, but rather, is an exercise of judicial discretion constrained by statute or law." *Id*. The Defense urges this Court to use its discretion to depart downward with respect to disposition and sentence Mr. Chauvin to a stringent probationary term.

A. Amenability to probation.

When crafting an appropriate sentence, a Court may depart dispositionally from the Guidelines, "if the defendant is particularly amenable to probation." *State v. Love*, 350 N.W.2d 359, 361 (Minn. 1984) (holding that the general rule is that probation may be imposed in lieu of an executed sentenced when the defendant is particularly amenable to

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probation); *see also State v. Malinski*, 353 N.W.2d 207, 209 (Minn. Ct. App. 1984) (holding that, concomitantly, a finding that a defendant is "unamenable to correction by imprisonment" can support a departure) (citing *State v. Heywood*, 338 N.W.2d 243 (Minn. 1983)). Amenability to probation may alone support a departure, but "a *finding* of amenability to *probation* is not a prerequisite." *See State v. Donnay,* 600 N.W.2d 471, 473 (Minn. Ct. App. 1999) (emphasis in original), *review denied* (Minn. Nov. 17, 1999).

In determining whether a defendant is particularly amenable to probation, courts must consider the factors first enumerated in *State v. Trog*, including: the defendant's age, criminal history, level of cooperation, and attitude in court. *See State v. Sejnoha*, 512 N.W.2d 597, 600 (Minn. Ct. App. 1994) (citing *Trog*, 323 N.W.2d 28, 31 (Minn. 1982)). The sentencing considerations enumerated in *Trog* were neither exclusive nor exhaustive. Here, the *Trog* factors, along with other considerations combine to create substantial and compelling circumstances that warrant a downward dispositional departure.

1. Age.

Mr. Chauvin was born in 1976 to a loving mother, father, and sister. He grew up near the Twin Cities and completed high school in a local suburb. Although Mr. Chauvin at a young age struggled to find passion for a particular career, he eventually decided to become a police officer. After years of work, Mr. Chauvin obtained his Bachelor of Science in Law Enforcement in 2006, while working as a Minneapolis police officer. Mr. Chauvin had a stable job, having worked full-time for the Minneapolis Police Department for nineteen (19) years.

Mr. Chauvin is forty-five (45) years old now as he stands before the Court. At the time of the offense conduct, he was forty-four (44) years old, living with his wife. Mr.

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Chauvin's age weighs in his favor when determining a sentence. The life expectancy of police officers is generally shorter, and police officers have a significantly higher average probability of death from specific diseases than did males in the general population. [1] Mr. Chauvin is now forty-four years old and is nearing the healthier years of his life. He has been preliminarily diagnosed with heart damage and may likely die at a younger age like many ex-law enforcement officers.

Independent of the long-term damage a prison sentence would inflict upon Mr. Chauvin's life prospects, given his age, convictions for officer-involved offenses significantly increase the likelihood of him becoming a target in prison. Such safety concerns are evident by his presentence solitary confinement in a high-security prison. This is also a fact that the Court is permitted to consider in the context of a mitigated dispositional departure. *See Trog*, 323 N.W.2d at 31; citing *State v. Wright*, 310 N.W.2d 461 (Minn. 1981), ("The trial court . . . concluded that there was a strong reason for believing that defendant would be victimized in prison and that both defendant and society would be better off if defendant were sent to the workhouse for a short time, then given treatment, and then supervised on probation for the remainder of the [sentence]. Underlying the trial court's decision is the belief that the chance that defendant will mend his ways and that society's interests will be safeguarded are better if the probationary treatment approach is followed. We cannot say that the trial court abused its discretion in reaching this conclusion").

Mr. Chauvin is not the average offender. Prior to this incident, Mr. Chauvin led a hard-working, law abiding life, and has experienced no legal issues until the point of his

[1] *See* https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4734369/ (accessed June 1, 2021).

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arrest. Mr. Chauvin still has the ability to positively impact his family and his community.

Thus, Mr. Chauvin's age is a substantial and compelling factor that supports a downward dispositional departure in sentencing.

2. Criminal History.

In affirming the grounds on which the trial court relied to support a downward dispositional departure, the Court in *Trog* credited the fact that the defendant had a nominal criminal history. *See Trog*, 323 N.W.2d at 31; *see Donnay*, 600 N.W.2d at 474 (affirming imposition of a mitigated dispositional departure where, "Donnay . . . had no prior criminal history[.]"). The logic behind affirming criminal history as an important sentencing factor is presumably that defendants with longer criminal histories have squandered their second chances (or have established that alternative programming has been unsuccessful) and are less "fit" for mitigated dispositions than their counterparts with little or no criminal history. *See id.*

Like the defendant in *Trog,* Mr. Chauvin has a criminal history score of zero. He has no previous convictions for felony, gross misdemeanor, or misdemeanor offenses. Importantly, there is neither evidence in Mr. Chauvin's criminal history to suggest that he would *not* be a good candidate for probation, nor evidence that he has squandered any second chances he has received from the judicial system. In fact, there is evidence to the contrary: Prior to his conviction, Mr. Chauvin complied with all the terms of this Court's release orders and made every court appearance. Mr. Chauvin's compliance with pre-trial conditions, along with his strict adherence to this Court's orders, is additional evidence that he is amenable to probation.

Mr. Chauvin's criminal history score of zero is a factor under *Trog* that supports a

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downward dispositional departure in sentencing.

3. Level of cooperation and attitude in Court.

Throughout these proceedings, and in the face of unparalleled public scorn and scrutiny, Mr. Chauvin has been very respectful to the judicial process, the Court, and the State. After making bail and being released on conditions, Mr. Chauvin remained out-of-custody, attended all court appearances, was never unruly, was properly dressed for court, and was deferential to the Court under all circumstances. Critically—and tellingly—Mr. Chauvin did not violate any of the conditions of his release from custody up until the day the jury's verdict was announced. In fact, Mr. Chauvin turned himself into custody upon learning that a complaint and warrant had been issued in his case. He has been completely cooperative with the Court.

These facts weigh in favor of finding Mr. Chauvin particularly amenable to probation and in favor of a mitigated dispositional departure. If Mr. Chauvin could remain compliant and law-abiding under circumstances of his pretrial release and his trial, he will certainly remain compliant and law-abiding while serving a stringent probationary term. Mr. Chauvin has established that he is particularly amenable to probation and is a prime candidate for a stringent probationary sentence plus time served.

5. Support of the Community.

In *State v. Docken*, the Minnesota Court of Appeals held that the support of family and friends is an important factor in granting a downward dispositional departure, reiterating *Trog*. 487 N.W. 2d 914, 916-17 (Minn. App. 1992). Mr. Chauvin unquestionably has the full support of his family.

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In the eyes of the public, Mr. Chauvin has been reduced to this incident, and he has been painted as a dangerous man. Despite serving his community as a police officer for nineteen (19) years, receiving consistently high scores on his annual reviews, and being well-regarded by his supervisors and peers. Mr. Chauvin has received various honors and commendations for his work in the Minneapolis Police Department, including two medals of valor, two medals of commendation, and various lifesaving awards. However, behind the politics, Mr. Chauvin is still a human being. Before this incident occurred, Mr. Chauvin was an average man with a loving family and close friends. He was a husband, stepfather, uncle, brother, and son. To this day, Mr. Chauvin has a close relationship with his family and friends, and he benefits tremendously from their support. He has the support of his mother, stepfather, father, stepmother, and sister. Additionally, although they divorced in early 2021, Mr. Chauvin is still supported by his ex-wife, her family, and his former stepchildren. Mr. Chauvin has also received thousands of letters of support since his arrest in 2020 from local and international communities.

Mr. Chauvin has the support network he needs to succeed as he moves past this incident. Therefore, probation is appropriate for Mr. Chauvin.

In light of Mr. Chauvin's zero criminal history score, his mature age, low risk to re-offend, and the support of his friends and family, Mr. Chauvin is particularly amenable to a mitigated departure and urges this Court to grant his motions and pronounce a probationary sentence with an incarceration period of time served.

6. Amenability to Probation.

"Underlying the trial court's decision [to grant a dispositional departure] is the belief that the chance that defendant will mend his ways and that society's interests will be

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safeguarded is better if the probationary treatment approach is followed." *State v. Wright*, 310 N.W.2d 461, 463 (Minn. 1981). Whether a defendant is particularly amenable to probation can be diluted down to the simple issue of whether the defendant will be able to exhibit discipline and self-control while contributing to society in a positive way. With Mr. Chauvin's disciplined background and familial support, the answer to this question is certainly "yes." In spite of his mistakes, Mr. Chauvin has demonstrated that he has a capacity for good and that he has the discipline to consistently work toward worthwhile goals.

Mr. Chauvin's low criminal history score, his history of service, both as a police officer and in the military, his exemplary work habits and his behavior while on pre-trial release, as well as during the trial, speak volumes to his amenability to probation. Not only has Mr. Chauvin demonstrated that he can maintain the discipline required to succeed with probation, he has also proven he can be an asset to the community if allowed to remain in it. This is the history of a man who is particularly amenable to treatment and should be granted a mitigated dispositional departure.

II. IN THE ALTERNATIVE, THE COURT SHOULD DEPART DURATIONALLY DOWNWARD WHEN CRAFTING ITS SENTENCE FOR MR. CHAUVIN.

In the alternative, and in light of the foregoing, the Court should consider a downward durational departure. Again, the Minnesota Sentencing Guidelines were promulgated "to establish rational and consistent sentencing standards that promote public safety, reduce sentencing disparity, and ensure that the sanctions imposed… are proportional to the severity of the … offense and the offender's criminal history." Minn. Sent. Guidelines I.A. The "sanctions used in sentencing convicted felons should be the

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least restrictive necessary to achieve the purposes of the sentence." *Id.* at I.A.5.

A "durational departure must be based on factors that reflect ***the seriousness of the offense***, not the characteristics of the offender." *State v. Solberg,* 882 N.W.2d 618, 623 (Minn. 2016) (emphasis added). "A downward durational departure is justified only if the defendant's conduct was significantly less serious than that typically involved in the commission of the offense." *Id.* at 624.

This case is clearly one in which, if the Court finds a mitigated dispositional departure is not warranted, a downward durational departure is justified. Here, Mr. Chauvin was unaware that he was even committing a crime. In fact, in his mind, he was simply performing his lawful duty in assisting other officers in the arrest of George Floyd. Mr. Chauvin's is not a typical case in which a person is commits an assault that results in the death of another. As is clear from Mr. Chauvin's actions, had he believed he was committing a crime, as licensed police officer, Mr. Chauvin simply would not have done so. Mr. Chauvin's offense is best described as an error made in good faith reliance his own experience as a police officer and the training he had received—not intentional commission of an illegal act.

Sentencing statistics also support an alternative downward durational departure in the absence of a mitigated dispositional departure. Of the 112 defendants, with a criminal history score of zero, who were sentenced between 2014 and 2018 for violating Minn. Stat. § 609.19, subd. 2(1), fourteen (14) percent received a mitigated durational departure. One of the reasons cited for a mitigated departure was, as here, lack of a dangerous weapon in the commission of the crime.

In spite of the notoriety surrounding this case, the Court must look to the facts. They

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all point to the single most important fact: Mr. Chauvin did not intend to cause George Floyd's death. He believed he was doing his job. The facts of Mr. Chauvin's case certainly cannot place his offense among the most egregious of all unintentional murder cases such that no mitigated departure is warranted. Given the facts of this case, if the Court declines to depart downward with respect to disposition, a downward durational departure is certainly justified.

III. DESPITE THIS COURT'S FINDINGS, AN AGGRAVATED DEPARTURE IS UNWARRANTED.

Although this Court found the presence of four aggravating factors, the decision as to whether to pronounce an aggravated sentence remains within the Court's sound discretion. *See* Minn. Sent. Guideline 2.D.1 ("A departure is not controlled by the Guidelines, but rather, is an exercise of judicial discretion constrained by statute or case law"); *State v. Jackson,* 749 N.W.2d 353, 360 (Minn. 2008) (when a court "finds facts that support a departure from the presumptive sentence, the court may exercise discretion to depart but is not required to depart"). As shown, *supra,* the *Trog* factors in this case actually support a *mitigated* sentencing departure.

As for the aggravating factors present in this case, they are not of the extreme sort that justified upward departures in cases where similar factors were present. For example, although the Court found the Defendant's actions to be "particularly cruel," the facts here are much different from other cases in which particular cruelty supported an aggravated sentence. "[P]articular cruelty involves the gratuitous infliction of pain and cruelty of a kind not usually associated with the commission of the offense in question." *Tucker v. State,* 799 N.W.2d 583, 586 (Minn.2011) (quotations omitted). The predicate felony for the felony murder charge in this case was third-degree assault. Third-degree assault

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requires infliction of "substantial bodily harm" to the victim. Minn. Stat. § 609.223, subd. 1. Here, there is no evidence that the assault perpetrated by Mr. Chauvin against Mr. Floyd involved a gratuitous infliction of pain or cruelty not usually associated with the commission of the offense in question. The infliction of substantial bodily injury necessarily causes pain. The assault of Mr. Floyd occurred in the course of a very short time, involved no threats or taunting, such as putting a gun to his head and pulling the trigger, *see State v. Harwell,* 515 N.W.2d 105, 109 (Minn. App. 1994), and ended when EMS finally responded to officers' calls.

Indeed, the fact that officers had summoned medical attention for Mr. Floyd actually served to mitigate any cruelty with which Mr. Floyd had been treated. Officers called an ambulance before the struggle with Mr. Floyd began, and upgraded the call during the struggle. It was the arrival of the ambulance, within minutes, that ended the incident. The particular cruelty factor for failing to aid a victim is applied in cases where an offender leaves the victim without calling for medical help, such as an ambulance. *See Harwell,* 515 N.W.2d at 109-10; *State v. Strommen,* 411 N.W.2d 540, 544-45 (Minn. App. 1987); *State v. Jones,* 328 N.W.2d 736, 738 (Minn. 1983). Here, not only did officers call for medical assistance twice, but Mr. Chauvin remained on scene until it arrived. In typical "particular cruelty" cases, the offender does not call for help or render aid, and typically leaves the victim at the scene.

The Court also found that Mr. Chauvin had "abused a position of trust and authority," which is not included among the aggravating sentencing factors for nonfinancial crimes enumerated in the Minnesota Sentencing Guidelines. *See* Minn. Sent. Guidelines § 2.D.3(b). However, the list of aggravating factors contained in the guidelines is

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"nonexclusive." Courts, in certain limited circumstances, have upheld the abuse of position of authority as an aggravating factor in sentencing a defendant, when proven beyond a reasonable doubt. *See State v. Lee,* 494 N.W.2d 475, 482 (Minn. 1992); *State v. Rourke,* 681 N.W.2d 35, 41 (Minn. App. 2004); *State v. Cermak,* 344 N.W.2d 833, 839 (Minn. 1984). The facts of all of these cases, however, involve criminal sexual conduct, domestic abuse, or both, where the victim had a pre-existing relationship with the offender. Many such cases involved a minor victim, and none of them involved a police officer.

One nonprecedential case, *State v. Bennett,* No. C9-96-2506, 1997 WL 526313 (Minn. App. Aug. 26, 1997), involved a taxi-cab shooting in which no pre-existing relationship existed between the victim and the offender. In *Bennett,* the court found that the defendant had "abused his position of trust and commercial authority" over the victim, because the victim's employment required him "to keep his back turned to Bennett, to stop the cab at any point." *Id.* at *3. Although this was not a pre-existing relationship, it was far more similar to the employment relationship found in other cases, such as *State v. Konrardy,* No. CX-88-1867, 1989 14919 (Minn. App. Feb. 28, 1989) than the circumstances in this case. The defense is aware of no caselaw in Minnesota, precedential or otherwise, in which a peace officer's position has been considered an aggravating factor for an upward departure in sentencing. Thus, this Court would be alone in using the facts of this case as a basis for pronouncing an aggravated sentence.

In its *Blakely* order, this Court also found that the Defendant committed the offense as a member of a group of three or more offenders. Per the guidelines, the Court may consider, as a factor supporting upward departure, that the offender "committed the crime as part of a group of three or more ***offenders*** who all actively participated in the crime,"

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Minn. Sent. Guidelines § 2.D.3.b(10) (emphasis added). An "offender is a person who has committed a crime." *Jones v. Borchardt,* 775 N.W.2d 646, 648 (Minn. 2009) (cleaned up). "The state deems a person to have committed a crime upon conviction." *Id.* Here, despite the Court's findings, none of Mr. Chauvin's codefendants have been convicted of a crime related to the offense of which he has been convicted. Moreover, it is clear that the term "offender," as used in the Sentencing Guidelines, can refer ***only*** to those individuals who have been convicted of a felony because the guidelines only apply to such individuals. Thus, it is unclear how the Court could have found beyond a reasonable doubt that three or more "offenders" actively participated in the crime at issue in this matter.

Further, the Defense fails to understand how the Court could find beyond a reasonable doubt—before any evidence has been presented in their cases—that Mr. Chauvin's codefendants ***actively participated*** in the crime of which he has been convicted. At this point, Mr. Chauvin's codefendants have merely been charged with accomplice liability for Mr. Chauvin's actions—which places the burden on the State to prove beyond a reasonable doubt that the codefendants ***intentionally*** aided Mr. Chauvin in commission of the offense. *See* Minn. Stat. § 609.05, subd.1. This means that the codefendants must have been aware of Mr. Chauvin's intent to commit third-degree assault. However, the State has not yet met its burden of proving as much. In fact, at this point, the codefendants must be presumed innocent of the alleged offenses. Minn. Stat. § 611.02. As such, the Defense believes that it would be error for the Court to use this factor to pronounce an aggravated sentence.

Finally, the Court found the Defendant committed the offense in the presence of children. The facts of this case, however, are considerably different from those of other

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cases in which the presence of children during the commission of a crime has been alleged as an aggravating factor.

In most such cases, the crime was committed in a home or at a location in which children were present at the outset, actually witnessed the crime, and were unable to leave the scene while the crime was being committed. *See State v. Profit,* 323 N.W.2d 34, 36 (Minn. 1982) (children witnessed an assault at a daycare center); *State v. Vance,* 765 N.W.2d 390, 394 (Minn. 2009) (home); *State v. Robideau,* 796 N.W.2d 147, 151 (Minn. 2011) (home); *State v. Gayles,* 915 N.W.2d 6, 12 (Minn. App. 2017) (home). The defense is unaware of any case in Minnesota in which the presence of children factor has been considered in a bystander-witness situation where the children, themselves, were not placed in danger. *See State v. Fleming,* 883 N.W.2d 790, 797 (Minn. 2016) (firing gun six times in a park full of children). The facts of this case are distinguishable from other precedential authority in which this factor has been applied. As such, the Court should consider the voluntary presence of children as bystander witnesses as a basis for an upward durational departure.

Again, although the Court found "facts that support a departure from the presumptive sentence, the court may exercise discretion to depart but is not required to depart" *Jackson,* 749 N.W.2d at 360. Here, there are sufficient mitigating factors and sufficient facts that distinguish this case from cases in which the aggravating factors found by this Court have been applied, that an aggravated durational departure is unwarranted in this case.

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CONCLUSION

In light of the foregoing, Mr. Chauvin respectfully requests that the Court disregard its *Blakely* findings and pronounce a strict probationary sentence, along with a period of incarceration equal to the time he has already served. In the alternative, Mr. Chauvin respectfully requests that the Court grant him a downward durational departure.

Respectfully submitted,

HALBERG CRIMINAL DEFENSE

Dated: June 2, 2021

/s/ Eric J. Nelson

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