

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

Case Type: Criminal

State of Minnesota,

Plaintiff,

**STATE'S AMENDED NOTICE OF INTENT
TO OFFER OTHER EVIDENCE**

vs.

State v. Derek Michael Chauvin,

Court File No. 27-CR-20-12646

State v. J Alexander Kueng,

Court File No. 27-CR-20-12953

State v. Thomas Kiernan Lane,

Court File No. 27-CR-20-12951

State v. Tou Thao,

Court File No. 27-CR-20-12949

Defendants.

TO: The Honorable Peter Cahill, Judge of District Court, and counsel for Defendants; Eric J. Nelson, Halberg Criminal Defense, 7900 Xerxes Avenue South, Suite 1700, Bloomington, MN 55431; Robert Paule, 920 Second Avenue South, Suite 975, Minneapolis, MN 55402; Earl Gray, 1st Bank Building, 332 Minnesota Street, Suite W1610, St. Paul, MN 55101; Thomas Plunkett, U.S. Bank Center, 101 East Fifth Street, Suite 1500, St. Paul, MN 55101.

Defendant Chauvin is charged with second-degree unintentional murder, third-degree murder, and second-degree manslaughter for causing the death of George Floyd on May 25, 2020. Co-defendants J. Alexander Kueng, Thomas Lane, and Tou Thao, are charged as accomplices with second-degree unintentional murder and second-degree manslaughter. At the trial concerning Mr. Floyd's death, the state will be required to prove certain states of mind and the defense will claim the reasonable use of force. As pertinent to this notice, for the second-degree murder charges, the State will be required to prove that Chauvin intentionally assaulted Mr. Floyd, by inflicting bodily harm during the restraint. The State will also be required to prove

that co-defendants Kueng, Lane, and Thao intentionally assaulted Mr. Floyd or knew that Chauvin was committing an assault and intentionally aided Chauvin's assault. With regard to the third-degree murder charge, the State will be required to prove that Chauvin intentionally committed an act that was eminently dangerous to others and was done without regard to human life. With regard to the second-degree manslaughter charge, the State will be required to prove objective gross negligence and the subjective recklessness state of mind. As to the co-defendants, the State will be required to prove that they engaged in conduct satisfying the statute or that they knew Chauvin was engaged in this conduct and intended to aid him. All four of the defendants are expected to raise the defense that they were using reasonable force in the restraint of Mr. Floyd. The State has filed a motion to join the four co-defendants' cases for trial.

Please take notice that at the trial of the above-captioned matter, the State intends to offer evidence of the following:

Defendant Chauvin

1. 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).

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.

2. 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).

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.

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

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.

4. 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).

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.

5. 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).

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.

6. 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 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).

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.

7. 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).

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.

8. 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 noise, indicating the male had gone unconscious. During that time, Chauvin fully handcuffed the male. *See* MPD 2019-197549 (Bates 25863).

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.

Defendant Kueng

9. On December 24, 2019, Defendant Kueng and other officers encountered an intoxicated, injured, and uncooperative male. During this encounter, Defendant Kueng and other officers took the male to the ground and used their body weight to hold him down until they could get him handcuffed. Once handcuffed, the officers got off the male and allowed him to sit up, when he became combative. The officers then restrained him briefly, but then when the male stopped fighting, the officers allowed the male to lay on his side and eventually move to a sitting position. The officers stood the male up and walked him to a squad car while waiting for an ambulance to attend to the male. *See* MPD Case #2019-375167.

This incident is offered to prove knowledge and intent. The incident shows that Defendant Kueng knew from a prior incident that an individual should not be restrained in the prone position, but should be turned to their side or allowed to sit once they are handcuffed and under control, showing knowledge of reasonable force. The incident is also offered to show Defendant Kueng's intent to assault Mr. Floyd in the prone position, with the weight of himself and two other officers being used to hold Mr. Floyd down, instead of using only reasonable force as in the prior incident.

Defendant Thao

10. On April 27, 2012, at a crime scene, Defendant Thao prematurely entered his squad car and sat idly while other officers performed numerous other obvious tasks which Thao should have assisted. His expediency was addressed by his FTO.
11. On May 4, 2012, when responding to a report of a house party, Defendant Thao pulled his squad car up to the residence and, instead of exiting his squad to talk to the homeowner and identify individuals, Thao used the squad's PA to holler at the people outside of the residence. His expediency was addressed by his FTO.
12. On June 3, 2012, Defendant Thao falsified a police report, claiming that he canvassed the area of a burglary call even though he did not canvas the area.

Defendant later admitted that he forgot to canvas the area and lied to avoid getting into trouble. His expediency and dishonesty were addressed by his FTO and later his precinct sergeants.

13. On June 3, 2012, Defendant Thao attempted to manipulate a domestic-abuse victim to respond to questions in a manner which would allow Thao to avoid generating a domestic-assault report. Thao later admitted this conduct to his FTO. His expediency and dishonesty were addressed by his FTO and later his precinct sergeants.
14. On June 4, 2012, Defendant Thao's FTO reported that Thao frequently forgot details that were told to him and, instead of addressing this appropriately, simply "guesses and adds things into his reports that are wrong." His expediency was addressed by his FTO.
15. On June 5, 2012, Defendant Thao responded dismissively and insubordinately to feedback from his FTO and refused to respond to training. These issues resulted in his field-training time being extended.
16. On July 1, 2012, Defendant Thao's FTO issued a report regarding Thao which provided that, on multiple occasions, Thao intentionally avoided responding to situations which clearly necessitated a police response, including observable law violations, and then, when asked by his FTO, later denied seeing the law violations. His expediency was addressed by his FTO, suggesting that Thao lacked candor about his observations.
17. On July 7, 2012, on at least three occasions, Defendant Thao attempted to speak to civilians in a manner which demonstrated to his FTO that Thao was not listening to victims and was "attempting to talk his way out of [filing] legitimate reports." These issues resulted in his field-training time to be extended a second time.
18. On August 17, 2017, Defendant Thao attempted to manipulate a domestic-abuse victim to respond to questions in a manner which would allow Thao to avoid generating a domestic-assault report. His expediency and dishonesty were the subject of an Office of Police Conduct Review Complaint.

Each of these incidents involving Defendant Thao is offered to prove intent. The incidents show Defendant Thao's intent to further aid the assault of Mr. Floyd because if he intervened or assisted the officers in applying a different restraint technique, Defendant Thao would have had to do more work: he would have had to summon a sergeant to the scene and complete a report. *See State v. Tou Thao*, District Court File No. 27-CR-20-12949, State's Response Opposing Defendant's Motion To Dismiss For Lack Of Probable Cause (Doc. 91), at 8-9, 26-27. Rather than engaging in a proper course of action to protect Mr. Floyd's safety,

Defendant Thao intended to assist in the ongoing assault of Mr. Floyd to avoid more work for himself.

To meet its burden of proof and in light of anticipated defenses, the State seeks to introduce in its case in chief evidence of the above-listed incidents for the purposes provided. The State intends to prove the underlying conduct by offering testimonial evidence, photographic and video evidence, and any other supporting documentation.

Please note that the State intends to file a separate memorandum in support of admission of this evidence prior to trial. In addition, the State may offer evidence of other acts, instances of specific conduct, and prior convictions pursuant to Minn. R. Evid. 404, 608, and 609. At this time, however, the State is still receiving, reviewing, and disclosing materials related to these types of evidence and will file notices to admit such evidence as soon as it is identified by the State.

Dated: September 25, 2020

Respectfully submitted,

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