

Defense attorney Eric Nelson opening statement on March 29, 2021



Speaker 1:

This is Eric Nelson-

Eric Nelson:

[crosstalk] Members of the jury.

Speaker 1:

The defense attorney for Derek Chauvin.

Eric Nelson:

A reasonable doubt is a doubt that is based upon reason and common sense. At the end of this case, we're going to spend a lot of time talking about doubt, but for purposes of my remarks this morning, I want to talk about reason and common sense, and how that applies to the evidence that you're about to see during the course of this trial. Reason is an idea that wholly permeates our law, our legal system, and it forms the foundation, and you will see and hear that repeatedly throughout the course of this trial. What would a reasonable police officer do? What is a reasonable use of force? What would a reasonable person do in his or

her most important affairs? What is a reasonable doubt? As such reason, dictates and necessitates how the evidence must be looked at and analyzed in every single case.

And common sense is exactly that; it's common sense. Common sense tells you that there are always two sides to a story. Common sense tells us that we need to examine the totality of the circumstances to determine the meaning of evidence and how it can be applied to the questions of reasonableness of actions and reactions. In other words, common sense is the application of sound judgment, based upon a reason analysis. And that's what this case is ultimately about; it's about the evidence in this case, the evidence that you will see in this case during this trial. I agree with counsel for the state; it is nothing more than that. There is no political or social cause in this courtroom.

But the evidence is far greater than nine minutes and 29 seconds. In this case, you will learn that the evidence has been collected broadly and expansively, Minnesota Bureau of Criminal Apprehension employed nearly 50 case agents, analysts, and technicians to investigate this case. The Federal Bureau of Investigation included at least 20 additional agents in their investigation. These agents combined have engaged in an extensive and far-reaching investigation. They had interviewed over 50 members of the Minneapolis Police Department, including the officers who responded to the scene after Mr. Floyd was brought to the hospital. They interviewed members of the Minneapolis Police Department, command staff. They interviewed officers who oversee training and policy making decisions within the police department. They have interviewed nearly 200 civilian witnesses, in this case. Some of these witnesses saw the entire incident, some who saw a portion of the incident, many who saw nothing, and some who had some piece of information to give to the officers, and others who had nothing. These agents interviewed the numerous medical personnel who attended to Mr. Floyd, and they interviewed the numerous firefighters and paramedics who responded.

Agents executed approximately a dozen search warrants in this case to gather information, and in the end, you will hear a term throughout, I believe, this case called the Bates stamp number. The Bates stamp system is a way for lawyers to keep track of the case, to make sure that we are working from the same set of documents, the same set of evidence, to preserve the integrity of the investigation. You will learn that we are approaching 50,000 Bates stamped items. So, this case is clearly more than about nine minutes and 29 seconds.

As you all saw during jury selection, the witness list in this case neared 400 people. So how do we begin to analyze and organize this evidence? I suggest that you let common sense and reason guide you. I propose that every witness you will hear from, and every piece of evidence that you will see or hear during this trial and be assigned to one of four basic locations: Cup Foods, the Mercedes-Benz, Squad 320 and Hennepin County Medical Center. So let's start at the first; Cup Foods. You will learn that on May 25th, 2020, shortly after 7:00 PM, Mr. Floyd and his friend, Maurice Hall entered the Cup Foods located at 38th and Chicago. While they were there, they ran into their other friend or Mr. Floyd's ex-girlfriend Shawanda Hill, and he offered her a ride. You will hear from Chris Martin, who is the store clerk at Cup Foods. Mr. Martin observed Mr. Floyd. He watched his body language. He interacted with Mr. Floyd in this moment, and Mr. Martin formed the opinion that Mr. Floyd was under the influence of something.

You will see the actual video from inside Cup Foods. Mr. Floyd did use a counterfeit \$20 bill to purchase a pack of cigarettes. Mr. Martin realized this, and first, along another one of his coworkers named [Bill Walter], went outside to the car where Mr. Floyd, Mr. Hall, and Ms. Hill were sitting. Mr. Martin asked Mr. Floyd to come in and either buy the cigarettes, exchange, or return the cigarettes. And you will hear from Mr. Martin, that Mr. Hall and Mr. Floyd refused. You will hear that a short time later, Mr. Martin went back to the car a second time. He went back to ask them again, "Please come inside, give us the money or return the cigarettes." And that second time again, Mr. Floyd refused.

So at 8:01 PM, a second clerk from the Cup Foods named [Omar Kamara] called 911 to report Mr. Floyd. During that call, Mr. Kamara, you will hear describe Mr. Floyd as drunk and that he could not control himself. He's not acting right. He's six to six and a half feet tall. Accordingly, Minneapolis police officers, [Thomas Lane] and [Alexander King] were dispatched to the scene and arrived at 8:08 PM. They were driving Minneapolis squad car 320, and they faced parking southbound in the northbound lane of Chicago Avenue, and were directed by store employees immediately to the second location, the Mercedes-Benz. During this trial, you will hear evidence of what happened in the Mercedes-Benz in the 20 to 30 minutes prior to the police arriving, you will hear from Mr. Floyd's friends, Shawanda Hill and Maurice Hall. This will include evidence that while they were in the car, Mr. Floyd consumed what were thought to be two Percocet pills. Mr. Floyd's friends will explain that Mr. Floyd fell asleep in the car, and that they couldn't wake him up, that they kept trying to wake them up to get going, that they thought the police might be coming because now the store was coming out and they kept trying to wake them up. And in fact, one of these friends, Ms. Hill, Shawanda Hill called her daughter should care a Prince to come and pick her up because they couldn't keep Mr. Floyd awake.

At 8:09 PM, officer's Lane and King approached the vehicle and Officer Lane approached the driver's side of the vehicle, and Officer King approached the passenger side. During the course of this trial, you will see and hear the body-worn cameras of these officers that fully capture the entire interaction with Mr. Floyd and his friends. You will see Officer Lane draw his service weapon after Mr. Floyd failed several times to respond to his commands to show him his hands. You will learn that that is an acceptable police practice. You will see the officers struggle with Mr. Floyd to get him out of the Mercedes-Benz and handcuffed, and you will see and hear everything that these officers and Mr. Floyd say to each other. The evidence will show that when confronted by police, Mr. Floyd put drugs in his mouth in an effort to conceal them from the police. At approximately

8:10PM, Officer Peter Chang of the Minneapolis park police response, he responds to the scene to assist officers King and Lane. And he helps in detaining the passengers. You will see Officer Chang's body-worn camera, and you will hear his interactions. This becomes important as we learn about police practices, because what you will learn is that when an officer responds to what is sometimes a routine and minimal event, it often evolves into a greater and more serious event.

You will see surveillance videos near Squad 320 from a local business called the [Dragon Lock] that capture the actions and reactions of everyone present at that location, including evidence of further concealment of controlled substances. During the course of the investigation, two search warrants were executed on the Mercedes-Benz. The first on May 27th of 2020, the second, several months later on December 9th of 2020. BCA agents located various pieces of evidence during both of these searches, including two pills that later analysis by the BCA revealed to be a mixture of methamphetamine and fentanyl. This is what's called a speed ball, a mixture of an opiate and the stimulant. You will learn that these pills were manufactured to have the appearance of Percocet. While standing next to the Mercedes-Benz Officer King and Officer lane both asked Mr. Floyd what he was on. And he says he is on nothing. Officer King and Lane escorted Mr. Floyd to the third location; Minneapolis Squad 320. The evidence will show that as officers King and lane escorted Mr. Floyd to their squad car, a citizen by the name of [Charles McMillian] walked alongside them. He kind of joined them and he was encouraging Mr. Floyd to cooperate with the officers, "Get in the car. You can't win."

The evidence will show that Mr. Floyd and the officers began to struggle as they attempted to get him in the squad car. And you will learn that officer's Derek Chauvin and his partner [inaudible] arrived to assist officers King and Lane at 8:16 and 48 seconds. Almost 8:17. Upon their arrival, the first thing that Officer Chauvin sees is officers King and Lane struggling with Mr. Floyd. Mr. Chauvin

asked the officers, "Is he under arrest?" "Yes." And then Officer Chauvin began to assist them in their efforts to get him into the squad car. You will see that three Minneapolis police officers could not overcome the strength of Mr. Floyd. Mr. Chauvin stands five foot nine, 140 pounds. Mr. Floyd is 6,3, weighs 223 pounds. You will learn that because of this intersection at 38th and Chicago is considered a high crime area, the city installs what's called the, "Milestone video system." It's a camera that sits high top of pole and can surveil the entire intersection. When you see these videos pulled back from afar, you will be able to see the Minneapolis police squad car rocking back and forth, rocking back and forth during the struggle so much so that it catches the attention of the 911 dispatcher, [Jenna Scurry]. This was not an easy struggle. As the struggle continues, you will see and hear both what Mr. Floyd was saying to the officers, and the officers' responses to him. Mr. Floyd does end up on the street and appeared to continue to struggle to these officers, so much so that they considered applying. What's called the maximum restraint technique. It used to be called the hobble or the hog tie. Mr. Chauvin used his knee to pin Mr. Floyd's left shoulder blade and back to the ground, and his right knee to pin Mr. Floyd's left arm to the ground. Officer King was placed below Mr. Floyd's buttocks, and Officer Lane was at the feet, and you will see and hear them continue to struggle with Mr. Floyd, as he's attempting to kick. You will see in here that it crowd begins to develop, watching and recording officers, initially fairly passive. As the went on the crowd began to grow angry. But here's what you will also see and hear; you will see and hear the conversation between the officers behind the squad car. The crowd is not aware of what they are saying and doing. You will learn that several bystanders, including [Donald Williams 00:15:14] and [Genevieve Hansen 00:15:14], they grew more, and more, and more upset with these officers. You've seen it this morning. But you will also see it from the perspective of the police officers. As the crowd grew in size, seemingly so too, did their anger. And remember, there's more to the scene than just what the officers see in front of them. There

are people behind them, there are people across the street, there are cars stopping people yelling. There is a growing crowd and what officers perceive to be a threat.

They're called names. You heard him this morning, "A fucking bum." They're screaming at them. Using the officers to divert their attention from the terror of Mr. Floyd, to the threat that was growing in front of him at this location. Questions emerge about the reasonableness of the use of force. And this will ultimately become one of the decisions that you have to make. To answer these questions, the evidence will show that the Bureau of Criminal Apprehension investigated the Minneapolis Police Department's, training and policies. You will learn about things such as the authorized use of force, proportionality of force, excited delirium, defensive tactics, including prone handcuffing, neck restraints, maximal restraint technique, the swarm technique. You will learn about rapidly evolving situations and the Minneapolis Police Department's decision-making model. You will learn about crowd control, medical intervention, de escalation, procedural justice, crisis intervention, and the human factors of force. That is what happens to a police officer or any person when they are involved in the high stress use of force situation.

And you will learn that Derek Chauvin did exactly what he had been trained to do over the course of his 19 year career. The use of force is not attractive, but it is a necessary component of policing. The evidence will, again, demonstrate that the Minnesota Bureau of criminal apprehension conducted two searches of Squad 20. You will learn that in the second search of Squad 320 agents recovered several pieces of partially dissolved pills. You will learn that these pills were again, analyzed were again, shown to be consistent or similar to the pills, phone on the Mercedes-Benz in that they contained methamphetamine and traces of fentanyl. Moreover, these pills contained the DNA and saliva of George Floyd.

Which leads us to our final location; Hennepin County Medical Center. The evidence will show that officers made two calls for emergency help. Those calls

were within one minute and 30 seconds of each other. The first call officers called for paramedics to arrive code two because Mr. Floyd had a nose injury; he was bleeding from the nose That occurred during the struggle; Mr. Floyd banged his face into the plexiglass partition of the squad car. You will see the blood evidence in the squad car. That first call came at eight o'clock, 20 minutes and 11 seconds. The second call was what's called a stepped-up call or a code three call, meaning, "Get here as fast as you possibly can." That call was made and placed at eight o'clock, 21 minutes and 35 seconds.

You will learn that paramedics arrived on scene at 8:27 and 18 seconds, just 19 minutes after officers King and Lane arrived, within six minutes of it being called a code three, and they did what they refer to as a load and go, because of the crowd. They came, they picked up Mr... Rather than attempting to resuscitate him or treat him on the scene, they loaded him into the ambulance, and they drove to a location several blocks away to begin their resuscitative efforts, and you will hear and learn that Officer Thomas Lane accompanied them for part of that time. You will learn, ultimately that Mr. Floyd was transported to the Emergency Department at Hennepin County efforts were efforts to save. Mr. Floyd were made at the direction of Dr. Bradford [inaudible]. Again, he took important tests, he ran blood samples, and blood gas samples. He took obtained very important pieces of information. You will learn that later that evening, Mr. Floyd was pronounced dead.

The evidence will show them that Dr. Andrew Baker of the Hennepin County Medical Examiner's Office conducted the only autopsy of Mr. Floyd. And you will hear of several interviews that Dr. Baker had with law enforcement, where he discusses the cause and manner of death, and what that actually means according to what he saw present in Mr. Floyd's body. And some of this evidence is extremely important to the final determination of Mr. Floyd's cause of death. The medical findings include things such as the blood gas test that was taken at HCMC that revealed Mr. Floyd had an exceptionally high level of carbon dioxide. Dr.

Baker found none of what are referred to as the telltale signs of asphyxiation. There were no bruises to Mr. Floyd's neck, either on his skin, or after peeling his skin back to the muscles beneath. There was no petechial hemorrhaging. There was no evidence that Mr. Floyd's airflow was restricted, and he did not determine to be a positional or mechanical asphyxia death.

At the time Mr. Flood was in the hospital, a femoral blood draw was taken. That blood draw was analyzed by a lab. The results of Mr. Floyd's toxicology screen revealed the presence of fentanyl and methamphetamine, among other things, and it will be important to know the difference between fentanyl and methamphetamine. The autopsy revealed many other issues, including coronary disease, an enlarged heart, what's called a paraganglioma, which is a tumor that secretes adrenaline, swelling or edema of the lungs. And the state was not satisfied with Dr. Baker's work, and so they have contracted with numerous physicians to contradict Dr. Baker's findings. And this will ultimately be another significant battle in this trial. What was Mr. Floyd's actual cause of death? The evidence will show that Mr. Floyd died of a cardiac arrhythmia that occurred as a result of hypertension, his coronary disease, the ingestion of methamphetamine and fentanyl, and the adrenaline flowing through his body, all of which acted to further compromise an already compromised heart.

At the conclusion of this evidence, you will be instructed as to the law, the elements of the offense, and the court will give you detailed instructions on what you must find to convict Mr. Chauvin of these charges, but when you reviewed the actual evidence, and when you hear the law and apply reason and common sense, there will only be one just verdict, and that is to find Mr. Chauvin not guilty.