

Prosecution attorney Steve Schleicher closing argument on April 19, 2021



Speaker 1:

Is the state ready to proceed with closing?

Mr. Schleicher:

Yes, sir.

Speaker 1:

Mr. Schleicher, you may proceed.

Mr. Schleicher:

May it please the court, counsel, members of the jury, his name was George Perry Floyd Jr. and he was born on October 14, 1973 in Fayetteville, North Carolina to his parents George Floyd Sr. and Larcenia Jones Floyd, Sissy, the matriarch. Now you met George Floyd's brother, Philonise, and you heard all about Sissy Floyd. She was George Floyd's mom. She was the mom of the house. She was the mom of the neighborhood, and you heard about the special bond that she and George Floyd shared during his life.

You heard about their relationship, how he would always take time and special attention to be with his mother, how he would still cuddle with her in the fetal position. You heard that. And from George Floyd's brother, you learned all about George's childhood.

And during his time growing up in that house, George Floyd was surrounded by people, by people he knew, people who knew him, people he recognized, a familiar face to pick out in the crowd. People need that. George Floyd was surrounded by people he cared about and who cared about him, throughout his life, throughout his childhood, in that house, through his adolescence, into his adulthood.

On May 25, 2020, George Floyd died face down on the pavement, right on 38th and Chicago, in Minneapolis. Nine minutes and 29 seconds, nine minutes and 29 seconds. During this time, George Floyd struggled, desperate to breathe, to make enough room in his chest to breathe. But the force was too much. He was trapped. He was trapped with the unyielding pavement underneath him, as unyielding as the men who held him down, pushing him, a knee to the neck, a knee to the back, twisting his fingers, holding his legs for nine minutes and 29 seconds. The defendant's weight on him. The lungs in his chest, unable to expand because there wasn't enough room to breathe. George Floyd tried. He pushed his bare shoulder against the pavement to lift himself, to give his chest, to give his lungs enough room in his chest, to breathe, with the pavement tearing into his bare skin.

As he desperately pushed with his knuckles to make space so he'd have room to breathe, the pavement lacerating, his knuckles. The defendant stayed on top of him for nine minutes and 29 seconds. So desperate to breathe. He pushed with his face to lift himself, to open his chest, to give his lungs room, to breathe. The pavement tearing into his skin. George Floyd losing strength, not superhuman strength. There was no superhuman strength that day.

There's no superhuman strength because there's no such thing as a superhuman. Those exist in comic books, and 38th and Chicago is a very real place. Not super humans, only humans. Just a human, just a man, lying on the pavement being pressed upon, desperately crying out. A grown man, crying out for his mother. A human being.

In that time and in that place while he was surrounded in life by people who knew him, faces he could pick out, there was no one there he knew. He was surrounded by strangers. Strangers, all of them. Nine minutes and 29 seconds. He's surrounded by strangers, not a familiar face to say his final words.

But he did say them to someone. He said them to someone who he did not know by name, but he knew him from the uniform he wore and the badge he wore and he called him Mr. Officer. That's what he called him, Mr. Officer. Mr. Officer would help. We call the police when we need help, and he pleaded with Mr. Officer.

George Floyd's final words on May 25, 2020 were, " Please, I can't breathe." And he said those words to Mr. Officer. He said those words to the defendant. He asked for help with his very last breath. But Mr. Officer did not help. The defendant did not help, he stayed on top of him, and continued to push him down, to grind his knees, to twist his hand, to twist his fingers into the handcuffs that bound him, looking at him, staring down at times though horrified bystanders who had gathered and watch this unfold.

The motto of the Minneapolis Police Department is to, "Protect with courage and to serve with compassion." But George Floyd was not a threat to anyone. He wasn't trying to hurt anyone. He wasn't trying to do anything to anyone.

Facing George Floyd that day, that did not require one ounce of courage, and none was shown on that day. No courage was required. All that was required was a little compassion and none was shown on that day.

George Floyd said, "I'm not trying to win." This was a call about a counterfeit \$20 bill. All that was required with some compassion, humans need that. People need

that. But more fundamental than that and more practical at that time, in that place, what George Floyd needed was some oxygen. That's what he needed. He needed to breathe because people need that. Humans need that, to breathe, and he said that and the defendant heard him say that over and over.

He heard him, but he just didn't listen. He continued to push him down, to grind into him, to shimmy, to twist his hand for nine minutes and 29 seconds. George Floyd begged until he could speak no more and the defendant continued this assault. When he was unable to speak, the defendant continued. When he was unable to breathe, the defendant continued. Beyond the point that he had a pulse, the defendant continued this assault. Nine minutes and 29 seconds.

When the ambulance arrived, the ambulance was here and the defendant continued. He stayed on top of him. He would not get up. He would not let up. He stayed on him, grinding into him, continuing to twist his fingers, to hold him down. He had no pulse. He was not breathing. He was not responsive and the defendant had to know what was right beneath him, right beneath him.

You saw the video, you saw the point when the ambulance arrived, and finally, after a paramedic got out and the defendant still did not get up, and the paramedic tapped him, and finally the defendant got up and they lifted Mr.

Floyd onto that gurney. And you saw the way he was not ... there was nothing there. His head had to be held to prevent it from falling to the ground. He was completely limp. The defendant had to know that, he was there, he was on top of him, and he was on top of him. On top of him. Sometimes you ask for the truth. Sometimes you insist on the truth, and the truth is the defendant was on top of him for nine minutes and 29 seconds and he had to know. He had to know.

The medical examiner would find the cause of George Floyd's death to be cardiopulmonary arrest complicating law enforcement subdual restraint, and neck compression. Well, what you saw the defendant and the other officers doing to George Floyd caused his death. The medical examiner ruled the death a homicide,

death at the hands of another.

What the defendant did to George Floyd killed him. It was ruled a homicide. The defendant is charged with murder. He charged with murder and he's charged with manslaughter. The defendant, at the time, was a police officer. Hey, it may be hard. It may be hard for any of you to imagine a police officer doing something like this.

Remember, in jury selection, and we talked about bias and we talked about setting biases and preconceived notions behind. Well, imagining a police officer committing a crime might be the most difficult thing you have to set aside because that's just not the way we think of police officers.

We trust the police. We trust the police to help us. We believe the police are going to respond to our call for help. We believe they're going to listen to us, and this is strong. This runs deep. It's difficult to set this aside.

I want you to consider that even after, with the bystanders, after they saw what they saw, after they saw this shocking display of abuse of police power and a man murdered in front of them, Genevieve Hanson, she called the police.

Donald Williams, he saw this, you heard him, he testified. He called the police. A nine-year-old, Judeah, what did she suggest? We need to call the police on the police.

That's our expectation. Even after seeing this, even after witnessing this, our expectation is that the police are going to help, and with good reason because policing is the most noble profession. It is. It is. And to be very clear, this case is called the State of Minnesota v. Derek Chauvin, this case is not called the State of Minnesota v. The Police. It is not.

Policing is a noble profession, and it is a profession. You met several Minneapolis police officers during this trial. You met them. They took the stand, and they testified. Make no mistake, this is not a prosecution of the police, it is a prosecution of the defendant, and there's nothing worse for good police than bad

police who doesn't follow the rules, who doesn't follow procedure, who doesn't follow training, who ignores the policies of the department, the motto of the department to protect with courage, to serve with compassion.

Chief Arradondo, the Chief of Police of Minneapolis Police Department, he took the stand and he testified, and he told you what that badge that he wears over his heart means. It's a public service. It's a public trust. They're there to help us. It's a professional organization. There are standards. There are rules. There's a code of conduct. There is a use of force policy. There's extensive training. The police are first responders. They're who we call for help, and they help us. They have CPR training. There's more training than simply use of force. There's more to policing than putting handcuffs on people and hauling them away to be true.

There's other kinds of training, there's procedural justice, there's crisis intervention training, there's medical training, and there's defensive tactics. And there's de-escalation. All of this training, hundreds of hours of training. You met the people who staff the training center and they told you, "We don't train this." They told you that.

The sanctity of life and the protection of the public, those are the cornerstones of the Minneapolis Police Department's use of force policy. The protection of the public, all of the public, all of the human beings that make up the public. The defendant, he didn't do that because that day, his badge just wasn't in the right place. The defendant was a police officer. He was.

And again, you need to set aside the notion that it's impossible for a police officer to do something like this. The defendant is on trial, not for being a police officer, it's not the state versus the police. He's not on trial for who he was. He's on trial for what he did. That is what he did. That is what he did on that day. Nine minutes and 29 seconds. That is what he did.

He didn't follow the training, those hundreds of hours of training that he had. He did not follow the department's use of force rules. He did not perform CPR. He

knew better. He just didn't do better. He just didn't do better. Remember, during the opening statement, counsel said that, "The defendant followed the rules and followed his training." Did you hear evidence of that? Do you hear evidence of that from the stand? Or did you hear something quite different?

The chief of police testified he violated their use of force policy. He violated their de escalation policy. He violated the duty to render emergency aid. No. You heard the trainer, Lieutenant Mercil, "We don't train this. This is not who we are." No, that representation was simply wrong. That's just a story. What the defendant did was not policing. What the defendant did was an assault.

I'm going to discuss the law with you in a bit here, and explain, the courts already provided you some instructions on second degree murder and you know that in the laws of this state, if you commit a certain level of assault, a felony level assault, and a person dies as a result of your assault, you're guilty of murder. It's as simple as that and what the defendant did here was a straight up felony assault. This was not policing. It was unnecessary. It was gratuitous. It was disproportionate, and he did it on purpose.

No question. This was not an accident. He did not trip and fall and find himself upon George Floyd's knee and neck. He did what he did on purpose, and it killed George Floyd. That force for nine minutes and 29 seconds, that killed George Floyd. He betrayed the badge and everything it stood for, it's not how they're trained, it's not following the rules. This is not an anti-police prosecution, it's a pro-police prosecution. The defendant abandoned his values, abandoned the training and killed a man, and why? Right out in the public, right out in broad daylight, in front of several bystanders, as they looked in shock and horror, and why? Well, this all started over a call of an alleged counterfeit \$20 bill, but George floods life was taken for something worth fighting are far less, far less.

You saw the photo, you saw the body language. You can learn a lot about someone by looking at their body language. The defendant facing down that

crowd. They were pointing cameras at him, recording him, telling him what to do, challenging his authority, his ego, his pride, not the kind of pride that makes you do better, be better, the kind of ego-based pride, but the defendant was not going to be told what to do.

He was not going to let these bystanders tell him what to do. He was going to do what he wanted, how he wanted for as long as he wanted, and there was nothing they could do about it because he had the authority. He had the power of the badge and the other officers and the bystanders were powerless. They were powerless to do a thing. The defendant, he chose pride over policing.

Charles McMillian, 61 years old, interesting man. You remember when he testified, he had the glasses. If any of you in the front row, when he walked by happened to notice his shoes? If you looked at his shoes, you probably saw your reflection in those shoes. He dressed for court like it was the most important day of his life. Interesting man. He was there. He's sort of narrating this horrific scene throughout. You hear him in the video.

He called out to George Floyd. He said, "You can't win. You can't win." And George Floyd replied, "I'm not trying to win. I'm not trying to win. I'm scared." But the defendant was trying to win. He wasn't going to be told what to do. He wasn't going to take a challenge to his authority. He was trying to win and George Floyd paid for it with his life.

Now, I also need to be clear, this is not the trial of George Floyd. George Floyd is not on trial here. You've heard some things about George Floyd, that he struggled with drug addiction, that he was being investigated for allegedly passing a fake \$20 bill, that there was never any evidence introduced that he knew was fake in the first place. But he is not on trial. He didn't get a trial when he was alive and he is not on trial here.

The defense claims that he was non-compliant. Non-compliant. Well, let's revisit what happened before the nine minutes and 29 seconds. Before that. It's

Memorial Day, May 25, 2020, and George Floyd is sitting in a car in the driver's seat with two friends. Now, previously he'd been in Cup Foods. He'd been in the store. He was walking, he was talking, he was breathing as alive as any person, any human in this room.

Back to the car. He's with his friends and there's a tap at the window. He looks to his left at a start. This is what he sees. This is what he sees. Within seconds of the approach, officer lane having tapped on the window, within seconds, he pulls his gun and holds it inches from George Floyd's face and starts shouting profanities, "Show me your effing hands. Show me your effing hands." Screaming it. This is within seconds.

You can tell a lot about someone by looking at their body language. How does Mr. Floyd look in this photo? Terrified? An officer on the driver's side, an officer on the passenger side, Lane orders Floyd to put his hands on the steering wheel, he does. That's not resistance, that's compliance. Lane orders Floyd to get out of the car, he does. That's not resistance, that's compliance. They ordered him ... He does. That's not resistance, that's compliance. They order him. They want him handcuffed. He is handcuffed. That's not resistance, that's compliance. And on the handcuffs, you recall the testimony. They weren't properly double locked, and so they continued to ratchet. They're not on correctly. They're on too tight. If you listen to the videos, throughout the videos, you can hear the sound of those handcuffs ratcheting tighter and tighter. Mr. Floyd is trying to explain to the police that his wrists hurt. Impervious to pain. Please. His wrists hurt. No one listens to him, but it continues. They tell him to go over to the Dragon Wok. He goes over to the Dragon Wok. That's not resistance, that's compliance. They ask them to sit down, he sits down. Not resistance, compliance. Not trying to escape, not trying to evade arrest, not trying to assault anybody, shoot anybody, stab anybody, punch anybody. No. Compliance. Sits down on the ground. They ask him his name, he gives his name. He spells it.

That's not resistance, that's compliance.

They ask him to get up, he gets up. They ask them to go across the street, he goes across the street. Where's the resistance? Where's that? They take him over to the car, okay? They take them over to the car. George Floyd is a big guy, right? You can see here, he's almost as big as Officer Lane. He's a big guy. He's a big person. The back of the squad car is not, right? That's what they wanted him to get into, and to George Floyd, that looked ... He looked at that. What do you think that looked like? Like a little cage. He tried to explain himself to the officers that he had anxiety, that he had claustrophobia. He explained this over and over. They wanted him to get in the back of this little car, and he just wasn't able to bring himself to do it. He wasn't able to bring himself to do it.

George Floyd:

[inaudible], man. When I start breathing, it's going to go off on me, man.

Speaker 2:

Pull your legs in.

George Floyd:

Okay. Okay. Okay. Let me count to three. Let me count to three, then I'm going in. Please.

Mr. Schleicher:

So, he's trying to work up the ability to get in the car. He's explaining himself repeatedly. And you can see, this is where the defendant and Officer Thao start coming into the scene. And we'll look at what they saw in a minute, but they started to come to the scene, right? A 19-year veteran of the police force with all of the training that that involves, over 800 hours of training, 40-hour crisis intervention training course, scenario based training where they're taught to recognize the signs of someone who is experiencing a crisis. A crisis. He couldn't

bring himself to get in, and sometimes people can't bring themselves to get in. This is not new. This is not groundbreaking. People have emotions. People have things happen to them. The police train for this. They recognize this. You don't get to meet the police on your best day. Very often you don't call the police and say, "Everything's fine. Just wanted you to know," right? That doesn't happen.

There's a whole range of humanity out there who have a whole range of different issues. I mean, it could be anything. It could be a death in the family that can cause extreme emotional response. Recall when Officer Lane approached the car, George Floyd talked about losing his mother. He'd lost her in 2018, those wounds still right there on the surface. Emotion. It could involve a divorce, finding bad financial news, mental illness, mental health issues like drug and alcohol abuse. All of those things can cause someone to not resist, but just not be able to bring themselves to comply at that moment at that time, and this is nothing new. They train for it. They plan for it. They prepare for it. They have a policy on it, right? Recognizing persons in crisis, you remember Chief Arradondo took the stand. He testified. He testified that they have 4,000 calls for service for persons in crisis every single year. This is nothing new.

They're there on a \$20 counterfeiting charge. They train for this. They know about this. Now, George Floyd certainly had his struggles and you know that. The state put in evidence of that. Courtney Ross testified that he struggled with opioid addiction. You knew that, and this is nothing new. But the difference though on May 25, 2020, the officers just wouldn't listen to him, wouldn't look at the signs and recognize the signs of what they had prepared for, and a reasonable officer in the defendant's place with all his training and all his experience, including that 40-hour crisis intervention course and the subsequent refresher course, should have known that and should have recognized it. Floyd was trying to get into the car. He was trying to work up the courage. He said he'd count to three, and he just couldn't do it. So the defendant arrives on the scene, he surveys the scene, he

saunters up to the car, and he slips on his gloves.

George Floyd:

[inaudible].

Speaker 3:

You can't win, bro. You can't win.

George Floyd:

I'm not trying to win. I'm not trying to win.

Speaker 3:

Go on.

George Floyd:

I'll get on the ground, anything.

Speaker 4:

Go get in the car.

George Floyd:

He know it. He know it too, Mr. Officer. Y'all hear me? Don't do me like that, man.

Speaker 4:

Get in the car.

George Floyd:

Okay. Can I talk to you please.

Speaker 4:

Yes. If you get in this car, we can talk.

George Floyd:

I am. I'm claustrophobic. I'm claustrophobic, man.

Speaker 4:

I hear you, but you're not working with me.

George Floyd:

God, I'm claustrophobic, man.

Speaker 4:

[crosstalk]. Get in the car.

George Floyd:

Can you put me in the front, please?

Speaker 4:

No, you're not getting in the front. Get in the car.

George Floyd:

I'm claustrophobic, officer.

Speaker 4:

I'm going to pull you in.

George Floyd:

Okay? I'm not a bad guy, man.

Speaker 4:

Get in the car.

George Floyd:

I'm not a bad guy.

Speaker 3:

You ain't going to win.

Mr. Schleicher:

So they don't listen, they just shove him into the car, into that tiny back seat. You saw the look on his face. You saw the look on George Floyd's face when he glanced over into that car. Looked like he'd seen a monster looking into that car. Clearly, this trained officer should have recognized that and understood that, that moment in that time, what is your goal? Where'd this critical thinking model go. Where'd that go where you take in information, you assess the information, you reassess the information, you consider what's the goal? What's the plan? You're there for a \$20 counterfeiting charge, allegedly. Chief Arradondo testified. They

generally don't put people in custody for that, so why is it necessary to shove him in the car? They made a judgment call. They decided to shove him in the car. The predictable thing to happen happened, right? He just couldn't be in the back of that car, and so they pull him out. They pull him out, and watch what happens. They pull them out of the car.

Speaker 4:

[inaudible].

George Floyd:

For what? Please, man. I can't fucking breathe.

Speaker 4:

Here. Come on out.

George Floyd:

Thank you. Thank you.

Speaker 5:

Get him down on the ground. On the ground.

Mr. Schleicher:

All right, folks. They get him out of the car. He is handcuffed. He is on his knees. He is not going anywhere. There are officers there, four officers. And what did George Floyd say once they pulled them out of the car? Thank you. Thank you. Now, a reasonable officer in the defendant's position at that time should have recognized and understood he wasn't trying to escape. He wasn't trying to punch anyone, stab anyone, wasn't trying to do that. The problem was the back of the car, just like George Floyd tried to explain over and over. The problem was the back of the car, so if you can give them the benefit of the doubt that they made a bad judgment call and shoved them in the back of the car at least when he came out in the struggle, it was over. He was on his knees. He was saying thank you. Done. No

need.

It could have been over there, but what did they do? They took him from this position, handcuffed on his knees, they pushed him down onto the ground. Didn't need to. Not at all. For what? He's handcuffed. They pushed him down into what is, you now know from watching the evidence in this case, the prone recovery position, right? When he's down on the ground, he's initially pushed. He is literally in the prone recovery position on the side. That allows the chest to expand and provides room for the lungs to expand and take in air so they can breathe. That is a step that protects against the known danger of positional asphyxia, and they have in there. He's right there, so then what happens after? They take him, incredibly, out of the recovery position and prone him on the ground.

For what? The prone position is a transitory position. It's a position you use to secure someone in handcuffs. And then when you're done with that, you immediately roll them on their side, right? That's the position he was in. Pruning him was completely unnecessary, and this is where the excessive force begins, right? This is where the nine minutes and 29 seconds start, because they didn't just lay him prone. They did not do that. They stayed on top of him with a knee on the neck and a knee on the back, and the defendant's weight on Mr. Floyd pushing down with Officer Kueng adding to the pressure, pushing down, holding his feet, Officer Lane, holding his feet for nine minutes and 29 seconds. That's when the excessive force begins. That's when the countdown began.

Now, you need to pull back and take a look. You've learned a lot about policies and procedures and tactics. You have to pull back and say would, but for the defendant's actions pushing him down, would George Floyd have died that day? Was it drugs? He just miraculously died of a drug overdose in that time? Maybe it was the tailpipe. Maybe it was his enlarged heart. Maybe not. Use your common sense. Use your common sense. Believe your eyes. What you saw, you saw.

Now, I want to talk to you a little bit about the law. The judges already instructed

you, and it's necessary to go over this a couple of times. You've learned. You've gotten to go to medical school here as jurors. There's so many benefits to being a jury. You got to go to medical school. You got that free parking, great lunches, fabulous pay, so now you get a little bit of a free law school education. The judge gave you a preview of that. We're going to go through that again. He's going to give you a copy of those instructions. You have them. You get to keep those and use those during your jury deliberations. He told you that you don't have to decide these issues in any order. You can do it the way you all see fit. I'll be making some suggestions as to the order. I think you should do things that might focus your deliberations and just make the conversation a little easier, a little more focused, but you have these jury instructions as your guide.

I think it's important for you to follow the judge's instructions to the letter, right? The words and the definitions that the judge gives you. They mean what the judge says they mean, and know that the state is required to prove these charges beyond a reasonable doubt. Proof beyond a reasonable doubt. He read this to you. Proof beyond a reasonable doubt is proof as ordinarily prudent men and women would act upon in their most important affairs, and a reasonable doubt is based on reason and common sense, not a fanciful or capricious doubt or beyond all possibility of doubt. So reasonable doubt, it's just as the name implies. It's a doubt that's reasonable, a doubt based on reason and common sense. You as jurors are not required, nor should you leave your common sense at the courthouse steps. As jurors, you must rely on your common sense. That's why you're here, because we need you to apply that standard to these facts and to be a judge of the facts and apply those findings of facts to the law.

And so proof beyond a reasonable doubt, it certainly is a high standard. It's the highest standard. It's a standard that the state has met here, and the state does not need to prove its case beyond all doubt. It does not need to prove its case beyond what I'll call an unreasonable doubt. Not required to prove beyond an

unreasonable doubt. An unreasonable doubt is a doubt not based on common sense but based on nonsense, and you're not required to accept nonsense.

You're not required to accept the notion that after the defendant kneeling on Mr. Floyd for nine minutes and 29 seconds in the dangerous prone position, handcuffed, restrained, pressing down on him, that after that as he was writhing in pain and suffering, that that that's not even a use of force.

There's no force there, because it's not likely to produce pain. A witness testified to that. You're not required to believe something that just flies in the face of common sense to believe that you would have to completely abandon all notion of common sense. Not likely to produce pain. You don't have to accept someone who says that. You'd be better off asking a nine-year-old. You're not required to accept the proposition that the car did it, that the car killed George Floyd. You're not required to accept that or to consider that it is the bystander's fault for distracting the defendant. You're not required to believe this amazing coincidence that after this nine minute and 29 second prone restraint that at that point in time, even though he was walking and talking, even though he was breathing, interacting with people, that he chose that moment to die of heart disease. To die of heart disease. Is that common sense or is that nonsense?

Or that it was a drug overdose. You know that George Floyd struggled with drug addiction and drug use. You know that. You know he had developed ... That requires a tolerance. You know what the toxicology report says in terms of the levels, and you know what the testimony was about that. Die of a drug overdose. That's not common sense. That's nonsense. Believe your eyes. What you saw happen happened. It happened. The defendant pressed down on George Floyd, so his lungs did not have the room to breathe. Dr. Tobin told you that. Dr. Smock, Dr. Rich, the experts, the experts who testified. You can rely on them, Dr. Smock, Dr. Rich, Dr. Isenschmid. They had said like that commercial, right? They know a thing or two because they've seen a thing or two. They know a thing or two. Dr. Tobin

knows a thing or two about how this works.

So looking at the charges, and this is a little bit of a different layout than you see in your printed jury instructions, and they're not intended to replicate the instructions completely, but it's meant to be sort of a guide for you to look at the different elements in a particular context. And so the charge of murder in the second degree, murder in the third degree, manslaughter in the second degree, the judge read you what the law says those things are, and the law breaks down these different charges into things called elements. First element, second element, third element, fourth element, and each of these has to be proved beyond a reasonable doubt by the state in order for the defendant to be guilty of those charges. Now, those are the elements that are required. Those are the only elements that are required.

Again, like other preconceived notions, you may have some ideas from watching TV about other cases and shows and things. You might have some other ideas as to what the law requires, but again, just know how it's lunchtime in court when the judge tells you it's lunchtime. When it's time to go, the judge tells you it's time to go. Same thing. You know what the charges are, you know what the elements are because the judge tells you what the elements are, so you need to follow that. Okay?

So, talking about murder in the second degree, first, the death of George Floyd must be proved, and then it must be proved that the defendant caused the death of George Floyd, and the fact that other causes may have contributed to George Floyd's death does not relieve the defendant of any criminal liability. It just does not. And for murder in the second degree, that the defendant at the time of causing George Floyd's death was committing or attempting to commit assault in the third degree. That's a felony level assault under the laws of Minnesota. And assault, to show the defendant assaulted George Floyd, that he intentionally applied unlawful force to Mr. Floyd without Mr. Floyd's consent resulting in bodily

harm. The state has to show that. The state did show that, the assault, and that the defendant inflicted substantial bodily harm on George Floyd, and that this act took place on or about May 25, 2020 in Hennepin County.

So as to the first element, that George Floyd died, well, that was established. That was established by the emergency room physician, Dr. Langenfeld. George Floyd was pronounced dead at the Hennepin County Memorial Hospital on May 25, 2020, so that element is met. And again, you can consider these elements any way you want to consider it. My suggestion is that you consider them in the order as listed here, murder two, murder three, manslaughter in the second degree, and in order of the elements just because there's a lot here. There were 38 witnesses who testified. There are a lot of exhibits that were offered, and it's easy to talk about everything at the same time. It really is, but it will help focus your deliberations if you look at these different elements in order to have sort of a logical way to focus your deliberation. So, I encourage you to do that, but you can do it any way you want.

Second element, that the defendant caused the death of George Floyd. Causation. What does that mean? What does causation mean here? It means that the defendant's act or acts were a substantial causal factor, a substantial causal factor in causing the death. He's criminally liable for all of the consequences of his actions that naturally occur, including those consequences brought about by intervening causes. The fact that other causes may have contributed to George Floyd's death just does not relieve the defendant of criminal liability. What you have to find is the nine minutes and 29 seconds of compression with his knees on his neck and on his back being held down was a substantial factor in George Floyd's death.

Now, if there was a superseding cause, then the defendant wouldn't be criminally liable. But the superseding cause, those are causes that come after the defendant's acts and alters the natural sequences of events and is the sole cause

of death, and we don't have that here. We know how George Floyd died.

This is the use of force. When we talk about use of force, that's been defined by the different witnesses who have testified looking at what happened from the point the knee went to the neck and back and the unlawful restraint, the assault started and how long it lasted. Nine minutes and 29 seconds. That's what killed George Floyd. That's why he died. Believe your eyes that unreasonable force, pinning him to the ground, that's what killed him. This was a homicide.

You heard this from forensic pathologists, the experts. You've heard this. The experts have weighed in. Dr. Langenfeld told you that Mr. Floyd died. Dr. Baker ruled this a homicide and told you the cause and manner of death, the unlawful restraint and subdual by law enforcement. What they did killed him. They told you that. Dr. Tobin, you remember Dr. Tobin, he told you specifically how it happened. He walked you through that, the asphyxia. He told you how it happened, and the other doctors who testified, Dr. Smock, Dr. Rich, Dr. Isenschmid, they told you how it didn't happen, right? It wasn't a sudden cardiac event. It wasn't a heart attack. It wasn't a drug overdose. It wasn't any of those things, right? Dr. Tobin came back and explained it wasn't carbon monoxide. No.

So, you know how George Floyd died and you heard this, but specifically Dr. Tobin provided fairly extensive detail, and it was very clear that George Floyd died as a result of a low level of oxygen. This low level of oxygen caused a brain injury and a PEA arrhythmia, which caused his heart to stop. That's not a cardiac event. It's not that his heart disease, that didn't cause him to die. It was the low level of oxygen. It was the asphyxia that caused him to die, and we know that that happened. We know that happened because they observed during the restraint at 20:24:21, what did they observe? They observed an anoxic seizure, a telltale sign of oxygen deprivation. Dr. Tobin told you that. Even Dr. Fowler told you that. And after Mr. Floyd experienced a seizure, he passed out. After his pulse stopped, his heart stopped ... he passed out after his pulse stopped, his heart stopped, that

cardiopulmonary arrest, that was the result of the police subdual and the restraint and the neck compression. We know from Dr. Tobin, George Floyd did not die primarily from a cardiac event, as has been suggested. Now, George Floyd, was not in perfect health. Sure, he had narrowed arteries, high blood pressure, no question about that. No question he was experiencing stress, even before the officers shoved him onto the sidewalk unnecessarily, gratuitously, disproportionately, but none of this caused George Floyd's heart to fail, it did not. His heart failed, because the defendant's use of force, the 929, that deprived Mr. Floyd of the oxygen that he needed, that humans need to live. Dr. Tobin knows, because he is a pulmonologist. He's a lung doctor. He's a lung doctor.

He's also a respiratory physiologist, he's the only person who testified who was able to calculate lung capacity, lung volume. He could do that. Dr. Baker couldn't do it. Didn't do it. He deferred to the pulmonologist, the pulmonologist, Dr. Tobin. Dr. Fowler couldn't do it. He said he would defer to a pulmonologist.

Dr. Tobin, who also happens to be a critical care physician, he spent years treating patients, treating patients in intensive care who experiencing respiratory failure. Dr. Tobin literally wrote the book on the subject and he was able to tell you what this looks like, what he was able to observe. What he was able to observe was oxygen deprivation, was asphyxia. Was asphyxia, because under the conditions that Mr. Floyd was being restrained, that the defendant put him in, that cut off his oxygen, it would have cut off the oxygen of someone who was perfectly healthy, of anyone. The forces that were used in the situation involved multiple factors.

George Floyd was handcuffed. [inaudible 00:54:23] arms and chest movement, he was placed prone, shoved prone on the sidewalk, the knees pushing on his neck and back, downward. The pavement, the force of the pavement being unyielding. It was like he was in a vice, that he was being squeezed in a vice. He calculated between Chauvin, the defendant, Officer King, pushing down on him, approximately 90 pounds of force and the position and the force combined, such

that it was if George Floyd's left lung had been surgically removed. That's how much of a deduction of air capacity there was here, to the point that Mr. Floyd was desperately trying to make space to breathe, pushing his shoulder, pushing his face against the pavement, to lift up, to give space to breathe.

His lung capacity, based on Dr. Tobin's calculation, just being in the prone position, even though you heard some studies from the defense saying the prone position isn't dangerous. Well, Dr. Tobin disagreed, he said that the lung capacity was reduced by 24%, just by the prone position. 43% when you consider the additional pressure. Dr. Tobin's opinion corroborates the police training and what the police have known for 30 years that there's a danger to the prone position. The danger is positional asphyxia. The danger, the worst thing that can happen with positional asphyxia is death. It wasn't just the lungs, the pressing up against the neck. Remember when you touched that, that it reduced the capacity of airflow, such that it was as if Mr. Floyd was breathing through a straw. These shallow breaths did not produce enough oxygen. Not enough oxygen could get to the lungs and that's what killed George Floyd.

Here's what didn't. There wasn't a sudden cardiac arrhythmia. Dr. Smock told you that, Dr. Thomas, Dr. Rich, Dr. Tobin, they agree, not a sudden cardiac arrhythmia. That's not how this looks. Dr. Baker, no medical evidence of a heart attack. We heard from Dr. Rich. Dr. Rich actually treats people who have heart attacks and he found there was nothing in his review, nothing in George Floyd's heart to suggest that the death originated from the heart, nothing.

Over the course of this case, you heard a lot of things that didn't happen and hypotheticals that don't apply. You know why George Floyd died, you know how he died. You heard a lot about drugs. You heard about his struggle with addiction. There's some things... George Floyd was obviously not a perfect man, who is? No one is. So, you heard about drugs. You heard about drugs in the car, some pills in the car, in the squad car, in his car, you heard questions about, "Is he chewing

gum? Does he have a pill in his mouth?" Based on his... none of that matters, because you know what his level, the drug level was, you know that from the toxicology report.

If drugs are found in the car, they're not in George Floyd's system. There's no point in talking about those. Let's talk about what was in his system and the toxicology report. You heard from Dr. Isenschmid and what he testified was that George Floyd's fentanyl to norfentanyl ratio, the metabolite, norfentanyl, that was well below the ratio of people who die from a fentanyl overdose, is even below the median. George Floyd's methamphetamine level, that was 94% lower than the group for driving population, for driving under the influence.

Dr. Rich and Dr. Smock they've treated patients who are under the influence of both fentanyl and methamphetamine, and they testified these drugs did not kill George Floyd. It didn't. We know that he had a tolerance, because he used drugs in the past. The experts all agree, the video show, that George Floyd did not die the way someone who dies from a fentanyl overdose dies. His breathing, it didn't slow down. He didn't fall asleep. He didn't go into a coma. No. This looked nothing like a fatal fentanyl overdose. Dr. Tobin, the only doctor in this case who actually calculated George Floyd's respiratory rate and the best doctor to do so, given his training and given his experience, he stated that the fentanyl in George Floyd's system did not depress his respiration. It didn't.

He did not die of a drug overdose. That's not how he died. He didn't die of excited delirium. You heard about excited delirium. Dr. Smock, who testified about excited delirium, told you, explained to you, George Floyd did not exhibit any of the signs of excited delirium, one of which being superhuman strength, nonsense. There's no superhuman strength. There's no superhuman strength. There are no superhumans, impervious to pain, nonsense. You heard him, you saw him, he was not impervious to pain. It's nonsense.

Paraganglioma, suggestion that this tumor, which is literally called an incidental

tumor, relatively rare, maybe causes headaches, did that cause his death, at that particular moment in time? At that time, at that place, after the restraint, after the subdual, after the nine minutes and 29 seconds, the tumor that causes headaches, that killed him? No. That's just a story. Dr. Rich specifically testified that he looked in George Floyd's medical records, and he did not find references to headaches.

You heard about carbon monoxide; the car killed him. Well, Dr. Tobin came back and explained that this car, which had a catalytic converter, that was outside, that was a hybrid, and there's no evidence was even on, that did not kill him. He explained carbon monoxide saturation level, I'm sorry, oxygen saturation level and based on his calculation of oxygen saturation level at 98%, at most, there could have been a 2% carbon monoxide. Same as anybody else. Same as people walking around, talking, breathing. This wasn't carbon monoxide. That's just a story and it's simply wrong.

You don't have to be Dr. Tobin to recognize this. It's probably nice to be Dr. Tobin, but you don't have to be Dr. Tobin to recognize this. You can see this with your own eyes. You could see what happened, that he couldn't breathe. He said he couldn't breathe. The defendant was on top of him, on his back, on his neck with his knees, pressing down. Of course! You saw how his body just deflated into the ground, past the point of consciousness. There were multiple moments in time, ladies and gentlemen, multiple moments in time, that things could have gone different, and George Floyd would have lived. CPR, if he would've left him in the side recovery position in the first place, or just placed him in the side recovery position shortly after the restraint, wouldn't have died.

Their own force witness testified that putting somebody in the side recovery position is pretty fast, pretty easy thing to do, not complicated. Professor [Stokes] said, "You just rotate them 90 degrees, quick." Could have done that, relieved the pressure. Could have done CPR, chest compressions, was supposed to, had a policy, had a policy he was supposed to follow, a duty to provide medical aid.

You're not just supposed to phone that in. You're actually supposed to use your training, provide the medical aid. Even Dr. Fowler was critical, no one starting CPR. So that should have been done. Defendant knew how to do it. He had the training, he knew better. He just didn't do better.

George Floyd didn't have to die that day. Shouldn't have died that day. But for the fact that defendant decided not to get up and not to let up, George Floyd died.

These actions were a substantial factor in George Floyd's death. These actions, make no mistake, these actions were not policing. These actions were an assault. So as the judge instructed you, for second degree murder, and it's actually very simple, if you find that the defendant committed this third-degree assault, while committing the assault, he caused George Floyd's death, the defendant's guilty of murder. That's the way a felony [worder] works in Minnesota. So, there's two elements, that the defendant assaulted George Floyd. What does that mean? "Assault" is the intentional infliction of bodily harm upon another, or the attempt to do so. Intentional infliction of bodily harm, that requires proof that the defendant intentionally applied unlawful force to another person without that person's consent and then the act resulted in bodily harm. Intentional, did it on purpose. He did the thing on purpose.

Bodily harm, physical pain, illness, or impairment of a person's physical condition. So again, to be very, very clear, the State does not have to prove that the defendant had an intent to kill George Floyd.

This was an intentional act that you see before you, he did this on purpose, and that's clear, he didn't, again, trip and fall and find himself there. This was also unlawful force. Officers are only authorized by law to use reasonable force. This was not reasonable force, as I'll explain. George Floyd clearly did not consent to having the defendant's knee on top of him for nine minutes and 29 seconds.

When you hear someone gasping for breath, calling for their mother, begging you to get off, how could you think anything else, that he did not consent to this?

Now, the State does not have to prove... We don't have to prove about intent. We don't have to show that the defendant intended to cause George Floyd harm, don't have to show that. You don't need to find that the defendant was trying to cause harm or had the purpose to cause harm to conclude that this was an assault. You do not.

State doesn't have to show that the defendant intended to violate the law. We don't have to show that. We don't have to show that the defendant intended to kill him. The only thing about defendant's intent that we have to prove, is that he applied force to George Floyd on purpose, that this wasn't an accident. It's pretty simple. If you're doing something that hurts somebody, and you know it, and you keep doing it, you're doing it on purpose.

George Floyd:

I can't breathe. [inaudible].

Mr. Schleicher:

Somebody's telling you they can't breathe, and you keep doing it, you're doing it on purpose. What else is going to happen when you push somebody down on the pavement? Everybody knows this. Everybody knows what happens when you push somebody against the pavement. You learn this pretty early on. We learn this pretty early on. Assault in the third degree requires that the defendant inflicted substantial bodily harm on George Floyd. Substantial bodily harm meaning a temporary, but substantial loss or impairment of the function of a bodily member or organ, organs, the lungs, the heart. Temporary loss of consciousness qualifies as substantial bodily harm. Certainly, a permanent loss of consciousness would constitute substantial bodily harm. You'd look at this point in the restraint, and you see the absence of expression, the absence of muscle tension. He's unconscious. He's lost consciousness. That's substantial bodily harm. He did that.

That's his knee.

So, when you consider the charge of second-degree murder, try to break it down into parts and find an order. The defendant caused George Floyd's death, he did. The State proved that beyond a reasonable doubt. At the time of causing the death, the defendant committed or was attempting an assault in the third-degree. That's been proved beyond a reasonable doubt, with those being proved and the venue, second degree felony murder, the defendant is guilty.

So, going back and talking about murder in the third degree, you can see that there's some elements in common, there's some differences. We've already discussed. The first element, the death of George Floyd, the substantial causal factor with the second element. Then the fifth element about... the venue element I'll call it, May 25, 2020 in Hennepin County. So, for third degree murder... The difference for third degree murder is that the defendant had to cause George Floyd's death by committing an act that was eminently dangerous and performed without regard for human life. Again, the State is not required for this charge either to show that the defendant intended to kill George Floyd, that he committed an act that was eminently dangerous and performed without regard for human life.

The State must prove that the act was highly likely to cause death, that the defendant acted with a reckless disregard for human life, that he was consciously indifferent, consciously indifferent to loss of life that his actions could cause. The defendant's act was eminently dangerous to others if it was likely to cause death to Mr. Floyd. If common sense in and of itself would not suffice, the dangers of prone restraint, of positional asphyxia, has been known in the law enforcement community for about 30 years, this is known, if common sense wasn't enough. Defendant's own use-of-force witness admits that.

Again, when we talk about danger, what is the danger, what's the potential danger of positional asphyxia? It's death. The medical experts who know a few things, who

know a thing or two, Dr. Tobin, Dr. Smock, Dr. Rich, they agreed.

The defendant's actions created a high risk of death. The defendant consciously disregarded the loss of life that his actions could cause and did cause. He knew the risks of positional asphyxia, due to this position. Everybody in law enforcement knows that, but he had other warnings, not just from his training, he had other warnings from people.

George Floyd:

He's not even resisting arrest right now, bro. [crosstalk].

Speaker 6:

He's passed out.

George Floyd:

[inaudible] stopped breathing right now, bro. Do you think that's cool? You think that's cool and all, right? Man, what's your badge number, bro? You think that's cool right now, bro? [crosstalk]. You think that's cool, though, bro? You're a bum, bro. You're a bum for that. You're a bum for that, bro. You think you get mad, you're just sitting there stopping his breathing right now [crosstalk].

Speaker 6:

[crosstalk] what the fuck.

George Floyd:

[crosstalk] right now, bro.

Mr. Schleicher:

It was plain and apparent to everyone who was there what was happening. He's going unresponsive, he's passed out. He's not talking. What are you doing? Now, we know that the defendant chose not to listen to bystanders, not to these bystanders, but how about to fellow officers on the scene?

Speaker 7:

Roll him on the side?

George Floyd:

No, he's staying put where we've got him [Crosstalk].

Mr. Schleicher:

“Roll him on his side?” “Staying put where we got him.” That’s what the defendant said, “He’s staying put where we got him.” Roll him on his side, means roll him into the side recovery position. He could have listened to the bystanders. He could have listened to fellow officers. He could have listened to his own training. He knew better, he just didn’t do better. He knew that kneeling on somebody’s neck, in addition to the positional asphyxia, just the pressure, is dangerous. Anyone can tell you that. A nine-year-old can tell you that, did tell you that. Conscious indifference. Indifference. Do you want to know what indifference is and sounds like?

George Floyd:

[inaudible] My stomach hurts.

Speaker 4:

Uh-huh (affirmative).

George Floyd:

My neck hurts.

Speaker 4:

Uh-huh (affirmative).

George Floyd:

Everything hurts. Give me water or something, please. Please. I can't breathe, officer.

Speaker 4:

Stop talking [crosstalk].

George Floyd:

They're going to kill me. They're going to kill me, man.

Speaker 4:

It takes a heck of a lot of oxygen, bro.

George Floyd:

Come on, man.

Mr. Schleicher:

Indifference. Leisurely picking rocks out of the tire. Commenting about the smell of the man's feet who you're pressing down, grinding on, as his voice slows and fades. As he tells you, "You're going to kill me. I can't breathe. My stomach hurts." "Uh-huh (affirmative)."" My neck hurts." "Uh-huh (affirmative)" "Everything hurts." "That takes a lot of oxygen to complain about it." Indifference. Did the defendant ever listen? Ever consider medical attention? No one defended that decision, the failure to give CPR, not even Dr. Fowler. This isn't protection, This isn't courage. It certainly, certainly is not and was not compassion. It was the opposite of that.

So back to the instructions and the elements of third degree murder. When you're deliberating, ask yourselves, "Did the defendant cause the death of George Floyd by an intentional act that was eminently dangerous to others?" Absolutely. The State proved that. Did the defendant act with a mental state, consisting of reckless disregard for human life, a conscious indifference to the loss of life, that the dangerous, that the eminently dangerous act could cause?

Yes, he did. You will find, based on that, that the State has proved the defendant is guilty of third-degree murder, as charged.

So back to the charges, let's talk about manslaughter in the second degree. Again,

you can see that there's some elements in common. The first, the third is in common with the other charges. So what's different about manslaughter in the second degree is that the defendant caused the death of George Floyd by culpable negligence. Culpable negligence, where created an unreasonable risk and consciously took a chance of causing death or great bodily harm. Again, the State does not need to prove that he intended to kill George Floyd. Culpable - ... to kill George Floyd. "Culpable Negligence," intentional conduct that the Defendant may not have even intended to be harmful, but that an ordinary and prudent, reasonably prudent, person would recognize as involving a strong probability of injuries to others.

You can look for yourself, and you can see exactly what was happening. The bystanders who were at the scene looked for themselves, and it was plain to them. They took video. You saw it. It was plain to you. Strong probability of injury. And, with the Defendant, his specialized knowledge about the dangers of positional asphyxia and the common sense that if you put your knee on somebody's neck, there's a strong probability of injury. He knew that too.

"Great Bodily Harm," bodily injury that creates a high probability of death, permanent or protracted loss or impairment of the function of a bodily member or organ. The heart, the lungs, the loss of consciousness.

Would an ordinary and reasonably prudent person know that this is dangerous? Everybody who watched knew it was dangerous. A nine-year-old saw that it was dangerous. The Defendant knew exactly what he was doing because he was right on top. He was right on top of him. But his negligence goes beyond his intentional assault of Mr. Floyd. His negligence includes his failure to act.

In your custody means in your care. In your custody means in your care. There is a duty to provide medical assistance. That duty includes not only calling the ambulance for somebody else to do, it means that you have to use your knowledge, your training, as a first responder. You're required to perform CPR. It's

a requirement. He failed to do it.

He had the training. He knew how to do it. You've seen his training records, it's Exhibit 119. You can take a look at all of the in-services, all of the hours. He knew what to do. He just didn't do it. He knew better, he didn't do better. He wouldn't even let Genevieve Hanson, the off-duty firefighter, do it. If he wasn't going to do it himself, you got to let somebody else do it. But he didn't. He had the knowledge; he had the tools. He just ignored it.

So, when you consider this charge, that the Defendant caused George Floyd's death by culpable negligence, where he took an unreasonable risk and consciously took a chance of causing death or great bodily harm, you will find that element has been proved beyond a reasonable doubt that he is Guilty of Second-Degree Manslaughter. Guilty, of all three charges.

So after all of this, you have another question you have to address. After seeing all of this, finding the assault, finding that murder was committed, that manslaughter was committed you have another thing to consider. And that is, was this just, okay? Was this fine? Is this okay because the Defendant was a police officer? Was this a authorized Use of Force? Was it justified? Was it justified?

It was not. Let's look at the instruction of the kind and degree of force a police officer may lawfully use in executing his duties. It's limited by what a reasonable police officer in the same situation would believe to be necessary, and force beyond that is just not reasonable. You look at the facts that a reasonable police officer in the same situation would have known at the precise moment that the officer acted with force. Looking at the [inaudible 01:22:20] of the totality of the facts and circumstances to see whether these actions, the Defendant's actions, were objectively reasonable. Was this objectively reasonable? No. We just saw the instruction that the law does not provide an excuse for police abuse. It does not. Let's start with the most basic of premises. That's very important. That restraining George Floyd in this manner, on the ground, prone, handcuff, knee on the neck,

knee on the back, body weight on top of him, start with the premise that that in fact was a Use of Force. The defense called a witness who actually testified that that was not a Use of Force because that is not likely to produce pain. No. No. Not true. Likely to produce pain, actually produced pain.

The problem with terms like “superhuman”, “superhuman strength”, you forget that those people don’t exist. Humans feel pain. Human beings feel pain. Human beings need to breathe. Don’t accept any notion to the contrary. You need to reject that testimony. You need to reject it.

And let’s discuss the standard, “What would a reasonable police officer do?” What would a reasonable police officer do? You don’t look at this from George Floyd’s perspective. It’s not what a reasonable victim would do. You don’t look at it from the bystanders’ perspective. What would a reasonable bystander do? But, under the law, don’t look at it from the Defendant’s perspective either. You look at it from the perspective of a reasonable officer. The evidence in this case has shown over and over that the Defendant is not that officer, because he did not act as a reasonable officer would. Remember Charles McMillan? Well, the Defendant explained his actions, he explained the basis of his actions to CharlesMcMillan. You recall that. Here’s what he said.

Derek Chauvin:

... he’s a sizeable guy.

Charles McMillan:

Yeah, and that guy. I thought he didn’t get in the car [crosstalk].

Derek Chauvin:

Looks like he’s probably on something.

Mr. Schleicher:

That was his justification for using this level of force.” He’s a big guy, sizable guy. He might be on something. We have to control it.” Control is the restraint. So, that’s the force. His two justifications were that George Floyd was big and that he might be on something. Well, you know the standards, you’ve heard the standards many times, you know the difference between a risk and a threat.

Officers are authorized to use force to respond to a threat. They’re not authorized to use force to respond to a risk.

Anybody poses a potential risk, big, small in-between, everybody’s a risk. Not everybody’s a threat. Being large, the act of being large, it’s not a crime, it’s not a risk... Sorry, it’s not a threat. It’s merely a risk. Being “on something”, being on something it’s not a threat. It may be a risk, but it’s not a threat. And force is not authorized against someone merely because they’re on something. And when questioned, their force expert witness conceited that the combination of the two, being large and being on something, is not justification for the Use of Force. It just isn’t. That’s not what they get to do.

So, the Defendant’s entire basis, his explanation to Charles McMillan at the time, at the scene, right afterwards, after he got up off of Mr. Floyd and tossed him on the gurney and walked away, like it was nothing... That’s his explanation. It’s not good enough. It’s not procedure. It’s not the Use of Force policy, it’s not following the rules.

Now, we’ve talked a lot about things that might’ve happened could have happened, potentials, hypotheticals. Talked about a lot of stuff that didn’t happen. You need to focus on what did happen. What did happen? George Floyd was not a threat. He never was. He wasn’t resisting. He just wasn’t able to comply. They should have recognized that, they should have recognized that.

They do it all the time. They had him handcuffed, they had plenty of resources, they had four officers, they had a fifth one off in the distance. He was handcuffed

behind his back. He wasn't going anywhere. He wasn't doing anything. He didn't need to be put in the prone position, that's a temporary position to facilitate handcuffing.

But the Defendant was on top of him, stayed on top of him, grinding his knees into him, pressing down on him, continuing to twist his arm, twist his wrist so it'd buck up against the handcuff, a pain compliance technique without the opportunity to comply. It's simply the infliction of pain, not a reasonable Use of Force. And that's not authorized in the Minneapolis Police Department. Kneeling on top of someone on their neck and their back, effectively they were using a maximal restraint technique, effectively.

Remember the Hobble, the Rip Hobble? You heard about that. They considered using it, they thought about using it, decided not to. They didn't need to, because he wasn't doing anything that would warrant it. But if you're going to restrain someone like that, completely holding them down, the policy authorizes the use of the Hobble, the Ripp Hobble. They didn't do that. The policy about applying the Ripp Hobble is, again, you have to put the person immediately in the side recovery position.

Why didn't they do that? The conduct didn't warrant it. They knew it. They didn't want to have to get a Sergeant down there to do a Force Review, it's Memorial Day. You heard that comment, they talked about that. So, they just held him, in this dangerous position, against policy. A reasonable officer wouldn't do that. A reasonable officer follows the rules. A reasonable officer follows the training. Force that carries a risk of death is Deadly Force. And you recall the MPD defense tactics and control guy? Like, deadly force is just not authorized in this situation. No force. When someone is passed out on the ground, unresponsive, no. You really can't even claim that Mr. Floyd was engaged in passive resistance. At this point, remember Charles McMillan, he kept saying get up and get in the car? "Get up and get in the car." And George Floyd said, "I will. I can't." He doesn't even have

the opportunity. He's saying he'll get up and get in the car. He isn't given the opportunity to do that. That's not resistance. That's compliance, at least an attempt to comply.

Force must be reasonable. It must be reasonable at the point it starts, at the point it ends, and all points in between officers are required to reassess the situation, to reevaluate the situation. To take in the information and react to it. The Defendant didn't do it.

The Defense has made the argument that the crowd justified the Defendant's Use of Force, like the blame should fall on the bystanders. For displaying concern over a man's life? What? But this was a distraction, that there was some concern. The Defendant doesn't appear too concerned. It wasn't the bystander's fault. A 19-year police veteran, a field training officer with over 800 hours of training, not being distracted by the comments of a 17-year-old or being filmed by some civilians. There's a policy about filming, they understand that civilians can film them. They know that, it's right there. This isn't something new or earth shattering or even particularly noteworthy.

Sergeant Stiger, you recall him, from LAPD? He use to patrol on skid row, he talked about people throwing rocks and bottles. This is, they have a phone, the phones. They're expressing concern. They're not doing anything. This is not a justification for an assault, for murder.

Defense suggested in their cross examination that reasonable minds can disagree, or that some of the witnesses don't line up exactly where the force began or what exactly should be done. But don't get caught up in that. Don't miss the forest for the trees. Consider the testimony as a whole.

Officer, after officer, after officer got on that stand, raised their hand and told you... The Chief of Police... that this conduct, the 9:29, violates the Use of Force policy. Violates the department's core values. He violated his duty of care. He failed to render aid.

Remember Commander, now Inspector, Katie Blackwell who was in charge of all training? Looked at this and said, "I don't even know what this is. I don't know what this modification is. This isn't how they train. These are the rules." Lt. Mercil looked at this and he said, without equivocation, "Not an MPD traintactic. It is not. We don't train our people to do this."

You could present 1000 hypothetical situations, you could talk about what didn't happen all day long into next week. But when you talk about what did happen on that day, at that time, that's what they said, "Use of Force unreasonable."

The supervisor, Sergeant Ploeger, "The force should have ended right after Mr. Floyd was on the ground." His supervisor said that. Lieutenant Zimmerman, the oldest serving... Or I should say the most years of service on the Minneapolis Police Department. Longest serving, correct myself, longest serving member of the department. What did he say? He looked at this. He said, "This was totally unnecessary. Totally unnecessary." A use of deadly force, not reasonable. Only reasonable force is authorized.

Sergeant Stiger, expert witness, Los Angeles Police Department, he's trained thousands of police officers. He looked at this, "This is objectively unreasonable force." Professor Stoughton, former police officer, University of South Carolina Law School professor, "This Use of Force was unreasonable, it was disproportionate, and it violates national standards."

The experts agree, because the force has to be reasonable when it starts, it has to be reasonable when it ends. And what is happening... If you look at the bottom, George Floyd is handcuffed and on the ground. What is he saying? He's saying, "I can't breathe," 27 times within the first 4 minutes and 45 seconds of this encounter, he's saying that. And the Defendant continues to kneel on his back and neck. Continue the dangerous restraint. George Floyd says, into the restraint at 8:22:24, "My stomach hurts. My neck hurts. Everything hurts." Defendant heard that, he heard those words. Was George Floyd resisting when he was trying to

breathe? No. No. And the Defendant heard it and he acknowledged it and all he did was mock him. “Ah ha. It takes a lot of oxygen to complain,” that’s what he said.” It takes a lot of oxygen to say.”

When George Floyd, in his final words to the Defendant, “Please, I can’t breathe. I can’t breathe,” crying out for help to the man in uniform, the Defendant stayed right on top of him, ignored it. Continued doing what he was doing, facing the crowd, grinding his knee, twisting his hand.

” I think he’s paying, passing out,” Officer Lane says. Officer Kueng can’t find a pulse. Now, the greatest skeptic of this case among you, how can you justify the continued force on this man when he has no pulse? No pulse, continued the restraint, continued grinding and twisting and pushing him down and crushing the very life out of him. It wasn’t too late. He could have rolled him over, performed CPR. No. He continued. Past the point of fighting a pulse, past the point where the ambulance arrives, past the point where the EMTs get out of the ambulance.

What’s the goal? What’s the plan here? What are we trying to accomplish? This was a counterfeit \$20 bill, allegedly. What is going on? Why? Why hold him that long, past that point, past that line that was crossed. No, unreasonable force.

Unreasonable, not proportional, excessive, it violated policy, it violated the law. It violated everything that the Minneapolis Police Department stood for. It is not lawful. Use that phrase “awful, but lawful”, but force that is not lawful, it’s just awful.

So, the Defendant is guilty of Second Degree Murder, he’s guilty of Third Degree Murder, he’s guilty of Second Degree Manslaughter. All of them, because this was not a justified Use of Force. You cannot justify this Use of Force. It’s impossible. Not if you apply the rules, not if you apply the standards that a sworn officer to protect and serve, that oath that they take.

At the beginning of my comments, I talked about George Floyd’s life. How he was surrounded by people who cared about him, surrounded by familiar faces, people

he could look out to in the crowd. But at his death he was surrounded by strangers. They were strangers, but you can't say they didn't care. You can't say that.

These people were randomly chosen from the community. People from the community randomly chosen by fate and they were coming from different places and they were going to different places and they had different purposes. All of them. Random members of the community, all converged by fate at one single moment in time to witness something. To witness 9 and 29 seconds of shocking abuse of authority, to watch a man die. And there was nothing they could do about it because they were powerless. They were utterly powerless, because even they respected the bad. Even seeing this happening, they tried, they cried out at first, pointed out, "Hey, you can get up off him."

It became more and more desperate as they watched this go on and on and on and there was nothing, there was nothing they could do. All they could do was watch and gather what they could. Gather their memories, gather their thoughts and impressions, gather those precious recordings. And they gathered those up and they brought them here. And they brought them here and they got up on the stand and they testified and they bore witness to what they saw. They bore witness to this outrageous act and they told you about it. And they gave you what they had, their thoughts, their impressions, their memories. They gave you those precious recording so you can see this, you can see this from every single angle. They gave that to you. They were powerless to do anything but that. They gave it to you. Randomly selected people from the community.

You got a summons in the mail. And here you are, all converged on one spot. Now, our system, we have power. The power actually belongs to us, the people. We give it to the government in trust for us, to hold and to use appropriately.

But sometimes we take it back. Sometimes when something is really important, we reserve those decisions for ourselves. The State, we have power but we can not

convict The Defendant. The Judge has power, but he cannot convict the Defendant.

That power... That power belongs to you. You have that power and only you have the power to convict the Defendant of these crimes, and in so doing declare that this Use of Force was unreasonable, it was excessive. It was grossly disproportionate. It is not an excuse for the shocking abuse that you saw with your own eyes. And you can believe your own eyes.

This case is exactly what you thought when you saw it first, when you saw that video. It is exactly that. You can believe your eyes. It's exactly what you believed. It's exactly what you saw with your eyes. It's exactly what you knew. It's what you felt in your gut. It's what you now know in your heart. This wasn't policing. This was murder. The Defendant is guilty of all three counts. All of them. And there's no excuse. Thank you.