STATE OF MINNESOTA | DISTRICT COURT
COUNTY OF HENNEPIN | FOURTH JUDICIAL DISTRICT

STATE OF MINNESOTA,

Plaintiff,

vs.

DEREK MICHAEL CHAUVIN,

Defendant.

ORDER DENYING STATE'S REQUEST TO MODIFY SENTENCING ORDER MEMORANDUM OPINION

Court File No. 27-CR-20-12646

This matter is before the Court pursuant to a July 7, 2021 letter[1] from Attorney General Keith Ellison (State's July 7 Letter) asking the Court to modify this Court's June 25, 2021 Memorandum Opinion attached to the Court's Sentencing Order of the same date by deleting several portions found at pages 16-17 of that Memorandum Opinion. No response was requested or expected from Defendant.

Based on the files, records, and proceedings, the Court make the following:

ORDER

1. The State's request for relief is **DENIED**.
2. The Attached Memorandum Opinion is incorporated herein.

BY THE COURT:

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Peter A. Cahill
Judge of District Court

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[1] The State knows that requests for relief are made by filing motions with service on other parties. *See* Minn. R. Crim. P. 32, 33. The State should have proceeded in that manner.

MEMORANDUM OPINION

Although the State's July 7 Letter does not cite any statutes or rules it contends invest this Court with jurisdiction over this case now that sentence has been imposed and the Defendant has been committed to the custody of the Commissioner of Corrections,[2] the Court believes the tone and substance of the Letter requesting modification of the Court's Sentencing Memorandum Opinion and the manner in which the Letter mischaracterizes the Memorandum Opinion and the record in this case necessitate a response.

First and most fundamentally, the State's July 7 Letter misperceives what should be the Court's focus in this case: Defendant's conduct toward George Floyd on May 25, 2020, the basis upon which the jury found Defendant guilty of unintentional second-degree and third-degree murder and second-degree manslaughter.

Second, the Court neither found nor wrote in the Sentencing Memorandum Opinion that the four minor eyewitnesses upon whom the State focuses[3] on May 25, 2020 were *not*

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[2] Because the State acknowledges that it is not asking the Court to modify or otherwise correct the sentence imposed, the State's letter is not a motion pursuant to Minn. R. Crim. P. 27.03 subd. 9. Because this request is filed by the State, not the Defendant, jurisdiction is not conferred by the postconviction relief provisions of Minn. Stat. chap. 590. The State cites no other provisions that expressly confer jurisdiction on this Court to consider postconviction motions for reconsideration, which is the essence of the State's July 7 Letter. The State of course remains free to seek appellate review of this Court's orders as authorized by law.

[3] The State persists in characterizing all four as "young girls" throughout the July 7 Letter. Although all four were minors on May 25, 2020, only J.R., who was nine years old, is in this Court's view accurately characterized as a "young girl." The other three, each of whom was 17 on May 25, 2020, are in the Court's view more accurately characterized as young women. In this Court's view, the State's approach which effectively lumps together all persons under the age of 18 and presumes each and every person under the age of 18 experiences "emotional trauma" in the same way regardless of the facts of any specific conduct he or she observes which a jury later determines to have been criminal and without regard to their own individual characteristics, circumstances, temperament, and life's experiences and without regard to the specific conduct they observed and the context in which they observed it, as well as their resulting behavior, is too simplistic and essentially infantilizes many young men and women.

traumatized. What the Court wrote is that "the evidence at trial did not present any *objective* indicia of trauma." Mem. Op. at 17 (emphasis added). That is true. The Court noted video evidence from the trial suggestive of a lack of contemporaneous emotional trauma at the time two of the young women as well as J.R. were witnessing the restraint of George Floyd and there was no significant *objective evidence* counterbalancing that. It is certainly possible that the witnesses experienced some level of emotional trauma from this incident, but the State failed to prove it.

In this regard, the State complains that this Court held a unitary trial that supposedly deprived the State of any opportunity to present objective evidence of any trauma any of the four may actually have experienced caused by their witnessing the events of May 25. Even though Defendant waived determination by the jury as to the existence of any aggravated sentencing factors and elected to submit that determination to this Court, it was the State that had filed notice of intent to seek an aggravated sentence and the State knew the Court was considering an aggravated sentence based on the Court's briefing order upon return of the jury's verdicts on April 20 and Defendant's waiver of his right to have a jury make the required factual findings. The State had a right, under the rules, to request a separate contested sentencing hearing to present any additional evidence it believed relevant and material to the existence of the *Blakely* factors[4] to support its request that the Court impose an aggravated sentence. *See* Minn. R. Crim. P. 27.03 subd. 4(D). It did not do so. To the contrary, the State's own earlier briefing gave this

[4] For example, the State could have presented at such a contested sentencing hearing testimony by Dr. Vinson, in accord with her Declaration filed by the State on July 7. The State could also have presented evidence of any professional counseling any of the three young women or J.R. had received from licensed providers or from school counselors. It is also understandable why the State might not wish to pursue such a course, because as all career prosecutors know, testifying in court, even in a low profile case, is also traumatic for children, especially when they have to discuss private matters.

factor – the presence of children -- lower priority and less attention than the other four aggravating factors upon which it sought an aggravated sentence. *See* State's Mem. in Support of Blakely Aggravated Sentencing Factors (April 30, 2021) and State's Mem. of Law on Sentencing (June 2, 2021).[5] It most assuredly is the case "that the State did not demonstrate the extent of trauma experienced by each of the child witnesses," at least to the satisfaction of this Court. *See* State's July 7 Letter, at 3.

As the Court stated at the sentencing hearing, the sentence was not intended to "send a message" of any kind. Ignoring this explicit statement, the State complains that the Court was sending a message "that instead of attempting to intervene in order to stop a crime . . . children should simply walk away and ignore their moral compasses.[6]" State's July 7 Letter at 2. Instead of sending a message, the Court was pointing to the facts of the case, specifically that the minors for whom the State expresses such concern were, in fact, free to leave the scene and were never coerced or forced by Chauvin or any of his colleagues to remain at the scene and watch Floyd's restraint. In fact, the Thao body-worn camera video (Tr. Exh. 49) shows:

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[5] In the State's April 30 Brief, the "presence of children" was the last of the five factors the State addressed and it devoted fewer lines to that analysis than any of the other four factors, including less than half the discussion it devoted to the factors of George Floyd's particular vulnerability and the particular cruelty with which Defendant treated George Floyd. Similarly, in the State's June 2 Brief, the "presence of children" factor was the third of the four factors the State addressed (the Court had found in its May 11 Verdict on the *Blakely* factors that the State had not proved the existence of George Floyd's particular vulnerability beyond a reasonable doubt), and there again received less extensive analysis than the factors of abuse of position of authority and particular cruelty.

[6] The Court is most certainly not encouraging young children to intervene in police actions, even if they believe they are preventing a crime. This is action best left to adults, and even then, adults are cautioned against routinely intervening in police action. The street is rarely an appropriate forum to determine the appropriateness of police conduct and in fact, may escalate the level of violence at a scene when bystanders act without complete knowledge of the situation. As the State's own expert opined, police actions are often "awful but lawful." While the actions of the adult bystanders in this case may have been an appropriate level of intervention, that is not always the case.

(1) One family group (a man and a woman walking with a small child) approaching from the direction of Cup Foods continue walking north past the scene of the incident at 8:23 p.m. without stopping.

(2) A second family group (what appears to be a mother, or at least an adult woman, walking with two children) heading southbound toward Cup Foods walking past the scene of the incident at 8:27 p.m. without stopping.

(3) A third family group (including a man and a woman with a small child and an older male, who could be another child or possibly a young friend or acquaintance) walking past the scene heading northbound from the direction of Cup Foods, stopping at the nearby bus stop on Chicago Avenue to observe briefly, at 8:28 p.m., before continuing on within a minute or so.

The facts and circumstances here are vastly different from those in *Robideau* and *Vance*, discussed below, in which the victim was the minor children's mother and the crime occurred in the victims' and childrens' home at night when the children were at home with their mother.

The State also notes social science research which it contends "demonstrates that 'adults view Black girls as less innocent and more adult-like than their white peers'" and suggests that "observers discount the experiences of young Black girls" and perceive them "as needing less protection and nurturing than white girls." State's July 7 Letter, at 2, 6. No evidence of any such social science research was presented by the State to this Court prior to the June 25 sentencing. Be that as it may, it is the State that is injecting supposed racial presumptions in this case, not this Court. This Court never mentioned in its Sentencing Memorandum Opinion the racial or ethnic status of any of the observers at the scene on May 25 or of the three young women and nine year-old J.R. who are the focus of the State's July 17 Letter. Anyone who observed the trial and the lay eyewitness observer testimony, or who watches the multiple videos that captured various aspects of the scene, can observe for themselves that the observers at the scene appear to have been Black, white, and Hispanic. *See, e.g.*, witnesses who testified at trial from March 29-31 and Tr. Exhs. 2-9, 11, 15-16, 24, 26-28, 33, 35-36, 39-45, 47-49, 52-55, 127, 246, 1007-1008, 1018-1020, and 1054-1055. Although one of the young women, now 18, and

nine-year old J.R. are Black, the other two young women, also now 18, are white. Whether "adultification" of "Black girls" is, as the State insists, "common in American society, including in the criminal justice system" (*see* State's July 17 Letter, at 2, 5, 6), this Court emphatically rejects the implication that it played any part in the Court's sentencing decision.

Finally, the State's July 7 Letter appears to ignore the law regarding the imposition of aggravated sentences, by implying that once a Court has found the existence of an aggravating factor beyond a reasonable doubt that by itself compels imposition of an upward durational departure on that ground.[7] But that is not the law because it ignores the second stage of the analysis discussed in the Court's Sentencing Memorandum Opinion. If aggravating factors were found to be proved in the first stage, in the second stage the trial court must explain why the presence of any such aggravating factors creates a "substantial and compelling" reason to impose a sentence outside the presumptive guidelines range, a task in which the trial court exercises its discretion and may, but is not required, to depart by imposing an aggravated sentence. *See* Sent. Mem. Op. at 3-5.

The Court is unaware of any reported, precedential Minnesota decisions which would compel imposition of an aggravated sentence on Defendant here based solely on the presence of these four minors under the facts and circumstances of this case.

In *State v. Robideau*, 796 N.W.2d 147 (Minn. 2011), which the State has cited in both of its sentencing-related briefs as well as in its July 7 Letter, an aggravated sentence had been imposed on a defendant convicted of intentional second-degree murder for the stabbing death of his girlfriend based on the presence of the victim's 14-year old son at the home where the

[7] *E.g.*, State's July 7 Letter, at 1 (characterizing Sentencing Memorandum Opinion as "suggest[ing]" that "an aggravating factor should not apply" "because the children in this case were not forcibly held at the scene or otherwise prevented from leaving").

stabbing occurred. That aggravated sentence was reversed, however, because the victim's teenage son had not actually seen, heard, or otherwise witnessed the crime: the stabbing occurred after midnight in the home's master bedroom while the victim's son was at home, but when he was downstairs in his basement bedroom and did not directly witness the stabbing; the only thing he heard was his mother saying "stop it." *Id*. at 148-49. The following morning, the boy discovered his mother's body lying on the floor of her bedroom, after forcing open the locked bedroom door. In this Court's view, the *Robideau* fact pattern would present a more compelling situation for finding the presence of substantial and compelling reasons for an aggravated sentence – had the boy actually witnessed the stabbing of his mother -- than do the facts here. In *Robideau*, a brutal stabbing occurred in the victim's and young teenage son's own home and the son found his mother's dead body. Here, in contrast, the events leading to the guilty verdict occurred in public, where the minors were not inhabiting any zone of privacy, the minors did not manifest any objective indicia of trauma at the scene, and did not know George Floyd or any of the officers.

In *State v. Profit*, 323 N.W.2d 34 (Minn. 1982), also cited by the State, an aggravated sentence was affirmed, but the aggravating factors on which the State relied in urging a durational departure were the particular cruelty and a particularly serious robbery presenting greater than normal danger to safety of others. In that case, the defendant had pled guilty to a first-degree criminal assault charge in one incident and to an aggravated robbery charge in a separate incident which occurred a few days later in a day care center in which some children had been present and had witnessed some aspects of the defendant's charged crimes at the day care center. Although children were present at the day care center during the second charged

incident, the trial court had not relied on the presence of children as an aggravating factor for the upward durational departure.

The State also cites *State v. Vance*, 765 N.W.2d 390 (Minn. 2009). That case involved a particularly brutal criminal sexual assault, in which the Defendant had repeatedly raped the victim over a period of ten hours, choked and strangled her, punched and kicked her, burned her with cigarettes, cut off her hair with a knife, and urinated on her in her home. The trial court had imposed an aggravated sentence based on the jury's finding of three aggravated factors: multiple forms of penetration; particular cruelty; and crimes committed within sight and sound of children as two of the victim's minor children were present in her apartment during the time of the crime. However, in *Vance*, the Minnesota Supreme Court held that an aggravated sentence could not be based merely on the presence of children factor because the victim in that case had kept the children in a separate room from where the crime was committed, so the children never actually saw, heard, or otherwise witnessed the crime.

In *State v. Fleming*, 883 N.W.2d 790 (Minn. 2016) (affirming upward durational departure), during the course of an altercation on a basketball court in a public park, the defendant, after being stabbed in the neck, took a handgun, brandished it, advanced toward the victim, and fired six times in the direction of the retreating victim. The evidence indicated that the shots were fired in the direction of a street adjoining the park as well as in direction of many children present at the time in the park. The defendant pled guilty to charges of felony firearm possession and second-degree assault. The State's asserted *Blakely* factors were (i) greater-than-normal danger committed in public park, and (ii) committed in presence of children. The trial court imposed an aggravated sentence, finding that defendant's conduct was more egregious than the typical offense and placed a large number of individuals in real and significant danger.

Unlike the situation here, though, the trial court in *Fleming* expressly found that children froze during the shooting and then ran in shock and horror to find each other, manifesting objective indicia of trauma. In any event, it appears from the opinion that the *Fleming* trial court had relied on the fact that the crime was more egregious than typical and exposed large number of others to real and significant danger of being shot and was not explicitly based on a finding that children were present.

In the final analysis, this Court is well aware of the unprecedented amounts of attention George Floyd's death has received in local, state-wide, and national media as well as from the pundit class. This Court, however, is constrained in ways the media, the pundit class, and prosecutors are not. This Court may not act on the assumptions or presumptions assayed by the State in its July 7 Letter, or on personal opinion. In sentencing, this Court's duty is to apply the law to the evidence and facts in the case in imposing a sentence that is rational and just, that helps to promote public safety, that reduces sentencing disparity, and that as whole is proportional to the severity of the offense and the defendant's criminal history.[8] That is what the Court sought to do in sentencing Defendant, as explained in the Court's Sentencing memorandum Opinion filed June 25, 2021. This Court did not find that the presence of three young women and one young girl who observed the officers' restraint of George Floyd for several minutes before he was loaded onto a stretcher and placed into an ambulance by itself

[8] The only presumption the Court can make is that the guidelines sentence is the appropriate sentence to be imposed. Minnesota Sentencing Guidelines 1.B.13 13. ("Presumptive sentences" are those sentences provided on the Sentencing Guidelines Grids and in section 3.A.2. They are presumptive because they are presumed to be appropriate for all typical cases sharing criminal history and offense severity characteristics). In this case, given Defendant's criminal history score of zero and the severity level 10 offense, that sentence was 150 months with a range of 128 to 180 months.

presented substantial and compelling reasons for an upward durational departure, for the reasons the Court explained in its Sentencing Memorandum Opinion.

For all these reasons, the Court declines the State's invitation to reconsider its Sentencing Memorandum Opinion supporting its sentencing order and declines to modify that Memorandum Opinion in any of the particulars sought by the Attorney General in his July 7, 2021 letter.

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