

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

 State of Minnesota,

Plaintiff,

vs.

Derek Michael Chauvin,

Defendant.

Court File No. 27-CR-20-12646

**DEFENDANT'S NOTICE
OF MOTIONS AND
POST-VERDICT MOTIONS**

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

NOTICE OF MOTIONS

PLEASE TAKE NOTICE that the Defendant, Derek Michael Chauvin, through his attorney Eric J. Nelson, Halberg Criminal Defense, hereby moves this Court for the following relief:

MOTIONS

1. For an order granting a new trial, pursuant to Minn. R. 26.04, subd. 1, on the following grounds: the interests of justice; abuse of discretion that deprived the Defendant of a fair trial; prosecutorial and jury misconduct; errors of law at trial; and a verdict that is contrary to law. The specific bases for this motion include, but are not limited to:
 - a. The Court abused its discretion when it denied Defendant's motion for a change of venue, pursuant to Minn. R. Crim. P. 24.03, subd. 1, and 25.02, subd. 3, in violation of Mr. Chauvin's constitutional rights to a due process and a fair trial. *See Sheppard v. Maxwell*, 384 U.S. 333, 363 (1966).
 - b. The Court abused its discretion when it denied Defendant's motion for a new trial on the grounds that "publicity during the proceedings threaten[ed] the fairness of

the trial[.]” *Sheppard, supra*. Such publicity included post-testimony, but pre-deliberation, intimidation of the defense’s expert witnesses, from which the jury was not insulated. Not only did such acts escalate the potential for prejudice in these proceedings, they may result in a far-reaching chilling effect on defendants’ ability to procure expert witness—especially in high-profile cases, such as those of Mr. Chauvin’s codefendants—to testify on their behalf. The publicity here was so pervasive and so prejudicial before and during this trial that it amounted to a structural defect in the proceedings. *See United States v. Hastings*, 461 U.S. 499, 508-09 (1983) (certain errors involve “rights so basic to a fair trial that their infraction can never be treated as a harmless error”).

- c. The Court abused its discretion when it failed to sequester the jury for the duration of the trial, or in the least, admonish them to avoid all media, which resulted in jury exposure to prejudicial publicity regarding the trial during the proceedings, as well as jury intimidation and potential fear of retribution among jurors, which violated Mr. Chauvin’s constitutional rights to due process and to a fair trial. Minn. R. Crim. P. 26.03, subd. 5.
- d. The State committed pervasive, prejudicial prosecutorial misconduct, which deprived Mr. Chauvin of his constitutional rights to due process and a fair trial, including but not limited to: disparaging the Defense; improper vouching; and failing to adequately prepare its witnesses.
- e. The Court abused its discretion and violated Mr. Chauvin’s rights under the Confrontation Clause when it failed to order Morries Hall to testify, or in the alternative, to admit into evidence Mr. Hall’s statements to law enforcement

regarding his interactions with George Floyd and presence at the May 25, 2020 incident. U.S. Const., amend. VI.

- f. The Court abused its discretion when it submitted instructions to the jury that failed to accurately reflect the law with respect to second-degree unintentional murder, third-degree murder, and authorized use of force.
 - g. The Court abused its discretion, in violation of Mr. Chauvin’s constitutional rights to due process and a fair trial, when it permitted the State to present cumulative evidence with respect to use of force.
 - h. The Court abused its discretion, in violation of Mr. Chauvin’s constitutional rights to due process and a fair trial, when it ordered the State to lead witnesses on direct examination.
 - i. The Court abused its discretion, in violation of Mr. Chauvin’s constitutional rights to due process and a fair trial, when it failed to order that a record be made of the numerous sidebars that occurred during the trial.
 - j. The cumulative effect of the multiple errors in these proceedings deprived Mr. Chauvin of a fair trial, in violation of his constitutional rights. *See State v. Duncan*, 608 N.W.2d 551, 551-58 (Minn. App. 2000), *review denied* (Minn. May 16, 2000) (“when the cumulative effect of numerous errors”—even if, alone, the errors are harmless—“constitutes the denial of a fair trial, the defendant is entitled to a new trial”).
2. An order for a hearing to impeach the verdict, pursuant to Minn. R. Crim. P. 26.03, subd. 20(6) and *Schwartz v. Minneapolis Suburban Bus Co.*, 104 N.W.2d 301 (Minn. 1960), on the grounds that the jury committed misconduct, felt threatened or intimidated, felt race-

based pressure during the proceedings, and/or failed to adhere to instructions during deliberations, in violation of Mr. Chauvin's constitutional rights to due process and a fair trial. *State v. Larson*, 281 N.W.2d 481, 484 (Minn. 1979); *State v. Kelley*, 517 N.W.2d 905 (Minn. 1994); *State v. Bowles*, 530 N.W.2d 521 (Minn. 1995).

3. For an order granting the Defense additional time to thoroughly brief the above issues, in light of the time that was required for preparation of partial transcripts of the proceedings.
4. Any other relief deemed fair and equitable by the Court.

This motion is based upon the files and records in this case, the Minnesota Statutes, the Minnesota Rules of Criminal Procedure, the United States and Minnesota Constitutions and upon such other and further points and authorities as may subsequently be presented to the Court.

Respectfully submitted,

HALBERG CRIMINAL DEFENSE

Dated: May 4, 2021

/s/ Eric J. Nelson
Eric J. Nelson
Attorney License No. 308808
Attorney for Defendant
7900 Xerxes Avenue S., Ste. 1700
Bloomington, MN 55431
Phone: (612) 333-3673