

1 STATE OF NEW YORK  
2 MONROE COUNTY GRAND JURY

3 \_\_\_\_\_

4 DAY 9:

5

6 Investigation into the death of Daniel T. Prude

7

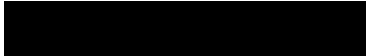
8 \_\_\_\_\_

9 Transcript of the Proceedings held before  
10 the Monroe County Grand Jury, at the Monroe County,  
11 Hall of Justice, 99 Exchange Blvd., Rochester, New  
12 York, 14614, on February 23rd, 2021.

13

14 APPEARANCES: Letitia James, ESQ.  
15 New York State Attorney General  
16 Appearing for the People  
17 BY: JENNIFER SOMMERS, ESQ.  
18 Deputy Chief of Special Investigations  
19 BY: MICHAEL SMITH, ESQ.  
20 NYS Office of the Attorney General

21

22 REPORTED BY:   
23 FORBES COURT REPORTING SERVICES, LLC  
24 21 Woodcrest Drive,  
Batavia, NY 14020,  
25 (585) 343-8612

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

I N D E X T O W I T N E S S E S

-----

FOR THE PEOPLE: PAGE

[REDACTED] 4

\* \* \*

I N D E X T O E X H I B I T S

FOR THE  
PEOPLE DESCRIPTION ID EVD

-----

GJ 64 Synchronized timeline video 11 11

1 (Proceeding reconvened.)

2 MS. SOMMERS: All right. Good morning,  
3 everyone. Welcome back. It's been a little while.  
4 We're going to start right up today. We have one  
5 witness left for you to hear from and one more piece  
6 of evidence, and then we will discuss further after  
7 that. Okay.

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1                   (Whereupon, the witness entered the Grand  
2 Jury room at a time of 10:04 a.m.)

3

4                   MS. SOMMERS: At this time, we're recalling  
5 [REDACTED].

6                   Mr. [REDACTED] has been previously sworn. I'm  
7 just going to ask him to acknowledge on the record  
8 that he understands that he is still under oath.

9

10                   [REDACTED] [REDACTED] after having been  
11 previously duly called and sworn, testified further as  
12 follows:

13

14                   THE WITNESS: Yes, ma'am. I do.

15

16                   **FURTHER EXAMINATION BY MS. SOMMERS:**

17 Q. Thank you. It's been a while. Could you please  
18 remind the Grand Jury of where you work and in what  
19 capacity again?

20 A. My name is [REDACTED]. I work for the Attorney  
21 General in the Special Operations Unit out of  
22 Syracuse.

23 Q. Thank you. And, is part of your position or  
24 expertise video and audio and that type of work?

25 A. Yes, ma'am.

1 Q. Thank you. As a final part of this case, were  
2 you asked to generate any particular type of evidence?

3 A. I was.

4 Q. What was it that you were asked to generate?

5 A. I was asked to assemble a video timeline using a  
6 number of different clips from different sources.

7 Q. In generating the timeline, what was that first  
8 time or what marked the first time that began the  
9 timeline?

10 A. There was a surveillance video of an individual  
11 crossing the street.

12 Q. And, do you recall at approximately what time  
13 that was?

14 A. I believe that is at approximately 2:57 a.m.

15 Q. And, is that reflected on the timeline that you  
16 created?

17 A. It is. In the timeline, I also created a running  
18 clock at the bottom left.

19 Q. What was the last portion of the media that you  
20 used to create the evidence that you are talking  
21 about, the timeline?

22 A. That was a video I compiled of five body worn  
23 cameras that was introduced here previously.

24 Q. And, at approximately what time did that end?

25 A. At approximately 3:28 a.m.

1 Q. So, in terms of the relevant timeline for what  
2 we're about to see, approximately how long was it?

3 A. Approximately 31 minutes.

4 Q. Okay. As a part of that, did you also make use  
5 of a map?

6 A. Yes, I did.

7 Q. And, was -- did the map include the route that  
8 Mr. Prude took that night as confirmed by various  
9 pieces of surveillance footage and other videos?

10 A. Yes. It was depicted with a red line.

11 Q. Okay. Was there any other information on that  
12 map, other than the route that Mr. Prude took?

13 A. Yes. There was a location of the cameras that  
14 we'll see in the clip.

15 Q. And, how was it that the various locations of the  
16 camera were noted on the video?

17 A. Just prior, and usually during the video, I would  
18 highlight the camera with a light blue rectangle.

19 MS. SOMMERS: For the record, I'd like to  
20 note that the maps that formed the basis for the video  
21 are in evidence before the Grand Jury as Exhibits 13  
22 and 31.

23 BY MS. SOMMERS:

24 Q. Investigator [REDACTED] -- I guess Detective [REDACTED]?

25 A. Detective these days.

1 Q. As part of the video, were there various pieces  
2 of surveillance footage also placed into the Exhibit?

3 A. Yes, ma'am. A video came from different sources.

4 Q. Is that where you would highlight where they --  
5 where the footage was coming from?

6 A. Yes.

7 Q. Did that include surveillance footage from  
8 buildings?

9 A. It did.

10 MS. SOMMERS: For the record, the  
11 surveillance footage from various buildings has  
12 previously been admitted under Exhibits 26, 27, 28,  
13 32, 33 and 34.

14 BY MS. SOMMERS:

15 Q. Did that also include City operated cameras.

16 A. Yes.

17 Q. Do you recall how many City operated cameras?

18 A. I don't recall how many.

19 MS. SOMMERS: For the record, those -- the  
20 footage from those cameras are -- is in at Exhibits 37  
21 and 38.

22 BY MS. SOMMERS:

23 Q. Detective [REDACTED], was there also a live stream  
24 video included in the timeline that was generated?

25 A. Yes, there was a live stream video from Face

1 Time.

2 A. Thank you.

3 MS. SOMMERS: For the record, that video has  
4 been admitted as Exhibit 22.

5 BY MS. SOMMERS:

6 Q. Was body worn camera footage video also used to  
7 generate the timeline?

8 A. Yes, it was.

9 Q. Initially, was there any footage captured from a  
10 Metro PCS Store?

11 A. Yes.

12 Q. Whose footage was used in the timeline?

13 A. Excuse me, ma'am?

14 Q. Which Officer's body worn camera footage was used  
15 in the timeline at the Metro PCS Store?

16 A. Officer [REDACTED].

17 MS. SOMMERS: For the record, that footage  
18 has previously been submitted -- admitted under Grand  
19 Jury Exhibit 46.

20 BY MS. SOMMERS:

21 Q. Was there additional body worn camera footage  
22 used in the timeline?

23 A. Yes.

24 Q. And, what was that?

25 A. It was body worn camera from five different



1 officers at the scene that they apprehended Mr. Prude.

2 Q. Is that the footage that you previously testified  
3 to synchronizing and placing in one so that it could  
4 be viewed at one time?

5 A. Yes, it is the same clip.

6 MS. SOMMERS: Thank you. For the record,  
7 that is already admitted before the Grand Jury under  
8 Exhibit 49.

9 BY MS. SOMMERS:

10 Q. Were 911 calls added to the timeline?

11 A. Yes, there were.

12 Q. How many?

13 A. Two.

14 Q. And, do you recall who made them?

15 A. Yes. One was from Mr. [REDACTED] and the other was  
16 from a tow truck driver.

17 Q. Thank you.

18 MS. SOMMERS: Those are admitted -- Mr.  
19 Prude under Grand Jury Exhibit 12, and the tow truck  
20 driver is under Exhibit 17.

21 BY MS. SOMMERS:

22 Q. Detective [REDACTED], did you also add radio  
23 dispatches and recordings to the timeline?

24 A. I did.

25 MS. SOMMERS: For the record, those are

1 already Exhibits -- already submitted as Grand Jury  
2 Exhibit Number 16.

3 BY MS. SOMMERS:

4 Q. In amassing this collection of evidence and  
5 playing it in realtime, did you in any way alter it?

6 A. I added a yellow circle on the very first clip  
7 that highlights an individual crossing the street that  
8 might be missed if -- without the circle.

9 Q. Okay. And, other than that circle, did you alter  
10 the underlying media?

11 A. No.

12 Q. Can you explain to the Grand Jury how, if at all,  
13 the volume was adjusted during the timeline?

14 A. Yes. The different areas of the audio being more  
15 pertinent than others, and those would be enhanced, or  
16 increased the volume, to be better understood.

17 Q. And, did you prepare this in collaboration with  
18 anybody?

19 A. With you.

20 Q. Okay. So, it wasn't you, yourself making these  
21 determinations, is that accurate?

22 A. That's true, yes.

23 Q. Okay. And, were any portions of the media that  
24 was playing, were any portions truncated or stopped,  
25 before they would play out to the end?

1 A. Yes, there were a few.

2 Q. Again, what was the reason for that?

3 A. There was no more pertinent data at an end.

4 Q. Showing you what's been marked for identification  
5 as Grand Jury Exhibit 64, do you recognize this?

6 A. I do.

7 Q. And, what is it, if you could just explain what  
8 it is?

9 A. This is a flash drive containing the video file  
10 of the timeline we're discussing, in which I placed on  
11 this video -- on this flash drive.

12 Q. Is what is contained on this flash drive an  
13 actual copy of the timeline that you generated?

14 A. It is.

15 Q. And, you've reviewed what's on the flash drive  
16 and you know it's an accurate copy of what you  
17 generated?

18 A. I have.

19 Q. Thank you.

20 MS. SOMMERS: I'll offer 64, please.

21

22 **(Whereupon, Grand Jury Exhibit Number 64 was**  
23 **then received into evidence?)**

24

25 MS. SOMMERS: All right. For the record,

1 we're going to go ahead and play 64.

2 At the very beginning, I'm going to ask,  
3 maybe to modulate the light a little bit. You tell me  
4 if -- if you want it greater.

5 (Whereupon, the video played into the record  
6 for the Grand Jury.)

7 (Whereupon, the video terminated.)

8 MS. SOMMERS: Does anyone have any questions  
9 for Detective [REDACTED]?

10 GRAND JURY POOL: (All jurors indicating a  
11 negative response.)

12 THE WITNESS: Thank you.

13 MS. SOMMERS: Thank you.

14 (Whereupon, the witness left the Grand Jury  
15 room at a time of 10:46 a.m.)

16

17

18

19

20

21

22

23

24

25

1 MS. SOMMERS: Last time, when we were here  
2 -- so -- well, let me start by saying that is the  
3 conclusion of the evidence that we have to present.

4 Last time, when we were here, there had been  
5 indication of a desire to see two pieces of evidence,  
6 the videotaped testimony of both of the experts, which  
7 we have and have available to -- to play for you now.

8 Would you like to vote on other pieces of  
9 evidence that you would like to see with a -- 12  
10 people, you know, I would prefer to err on the side of  
11 giving you whatever -- if people believe that they  
12 need to see additional pieces of evidence, we have it  
13 all here, we're happy to provide it. But, I don't  
14 know whether you want to, kind of, speak collectively  
15 to make those decisions at this point. I have the  
16 evidence list. But, would you like to begin reviewing  
17 the items that you had previously asked for at this  
18 time? Do you want -- just any feed back.

19 A JUROR: Isn't that almost, like, three  
20 hours?

21 A JUROR: Yeah. Let's deliberate.

22 MS. SOMMERS: So, the first expert -- his  
23 testimony -- the first expert was Dr. [REDACTED].

24 I believe that there was one person who was  
25 not here when he testified. We would like the -- the

1 vote to be a representative vote and, you know, we can  
2 certainly, you know, skip credentials and stuff on  
3 both experts. But, I'm not sure if there was anyone  
4 -- I don't believe there was anyone who was still  
5 here, or maybe there is one missing when the second  
6 expert -- but, we, obviously, want you to have -- want  
7 everyone to make an informed vote.

8 I don't know if you have anything to add,  
9 Mr. Smith?

10 MR. SMITH: No. Only that, in order to vote  
11 before the Grand Jury, the grand jurors must defer to  
12 all the critical and essential elements.

13 So, again, last time we were here, there was  
14 discussion of playing back those two -- those two  
15 pieces of evidence.

16 Now, if the Grand Jury would prefer to vote  
17 on those two pieces of evidence, if that's the  
18 indication that we're getting. Again, that's  
19 something we can do. I think it would be our  
20 preference to play whatever the grand jurors want to  
21 play back.

22 A JUROR: Like, you mean, have us vote on  
23 whether we want to see it or it not?

24 MS. SMITH: That's correct. Again, there  
25 was some indication. Again, because it's on the

1 record from last time, there was some indication that  
2 the grand jurors, or some grand jurors, again, wanted  
3 to review those two specific pieces. Again, Dr. [REDACTED]  
4 and Dr. [REDACTED].

5 If the indication is now -- and, it seems to  
6 be that's the indication that we're getting. If the  
7 indication is that the grand jurors would prefer to  
8 vote on that at this point then --

9 MS. SOMMERS: To vote on whether or not you  
10 wish to see that.

11 A JUROR: Now, there's a grand juror here  
12 that, if they did not see the first one, they cannot  
13 vote, is that correct?

14 MS. SOMMERS: It would be our preference to  
15 minimally show the substance of the first expert so --  
16 we could skip credentialing and --

17 A JUROR: But, for everyone to be able to  
18 vote, we need to see that first one?

19 MS. SOMMERS: For everyone -- how about  
20 this. We would prefer to play the first one and if  
21 there are people in the room that feel that they  
22 remember it and don't need to sit through it again,  
23 you could certainly take a -- well, no. I actually  
24 would prefer everyone to be in the room. So, in a  
25 nutshell, yes.

1 A JUROR: Okay.

2 A JUROR: I would like to vote on [REDACTED]  
3 because I'd like to see it.

4 A JUROR: How long is that video?

5 MS. SOMMERS: I believe [REDACTED] is about one  
6 hour. [REDACTED] is longer than [REDACTED].

7 A JUROR: That was the critical part.

8 MS. SOMMERS: So, why don't we do [REDACTED] and  
9 then that part would be covered in terms of voting.  
10 And then, we can leave up to you, whoever would care  
11 to see more than that and you could vote on that.  
12 And, a simple majority -- 12 people as a majority of  
13 23 would carry that.

14 Does that sound okay?

15 A JUROR: I have a question. It seemed  
16 like one expert had an opinion that there was no  
17 improper anything done. And then, another expert had  
18 an opinion that there was some -- something that was  
19 not quite properly done, am I correct? I don't want  
20 to hear one side and not hear the other.

21 MS. SOMMERS: I totally understand.

22 MR. SMITH: [REDACTED], as we said in the  
23 beginning, you as the grand jurors are the finders of  
24 fact in this case. We are the legal advisors. We'll  
25 give you the legal instructions, some guidance. But,



1 you are the fact finders in this case. If that is  
2 your recollection, sir, and that is your opinion of  
3 the testimony, that is your opinion and recollection  
4 of the testimony. We'll give you, in the  
5 instructions, some instructions, some charges on how  
6 to evaluate the credibility of witnesses, including  
7 expert witnesses, sir. We encourage you to use those  
8 tools and those factors to, again, evaluate the  
9 credibility and you, as the grand jurors will resolve  
10 those differences and find the facts.

11 (Whereupon, there was a short break off the  
12 record.)

13 MS. SOMMERS: Okay. For the record, we are  
14 going to replay the video regarding Dr. [REDACTED] as  
15 requested by the Grand Jury. However -- and, it's  
16 video recorded. The very first part of it is not  
17 video recorded, and I was going to have the reporter  
18 read that part into the record. It includes the oath  
19 that he took.

20 Does anybody feel that they need to hear the  
21 first five minutes?

22 GRAND JURY POOL: (All jurors indicating a  
23 negative response.)

24 MS. SOMMERS: Okay. So, we're going to skip  
25 that part and I'm going to press play.

1                   (Whereupon, the recorded testimony of Dr.  
2     ██████ was then played into the record to the Grand  
3     Jury.)

4                   (Whereupon, the video testimony terminated.)

5                   MS. SOMMERS: Okay. So, just for the  
6     record, we just completed playing Dr. ██████'s  
7     testimony.

8                   A couple of things that I wanted to say. At  
9     one point, Dr. ██████'s testimony spilled over into  
10    maybe an area that was not necessarily his expertise,  
11    in terms of, could they have done anything  
12    differently. And, I just want to point out, from a  
13    medical perspective, you should be considering what he  
14    said, but from criminal police practices, it -- it may  
15    be borderline outside of his area of expertise. He  
16    never opined whether the matter could have been  
17    de-escalated or that type of thing, and -- or, he  
18    never brought that up. And, I just want to point that  
19    out that he was, kind of, maybe spilling over into an  
20    area that was outside of his area.

21                  I also wanted to say that, like, I have  
22    ticks that come up when your face is, like, on the  
23    thing, and I nodded a lot. It didn't mean that I'm  
24    agreeing with him. It also looks like I'm having eye  
25    problems. So, when I looked like I was in pain, I

1 wasn't -- it wasn't because of what he was saying. So  
2 please don't take either of those things as you  
3 process that.

4 In terms of Dr. [REDACTED]'s testimony, I wanted  
5 to say a couple of things. So, you just heard one  
6 expert. Dr. [REDACTED] was the criminology expert and I  
7 -- I would like you all to consider, at least -- well,  
8 we're going to leave the room and I'd like you to  
9 vote. But, what -- what -- I can't think of his first  
10 name, [REDACTED]. What one of the grand jurors brought up  
11 is true. We would like you to consider -- if you  
12 don't wish to hear all of Dr. [REDACTED]'s testimony,  
13 which you have every right to hear every word of it,  
14 we'd ask you to, at least, consider or vote on hearing  
15 his conclusions, that portion where he opines about  
16 certain things. That is an option. So, in terms of  
17 his testimony -- and, we brought him up at the  
18 beginning because when we were here last time, the  
19 testimony of both experts was talked about, in terms  
20 of what you might all wish to hear.

21 So, we could leave right now and you guys  
22 could vote about whether or not you wish to hear Dr.  
23 [REDACTED]'s testimony at all, whether you wish to hear  
24 his entire amount of testimony, or whether or not you  
25 wish to hear certain parts of it.

1 Yes?

2 A JUROR: I am going to go back. I'm --  
3 I'm disturbed a bit because there's -- I don't know if  
4 that witness was fully informed. He talked about  
5 positionality and not obstructing -- and, that was the  
6 focus, not obstructing the breathing. But, he didn't  
7 seem to understand that the officer was applying  
8 pressure to this nerve and it was very painful and  
9 debilitating the suspect at the same time. He didn't  
10 seem to know that that was going on. Was he aware of  
11 that?

12 A JUROR: That has nothing to do with his  
13 breathing.

14 MR. SMITH: I think at this point, I'm going  
15 to jump in. Ms. Sommers and I, again, are your legal  
16 advisors. We'll provide you with the legal  
17 instructions. You're the fact finders. Mr. Sommers  
18 and I cannot and will not be part of your  
19 deliberations. To the extent that there's anything  
20 that needs to be discussed, sir, amongst your fellow  
21 jurors, any resolution of any apparent or perceived or  
22 real inconsistencies, again, we will instruct you on  
23 how to get through all of that. And, those decisions  
24 and the facts on whether or not to find Dr. [REDACTED]  
25 credible, not credible, credible in part, credible in

1 whole, those are up to you. That's up to the grand  
2 jurors individually and collectively. You make those  
3 decisions, [REDACTED].

4 A JUROR: Totally understandable. But, my  
5 point -- and, what I'm trying to get at is, was that  
6 witness informed of that? Was he fully informed  
7 before he made his decision?

8 MR. SMITH: Again, I think the record -- and  
9 everyone's recollection, as we've said repeatedly, is  
10 sort of -- controls, [REDACTED]. But, I think the  
11 record would reflect that Dr. [REDACTED] laid out the  
12 materials that he reviewed and the basis for his  
13 opinion. So, it's up to you, sir, to decide whether  
14 or not those opinions are credible, not hash it out  
15 with me in this forum. That's for deliberations and  
16 for you to decide. You're free to reject in part, in  
17 whole, his testimony.

18 A JUROR: I'm guessing the process. How  
19 people are prepared, are they sharing information with  
20 us. Not so much the details, but how much he was  
21 informed.

22 A JUROR: Well, I'm happy to -- we decided  
23 to take a look at that because I don't remember seeing  
24 that. I guess I wasn't here.

25 MR. SMITH: Is that just about that witness

1 in general?

2 A JUROR: Yes.

3 MR. SMITH: And, again, like we said, we --  
4 there's a couple of reasons we've just played that  
5 back. And, we can't and we're not telling you what to  
6 do. And, as Ms. Sommers said last time, and I think  
7 the last time we were here, it related to the time  
8 before. There had been some discussion of playing  
9 back. And, again, some questions come up sometimes  
10 and they come and they fade, but whatever the issue  
11 was a couple of times ago when we were here, there had  
12 been some discussion about reviewing both Dr. [REDACTED]  
13 and Dr. [REDACTED]. That was the reason this morning,  
14 that we initially broached that subject. That's sort  
15 of, how we left it.

16 There's an additional factor that, while you  
17 have seen the other critical and essential evidence,  
18 you missed our retained expert in this case. Playing  
19 that back, we're attempting to expand the jury pool to  
20 make sure everybody who could possibly vote can vote.  
21 There is a grand juror here, unfortunately present,  
22 that will not be able to vote because he missed too  
23 much critical and essential -- unfortunately, too much  
24 critical and essential evidence that cannot be made  
25 up. But, in light of the conversations from two times

1 ago about possibly reviewing those two pieces of  
2 testimony, you missing that, [REDACTED], and you've  
3 seen the other critical evidence, as well as, again,  
4 your verbal indication this morning from some of the  
5 grand jurors that you wanted to see that back is why  
6 we played that. So, that's why we played that.

7 Again, Ms. Sommers is suggesting that, based  
8 on that fact, and the fact we reviewed or discussed  
9 [REDACTED] a couple of times ago, that is a possibility to  
10 -- for you to take a vote on to review Dr. [REDACTED].  
11 The Medical Examiner, Dr. [REDACTED], is another  
12 option. And, again, as well as the -- any of the 63  
13 -- 64 pieces of evidence admitted and any of the body  
14 worn camera, you can vote and decide to review.

15 And, I guess, that's what we're asking you  
16 to do right now, specifically, as it relates to Dr.  
17 [REDACTED] because of the conversations that we had two  
18 times ago. But, generally, with any of the other  
19 evidence too.

20 A JUROR: Dr. [REDACTED], he's not a medical  
21 doctor?

22 MR. SMITH: He's not a medical doctor. He's  
23 a criminologist.

24 A JUROR: Okay.

25 MR. SMITH: Again, your recollection

1 controls. He opined on certain police practices. He  
2 was retained to opine on certain police practices and  
3 he did so.

4 A JUROR: So, he would give his opinion, as  
5 well as Dr. [REDACTED] gave his opinion?

6 MR. SMITH: Exactly.

7 A JUROR: He's not an M.D.

8 MR. SMITH: No, not an M.D.

9 MS. SOMMERS: Dr. [REDACTED] and Dr. [REDACTED],  
10 Medical Examiner, those were the two medical  
11 professionals. Dr. [REDACTED], professional in his own  
12 right, but not in medicine.

13 A JUROR: Criminology.

14 MS. SOMMERS: Criminology.

15 THE COURT: So I think at this time Ms.  
16 Sommers and I will leave the room.

17 A JUROR: I have one more statement. I  
18 think it would help. Let's re-cap what we did last  
19 time when we met on January 13th, we have all the  
20 evidence that we wanted to review, and to the -- to  
21 reiterate, there were two videos that members of the  
22 Grand Jury wanted to see. We didn't review them last  
23 time, we're reviewing them now. I think, now that  
24 we've reviewed the video from Dr. [REDACTED] in full and  
25 some people haven't seen it before, I think it's even



1 more imperative right now to review parts of Dr.  
2 ██████'s testimony. Maybe not the entirety, but  
3 there's a specific part that I want to see again now  
4 after we just reviewed this.

5 A JUROR: Okay. We need to vote now. Can  
6 we vote on it? Because, I mean, we're out tomorrow  
7 and if we keep talking about what we're going to do  
8 and not going to do, tomorrow's going to come and go.

9 MS. SOMMERS: Can I just ask -- I don't want  
10 anybody in this room to feel that their voices can't  
11 be heard. So, the options are review it all, review  
12 it not at all, which -- well, review it all, or pick  
13 out -- or, tell us which parts you -- you would like  
14 to review. Whether -- so, with Dr. ██████ and Dr.  
15 ██████ followed this, kind of, same pattern. The  
16 conclusions about the case were at the ends. If  
17 that's what you think you might want to hear, let us  
18 know. If you wish to hear the entire thing, let us  
19 know. How does that sound?

20 A JUROR: Sounds good.

21 MS. SOMMERS: Okay. And, if there are other  
22 witnesses that you wish to review, let us know that as  
23 well. ██████ and ██████ are the only two on video  
24 though, so the court reporter will be reading the rest  
25 of it back.

1 A JUROR: Okay.

2 MS. SOMMERS: Okay. Questions?

3 A JUROR: Sounds good.

4 A JUROR: Want us to take two votes? One  
5 to review Dr. [REDACTED]'s testimony and the second part  
6 to review the entire or just subsections?

7 MS. SOMMERS: We can't tell you how to vote.

8 A JUROR: We'll figure it out.

9 MS. SOMMERS: I know that's not the answer  
10 sometimes that you want to hear.

11 (Whereupon, Ms. Sommers, Mr. Smith and the  
12 court reporter left the Grand Jury room during  
13 deliberations and subsequently returned.)

14 MS. SOMMERS: Just for the record, we're  
15 back. We stepped outside. We're back on.

16 GRAND JURY FOREPERSON: The Grand Jury has  
17 voted not to review the testimony from [REDACTED].

18 MS. SOMMERS: Okay. Does the Grand Jury  
19 wish to review any testimony?

20 A JUROR: We want our instructions so we  
21 know what testimony we might want to see.

22 MS. SOMMERS: Okay. With that -- I'm not  
23 sure that came across. So, you'd like to hear the  
24 Charge and then decide if you wish to see any --

25 A JUROR: Yes.

1 MS. SOMMERS: Okay. Thank you.

2 Do you want to -- the Grand Jury  
3 instructions will maybe take 15 minutes. Do you want  
4 to break before or after?

5 A JUROR: Before, please.

6 MS. SOMMERS: Okay.

7 (Whereupon, there was a short break off of  
8 the record.)

9 MR. SMITH: Okay. Ladies and gentlemen, we  
10 are back on the record.

11 I guess, before I start the Charge, I do  
12 want to state for the record that the record should  
13 reflect that we do have 20 grand jurors present and we  
14 do have a quorum. All 20 grand jurors present at the  
15 time are eligible to vote. I say that only because  
16 this morning we had 21 grand jurors who were here.  
17 One of the grand jurors who, before today, I've had  
18 several conversations with him that he would not be  
19 eligible to vote because of dates he missed and  
20 understood and wanted to come anyway, as was his  
21 right. That grand juror has now left, which is why we  
22 went from 21 and one could not vote, to 20 grand  
23 jurors who are able to vote.

24 So, again, we do have a quorum. At this  
25 point, ladies and gentlemen, I'm going to charge you

1 on the law applicable to this case.

2 Ladies and gentlemen, on behalf of Ms.  
3 Sommers and myself, and the Attorney General, Leticia  
4 James, we just want to thank you all for your  
5 participation in this case and the careful attention  
6 you have given it since October, being here on time  
7 every week, for agreeing to extend the term. We can't  
8 tell you how grateful we were. Thank you very much.  
9 And, during a pandemic, I think we all understand  
10 everyone made sacrifices.

11 Now, after careful review and consideration,  
12 we have determined that no further evidence -- that we  
13 have no further evidence to present in connection with  
14 this matter and that, therefore, the evidentiary  
15 portion of this presentation is complete.

16 We are now going to submit for your  
17 consideration a criminal charge in this matter. One  
18 Criminal Charge with respect to three officers who  
19 physically restrained Daniel Prude. Officer [REDACTED]  
20 [REDACTED], Officer [REDACTED] and Officer [REDACTED]  
21 [REDACTED]. And, the Charge we submit to you is the  
22 Charge of Criminally Negligent Homicide, and we ask  
23 that you consider that Charge under the theory that  
24 the three officers, acting in concert with each other,  
25 and with Criminal Negligence, restrained Daniel Prude

1 in a manner that caused his death. I'll explain that  
2 Charge in greater detail in a moment.

3 Before that, I do want to review a few  
4 matters relevant to your deliberations, generally.  
5 First, over the course of this presentation, you have  
6 been reminded that if you have read, heard or seen  
7 anything in the news media about this particular case,  
8 you should disregard that information and you should  
9 not communicate that to your fellow grand jurors. I  
10 want to reiterate that instruction as you go into  
11 deliberations. The determination you make about this  
12 case must be based exclusively on the evidence that  
13 has been presented to you in this Grand Jury.

14 The second, I want to talk a little bit  
15 about witness credibility. As the judges of the  
16 facts, you alone determine the truthfulness and the  
17 accuracy of the testimony of each witness. You must  
18 decide whether a witness has told the truth and was  
19 accurate or, instead, testified falsely or was  
20 mistaken. There is no particular formula for  
21 evaluating the truthfulness and accuracy of another  
22 person's statement or testimony.

23 In life, you frequently decide the  
24 truthfulness and accuracy that is made to you by other  
25 people. The same fact as you use to make those

1 decisions should be used here when evaluating the  
2 testimony.

3 Now, some factors you may want to consider  
4 are, was the testimony plausible? Was the testimony  
5 consistent with other testimony? You may wish to  
6 consider whether the witness had a motive to lie.  
7 Whether a witness had an interest in the outcome.  
8 Now, you've heard in this case from police officers.  
9 The testimony of the witness should not be believed  
10 solely and simply because that witness is a police  
11 officer. On the other hand, the witness' testimony  
12 should not be disbelieved solely and simply because  
13 they are a police officer. You must evaluate the  
14 credibility of a police officer the same as you would  
15 evaluate any other witness.

16 So, I want to talk a little bit right now  
17 about a so-called interested witness. Now, as I just  
18 mentioned, in determining the credibility of any  
19 witness, and the weight you give that witness'  
20 testimony, you may consider the interest that witness  
21 had in the outcome of the case. You may -- may  
22 consider whether a witness has an interest in the  
23 outcome of the case. Said another way, if you find  
24 that any witness is an interested witness, you should  
25 consider such interest in evaluating, determining the

1 credibility to his or her testimony and the weight  
2 given to it.

3 Officers [REDACTED] and [REDACTED]  
4 testified in this case as witnesses on their own  
5 behalf, to the extent they are both currently the  
6 subject of this Grand Jury inquiry. Each is, of  
7 course, an interested witness since each has an  
8 interest in the outcome of this proceeding.

9 You may, as grand jurors, should keep such  
10 interest in mind in determining the credibility and  
11 weight to be given to these officers' testimony.

12 A disinterested witness, on the other hand,  
13 is one who has no interest in the outcome of the  
14 proceeding. Again, a factor that you may wish to  
15 consider in determining the credibility and the weight  
16 to be given to the testimony of such witness.

17 Although, Officers [REDACTED] and [REDACTED] did testify in  
18 this case, I do want to underscore that burden of  
19 establishing sufficient evidence to indict on any  
20 charge always rests with the prosecution, Ms. Sommers  
21 and I. That burden never shifts. The prosecution's  
22 evidence must be sufficient to establish the crime or  
23 crimes presented.

24 Moreover, the fact that Officer [REDACTED]  
25 [REDACTED] did not choose to waive immunity and testify

1 before this Grand Jury is not a factor from which any  
2 unfavorable witness -- I'm sorry, inference may be  
3 drawn.

4 I now want to say a few words about a  
5 certain type of witness you heard from in this case  
6 and how you should treat their testimony. Testimony  
7 from an expert witness. Ordinarily, witnesses are  
8 limited to testifying about facts and are not  
9 permitted to offer their opinion. There are, however,  
10 instances where the testimony of an expert can assist  
11 the finders of fact, you all, in resolving issues in a  
12 case.

13 So, when matters are beyond the realm of  
14 common knowledge of regular people and some  
15 scientific, medical, technical or other specialized  
16 knowledge will help the jury understand the evidence,  
17 or to determine a fact at issue, a witness with  
18 expertise in a specialized field may render opinions  
19 about such that. Now, you will recall Dr. [REDACTED]  
20 [REDACTED] testified as an expert in the field about  
21 forensic pathology and gave her opinion on issues in  
22 that area. Dr. [REDACTED] testified as an expert in  
23 the field of emergency medicine, specializing in  
24 arrest deaths and restraint deaths and gave his  
25 opinion on issues in that area. Dr. [REDACTED]



1 testified as an expert in the field of criminology,  
2 specializing in police procedures and uses of force  
3 and gave testimony on issues in this area.

4           The credibility of an expert and the weight  
5 and sufficiency of such testimony are for you to  
6 determine. You may accept or reject such testimony in  
7 whole or in part, just as you may with respect to the  
8 testimony of any other witness. In making this  
9 determination, you should consider the expert's  
10 qualifications and credibility, the opinion testified  
11 by to by the expert and the facts or the reasons upon  
12 which the expert's opinion is based. If you are  
13 unable to find that such facts or reasons exists, then  
14 you may disregard any opinion put forth by the expert  
15 based on those particular facts or reason. If you  
16 accept the facts or reasons upon which the expert  
17 based his or her opinion, you may go on to the second  
18 part of the analysis and consider the expert's  
19 opinion. If you find the opinion to be contrary to  
20 logic or common sense, or to be contradicted by more  
21 credible direct evidence, then you may reject the  
22 opinion. If you find the expert's opinion to be  
23 accurate, based upon common sense and logic, you may  
24 accept the expert's opinion. The decision to accept  
25 or reject an expert's testimony is yours and yours

1 alone.

2 Now, if by any chance any of you happen to  
3 have any special expertise, especially, in the field  
4 of forensic pathology, emergency medicine,  
5 criminology, you must resist the temptation to rely on  
6 that expertise in your evaluation of the case, or to  
7 inject it into the deliberations. Only the evidence  
8 that has been presented to the entire Grand Jury in  
9 this Grand Jury Chamber may be taken into  
10 consideration.

11 Now, before I instruct you on the specific  
12 law applicable to the facts of this case, I want to  
13 talk a little bit about the burden of proof applicable  
14 to this and all Grand Jury proceedings in New York  
15 State.

16 Reasonable cause. As you were instructed  
17 during your impanelment, a Grand Jury may indict a  
18 person or an offense when the testimony and other  
19 evidence presented is one, legally sufficient to  
20 establish that the person committed the offense, and  
21 two, provides reasonable cause to believe that person,  
22 in fact, committed the offense.

23 I will now define those two terms, legally  
24 sufficient evidence and reasonable cause to believe  
25 that a person has committed an offense.

1           Legally sufficient evidence means evidence,  
2           which if accepted as true would establish every  
3           element of an offense charged and the defendant's  
4           commission of the offense.

5           Reasonable cause to believe that a person  
6           has committed an offense exists when evidence appears  
7           reliable -- sorry, exists when evidence, which appears  
8           reliable, discloses facts or circumstances which are  
9           collectively of such weight and persuasiveness as to  
10          convince a person of ordinary intelligence, judgment  
11          and experience that it is reasonably likely that the  
12          offense was committed and the person committed it.

13          I'll now instruct you on the law applicable  
14          to the charged offense.

15          Again, the Charge we submit to you is the  
16          Charge of Criminally Negligent Homicide and we ask  
17          that you consider that Charge under a theory that the  
18          three officers acting in concert with each other and  
19          with criminal negligence restrained Daniel Prude in a  
20          manner that caused his death. And, we ask that you  
21          consider that Charge as it relates to the actions of  
22          ██████████, ██████████, and ██████████ in  
23          restraining Mr. Prude in the early morning hours of  
24          March 23rd, 2020 in the City of Rochester in Monroe  
25          County.

1 Under Penal Law Section 125.10, a person is  
2 guilty of Criminally Negligent Homicide when, with  
3 criminal negligence, that person causes the death of  
4 another person.

5 This Charge has two elements that the  
6 evidence must establish for you to indict. First,  
7 that the officers, through their conduct, caused Mr.  
8 Prude's death, and second, that they did so with  
9 criminal negligence.

10 I want to briefly discuss two of the  
11 concepts that are imbedded in the Charge, which I  
12 think is essential to understand -- your understanding  
13 is essential in order for you to properly consider the  
14 matter before you.

15 Causation and criminal negligence. First,  
16 causation. A person causes the death of another when  
17 that person's conduct is a sufficiently direct cause  
18 of another -- the death of another person.

19 A person's conduct is a sufficiently direct  
20 cause of the death when, one, that the conduct is an  
21 actual contributory cause of the death; and, two, the  
22 death was reasonably foreseeable as a result of that  
23 conduct.

24 Let me explain each of these two ingredients  
25 of causation. First, when a person's conduct

1 constitutes an actual contributory cause of another  
2 person's death.

3 A person's conduct is an actual contributory  
4 cause of another's death when that conduct forged a  
5 link in the chain of causes which actually brought  
6 about such death.

7 In other words, when the conduct set in  
8 motion or continued in motion, the events which  
9 ultimately resulted in the death.

10 An obscure or merely probable connection  
11 between the conduct and the death will not suffice.

12 At the same time, if a person's conduct is  
13 an actual contributory cause of the death to another,  
14 then it does not matter that such conduct was not the  
15 sole cause of the death, or that a pre-existing  
16 medical condition also contributed to the death, or  
17 that the death did not immediately follow the injury.

18 As I said, however, there's a requirement  
19 that in order to establish the element of causation  
20 and that is that the death must be a reasonably  
21 foreseeable result of the conduct.

22 Death is a reasonably foreseeable result of  
23 a person's conduct when the death should have been  
24 foreseen as being reasonably related to the actor's  
25 conduct. It is not required that the death was the

1 inevitable result or even the most likely result.

2 And, it is not required that actor intended  
3 to cause death.

4 So, that is the element of causation.

5 Again, in order to indict the officers for  
6 Criminally Negligent Homicide, legally sufficient  
7 evidence must provide reasonable cause to believe that  
8 the officers' conduct caused Mr. Prude's death.

9 Now, turning back to the other element  
10 necessary to prove the Charge of Criminally Negligent  
11 Homicide. And, that is, the mental state or required  
12 state of mind, which again, in this case, is criminal  
13 negligence.

14 A person acts with criminal negligence with  
15 respect to the death when, one, that person engages in  
16 blameworthy conduct so serious that it creates or  
17 contributes to a substantial and unjustifiable risk  
18 that another person's death will occur; two, when he  
19 or she fails to perceive that risk; and, three, when  
20 the risk is of such a nature and degree that failure  
21 to perceive it constitutes a gross deviation from the  
22 standard of care that a reasonable person would  
23 observe in the situation.

24 There's a lot there, so I'll say it again  
25 piece by piece.

1           A person acts with criminal negligence with  
2     respect to a death when, the person engages in  
3     blameworthy conduct so serious that it creates or  
4     contributes to a risk that another person's death will  
5     occur.

6           The risk that another person's death will  
7     occur must be substantial and unjustifiable. The  
8     person must also fail to perceive that risk, that is,  
9     a substantial and unjustifiable risk that another  
10    person's death will occur; and, finally, the risk must  
11    be of such nature and degree that failure to perceive  
12    it constitutes a gross deviation from the standard of  
13    care that a reasonable person would observe in the  
14    situation.

15           It is important to note that criminal  
16    negligence is not the same type of negligence that you  
17    may be familiar with from a civil lawsuit seeking a  
18    monetary judgment. The carelessness required for  
19    criminal negligence is appreciably more serious. It  
20    must be such that its seriousness would be apparent to  
21    anyone who shares the community's general sense of  
22    right and wrong.

23           So, that is criminal negligence.

24           And, again, in order for you to indict the  
25    officers for Criminally Negligent Homicide, we are

1 asking again, that you consider that Charge against  
2 Officers [REDACTED], [REDACTED], [REDACTED]  
3 [REDACTED].

4 The evidence must provide reasonable cause  
5 to believe that the officers' conduct not only caused  
6 Mr. Prude's death, but that the officers acted with  
7 criminal negligence in doing so.

8 Now, as I mentioned at the beginning, we are  
9 also going to ask that you consider the Charge of  
10 Criminally Negligent Homicide under the theory that  
11 the three officers acting in concert with each other  
12 and restrained Mr. Prude in a manner that caused Mr.  
13 Prude's death.

14 Now, our law recognizes that two or more  
15 individuals can act jointly to commit a crime and  
16 that, in certain situations, each can be held  
17 criminally liable for the acts of the others. In that  
18 situation, those persons can be said to be, quote,  
19 acting in concert, unquote, with each other.

20 Our law defines the circumstances under  
21 which one person may be criminally liable for the  
22 conduct of another. It says, specifically, that when  
23 one person engages in conduct which constitutes an  
24 offense, another person is criminally liable for such  
25 conduct when, acting with the state of mind required



1 for the commission of that offense, he or she solicits  
2 requests, commands importunes or intentionally aids  
3 such person to engage in such conduct.

4 Now, under that definition, mere presence at  
5 the scene of a crime, even with knowledge that a crime  
6 is taking place, does not by itself make a defendant  
7 criminally liable for that crime.

8 In order for one of the officers to be held  
9 criminally liable for the conduct of another or the  
10 officers here, you must find one of the officers  
11 solicited, requested, commanded, importuned or  
12 intentionally aided the other officer or officers to  
13 engage in that conduct, in this case, the act of  
14 restraining Mr. Prude; and, two, that the officers did  
15 so with a state of mind required for the commission of  
16 the offense, in this case, criminal negligence, by  
17 failing to perceive a substantial and unjustifiable  
18 risk that death would result.

19 Now, if it is established that a person is  
20 criminally liable for the conduct of another, the  
21 extent or degree of that person's participation in the  
22 crime does not matter.

23 A person found to be criminally liable for  
24 the conduct of another in the commission of a crime is  
25 as guilty of the crime as if the person personally had

1        comitted every act constituting the crime.

2                The evidence must still establish that the  
3        person acted with the state of mind required for the  
4        commission of the offense, and either personally or by  
5        acting in concert with another person or persons  
6        committed each of the remaining elements of the crime.

7                Again, I do wish to make clear that although  
8        we've asked you to consider the Charge of Criminally  
9        Negligent Homicide under the theory that the officers  
10       were acting together, that is, acting in concert, this  
11       does not prevent you from deciding that only one or  
12       two of the officers are culpable rather than all  
13       three; or, of course, from deciding none of them were  
14       culpable.

15               Again, I want to make that clear. Nothing  
16       about charge of acting in concert prevents the grand  
17       jurors or of any of these charges from finding only  
18       one of these officers committed this crime, that two  
19       of them, or three, or that none of them. It is your  
20       obligation to evaluate the evidence as it applies or  
21       fails to apply to each officer separately.

22               In addition to the element to causation and  
23       criminal negligence, in order to indict, you must also  
24       find reasonable cause to believe that the officers'  
25       conduct was not justified under the law. If you find

1 that their conduct was justified, you may not vote an  
2 indictment against the officers even if there is  
3 legally sufficient evidence to support reasonable  
4 cause as to the other elements.

5 I want to instruct you right now under the  
6 defense of justification.

7 Under the New York State justification  
8 statute, a police officer, in the course of effecting  
9 or attempting to effect an arrest or of preventing or  
10 attempting to prevent the escape from custody of a  
11 person whom he or she reasonably believed to have  
12 committed an offense may use physical force when, and  
13 to the extent he or she reasonably believes such to be  
14 necessary to effect the arrest or to prevent the  
15 escape from custody, or in self defense or to defend a  
16 third person from what he or she reasonably believes  
17 to be an imminent use of physical force.

18 As you heard, the statute addresses several  
19 different circumstances under which the use of force  
20 may be authorized, one of which is the use of force to  
21 effect an arrest or prevent the escape of custody.

22 A police officer reasonably believes that  
23 his or her use of force was necessary to effect the  
24 arrest or prevent the escape from custody of a person,  
25 he or she reasonably believes to have committed an

1 offense when, first, the officer actually believes the  
2 person has committed an offense, and also actually  
3 believes that his or her use of physical force is  
4 necessary to effect the arrest or prevent the escape  
5 of custody of that person. It does not matter whether  
6 those beliefs are mistaken, provided the defendant  
7 actually holds them.

8           Second, a reasonable person in the officers'  
9 position knowing what the officer knows and being in  
10 those circumstances would also hold those same  
11 beliefs. Thus, with respect to the defense of  
12 justification under this provision of the statute, if  
13 you find reasonable cause to believe that the officers  
14 did not actually believe that their use of force was  
15 necessary to effect the arrest or prevent the escape  
16 from custody of Mr. Prude, or if the officers had such  
17 a belief that you find reasonable cause to believe  
18 that the officers' belief was unreasonable, then the  
19 use of physical force is not justified.

20           In the absence of reasonable cause to  
21 disbelieve this offense, such use of force is  
22 justified. Let me say that again. In the absence of  
23 reasonable cause to disbelieve this defense such use  
24 of force is justified, all told then, in order to vote  
25 an indictment against any or all of these officers on

1 the Charge of Criminally Negligent Homicide, you must  
2 find that the legally sufficient evidence provides  
3 reasonable cause to believe that the officers, [REDACTED]  
4 [REDACTED], [REDACTED] and [REDACTED], committed  
5 this crime, including reasonable cause to believe that  
6 the officers were not justified in their use of force.  
7 You do not have reasonable cause to believe that the  
8 officers' use of force was unjustified and you found  
9 that their use or force, therefore was justified, you  
10 may not vote to indict even if the other elements  
11 regarding causation and criminally negligence are  
12 established.

13 Again, if you do not have reasonable cause  
14 to believe that the officers' use of force was  
15 unjustified, you may not vote to indict, even if the  
16 other elements are satisfied.

17 So, that's it, ladies and gentlemen. If you  
18 have any questions at this time, we're happy to answer  
19 them. Otherwise, again, we'll leave you to your  
20 deliberations and we're happy to come back at any  
21 point if you have any questions and we'll be right  
22 outside the door. Again, we're going to ask you to  
23 consider that Charge against those three officers.

24 MS. SOMMERS: By saying we, I want to  
25 underscore one thing. You are not an arm of the

1 prosecution and you are to draw no conclusions about,  
2 quote, unquote, we think, feel or anything else. This  
3 is -- you are an independent body. It's your duty to  
4 apply the facts as you understand them, as you heard  
5 them, to the law, and not to draw any conclusions  
6 about what we may think because ultimately it's  
7 irrelevant. It's -- it's what the Grand Jury --  
8 hearing the facts and applying the law.

9 So, a couple of things also. If you want  
10 further evidence, please knock on the door, we'll get  
11 it to you.

12 MR. SMITH: Otherwise, we'll be outside the  
13 door.

14 A JUROR: How does that work if a Grand  
15 Jury -- what stops our deliberations?

16 MS. SOMMERS: So, of course, a Grand Jury  
17 does not need to come to a unanimous verdict. So,  
18 if -- you know, again, we're -- we can't tell you how  
19 to vote. We cannot tell you how to run your  
20 deliberations. These are all things that are outside  
21 of -- of our role. But, probably it takes a majority.  
22 In Grand Jury it's 12 people to agree on something.  
23 So, if -- if people feel that they're in a position  
24 where they're ready to vote, that's fine. If there  
25 are people who wish to view more evidence, we ask you

1 to take a vote and if -- if a majority then wishes to  
2 see that, we're happy to -- to provide it. But, since  
3 it does not need to be a unanimous decision, it's more  
4 or less guided on when you believe that you -- you're  
5 at a position where you can vote, where you feel that  
6 you can render a decision as to whether or not to vote  
7 to indict or not.

8 Did you want to add anything.

9 MR. SMITH: I don't know if this clarifies.  
10 Again, we're asking you to consider One Count.

11 A JUROR: No matter what happens, you can  
12 have a majority on either side instantly, at any  
13 given time, how do we know when --

14 MR. SMITH: So, we're asking you to consider  
15 One Charge against three officers and we're telling  
16 you -- and, I think we have -- we mentioned throughout  
17 these proceedings, in order for the Grand Jury to take  
18 any action you need 12 votes. We have a quorum here  
19 that would normally be, you know, at least 16 to take  
20 any action, to hear anything, to take a vote we need  
21 16 to take action. For the purposes of this case, [REDACTED]  
22 [REDACTED], the action that you can do is indict or  
23 dismiss. There are other circumstances where cases  
24 can be transferred to family court, reduced as  
25 misdemeanors. Not applicable here. So, there's no --

1 there's no right way or wrong way to do this. But, it  
2 takes 12. So, if there's 12 right now one way or the  
3 other.

4 A JUROR: That's what I'm getting at. If  
5 we took a vote this minute when you walk out, that  
6 could end it in theory?

7 MR. SMITH: Once you have 12 --

8 A JUROR: Unless it goes 10, 10.

9 MR. SMITH: Once you get to 12.

10 A JUROR: As long as we get 12 in any  
11 direction we're done?

12 MS. SOMMERS: I want to say one thing  
13 about -- well, if it's, like, a 10, 10 and --

14 A JUROR: No, you need 12, right?

15 MS. SOMMERS: No. If you get to a 10 -- if  
16 nobody gets to 12, then it's not --

17 MR. SMITH: No action. Let us know that  
18 too.

19 MS. SOMMERS: Let us know.

20 MR. SMITH: 12 to indict, 12 to dismiss. If  
21 you don't get to 12, let us know and that will be no  
22 action.

23 A JUROR: I think it's good that we hear  
24 everybody's opinion before making a final decision.

25 MR. SMITH: We'll let you guys do that.



1 MS. SOMMERS: If there's anybody here -- I  
2 want to note for the record it's 1:00 o'clock in the  
3 afternoon. Did everyone bring something to eat? If  
4 people want to run down to the Grand Jury room, I know  
5 we were anxious to get started, but if there's anyone  
6 here that feels, like, you know, hungry it's okay. If  
7 you want to take like five or ten minutes?

8 A JUROR: We're ready to vote.

9 MS. SOMMERS: For the record, I think  
10 someone just said no, we're ready, let's vote.

11 MR. SMITH: Anymore questions about the  
12 Charge?

13 A JUROR: One question. The Charge, is it  
14 all three individuals grouped together?

15 A JUROR: That's up to us to decide.

16 A JUROR: Oh, for us to decide.

17 MR. SMITH: Again, [REDACTED], as I sort of  
18 said, we're asking you to consider the Charge against  
19 all three. Asking you to consider that they were  
20 acting in concert. And, again, nothing prevents you  
21 from finding that one was guilty on his own.

22 MS. SOMMERS: Not guilty.

23 MR. SMITH: I'm sorry. Reasonable cause  
24 that a crime was committed by one, by any combination  
25 of two, by all three acting in concert, two acting in

1 concert or none.

2 A JUROR: Okay.

3 MR. SMITH: That's up to you.

4 A JUROR: I'm sorry. One more. Sorry.  
5 Criminally Negligent Homicide, when you explained it,  
6 is it where then knew by their actions that this was  
7 going to happen, the death was going to happen?

8 MR. SMITH: Let me read it one more time.

9 A JUROR: Like, knowing that this would be  
10 the end result?

11 MR. SMITH: That is not an accurate --  
12 accurate description of Criminal Negligence.

13 A person acts with criminal negligence --  
14 I'll read that portion.

15 A person acts with criminal negligence with  
16 respect to a death when, a person engages in  
17 blameworthy conduct so serious that it creates or  
18 contributes to a risk that another person's death will  
19 occur.

20 The risk that another person's death will  
21 occur must be substantial and unjustifiable.

22 A person must also fail to perceive that  
23 risk.

24 Fail to perceive that risk. That is the  
25 substantial and unjustifiable risk that another

1 person's death will occur.

2 Finally, the risk must be of such nature and  
3 degree that failure to perceive it constitutes a gross  
4 deviation from the standard or care that a reasonable  
5 person would observe in the situation.

6 So, again, in addition to acting in criminal  
7 negligence, you must also find that one or any, in  
8 order to indict, reasonable cause that they also  
9 caused the death and were not justified. That's  
10 criminal negligence.

11 Does that answer your question.

12 A JUROR: But that's appearing that they  
13 were not -- as police officers were not justified in  
14 using force.

15 A JUROR: Justified trumps it.

16 [REDACTED]: If you find that they -- if you  
17 find that they caused the death, one or any of them,  
18 caused the death and also had the requisite state of  
19 mind of criminal negligence and caused the death with  
20 criminal negligence, if you find that happened, they  
21 are guilty if they are not justified -- I'm sorry, you  
22 can indict if -- if they are not justified. But, even  
23 if you find those first two things, if you find that  
24 their use of physical force, their use of force was  
25 justified in the situation, then it doesn't matter

1 what you found on the first two, there's no  
2 indictment. Does that answer that question?

3 A JUROR: Yes.

4 MR. SMITH: Any other specific questions  
5 about the Charge? Seeing no hands.

6 A JUROR: I have a couple of questions. So,  
7 hypothetically, if the Grand Jury decides --

8 A JUROR: Speak up.

9 A JUROR: So, hypothetically, if the Grand  
10 Jury decides that they don't want to indict all three  
11 officers, say they vote on that, say they don't, but  
12 they feel one or two officers should be held  
13 accountable, do we have another vote on that, like,  
14 alternative indictments? And another question is,  
15 what is the formal procedure for a vote? Is there an  
16 anonymous voting procedure, are we voting to indict,  
17 dismiss, yes, no?

18 MR. SMITH: It's -- it's by a show of hands  
19 or however you want to remember it. You guys do it  
20 however you want, but let us know when you reach a  
21 decision as it relates to Officer [REDACTED], Officer  
22 [REDACTED] and Officer [REDACTED]. When you've reached a  
23 decision whether or not to indict or dismiss against  
24 those three, any combination or none or all, then let  
25 us know.

1 Does that answer the question?

2 A JUROR: Yes.

3 MS. SOMMERS: We can't tell you how to vote.  
4 However you decide if you want to, like, the  
5 Foreperson just said, raise a hand, fine, anonymous.  
6 Whatever you decide as a body, we can't get involved  
7 in that.

8 MR. SMITH: I just ask that the recording  
9 secretary keep track of the votes and then we'll come  
10 in and ask if you've reached a decision as it relates  
11 to this Officer, this -- is it 12? What's the  
12 decision.

13 A JUROR: If we vote and come up with a  
14 majority one way or the other, can we deliberate on  
15 that and then do another vote?

16 MS. SOMMERS: What? I'm --

17 A JUROR: Let's say right now we excuse you  
18 guys and take a vote, there's going to be -- it's  
19 going to go one side or the other. Do we then  
20 deliberate?

21 MS. SOMMERS: If you get to 12 either way  
22 then --

23 A JUROR: It's 12.

24 A JUROR: Okay.

25 MR. SMITH: There's no -- there's no

1 deliberation requirement, [REDACTED], I guess is -- we're  
2 not -- again, we can't tell you -- the law allows the  
3 Grand Jury to do certain things and take certain  
4 actions. We can't tell you how to vote or how to  
5 deliberate or that you have to in the first place.

6 A JUROR: Okay.

7 MR. SMITH: Any further questions about the  
8 Charge?

9 A JUROR: No.

10 MR. SMITH: With that, we'll be outside.

11 A JUROR: Can we have a copy of that?

12 MR. SMITH: You may not. If there's certain  
13 parts you need, please let us know.

14 MS. SOMMERS: The elements are causation,  
15 and the mental state which is criminal negligence.  
16 Right? So, there's two aspects to that. Causation  
17 has two aspects and criminal negligence was re-read  
18 again, and then layered over the entire thing is  
19 justification.

20 (Whereupon, Ms. Sommers, Mr. Smith and the  
21 court reporter left the Grand Jury room during  
22 deliberations and subsequently returned.)

23 GRAND JUROR FOREPERSON: So, the Grand Jury  
24 has some questions. Maybe if you could repeat the  
25 questions?

1           A JUROR:    We're trying to understand your  
2 explanation of justification.  Now, my understand --  
3 well, several of us, our understanding is, if you  
4 decide that the police were justified in hands-on  
5 restraining him, then the rest is out the window, is  
6 that a hundred percent accurate?

7           MR. SMITH:  Yes.  That is a hundred percent  
8 accurate.  So -- so, justification --

9           A JUROR:    Even if it was excessive force or  
10 not?  That was the part of that?

11          MR. SMITH:  You have to -- you have to find  
12 that the use of force was justified.  If you find that  
13 the use of force was justified, using that --

14          A JUROR:    Including the amount of force?

15          MR. SMITH:  What's that?

16          A JUROR:    Including the amount of force?  
17 Because that was another part of the question is what  
18 if they did -- they were justified in bringing him  
19 down but then they used excessive force?

20          MR SMITH::   Then it would not be justified.

21          A JUROR:    Now, you're negligent, basically.

22          MR. SMITH:  I think maybe -- let me re-read  
23 the justification part.  Let me just, as it relates to  
24 -- in addition to the elements of causation and  
25 criminal negligence, in order to indict, you must find

1 reasonable cause to believe that the officers' conduct  
2 was not justified under the law. If you find the  
3 conduct was justified, you may not vote an indictment  
4 against the officers even if there is legally  
5 sufficient evidence to support reasonable cause as to  
6 the other elements.

7 A JUROR: So if it was excessive, it could  
8 become unjustified after the fact?

9 MR. SMITH: Let me read for you what is  
10 justified.

11 Under New York State's justification  
12 statute, a police officer, in the course of  
13 attempting, effecting -- I'm sorry. A police officer,  
14 in the course of effecting or attempting to effect an  
15 arrest or of preventing or attempting to prevent the  
16 escape from custody of a person whom he or she  
17 reasonably believes to have committed an offense may  
18 use physical force when, and to the extent he or she  
19 reasonably believes such force to be necessary to  
20 effect the arrest or to prevent the escape from  
21 custody.

22 MS. SOMMERS: I want to say one other thing  
23 about justification. If -- if -- if you're engaged in  
24 an analysis of when something changes from -- and, I  
25 really, generally, have no idea, you know, because



1 your deliberations do not include us, but if -- if  
2 you're -- if you are indicating by your question that  
3 something justified then becomes unjustified by the --  
4 by the imposition of excessive force, force that was  
5 no longer needed, then we would ask that you then --  
6 so, from the time that it's not justified, and I'm not  
7 suggesting that any of it was or wasn't, can you then  
8 reach the determinations of -- of the elements of the  
9 crime of Criminally Negligent Homicide from that  
10 point. So, causation and -- did I say that properly?

11 MR. SMITH: You did.

12 A JUROR: I think we're good.

13 MS. SOMMERS: Everybody understand?

14 GRAND JURY POOL: (All jurors indicating a  
15 positive response.)

16 MR. SMITH: Is that the nature of the --  
17 thank you.

18 MS. SOMMERS: Any other questions?

19 (Whereupon, Ms. Sommers, Mr. Smith and the  
20 court reported the the Grand Jury room during  
21 deliberations and subsequently returned.)

22 MR. SMITH: Does the Grand Jury have a  
23 question or have they reached a decision?

24 GRAND JURY FOREPERSON: The Grand Jury has  
25 completed a vote.

1 MR. SMITH: Has the Grand Jury taken a vote  
2 or reached a decision with respect to Officer [REDACTED]  
3 [REDACTED]?

4 A JUROR: No, we didn't

5 A JUROR: Yes, we did.

6 GRAND JURY FOREPERSON: We did for all  
7 three.

8 MR. SMITH: And, what was the Grand Jury's  
9 decision related to Officer [REDACTED]?

10 GRAND JURY FOREPERSON: So, the Grand Jury  
11 evaluated whether Criminal Charges against [REDACTED],  
12 [REDACTED], and [REDACTED] of Criminally Negligent Homicide  
13 restraint caused his death. The vote was 15 for no  
14 indictment and 5 for an indictment.

15 THE COURT: For Officer [REDACTED]?

16 GRAND JURY FOREPERSON: For all three.

17 MR. SMITH: Is there anybody here who  
18 disagrees that the Grand Jury voted 15 to 5 to dismiss  
19 the Charges against all three of the officers?

20 A JUROR: Right here.

21 MR. SMITH: I'm sorry. I didn't mean to  
22 poll the Grand Jury. I asked, does anybody disagree  
23 that that's the vote?

24 A JUROR: Oh.

25 GRAND JURY POOL: (All jurors indicating a

1 negative response.)

2 MR. SMITH: Seeing that there are no hands.  
3 Everybody agrees that that was the vote?

4 GRAND JURY POOL: (All jurors indicating a  
5 positive response.)

6 MR. SMITH: Thank you.

7 MS. SOMMERS: Kind of the nature of Grand  
8 Jury because it lasts over the course of months. This  
9 one certainly did and we got to know you, and there  
10 have been moments of levity, but it's a very serious  
11 matter. And, we're grateful for the seriousness that  
12 I hope everybody took in evaluating this and -- and, I  
13 thank you.

14 MR. SMITH: I just -- I do want to reiterate  
15 again --

16 A JUROR: Can I say something? I'm sure I  
17 speak for everybody. You guys did amazing work. If  
18 it wasn't for everything that you presented to us, I  
19 don't think anybody would have come up with a  
20 decision. You worked very hard and I'm sure nobody  
21 took it lightly. It was a very serious case. It's  
22 horrible what happened to him.

23 MS. SOMMERS: Maybe this stuff can go off  
24 the record if we're done with the official part.

25 MR. SMITH: I'll respond real quick. Thank

1 you. Again, we want to thank you. And, this isn't  
2 about us. We have a job to do. It's our job. You  
3 guys are the citizens that had to come in here during  
4 a pandemic, during a case that has gotten a  
5 significant amount of media attention. And, you guys  
6 have given it your full attention and you've treated  
7 it with the serious, serious matter that it is. You  
8 guys have been here on time and paid attention. Very  
9 grateful.

10 MS. SOMMERS: Definitely not easy. All  
11 right. I think we can go off the record now.

12 (Proceedings concluded.)

13

14

15

16

17

18

19

20

21

22

23

24

25

1       **S T E N O G R A P H E R    C E R T I F I C A T I O N .**

2

3           I DO HEREBY CERTIFY as a Notary Public in and  
4       for the State of New York, that I did attend and  
5       report the foregoing proceeding, which was taken down  
6       by me in a verbatim manner by means of machine  
7       shorthand.

8           Further, that the proceeding was then  
9       reduced to writing in my presence and under my  
10      direction. That the proceeding was taken to be used  
11      in the foregoing entitled action. That the said  
12      deponent, before examination, was duly sworn to  
13      testify to the truth, the whole truth, and nothing but  
14      the truth, relative to said action.


15

16

17

18

19

  
Notary Public.

20

21

22

23

24

25