No. 23-416

In the Supreme Court of the United States

DEREK MICHAEL CHAUVIN,
Petitioner,

v.

STATE OF MINNESOTA,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE COURT OF APPEALS OF MINNESOTA

BRIEF OF MINNESOTA POLICE AND PEACE OFFICERS ASSOCIATION AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

Christopher W. Madel
Counsel of Record
MADEL PA
800 Hennepin Avenue
Suite 800
Minneapolis, MN 55403
(612) 605-0630
cmadel@madellaw.com

Counsel for Amicus Curiae

2023 – Bachman Legal Printing ■ (612) 339-9518

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page

CASES

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

Page

TABLE OF AUTHORITIES—Continued

The MPPOA submits this brief in support of Petitioner Derek Michael Chauvin, and urges reversal of the decision below in *State v. Chauvin*, 989 N.W.2d 1 (Minn. App. 2023).

STATEMENT OF INTEREST OF AMICUS CURIAE

Founded in 1922, the Minnesota Police and Peace Officers Association ("MPPOA") is the largest association representing licensed peace officers in the State of Minnesota.[1] As the legislative voice for public safety professionals, the MPPOA seeks to promote laws and policies that support public safety and the working conditions and retirement benefits for the professionals that uphold it, while opposing those laws and policies that do not. The MPPOA provides training and promotes high ethical standards in policing across the state of Minnesota. It also provides legal representation to member officers acting in their official capacities for, *inter alia,* critical incidents that might expose the officer to criminal liability.

The MPPOA has a strong interest in this case because it bears directly on how criminal proceedings related to its members' use-of-force incidents are handled under the intense public pressure.

The MPPOA respectfully submits this brief to emphasize the significant negative impact that the decision below will have on the rights of, *inter alia*, police officers charged in connection with highly

---

[1] Pursuant to this Court's Rule 37.6, counsel for the MPPOA states that no part of this brief was authored by counsel for any party, and no person or entity other than the MPPOA or its members made any monetary contribution to the preparation or submission of the brief. Parties received timely notice of the MPPOA's intent to file this brief.

politicized use-of-force incidents and to demonstrate the need for this Court to grant certiorari and end the confusion surrounding when and whether threats of community violence require transferring a trial to a different venue.

SUMMARY OF THE ARGUMENT

In the hours and days following the death of George Floyd during his attempted arrest by Petitioner and others, violent riots engulfed the "Twin Cities" of Minneapolis and Saint Paul, Minnesota. The scale and intensity of the unrest was unprecedented. Nightly riots spanned nearly a week, resulting in multiple deaths, innumerable injuries, as well as hundreds of millions of dollars in property damage—including the complete destruction of a Minneapolis police precinct. After some delay, the Minnesota Governor activated the National Guard to maintain order. This chaos, including the video relating to Mr. Floyd's death, received intense, ongoing media coverage—locally, nationally, and internationally.

Unruly demonstrations continued after Petitioner was charged, including around Petitioner's various pretrial hearings and his release on bail. During these disruptions, a local church was destroyed in an arson incident.

As trial approached, officials deployed extraordinary security precautions. Barricades and twelve-foot fences with barbed wire were erected around the Hennepin County Government Center (where the trial occurred). Every day, the jurors, with names anonymized by the district court, walked through a judicial citadel complete with the high fences, military vehicles (including Humvees and troop carriers), as well as uniformed soldiers brandishing automatic weapons.

Shortly before the conclusion of the trial, another officer-involved shooting in a nearby Minneapolis suburb resulted in renewed chaos in the community, again including widespread riot and looting. Minneapolis enacted yet another curfew order, which some jurors were subject to. And again, all of this was exhaustively covered in the local, national, and international media.

In anticipation of the verdict announcement, businesses were again boarded up. Local schools moved to distance learning. National Guard troops not only surrounded the Hennepin County Government Center, but hundreds more troops guarded dozens of Minneapolis-street corners in Humvees, each handling more automatic weapons. The international media converged on Minneapolis with 24-hour coverage of not only the trial, but the security attending it.

Given the deaths, injuries, and carnage that devastated large sections of Minneapolis in the wake of Mr. Floyd's death, not to mention the new military-style fortification of the courthouse and the surrounding city, prospective jurors were clearly concerned for their personal safety, the safety of their families, and the safety of their community should they fail to convict Petitioner. This atmosphere placed enormous pressure on the jurors to convict Petitioner lest they, their families, and their community face further violence. Petitioner was, in essence, tried by a jury under the menacing eye of a violent mob demanding conviction.

The trial court and the Minnesota Court of Appeals should have presumed that this potent threat of harm to the jurors and the community prejudiced the jury pool. But in considering the motion to transfer, the district court focused on the publicity surrounding

Mr. Floyd's death and the trial. Repeatedly noting the district court's "wide discretion" in this regard, the Minnesota Court of Appeals remarkably added that other cases "involved circumstances more extreme than those in [Petitioner's] trial." This is not only absurd, but the lower courts wholly failed to consider the palpable threat of harm to the jurors, their families, and their community from a "not guilty" verdict. It is now an unfortunate given that every police-involved critical incident is immediately criticized by significant segments of American society—regardless of the facts. Under these extreme circumstances, the failure to transfer the trial to less dangerous venue denied Petitioner his Sixth Amendment right to a fair trial.

Public confidence in fair trials is more important today than ever. This is especially true when the underlying case has led to ubiquitous commentary, reporting, and, indeed, riots. Even more serious is the recent fact that States are increasingly prosecuting police officers as rapidly and aggressively as possible to prevent political blowback and social unrest. The decisions of the lower courts here, if left in place, risk teaching agitators that they can influence the results of criminal proceedings—particularly against increasingly politically unpopular police officers—by provoking widespread violence and chaos in the community.

This Court should grant the petition and take this opportunity to clarify that, in extreme cases such as this one, substantial threats to public order and community safety based on the outcome of a prosecution presumptively prejudice the jury and require transfer to another venue.

ARGUMENT

I. THIS COURT REAFFIRMED IN SKILLING THAT JURY PREJUDICE MAY BE PRESUMED IN EXTREME CASES

The right to trial by jury is "the most priceless" of the safeguards of the "concepts of individual liberty and of the dignity and worth of every man[.]" *Irvin v. Dowd*, 366 U.S. 717, 721 (1961). "In essence, the right to jury trial guarantees to the criminally accused a fair trial by a panel of impartial, 'indifferent' jurors. The failure to accord an accused a fair hearing violates even the minimal standards of due process." *Id.* at 722. An impartial, indifferent jury must be able to set aside preconceptions, disregard extrajudicial influences, and decide guilty or innocent "based on the evidence presented in court." *Id.* at 723. But "[c]ommunity passions, often inflamed by adverse pretrial publicity, can call the integrity of a trial into doubt." *Skilling v. United States*, 561 U.S. 358, 438 (2010) (Sotomayor, J., concurring in part and dissenting in part). For this reason, this Court has held that the hostility of a local community may become so severe that it gives rise to a "presumption of [juror] prejudice" notwithstanding the jurors own generalized affirmations of impartiality. *Patton v. Yount*, 467 U.S. 1025, 1031 (1984) (discussing *Irvin*). *See also Marshall v. United States*, 360 U.S. 310, 312-13 (1959) (granting new trial based on publicity reaching jury despite jurors' statements that they could remain impartial).

This Court discussed the issue of presumed prejudice due to pretrial publicity in depth most recently in *Skilling v. United States*, 561 U.S. 358 (2010). In *Skilling*, the Court considered the appeal of Jeffrey Skilling, the former chief executive officer of

Enron Corporation, related to, *inter alia*, "honest services" wire fraud. *Id.* at 367. Writing for the Court, Justice Ginsberg distinguished *Skilling* from prior cases involving the presumption of prejudice based on, *inter alia*, the size of the community (and thus the pool of potential jurors to draw from); the prejudicial nature of what was reported (e.g., confessions); and the temporal proximity between the widely reported crime and the trial. *Id.* at 382-384. The Court further noted the difference between intense pretrial publicity and a "carnival atmosphere" pervading the trial itself. *Id.* at 381 (quoting *Sheppard v. Maxwell*, 384 U.S. 333, 358 (1966)). Based on these distinctions, this Court declined to find a presumption of prejudice. *Id.* at 384.

The Court did not, however, reject the possibility of a presumptive prejudice in *Skilling*. To the contrary, the Court stated that "[a] presumption of prejudice, our decisions indicate, attends only the extreme case." *Id.* at 381. The question remains, however, under what circumstances a case is considered "extreme" and what factors a court can—and must—consider in making that determination.

II. THERE IS NO CLEAR GUIDANCE FOR THE LOWER COURTS ON HOW TO CONSIDER THE THREAT OF COMMUNITY VIOLENCE

As "extreme" cases are necessarily rare, there is scant precedent to guide the lower courts and few opportunities for this Court to squarely address the issue. As a result, lower courts have been left without significant guidance, placed differing weight on different considerations, and thus reached inconsistent results.

For instance, in *People v. Boss*, 261 A.D.2d. 1 (N.Y. App. Div. 1999), the New York appellate court considered a motion to transfer venue to a court outside of New York City for the police officers accused of murdering Amadou Diallo. *Id.* at 2-3. The trial was set to be held approximately 11 months after the death. *Id.* The New York court discussed the extensive publicity of the death, focusing largely on print articles and advertisements in the New York Post, the New Yorker, and the New York Times. *Id.* at 6. The Court further discussed public opinion polling showing that a substantial percentage of the public had already formed their opinions about the defendant's guilt. *Id.* But the New York court went further, writing:

> [D]efendants have provided other evidence that we find more compelling than publicity and polls. What is unique about this case is the scale and intensity of the public clamor that preceded the indictments, which, we can only conclude, would be repeated at trial. At the inception of this case there were weeks of mass demonstrations at police headquarters, the Bronx County Courthouse, and elsewhere. Thousands participated daily, and over one thousand persons, including high-ranking present and former public officials and other prominent persons, were arrested for acts of civil disobedience.

Id. Thus, the New York court concluded, "this case cannot be tried in Bronx County, or anywhere else in the City of New York, without an atmosphere in which jurors would be under enormous pressure to reach the verdict demanded by public opinion." *Id.* Moreover,

the *Boss* court further concluded that the "subject of potential pressure upon jurors would be particularly difficult to deal with in voir dire." The court reasoned that case was "not a simple matter of asking the jurors if they could put aside any opinions they may have formed. Instead, it would also be necessary to ascertain whether they could resist a public cry for conviction, and specifically, whether they could face their friends and neighbors in the event of an acquittal." *Id.* Indeed, the court explained that the "very asking of such questions carries the danger of implanting or reinforcing in the jurors' minds the fear of the consequences of reaching an unpopular verdict." *Id.* After trial in Albany, the defendants were ultimately acquitted.

Similarly, in *Lozano*, a Florida appellate court considered the denial of a motion to transfer by the defendant police officer, who had killed two fleeing suspects (both Black men), resulting in riots that became world news. *Lozano v. State*, 584 So.2d 19, 20-22 (Fla. Dist. App. 1991) (per curium). The defendant sought a change of venue based not only on the violence that followed the incident itself but also that followed "prior acquittals in similar so-called police brutality cases[,]" including the "widespread concern over the prospect of unrest in the area if there were verdicts of not guilty." *Id.* at 21. The trial court denied the motion and Lozano was convicted of two counts of manslaughter. *Id.* at 22. In reversing the trial court's denial, the *Lozano* court explained:

> We simply cannot approve the result of a trial conducted, as was this one, in an atmosphere in which the entire community—including the jury—was so obviously and, it must be said, so justifiably

> concerned with the dangers which would follow an acquittal, but which would be and were obviated if, as actually occurred, the defendant was convicted.

Id. The court further explained that "the fear that one's own county would respond to a not guilty verdict by erupting into violence is as highly 'impermissible [a] factor' . . . as can be contemplated." *Id.* at 22-23 (internal citation to *Estelle v. Williams*, 425 U.S. 501, 505 (1976) omitted). Upon being re-tried in a different venue, the defendant was acquitted. *Vasilinda v. Lozano*, 631 So.2d 1082, 1084 (Fla. 1994).

Famously, in *Powell v. Superior Court*, the California second district court of appeals ordered venue transferred in the case of the officers involved in the beating of Rodney King to outside of Los Angeles County. *Powell v. Superior Court*, 232 Cal. App.3d 785, 803 (1991). That court's decision discussed the court's receipt of "a document which can be construed only as a threat of community violence if the case is transferred to another venue" which was "widely publicized[.]" *Id.* at 801. *See also id.* ("The possibility of riots also has been mentioned on television news coverage.") The *Powell* court reasoned that the threat of violence arising out of the consideration of transferring the case led to the "inevitable inference" that similar threats would arise during the trial regarding the "ultimate determination of guilt or innocence[,]" that this factor thus weighed in favor of transfer, and favorably discussed *Lozano* as a case involving "similar circumstances." *Id.* The day the acquittal was announced from the transferred trial, the 1992 LA riots erupted.

And again, in *Nevers v. Killinger*, the Eastern District of Michigan granted a writ of *habeas corpus*

to a police officer convicted of murder following the killing of Malice Green. *Nevers v. Killinger*, 990 F. Supp. 844, 863 (E.D. Mich. 1997). The district court judge found that the state courts had erred in not granting a change of venue considering pretrial publicity and other "extraneous prejudicial influences" on the jury. *Id.* at 864. Among these "extraneous influences," the district court noted that "at least one member of petitioner's jury learned during deliberations that the City of Detroit was bracing for a riot in the event of an acquittal." *Id.* at 866. In explanation, the district court wrote:

> [T]he Court cannot imagine a more prejudicial extraneous influence than that of a juror discovering that the City he or she resides in is bracing for a riot—including activating the National Guard and closing freeways—in the event the defendant on whose jury you sit is acquitted. The magnitude of such extraneous influence cannot be overlooked."

Id. at 871. The Sixth Circuit affirmed. *See Nevers v. Killinger*, 169 F.3d 352, 374 (6th Cir. 1999). In a subsequent trial, Nevers was convicted of involuntary manslaughter.

In contrast, in *State v. Christensen*, the Iowa Supreme Court considered whether the jury learning of a potential threat of a riot did not create a presumption of prejudice and that the defendant had not shown a reasonable probability that the result would have been different absent that extraneous influence. *State v. Christensen*, 929 N.W.2d 646, 679-80 (Iowa 2019). The *Christensen* court distinguished *Loranzo* and *Powell* as "pretrial change of venue cases in which there had been massive publicity and substantial

threats of violence had arisen from the underlying incidents." *Id.* at 680.

But in none of these cases did the trial or appellate courts have any clear guidance from the Supreme Court to rely upon in weighing how the threat of community violence impacts Defendant's Sixth Amendment right to trial by an impartial jury. Instead, the lower courts are forced to extrapolate generalized statements from this Court in entirely dissimilar cases. *See, e.g.*, *Lozano*, 584 So.2d at 22 (quoting *Estelle*, 425 U.S. at 505 for the proposition that "every criminal defendant is entitled to a trial free of prejudice inherent in the circumstances which present an 'unacceptable risk . . . of impermissible factors coming into play.'"); *Nevers*, 990 F. Supp. at 864 (citing *Mattox v. United States*, 146 U.S. 140 (1892) for proposition that "a defendant's rights are violated when a jury's verdict is affected by prejudicial extraneous facts and information not introduced in evidence").

III. THE LACK OF GUIDANCE FROM THIS COURT LED THE LOWER COURTS TO DENY PETITIONER A FAIR TRIAL

The lack of guidance from this Court had a clear effect in Petitioner's case. The lower courts here, breaking with the decisions in similar cases discussed above, failed entirely to consider the looming impact of riots and community violence on the jury's deliberative process.

In fact, the Minnesota Court of Appeals focused almost exclusively on pretrial publicity. App. 20-23. That court looked to *Rideau v. Louisiana*, 373 U.S. 723 (1963) and *Sheppard v. Maxwell*, 384 U.S. 333 (1966). App. 15. But as this Court discussed in *Skilling*, those cases concerned trial atmospheres that were "utterly corrupted by press coverage" that the

Court compared to a "carnival." *Skilling*, 561 U.S. at 380. They did not concern trials that were conducted under the implicit threat of widespread unrest and violence within the community if the "wrong" verdict were reached.

At most, the Minnesota Court of Appeals referenced the courtroom security measures in passing, stating:

> While there was substantial security around the courthouse during trial, it was put into place to ensure a safe trial for the parties as well as the general public. As the district court pointed out, a smaller courthouse in a different venue would unlikely be able to accommodate the necessary security measures.

App. 22. But this does not address the true issue—the facts making the "substantial security" necessary assuredly weigh on the jurors' minds as much as on the city, county, state, and court putting those security measures into place. That is to say, the same reasonable fear of further rioting and community violence in the event of an acquittal that compelled (1) the city and county to literally barricade the courthouse with troops, military vehicles, razor wire, and automatic weapons; (2) hundreds of storeowners and offices to board up their windows again; (3) Governor Tim Walz (D) to mobilize the National Guard, would no doubt also weigh on the minds of the jury.[2] Indeed, as discussed more fully in the petition, numerous jurors and potential jurors reported concerns regarding personal

---

[2] Brian Bakst, *National Guard presence during Chauvin Trial Cost $25M*, MPR News (April 28, 2021), https://perma.cc/Y5YP-5V4D.

safety, the safety of their family, the potential for property damage, and the potential for further "chaos" in the Twin Cities. Pet. 15-16. And in contrast to the lower courts, outside observers repeatedly noted the effect that this public pressure undoubtedly had on the process. *See, e.g.*, Nesrine Malik, *The George Floyd Verdict Would Not Have Happened Without Months of Protest*, The Guardian (April 25, 2021), https://perma.cc/TU5B-G53B; Griff Witte, Joyce Koh, Kim Bellware, & Silvia Foster-Frau, *The Chauvin Verdict Had Cities Nationwide Braced for Unrest. Instead, They Got a Celebration*, The Washington Post (April 20, 2021), https://perma.cc/KMM6-VM7Y.

IV. THE COURT SHOULD USE THIS OPPORTUNITY TO CLARIFY THAT THE THREAT OF COMMUNITY VIOLENCE CAN MAKE A CASE "EXTREME" SUCH THAT JURY PREJUDICE MUST BE PRESUMED

If ever there were a situation where the atmosphere surrounding a trial could be described as "extreme," it was this one. Trial was held in the epicenter of the most destructive rioting seen in this country in decades. The trial was conducted under the widespread belief that a failure to convict the Petitioner would return the carnage that led to Petitioner's arrest. Yet the lack of guidance from this Court on how to handle such a situation resulted in, in effect, at least the same degree of prejudice this Court has repeatedly held to be unacceptable, if not the same kind.

Moreover, while "extreme" cases are obviously rare by nature, community violence following perceived misconduct by police officers—or the perceived leniency of the justice system for those officers—has become so commonplace that it is almost expected. *See, e.g.*, Greg Risling & Terry Collins, Associated

Press, (July 9, 2010), https://perma.cc/35QC-7KLR (rioting in San Francisco following conviction of officer who shot Oscar Grant to a lesser sentence); Mackey, Robert. *Protests in Anaheim After Fatal Shooting*. The Lede. The New York Times (July 24, 2012), https://perma.cc/MHT8-YJ3S; Fox8 Digital Desk, *Riots in Brooklyn after police fatally shoot teenager*, MyFox8.com (Mar. 15, 2013), https://perma.cc/GB8X-7YQ3 (the Flatbush Riots); Ellen Wulfhorst, Daniel Wallis & Edward McAllister, *More troops deployed in Ferguson to guard against fresh riots*, Reuters (Nov. 24, 2014), https://perma.cc/8HRX-NMV8 (describing riots following grand jury declining to indict officer involved in death of Michael Brown); Sabrina Toppa, *The Baltimore Riots Cost an Estimated $9 Million in Damages*, Time (May 14, 2015), https://perma.cc/V3MJ-V7SS (riots following funeral of Freddie Gray); Ken Daley, *43 of 102 arrested protesters from outside Baton Rouge, police say*, Nola.com (July 11, 2016), https://perma.cc/68RS-XVW8 (protests following death of Alton Sterling); Douglas Belkin & Beckie Strum, *Protests Turn Violent in St. Paul; More Than 100 Arrested*, The Wall Street Journal (July 10, 2016), https://perma.cc/SKT7-6H72 (riots following death of Philando Castile in Twin Cities suburb); *Violence breaks out in Milwaukee following officer-involved shooting*, Fox6 News (Aug. 13, 2016), https://perma.cc/EQ48-GGDK (rioting in Milwaukee following shooting of Syllville Smith); Joe Marusak, Ely Portillo, Mark Price & Adam Bell, *Charlotte faces aftermath of protests ignited by fatal police shooting; 16 officers injured*, The Charlotte Observer (Sept. 26, 2016), https://www.charlotteobserver.com/news/local/crime/article103009432.html (rioting following death of Keith Lamar Scott); Brooklyn Dance, *Dozens*

of Memphis officers injured, three people arrested in violent protest after police shooting, The Tennessean (June 13, 2019**),** https://perma.cc/V7GU-MHSG; N'dea Yancey-Bragg & Jeff Neiburg, *Philadelphia prepares for another night of protests over Walter Wallace killing after second night turns violent*, USA Today (October 28, 2020), https://perma.cc/E2LM-5F5T; Zoe Jackson & Susan Du, *Police shooting of Daunte Wright amid Derek Chauvin trial adds more trauma to wounded Twin Cities*, Star Tribune (April 14, 2021), https://perma.cc/MMN9-MLJJ; Kyle Brown, *27 people arrested after second night of unrest in Uptown*, KSTP-TV (June 5, 2021), https://perma.cc/P2A3-45ME (unrest following death of Winston "Boogie" Smith in Minneapolis). Indeed, even false *rumors* of a police shooting were enough to cause a riot in Minneapolis in 2020. *See* Chao Xiong, *At least 19 charged with burglary, assault in Minneapolis riot*, Star Tribune (Aug. 28, 2020), https://perma.cc/583Q-3HWQ.

The simple fact is that incidents that involve police misconduct—perceived or actual—are increasingly likely to trigger social unrest and community violence, including in response to perceived leniency toward the defendant officers during any related prosecution. When they do or threaten to, the lower courts are ill-equipped to determine when the defendant's Sixth Amendment rights require transfer to a venue under existing Supreme Court precedent. Accordingly, this Court should take the opportunity to grant the petition and clarify for the benefit of all courts that a threat of widespread destructive rioting in the community based on the outcome of a case renders the case "extreme" and presumptively prejudices a jury drawn from that community such that a transfer of venue is required.

CONCLUSION

For the foregoing reasons, the Court should grant the petition and reverse the decision below.

Respectfully submitted,

Christopher W. Madel
Counsel of Record
MADEL PA
800 Hennepin Ave., Suite 800
Minneapolis, MN 55403
(612) 605-0630
cmadel@madellaw.com

Counsel for Amicus Curiae