



Written by [R. Cort Kirkwood](#) on June 5, 2021

Chauvin Files New Motion, Argues That Judge, Prosecutors Deprived His Right to a Fair Trial

Derek Chauvin, the former cop who was [unjustly convicted](#) of “murdering” drug addict George Floyd, [filed a 64-page motion](#) early this week to ask for a new trial.

The motion argues that Chauvin’s first trial was unfair, and therefore, unconstitutional, because of pretrial publicity, prosecutorial misconduct, Cahill’s abuse of judicial discretion, and two jurors whose [post-trial statements revealed](#) they did not decide the case on the facts.

The motion is Chauvin’s second. Judge Peter Cahill, who presided over the Stalinesque show trial, turned down [the first one](#).



Derek Chauvin (AP Images)

Judge, Prosecutors

First among the reasons for a new trial is that Cahill abused his discretion by refusing to change venue: “Pervasive publicity before and during the trial tainted the jury pool and prejudiced the jury itself, depriving Mr. Chauvin of a fair trial in violation of his constitutional right to due process,” the [motion argues](#) for 10 pages.

The jury pool was irreparably tainted:

All jurors had some knowledge of the case. Most had formed an opinion of some sort. ...

The media coverage in this case is like a bomb explosion: Hennepin and Ramsey counties are ground zero and although felt far and wide, the effects of the explosion diminish as they ripple outward from the Twin Cities. The most intense media coverage in the state clearly appeared here, in the Twin Cities. Although it is more than reasonably probable that Mr. Chauvin cannot receive a completely fair and impartial trial in Hennepin or Ramsey counties, or anywhere in the State, the probability that Mr. Chauvin can receive a more-fair and more-impartial trial increases as one travels outward from the Twin Cities.

And because even the court found troubling “prejudicial pretrial publicity,” the motion argues, “it lacked discretion ... to deny Mr. Chauvin’s motion.”

The court also “abused its discretion when it denied Mr. Chauvin’s motion to sequester the jury.” Though Chauvin’s attorney moved several times to sequester, Cahill refused and simply told jurors to “avoid news about this case” or “don’t watch the news.”

That, too, the motion argued, violated Chauvin’s right to a fair trial. Prior case law requires that “sequestration must be ordered.”



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Another abuse of discretion was failing to order “a record be made of the numerous sidebars that occurred during the trial.” Sidebars are conversations between attorneys and the judge to which the jury is not privy. Not recording those conversations violated rules governing trials.

The judge also permitted “needless presentation of cumulative evidence” about the use of force.

Prosecutors, the [motion argues](#), “committed pervasive, prejudicial misconduct in violation of Mr. Chauvin’s constitutional rights to a fair trial by an impartial jury” by repeatedly violating rules and standards of conduct.

Those standards included rules on discovery, disclosing evidence, and ignoring the court’s initial discovery deadline.

Prosecutors permitted a witness to testify who wore a visible Black Lives Matter T-shirt under his dress shirt, which was “prejudicial messaging” to the jury.

During their closing statements, prosecutors belittled Chauvin’s defense by repeatedly calling Chauvin’s defense a “story” and “nonsense.”

Other prosecutorial misconduct included “inviting jurors to put themselves in the shoes of another” because it “improperly inflames passion by personalizing emotions, such as anger and fear, and encourages improper speculation.”

Prior case law, the motion argues, says a “prosecutor cannot ask jurors to look at their own experiences when weighing credibility of evidence.”

Prosecutors also erred by using “us” and “we” in an “an improper attempt to align the prosecutor with the jury.” The motion also says prosecutors injected personal opinions in their arguments, which is also forbidden.

Another prosecutorial error was offering jurors facts about Chauvin not in evidence with such statements as the “the defendant abandoned his values.” In claiming that Chauvin supposedly ignored the pleas of bystanders to release Floyd from the restraint that supposedly killed him, prosecutors improperly speculated that the cop’s “ego” and “pride” were at work. “He was not going to let these bystanders tell him what to do,” a prosecutor said.

But “Chauvin did not testify,” the motion continues:

Neither his state of mind, nor his thoughts, nor his pride, nor his ego was in evidence. This was prosecutorial misconduct, plain and simple. The State cannot “be permitted to ‘deprive a defendant of a fair trial by means of insinuations and innuendos which plant in the minds of the jury a prejudicial belief in the existence of evidence which is otherwise inadmissible.’”

Prosecutors did not order a key witness to testify, the motion argues.

Juror Misconduct

The motion also argues that [the conduct](#) of two jurors violated Chauvin’s right to a fair trial.

Lisa Christensen “lacked candor during the jury selection process.” On her jury questionnaire, Christensen said she was concerned for her safety, the verdict depending. During [voir dire](#), she said that keeping her identity a secret alleviated those concerns.



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Yet two days after the verdict, she invited the media to her home, the motion argues:

Christensen was asked about her nervousness on verdict day, to which she replied: “Before [Judge Cahill] did read [the verdict], yes I was. In my mind, I was going through, like, you know, I hope there is not going to be rioting again and protests and this mayhem that happened before. My place of business got broken into prior. So, I was just hoping that wasn’t going to happen again and I was relieved that they came to the verdict they did. I think it was the right verdict to come to.”

Though Christensen said she could be impartial during *voir dire*, “her post-verdict conduct clearly indicates that otherwise, and that she did in fact feel pressure to convict.”

The other juror, Brandon Mitchell, conducted interviews in which he essentially admitted that he was biased and did not follow the “objective definitions in the jury instructions.”

Mitchell admitted he didn’t follow instructions to be strictly impartial when told an interviewer that juries are instruments of social uplift:

If we want to see some change, want to see some things going differently, we’ve got to get out there, get into these avenues, get into these rooms, to try and spark some change.

Other post-verdict interviews show that “he had no intention of engaging in meaningful deliberation, but instead believed that no deliberation was necessary.”

Mitchell was “ready to convict ... and willing to forgo what is often a lengthy deliberation process.”

Last, like Christensen, Mitchell “lacked candor” during jury selection “regarding his opinion of the case and his participation in protests.”

The jury questionnaire asked Mitchell if he joined anti-cop protests in Minneapolis. Mitchell answered no despite participating in just such a protest in Washington, D.C.

Though the protest was not in Minneapolis, the questionnaire also asked whether the judge and attorney need to know anything else. Mitchell answered no.

Thus his answer was “untruthful and evasive,” the [motion argues](#):

A reasonable person would understand that his participation in a major civil rights march, wherein Mr. Floyd and his family were reportedly a focal point, would need to be disclosed under this question. Furthermore, while at this march, Mr. Mitchell wore a shirt stating, “Get your knee off our necks.”

Mitchell claimed he did not remember owning the shirt, although he wore it in a video on his YouTube Channel.

The motion’s indictment of Mitchell’s dishonesty goes on at some length.

Chauvin’s attorneys [also filed a motion](#) for a sentence of probation instead of prison time.

The motion for a new trial [echoes arguments](#) from leftist law professor Alan Dershowitz, who was part



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of the O.J. Simpson's winning defense team when the former NFL pro was tried in the murder of his wife.



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