

The Evidence And Arguments That Won Chauvin's Conviction

By [Cara Bayles](#) | April 21, 2021, 3:57 PM EDT

During the final days of the trial of Derek Chauvin, the former Minneapolis police officer convicted Tuesday of the murder of George Floyd, the defense presented its case-in-chief with hours of expert testimony from Dr. David Fowler, the former medical examiner for the state of Maryland.

Fowler [said](#) Floyd was in poor health and that a litany of factors — an enlarged heart, plaque narrowing his coronary arteries, fentanyl and methamphetamine intoxication, even carbon monoxide from a nearby tailpipe — were just as likely to have caused Floyd's death as Chauvin's knee digging into his neck for more than nine minutes.

On cross-examination, Jerry Blackwell, founder of the Minneapolis law firm [Blackwell Burke PA](#), who was working pro bono for the prosecution, asked Fowler if he thought Chauvin should have administered emergency medical aid after Floyd went into cardiac arrest.

"As a physician, I would agree," Fowler said, noting that "immediate medical attention for a person who's undergone cardiac arrest may well reverse that process."

It was a moment that Blackwell's colleague, Steve Schleicher, a [Maslon LLP](#) partner also working pro bono for the prosecution, cited during closing arguments, saying, "Even Dr. Fowler was critical of no one starting CPR."

"There were multiple moments in time when things could have gone different, and George Floyd would have lived," Schleicher said. "[Chauvin] had the training. He knew better, he just didn't do better. ... And make no mistake, these actions were not policing. These actions were an assault."

In a few sentences, Schleicher gestured to several elements of the three charges brought against Chauvin. Assault was necessary to prove second-degree murder. "He knew better" and the idea that "things could have gone different" suggested the culpable negligence requirement of second-degree manslaughter and the "depraved mind" needed to prove third-degree murder.

That's how evidence and expert testimony were woven together to prove all three charges against Chauvin, according to Frederick Brewington, a New York-based civil rights attorney and advisory board member of the National Police Accountability Project.

"It goes to the state of mind that helps the jury deal with relevant facts that allow them to make that determination," he said.

The murder charges against Chauvin became international news last spring after millions of people viewed a bystander's video of Floyd's arrest. It showed Chauvin pinning Floyd's neck down for about nine minutes, as Floyd — who was suspected of using a counterfeit \$20 bill — begged him to stop, said he couldn't breathe and eventually lost consciousness. The image of a Black man gasping for breath under the knee of a white police officer rekindled a nationwide racial justice movement.

On Tuesday afternoon, a jury found Chauvin [guilty of all counts](#). While the evidence was overwhelming, it was no easy feat for prosecutors. To prove their case to the jury, they had to meet all the necessary elements of each charge. Here's how they did it.

Cause of Death

For all three charges, prosecutors had to prove Chauvin's actions were a "substantial causal factor" in Floyd's death.

And so they called on a parade of medical experts — a pulmonologist, a cardiologist, an emergency medicine doctor, several toxicologists and two forensic pathologists.

Prosecutors had the stronger case, but they took nothing for granted, according to Kami Chavis, a law professor and director of the Criminal Justice Program at Wake Forest University School of Law, who is also a former assistant U.S. attorney for the District of Columbia.

"As a lawyer, you want to ensure you're meeting your burden. That's why they had multiple medical experts testifying," she said. "Honestly, you would have to suspend common sense to think that this knee on his neck for several minutes after he stopped breathing was not a cause of his death. I think the prosecution was aware the defense was going to try everything they could to sow seeds of doubt."

Dr. Martin Tobin, a pulmonologist, [testified](#) that the way officers forced Floyd to lie prone on the street with pressure on his back and his neck made it difficult for him to breathe. Tobin calculated Floyd's lung capacity and oxygen level as the restraint wore on. He counted out Floyd's respiratory rate. And he pinpointed in video clips "the moment the life goes out of his body" — a moment when Floyd's brain oxygen level grew so fatally low, he spasmed and his face went slack.

Tobin's testimony that "a healthy person subjected to what Mr. Floyd was subjected to would have died" was vital to the case, according to [Simpson Thacher & Bartlett LLP](#) partner Brooke Cucinella, a former federal prosecutor.

The paramedics who testified about trying to resuscitate Floyd were important, too. They "confirmed that Mr. Floyd did not have a pulse, yet was still being forcibly restrained," Cucinella said in an email.

A Reasonable Officer

None of the charges brought against Chauvin required an intent to kill Floyd.

But for the top charge, second-degree murder, the jury had to find that Chauvin killed Floyd while committing assault under the felony murder rule.

To prove assault, the prosecution had to show that Chauvin's use of force was criminal, not within the legal bounds of his powers of arrest as an on-duty officer.

So expert testimony on the use of force was particularly important to that charge. Jurors learned about [the standard](#) set by the [U.S. Supreme Court's](#) 1989 [Graham v. Connor](#) decision, which found that the use of force "must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight."

The Graham case set out three main factors the reasonable officer might consider: "the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight."

The prosecution's use-of-force experts [agreed](#) that Floyd's alleged crime, passing a counterfeit bill, didn't merit arrest, let alone force. They said Floyd was already handcuffed and unable to pose a serious threat or flight risk when he was shoved to the ground. They all agreed the use of force was unlawful, and that Chauvin should have known from his training that Floyd was in danger of positional asphyxia while lying on his stomach.

Several Minneapolis Police Department officers testified against their former colleague.

The department's longest serving officer, Lt. Richard Zimmerman, [said](#) he had been trained about the dangers of positional asphyxia for decades.

Commander Katie Blackwell, who [ran training for the department](#), showed Chauvin's name on a sign-up sheet from a 2018 use of force training. Looking at the infamous photo of Chauvin with his knee on Floyd's neck, she said, "That's not what we train."

Her testimony was important for showing that Chauvin acted unreasonably, according to Brewington.

"He was not trained in this fashion, and in fact had just recently been retrained that the actions he was taking were contrary to good, acceptable practice in the policing community," Brewington said.

The issue of unreasonable force was important for all three charges. Judge Peter Cahill instructed the jury, "No crime is committed if a police officer's actions were justified by the officer's use of reasonable force in the line of duty in effecting a lawful arrest or preventing escape from custody."

But the "reasonable officer" standard was especially important for the second-degree murder charge, which required a finding that Chauvin was acting so unreasonably, he was no longer conducting a lawful arrest but committing a criminal assault.

A Depraved Mind

To meet the third-degree murder charge's requirement that Chauvin acted "without regard for human life" and second-degree manslaughter's required finding that Chauvin displayed "culpable negligence," prosecutors relied on a slew of evidence suggesting Chauvin should have known he was killing Floyd.

Several videos showed all the ways Chauvin was warned — a means of illustrating he met the "depraved mind" requirement for third-degree murder.

He was warned [by several bystanders](#), from a firefighter with medical training who demanded that officers check Floyd's pulse, to a mixed martial arts fighter who said Chauvin was administering a "blood choke," to a 9-year-old child who told Chauvin to get off Floyd's neck.

Floyd himself complained 27 times that he couldn't breathe. At one point, police body-worn cameras picked up Chauvin's [indifferent responses](#) to his pleas.

Floyd told officers, "My stomach hurts. My neck hurts. Everything hurts." Chauvin could be heard

saying, "Uh huh," acknowledging each complaint.

A fellow officer [asked](#) Chauvin if they should roll Floyd onto his side — into the "recovery position" that both medical and policing experts said would have saved Floyd's life by giving him room to breathe. But Chauvin said, "No, keep him here."

That showed Chauvin consciously disregarded the risks he was taking with Floyd's life.

"Multiple people who were witnessing the event saw what Derek Chauvin saw but chose to ignore — and that was the fact that Mr. Floyd was in distress, was unable to breathe, at some point lost consciousness, lost a pulse," Chavis, the law professor, said.

Chauvin had many opportunities during those nine minutes and 29 seconds to stop, said Cucinella of Simpson Thacher.

"He chose not to, despite all the indications over a sustained period of time — not in a split second — that his actions were hurting Mr. Floyd, causing profound damage, and ultimately, took his life," she said.

--Editing by Jill Coffey.