Filed in District Court
State of Minnesota
2/15/2019 9:00 AM

STATE OF MINNESOTA | DISTRICT COURT

COUNTY OF HENNEPIN | FOURTH JUDICIAL DISTRICT

State of Minnesota, Plaintiff, vs. **MOHAMED MOHAMED NOOR,** Defendant.	**MEMORANDUM OF LAW IN SUPPORT OF MOTION TO ADMIT EVIDENCE FROM DEFENDANT'S PRE-HIRE PSYCHOLOGICAL EVALUATION** MNCIS No: 27-CR-18-6859

TO: THE HONORABLE KATHRYN QUAINTANCE, JUDGE OF DISTRICT COURT; COUNSEL FOR DEFENDANT, AND DEFENDANT.

STATEMENT OF FACTS

In February 2015, two-and-a-half years before he shot and killed Justine Ruszczyk, the defendant participated in a pre-hiring screening and background check, which was required of all candidates for positions with the Minneapolis Police Department (MPD). The MPD also required a psychological evaluation consisting of an interview and an MMPI test. The MMPI is the Minnesota Multiphasic Personality Inventory, a standardized psychological test that assesses personality traits and psychopathology. The defendant took the MMPI and his profile was compared to a 2000-person sample of other police officer candidates across the United States.[1] While the test results showed no diagnoses of mental illness, they revealed the following (in relevant part):

[1] As part of the investigation in this case, the BCA acquired the defendant's MMPI testing raw data by search warrant. Those data were provided to an independent psychologist who re-scored the test and came to the same conclusion as the examiner in 2015. The independent psychologist has not met or interviewed the defendant, nor rendered any opinion about the defendant or this case. The re-scoring of the test, which is done by computer, was done solely to verify the results from the MPD evaluation.

Filed in District Court
State of Minnesota
2/15/2019 9:00 AM

> In the interpersonal realm of functioning, he reported disliking people and being around them. He is likely to be asocial and socially introverted. However, he reported little or no social anxiety.
>
> [T]he test results indicate a level of disaffiliativeness that may be incompatible with public safety requirements for good interpersonal functioning. His self-reported disinterest in interacting with other people is very uncommon among other police officer candidates. Only 1.7% of members of a comparison group of police officer candidates describe a level of disaffiliativeness equal to or greater than his reported on the test.
>
> In addition, compared to other police officer candidates, he is more likely to become impatient with others over minor infractions; and to have a history of problems getting along with others, to be demanding, and to have a limited social support network. He is also more likely than most police officer candidates or trainees to exhibit difficulties confronting subjects in circumstances in which an officer would normally approach or intervene. In addition, he is more likely to exhibit difficulties in demonstrating a command presence and controlling situations requiring order or resolution.

The test results are provided with a caveat that they are to be used in conjunction with a clinical evaluation of the test-taker. A psychiatrist conducted such an examination and concluded that because there was no evidence of major mental illness, chemical dependence, or personality disorder, the defendant was "psychiatrically fit to work as a cadet police officer for the Minneapolis Police Department." Fifteen days after receiving the findings from the psychiatrist, a human resources employee of the MPD asked him to provide clarification on the opinion given the abnormalities in the test's findings. In response, the psychiatrist reported that the test results did not "correlate with the clinical history, examination and collateral information" so he "did not give the psychological testing much weight" in concluding that the defendant was fit for duty as an MPD officer.

Filed in District Court
State of Minnesota
2/15/2019 9:00 AM

ARGUMENT

THE COURT SHOULD ADMIT THE INFORMATION IN THE DEFENDANT'S PRE-HIRE EVALUATION BECAUSE IT PROVES AN ELEMENT OF THE OFFENSE AND DISPROVES THE DEFENDANT'S AFFIRMATIVE DEFENSE.

The results and conclusions of the defendant's MMPI test are relevant and admissible evidence that both proves an element of the charged crimes and disproves a defense to a crime, which are burdens carried by the State in this case. Minnesota Rule of Evidence 401 governs whether evidence is relevant. The rule uses a "liberal as opposed to restrictive approach to the question relevancy" and therefore allows evidence to be admitted if it "has *any* tendency to make the existence of a fact of consequence more or less probable than it would be without the evidence." Minn. R. Evid. 401, committee cmt. The evidence at issue must tend to prove or disprove a fact of consequence to the litigation, meaning that relevance in a particular case depends on the offenses charged, pleadings, and the substantive law. *Id.* It is necessary to examine what the State must prove beyond a reasonable doubt to determine whether particular evidence is relevant. *See State v. Hornig*, 535 N.W.3d 296, 298 (Minn. 1995).

Character evidence is "considered to be a generalized description of one's disposition, or of one's disposition in respect to a generalized trait." Minn. R. Evid. 406 committee cmt. (distinguishing character evidence from habit evidence); *State v. Yang*, 644 N.W.2d 208, 817 (Minn. 2002). Where the evidence offered concerns a defendant's character, Minnesota Rule of Evidence 404(a)(1)[2] may apply and provides:

> **(a) Character evidence generally.** Evidence of a person's character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion, except:
>
> (1) *Character of accused.* Evidence of a pertinent trait of character offered by an accused, or by the prosecution to rebut the same.

[2] In this case, the State has also moved the court to admit evidence pursuant to Minn. R. Evid. 404(b), which is distinct from this evidence and is discussed in a separate motion and memorandum.

Filed in District Court
State of Minnesota
2/15/2019 9:00 AM

Not all evidence of a defendant's character, however, is inadmissible in a criminal case. The provisions of 404(a) apply *only* when character evidence is used to show that a person acted in conformity with that character. *State v. Blair*, 402 N.W.2d 154, 157 (Minn. 1987).[3] When character evidence is offered for another purpose, 404(a) and 404(b) do not apply. *Id.; State v. Axford,* 417 N.W.2d 88, 92 (Minn. 1987). For example, a criminal defendant may "open the door" to character evidence by testifying to a fact or trait inconsistent with other evidence possessed by the opposing party. *See State v. Yang*, 644 N.W.2d 208, 817 (Minn. 2002).

Evidence concerning a defendant's character is also admissible where the character evidence is "relevant to the charged offense." *State v. Miller,* 396 N.W.2d 903, 906 (Minn. Ct. App. 1968) (only aspects of an accused's character which are "involved in the offense charged" are within the scope of Rule 404(a)(1)). "[I]f character is directly at issue because it is an element in a claim *or defense*, the necessity for character evidence would substantially outweigh any secondary consideration of prejudice or confusion. 11 Minn. Prac., Evidence § 404.03 (4th ed.) (emphasis added).[4] In such cases, the moving party is not limited to reputation and opinion evidence. *Id.* Any evidence relevant to the element can be offered. *Id.*

Character evidence, even when highly prejudicial, is admissible if it is necessary to establish an element of the State's case. *See, e.g., State v. Chuon,* 596 N.W.2d 267, 270 (Minn.

---

[3] The reasons for the exclusion of character evidence which proves *only* that a criminal defendant acted in conformity with his character are well known. *See State v. Loebach*, 310 N.W.2d 58, 63 (Minn. 1981). First, the jury may use the evidence to convict the defendant to penalize him for past wrongdoings or simply because he is an "undesirable person." *Id.* Second, the jury could give the character evidence greater weight than it should when deciding guilt of the crime(s) charged. *Id.* Third, it is generally unfair to require a defendant to defend against both the crime(s) with which he is charged and also explain his personality. *Id.* Put another way, the main policy which drives the exclusion of such evidence which has "admitted probative value" is that exclusion prevents "confusion of issues, unfair surprise, and undue prejudice." *Id.* (quoting *Michelson v. United States,* 335 U.S. 469, 475-76 (1948)).

[4] For example, if a defendant asserts entrapment as a defense in a criminal case, the prosecution may admit evidence of the defendant's character because whether the defendant has a predisposition to commit the crime is an element of the defense. 11 Minn. Prac., Evidence §404.04 (4th ed.).

Filed in District Court
State of Minnesota
2/15/2019 9:00 AM

Ct. App. 1999) (holding evidence of prior gang activity admissible where defendant was charged with a crime for the benefit of a gang, even where there was prejudice, because the statute required that the offense be committed for the primary purpose of benefitting the gang). *State v. Villanueva*, C2-99-2040, 2000 WL 1281129, at *2 (Minn. Ct. App. Sept. 12, 2000) (holding that a statement defendant made to a psychologist was relevant to proving an essential element of the State's case and therefore, although there was significant potential for prejudice, it was outweighed by its "highly probative value.").

Like all evidence, relevant evidence of a defendant's character is subject to Minnesota Rule of Evidence 403, which provides that the court may exclude evidence where its prejudicial effect substantially outweighs its probative value. "Prejudice" does not mean the damage to the case that results from "the legitimate probative force of the evidence…[but] refers to the unfair advantage that results from the capacity of the evidence to persuade by illegitimate means." *Yang,* 644 N.W.2d at 817 (quoting *State v. Cermack,* 365 N.W.2d 243, 247 n.2 (Minn. 1985) (citing 22 C. Wright and K. Graham, Federal Practice and Procedure – Evidence § 5215 (1978)). Even when evidence may be highly damaging to the opponent's case, it is admissible when it is highly probative. *Yang*, 644 N.W.2d at 817 (citation omitted).

The defendant has noticed several affirmative defenses in this case, the most important of which is that as a police officer, he was authorized to use reasonable force. While jury instructions in this case have not yet been finalized by the court, the applicable instructions from the Minnesota Jury Instruction guide provide:

> As to each count or defense, the kind and degree of force a peace officer may lawfully use…is limited by what a reasonable police officer in the same situation would believe to be necessary. Any use of force beyond that is regarded by the law as excessive. To determine if the action of the peace officer were reasonable you

Filed in District Court
State of Minnesota
2/15/2019 9:00 AM

> must look at those facts known to the officer at the precise moment he acted with force.
>
> The State has the burden of proving beyond a reasonable doubt that the defendant was not authorized to use deadly force.

10 Minn. Prac. Jury Instr. Guides—Criminal CRIM JIG 7.11 (6th ed.). This defense applies to all three crimes with which the defendant is charged. The State, therefore, must prove beyond a reasonable doubt for each offense that: 1) the defendant did not act as a reasonable police officer would have acted under the same circumstances and, therefore, the force he used was excessive, and 2) the defendant, a police officer, by using unauthorized deadly force, acted outside the scope of the protection the law affords police officers to use such force. Also, with respect to the third degree murder charge in this case, the State must prove that the defendant acted with extreme indifference to human life when he shot and killed Justine Ruszczyk.

The absence of controlling or even instructive cases on these specific issues is not the result of widely settled law or decided public policy. This is a case of first impression in Minnesota because no police officer has ever been charged with and tried for second or third degree murder for killing a citizen in the line of duty. In fact, prosecutions resulting in convictions of on-duty police officers for homicide in the United States are so rare that there is almost no case law on the subject in general, and none at all on the issue of whether a police officer's character is admissible evidence to prove whether he was acting as a reasonable police officer at the time he killed the victim.

Here, the State must prove that the defendant was not acting as a reasonable police officer would have when he used unreasonable and excessive force on July 15, 2017. Unlike all other murder cases in which a defendant asserts a reasonable use of force, *i.e.*, self-defense, this defendant's occupation affords him specific legal protection and requires a specific defense. This

Filed in District Court
State of Minnesota
2/15/2019 9:00 AM

is literally and uniquely written into the law that governs the case. Certainly, police officers must be permitted to act with reasonable, and sometimes deadly, force to protect the public they serve. Not all police officers, however, are in fact reasonable, nor do they act as their reasonable counterparts would do in similar situations.

For that reason, it matters that the defendant's recent MMPI test results show what they show. This evidence is unquestionably relevant and has an obvious tendency to make the existence of facts of consequence more or less probable than it would be without the evidence. The jury in this case must decide whether the defendant acted as a reasonable police officer in the same circumstances would have. The reasonable police officer who is entrusted with the power and authority to use deadly force is not an officer whose character is incompatible with public safety requirements for good interpersonal functioning. The reasonable police officer does not dislike the public he serves. The reasonable police officer does not become impatient with others over minor infractions or exhibit difficulties confronting subjects in circumstances in which an officer would normally approach or intervene. The reasonable police officer does not have difficulty demonstrating a command presence and controlling situations requiring order or resolution.

This evidence is all the more probative to the issues and, specifically, the defense in this case because the traits discovered through testing revealed themselves across the board in the defendant's actions the night he killed Ms. Ruszczyk. For example, the evidence will be, in the broadest terms:

1. The defendant failed to sufficiently investigate a series of 911 calls in the area that night;

2. The defendant showed no interest in investigating the circumstances that were potentially dangerous to the subjects of the 911 calls or the public in general;

Filed in District Court
State of Minnesota
2/15/2019 9:00 AM

3. The defendant took no time at all to make any inquiry into who approached his squad car and wholly failed to determine whether she actually posed a danger to him or anyone else;

4. Rather than try to deescalate the situation or slow it down in any way, the defendant went right to his gun and intentionally shot and killed the 911 caller outside his car.

The defendant's immediate decision to shoot demonstrates impulsivity and impatience which was devastatingly incompatible with public safety. Ms. Ruszczyk, of course, had committed no infraction of any kind and the defendant simply shot her. His actions clearly demonstrate his difficulty confronting a subject, *i.e.*, a 911 caller, in a manner in which police officers are routinely called to intervene. Finally, the defendant tragically failed to demonstrate a reasonable command presence when confronted with a person outside his squad. If he had, he would have taken control and assisted Ms. Ruszczyk, not killed her.

More to the point, the defendant must not be able to walk into court and assert that he was a perfectly reasonable police officer at the exact moment he fired his gun on July 15, 2017, and that no other circumstances matter. There is no legal presumption that the defendant was a reasonable police officer at any time, but excluding this evidence would create exactly that. To do what the jury must do and assess whether the defendant was, in fact, a reasonable police officer on July 15, 2017, it must have the whole picture. The evidence that the defendant acted in a manner *predicted* by his testing certainly helps prove that he was not acting reasonably at the time of the murder, a key element the State is required to prove.

This evidence is also relevant to the issues in the third degree murder charge, specifically the defendant's indifference to human life which led to his actions on July 15, 2017. The evidence that the defendant dislikes people tends to prove that he was indifferent to Ms. Ruszczyk's life. His tendency to become impatient in the face of even a minor infraction shows why he immediately reacted to Ms. Ruszczyk with excessive deadly force. These self-reported attitudes toward people

Filed in District Court
State of Minnesota
2/15/2019 9:00 AM

are extremely relevant evidence that the defendant acted without regard for the risk he knowingly created when he fired his gun through his partner's window and killed Justine Ruszczyk.

Given the lack of precedent, it is not possible to know whether this evidence could be highly damaging to the defendant's case. But because the evidence is necessary to disprove the defense, which is the same as proving an element, its highly probative value outweighs the potential for prejudice. Also, Rule 403 only guards against *unfair* prejudice. Admitting this evidence cannot be unfair where the defendant's occupation itself provides specific protections, namely a defense to an intentional killing, and will be the basis for the instructions the jury receives.

CONCLUSION

The law permits a court to admit evidence of a defendant's character when necessary to prove an element of a crime or disprove a defense. The defendant's occupation as a police officer, and the question of whether his actions were reasonable, are elements of the crimes at issue and the defense he asserts. The evidence of the defendant's psychological examination has obvious and significant probative value and, given the issues, is essential to proving the State's case. For this reason, it does not wield the type of prejudice requiring exclusion. The court should grant the motion to admit this important evidence.

Filed in District Court
State of Minnesota
2/15/2019 9:00 AM

Respectfully submitted,

MICHAEL O. FREEMAN
Hennepin County Attorney

By: _____
AMY E. SWEASY (26104X)
Assistant County Attorney
C-2100 Government Center
Minneapolis, MN 55487
Telephone: (612) 348-5561

By: _____
PATRICK R. LOFTON (0393237)
Assistant County Attorney
C-2100 Government Center
Minneapolis, MN 55487
Telephone: (612) 348-5319

Dated: February 15, 2019