

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

State of Minnesota,

Plaintiff,

v.

**STATE'S AMENDED PROPOSED  
JURY INSTRUCTION  
REGARDING THIRD-DEGREE  
MURDER**

Court File No.: 27-CR-20-12646

Derek Michael Chauvin,

Defendant.

TO: The Honorable Peter Cahill, Judge of District Court, and counsel for Defendant; Eric J. Nelson, Halberg Criminal Defense, 7900 Xerxes Avenue South, Suite 1700, Bloomington, MN 55431.

The State hereby amends its proposed jury instruction regarding third-degree murder in light of the Minnesota Supreme Court's decision on March 31, 2021 in *State v. Coleman*, No. A19-0708, \_\_\_ N.W.2d \_\_\_, 2021 WL 1201738 (Minn. Mar. 31, 2021).

In *Coleman*, the Supreme Court held that “the mental-state element for third-degree depraved mind murder requires a showing that the eminently dangerous act was committed with a mental state of *reckless disregard of human life*.” *Id.* at \*7 (emphasis in original). In other words, the “attending circumstances” must show that “the nature of the act supports an inference that the defendant was indifferent to the loss of life that this eminently dangerous activity *could* cause.” *Id.* (emphasis in original). In so holding, the Court clarified that third-degree murder does not have “a mental-state element that requires a showing that the *act* was committed in a *reckless manner*.” *Id.* (emphasis in original). For that reason, the Court explained that CRIMJIG 11.38, which “include[s] the phrase ‘committed in a *reckless or wanton manner* with the knowledge that

someone *may* be killed,” “incorrectly attaches the recklessness component to the act itself, and allows for conviction based on an impermissibly low risk of death.” *Id.* at \*8 (quoting 10 Minn. Dist. Judges Ass’n, *Minnesota Practice—Jury Instructions Guides, Criminal*, CRIMJIG 11.38 (6th ed. 2015)) (emphasis in original). CRIMJIG 11.38 therefore “materially misstate[s] the law.” *Id.*

In a footnote, the Supreme Court then “illustrate[d] one way in which the required mental state could be communicated to a jury” in jury instructions. *Id.* at \*8 n.4. It indicated that “[o]ne way to accurately state the law in a jury instruction” regarding third-degree murder “could be to use the phrase ‘but it must have been committed *with an indifference to the loss of human life that the eminently dangerous act could cause.*’” *Id.* (emphasis in original). That approach, the Court explained, “would eliminate the unnecessary and confusing ‘reckless or wanton’ language, and removes the ‘with the knowledge that someone may be killed’ language that we have held materially misstates the required mental state.” *Id.*<sup>1</sup>

In light of the Supreme Court’s decision in *Coleman*, the State amends its proposed jury instruction regarding third-degree murder. In particular, the State requests that the jury be instructed in accordance with the language proposed in the footnote in *Coleman*. The State’s amendment to its proposed third-degree murder instruction is underlined below:

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<sup>1</sup> In *Coleman*, the Supreme Court did not address the separate question whether a defendant can be convicted of third-degree murder where the death-causing act was directed at a single person. The Court of Appeals addressed that question in *State v. Noor*, No. A19-1089, 2021 WL 317740 (Minn. App. 2021), and concluded that “a conviction for third-degree murder . . . may be sustained even if the death-causing act was directed at a single person,” *id.* at \*7. The Supreme Court granted a petition for review in *Noor* on March 1, 2021, and that case currently remains pending in the Supreme Court. *See State v. Noor*, No. A19-1089 (Minn. Mar. 1, 2021) (order).

**MURDER IN THE THIRD DEGREE—DEPRAVED MIND—ELEMENTS**

The elements of murder in the third degree, as alleged here, are:

**First**, the death of George Floyd must be proven.

**Second**, the defendant, acting alone or aided by others, caused the death of George Floyd.

“To cause” means to be a substantial causal factor in causing the death. The defendant is criminally liable for all the consequences of his actions that occur in the ordinary and natural course of events, including those consequences brought about by one or more intervening causes that were the natural result of the defendant's acts. The fact that other causes contribute to the death does not relieve the defendant of criminal liability.

However, the defendant is not criminally liable if a “superseding cause” caused the death. A “superseding cause” is a cause that comes after the defendant’s acts, alters the natural sequence of events, and produces a result that would not otherwise have occurred. An action that occurs before the defendant’s conduct and is not the sole cause of the death does not constitute a superseding cause.

**Third**, the defendant's intentional act that caused the death of George Floyd was eminently dangerous to other persons and was performed without regard for human life. Such an act may not have been specifically intended to cause death, and may not have been specifically directed at the particular person whose death occurred. But in order to find this element has been satisfied, ~~it must have been committed in a reckless or wanton manner with the knowledge that someone may be killed and with a heedless disregard of that happening~~ the defendant’s act must have been committed with an indifference to the loss of human life that the eminently dangerous act could cause.

**Fourth**, the defendant’s act took place on May 25, 2020 in Hennepin County.

The defendant is charged with committing this crime or intentionally aiding the commission of this crime. If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty of this charge. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty of this charge, unless you find the State has proven beyond a reasonable doubt that the defendant is liable for this crime committed by another person according to the aiding-and-abetting instruction below.

**CONCLUSION**

The State respectfully requests that the Court instruct the jury in accordance with the State's amended proposed jury instruction regarding third-degree murder.

Dated: April 1, 2021

Respectfully submitted,

KEITH ELLISON  
Attorney General  
State of Minnesota

/s/ Matthew Frank  
MATTHEW FRANK  
Assistant Attorney General  
Atty. Reg. No. 021940X

445 Minnesota Street, Suite 1400  
St. Paul, Minnesota 55101-2131  
(651) 757-1448 (Voice)  
(651) 297-4348 (Fax)  
matthew.frank@ag.state.mn.us

NEAL KUMAR KATYAL (*pro hac vice*)  
SUNDEEP IYER (*pro hac vice*)  
Special Attorneys for the State of Minnesota  
Hogan Lovells U.S. LLP  
555 Thirteenth Street, N.W.  
Washington, D.C. 20004  
(202) 637-5600 (Voice)  
neal.katyal@hoganlovells.com

ATTORNEYS FOR PLAINTIFF