

Members of the Jury:

Duties of Judge and Jury

It is your duty to decide the questions of fact in this case. It is my duty to give you the rules of law you must apply in arriving at your verdict.

You must follow and apply the rules of law as I give them to you, even if you believe the law is or should be different. Deciding questions of fact is your exclusive responsibility. In doing so, you must consider all the evidence you have heard and seen in this trial, and you must disregard anything you may have heard or seen elsewhere about this case.

I have not by these instructions, nor by any ruling or expression during the trial, intended to indicate my opinion regarding the facts or the outcome of this case. If I have said or done anything that would seem to indicate such an opinion, you are to disregard it.

Presumption of Innocence

The defendant is presumed innocent of the charges made. This presumption remains with the defendant unless and until the defendant has been proven guilty beyond a reasonable doubt. That the defendant has been brought before the court by the ordinary processes of the law and is on trial should not be considered by you as in any way suggesting guilt. The burden of proving guilt is on the State. The defendant does not have to prove innocence.

Proof Beyond a Reasonable Doubt

Proof beyond a reasonable doubt is such proof as ordinarily prudent men and women would act upon in their most important affairs. A reasonable doubt is a doubt based upon reason and common sense. It does not mean a fanciful or capricious doubt, nor does it mean beyond all possibility of doubt.

Unanimous Verdict—Duty of Jurors to Discuss

In order for you to return a verdict, whether guilty or not guilty, each juror must agree with that verdict. Your verdict must be unanimous.

You should discuss the case with one another, and deliberate with a view toward reaching agreement, if you can do so without violating your individual judgment. You should decide the case for yourself, but only after you have discussed the case with your fellow jurors and have carefully considered their views. You should not hesitate to reexamine your views and change your opinion if you become convinced they are erroneous, but you should not surrender your honest opinion simply because other jurors disagree or merely to reach a verdict.

Direct and Circumstantial Evidence

A fact may be proven by either direct or circumstantial evidence, or by both. The law

does not prefer one form of evidence over the other.

A fact is proven by direct evidence when, for example, it is proven by witnesses who testify to what they saw, heard, or experienced, or by physical evidence of the fact itself. A fact is proven by circumstantial evidence when its existence can be reasonably inferred from other facts proven in the case.

For example, the fact that “a person walked in the snow” could be proved by an eyewitness who testified directly that he or she saw a person walking in the snow; or it could be proved by circumstantial evidence of shoe-prints in the snow, from which it can be indirectly inferred that a person had walked in the snow.

Rulings on Objections to Evidence

During this trial I have ruled on objections to certain testimony and exhibits. You must not concern yourself with the reasons for the rulings since they are controlled by rules of law.

By receiving evidence to which objection was made, I did not intend to indicate the weight to be given such evidence. You are not to speculate as to possible answers to questions which I did not require to be answered. You are to disregard all evidence which I have ordered stricken or have told you to disregard.

Instructions to Be Considered as a Whole

You must consider these instructions as a whole and regard each instruction in the light of all the others. The order in which the instructions are given is of no significance. You are free to consider the issues in any order you wish.

Notes Taken by Jurors

You have been allowed to take notes during the trial. You may take those notes with you to the jury room. You should not consider these notes binding or conclusive, whether they are your notes or those of another juror. The notes should be used as an aid to your memory and not as a substitute for it. It is your recollection of the evidence that should control. You should disregard anything contrary to your recollection that may appear from your own notes or those of another juror. You should not give greater weight to a particular piece of evidence solely because it is referred to in a note taken by a juror.

Definitions of Words

During these instructions I may define certain words and phrases. If so, you are to use those definitions in your deliberations. If I have not defined a word or phrase, you should apply the common, ordinary meaning of that word or phrase.

Statements of Judge and Attorneys

Attorneys are officers of the court. It is their duty to make such objections as they deem proper and to argue fully their client's cause. However, the arguments or other remarks of an attorney are not evidence in this case.

If the attorneys have made, or if I have made or should make, any statement as to what the evidence is, which differs from your recollection of the evidence, then you should disregard the statement and rely solely on your own memory. If an attorney's argument contains any statement of the law which differs from the law which I give you, you should disregard the statement.

Evaluation of Testimony—Believability of Witnesses

You are the sole judges of whether a witness is to be believed and of the weight to be given a witness's testimony. There are no hard and fast rules to guide you in this respect. In determining believability and weight of testimony, you may take into consideration the witness's:

1. Interest or lack of interest in the outcome of the case;
2. Relationship to the parties;
3. Ability and opportunity to know, remember, and relate the facts;
4. Manner;
5. Age and experience;
6. Frankness and sincerity, or lack thereof;
7. Reasonableness or unreasonableness of their testimony in the light of all the other evidence in the case;
8. Any impeachment of the witness's testimony;
9. And any other factors that bear on believability and weight.

You should rely in the last analysis upon your own experience, good judgment, and common sense.

Expert Testimony

A witness who has special training, education or experience in a particular science, occupation or calling, is allowed to express an opinion as to certain facts. In determining the believability and the weight to be given such opinion evidence, you may consider, among other things:

1. The education, training, experience, knowledge and ability of the witness;
2. The reasons given for the opinion;

3. The sources of the information; and
4. The factors previously given for evaluating the testimony of a witness.

Such opinion evidence is entitled to neither more nor less consideration by you than any other evidence. You are to judge its believability and weight in the same manner as you will do for evaluation of other testimony.

Impeachment

In deciding the believability and weight to be given the testimony of a witness, you may consider evidence of a statement by or conduct of the witness on some prior occasion which is inconsistent with present testimony. Evidence of any prior inconsistent statement should be considered only for the purpose of testing the believability and weight of the witness's testimony. In the case of defendant, however, evidence of any statement which he may have made may be considered by you for all purposes.

Defendant's Right Not to Testify

The State must convince you by evidence beyond a reasonable doubt that the defendant is guilty of the crime charged. The defendant has no obligation to prove innocence. The defendant has the right not to testify. This right is guaranteed by the federal and state constitutions. You should not draw any inference from the fact that the defendant has not testified in this case.

Multiple Offenses Considered Separately

In this case, the defendant has been charged with multiple offenses. You should consider each offense, and the evidence pertaining to it, separately. The fact that you may find defendant guilty or not guilty as to one of the charged offenses should not control your verdict as to any other offense.

Transcripts of Audio Recordings

During trial, you have listened to audio recordings. Because of the nature and quality of the recordings, portions of the recordings may have been difficult to hear or understand. As a result, transcripts of the recordings were provided to you to assist you in listening to the recording, and were collected from you at the conclusion of the playing of the recording. If there is any difference between what you heard in the recording and what you read in the transcript, then you must rely on what you heard, not what you read. The transcript is not to control; rather, the recording which you heard is to control. The transcript will not be available to you during your deliberations.

Charts, Summaries, or Calculations Admitted into Evidence

The parties have introduced demonstrative exhibits in the form of charts, summaries, or calculations. This information is presented to assist you as an aid in your understanding of

witnesses' testimony here in court. If the chart, summary, or calculations are not consistent with the facts or figures shown by the evidence in this case, as you find them, you should disregard the chart, summary, or calculation and determine the facts from the underlying evidence. Additionally, because the charts, summaries, or calculations are based on the testimony, you should, therefore, give them only such weight as you think the underlying material deserves.

Count 1. Murder in the First Degree (Nicholas Brady)

The statutes of Minnesota provide that whoever, with premeditation and with the intent to effect the death of the person, causes the death of a human being is guilty of murder in the first degree.

The elements of murder in the first degree are:

First, the death of Nicholas Brady must be proven.

Second, the defendant caused the death of Nicholas Brady.

Third, the defendant acted with the intent to kill Nicholas Brady. In order to have had an intent to kill, the defendant must have acted with purpose of causing death or the defendant must have believed that the act would have that result.

Fourth, the defendant acted with premeditation. Premeditation means that the defendant considered, planned, prepared for, or determined to commit the act before the defendant committed it. Premeditation, being a process of the mind, is wholly subjective and hence not always susceptible to proof by direct evidence. It may be inferred from all the circumstances surrounding the event. It is not necessary that premeditation exist for any specific length of time. A premeditated decision to kill may be reached in a short period of time. However, an unconsidered or rash impulse, even though it includes an intent to kill, is not premeditated.

Fifth, the defendant's act took place on or about November 22, 2012, in Morrison County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty of murder in the first degree. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty of murder in the first degree.

Count 2. Murder in the First Degree (Haile Kifer)

The statutes of Minnesota provide that whoever, with premeditation and with the intent to effect the death of the person, causes the death of a human being is guilty of murder in the first degree.

The elements of murder in the first degree are:

First, the death of Haile Kifer must be proven.

Second, the defendant caused the death of Haile Kifer.

Third, the defendant acted with the intent to kill Haile Kifer. In order to have had an intent to kill, the defendant must have acted with purpose of causing death or the defendant must have believed that the act would have that result.

Fourth, the defendant acted with premeditation. Premeditation means that the defendant considered, planned, prepared for, or determined to commit the act before the defendant committed it. Premeditation, being a process of the mind, is wholly subjective and hence not always susceptible to proof by direct evidence. It may be inferred from all the circumstances surrounding the event. It is not necessary that premeditation exist for any specific length of time. A premeditated decision to kill may be reached in a short period of time. However, an unconsidered or rash impulse, even though it includes an intent to kill, is not premeditated.

Fifth, the defendant's act took place on or about November 22, 2012, in Morrison County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty of murder in the first degree. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty of murder in the first degree.

Count 3. Murder in the Second Degree (Nicholas Brady)

The statutes of Minnesota provide that whoever, with intent to cause the death of the person, but without premeditation, causes the death of a human being is guilty of murder in the second degree.

The elements of murder in the second degree are:

First, the death of Nicholas Brady must be proven.

Second, the defendant caused the death of Nicholas Brady.

Third, the defendant acted with the intent to kill Nicholas Brady. To find the defendant had an intent to kill, you must find that the defendant acted with the purpose of causing death, or believed that the act would have that result. Intent, being a process of the mind, is not always susceptible to proof by direct evidence, but may be inferred from all the circumstances surrounding the event. It is not necessary that the defendant's act be premeditated.

Fourth, the defendant's act took place on or about November 22, 2012, in Morrison County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty of murder in the second degree. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty of murder in the second degree.

Count 4. Murder in the Second Degree (Haile Kifer)

The statutes of Minnesota provide that whoever, with intent to cause the death of the person, but without premeditation, causes the death of a human being is guilty of murder in the second degree.

The elements of murder in the second degree are:

First, the death of Haile Kifer must be proven.

Second, the defendant caused the death of Haile Kifer.

Third, the defendant acted with the intent to kill Haile Kifer. To find the defendant had an intent to kill, you must find that the defendant acted with the purpose of causing death, or believed that the act would have that result. Intent, being a process of the mind, is not always susceptible to proof by direct evidence, but may be inferred from all the circumstances surrounding the event. It is not necessary that the defendant's act be premeditated.

Fourth, the defendant's act took place on or about November 22, 2012, in Morrison County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty of murder in the second degree. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty of murder in the second degree.

Self-Defense

No crime is committed when a person takes the life of another person, even intentionally, if the defendant's action was taken in resisting or preventing an offense the defendant reasonably believed exposed the defendant to death or great bodily harm.

In order for a killing to be justified for this reason, three conditions must be met.

First, the killing must have been done in the belief that it was necessary to avert death or great bodily harm.

Second, the judgment of the defendant as to the gravity of the peril to which he was exposed must have been reasonable under the circumstances.

Third, the defendant's election to defend must have been such as a reasonable person would have made in light of the danger perceived.

All three conditions must be met. The defendant has no duty to retreat from his dwelling. The State has the burden of proving beyond a reasonable doubt that the defendant did not act in self-defense.

Defense of Dwelling

No crime is committed when a person takes the life of another person, even intentionally, if the defendant's action was taken in preventing the commission of a felony in the defendant's place of abode.

In order for a killing to be justified for this reason, three conditions must be met.

First, the defendant's action was done to prevent the commission of a felony in the dwelling. In this case, the parties stipulate that Nicholas Brady and Haile Kifer were committing, or intending to commit, felony burglary in the defendant's dwelling.

Second, the defendant's judgment as to the gravity of the situation was reasonable under the circumstances.

Third, the defendant's election to defend his dwelling was such as a reasonable person would have made in light of the danger perceived.

All three conditions must be met. The defendant has no duty to retreat. The State has the burden of proving beyond a reasonable doubt that the defendant did not act in defense of dwelling.

Verdict Form

A verdict form indicating the charges has been prepared for your use in this trial. The verdict form is complete in itself. There is nothing for you to add or subtract. When you have reached your verdict, have the verdict form signed and dated by your foreperson. Your verdict must be unanimous.

I would like to go over the verdict form with you at this time.

[Reading of verdict form.]

If in considering a charge against the defendant, you find that the State has sustained its burden of proving the defendant guilty beyond a reasonable doubt, you will mark guilty on the verdict form as to the charge.

If in considering a charge against the defendant, you find that the State has failed to sustain its burden of proving the defendant guilty beyond a reasonable doubt, you will mark not guilty on the verdict form as to the charge.

Statements of Law by Attorneys

Attorneys are permitted to comment on the law in their final arguments. However, if any argument included statements of law that were different from what I told you the law is, you must disregard such statements. You must decide the case on the law as I give it to you

whether you agree with it or not, and whether or not you think the law is or should be otherwise.

[Closing arguments]

When you retire to the jury room, you will select one of your number to act as foreperson to preside over your deliberations.

There are no set rules or procedures that you are to follow. Go about your deliberations as you think best.

Unanimous Verdict—Duty of Jurors to Discuss

In order for you to return a verdict, whether guilty or not guilty, each juror must agree with the verdict. Your verdict must be unanimous.

You should discuss the case with one another, and deliberate with a view to reaching agreement, if you can do so without violence to your individual judgment. You should decide the case for yourself, but only after you have discussed the case with your fellow jurors and have carefully considered their views. You should not hesitate to reexamine your views and change your opinion if you become convinced they are erroneous but you should not surrender your honest opinion simply because other jurors disagree or merely in order to reach a verdict.

Sympathy, Prejudice, Emotion

You must not permit sympathy, prejudice or emotion to influence your verdict. You should base your verdict entirely upon the evidence which has been received in court, and upon the law which I have given you in these instructions.

Possible Consequences of Decision

You are to concern yourselves only with whether or not the defendant is guilty of the offenses charged. You are not to consider the possible consequences of your decision. Sentencing, if there is a finding of guilt, is the sole responsibility of the judge.

Use of Exhibits

You will be permitted to take with you to the jury room any exhibits which have been received in evidence, and you may consider them in the course of your deliberations.

Bailiffs' Responsibilities

During your deliberations, the bailiffs are charged with keeping you together and secluding you from other people. You may talk with the bailiffs about scheduling. For example, you may talk with the bailiffs about when you might like to take a break for a meal and whether you would like to go out for that meal or simply order in; but you may not discuss the evidence, these instructions, or other substantive issues in this case with the bailiffs.

Once you have arrived at your verdict, you should then notify the bailiff that you have arrived at a decision; but you are to keep your verdict secret until it is received in Court.

Concluding Remarks

The court and the parties appreciate the patience you have shown during this trial and thank you in advance for the diligence you will use to assess the evidence. The final test of the quality of your service will be in the verdict which you as a jury return to this court. You make a definite contribution to the efficient administration of justice if you arrive at a just and proper verdict.