

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

State of Minnesota,

Case No.: 27-CR-18-6859

Plaintiff,

v.

**DEFENDANT NOOR'S
PROPOSED JURY INSTRUCTIONS**

Mohamed Mohamed Noor,

Defendant.

**CRIMJIG 3.07
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.

**CRIMJIG 3.01
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.

CRIMJIG 3.02
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.

CRIMJIG 3.03 (Modified)
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. *If the jury views the evidence in the case as reasonably permitting either of two conclusions—one of innocence, the other of guilt—the jury must, of course adopt the conclusion of innocence.*

State v. Al-Naseer, 788 N.W.2d 469, 473 (Minn. 2010); 1A Fed. Jury Prac. & Instr. § 12:10 (6th ed.).

CRIMJIG 3.05
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.

CRIMJIG 3.06
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 evidence.

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

CRIMJIG 3.11 STATEMENTS OF JUDGE AND ATTORNEYS

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

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

CRIMJIG 3.09 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.

CRIMJIG 3.12 EVALUATION OF TESTIMONY – BELIEVABILITY OF WITNESS

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 good judgment and common sense.

CRIMJIG 3.13 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 weight to be given such opinion evidence, you may consider:

[1] The education, training, experience, knowledge, and ability of the witness,

[2] The reasons given for the opinion,

[3] The sources of the information,

[4] Factors already given you for evaluating the testimony of any witness.

Such opinion evidence is entitled to neither more nor less consideration by you than any other evidence.

CRIMJIG 3.15 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 that is inconsistent with present testimony. Evidence of any prior inconsistent statement or conduct should be considered only to test the believability and weight of the witness's testimony. In the case of the defendant, however, evidence of any statement he may have made may be considered by you for all purposes.

CRIMJIG 3.21
EVIDENCE OF CHARACTER

In this case you have heard evidence as to the general character and character for honesty of the defendant. You should consider such evidence with all the other evidence in the case in determining whether or not the prosecution has proven the defendant's guilt beyond a reasonable doubt.

VERDICT FORMS

You will be provided with three sets of verdict forms. For each alleged offense that you are to consider, you will receive two verdict forms, one indicating a finding of Not Guilty and the other indicating a finding of Guilty. For each of the alleged offenses you will have to return the form indicating your finding, signed by the presiding juror.

With regard to each of the alleged offenses, I will now give you the legal definition of the offense and the elements of each offense that the State must prove.

CRIMJIG 3.23
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. 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.

CRIMJIG 3.29
DEFINITIONS OF WORDS

During these instructions I have defined 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.

COUNT 1

CRIMJIG 11.24
Murder in the Second Degree—Defined

Under the laws of Minnesota, a person intentionally causing the death of another person, but without premeditation, is guilty of murder in the second degree.

CRIMJIG 11.25
Murder in the Second Degree—Elements

The elements of murder in the second degree as alleged in this case are:

First, the death of Justine Rusczyk must be proven.

Second, the defendant caused the death of Justine Rusczyk.

Third, the defendant acted with the intent to effect the death of Justine Rusczyk. To find the defendant had an intent to effect the death of Justine Rusczyk, you must find the defendant acted with the purpose of causing death, or believed 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 July 15, 2017, in Hennepin County.

If you find each of these elements has been proven beyond a reasonable doubt, the defendant is guilty of this charge. If you find any element has not been proven beyond a reasonable doubt, the defendant is not guilty of this charge.

COUNT 2

CRIMJIG 11.37
Murder in the Third Degree—Depraved Mind—Defined

Under Minnesota law, a person causing the death of another by perpetrating an act eminently dangerous to others and evincing a depraved mind, without regard for human life, but without intent to cause the death of any person, is guilty of murder in the third degree.

CRIMJIG 11.38 (*Modified*)
Murder in the Third Degree—Depraved Mind—Elements

The elements of murder in the third degree as alleged in this case are:

First, the death of Justine Rusczyk must be proven.

Second, the defendant caused the death of Justine Rusczyk.

Third, the defendant's intentional act, which caused the death of Justine Rusczyk, was eminently dangerous to human beings and was performed without regard for human life. Such an act may not be specifically intended to cause death, and may not be specifically directed at the particular person whose death occurred, but it is committed in a reckless or wanton manner with the knowledge that someone may be killed and with a heedless disregard of that happening. *Murder in the third degree cannot occur where the defendant's actions were focused on a specific person.*

State v. Barnes, 713 N.W.2d 325, 331 (Minn. 2006)

Fourth, the defendant's act took place on or about July 15, 2017, in Hennepin County.

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.

COUNT 3

CRIMJIG 11.55 MANSLAUGHTER IN THE SECOND DEGREE - DEFINED

Under Minnesota law, whoever, by culpable negligence, whereby he creates an unreasonable risk and consciously takes the chance of causing death or great bodily harm to another person, causes the death of another is guilty of manslaughter in the second degree.

CRIMJIG 11.56 (Modified) MANSLAUGHTER IN THE SECOND DEGREE - ELEMENTS

The elements of manslaughter in the second degree are:

First, the death of Justine Rusczyk must be proven.

Second, the defendant caused the death of Justine Rusczyk by culpable negligence, whereby the defendant created an unreasonable risk and consciously took a chance of causing death or great bodily harm. "Culpable negligence" is intentional conduct that the defendant may not have intended to be harmful, but that an ordinary and reasonably prudent

person would recognize as involving a strong probability of injury to others. *Culpable negligence is more than ordinary negligence. It is more than gross negligence. It is gross negligence coupled with an element of recklessness. It is a conscious disregarding of a substantial and unjustifiable risk of which one actually is aware, and not a disregarding of a risk of which one should be aware.*

State v. Frost, 342 N.W.2d 317, 320 (Minn. 1983).

“Great bodily harm” means bodily injury that creates a high probability of death, or causes serious permanent disfigurement, or causes a permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily harm.

Third, the defendant's act took place on July 15, 2017, in Hennepin County.

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

CRIMJIG 7.11 (Modified)
Authorized Use of Deadly Force by Peace Officers

The statutes of Minnesota provide that no crime is committed, and a peace officer's actions are justified, only when the peace officer uses deadly force in the line of duty when necessary to protect the peace officer or another from apparent death or great bodily harm.

“Deadly force” means force which the peace officer uses with the purpose of causing, or which the peace officer should reasonably know creates a substantial risk of causing death or great bodily harm.

As to each count or defense, the kind and degree of force a peace officer may lawfully use is limited by what a reasonable peace 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 actions of the peace officer were reasonable, you 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.

“Apparent” means “as perceived or believed subjectively by the officer.” For purposes of this statute, if an officer is ultimately mistaken as to his apparent belief, the fact that he

may have been mistaken is of no consequence, so long as the officer perceived that a danger of death or great bodily harm existed at the time of his actions.

The “reasonableness” of a particular use of force must be judged from the perspective of a reasonable officer at the moment he is on the scene, rather than with the 20/20 vision of hindsight. The reasonableness inquiry extends only to those facts known to the officer at the precise moment the officer acted with force. The determination of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments about the amount of force that is necessary in a particular situation under circumstances that are tense, uncertain, and rapidly evolving.

Schulz v. Long, 44 F.3d 643 (8th Cir. 1995)

CRIMJIG 7.06 SELF DEFENSE – GENERALLY

The defendant asserts the defense of self-defense.

“Self-defense” means that the defendant used reasonable force against Justine Rusczyk to resist or aid another in an offense against the defendant or another, and such an offense was being committed or the defendant reasonably believed that it was.

It is lawful for a person, who is resisting an offense against his person or another and who has reasonable grounds to believe that bodily injury is about to be inflicted upon the person or another, to defend from an attack. In doing so, the person may use all force and means that the person reasonably believes to be necessary and that would appear to a reasonable person, in similar circumstances, to be necessary to prevent an injury that appears to be imminent.

The kind and degree of force a person may lawfully use in self-defense is limited by what a reasonable person in the same situation would believe to be necessary. Any use of force beyond that is regarded by the law as excessive.

The legal excuse of self-defense is available only to those who act honestly and in good faith. This includes the duty to retreat or avoid the danger if reasonably possible.

The defendant is not guilty of a crime if he acted in self-defense.

The State has the burden of proving beyond a reasonable doubt that the defendant did not act in self-defense.

CRIMJIG 7.05
SELF DEFENSE – JUSTIFIABLE TAKING OF LIFE

The defendant asserts the defense of the justifiable taking of a life.

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

In order for the taking of a life to be justified for this reason, four conditions must be met:

First, the defendant's act 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 or another 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 and the existence of any alternative way of avoiding the peril.

Fourth, there was no reasonable possibility of retreat to avoid the danger.

All four conditions must be met.

The State has the burden of proving beyond a reasonable doubt that the defendant did not act in self-defense.

CRIMJIG 3.01
**DUTIES OF JURORS: SELECTION OF FOREPERSON; UNANIMOUS
VERDICT; DELIBERATION; RETURN OF VERDICT**

When you return to the jury room to discuss this case you must select a jury member to be foreperson. That person will lead your deliberations. The opinions of the individual you select do not carry any greater significance than those of any other juror.

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.

The foreperson must date and sign the verdict form when you have finished your deliberations and reached a verdict.

When you agree on a verdict, notify the (bailiff) (jury attendant).

You will return to the courtroom where your verdict will be received and read out loud in your presence.

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Defendant reserves the right to propose additional jury instructions based upon the evidence received at trial.

Dated: February 13, 2019.

Respectfully submitted,

s/ Thomas C. Plunkett
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