

STATE OF MINNESOTA  
COUNTY OF WASHINGTON

DISTRICT COURT  
TENTH JUDICIAL DISTRICT  
Court File No. 82-CR-19-2887

---

State of Minnesota,

Plaintiff,

vs.

**DEFENDANT'S REQUESTED  
JURY INSTRUCTIONS**

Brian Jeffrey Krook,

Defendant.

---

The Defendant, Deputy Brian Jeffrey Krook, through and by his lawyers,  
Kevin Short and Paul Engh, request the following instructions be given to the jury.

Dated: February 24, 2020

Respectfully submitted,

/s/ Paul Engh

---

Paul Engh # 134685  
Suite 260  
630 Third Avenue South  
Minneapolis, MN 55402  
612.252-1100

Kevin Short # 100572  
Suite 3260  
150 South Fifth Street  
Minneapolis, MN 55402  
612.333.6006

Lawyers for Deputy Brian Krook

## **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 3.07

## **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 3.01

## **PRESUMPTION OF INNOCENCE**

The defendant is presumed innocent of the charge 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 3.02

## **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 beyond all possibility of doubt, or a doubt based upon speculation or irrelevant details.

CRIMJIG 3.03

## **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 3.05

## **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 3.06

## **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 3.11

## **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 3.09

## **EVALUATION OF TESTIMONY – BELIEVABILITY OF A 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 3.12

### **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 to 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 3.13

**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 3.15

**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.

## CRIMJIG 3.21

**DEFINITION OF WORDS**

In 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.

**MANSLAUGHTER IN THE SECOND DEGREE - DEFINED**

Under Minnesota law, whoever, by culpable negligence, 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.

Minn. Stat. 609.205

## **MANSLAUGHTER IN THE SECOND DEGREE - ELEMENTS**

The elements of manslaughter in the second degree are:

**First**, the death of Benjamin Evans must be proven.

**Second**, the defendant caused the death of Benjamin Evans 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 disregard 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.

“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 April 12 2018, in Washington 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.

State v. Frost, 342 N.W.2d 317, 320 (Minn. 1983); CRIMJIG 11.56.

## CAUSATION

“Causes” or “proximate cause” means that the defendant's acts were a substantial factor in causing the death of Benjamin Evans. The jury must consider whether the act of the defendant was the proximate cause of the death of the victim without the intervention of an efficient independent force in which the defendant did not participate or which he could not reasonably have foreseen.

State v. McCormick, 835 N.W.2d 498, 508 (Minn. App. 2013); CRIMJIG 3.31.

A “superseding cause” is a cause which comes after the original event and which alters the natural sequence of events and produces a result which would not otherwise have occurred. A superseding cause is a separate act that operates as an independent force to produce Mr. Evans’ death. A superseding cause has four elements: (1) the harm occurred after the original negligence; (2) the accident must not have been brought about by the negligence; (3) it must have actively worked to bring about a result which would not otherwise have followed from the original negligence; and (4) it must not have been reasonably foreseeable by the original wrongdoer. The State must prove there was not an intervention of an efficient independent force in which Deputy Krook did not participate or which he could not reasonably have foreseen.

State v. Smith, 819 N.W.2d 724, 729 (Minn. App. 2012); CRIMJIG 3.31.

## AUTHORIZED USE OF FORCE BY POLICE OFFICERS

The statutes of the State of Minnesota provide that no crime is committed, and a peace officer’s actions are justified, 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.

The State has the burden of proving beyond a reasonable doubt that the defendant was not authorized to use deadly force.

Minn. Stat. 609.066

The statutes of Minnesota also provide that no crime is committed, and the peace officer's actions are justified, when the peace officer uses deadly force to effect the arrest or capture, or prevent the escape, of a person whom the officer knows or has reasonable grounds to believe has committed or attempted to commit a felony if the officer reasonably believes that the person will cause death or great bodily harm if the person's apprehension is delayed.

"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.

It is a felony for an individual point a fire arm at a law enforcement official while engaged in the performance of an official duty, defined as a first degree assault.

Minn. Stat. 609.221, Subd. 2; Omnibus Order, p. 3, para. 7 (noting that Evans' "gun held to his head was aligned in the direction of the deputies near Deputy Ramirez's squad car, so that a fired bullet traveling through or past the head, if not deflected or spent, would continue toward the officers").

The State has the burden of proving beyond a reasonable doubt that the defendant was not authorized to use deadly force when confronted with evidence of Mr. Evans' first degree assault.

Minn. Stat. Sec. 609.066

### **REASONABLE USE OF FORCE**

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 Deputy Krook, and not the other officials on the scene or their perception or preference of what should have occurred, at the precise moment Deputy Krook 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.

In considering the reasonableness of the use of force, the jury may consider whether the force was applied in good faith by the defendant.

Graham v. Connor, 490 U.S. 386, 396 (1989).

### **REASONABLENESS DEFINED**

When considering the reasonableness of Deputy Krook's use of force, you are instructed that he and his colleagues

1) Need not have given a warning to Mr. Evans, to the effect that he would be shot if he did not abandon his firearm;

2) Need not have obtained cover in the form of a shield, nor was there a requirement that Deputy Krook stand behind a police car;

3) Need not have continued negotiations past the opening moments when Mr. Evans was first found on the street;

4) Need not have believed Mr. Evans statements, to the effect that he would not harm the officers at the scene;

5) And Deputy Krook himself need not have agreed with his colleagues that the negotiations should continue, nor is there a requirement that he share their perceptions.

1: White v. Pauly, 137 S.Ct. 548, 552 (2017);

2 and 3: Kisela v. Hughes, 138 S.Ct. 1148, 1151 (2018); City and County of San Francisco v. Sheehan, 135 S.Ct. 1765 (2015);

4. Testimony of Officers at the scene, and Deputy Krook.

5. Pauly, 137 S.Ct. at 550

### **STATUTORY REQUIREMENT TO RENDER AID**

When a law enforcement officer “discharges a firearm and knows or has reason to know that the discharged has caused bodily harm to another person,” he is required by statute to “render immediate reasonable assistant to the injured person.” His failure to render aid is a felony offense.

Minn. Stat. 609.662, Subd. 2 (a)(2)

### **NEGLIGENCE OF DECEDENT**

Mr. Evans’ negligence is not a defense in a criminal case. However, in considering whether or not the defendant exercised the care of a reasonably prudent peace officer or failed to exercise such care, the jury may take into consideration the conduct of Mr. Evans and all of the other circumstances that existed at the time the incident occurred. In other words, if there was any negligence on the part of the Mr. Evans, this can be considered by you only insofar as it tends to show that the defendant was not himself negligent or that his acts did not constitute the proximate cause of the accident. You may consider Mr. Evans’ conduct if it contributed to his death.

State v. Crace, 289 N.W.2d 54, n. 5 (1979); State v. Schaub, 44 N.W.2d 61, 64 (Minn. 1950)(the victim’s conduct, if negligent, may be considered as an intervening factor).

### **CARRYING A PISTOL WHILE UNDER THE INFLUENCE OF ALCOHOL**

Under Minnesota law, a person may not carry a pistol on or about the person’s clothes or person in a public place when the person is under the influence of alcohol. An individual is impaired by his consumption of alcohol if his BAC reading exceeds .08 BAC.

Minn. Stat. Sec. 624.7142, subd. 1 (4); Minn. Stat. Sec. 169A.20, subd. 1 (5).

## **ADDITIONAL FORMS OF MR. EVANS' NEGLIGENCE**

As noted, it is a felony, and unreasonable, for a person to point a firearm at a law enforcement official while that official is engaged in his or her official duties. It does not matter at which officer the gun is pointed. Minn. Stat. 609.221, Subd. 2.

It is also a crime, and unreasonable, to brandish, display or threaten the use of a firearm during an assault. Minn. Stat. 609.11, Subd. 5.

It is also a crime, and unreasonable, for a person to interfere with a police officers engaged in their official duties by not following orders. Minn. Stat. Sec. 609.50 prohibits an individual from resisting or interfering with a law enforcement officer while that officer is engage in the performance of his or her official duties; State v. Krawsky, 426 N.W.2d 875, 877 (Minn. App. 1988)(describing the crime).

As well, it is a crime, and unreasonable, for an individual to engage in disorderly conduct. Minn. Stat. Sec. 609.72 prohibits an individual from engaging in “noisy conduct” that “reasonably arouse[s] alarm in others . . .”

## **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 the 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.

### **VERDICT FORMS**

You will be provided with two verdict forms, one indicating a finding of Not Guilty and the other indicating a finding of Guilty. You will have to return one of the forms reflecting your verdict, signed by the presiding juror.

CRIMJIG 3.04

### **FINAL INSTRUCTION: DUTY OF THE JURY**

Finally, you must remember that the authority vested in you is not an arbitrary power, but one that must be exercised with sincere judgment, sound discretion, and in accordance with the facts as you find them from the evidence and the law that I have just given to you. The responsibility that rests upon you should be borne courageously and without fear or favor. Be fair and act honestly. Deliberate without prejudice, bias or sympathy and without regard to your own personal likes or dislikes. We will await your verdict.