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APR 19 2021

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF HENNEPIN FOURTH JUDICIAL DISTRICT

STATE OF MINNESOTA,

Plaintiff, **JURY INSTRUCTIONS**

vs.

DEREK MICHAEL CHAUVIN, **Court File No. 27-CR-20-12646**

Defendant.

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 have now heard the evidence and soon you will hear the arguments of counsel. At this time, I will instruct you in the law applicable to this case. 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. You have each been given a copy of these instructions to follow along as I read and you may take your copy with you when you retire to the jury room. Nevertheless, you should listen carefully and attentively as I read them to you now. Please note that the titles of the individual sections of these instructions are not part of the instructions but merely placed as headings to assist you in finding a topic.

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.

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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.

Presumption of Innocence

The Defendant is presumed innocent of the charges made. This presumption remains with the Defendant unless and until he 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 his 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.

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, if a person watches deer crossing a snow-covered field, the person has direct evidence of deer walking in the field because the person sees it. If the person does not see deer, but finds deer tracks in the snow, the deer tracks are circumstantial evidence that deer walked in the field because that factual conclusion can reasonably be inferred from the tracks found in the snow.

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.

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If the attorneys or I have made or should make any statement as to what the evidence is that 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 attorney's statement.

Multiple Charges to be Considered Separately

The State has brought three charges, or counts, against the Defendant. Each count charges a separate and distinct offense. You must consider the evidence applicable to each count as though it were the only accusation before you for consideration, and you must state your findings as to each count in a separate verdict, uninfluenced by the fact that your verdict as to any other count or counts is in favor of, or against, the Defendant. The Defendant may be found "guilty" or "not guilty" of any or all of the offenses charged, depending upon the evidence and the weight you give to it under the court's instructions.

Definitions of Words and Phrases

I am about to instruct you on the law you are to apply to the charges and the defense. Before doing so, however, I am going to define a few words and phrases that appear more than once in the elements of the charges and the defense that follow. The words and phrases being defined are **bolded** in the written copy of these instructions you will be receiving. You should use these definitions for these words and phrases in your deliberations.

"**Attempted**" means that the Defendant did an act which was a substantial step toward, and more than mere preparation for, causing the result, and that the Defendant did that act with intent to cause that result.

There are several forms of **bodily harm** relevant to some of the charges or the defense:

(1) "**Bodily harm**" means physical pain or injury, illness, or any impairment of a person's physical condition.

(2) "**Substantial bodily harm**" means bodily harm that involves a temporary but substantial disfigurement, that causes a temporary but substantial loss or impairment of the function of any bodily member or organ, or that causes a fracture of any bodily member.

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

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"**To cause death,**" "**causing the death**" or "**caused the death**" means that the Defendant's act or acts were a substantial causal factor in causing the death of George Floyd. 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, if such intervening causes 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 is the sole cause of a result that would not otherwise have occurred.

"**To know,**" "**to have knowledge,**" or "**knew**" requires only that the Defendant believes that the specified facts exist.

"**Intentionally**" or "**intentional**" means that the Defendant either has a purpose to do the thing or cause the result specified, or believes that the act performed, if successful, will cause the result. In addition, the Defendant must have knowledge of those facts that are necessary to make his conduct criminal and that are set forth after the word "intentionally" or "intentional."

"**With intent that,**" "**with intent to,**" or "**intended**" means that the Defendant either has a purpose to do the thing or cause the result specified, or believes that the act performed, if successful, will cause the result. It is not necessary that the Defendant have this intent in advance; the necessary intent can develop during the commission of the act.

"**Police officer**" means an employee of a law enforcement agency who is licensed by the Board of Peace Officer Standards and Training, charged with the prevention and detection of crime and the enforcement of the general criminal laws of the State of Minnesota and who has the full power of arrest. A law enforcement agency is a unit of state or local government that is authorized by law to grant full powers of arrest and to charge a person with the duties of preventing and detecting crime and enforcing the general criminal laws of the State of Minnesota. The Minneapolis Police Department is a law enforcement agency for these purposes.

The definition of any word or phrase with a specific legal meaning that appears only once in the elements or the defense will be defined where it appears later in these instructions.

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COUNT I

The Defendant is charged in Count I with Murder in the Second Degree in connection with the death of George Floyd.

Definition

Under Minnesota law, a person causing the death of another person, without intent to cause the death of any person, while committing or attempting to commit a felony offense is guilty of the crime of Murder in the Second Degree.

The Defendant is charged with committing this crime or intentionally aiding the commission of this crime.

Elements

The elements of the crime of Murder in the Second Degree while committing a felony are:

First Element: The death of George Floyd must be proven.

Second Element: The Defendant **caused the death** of George Floyd.

Third Element: The Defendant, at the time of **causing the death** of George Floyd, was committing or **attempting** to commit the felony offense of Assault in the Third Degree. It is not necessary for the State to prove the Defendant had an **intent to** kill George Floyd, but it must prove that the Defendant committed or **attempted** to commit the underlying felony of Assault in the Third Degree.

There are two elements of Assault in the Third Degree:

(1) Defendant assaulted George Floyd.

"Assault" is the intentional infliction of **bodily harm** upon another or the attempt to inflict **bodily harm** upon another. The intentional infliction of **bodily harm** requires proof that the Defendant **intentionally** applied unlawful force to another person without that person's consent and that this act resulted in **bodily harm**.

(2) Defendant inflicted **substantial bodily harm** on George Floyd. It is not necessary for the State to prove that the Defendant **intended** to inflict **substantial bodily harm**, or **knew** that his actions would inflict **substantial**

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bodily harm, only that the Defendant **intended** to commit the assault and that George Floyd sustained **substantial bodily harm** as a result of the assault.

Fourth Element: The Defendant's act took place on or about May 25, 2020 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 of these elements 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 or persons according to the instruction below on page 8 under the heading "Liability for Crimes of Another."

COUNT II

The Defendant is charged in Count II with Murder in the Third Degree in connection with the death of George Floyd.

Definition

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.

The Defendant is charged with committing this crime or intentionally aiding the commission of this crime.

Elements

The elements of the crime of Murder in the Third Degree are:

First Element: The death of George Floyd must be proven.

Second Element: The Defendant **caused the death** of George Floyd.

Third Element: The Defendant **caused the death** of George Floyd by an **intentional** act that was eminently dangerous to other persons. A person commits an act eminently dangerous to others when the act is highly likely to **cause death**.

Fourth Element: Defendant acted with a mental state consisting of reckless disregard for human life. The Defendant's 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 it

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must have been committed with a conscious indifference to the loss of life that the eminently dangerous act could **cause**.

Fifth Element: The Defendant's act took place on or about May 25, 2020 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 of these elements 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 or persons according to the instruction below on page 8 under the heading "Liability for Crimes of Another."

COUNT III

The Defendant is charged in Count III with Manslaughter in the Second Degree in connection with the death of George Floyd.

Definition

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.

The Defendant is charged with committing this crime or intentionally aiding the commission of this crime.

Elements

The elements of Manslaughter in the Second Degree are:

First Element: The death of George Floyd must be proven.

Second Element: The Defendant **caused the death** of George Floyd, 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.

Third Element: The Defendant's act took place on or about May 25, 2020 in Hennepin County.

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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 of these elements 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 or persons according to the following instruction on "Liability for Crimes of Another."

LIABILITY FOR CRIMES OF ANOTHER

The following instructions apply to all three of the charges I have just given you.

Definition

The Defendant is guilty of a crime committed by another person or persons only if the Defendant has played an intentional role in aiding the commission of that crime and made no reasonable effort to prevent the crime before it was committed. "Intentional role" includes intentionally aiding, advising, hiring, counseling, conspiring with, or procuring another to commit the crime.

Elements

The Defendant's presence or actions constitute intentionally aiding only if:

First, the Defendant **knew** another person or persons were going to commit or were committing a crime.

Second, the Defendant **intended** that his presence or actions aid the commission of that crime.

If the Defendant **intentionally** aided another person or persons in committing a crime, or intentionally advised, hired, counseled, conspired with, or otherwise procured the other person or persons to commit it, the Defendant is also guilty of any other crime the other person or persons commit while trying to commit the intended crime, if that other crime was reasonably foreseeable to the Defendant as a probable consequence of trying to commit the intended crime.

The Defendant is guilty of the crime under this theory of intentionally aiding in the commission of a crime by another person or persons only if the other person or persons commit that crime. The Defendant is not guilty for aiding, advising, hiring, counseling, conspiring, or otherwise procuring the commission of one of the charged crimes unless that crime is actually committed.

The State has the burden of proving beyond a reasonable doubt that the Defendant **intentionally** aided another person in committing the charged crime.

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Defense: Authorized Use of Force by a Police Officer

No crime is committed if a **police officer's** actions were justified by the **police officer's** use of reasonable force in the line of duty in effecting a lawful arrest or preventing an escape from custody.

The kind and degree of force a **police officer** may lawfully use in executing his duties is limited by what a reasonable **police officer** in the same situation would believe to be necessary. Any use of force beyond that is not reasonable. To determine if the actions of the **police officer** were reasonable, you must look at those facts which a reasonable officer in the same situation would have known at the precise moment the officer acted with force. You must decide whether the officer's actions were objectively reasonable in light of the totality of the facts and circumstances confronting the officer and without regard to the officer's own subjective state of mind, intentions, or motivations.

The Defendant is not guilty of a crime if he used force as authorized by law.

To prove guilt, the State must prove beyond a reasonable doubt that the Defendant's use of force was not authorized by law.

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:

Interest or lack of interest in the outcome of the case

Relationship to the parties

Ability and opportunity to know, remember, and relate the facts

Manner

Age and experience

Frankness and sincerity, or lack thereof

Reasonableness or unreasonableness of their testimony in the light of all the other evidence in the case

Any impeachment of the witness's testimony

And any other factors that bear on believability and weight

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

The education, training, experience, knowledge, and ability of the witness.

The reasons given for the opinion.

The sources of the information.

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.

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.

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 the Defendant may have made may be considered by you for all purposes.

Evidence of Other Occurrences Involving George Floyd

You have heard evidence of an occurrence involving George Floyd on May 6, 2019. As I told you at the time this evidence was offered, it was admitted solely for the limited purpose of showing what effects the ingestion of opioids may or may not have had on the physical

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wellbeing of George Floyd. This evidence is not to be used as evidence of the character of George Floyd.

Demonstrative Evidence

During the testimony of some witnesses, the parties introduced demonstrative exhibits in the form of charts, summaries, and animated videos. This information was presented to assist you as an aid in your understanding of the witness's testimony and to help explain the facts disclosed by the records, other documents, testimony and other evidence that was received during the trial. If any chart, summary, or animated video is not consistent with the facts or figures shown by the evidence in this case, as you find them, you should disregard the chart or summary or animated video and determine the facts from the underlying evidence.

Definition of Words

Earlier during these instructions I defined certain words and phrases and 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.

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 and statements of attorneys that I have ordered stricken or have told you to disregard.

[CLOSING ARGUMENTS BY PARTIES]

Jurors May Return for Information

If you have a question about any part of the testimony or any legal question after you have retired for your deliberation, please address it to me in writing, and give it to the sheriff's deputy with the juror number of your foreperson on the note. It will take some time to answer any question because I will have to consult with the lawyers and receive their input before answering your question. I do not say this to discourage questions, but only to advise you that it will take some time to provide you with an answer.

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As I told you, you will take with you into the jury room copies of the instructions that I am reading to you. The lawyers and I have determined that these instructions contain all the laws that are necessary for you to know in order to decide this case.

I cannot give you a trial transcript. No such transcript exists. We count on the jury to rely on its collective memory.

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.

Implicit Bias

We all have feelings, assumptions, perceptions, fears, and stereotypes about others. Some biases we are aware of and others we might not be fully aware of, which is why they are called "implicit" or "unconscious biases." No matter how unbiased we think we are, our brains are hardwired to make unconscious decisions. We look at others, and filter what they say, through the lens of our own personal experience and background. Because we all do this, we often see life – and evaluate evidence – in a way that tends to favor people who are like ourselves or who have had life experiences like our own. We can also have biases about people like ourselves. One common example is the automatic association of male with career and female with family. Bias can affect our thoughts, how we remember what we see and hear, whom we believe or disbelieve, and how we make important decisions.

As jurors you are being asked to make an important decision in this case. You must:

1. Take the time you need to reflect carefully and thoughtfully about the evidence.

2. Think about why you are making the decision you are making and examine it for bias. Reconsider your first impressions of the people and the evidence in this case. If the people involved in this case were from different backgrounds, for example, richer or poorer, more or less educated, older or younger, or of a different gender, gender identity, race, religion, or sexual orientation, would you still view them, and the evidence, the same way?

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3. Listen to one another. You must carefully evaluate the evidence and resist and help each other resist any urge to reach a verdict influenced by bias for or against any party or witness. Each of you have different backgrounds and will be viewing this case in light of your own insights, assumptions, and biases. Listening to different perspectives may help you to better identify the possible effects these hidden biases may have on decision-making.

4. Resist jumping to conclusions based on personal likes or dislikes, generalizations, gut feelings, prejudices, sympathies, stereotypes, or unconscious biases.

The law demands that you make a fair decision, based solely on the evidence, your individual evaluations of that evidence, your reason and common sense, and these instructions.

Duties of Jurors: Selection of Fore Person; Unanimous Verdict; Deliberation; Return of Verdict; Advising of Additional Issues

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.

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.

A single verdict form for each count has been prepared for your use. When you have finished your deliberations and have reached a verdict as to a specific count, the foreperson should mark the appropriate choice on the form with an "x" and then date and sign the verdict form, filling in the foreperson's juror number on the indicated line and then signing the foreperson's name on the second line. The order in which the "guilty" and "not guilty" choices appear on the verdict forms is strictly alphabetical and should not in any way be considered as indicating which choice is the correct choice. When all the verdict forms are completed, the forms should be placed in the provided envelope, sealed, and given to the deputy who will convey the verdicts to the court. At a time designated by the court, your verdict will be read out loud in the courtroom in your presence.

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During your deliberations, you must not let bias, prejudice, passion, sympathy, or public opinion influence your decision. You must not consider any consequences or penalties that might follow from your verdict. You must not be biased in favor of or against any party or witness because of his or her disability, gender, race, religion, ethnicity, sexual orientation, age, national origin, or socioeconomic status.

Your verdict must be based solely on the evidence presented and the law that I give you. Your like or dislike of any witness, attorney or party should not have an effect on the outcome of this case. The State of Minnesota and the Defendant have a right to demand, and do demand, that you will consider and weigh the evidence, apply the law, and reach a just verdict, regardless of what the consequences might be. You must be absolutely fair. Remember that it is fair to find the Defendant guilty if the evidence and the law require it. On the other hand, it is fair to find the Defendant not guilty if you are not convinced of his guilt beyond a reasonable doubt.

Now, members of the jury, this case is in your hands as judges of the facts. I am certain that you realize that this case is important and serious, and therefore, deserves your careful consideration.

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