

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT
Court File No. 27-CR-20-12953

State of Minnesota,

Plaintiff,

vs.

**DEFENDANT'S REQUESTED
JURY INSTRUCTIONS**

J. Alexander Kueng,

Defendant.

The Defendant, J. Alexander Kueng, through and by his lawyer, Thomas C. Plunkett, requests the following instructions be given to the jury.

Dated: August 29, 2022

Respectfully submitted,

/s/ Thomas C. Plunkett

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651-222-4357

Attorney for Defendant

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.

If the jury views the evidence in this 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.

CRIMJIG 3.03(modified); State v. Al-Naseer, 788 N.W.2d 469, 473 (Minn. 2010).

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, as jurors, are the sole and exclusive judges of the credibility of each of the witnesses called to testify in this case and only you determine the importance or the weight that their testimony deserves. After making your assessment concerning the credibility of a witness, you may decide to believe all of that witness' testimony, only a portion of it, or none of it.

In making your assessment you should carefully scrutinize all of the testimony given, the circumstances under which each witness has testified, and every matter in evidence which tends to show whether a witness, in your opinion, is worthy of belief. Consider each witness's intelligence, motive to falsify, state of mind, and appearance and manner while on the witness stand. Consider the witness's ability

to observe the matters as to which he or she has testified and consider whether he or she impresses you as having an accurate memory or recollection of these matters. Consider also any relation a witness may bear to either side of the case, the manner in which each witness might be affected by your verdict, and the extent to which, if at all, each witness is either supported or contradicted by other evidence in the case.

Inconsistencies or discrepancies in the testimony of a witness or between the testimony of different witnesses may or may not cause you to disbelieve or discredit such testimony. Two or more persons witnessing an incident or a transaction may simply see or hear it differently. Innocent misrecollection, like failure of recollection, is not an uncommon experience. In weighing the effect of a discrepancy, however, always consider whether it pertains to a matter of importance or an insignificant detail and consider whether the discrepancy results from innocent error or from intentional falsehood.

After making your own judgment or assessment concerning the believability of a witness, you can then attach such importance or weight to that testimony, if any, that you feel it deserves. You will then be in a position to decide whether the Attorney General has proven the charge beyond a reasonable doubt.

Devitt § 15.01 (Modified – Government replaced by Attorney General)

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

AUTHORITY TO ARREST

A police officer is authorized by law to make an arrest of a suspect “when the person arrested has committed a felony, although not in the officer’s presence,” and “when a felony has in fact been committed, and the officer has reasonable cause for believing the person arrested to have committed it.”

Minn. Stat. 629.34, Subd. 1 (c)(2) and (3).

PASSING OR POSSESSING A COUNTERFEIT BILL IS A FELONY OFFENSE

Uttering or possessing counterfeit United States currency is considered a felony under Minnesota law.

Minn. Stat. 609.532, Subds. 3 and 4.

The same conduct is also considered a felony under federal law. 18 U.S.C.
472.

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.

FELONY MURDER IN THE SECOND DEGREE

Under Minnesota law, a person causing the death of another, 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.

CRIMJIG 11.28; Minn. Stat. 609.19, Subd. 2 (1).

FELONY MURDER IN THE SECOND DEGREE – ELEMENTS

The elements of this crime are:

First, the death of George Floyd must be proven.

Second, the defendant caused the death.

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, if such intervening causes were the natural result of the defendant's acts. The fact that other causes contributed 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 overdose or heart failure that causes death is a superseding intervening cause.

Third, 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

affect the death of George Floyd, but it must prove the defendant committed or attempted to commit the underlying felony.

Fourth, a “special danger to human life” must have been caused by the underlying felony, in turn determined by the circumstances under which the felony was committed.

CRIMJIG 11.29(modified); State v. Anderson, 666 N.W.2d 696, 699 (Minn. 2003) (noting the felony of felony murder in the second degree must be of the kind that presents a “special danger to human life...” measured by the circumstances of how the crime was committed)

ASSAULT IN THE THIRD DEGREE DEFINED

Under Minnesota law, whoever assaults another and inflicts substantial bodily harm is guilty of a crime.

CRIMJIG 13.15

ASSAULT IN THE THIRD DEGREE – ELEMENTS

The elements of assault in the third degree are:

First, the 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.

Second, the defendant inflicted and caused substantial bodily harm upon Mr. Floyd;

"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.

Third, the offense took place in Hennepin County.

The word "intentional" means "the actor either has a purpose to do the thing or cause the result specified, or believes that the act performed by the actor, if successful, will cause that result." The defendant "must have knowledge of those facts which are necessary to make the defendant's conduct criminal."

Minn. Stat. 609.02, Subd. 9 (3).

CRIMJIG 13.16 (modified)

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 George Floyd must be proven.

Second, 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. 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 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. 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 (modified).

MANSLAUGHTER CAUSATION

“Causes” or “proximate cause” means that the defendant's acts were a substantial factor in causing the death of George Floyd. 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(modified).

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. Floyd's 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 the defendant did not participate or which he could not reasonably have foreseen. If the jury finds that a superseding cause exists, the element of causation is not proven.

CRIMJIG 3.31 (modified); State v. Smith, 835 N.W.2d 1, 6 (Minn. 2013) (noting a proof of a superseding cause defeats the element of causation).

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 the defendant, and not the other officials on the scene or their perception or preference of what should have occurred, at the precise moment the defendant acted with the force he did. 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.

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.

Graham v. Connor, 490 U.S. 386, 396 (1989); Mumm v. Mornson, 708 N.W.2d 575, 582 (Minn. 2006)(adopting the Graham standard).

NEGLIGENCE OF MR. FLOYD

Mr. Floyd's own negligence, his failure to act as a reasonable person would in his situation, 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. Floyd and all of the other circumstances that existed at the time the incident occurred. In other words, if there was negligence on the part of the Mr. Floyd, 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. Floyd's own 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).

ADDITIONAL FORMS OF MR. FLOYD'S NEGLIGENCE

It is a crime, and unreasonable, for a person to interfere with a police officer engaged in their official duties by not following orders. An individual may not resist or interfere with a law enforcement officer while that officer is engaged in the performance of his or her official duties.

Minn. Stat. Sec. 609.50; State v. Krawsky, 426 N.W.2d 875, 877 (Minn. App. 1988)(describing the crime); Lombardo v. City of St. Louis, 956 F.3d 1009 (8th Cir. 2020)(holding that expert testimony that the suspect's restraint was the principal cause of death was deemed "less significant" than the contributing causes of extensive heart disease and methamphetamine intoxication).

It is a crime, and thus unreasonable, for an individual to possess and ingest fentanyl or methamphetamine both controlled substances under Minnesota and United States law.

Minn. Stat. 152.02, Subd. 5 (c)(10); 21 U.S.C. 841.

It is a crime, and thus unreasonable, for an individual to pass or attempt to pass a counterfeit bill. Minn. Stat. 609.532, Subds. 3 and 4; 18 U.S.C. 472.

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.

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

CRIMJIG3.23Multiple Offenses Considered Separately, 10 Minn. Prac., Jury Instr. Guides--Criminal CRIMJIG 3.23 (6th ed.)

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.

Cautionary Instruction on Receipt of Testimony of a Biased Witness

You are about to hear testimony from an official involved in the investigation who has made statements that show the official is biased against the defendants in this matter. You are instructed that in considering the believability and credibility of the witness's testimony you must consider that this witness is actually biased. You may use the fact of bias as grounds to disregard all of the witness's testimony.