

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FIRST JUDICIAL DISTRICT

 State of Minnesota,

Court File No.: 27-CR-18-6859

Plaintiff,

v.

**MOTION TO SEVER
COUNTS**

Mohamed M. Noor,

Defendant.

Defendant, by and through his attorneys, hereby moves the Court, pursuant to Minnesota Rule of Criminal Procedure, Rule 17.03, subdivision 3(1)(b) for an Order severing Count 1 from Counts 2 and 3 in order "to promote a fair determination of the defendant's guilt or innocence of each offense or charge."

While severance is most commonly at issue when there are questions of whether multiple offenses are part of a single behavioral incident, joined offenses that are related may still require severance under Rule 17.03, subd. 3(1)(b). State v. Profit, 591 N.W.2d 451, 459 (Minn. 1999). The charges in this case address a single behavioral incident, but differences in proof between Count 1 and Counts 2 and 3 unfairly require Defendant to defend against multiple theories of prosecution. Each of the Counts charged requires proof of different intent. Murder in the second degree requires the State to prove in part,

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.

CRIMJIG 11.25. While murder in the third degree requires,

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.

CRIMJIG 11.38. And finally, manslaughter in the second degree requires,

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.

CRIMJIG 11.56. The defense of each count requires competing defenses to the elements.

Second degree murder requires Defendant to defend against the element that he specifically did not intend to cause the death of Ms. Rusczyk, but while doing so he in essence proves the element of third degree murder that his act was not specifically intended to cause death. Second degree murder also limits Defendant's ability to defend against the reckless requirement of third degree murder and the negligent requirement of manslaughter by requiring Defendant to choose between defending what his intent was versus his actions. Forcing Defendant to choose between competing defenses is what severance protects against. In this case, fairness requires Count 1 be severed from Counts 2 and 3.

WHEREFORE, Defendant respectfully requests this Court sever Count 1 from
Counts 2 and 3.

Dated: February 14, 2019.

Respectfully submitted,

s/ Thomas C. Plunkett

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