

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

State of Minnesota,

Plaintiff,

v.

Mohamed Mohamed Noor,

Defendant.

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

**MOTION FOR JUDGMENT
OF ACQUITTAL**

Defendant, Mohamed Noor, by and through his attorneys, hereby moves the Court, pursuant to Minnesota Rules of Criminal Procedure, Rule 26.03, subdivision 17(3) and Rule 26.04, subdivision 3 for a judgment of acquittal as to Counts 2 and 3 of the complaint. As this Court is aware, a judgment of acquittal must be entered if the evidence is insufficient to sustain a conviction. MINN.R.CRIM.P. 26.03, subd. 17(1). In determining the sufficiency of the evidence, this Court must view the evidence in the light most favorable to the jury verdict and determine whether the jury could reasonably have found the defendant guilty of the crime charged beyond a reasonable doubt. Bangert v. State, 282 N.W.2d 540 (Minn. 1979).

A. Third Degree Murder

Count 2 charged Mr. Noor with Murder in the Third Degree in violation of Minnesota Statute section 609.195, subdivision (a). In relevant part, the Court instructed the jury as follows,

Third, the defendant Mohamed Noor's intentional act, which caused the

death of Justine Ruszczuk, 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.

As previously argued to the Court in Mr. Noor's Motion to Dismiss Based on Lack of Probable Cause and Defendant's Memorandum in Support of Defendant Noor's Proposed Jury Instructions, Mr. Noor submits a judgment of acquittal for Count 2 should be entered because there is insufficient evidence to demonstrate he acted with a depraved heart and there is overwhelming evidence that his actions were directed at a specific person.

The evidence at trial failed to support a finding that Mr. Noor acted with a depraved heart. When Officer Noor fired that night he was not acting with a depraved mind seething with wanton passion to cause mischief. See State v. Carlson, 328 N.W.2d 690, 694 (Minn. 1982) (suggesting a random shooting spree would constitute evidence of a depraved mind); State v. Montermini, 819 N.W.2d 447, 461 (Minn. 2012) (holding driving at high speeds the wrong way down a one-way street and disregarding passenger pleas to stop sufficient evidence to establish a depraved mind); State v. Wahlberg, 296 N.W.2d 408, 417 (Minn. 1980) (stating "a mind which has become inflamed by emotions, disappointments, and hurt to such a degree that it ceases to care for human life and safety is a depraved mind."); State v. Weltz, 193 N.W. 42, 44 (Minn. 1923) (finding, it was a fair inference from the evidence that an argument coupled with alcohol excited the defendant to the point of frenzied anger that demonstrated a depraved mind). A mind

like that requires time to develop. A depraved mind is not the product of split second reaction. The evidence in this case clearly established Mr. Noor's actions were the product of a split second reaction. His reaction was not fueled by wanton mischief, but the reasonable response to the actions of Officer Harrity. Mr. Noor reacted to a dark alley in the middle of the night, a thump on the squad, a voice, a body appearing at the driver's side window, the startled announcement of fear by Officer Harrity as he reached for his firearm, and his observation that that the person in the window was raising their right arm. Mr. Noor's actions to defend his partner and himself, in the context of that night, are not evidence of the depraved mind envisioned by Minnesota courts for the last hundred years.

But, it is not just Mr. Noor's actions before the shot that this Court must consider, but also his actions after that must be considered when determining whether he possessed a depraved mind. Montermini, 819 N.W.2d at 461. Mr. Noor's actions after the tragic shooting are the complete opposite of Montermini. His immediate response, as captured by the body worn cameras, shows an officer distraught by his actions. He pled for J.R.'s life and when directed by Officer Harrity he performed CPR until the first responders arrived. His actions before, during, and after the shooting are not indicative of a man with a depraved heart.

The evidence at trial, however, did establish that Mr. Noor directed his actions at only one person, J.R. Evidence that stands entirely contrary to the instruction given by this Court. It is black letter law that 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); see also State v. Wahlberg, 296 N.W.2d 408, 417 (Minn. 1980) (holding, that an instruction on murder in the third degree is inappropriate where the evidence suggested all of the blows were directed at the victim.); State v. Hanson, 176 N.W.2d 607, 614-15 (Minn. 1970) (holding, “the act must be committed without a special design upon the particular person or persons with whose murder the accused is charged.”); State v. Harris, 713 N.W.2d 844, 850 (Minn. 2006) (stating, “Here where it was undisputed that Harris intentionally directed one shot at close range toward Greenwood, no third-degree murder instruction was required.”); State v. Fox, 340 N.W.2d 332, 335 (Minn. 1983) (confirming the district court’s refusal to submit a third-degree murder instruction when the evidence demonstrated that the defendant fired one shot at a specific individual.). But, that is exactly what occurred here.

The facts before this Court show that Mr. Noor incorrectly perceived a specific person posing a threat and reacted. He did not shoot blindly into the night. After identifying J.R. as an intended target, Mr. Noor took steps to identify his partner’s location for his partner’s safety and to protect his partner before discharging his weapon. Further, Mr. Noor was aware of and considered the location of Mr. Sax before discharging his weapon. Mr. Noor’s consideration of Sax’s location shows Mr. Noor did consider the safety of the general public. Mr. Noor’s actions show that he appreciated the potential for generalized danger, considered that danger, took steps to mitigate the danger, and fired once at a specific person. His conduct, while having the tragic result of ending an innocent life, was not the product of a depraved mind. Because Mr. Noor considered the potential harm to his partner and Mr. Sax and mitigated that harm by

locating them and restraining his partner, he had regard for human life. Because he was responding to a threat both he and Officer Harrity perceived, albeit incorrectly, he was not acting without regard for human life. Because his actions do not show a heedless disregard for human life, the offense of third degree murder is not proven.

Comparing the facts in this case to the decision in Fox confirms this claim. The assailant in Fox shot a deputy sheriff in the head at close range. Similarly, 2 other people were present in Fox and only 1 round was discharged. Id. The Fox Court held that any contention that the evidence supported a conviction of third-degree murder was without merit. Id. The Fox Court held that since all acts were directed against one person and the defendant knew he was shooting that person murder in the 3rd degree could not be proven. Id. The Fox Court also put focus on the fact that only shot was fired. Here, similarly, Mr. Noor fired a single shot, and directed that shot at a specific, identifiable person, in an attempt to save his partner's life. There is insufficient evidence that he acted with a depraved mind.

B. Manslaughter in the Second Degree

Count 3 charged Mr. Noor with Manslaughter in the Second Degree, Culpable Negligence Creating Unreasonable Risk in violation of Minnesota Statute section 609.205, subdivision (1). In relevant part, the Court instructed the jury as follows,

Second, the defendant Mohamed Noor caused the death of Justine Ruszczuk, by culpable negligence, whereby the defendant Mohamed Noor created an unreasonable risk and consciously took a chance of causing death or great bodily harm.

“To cause” means to be a substantial causal factor in causing the death. The defendant Mohamed Noor 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 Mohamed Noor's acts. The fact that other causes contribute to the death does not relieve the defendant Mohamed Noor of criminal liability.

“Culpable negligence” is intentional conduct that the defendant Mohamed Noor 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.

“Recklessness” is a conscious disregard of a substantial and unjustifiable risk of death or great bodily harm to others. This means the defendant Mohamed Noor consciously committed an act: 1) that created a risk; 2) the risk was substantial; 3) there was no adequate reason for taking the risk; 4) the defendant Mohamed Noor was aware of the risk; and 5) the defendant Mohamed Noor disregarded it. The defendant Mohamed Noor need not have intended, however, to cause harm.

When reviewing the sufficiency of evidence related to culpable negligence, the court of appeals has established a two-part test.

This standard is satisfied by establishing (1) objective gross negligence on the part of the actor and (2) subjective “recklessness in the form of an actual conscious disregard of the risk created by the conduct.” *State v. Frost*, 342 N.W.2d 317, 320 (Minn.1983). The objective aspect is satisfied by demonstrating that the act was “a gross deviation from the standard of care that a reasonable person would observe in the actor's situation.” *Id.* at 319 (quotation omitted); *State v. Back*, 775 N.W.2d 866, 869 n. 5 (Minn.2009).

The subjective aspect requires a finding of the actor's state of mind. The Minnesota Supreme Court has stated that “[a] state of mind is generally proven circumstantially, by inference from words or acts of the actor both before and after the incident. A [fact-finder] is permitted to infer that a person intends the natural and probable consequences of their actions.” *State v. Johnson*, 616 N.W.2d 720, 726 (Minn.2000)(citations omitted).

State v. McCormick, 835 N.W.2d 498, 507 (Minn.Ct.App. 2013).

The evidence showed Mr. Noor's actions were a reaction to events that unfolded in seconds. Officer Harrity candidly admitted that the events just prior to Officer Noor's action scared him in a way he had never experience on duty. That fear was certainly expressed to Mr. Noor through Officer Harrity's exclamation and Officer Harrity reaching for his own firearm. In that context, the only reasonable interpretation of the events is that Mr. Noor perceived a need to defend himself and Officer Harrity. That perception is not an act of gross negligence given the context.

As far as subjective evidence that Mr. Noor acted with a conscious disregard of the risk his conduct created, there is simply no evidence to support this finding. Mr. Noor acted in a split second decision with intent to defend himself and Officer Harrity. Even in that moment he acted with a level of control. He restrained his partner with one hand and he fired once. That is not a conscious disregard of risk when one believes he is defending himself from imminent danger. Mr. Noor understood his actions had consequences. His actions were an attempt to minimize the danger he and Officer Harrity believed was real at that moment. And after the fact, his shock and actions reveal a man with a heavy conscience, not a man acting in a conscious disregard for the risk he was creating.

WHEREFORE, Mr. Noor respectfully requests this Court enter a judgment of acquittal as to Counts 2 and 3.

Respectfully submitted,

Dated: May 13, 2019.

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