

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

State of Minnesota,

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

Plaintiff,

v.

Mohamed M. Noor,

**DEFENDANT’S RESPONSE
TO THE STATE’S MOTIONS
IN LIMINE REGARDING
EFFECTS OF AN OFFICER-
INVOLVED SHOOTING**

Defendant.

Defendant, Mohamed M. Noor, by and through his attorneys, offers the following response to the State's Motion to exclude effects of an officer-involved shooting.

1. THE PSYCHOLOGICAL EFFECTS OF AN OFFICER BEING INVOLVED IN AN OFFICER-INVOLVED SHOOTING OR CRITICAL INCIDENT IS RELEVANT.

In Graham v. Connor, the Supreme Court instructed,

The ‘reasonableness’ of a particular use of force must be judged from the perspective of a reasonable officer *on the scene*, rather than with the 20/20 vision of hindsight.... With respect to a claim of excessive force, the [] standard of reasonableness *at the moment* applies: ‘Not every push or shove, even if it may later seem unnecessary in the peace of a judge's chambers,’ violates the Fourth Amendment. The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make *split-second judgments*—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation.

490 U.S. 386, 396-97 (1989). The Supreme Court’s instruction along with Minnesota statute section 609.06 has been newly translated into criminal jury instruction 7.11, which reads as follows,

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

“Deadly force” means force which the peace officer uses with the purpose of causing, or which the peace officer should reasonably know creates a substantial risk of causing death or great bodily harm.

As to each count or defense, the kind and degree of force a peace officer may lawfully use is limited by what a reasonable peace officer in the same situation would believe to be necessary. Any use of force beyond that is regarded by the law as excessive. To determine if the actions of the peace officer were reasonable, you must look at those facts known to the officer at the precise moment he acted with force.

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

An important part of Minnesota’s use of force law relates to the subjective intent of the officer. One of the elements of authorized use of force relates to officer’s subjective perception of “apparent” death or great bodily injury. The comments to MINN.STAT. § 609.06 recognize the subjective nature of the statute. In the end, it does not matter 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. See also Schulz v. Long, 44 F.3d 643, 649 (8th Cir. 1995).

Fact or expert testimony on what either Officer in this case perceived at the time of the shooting is relevant to a jury understanding and appropriately applying the authorized use of force law. The starting point is the subjective belief of the Officers. But, it does not end there, because that subjective belief must then be weighed against the

objective reasonableness standard of a police officer. Here again is why it is important that Officer Harrity's subjective beliefs and expert testimony about the psychological effects of an incident like this are necessary to explain the reasonable officer standard. If the jury does not understand the psychological effects an officer goes through in an incident like this there is no reasonable officer comparison to make. Testimony about the psychological effects of a shooting incident is necessary to present a clear and complete defense in this case.

2. THE EFFECT OF THE SHOOTING OF J.R. ON OFFICER NOOR IS RELEVANT.

In the context of murder in the third degree, the supreme court made it clear in State v. Montermini, that it is not just a defendant's actions before the "depraved mind" act occurs that must be considered, but also the actions after the act that must be considered when determining whether a defendant possessed a depraved mind. 819 N.W.2d 447, 461 (Minn. 2012). In Montermini, the supreme court considered Montermini's actions before and after a fatal car crash in determining Montermini possessed a depraved mind. In concluding Montermini had a depraved mind, the supreme court first cited evidence of Montermini's pre-crash driving conduct, specifically his high rate of speed and driving the wrong way down a one way street, the fact that he had consumed alcohol before driving, and the fact that he ignored the pleas from his passengers to stop the car. Montermini, 819 N.W.2d at 461. Then the supreme court turned to his actions after the crash. The supreme court concluded that Montermini's actions after the crash, by continuing to drive at a high rate of speed on a curb where bystanders were standing,

running a red light, and dragging his unconscious passengers out of the car into an unlit parking lot where they were less likely to be found also supported a finding that Montermini possessed a depraved mind. Montermini, 819 N.W.2d at 461-62.

Officer Noor's actions after the tragic shooting are the complete opposite of Montermini. Officer Noor's 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 asked by Officer Harrity, he performed CPR until the first responders arrived. His actions after the shooting evince a man not with a depraved mind, but of a man recognizing a tragedy and wanting to do anything he can to change the outcome. These psychological effects following the shooting and death of J.R. are relevant to the charges in this case. In determining Officer Noor's intent he should be allowed to introduce evidence the supreme court has instructed is relevant to an element of third degree murder.

This same after the fact effect on Officer Noor has also been recognized as relevant to the elements of manslaughter by the courts. In cases of culpable negligence manslaughter, the court of appeals have developed a two-part test to establish the element of culpable negligence,

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) (emphasis added). Just like with third degree murder the courts have made it clear the subjective reaction of a defendant is relevant to determine whether manslaughter in the second degree has been proven. It would be an error to exclude evidence related to Officer Noor’s actions following the shooting.

WHEREFORE, the State’s motion to exclude evidence should be denied because the evidence the State seeks to exclude is relevant to the elements of this case.

Respectfully submitted,

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