

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

State of Minnesota,)
)
 Plaintiff,)
)
 vs.)
)
 MOHAMED MOHAMED NOOR,)
)
 Defendant.)

**STATE’S MEMORANDUM IN
OPPOSITION TO DEFENDANT’S
MOTION TO SEVER COUNTS**

MNCIS No: 27-CR-18-6859

* * * * *

To: THE HONORABLE KATHRYN QUAINANCE, HENNEPIN COUNTY DISTRICT COURT JUDGE; COUNSEL FOR DEFENDANT; AND DEFENDANT.

INTRODUCTION

The defendant is charged with second degree intentional murder (Count 1), third degree murder (Count 2), and second degree manslaughter (Count 3). His trial is set for April 1, 2019. On February 15, 2019, the defendant moved the court to sever Count 1 from Counts 2 and 3 under Minn. R. Crim P. 17.03. Because the charges are related and because fairness requires that the defendant stand trial for all three charges at once, the Court should deny the defendant’s motion.

ARGUMENT

THE COURT SHOULD NOT SEVER THE CHARGES BECAUSE THEY ARE BASED ON THE SAME FACTUAL CIRCUMSTANCES AND SEVERANCE IS NOT NECESSARY TO FAIRLY DETERMINE THE DEFENDANT’S GUILT.

In Minnesota, “[w]hen the defendant’s conduct constitutes more than one offense, each offense may be charged in the same charging document in a separate count.” Minn. R. Crim. P. 17.03, subd. 1. Before trial, separate offenses should be severed only if (a) the offenses are not related, or (b) “severance is appropriate to promote a fair determination of the defendant’s guilt or innocence of each offense[.]” Minn. R. Crim. P. 17.03, subd. 3(1). Accordingly, “when faced

with a motion for severance of offenses, a district court must first decide whether the offenses are related, and, if they are related, must determine whether joinder would prejudice the defendant.” *State v. Kendell*, 723 N.W.2d 597, 607 (Minn. 2006).

Separate offenses are “related” if they arise out of the same behavioral incident. *Kendell*, 723 N.W.2d at 607. To make this determination, courts typically engage in inquiries of temporal and geographic proximity, and look to the motivations behind a defendant’s behavior. *Id.* at 608. No such analysis is needed in this case. The charged counts do not entail different victims, locations, times, or motivations. There are no disparate factual circumstances to consider. The defendant is on trial for one act: killing an innocent woman without assessing whether or not she was a threat. Just because the defendant’s behavior simultaneously satisfies the elements of separate crimes does not mean he should receive separate trials.

Since the offenses are obviously related, the Court must next determine whether severance is “appropriate to promote a fair determination of the defendant’s guilt.” *Kendell*, 723 N.W.2d at 608 (quoting Minn. R. Crim. P. 17.03, subd. 3(1)(b)). Severance is unnecessary if “evidence of each offense would have been admissible at a trial of the other offenses had the offenses been tried separately.” *Id.* at 608.

Again, the charges at issue all concern the same facts: the defendant, with no reasonable fear or provocation, shot and killed a person who was approaching his squad car for help. He fired the deadly shot from inside his squad car, across the body of his partner, as a juvenile bicyclist passed in front of his vehicle, simultaneously endangering the lives of three people. The State would present these same facts at trial whether the defendant was on trial for only Count 1 or for all three counts. His actions were at once reckless and intentional, and it is fair for him to stand

trial for all three charges. *See e.g., State v. Vang*, 847 N.W.2d 248, 259 (Minn. 2014) (recognizing “intent and recklessness are not mutually exclusive.”).

Moreover, the defendant has raised the same affirmative defenses to all three charges: self-defense, reasonable force, and defense of others.¹ Whether one argues the defendant’s conduct was intentional, reckless, or negligent, his defense will be the same: that he shot Ms. Ruszczyk because he believed she posed a risk to his life or that of his partner. The credulity of his claim aside, it applies to all charges; he will not be forced to rely on alternate theories to defend this case. Accordingly, there is no legal, equitable, or practical reason to sever the charges in this case.²

¹ *See* Defendant’s Rule 9 Disclosure, 04/25/2018 (noticing defenses of “Not Guilty,” “Self Defense,” and “Reasonable Force”); Amended Defendant’s Rule 9 Disclosure, 01/11/2019 (noticing previous defenses and “Defense of Others”).

² While the State in no way concedes severance would lead to a double jeopardy problem, the question is avoided altogether if the charges remained joined. *See, e.g., State v. Hill*, 918 N.W.2d 237, 243 (Minn. Ct. App. 2018) (recognizing prosecuting remaining charges after a partial plea does not violate double jeopardy).

CONCLUSION

The charges in this case arise out of the same behavioral incident. They do not entail different victims, locations, times, or factual scenarios. Additionally, the defendant's noticed affirmative defenses apply to all charges. Therefore, there is no reason to sever the counts in this case.

Respectfully submitted,

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