

STATE OF MINNESOTA  
COUNTY OF HENNEPIN

DISTRICT COURT  
FOURTH JUDICIAL DISTRICT

State of Minnesota,	)	
	)	<b>STATE'S RESPONSE TO DEFENDANT'S</b>
Plaintiff,	)	<b>MOTION FOR JUDGMENT OF</b>
	)	<b>ACQUITTAL</b>
vs.	)	
	)	
<b>MOHAMED MOHAMED NOOR,</b>	)	MNCIS No: 27-CR-18-6859
	)	
Defendant.	)	

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

### INTRODUCTION

On April 30, 2019, a jury convicted the defendant of murder in the third degree and manslaughter in the second degree for shooting and killing Justine Ruszczyk on July 15, 2017. The defendant has moved this court for a judgment of acquittal citing two rules of criminal procedure. The first rule appears to be a reference to Minn. R. Crim. P. 26.03, subd. 18(3)<sup>1</sup> on grounds of insufficient evidence. The second rule cited by defendant, Minn. R. Crim. P. 26.04, subd. 3, applies to vacation of judgment for failure to charge an offense or lack of jurisdiction. The State's response to the defendant's insufficient evidence argument follows. Because the defendant has not articulated a sufficient foundation for dismissal related to the complaint or jurisdiction, the State asks the court to disregard that portion of the defendant's motion.<sup>2</sup>

<sup>1</sup> The defense brief cites Minn. R. Crim. P. 26.03, subd. 17(3), which no longer exists after the rules were renumbered in 2010. *See State v. Carpenter*, 893 N.W.2d 380, 385 (Minn. Ct. App. 2017).

<sup>2</sup> It is also possible that the defendant meant to refer to Rule 26.04, subd. 1(1)(3), which provides for a new trial based on prosecutorial misconduct. But again, the defendant has made no argument to support this claim, so the State will not address it herein.

## ARGUMENT

### **There is more than sufficient evidence to convict the defendant of third degree murder and second degree manslaughter.**

The jury's verdicts for third degree murder and second degree manslaughter are supported by overwhelming evidence presented at trial. A motion for judgment of acquittal is "procedurally equivalent to a motion for a directed verdict." *State v. Slaughter*, 691 N.W.2d 70, 75 (Minn. 2005). Like a motion for a directed verdict, a motion for judgment of acquittal should be denied if "the evidence is sufficient to present a fact question for the jury's determination, after viewing the evidence and all resulting inferences in favor of the state." *Id.* at 74-75.

The defendant argues the evidence at trial was insufficient to prove the defendant acted with a depraved mind.<sup>3</sup> However, the court did not instruct the jury that it needed to find the defendant acted with a depraved mind to find him guilty. Rather, the court instructed the jury that it must find:

The defendant's intentional act . . . was eminently dangerous to human beings and was performed without regard to 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 the State has argued from the outset, and as the jury instructions explicitly state, the law *does not* require the State to prove that the defendant possessed a "depraved mind."

The words 'depraved mind' have not been included in the elements. These words are not susceptible of definition, except in terms of an 'eminently dangerous' act and the lack of regard for human life. Since those terms are used, the further use of the words 'depraved mind' seems unnecessary and possibly prejudicial. The phrase 'committed in a reckless or wanton manner' is drawn from *State v. Lowe*, 66 Minn. 296, 68 N.W. 1094 (1896).

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<sup>3</sup> The defendant repeatedly refers to a "depraved heart," but the State presumes he means depraved mind.

*See* CRIMJIG 11.38, comment.

The evidence at trial proved that the defendant, a trained police officer, fired his 9mm handgun from the passenger seat of his marked squad car across the body and face of his partner without warning. He fired it through the small space of an open car window in the direction of a person he failed to identify as a threat in a residential neighborhood. He acted with full knowledge that there was a bicyclist in front of his car as he fired. He also acted with full knowledge that his purpose for being in the alley was locating a woman; yet he fired at the first woman who approached the car. The jury correctly found the defendant's act eminently dangerous to multiple human beings including Ms. Ruszczyk, the bicyclist, and Officer Harrity. The fact that he caused the death of the person he fired at is contemplated by the jury instruction and does not preclude a finding of guilt. The instruction provides that the act *may*, and therefore, also *may not*, be directed at the person whose death occurred, in this case, Ms. Ruszczyk. CRIM JIG 11.38. Here, the defendant's actions killed the person to whom he directed his single shot, but that did not preclude the jury from finding his actions were eminently dangerous to human beings and performed without regard for human life.

With respect to second degree manslaughter, the State's argument based on the jury's findings is the same. The court correctly instructed the jury that culpable negligence is conduct that the ordinary and reasonably prudent person would recognize as involving a strong probability of injury to others along with an element of recklessness. The court further instructed the jury that recklessness consisted of its own five elements: 1) the defendant created the risk, 2) the risk was substantial, 3) there was no adequate reason for taking the risk, 4) the defendant was aware of the risk, 5) the defendant disregarded the risk.

The same evidence that supports the third degree murder verdict supports this verdict. The defendant intentionally took the unreasonable risk of killing Ms. Ruszczuk, Officer Harrity, the bicyclist, and anyone else who might have been in the alley with his intentional act of shooting through the window at someone he had failed to adequately assess as a threat.

The arguments offered by the defendant are a blanket reprise of the arguments raised in the motion to dismiss for lack of probable cause. As before, they rely on case law generated from first and second degree murder cases where the issue on appeal was whether the defendant should have been granted a third degree murder instruction. Therefore these cases have radically different fact patterns from this case and are easily distinguished. Importantly, the defendant fails to address the fact that since the last time he raised these identical arguments, there was a full trial on the merits and the jury rendered verdicts on the facts and evidence in *this* case.

The jury rejected the defendant's testimony and argument at trial that his reaction in shooting and killing Ms. Ruszczuk was a "reasonable response to the actions of Officer Harrity." The jury rejected the defendant's claim that he adequately identified both a threat and a specific target before shooting. The jury rejected the defendant's argument that he acted safely and without putting others in danger. The jury rejected the defendant's assertion that "the only reasonable interpretation of the events is that [the defendant] perceived a need to defend himself and Officer Harrity." Finally, the jury rejected the defendant's claim and testimony that he acted safely and with restraint by holding his partner back to protect him.

The jury rendered a verdict supported by more than sufficient evidence to convict the defendant of third degree murder and second degree manslaughter. The court should deny the defendant's motion for judgments of acquittal.

Respectfully submitted,

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