

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

State of Minnesota,

Court File No. 27-CR-21-7460

Plaintiff,

vs.

**STATE'S PROPOSED JURY
INSTRUCTIONS**

Kimberly Ann Potter,

Defendant.

TO: The Honorable Regina M. Chu, the above-named defendant and defendant's counsel,
Earl Gray, 1st Bank Building, 332 Minnesota Street, Ste. W1610, St. Paul, MN 55101;
Paul Engh, Ste. 260, 650 South Third Avenue, Minneapolis, MN 55402.

STATE'S PROPOSED JURY INSTRUCTIONS

For the trial of the above-captioned matter, the State respectfully requests the attached
jury instructions.

Dated: November 12, 2021

Respectfully submitted,

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State of Minnesota

/s/Matthew Frank
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ATTORNEYS FOR PLAINTIFF

Duties of Judge and Jury (CRIMJIG 3.01)

It is your duty to decide the questions of fact in this case. It is my duty to give you the rules of law you must apply in arriving at your verdict.

You must follow and apply the rules of law as I give them to you, even if you believe the law is or should be different.

Deciding questions of fact is your exclusive responsibility. In doing so, you must consider all the evidence you have heard and seen in this trial, and you must disregard anything you may have heard or seen elsewhere about this case.

I have not by these instructions, nor by any ruling or expression during the trial, intended to indicate my opinion regarding the facts or the outcome of this case. If I have said or done anything that would seem to indicate such an opinion, you are to disregard it.

In your determination of the facts, you are not to consider the possible penalties. That consideration is the responsibility of the court exclusively. Your only duty is to determine whether or not the guilt of the defendant has been proved beyond a reasonable doubt without reference to any possible penalty which may accrue.

Instructions to Be Considered as a Whole (CRIMJIG 3.07)

You must consider these instructions as a whole and regard each instruction in light of all the others. The order in which the instructions are given is of no significance. You are free to consider the issues in any order you wish.

Presumption of Innocence (CRIMJIG 3.02)

The Defendant, Kimberly Potter, is presumed innocent of the charges made. This presumption remains with the Defendant unless and until she has been proven guilty beyond a reasonable doubt. That the Defendant has been brought before the court by the ordinary processes of the law and is on trial should not be considered by you as in any way suggesting guilt. The burden of proving guilt is on the State. The Defendant does not have to prove her innocence.

Proof Beyond a Reasonable Doubt (CRIMJIG 3.03)

Proof beyond a reasonable doubt is such proof as ordinarily prudent men and women would act upon in their most important affairs. A reasonable doubt is a doubt based upon reason and common sense. It does not mean a fanciful or capricious doubt, nor does it mean beyond all possibility of doubt. A doubt is not reasonable if it is based upon speculation or irrelevant details.

Direct and Circumstantial Evidence (CRIMJIG 3.05)

A fact may be proven by either direct or circumstantial evidence, or by both. The law does not prefer one form of evidence over the other.

A fact is proven by direct evidence when, for example, it is proven by witnesses who testify to what they saw, heard, or experienced, or by physical evidence of the fact itself. A fact is proven by circumstantial evidence when its existence can be reasonably inferred from other facts proven in the case.

Statements of Judge and Attorneys (CRIMJIG 3.11)

Attorneys are officers of the court. It is their duty to make objections they think proper and to argue their client's cause. However, the arguments or other remarks of an attorney are not evidence.

If the attorneys or I have made or should make any statement as to what the evidence is that differs from your recollection of the evidence, you should disregard the statement and rely solely on your own memory. If an attorney's argument contains any statement of the law that differs from the law I give you, disregard the attorney's statement.

Multiple Charges to be Considered Separately (CRIMJIG 3.23)

In this case, the defendant has been charged with two offenses. You should consider each offense and the evidence pertaining to it separately and in any order you wish. The fact that you may find the defendant guilty or not guilty as to one of the charged offenses should not control your verdict as to any other offense.

Charges and Defenses

I am about to instruct you on the law you are to apply to the charges and the defenses.

COUNT I

The Defendant is charged in Count I with Manslaughter in the First Degree while committing a misdemeanor in connection with the death of Daunte Wright.

Definition (CRIMJIG 11.45)

Under Minnesota law, whoever, while committing a misdemeanor or gross misdemeanor offense with such force and violence that the death of or great bodily harm to any person was reasonably foreseeable, causes the death of another is guilty of manslaughter in the first degree.

Elements (CRIMJIG 11.46)

The elements of Manslaughter in the First Degree while committing a misdemeanor are:

First, the death of Daunte Wright must be proven.

Second, the Defendant caused the death of Daunte Wright.

“To cause death,” “causing the death,” or “caused the death” means that the Defendant’s act or acts were a substantial causal factor in causing the death of Daunte Wright. The Defendant is criminally liable for all the consequences of her 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 a natural result of the Defendant’s acts. The fact that other causes contribute to the death does not relieve the Defendant of criminal liability. Contributory negligence of Mr. Wright, if any, is not a defense to a criminal charge. Instead, any negligence of Mr. Wright is only relevant in determining whether Defendant was negligent and, if so, whether Defendant’s negligence caused the death of Mr. Wright.¹ However, the Defendant is not criminally liable if a “superseding cause” caused the death. A “superseding cause is a cause that comes after the Defendant’s acts, alters the natural sequence of events, and is the sole cause of a result that would not have otherwise occurred.”

Third, the death of Daunte Wright was caused by the Defendant’s committing or attempting to commit the crime of Reckless Handling or Use of a Firearm.

There are three elements of Reckless Handling or Use of a Firearm (CRIMJIG 32.02):

(1) First, the Defendant recklessly handled or used a gun.

A person acts “recklessly” if the person acts in willful or wanton disregard for the safety of others. This means a conscious and intentional act that the Defendant knew, or should have known, created an unreasonable risk of harm to others under the totality of the circumstances. The “totality of the circumstances” includes what the Defendant knew and did not know concerning the circumstances of endangerment. It also includes the Defendant’s prior knowledge, experience, and history.²

(2) Second, the Defendant handled or used the gun so as to endanger the safety of another person.

(3) Third, the Defendant’s act took place on or about April 11, 2021 in Hennepin County.

It is not necessary for the State to prove any intent on the part of the defendant to kill anyone.

¹ *State v. Crace*, 289 N.W.2d 54, 59-60 (Minn. 1979)

² *State v. Coleman*, 957 N.W.2d 72, 74 (Minn. 2021); *State v. Rhodes*, 657 N.W.2d 823, 840 (Minn. 2003).

Fourth, the Defendant committed or attempted to commit the crime of Reckless Use or Handling of a Firearm with such force or violence that the death of another person or great bodily harm to another person was reasonably foreseeable.

“Great bodily harm” means bodily injury that creates a high probability of death, that causes serious permanent disfigurement, or that causes a permanent or protracted loss or impairment of the function of any bodily member or organ, or other serious bodily harm.

Fifth, the Defendant’s act took place on or about April 11, 2021 in Hennepin County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

COUNT II

The Defendant is charged in Count II with Manslaughter in the Second Degree in connection with the death of Daunte Wright.

Definition (CRIMJIG 11.55)

Under Minnesota law, whoever, by culpable negligence, whereby she creates an unreasonable risk of causing death or great bodily harm to another person, causes the death of another is guilty of manslaughter in the second degree. Put differently, whoever does not intend to cause a death, but does so by error, is guilty of second-degree manslaughter if the error results from the defendant’s culpable negligence.³

Elements (CRIMJIG 11.56)

The elements of manslaughter in the second degree are:

First, the death of Daunte Wright must be proven.

Second, the Defendant caused the death of Daunte Wright by culpable negligence, whereby the Defendant created an unreasonable risk and consciously took a chance of causing death of great bodily harm.

“To cause death,” “causing the death,” or “caused the death” means that the Defendant’s act or acts were a substantial causal factor in causing the death of Daunte Wright. The Defendant is criminally liable for all the consequences of her 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 a natural result of the Defendant’s acts. The fact that other causes

³ *State v. Frost*, 342 N.W.2d 317, 323 (Minn. 1983).

contribute to the death does not relieve the Defendant of criminal liability. Contributory negligence of Mr. Wright, if any, is not a defense to a criminal charge. Instead, any negligence of Mr. Wright is only relevant in determining whether Defendant was negligent and, if so, whether Defendant's negligence caused the death of Mr. Wright.⁴ However, the Defendant is not criminally liable if a “superseding cause” caused the death. A “superseding cause is a cause that comes after the Defendant’s acts, alters the natural sequence of events, and is the sole cause of a result that would not have otherwise occurred.”

“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.

“Creating an unreasonable risk and consciously taking a chance of causing death or great bodily harm” means the Defendant took action under circumstances where she realized or should have realized the gravity of the danger to the deceased and, as a result of a choice on her part, assumed the risk which caused the death.⁵

“Great bodily harm” means bodily injury that creates a high probability of death, that causes serious permanent disfigurement, or that causes a permanent or protracted loss or impairment of the function of any bodily member or organ, or other serious bodily harm.

It is not necessary for the State to prove any intent on the part of the defendant to kill anyone.

Third, the Defendant’s act took place on or about April 11, 2021 in Hennepin County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

Defense: Authorized Use of Deadly Force by a Police Officer (CRIMJIG 7.18)

Minnesota law provides that no crime is committed, and a police officer’s actions are justified, only when the police officer uses deadly force in the line when necessary to:

- (1) Protect the police officer or another from apparent death or great bodily harm;
- (2) Effect the arrest or capture, or prevent the escape, of a person whom the peace officer knows or has reasonable grounds to believe has committed or attempted to commit a felony involving the use or threatened use of deadly force; or

⁴ *State v. Crace*, 289 N.W.2d 54, 59-60 (Minn. 1979)

⁵ *State v. Frost*, 342 N.W.2d 317, 322 (Minn. 1983)

- (3) Effect the arrest or capture, or prevent the escape, of a person whom the police officer knows or has reasonable grounds to believe has committed or attempted to commit a felony if the police officer reasonably believes that the person will cause death or great bodily harm if the person's apprehension is delayed.

"Police officer" means an employee of a law enforcement agency who is licensed by the Board of Peace Officer Standards and Training, charged with the prevention and detection of crime and the enforcement of the general criminal laws of the State of Minnesota and who has the full power of arrest. A law enforcement agency is a unit of state or local government that is authorized by law to grant full powers of arrest and to charge a person with the duties of preventing and detecting crime and enforcing the general criminal laws of the State of Minnesota. The Brooklyn Center Police Department is a law enforcement agency.

"Deadly force" means force which the police officer uses with the purpose of causing, or which the police officer should reasonably know creates a substantial risk of causing, death or great bodily harm. In determining whether the Defendant should reasonably have known that the force she applied created a substantial risk of causing death or great bodily harm, you are not to consider the Defendant's underlying intent or motivations.⁶ It is not necessary for the State to prove that the Defendant intended to cause death or great bodily harm or believed that such harm would occur.⁷ The Defendant need only have acted with intent to use force and prove that a reasonable person in the Defendant's position would have foreseen a substantial risk of causing death or great bodily harm.⁸

"Great bodily harm" means bodily injury that creates a high probability of death, that causes serious permanent disfigurement, or that causes a permanent or protracted loss or impairment of the function of any bodily member or organ, or other serious bodily harm.

As to each count or defense, the kind and degree of force a police officer may lawfully use in protecting themselves or another, effecting arrest or capture, or preventing escape, is limited by what a reasonable police officer in the same situation would believe to be necessary. To determine whether or not the actions of the police officer were necessary, you must look at those facts known to the officer at the precise moment she acted with force. You may also consider the Defendant's prior knowledge, experience, and history.⁹

The Defendant is not guilty of a crime if she used deadly force as authorized by law. To prove guilt, the State must prove beyond a reasonable doubt that the Defendant's use of deadly force was not authorized by law.

⁶ *Graham v. Connor*, 490 U.S. 386, 387, 109 S. Ct. 1865, 1867 (1989).

⁷ *See State v. Lindsey*, 654 N.W.2d 718, 723-24 (Minn. Ct. App. 2002).

⁸ *See State v. Ortiz*, 626 N.W.2d 445, 450 (Minn. Ct. App. 2001), *review denied* (Minn. June 27, 2001); *State v. Lindsey*, 654 N.W.2d 718, 724 (Minn. Ct. App. 2002).

⁹ *State v. Coleman*, 957 N.W.2d 72, 74 (Minn. 2021); *State v. Rhodes*, 657 N.W.2d 823, 840 (Minn. 2003).

Evaluation of Testimony – Believability of Witnesses (CRIMJIG 3.12)

You are the sole judges of whether a witness is to be believed and of the weight to be given to a witness's testimony. There are no hard and fast rules to guide you in this respect. In determining believability and weight of testimony, you may take into consideration:

- (1) The witness's interest or lack of interest in the outcome of the case;
- (2) The witness's relationship to the parties;
- (3) The witness's ability and opportunity to know, remember, and relate the facts;
- (4) The witness's manner;
- (5) The witness's age and experience;
- (6) The witness's frankness and sincerity, or lack thereof;
- (7) The reasonableness or unreasonableness of the witness's testimony in light of all the other evidence in the case;
- (8) Any impeachment of the witness's testimony; and
- (9) Any other factors that bear on believability and weight.

You should rely, in the last analysis, upon your own experience, good judgment, and common sense.

Expert Testimony (CRIMJIG 3.13)

A witness who has special training, education, or experience in a particular science, occupation, or calling, is allowed to express an opinion as to certain facts. In determining the believability and weight to be given such opinion evidence, you may consider:

- (1) The education, training, experience, knowledge, and ability of the witness;
- (2) The reasons given for the opinion;
- (3) The sources of the information; and
- (4) Factors already given to you for evaluating the testimony of any witness.

Such opinion evidence is entitled to neither more nor less consideration by you than any other evidence.

Defendant's Right Not to Testify¹⁰ (CRIMJIG 3.17)

The State must convince you by evidence beyond a reasonable doubt that the Defendant is guilty of the crime charged. The Defendant has no obligation to prove innocence. The Defendant has the right not to testify. This right is guaranteed by the federal and state constitutions. You should not draw any inference from the fact that the Defendant has not testified in this case.

¹⁰ The State requests this instruction in the event that the Defendant does not testify at trial.

Impeachment (CRIMJIG 3.15)

In deciding the believability and weight to be given to the testimony of a witness, you may consider evidence of a statement by or conduct of the witness on some prior occasion that is inconsistent with present testimony. Evidence of any prior inconsistent statement or conduct should be considered only to test the believability and weight of the witness's testimony. In the case of the Defendant, however, evidence of any statement the Defendant may have made may be considered by you for all purposes.

Demonstrative Evidence (CRIMJIG 3.26, 3.27)

During the testimony of some witnesses, the parties introduced demonstrative exhibits in the form of charts and summaries. This information was presented to assist you as an aid in your understanding of the witness's testimony and to help explain the facts disclosed by the records, other documents, testimony, and other evidence that was received during the trial. If any chart or summary is not consistent with the facts or figures shown by the evidence in this case, as you find them, you should disregard the chart or summary and determine the facts from the underlying evidence.

Definition of Words (CRIMJIG 3.29)

Earlier during these instructions, I defined certain words and phrases and you are to use those definitions in your deliberations. If I have not defined a word or phrase, you should apply the common, ordinary meaning of that word or phrase.

Rulings on Objections to Evidence (CRIMJIG 3.06)

During this trial, I have ruled on objections to certain testimony and exhibits. You must not concern yourself with the reasons for these rulings, since they are controlled by rules of evidence.

By admitting into evidence testimony and exhibits as to which the objection was made, I did not intend to indicate the weight to be given such testimony and evidence. You are not to speculate as to possible answers to questions I did not require to be answered. You are to disregard all evidence and statements of attorneys that I have ordered stricken or have told you to disregard.

[CLOSING ARGUMENTS BY PARTIES]

Jurors Questions During Deliberation

If you have a question about any part of the testimony or any legal question after you have retired for your deliberation, please address it to me in writing, and give it to the sheriff's deputy with the juror number of your foreperson on the note. It will take some time to answer any question because I will have to consult with the lawyers and receive their input before answering your question. I do not say this to discourage questions, but only to advise you that it will take some time to provide you with an answer.

As I told you, you will take with you into the jury room copies of the instructions that I am reading to you. The lawyers and I have determined that these instructions contain all the laws that are necessary for you to know in order to decide this case.

I cannot give you a trial transcript. No such transcript exists. We count on the jury to rely on its collective memory.

Notes Taken by Jurors (CRIMJIG 3.09)

You have been allowed to take notes during the trial. You may take those notes with you to the jury room. You should not consider these notes binding or conclusive, whether they are your notes or those of another juror. The notes should be used as an aid to your memory and not as a substitute for it. It is your recollection of the evidence that should control. You should disregard anything contrary to your recollection that may appear from your own notes or those of another juror. You should not give greater weight to a particular piece of evidence solely because it is referred to in a note taken by a juror.

Implicit Bias (CRIMJIG 3.35)

We all have feelings, assumptions, perceptions, fears, and stereotypes about others. Some biases we are aware of and others we might not be fully aware of, which is why they are called “implicit” or “unconscious biases.” No matter how unbiased we think we are, our brains are hardwired to make unconscious decisions. We look at others and filter what they say through the lens of our own personal experience and background. Because we all do this, we often see life – and evaluate evidence – in a way that tends to favor people who are like ourselves or who have had life experiences like our own. We can also have biases about people like ourselves. One common example is the automatic association of male with career and female with family. Biases can affect our thoughts, how we remember what we see and hear, whom we believe or disbelieve, and how we make important decisions.

As jurors, you are being asked to make an important decision in this case. You must:

- (1) Take the time you need to reflect carefully and thoughtfully about the evidence.
- (2) Think about why you are making the decision you are making and examine it for bias. Reconsider your first impressions of the people and evidence in this case. If the people involved in this case were from different backgrounds, for example, richer or poorer, more or less educated, older or younger, or of a different gender, gender identity, race, religion, or sexual orientation, would you still view them and the evidence the same way?
- (3) Listen to one another. You must carefully evaluate the evidence and resist and help each other resist any urge to reach a verdict influenced by bias for or against any party or witness. Each of you have different backgrounds and will be viewing this case in light of your own insights, assumptions, and biases.

Listening to different perspectives may help you to better identify the possible effects these hidden biases may have on decision-making.

- (4) Resist jumping to conclusions based on personal likes or dislikes, generalizations, gut feelings, prejudices, sympathies, stereotypes, or unconscious biases.

The law demands that you make a fair decision, based solely on the evidence, your individual evaluations of that evidence, your reason and common sense, and these instructions.

Duties of Jurors; Selection of Foreperson; Unanimous Verdict; Deliberation; Return of Verdict; Advising of Additional Issues (CRIMJIG 3.04)

When you return to the jury room to discuss this case you must select a jury member to be foreperson. That person will lead your deliberations.

In order for you to return a verdict, whether guilty or not guilty, each juror must agree with that verdict. Your verdict must be unanimous.

You should discuss the case with one another, and deliberate with a view toward reaching agreement, if you can do so without violating your individual judgment. You should decide the case for yourself, but only after you have discussed the case with your fellow jurors and have carefully considered their views. You should not hesitate to reexamine your views and change your opinion if you become convinced they are erroneous, but you should not surrender your honest opinion simply because other jurors disagree or merely to reach a verdict.

A single verdict form for each count has been prepared for your use. When you have finished your deliberations and have reached a verdict as to a specific count, the foreperson should mark the appropriate choice on the form with an “x” and then date and sign the verdict form, filling in the foreperson’s juror number on the indicated line and then signing the foreperson’s name on the second line. The order in which the “guilty” and “not guilty” choices appear on the verdict forms is strictly alphabetical and should not in any way be considered as indicating which choice is the correct choice. When all the verdict forms are completed, the forms should be placed in the provided envelope, sealed, and given to the deputy who will convey the verdicts to the court. At a time designated by the court, your verdict will be read out loud in the courtroom in your presence.

During your deliberations, you must not let bias, prejudice, passion, sympathy, or public opinion influence your decision. You must not consider any consequences or penalties that might follow from your verdict. You must not be biased in favor of or against any party, victim, or witness because of his or her disability, gender, race, religion, ethnicity, sexual orientation, age, national origin, or socioeconomic status.

Your verdict must be based solely on the evidence presented and the law that I give you. Your like or dislike of any witness, attorney, or party should not have an effect on the outcome of this case. The State of Minnesota and the Defendant have a right to demand, and do demand, that you will consider and weigh the evidence, apply the law, and reach a just verdict, regardless of

what the consequences might be. You must be absolutely fair. Remember that it is fair to find the Defendant guilty if the evidence and the law require it. On the other hand, it is fair to find the Defendant not guilty if you are not convinced of her guilty beyond a reasonable doubt.

Now, members of the jury, this case is in your hands as judges of the facts. I am certain that you realize that this case is important and serious and, therefore, deserves your careful consideration. We will await your verdict.