

**State of Minnesota**

**v.**

**Kimberly Ann Potter**

**CASE NO. 27-CR-21-7460**

**JURY INSTRUCTIONS**

Judge Regina M. Chu  
Presiding

## **Duties of Judge and Jury**

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**

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**

The Defendant is presumed innocent of the charge made. This presumption remains with the Defendant unless and until the Defendant 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 innocence.

## **Proof Beyond a Reasonable Doubt**

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.

### **Direct and Circumstantial Evidence**

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**

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, which 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 statement.

### **Evaluation of Testimony—Believability of Witnesses**

You are the sole judges of whether a witness is to be believed and of the weight to be given 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 the witness's:

- (1) Interest or lack of interest in the outcome of the case;
- (2) Relationship to the parties;
- (3) Ability and opportunity to know, remember, and relate the facts;
- (4) Manner;

- (5) Age and experience;
- (6) Frankness and sincerity, or lack thereof;
- (7) Reasonableness or unreasonableness of their testimony in the 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**

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,
- [4] Factors already given 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.

### **Impeachment**

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.

### **Evidence of Character**

In this case you have heard evidence as to the Defendant's general character to be peaceful and law-abiding. You should consider such evidence with all the other evidence in the case in determining whether or not the prosecution has proven the Defendant's guilt beyond a reasonable doubt.

### **Rulings on Objections to Evidence**

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.

### **Demonstrative Evidence**

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.

### **Consideration of Policies**

Brooklyn Center Police Department policies are not criminal statutes. An alleged violation of a policy is not a crime.

## Multiple Charges to be Considered Separately

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.

## Definition of Words

If I do not define a word or phrase that is used in these instructions, you should apply the common, ordinary meaning of that word or phrase.

**“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. 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.

**“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.

## COUNT I

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

## Definition

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

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.

Third, the death of Daunte Wright was **caused** by the Defendant's committing the crime of Reckless Handling or Use of a Firearm.

There are two elements of Reckless Handling or Use of a Firearm:

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

A person acts "recklessly" if, under the totality of the circumstances, she commits a conscious or intentional act in connection with the handling or use of a firearm that creates a substantial and unjustifiable risk that she is aware of and disregards.

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

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

Fourth, the Defendant committed 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.

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

Under Minnesota law, whoever, by culpable negligence, whereby she creates an unreasonable risk and consciously takes a chance of **causing death** or **great bodily harm** to another person, **causes the death** of another is guilty of manslaughter in the second degree.

### Elements

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** or **great bodily harm**.

“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.

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

With respect to any alleged use of a firearm:

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 of duty 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 police 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
- (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.

"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. 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. 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**.

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 police officer at the precise moment she acted with force. The

reasonableness of the particular use of force must be judged from the perspective of a reasonable police officer on the scene, rather than with the benefit of hindsight, taking into consideration 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.

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.

### **Use of Non-Deadly Force**

In this case you have heard testimony about whether the Defendant's apparent decision to use a Taser was reasonable or appropriate.

The statutes of Minnesota provide that a police officer is authorized to use reasonable force in the line of duty in:

- (1) Effecting a lawful arrest;
- (2) Executing legal process;
- (3) Enforcing an order of the court; or
- (4) Executing any other duty imposed upon the police officer by law.

You are instructed that executing a lawful arrest warrant is a duty imposed on police officers by law.

The kind and degree of force a police officer may lawfully use in executing the police officer's duties is limited by what a reasonable police officer in the same situation would believe to be necessary. Any use of force beyond that is not reasonable. To determine whether or not the actions of the police officer were reasonable, you must look at those facts known to the police officer at the moment the police officer acted with force. The reasonableness of the particular use of force must be judged from the perspective of a reasonable police officer on the scene, rather than with the benefit of hindsight, taking into consideration 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.

Whether the Defendant's apparent decision to use a Taser was reasonable or appropriate is not a defense to the charges in this case.

### **Jury May Return for Information**

Each of you will be provided with a copy 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. If you have a request to have a portion of a witness's testimony read back to you by my court reporter, I will consider the request, in consultation with the lawyers; but that request may be denied, in which case you'll be asked to rely on your collective memory.

If you submit a question to me about the law or evidence, I will need to consult with the lawyers before deciding whether I can answer the question. Because the lawyers and I may be in other hearings, it may take a significant amount of time to respond to your question.

I say this not to discourage you from asking questions but only to inform you that the asking of a question about the law or evidence is a significant event that takes time to address.

### **Notes Taken by Jurors**

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 a greater weight to a particular piece of evidence solely because it is referred to in a note taken by a juror.

## **Replaying of Audio/Video Recordings**

In this case, the State and the Defendant have agreed that you will be sent back with a laptop containing all of the audio or video evidence admitted in this case. This is by order of the Court. The attorneys have reviewed the laptop to ensure the accuracy of the exhibits on the laptop. You will have a laptop that does not have internet access or other programs or information on it – the only items on the laptop are whatever is needed to access the exhibits that are on the laptop. On the laptop, you will see each exhibit identified by number. You can simply click on the exhibit, and it should open on the laptop and an additional monitor that has been provided for you in the deliberation room.

If you encounter any difficulty operating the laptop or accessing any exhibit, you may send a note to the deputy who will be outside your deliberation room. I will then review the note with the attorneys and an IT person and see if the issue can be resolved. If the issue cannot be resolved, we may need to replay the exhibit or exhibits in the traditional manner, with the judge, parties, and jury reconvening in the courtroom and replaying the recordings in open court and with the jury suspending your deliberations during that time. After we replayed the recordings, you would then return to the jury room to continue your deliberations.

### **Duties of Jurors: Selection of Foreperson; Unanimous Verdict; Deliberation; Return of Verdict; Advising of Additional Issues**

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.

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. Bias 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 the 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. Resist and help each other resist any urge to reach a verdict influenced by bias. 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.

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. 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 you have finished your deliberations and have reached a verdict as to the specific count, the foreperson should mark the appropriate choice on the form with an “x.” The foreperson then must date and sign the verdict form with the foreperson’s juror number.

When you agree on a verdict, notify the deputy. You will return to the courtroom where your verdict will be received and read out loud in your presence.

In arriving at your verdict, the subject of penalty or punishment is not to be discussed or considered by you. This is a matter that lies solely with the Court and within the limits prescribed by law. The subject of penalty or punishment must not in any way affect your decision as to whether or not the State has proven the charges beyond a reasonable doubt.

Your duty is to both the State and the Defendant. The State and the Defendant both have the right to expect that you will see that justice is done according to your true conclusions. The responsibility which rests upon you should be borne courageously and without fear or favor. Be fair, act honestly, deliberate without prejudice, bias, or sympathy, and without regard to your personal likes or dislikes.

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