

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

State of Minnesota,

Court File No.: 27-CR-20-12646

Plaintiff,

v.

**STATE'S PROPOSED JURY
INSTRUCTIONS**

Derek Michael Chauvin,

Defendant.

TO: The Honorable Peter Cahill, Judge of District Court, and counsel for Defendant; Eric J. Nelson, Halberg Criminal Defense, 7900 Xerxes Avenue South, Suite 1700, Bloomington, MN 55431.

STATE'S PROPOSED JURY INSTRUCTIONS

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

Dated: February 8, 2021

Respectfully submitted,

KEITH ELLISON
Attorney General
State of Minnesota**/s/ Matthew Frank**
MATTHEW FRANK
Assistant Attorney General
Atty. Reg. No. 021940X445 Minnesota Street, Suite 1400
St. Paul, Minnesota 55101-2131
(651) 757-1448 (Voice)
(651) 297-4348 (Fax)
matthew.frank@ag.state.mn.us

ATTORNEYS FOR PLAINTIFF

INSTRUCTIONS TO BE CONSIDERED AS A WHOLE

You must consider these instructions as a whole and regard each instruction in the 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.

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.

PRESUMPTION OF INNOCENCE

The defendant, Derek Chauvin, is presumed innocent of the charges made. This presumption remains with the defendant unless and until he 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 his innocence.

PROOF BEYOND A REASONABLE DOUBT

The law requires the State to prove the elements of the offense beyond a reasonable doubt. It does not require that the elements be proved beyond all possibility of doubt. Proof beyond a reasonable doubt is the amount of proof that ordinary men and women would act upon in their most important decisions. You have a reasonable doubt if your doubts are based upon reason and common sense. You do not have a reasonable doubt if your doubts are based upon speculation or irrelevant details.

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.

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 the rulings, since they are controlled by rules of evidence.

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

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

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, and if that statement 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 the weight to be given to 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 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; 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.

IMPEACHMENT

In deciding the believability and weight to be given 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 the testimony at trial. Evidence of any prior inconsistent statement or conduct should be considered only to test the believability and weight of the witness's testimony at trial. However, in the case of the defendant, evidence of any statements he may have made may be considered by you for all purposes.

DEFENDANT'S RIGHT NOT TO TESTIFY¹

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.

EVIDENCE AS TO OTHER CRIMES OR OCCURRENCES INVOLVING DEFENDANT

You have heard evidence of an occurrence involving defendant Derek Chauvin on August 22, 2015, and an occurrence involving defendant Derek Chauvin on June 25, 2017. As I told you at the time this evidence was offered, these incidents were admitted for the limited purpose of assisting you in determining whether the defendant committed those acts with which the defendant is charged in the complaint. This evidence is not to be used as proof of the character of the defendant, nor as proof that the defendant acted in conformity with such character.

The defendant is not being tried for and may not be convicted of any offense other than the charged offense(s). You are not to convict the defendant on the basis of any occurrence on August 22, 2015 or on June 25, 2017. To do so might result in unjust, double punishment.

DEMONSTRATIVE EVIDENCE

The State and the defendant have introduced demonstrative exhibits in the form of charts and summaries. This information is presented to assist you as an aid in your understanding of a witness's testimony here in court, and to help explain the facts disclosed by the records and other documents that are evidence in the case. If the demonstrative exhibit is not consistent with the facts or figures shown by the evidence in this case, as you find them, you should disregard the demonstrative exhibit and determine the facts from the underlying evidence.

MULTIPLE OFFENSES CONSIDERED SEPARATELY

In this case, the defendant has been charged with multiple offenses. You should consider each offense, and the evidence pertaining to it, separately. 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 the other charged offenses.

DEFINITIONS OF WORDS

During these instructions, I have defined certain words and phrases. 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.

¹ The State requests this instruction in the event Defendant Chauvin does not testify at trial.

MURDER IN THE SECOND DEGREE—WHILE COMMITTING A FELONY—DEFINED

Under Minnesota law, a person causing the death of another person, without intent to cause the death of any person, while committing or attempting to commit a felony offense is guilty of the crime of murder in the second degree.

MURDER IN THE SECOND DEGREE—WHILE COMMITTING A FELONY—ELEMENTS

The elements of murder in the second degree while committing a felony, as alleged here, are:

First, the death of George Floyd must be proven.

Second, the defendant, acting alone or aided by others, caused the death of George Floyd.

“To cause” means to be a substantial causal factor in causing the death. The defendant is criminally liable for all the consequences of his actions that occur in the ordinary and natural course of events, including those consequences brought about by one or more intervening causes that were the 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 produces a result that would not otherwise have occurred. An action that occurs before the defendant’s conduct and is not the sole cause of the death does not constitute a superseding cause.

Third, the defendant, at the time of causing the death of George Floyd, was committing or attempting to commit the felony offense of assault in the third degree. It is not necessary for the State to prove the defendant had an intent to kill George Floyd, but it must prove that the defendant committed or attempted to commit third-degree assault.

The elements of assault in the third degree are:

First, the defendant, acting alone or aided by others, assaulted George Floyd.

The term “assault,” as used in this case, is the intentional infliction of bodily harm upon another.

“Bodily harm” means physical pain or injury, illness, or any impairment of a person's physical condition.

“Intentional infliction of bodily harm” means that the defendant intentionally applied force to George Floyd without George Floyd’s consent, and that this physical act resulted in bodily harm. This requires proof that the defendant’s application of force to George Floyd was not accidental. It does not require proof that the defendant intended to cause

bodily harm or violate the law, and it does not require proof that the defendant knew he would cause bodily harm or violate the law.

Second, the defendant, acting alone or aided by others, inflicted substantial bodily harm on George Floyd.

“Substantial bodily harm” means bodily harm that involves a temporary but substantial disfigurement, causes a temporary but substantial loss or impairment of the function of any bodily member or organ, or causes a fracture of any bodily member. A temporary loss of consciousness constitutes substantial bodily harm. It is not necessary for the State to prove that the defendant intended to inflict substantial bodily harm, but only that the defendant intended to commit the assault.

Fourth, the defendant’s act took place on May 25, 2020 in Hennepin County.

The defendant is charged with committing this crime or intentionally aiding the commission of this crime. If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty of this charge. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty of this charge, unless you find the State has proven beyond a reasonable doubt that the defendant is liable for this crime committed by another person according to the aiding-and-abetting instruction below.

AIDING AND ABETTING A CRIME—DEFINED

The defendant is guilty of a crime committed by another person only if the defendant has played an intentional role in aiding the commission of the crime and made no reasonable effort to prevent the crime before it was committed. “Intentional role” includes intentionally aiding, advising, hiring, counseling, conspiring with, or procuring another to commit the crime.

AIDING AND ABETTING MURDER IN THE SECOND DEGREE—ELEMENTS

The elements of aiding and abetting murder in the second degree, as alleged here, are:

First, the defendant knew that another person was going to commit or was committing an assault in the third degree upon George Floyd.

Second, the defendant intended that his presence or actions aid another person in the commission of assault in the third degree upon George Floyd.

“Intended” means either that the defendant has a purpose to aid another in causing bodily harm, or believes that his actions, if successful, will aid another in causing bodily harm. It is not necessary that the defendant have this intent in advance; the necessary intent can develop while the other person is committing the crime.

A defendant may “intend that his presence or actions” aid the crime by intentionally advising, hiring, counseling, conspiring with, or procuring another to commit the crime.

The defendant is guilty of aiding and abetting murder in the second degree, however, only if another person committed that crime. The defendant is not guilty for aiding, advising, hiring, counseling, conspiring, or otherwise procuring the commission of murder in the second degree unless that crime is actually committed.

The State has the burden of proving beyond a reasonable doubt that the defendant intentionally aided another person in committing the crime of murder in the second degree.

MURDER IN THE THIRD DEGREE—DEPRAVED MIND—DEFINED²

Under Minnesota law, a person causing the death of another by perpetrating an act eminently dangerous to others and evincing a depraved mind, without regard for human life, but without intent to cause the death of any person, is guilty of murder in the third degree.

MURDER IN THE THIRD DEGREE—DEPRAVED MIND—ELEMENTS

The elements of murder in the third degree, as alleged here, are:

First, the death of George Floyd must be proven.

Second, the defendant, acting alone or aided by others, caused the death of George Floyd.

“To cause” means to be a substantial causal factor in causing the death. The defendant is criminally liable for all the consequences of his actions that occur in the ordinary and natural course of events, including those consequences brought about by one or more intervening causes that were the 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 produces a result that would not otherwise have occurred. An action that occurs before the defendant’s conduct and is not the sole cause of the death does not constitute a superseding cause.

Third, the defendant's intentional act that caused the death of George Floyd was eminently dangerous to other persons and was performed without regard for human life. Such an act may not have been specifically intended to cause death, and may not have been specifically directed at the particular person whose death occurred. But in order to find this element has been satisfied, it

² On February 4, 2021, the State filed a motion to reinstate the third-degree murder charge against defendant Chauvin or, in the alternative, for leave to amend the complaint to include that charge. That motion remains pending. In the event the Court grants the State’s motion, the State proposes these jury instructions for the third-degree murder charge.

must have been committed in a reckless or wanton manner with the knowledge that someone may be killed and with a heedless disregard of that happening.

Fourth, the defendant's act took place on May 25, 2020 in Hennepin County.

The defendant is charged with committing this crime or intentionally aiding the commission of this crime. If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty of this charge. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty of this charge, unless you find the State has proven beyond a reasonable doubt that the defendant is liable for this crime committed by another person according to the aiding-and-abetting instruction below.

AIDING AND ABETTING MURDER IN THE THIRD DEGREE—ELEMENTS

The elements of aiding and abetting murder in the third degree, as alleged here, are:

First, the defendant knew that another person was going to commit or was committing murder in the third degree.

Second, the defendant intended that his presence or actions aid another person in the commission of murder in the third degree.

“Intended” means either that the defendant has a purpose to aid another in conduct constituting murder in the third degree, or believes that his actions, if successful, will aid another in conduct constituting murder in the third degree. It is not necessary that the defendant have this intent in advance; the necessary intent can develop while the other person is committing the crime.

A defendant may “intend that his presence or actions” aid the crime by intentionally advising, hiring, counseling, conspiring with, or procuring another to commit the crime.

The defendant is guilty of aiding and abetting murder in the third degree, however, only if another person committed that crime. The defendant is not guilty for aiding, advising, hiring, counseling, conspiring, or otherwise procuring the commission of murder in the third degree unless that crime is actually committed.

The State has the burden of proving beyond a reasonable doubt that the defendant intentionally aided another person in committing the crime of murder in the third degree.

MANSLAUGHTER IN THE SECOND DEGREE—DEFINED

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

MANSLAUGHTER IN THE SECOND DEGREE—ELEMENTS

The elements of manslaughter in the second degree, as alleged here, are:

First, the death of George Floyd must be proven.

Second, the defendant, acting alone or aided by others, caused the death of George Floyd by culpable negligence, whereby the defendant created an unreasonable risk and consciously took a chance of causing death or great bodily harm.

“To cause” means to be a substantial causal factor in causing the death. The defendant is criminally liable for all the consequences of his actions that occur in the ordinary and natural course of events, including those consequences brought about by one or more intervening causes that were the 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 produces a result that would not otherwise have occurred. An action that occurs before the defendant’s conduct and is not the sole cause of the death does not constitute a superseding cause.

“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. Culpable negligence is more than ordinary negligence or gross negligence. It is gross negligence coupled with recklessness. “Recklessness” is a conscious disregard of a substantial and unjustifiable risk of death or great bodily harm to others. The defendant, however, need not have intended to cause harm.

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

Third, the defendant’s act took place on May 25, 2020 in Hennepin County.

The defendant is charged with committing this crime or intentionally aiding the commission of this crime. If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty of this charge. If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty of this charge, unless you find that the State has proven beyond a reasonable doubt that the defendant is liable for this crime committed by another person according to the aiding-and-abetting instruction below.

AIDING AND ABETTING MANSLAUGHTER IN THE SECOND DEGREE—ELEMENTS

The elements of aiding and abetting manslaughter in the second degree, as alleged here, are:

First, the defendant knew that another person was going to commit or was committing manslaughter in the second degree.

Second, the defendant intended that his presence or actions aid another person in the commission of manslaughter in the second degree.

“Intended” means that the defendant either has a purpose to aid another in conduct constituting manslaughter in the second degree, or believes that his actions, if successful, will aid another in conduct constituting manslaughter in the second degree. It is not necessary that the defendant have this intent in advance; the necessary intent can develop while the other person is committing the crime.

A defendant may “intend that his presence or actions” aid the crime by intentionally advising, hiring, counseling, conspiring with, or procuring another to commit the crime.

The defendant is guilty of aiding and abetting manslaughter in the second degree, however, only if another person committed that crime. The defendant is not guilty for aiding, advising, hiring, counseling, conspiring, or otherwise procuring the commission of manslaughter in the second degree unless that crime is actually committed.

The State has the burden of proving beyond a reasonable doubt that the defendant intentionally aided another person in committing the crime of manslaughter in the second degree.

AUTHORIZED USE OF FORCE BY POLICE OFFICER

The statutes of Minnesota provide that no crime is committed, and a police officer’s actions are justified, when the police officer uses reasonable force in the line of duty in:

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

As to each count or defense, the kind and degree of force a police officer may lawfully use in executing his 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 if the actions of the police officer were reasonable, you must look at those facts known to the officer at the precise moment he acted with force. You must decide whether the officer’s actions were objectively reasonable based on the totality of the facts and circumstances confronting the officer, without regard to his own state of mind, intention, or motivation. The reasonableness of the use of force depends not only on the facts and circumstances confronting

the officer at the precise moment he used force, but also on whether the officer's own conduct during the incident unreasonably created the need to use such force.

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

DEFENSE OF SELF OR OTHERS

No crime is committed when a person uses reasonable force to resist—or to aid another person in resisting—an offense against the person, if such an offense was being committed or the person reasonably believed that it was being committed.

An “offense against the person” means an offense of a physical nature with the potential to cause bodily harm.

“Bodily harm” means physical pain or injury, illness, or any impairment of physical condition.

It is lawful for a person to defend from an attack if the person is resisting an offense against his person or aiding another in resisting an offense against the person, and if the person has reasonable grounds to believe that bodily injury is about to be inflicted. In doing so, the person may use all force and means that the person reasonably believes to be necessary and that would appear to a reasonable person, in similar circumstances, to be necessary to prevent an injury that appears to be imminent. The kind and degree of force a person may lawfully use in defense of self or others is limited by what a reasonable person in the same situation would believe to be necessary. Any use of force beyond that is not reasonable.

The legal excuse of defense of self or others is available only to those who act honestly and in good faith. A person may use force in defense of self or others only if the person was not the aggressor and did not provoke the offense. The defendant has a duty to retreat or avoid the danger if reasonably possible. The rule of self-defense does not authorize one to seek revenge or to take into his own hands the punishment of an offender.

The defendant is not guilty of a crime if he acted in defense of self or others as authorized by law. To prove guilt, the State has the burden of proving beyond a reasonable doubt that at least one of the requirements of this defense has not been met.

JURY QUESTIONS DURING DELIBERATIONS

If you have a question about any part of the testimony or any legal question after you have retired for deliberation, please address it to the judge in writing, and give it to the deputy.

As I told you, you may take with you into the jury room 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. 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.

**DUTIES OF JURORS; SELECTION OF FOREPERSON; UNANIMOUS VERDICT; DELIBERATION;
RETURN OF VERDICT**

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 verdicts 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 just because other jurors disagree, or merely to reach a verdict.

The foreperson must date and sign the verdict forms when you have finished your deliberations and reached a verdict.

You will be given one verdict form for each of the charges, and you will place an "X" in the space on each form that reflects your decision. When you agree on your verdicts and have completed your deliberations, notify the deputy. You will return to the courtroom where your verdicts will be received and read out loud in your presence.

After you return your verdict, there may be additional issues for you to address and decide. I will instruct you further at that time.

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 that 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. We will await your verdict.