

STATE OF MINNESOTA

COUNTY OF RAMSEY

DISTRICT COURT

SECOND JUDICIAL DISTRICT

State of Minnesota,

Plaintiff,

vs.

Court File # 62-CR-21-6868

Brian Harry Kjellberg,

Defendant.

Hassan Tahir
Makenzie Morgan Lee

Attorneys for the State of Minnesota

Earl Gray
Amanda Montgomery

Attorneys for the Defendant

JURY INSTRUCTIONS

Chief Judge Leonardo Castro
Presiding Judge

Members of the Jury:

The evidence has now been concluded and the attorneys will be making their summations and presenting their respective points of view shortly. It is now my duty to instruct you on the law that applies to this case and it is your duty as jurors to follow the law as it is stated to you.

I ask that you listen carefully to what I am about to tell you. It will be helpful to know what the law is and what your duties are before you hear the attorneys give their final arguments. I ask that you try not to take notes during my instructions. You will be given a written copy of these instructions to take with you to the jury room so that you may refer back to them if you need to. Please listen to and concentrate on what I am about to tell you so that you have an overall framework and understanding of the law to help you understand the attorneys' arguments.

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.

Presumption of Innocence

The defendant is presumed innocent of the charges 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

Using direct and circumstantial evidence

You should consider both kinds of evidence. The law makes no distinction between the weight given to either direct or circumstantial evidence. It is up to you to decide how much weight to give any kind of evidence.

Tool / Weapon

A tool described as the weapon has been introduced and admitted into evidence. It will not be given to you during deliberations. If you would like to see and examine it, it will be provided to you with the escort of a deputy sheriff. If you make the request at any time during your deliberations, it will be brought in by the deputy for your examination. The deputy will remain in the room until you have completed your examination then it will be retrieved. You are not to discuss the case or conduct any deliberation while the deputy is in the room.

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 because they are controlled by rules of evidence.

By admitting into evidence testimony and exhibits as to which 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 I have ordered stricken or have told you to disregard.

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.

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,
9. And 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 the testimony of a witness, you may consider impeachment evidence which is 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 he 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 character for peacefulness, truthfulness, and reputation in the community. 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.

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The defendant in this case has been accused of the following crime:

Murder in the Second Degree, without intent to kill but while committing a felony assault. 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.

The elements of murder in the second degree, each of which the state must prove beyond a reasonable doubt are:

First, the death of Arnell Stewart must be proven.

Second, the defendant caused the death of Arnell Stewart.

“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, if such intervening causes 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.

Third, the defendant, at the time of causing the death of Arnell Stewart, was committing or attempting to commit the felony offense of Assault in the second degree. It is not necessary for the State to prove the defendant had an intent to kill Mr. Stewart, but it must prove defendant committed or attempted to commit the underlying felony.

The elements of Assault in the second degree are:

First, the defendant assaulted Arnell Stewart.

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.

“Intentionally” means that the actor either has a purpose to do the thing or cause the result specified, or believes that the act performed by the actor, if successful, will cause the result. In addition, the actor must have knowledge of those facts that are necessary to make the actor's conduct criminal and that are set forth after the word “intentionally.”

Second, the defendant, in assaulting Arnell Stewart, used a dangerous weapon. A “dangerous weapon” is any device designed as a weapon and capable of producing death or great bodily harm, or any other device or instrumentality that, in the manner it is used or intended to be used, is calculated or likely to produce death or great bodily harm.

Fourth, the defendant's act took place on December 2, 2021 in Ramsey 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.

Self Defense

The defendant has asserted the defense of self.

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

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, who is resisting an offense against his person and who has reasonable grounds to believe that bodily injury is about to be inflicted to defend from an attack. 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 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 is available only to those who act honestly and in good faith. A person may use force in defense of self 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, except the defendant has no duty to retreat when acting in defense of self in his home.

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

The defendant has also asserted the justifiable use of force in defense of property.

It is lawful for a person in lawful possession of real or personal property to use reasonable force to resist trespass upon or other unlawful interference with the property. 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 resist trespass upon or other unlawful interference with the property. The kind and degree of force a person may lawfully use is limited by what a reasonable person in the same situation would believe to be necessary to resist trespass upon or other unlawful interference with the property. Any use of force beyond that is not reasonable.

Trespass is the intentional entry into the property of another, and without claim of right refuses to depart the property on the demand of the lawful possessor.

The legal excuse of defense of property is available only to those who act honestly and in good faith. A person may act in defense of property only if the person was not the aggressor and did not provoke the trespass or unlawful interference with the property. The defendant has a duty to retreat or avoid the danger if reasonably possible, except the defendant has no duty to retreat from the home when acting in defense of property.

The defendant is not guilty of a crime if he acted as authorized by law in resisting a trespass upon or other unlawful interference with property.

To prove guilt, the state must prove beyond a reasonable doubt that at least one of the requirements of defense of property has not been met.

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.

[Counsel, are there any additions or corrections?]

[Attorneys' Final Arguments]

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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.

Deliberations

When you deliberate, there are certain things that you must not consider. These are as follows:

1. The necessity, advisability, or desirability of the prosecution of the alleged crime. These are matters which are not properly the concern of the jury.
2. The consequences of your verdict. The matter of punishment, if the defendant is found guilty, is solely the concern of the court and you are not to speculate on it or consider it in any way in your deliberations.
3. Feelings of prejudice, bias or sympathy toward either the defendant or the state. You are to take a neutral position and decide the case on the evidence and the law.

During your deliberations you should consider, examine and weigh with care, calmly and objectively, all the evidence in the case. You should subject that evidence to the scrutiny of your judgment as persons of experience and common sense, and you should draw from that evidence such conclusions as you believe to be fair and reasonable.

When you reach a verdict, it must be agreed upon by all of you. In other words, your verdict must be unanimous.

You will be given two (2) verdict forms. These are guilty and not guilty forms for Murder in the Second degree, without intent, while committing a felony assault. You should use whichever may be appropriate to your verdict.

I will read the verdict forms to you. Do not draw any conclusion from the order in which I read them since one must be read first and another last.

[Read verdict forms.]

On each verdict form you will find a place for the Presiding Juror to sign and a place for the date. When you reach a verdict that person should sign and date the appropriate verdict form.

The first thing you should do when you retire to the jury room is to select one of the members of the jury to preside over your deliberations.

When all of you agree on a verdict, you will return to the courtroom where your verdict will be read in open court in my presence and in the presence of the lawyers and the defendant. Please return with all the verdict forms including those not used.

I suggest that when you retire to the jury room you conduct your deliberations in a conscientious and business-like manner and that you give respectful and attentive consideration to the views of your fellow jurors.

Each of you has a duty to consult with one another and to deliberate with a view toward reaching an agreement if you can do so. Each of you must, of course, decide the case for yourself, but only after an objective consideration of the evidence with your fellow jurors. No juror should hesitate to re-examine his or her own view and to change their opinion if they are persuaded that their opinion is wrong or inaccurate. On the other hand, no juror should surrender his or her honest judgment solely because of the opinions of their fellow jurors or merely for the purpose of returning a unanimous verdict.

Your deliberations should be conducted only when all of you are present. During breaks do not discuss the case. Following breaks, do not discuss the case until all members are present and able to participate in the discussions.

The final test of the quality of your service will be in the verdict, which you return to this court. As I told you at the beginning of this case, this is an extremely important matter for both the defendant and the state. I am sure you will keep that in mind throughout your deliberations.

Your function is the most important and difficult one in the entire system of justice, namely, that of reaching a fair and just verdict. It is essential to the faithful performance of that function that you act impartially and devote whatever time is necessary to reach a fair and unhurried verdict.

You are an essential part of the system of justice, and you have pledged yourselves to perform your duties honestly and conscientiously, without fear or favor, basing your verdict only on the evidence received in court, on the fair and reasonable conclusions to be drawn from that evidence, and on the law as I have given it to you.

The exhibits will be provided to you in the jury room. Any jury review of audio or video material must occur in open court. If you would like to review audio or video materials, please inform the deputy.

[Counsel, are there any additions or corrections?]

[Dismiss alternate jurors]

[Swear in Deputy]