

STATE OF MINNESOTA
COUNTY OF RAMSEY

DISTRICT COURT
SECOND JUDICIAL DISTRICT
CRIMINAL DIVISION

State of Minnesota,

Plaintiff,

vs.

ORDER 5 –
PRE-TRIAL MOTIONS

Case File No.: 62-CR-16-8110

Jeronimo Yanez,

Defendant.

This matter came before the undersigned Judge of the District Court on April 4, 2017, on Defendant's pretrial motions.

Richard J. Dusterhoft, Esq., Assistant Ramsey County Attorney; Clayton M. Robinson, Esq., Assistant Ramsey County Attorney; and Jeffrey S. Paulsen, Esq., Special Assistant Ramsey County Attorney, appeared on behalf of the State.

Paul C. Engh, Esq.; Thomas Kelly, Esq; and Earl P. Gray, Esq., appeared on behalf of the Defendant Jeronimo Yanez, who personally appeared.

This court, having in mind the arguments of counsel, the applicable law, and all files and records herein, issues the following order.

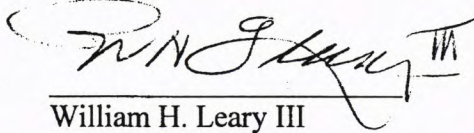
IT IS ORDERED:

1. Defendant's motion to change venue is **DENIED**.

2. Defendant's motion to dismiss complaint is **DENIED**.
3. Defendant's motion to suppress his statement given to the Minnesota Bureau of Criminal Apprehension is **STRICKEN** at Defendant's request.
4. Defendant's motion to sever offenses is **DENIED**.
5. Defendant's motion to exclude certain opinions of State expert Jeffrey Noble is **DENIED**.
6. Defendant's motion for production of certain discovery information will be determined by separate order of this court.

The accompanying memorandum is incorporated herein by reference.

April 6, 2017



William H. Leary III
District Court Judge

MEMORANDUM**Change of Venue**

In his motion for change of venue, Defendant contends that Ramsey County cannot provide a fair trial because of the volume, tenor and source of pretrial publicity disseminated through print, television, electronic news and social media in this matter, and because of the potential for public misconduct during the trial. In support of his motion, Defendant has provided a review of media headlines, articles, and the opinion of a defense investigator that this case has received less public attention in Brainerd, Minnesota, than locally. Defendant has not produced any evidence predictive of public misconduct that might occur during the trial. For the following reasons, Defendant's motion is denied.

A change of venue is warranted when "the dissemination of potentially prejudicial material creates a reasonable likelihood" of an unfair trial. Minn. R. Crim. P. 25.02, subd. 3. A showing of actual prejudice is not required. *Id.*

The Minnesota Supreme Court has held that pretrial publicity is not solely determinative of whether a change of venue should be granted. Rather, the fundamental issue is whether jurors from the community where the alleged crime occurred can honestly and in good conscience set aside pretrial publicity and their own impressions or opinions regarding the case.

Prospective jurors cannot be presumed partial solely on the ground of exposure to pretrial publicity. With our present methods of communication, it is unlikely that "any of those best qualified to serve as jurors will not have formed some impression or opinion as to the merits of the case." *Irvin*, 366 U.S. at 722-23, 81 S.Ct. at 1642-43. The test is whether a prospective juror can set aside his impression or opinion and render an impartial verdict. *Id.*

at 723, 81 S.Ct. at 1642; *Webber*, 292 N.W.2d at 12; see also *State v. Howard*, 324 N.W.2d 216, 220 (Minn.1982).

State v. Kinsky, 348 N.W.2d 319, 323 (Minn. 1984); *State v. Blom*, 682 N.W.2d 578, 608 (Minn. 2004).

In *State v. Blom*, a case that was the subject of “extensive local and statewide news coverage,” the Minnesota Supreme Court held that the trial court did not abuse its discretion in denying defendant’s motion for a second change of venue. *Blom*, 682 N.W.2d at 588. In *Blom*, the defendant kidnapped, murdered and burned the remains of nineteen-year-old Katie Poirier near Moose Lake, Minnesota, in 1999. While criminal charges were filed in Carlton County, the trial court granted defendant’s motion for a change of venue and transferred venue to the City of Virginia in St. Louis County. Virginia is 65 miles from Moose Lake.

During jury selection, however, the defendant again moved for a change of venue based on his contention that individual jurors and the Virginia community were biased against him. *Id.* at 595. He also argued that jury exposure to the case outside the courtroom and the potential for jury exposure to prejudicial publicity made another change of venue necessary. *Id.* In denying the motion, “the district court acknowledged that the pretrial publicity was extensive, but concluded that no evidence had been provided to indicate that any part of Minnesota had been shielded from such publicity.” *Id.* The court stated that it “could not conclude that the jury had been adversely affected by any exposure to publicity or inadmissible evidence, or that the jury would be unfair[.]” *Id.* at 595-596. As to the jury’s future exposure to adverse publicity, the trial court stated that it would

reconsider defendant's motion should such publicity occur. *Id.* The Supreme Court affirmed.

As in *Blom*, the death of Mr. Castile has been the subject of ongoing public comment locally, statewide and nationally. Although Defendant surmises, through a review of media headlines, articles, and the opinion of an investigator, that the impact of such publicity may be less in other areas of the state, Defendant concedes that no area of the state has been "shielded" from such publicity. Certainly, it is more evident than ever that, given the saturation of electronic communication in the years since *Blom* and *Kinsky* were decided, "our present methods of communication" make it unlikely that any community has been impervious to forming "impressions or opinions" regarding the case.

This court recognizes that, in accordance with the holdings in *Kinsky* and *Blom*, a more informative consideration of Defendant's motion may occur during jury selection when all potential jurors will be required under oath to disclose, through questionnaires and individual questioning, their exposure to pretrial publicity and their ability to render an impartial verdict. Defendant has failed, however, to demonstrate at this time that there is a "reasonable likelihood" that an unfair trial would occur in Ramsey County.

Motion to Dismiss Count I

Defendant first argues that the manslaughter count should be dismissed because, as applied to this case, the statute "is void for vagueness" and thereby violates the due-process clause on the United States and Minnesota constitutions. More specifically, Defendant argues as follows:

The Statute as applied to this offense incorporates the description of an element which renders the Statute vague and ambiguous. The report of Jeffery Noble provides opinions which are dependent on law inapplicable to the offense and of which no Minnesota law enforcement officer would have fair notice.

The analysis performed by Jeffrey Noble with the resulting opinion is guided by Ninth Circuit law applied to excessive force claims under 42 U.S.C. 1983.

This body of law widens the focus on officer conduct to tactical conduct and decisions employed by law enforcement preceding the use of deadly force. With Officer Yanez, the culpable negligence starts with his decision to follow the car driven by Philando Castile. This expansive reading and application of the law to an element of the offense is incorrect and constitutes a violation of due process rights.

Def. Mem. at 3-4. For the following reasons, Defendant's "void for vagueness" argument must be rejected.

A party challenging a statute on constitutional grounds must demonstrate beyond a reasonable doubt that the statute violates a provision of the constitution. *State v. Ness*, 819 N.W.2d 219, 224 (Minn. Ct. App. 2012). A penal statute is void for vagueness when it fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by statute, or when it authorizes or encourages arbitrary and discriminatory enforcement. *Id.* at 228. "[D]ue process requirements are satisfied 'by specifying standards of conduct in terms that have acquired meaning involving reasonably definite standards either according to the common law or by long and general usage.'" *State v. Bussmann*, 741 N.W.2d 79, 83 (Minn. 2007). A void-for-vagueness - as applied - argument is properly framed when the alleged conduct of the defendant is impermissibly applied to the statute.

Defendant argues that the sole facts upon which a person may be found guilty of second-degree manslaughter are those facts as they occurred at the immediate moment of the shooting, and not those facts, as alleged by the State, leading up to that event. For that proposition, Defendant cites three Minnesota cases and a case from the Eighth Circuit Court of Appeals.¹ While the convictions in each of the Minnesota cases involved facts immediately surrounding the deaths of the victims, none of the appellate decisions held that the manslaughter statute was necessarily confined to those facts alone. That is, none of the cases held that the manslaughter statute precluded a conviction based upon evidence of a course of conduct preceding a victim's death.

As to the Eighth Circuit case, *Schulz v. Long*, 44 F. 3d 643, 648-649 (8th Cir. 1995), the case involved an alleged violation of the Fourth Amendment prohibiting illegal searches and seizures. The Eighth Circuit Court of Appeals held that the only conduct pertinent to a fourth-amendment claim was that conduct occurring at the moment of the seizure. The court reasoned that the Fourth Amendment only protected against illegal seizures and nothing more, and, therefore, the pertinent facts were limited to those occurring at the moment of the seizure. *Id.* In the present case, a fourth-amendment violation is not an element of the manslaughter offense and, therefore, the holding in *Schulz* does not apply.

¹ *State v Frost*, 342 N.W.2d. 317 (Minn 1983); *State v. McCormick*, 835 N.W.2d 498 (Minn. Ct. App 2013); *State v. McKown*, 427 N.W. 2d 63 (Minn. 1991); *Schulz v. Long*, 44 F. 3d 643 (8th Cir. 1995).

Defendant next argues that the manslaughter offense should be dismissed because the statute under which the offense is charged, Minn. Stat. § 609.205(1), criminalizes conduct that is permitted under another statute, Minn. Stat. 609.066, subd. 2. Defendant's analysis misses the mark.

Minnesota law states that manslaughter in the second degree occurs when a person causes the death of another as a result of the "person's culpable negligence whereby the person creates an unreasonable risk, and consciously takes chances of causing death or great bodily harm to another." Minn. Stat. § 609.205(1). The statute has objective and subjective elements.

The objective element requires a finding that a defendant's act was "a gross deviation from the standard of care that a reasonable person would observe in the [defendant's] situation." *State v. Frost*, 342 N.W.2d 317, 319 (Minn. 1983); *State v. Back*, 775 N.W.2d 866, 869, n. 5 (Minn. 2009). The subjective element requires a finding as to the defendant's state of mind, specifically a "recklessness" in the form of an "actual conscious disregard for the risk created by the defendant's conduct." *State v. Back* at 869, n. 5. A defendant's "state of mind is generally proven circumstantially, by inference from words or acts of the [defendant] both before and after the incident." *State v. Johnson*, 616 N.W.2d 720, 726 (Minn. 2000).

Minn. Stat. 609.066, subd. 2, which prescribes the authorized use of deadly force by a peace officer, states that the "use of deadly force by a peace officer in the line of duty is justified only when necessary to protect the peace officer or another from apparent death or great bodily harm."

The statutes do not treat the same conduct as, respectively, impermissible and permissible. The manslaughter statute prohibits, and criminalizes, conduct resulting in an unreasonable risk of death or great bodily harm. The deadly-force statute limits a peace officer's justification for use of deadly force "only when necessary." A peace officer who creates a situation that violates the manslaughter statute cannot otherwise justify the death that results as a "necessary" use of deadly force.

Suppression of Statement

At the hearing, Defendant withdrew his motion to suppress the statement he gave to agents of the Minnesota Bureau of Criminal Apprehension (BCA) on July 7, 2017.

Severance of Offenses

Defendant moves for severance of Count 1 of the complaint, Manslaughter in the Second Degree, from Counts 2 and 3, each alleging Intentional Discharge of a Firearm. In his memorandum in support of the motion, Defendant argued that, because the offenses require proof of differing mental states, trying all charges together would lead to juror confusion and result in substantial prejudice to him. At the hearing, Defendant did not address the argument raised in his memorandum. Rather, he argued that the charges should be severed because the facts relevant to the manslaughter charge should be limited to the moment of the shooting, as discussed above, and that the other charges would not be limited to those facts, thereby exposing the jury to facts not relevant to the manslaughter charge.

As to Defendant's argument in his memorandum, there is no basis in the law for severing counts based on the jury's consideration of different concepts of criminal behavior in a single trial. As to the argument raised at the hearing, this court, having already rejected

Defendant's argument as to the facts relevant to the manslaughter charge, must reject the same argument as a basis for severing the counts. The facts alleged are similarly relevant to all counts.

Exclusion of Expert Testimony

Defendant has moved to exclude the opinions of Jeffrey Noble, the State's expert witness, that (1) constitute legal conclusions and (2) are partially based upon allegedly irrelevant events that preceded the shooting.

As to Defendant's first argument, the law does not prohibit Mr. Noble from expressing an opinion as to the reasonableness of Defendant's conduct. It only prohibits Mr. Noble from expressing an opinion on the ultimate issue in this case, that is, Defendant's innocence or guilt.

As to excluding Mr. Noble from expressing an opinion based on events leading up to the shooting, that argument has been rejected previously in this memorandum and must be rejected again as a basis from excluding that portion of his report.

Defendant's motion to exclude Mr. Noble's opinions, insofar as they are not opinions as to the ultimate issues in this case, must be denied.

WHL