

COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

STATE OF OHIO	:	Case No. B1503961
Plaintiff	:	Judge Megan E. Shanahan
vs.	:	
RAYMOND M TENSING	:	CRIMINAL CHARGE
Defendant	:	OF THE COURT

MEMBERS OF THE JURY:

You have heard the evidence and the arguments of counsel. It is my duty to instruct you on the law that applies to this case. The Court and the jury have separate functions: you decide the disputed facts and the Court provides the instructions of law. It is your sworn duty to accept these instructions and to apply the law as it is given to you. You are not permitted to change the law, nor to apply your own conception of what you think the law should be.

A criminal case begins with the filing of an indictment. The indictment merely informs the Defendant that he has been charged with a crime. The fact that it was filed may not be considered for any other purpose. The plea of not guilty is a denial of the charge and puts in issue all the essential elements of the crime.

The Defendant is presumed innocent until his guilt is established beyond a reasonable doubt. The Defendant must be acquitted unless the State produces



evidence that convinces you beyond a reasonable doubt of every essential element of the offense charged in the indictment.

Reasonable doubt is present when, after you have carefully considered and compared all the evidence, you cannot say you are firmly convinced of the truth of the charge. Reasonable doubt is a doubt based on reason and common sense. Reasonable doubt is not mere possible doubt, because everything relating to human affairs or depending on moral evidence is open to some possible or imaginary doubt.

Proof beyond a reasonable doubt is proof of such character that an ordinary person would be willing to rely and act upon it in the most important of his or her own affairs.

What is evidence? Evidence is all the testimony received from the witnesses, the exhibits admitted during the trial and any stipulations entered into by counsel.

State's Exhibit 9A is the video recording of the Defendant's interview with Cincinnati Police on July 21, 2015. Several breaks were taken during the interview and during some of those breaks the Defendant was present in the interview room with his attorney. By the agreement of the parties, those sections of the interview have been redacted from the interview.

There is also a few minute segment of the interview where the officers are questioning the Defendant about damage to his uniform where the video did not record what was taking place but the audio was functioning properly. Both sides agree that the complete audio part of the interview was recorded on this disk, and the only thing missing is the few minutes of video.

Evidence may be direct or circumstantial, or both. Direct evidence is the testimony given by a witness who has seen or heard the facts to which he or she testifies. It includes exhibits admitted into evidence during the trial.

Evidence may also be used to prove a fact by inference. This is referred to as circumstantial evidence. Circumstantial evidence is the proof of facts or circumstances by direct evidence from which you may reasonably infer other reasonable facts or conclusions.

Circumstantial evidence and direct evidence inherently possess the same probative value and therefore are subjected to the same standard of proof. Where the evidence is both direct and circumstantial, the combination of the two must satisfy you of the Defendant's guilt beyond a reasonable doubt.

You may not make one inference from another inference but you may draw more than one inference from the same facts or circumstances.

The evidence does not include the indictment, the opening statements, or closing arguments of counsel. The opening statements and closing arguments of counsel are designed to assist you. They are not evidence.

Statements and answers that were stricken by the Court or which you were instructed to disregard are not evidence and must be treated as though you never heard them.

You must not speculate as to why the Court sustained the objection to any question or what the answer to such question might have been. You must not draw any inference or speculate on the truth of any suggestion included in a question that was not answered.

A number of exhibits and the testimony related to them have been introduced. You may consider whether the exhibits are the same objects and in the same condition as originally taken. You will determine what weight, if any, the exhibits should receive in the light of all the evidence.

Recordings and testimony relating to them have been introduced into evidence. You shall consider whether the recordings are a true record of what transpired at the time they were taken. If you find that they are, you will then determine what weight, if any, the recordings should receive in light of all the evidence.

Generally a witness may not express an opinion. However, one who follows a profession or special line of work may express his opinion because of his education, knowledge and experience. Such testimony is admitted for whatever assistance it may provide to help you to arrive at a just verdict.

Questions have been asked in which expert witnesses were permitted to assume that certain facts were true and to give an opinion based upon such assumption. You must determine whether the assumed facts, upon which the experts based their opinion, are true. If any assumed fact was not established, you will determine its effect upon the opinion of the experts.

However, as with other witnesses, upon you alone rests the duty of deciding what weight should be given to the testimony of the experts. In determining its weight, you may take into consideration their skill, experience, knowledge, veracity, familiarity with the facts of this case, and the usual rules for testing credibility and determining the weight to be given to testimony.

You are the sole judges of the facts, the credibility of the witnesses and the weight of the evidence. To weigh the evidence, you must consider the credibility of the witnesses. You will apply the tests of truthfulness that you apply in your daily lives.

These tests include the appearance of each witness upon the stand; his or her manner of testifying; the reasonableness of the testimony; the opportunity he or she had to see, hear and know the things concerning which he or she testified; his or her accuracy of memory; frankness or lack of it; intelligence; interest and bias, if any; together with all the facts and circumstances surrounding the testimony. Applying these tests, you will assign to the testimony of each witness such weight as you deem proper.

You are not required to believe the testimony of any witness simply because he or she was under oath. You may believe or disbelieve all or any part of the testimony of any witness. It is your province to determine what testimony is worthy of belief and what testimony is not worthy of belief.

The testimony of the Defendant is to be weighed by the same rules that apply to other witnesses.

The indictment charges that the crimes alleged took place on or about the 19th day of July in the year Two Thousand Fifteen. It is not necessary that the State prove that the crimes were committed on the exact day that is charged in the indictment. It is sufficient to prove that the offenses took place on a date reasonably near the dates claimed.

The indictment also charges that the crimes took place in Hamilton County, Ohio. Before you can decide whether the State of Ohio has proved beyond a reasonable doubt all of the essential elements of the offenses with which the Defendant is charged, you must first decide whether this is the correct county in which this trial should be held. The State must prove beyond a reasonable doubt that all or any part of the crimes were committed in Hamilton County, Ohio. The right of this Court to try the Defendant depends upon proof that the crimes were committed in Hamilton County.

The charges set forth in each count in the indictment constitute a separate and distinct matter. You must consider each count and the evidence applicable to

each count separately and you must state your finding as to each count uninfluenced by your verdict as to any other count. The Defendant may be found guilty or not guilty of any one or all the offenses charged.

The Court will now outline and define the specific issues involved in this case.

COUNT 1

The indictment charges the Defendant in Count 1 with murder, a violation of Ohio Revised Code Section 2903.02(A). Before you can find the Defendant guilty, you must find beyond a reasonable doubt that on or about the 19th day of July in the year Two Thousand Fifteen, and in Hamilton County, Ohio, the Defendant *purposely* caused the death of Samuel Dubose.

Purpose is an essential element of the offense of murder.

A person acts purposely when it is his specific intention to cause a certain result. It must be established in this case that at the time in question there was present in the mind of the Defendant a specific intention to cause the death of another.

Purpose is a decision of the mind to do an act with a conscious intent to produce a specific result or engage in specific conduct. To do an act purposely is to do it intentionally and not accidentally. Purpose and intent mean the same thing.

The purpose with which a person does an act is known only to that person, unless he expresses it to others or indicates it by his conduct.

The purpose with which a person does an act or brings about a result is determined from the manner in which it is done, the means or weapon used and all the other facts and circumstances in evidence.

You may infer a purpose to cause the death of another when the natural or probable consequence of the Defendant's act is to produce death in light of all the surrounding circumstances. Such circumstances include the weapon used and its capability to destroy life. If you find that the Defendant used a deadly weapon against another in a manner calculated to destroy life, you may, but are not required to, infer the purpose to cause death from the use of the weapon. Whether an inference is made rests entirely with you.

“Deadly weapon” means any instrument, device, or thing capable of inflicting death, and designed or specially adapted for use as a weapon, or possessed, carried, or used as a weapon.

A deadly weapon is any instrument, device, or thing that has two characteristics. The first characteristic is that it is capable of inflicting or causing death. The second characteristic is in the alternative: either the instrument, device, or thing was designed or specially adapted for use as a weapon, or it was possessed, carried, or used in this case as a weapon. These are questions of fact for

you to determine. Proof of fear or apprehension on the part of the person against whom the weapon is used or threatened is not required.

Proof of motive is not required. The presence or absence of motive is one of the circumstances bearing upon purpose. Where an act is a crime, a “good” motive or purpose is not a defense.

Cause is an essential element of the offense of murder. Cause is an act or *failure to act which in a natural and continuous sequence directly produces the death and without which it would not have occurred.*

The Defendant's responsibility is not limited to the immediate or most obvious result of the Defendant's act or failure to act. The Defendant is also responsible for the natural and foreseeable consequences or results that follow, in the ordinary course of events, from the act or failure to act.

The Defendant, Ray Tensing, maintains that his use of deadly force against Samuel Dubose was reasonable and lawful in the exercise of his official duties as a police officer and, therefore, justified, because he feared that the actions of Samuel Dubose would cause death or serious physical harm to the Defendant. To establish this defense of justification the Defendant must prove that he was justified in using deadly force by a preponderance of the evidence. Preponderance of the evidence is the greater weight of the evidence; that is, evidence that you believe because it outweighs or overbalances in your minds the evidence opposed to it. A preponderance means evidence that is more probable, more persuasive, or of

greater probative value. It is the quality of the evidence that must be weighed. Quality may or may not be identical with quantity. In determining whether or not an issue has been proved by a preponderance of the evidence you should consider all of the evidence bearing upon that issue regardless of who produced it. If the weight of the evidence is equally balanced or if you are unable to determine which side of an issue has the preponderance, then the Defendant has not established such defense. If the Defendant fails to establish the defense of justification, the State still must prove to you beyond a reasonable doubt all the elements of the crimes charged.

The standard of law to be applied in determining whether the use of deadly force by a police officer is justified is as follows: deadly force may be used if the officer reasonably believes that such force is necessary to defend himself from the actual use or imminent use of physical force by the suspect that poses the threat of death or serious physical harm. If such circumstances exist then the officer's use of deadly force is not unreasonable. The test of reasonableness requires careful attention to the facts and circumstances including, but not limited to, the severity of the crime that the defendant police officer was addressing, whether Samuel Dubose posed an immediate threat to the safety of the defendant police officer or others, whether Samuel Dubose was actively resisting arrest or attempting to evade arrest by flight, and whether the defendant police officer played a role in creating the dangerous situation.

The “reasonableness” of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. The determination of reasonableness must allow for 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 test of reasonableness is not capable of precise definition or mechanical application.

The “reasonableness” inquiry is an objective one. The question is whether an officer’s action were “objectively reasonable” in light of all of the facts and circumstances confronting him, without regard to his underlying intent or motivation.

If you find that the State proved beyond a reasonable doubt all of the essential elements of the crime of murder, your verdict as to Count 1 must be guilty.

However, if you find that the State failed to prove beyond a reasonable doubt all the essential elements of the crime of murder, your verdict as to Count 1 must be not guilty.

COUNT 2

The indictment charges the Defendant in Count 2 with voluntary manslaughter, a violation of Ohio Revised Code Section 2903.03(A). You should

not consider Count 2 unless you are unable to unanimously find the Defendant guilty of murder as charged in Count 1. If you unanimously find the Defendant guilty of murder in Count 1, you are not to consider Count 2.

Before you can find the Defendant guilty, you must find beyond a reasonable doubt that on or about the 19th day of July in the year Two Thousand Fifteen, and in Hamilton County, Ohio, the Defendant knowingly caused the death of Samuel Dubose, while the said Defendant was under the influence of sudden passion or in a sudden fit of rage, either of which was brought on by serious provocation occasioned by the victim that was reasonably sufficient to incite the Defendant into using deadly force.

The State of Ohio has the burden of proving the Defendant knowingly caused the death of Samuel Dubose in Count 2, voluntary manslaughter. Neither the State of Ohio nor the Defendant, Raymond Tensing, has the burden of proving that the Defendant was under the influence of sudden passion or in a sudden fit of rage, either of which was brought on by serious provocation occasioned by the victim that was reasonably sufficient to incite the Defendant into using deadly force. These are factors that mitigate the culpability of the Defendant, and not elements of the crime of voluntary manslaughter. If you find evidence of sudden passion or in a sudden fit of rage, either of which was brought on by serious provocation occasioned by the victim that was reasonably sufficient to incite the

Defendant into using deadly force, such evidence can come from evidence produced by the State of Ohio or by the Defendant.

A person acts knowingly, regardless of purpose, when the person is aware that the person's conduct will probably cause a certain result or be of a certain nature. A person has knowledge of circumstances when the person is aware that such circumstances probably exist.

Because you cannot look into the mind of another, knowledge is determined from all the facts and circumstances in evidence. You will determine from these facts and circumstances whether there existed at the time in the mind of the Defendant an awareness of the probability that he caused the death of another.

Proof of motive is not required. The presence or absence of motive is one of the circumstances bearing upon knowledge. (When an act is a crime, a “good” motive or purpose is not a defense.)

“Cause” has been previously defined.

“Under the influence of sudden passion or in a sudden fit of rage” means there is serious provocation occasioned by the victim that is reasonably sufficient to incite a person into using deadly force; it is an act done in the heat of blood without time to reflect or for passions to cool.

For provocation to be reasonably sufficient to bring on sudden passion or a sudden fit of rage, you must decide that the provocation was sufficient to arouse the passions of an ordinary person beyond the power of his/her control.

When deciding whether the Defendant was actually under the influence of sudden passion or a sudden fit of rage, you must consider the emotional and mental state of the Defendant and the conditions and circumstances that surrounded him at the time of the act.

“Deadly force” means any force that carries a substantial risk that it will proximately result in the death of any person.

“Substantial risk” means a strong possibility, as contrasted with a remote or even a significant possibility, that a certain result may occur or that certain circumstances may exist.

The Defendant, Ray Tensing, maintains that his use of deadly force against Samuel Dubose was reasonable and lawful in the exercise of his official duties as a police officer and, therefore, justified, because he feared that the actions of Samuel Dubose would cause death or serious physical harm to the Defendant. Justified use of deadly force has been previously defined for you.

If you find that the State proved beyond a reasonable doubt all of the essential elements of the crime of voluntary manslaughter, your verdict as to Count 2 must be guilty.

However, if you find that the State failed to prove beyond a reasonable doubt all the essential elements of the crime of voluntary manslaughter, your verdict as to Count 2 must be not guilty.

You will have with you in the jury room the following forms of verdicts. No inference is to be drawn from the order in which the Court reads these verdicts.

When you have reached a verdict you will complete the form that corresponds to your decision. You will notice that there are 4 verdict forms, and there are twelve lines on each one of the verdict forms. Those individuals agreeing upon a certain verdict will sign in ink on the line indicated for their signature. All twelve of you must agree on a verdict. The person who is selected as the foreperson will sign in the lower right hand corner on the line indicated for his/her signature.

You may not discuss or consider the subject of punishment. It is your duty to carefully weigh the evidence, to decide all the disputed facts, to apply the instructions of the Court to your findings, and to render your verdict accordingly. Your duty is confined to the determination of guilt or innocence of the Defendant. In the event you find the Defendant guilty, the duty to determine the punishment is placed by law upon the Court.

In fulfilling your duty your efforts must be to arrive at a just verdict. Consider all the evidence, make your findings with intelligence and impartiality, without bias, sympathy, or prejudice, so that the State of Ohio and the Defendant will feel that their case was fairly and impartially tried.

If, during the course of the trial, the Court said or did anything that you consider an indication of the Court's view on the facts, you are instructed, at this time, to disregard it.

Your initial conduct upon entering the jury room is a matter of importance. It is not wise to immediately express a determination to insist upon a certain verdict because your sense of pride may be aroused. You may hesitate to change your position even if convinced that it is wrong. Consult with one another, consider each other's views and deliberate with the objective of reaching an agreement, if you can do so without disturbing your individual judgment. Each of you must decide this case for yourself, but you should do so only after a discussion and consideration of the case with your fellow jurors. Do not hesitate to change an opinion if convinced that it is wrong. However, you should not surrender honest convictions in order to be congenial or to reach a verdict solely because of the opinion of other jurors.

You must not be influenced by any consideration of sympathy or prejudice. It is your duty to carefully weigh the evidence, to decide all disputed questions of fact, to apply the instructions of the Court to your findings, and to render your verdict accordingly.

If during deliberations a question arises as to the evidence you have heard or the law as I have given it to you, place any request or question in writing, signal the bailiff and deliver it to the bailiff. Do not ask questions hastily without first

searching your collective memory for the answer or without reviewing the instructions I have given you. When you ask a question the Court will call the parties and counsel back to the courtroom and review with counsel how or if the question should be answered. If your question can and should be answered, it will be answered.

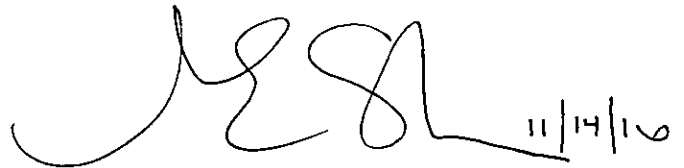
The Court will place in your possession the verdict forms and a copy of the charge that I am reading to you. You will first select a foreperson. The foreperson will retain possession of these records, including the verdict, and return them to the courtroom. The foreperson will see that your discussions are orderly and that each juror has the opportunity to discuss the case and to cast his or her vote; otherwise, the authority of the foreperson is the same as any other juror. Until your verdict is announced in open court, you are not to disclose to anyone else the status of your deliberations or the nature of your verdict.

Juror numbers 13, 14, and 15, you must return to the Jury Commissioner's Office where you will be kept separately. You must not discuss the case with anyone or disclose to anyone how you would have voted. After the jury has returned its verdict and the verdict is announced in open court, the bailiff will contact you and you will be released from these restrictions. In the event of a misfortune to a current juror, you will be recalled to deliberate so you must conduct yourselves in accordance with the admonitions I have given throughout this trial.

Does counsel desire anything further at this time?

After you retire, select a foreperson, and whenever all twelve – I repeat, all twelve – jurors agree upon a verdict, you will sign the verdict in ink and advise the bailiff by contacting him at 513-946-5750. You will then be returned to the courtroom.

You are excused, at this time, to start your deliberations.

A handwritten signature in black ink, followed by the date 11/14/16. The signature is stylized and appears to be 'JESL'.