



A Proud Past – A Promising Future
McLean County
STATE OF NORTH DAKOTA

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Ladd R. Erickson
McLean County State's Attorney
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April 6, 2021

Madam Chairman and members of the committee, my name is Ladd Erickson and I am the McLean and Sheridan County State's Attorney. I appear here to oppose HB1498 and intend to explain my opposition using the attached documents throughout my testimony.

Thank you,


Ladd R. Erickson

K - 6.01. Murder (Intentionally or Knowingly) 2013

A person who intentionally or knowingly causes the death of another human being is guilty of murder.

ESSENTIAL ELEMENTS OF OFFENSE

The State's burden of proof is established if the evidence shows beyond a reasonable doubt, the following essential elements:

1. On or about March 1, 2021 in McLean, North Dakota;
2. The Defendant, John Doe;
3. Intentionally or knowingly;
4. Caused the death of Jane Doe, a human being, and
- 5. *The Defendant did not act in self-defense or his actions were not excused.***

K - 6.20. Manslaughter (Reckless Conduct)2013

If you find the Defendant not guilty of the crime of murder, then you must consider whether the Defendant is guilty of the crime of manslaughter, an offense necessarily included in the offense charged.

A person who recklessly causes the death of another human being is guilty of manslaughter.

ESSENTIAL ELEMENTS OF OFFENSE

The State's burden of proof is satisfied if the evidence shows, beyond a reasonable doubt, the following essential elements:

1. On or about March 1, 2021, in McLean County, North Dakota;
2. The Defendant, John Doe;
3. Recklessly;
4. Caused the death of Jane Doe, a human being and
- 5. *The Defendant did not act in self-defense or his actions were not excused.***

- 6.30. Negligent Homicide (Negligently Causes Death) 2013

If you find the Defendant not guilty of the crime of manslaughter, then you must consider whether the Defendant is guilty of the crime of negligent homicide.

A person who negligently causes the death of another human being is guilty of negligent homicide.

ESSENTIAL ELEMENTS OF OFFENSE

The State's burden of proof is satisfied if the evidence shows, beyond a reasonable doubt, the following essential elements:

1. On or about March 1, 2021 in McLean County, North Dakota;
2. The Defendant, John Doe;
3. Negligently;
4. Caused the death of Jane Doe, a human being; and
5. *The Defendant did not act in self-defense or his actions were not excused.*

- 3.01. Additional Element of Offense - Nonexistence of Defense 2003

Evidence has been presented that the Defendant acted in self-defense or was excused. The State must prove beyond a reasonable doubt, as an additional element of the offense charged, that the Defendant was not acting in self-defense or was excused. The Defendant does not have the burden of proof as to this defense. If the State has failed to prove beyond a reasonable doubt that the Defendant did not act in self-defense or his actions were not excused, the defendant is entitled to a verdict of not guilty.

K - 3.08. Effect of Intoxication on Culpability 1985

The culpability required as an essential element of the crime of murder is that the Defendant purposely engaged in the prohibited conduct engaged in the prohibited conduct while knowing or having a firm belief, unaccompanied by substantial doubt, that the Defendant was doing so, whether or not it was the Defendant's purpose to do so engaged in the prohibited conduct in conscious and clearly justifiable disregard of a substantial likelihood of the existence of relevant facts or risks, involving a gross deviation from acceptable standards of conduct.

If the evidence shows that the Defendant was intoxicated at the time of committing the alleged offense, you may consider that fact in deciding whether the Defendant acted with the required culpability.

K - 3.10. Effect of Voluntary Intoxication 1985

Voluntary intoxication at the time of committing the alleged offense does not relieve a Defendant of criminal responsibility for the crime.

K - 3.34. Self-Defense (Reasonableness of Accused's Belief) 2012

The Defendant's conduct is to be judged by what the Defendant in good faith honestly believed and had reasonable grounds to believe was necessary to avoid apprehended death or great bodily injury.

K - 3.32. Self-Defense (After Provocation) 1985

A person is justified in using force upon another to defend oneself against danger of imminent unlawful bodily injury, sexual assault, or detention by the other person. One is not justified in using force if one causes bodily injury or death to the other person and had intentionally provoked the danger defended against has entered into mutual combat with another person or is the initial aggressor, unless resisting force that is clearly excessive in the circumstances. A person's use of defensive force is justified if, after one withdraws from an encounter and has indicated to the other person that one has done so, the other person nevertheless continues or menaces unlawful action.

K - 3.80. Excuse (Necessary and Appropriate Conduct) 2013

A person's conduct is excused if the person believes that the facts are such that the conduct is necessary and appropriate, even though that belief is mistaken. The reasonableness of the excuse must be determined from the viewpoint of a person in that situation under the circumstances as the person believes them to be.

Defense of Others

A person is justified in using force upon another in order to defend anyone else if the one defended would be justified to act in self-defense and the person coming to the defense has not, by provocation or otherwise, forfeited the right of self-defense.

K - 3.50. Use of Force in Defense of Premises and Property 1985

Force is justified if it is used by a person to prevent or terminate an unlawful entry or other trespass in or upon premises to prevent an unlawful carrying away or damaging of property; however, force is not justified unless the person using force first requests the person against whom force is to be used to desist from interference with the premises or property, but a request is not necessary if it would be useless or dangerous to make the request substantial damage would be done to the property sought to be protected before the request could effectively be made.

K - 3.52. Use of Deadly Force Presumption of Fear of Death or Serious Bodily Injury 2011

A person is presumed to have held a reasonable fear of imminent death or serious bodily injury to himself or another when using deadly force if:

- a. The person against whom the deadly force was used was in the process of unlawfully and forcibly entering, had unlawfully and forcibly entered and remains within, or had removed or was attempting to remove another against his will from a dwelling place of work, or occupied motor home or travel trailer; and
- b. The person who uses deadly force knew or had reason to believe that an [unlawful and forcible entry, or unlawful and forcible act was occurring or had occurred.

This presumption may be rebutted by proof beyond a reasonable doubt that the person who used the deadly force did not have a reasonable fear of imminent death or serious bodily injury to himself or another.

This presumption does not apply if:

The person against whom the deadly force was used had the right to be in or is a lawful resident of the, dwelling, place of work, or occupied motor home or travel trailer, including an owner, lessee, or titleholder, and there is not a temporary or permanent domestic violence protection order or any other order of no contact against the person against whom deadly force was used.

The person removed or sought to be removed is a child, a grandchild, or is otherwise in the lawful custody or under the lawful guardianship of the person against whom deadly force was used.

The person who uses deadly force was engaged in the commission of a crime, or using the dwelling, place of work, or occupied motor home, or travel trailer to further the commission of a crime.

The person against whom deadly force was used was a law enforcement officer who entered or attempted to enter a dwelling, place of work, occupied motor home, or travel trailer in the performance of official duties and provided identification, if required, in accordance with any applicable law or warrant from a court, or if the person using force knew or reasonably should have known that the person against whom the deadly force was used was a law enforcement officer.

Limits on Use of Excessive or Deadly Force 2011

The duty to retreat or avoid using deadly force does not apply under the following circumstances:

1) Water drainage, section line, fence, or livestock at large disputes between landowners; bar fights; street dances and sporting event tailgate parties; remote child custody exchange locations; or any other place the individual has a lawful right to be during a dispute with another;

2) The individual or their witnesses claim the deceased provoked them;

3) The individual is not doing anything illegal that would require someone to use deadly force against them;

4) If the dispute between people involves a fist fight, and the individual or their witnesses claim the deceased was the initial aggressor or was using or threatening excessive force under the circumstances, the individual is authorized to use deadly force even if they could safely retreat.

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF SHERIDAN

SOUTH CENTRAL JUDICIAL DISTRICT

State of North Dakota,

Sheridan County Cr. #

Plaintiff,

-vs-

INFORMATION

Defendant.

¶1 THE PROSECUTING ATTORNEY OF SHERIDAN COUNTY, CHARGES that:

On or before the 10th day of November, 2020, in Sheridan County, ND the above-named

Defendant committed the offense of:

TERRORIZING in violation of N.D.C.C. § 12.1-17-04(1) by then and there: With intent to place another human being in fear for that human being's or another's safety, or in reckless disregard of the risk of causing such terror threatened to commit any crime of violence or act dangerous to human life.

To-wit: The defendant terrorized with threatening words, gestures and a handgun.

Penalty Section: N.D.C.C. § 12.1-17-04
Class C Felony

¶2 Against the peace and dignity of the State of North Dakota.

¶3 DATED: This 12 day of November, 2020.

Ladd R. Erickson by Larissa K. Ribbsted
Ladd R. Erickson
Prosecuting Attorney

¶4 Based on the attached affidavit, the Court finds probable cause to initially charge the Defendant with the offense on:

Signed: 11/12/2020 1:58:42 PM
BY THE COURT:

James S. Jive
District Court Judge

State's Witnesses:

STATE OF NORTH DAKOTA)
) SS
 COUNTY OF SHERIDAN)

AFFIDAVIT

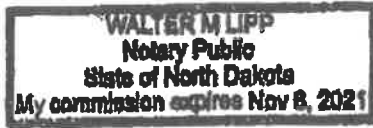
; being first duly sworn, deposes and states as follows:

1. I am the Sheriff of Sheridan County North Dakota and make this affidavit in that capacity.
2. On November 10, 2020 at approximately 2030 hours I received a call that located a vehicle parked in an approach at 12th St NW and 5th Ave NW in rural Sheridan County. thought it was strange that a vehicle was parked there with its lights on so he stopped.
3. A short time after he stopped a male , described as approximately in his 50's got out of the vehicle and walked towards . asked the male "what's going on". The male was on his cell phone and as he got close to he started waving a handgun (described as a revolver with about a 4" barrel) and told "you best keep moving" and , then immediately left.
4. , then called his mother and told her and then we were called. had said he was very scared when the man had pointed the gun at him.
5. When we arrived in the area a short time later we started looking for the vehicle that , had described (which was a newer Ford F350, white in color, that had quite a few lights on it and possibly a flatbed).
6. A while later we located a vehicle that matched that vehicle description in a pasture a short distance north of where had said he had seen it.
7. After a while of giving the driver verbal commands to exit the vehicle, a male did exit the vehicle.
8. A loaded 357 Smith and Wesson revolver was recovered from the driver and that handgun matched the description of the gun that had seen.
9. The male was identified as. (DOB () and based on the foregoing he was placed under arrest for Terrorizing (NDCC 12.1-17-04).

Dated: November 11, 2020

, Sheriff

Subscribed and sworn before me on the 11th day of November, 2020.



Walter M. Lipp

Notary Public

Sheridan County, North Dakota