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**OFFICE OF
APPELLATE COURTS**

A21-0453

STATE OF MINNESOTA
IN SUPREME COURT

STATE OF MINNESOTA,

Respondent,

vs.

OMAR NUR HASSAN,

Appellant.

RESPONDENT'S BRIEF

WILSON & CLAS

ANDREW C. WILSON
Atty. License No.: 398583

CHARLES S. CLAS, JR.
Atty. License No.: 396427

201 Sixth Street SE, suite 210
Minneapolis, MN 55418
Phone: (612) 910-2104

HENNEPIN COUNTY
ATTORNEY'S OFFICE

MICHAEL O. FREEMAN
Hennepin County Attorney

By: JONATHAN P. SCHMIDT
Assistant County Attorney
Atty. License No.: 329022
C-2000 Government Center
300 South Sixth Street
Minneapolis, MN 55487
Phone: (612) 543-4588

ATTORNEYS FOR APPELLANT

ATTORNEYS FOR RESPONDENT

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LEGAL ISSUES

I. Did the evidence sufficiently prove Appellant was the shooter?

Yes. In the light most favorable to the verdicts, the circumstances are only consistent with guilt and do not support a rational hypothesis other than guilt. *See, e.g.*, T.608, T.655-58, T.686-87, T.734-35, T.823, T.881, T.903-07; Exs.15, 42-52, 53, 69.¹

Authorities:

- *State v. Al-Naseer*, 788 N.W.2d 469 (Minn. 2010).
- *State v. Fairbanks*, 842 N.W.2d 297 (Minn. 2014).
- *State v. Walen*, 563 N.W.2d 742 (Minn. 1997).

II. Does Minnesota's statutorily mandated sentence for first-degree premeditated murder violate the Minnesota Constitution prohibiting cruel or unusual punishments?

No. The Minnesota Legislature, within its prerogative, has drawn lines to demarcate adults and juveniles and has made choices as to punishment for various crimes. Appellant has not met his high burden to demonstrate the mandatory statutory sentence is unconstitutional for a person over the age of 21 years old who was convicted of first-degree premeditated murder. S.T.4-9.

Authorities:

- Minn. Stat. § 609.106.
- *Nelson v. State*, 947 N.W.2d 31 (Minn. 2020).
- *State v. Heden*, 719 N.W.2d 689 (Minn. 2006).

¹ "T." refers to the trial transcripts, "S.T." to the sentencing transcript, and "Ex." to the trial exhibits.

STATEMENT OF THE CASE AND FACTS

Following initial charges of second-degree murder (Index #1), a grand jury indicted Appellant Omar Nur Hassan on charges of first-degree premeditated intentional murder (two counts) and first-degree premeditated murder for the benefit of a gang (two counts). Index #13.² The jury convicted Hassan of the two counts of first-degree murder and acquitted him of the two-counts of first-degree murder for the benefit of a gang. T.1028-30; Index #114. Hassan received the mandatory sentence: life in prison without the possibility of parole. S.T.8-9; Index #75.

A. Rival gang violence

In 2019, the Cedar-Riverside area in Minneapolis was the “turf” of the 1627 Boys gang. T.921. The primary purpose of the 1627 gang—who aligned themselves with the Crips—was murder, attempted murder, and narcotics. T.924, T.933.

The 1627 Boys rival gang was the Somali Outlaws. T.924-25. The Somali Outlaws, who aligned with the Bloods, had the Karmel Mall—near Lake and Pillsbury—in Minneapolis as their “turf.” T.925; T.932. The primary purpose of the Somali Outlaws was murder, attempted murder, and narcotics. *Id.*

The two gangs’ rivalry manifested in extreme violence. T.926. If one gang member was shot, police expected a retaliatory shooting “almost immediately.” *Id.* In early 2019, there were a number of shootings and retaliatory shootings between the 1627 Boys and the Somali Outlaws. T.928.

² The State later dismissed the second-degree murder charges. T.4.

Police investigation into Somali gang-related shootings presented unique challenges with respect to motor vehicles. T.705. In officers' experience, the passengers and drivers frequently changed vehicles and would not just drive the vehicle that they owned. *Id.*

B. Shooting several days prior to March 1, 2019

On February 19, 2019, a shooting occurred at ██████████ – one block from the Red Sea Bar and Restaurant. T.657-58, T.714-15. O█████ B█████, an alleged member of the 1627 Boys, was shot and paralyzed by a .40 caliber gun. T.638-39, T.714-16, T.935-38.

Farhan Ibrahim—known as Crazy 8 and a Somali Outlaws member—pleaded guilty to shooting B█████. T.840-43; T.935-38. Farhan's brother—known as "FME" and also a Somali Outlaws member—is Abdilahi Ibrahim. T.716, T.844, T.928-34; Exs.70-71.

C. Shooting of Hassan's cousin earlier in evening on March 1, 2019

On March 1, 2019 at 9:17 p.m., Hassan's cousin A█████ Y█████—who had ties to the Somali Outlaws—was shot at the Karmel Mall. T.643, T.657-58, T.677-80, T.689, T.716; Ex.58. Y█████ was transported to the Hennepin County Medical Center ("HCMC") and underwent emergency surgery. T.678-79, T.689. Police believed the shooting of Y█████ was related to, and in retaliation for, the shooting of B█████ a few days earlier. T.679-80.

D. Meeting in lobby at HCMC

At about 9:50 p.m.—after Y [REDACTED] had been admitted to the hospital—several Somali males enter the emergency room lobby area and spoke with one another. T.683, T.689-91. Some had arrived at the hospital in a Chevrolet with a distinctive v-shaped snow cover on the hood. T.665-66, T.694; Ex.47.

Hassan was wearing dark clothing, including a dark winter coat, an undershirt that included a hood that he wore on his head, tapered pants, white socks, and dark shoes. T.687; Exs.49-50. Hassan appeared distraught, with his head down and hands on his forehead. T.695. Others appeared to be consoling him. *Id.*

Abdilahi Ibrahim talked to Hassan multiple times, including several side conversations. T.699-T.703. Ibrahim wore a dark parka jacket with fur on the hood, slim / tapered pants, white sneakers with white laces, and a dark tongue. *Id.*

Hassan left the lobby area, went outside, and briefly got into a black Camry, then quickly exited the vehicle. T.705-08. After he exited the vehicle, Hassan's demeanor changed: he frequently touched the right side of his jacket and held his jacket with his arm. *Id.* In an Officer's experience, people frequently check the area where the gun is located to ensure it is still there and is secure. *Id.*

At 10:29 p.m., Hassan and Abdilahi Ibrahim left HCMC and got into the same black sedan, which drove away. T.711-12. At this time, the Chevy with the v-shaped snow pattern was still parked near the hospital. *Id.* At 10:48 p.m., a dark sedan pulled up behind the Chevy. *Id.* Two people got out of the dark sedan, opened the trunk for both vehicles, got into the Chevy and then both vehicles left. T.713.

E. Abdilahi Ibrahim and Hassan retaliate, shoot young men behind the Red Sea Bar and Restaurant

Ibrahim and Hassan were dropped off by the Chevy with the v-shaped snow pattern at the corner of Riverside Avenue and Fourth Street. T.671. The two men walked toward the victim vehicle parked at the Red Sea Bar and Restaurant. T.671. At 11:54 p.m., Ibrahim and Hassan walked up to the vehicle and fired at least 26 times, killing a 17-year-old juvenile, paralyzing another victim, and hitting a third victim. T.608, T.655-58, T.674, T.823. After the shooting, they ran towards Fourth Street, jumped into the waiting Chevy, and sped away. T.674; Ex.15.

F. Police investigate

1. Ambulance and police arrive

The side and rear of the vehicle were “riddled with bullet holes.” T.637; T.610-12; Exs.6-9. The ambulance medic saw multiple bullet holes in the car’s windows and door, with an individual in the back who was not breathing, had no pulse, and had visible brain matter. T.615-18. The medical technician decided resuscitative efforts would be futile and turned to another passenger in the back seat. T.618. That passenger was conscious and breathing, but had two entry wounds near his spine and noted that he could not feel his legs. T.618-19.

Police officers interviewed the driver of the victim vehicle at the police station. T.637-38. The driver asked the officer if he could call his grandmother. *Id.* The officer overheard a male voice answer the phone and identify himself as O ■■■, who the officer believed was O ■■■ B ■■■ (who was shot 10 days earlier). T.638-40.

2. Police process the scene, investigate casings and bullets

Around the vehicle, police recovered 26 discharged cartridge casings (“DCC”), which is the casing that is ejected from a semi-automatic firearm when a bullet is fired. T.608. 13 DCCs were from a .40 caliber gun, and the other 13 were from a 9-millimeter firearm. *Id.*; Exs.3, 4.

In processing the bullet casings, police used a national ballistic network database to determine—from unique markings on the shell—that “there was a very good likelihood that the same gun was used” to shoot O■■■ B■■■ on February 19 as the gun that was used in the March 1 shooting at the Red Sea. T.714-15. Further analysis on the .40 caliber DCCs from both shootings showed matching features further demonstrating that the casings were fired from the same gun. T.851.³

3. Police investigate surveillance video

a. Videos from HCMC

Police obtained the external and lobby video from HCMC. T.665-T.712; Exs.47-50. The video depicted Hassan and Abdilahi Ibrahim in the hospital lobby, showed Hassan visibly upset, depicted Hassan getting into and quickly exiting a vehicle outside the hospital, and showed Hassan and Ibrahim leaving together. *Id.* The video also showed the Chevy with the distinctive snow cover on the hood. *Id.*

³ The recovered DCCs and bullets had insufficient DNA. T.852-58.

b. Videos from scene

Police obtained videos from the street cameras and surveillance cameras behind the Red Sea⁴ and the West Bank Diner⁵ (located next to the Red Sea). T.622-25, T.661, T.668; Ex.15. The Red Sea video had low quality resolution and could not be enhanced. T.666-67. The West Bank Diner's cameras produced higher quality videos compared to the Red Sea video. T.668-69.

The videos depicted the victim vehicle arrive, drive down the alley behind the West Bank Diner, and park behind the Red Sea. T.672-73; Ex.53. Two people exited the car, entered the Red Sea, and left four people in the backseat. *Id.*

The Chevy with the distinctive snow cover pulled up to Fourth Street and Riverside Avenue. T.626, T.664-65, T.671-73; Ex.15. Two people got out of the passenger side of the vehicle and walked westbound on Fourth Street. *Id.* They turned into the alley parking lot, and walked directly toward the victim vehicle parked at the Red Sea. *Id.* The videos did not capture the guns being fired, but the shooters are seen after the shooting running towards Fourth Street, jumping into the waiting Chevy, and driving away. T.626-29, T.674; Ex.15.

After the shooters ran away, two people exited the back of the victim vehicle. T.675. One victim walked himself to the Riverside Hospital. *Id.* The driver and front seat passenger exited the Red Sea and "freaked out." *Id.* Both appeared frantic and confused. *Id.*

⁴ The Red Sea video was 8 minutes ahead of the actual time. T.669.

⁵ The West Bank Diner video was one hour ahead of the actual time. T.669.

4. Police compare the hospital video with the scene video

Police studied the videos from the scene and compared it to the HCMC video. T.677. An officer studied the videos frame by frame, and printed and enlarged still photos. T.661, 677-88; Exs.42-52. A forensic scientist spent over 100 hours comparing the videos and isolating images. T.913, T.897-905. All individuals in the videos showed people dressed differently from one another. T.662-63. The forensic scientist could not conclusively declare that the apparel recorded in HCMC was the exact same apparel recorded at the scene of the shooting. T.913-14.

Police compared video of the Chevy at HCMC to video of the Chevy at the scene. T.665-66, T.685; Ex.47. Both vehicles had the same v-shaped snow cover on the hood, the same location of headlights, same type of grill, and same rims. *Id.*

At HCMC, Hassan wore a dark, waist-length winter jacket that had reflective material. T.686-87; Exs.49-50, 53. His hood (that was part of his undershirt, not the jacket) was pulled over his head but left a portion of his hair visible. *Id.* Hassan also had dark pants that were tapered above the ankles, exposing white socks. *Id.* His shoes were dark, with dark laces, a high tongue, and a higher heel area. *Id.*

The West Bank Diner video depicted one of the shooters wearing a dark, waist length winter jacket with reflective material; a hood from the shirt under the jacket that left a portion of his hair exposed; dark pants that tapered near the ankle, leaving white socks visible; and dark shoes, with dark laces, a high tongue, and a higher heel area. *Id.*; T.903-07.

At HCMC, Abdilahi Ibrahim wore a dark winter parka that: had a fur-lined hood (pulled over Ibrahim's head), was waist-length, and had high front horizontal and side vertical pockets. T.687-88; Ex.51-53. Ibrahim also had dark slim / tapered pants. *Id.* He wore white sneakers with white laces, a dark tongue, and a dark area on the heels of the shoe. *Id.*

At the scene, a shooter had the same dark winter parka: fur-lined hood pulled over his head, high horizontal pockets, and waist-length. *Id.* The shooter also wore dark slim / tapered pants, had white shoes with white laces, a black tongue, and a dark area on the heel of the shoes. *Id.*

G. Cell phone investigation places Hassan's phone at the scene during the time of the shooting

A Special FBI Agent obtained the cell site tower information and T-Mobile records from Hassan's phone. T.717. On March 1, 2019, between 9:52 p.m. and 10:31 p.m. Hassan's phone was at HCMC. T.734, T.875-76; Ex.69. At 11:52 p.m.—approximately two minutes before the shooting—Hassan's cell phone was near the Red Sea Bar. T.734-35, T.823, T.881; Ex.69. Hassan's phone was deactivated four days after the shooting (on March 5, 2019). T.718.

H. Police arrest Ibrahim and Hassan, investigate Hassan’s social media

1. Ibrahim arrested in Texas

Police executed a warrant in Arlington, Texas and arrested Abdilahi Ibrahim.

T.721. Ibrahim had his passport and an empty magazine for a 9mm. T.723-24.

2. Hassan flees the country, has communications via social media, arrested in Kenya

A round-trip ticket to Africa was purchased on March 3, 2019, with a departure date of March 6, 2019 and a return flight leaving on March 31, 2019 and landing in Minneapolis on April 1, 2019. T.720; Ex.57. The Department of Homeland Security verified that Hassan was on the March 6 flight. T.720-21.

On March 28, 2019, Hassan was asked on Instagram how long he planned to stay in Africa. T.721; Exs.55, 57. Even though the return flight was supposed to occur a few days later, Hassan responded, “prolyl another month.” *Id.* Hassan was arrested in Kenya in the summer of 2019. T.725.

I. Trials consolidated; Ibrahim pleads guilty

Hassan and Abdilahi Ibrahim’s cases were consolidated for trial. *See* T.1-5. After picking a jury and some testimony on the first day, Ibrahim pleaded guilty to second-degree murder, with intent – not premeditated as a crime committed for the benefit of a gang. T.647. *See also State v. Ibrahim*, D. Ct. Docket 27-CR-19-8238 at Index #103. Ibrahim was later sentenced to 330 months in prison. *Ibrahim D.* Ct. Docket at Index #109. The trial in Hassan’s case proceeded without Ibrahim, and the jury was informed that Ibrahim’s case was disposed of separately. T.647.

J. Trial testimony, jury finds Hassan guilty, sentenced to life in prison

At trial, numerous officers and forensic scientists testified about the police investigation and response. T.601-T.823, T.839-60, T.919-38. An assistant medical examiner determined that the cause of death was a homicide from numerous gunshot wounds. T.838; Exs.16-41. The FBI Agent testified about Hassan's cell phone location on the night of the shooting. T.861-83. Officers and forensic scientists testified about comparing the various videos. T.655-T.823, T.896-T.915.

The jury found Hassan guilty of one count of first-degree premeditated intentional murder and one count of attempted first-degree murder. T.1028-30; Index #114. The jury acquitted him on the murder counts for the benefit of a gang. *Id.* Hassan received the legislatively proscribed presumptive sentence: life in prison without the possibility of parole. S.T.8-9; Index #75.

Hassan filed a timely notice of appeal. Index #81.

ARGUMENT

I. The evidence sufficiently supports the verdict

Appellant argues the evidence was insufficient to establish that he was the second shooter with Abdilahi Ibrahim. App.Br.16-34. Since the circumstances proved are consistent only with guilt and inconsistent with any other rational hypothesis, this Court should affirm.

A. The sufficiency of evidence standard of review

“A defendant bears a heavy burden to overturn a jury verdict.” *State v. Vick*, 632 N.W.2d 676, 690 (Minn. 2001). This Court will not disturb the verdict if the jury, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could reasonably conclude the defendant was guilty. *State v. Alton*, 432 N.W.2d 754, 756 (Minn. 1988). Appellate review on a sufficiency of the evidence claim “is limited to a painstaking analysis of the record to determine whether the evidence, when viewed in the light most favorable to the conviction, was sufficient to permit the jurors to reach the verdict which they did.” *State v. Ortega*, 813 N.W.2d 86, 100 (Minn. 2012) (quotes omitted).

This Court assumes “the jury believed the state’s witnesses and disbelieved any evidence to the contrary.” *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989). Assessing credibility and the weight to give a witness’s testimony is “exclusively the province of the jury.” *State v. Mems*, 708 N.W.2d 526, 531 (Minn. 2006). Any inconsistency in the evidence must be “resolved in favor of the State.” *State v. Budreau*, 641 N.W.2d 919, 929 (Minn. 2002).

A conviction based on circumstantial evidence must be affirmed if the circumstances proved are consistent with guilt and inconsistent with any other rational hypothesis. *State v. Walen*, 563 N.W.2d 742, 750 (Minn. 1997). The question “is not whether reasonable doubt existed, but whether there was sufficient evidence for a jury to reasonably conclude that no reasonable doubt existed.” *Id.*

If the evidence supporting a conviction is circumstantial, a two-step analysis is applied to determine whether the circumstantial evidence is sufficient to sustain a guilty verdict. *State v. Fairbanks*, 842 N.W.2d 297, 307 (Minn. 2014). First, this Court “identif[ies] the circumstances proved by the State, deferring to the jury’s acceptance of the State’s proof of those circumstances and rejection of any evidence in the record to the contrary.” *Id.* In identifying the circumstances proved, the Court only considers “those circumstances that are consistent with the verdict” because, even in circumstantial evidence cases, “the jury is in the best position to evaluate the credibility of the evidence.” *State v. Hawes*, 801 N.W.2d 659, 670 (Minn. 2011). Put another way, this Court assumes “the jury resolved any factual disputes in a manner that is consistent with the jury’s verdict.” *State v. Moore*, 846 N.W.2d 83, 88 (Minn. 2014). The Court considers the totality of the circumstances proved, including before, during, and after the event, rather than considering each circumstance in isolation. *State v. Andersen*, 784 N.W.2d 320, 332 (Minn. 2010).

Second, the Court determines “whether the circumstances proved are consistent with the hypothesis that the accused is guilty and inconsistent with any rational hypothesis except that of his guilt.” *Hawes*, 801 N.W.2d at 669. Speculation and conjecture cannot support a rational hypothesis inconsistent with the verdict. *State v. Al-Naseer*, 788 N.W.2d 469, 480 (Minn. 2010).

B. The evidence sufficiently proved the guilty verdicts

This Court should affirm the jury’s convictions of first-degree murder and attempted first-degree murder because the circumstances proved are consistent only with guilt and inconsistent with any other rational hypothesis.

1. The circumstances proved

The circumstances—while deferring to the jury’s acceptance of the evidence and resolving factual disputes consistent with the verdict—proved the following:

Rival gang violence

- The 1627 Boys gang were rivals with the Somali Outlaws gang. T.925-26. If one gang member was shot, police expected the other gang to retaliate “almost immediately.” T.926.
- Both gangs would frequently change vehicles and not simply drive the vehicle they owned. T.705.

Pre-Red Sea shooting

- On February 19, 2019, Abdilahi Ibrahim’s brother, Farhan Ibrahim (a Somali Outlaws member), shot a rival gang member (C■■■ B■■■, a 1627 Boys member) with a .40 caliber gun. T.638-39, T.657-58, T.714-16, T.935-38.
- On March 1, 2019 at 9:17 p.m., Hassan’s cousin, Y■■■ (Somali Outlaws member) was shot at the Karmel Mall (in Somali Outlaws turf) in retaliation for the shooting of B■■■. T.643, T.657-58, T.677-80, T.689, T.716; Ex.58. Y■■■ was transported to HCMC for emergency surgery. T.678-89.

- At 9:50 p.m., after Y■■■ was admitted to HCMC, Hassan and Abdilahi Ibrahim (a member of the Somali Outlaws) were at HCMC with several others. T.687; Exs.49-50. Some individuals arrived in a Chevrolet with a distinctive v-shaped snow cover on the hood. T.665-66, T.694; Ex.47.
- At the hospital, Hassan was visibly distraught. T.695. Abdilahi Ibrahim spoke with Hassan several times in the lobby and outside the hospital. T.700-03.
- Hassan got into a dark vehicle and quickly emerged from that vehicle. T.705-09. After Hassan exited the vehicle, he frequently touched the right side of his jacket and held his jacket with his arm – behavior consistent with having a gun in that side of his jacket. *Id.*
- At 10:29 p.m., Hassan and Abdilahi Ibrahim leave HCMC together. T.711.
- Between 9:52 p.m. and 10:31 p.m., Hassan’s cell phone was in the area of HCMC. T.875-76; Ex.69.

Shooting at the Red Sea

- The same Chevy that was earlier at HCMC—with the v-shaped snow cover—dropped off two individuals at the corner of Riverside Avenue and Fourth Street near the Red Sea. T.671. At 11:54 p.m., the two men walked up to the victim vehicle and fired their guns 26 times. T.608, T.655-58, T.674; Exs.3-9. The shooting killed a 17-year-old, paralyzed a second individual, and injured a third person. T.608, T.655-58, T.674.
- The same .40 caliber gun that Farhan Ibrahim, Abdilahi Ibrahim’s brother, used to shoot O■■■ B■■■ was used in the shooting at the Red Sea Restaurant. T.714-15, T.851.
- At 11:52:56 p.m., less than two minutes before the murder, Hassan’s phone was near the Red Sea Restaurant. T.881; Ex.69.

Comparing clothing from HCMC video to scene video

- Video from HCMC and the scene were analyzed. T.661-88, T.897-T.913; Exs.42-52. Law enforcement spent over 100 hours comparing the videos, isolating images, studying the videos frame-by-frame. *Id.*
- Hassan identified himself in the HCMC video, where he wore a dark, waist-length winter coat that had shiny / reflective material. T.686-87; Exs.49-50.

Id. Hassan had a hood on his head, which left a portion of his hair visible and covered his neck. *Id.* The hood was part of Hassan's undershirt, not his jacket. *Id.* Hassan also wore dark pants that were tapered above the ankles, exposing white socks. *Id.* Hassan's shoes were dark, with dark laces, a high tongue, and a higher heel area. *Id.*

- The West Bank Diner video depicted a man wearing a dark winter jacket that was waist length and had reflective material; a hood on the man's head from the shirt under the jacket, which left a portion of the man's hair exposed; dark pants that were tapered above the ankles, exposing white socks; and dark shoes with dark laces, a high tongue, and a higher heel area. *Id.*; T.903-07.
- At HCMC, Abdilahi Ibrahim wore a winter parka with a hood lined with fur that was pulled over Ibrahim's head. T.687-88; Exs.51-53. The jacket went to Ibrahim's waist, had high front horizontal and side vertical pockets. *Id.* Ibrahim also had dark slim and tapered pants. *Id.* He wore white sneakers with white laces, a dark tongue, and a dark area on the heels of the shoes. *Id.*
- The West Bank Diner depicted an individual wearing the same waist-length winter parka with a dark, fur lined hood and high horizontal pockets. *Id.* The shooter had dark slim and tapered pants. *Id.* He also had white shoes with white laces, a black tongue, and a dark area on the heels of the shoes. *Id.*

Fleeing Minnesota and arrests

- Four days after the shooting, Hassan's cell phone was deactivated. T.718.
- On March 3, 2019, less than two days after the shooting, a round-trip ticket to Africa was purchased, which Hassan used. T.720-21; Ex.57. Hassan left on March 6, 2019 and had a return flight scheduled to leave Africa on March 30 and land in Minneapolis on April 1, 2019. *Id.*
- Despite a return ticket for two days later, on March 28, 2019 Hassan wrote that he planned to stay in Africa "prolyl another month." T.721; Exs.55, 57.
- Hassan was arrested in Kenya in the summer of 2019. T.725.

2. The circumstances proved are only consistent with guilt

Resolution of this issue turns upon “reasonable” and “rational.” Specifically, “whether the *reasonable* inferences that can be drawn from the circumstances proved support a *rational* hypothesis other than guilt.” *Al-Naseer*, 788 N.W.2d at 473 (emphasis added). Appellant has not raised reasonable inferences that support a rational hypothesis other than guilt.

Appellant claims an inference from the evidence is that “Individual No. 5,” and not Hassan, was the second shooter. App.Br.26-29. That inference is not reasonable. Law enforcement testimony showed this hypothesis was “extensively” examined and determined to be unreasonable. T.817. The HCMC video showed No. 5 was wearing different clothing than Hassan. For example, No. 5 had a large Adidas symbol on the left-hand side of his pants that would have been visible in the shooting videos if No. 5 was the shooter. T.819-20; Exs.67-68. The shooter did not have a large Adidas symbol on his pants. *Id.*

Moreover, Hassan and No. 5 had different facial features. Unlike Hassan, No. 5 had little to no facial hair. *Id.* Hassan and No. 5 also had completely different hairlines – No. 5 having a larger forehead with a hairline that is farther back than Hassan. T.819-21; Exs.67-68. Importantly, the jury heard Appellant’s theory about No. 5 being the second shooter and, within their exclusive province, did not find that theory to be credible. *Mems*, 708 N.W.2d at 531.

Appellant also posits that Hassan was not with his phone at the time of the shooting. *See* App.Br.30. Appellant’s inference that Hassan lost his phone or had it stolen sometime after he left the hospital is not reasonable and requires substantial speculation. Particularly because the evidence—video and cell phone data—conclusively show Hassan and his phone were both at HCMC a little over an hour before the shooting. The only reasonable inference is that Hassan was with his phone near the Red Sea within minutes of the shooting.

Appellant further contends there is a disconnect in the chain of evidence after Hassan left HCMC and before the shooting occurred. App.Br.28. But the time gap between HCMC and the shooting is immaterial. Whether Hassan and Abdilahi Ibrahim remained together during that entire time is also immaterial. The circumstances proved that Hassan was at HCMC with Ibrahim, both wore distinctive clothing, and the two shooters wore extremely similar clothing as Hassan and Ibrahim.⁶ The circumstances also prove that Hassan’s phone was in the vicinity of the Red Sea within two minutes of the shooting.

Appellant contends the jurors were required to “draw arbitrary lines in the credibility of the State’s witnesses despite that the State’s witnesses’ testimony was unconflicted[.]” App.Br.28; App.Br.28-32. But Appellant’s argument runs afoul of the standard of review, which requires this Court consider only the

⁶ Although the witness could not conclusively testify that the clothes at HCMC were the same seen on the surveillance video (T.913-14), the jury was allowed to make the reasonable inference that they were, in fact, the same clothes.

“circumstances that are consistent with the verdict.” *Hawes*, 801 N.W.2d at 670. To the extent Appellant is claiming inconsistencies in the evidence—even inconsistencies within one witness’s testimony—those inconsistencies must be resolved in favor of the State and the verdicts. *Id.*; *Budreau*, 641 N.W.2d at 929.

Appellant makes several other arguments about inconsistent witness testimony, faulting the law enforcement for their investigation, and attacking the cell phone location data. App.Br.27-32. These arguments were better suited for closing argument than to this Court. Appellant tries to plant seeds of doubt to meet his heavy burden to overturn the jury’s verdict. But the question on a circumstantial evidence review is “not whether reasonable doubt existed[.]” *Walen*, 563 N.W.2d at 750. The question is “whether there was sufficient evidence for a jury to reasonably conclude that no reasonable doubt existed.” *Id.* The evidence presented was sufficient for the jury to find Hassan guilty.

Appellant’s theory also does not raise a *rational* hypothesis other than guilt. Appellant essentially asks this Court to overturn a jury’s verdict by contending that a second man—who matched Hassan’s physical and facial appearance, wore the exact same clothing that Hassan wore a few hours earlier that same evening, and accompanied the same person Hassan was with earlier that night at the hospital—was the actual shooter, and that Hassan’s phone (but not Hassan) was near the murder scene two minutes before the shooting. In offering this hypothesis, Appellant attempts to explain away inferences for each circumstance in isolation, rather than—as is required—consider the circumstances proved in the totality.

Appellant’s innocent excuses for each individual circumstance cannot overcome the totality of circumstances taken together. In totality, Hassan had motive to retaliate for his cousin just being shot, he received a gun at the hospital, his clothing at the hospital matched the shooter at the scene, his facial characteristics matched the shooter at the scene, he was with the second shooter at the hospital, his cell phone was at the hospital and later pinged near the murder scene two minutes before the shooting, and he fled the country and failed to make his return flight.⁷ Appellant essentially asks this Court to reject the witness testimony and video evidence and to accept an alternative version of events. But the jury was in the best position to weigh witness credibility, and on review, this Court must assume the jury disbelieved any evidence contrary to the jury’s verdict. *Moore*, 438 N.W.2d at 108. This Court should affirm.

⁷ The fact that Hassan was acquitted of first-degree murder for the benefit of a gang does not lessen the circumstantial evidence supporting Hassan’s guilt. The rival gang evidence continues to have relevance to circumstances surrounding Hassan’s guilt: explaining why Hassan’s cousin was shot (retaliation for B█’s shooting), and demonstrating that Abdilahi Ibrahim—who was connected to the Somali Outlaws—had motive for the shooting (gang retaliation). Hassan being with a known gang member at the hospital and at the shooting adds context to the crimes. But Hassan had separate, non-gang-related motive for wanting to retaliate—his cousin was shot.

In addition, the evidence of gang affiliation came from testimony that connected Ibrahim to the Somali Outlaws. T.928-29. That same witness did not tie Hassan to the Somali Outlaws. T.919-38. The fact that Hassan was acquitted of the counts related to “for the benefit of a gang” shows the jury’s careful consideration of all of the evidence presented.

II. Minnesota’s Constitution does not preclude the Legislature’s policy choice to punish those convicted of first-degree murder

A. Standard of review

Constitutional interpretation is a legal question that this Court reviews *de novo*. *Nelson v. State*, 947 N.W.2d 31, 36 (Minn. 2020).

B. Though slightly different language, the Minnesota Constitution should be interpreted uniformly with the U.S. Constitution

Appellant argues that Hassan’s mandatory sentence of life in prison without the possibility of release runs afoul of Minnesota’s Constitution’s prohibition of “cruel or unusual punishments[.]” App.Br.35-45. Though Minnesota’s Constitution can provide greater protections beyond those recognized by the U.S. Constitution, this Court should decline to do so in this case.

It is settled that Hassan’s mandatory sentence of life in prison without the possibility of release does not run afoul of the Eighth Amendment.⁸ *See, e.g., Nelson*, 947 N.W.2d at 39-40 (mandatory life in prison without the possibility of release sentence for an 18-year-old convicted of first-degree premeditated murder did not violate the Eighth Amendment’s “cruel and unusual” provision). *See also id.* at 37 n.6 (“Every appellate court to consider the issue has held that the *Miller/Montgomery*⁹ rule applies only to juveniles.”) (citing cases) (footnote

⁸ “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.” U.S. Const. amend. VIII.

⁹ *Miller v. Alabama*, 567 U.S. 460, 465 (2012) (“mandatory life without parole for those under the age of 18 at the time of their crimes violates the Eighth Amendment’s prohibition on ‘cruel and unusual punishments’”); *Montgomery v.*

added); *Munt v. State*, 880 N.W.2d 379, 383 (Minn. 2016) (*Miller/Montgomery* does not apply to adult (35-year-old) offender); *State v. Robertson*, 884 N.W.2d 864, 877 (Minn. 2016) (*Miller* does not apply to adult (22-year-old) offender); *Crow v. State*, 923 N.W.2d 2, 10-11 (Minn. 2019) (“*Miller*’s rule regarding the unconstitutionality of life without the possibility of release for juveniles does not apply to” 22-year-old). The question Appellant presents is whether Minnesota’s Constitution should provide Hassan greater protections than the federal constitution.

Minnesota’s Constitution provides: “Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishments inflicted.” Minn. Const. art. 1, § 5. Appellant does not argue that the sentence imposed violates the “unusual” portion of Minnesota’s Constitution. App.Br.36, 45. Instead, Appellant contends the punishment violates Minnesota’s Constitution as it is “cruel.” *Id.* at 45. Specifically, Appellant argues the sentence is “cruel given his youth.” *Id.*

Although Minnesota’s Constitution can offer “greater protection of individual rights than does the federal constitution[.]” this Court adheres “to the general principle of favoring uniformity with the federal constitution.” *Kahn v. Griffin*, 701 N.W.2d 815, 824, 827 (Minn. 2005) (quotes omitted) (discussing policy reasons favoring uniformity between the state and federal Constitutions). As such, this Court will “not independently apply our state constitution” to construe it “more expansively than the United States Supreme Court has construed the federal

Louisiana, 577 U.S. 190, 213 (2016) (*Miller* announced a new rule rendering life without parole sentences an unconstitutional penalty).

constitution” “absent language, concerns, and traditions unique to Minnesota.” *Id.* at 825 (quotes omitted). Indeed, the Court “will not lightly reject a [U.S.] Supreme Court interpretation of identical or substantially similar language.” *Id.* at 824.

Minnesota’s Constitution uses “substantially similar language” to the federal constitution. *Id.* The only difference is the conjunction – “and” for the state constitution, “or” for the federal constitution. Although the “or” is “not trivial,”¹⁰ this Court relies “on the United States Supreme Court’s construction of the Eighth Amendment to guide [the] interpretation of Article 1, Section 5, of the Minnesota Constitution.” *State v. McDaniel*, 777 N.W.2d 739, 753 (Minn. 2010).

The U.S. Supreme Court has acknowledged that there are fundamental differences between juveniles and adults in assessing whether a punishment is cruel and unusual under the Eighth Amendment. *See, e.g., Roper v. Simmons*, 543 U.S. 551, 570-71 (2005); *Graham v. Florida*, 560 U.S. 48, 74 (2010); *Miller*, 567 U.S. at 479-80; *Montgomery*, 577 U.S. at 212. The Supreme Court has yet to extend *Miller/Montgomery* rule to those over the age of 18. *Nelson*, 947 N.W.2d at 40 (“The *Miller/Montgomery* rule ... is clearly limited to juvenile offenders under the age of 18 at the time of the offense.”). If used as a guide, U.S. Supreme Court jurisprudence dictates that Hassan’s sentence is valid under the state constitution.

¹⁰ *See State v. Mitchell*, 577 N.W.2d 481, 488 (Minn. 1998) (U.S. Supreme Court has used the “and” to uphold punishments that were not “unusual” even if they may have been cruel).

Besides Supreme Court precedent, Appellant has not offered any “language, concerns, and traditions unique to Minnesota” that would require the state constitution to be interpreted more expansively than the federal in order to declare an adult’s sentence unconstitutional. *Kahn*, 701 N.W.2d at 824. First, the difference in the constitutional language—“and” versus “or”—is immaterial for Hassan’s sentence. Life without the possibility of release sentences for adults have been ruled valid under both the Eighth Amendment and the Minnesota Constitution. *See, e.g., State v. Juarez*, 837 N.W.2d 473, 481-82 (Minn. 2013) (adult sentence of life imprisonment without the possibility of release did not violate the Eighth Amendment or the Minnesota Constitution). Thus, the language that is unique to Minnesota’s Constitution does not support a more expansive reading.

Second, the concerns are not unique to Minnesota in order to justify a broader reading under the state constitution. Minnesota courts have expressed concerns about sentences for juvenile offenders, but this Court has consistently recognized the difference between juveniles and adults. *See, e.g., Munt*, 880 N.W.2d at 383 (juveniles and adults are not similarly situated); *Robertson*, 884 N.W.2d at 877 (upholding mandatory life without the possibility of release sentence for an adult offender); *Jackson v. State*, 883 N.W.2d 272, 281 (Minn. 2016) (“the mandatory imposition of [life without release] sentences is constitutional for adults.”). The Court recently noted that “the distinctions that the United States Supreme Court has drawn between juveniles and adults are sound[.]” *Nelson*, 947 N.W.2d at 40 n.10. As an adult, the concerns about juveniles do not apply to Hassan.

Finally, the traditions in Minnesota also do not warrant reading the state constitution more broadly than the federal. Indeed, in 2005 the Minnesota Legislature added first-degree premeditated murder to the list of crimes requiring a sentence of life in prison without the possibility of release. *See* Act of June 2, 2005, ch. 136, art. 2, § 5, 2005 Minn. Laws 901, 922. And the Legislature continues to recognize an adult as “an individual 18 years of age or over[,]” which has been the tradition in Minnesota for nearly 50 years. Minn. Stat. § 645.45(3).¹¹

In short, there is no “language, concerns, and traditions unique to Minnesota” that justifies departing from the principle of favoring uniformity with the federal constitution given the substantially similar language between the state and federal constitutions. *Kahn*, 701 N.W.2d at 824, 827. On that basis alone, this Court should affirm the sentence for Hassan, who was over 21-years old at the time of the crimes.

C. The sentence is constitutional under Minnesota’s Constitution

Even if this Court were to analyze beyond comparing the state and federal constitutions, affirmance is still appropriate. Appellant has not met his high burden to establish the mandatory statutory sentence is unconstitutional for a person over the age of 21 years old who is convicted of first-degree premeditated murder.

¹¹ The age of legal adulthood in Minnesota was 21 prior to 1973. *See Yaeger v. Yaeger*, 303 Minn. 497, 498, 229 N.W.2d 137, 138 (1975) (discussing statutory change to age of a child); *State v. Fleming*, 302 Minn. 61, 63, 223 N.W.2d 397, 399 (1974) (same). In 1973, the recognized age of adulthood was lowered from 21 to 18. *Id.* The law was amended, in part, to reflect the ratification of the 26th Amendment in 1971 that recognized the right to vote of citizens “who are eighteen years of age or older[.]” U.S. Const. Amend. XXVI.

1. The high burden of declaring a statute unconstitutional

Statutes are presumed to be constitutional. *State v. Heden*, 719 N.W.2d 689, 698 (Minn. 2006). The person challenging a statute has the high burden of demonstrating “beyond a reasonable doubt that the statute is unconstitutional.” *State v. Merrill*, 450 N.W.2d 317, 321 (Minn. 1990). The person challenging a sentence as cruel or unusual also “bears the heavy burden ... of showing that our culture and laws emphatically and well nigh universally reject the sentence.” *Heden*, 719 N.W.2d at 698 (internal quotations omitted).

2. The statute is constitutional

To determine whether a sentence is cruel, a court should “compare the gravity of the offense to the severity of the sentence.” *State v. Ali*, 855 N.W.2d 235, 259 (Minn. 2014). Hassan has not showed the imposition of the life in prison without the possibility of parole “was disproportionate considering the gravity of the offense[] the jury found he committed.” *Id.* (affirming consecutive life sentences for a juvenile). Hassan has not, therefore, shown that his sentence is cruel under Article I, Section 5 of the Minnesota Constitution.

Appellant’s primary argument is that Hassan, who was 21 years old at the time of the crimes, should not be considered in the same category as older adults. App.Br.38-45. Put another way, Appellant urges this Court to conclude section 609.106 violates the state constitution due to Hassan’s “youthfulness.” *Id.*

Appellant argues “[t]here is no consensus in Minnesota law as to when an individual is an adult or a juvenile[.]” App.Br.41. In support of the argument, Appellant points to various laws, such as prosecuting juveniles as adults (ages 14 to 17 can be certified as an adult), purchasing tobacco (now 21), a child being unable to marry even with parental consent (under 18), driving a motor vehicle (15 or 16), possessing a firearm (16 in certain situations), consuming alcohol (21), voting (18), being Governor (25), or holding office (21). App.Br.41-44.

The Legislature has, however, clearly defined “adult” under the criminal code as “an individual 18 years of age or over.” Minn. Stat. § 645.45(3). The fact that the Legislature has made policy decisions as to other life events—like consuming alcohol or marrying—is immaterial to the policy choices made in the criminal code. Such policy choices simply “confirm[] that the change sought here is a matter of public policy which is more properly the subject of legislative action.” *Nelson*, 947 N.W.2d at 39 n.9.

Indeed, this Court has long held that it is “the exclusive province of the Legislature to declare what acts, deemed by the lawmakers inimical to the public welfare, shall constitute a crime, to prohibit the same and impose appropriate penalties for a violation thereof.” *State v. Moilen*, 140 Minn. 112, 115, 167 N.W. 345, 346 (1918). Courts can only interfere with the legislature’s prerogative “when there has been a clear departure from the fundamental law and the spirit and purpose thereof and a punishment imposed which is manifestly in excess of constitutional limitations.” *State v. Ives*, 210 Minn. 141, 143, 297 N.W. 563, 564 (1941).

Even if additional consideration is given to Appellant’s arguments, they fall short because he was 21 years old at the time of the shooting. Nearly all laws that Appellant cites recognize a person as an adult at the age of 21. *See* App.Br.38-44. Thus, the other laws do not support the age distinction in this case because Hassan was at least 21. In addition, *Crow*, *Munt*, and *Robertson* are controlling in this case “because the defendants in those cases [like Hassan] were over the age of 21 when the offense was committed.” *Nelson*, 947 N.W.2d at 44 n.2 (Chutich, J., dissent).

Ultimately, there are “ethical, moral, and public policy-based concerns implicated by the facts of” Hassan’s case. *Nelson*, 947 N.W.2d at 39. Perhaps the Minnesota Legislature should create a category of “youthful offenders” to recognize the difference between a 17-year-old and an 18-year-old -- or even a 21-year-old. Or perhaps the legislature should amend the statute to provide some discretion for district courts when sentencing a person under the age of 25 for first-degree premeditated murder. But these public policy-based concerns should be addressed, if at all, by the legislative branch who can take testimony, hold hearings, and consider all perspectives in deciding whether to change the law. As this Court recently held, “[t]hese concerns ... are better left to the Minnesota Legislature.” *Id.*

Appellant has not met his high burden to establish that Hassan’s sentence runs afoul of the Minnesota Constitution. This Court should affirm.

CONCLUSION

Respondent respectfully requests this Court to affirm the convictions and sentence.

DATED: October 12, 2021

Respectfully submitted,

MICHAEL O. FREEMAN
Hennepin County Attorney

/s/ Jonathan P. Schmidt

By: JONATHAN P. SCHMIDT

Assistant County Attorney

Atty. License No: 329022

Phone: (612) 543-4588

FAX: (612) 348-6028

C-2000 Government Center

Minneapolis, MN 55487

ATTORNEYS FOR RESPONDENT

A21-0453
STATE OF MINNESOTA
IN SUPREME COURT

State of Minnesota,

Respondent,

vs.

Omar Nur Hassan,

Appellant.

**CERTIFICATION OF
BRIEF LENGTH**

I hereby certify that this brief conforms to the requirements of Minn. R. Civ. App. P. 132.01, subds. 1 and 3, for a brief produced with a proportional font. The length of this brief is 7,093 words. This brief was prepared using Microsoft Word 2016, Times New Roman font face size 13.

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/s/ Jonathan P. Schmidt
JONATHAN P. SCHMIDT
Assistant County Attorney
Atty. License No.: 329022
C-2000 Government Center
300 South Sixth Street
Minneapolis, MN 55487
Phone: (612) 543-4588