



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**STATE OF ARIZONA v. PHILIP JOHN MARTIN,
CR-18-0380-PR**
245 Ariz. 42 (App. 2018)

PARTIES:

Petitioner: Philip John Martin

Respondent: State of Arizona

FACTS:

In 2012, Philip Martin shot and killed his neighbor as the neighbor was walking up Martin's driveway. Martin admitted shooting the victim but claimed he did so because he feared for his own safety. He claimed to have seen a bulge at the victim's side as the victim walked toward the house and he thought the bulge was a gun. Martin also claimed that he told the victim repeatedly to leave the property, but he kept advancing toward the house. The State charged Martin with first-degree premeditated murder.

At his first trial, the trial court instructed the jury on self-defense and defense of premises but refused Martin's request to give an instruction on the use of force in crime prevention. The jury also was instructed that "if all of you agree that the state has failed to prove the defendant guilty of the more serious crime [first-degree murder] beyond a reasonable doubt, or if after reasonable efforts you are unable to unanimously agree on the more serious crime," it could find Martin guilty of the lesser crime, second degree murder. The jury returned a verdict indicating it was "unable to agree" on first degree murder and finding Martin guilty of second-degree murder. The trial court sentenced Martin to 16 years in prison.

On appeal after the first trial, Martin argued that the trial court erred in refusing his crime prevention justification instruction. The court of appeals held that the trial court committed reversible error in denying the crime prevention instruction, reversed Martin's conviction, and remanded for a new trial.

Upon remand, the State sought to retry Martin for first-degree murder. The State argued that the prohibition on double jeopardy did not bar a retrial for first-degree murder because the jury's indication on the verdict form that it was "unable to agree" was equivalent to a genuine deadlock. The trial court agreed. The jury in his second trial found Martin guilty of first-degree murder. The trial court sentenced him to natural life in prison.

On appeal after the second trial, Martin argued that double jeopardy barred his second trial for first-degree murder because the first jury's inability to agree on first-degree murder

constituted an implied acquittal of the charge. The court of appeals disagreed. It found that the first jury clearly stated that it was unable to agree on the greater charge after it was instructed that it could proceed to consider the lesser charge if after reasonable efforts it was unable to agree on first-degree murder. The court of appeals found that this constituted a genuine deadlock permitting retrial on first-degree murder, rather than an implied acquittal barring retrial.

ISSUE:

Was the prosecution barred by double jeopardy from re-trying Appellant for first degree murder after a conviction for second degree murder in a prior trial?

DEFINITION:

The Double Jeopardy Clause of the Fifth Amendment of the United States Constitution provides:

“[N]or shall any person be subject for the same offence to be twice put in jeopardy of life or limb[.]” Article 2, Section 10, of the Arizona Constitution contains a similar provision: “No person shall ... be twice put in jeopardy for the same offense.”

These provisions are coextensive and prohibit: “(1) a second prosecution for the same offense after acquittal; (2) a second prosecution for the same offense after conviction; and (3) multiple punishments for the same offense.” *Lemke v. Rayes*, 213 Ariz. 232, 236 ¶ 10 and n.2 (App. 2006). Martin claims his retrial on first-degree murder violated the prohibition against a second prosecution for the same offense after acquittal.

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