



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**STATE OF ARIZONA v. RICKY ALONZO HIPPENSTEEL
CR-25-0203-PR**

PARTIES:

Petitioner: Ricky Alonzo Hippensteel

Respondent: The State of Arizona

FACTS:

Petitioner was indicted on first-degree murder and other charges. At trial, the court gave the jury lesser-included offense instructions for second-degree murder, manslaughter, and negligent homicide. Petitioner did not object to the jury instructions.

For “Lesser-Included Offense–2nd Degree Murder,” the trial court correctly instructed the jury consistent with the requirements set forth in *State v. Lua*, 237 Ariz. 301 (2015). However, for “Lesser-Included Offense–Manslaughter,” the court erroneously instructed the jury that provocation manslaughter could be considered a lesser offense of second-degree murder. *See* Attachment A. The verdict form tracked this incorrect language. *See* Attachment B. The jury ultimately found Petitioner not guilty of first-degree murder and guilty of second-degree murder.

Petitioner appealed, arguing that the trial court committed fundamental, prejudicial error. The court of appeals affirmed in a split opinion. The majority found that Petitioner was not prejudiced by any errors. It noted that the second-degree murder instruction correctly directed that once the jury found the elements of second-degree murder met, the jury was then required to consider whether Petitioner was adequately provoked by the victim. The majority presumed that the jury followed this instruction. Consequently, the majority found that the jury could not have checked the “Guilty” line for second-degree murder until after it considered and ruled out provocation manslaughter. The dissent disagreed, concluding that the verdict form read with the jury instructions may have stopped the jury from reaching the question of provocation manslaughter.

ISSUE:

A trial court instructed a jury on two antithetical ways of evaluating a lesser offense, one correct and the other erroneous. Can an appellate court—operating on the presumption that jurors followed only the correct instruction—find a lack of prejudice through speculation on which one the jury followed?

This Summary was prepared by the Arizona Supreme Court Staff Attorneys’ Office solely for educational purposes. It should not be considered official commentary by the Court or any member thereof or part of any brief, memorandum, or other pleading filed in this case.

Attachment A

"Premeditation" means that the defendant intended to kill another human being or knew he would kill another human being, and that after forming that intent or knowledge, reflected on the decision before killing. It is this reflection, regardless of the length of time in which it occurs, that distinguishes first degree murder from second degree murder. An act is not done with premeditation if it is the instant effect of a sudden quarrel or heat of passion. The time needed for reflection is not necessarily prolonged, and the space of time between the intent or knowledge to kill and the act of killing may be very short.

Lesser-Included Offense-2nd Degree Murder

The crime of "first degree premeditated murder" includes the lesser offenses of "second degree murder" You may consider the lesser offense of "second degree murder" if either:

1. You find the defendant not guilty of "first-degree premeditated murder"; or
2. After full and careful consideration of the facts, you cannot agree on whether to find the defendant guilty or not guilty of "first-degree murder."

The crime of second-degree murder requires proof of one of the following:

1. The defendant intentionally caused the death of another person; or
2. The defendant caused the death of another person by conduct which the defendant knew would cause death or serious physical injury; or
3. Under circumstances manifesting extreme indifference to human life, the defendant recklessly engaged in conduct that created a grave risk of death and thereby caused the death of another person

The risk must be such that disregarding it was a gross deviation from what a reasonable person in the defendant's situation would have done; or

The difference between first-degree murder and second-degree murder is that second-degree murder does not require premeditation by the defendant.

Attachment A

If you determine that the defendant is guilty of either first-degree murder or second-degree murder and you have a reasonable doubt as to which it was, you must find the defendant guilty of second-degree murder.

If you find the elements of second-degree murder proven beyond a reasonable doubt, you must consider whether the homicide was committed upon a sudden quarrel or heat of passion resulting from adequate provocation by the victim. If you unanimously find that the homicide was committed upon a sudden quarrel or heat of passion resulting from adequate provocation by the victim, then you must find the defendant guilty of manslaughter rather than second-degree murder.

Lesser-Included Offense-Manslaughter

The crimes of "first degree murder" and "second degree murder" include the lesser offense of "manslaughter" You may consider the lesser offense of "manslaughter" if either:

1. You find the defendant not guilty of both "first-degree murder" and "second degree murder"; or
2. After full and careful consideration of the facts, you cannot agree on whether to find the defendant guilty or not guilty of "first-degree murder" or "second-degree murder."

The crime of manslaughter can be committed in two ways. The first is "reckless manslaughter." Reckless manslaughter requires proof that the defendant recklessly caused the death of another person.

The second way to commit "manslaughter" is manslaughter by sudden quarrel or heat of passion. Manslaughter by sudden quarrel or heat of passion requires proof that:

1.
 - a. The defendant intentionally killed another person; or
 - b. The defendant caused the death of another person by conduct which the defendant knew would cause death or serious physical injury; or
 - c. Under circumstances which showed an extreme indifference to human life, the defendant caused the death of another person by consciously disregarding a grave risk of death. The

Attachment A

risk must be such that disregarding it was a gross deviation from what a reasonable person in the defendant's situation would have done; and

2. The defendant acted upon a sudden quarrel or heat of passion; and
3. The sudden quarrel or heat of passion resulted from adequate provocation by the person who was killed. [It is no defense that the defendant was unaware of the risk solely by reason of intoxication.] "Adequate provocation" means conduct or circumstances sufficient to deprive a reasonable person of self-control. Words alone are not adequate provocation to justify reducing an intentional killing to manslaughter. There must not have been a "cooling off" period between the provocation and the killing. A "cooling off" period is the time it would take a reasonable person to regain self-control under the circumstances.

You must unanimously agree that the State has proven "manslaughter" beyond a reasonable doubt before you may find the defendant guilty of "manslaughter." However, all of you do not have to agree on whether it was "reckless manslaughter" or "manslaughter by sudden quarrel or heat of passion."

If you determine that the defendant is guilty of either second-degree murder or manslaughter but you have a reasonable doubt as to which it was, you must find the defendant guilty of manslaughter.

Attachment B

CLERK OF THE SUPERIOR COURT

FILED
3-9-2023 3:23 pm

Deputy

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

STATE OF ARIZONA

No. CR2021-123897-001

v.

VERDICT – COUNT 1

RICKY HIPPENSTEEL

We, the Jury, duly empaneled and sworn in the above-entitled action, and upon our oaths, do find the Defendant, Ricky Hippensteel, on the charge of “Count 1: First Degree Premeditated Murder” as the result of the death of Derek Joseph Odle as follows (check only one):

☒ Not Guilty

☐ Guilty

☐ Unable to agree

Lesser-Included Offense Verdict on “Second Degree Murder”: If you find the Defendant “guilty” of “First-Degree Murder”, do not complete this portion of the verdict form. In other words, complete this portion only if you find the Defendant either “not guilty” of “First-Degree-Murder” or you are unable to decide.

We, the Jury, duly empaneled and sworn in the above-entitled action, and upon our oaths, do find the Defendant, Ricky Hippensteel, on the charge of “Second-Degree Murder” as the result of the death of Derek Joseph Odle as follows (check only one):

☐ Not Guilty

☒ Guilty

☐ Unable to agree

Attachment B

Lesser-Included Offense Verdict on "Manslaughter": If you find the defendant "Guilty" of "First-Degree Murder" or "Guilty" of "Second Degree-Murder," do not complete this portion of the verdict form. In other words, complete this portion only if you find the defendant either "Not Guilty" of both "First-Degree Murder" and "Second Degree Murder" or you are unable to decide.

We the jury, duly empaneled and sworn in the above-entitled action, and upon our oaths, do find the Defendant, Ricky Hippensteel, on the charge of "Manslaughter" as the result of the death of Derek Joseph Odle as follows (check only one):

☐ Not guilty

☐ Guilty

☐ Unable to Agree

Complete this portion of the verdict form only if you find the defendant "guilty" of "manslaughter."

Please indicate the number of jurors who found beyond a reasonable doubt that the offense of "manslaughter" was committed as follows:

☐ Reckless manslaughter

☐ Manslaughter by sudden quarrel or heat of passion

☐ Both reckless manslaughter and manslaughter by sudden quarrel or heat of passion

Lesser-Included Offense Verdict on "negligent homicide": If you find the defendant "guilty" of "First-Degree Murder" or "guilty" of "Second-Degree Murder" or "guilty" of "Manslaughter," do not complete this portion of the verdict form. In other words, complete this portion only if you find the defendant either "not guilty" of "first-degree murder," "second-degree murder," and "manslaughter" or you are unable to decide.

We the jury, duly empaneled and sworn in the above entitled action, and upon our oaths, do find the Defendant Ricky Hippensteel, on the lesser-included offense of "Negligent Homicide" as the result of the death of Derek Joseph Odle a follows (check only one):

☐ Not guilty

☐ Guilty