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7 SUPERIOR COURT OF ARIZONA

8 COCONINO COUNTY

9 STATE OF ARIZONA

10 Plaintiff,

11 vs.

12 TIMOTHY MAX DURAN

13 Defendant.

14) CR 2019-00338

15) DEFENSE REQUESTED LESSER
16) INCLUDED OFFENSE
17) INSTRUCTIONS

18 _____
19 COMES NOW the defendant, by and through his attorney undersigned, and
20 respectfully moves this Court, to give the following lesser included offense
21 instructions:

22 **Second-Degree Murder**

23 The crime of “first degree murder” includes the lesser offenses of “second
24 degree murder,” and “manslaughter.” You may consider the lesser offense of
25 “second degree murder” if either:

- 26 1. You find the defendant not guilty of “first-degree murder”; or
27 2. After full and careful consideration of the facts, you cannot agree on
28 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

1 3. Under circumstances manifesting extreme indifference to human life, the
2 defendant recklessly engaged in conduct that created a grave risk of death and
3 thereby caused the death of another person. The risk must be such that disregarding
4 it was a gross deviation from what a reasonable person in the defendant’s situation
5 would have done; or

6 4. The defendant intentionally, knowingly or under circumstances
7 manifesting extreme indifference to human life recklessly engaged in conduct that
8 created a grave risk of death and thereby caused the death of another person.

9 The above definitions of “intentionally,” “intent – inference” and
10 “knowingly” apply. “Recklessly” means that a defendant is aware of and
11 consciously disregards a substantial and unjustifiable risk that conduct will result
12 in the death of another. The risk must be such that disregarding it is a gross
13 deviation from what a reasonable person would do in the situation.

14 If the State is required to prove that the defendant acted “recklessly,” that
15 requirement is satisfied if the State proves that the defendant acted “intentionally”
16 or “knowingly.”

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

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

22 **Manslaughter**

23 You may consider the lesser offense of “manslaughter” if either:

24 1. You find the defendant not guilty of both “first-degree murder” and
25 “second degree murder”; or

26 2. After full and careful consideration of the facts, you cannot agree on
27 whether to find the defendant guilty or not guilty of “first-degree murder” or
28

1 “second-degree murder.”

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

5 “Reckless” has the same definition as used above.

6 The second way to commit “manslaughter” is manslaughter by sudden
7 quarrel or heat of passion. Manslaughter by sudden quarrel or heat of passion
8 requires proof that:

9 1. a. The defendant intentionally killed another person; or

10 b. The defendant caused the death of another person by conduct which the
11 defendant knew would cause death or serious physical injury; or

12 c. Under circumstances which showed an extreme indifference to human
13 life, the defendant caused the death of another person by consciously disregarding
14 a grave risk of death. The risk must be such that disregarding it was a gross
15 deviation from what a reasonable person in the defendant’s situation would have
16 done; and

17 2. The defendant acted upon a sudden quarrel or heat of passion; and

18 3. The sudden quarrel or heat of passion resulted from adequate provocation
19 by the person who was killed.

20 It is no defense that the defendant was unaware of the risk solely by reason
21 of intoxication.

22 “Adequate provocation” means conduct or circumstances sufficient to
23 deprive a reasonable person of self-control. Words alone are not adequate
24 provocation to justify reducing an intentional killing to manslaughter. There must
25 not have been a “cooling off” period between the provocation and the killing. A
26 “cooling off” period is the time it would take a reasonable person to regain self-
27 control under the circumstances.

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

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

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9 Source: RAJI 11.03A1, 11.03A2, 11.04, 110.5 and 11.4 Standard
10 Instruction with Lesser Included Offenses, 4th Edition, 2018 Updates.

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12 Respectfully submitted this 6 day of October, 2021.

13
14
15 By /S/ Gregory T. Parzych
16 Gregory T. Parzych

17 Original of the foregoing Pleading
18 mailed/hand-delivered this 6 day
of October, 2021, to:

19 Clerk of Superior Court – Coconino County
20 200 N. San Francisco Street
Flagstaff, AZ 86001

21 Copy of the foregoing Pleading
22 e-mailed this 6 day
of October, 2021, to:

23 The Honorable Dan Slayton

24 Bryan Shea
25 DEPUTY COUNTY ATTORNEY

26 Robert Swinford
27 Arizona Voice for Crime Victims
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