

16.3 Manslaughter—Voluntary (18 U.S.C. § 1112)

The defendant is charged in [Count _____ of] the indictment with voluntary manslaughter in violation of Section 1112 of Title 18 of the United States Code. For the defendant to be found guilty of that charge, the government must prove each of the following elements beyond a reasonable doubt:

First, the defendant unlawfully killed [name of victim];

Second, while in a sudden quarrel or heat of passion, caused by adequate provocation:

a) the defendant intentionally killed [name of victim]; or

b) the defendant killed [name of victim] recklessly with extreme disregard for human life; and

Third, the killing occurred at [specify place of federal jurisdiction].

Heat of passion may be provoked by fear, rage, anger, or terror. Provocation, to be adequate, must be such as might arouse a reasonable and ordinary person to kill someone.

Comment

As to the first element, if there is evidence of justification or excuse, the following language should be added: “A killing is unlawful within the meaning of this instruction if

it was [not justifiable] [not excusable] [neither justifiable nor excusable].”

As to the second element, the United States Code defines manslaughter as an “unlawful killing of a human being without malice.” 18 U.S.C. § 1112. Such killing is voluntary manslaughter when it occurs “[u]pon a sudden quarrel or heat of passion.” *Id.* However, noting tension between the common law and the boundaries of these statutory definitions, the circuit has suggested that courts have leeway to reconcile the “apparent language” of the statute with the common law of homicide. *See United States v. Quintero*, 21 F.3d 885, 890-91 (9th Cir. 1994) (holding that intent without malice, not heat of passion, is essential element of voluntary manslaughter, despite “apparent” statutory language). *But see United States v. Paul*, 37 F.3d 496, 499 n.1 (9th Cir. 1994) (suggesting language from *Quintero* that intent to kill is necessary element of voluntary manslaughter is dicta; while most voluntary manslaughter cases involve intent to kill, it is possible that a defendant who killed unintentionally but recklessly with extreme disregard for human life may have acted in a heat of passion with adequate provocation, so as to commit voluntary manslaughter).

Regardless of whether the mental state of a defendant was to kill intentionally or to kill with extreme recklessness, the circuit has explained that acting under a heat of passion serves to negate the malice that otherwise would attach to an intentional or extremely reckless killing. *United States v. Roston*, 986 F.2d 1287, 1291 (9th Cir. 1993) (holding defendant's showing of heat of passion negates presence of malice); *Paul*, 37 F.3d at 499 n.1 (holding heat of passion and adequate provocation negates malice that would otherwise attach if defendant killed with mental state required for murder—intent to kill or extreme recklessness—so that it would not be murder but manslaughter); *Quintero*, 21 F.3d at 890-91 (holding sudden quarrel or heat of passion are not essential elements of voluntary manslaughter but may demonstrate that the defendant acted without malice).

The heat of passion standard found in the last paragraph of this instruction was suggested by *Roston*, 986 F.2d at 1291.

As to the third element, whether the crime alleged occurred at a particular location is a question of fact. *United States v. Warren*, 984 F.3d 325, 327 (9th Cir. 1993). Whether the location is within the special maritime and territorial jurisdiction of the United States, or a federal prison is a question of law. See *United States v. Gipe*, 672 F.2d 777, 779 (9th Cir. 1982).

Heat of passion is not the only condition that might serve as a defense to a murder charge and reduce the offense to manslaughter. In *Kleeman v. United States Parole Commission*, 125 F.3d 725, 732 (9th Cir. 1997), the circuit suggested that an “extremely irrational and paranoid state of mind that severely impairs a defendant's capacity for self control” may also negate the malice attached to an intentional killing.

If there is evidence that the defendant acted in self-defense, see Instruction 5.10 (Self-Defense).

Voluntary and involuntary manslaughter are lesser included offenses of murder. *United States v. Arnt*, 474 F.3d 1159, 1163 (9th Cir. 2007). However, they are not lesser included offenses of felony murder. *United States v. Miguel*, 338 F.3d 995, 1004-06 (9th Cir. 2003).

Second degree murder is reduced to voluntary manslaughter if the unlawful killing is done upon a sudden quarrel or in the heat of passion caused by adequate provocation. *Roston*, 986 F.2d 1290-91.

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