

FILED
J. MICHAEL A. NOLAN
JUDGE, SUPERIOR COURT

DEC 19 2012

ARIZONA SUPERIOR COURT, PIMA COUNTY

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HON. CHRISTOPHER BROWNING

12.19.12

CASE NO.

CR20091310-001

BY: R. ST. GERMAINE, DEPUTY

DATE:

December 18, 2012

STATE OF ARIZONA
Plaintiff,

vs.

GLEN CUSFORD FRANCIS (-001)
Defendant.

RULING / ORDER

**UNDER ADVISEMENT RULING RE LESSER INCLUDED OFFENSES OF SECOND DEGREE
MURDER AND MANSLAUGHTER:**

Following a review of the evidence, after oral argument from counsel and after the Court's review of a number of Arizona cases, including, but not limited to, *State v. Salazar*, 173 Ariz. 399, 844 P.2d 566 (1992); *State v. Van Adams*, 194 Ariz. 408, 984 P.2d 16 (1999); and, *State v. Sprang*, 277 Ariz. 10, 251 P.3d 839 (App. 2011), the Court respectfully **OVERRULES** the Defendant's request that the jury be instructed on the offenses of Second Degree Murder and Manslaughter.

As counsel for the Defendant conceded in his argument on jury instructions, the defense theory in this case is one of "all or nothing". The Defendant denies that he was the perpetrator of the murder, although he did not testify. The theory of his defense is misidentification.

The uncontroverted facts establish that the victim died as the result of multiple sharp force wounds (stab wounds) and blunt force trauma. The Medical Examiner, Dr. Bruce Parks, testified that he documented at least 29 sharp force wounds on the victim's body. The assault resulting in the victim's death occurred in the late evening hours or early morning hours in a Mosque where the victim served as the Imam. There was no evidence indicating that anyone other than the victim and his assailant were in the Mosque at the time of the killing. The assault occurred after the normal operational hours of the Mosque and after the doors had been locked for the evening.

The law in Arizona is clear that an instruction on Second Degree Murder is only appropriate when "a reasonable construction of the evidence...tend[s] to show lack of premeditation." *State v. Whittle*, 156 Ariz.

Rhonda Lowery
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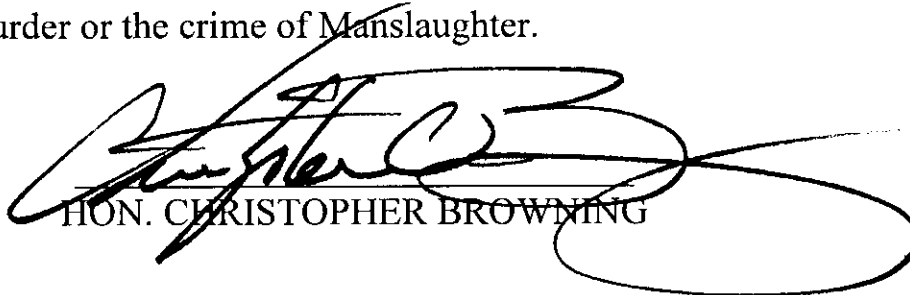
Case No.: CR20091310-001

400, 404, 752 P.2d 489, 493 (App. 1985). Furthermore, when a “defendant’s theory of the case denies all involvement in the killing and no evidence provides a basis for a Second [-] Degree Murder Conviction”, such an instruction should not be given. *State v. Salazar*, 173 Ariz. 399, 408, 844 P.2d 566, 575 (1992).

In the case at bar, there is simply no evidence whatsoever in the record to sustain a finding that this homicide was anything other than premeditated. There was no testimony that anyone saw, heard or even suspected an argument or conflict between the victim and his assailant, which ultimately escalated to an assault resulting in the victim’s death. There is no reasonable basis to conclude that the assailant’s conduct was “reckless”. There is not a scintilla of evidence suggesting that the perpetrator acted in self defense. Rather, as noted previously, the victim was repeatedly and brutally stabbed and beaten, sustaining more than two dozen penetrating wounds and blunt force trauma primarily to his head, neck and torso. He also had wounds to his hands which the medical examiner characterized as “defensive”.

In sum, the only evidence presented to the trier of fact is that the victim was killed as a result of an intentional, premeditated act. There is nothing in the record to suggest that the killing occurred in any other way.

Accordingly, the Court concludes that it is not appropriate to instruct the jury on the crime of Second Degree Murder or the crime of Manslaughter.



HON. CHRISTOPHER BROWNING

cc: Casey F. McGinley, Esq.
Paul Skitzki, Esq.
Sean H. Bruner, Esq.
Clerk of Court - Under Advisement Clerk

Rhonda Lowery
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