

Superior Court of Arizona

Maricopa County

State of Arizona,)
Plaintiff)
v.)
Jimmy Jim, a single)
individual; and The)
Investor Syndicate,)
a foreign entity,)
Defendants _____)

Case No. CR-3279 Destination 1

[KEY] FINAL JURY INSTRUCTIONS

The parties jointly submit the following jury instructions.

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Instruction No. 2 Liability of Defendants

There are two defendants. You must consider the evidence in the case as a whole. However, you must consider the charges against each defendant separately. Each defendant is entitled to have the jury determine the verdict as to each of the crimes charged based upon that defendant's own conduct and from the evidence which applies to that defendant, as if that defendant were being tried alone. Both defendants are charged for conduct acting as an accomplice.

Source: Revised Arizona Jury Instructions Criminal (6th ed. 2022) (RAJI (Criminal) 6th) Standard Criminal 29.¹

Instruction No. 3. Accomplice Liability

"Accomplice" means a person who, with the intent to promote or facilitate the commission of an offense, does any of the following:

Aids, counsels, agrees to aid or attempts to aid another person in planning or committing an offense; or

Provides means or opportunity to another person to commit the offense.

A defendant is criminally accountable for the conduct of another if the defendant is an accomplice of such other person in the commission of the offense, including any offense that is a natural and probable or reasonably foreseeable consequence of the offense for which the person was an accomplice.

It is the intent of the one charged as an accomplice, rather than the intent of the main actor, that controls the accomplice's criminal responsibility.

¹ Available at <https://www.azbar.org/media/g01ktaqc/raji-criminal-6th-ed-2022.pdf>

Source: RAJI (Criminal) 6th 3.01 (modified); A.R.S. § 13-301 and 303(A)(3); *State v. Wall*, 212 Ariz. 1, 126 P.3d 148, 151-52 ¶ 20 (Ariz. 2006); *State v. Phillips*, 202 Ariz. 427, 436, ¶ 37, 46 P.3d 1048, 1057 (2002)(felony murder).

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Instruction No. 5. Enterprise Liability

An enterprise commits an offense if:

The conduct undertaken in behalf of the enterprise and constituting the offense is engaged in, authorized, solicited, commanded or recklessly tolerated by the directors of the enterprise in any manner or by a high managerial agent acting within the scope of employment.

The conduct constituting the offense is engaged in by an agent of the enterprise while acting within the scope of employment and in behalf of the enterprise, and the offense is defined by a statute which imposes criminal liability on an enterprise.

"Agent" means any officer, director, employee of an enterprise or any other person who is authorized to act in behalf of the enterprise.

"High managerial agent" means an officer of an enterprise or any other agent in a position of comparable authority with respect to the formulation of enterprise policy.

Source: RAJI (Criminal) 6th 3.04; A.R.S. § 13-305(A)(3)(b) and (B)(1); *State v. Far West Water & Sewer, Inc.*, 224 Ariz. 173, 186-87 ¶¶31-33 (App. 2010).

Instruction No. 5A. Personal Liability for Conduct of an Enterprise

A person is criminally liable for conduct constituting an offense which such person performs or causes to be performed in the name of or in behalf of an enterprise to the same extent as if such conduct were performed in such person's own name or behalf.

Source: RAJI (Criminal) 6th 3.05; A.R.S. § 13-306.

Instruction No. 6. Reasonable Doubt Defined

The State has charged the defendants with a crime. The charge is not evidence against the defendants. You must not think a defendant is guilty just because the defendant has been charged with a crime. The defendants have pled "not guilty." The defendants' plea of "not guilty" means that the State must prove every part of the charge beyond a reasonable doubt.

The law does not require a defendant to prove innocence. Every defendant is presumed by law to be innocent.

The State has the burden of proving the defendant guilty beyond a reasonable doubt. In civil cases, it is only necessary to prove that a fact is more likely true than not or that its truth is highly probable. In criminal cases such as this, the State's proof must be more powerful than that. It must be beyond a reasonable doubt.

Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. There are very few things in this world that we know with absolute certainty, and in criminal cases the law does not require proof that overcomes every doubt. If, based on your consideration of the evidence, you are firmly convinced that the defendant is guilty of the crime charged, you must find the defendant guilty. If, on the other hand, you think there is a real possibility that the defendant is not guilty, you must give the defendant the benefit of the doubt and find the defendant not guilty.

In deciding whether the defendant is guilty or not guilty, do not consider the possible punishment.

Source: RAJI (Criminal) 6th Preliminary Criminal 20 and Standard Criminal 4(a). *State v. Portillo*, 182 Ariz. 592, 596, 898 P.2d 970, 974 (1995); *State v. Sullivan*, 205 Ariz. 285, 288, 69 P.3d 1006, 1009 (App. 2003); *State v. Van Adams*, 194 Ariz. 408, 418, 984 P.2d 16, 26 (1999); *State v. Koch*, 138 Ariz. 99, 105, 673 P.2d 297, 303 (1983).

Instruction No. 7. Crime Committed by a Third Party

The State has the burden of proving that the defendant is the person who committed the alleged crime[s]. If you have a reasonable doubt whether the defendant committed the alleged crime[s] because the crime may have been committed by a third party, you must find the defendant not guilty.

Source: RAJI (Criminal) 6th Standard Criminal 47

Instruction No. 8. Deliberate Ignorance

The State is required to prove beyond a reasonable doubt that the defendant knew that he or it was exercising control over helium-3 without proper authorization. That knowledge can be established by either direct or circumstantial evidence showing that the defendant was aware of the high probability that the helium-3 from Wide Mine was processed without the required approvals, and that the defendant acted with conscious purpose to avoid learning the true status of the helium-3. You may not find such knowledge, however, if you find that the defendant actually believed that Wide Mine had a license to extract helium-3, or if you find that the defendant was simply careless.

Source: RAJI (Criminal) 6th Standard Criminal 38 (modified); A.R.S. § 13-204; *State v. Haas*, 138 Ariz. 413, 675 P.2d 673 (1983)(deliberate ignorance justifies an inference of knowing participation in fraud); *State v. Fierro*, 220 Ariz. 337, 206 P.3d 786 (App. 2008); *United States v. Heredia*, 483 F.3d 913 (9th Cir. 2007).

Instruction No. 9. Culpable Mental State

"Culpable mental state" means intentionally, or knowingly, as those terms are thusly defined:

(a) "Intentionally" or "with the intent to" means, with respect to conduct or to a result or to conduct described by a statute defining an offense that a person's objective is to cause that result or to engage in that conduct.

(b) "Knowingly" means, with respect to conduct or to a circumstance described by a statute defining an offense, that a person is aware or believes that his or her conduct is of that nature or that the circumstance exists. It does not require any knowledge of the unlawfulness of the act or omission.

(c) "Recklessly" tolerated means that a defendant enterprise is aware of and consciously disregards a substantial and unjustifiable risk that an agent's conduct will result in the offense charged. The risk must be of such nature and degree that disregarding it is a gross deviation from what a reasonable person would do in the situation.

Source: RAJI (Criminal) 6th 1.0510(a)(1) and (b) (modified); A.R.S. § 13-105(10)(a) and (b); A.R.S. § 13-204(B).

Instruction No. 9A. Proof of Intent

Intent may be inferred from all the facts and circumstances disclosed by the evidence. It need not be established exclusively by direct sensory proof. The existence of intent is one of the questions of fact for your determination. You may find intent if the defendant does not possess actual knowledge but has a belief that a certain circumstance exists.

Source: RAJI (Criminal) 6th 1.0510(a)(2) (modified).

Instruction No. 9B Included Mental State – Knowingly

If the State is required to prove that the defendant acted "knowingly," that requirement is satisfied if the State proves that the defendant acted "intentionally."

Source: RAJI (Criminal) 6th 1.510.01; A.R.S. § 13-202(C).

Instruction No. 9C – Causation Ignorance of Fact

Ignorance or a mistaken belief as to a matter of fact does not relieve a person of criminal liability unless:

The ignorance or a mistaken belief as to a matter of fact negates the culpable mental state required for a commission of the offense.

Source: RAJI (Criminal) 6th 2.04.01(A) (modified); A.R.S. § 13-204(A).

COUNT ONE—BRIBERY

Instruction No. 10. Elements of Bribery

For the defendants to be found guilty of commercial bribery, the government must prove each of the following elements beyond a reasonable doubt:

1. A person confers any benefit on an employee, without the consent of the employee's employer
2. With the corrupt intent to influence the conduct of the employee in relation to the employer's commercial affairs, and
3. the conduct of the employee causes economic loss to the employer.

"Corrupt" means a dishonest design to acquire or cause some pecuniary gain or other advantage to the person conferring the benefit, or to some other person.

RAJI (Criminal) 6th 26.05 (modified); A.R.S. §§ 13-2605(A)(1); 1-215(8); see *State v. Walker*, 185 Ariz. 228, 242, 914 P.2d 1320, 1334 (App. 1995) ("Corrupt in the context of the charge of bribery means dishonest and being open to bribery or using a position of trust for dishonest gain.").

COUNT TWO—THEFT

Instruction No. 20. Elements of Theft

For the defendants to be found guilty of felony theft, the government must prove the following elements beyond a reasonable doubt:

- (1) Without lawful authority, the person knowingly controlled property of another (the helium-3).

"Control" means to act so as to exclude others from using their property except on the defendant's own terms.

“Property of another” means property in which any person other than the defendant has an interest on which the defendant is not privileged to infringe.

"Property" means any thing of value, tangible or intangible and includes all forms of real property and personal property.

(2) with the intent to deprive the other person (EX Corp) of the helium-3.

Source: RAJI (Criminal) 6th 18.02.01 and 18.01(2) (modified); A.R.S. § 13-1801(2) and (12); A.R.S. § 13-1802(A)(1), and (K)(5).

Instruction No. 21– Deprive Defined

“Deprive” means to:

withhold the property interest of another permanently; or

transfer or dispose of the property interest of another so that it is unlikely to be recovered.

Source: RAJI (Criminal) 6th 18.01(4); A.R.S. § 13-1801(4)

COUNT THREE—PARTICIPATING IN A CRIMINAL SYNDICATE

Instruction No. 30. Criminal Syndicate Defined

“Criminal syndicate” means any combination of persons or enterprises engaging, or having the purpose of engaging, on a continuing basis in conduct that violates any one or more provisions of any felony statute of this state.

“Combination” means persons who collaborate in carrying on or furthering the activities or purposes of a criminal syndicate even though such persons may not know each other’s identity, membership in the combination changes from time to time or one or more members may stand in a wholesaler-retailer or other arm’s length relationship with others as to activities or dealings between or among themselves in an illicit operation.

“Enterprise” includes any corporation, association, labor union or other legal entity.

Source: RAJI (Criminal) 6th 23.01.C.07; A.R.S. §§ 13-2301; 13-105.

Instruction No. 31. The Elements of Participating in a Criminal Syndicate

For the defendants to be found guilty of the felony of participating in a criminal syndicate, the government must prove each of the following elements beyond a reasonable doubt:

1. Intentionally organizing, managing, directing, supervising, or financing a criminal syndicate

2. with the intent to promote or further the criminal objectives of the syndicate

Source: RAJI (Criminal) 6th 23.08.A; A.R.S. §§ 13-2308(A)(1); 13-2301(C)(7).

Instruction No. 33. Accomplice Participation

A defendant shall not be convicted of participating in a criminal syndicate on the basis of accountability as an accomplice unless the defendant intentionally participates in one of the ways specified.

Source: A.R.S. §§ 13-2308(B).

COUNT FOUR—BURGLARY

Instruction No. 40. The Elements of Burglary

For the defendants to be found guilty of burglary, the government must prove each of the following elements beyond a reasonable doubt.

A person must:

1. Enter or remain unlawfully.

“Enter or remain unlawfully” means entering or remaining on premises when the person's intent for so entering or remaining is not licensed, authorized, or otherwise privileged.

2. In a fenced commercial yard.

"Fenced commercial yard" means a unit of real property that is:

surrounded completely by fences, walls, buildings, or similar barriers, and

zoned for business operations or where commercial items are located.

3. With the intent to commit any theft therein.

Source: RAJI (Criminal) 6th 15.06 (modified); A.R.S. §§ 13-1506(A)(1); 13-1501(2) and (4); and 13-105(18).

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Instruction No. 42.

The crime of attempted burglary requires proof that the defendant:

1. intentionally engaged in conduct that would have been a crime if the circumstances relating to the crime were as the defendant believed them to be; or
2. intentionally committed any act that was a step in a course of conduct that the defendant believed would end in the commission of a crime; or
3. engaged in conduct intended to aid another person to commit a crime, in a manner that would make the defendant an accomplice, had the crime been committed or attempted by the other person.

Source: RAJI (Criminal) 6th 10.01; A.R.S. § 13-1001; *State v. Nunez*, 159 Ariz. 594, 596 (App. 1989); *State v. Adams*, 155 Ariz. 117, 119 (App. 1987).

COUNT FIVE—FELONY MURDER

Instruction No. 50.

For the defendants to be found guilty of first degree felony murder, the government must prove each of the following elements beyond a reasonable doubt that:

1. The defendant and other persons committed or attempted to commit burglary; and
2. In the course of and in furtherance of this crime or immediate flight from this crime, the defendant or another person caused the death of any person.

Source: RAJI (Criminal) 6th 11.052; A.R.S. § 13-1105(a)(2) (modified).

Instruction No. 51

Felony murder requires no specific mental state other than what is required for the commission of burglary, the underlying felony.

Burglary requires intent to commit any theft in a fenced commercial yard.

Source: A.R.S. § 13-1105(B); A.R.S. §§ 13-1506(A)(1).

Instruction No. 52

A death occurs in the course or furtherance of an underlying felony if it “resulted from an action taken to facilitate the accomplishment of the felony.” A close temporal relationship between the acts facilitating the underlying felony and the victim’s death supports the finding of a valid predicate felony for a first degree murder charge.

Source: *State v. Rodriguez*, 570 P.3d 994, ¶54 (Ariz. App. 2025) (quoting *State v. Burns*, 237 Ariz. 1, ¶ 77, 344 P.3d 303 (2015) and *State v. Jones*, 188 Ariz. 388, 397, 937 P.2d 310, 319 (1997)).

Instruction No. 53

Under Arizona’s felony murder rule, “there is no requirement that the killing occur, while committing or while engaged in the felony, or that the killing be a part of the felony other than that the few acts be a part of one continuous transaction.” Where the “felony and the murder were part of the same series of events,” there is a “sufficient link” between the felony and Walker’s death to uphold a felony-murder conviction.

Source: *State v. Rodriguez*, 570 P.3d 994, ¶56 (Ariz. App. 2025) (quoting *State v. Richmond*, 112 Ariz. 228, 232, 540 P.2d 700 (1975) and *People v. Stamp*, 82 Cal. Rptr. 598, 602 (Ct. App. 1969)).

Instruction No 54

The prosecution must prove, beyond a reasonable doubt, that “In the course of and in furtherance of” attempted burglary, the defendant or another person caused the death of any person. The prosecution is not required to prove the identity of the person causing the death of Jonny Walker.

Source: A.R.S. § 13-1105(a)(2).

