

Errata 1/10/2022

Case Packet:

1. **Page 13, line 18:** add

Procedural Explanation of the Lesser Included Offense of Voluntary Manslaughter

The prosecution will argue that the defendant committed first-degree murder when the defendant (1) intentionally obtained a rattlesnake, (2) cut off its rattle, and (3) placed it in the victim's mailbox in order to kill him. Alternatively, the prosecution will argue that if the court finds the defendant acted under the heat of passion and in response to the victim's provocation, then the defendant should be convicted of voluntary manslaughter. First-degree murder is a greater offense of murder, and voluntary manslaughter is the lesser included offense. The crimes are mutually exclusive, so the defendant cannot be convicted of both. The prosecution will argue that the judge should:

- find the defendant guilty of murder; but
- if the judge finds the defendant not guilty of murder, then they should find the defendant guilty of manslaughter; and
- In no event should the judge find the defendant not guilty of both offenses.

The defense will argue: (1) the defendant did not place the rattlesnake in the mailbox, (2) the defendant had no intent to murder, and (3) even if the court finds the defendant put the rattlesnake in the mailbox, the act was committed under heat of passion and in response to adequate provocation, so therefore only guilty of voluntary manslaughter. The defense will argue that the judge should:

- find the defendant not guilty of murder and not guilty of manslaughter; but
- if the judge finds the defendant guilty, then it should only be for manslaughter, and the judge should still find the defendant not guilty of murder; and
- in no event should the judge find the defendant guilty of murder of any kind.

2. **STIPULATION - Page 15, line 19:** add "20. As Smith opened the mailbox door, a snake that was coiled in the box bit deep into Smith's left wrist."
3. **Page 36, line 31-35:** delete "A moment later I heard a loud scream coming from Smith's direction. I looked over and saw Smith stepping away from the mailbox and trying to shake off what looked like a snake from Smith's hand or wrist." And replace with "A moment later I looked up and saw Smith open the mailbox door, reach in, and then step away and scream trying to shake off what looked like a snake hanging from Smith's hand or wrist."
4. **Page 40, line 25 and line 32:** delete "[" and "]"
5. **STIPULATION - Page 15, line 19:** add "21. Rattlesnakes with their rattles removed cannot be heard giving their distinctive warning sound."
6. **STIPULATION - Page 15, line 19:** add "22. Snake tongs and snake feeding tongs are used interchangeably throughout the case."
7. **STIPULATION - Page 15, line 19:** add "23. The autopsy was done in a timely manner."
8. **Page 26, line 33:** delete "illegal aliens" and replace with "people whom the court called "illegal aliens" (i.e., undocumented immigrants)"
9. **Page 33, line 8:** after "mailbox slot." add "Cobey gave me a photo of the trap."
10. **Page 41, line 13:** after "disability check" add "and state unemployment I received"
11. **STIPULATION - Page 15, line 19:** add "24. The May 31 forensic report identified fingerprints belonging to Cobey, Smith, and Emling on the front of Smith's mailbox door as well as the top of the mailbox. Deputy Garrett can testify to the existence of the report and the report's findings as outlined in Deputy Garrett's written statement."
12. **STIPULATION - Page 15, line 19:** add "25. ~~In the pretrial argument there is no issue as to state action.~~" See #14 for update.

13. **STIPULATION - Page 15, line 19:** add "26. Jamie Cobey, the defendant, is present during the trial. Under the conditions of an online trial, any witness that reasonably knows or should know the defendant, is assumed to have correctly identified Jamie Cobey as the defendant in this case."
14. **STIPULATION - Page 15, line 19:** after "25." delete "In the pretrial argument there is no issue as to state action." and replace with "The conduct of the victim in the placement of the camera and the resulting images are, for the purposes and objectives of this problem, deemed the act of law enforcement."
15. **STIPULATION - Page 15, line 19:** add "27. The mailbox's incoming-mail opening (the front door flap to the mailbox) is 11.69" top width, 11.56" bottom width, and 14.98" high; and the mailbox is 24.28" long."
16. **Page 22, line 9:** after "include:" add "fact situation,"
17. **Page 43, line 47:** after "trap" add ", which was empty,"
18. **Page 9, line 11:** delete: "Dani Emling" and replace with "Francis Yazzie"
19. **Page 21, lines 21-35:** after "The prosecution will argue that" remove "a private citizen may place a video camera on their property and can voluntarily provide footage captured by a video camera to the police. Therefore, the video surveillance from the smart camera was not a search by law enforcement requiring a warrant. Furthermore,"
20. **Page 21, lines 36-42:** after "The defense will argue that the" delete "smart camera was provided to Smith by the sheriff's deputy, and that the deputy told Smith where to place the camera. Furthermore, the deputy had constant and permanent access to the video captured by the camera, thus making Cobey's conduct surveillance as an agent of law enforcement and not in the role of private citizen."
21. **Page 22, lines 17-18:** remove ", as well as Ninth Circuit Court of Appeals holding"
22. **Page 28, line 4:** after "Appeal" add "(2009)"
23. **Page 30, line 16:** delete "cause" and replace with "effect"
24. **Page 34, line 12:** after "backyard and" add "in the NW corner of the yard"