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To: Liam Paul

From: Applicant

Re: State v. Dalton

Date: July 30, 2024

Good afternoon Mr. Paul,

I have attached the draft of the closing argument for the matter of State v. Dalton for your review. Please see below.

Closing Argument for the State matter of State of Columbia v. Adam Delton

I. Introduction

Your honor in this case, we have the death of Ms. Laura Vons, the alleged girlfriend of the defendant in this case, Adam Delton. There have been some contradictory statements from the defendant as well as his roommate Mr. Brett Reed, in what they originally told Officer Hobbs and Detective Ames and what they later testified to in this court in front of your honor. I would like to go through the elements of Second Degree Murder to demonstrate how the state has proven these elements beyond a reasonable doubt.

II. Second Degree Murder Argument

Second Degree murder is statutorily defined as, "The unlawful killing of a human being with malice aforethought but without the premeditation, deliberation and willfulness necessary to elevate the offense to first degree murder." Columbia Penal Code (CPC) §187, §189.

A. Unlawful killing of Another

In *State v. Frye*, (Hereafter, "Frye") The Columbia Superior Court defined, "Unlawful killing" as, "One that is not justified or excused. Under Columbia law a defendant must raise the issue of justification or excuse but does not bear any burden of proof or persuasion in a murder prosecution. *State v. Frye*. (Col. Sup. Ct. 1990) The court also stated that if justification or excuse is not raised, it is waived.

In this case, there was an unlawful killing by the defendant, there is no justification or excuse for

him shooting his girlfriend Laura Vons. The defendant stated to Detective Ames that "He pushed the gun away, and she pointed it at him again. He then took the gun pointed it at her and accidentally shot her." (Direct Examination of Hal Ames.) Here defense is not arguing a defense of justification or excuse.

Thus, the element of Unlawful killing of another is satisfied.

B. Malice aforethought

Malice is for the purpose of constituting murder of either degree may be expressed or implied. (CPC §188)

I. Express Malice

It is express malice "when there is manifested a deliberate intention unlawfully to take away the life of a fellow creature." (CPC §188.)

In this case, the state can concede that express malice is not present. There is no manifested deliberation by Mr., Dalton to kill Laura Vons. However, the state believes implied malice is apparent in this case.

II. Implied Malice

Implied malice is present when the circumstances attending the killing show an abandoned and malignant heart. (CPC §188)

In this case, there is a test for implied malice, the court should look at whether the defendant realized the risk and acted in total disregard of the danger, he is guilty of murder based on implied malice. The court in *State v. Olivas* found that the state of mind of a person who acts with conscious disregard is implied malice, 'I know my conduct is dangerous to others but I don't care if someone is hurt or killed.

The court should apply the same test for implied malice. Here, the defendant realized the risk of having arms in his home, he had just gotten out of on bail, at 3:30AM, and when Officer Hobbs walked through the home he saw multiple guns, one revolver found in the kitchen, and the room where Laura Vons was shot, he found a semiautomatic handgun and a duffel bag with a shotgun. The defendant was pointing the gun at Laura Vons. He knew his conduct was dangerous to others, because he pointed the gun at Laura, and he told Det. Ames he knew the gun was loaded, but later contradicted his statement.

Opposing counsel would argue there is no implied malice because defendant called for help afterwards and expressed his remorse. However, as stated in *State v. McNally* Columbia District Ct. of Appeal 4th District (2015), "Brandishing a loaded firearm at a person is an act dangerous to human life." As such the court should find that there is implied malice on behalf of the defendant when he decided to let Laura play with his guns and point them at him, instead of putting them away, he decided to point the gun at her. Knowing the gun was loaded and thus killed her. He also decided to wet the weapon to prevent further incrimination, although that is not sufficient to prove implied malice. It should definitely be taken into consideration.

C. Conclusion for Second degree murder

The people ask your honor to find the defendant guilty of second degree murder, even though defendant is going to argue Involuntary manslaughter. Like in *State v. McNally*, the defendants argument that there was no implied malice because he did not intend to kill his friend failed. The people ask the court to do the same here and find defendant guilty of second degree murder.

II. Alternative Involuntary Manslaughter Argument

If the court finds that second degree murder is not adequate, the people ask the court to find the defendant guilty of involuntary manslaughter at the very least. Involuntary manslaughter is statutorily defined as a killing in the commission of a lawful act which might produce death in an unlawful manner or without due caution and circumspection. (Columbia Penal Code CPC §192)

A. Criminal Negligence

In *State v. Penny* (2005) the Columbia supreme court explained that criminal negligence exists when the defendant engages in conduct that is aggravated culpable, gross or reckless. It is such departure from what would be the conduct of an ordinarily prudent or careful person under the same circumstances as to be incompatible with a proper regard for human life, or in other words, a disregard for human life or an indifference to consequences.

I. Conduct beyond that of an ordinary prudent person

The degree of care for firearms is defined in *State v. Freud* Columbia District Ct. of Appeal 3rd District (2014) as A high degree of care is demanded for those who use them because Firearms have been recognized as a dangerous instrumentality because of their great potential harm and in the interest of preservation of human life and safety."

In this case, the defendant did not act like a reasonably prudent person, he knew let Laura play with his gun. Defense counsel might argue that the reason defendant did not take the gun away from Laura like a reasonable prudent person was because he trusted her and they were dating. However, since Laura had a firearm, the degree of care is higher than normal. Defendant should have taken it away.

II. Reckless disregard for human life

In this case, defendant acted with reckless disregard for human life by even pointing a gun at Laura, defendant had reason to know that the gun was loaded. As he told Det. Ames. However, even if he genuinely did not know, Testimony of Ellen Donato contradicts this argument. In Donato's testimony she states that, "It simply could not happen, the gun cannot be fired by pulling the hammer back and releasing it before it is fully cocked. Defense counsel presented no evidence to prove that Dalton did not fire recklessly.

III. indifference to consequences

The state concedes that Mr. Dalton did not act indifferent to the consequences because he did attempt to try and call for help once he figured out Laura was injured. He told his roommate Brett to immediately call for help. Mr. Dalton also testified to the officers he expressed regret and asked if she was okay.

B. Proximate Cause between defendant conduct and the death of the victim

Involuntary manslaughter requires a showing that the defendant's conduct proximately caused the victim's death. When there are concurrent causes of death, the defendant is criminally responsible if his or her conduct was a substantial factor contributing to the result.

I. "But For Test"

Here, the defendant's conduct was the proximate cause of the death of Laura. When the defendant fired the gun at Laura, even if accidentally, the shot went through and killed Laura. Courts normally use the but for test, "but for" defendant's conduct the death would not have happened. Applying this test to the situation at hand, but for defendant's conduct Laura would have not died.

Thus, there is a proximate cause between defendant's actions and the death of Laura Vons.

D. Foreseeability and Natural and Probable Consequence of Defendant's Actions

Further proximate causation requires that the death was a reasonable foreseeable, natural and probable consequence of defendant's act, rather than a remote consequence that is so insignificant or theoretical that it cannot be properly be regarded as a substantial factor in bringing about the death. The death of the deceased could not be attributed to any supervening intervening cause, such as the victim's taking hold of the gun or being intoxicated, but was a proximate result of the negligence of the defendant. (*State v. Freud* (2014) District Ct of Appeal 3rd District)

Here, Your honor can see that it was foreseeable that when the gun was fired, someone would get injured or hurt. The death of Laura was the consequence of the defendant's actions. Laura died because the defendant fired that firearm, regardless if intentional or not. In this case, it was a substantial factor in the death of Laura. If the gun would have not been loaded, Laura might still be here today. The state also points to the fact that there was no intervening cause to the death of Laura.

Thus, the death of Laura was foreseeable and a natural and probable consequence of the defendant's actions.

III. Conclusion

As previously stated, the state believes it has met its burden of proving the elements of second degree murder beyond a reasonable doubt. However, if your honor does believe that this was an accident, the state asks the court to find the defendant guilty of involuntary manslaughter due to the criminal negligence of the defendant, whose actions caused the death of Laura Vons. Had the defendant acted differently, Laura Vons might still be with us today.

Question #6 Final Word Count = 1705

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