

Conviction for murder reversed due to provocation prior to shooting

Written by Australian Business

September 27, 2013 /**24-7PressRelease**/ -- A person accused of committing a homicide can find themselves [facing charges](#) that can range from involuntary manslaughter--that is, an unintentional killing--up to a willful first-degree murder charge.

During a jury trial, it's crucial that the instructions the court provides to the jury are legally complete and accurate, to ensure that a defendant's constitutional rights are not violated. The recent California Court of Appeal case, *People v. Thomas*, provides an example.

Parking dispute leads to a shooting

In this case, the defendant lived in an apartment complex where there had been a number of disputes with a neighbor over parking issues. On the night in question, an argument erupted over one car blocking another, leading to a physical fight, after which the defendant walked back to his car. The defendant's father entered the scene and a brief discussion followed, during which time one of the neighbors approached the defendant in his car. There was a dispute as to what happened next, but the defendant, still upset from the fight, did fire a gun at the neighbor, killing him.

The witness who called 911, and who had been in the fight with the defendant earlier, did not tell the 911 operator, the police on the night of the shooting or the homicide detectives that he had punched the defendant. The defendant testified that he did not make a conscious decision to pull the trigger and that he did not intend to fire a shot. He was afraid of being injured or killed and felt he had no choice but to shoot.

The defendant was found guilty of second-degree murder and of being a felon in possession of a firearm, and was sentenced to 40 years to life imprisonment, consisting of 15 years to life for the murder, and 25 years to life for the use of a firearm.

Malice necessary for second-degree murder

One required element of a second-degree murder charge is "malice"--an intention to kill or injure the person. The defendant appealed his conviction on the basis that the jury was never given an instruction on "provocation"--that the defendant was provoked by the fight prior to the

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shooting--which could prove that he acted in the heat of passion and without malice, reducing the charge to manslaughter.

The appeals court found that the jury should have been instructed on the possible charge of voluntary manslaughter as a lesser-included offense of murder, because there was evidence of provocation. All the witnesses agreed that, minutes before the killing, the men had been involved in an argument and a physical altercation. Thus, the defendant's conviction for second-degree murder was reversed.

The circumstances of a homicide are crucial

If a person is accused of a crime, especially one as serious as [homicide](#) , every fact and circumstance surrounding the incident may be extremely important. In addition, any misstep in the judicial process can have profound consequences. The difference in the type of homicide charged, and whether a justification such as [self-defense](#) applies, could be the difference between life or death for the accused.

If you are charged with a crime, it is crucial that you seek a defense attorney who has the experience to protect your rights and freedom.

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