**16.4 Manslaughter—Involuntary (18 U.S.C. § 1112)**

The defendant is charged in [Count \_\_\_\_\_\_\_ of] the indictment with involuntary manslaughter in violation of Section 1112 of Title 18 of the United States Code. [Involuntary manslaughter is the unlawful killing of a human being without malice aforethought and without an intent to kill.] For the defendant to be found guilty of that charge, the government must prove each of the following elements beyond a reasonable doubt:

First, the defendant committed an act that might produce death;

Second, the defendant acted with gross negligence, defined as wanton or reckless disregard for human life;

Third, the defendant’s act was the proximate cause of the death of the victim. A proximate cause is one that played a substantial part in bringing about the death, so that the death was the direct result or a reasonably probable consequence of the defendant's act;

Fourth, the killing was unlawful;

Fifth, the defendant either knew that such an act was a threat to the lives of others or knew of circumstances that would reasonably cause the defendant to foresee that such an act might be a threat to the lives of others; and

Sixth, the killing occurred at [*specify place of federal jurisdiction*].

**Comment**

With respect to the first and second elements, *see United States v. Garcia*, 729 F.3d 1171 (9th Cir. 2013).

While the third element is not in the statute, it is required by *United States v. Main*, 113

F.3d 1046, 1049-50 (9th Cir. 1997) (“When the jury is not told that it must find that the victim’s death was within the risk created by the defendant’s conduct an element of the crime has been erroneously withdrawn from the jury . . . It is not relevant that § 1112 does not expressly mention proximate cause.”).

As to the fourth element, if there is evidence of justification or excuse, the following language should be added: “A killing is unlawful within the meaning of this instruction if it was [not justifiable] [not excusable] [neither justifiable nor excusable].”

While the fifth element is not in the statute, it is required by *United States v. Keith*, 605 F.2d 462, 463 (9th Cir. 1979).

As to the sixth element, whether the crime alleged occurred at a particular location is a question of fact. *United States v. Warren*, 984 F.2d 325, 327 (9th Cir. 1993). Whether the location is within the special maritime and territorial jurisdiction of the United States or a federal prison is a question of law. *See United States v. Gipe*, 672 F.2d 777, 779 (9th Cir. 1982).

The trial judge may be obligated to give an instruction on involuntary manslaughter in a murder case even when the defense does not offer the instruction. In *United States v. Anderson*, 201 F.3d 1145, 1150 (9th Cir. 2000), the Ninth Circuit held that it was plain error for the court not to instruct the jury on involuntary manslaughter, even though the defendant had not requested such an instruction, because there was evidence in the record to support the theory that the killing was accidental.

A two-step test applies to determine whether the trial judge is obligated to give an instruction on involuntary manslaughter in a murder case. *United States v. Arnt*, 474 F.3d 1159, 1163 (9th Cir. 2007). The first step is a legal question: “Is the offense for which the instruction is sought a lesser-included offense of the charged offense?” *Id.* “The second step is a factual inquiry: Does the record contain evidence that would support conviction of the lesser offense?” *Id.* Voluntary and involuntary manslaughter are lesser included offenses of murder. *Id.* However, they are not lesser included offenses of felony murder. *United States v. Miguel*, 338 F.3d 995, 1004-06 (9th Cir. 2003).

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