What is Second Degree Murder.

In simple terms it is First Degree Murder accompanied by legally recognized mitigating factors.

A mitigating factor exists so as to reduce the offense of first degree murder to the lesser offense of second degree murder if, at the time of the killing, the defendant acts under a sudden and intense passion resulting from serious provocation by the deceased.

Although the burden of proof to convict the defendant of First Degree Murder is beyond a reasonable doubt, mitigating factors sufficient to reduce the offense to Second Degree Murder need only be proven by preponderance of the evidence. The evidence must persuade Your Honor that considering all the evidence in this case, that it is more probably true than not true that Joyel, acted under a sudden and intense passion resulting from serious provocation by Xavier Malayil.

We really can’t move much further without some guidance as to what “Serious Provocation” means. For a definition, we turn to 720 ILCS 5/9-2(b).

“Serious Provocation” is conduct sufficient to excite an intense passion in a reasonable person.”

Let’s examine that single sentence for a moment. “Conduct sufficient to excite an intense passion in a reasonable man.”

What is a reasonable man? The Statute doesn’t say reasonable Illinois resident, or reasonable American. Even if it did, we would still be left in somewhat of a legal black hole. Reasonable people have very differing beliefs and tenets. Reasonable men disagree with intense passion over political and religious beliefs. Cultures disagree on social polarization, divine right to status based on gender, and many other issues. So as a collage of cultures, what do we accept as the thoughts of a reasonable man. What checklist can we use for those issues that we, as lawyers, can thrust upon the entirety of our society, as intellectually and emotionally sufficient to excite an intense passion?

Also, how does the introduction of alcohol affect this reasonable person meter. Reasonable people have been know to drink Brandy, much like Joyel. If a reasonable man becomes intoxicated, are his action still that of a reasonable man? Our society banned alcohol via the 18th Amendment and then repealed that ban when the 21st Amendment was passed. Have reasonable men told our society that reasonable men can drink alcohol? If so, how much?

We hear pleas that designated drivers should be selected when people consume alcohol. Does that mean we expect reasonable people to drink to the point that their abilty to drive will be affected? We live in a society that repeatedly begs people not to drink and drive, yet stocks every gas station with beer and wine, and sometimes more. Certainly, our formula for constructing our reasonable man meter must include those instances of intoxication.

In this case, Xavier had a Blood Alcohol Level of .338 and was not in the process of sobering up at the time of his death. Since Joyel drank with Xavier all afternoon and was reported to seem intoxicated by several trial witnesses, Joyel’s Blood Alcohol was probably in the same neighborhood as Xavier’s at the time of the homicide.

Imagine someone asking for directions to Phoenix Arizona, and the response was to head West. Although generally correct, a few more compass points would ease the journey.

Likewise the law points us in the right direction, but we ultimately need to make our own path.

In Illinois, four categories of provocation are recognized:

1. Substantial Physical Injury or substantial physical assault.

2. Mutual Quarrel or Combat

3. Illegal arrest

4. Adultery with the offender’s spouse.

Clearly, 1, 3, and 4 do not apply.

We are left with Mutual Quarrel or Combat. Although the disjunctive “or” is placed between the words Quarrel and Combat, it has often been held that more than just mere words are necessary to mitigate against a finding of First Degree Murder. However, we have both Mutual Quarrel and Mutual Combat in this case.

Joyel told witness # 13, Agent Frimel that Xavier had talked bad about his family.

Joyel further stated that Xavier would call his sisters on the telephone after their husbands went to work and talk about having sex with them. Joyel’s was close with his family. Xavier had purposely upset those people closest to Joyel.

Is that enough for a reasonable person to kill? Certainly not. No one is saying that the death of Xavier was justified. We don’t expect a reasonable man to kill someone who telephonically upsets their family. The issue is, would the actions of Xavier be recognized as an event that would excite an intense passion in a reasonable man?

Keep in mind that this argument lasted for at least 15 minutes, according to Mr. Vyas. We aren’t sure how long they had been arguing before Mr. Vyas became a witness to the events. Joyel tells us that he was demanding Xavier to forever cease his practice of harassing his sisters. Xavier repeatedly replied that he would call Joyel’s sisters whenever he wanted to.

Certainly we can see how this frustrating impasse could escalate to an emotionally volatile state. Over and over, Mr Vyas watched as Joyel argued with Xavier, and Xavier returned with comments of like tone and demeanor.

In addition, Xavier and Joyel seemed to make it a practice of drinking and arguing. Mr. Vyas stated that Xavier comes over to the apartment about twice per week and usually consumes alcohol during those visits. He added that almost every time Joyel comes over to see Xavier, they quarrel. It is also in evidence that Mr. Vyas had heard that Joyel and Xavier sometimes become physically violent.

The mitigation is also somewhat shored up by what Mr. Vyas said. He concluded that Xavier tried to walk out of the room two different times and was pushed back by Joyel. I asked Mr. Vyas to provide us details with regard to how both Joyel and Xavier moved their respective bodies. Mr Vyas said that Joyel would push Xavier back with a front forward motion of his arm. Recall that Mr. Vyas never said that Joyel moved his feet. That tells us much more than Mr. Vyas’ speculation that Xavier was trying to leave the room. It tells us that Xavier was walking into Joyel. In street terms, “Xavier was walking up on Joyel” That action is a precursor to an impending physical assault.

Prior to Xavier physically challenging Joyel, Joyel was’nt being aggressive with the knife. He didn’t advance toward Xavier. He didn’t waive the knife around during the argument. He never even pointed the knife at Xavier during the prolonged argument.

Certainly, if Joyel were threatening Xavier with the knife during the argument, he would have wielded the knife in such a way as to add a behavioral exclamation point to the threat. Without this expected preface to the homicidal finale, we can logically conclude that something else occurred. Something that would excite an intense passion in a reasonable person.

Joyel provides with the fullest picture. As the only witness to the events, Joyel tells us that in the front room, he and Xavier argued. A pushing match ensued, during which Xavier retrieved a knife. Xavier thrust the knife towards Joyel, which Joyel avoided. Joyel and Xavier struggled over the knife, and when Xavier dropped the knife, Joyel was able to retrieve it.

This isn’t a case of who is taller or who is younger. When alcohol levels approach .30, age and size limitations are benched next to sobriety. With knife in hand, Joyel and Xavier mutally struggled. The fight was on. Joyel’s actions are not self defense, or excusable. They constitute murder. But Second Degree Murder.

Everything that Joyel did after he committed Second Degree Murder is evidence on guilt. He knew he would not prevail on a theory of self defense. He knew that despite the arguing and struggling, that he had stabbed a man who was unarmed. Joyel had been with the one with the knife for about 15 minutes preceding the Second Degree Murder. He knew he had killed a man, and fled. He fled to Philadelphia, where he resided for a few years until law enforcement tracked him down.

He ceased existing as Joyel Joseph, and became Roy Thomas. He tried to put this homicide out his mind, and isolated himself from his family in the process. While in Philadelphia, Joyel was questioned by FBI agent Frimel. Frimel tells us that he summarized Joyel’s answers, and is unable to provide us with the full text of Joyel’s answers. Frimel said that he tried to use simple language becuse of Joyels think accent which was difficult for Agent Frimel to comprehend.

The end result was that Agent Frimel asked only 17 questions of Joyel. 9 of those questions dealt with biographical issues. Agent Frimel never asked Joyel if Xavier had the knife at any time during the argument. Agent Frimel never asked Joyel if he and Xavier had struggled. Agent Frimel chose the questions during that interview, and could not even provide us with Joyel’s full unedited answers to those nine relevant questions because his notes were destroyed.

Subsequent to the Frimel interview, Joyel spoke to Officer Sethuraman. He told her that he killed Xavier because Xavier had spoken ill of his sisters. That’s true. Joyel did kill Xavier. The reason for the argument was at least, in part, about the honor of his sisters.

Joyel did not have legal training, and was not provided a short course explaining the differences between First and Second Degree Murder. Most people aren’t aware of the distinction. I suppose we could have expected Joyel to explain that Xavier initially had the knife, but how would Joyel know the huge significance of that fact.

In his mind the fact that he killed an unarmed man was the headline and text. Joyel had only been in the US since 1996. He was not and is not proficient in the English language, and is most likely not very familiar with the differences of Illinois legal responsibility compared the law imposed in South India.

Joyel, after being advised of his Miranda Warnings and after having been in Court with his attorney, apparently had discussions with his brother about the circumstances of the homicide. It’s not unreasonable for a sober Joyel to be ashamed of his actions.

The family honor which was so important for Joyel to defend against Xavier’s attack had ultimately been dishonored by Joyel. As was evident and obvious from the testimony, Joyel was not very verbose regarding the homicide, and tried to redirect the conversation.

Being in Court, and being sworn to tell the truth in open Court is quite a bit different. Joyel relived the events of the homicide on Tuesday and Wednesday. After about 10 hours of testimony, three years of mentallyl blocking out the events was torn down. Joyel rewound and replayed his mental recording of the day’s events and honestly told you what happened.

Your Honor has been on the bench for many years, and I’m sure you have seen witnesses who are obviously fabricating. Sometimes, it not the inconsistency, but the perfect, seemingly professionally choreographed testimony that raises a brow. Joyel provided the type of humanized testimony that by itself provides an indicia of reliability.

He told us of the argument, the knife, the pushing, the struggle and the stabbing. However, he directly contradicted the testimony and physical evidence which conclusively tells us that the homicide occurred in Mr. Vyas’s bedroom. Why is that? We are all aware of the studies re: witness to a startling event. 10 witnesses who observe the same sudden and intense event may recall that event in completely different and contradictory accounts. The fact the Joyel did not purposely change his account of what happened to conform to the testimony he heard on Tuesday and Wednesday tells us he is being honest with the court. He remembers accurately the important details of the offense. Just because we may not recall the exact chair in a restaurant where we at lunch doesn’t mean we are wrong about having a cheeseburger at that restaurant.

Now research of this incident will never point to a case with these exact same facts. There wil always be some distinguishable factor between any case and the facts in this case. However, the case of People v. Dare, 94 Ill.Dec. 911 is very similar.

The defendant and his common law wife were alcoholics. The police responded to their apartment to find the wife badly beaten and stabbed. Empty beer cans and vodka bottles were in various locations in the apartment. A seven inch knife was found on the floor. When asked what happened, the defendnat said he had come home from a tavern to find his wife on the floor beaten and stabbed. While being booked, the defendant changed his story. He now said that he had been asleep in the afternoon, and awaoke to find his wife beaten and stabbed.

Evidence was admitted at trial that the Defendnat and his wife often quarreled, and that the defendant had even threatened her with a knife a few days prior to the homicide.

Evidence also was elicited about how the defendant and his wife drank heavily at least twice per week. Although charged with First Degree Murder, the Defendant was convicted of Voluntary Manslaughter, now known as Second Degree Murder. In affirming the trial court’s verdict, the Appellate Court considered evidence of the couple’s drinking habits, their history of mutual abuse, and the argument that occurred between them on that day.