

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**STATE OF MISSOURI**

**v.  
CARLTON L. MANUEL JR.**

**RESPONDENT,**

**APPELLANT.**

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DOCKET NUMBER WD75622

DATE: July 15, 2014

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Appeal From:

Jackson County Circuit Court  
The Honorable Robert M. Schieber, Judge

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Appellate Judges:

Special Division: Lisa White Hardwick, Presiding Judge, Karen King Mitchell, Judge and  
Cynthia L. Martin, Judge

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Attorneys:

Richard A. Starnes and Jennifer Rodewald, Jefferson City, MO, for respondent.

Jeannie M. Willibey, Kansas City, MO, for appellant.

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**MISSOURI APPELLATE COURT OPINION SUMMARY**

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**STATE OF MISSOURI,**

**RESPONDENT,**

**v.**

**CARLTON L. MANUEL JR.,**

**APPELLANT.**

No. WD75622

Jackson County

Before Special Division: Lisa White Hardwick, Presiding Judge, Karen King Mitchell, Judge and Cynthia L. Martin, Judge

Carlton Manuel, Jr. appeals his conviction of second-degree (felony) murder and armed criminal action following a jury trial. Manuel seeks plain error review of a claim of instructional error, and argues that there was insufficient evidence to prove that the victim was killed in the perpetration or attempted perpetration of a felony.

**AFFIRMED**

1. The verdict director for felony murder was in accord with MAI-CR3d 314.06, the applicable pattern instruction. We have nonetheless held that a pattern instruction that is not in "proper form" because it fails to comport with the substantive law can be the subject of plain error review.

2. Manuel argues that the pattern instruction does not comport with the substantive law because section 565.021.1(2) creates two discrete essential elements for felony murder--a temporal element requiring a death to occur before the essential elements of the underlying felony has been completed, and a causation element requiring a death to occur as a result of the commission or flight from commission of the underlying felony. According to Manuel, the pattern instruction only submits the causation element.

3. We do not agree with Manuel's construction of section 565.021.1(2). That section requires the killing of another person "in the perpetration or the attempted perpetration of such felony or in the flight from the perpetration or attempted perpetration of such felony." Flight occurs after the essential elements of the underlying felony have been committed. This strongly suggests that the legislature intended the phrase "in the perpetration or the attempted perpetration" to broadly encompass a continuum from the point where the commission of a felony begins through the point where all other acts or consequences reasonably associated with the felony have occurred including, but not limited to, flight.

4. We do not believe the legislature intended to parse the concept of "in the perpetration" so finely as to excuse deaths that plainly occur as a result of the commission of a felony or its attempt, but just happen to temporally occur after the essential elements of the felony or its attempt have been completed, but before flight from the offense. It would be absurd to conclude that the legislature intended to attach felony murder consequences to flight but not to other acts or consequences reasonably attendant to a completed underlying felony.

5. We thus conclude that to support a conviction for felony murder, it need only be shown that: (i) the evidence was sufficient for a finding beyond a reasonable doubt that the defendant committed the underlying felony offense, and (ii) another person died as a result of the perpetration or flight from perpetration of that felony.

6. The verdict director in this case comports with the substantive law.

Opinion by Cynthia L. Martin, Judge

July 15, 2014

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