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ADVANCE SHEET HEADNOTE

June 5, 2023

2023 CO 30

**No. 21SC564, *Garcia v. People* – Jury Instruction – First Degree Murder – Extreme Indifference Murder – Universal Malice.**

The supreme court concludes that the trial court did not err by refusing to provide the defendant's requested jury instruction defining the term "universal malice," which appears among the statutory elements for extreme-indifference first degree murder. The court reasoned that the plain language of the statute should be sufficiently clear to a reasonable person of common intelligence.

**The Supreme Court of the State of Colorado**  
2 East 14<sup>th</sup> Avenue • Denver, Colorado 80203

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2023 CO 30

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**Supreme Court Case No. 21SC564**  
*Certiorari to the Colorado Court of Appeals*  
Court of Appeals Case No. 17CA1910

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**Petitioner:**

Cristobal Fernando Garcia,

v.

**Respondent:**

The People of the State of Colorado.

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**Judgment Affirmed**

*en banc*

June 5, 2023

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**Attorneys for Petitioner:**

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**JUSTICE HOOD** delivered the Opinion of the Court, in which **CHIEF JUSTICE BOATRIGHT, JUSTICE MÁRQUEZ, JUSTICE GABRIEL, JUSTICE HART, JUSTICE SAMOUR,** and **JUSTICE BERKENKOTTER** joined.

JUSTICE HOOD delivered the Opinion of the Court.

¶1 Defendant, Cristobal Fernando Garcia, was found guilty of one count of attempted extreme-indifference murder, a form of first degree murder that requires that the defendant “evidenc[e] an attitude of *universal malice* manifesting extreme indifference to the value of human life generally.” § 18-3-102(1)(d), C.R.S. (2022) (emphasis added). Garcia asserts that the court of appeals erred by holding that the trial court wasn’t required to define “universal malice” for the jury. *See People v. Garcia*, 2021 COA 80, ¶ 16, 495 P.3d 362, 367. We affirm the judgment of the division.

### **I. Facts and Procedural History**

¶2 In August 2016, Natalie Duran asked her sister to help her search for Duran’s live-in boyfriend, Garcia. While searching by car, the two women spotted Garcia in Duran’s car and pursued him until he stopped. Duran got out of the car and confronted Garcia. The two argued. As Duran was walking away, she told Garcia that she had reported her car stolen. Garcia responded by exclaiming, “What?” He then aimed a handgun in Duran’s direction and fired at least three times before fleeing. None of the bullets hit either woman.

¶3 Garcia was charged with three counts of attempted first degree murder. One count was based on a theory of intent after deliberation regarding Duran, and

the other two counts relied on a theory of extreme indifference toward Duran and her sister.

¶4 The case proceeded to a jury trial. In addition to instructing the jury on criminal attempt, the court instructed the jury on the elements of extreme indifference murder as follows:

1. That Cristobal Garcia[,]
2. in the State of Colorado, at or about the date and place charged,
3. under circumstances evidencing an attitude of universal malice manifesting extreme indifference to the value of human life generally,
4. knowingly,
5. engaged in conduct which created a grave risk of death to, [sic] persons other than himself and thereby,
6. knowingly caused the death of Natalie Duran.

This instruction tracked the statutory language for extreme indifference murder. *See* § 18-3-102(1)(d).

¶5 Defense counsel also requested the following definitional instruction for “universal malice”: “‘Universal Malice’ is that depravity of the human heart which determines to take life upon slight or insufficient provocation, without knowing or caring who may be the victim.” The trial court rejected this instruction, ruling that the elemental instruction sufficed.

¶6 The jury convicted Garcia of attempted extreme-indifference murder as to Duran. It acquitted Garcia of the other two counts of attempted murder but convicted him of the lesser included offenses of reckless endangerment on both counts.

¶7 Garcia appealed, and a division of the court of appeals affirmed the convictions, concluding that the trial court’s instructions were adequate and that an additional definition of “universal malice” was unnecessary. *Garcia*, ¶¶ 16, 43, 495 P.3d at 367, 372. Shortly after, a separate division of the court of appeals declined to apply *Garcia*, instead holding that “universal malice” requires a definitional jury instruction. *People v. Draper*, 2021 COA 120, ¶ 39, 501 P.3d 262, 274.

¶8 We granted Garcia’s petition for review.<sup>1</sup>

## II. Analysis

### A. Standard of Review

¶9 We review de novo whether jury instructions adequately inform the jury of the governing law. *Riley v. People*, 266 P.3d 1089, 1092 (Colo. 2011). We consider

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<sup>1</sup> We granted certiorari to review the following issue:

Whether, as a matter of first impression, the jury must receive an instruction defining the “universal malice” element of extreme indifference murder.

“not only whether the jury instructions faithfully track the law but also whether the instructions are confusing or may mislead the jury.” *Garcia v. People*, 2022 CO 6, ¶ 16, 503 P.3d 135, 140. We also review related issues of statutory interpretation de novo. *Id.*

## **B. Universal Malice**

¶10 The United States and Colorado Constitutions guarantee criminal defendants both the right to have a jury decide their case and the right to have the prosecution prove every element of a charged offense beyond a reasonable doubt. U.S. Const. art. III, § 2, cl. 3; U.S. Const. amends. VI, XIV, § 1; Colo. Const. art. II, §§ 16, 25. To give effect to these guarantees, a trial court is required to properly instruct the jury on all the statutory elements of the charged crimes. *Garcia*, ¶ 15, 503 P.3d at 140.

¶11 Section 18-3-102(1)(d) provides the following statutory elements for extreme-indifference first degree murder:

A person commits the crime of murder in the first degree if . . . [u]nder circumstances evidencing an attitude of universal malice manifesting extreme indifference to the value of human life generally, he knowingly engages in conduct which creates a grave risk of death to a person, or persons, other than himself, and thereby causes the death of another.

No statute provides a definition for “universal malice.” However, we can trace the evolution of the term’s meaning through a century and a half of caselaw.

¶12 The earliest Colorado homicide statutes included as a form of first degree murder an “act greatly dangerous to the lives of others and indicating a depraved mind, regardless of human life.” *People v. Jefferson*, 748 P.2d 1223, 1227 (Colo. 1988) (quoting “An Act Fixing the Punishment for Murder,” ch. 64, sec. 2, § 1176, 1901 Colo. Sess. Laws 153, 154). At the beginning of the 20th century, in *Longinotti v. People*, 102 P. 165, 180–81 (Colo. 1909), this court restricted this offense to acts evincing “universal malice,” distinguishing them from intentional killings. In *Longinotti*, we defined “universal malice” as “depravity of the human heart, which determines to take life upon slight or insufficient provocation, without knowing or caring who may be the victim.” *Id.* at 181. As a result, this became known as “depraved heart murder.”

¶13 In 1972, the General Assembly recodified the criminal code. “An Act Enacting the Colorado Criminal Code,” ch. 121, §§ 40-1-101 to 40-13-109, 1971 Colo. Sess. Laws 388, 388–484. In addition to proscribing premeditated and felony murder, a new first-degree-murder statute outlawed killings “manifesting extreme indifference to the value of human life.” Ch. 121, § 40-3-102(1)(d), 1971 Colo. Sess. Laws 418.

¶14 A few years later, the General Assembly, seeking to distinguish between specific and general intent crimes, substituted “knowingly” for “intentionally” in both the extreme-indifference-murder and second-degree-murder statutes. *See*

“An Act Concerning Criminal Culpability,” ch. 224, secs. 5–6, §§ 18-3-102(1)(d), -103(1)(a), 1977 Colo. Sess. Laws, 959, 960; *see also Jefferson*, 748 P.2d at 1229. Under our state constitution’s due process doctrine, we determined that this change made extreme indifference murder indistinguishable from second degree murder and held that these amendments unconstitutionally created disparate criminal sanctions for the same criminal conduct. *People v. Marcy*, 628 P.2d 69, 74–76 (Colo. 1981), *superseded by statute*, “An Act Concerning the Criminal Code,” ch. 212, sec. 4, § 18-3-102(1)(d), 1981 Colo. Sess. Laws 972, 973.

¶15 The legislature immediately responded to *Marcy* by amending Colorado’s first-degree-murder statute to include “universal malice.” 1981 Colo. Sess. Laws at 973. In 1988, we upheld the constitutionality of this new statutory formulation. *Jefferson*, 748 P.2d at 1233. We determined that the new phrase “*evidencing an attitude of universal malice* manifesting extreme indifference to the value of human life *generally*” sufficiently distinguished extreme-indifference first degree murder from second degree murder to render the statute constitutionally sound. *Id.* (emphasis reflects the 1981 additions).

¶16 Most recently, when confronted with extreme indifference murder, we’ve referred to “universal malice” as conduct “evidenc[ing] a willingness to take human life indiscriminately, without knowing or caring who the victim may be or without having an understandable motive or provocation.” *Candelaria v. People*,

148 P.3d 178, 181 (Colo. 2006). And we've reaffirmed this understanding of "universal malice" in the years since *Candelaria*, noting that the term describes conduct "objectively demonstrating a willingness to take life indiscriminately." E.g., *People v. Anderson*, 2019 CO 34, ¶ 15, 442 P.3d 76, 79 (citing *Candelaria*, 148 P.3d at 182); *Montoya v. People*, 2017 CO 40, ¶ 21, 394 P.3d 676, 684. We've also rejected the idea that *Jefferson* incorporated depraved heart murder into the modern extreme indifference statute, instead emphasizing the differences between the extreme indifference statute and *Longinotti's* construction of depraved heart murder. *Candelaria*, 148 P.3d at 182.

### C. Application

¶17 While the better practice would be to define "universal malice" as including "a willingness to take life indiscriminately," see *Candelaria*, 148 P.3d at 182, on the facts before us today, we conclude that no definitional instruction was legally required.

¶18 In reaching this conclusion, we start with a simple observation: We have never required trial courts to include a definition of "universal malice" in their jury instructions, let alone a specific definition from a particular case. If anything, our precedent counsels that "a trial court's use of an excerpt from an opinion in an instruction is generally an unwise practice." *Evans v. People*, 706 P.2d 795, 800 (Colo. 1985). Indeed, we've stated that

language used in an opinion pertinent to the issues and the determined facts in that case may be a proper expression of the law as related to those facts and issues, and pertinent to a decision of the case, and yet may not be sufficiently general, clear, or accurate to serve as a satisfactory or full instruction to a jury.

*Id.* (quoting *Cohen v. People*, 103 P.2d 479, 480 (Colo. 1940)).

¶19 Instead, the paramount concern is whether the instructions properly inform the jury of the law. *McDonald v. People*, 2021 CO 64, ¶ 54, 494 P.3d 1123, 1133. This typically turns on whether the instructions track the applicable statute and, if so, whether the instructions are nonetheless somehow confusing or misleading. *Garcia*, ¶ 16, 503 P.3d at 140. The relevant instruction here accurately tracked section 18-3-102(1)(d), but was it still so confusing or misleading that it created error?

¶20 To answer this question, we consider whether the language at issue is technical. Under section 2-4-101, C.R.S. (2022), definitions should be provided for “technical” terms. *See also Griego v. People*, 19 P.3d 1, 7 (Colo. 2001). Conversely, when “a term, word, or phrase in a jury instruction is one with which reasonable persons of common intelligence would be familiar, and its meaning is not so technical or mysterious as to create confusion in jurors’ minds as to its meaning, an instruction defining it is not required.” *Day v. Johnson*, 255 P.3d 1064, 1070 (Colo. 2011) (quoting *People v. Thoro Prods. Co.*, 45 P.3d 737, 745 (Colo. App. 2001)).

¶21 We reject the notion that “universal malice” is a technical term. Instead, we believe the plain meaning of “universal malice” should be sufficiently clear to a reasonable person of common intelligence that no definitional instruction is required on the facts presented here.<sup>2</sup> After all, the term’s meaning emanates from its express subparts. “Universal” is defined as “including or covering all or a whole collectively or distributively without limit or exception” and is commonly used in a variety of contexts. *Universal*, Merriam-Webster Dictionary, <https://www.merriam-webster.com/dictionary/universal> [https://perma.cc/N5SZ-H87W]. And the meaning of “malice” similarly tracks its commonly understood dictionary definition, which is a “desire to cause pain, injury, or distress to another.” *Malice*, Merriam-Webster Dictionary, <https://www.merriam-webster.com/dictionary/malice> [https://perma.cc/5WP7-GBNN]. Read together, a reasonable person of common intelligence would understand “universal malice” as a desire to harm that covers all or, in the context of homicide, “a willingness to take life indiscriminately.” See *Candelaria*, 148 P.3d at 182.

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<sup>2</sup> We recognize that on different facts—e.g., if the jury had expressed confusion about the meaning of “universal malice”—a definitional instruction might have been necessary. See, e.g., *Leonardo v. People*, 728 P.2d 1252, 1256 (Colo. 1986).

¶22 In so concluding, we necessarily reject Garcia’s reliance on *Draper*, ¶ 35, 501 P.3d at 274, in which a division of the court of appeals concluded that “‘universal malice’ does not have a common meaning or understanding.” The division took issue with the *Garcia* division’s “practice of defining complex legal concepts by consultation with dictionaries,” *id.* at ¶ 36, 501 P.3d at 274, and recognized that “while the appellate judges in *Garcia* had access to one or more dictionaries to accomplish this task, the jury has no such resources.” *Id.* Thus, *Draper* departed from *Garcia* and held that a trial court errs when it fails to instruct a jury on the definition of “universal malice.” *Id.* at ¶ 39, 501 P.3d at 274. By affirming the division below, we overrule *Draper*.

¶23 Even so, we are sympathetic to the *Draper* division’s concern regarding overreliance on dictionary definitions, particularly given that jurors may not access those definitions during their deliberations. However, our analysis today merely begins with a dictionary; it doesn’t end there. We also consider the broader statutory context in which the term “universal malice” is found.

¶24 As relevant here, the term resides within the phrase “universal malice manifesting extreme indifference to the value of human life generally.” § 18-3-102(1)(d). The word “manifesting” requires the prosecution to prove that the conduct at issue reflected “extreme indifference to the value of human life generally” –again, language that should be clear to a reasonable person of

common intelligence. Thus, even if there could be confusion about “universal malice” as a standalone term, the complete statutory phrase lends clarity.

¶25 Finally, even if a definition of “universal malice” had been necessary, the trial court would have erred in using the outdated depraved-heart iteration that Garcia tendered. Garcia’s proposed instruction defined “universal malice” as “that depravity of the human heart which determines to take life upon slight or insufficient provocation, without knowing or caring who may be the victim.” While that definition directly tracks language from *Longinotti*, depraved heart murder—and by extension, any definitions of “universal malice” associated with it—has been abrogated by statute and implicitly overruled. See *Candelaria*, 148 P.3d at 182.

¶26 Instead, if a trial court does provide a definition of “universal malice,” the better practice would be to define the term to include “a willingness to take life indiscriminately.” See *id.* This construction tracks the plain meaning of “universal malice,” as discussed above. Further, this definition captures a modern understanding of the term, which aligns with our recent interpretations of section 18-3-102(1)(d). See, e.g., *id.*; *Anderson*, ¶ 15, 442 P.3d at 79.

### **III. Conclusion**

¶27 Because we agree that on the facts presented here the trial court adequately instructed the jury on the applicable law without including an instruction defining “universal malice,” we affirm the judgment of the court of appeals.