

Answer to CL630 Criminal Law Module 15 Practice Essay

Did Dean commit homicide?

Homicide is causing the death of another human being. Here, it is undisputed that Dean caused Vic's death when he bludgeoned him in the head.

The question is, of what level of criminal homicide he can be charged and successfully convicted? The prosecution will likely try to convict the defendant of murder, and the defense will try to mitigate it down to voluntary manslaughter.

Did Dean commit murder?

Murder is the killing of a human being with malice aforethought. Malice aforethought can consist of (1) actual intent to kill, (2) intent to cause serious bodily harm, (3) extreme recklessness (depraved heart killing), or (4) felony murder.

It is useful to first analyze whether there was actual intent to cause death.

Did Dean have intent to kill?

Intent equates to purpose (conscious object) or knowledge with substantial certainty that a result will occur. Here, it is highly likely that Dean intended to kill Vic when he beat him. Intent can be inferred from conduct. Here, the natural and probable consequence of repeatedly smashing a racquet into someone's head, even after blood is spurting out, and even after they have slumped to the ground, is to cause their death.

Under the "deadly weapon" doctrine, use of such a weapon can be a basis to infer intent to kill. Although a tennis racquet is not invariably considered a deadly weapon, like a knife or gun, when used in this manner on someone's skull, it could be considered a deadly weapon.

Moreover, Dean had a motive to kill (anger at learning that Vic slept with his wife). Although motive is not an essential element of murder (or most crimes), it can be another basis to infer intent. Here, Dean either wanted Vic dead, or knew that death was almost sure to result and was fine with that. Thus, Dean likely intentionally killed Vic.

Dean may argue that he only intended to hurt Vic, not kill him. However, this is not very plausible in light of the facts. Moreover, even if Dean intended to cause serious bodily injury to Vic, that would still be sufficient implied malice to warrant a conviction for second-degree murder.

Could Dean be convicted of first-degree murder?

The default intentional killing, absent any aggravating or mitigating factors, is second-degree murder. However, because the prosecution would try to get a conviction for the most serious crime possible, they will press a first-degree murder charge.

First-degree murders are those killings that are done not only intentionally, but with premeditation and deliberation. Premeditation is a function of quantity, the time which the decision to kill was considered, and deliberation is a function of quality, the thought given to the decision to kill. No particular amount of time is required, so long as the decision to kill is made at some point prior to the act of killing itself, such that we can say there was a choice to kill.

Roughly fifteen seconds elapsed between the time Dean first learned that Vic had slept with his wife, and the time he starting hitting Vic. The prosecution will say that this is more than sufficient to show that the decision to kill came before the act itself. Thus, there was premeditation. The prosecution will argue that there was also deliberation, as Dean thought about how to react to the news for fifteen seconds, and so weighed his options. He even hit Vic with the racquet after Vic asked, "Are you gonna use that racquet?", suggesting that he was listening

to Vic and made a rational decision about how to respond to his question. And the fact that two employees had to pull Dean off of Vic suggests he was determined to cause his death.

The defense will counter that during those fifteen seconds, Dean was just frozen and wasn't thinking. Or at most, he was processing the news, he wasn't considering killing. It was only when he snapped and started hitting that he made that decision, i.e., at the time of the act itself. Alternatively, the defense will argue that even if he had formed the intent to kill earlier, he did so in a heated rage (as will be discussed below in connection with voluntary manslaughter), and so could not have made a deliberate choice to take another's life. His standing there motionless is evidence of how shocked he was, and his split-second transformation from motionless to violent shows how emotionally wrought he was. The fact that two employees had to pull Dean off of Vic, even after he was obviously dead, actually corroborates the defense's view that Dean was not thinking clearly or rationally, not that he was acting deliberately.

A jury would be unlikely to find Dean liable for first-degree murder.

Did Dean commit voluntary manslaughter?

The defense will argue that Dean should be convicted, if anything, only of voluntary manslaughter. An intentional killing will be mitigated to voluntary manslaughter if it was done (a) as a result of adequate provocation, (b) in a heat of passion, (c) without time for cooling off, and (d) without cooling off. The defense will argue that this is clearly what happened here: Dean has just learned that Vic slept with his wife. This caused him to fly into a homicidal rage.

The elements of heat of passion, no time for cooling off, and no cooling off are not really in dispute. Dean was clearly in a rage when he killed Vic. Although the prosecution may argue that Dean had fifteen seconds to cool off, it is unlikely that a jury would find that this was sufficient time to calm down from learning such devastating news regarding his wife's affair with his best friend. The hotly disputed issue will be the first element, adequate provocation.

Was there adequate provocation?

Traditionally at common law, finding your spouse in bed with another person was legally adequate provocation. But Dean did not *see* Vic in bed with his wife, he only *heard* about it. Although the modern trend is to move beyond the common law list of adequate provocations, and let the issue go to the jury, the majority position is that mere words are never enough. The prosecution will argue that merely being informed that Vic had slept with Dean's wife is insufficient as a matter of law. Under the majority view, the prosecution would likely prevail.

The defense will respond that, under the minority position, words of information—as opposed to words of insult—can constitute adequate provocation. Arguably, if seeing your wife in bed with another man is upsetting enough to explain a homicidal rage, learning that information through other means is virtually as upsetting. Moreover, Vic providing the detail about the mole (which, it is reasonable to infer, was accurate) not only informs Dean of the event, it provides corroborating information confirming that it really happened. Plus, Vic was apparently a good friend of his, making the news all the more painful.

The prosecution will counter that the visceral impact of *seeing* your spouse with someone else is what plausibly triggers a homicidal rage, but that is absent here when Vic just tells him the information verbally. Plus, Vic is so nonchalant, and has been a longtime friend, how does Dean know he isn't kidding? There is nothing to corroborate his claim, as there is no evidence that the mole was really there, or that Vic might not have seen it through legitimate means or heard about it. Moreover, Vic's words are arguably accompanied by words of insult—regarding the wife's mole—and such words are never sufficient, even under the minority view.

Whichever position the jurisdiction adopts, it is unlikely that Dean will be able to mitigate the killing down to voluntary manslaughter.

Do other theories of homicide apply?

An aggressive prosecution might argue that Dean is liable for first-degree felony murder, because he caused a death during the commission of a battery. However, this would be a clear case where the “merger” or “independent felonious purpose” limitation would apply. Dean had no other intent in committing the predicate felony other than to cause physical harm to Vic, so to apply the felony murder rule in this context would be illogical.

Dean, conversely, may argue he was so blinded with hurt that he failed to realize Vic might die, and so only negligently failed to realize that death would result from his actions, and so was only liable for involuntary manslaughter, i.e., negligent homicide. But it is highly unlikely any jury would credit this claim. As discussed above, it is far more likely he would be found to have intended Vic’s death, or at least intended serious bodily harm.

[Note to student: These more tangential issues are addressed only briefly, and only after the central issues have been adequately addressed.]

Conclusion: Because Dean intended to kill Vic but neither aggravating nor mitigating factors are present, Dean would most likely be convicted of second-degree murder.