

# WRITING PRACTICE – MURDER

## Assignment Memo

Please review the laws pertaining to murder in the document below and write an essay determining what would happen if Mr. and Mrs. Macbess would be charged with murder. Specifically, your essay should answer the following questions: Will Mr. Macbess be found guilty of first or second degree murder, or involuntary manslaughter, or nothing in the death of the King? What about in the death of Banquod? Will Mrs. Macbess be found guilty as an accomplice in the death of the king? What about in the death of Banquod?

In your essay, you should assume that all the facts given to you about the Macbess case are somehow discovered and presented to the jury, and that the jury believes all of it. The purpose of your essay is to explain how the Rules of Murder will lead to the conviction or acquittal of these two persons for these two crimes.

## Rules of Murder

Murder and Malice. A murder is the killing of one human by another with mental frame of mind known as **malice aforethought**. This means that the first step in convicting a killer of murder is to prove that he had malice aforethought. This can be shown according to four different theories, and a prosecutor can show that a killer meets any or all of those criteria in case the defense is able to contradict one of them. Here are the four theories or routes by which a killer can be pinned with malice aforethought: 1) killer had the **intent to kill** or **knew for sure** that death would result (e.g., fires a gun at victim's head or puts a bomb on his plane); 2) killer had the **intent to cause serious physical harm** or knew it would probably result (e.g., tries and wants to sever victim's finger); 3) killer showed **reckless indifference to the value of human life** (e.g., fires a gun into an apartment building for fun or drives 60 mph on crowded sidewalk); or 4) killer intended to commit **some other dangerous felony**. This last is known as the felony murder rule and requires more explanation.

Felony Murder Rule. This refers to the fourth possibility for proving malice aforethought. The rule is that a killer who causes a death while in the progress of intentionally committing a dangerous felony is deemed to have acted with malice aforethought, even

if the killing was accidental and never planned. Notice that even though it may be accidental, the death still has to be *caused* directly (proximately) by the killer's acts. An earthquake that kills a victim during a bank robbery will not count. The death must happen during the felony, which is considered to still be in progress until the killer has successfully completed the escape. The death could even occur before the felony itself as long as the plan for the felony had already been formed. Finally, the "triggering" felony has to be separate from the act of killing itself, or else all killings would be under this rule. The idea is that a death occurring while **some other** dangerous felony is in progress will trigger malice aforethought.

Without malice, manslaughter may be possible. If the prosecution cannot prove that the killer acted with malice, it may still be possible to charge with Involuntary Manslaughter if it can be proven that the killer was **grossly negligent**. This would mean that the killer departed from the usual standards of care so substantially that he exposed his victim to considerable and unjustified risk of harm.

First vs. Second Degree Murder. If murder is proven, it must be determined whether it is first degree or second degree. A murder is first degree if it can be shown that the killing was premeditated (planned out ahead of time). To prove that something was premeditated, it helps to identify evidence of 1) an elaborate plan; 2) a preexisting motive (a desire to inherit vs. sudden anger); and 3) a method of killing that does not seem spontaneous (e.g., poisoning vs. shoving). Any murder that is not first degree is automatically second degree. But remember that if malice cannot be proven, there is no murder at all. There is either manslaughter or perhaps no crime at all.

Accomplices. The general rule is that one who aids or encourages another to commit a crime is guilty of the same crime. Assistance after the crime doesn't count. Even words may be enough if they help in some way, and assistance counts even if it turns out it wasn't necessary. If it turns out that the assistance was completely useless, though, that might be a defense. Just being present or just knowing about the crime is not enough. The prosecutor has to show that the alleged accomplice wanted the crime to happen, that the accomplice helped, and that the accomplice intended to help.

Are accomplices liable for additional crimes? Sometimes the primary criminal commits further crimes beyond what the accomplice set out to assist. The accomplice will be guilty of all crimes that are natural, foreseeable consequences of the original crime even if the accomplice never intended them. However, if the primary criminal goes beyond the foreseeable and commits further crimes for personal or random motives, the accomplice will not be guilty of those.

But what if the Killing Happened Unexpectedly? A defendant may try to argue that although he did something wrong, intervening causes came along and killed the victim. Without those intervening causes, the victim might not have died, so it is unfair to blame death on the defendant. Will this argument work? It depends on the intervening cause. If death resulted directly from the defendant, it won't matter if it happened in a slightly different way. For example, if you intend to kill your victim, miss, and he has a heart attack and dies, it is still your fault. If some external factor gets in the way, it will still be your fault unless it is wildly coincidental. For example, if you intend to shoot your victim and hit him, it won't matter if his death happens from his refusal of medical care for religious reasons or from jumping out a window to get away. You are still the cause. Perhaps if the gunshot wakens a rhinoceros who charges into the room and kills your victim, you might get off the hook.

#### The Case of the MacBess Murders

Mr. Macbess was a loyal warrior who was greatly trusted by his King. Simpleminded and content with his role in life, he was happy with his rather low position and never asked for more. However, Mrs. Macbess was fiercely ambitious and constantly pressured her husband to seek promotions and demand recognition for his abilities. As time went on, her pressuring increased and she began to insinuate that she might leave him if he did not improve his status in life.

One night, it happened that King was to spend the night at the Macbess mansion. After he arrived, Mrs. Macbess took her husband to one side. "This is the best opportunity you will ever have," she said. "If King dies tonight, you will be one of the top contenders for the throne."

"I may be a soldier, but I am not a murderer," answered her husband. He's our guest here tonight. I know you want me to do this, but I don't think I can."

"You disgust me," replied Mrs. Macbess. "Obviously, you do not even deserve to be called a man, let alone a husband. Just show a little backbone. You can do this. I know you can. Besides, I have ever told you how attractive I find you when you take command?"

These suggestions went against everything Mr. Macbess believed in. At last, however, his will was overcome by his wife, and he entered King's bedroom with a sharpened

dagger in hand. Even then, he did not expect to use it. Though he had agreed to follow his wife's direction to kill King, he privately intended to frighten him into swearing to name him as his successor. Mr. Macbess entered the darkened bedroom with the knife extended before him pointing outward. "I don't want to hurt you," he blurted out. Failing to see the riding boots that King had carelessly flung onto the floor, he tripped and fell forward with the outstretched dagger unfortunately plunging into King's heart. King died.

King's death was blamed on unknown assassins, and Mr. Macbess did come to take his place on the throne. However, only weeks later, Mr. Macbess began to have some disturbing conversations with his best friend, Banquod. It seems that Banquod found the whole affair suspicious and perhaps had even overheard the couple arguing on the night of the murder. Mrs. Macbess found her husband one day absorbed in thought and asked him what was wrong.

"I'm worried about the situation with Banquod," he said somewhat cryptically.

Seeming to understand his meaning, his wife asked, "What are we going to do about it? I'm here to help."

But no matter how many times she asked, Mr. Macbess never answered her. Instead, he formed his own plan. He hid a sword behind a tree in a clearing about a half-mile from his home and then told Banquod that they needed to walk down there for a private consultation. Without explaining his purposes to his wife, Mr. Macbess told her to offer Banquod a pair of shoes that he had sabotaged so that the laces would constantly undo themselves. Mrs. Macbess had no idea of the nature of the shoes or the purpose of this request, but she obeyed, and Banquod accepted and put on the shoes.

When the two men arrived at the clearing in the woods, Macbess waited for Banquod to tie his shoe and then pulled out the hidden sword and decapitated him with a single blow. Meanwhile, Mrs. Macbess, guessing that the shoes might have been poisoned, burned the box they had come in to hide the evidence.

## ATTEMPTS

The law punishes people for attempting a crime even if they do not succeed. The idea is that this will deter people from making such attempts and that a criminal should not escape punishment just because a plan fails. However, this can lead to injustice in at least two important ways. First, there is the question of whether the defendant *really was intending* to attempt a crime. Since no result occurred, a defendant could

conceivably argue that appearances were deceiving or that a joke was intended. Secondly, even if there is intent, the question remains of whether the defendant **went far enough** in his plan. Punishing someone for a crime that has barely begun or that is still an idea amounts to punishing people for bad thoughts.

For these reasons, the general rule is that to convict someone of attempting a crime, the prosecution must prove that 1) the defendant intended to commit the crime, and 2) the defendant took a **substantial step** toward that goal.

Further complications arise when it turns out that the crime being attempted was actually impossible. Should that matter? Should a person be charged with attempted murder if he shoots an already dead body, thinking that it is alive? What if he tries to break into a house, gets confused in the dark, and mistakenly breaks into his own house? Is that an attempted break-in and punishable by law?

### Practice with Attempt

Consider the following situations. Then decide which examples you think the law should punish and why you believe that is fair.

1. Adams and Baker form a plan to order a pizza and then mug the deliverer. They order the pizza. The pizza never arrives because the restaurant closes due to fire, but the police find out about the plan. The police go to the Adams and Baker residence but find no evidence except for a hunting knife sitting on a shelf near the front door. Attempted assault?
2. Cheswick decides that he wants to find his boss and strangle him. It turns out that he has the wrong apartment number, and so he wanders around the complex for two hours hoping to run into him. He never does. Attempted murder?
3. Dixon, an undocumented alien, attempts to bribe a border official with a \$100 bill. It turns out that the person he believed to be an inspections officer was a janitor. Attempted bribery?
4. Eglantine believed she was meeting with thieves to buy what they had told her was a stolen television. It turns out that the thieves are police officers and that the television is not really stolen. Attempted purchase of stolen goods?
5. Felix finds what he thinks is a pound of cocaine in the street and carries it home. It turns out it is only flour. Attempted possession of drugs?
6. Grace fires at what she thinks is her ex-boyfriend. It turns out to be a manikin. Attempted assault with a deadly weapon?
7. Humbert fires a gun in the air for fun, and it almost hits a passerby in the head. Attempted murder?

8. Isabel fires a gun at a passerby intending to miss by an inch and scare him. She does miss by an inch. Attempted murder?
9. Jones enters a backyard illegally and lights a match just as police apprehend him. He claims that the match was for lighting a cigarette, and he does have cigarettes on him. Attempted arson?
10. Larson accepts \$500 from an undercover agent with the agreement that he will procure a prostitute for him. An hour later, he returns to the agent alone. Before he can say anything, he is arrested. Attempted procurement of prostitution?
11. Mabel, an adult phones a 16-year-old boy and invites him to her house with the intention to have sexual relations with him. He does not arrive, but police intercept the call and arrest Mabel. Attempted statutory rape?
12. Nestor tries to shoot his roommate but fails because he did not realize that the gun was a toy. Attempted murder?
13. Olga believes that pouring salt in front of her neighbor's doorway will kill her, and she pours salt in front of her doorway. The neighbor is not harmed. Attempted murder?

#### **Assignment Memo**

In the case below, the state's attempt to convict Smallwood of attempted murder was overturned. Read the facts, then compare them with the cases of Hinkhouse and Brown following. Write an essay comparing the cases and arguing why Smallwood should be found not guilty, while the others were found guilty.

*Smallwood v. State* 680 A. 2d 512 (Md: Court of Appeals, 1996)

On August 29, 1991, Dwight Ralph Smallwood was diagnosed as being infected with the Human Immunodeficiency Virus (HIV). According to medical records from the Prince George's County Detention Center, he had been informed of his HIV-positive status by September 25, 1991. In February 1992, a social worker made Smallwood aware of the necessity of practicing "safe sex" in order to avoid transmitting the virus to his sexual partners, and in July 1993, Smallwood told health care providers at Children's Hospital that he had only one sexual partner and that they always used condoms. Smallwood again tested positive for HIV in February and March of 1994.

On September 26, 1993, Smallwood and an accomplice robbed a woman at gunpoint, and forced her into a grove of trees where each man alternately placed a gun to her head while the other one raped her. On September 28, 1993, Smallwood and an accomplice robbed a second woman at gunpoint and took her to a secluded location, where Smallwood inserted his penis into her with "slight penetration." On September 30, 1993, Smallwood and an accomplice robbed yet a third woman, also at gunpoint, and took her to a local school where she was forced to perform oral sex on Smallwood and was raped by him. In each of these episodes, Smallwood threatened to kill his victims if they did not cooperate or to return and shoot them if they reported his crimes. Smallwood did not wear a condom during any of these criminal episodes.

Based upon his attack on September 28, 1993, Smallwood was charged with, among other crimes, \*\*\* the attempted second-degree murder of each of his three victims.

#### Hinkhouse

On November 3, 1990, defendant told his probation officer, Bill Carroll, that defendant was HIV-positive. Carroll immediately advised defendant of the implications of his HIV status, explaining the seriousness of the disease and the manner in which it is transmitted. Carroll explained that using a condom limits the risks of transmitting the virus, but he also explained that it would not eliminate the risk entirely. He told defendant that if he passed the virus to another person, "he would be killing someone."

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Nevertheless, defendant continued to engage in sexual relations with a number of women. When he was taken into custody again for another probation violation later that year, he was heard bragging about his sexual prowess with women, expressing neither concern nor remorse for the people whom he might have exposed to HIV. As a condition of his release, however, he signed a probation agreement that included a commitment not to engage in any unsupervised contact with women without express permission from his parole officer.

In 1993, defendant began several sexual relationships without notifying Carroll. In each case, he refused to use a condom during sex and failed to disclose his HIV status. In May of that year, he began a sexual relationship with P.D. He never used a condom and said nothing about HIV.

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The **state's** expert, Dr. Johnson \*\*\* thought that it was significant that defendant agreed to use, and in fact used, condoms when having intercourse with a woman for whom he expressed affection, but he did not use condoms with the other women with whom he had sex. Johnson also reported a conversation with another of defendant's former sexual partners, who said that, although defendant had denied that he was HIV-positive, he said that if he were positive, he would spread the virus to other people. In Johnson's opinion, such statements, coupled with defendant's behavior, showed intentional, deliberate conduct. Particularly in the light of the pattern of systematically recruiting and exploiting multiple partners over a long period of time, Johnson said, he found no evidence to suggest that defendant was acting impulsively or without the intent to harm.

Haines

On August 6, 1987, Lafayette, Indiana, police officers John R. Dennis (Dennis) and Brad Hayworth drove to Haines' apartment in response to a radio call of a possible suicide. Haines was unconscious when they arrived and was lying face down in a pool of blood. Dennis attempted to revive Haines and noticed that Haines' wrists were slashed and bleeding. When Haines heard the paramedics arriving, he stood up, ran toward Dennis, and screamed that he should be left to die because he had AIDS. Dennis told Haines they were there to help him, but he continued yelling and stated he wanted to \*\*\* "give it to him." Haines told Dennis that he would "use his wounds" and began jerking his arms at Dennis, causing blood to spray into Dennis' mouth and eyes. Throughout the incident, as the officers attempted to subdue him, Haines repeatedly yelled that he had AIDS, that he could not deal with it and that he was going to make Dennis deal with it.