

ANSWER TO QUESTION NO. 7

The intoxication defense is not likely to succeed. MCL 768.37(1) removes intoxication as a defense to any crime if the consumption of the alcohol causing the intoxication was voluntarily consumed. Because the facts indicate Tony and Chucky voluntarily consumed the whisky and beer, the intoxication defense is not available to them. Additionally, because Tony and Chucky would know the consumption of alcohol would cause their intoxication, MCL 768.37(2) would not assist them.

Tony claiming Chucky alone murdered Vance will not exonerate Tony. Criminal responsibility may be assigned to a principal or an accomplice, sometimes also called an aider and abettor. MCL 767.39 abolished the distinction between accessory and principal:

"Every person concerned in the commission of an offense, whether he directly commits the act constituting the offense or procures, counsels, aids, or abets in its commission may hereafter be prosecuted, indicted, tried and on conviction shall be punished as if he had directly committed such offense."

The elements of aiding and abetting are (1) the alleged crime was actually committed by the defendant or someone else; (2) before or during the crime, defendant did something to assist in the commission of the crime; and (3) the defendant must have intended the commission of the alleged crime or must have known that the other person intended its commission at the time of giving the assistance. CJI 2d 8.1.

Applying these elements to the facts at hand requires rejection of Tony's defense that he is not guilty of murder because Chucky did the actual killing. Tony encouraged Chucky to kill Vance by (1) providing Chucky the keys to his car; (2) pulling Vance into the road; (3) telling him to (indeed threatening to kill him if he didn't) run over Vance, all to finish him off or kill him. Tony has accomplice liability as an aider and abettor.

Chucky's defense that Tony forced him to kill Vance will be unsuccessful. One accused of a crime may claim duress as a defense but not where the crime is murder. Because the charged crime is the murder of Vance, Chucky cannot employ a duress defense, even if Chucky was afraid of Tony. *People v Dittis*, 157 Mich App 38, 41 (1987); *People v Etheridge*, 196 Mich App 43, 56 (1992); *People v Moseler*, 202 Mich App 296, 299 (1993). Michigan cases are

therefore consistent with the common law, and Michigan statutes provide no exception to the common law.

Mary cannot be charged with murder either as a principal or an accomplice because she did not take part in the murder as a principal nor an alder or abettor. She did not know about the murder beforehand, only learning of it after being told by Tony and Chucky. However, Mary can be charged as an accessory after the fact. The elements of this charge are (1) someone else, other than Mary, committed the crime of murder; (2) Mary helped the other person in an effort to avoid discovery, arrest, trial or punishment; (3) when Mary gave help, she knew one or both men had committed a felony; and (4) Mary intended to help one or both men avoid discovery, arrest, trial or punishment.

Applying these elements to the facts presented would cause Mary to be charged with Accessory After the Fact because (a) the men committed the murder by their own statements; (b) Mary helped them avoid discovery or arrest because she saw the blood in their boots, saw the police arrive, mopped the floor, and directed the men to hide evidence in the dumpster and themselves in the cooler; (c) Mary knew the men had committed a felony by their own words; and (d) she intended to help the men with whom she had an employer/employee relationship. CJI 2d 8.6. MCL 767.67.