

EXAMINERS' ANALYSIS OF QUESTION 8

Defense counsel's motion is unpersuasive and the Court should deny counsel's request.

The elements of second-degree murder are (1) a death, (2) caused by an act of the defendant, (3) with malice, and (4) without justification. Only the third element, the presence of malice, is at issue on the facts presented.

Malice is defined as the intent to kill, the intent to cause great bodily harm, or the intent to do an act in wanton and wilful disregard of the likelihood that the natural tendency of such behavior is to cause death or great bodily harm. *People v Goecke*, 457 Mich 442, 464 (1998) citing *People v Aaron*, 409 Mich 672, 728 (1980). Only the third formulation of malice is presented by the facts at hand.

Malice in this form may be inferred from the evidence that the defendant intentionally set in motion a force likely to cause death or great bodily harm. *People v Roper*, 286 Mich App 77, 84 (2009).

The issue is whether these elemental requirements for malice are established by RB's intoxication and negligent driving and other facts. The Court should deny defense counsel's motion for the following reasons. First, RB had a significantly elevated blood alcohol content, reflective of considerable ingestion of alcohol. Second, he drove at almost double the posted speed limit. Third, he ran a red light in an area where he was familiar with the roads and traffic lights. Fourth, he passed other vehicles slowing down for the upcoming intersection.

In sum, the prosecution's case should not be dismissed for elemental deficiency of malice. Driving an oversized, high-powered vehicle while drunk, at double the speed limit through a visible red light amounts to doing an act in a wanton and wilful disregard of the likelihood such behavior will cause death or great bodily harm. As such, RB is properly charged with second degree murder.

The facts of the case scenario are based on *People v Richard Allen Baker* which was decided with *Goecke, supra*.