

EXAMINERS' ANALYSIS OF QUESTION 8

Second degree murder

Daniel could be charged with second degree murder. An unplanned, impulsive killing with malice aforethought is second degree murder. *People v Stinson*, 58 Mich App 243, 247 (1975). The elements of second degree murder are: (1.) The defendant caused death (here Paul's death by blunt force trauma); (2) the defendant had one of these three states of mind (mens rea) at the time he acted: a.) he intended to kill; b.) he intended to do great bodily harm; or c.) he knowingly created a very high risk of death or great bodily harm knowing that death or such harm would be the likely result of his actions; and (3.) the killing was not justified, excused or done under circumstances that reduce it to a lesser crime. *People v Dykhouse*, 418 Mich 488, 508-509 (1984); *People v Aaron*, 409 Mich 672, 728 (1980).

The evidence clearly supports the conclusion Paul died of blunt force trauma from being hit on the head by Daniel. The evidence also supports Daniel intended to kill or commit great bodily harm to Paul by hitting Paul on the head with a piece of cement, or Daniel knowingly created a very high risk of death or great bodily harm knowing one to be the likely result of his actions. Especially as he struck him on the head when Paul was defenseless on the ground.

An inference of intent to kill or to commit great bodily harm can be drawn from the use of a deadly weapon. *People v Martin*, 392 Mich 553, 561-562 (1974). A piece of cement can be a deadly weapon. It is hard and can be used as a dangerous weapon. Malice (any of the three states of mind) can be inferred from the type, duration, severity and manner in which the beating was inflicted. *Stinson*, 58 Mich App at 258; *People v McFee*, 35 Mich App 227, 230-231 (1971). Daniel struck Paul with a dangerous weapon on the head when Paul was defenseless on the ground. The mens rea requirement of second degree is fulfilled.

Voluntary manslaughter

Voluntary manslaughter parallels the crime of second degree murder but is distinguished from second degree murder by the fact the act is done as a result of provocation and done in heat of

passion (not cool reflection). *People v Townes*, 391 Mich 578, 589-590 (1974).

Voluntary manslaughter is murder committed in the heat of passion caused by adequate provocation without time for a reasonable person to control the passions. *People v Reese*, 491 Mich 127, 143 (2012). The mens rea required for voluntary manslaughter is the same as second degree murder. *Townes*, 391 Mich at 589; *People v Delaughter*, 124 Mich App 356, 360 (1983). Adequate provocation and passion mitigate second degree murder to voluntary manslaughter, but are not elements of the crime. *Reese*, 491 Mich at 143-144.

Provocation "is that which causes the defendant to act out of passion rather than reason." *People v Sullivan*, 231 Mich App 510, 518 (1998). Provocation must be adequate, that which would cause a reasonable person to lose control of reason, to "act out of passion rather than reason." *People v Pouncey*, 437 Mich 382, 390 (1991); *People v Mitchell*, 301 Mich App 282, 286-287 (2013); *Sullivan*, 231 Mich App at 518-519. The test is whether an ordinary or reasonable person of fair average disposition would have been provoked under the circumstances and lose control of reason. *Pouncey*, 437 Mich at 389; *People v Younger*, 380 Mich 678, 682 (1968).

Insulting words alone, or an assault and battery, are ordinarily insufficient provocation. *Pouncey*, 437 Mich at 391. A mutual fight is ordinarily sufficient provocation. See *People v Pouncey*, 437 Mich 382 (1991).

Paul's words were insulting but not sufficient provocation. There was not a mutual fight. Paul's failure to pay a debt, his words and economic pressure on Daniel is not adequate provocation. The fatal blow may have been delivered out of anger but not heat of passion. The best conclusion is that the facts support second degree murder as there was insufficient provocation and it did not cause Daniel to act out of heat of passion.

Involuntary manslaughter is the intentional killing of another without malice in 1) commission of an unlawful act not a felony, not naturally causing death or great bodily harm; 2) negligent commission of a lawful act; or 3) negligent omission to perform a legal duty. *People v Heffin*, 434 Mich 482, 507-508 (1990). It does not apply here as hitting a person with a weapon

is a felony (felonious assault) and is not a lawful act nor gross negligence.