

**ANSWER TO QUESTION NO. 4**

A. **Discuss the Charge Asserted Against Debbie Defendant:** The prosecutor has charged Debbie Defendant with first-degree premeditated murder. The elements of this offense are:

1. Defendant caused the death of the deceased;
2. Defendant intended to kill the deceased;
3. The intent to kill was premeditated;
4. The killing was deliberate; and
5. The killing was not justified or excused under the law.  
CJI2d 16.1; MCL 750.316(1) (a).

Here, Debbie's confession provides evidence as to every element of the crime of first-degree premeditated murder. Simply stated, Debbie confessed to the intentional, deliberate and premeditated murder of her father. Murder perpetrated by means of poison is premeditated murder. MCL 750.316(1)(a). Nothing in the fact pattern supports the conclusion that this murder was justified or excused under the law. Thus, Debbie Defendant's confession provides evidence of every element of the charge of first-degree premeditated murder. This said, the prosecution will likely fail in this prosecution.

B. **Will the Prosecutor be Successful in the Prosecution of Debbie Defendant?** In Michigan, a prosecutor may not introduce in evidence the inculpatory statements of an accused without proof of the corpus delicti. *People v McMahan*, 451 Mich 543, 548 (1996) The corpus delicti rule guards against erroneous convictions for criminal homicides that never occurred. The rule also minimizes the weight accorded to confessions by requiring collateral evidence to support a conviction. *Id.* at 548-549 (internal quotations and citations omitted); see also *People v Konrad*, 449 Mich 263, 269 (1995).

The corpus delicti rule "provides that a defendant's confession may not be admitted unless there is direct or circumstantial evidence independent of the confession establishing (1) the occurrence of the specific injury (for example, death in cases of homicide) and (2) some criminal agency as the source of the injury." *Konrad, supra*, at 269-270, citing *People v Cotton*, 191 Mich App 377, 394 (1991); see also *McMahan, supra*, at 548-549. It is not necessary to prove all elements of the charged crime before the confession is admissible. *People v Ish*, 252 Mich App 115, 117 (2001). Further, evidence of the above elements need not

be proved beyond a reasonable doubt. It is sufficient if the trial court determines that these elements are established by a preponderance of the evidence. *People v King*, 271 Mich App 235, 241-242 (2006). In so doing, courts may draw reasonable inferences and weigh the probabilities. *People v Mumford*, 171 Mich App 514, 517 (1988).

Here, the death of Debbie Defendant's father is not disputed. The only issue is whether a preponderance of the evidence showed that the death of the deceased was caused by a criminal agency. Nothing presented in the facts of this case, other than Debbie Defendant's confession, establishes that the death of the deceased was caused by a criminal agency. The death certificate of the deceased indicates he died of natural causes. There was no evidence preserved from the crime scene that can be reviewed and reassessed in light of Debbie's confession. No photos were taken and no autopsy was performed. There is no body to exhume to search for evidence of a poison. The home of Debbie Defendant was searched and no evidence turned up establishing that Debbie possessed a lethal poison. The records of Debbie's former employer, the place where she claimed to have taken the poison, no longer exist and her former employer cannot attest to any drugs missing during Debbie's tenure.

The prosecution will not be able to satisfy the corpus delicti rule. Without independent proof that the death of Debbie Defendant's father was caused by some criminal agency, Debbie's confession cannot be admitted against her and the prosecutor will not be able to convict Debbie as charged.