

A worker at a day-care center run by a corporation noticed that one of the boys often arrived with bruises and welts on his back and legs. A statute in the jurisdiction requires all day-care workers to report to the police cases where there is probable cause to suspect child abuse and provides for immediate removal from the home of any suspected child-abuse victims. The worker was not aware of this statute. Nevertheless, he did report the boy's condition to his supervisor, who advised him to keep quiet about it so the day-care center would not get into trouble for defaming a parent. About two weeks after the worker first noticed the boy's condition, the boy was beaten to death by his father.

The worker has been charged with murder in the death of the boy. The evidence at trial disclosed, in addition to the above, that the boy had been the victim of beatings by the father for some time, and that these earlier beatings had been responsible for the marks that the worker had seen. The boy's mother had been aware of the beatings but had not stopped them because she was herself afraid of the boy's father.

What is the worker's best argument that he is NOT guilty of murder?

- A. He lacked the mental state necessary to the commission of the crime.
- B. He was not aware of the duty-to-report statute.
- C. His omission was not the proximate cause of the boy's death.
- D. The day-care corporation, rather than the worker, was guilty of the omission, which was sanctioned by its supervisory-level agent.

Explanation:

Murder is the unlawful killing of another (criminal act) with **malice aforethought** (mental state). An unlawful killing can be caused by a voluntary act (eg, deliberately pulling a gun's trigger). But it can also be caused by an **omission**—ie, a **failure to perform a statutory** or other **legal duty** when the defendant **could have reasonably done so**. Causation must be both:

actual – (1) the victim would not have died at that time but for the defendant's conduct or (2) when there were multiple causes, the defendant's conduct was a substantial factor in the victim's death *and*

proximate – the death was a natural and probable (ie, foreseeable) consequence of the defendant's conduct.

Here, the worker failed to perform his statutory duty to report the boy's frequent bruises and welts to police even though he reasonably could have done so (omission). This was a substantial factor in the boy's death because he would have been immediately removed from his home had the worker informed police (actual cause). And it was foreseeable that the omission would result in continued abuse and possible death (proximate cause)

(Choice C). But since murder requires malice aforethought, the worker's best defense is that he lacked that mental state.

(Choice B) Mistake or ignorance of the law is no defense to criminal liability (absent very narrow **exceptions**). Therefore, the worker could be convicted of murder even though he was unaware of the duty-to-report statute.

(Choice D) Under the doctrine of respondeat superior, an employer may be vicariously liable for a crime committed by its employee within the scope of employment and for the employer's benefit. Here, the supervisor recklessly advised the worker to keep quiet so that the day-care corporation could avoid a defamation suit. Therefore, the corporation may be vicariously liable for murder. But this is no defense to the worker's criminal liability.

Educational objective:

A defendant is guilty of murder when his/her voluntary act or omission (1) actually and proximately caused another's death and (2) was committed with malice aforethought. An omission is the failure to perform a legal duty when the defendant could have reasonably done so.

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Elements of murder

