

A common law jurisdiction defines first-degree murder as any murder that is (1) committed by means of poison or (2) premeditated. All other murder is second-degree murder, and manslaughter is defined as at common law.

An employee was angry with her boss for denying her a raise. Intending to cause the boss discomfort, the employee secretly dropped into his coffee three over-the-counter laxative pills. The boss drank the coffee containing the pills. Although the pills would not have been dangerous to an ordinary person, because the boss was already taking other medication, he suffered a seizure and died.

If the employee is charged with murder in the first degree, should she be convicted?

- A. No.
- B. Yes, only because she acted with premeditation.
- C. Yes, only because she used poison.
- D. Yes, both because she used poison and because she acted with premeditation.

Explanation:

Murder is the unlawful killing of another with **malice aforethought**—ie, (1) **intent** to kill, inflict serious bodily injury, or commit an **inherently dangerous felony** or (2) **reckless disregard** for a high or obvious risk of death or serious bodily harm (ie, depraved-heart murder). And in this jurisdiction, murder is elevated to the first degree when the killing is committed with poison or premeditation (ie, planned or reflected upon the killing beforehand).

Here, the employee put laxatives in her boss's coffee after he denied her a raise. When the laxatives mixed with other medication the boss was taking, it killed him. But the employee only intended to cause the boss discomfort—not kill or seriously injure him. And since the laxatives were not dangerous to an ordinary person, there was no high or obvious risk of death or serious bodily harm (no depraved-heart murder). Therefore, the employee did not act with the malice aforethought necessary to be convicted of *any* degree of murder, including first-degree murder.

(Choices B, C, & D) Premeditation or the use of poison elevates murder from second to first degree in this jurisdiction. But the employee's planning (premeditation) and use of laxatives (a possible poison) are of no consequence here since she lacked the malice aforethought necessary to be convicted of murder in any degree.

Educational objective:

Murder requires proof that the defendant acted with malice aforethought—ie, (1) intent to kill, inflict serious bodily harm, or commit an inherently dangerous felony or (2) reckless disregard for a high or obvious risk of death or serious bodily harm (ie, depraved-heart murder).

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First-degree murder

Malice aforethought



Poison



Premeditation



Unlawful killing