

9.7: End-of-Chapter Material

9.7.1 Summary

Homicide is the killing of one human being by another. Criminal homicide is either murder or manslaughter. Some states and the federal government also criminalize the killing of a fetus. Suicide is usually not criminal, although assisted suicide could be.

Many jurisdictions follow the common law and define murder as the killing of a victim with malice aforethought. Malice can be either a specific intent to kill, which is express malice, or the intent to do serious bodily injury, or depraved heart, which is implied malice. The Model Penal Code defines murder intent as purposely, knowingly, or recklessly under circumstances indicating extreme indifference to life. A killing by the transmission of AIDS can either be murder, if the transmission is deliberate, or manslaughter, if the transmission is inadvertent.

Most jurisdictions divide murder into degrees of seriousness. First-degree murder is the most serious, can merit the death penalty in certain jurisdictions, and generally includes premeditated murder, murder by a specified means, and serious felony murders. Premeditated murder is typically a killing supported by specific intent to kill combined with cool reflection and planning. Murder by a specified means is killing with a specific heinous method. Felony murder is a homicide that occurs during the commission or attempted commission of a felony. Felony murder lacks murder intent; the defendant need only possess the intent required for the felony. Felony murder can be graded as first, second, or third degree, depending on the felony. The Model Penal Code classifies all murders as first-degree felonies.

Second-degree murder is often defined as any murder that is not first degree. Typically, second-degree murder intent is the intent to inflict serious bodily injury or a depraved heart intent. Second-degree murder is usually graded lower than first-degree murder but higher than manslaughter.

In many jurisdictions, manslaughter is an unlawful killing without murder intent. Most jurisdictions divide manslaughter into voluntary and involuntary. The Model Penal Code classifies all manslaughters as felonies of the second degree. Voluntary manslaughter is a killing that occurs during a heat of passion inspired by adequate provocation from the victim, negating murder intent. Involuntary manslaughter can be a killing that occurs during the commission or attempted commission of a misdemeanor or a reckless or negligent killing, depending on the jurisdiction. Involuntary manslaughter can also be vehicular manslaughter when the killing occurs while driving a vehicle recklessly, negligently, or under the influence of alcohol or drugs. The Model Penal Code classifies negligent killings as negligent homicide and a felony of the third degree.

9.7.2 YOU BE THE JUDGE

Read the prompt and then decide whether you would **affirm** or **reverse** the lower court. Review the case and see how the judges or justices actually ruled. Check your answers using the answer key at the end of the chapter.

1. The defendant shot and killed his ex-girlfriend, who was pregnant. The defendant did not know she was pregnant, nor was it obvious from her appearance. The lower court reversed a jury verdict of second-degree murder of the fetus, and the prosecution appealed. Would you **affirm** or **reverse**? *People v. Taylor*, 86 P.3d 881 (2004). The case is available at this link: <http://caselaw.lp.findlaw.com/data2/californiastatecases/s112443.pdf>.
2. The defendant held his wife and two small children hostage at gunpoint in a train compartment for three days. The wife died of a bullet wound and one of the children died of dehydration. The defendant was convicted of first-degree murder for the child's death, based on the specified means of "starvation." The defendant appealed because there was *no evidence of specific intent to kill* the child. Would you **affirm** or **reverse**? *State v. Evangelista*, 353 S.E.2d 375 (1987). The case is available at this link: http://scholar.google.com/scholar_case?case=587685537389879135&hl=en&as_sdt=2&as_vis=1&oi=scholar.
3. The defendant was charged with felony murder for the death of his girlfriend's mother. The underlying felony was cruelty to an elderly person. The defendant and his girlfriend had removed the victim from an assisted living facility so that they could control her Social Security checks. Thereafter, they neglected to care for her and she died from this neglect. The defendant claimed that he had *no duty of care* for his girlfriend's mother. The lower court denied his motion for a new trial. Would you **affirm** or **reverse**? *Wood v. State*, 620 S.E.2d 348 (2005). The case is available at this link: www.lexisone.com/lx1/caselaw/freecaselaw?action=OCLGetCaseDetail&format=FULL&sourceID=bdjgjj&searchTerm=eIgi.YXca.aadj.ecDa&searchFlag=y&l1loc=FCLOW.
4. The defendant held the victim, his ex-wife, hostage in her home with a gun. When an oil truck pulled into her driveway, she smirked at the defendant because she knew the confrontation was over. The defendant shot and killed her and claimed that the

smirk was *adequate provocation*. The court held that the defendant was not entitled to a jury instruction on voluntary manslaughter. Would you **affirm** or **reverse**? *State v. Warmke*, 879 A.2d 30 (2005). The case is available at this link: http://scholar.google.com/scholar_case?case=7047276887490940793&q=State+v.+Warmke,+879+A.2d+30+%282005%29.&hl=en&as_sdt=2,6&as_vis=1.

9.7.3 Cases of Interest

- *United States v. Watson*, 501 A.2d 791 (1985), discusses premeditation in a short period of time: <http://www.scribd.com/doc/10079243/United-States-v-Watson>.
- *Calderon v. Prunty*, 59 F.3d 1005 (1995), discusses lying in wait: <http://openjurist.org/59/f3d/1005>.
- *Mullaney v. Wilbur*, 421 U.S. 684 (1975), discusses the burden of proof for voluntary manslaughter: <http://supreme.justia.com/us/421/684/case.html>.

9.7.4 Articles of Interest

- Assisted suicide: phoenixcriminallawnews.com/2011/04/lawrence-egbert-of-final-exit-network-acquitted-of-manslaughter.html
- Utah bill that criminalizes miscarriage: www.parentdish.com/2010/03/04/could-a-reckless-miscarriage-be-murder-utah-bill-might-make-i
- Prosecution of Michael Jackson's doctor for involuntary manslaughter, www.cbsnews.com/stories/2011/01/25/eveningnews/main7282905.shtml
- HIV as a deadly weapon: www.johntfloyd.com/blog/2010/03/30/is-hiv-a-deadly-weapon

9.7.5 Websites of Interest

- Fetal homicide statutes: www.ncsl.org/default.aspx?tabid=14386
- Information about assisted suicide: <http://www.assistedsuicide.org>
- State statutes on the criminal transmission of HIV: www.statehealthfacts.org/comparetable.jsp?ind=569&cat=11

9.7.6 Statistics of Interest

- Crime, including homicide: www.census.gov/compendia/statab/cats/law_enforcement_courts_prisons/crimes_and_crime_rates.html

9.7.7 Answers to Exercises

From [Section 9.1](#)

1. The fundamental difference between homicide and suicide is the identity of the **victim**. In a homicide, the victim is another human being. In a suicide, the victim is the perpetrator, which is one of the reasons that homicide is often criminal and suicide is not.
2. The US Supreme Court held that the right to assist a suicide is not a fundamental liberty interest protected by the **due process clause** in the Fourteenth Amendment.

9.7.8 Answers to Exercises

From [Section 9.2](#)

1. Jay has the criminal intent of **depraved heart**. Jay's conduct in shooting at a tree in a public place might cause someone's death, which indicates that Jay is indifferent to whether he takes a life. This indifference is a form of implied malice, knowingly, or recklessly manifesting extreme indifference to the value of human life.
2. Yes, this is true. Because Jay used a revolver, the prosecutor has the benefit of the deadly weapon doctrine in many jurisdictions, *alleviating his burden of proving criminal intent*.
3. The US Court of Appeals for the Eighth Circuit held that teeth can constitute a deadly weapon in *any case*, whether or not the defendant has contracted the HIV virus. The court thereafter affirmed the defendant's conviction for assault with a deadly weapon.

9.7.9 Answers to Exercises

From [Section 9.3](#)

1. This killing could be first-degree **premeditated murder** or first-degree **murder by a specified means**. The facts indicate a willful, deliberate, premeditated killing. Johnnie evidences a specific intent to kill the leader of a rival gang. He indicates planning by putting his gun in the glove compartment of his car and driving to the gas station on Friday night where he suspects Marcus will be present. He kills Marcus by shooting him in a manner calculated to cause death. In addition, first-degree murder by a specified means frequently includes drive-by shooting as a method of killing.
2. The Tennessee Supreme Court held that the defendant's failure to make a timely police report and concealment of the murder weapon did not prove that the murder was premeditated. The Court stated the following:

One who has recently killed another person recklessly, passionately, or even negligently may be extremely hesitant to reveal the details of the crime, and yet not be guilty of first-degree murder...One who kills another in a passionate rage may dispose of the weapon when reason returns just as readily as the cool, dispassionate killer. *State v. West*, 844 S.W. 2d 144, 147 (1992), accessed July 30, 2010, http://scholar.google.com/scholar_case?case=3481778471457660977&hl=en&as_sdt=2002&as_vis=1.
3. The **motive** was to exact revenge. The defendant and victim had a relationship fraught with abuse, most of it based on the defendant's desire to control the victim. The **planning** was as follows: the defendant selected the day of the killing with care, made a copy of the key to his son's house, rented a minivan with tinted windows and altered the interior, sent four letters to his son that he knew the victim, a postal employee, would deliver, packed the murder weapon and supplies in the minivan, called his son's house to ensure his son had left, arrived early at his son's house, and prepared the interior for the killing. **Preconceived design** is shown by the following actions: The defendant shot the victim several times with the shotgun he brought to his son's house. He paused to reload and also to retrieve a handgun from the snow in between shots.

9.7.10 Answers to Exercises

From Section 9.4

1. The Minnesota Supreme Court reversed the court of appeal and held that felon in possession of a firearm and possession of a stolen firearm are not felonies *inherently dangerous to life*, so they cannot be predicate felonies for a felony murder conviction. The Court stated the following: "Applying the statute as previously interpreted by us to this record, we conclude that the predicate offenses of felon in possession of a firearm and possession of a stolen firearm are not inherently dangerous. While the use of a firearm can pose significant danger to human life, simple possession—standing alone—does not." *People v. Anderson*, 666 N.W. 2d 696, 700 (2003), accessed July 30, 2010, www.lexisone.com/lx1/caselaw/freecaselaw?action=OCLGetCaseDetail&format=FULL&sourceID=bdjhdg&searchTerm=ejhU.Iaea.aadj.ebKG&searchFlag=y&l1loc=FCLOW.
2. Kurt did not commit felony murder in this case because he had reached a place of *temporary safety*, so the felony had ended.
3. The US Supreme Court based its holding on the *Eighth* and *Fourteenth* amendments. Primarily, the Court determined that the death penalty was cruel and unusual punishment under the circumstances.

9.7.11 Answers to Exercises

From Section 9.5

1. There is no evidence of premeditation, and Kurt did not kill the homeless person using a specified means. This is not a first-degree felony murder (based on the felony of robbery) because the felony had ended when the killing occurred. Thus this is most likely **second-degree** murder.
2. The California Court of Appeals upheld the defendant's second-degree murder charge and stated that it was up to the trier of fact to determine the probability of death and the subjective mental state of the defendant.
3. The Mississippi Court of Appeals held that putting a gun to someone's forehead and pulling the trigger indicates *depraved heart intent*, even if the defendant believes the gun to be unloaded.

9.7.12 Answers to Exercises

From Section 9.6

1. The Model Penal Code classifies criminal homicides as felonies of the first, second, and third degree, depending on the defendant's intent. Murder is supported by purposeful, knowing, or extremely reckless intent and is a felony of the first degree. Manslaughter is supported by reckless intent, or is a murder that is committed under the influence of extreme mental or emotional disturbance for which there is a reasonable explanation or excuse, and is a felony of the second degree. Criminal homicide committed with negligent intent is a negligent homicide and is a felony of the third degree.

2. The Indiana Supreme Court held that a jury instruction on voluntary manslaughter was inappropriate because a reasonable person would not be provoked by words alone. In this case, a ten-year-old boy threatened to expose sexual molestation by the defendant, who was twenty years old. The Court held that this threat was not **adequate provocation**.
3. The Maryland Court of Appeals held that *the victim* must be the source of the adequate provocation in a voluntary manslaughter case. Thus the defendant could not claim voluntary manslaughter when he killed his ex-girlfriend's family members because he was provoked only *by her*.
4. The defendant was charged with involuntary manslaughter because she treated her daughter's meningitis with prayer, rather than obtaining medical care. The California Supreme Court upheld the involuntary manslaughter charge, in spite of the First Amendment **free exercise clause** and the Fourteenth Amendment **due process clause**.

9.7.13 Answer to Law and Ethics Question

1. The first problem with extending the defense of voluntary manslaughter to the deliberate killing of an abortion doctor is the fact that the abortion doctor is acting *legally*. Extending the defense in this manner opens the door to a voluntary manslaughter charge for a defendant who (1) kills an individual authorized to execute prisoners pursuant to the death penalty or (2) is a soldier who is going off to war. Another problem with extending the defense to include Roeder's conduct is the lack of imminence. As discussed in Chapter 5, defense of others requires an **imminent** threat. No imminent threat was present when the abortion doctor was in church. Removing the imminence requirement allows defendants to calmly and with deliberation kill victims and thereafter claim voluntary manslaughter—the *antithesis* of heat of passion. Thus the judge presiding over Roeder's trial allowed the defense arguments but thereafter precluded the voluntary manslaughter charge. "Man Testifies he Killed Kansas Abortion Doctor," *USA Today*, accessed July 27, 2010, http://www.usatoday.com/news/nation/2010-01-28-tiller-murder-trial_N.htm.

9.7.14 Answers to You Be the Judge

1. The California Supreme Court **reversed**, holding that implied malice does not mean that the defendant needs to be aware of the risk to a *specific victim*.
2. The Supreme Court of North Carolina **affirmed** because there is no need to prove specific intent to kill when a murder is by a specified means.
3. The Supreme Court of Georgia **affirmed** because the defendant voluntarily and knowingly took the victim into his home and agreed to care for her, creating the duty to act.
4. The Supreme Court of Maine **affirmed** because the defendant initiated the confrontation.

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