

1)

Debora=D

Stuart= S

Oliver=O

First degree murder

D was not guilty of first degree murder because she did not have any plans nor acted in a cold and dispassionate manner to kill S. First degree murder can be shown by violation of criminal statute and felony murder. There are no evidences of any types of first degree murder (as discussed below)

Murder

Murder is defined as intentional killing of another human being. The Mens Rea of the murder must be shown by express malice of specific intent to kill, specific intent to harm the great bodily injury and the implied malice of wanton disregard or FM.

Here, D went into the building since it was cold and freezing, opened up the garage while thinking that the house was unoccupied. She found the stack of wood and started the fire and fell asleep and while she was asleep, the fire flames and smoked and then she escaped through the window. S dies as a result of the fire quickly engulfed the house while he was sleeping. D did not commit the murder with expressed malice because she never had the specific intent to kill anyone or hurt anyone by a great bodily injury.

Additionally, to convict the D on depraved heart murder, prosecutor must show that she acted with reckless disregard of high risk to other human being. Although she escaped the house while the fire flamed but she did not act with depraved heart and reckless disregard of S's life when escaping the house. She was only looking for the place to stay warm and she made the fire only to stay warm before she fell asleep. This does not raise to level of wanton or depraved heart murder.

Prosecutor will argue that D must be convicted of the felony murder that was happened as a result of inherently dangerous felony of Arson. Under CL, arson is defined as maliciously putting another's property into the fire. Malice is defined as intentional or reckless disregard of the harm that will result. Here, it is likely that D did not commit the felony murder because she did not act intentionally or as stated above with reckless disregard of the act. Her act was more result of the gross negligence as will be discussed later. Additionally even if, she will be convicted of murder, she will claim imperfect self defense because she was not acting reasonably to defend herself when she went to another person's property and started the fire.

D is likely not liable for voluntarily manslaughter because she did not act as a result of reasonable provocation.

D will likely be convicted of involuntarily manslaughter because her act was a result of her gross negligence. She went to start the fire in someone's else property without even knowing that the property was occupied. Involuntarily manslaughter requires the mens rea of gross negligence

while the actus reus must be done unintentionally. It is mostly for the vehicular crime or malum si misdemeanor. While arson is inherently dangerous felony, it is not the misdemeanor. However, because she acted with gross negligence, she is likely to be convicted of involuntarily manslaughter.

Burglary

D cannot be convicted of burglary because she did not break and enter the house with an intent to commit the felony, arson.

Defenses

Necessity- Necessity was never a defense to murder but it can be a defense for the involuntarily manslaughter. She will argue that she was acting because she was about to die and she is the homeless with no place to stay while it was very cold and freezing outside.

Causation

For the D to be convicted of the murder, her act must be actual and proximate cause of the killing. D can also argue causation by which she argues that she was not the proximate cause of S's being killed. While she is the actual cause because "but for" her not starting the fire, S would not be killed in the fire. She will claim that she was not the proximate cause because it was not foreseeable for someone to die as a result of making the fire. She argues that the extreme cold was an unforeseeable event that caused the fire to flow the flames from the garage into the house. It was not foreseeable to have the person killed when someone started the small fire and fell asleep. In other words, the extreme cold was the superseding cause of the killing. However, for the cold to be a superseding cause, D must show that the cold was unforeseeable whether on the area. If the area is the area that usually it is cold, this defense is not strong.

2.

D will argue her statement must be suppressed because it was in violation of her 5th amendment due process voluntarily statement and statement against discrimination which applies to state by 14th AM.

The focus for due process is on voluntariness. Officer O did not use any techniques to force or coerce D to make the statement. He watched her walking on the sidewalk three blocks from the fire and asked her questions without using any techniques.

Under Miranda warning the PO must give the Miranda warning under the custodial interrogation. Custody happens when D reasonably believes that she was under arrest and her freedom of movement was restrained. Here, under the totality of circumstances, PO asked her a question when she was walking down the street three blocks from the fire. She can argue that when she saw the PO, she reasonably believed that she could not move and she was under arrest. However, the reasonableness is objective and it does not seem like the objective person would believe that she is not free to leave. PO did not stop her to ask her questions.

Interrogation occurs when the PO's conduct or words are reasonably likely to elicit incriminating statements. Here, PO did not act in any way or say anything that would reasonably elicit

incriminating statement of D. PO will argue that he was basically asking the background questioning or on scene questions and D blurred out the statement. Voluntarily statement made to the PO are admissible and not barred even if under the custodial interrogation. D will argue that it was cold and it was very close to the fire so PO's questioning and conduct was in the way to elicit the statement. However, the court will likely deny the argument and use the statement both in case in chief and for her impeachment.

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END OF EXAM