

Crim Law Section 4

Week 5 and 6

I. Homicide

a. Murder.

- i. Murder 2nd is the default setting for intentional killing cases. Murder 1st is an aggravated form of intentional killing. Aggravated murder 1st means that 1st degree murder was committed in connection with another serious factor such as rape, hate crime, whatever. Different in every single state. Connected with death penalty.
- ii. State v. Bingham
 1. Bingham raped and killed Leslie Cook. He strangled her for 3 to 5 minutes, causing asphyxiation. He was charged with aggravated first degree murder, and they remand for resentencing for 2nd degree murder.
 2. Issue: was there premeditation?
 - a. Why were they together in the first place? That should've been evidence of premeditation. But,
 - b. The prosecutor's argument was that the strangulation itself was premeditation, i.e. he was thinking about whether he should kill her/premeditating to kill her up to the point of no return.
 - c. The court goes on to say the act itself (killing) cannot be considered premeditation.
 - d. Dissent: the decision of premeditation is up to the jury, and a person should not be excused because, during the act of killing someone, they decided to continue killing them, rather than thinking it out really well before hand.
 - e. Why didn't the prosecutor look at why this man was with the victim? They didn't appear to know each other beforehand, the whole timeline should've been considered.
 3. Definitions of premeditation
 - a. Must occur for an amount of time
 - b. Must be a deliberative thought process
 - c. Possible jury instructions:
 - i. A premeditated intent to cause the death of another
 - ii. Must involve more than a moment in point of time
 - iii. The mental process of thinking beforehand, deliberation, reflection, weighing or reasoning for a period of time, however short
 - iv. The deliberate formation of and reflection upon intent to take a human life.
 - d. Prosecutors obviously want the last one, doesn't have to be before the act and doesn't have to take very long.
 - e. For some reason they didn't go for felony murder. That was dumb.

- f. Lots of evidence of things that could've helped support premeditation in addition to the 3-5 minutes thing. Why didn't prosecutor focus on it more?

iii. Gilbert v. State

1. 75 year old husband shoots his wife in the head twice. She was suffering from osteoporosis and very early Alzheimer's. His defense was that she wanted to die, she was crying on the couch.
2. Murder conviction sustained. They don't buy the mercy killing for a variety of reasons. Affirm first degree murder based on Premeditation.
3. Defendant deliberately finds his gun, puts one in the chamber, goes back down, shoots her. He thinks she is still alive, so he goes back and gets another bullet and shoots her again in the head.
4. Was the second act necessary for deliberation? No, he knew he was breaking the law, but he thought he was justified. His intent was to kill her, and he plans to kill her. He knew he was killing her.
5. He was "trying to help her" although some witnesses testified that he had been complaining about her dependency on him.
6. What does this add to our understanding of premeditation?
 - a. Underlying intentions don't always matter. If you thought what you were doing was noble, but you thought it out beforehand, you have still pre-meditated.
 - b. Even if you are a good person there can still be premeditation. It's not about an evil mind, rather a purposeful mind.

iv. Britney Maynard

1. She had brain tumor and was given 6 months left to live. She could feel herself losing her mind a bit.
2. Oregon has a death with dignity law that allows terminal patients to receive physician assisted suicide (with extensive controls to make sure they aren't just giving drugs to depressed people).
3. Why did this case get so much press? We don't mind so much when terminal 90 year olds die, but a 29 year old wanting to kill herself rouses certain emotions. Maynard also wanted to increase access to euthanasia beyond Oregon. She also wasn't in serious pain yet. She wanted to die while she was still who she was.
4. It is really hard to decide when the right time is.

v. 1st degree v. 2nd degree

1. Premeditation = reflected and thought about the killing in advance, even an instant
2. Deliberation = purposeful, doing each action with intent to do the action. Quality of thought process, undertaken with a cool head.
3. Premeditation is supposed to be required for 1st degree, deliberation is often taken as evidence of premeditation...but is it really?

vi. State v. Bingham

1. Bingham accompanied a woman described as "mentally retarded" (by the majority) into a small town in the middle of nowhere. He walked out of town with her, raped her, strangled her, and abandoned her in a

pasture. TC charged him with aggravated murder 1st, which carries the death penalty for punishment. Defendant appealed based on jury instructions for premeditation. Appellate court finds error in jury instructions and remands for resentencing with murder 2nd.

2. Prosecutor's theory of premeditation: "he wanted to have sex with her, and he had to kill her in order to do it." It took 3 to 5 minutes to strangle her, and for about the first half of that he could've backed off and just rendered her unconscious. Because he thought about it and decided to deliberately keep going, the 3-5 minutes of strangulation should be thought of as premeditation.
3. This theory is really problematic, and the reason the judges reverse. Premeditation should occur beforehand.
4. Prosecution ignored the greater timeline which shows clear premeditation: he accompanied this stranger, a mentally disabled person, on a bus to a town where neither of them lived. After spending some time with her, he walks her out to the middle of nowhere where he deliberately rapes and strangles her, and abandons her body. All of this can be built into a circumstantial narrative of premeditation. He sits in prison with a new murder 2nd trial.
5. Takeaway on premeditation: the prosecution must establish that the defendant planned to commit the act before he began to commit the act.
6. Note: the Washington State jury instructions for premeditation evolved to make it possible for the premeditation theory against Bingham to stand, premeditation can immediately proceed action. The instructions in place at the time of Bingham would not allow premeditation to occur at the time of the act.

vii. Gilbert v. State

1. Defendant's wife had osteoporosis and very early alzheimer's. Although they went out for lunch every day, and she dressed nice and got her hair done and appeared to be happy, he testified that she was deeply depressed, lied around on the couch all day, and cried because she was in deep pain. Defendant found his gun, loaded a single bullet, and shot her in the head while she lay on the couch facing away from him. He checked her pulse and it was still beating (as it does for a few minutes) he was afraid he messed up so he loaded a second bullet and fired again. All very deliberate. There was no mercy note, suicide note, etc. nothing to indicate that the wife told anyone specifically that she wanted to be put out of her suffering. Sentenced to 1st degree murder, appeals on sufficiency of the evidence for premeditation.
2. Conviction upheld. Premeditation doesn't mean evil or malignant. It means that the defendant deliberately thought about the act of killing someone and then carried the act out.

- b. Voluntary manslaughter = murder charge reduced because of provocation, imperfect self-defense, or diminished capacity.