

## CRIMINAL LAW ESSAY

### STATE v. JIM

Jim's wife, Melissa, was much younger than him. She was also very beautiful and attracted the attention of other men. Although Jim was very successful, he was obsessed with the idea that his wife might cheat on him.

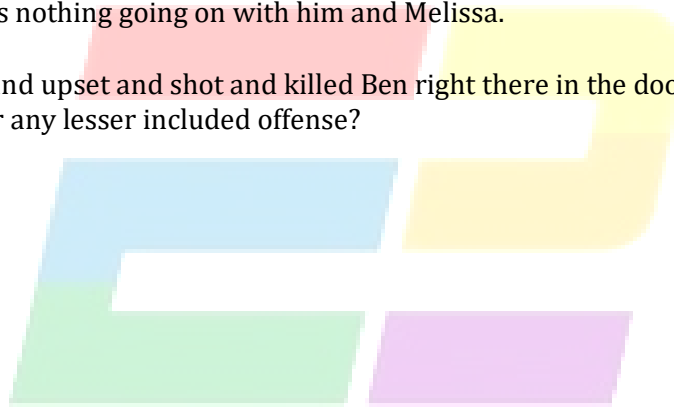
One afternoon, Jim came home early from a business trip to surprise Melissa. However, when he got home, he found his wife in bed with his neighbor, Ben.

Jim was furious, but calmly walked out of the house and got into his car. He stayed at a hotel for the next few days.

Three days later, Jim drove to a gun shop and bought a gun. He immediately drove to Ben's house and knocked on the front door. When Ben answered, Jim asked him if he had anything to say. Ben insisted that there was nothing going on with him and Melissa.

Jim became irritated and upset and shot and killed Ben right there in the doorway. Is Jim guilty of first degree murder or any lesser included offense?


Discuss.



Essential Elements

## STATE v JIM ANNOTATED SAMPLE ANSWER

### State v. Jim<sup>1</sup>


1. Is Jim guilty of first-degree murder?<sup>2</sup> 

### First Degree Murder<sup>3</sup>


Murder is defined as homicide plus malice. To establish murder in the first degree, the prosecution must prove either that Defendant intended to kill with premeditation and deliberation or that Defendant is guilty of felony murder.

### Homicide<sup>4</sup>

A homicide occurs when one person causes the death of another.

Here, Jim shot and killed Ben. Therefore, homicide can be proven.<sup>5</sup> 

### Malice

Malice exists when defendant 1) intends to kill, 2) acts with a depraved heart, 3) intends to commit serious bodily injury, or 4) kills someone during the commission of an inherently dangerous felony.<sup>6</sup> 

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<sup>1</sup> Notice that we begin this essay by identifying the case against the Defendant we are discussing. Had there been more defendants, we would have used a similar header to alert the reader that we were moving on to discuss the crimes of the next Defendant. In general, you will organize your criminal law essays by using a header to identify the case against the defendant first and then using separate headers to identify the crimes and elements of each crime that the prosecution should at least consider under the facts.

<sup>2</sup> Notice that we always begin with the first question included in the call of the question. Here, the call of the question asks us to consider whether 1) Jim is guilty of first-degree murder or 2) any lesser included offense? PRO TIP: Whenever you see several questions presented at the end of a fact pattern, think of it as a gift! The test writer has already organized your answer! Use each question as a topic header and think through your template to ensure that you answer the question completely.

<sup>3</sup> Define the crime you have identified as the first issue. Sometimes, as here, the call of the question will identify the crime for you. Other times, you will have to wade through your mental checklist of issues as you read each sentence of the fact pattern to determine what crimes must be discussed. From there, you will need to address each element of the crime you identified separately. Notice how the rule itself provides the headings used below. Think of the elements of each crime as a roadmap to organize your analysis.

<sup>4</sup> Many students forget to include the homicide element – this is the first thing you should always address in any murder analysis. You don't always need to address causation in detail – unless it is an issue – but you do need to identify a death and explain what caused it.


<sup>5</sup> Notice that we are following IRAC and using the "HERE, THEREFORE" to analyze the facts and reach our conclusion for each element.

<sup>6</sup> Always mention all four types of malice in your rule statement. However, you only need to fully discuss the types that are discussable – meaning they should be considered when charging the Defendant.

## Intent to Kill<sup>7</sup>

Here, the prosecution will argue that Jim acted with intent to kill BECAUSE he was angry with Ben for having an affair with his wife and used a gun to commit the crime. Jim could try to argue that he only intended to injure Ben. However, according to the deadly weapon doctrine, anytime a dangerous weapon is used in the killing, intent to kill is presumed.


## Felony Murder

Felony murder is an appropriate charge when a death occurs during the perpetration of an inherently dangerous felony. HERE, felony murder doesn't likely apply here BECAUSE there is no separate underlying felony. Note that an assault and battery would merge into the murder itself. THEREFORE, intent to kill, rather than felony murder will support a first degree charge as long as Jim acted with premeditation and deliberation.<sup>8</sup> 

## Premeditation and Deliberation

Even though the prosecution may be able to establish intent to kill, this will not result in a first-degree murder charge unless Jim also acted with premeditation and deliberation.

Premeditation is thinking it over before acting, and deliberation is acting coolly and calmly, as opposed to suddenly and impulsively.

HERE, Jim acted with premeditation BECAUSE he took the time to drive to the store, buy the weapon, and drive to Ben's home. However, he may not have acted deliberately BECAUSE the facts say he became irritated and upset before shooting, so he may have acted impulsively as a result of that frustration. THEREFORE, Jim will have been found to have acted with premeditation and deliberation, which will result in a first-degree murder charge unless it can be mitigated to Voluntary Manslaughter.<sup>9</sup> 

## 2. Is Jim Guilty of a Lesser Offense?<sup>10</sup>

## Voluntary Manslaughter


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<sup>7</sup> Note that we discuss both the Intent to Kill and the Felony Murder types of malice here, as these are the ones required for a first-degree charge. Notice that we also argue both sides when warranted in our analysis.

<sup>8</sup> Note again that we are following IRAC, using the "HERE, THEREFORE" method to analyze the facts. Notice again that the word BECAUSE can be your best friend as it forces you to analyze the facts rather than simply repeating them. (There is no need to capitalize the words – I just did it here to alert you to their use as described in this note.)


<sup>9</sup> ALWAYS discuss both premeditation and deliberation separately and completely – they are not the same thing. Notice again how we used IRAC, stating the rule first and then weaved the facts into the analysis before reaching our conclusion.

<sup>10</sup> Always go back to the call of the question and make sure you have answered the question completely. It is important to note that had the call not specifically asked for a discussion of lesser offenses, you would absolutely still want to discuss voluntary manslaughter as it is raised by the facts and could prevent Jim from being found guilty of first-degree murder.

A murder charge can be reduced to voluntary manslaughter when defendant can show that the killing was committed during the heat of passion. He must show that 1) he was provoked, 2) that a reasonable person would have been provoked, 3) that he did not cool off, and 4) that a reasonable person would not have cooled off.<sup>11</sup> 

### First Possible Provocation<sup>12</sup>




Here, Jim just found out his wife was having an affair with Ben and was provoked by finding them in bed together. A reasonable person would also be provoked in this situation. Therefore, Jim is likely to prove provocation. However, there is a question as to whether Jim had cooled off. Because he did not act on this provocation until a few days later, he arguably had time to cool off, as would a reasonable person.<sup>13</sup> 

### Second Possible Provocation

Jim was also arguably provoked again before pulling the trigger, as the facts state that he became irritated and upset when Ben denied the affair. If a reasonable person would also have been provoked and would not cool down, Jim's first-degree murder charge could be reduced to Voluntary Manslaughter.

### **Conclusion**

Jim is likely to be charged with first degree murder. It is arguable that his actions were premeditated and deliberated. Also, it is arguable that Jim cooled down before the killing and was not adequately provoked by his frustration.<sup>14</sup> 

END OF ANSWER.

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<sup>11</sup> ALWAYS mention and discuss all 4 elements – subjective and objective provocation and cooling off every time you discuss voluntary manslaughter. It may help numbering each element, as we have done here.

<sup>12</sup> Read the facts carefully – there may be more than one provoking event, as there is here.

<sup>13</sup> Again, notice how we analyze all 4 of the elements required to prove adequate provocation.

<sup>14</sup> Don't forget your overall conclusion ☺

## Professor's Guidance

We tested the issue of murder with this essay. It was fairly simple, with only one defendant and the call of the question limited your discussion to only first-degree murder or lesser included offenses.

The main point I want to make here is to not make what looks like an “easy essay” more difficult than it has to be. Many students spend time discussing all four types of malice and involuntary manslaughter and even assault and battery (although the call of the question limited the discussion to homicide crimes.) If you read a fact pattern that seems too simple, don't assume it is a trick. Rather, simply read the facts carefully to make sure you haven't missed anything important and be confident in your knowledge. What may seem simple to you may not seem so simple to another student, especially if they haven't practiced. The same advice applies to multiple choice questions.

I assume you did a good job with your analysis of homicide and the Intent to Kill form of malice. There was no need to discuss the other forms of malice, as only intent to kill was applicable, and the call of the question directed you to only consider a first- degree charge. This should have forced you to discuss premeditation and deliberation.

The biggest mistake students often make is that they don't clearly define premeditation and deliberation, or they lump them together believing they are the same thing. They are not. They must be defined separately and analyzed separately as they were in this essay. If you can't prove both, you can't prove first degree.

The call of the question also asked you to consider lesser included offenses. This is a big tip that you should look to see if manslaughter is applicable. Here, the affair, Jim's obsession, anger, and frustration were all red flag facts that should prompt you to discuss Voluntary Manslaughter.

Whenever you discuss Voluntary Manslaughter, you need to always discuss each of the four requirements separately and completely. Address both the objective and subjective provocation factor, as well as the objective and subjective cooling off factor. This issue was worth about 50% of this essay, so it is important that you address it completely.

Essential Elements

### State v. Jim Issue Checklist

Compare your answer to the Sample Answer provided and use this checklist to grade yourself.

First, determine if you spotted the issue, then assign yourself a grade for that issue. If it is Perfect, give yourself a 3. If it could be improved, give it a 2, and if you bombed it, give yourself a 1. Then take note of your writing style. Was your answer well organized? Does your analysis require greater detail? Did you miss an issue or use an incorrect or incomplete rule statement?

You'll find that you get better with practice. Notice where improvement is needed, study up and try again on another essay with similar issues!

Issues	Covered	Not Covered	Issue Grade 1 - fail 2 - Room for Improvement 3 - Perfect
Example Issue	X		2
Murder			
Malice			
Intent to Kill			
Deadly Weapon Doctrine			
Felony Murder			
Premeditation			
Deliberation			
Voluntary Manslaughter			
Provocation			
Cooling Off			

Writing style [Check if applicable]

Poor Organization [ ] Weak Analysis [ ] Missed Issue [ ] Law Error [ ]

Other: