



# ANU LAW STUDENTS' SOCIETY

## LAWS1206 Criminal Law 1<sup>st</sup> Semester 2011

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### Q3: 83/100

Strength of the murder charge against Deanna

The events took place in Sydney. The jurisdiction for this offence is NSW. All references in this answer are made to the Crimes Act 1900 (NSW).

The prosecution has the legal burden of proof [✓] to prove all elements of the crime beyond reasonable doubt (DPP v Woolmington). The prosecution must prove that Deanna's act caused the death of Vlad, and that the act was committed with intent to kill or inflict GBH, or with reckless indifference to human life - section 18(1)(a) Crimes Act 1900 (NSW). [✓]

#### AR

The act done by Deanna was stabbing Vlad in the stomach. On the facts it is shown that Vlad is a human being. There is no issue that the act of Deanna was willed, that is, that it was voluntary. **s 428G**

It is also uncontested that Deanna's act substantially contributed to Vlad's death (Royall).

[✓] It is a natural consequence (Royall) and reasonably foreseeable (Royall) that Vlad might die after being stabbed by Deanna. Causation would likely be left to the jury to decide according to common sense in this case as causation is simple (Campbell v The Queen).

#### MR

Did Deanna intend to kill Vlad or inflict GBH on Vlad? Intention as defined in He Kaw Teh [✓] is a decision to bring about a particular result. It is arguable on the facts that Deanna intended to inflict GBH on Vlad by using the knife to stab him, which was a premeditated [✓] weapon. It is unlikely that Deanna intended to kill [✓] Vlad as she tells the police officer "I'm no murderer". [✓] She also states no intention to actually kill Vlad to Brenda before the act. It can be inferred on her words and actions, however, that Deanna intended to inflict GBH on Vlad should he attempt to take Bianca. [✓] GBH as defined in section 4 includes "permanent or serious disfiguring of the person" and DPP v Smith extends that to "really serious injury". Deanna's stabbing of Vlad in the stomach shows her intention to inflict "really serious injury".

If intention is not accepted, the prosecution should be able to prove reckless indifference [✓] to human life. Pemble v The Queen [✓] says that Deanna must have foresight [✓] to the probability that the act will cause death. It is unlikely that Deanna did not foresee that death resulting from the stab would she inflicted would be probable. [✓]

Intoxication may be taken into account for the MR of murder because murder is a specific intent offence (s 428B(2) table).

Self induced intoxication may be taken into account for specific intent offences (s 428C(1)) [✓] unless the accused had already resolved to do the act before becoming intoxicated (s 428C(2)(a)) [✓] or became intoxicated to strengthen his/her resolve to do the act (s 428C(2)(b)). It is arguable on the facts that Deanna had already resolved to do the act (s 428C(2)(a)) because she was prepared [✓] with a knife in her handbag and had told Brenda that Vlad would have to “get past us first” [✓] and that she wouldn’t “take any more of his shit.” [✓ **Good reasoning for intox.**]

For these reasons Deanna is unlikely to be able to defend her actions with the excuse [?] of intoxication. **[No but it can be taken into account]**

#### Conclusion

It is likely on the facts that Deanna will be convicted of murder under s 18 unless she can prove provocation or self-defence (Deanna may argue both (s23(5)). **[P – shifting burden]**

#### Provocation

Deanna must prove her act (in stabbing Vlad) was done under provocation resulting in a loss of self-control on her part induced by Vlad’s conduct, and that Vlad’s provocative conduct could have induced an ordinary person in the position of Deanna to have lost control enough to kill or inflict GBH on Vlad (s 23 Crimes Act 1900 NSW). **[Excellent]**

The onus is on the prosecution to prove beyond reasonable doubt that the act was not done under provocation (s 23(4)). [✓] The jurisdiction is still NSW.

- Loss of self control s 23(2)(a) [✓]

Here we must assess the content, extent, gravity and implications of the provocation and the actual loss of self control (Masciantonio v The Queen). [✓] Deanna could be argued to have suffered a history of abuse (Chhay v R) [✓] which contributed to the provocation. This may not be a very strong argument, however, because of the history of abuse was longer and significantly harsher in Chhay. Nonetheless, Vlad’s recent behaviour [✓] and “anger management issues” [✓] should be taken into account.

The phone call received by Deanna at her work from Vlad also contributed to the provocative circumstances as Vlad said that Deanna could not come to their home if she worked for Larry and that Deanna would not see Bianca (her own child) again if she chose to work for Larry. [✓] Coupling these circumstances with the gestures of Vlad when he came to Brenda’s house – saying that no one can stop him from taking his daughter while holding a crowbar [✓] could be argued to be gravity [✓] enough to ground loss of self control.

Section 23(2)(b) requires an objective ordinary persons perspective in Deanna's circumstances. Would an ordinary person (affirmed in Stingal, unanimous decision) have so lost self control as to form homicidal intent (to inflict GBH or kill)? (Masciantonio)

It is likely that a jury would find that in the circumstances, an ordinary person would lose self-control as to for homicidal intent. [✓]

Loss of self-control may be evident in Deanna's immediate confrontation with Vlad as soon as he arrived at Brenda's house and her apparent lack of hesitation, and resolve to kill Vlad.

This loss of self-control [✓] was present at the time of the killing.

Deanna is likely to be permitted the partial defence of provocation in the circumstances. This would reduce her murder sentence to a manslaughter sentence (s23(1)). [✓]

- Self Defence

Jurisdiction NSW. Prosecution has BoP to prove BRD that Deanna did not act in self defence (s 419). [✓]

Deanna may argue self-defence under s 418(2)(a). Deanna must have believed it necessary to defend herself and/or another (Bianca) from Vlad and this conduct must be shown to be a reasonable response in the circumstances. [✓]

Necessity [✓]

Response of accused must be objectively proportionate to the situation in which the accused believed she faced (Katarzynski). [✓]

Was stabbing Vlad a reasonable response in the circumstances as Deanna believed them to be? (R v Muddle). [✓]

Given the circumstances (Vlad threatening to take Bianca permanently and wielding a crowbar) it is likely that a court could not find Deanna's conduct objectively proportionate, because there were other things Deanna could have done [✓] to defend herself. Instead of rushing outside to meet Vlad, Deanna might have been able to lock the house and call for police. The fact that Vlad was armed may, however, sway a jury towards a finding [✓] that the provocation was objectively proportionate in the circumstances as Deanna believed them to be.

The prosecution may argue that Deanna provoked Vlad's attack against her by threatening to work for Larry (Zecevic v DPP). [✓] This is unlikely to be supported though, because a jury would

likely find that Deanna's original aggression had eased by the time of the stabbing. **[Vuni + Muddle?]**

Deanna may be most likely to succeed in a charge of self-defence if she pleaded insanity (intimate partners who kill) – battered woman syndrome.

For self-defence self-induced intoxication may NOT be taken into account **[✓]** (Katarzynski) **[excessive – s 421?]**

Conclusion

A jury would likely find that Deanna had not acted in self-defence because her loss of self-control was not proportionate to the circumstances (could have taken an alternative form of action). **[✓]**

[Conceded that this could go either way though]

**[Excellent paper with well reasoned arguments, good application of the facts & identified all major issues]**