



California Bar Examination

Performance Test and Selected Answers

July 2024



PERFORMANCE TEST AND SELECTED ANSWERS

JULY 2024

CALIFORNIA BAR EXAMINATION

This publication contains the performance test from the July 2024 California Bar Examination and two selected answers.

The selected answers are not to be considered “model” or perfect answers. The answers were assigned high grades and were written by applicants who passed the examination after the First Read. They are reproduced as submitted by the applicant, except that minor corrections in spelling and punctuation were made for ease in reading. These answers were written by actual applicants under time constraints without access to outside resources. As such, they do not always correctly identify or respond to all issues raised by the question, and they may contain some extraneous or incorrect information. The answers are published here with the consent of the authors.

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July 2024

**California
Bar
Examination**

**Performance Test
INSTRUCTIONS AND FILE**

STATE v. DALTON

Instructions.....

FILE

Memorandum to Applicant

Trial Transcript

PERFORMANCE TEST INSTRUCTIONS

1. This performance test is designed to evaluate your ability to handle a select number of legal authorities in the context of a factual problem.
2. The problem is set in the fictional State of Columbia, one of the United States. In Columbia, the intermediate appellate court is the Court of Appeal and the highest court is the Supreme Court.
3. You will have two sets of materials with which to work: a File and a Library.
4. The File consists of source documents containing all the facts of the case. The first document in the File is a memorandum containing the directions for the task you are to complete. The other documents in the File contain information about your case and may include some facts that are not relevant. Facts are sometimes ambiguous, incomplete, or even conflicting. As in practice, a client's or supervising attorney's version of events may be incomplete or unreliable. Applicants are expected to recognize when facts are inconsistent or missing and are expected to identify sources of additional facts.
5. The Library contains the legal authorities needed to complete the task and may also include some authorities that are not relevant to the assigned lawyering task. The cases, statutes, regulations, or rules may be real, modified, or written solely for the purpose of this performance test. If any of them appear familiar to you, do not assume that they are precisely the same as you have read before. Read each thoroughly, as if it were new to you. You should assume that cases were decided in the jurisdictions and on the dates shown. In citing cases from the Library, you may use abbreviations and omit page references. Applicants are expected to extract from the Library the legal principles necessary to analyze the problem and perform the task.
6. In answering this performance test, you should concentrate on the materials in the File and Library. What you have learned in law school and elsewhere provides the general background for analyzing the problem; the File and Library provide the specific materials with which you must work.

7. This performance test is designed to be completed in 90 minutes. Although there are no restrictions or parameters on how you apportion that 90 minutes, you should allow yourself sufficient time to thoroughly review the materials and organize your planned response before you begin writing it. Since the time allotted for this session of the examination includes two (2) essay questions in addition to this performance test, time management is essential.
8. Do not include your actual name or any other identifying information anywhere in the work product required by the task memorandum.
9. Your performance test answer will be graded on its responsiveness to and compliance with directions regarding the task you are to complete, as well as on its content, thoroughness, and organization.

Liam Paul

State's Attorney

Coronado Hills, Columbia

TO: Applicant
FROM: Liam Paul
RE: State v. Dalton
DATE: July 30, 2024

The parties just finished presenting evidence in the non-jury trial of State v. Dalton. Adam Dalton is charged with second degree murder and the lesser included offense of involuntary manslaughter for killing Laura Vons. Because it was late, the judge has scheduled closing arguments for tomorrow. I will present the closing argument, but I want you to prepare a draft of that closing argument for my review. I have attached relevant portions of the trial transcript.

I want to argue that the state has proved the elements of second degree murder or in the alternative at least involuntary manslaughter.

While in a jury trial you do not ordinarily discuss or make reference to the legal authorities, in a bench trial you have more latitude in referring to the legal authority. Indeed, legal authorities provide the framework for arguing that the facts prove the elements. But you must not lose sight of the fact that a closing argument is not a legal memo or an essay. The argument is based on the evidence presented, not histrionics or personal opinion.

Your job is to persuade the judge that the evidence presented by the state and the defendant, and reasonable inferences from that evidence, establish that the state has proven each of the required elements beyond a reasonable doubt. Address each of the two offenses separately. Within each offense address each element separately. Do not hold back any argument assuming you will have a second opportunity to make it in rebuttal.

TRIAL TRANSCRIPT
STATE v. DALTON

EXAMINATION OF ERIC HOBBS

Eric Hobbs, a witness called by the state, first being duly sworn, testified as follows:

DIRECT EXAMINATION BY STATE'S ATTORNEY LIAM PAUL

QUESTION: Would you tell us your name?

ANSWER: Eric Hobbs.

Q: Where do you work?

A: I am a Police Officer with the Coronado Hills Police Department.

Q: Did you have occasion to respond to an incident at the defendant's home?

A: Yes. On November 30, 2023, at approximately 7:05 a.m., I responded along with my partner, Officer Carlos Hernandez, to a report of a shooting at the defendant's house.

Q: What did you observe when you got to defendant's house?

A: When we arrived, we saw the defendant's roommate, Brett Reed, leaning against the fender of a white Cadillac holding Laura Vons in his arms. Vons had been shot in the face. Shortly, after I placed Vons on the ground, defendant came running out of the house with blood on his clothes and face, screaming for someone to call an ambulance for his girlfriend. Officer Hernandez called for an ambulance, but was told one was already on its way because of the earlier 911 call by Brett. We restrained both defendant and his roommate and then we conducted a safety sweep of the house.

Q: What did you find?

A: Upon entering the bedroom where Vons was shot, we saw bloodstains on the bed and pillow. We also saw some marijuana and marijuana paraphernalia in the room. I followed a trail of blood that led from the bedroom to the kitchen. I saw water on the

kitchen floor. In front of a kitchen cabinet, the water was a pale red, so I opened the cabinet door. In the cabinet I found a revolver that appeared to be wet with water. The revolver contained five live .38–caliber rounds, as well as one fired round.

Q: Did you find anything else?

A: We went back to the room where Vons was shot and found a box containing a semiautomatic handgun, a box of .38–caliber bullets, a duffel bag containing a sawed-off shotgun and a box of shotgun shells.

Q: Then what happened?

A: By then, detectives had arrived and I transported the defendant by car to the police station.

Q: Did defendant say anything while in the car going to the station?

A: He expressed regret that he shot Vons and asked if Vons was okay.

CROSS-EXAMINATION BY DEFENSE ATTORNEY LUCIA WREN

Q: Now, Officer Hobbs, you testified on direct that Mr. Dalton expressed regret that he shot Vons and asked if Vons was okay. Is that correct?

A: Yes.

Q: Isn't it true that he also said, "I can't lose her. I would do anything for her. How is someone supposed to go on with their life when they see something like that?"

A: Yes.

Q: Isn't it true that Mr. Dalton was crying for most of the trip.

A: Yes.

EXAMINATION OF HAL AMES

Hal Ames, a witness called by the state, first being duly sworn, testified as follows:

DIRECT EXAMINATION BY STATE'S ATTORNEY LIAM PAUL

Q: Would you tell us your name?

A: Hal Ames.

Q: Where do you work?

A: I am a Detective with the Coronado Hills Police Department.

Q: Did you have occasion to question the defendant in this case?

A: Yes. I was assigned to lead the investigation of Ms. Vons death. At approximately 3:00 p.m. on the day the incident, I gave him his *Miranda* rights and he waived them. I then interviewed the defendant.

Q: What did he say happened?

A: He said he shot Vons, but claimed the shooting was accidental. He said they were sitting on the couch in the bedroom when Vons pointed the gun at him. He said he pushed the gun away, and she pointed it at him again. He then took the gun, pointed it at her, and accidentally shot her.

Q: Did he say whether he knew the gun was loaded?

A: He said he knew the gun was loaded. It had to be loaded, he said, because he hadn't taken the bullets out from when he bought it.

Q: How would you describe the defendant's demeanor during your questioning?

A: Calm, collected.

CROSS-EXAMINATION BY DEFENSE ATTORNEY LUCIA WREN

Q: As part of your investigation, you reviewed the recording of the 911 call. Correct?

A: Yes.

Q: So, you heard Adam Dalton in the background of the telephone call crying and repeatedly saying things like, “Noooo, baby,” and “Baby, are you alive, baby?”

A: Yes.

EXAMINATION OF TALIA TAMS

Talia Tams, a witness called by the state, first being duly sworn, testified as follows:

DIRECT EXAMINATION BY STATE’S ATTORNEY LIAM PAUL

Q: Please tell us your name.

A: Talia Tams.

Q: What was your relationship to Laura Vons?

A: Laura was my best friend.

Q: Did the two of you text the night before and the morning of her death?

A: Yes.

Q: Please tell us what the texts contained.

A: At 4:24 a.m., Laura texted me that, “Adam’s out.” Two minutes later she sent, “I already wish he was locked back up. OMG, you have no clue.” At 7:02 a.m., Laura wrote: “Just was fighting with him right now.”

CROSS-EXAMINATION BY DEFENSE ATTORNEY LUCIA WREN

BY MS. WREN: No questions, Your Honor.

BY MR. PAUL: The State rests its case-in-chief, Your Honor.

EXAMINATION OF ADAM DALTON

Adam Dalton, a witness called by the Defendant, first being duly sworn, testified as follows:

DIRECT EXAMINATION BY DEFENSE ATTORNEY LUCIA WREN

Q: Please tell us your name.

A: Adam Dalton.

....

Q: So, after you were released from jail on the day Ms. Vons was shot, what did you do?

A: I was released on bail around 3:30 a.m. and walked home. Along the way, I sent a text message to Laura to tell her to meet at the house. I told her that Brett, my roommate, would be there and we could party.

Q: What did you do when you got home?

A: After showering, I drank a few beers.

Q: Did Laura come to the house?

A: Laura arrived around 5:30 that morning

Q: What happened then?

A: After a bit, Laura and I went to my bedroom.

Q: Then what happened?

A: I went to my safe, which contained marijuana and money, and began weighing the marijuana and counting the money.

Q: And, then?

A: Laura said, "Hey, baby," and I saw Laura pointing a gun at me. She had found my gun from underneath my pillow.

Q: Did that worry you?

A: No, I trusted Laura. I just brushed the gun away and continued to weigh the marijuana.

Q: Then what happened?

A: A spider landed on Laura and she screamed a little bit. She jumped up, started waving her hands. In order to tease her, I grabbed the spider, and brought it closer to her, and she got even more upset. I felt bad about teasing her so I gave her a hug and a kiss, then went back to weighing my marijuana.

Q: Did Laura do anything?

A: I turned around and Laura was sitting on the edge of the bed pointing the gun at me again. I took the gun away from her and pointed it at her.

Q: Did you know the gun was loaded?

A: No.

Q: After you took the gun from her, what happened?

A: She slapped the gun and I cocked back the hammer, just jokingly, and the hammer slipped and like, pow, the gun went off. I mean I pulled the hammer on the gun back, but it slipped. Like I didn't get to pull it all the way back. I did not intend to threaten or shoot her. I was just kind of being stupid.

Q: What were you thinking when you were doing all this?

A: It just happened so quick. It just happened. I didn't think about it at all.

Q: What did you do then?

A: Immediately after the shot, I told Brett to call 911, which he did. I tried to give Laura mouth-to-mouth resuscitation. When she told me she could not breathe, Brett and I took her outside to the driveway in front of the house to get her help.

Q: Then what did you do?

A: I went back into the house to get my keys. From inside the house, I heard sirens and panicked. I grabbed the gun and rinsed it off in an attempt to wash off the fingerprints. I tossed the gun into the bottom of a kitchen cabinet. Then I ran outside.

CROSS-EXAMINATION BY STATE'S ATTORNEY LIAM PAUL

Q: You've told two versions of what happened in the bedroom, haven't you?

A: No.

Q: You heard Detective Ames testimony about what you told him on the day of the shooting?

A: Yes.

Q: That story was different from your testimony today, right?

A: Not really.

Q: Didn't you tell him, for example, that you knew the gun was loaded?

A: No, I never said that.

EXAMINATION OF BRETT REED

Brett Reed, a witness called by the Defendant, first being duly sworn, testified as follows:

DIRECT EXAMINATION BY DEFENSE ATTORNEY LUCIA WREN

Q: Tell us your name, please.

A: Brett Reed.

Q: Where do you live?

A: With my roommate, Adam Dalton. We share the house.

Q: How long had Adam been dating Laura Vons?

A: About one year.

Q: How would you describe their relationship?

A: They were great. They looked to be in love. He told me he was in love with her.

Q: Where were you at the time of the shooting?

A: I was in my room sleeping. My room shares a wall with the room where Laura was shot.

Q: Did you hear anything?

A: I was awakened by loud talking in the room where Laura was. A couple of minutes after hearing the loud talking, I heard a gunshot. Immediately afterward, I heard a commotion and screaming. It seemed like someone was panicking like yelling or screaming out of fear or grief.

CROSS-EXAMINATION BY STATE'S ATTORNEY LIAM PAUL

Q: You said the defendant and Vons were in love, right?

A: Yes.

Q: However, you have also previously stated that Adam had an ex-fiancée and was conflicted about whom he wanted to be with. Correct?

A: Yes, but that doesn't mean he didn't love Laura.

Q: Isn't it true you previously told Detective Ames, quote, "I was awakened by a loud screaming argument between a guy and a girl for at least three minutes"?

A: I do not remember describing the sounds as loud screaming.

Q: Isn't it also true you told Detective Ames that you did not know where the yelling was coming from and that you could not tell what the loud screaming was about?

A: No.

BY MS. WREN: We have no further witnesses, Your Honor.

BY MR. PAUL: The State calls one witness in rebuttal, Your Honor.

EXAMINATION OF ELLEN DONATO

Ellen Donato, a witness called by the state, first being duly sworn, testified as follows:

DIRECT EXAMINATION BY STATE'S ATTORNEY LIAM PAUL

Q: Would you tell us your name?

A: Ellen Donato.

Q: Where do you work?

A: I am a Criminalist with the Columbia State Police Department.

Q: Do you have a particular expertise?

A: Yes, I am a criminalist with an expertise in firearms.

Q: Now, by stipulation of the parties, you were in the courtroom and heard Detective Ames testify that the defendant said, "I cocked back the hammer, just jokingly, and the hammer slipped." Defendant added, "I pulled the hammer on the gun back, but it slipped. Like I didn't get to pull it all the way back." What is your professional opinion as to the likelihood that this occurred?

A: It simply could not happen. Because of the multiple safeties on this particular gun, the gun cannot be fired by pulling the hammer back and releasing it before it is fully cocked.

BY MS. WREN: No cross-examination, Your Honor.

BY JUDGE JOHNSON: Okay, as I understand where we are, defendant is not presenting evidence and will not be arguing an affirmative defense of justification or excuse.

Correct?

BY MR. PAUL: That is correct, Your Honor. The defense rests.

BY JUDGE JOHNSON: Given the time, we will proceed with closing arguments tomorrow at 9:00 a.m. Court is adjourned.



July 2024

**California
Bar
Examination**

**Performance Test
LIBRARY**

STATE v. DALTON

LIBRARY

State v. McNally

Columbia District Ct. of Appeal, 4th District (2015)

State v. Freud

Columbia District Ct. of Appeal, 3rd District (2014)

State v. McNally

District Court of Appeal, Fourth District, Columbia (2015)

Defendant, a federal correctional officer, was convicted of second degree murder in the death of a fellow correctional officer, Gary Bent. The trial court sentenced defendant to prison for 15 years to life. Defendant contends the conviction is not supported by the evidence. We affirm defendant's conviction.

On the evening of March 8, 2012, defendant and his friend, Gary Bent, drank beer and ingested drugs in a hotel room. Bent felt sick, sat on the edge of the bathtub, and said he was about to throw up. Defendant called Bent a "sissy" and decided to play a joke. He took his loaded pistol out of its holster and waved it at Bent. The pistol had a live round in the chamber. The pistol had several safety features. All safeties had to be released to fire the pistol. Holding the pistol like a TV gangster, defendant ordered Bent to "Hurry up and puke." Bent told him to "bug off" just before defendant shot him. The bullet struck Bent in the neck, severing his jugular vein.

Rather than administer CPR or call for help, defendant smoked a cigarette, paced around the room, and tossed the spent shell casing in the bathtub where Bent lay. Defendant sent Sonia Reynolds the following text message: "Damn. I just shot my friend in the damn neck. He's dead. Whoops." Reynolds asked if defendant had called an ambulance. Defendant texted: "No. He's dead. Why? Little late for that, don't you think?" Reynolds reported the matter to the police department.

Defendant had served seven years in the United States Army, knew about firearms, and was aware of all firearm safety rules. As a corrections officer at the federal prison, defendant received monthly training in firearm use and safety.

Elpidio Garcia, a firearms instructor at the federal prison, testified that he trained defendant in firearm use and safety. Defendant took an advanced shooting course that

included firearm safety and live firearms training. Garcia stated that defendant was trained to obey the following firearm safety rules on and off duty: "All guns are always loaded. Never let your muzzle cover anything you don't want to destroy. Keep your finger off the trigger until your sights are on the target."

Defendant defended on the theory that the shooting was accidental. As a corrections officer, defendant carried a firearm for protection and usually had a round chambered in the pistol when "out and about." Defendant's ex-girlfriend stated that he carried a loaded pistol at all times.

Second degree murder is the unlawful killing of a human being with malice aforethought, but without the premeditation, deliberation and willfulness necessary to elevate the offense to first degree murder. Columbia Penal Code (CPC) §§187, 189.

An unlawful killing is one that is not justified or excused. Under Columbia law, defendant must raise the issue of justification or excuse but does not bear any burden of proof or persuasion in a murder prosecution. *State v. Frye* (Col. Sup. Ct. 1990). If it is not raised, it is waived. The defendant does not contest that there was an unlawful killing, nor does he contest that his actions caused the death of Officer Bent.

Defendant contends, however, that the evidence does not support the finding that he acted with malice aforethought. Malice, for the purpose of constituting murder of either degree, may be express or implied. (CPC §188). It is express "when there is manifested a deliberate intention unlawfully to take away the life of a fellow creature." CPC §188. There is no evidence of express malice on these facts.

Implied malice is present "when the circumstances attending the killing show an abandoned and malignant heart." CPC §188. Whether circumstances attending the killing show an abandoned and malignant heart (implied malice) is a subjective test. If defendant realized the risk and acted in total disregard of the danger, he is guilty of murder based on implied malice. In other words, the mental component is established where the

defendant knows that his conduct endangers the life of another and acts with conscious disregard for life. *State v. Olivas* (Col. App. 1985) (“state of mind of a person who acts with conscious disregard for life--i.e., implied malice--is, ‘I know my conduct is dangerous to others, but I don’t care if someone is hurt or killed’.”).

It is settled that brandishing a loaded firearm at a person is an act dangerous to human life. For example, one who playfully fires a gun that he knows is loaded in the direction of another person may be convicted of murder. If the same person performs the same act incorrectly convinced that the gun is not loaded, he is guilty of manslaughter. *In re M.*, (Col. Sup. Ct. 1969). Here, defendant pointed the loaded pistol at Bent. He “overrode” the safeties, and pulled the trigger. He has his extensive training in firearm safety. Considering all the facts, the jury reasonably inferred that defendant knew it was a highly dangerous act and acted in conscious disregard for life.

Defendant’s behavior following the shooting is also probative of implied malice. Subsequent behavior such as hiding a weapon or even denying the shooting may by themselves not show implied malice at the time of the shooting. In this case, however, defendant’s continuing behavior, including a clear lack of remorse, is so closely related to the event that it is probative. We also reject defendant’s argument that a person does not act with implied malice when he is under the influence of alcohol and/or drugs, engages in joking or horseplay with a firearm, and causes the discharge of the firearm killing another person.

Based on defendant’s training and experience with firearms, the reckless manner in which he pointed the pistol at Bent, his text messages, behavior following the shooting, and his statement to the police, the jury could rationally find that he acted with implied malice.

Affirmed.

State v. Freud

District Court of Appeal, Third District, Columbia (2014)

Defendant, Herman Freud, was convicted of involuntary manslaughter of his wife, Betty Freud. Defendant was sentenced to three years in prison.

Following an afternoon of drinking, defendant and his wife met another couple for dinner. During dinner all parties continued to drink and defendant and Betty began arguing about domestic matters. Later, at home, defendant and Betty resumed their quarrel, and Betty stated to defendant, "Well, why don't you pack your bags and leave?", to which defendant replied, "Okay, I will." Defendant then put on his shirt, tie and coat and went to the kitchen to mix himself a drink. He found his wife already there having a drink. Defendant testified that they then discussed how silly it was to quarrel over such trivial matters, reviewed their happy married life together, conversed about matters in general, and embraced and kissed each other several times. Betty stated to defendant, "Herman, sometimes you make me so mad I could kill you."

Defendant replied to the effect that, "Well, I could make it easy for you" or "I can help that." He then went to their bedroom, opened the bureau drawer and took out his .45 caliber army type semi-automatic pistol that he had retained from his military service. The gun was not loaded, so defendant took out a loaded clip, which was also in the drawer, and put it in the gun. He then placed a shell in the chamber and cocked the gun. Upon entering the kitchen, defendant went up to Betty and said, "Here is the gun." Defendant handed it to her muzzle first. Defendant testified that, "I told her there was a safety catch there on the grip handle. I showed her that and she took the gun with her left hand, and about that time it went off." Mrs. Freud died.

Defendant argues on appeal that his conviction must be reversed because: (1) there is insufficient evidence to support causation and (2) there was insufficient evidence of mens rea to support the conviction.

To resolve these claims, we must determine whether the state provided sufficient evidence for the jury to find that each of the elements of involuntary manslaughter was proved beyond a reasonable doubt.

Actus Reus

The evidence is clear that the deceased died as a result of a bullet wound from the pistol in evidence that belonged to the defendant.

Mens Rea

The theory of the prosecution was that defendant handled a dangerous weapon without due caution and circumspection and the case was presented to the jury on that basis. Defendant argues that he was charged with no other criminal act and must be presumed to have been engaged in a lawful act and there was merely an unfortunate accident for which no liability should attach because of his lack of intent. Defendant is wrong.

Involuntary manslaughter is a lesser offense of murder, distinguished by its mens rea. The mens rea for murder is specific intent to kill or conscious disregard for life. Absent either of these states of mind, the defendant may incur homicide culpability for involuntary manslaughter.

Involuntary manslaughter is statutorily defined as a killing “in the commission of a lawful act which might produce death, in an unlawful manner, or without due caution and circumspection.” Columbia Penal Code (CPC) §192. This language, in turn, has been defined as criminal negligence.

In *State v. Penny* (2005), the Columbia Supreme Court explained that criminal negligence exists when the defendant engages in conduct that is “aggravated, culpable, gross, or reckless. It is conduct that is such a departure from what would be the conduct of an ordinarily prudent or careful person under the same circumstances as to be incompatible with a proper regard for human life or, in other words, a disregard of human life or an

indifference to consequences.” Courts have consistently stated that this is an objective test.

Firearms have been recognized as a dangerous instrumentality because of their great potential harm and, in the interest of the preservation of human life and safety, a high degree of care was demanded of those who use them. Defendant procured and loaded the weapon as well as brought it back to the room where his wife was seated. It is fairly inferable that the obtaining and handling of a loaded gun, as he admitted he had, showed a lack of due caution and circumspection. Thus, even if the defendant had a subjective, good faith belief that his or her actions posed no risk, his belief was objectively unreasonable.

Causation

Defendant contends that the cause of death was his wife’s intervening and superseding actions of her heavy drinking and taking the gun.

Involuntary manslaughter, like other forms of homicide, also requires a showing that the defendant's conduct proximately caused the victim's death. When there are concurrent causes of death, the defendant is criminally responsible if his or her conduct was a substantial factor contributing to the result. As explained in *State v. Sanchez* (Col. S. Ct. 1999), there may be more than one proximate cause of the death. When the conduct of two or more persons contributes concurrently as the proximate cause of the death, the conduct of each is a proximate cause of the death if that conduct was also a substantial factor contributing to the result. A cause is concurrent if it was operative at the time of the death and acted with another cause to produce the death.

When there are multiple concurrent causes of death, the jury need not decide whether the defendant's conduct was the primary cause of death, but need only decide whether the defendant's conduct was a substantial factor in causing the death, which reaches beyond the “but for” test. *State v. Jennings* (Col. S. Ct. 2010).

Further, proximate causation requires that the death was a reasonably foreseeable, natural and probable consequence of the defendant's act, rather than a remote consequence that is so insignificant or theoretical that it cannot properly be regarded as a substantial factor in bringing about the death. The death of the deceased could not be attributed to any supervening or intervening cause, such as the victim's taking hold of the gun or being intoxicated, but was a proximate result of the negligence of the defendant.

Judgement affirmed.

PT: SELECTED ANSWER 1

Performance Test

To: Liam Paul

From: Applicant

Re: *State v. Dalton* Closing Argument Draft

Date: July 30, 2024

Good Morning Your Honor.

The decision before the Court today is to determine the most appropriate means of bringing about justice for the killing of Laura Vons. The State has charged Defendant with second degree murder, as well as the lesser included offense of involuntary manslaughter for killing Laura Vons ("Ms. Vons"). There is no dispute in this case that the Defendant indeed shot the victim, his girlfriend, Ms. Vons. Rather, the state contends that the primary issue before this Court is to determine what mental state the Defendant was acting under on the night of the devastating shooting. It is simply not a question of whether the Defendant killed Ms. Vons, but what was going through the Defendant's mind at the time of the shooting. Based on the evidence presented at trial yesterday, the State contends it has established its burden of proving beyond a reasonable doubt each of the elements of second degree murder, or at the very least, the lesser charge of involuntary manslaughter.

In the foregoing argument, the State will summarize the evidence presented before this court at trial.

At trial, the State presented evidence from multiple witnesses that on November 30, 2023, at 7:02 am Ms. Laura Vons texted her best friend, Ms. Tams, that she had just been fighting with the Defendant. Three minutes later, Ms. Vons had a bullet in her face, and later died from her injuries. At trial, we heard from the Defendant's roommate, Mr. Reed, that minutes before the shooting, Mr. Reed was awakened to the sound of loud talking in Defendant's bedroom, followed by a gunshot and screaming.

At approximately 7:05am, Officers Hobbs and Hernandez of the Coronado Hills Police Department responded to a report of a shooting at the Defendant's home. At trial, we heard from Officer Hobbs that when he and his partner arrived at the scene, they immediately found Defendant's roommate outside of the home holding the deceased body of Ms. Vons, who had just been shot in the face. Officer Hobbs described for the Court the sheer amount of blood that was found throughout the scene of the killing. Shortly after, Defendant ran out of the house, covered in blood on his face and clothing. During his testimony, the Defendant admitted he had been trying to wash his

fingerprints off of the murder weapon and attempted to hide the gun in his kitchen.

Upon further inspection of the home, Officer Hobbs testified that he saw bloodstains on the bed and pillow in the bedroom where Ms. Vons was shot. A trail of blood led from the bedroom to the kitchen. On the kitchen floor, Officer Hobbs found a pool of bloodstained water, which led him to discover a loaded revolver stashed inside a kitchen cabinet above the bloody water. The revolver contained five live .38-caliber rounds, and one fired round.

Defendant does not deny he shot Ms. Vons. At trial, Detective Hal Ames testified that Defendant admitted that he and Ms. Vons were sitting on the couch in the bedroom when Vons pointed the gun at the Defendant. At trial, Defendant testified that he was not worried when Ms. Vons pointed the gun at him, because he trusted her. Nevertheless, Defendant responded by taunting Ms. Vons with a spider. Defendant then took the gun, pointed it at Ms. Vons, and shot her in the face.

The State has met its burden of establishing that the Defendant is guilty of second degree murder.

Under the Columbia Penal Code (CPC) Sections 187 and 189, second degree murder is defined as the unlawful killing of a human being with malice aforethought, but without the premeditation, deliberation, and willfulness necessary to elevate the offense to first degree murder. (*State v. McNally*, 2015). As previously established by the Columbia Supreme Court, one who playfully fires a gun that he *knows* is loaded in the direction of another person *may* be convicted of murder. (*In re M.*, 1969).

Actus Reus

The State contends it has met its burden of establishing the Defendant committed the actus reus element of second degree murder, because the Defendant unlawfully killed Ms. Vons. Here, there is no dispute that Defendant *killed* Ms. Vons. Defendant admitted to shooting Vons multiple times: first in Officer Hobbs' police car, again during an interview with Detective Ames, and again while testifying at trial.

The only remaining issue is whether the killing was unlawful. The State believes it was. An unlawful killing is one that is **not justified or excused**. (*State v. McNally*, 2015). According to the Columbia Supreme Court, although the Defendant does not bear any burden of proof or persuasion in a murder prosecution, the Defendant still must raise the issue of justification or excuse. (*State v. Frye*, 1990). **If it is not raised, it is waived.** (*State v. McNally*, 2015).

Here, Your Honor, the defense rested their case and explicitly declined to argue the affirmative defense of justification or excuse. Thus, the Defendant has waived this defense, and this Court may not conclude that the killing was either justified or excused.

Mens Rea

Under the Columbia Penal Code (CPC) Section 188, malice aforethought may either be

express or implied. Express malice arises where "there is manifested a deliberate intention unlawfully to take away the life of a fellow creature." (*Id.*) The State does not contend, however, that the Defendant acted with express malice. Quite explicitly, the charges against the defendant are second degree murder, which does not require the state to establish premeditation. Rather, the State contends that the Defendant shot Ms. Vons with the mens rea of implied malice, which is sufficient to find the Defendant guilty of second degree murder.

Whether implied malice exists is a subjective test. (*State v. McNally*, 2015). Implied malice is present "when the circumstances attending the killing show an abandoned and malignant heart." (*CPC Section 188*). For example, the mens rea of implied malice is established where the defendant knows that his conduct endangers the life of another, and acts with conscious disregard for life. (*State v. Olivas*, 1995). In other words, if the defendant realized the risk of his conduct and acted in total disregard of the danger, he is guilty of murder based on implied malice. (*State v. McNally*, 2015).

In *State v. McNally*, the Columbia Court of Appeal found the defendant had a mental state of implied malice where the defendant knowingly pointed a loaded pistol at the victim, despite knowing the pistol had a live round in the chamber, simply because he decided to play a "joke" on the victim. (*State v. McNally*, 2015). Similarly, here, the Defendant has testified that he chose to point his gun at Ms. Vons and cocked back the hammer "jokingly." Even further, according to the testimony of Detective Ames, the Defendant knew the gun was loaded. In fact, he stated to Detective Ames that it "had to be" loaded, because he hadn't taken the bullets out from when he bought it. Nevertheless, Defendant testified at trial that he did not know the gun was loaded, and affirmatively denies having told Detective Ames that he knew the gun was loaded. Defendant's testimony, however, is inconsistent with the evidence observed by Officer Hobbs inside the Defendant's home. Officer Hobbs found a box containing a semiautomatic handgun, a box of .38 caliber bullets, and a sawed-off shotgun and shotgun shells. The multiple guns and ammunition among the Defendant's belongings suggest that the Defendant had a familiarity with guns, suggesting that it is more likely that he knew his gun was loaded.

In *McNally*, the court reasoned that the reckless manner in which the defendant pointed the pistol at his victim, and the fact that all the safeties had to be released to fire the pistol, were sufficient to constitute the mens rea for murder. (*State v. McNally*, 2015). Implied malice, the court concluded, *may* still be present even where the defendant was engaged in joking or horseplay with the firearm at the time of the shooting. (*Id.*). Likewise, here, the Defendant testified that Ms. Vons "slapped" the gun as he pointed it at her, and in response, the Defendant cocked back the hammer, the hammer "slipped" as he allegedly attempted to place the hammer back onto the gun, and the gun fired. If true, the Defendant's conduct in handling the gun was certainly reckless. More importantly, however, the Defendant's testimony is contradicted by the testimony of Ms. Ellen Donato, a Criminalist with the Columbia State Police Department with expertise in firearms. At trial, Ms. Donato testified that version of events as described by Defendant "simply could not happen." Rather, Ms. Donato testified, because of the multiple safeties on this particular gun, the gun cannot be fired by pulling the hammer

back and releasing it before it is fully cocked. Thus, it can be inferred that the gun must have been fully cocked, and all the safeties were disabled when the shooting occurred.

As highlighted by the Columbia Court of Appeal in *State v. Olivas*, the state of mind of a person who acts with implied malice is, "I know my conduct is dangerous to others, but I don't care if someone is hurt or killed." (*State v. Olivas*, 1995). Here, given that the Defendant most likely knew his gun was loaded, and still jokingly decided to point the loaded gun into Ms. Von's face, it can certainly be stated of the Defendant that he *knew* his conduct was dangerous to Ms. Vons, but he *didn't care* if someone was hurt.

Furthermore, while subsequent behavior (i.e. hiding a weapon or denying the shooting) cannot, by itself, establish implied malice, a defendant's behavior after the shooting may be so closely related to the shooting itself that it is **probative of implied malice**, including where the defendant's subsequent conduct indicates the defendant's clear lack of remorse. (*State v. McNally*, 2015).

The defense may argue that unlike in *McNally*, where the defendant failed to call 911 after he shot his friend, here, Defendant's conduct immediately after the shooting was completely distinct from the defendant in *McNally*. However, the defendant's reliance on *McNally* would be misplaced. Specifically, the defendant in *McNally* explicitly stated that he chose not to call 911 because the victim was already dead. Here, however, although evidence was presented that confirmed the Defendant asked his roommate to call an ambulance for Ms. Vons, this case is distinguishable from *McNally*, because at that time, Ms. Vons was still alive. Defendant testified that he attempted mouth-to-mouth resuscitation. However, when Ms. Vons told the Defendant she could not breathe, he and his roommate carried her outside to seek help. In the police car on the way to the station, Defendant expressed regret that he shot Vons and asked if Vons was okay. This suggests that at the time the Defendant was taken into custody, he did not even know that Ms. Vons had died. Defendant's attempts to save Ms. Vons life are not necessarily evidence of his remorse. Rather, Defendant's conduct could just as well show that he was fearful of the legal consequences of his conduct, and he wanted to avoid being caught.

In fact, this theory is further supported by the fact that Defendant attempted to hide the murder weapon. Defendant testified that he panicked when he heard sirens outside. He admitted that he grabbed the gun, rinsed it off in an attempt to wash off the fingerprints, and put it into the kitchen cabinet. Officer Hobbs also testified that the revolver had been stashed in a kitchen cabinet. Furthermore, although Defendant was crying for most of the trip, by the time Detective Ames interviewed the Defendant, he appeared calm and collected. Taken together with the Defendant's attempt to hide the evidence of his guilt, the Defendant's cool and collected demeanor during his interview with Detective Ames could very well support a finding that Defendant lacked remorse for the shooting.

Finally, implied malice *may* still be present even where the defendant was under the influence of alcohol or drugs (*State v. McNally*, 2015). In *McNally*, the court found the defendant guilty of second degree murder even where the defendant had been drinking and ingesting drugs on the night of the shooting. In this case, by contrast, it appears

that even less substances were imbibed prior to the shooting. Here, Officer Hobbs testified that when he and his partner arrived at the scene of the shooting, they observed marijuana and marijuana paraphernalia in the room. At trial, we heard no testimony to suggest that Defendant was under the influence of marijuana at the time of the shooting. Further, although Defendant also testified that he had drank a few beers that morning, several hours had passed before the shooting. If the defendant in *McNally* can be found to have had implied malice while intoxicated on beer and drugs, the Defendant in this case was certainly not too intoxicated to be able to act with implied malice.

Causation

Proximate causation requires that the death was a **reasonably foreseeable, natural and probable consequence** of the defendant's act, *rather than* a remote consequence that is so insignificant or theoretical that it cannot properly be regarded as a substantial factor in bringing about the death. (*Freud*, 2014). Further, according to the Columbia Supreme Court, there *may be* more than one proximate cause of the death. (*State v. Sanchez*, 1999). For example, where there are multiple concurrent causes of death, the jury *need not* decide whether the defendant's conduct was the *primary* cause of death, but *need only* decide whether the defendant's conduct was a substantial factor in causing the death, which reaches beyond the "but for" test. (*State v. Jennings*, 2010). Where there are concurrent causes of death, the defendant is criminally responsible if his or her conduct was a substantial factor contributing to the result. (*Freud*, 2014). A cause is "concurrent" if it was operative at the time of the death and acted with another cause to product the death. (*Freud*, 2014).

Here, the Defendant will likely argue that Ms. Von's attempt to "slap" the gun, and the fact that the hammer "slipped" as he allegedly attempted to place the hammer back onto the gun were intervening and superseding actions, and therefore, it was not foreseeable that the gun would fire. Columbia Courts have already established however, that this argument is not sufficient to overcome the causation element. In *Freud*, the defendant made a similar argument based on the victim's heavy drinking and attempt to take the gun. The court in *Freud*, however, did not agree with this argument, instead finding that the victim's conduct was merely a concurrent cause of the shooting that did not preclude a finding of proximate causation as a result of the defendant's acts. This court should follow the precedent set by *Freud* and find that despite the potential intervening causes of this shooting, if any, the shooting can *nevertheless* be found to be a reasonably foreseeable consequence of Defendant's brandishing of the loaded weapon in Ms. Vons' face. Thus, the State has met its burden of establishing that the killing of Ms. Vons was a reasonably foreseeable, natural and probable consequence of the defendant's act of pointing the gun at Ms. Vons and cocking the firearm while pointed at Ms. Vons. Even if there were alternate intervening causes, Defendant's conduct was a substantial factor in Ms. Vons' death.

In the alternative, the State contends that it has met its burden of establishing the Defendant is guilty of involuntary manslaughter.

Involuntary manslaughter is statutorily defined under the Columbia Penal Code (CPC)

Section 192 as a killing "in the commission of a lawful act which might produce death, in an unlawful manner, or without due caution and circumspection," or in other words, criminal negligence. (*Freud*, 2014). Involuntary manslaughter is a lesser offense of murder, distinguished by its mens rea. (*Freud*, 2014). Thus, while the mens rea for murder is specific intent to kill or conscious disregard for life, absent either of these states of mind, the defendant may incur homicide culpability for involuntary manslaughter. (*Freud*, 2014).

Actus Reus

It is well settled that brandishing a loaded firearm at a person is an act dangerous to human life. (*State v. McNally*, 2015). Firearms are recognized as a dangerous instrumentality because of their great potential harm. (*Freud*, 2014). In fact, given the high danger of firearms, the Supreme Court of Colombia has asserted that one who playfully fires a gun in the direction of another person, while **incorrectly** convinced that the gun is not loaded, he is guilty of manslaughter. (*In re M.*, 1969).

As discussed earlier, the Defendant has already admitted to have shot and killed Ms. Vons. Even if the Defendant's specific conduct with regard to his handling of the weapon was not intentional, the joking manner in which the Defendant was brandishing the gun, and the dangerous nature of firearms provide sufficient evidence to conclude that the Defendant was handling the gun in an unlawful manner, or at least without due caution and circumspection.

Mens Rea

According to the Columbia Supreme Court, criminal negligence exists when the defendant engages in conduct that is "aggravated, culpable, gross, or reckless." (*Penny*, 2005). It is conduct that is such a departure from what would be the conduct of an ordinarily prudent or careful person under the same circumstances as to be incompatible with a proper regard for human life, or in other words, a disregard of human life or an indifference to consequences. (*Penny*, 2005). Columbia Courts have consistently stated that this is an objective test. (*Freud*, 2014). In the interest of the preservation of human life and safety, a high degree of care is demanded of those who use firearms. (*Freud*, 2014).

In *Freud*, the Court held that the defendant's conduct was objectively unreasonable, and thus constituted criminal negligence, where the defendant pointed a loaded gun at his victim, muzzle first, and cocked the gun. (*Freud*, 2014). Similarly, here, the Defendant testified that as he pointed it at Ms. Vons, the Defendant cocked back the hammer, the hammer "slipped" as he allegedly attempted to place the hammer back onto the gun, and the gun fired. In the Defendant's own words, "I was just kind of being stupid." He testified that he was not thinking at all. In *Freud*, the Court reasoned that the defendant's obtaining and handling of a loaded gun showed a lack of due caution and circumspection. (*Freud*, 2014). Likewise, here, this Court has sufficient evidence to conclude that even though Defendant *claimed* the shooting was accidental, his conduct lacked the high degree of care demanded of those who use firearms. Accordingly, even if this court does not believe that the State has met its burden of establishing the

defendant acted with implied malice, the evidence overwhelmingly suggests that the defendant acted, at the very least, with criminal negligence.

Causation

Like other forms of homicide, involuntary manslaughter requires a showing that the defendant's conduct proximately caused the victim's death. (*Freud, 2014*). The causation required for second degree murder is the same causation required to establish involuntary manslaughter. Thus, the State's earlier discussion of proximate cause regarding second degree murder is equally sufficient to establish the proximate cause element for involuntary manslaughter.

Conclusion

Based on the aforementioned argument, the State asserts that it has met its burden of establishing that the shooting of Ms. Vons was committed with implied malice, or at the very least, criminal negligence, and that the Defendant's conduct with the firearm was a reasonable foreseeable cause of Ms. Von's death.

Accordingly, the State respectfully requests that this Court find the defendant, Adam Dalton, guilty of second degree murder for the killing of Laura Vons. In the alternative, the State would request that this Court find the defendant guilty of involuntary manslaughter.

Thank you.

PT: SELECTED ANSWER 2

TO: Liam Paul

FROM: Applicant

RE: State v. Dalton

Good afternoon,

Attached below is the requested draft for closing arguments. Headings and citations are included for organizational purposes.

Good Morning your honor, and may it please the court,

As the prosecution we bear the burden of proof in this case. Mr. Dalton is charged with 2nd degree murder and with involuntary manslaughter, and the prosecution has presented evidence that shows beyond a reasonable doubt that Mr. Dalton is guilty of each. I will walk through the elements of each charge one by one, and show how we have proved our case beyond a reasonable doubt.

Each crime needs an act, a state of mind, and causation. The act is undisputed. A bullet came out of Mr. Dalton's gun, which he was holding, and killed Laura Vons. Now we will address Mr. Dalton's state of mind, and the fact that nothing else caused the victim's death but the defendant.

Mr. Dalton is guilty of 2nd Degree Murder; he acted with malice aforethought.:

First, Mr. Dalton is charged with second degree murder. Per the Columbia Penal Code, second degree murder is the unlawful killing of a human being with malice aforethought, but without the premeditation, deliberation, and willfulness necessary for a first degree murder. CPC 187, 189.

Unlawful killing:

An unlawful killing is one that is not justified or excused. While the defendant does not bear and burden of proof or persuasion on a defense of justification or excuse, they must raise the issue. *State v. Frye*. If the issue of justification or excuse is not raised by the defendant, those defenses are waived. Here, the defendant has not raised the issue of justification or excuse, and therefore has waived those defenses. Therefore, the killing was unlawful.

Express malice aforethought:

Next, the prosecution has shown that Mr. Dalton acted with malice aforethought. Malice

aforethought may be express or implied. It is express where there is manifested a deliberate intention unlawfully to take the life of a fellow creature. CPC 188. Here, there is evidence that Mr. Dalton acted with express malice. He was conflicted about whether to live with the victim or his ex-girlfriend. He was arguing loudly with the victim minutes before the shooting. It was loud enough to wake up his sleeping roommate immediately before he shot her. Some of Laura Vons last words via text were also about the animosity between them. Laura's best friend Talia stated that the night Laura was killed, Laura had been texting her. Laura told Talia that she wished Mr. Dalton was already locked back up. Just before the shooting, Laura stated that she "just was fighting with him right now." That text went out at 7:02 AM. At 7:05 AM Officer Hobbs and his partner responded to the shooting of Laura Vons. This unsteady relationship and the fighting between Laura Vons and Mr. Dalton are certainly enough to give rise to the deliberate intention to unlawfully take the life of a fellow creature, and therefore the prosecution has made its case for express malice.

Implied malice aforethought:

There is further evidence that even if Mr. Dalton lacked express malice, he acted with implied malice. Implied malice exists when the circumstances attending the killing show abandoned and malignant heart. *State v. McNally*. This is established when the defendant realized the risk to human life, and acted in total disregard of the danger. The test is subjective, and depends on the defendant's state of mind. The defendant must know that his conduct endangers the life of another and act with conscious disregard for that life. It is when a defendant says, "I know my conduct is dangers to others, but I don't care if someone is hurt or killed." *State v. Olivas*.

Brandishing a loaded firearm at a person is an act dangerous to human life. If the same person performs the same act incorrectly convinced the gun is unloaded, they are guilty of manslaughter. *In re M*.

Here, Mr. Dalton took a firearm he knew to be loaded, pointed it at Laura Vons, and fired it, and in doing so said "I know I might kill Laura, but I don't care."

We know that Mr. Dalton knew the firearm to be loaded because he told us. During his interview, the day of the killing, Mr. Dalton said that he knew the gun was loaded because he "hadn't taken the bullets out from when he bought it." The defense might call this into question. They will point out that Mr. Dalton took the stand during this trial, and that he said that he did not know the gun was loaded. He claims he never told Detective Ames that the gun had to have been loaded, because he never unloaded it after purchasing it. And only now, on the stand, after every opportunity to fabricate a story that would reduce his culpability, has Mr. Dalton denied knowing the gun was loaded when he pointed it at Laura.

We also know that Mr. Dalton fired the weapon. In *State v. McNally* the court found that the fact that the defendant overrode the safeties on his firearm, along with possessing, and ignoring training about treating all firearms as if they are loaded, and not pointing the weapon at anything one doesn't wish to destroy, to be conclusive evidence that the defendant in that case acted with a conscious disregard for human life.

In our case, the state's criminologist testified that the firearm had multiple safeties, and that it was not possible for the gun to go off, without fully drawing the hammer of the weapon back and releasing it. The defense might try to argue that this was not really conscious disregard for human life, because Mr. Dalton did not have a finger on the trigger. But he had to have pulled the hammer of the firearm all the way back, and released it for the gun to go off. His story about half-cocking the gun, and letting the hammer slip, is just that: a story.

The defense might also argue that this is somehow different from *McNally* because Mr. Dalton did not have the extensive military and corrections officer firearm training that the defendant had in that case. Mr. Dalton did not carry a firearm while out and about but he was familiar with firearms. Found in his home were the pistol which killed Laura Vons, another semi-automatic pistol, a shotgun, and ammunition. Mr. Dalton even testified that he slept with a gun under his pillow. This all shows that Mr. Dalton understood the risk of brandishing a firearm he knew to be loaded.

Lastly, we know Mr. Dalton understood not to point the weapon at anyone, because he would not let Laura point it at him. During his own testimony, he states that he found Laura Vons pointing the gun at him once while he was counting money and marijuana. He pushed the firearm away, because he knew that it was a risk to have it pointed at him. After teasing her about her fear of spiders, he found her pointing the weapon at him again and this time he took it away. Again, this was because Mr. Dalton knew the risk of having the firearm pointed at him. He then turned the weapon on Laura Vons, drew the hammer all the way back, and released it, knowing the firearm was loaded. He knew the risk, he knew he might kill Laura, and he didn't care. That is implied malice, and the prosecution has shown that Mr. Dalton acted with implied malice beyond a reasonable doubt.

Intoxication:

A person may also act with implied malice under the influence of alcohol and or drugs, engages in horseplay with a firearm, and causes the discharge killing another person. Any argument by the defense that Mr. Dalton's several beers, or the presence of marijuana negates the malice necessary for 2nd degree murder will be immaterial. Mr. Dalton acted with malice, regardless of what was in his system.

Subsequent behavior:

Subsequent behavior such as hiding a weapon or even denying the shooting may by themselves not show implied malice, but continuing behavior, including a clear lack of remorse is so closely related to the event that it is probative. *McNally*. Here, Mr. Dalton never denied the shooting, though he did attempt to wash fingerprints off the weapon and to hide it. While this may be immaterial of whether he acted with malice, what should be material is Mr. Dalton's continuing deception. He has changed his story about whether the firearm was loaded. He continues to claim that he deeply loved Laura Vons, that he regrets her death, and that he cannot live without her. Yet Laura did not seem to hold the same feelings. She texted her best friend as much. Their argument woke up Mr. Dalton's roommate. And while Mr. Dalton's roommate claims that Mr. Dalton loved

the victim, he also admits that Mr. Dalton was conflicted about whether to go live with his ex-girlfriend. This is a continuing pattern of deception, from the time of the killing, that is so closely related to the killing that it should be probative as in *McNally*. At the very least, this pattern of deception negates any assertion by the defense that there could be no malice because of Mr. Dalton's love for Laura Vons, because that love is in question.

Causation:

Homicide requires a showing that the defendant's conduct proximately caused the victim's death. There may be more than one proximate cause of death. *State v. Sanchez*. The defendant is criminally responsible if their conduct was a substantial factor in contributing to the result.

A cause is concurrent if it was operative at the time of death and acted with another cause to produce death. A jury need only find that the defendant's cause was a substantial factor, beyond the "but for" test. *State v. Jennings*.

In *State v. Freud* the defendant contended that he was not the proximate cause of his wife's death when a gun that he had loaded, was holding, and was handing to her went off and killed her. Instead, the defendant contended that the cause of death was his wife's intervening actions of drinking heavily, and taking the gun. The court disagreed, finding that the death could not be attributed to any other cause such as the victim taking hold of the gun, or the drinking, but only due to the defendant's negligence in handing over a loaded firearm with the muzzle towards the victim. Here, if the defense tries to argue that Laura Vons was a superseding cause, either by repeatedly pointing the gun at Mr. Dalton, or due to drinking herself, those arguments should fail. Even if Ms. Vons instigated the conflict by pointing the pistol at Mr. Dalton, it was Mr. Dalton who took it, and knowing it was loaded, pulled back the hammer and let the weapon fire. Therefore Mr. Dalton is a substantial factor in Laura Vons' death, if not the only factor.

It also requires that the death was a reasonably foreseeable, natural and probable consequence of the defendant's act, rather than a remote consequence that is so insignificant or theoretical that it cannot properly be regarded as a substantial factor in bringing about the death.

Here, Mr. Dalton pointed the firearm, which he knew was loaded, at Laura Vons, pulled the hammer back, and released it. There is nothing unnatural, unforeseeable, or improbable about someone dying from a gunshot wound, after pointing a loaded weapon at them, and pulling back the hammer.

In the alternative: Mr. Dalton is guilty of involuntary manslaughter:

If this court is unconvinced that Mr. Dalton acted with malice, he is at least guilty of involuntary manslaughter. Involuntary manslaughter is a killing in the commission of a lawful act which might produce death, in an unlawful manner or without due caution and circumspection. Courts have dubbed this behavior 'criminal negligence.'

Criminal negligence exists when the defendant engages in conduct that is aggravated,

culpable, gross, or reckless. It is conduct which is such a departure from what an ordinarily prudent or careful person would do under the same circumstances as to be incompatible with a proper regard for human life. It is an objective test which encompasses a disregard for human life or indifference to consequences. *State v. Penny*.

Because this is an objective test, we no longer need to infer what Mr. Dalton knew, or thought, but only to examine what he did. In *Freud*, the defendant had argued with his wife. After making up, she said that sometimes he made her so mad she could kill him. On hearing this, the defendant went upstairs, retrieved his handgun, loaded it, put a round in the chamber, and brought it back to her, to show her how to kill him easily. He showed her how to disengage the safety, and as he was handing it to her, fired the gun, killing his wife. The court found that this was criminal negligence, because firearms are recognized as a dangerous instrumentality with a great potential for harm, demanding a high degree of care. The court stated that it was "fairly inferable that the obtaining and handling of a loaded gun . . . showed a lack of due caution and circumspection." *Freud*. Here, a similar fact pattern emerged. Mr. Dalton retrieved a handgun--albeit from the victim--and handled the gun, which--as we have shown--he knew to be loaded. This is already actions that show the same lack of due care and circumspection as in *Freud*. When Mr. Dalton then proceeded to draw the hammer back, he fully departed from what an ordinarily prudent person would do so as to take action incompatible with a proper regard for human life. Therefore, the state has proven beyond a reasonable doubt that Mr. Dalton acted with criminal negligence.

Causation:

The analysis of causation for manslaughter is the same as any other homicide charge. As we have already established beyond a reasonable doubt, Mr. Dalton was a substantial, if not the only factor in the death of Laura Vons.

Conclusion:

The prosecution has proven every element of homicide beyond a reasonable doubt. The act--the firing of the gun--was undisputed. We have proved that Mr. Dalton acted with malice, or at the very least with criminal negligence, and that his actions, not some act by the victim, were the cause of Laura Vons' death. Therefore we respectfully ask the court to find Mr. Dalton guilty.