

ADMINISTRATION OF JUSTICE

YOU MAKE THE DECISION!

The Inheritance and the Murder Plot

Name: _____ Period: _____ Row: _____ Score: _____

THE TRIAL OF JEFF ALVAREZ for attempted murder has gone on now for several days. This was a trial in which the defendant chose to have you as the judge render a decision and not have a jury. It is up to you to review the facts and render a verdict.

Jeff Alvarez was an old friend of Allen Desmond and had no prior criminal record. Desmond had been arrested several times for suspicion of dealing in narcotics, but had never been convicted. He was under investigation for another drug related offense by authorities at the time of this attempted murder. Desmond was married to Linda, who had inherited quite a bit of money and property from her father's estate. Allen and his wife did not get along according to witnesses who saw them involved in many quarrels and fights. Allen Desmond decided he wanted to get rid of his wife Linda. However, he didn't want a divorce, because he knew he would not get any of her money or property. To Allen the logical solution was to murder her.

Allen met with Alvarez at a factory where Jeff worked as a forklift operator. During the conversation Desmond said, "Help me knock off my wife and I'll give you half the inheritance money. I know you own a gun and we can make it look like a home burglary. We'll shoot her in the bedroom and take a bunch of stuff out of the house to make it look good."

"Alvarez at first refused to help Allen but in the days that followed Desmond kept after him. Alvarez continually said he wouldn't take part in the shooting and wanted nothing more to do with it. Desmond finally gave in and said, "Okay, I'll do it myself. But I need you to lend me your gun so I can shoot her. I also need you to show me how to use the gun."

Alvarez agreed to that for one third of the money, but would do nothing more. There were several more meetings after that and phone calls in which Desmond mentioned the date and time he'd planned to commit the fake burglary and murder. Neither man knew that police had been investigating Desmond for suspected drug involvement and had tapped his telephone line.

Desmond did as he had planned by telling his wife he would be out of town on business for a day. Early in the morning around 3 a.m. he forced a lock on his own home and went upstairs into his wife's bedroom. Seeing a huddled form that he thought was his wife in the bed by the light from the moon shining through the open curtain Desmond fired three shots. Several policemen, hiding in the nearby closet emerged, ordering him to drop the gun and put up his hands. Desmond, apparently believing he'd killed Linda, panicked and shot himself dying the next day. The form in the bed wasn't his wife it had been a dummy. The officers, knowing the plot, had put it there, after getting Linda to a place of safety.

"That afternoon police arrested Jeff Alvarez and charged him with criminal conspiracy to commit murder. Now, Counselors, if you wish to comment, I'll be glad to listen."

The district attorney says, "your Honor before there is a crime, there must be the intention to commit the act, and then the actual attempt at or commission of the act itself. The two go together because an act without intention is not a crime. Nor is an unlawful intention without the act being committed a crime. This is true when one joins a criminal conspiracy. As in this case a plan to commit a crime. Everyone who knowingly takes part in the act is responsible

for it. If one makes a bomb that someone else places, he is just as guilty as the one who places it. Or the one who waits in a getaway car is as guilty as those who go inside and rob the bank. Here the accused man loaned his gun, and showed his friend how to use it. He knew his friend intended to murder Linda Desmond. Jeff Alvarez should therefore be found guilty of conspiracy to commit murder."

Alvarez's attorney said, "There is no conspiracy here because there was no crime. Desmond fired at a dummy. His wife was nowhere around. That made the crime impossible. For example, there's a court ruling where someone thought he was bribing a juror. It turned out the person was not a juror at all. And they had to let the accused go free. Same result where a man thought he was buying stolen goods, but they weren't actually stolen. In other words, you cannot convict a man for trying to do something that is legally impossible to do."

You say, "Counselors, thank you for your comments. As soon as possible, I will give you the court's decision.

Now you are alone in your judge's chambers. You must find the answers to several questions so that you can decide the case, and be sure your decision is within the law. You must consider all the facts, and then complete your official Opinion and Order.

Judge's "Case Analysis Sheet"

To make an informed decision in a court dispute you must first examine the facts in issue. FULLY EXPLAIN YOUR ANSWERS.

1. What were Desmond's reasons for wanting to kill his wife?

2. Why did Allen Desmond approach Jeff Alvarez?

3. How is Alvarez's knowledge of Desmond's intentions concerning the gun he loaned him important to this case of conspiracy?

4. What was Alvarez going to get in return for lending the gun to Desmond?

5. What do you think Desmond was thinking when he believed his wife Linda was in the bed as he took aim with the gun and fired at the humps in the bed?

6. What do you think the outcome would have been if the police hadn't known about the plot and put the dummy in the bed and moved Linda to a location of safety?

7. What issue might a defense attorney raise in regard to the wire tap on Desmond's phone?

IN THE SUPERIOR COURT OF THE STATE, COUNTY OF MONROE

THE STATE)	
)	
Plaintiff)	
)	
vs)	Criminal Case No. 8963081
)	
JEFF ALVAREZ)	
)	
Defendant)	

COURT'S OPINION AND ORDER FOR JUDGMENT

The State says Jeff Alvarez is guilty of conspiracy to commit murder because he loaned a gun to a person wishing to kill his wife. The police successfully prevented the crime.

The question is whether a person can be punished for conspiring to help do something that could not have happened. This is a very fine point of law. If you conspire to do something that is legally impossible, that is not a crime.

For example, as Alvarez's attorney points out, you can only bribe a juror if he or she is actually a juror. Otherwise, that is a legal impossibility.

But it is a crime to conspire to do something even if it is impossible because of the facts. That's a factual impossibility. A thief who tries to pick an empty pocket is guilty of an attempted crime. Or trying to rob a safe that turns out to have nothing in it.

If an accused person can prove he was "entrapped" by the police into committing a crime, the court will not find him guilty. Entrapment, the courts say, is an improper and unlawful practice. Occasionally a government informer tries to get someone to do an illegal act. It may be the informer tries to get a drug dealer to sell narcotics, or it may be, as here, murder.

The police placed a dummy in Linda's bed to fool her husband. When Allen Desmond entered his home to murder his wife it looked real as it lay in her bed. So he fired - and then killed himself when he realized it had been a police set-up. The police then charged Jeff Alvarez with conspiring to commit murder because he lent his gun to Desmond even though he knew what Desmond was going to use it for. Was setting up the dummy entrapment? Or was that different from an informer trying to get a suspect to sell him marijuana cigarettes?

It is evident in this case the police _____ use legal methods to uncover this attempt on the part of Desmond to murder his wife.
did / did not

Here we have a case where a man shoots at an empty bed, thinking someone was in it. The court believes this is a _____ impossibility because his wife could have been in the bed had it not have been for the police.
legal / factual

Jeff Alvarez is _____ of the crime of conspiring to commit murder.
guilty / not guilty

He _____ be sentenced as provided by law.
should / should not

JUDGE OF THE SUPERIOR COURT