

## Unlawful killing: Murder section 302(1)(b) (Felony Murder)

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### Legislation

#### 302 Definition of murder

(1) Except as hereinafter set forth, a person who unlawfully kills another under any of the following circumstances, that is to say—

(b) if death is caused by means of an act done in the prosecution of an unlawful purpose, which act is of such a nature as to be likely to endanger human life;

is guilty of **murder**.

### Commentary

#### *A species of unlawful killing*

Section 291 provides, “It is unlawful to kill any person unless such killing is authorised or justified or excused by law”. A charge of murder pursuant to section 302(1) requires proof of unlawful killing in any of the circumstances specified therein. The circumstance specified in section 302(1)(b) is that “death is caused by means of an act done in the prosecution of an unlawful purpose, which act is of such a nature as to be likely to endanger human life”. This species of unlawful killing is known as “felony murder”.

#### *Elements*

Section 302(1)(b)’s five elements, set out as a potential jury handout in appendix A below, are:

- (1) the deceased is dead;
- (2) the defendant caused the deceased’s death;
- (3) the defendant did so unlawfully, ie any defences are excluded beyond a reasonable doubt;
- (4) the defendant did the act which caused death in the prosecution of an unlawful purpose;
- (5) the act was of such a nature as to be likely to endanger human life.

Note that intention to kill or do grievous bodily harm, which is an element of section 302(1)(a), is not an element of section 302(1)(b). As much is apparent from the words of the section, including section 302(3) which specifically provides that under section 302(1)(b) “it is immaterial that the offender did not intend to hurt any person”. Further, as Gibbs J observed in *Stuart v The Queen* (1974) 134 CLR 426, 438, even without the words of section 302(3), section 23(2) has the effect that the result which

the offender intended to cause by the offender's act is immaterial. His Honour explained however that the apparent severity of section 302(1)(b)'s operation is mitigated by the potential operation of the defence of accident at section 23(1).

### *Manslaughter an inherent alternative*

If an unlawful killing occurs where none of the circumstances listed in section 302(1) are proved the offender will be guilty of manslaughter, per section 303(1). Manslaughter (a form of "unlawful killing" per section 300) need not be alleged as a separate count from murder in the indictment because it is an available inherent alternative to a charge of murder (per section 576). Each offence shares the elements of unlawful killing, which are the first three elements listed above (the fourth and fifth elements being required for murder per section 302(1)(b)). The common and safe approach to summing up a murder case is that the offence of manslaughter is explained and left to the jury as an alternative to murder. It is important to appreciate however, that the offence of manslaughter does not arise as an inherent alternative on which a verdict can be returned unless the jury first reaches a unanimous verdict of not guilty of murder. Thus, if a jury cannot agree on its verdict in respect of murder, a verdict on the lesser alternative of manslaughter should not be taken.

Even if the elements of murder have been proved beyond reasonable doubt, section 304 "Killing on Provocation" and section 304A "Diminished Responsibility" may operate to reduce what would otherwise be murder to manslaughter. The onus of proof for those defences, contrary to the usual principle that it is for the prosecution to exclude potential defences beyond a reasonable doubt, is on the defendant to prove them on the balance of probabilities.

### *The element of causation*

Section 293 provides "any person who causes the death of another, directly or indirectly, by any means whatever, is deemed to have killed that other person".

The allegedly causative acts or omissions need not be the sole cause of death but must be a substantial or significant cause of death or have substantially contributed to the death - per *Royall v The Queen* (1991) 172 CLR 378 at 398, 411, 423. This principle is to be understood subject to s 296 "Acceleration of death", section 297 "When injury or death might be prevented by proper precaution" and section 298 "Injuries causing death in consequence of subsequent treatment".

In *Royall v The Queen* (1991) 172 CLR 378, at 387, 411-412, 423, 441, the High Court endorsed the statement of Burt CJ in *Campbell v The Queen* (1980) 2 A Crim R 157 at 161 that it is enough if juries are told that the question of cause is not a philosophical or scientific question but a question to be determined by them applying their common sense to the facts as they find them, appreciating that the purpose of the inquiry is to attribute legal responsibility in a criminal matter.

Because the critical time to assess the operation of potential defences and the nature of the death causing act is the time the defendant committed the act(s) resulting in death, difficulties with unanimity can arise where death has potentially been caused by a range of acts committed over some time by the accused and there is uncertainty as

to which of those acts had a fatal contribution. In *Lane v The Queen* [2018] 265 CLR 196 the High Court allowed an appeal where the case had been left to the jury on the basis the fatal injury may have been inflicted in one of two separate physical events involving the appellant. It transpired on appeal that the earlier event was not sufficient to sustain a conviction whereas the latter was. The conviction could not be salvaged via the proviso by reason of the strength of the evidence re the second event because, in the absence of a direction as to the need to be unanimous about what the fatal acts were, it remained a possibility some jurors convicted solely on the basis of the first event. Where it is open to the jury to be satisfied one or more of a range of potentially fatal acts of the defendant caused death but the jury may be uncertain which one or more of those acts caused death, the jury should be instructed of the need to be unanimous:

- (a) as to the acts included within that range of potentially fatal acts,
- (b) that potential defences have been excluded in respect of all of that range of acts,
- (c) that all of the acts were done in the prosecution of an unlawful purpose, and
- (d) that all of the act were of such a nature as to endanger human life.

#### *The element of unlawfulness*

Section 291 provides, “It is unlawful to kill any person unless such killing is authorised or justified or excused by law”.

Defences providing such authorisation, justification or excuse include section 23 “Intention – motive” (accident), section 27 “Insanity”, section 266 “Prevention of crimes”, section 267 “Defence of dwelling”, section 271 “Self-defence against unprovoked assault”, section 272 “Self-defence against provoked assault” and section 273 “Aiding in self-defence”.

The operation of section 23 is, per section 23(1), “Subject to the express provisions of this Code relating to negligent acts and omissions”. This sometimes has the consequence in murder cases involving the use of weapons such as guns and knives, that section 289 “Duty of persons in charge of dangerous things” is left to the jury as an alternate potential pathway to conviction for manslaughter, in the event the prosecution fail to prove the elements of murder beyond reasonable doubt.

While a defence under section 31 “Justification and excuse – compulsion” is not available for murder it is available for manslaughter – per *Pickering v The Queen* (2017) 260 CLR 151.

The trial judge is obliged to leave a defence to the jury, even if not sought by defence counsel, if, on the version of events most favourable to the accused which is suggested by material in the evidence, a jury acting reasonably might fail to be satisfied beyond reasonable doubt that the defence has been excluded - per *Masciato v The Queen* (1995) 183 CLR 67-68.

### *The element of “prosecution of an unlawful purpose”*

The meaning of “prosecution” in this element has not been the focus of authoritative consideration but in *Macartney v R* (2006) 31 WAR 416, 431 Steytler P observed it “seemingly picks up the old common law requirement that it be “in the course of or in furtherance of” that purpose”.

In the same case Steytler P observed of the meaning of “unlawful purpose”:

[T]he words "unlawful purpose" are very wide, even wider than the old common law requirement that the act of violence occur in the course of or in furtherance of a felony involving violence. As was pointed out in *R v Georgiou* (2002) 131 A Crim R 150 at 160, the framers of the section have chosen the words "unlawful purpose" rather than the word "offence" and the unlawful purpose is not limited to the strict elements of an offence, with the consequence, for example, that an act done in the course of attempting to get away after the commission of an offence would be an act done for an unlawful purpose.

It appears to follow that an act is done in the prosecution of an unlawful purpose if it is done in order to carry out or try to carry out an unlawful purpose, which includes trying to deter or avoid resistance to doing so and apprehension for doing so.

The suggested direction below assumes the purpose particularized by the prosecution is unlawful because if the judge decides it not capable of constituting an unlawful purpose then section 302(1)(b) should not be left to the jury as a basis for liability.

Section 302(1)(b) “relates to an act of such a nature as to be likely to endanger human life when the act is done in the prosecution of a further purpose which is unlawful”, so the commission of the act which caused the death cannot at once constitute the dangerous act and the unlawful purpose - per *Hughes v The King* (1951) 84 CLR 170, 174-175 (emphasis added).

In *Hughes v The King* (1951) 84 CLR 170, 174-175 the dangerous act was an assault but there was no unlawful purpose beyond the making of the assault. It was held section 302(1)(b) should not have been left to the jury as a basis for liability because when there is no purpose at all beyond the doing of the act which constitutes the offence, then there is no relevant "unlawful purpose" under the section.

*Hughes* was distinguished in *R v Gould & Barnes* [1960] Qd R 283, 292, where the defendants introduced a mixture of glycerine, Dettol and Surf into a woman’s vagina and uterus in an attempt to abort her pregnancy. Upholding s 302(1)(b) as a foundation for liability in that case Philp J observed, “there was a supervening unlawful purpose apart from the act which killed – the purpose being the unlawful attempt to abort”.

While there must be an unlawful purpose apart from or beyond the bare commission of the dangerous act, there may be some overlap between the two in that the commission of the act may constitute part of a broader purpose – per *Stuart v R* (1974) 134 CLR 426, 448. Jacobs J there observed:

[T]here is nothing in *Hughes v the King* which suggests that there must be a purpose of committing a distinct offence of which the [dangerous] act ... is not a constituent part. The unlawful purpose must in fact be prosecuted by the dangerous act but the unlawfulness of the purpose may appear from the act whereby that purpose is prosecuted. The dangerous act need not be itself an offence and the purpose unrelated to the dangerous act need not be an offence. It is when the combination of them results in an offence, but only when there is in fact a combination, that is to say, when a purpose can be discerned beyond the doing of the dangerous act itself that the requirements of [302(1)(b)] are satisfied. It is thus permissible to look at the act in the light of the purpose and likewise the purpose in the light of the act by which that purpose is prosecuted. (emphasis added)

Just as the Crown may rely upon several acts of the accused as having caused the death in a charge of felony murder, so it may rely upon several unlawful purposes – per *R v Hayes* [2008] QCA 371 [77]. Also see *Stuart v R* (1974) 134 CLR 426, 439-440 where Gibbs J observed that while the case was left on the basis the act was done in the prosecution of the potential unlawful purpose of extortion it could also have been left on the basis the act was done in the prosecution of the narrower potential unlawful purpose of arson (a purpose which his Honour observed formed part of the wider purpose of extortion).

If the unlawful purpose is particularised as an offence an element of which is an intention to cause a specific result (e.g. burglary), and intoxication is raised, it will be necessary to direct the jury that it must have regard to that intoxication in determining the existence of the intent and hence whether the unlawful purpose has been proved - per *R v George* [2014] 2 Qd R 150, 160-161.

#### *The element of “likely to endanger human life”*

The provision speaks of the nature of the act, not of the knowledge of the offender and therefore the test required to be applied is an objective one. It is enough that the act which caused the death was in fact likely to endanger human life, whether or not the offender believed or knew the act was likely to endanger human life – per *R v Gould & Barnes* [1960] Qd R 283, 292, confirmed in *Stuart v The Queen* (1974) 134 CLR 426, 438. This renders a mistake of fact defence per section 24 irrelevant to the specific assessment of whether the act which caused death was of such a nature as to be likely to endanger human life – per *R v Gould & Barnes* [1960] Qd R 283, 291-293.

#### **Suggested Direction**

**Our law provides that any person who unlawfully kills another is guilty of a crime which is called murder or manslaughter according to the circumstances of the case. A person who unlawfully kills another and does so in particular circumstances stipulated by law, is guilty of murder. Where a person unlawfully kills another but those stipulated circumstances are not present, that person will be guilty of manslaughter.**

**The circumstances stipulated by law which are relied upon here in support of the charge of murder are:**

- **that [X's] death was caused by means of an act done by the accused in the prosecution of an unlawful purpose, which act was of such a nature as to be likely to endanger human life.**
- [If other types of murder pursuant to section 302(1) are also to be left to the jury, list the other types relied upon in the alternative and adjust the draft direction as necessary.]

**I will for convenience refer to an unlawful killing which involves those particular circumstances as felony murder.**

**Proof of any offence requires proof of the elements of the offence. The elements of an offence are the essential ingredients of it, all of which must be proved beyond a reasonable doubt to prove the offence.** (It will assist to accompany the direction with a jury handout listing the elements – see the example at appendix A below)

**In order for the prosecution to prove felony murder it must prove all of the following elements beyond a reasonable doubt:**

1. **that [X] is dead;**
2. **that the defendant caused [X]'s death;**
3. **that the defendant did so unlawfully;**
4. **that the defendant did the act which caused death in the prosecution of an unlawful purpose; and**
5. **that the act which caused death was of such a nature as to be likely to endanger human life.**

**I will discuss each element in more detail shortly.**

(Where multiple limbs of section 302(1) are to be put in the alternative it will be necessary to put them alternatively to elements 4 and 5 above. Consider

expanding the draft handout to include the alternatives – see an example at appendix B below.)

**The first three of those elements are the elements of an unlawful killing. Proof of them without proof of the remaining elements would prove the offence of manslaughter. Manslaughter is an inherent alternative charge to murder but it only becomes available as an alternative in the event you find the defendant not guilty of murder.**

**So, after your deliberations have concluded, in taking your verdicts my associate will ask you, “*How do you find the defendant: guilty or not guilty of murder?*” If you find the defendant “*guilty*” of murder, that would be the end of the process (on that charge). However, if you were to say, “*not guilty*” then my associate would go on with a second question, “*How do you find the defendant: guilty or not guilty of manslaughter?*” and you would return your verdict of “*guilty*” or “*not guilty*” as the case may be in respect of manslaughter.**

**You will appreciate from what I have said that the first three elements are elements common to both murder and manslaughter. If any one of the first three elements have not been proved there will not have been an unlawful killing and you must find the defendant not guilty of murder and not guilty of manslaughter.**

**I will now discuss each element.**

**Element 1 requires that [X] is dead. In this case it has been admitted [and/or you might think there is persuasive evidence] that [X] is dead. [If there is an issue as to whether [X] is dead, explain the relevant issue(s) of fact which the jury must determine in deciding whether [X] is dead].**

**Element 2, the element of causation, requires that the defendant caused [X]’s death. To decide whether the defendant caused [X]’s death you will need to decide whether [X]’s death was caused by the acts alleged against the defendant. [This direction only refers to “acts”, not “omissions”, because s 302(1)(b) only grounds guilt via an act or acts. Also, it refers to acts, plural, so**

the direction should vary such references to the singular if there is only a single act alleged.]

**Our law provides a person who causes the death of another, directly or indirectly and by any means whatever, is deemed to have killed that other person.**

[If death was delayed - **It does not matter that death was not immediate. If the acts of the defendant led to the injury/condition of the deceased which in the ordinary course resulted in the death, then in law the defendant is responsible for that death however long after the defendant's acts the death occurred.**]

**The means by which a person causes the death of another may be direct or indirect, as long as those means are, or are caused by, the defendant's acts. To prove the defendant's acts caused death it is not necessary to prove they were the sole or only contributing cause of death. However, it must be proved the defendant's acts were a substantial or significant cause of death or contributed substantially to the death.**

[Where the events causing death are uncertain or there are competing innocent causes: - **Whether it has been proved that the defendant's acts were a substantial or significant cause of death or contributed substantially to the death is not a question for scientists or philosophers. It is a question for you to answer, applying your common sense to the facts as you find them, appreciating you are considering legal responsibility in a criminal matter and the high standard of satisfaction required is proof beyond a reasonable doubt.**]

**In considering whether the defendant caused [X]'s death you should take into account what (if anything) is known as to the medical cause of [X]'s death. The medical cause of death in the present case is alleged to be ...**  
[Here identify the evidence based medical cause of death or, if it is unknown, the evidence relied upon to establish the mechanism(s) of death by inference. If the



mechanism relied upon by the prosecution is in issue identify the material facts and or inferences to be determined].

**Your consideration of the defendant's conduct as potentially causing death must be confined to such of the defendant's acts, if any, as have been proved beyond a reasonable doubt. This element of causation will only have been proved if you are satisfied beyond a reasonable doubt that acts of the defendant which you find to have been proved beyond a reasonable doubt were a substantial or significant cause of death or contributed substantially to the death.**

**The act(s) of the defendant alleged by the prosecution to have caused death is/are ...** [Here list the act(s) relied upon. Where the identity of the defendant as the actor or the occurrence of any acts is in dispute, identify the factual dispute(s) which the jury must resolve. This may require a direction about circumstantial evidence where an act is alleged as an inference arising from proved facts.].

[Where more than one act of the defendant may have caused death and the acts range over time or circumstance to the extent it is necessary to avoid future doubt as to unanimity – **It may be that you conclude the deceased's death was caused by one or more of a range of the defendant's acts, but are uncertain or cannot agree as to exactly which of them, alone or in combination, was fatal.** [Identify the set of acts of the defendant which in this case the jury might think are the acts which alone or in combination must have caused death]. **Your uncertainty or lack of agreement about the exact causative contribution of the range of potentially fatal acts will not prevent the prosecution proving this element of causation, as long as you conclude it must have been one or more of the acts within that range which caused death. It is important for your further deliberations about elements 3, 4 and 5 however that you reach unanimous agreement on which of the defendant's acts are included within the range of potentially fatal acts. That is necessary because for a jury to reach unanimous agreement that an offence has been committed each juror must be satisfied the offence is constituted by the same acts. Thus, if you are satisfied element 2 is proved because, despite doubts about the precise cause of death, you are satisfied beyond reasonable**

doubt that death must have been caused by one or more of a range of potentially fatal acts of the defendant, ensure you are unanimously agreed as to the content of that range so it will be that range of acts you consider when you refer to the acts of the defendant in considering elements 3, 4 and 5.]

**Element 3**, the element of unlawfulness, requires that in causing [X]'s death the defendant did so unlawfully. All killing is unlawful, unless authorised, justified or excused by law. Our law creates some defences which can operate to excuse a killing, making it lawful. A well known example is acting in self-defence. Where the facts raise the possibility such a defence may apply it is not for the defendant to prove it applies. Rather it is for the prosecution to exclude the application of such a defence beyond a reasonable doubt. The prosecution must do this because if there lingers a real possibility that such a defence operates to excuse the defendant then the prosecution will not have proved beyond reasonable doubt that the accused's actions were unlawful.

**In the present case....** [Here indicate whether any defences, such as self-defence, compulsion or accident arise for the jury's consideration and, if any do, proceed to explain the operation of the defence(s) including the prosecution's obligation to exclude them. Where the defendant's acts attracted the unanimity direction re the range of potentially fatal acts in element 2 - **You will recall I directed you in discussing element 2 that if you are satisfied beyond reasonable doubt death must have been caused by one or more of a range of potentially fatal acts of the defendant, you must unanimously agree upon the content of that range. In order for the prosecution to exclude the operation of this defence of ....., the prosecution must exclude it as operating in respect of all the acts within that range of potentially fatal acts.]**

**Before turning to elements 4 and 5 I remind you that if any one of elements 1, 2 or 3 is not proved beyond a reasonable doubt then elements 4 and 5 are irrelevant because the defendant could not be found guilty of unlawful killing, whether in the form of murder or manslaughter. In the event you are satisfied beyond a reasonable doubt of the first three elements the**

defendant would be guilty of an unlawful killing. Whether that killing constitutes murder or only manslaughter will depend upon whether or not elements 4 and 5 are proved beyond a reasonable doubt [if relevant - , and if they are, whether the defence of provocation/diminished responsibility, which I will come to later, operates to reduce what would be murder to manslaughter]. If elements 4 and 5 are not proved beyond a reasonable doubt then the defendant must be found not guilty of murder [adjust as necessary if other forms of murder are being left to the jury]. In that event it would remain to consider whether the defendant is guilty of manslaughter, that is, whether elements 1, 2 and 3 have all been proved beyond a reasonable doubt. If they have then you would find the defendant guilty of manslaughter but if any of them have not been so proved then you would find the defendant not guilty of manslaughter.

**Element 4**, the element of prosecuting an unlawful purpose, requires that the acts of the defendant which you find to have caused death were done in the prosecution of an unlawful purpose.

[Where the defendant's acts attracted the unanimity direction re the range of potentially fatal acts in element 2 - **You will recall I directed you in discussing element 2 that if you are satisfied beyond reasonable doubt death must have been caused by one or more of a range of potentially fatal acts of the defendant, you must unanimously agree upon the content of that range. In order for the prosecution to prove this element it must prove all the acts within that range of potentially fatal acts were done in the prosecution of an unlawful purpose.**]

**The unlawful purpose alleged by the prosecution here is** [Here indicate what the unlawful purpose or purposes are alleged to be and the evidence relied upon as allegedly proving the existence of the unlawful purpose.]. **If such a purpose existed, it is not in issue that would have been an unlawful purpose.** [In the event it is in issue then explain the way in which the alleged purpose could be unlawful, namely the basis upon which you have decided to leave it to the jury as capable of amounting to an unlawful purpose.] **It is a matter for you to decide whether the existence of the alleged unlawful purpose has been proved**

**beyond a reasonable doubt.** [Where the existence of the alleged unlawful purpose is in issue here discuss the relevant issues of fact which the jury should consider in deciding whether the alleged unlawful purpose existed.]

**It is necessary not only that you are satisfied beyond reasonable doubt of the existence of the alleged unlawful purpose but also that that you are satisfied beyond reasonable doubt that the acts of the defendant which you find to have caused death were done in the prosecution of that unlawful purpose. Something is done in the prosecution of an unlawful purpose if it is done in order to carry out or try to carry out an unlawful purpose, which includes trying to deter or avoid resistance to doing so and apprehension for doing so. The basis upon which the death causing acts are alleged to have been done in the prosecution of the unlawful purpose alleged in this case is said to be that** [Here insert the factual basis for the allegation in the present case and discuss the relevant issues of fact to be considered in the jury's determination of whether the fatal acts were done in the prosecution of the unlawful purpose].

**If you are satisfied beyond reasonable doubt that there was an unlawful purpose as alleged by the prosecution and that the acts of the defendant which you find to have caused death were done in the prosecution of that unlawful purpose then element 4 would be established and it would remain to consider element 5. If you are not so satisfied, then a critical element of the murder charge would not have been established and you must find the defendant not guilty of murder** [adjust as necessary if other forms of murder are being left to the jury].

**Element 5, the element of likely to endanger life, requires that the acts of the defendant which you find to have caused death, were of such a nature as to be likely to endanger life.**

[Where the defendant's acts attracted the unanimity direction re the range of potentially fatal acts in element 2 - **You will recall I directed you in discussing element 2 that if you are satisfied beyond reasonable doubt death must have been caused by one or more of a range of potentially fatal acts of the**

**defendant, you must unanimously agree upon the content of that range. In order for the prosecution to prove this element it must prove all the acts within that range of potentially fatal acts were of such a nature as to be likely to endanger life.]**

**This element requires the objective consideration of whether the acts of the defendant which you find to have caused death were in fact of such a nature as to be likely to endanger human life. Even if you were to think the defendant did not intend to hurt anyone, that would be immaterial because this element is not concerned with the subjective assessment of whether he intended to endanger life by committing the acts which caused death. It is solely concerned with whether, as a matter of fact, those acts were of such a nature as to be likely to endanger life.**

**It is important you do not work backwards in considering this element in the aftermath and reason that if death resulted from the defendant's actions then those actions must have been likely to endanger life. That would be illogical because, as is well known, fatal tragedies can occur in apparently benign and unlikely circumstances. To avoid such an error you may be assisted by picturing the scene as if you had been an observer watching the events unfolding, including the physical actions of the defendant which caused the death. Ask yourself, were those physical actions of such a nature as to be likely to endanger human life?**

[Here review the main issues of fact the jury need to resolve in deciding this element.]

**If you are not satisfied beyond reasonable doubt that the acts of the defendant which you find to have caused death were of such a nature as to be likely to endanger human life then a critical element of the murder charge would not have been established and you must find the defendant not guilty of murder [adjust as necessary if other forms of murder are being left to the jury].**

**If you are satisfied beyond reasonable doubt that the acts of the defendant which you find to have caused death were of such a nature as to be likely**

**to endanger human life then element 5 would be established. If you are likewise satisfied that all of the other elements have been proved beyond reasonable doubt, then you would convict the defendant of murder [if provocation/diminished responsibility arise in this case - unless you conclude the defence of provocation/diminished responsibility operates to reduce what would be murder to manslaughter. I will now turn to that defence ...here move to direct the jury re provocation/diminished responsibility.].**

## Appendix A: Elements of Murder/Manslaughter

R v .....

	<b>Felony Murder</b>	<b>Manslaughter</b>
	To prove murder the prosecution must prove all of these four elements beyond reasonable doubt:	To prove manslaughter the prosecution must prove all of these three elements beyond reasonable doubt:
<b>Death</b>	(1) [x] is dead; and	(1) [x] is dead; and
<b>Causation</b>	(2) the defendant caused [x]'s death; and	(2) the defendant caused [x]'s death; and
<b>Unlawfulness</b>	(3) the defendant did so unlawfully (that is, any defences are excluded beyond a reasonable doubt); and	(3) the defendant did so unlawfully (that is, any defences are excluded beyond a reasonable doubt).
<b>Unlawful Purpose</b>	(4) the defendant did the act(s) which caused death in the prosecution of an unlawful purpose; and	
<b>Life Endangering</b>	(5) the act(s) was (were) of such a nature as to be likely to endanger human life.	

## Appendix B: Elements of Felony Murder/Murder with Intent/Manslaughter

*R v* .....

<b>Felony Murder</b>	<b>Murder with intent</b>	<b>Manslaughter</b>
To prove felony murder the prosecution must prove all of these five elements beyond reasonable doubt:	To prove murder with intent the prosecution must prove all of these four elements beyond reasonable doubt:	To prove manslaughter the prosecution must prove all of these three elements beyond reasonable doubt:
(1) [x] is dead; and	(1) [x] is dead; and	(1) [x] is dead; and
(2) the defendant caused [x]'s death; and	(2) the defendant caused [x]'s death; and	(2) the defendant caused [x]'s death; and
(3) the defendant did so unlawfully (that is, any defences are excluded beyond a reasonable doubt); and	(3) the defendant did so unlawfully (that is, any defences are excluded beyond a reasonable doubt); and	(3) the defendant did so unlawfully (that is, any defences are excluded beyond a reasonable doubt).
(4) the defendant did the act(s) which caused death in the prosecution of an unlawful purpose; and	(4) at the time of the act(s) which caused death, the defendant intended to kill or to do grievous bodily harm to [x].	
(5) the act(s) was (were) of such a nature as to be likely to endanger human life.		