

DB#10 Error of Law

Directions: Read the case *White v. United States* (below) and then complete the following sentence, “**The trial judge had made an error of law when he**” In other words, you are looking for the error of law that the trial judge made. Yes, there is an error of law. In your response to the question you will need to explain what the error of law is and why you believe that it is an error of law using both the facts of the case and the various laws. The laws are found under the heading “Laws to Consider,” - below after the facts of the case. Just do your best, don’t get too caught up in being exactly right, the discussion what I am interested in.

White v. United States

In 1953, Everett White was in his early sixties. “He never did much in his life, but he was always trying,” says George Blow, White’s attorney. White-haired, slightly paunchy, and extremely mild-mannered, White was an unlikely candidate for a murder conviction. “He was a very simple man, a very likeable fellow,” says Blow. If White’s uneventful life was notable for anything, it was his devotion to Bettie Brown, a lifelong friend of twenty years his senior.

White had divorced in 1930 and moved to the District of Columbia, down the street from Brown. One night White visited his friend during a snowstorm and fell ill. He ended up staying a month while Betty Brown nursed him through his pneumonia. For the next twenty-three years they rented rooms in the same house on the 1500 block of Massachusetts Avenue in Washington D.C. As Bettie Brown’s health began to fail, White looked after her, fixing up the house, cooking meals, running errands and keeping her company.

On Tuesday, May 26, 1953 at 7:40 A.M., firefighters responded to an alarm at the home of Bettie Brown and Everett White. Finding the house locked tight, they broke in through the front windows, back door and a skylight. They found Bettie Brown in bed in her first-floor room, dead. In the basement they found White face down in two inches of bloody water in a bathtub. He had several superficial stab wounds in his chest and neck

and was suffering from smoke inhalation. Firefighters carried White to the yard and revived him.

At the hospital, White told police sergeant Lionel Couture that he had awakened at approximately 7:00 A.M. and, smelling smoke, went to the basement to investigate. There, he said, a “tall bald-heading man” attacked him, stabbing him several times with a “long dagger.” White said he lost consciousness briefly, then dragged himself to the bathtub before losing consciousness again.

Later that day, after talking with fire investigators, Sergeant Couture returned to the hospital. He asked White why there appeared to be five separate fires throughout the house. White responded that the intruder must have set them. And how did the intruder get out of a completely locked house, Couture wanted to know. White said he had no explanation. Finally, Couture told White that pencils and an open box of stationery were found on the kitchen table. Had he been writing letters? White said no.

The next day, an acquaintance of White’s gave the police a letter she had just received. The envelope was postmarked Washington, D.C. May 26 – 12:30 P.M. – 1953. The letter was from Everett White.

Tuesday A.M. Please notify W.T. Thompson, Fredericksburg, Virginia, of Miss Bettie Brown’s death. A fine good lady, a true friend to me. We both want it this way. Good-bye my friend, Everett. Please have my ashes thrown on the Chesapeake Bay

At the bottom of the page was the word “Over.” Then on the other side: “The inclosed [sic] is for flowers for her.” In the envelope were two twenty-dollar bills.

When confronted with the evidence, White admitted that he wrote the letter. He explained that he had gone to check on Bettie Brown around midnight the night before the fire and found she died in her sleep. He said he became so despondent that he contemplated suicide, wrote the letter, and posted it right away. White insisted, however, that by morning he had changed his mind. He stuck to his story of being awakened by the smell of smoke and then attacked by the strange intruder.

White was charged with arson and the first-degree murder of Bettie Brown. At his trial, a doctor testified without contradiction that Bettie Brown had died of smoke inhalation and could not have been dead seven hours before the fire, as White claimed. White

took the stand in his own defense. Upon cross-examination, he conceded that he and Bettie Brown had been threatened with eviction several times, including the day before the fire, and that they both feared being institutionalized. Still, he did not budge from his account of the intruder.

The judge submitted the case to the jury on two counts: arson and murder. On the second count, the judge instructed the jury it could find White guilty of murder in either the first or the second degree. The jury returned a verdict of guilty of arson and second degree murder. The verdict said nothing about the first-degree charge. The judge sentenced White to one to three years' imprisonment for arson and five to twenty years' imprisonment for murder in the second degree.

Public defender George Blow was assigned to handle White's appeal. It was his first big criminal case. He searched meticulously through White's trial record looking for what every appellate attorney hopes to find: **an error in trial procedure requiring reversal**. Blow found what he believed to be such an error, but the consequences of raising it were frightening.

The trial judge had made a mistake when he ...

THE LAW TO CONSIDER

First Degree Murder : First degree murder occurs when the killing is committed with malice aforethought and a premeditated intent to kill.

Second Degree Murder: Second degree murder occurs when the killing is with malice aforethought but without deliberation and premeditation.

Deliberate and premeditated: "Deliberate" means determined after careful thought and weighing the consequences. "Premeditated" means considered beforehand.

The law does not try to measure in units of time the length of time during which the thought must be pondered before it can ripen into an intent to kill that is truly deliberate and premeditated. The time will vary with different individuals and different circumstances.

The true test is not the duration of time but the extent of the reflection. A cold, calculated decision may be arrived at in a short time, but a mere unconsidered rash

impulse will not amount to deliberation and premeditation, even though it includes intent to kill.

Arson: Arson is the willful and malicious burning of a dwelling. Killing in the course of arson is classified as first degree murder.