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Criminal Law--First Degree Murder in Ohio-- Requirement of Intent to Kill

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**CRIMINAL LAW — FIRST DEGREE MURDER IN OHIO —
REQUIREMENT OF INTENT TO KILL**

The defendant, while attempting to rob the decedent, killed him by striking him on the head with a stick. The defendant was convicted of first degree murder. The Ohio Supreme Court, reversing the conviction, held that there was not evidence to justify finding an intent to kill beyond a reasonable doubt, and that such evidence is necessary to sustain a conviction of first degree murder under Ohio General Code Section 12400,¹ although the killing occurred in an attempt to rob.²

This decision is in accord with earlier holdings³ regarding the requirement of actual intent to kill as an element of first degree murder in Ohio. However, the case of *State v. Salter*⁴ cast some doubt on this requirement. True, in that case the court *said* that Section 12400 requires an intent to kill as an element of first degree murder. But the court sustained a conviction thereunder although the evidence did not seem to justify a conclusion of intent to kill beyond a reasonable doubt. The importance of the principal case lies in its clear adherence to the rule advanced in the earlier decisions.

MARSHALL I. NURENBERG

¹ "Whoever, purposely, and either of deliberate and premeditated malice, or by means of poison, or in perpetrating or attempting to perpetrate rape, arson, robbery or burglary, kills another is guilty of murder in the first degree"

² *State v. Farmer*, 156 Ohio St. 214, 102 N.E.2d 11 (1951).

³ *Robbins v. State*, 8 Ohio St. 131 (1857); *Turk v. State*, 48 Ohio App. 489, 194 N.E. 425, *aff'd* 129 Ohio St. 245, 194 N.E. 453 (1935).

⁴ 149 Ohio St. 264, 78 N.E.2d 575 (1948).

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