Murder and attempted murder

Law

1. "Murder is constituted by any wilful act causing the destruction of life, whether wickedly (*Drury v HM Advocate* 2001 SLT 1013 (court of five judges)) intended to kill, or displaying such wicked recklessness as to imply a disposition depraved enough to be regardless of consequences." (Macdonald, Criminal Law, 5th ed, 89; cf *Broadley v HM Advocate* 1991 JC 108, 111 (opinion of the court). *HM Advocate v Purcell* [2007] HCJ 13, 2008 JC 131; *Petto v HM Advocate* [2011] HCJAC 80, 2012 JC 105)

2. The murderous intention of the accused may be ascertained from the accused's admissions, or it may be inferred from the normal interpretation which is placed on human conduct and its motivation. Even if wicked intention (*Drury v HM Advocate*, (court of five judges)) to kill is not proved, an accused may still be found guilty of murder if the accused's actions demonstrate a wicked recklessness. Depending on the precise evidence of the accused's actings, wicked recklessness may be inferred from the nature of the assault or the severity of the injuries inflicted, or the surrounding circumstances (Stair Memorial, at paragraphs 267-268. *HM Advocate v Purcell*; *Petto v HM Advocate*). "Wicked recklessness is recklessness so gross that it indicates a state of mind which falls to be treated as wicked and depraved as the state of mind of a deliberate killer" (*Scott v HM Advocate* 1996 JC 1, 5 (opinion of the court). *HM Advocate v Purcell*; *Petto v HM Advocate*). Wicked recklessness is determined objectively (*Broadley v HM Advocate* 1991 JC 108, 114 per Lord Justice Clerk Ross).

3. It follows from the definition of murder quoted above that the Crown does not require to prove that the accused had a motive to murder or that the killing was premeditated (*HM Advocate v Rutherford* 1947 JC 1, 6 per Lord Justice General Cooper).

4. An act of wicked recklessness which causes loss of life may give rise to a charge of murder, although it is not directed against any particular person. This statement of the law is consistent with wicked recklessness being objectively determined (Stair Encyclopaedia, supra, paragraph 269).

5. Since the test for distinguishing murder and culpable homicide is objective, in certain circumstances at a murder trial, the judge has a duty to withdraw the issue of culpable homicide from the jury (*Broadley*).

6. Attempted murder is just the same as murder in the eyes of our law, but for the one vital distinction, that the killing has not been brought off and the person attacked has escaped with their life (*Cawthorne v HM Advocate* 1968 JC 32, 36 per Lord Justice General Clyde).

7. In a charge of attempted murder if the jury wish to return a verdict of guilty under provocation the correct verdict is guilty of assault under provocation (*Brady v HM Advocate* 1986 JC 68, 76-77 per Lord Justice Clerk Ross).

In proceedings for crimes committed on or after 25 June 2012, diminished responsibility is only relevant to a charge of murder (see section 51B of the 1995 Act and section 171 of the Criminal Justice and Licensing (Scotland) Act 2010 which abolished the common law on diminished responsibility). However, if the conduct which gives rise to the proceedings took place before 25 June 2012, the common law plea of diminished responsibility is still relevant. It is not free from controversy that diminished responsibility applied to attempted murder at common law although an appeal court was prepared to accept that it did in *Kerr v HM Advocate* 2011 SLT 430.

In a charge of murder, if diminished responsibility is established, the correct verdict is guilty of culpable homicide. In a charge of attempted murder diminished responsibility is only possibly relevant if the crime was committed before 25 June 2012. If diminished responsibility is established, the appropriate verdict is guilty of assault, with or without aggravations, by reason of diminished responsibility (*Kerr v HM Advocate* 2011 SLT 430).

8. While defining "assault" where that term appears in a murder charge may introduce an unnecessary complication (*Drury v HM Advocate*, at paragraph [10]) there are circumstances in which it is necessary to do so. These would arise where it would be open to the jury on the evidence to delete all reference to homicide and to convict of an assault (*Touati v HM Advocate*, [2008] HCJAC 73, 2008 JC 214 where defence counsel had invited the jury to return a verdict of guilty of assault).

9. Where a conviction for murder is sought against more than one accused on the basis of concert, the trial judge must direct the jury on the possibility of their convicting any of them of culpable homicide, if, in the circumstances, such a verdict could reasonably be returned (*McKinnon v HM Advocate* 2003 JC 29, *Touati v HM*

Advocate, *Ferguson v HM Advocate* 2009 SLT 67, *Hopkinson v HM Advocate* [2009] HCJAC 9, 2009 SLT 292, *Woodside v HM Advocate* [2009] HCJAC 19, 2009 SCCR 350).

10. In most cases of homicide it is unnecessary to give the jury any directions on causation, because how the deceased died is usually not in dispute. But where an issue of causation is raised, such as a novus actus interveniens, it is sufficient to say that in law the accused's act need not be the sole cause, or even the main cause, of the death. It is enough if the accused's act contributed significantly or materially to it (*Finlayson v HM Advocate* 1979 JC 33, *Malone v HM Advocate* 1988 SCCR 498, *Johnston v HM Advocate* [2009] HCJAC 38, 2009 JC 227 at paragraph [55]).

11. It is not a defence to murder or culpable homicide that a complainer consented; *HM Advocate v Rutherford* 1947 JC 1; *Sutherland v HM Advocate* 1994 JC 62. Generally speaking, in Scots law it is not a defence to assault that the complainer consented; *Smart v HM Advocate* 1975 JC 30; *cf,* a currently embargoed pre-trial opinion of 27 June 2024 of a court comprising also the Lord Justice Clerk (Dorrian) and Lord Matthews delivered by the Lord Justice General (Carloway) at paragraphs [23] to [25]. Judges will find the opinion in the T drive "Appeal opinions-pre trial."

See also chapters on **CULPABLE HOMICIDE** and **CAUSATION.**

Possible forms of direction on murder and attempted murder

Murder

[**Where appropriate**] In this case, you will see the charge begins with the word 'assault.' An assault is an attack on another person carried out with evil intent, which simply means that the attack was deliberate. Accidental or careless contacts are not assaults. The assault is said to have caused the death of the deceased and is said to amount to the crime of murder.

The crime of murder involves the unlawful killing of another person, either wickedly intending to kill the person, or acting in a way that shows wicked recklessness as to whether the other person lives or dies. In the second formulation, wicked recklessness, there must have been an assault which was intended to injure.

Proof of motive is not necessary, but it must be shown that the accused either had a wicked intention of killing the other person, or that the accused intended to cause physical injury and acted with wicked recklessness as to whether the other person lived or died.

A word about each of these requirements.

Intention is a state of mind, to be inferred or deduced from what has been proved to have been said or done. “Wicked” in the context of intention has no particular legal significance. It just has its ordinary meaning. Intending to kill someone is obviously wicked.

“Wicked recklessness” is also something to be inferred from what has been proved to have been said and done, and from the nature of the attack and the severity of the injuries inflicted, and the surrounding circumstances. It is acting in such a way as to show total indifference as to whether or not the other person's death results. It involves committing an attack of such severity that it could easily have led to death and being completely indifferent to whether that might result. It’s a wicked disregard for the consequences. There must also have been an intention to cause injury.

For the Crown to prove this charge, you would need to be satisfied:

1. that the accused killed (the person named in the charge)
2. in doing so the accused acted either:

- with a wicked intention to cause death, or
- in a way which showed wicked recklessness as to (the person named in the charge)’s fate.

Where mitigating factor pleaded: provocation

In this case the defence have argued that the accused was provoked into acting as he/she/they did, and this negates the “wicked” element in the conduct. They say that excludes the wicked intent or the wicked recklessness of the consequences required for murder. They say the accused should be convicted of culpable homicide.

Culpable homicide is causing someone’s death by an unlawful act which is culpable or blameworthy. It’s killing someone where the accused didn’t have the wicked intention to kill, and didn’t act with such wicked recklessness as to make the accused guilty of murder. The unlawful act must be intentional or reckless. But the recklessness is less extreme than what’s required for murder.

Provocation may be an excuse for killing someone, but it never justifies it. It doesn’t lead to an acquittal, but to a conviction of culpable homicide. If there’s provocation, that excludes the element of wickedness in the accused’s intention or reckless

conduct. So, whether your verdict is one of murder or of culpable homicide will depend on whether you thought the accused was acting under provocation.

Provocation can arise in certain circumstances only, broadly where the accused has been the subject of a physical attack, or where the accused has learned of another person's infidelity, where fidelity is to be expected. There are also rules about what amounts to provocation. I want to explain these now.

[Take in relevant parts of rules on provocation]

(in cases of disclosed sexual impropriety)

Provocation recognises human frailty, that some people can't control their passions, and act through weakness, not wickedness. Learning of another's sexual infidelity may cause loss of self-control, and a violent reaction, leading to killing in hot blood. That could deprive a killing of the wickedness that's essential for murder.

That could arise only where:

1. Faithfulness in sexual matters was to be expected in the relationship between the accused and the deceased. Whether such a bond existed depends on the nature of their relationship, its history, whether it had ended or still continued. Without a mutual expectation of sexual fidelity there can be no provocation.
2. The deceased's sexual conduct broke, and was seen by the accused as breaking, that bond of sexual fidelity. It must have been improper, otherwise there can be no provocation.
3. Discovering the deceased's behaviour caused the accused immediately to lose self-control, and the accused killed in the heat of the moment. The accused must have reacted in hot blood, otherwise there can be no provocation.
4. An ordinary person would have acted as the accused did. If you thought the accused's reaction was more extreme than what would be expected of the ordinary person facing that situation, there can be no provocation.

Remember this, in such cases of partner-killing, culpable homicide isn't the only verdict available. There can be a verdict of murder. If the answer to any of these four issues is "no", your verdict should be guilty of murder. But if you thought the answer to each was "yes", or if you are left with a reasonable doubt about whether the Crown has excluded provocation, your verdict should be guilty of culpable homicide.

Where mitigating factor pleaded: diminished responsibility (in a charge of murder under section 51B)

In this case the defence have argued that at the time of the incident the accused was of diminished responsibility, and this negates the "wicked" element in the accused's conduct. They say that excludes the wicked intent or the wicked recklessness of the consequences required for murder. They say the accused should be convicted of culpable homicide.

Diminished responsibility may be an excuse for killing someone, it never justifies it. It doesn't lead to an acquittal, but to a conviction of culpable homicide. If there's diminished responsibility that excludes the element of wickedness in the accused's intention or reckless conduct. So, whether your verdict is one of murder or of culpable homicide will depend on whether you thought the accused was of diminished responsibility."

[Take in directions on diminished responsibility] – for crimes committed on or after 25 June 2012 see the chapter on diminished responsibility which offers a direction apt to such cases under section 51B of the 1995 Act .

If dealing with a crime of murder committed before 25 June 2012, a specimen direction for diminished responsibility at common law is provided at the end of this chapter. If relevant, it can be amended to fit attempted murder. The effect of the jury finding diminished responsibility established would be limited to the deletion of the averment of attempted murder.]

Attempted murder

"Charge is a charge of attempted murder. To define attempted murder I first have to define murder.

The crime of murder involves the unlawful killing of another person, wickedly intending to kill that person, or acting in such a way as to show wicked recklessness as to whether the other person lives or dies. In the second formulation, wicked recklessness, there must have been an assault which was intended to injure.

Proof of motive is not necessary, but it must be shown that the accused either had a wicked intention of killing the other person, or that the accused intended to cause physical injury and acted with wicked recklessness as to whether the other person lived or died.

A word about each of these requirements.

Intention is a state of mind, to be inferred or deduced from what has been proved to have been said or done. “Wicked” in the context of intention has no particular significance. It just has its ordinary meaning. Intending to kill someone is obviously wicked.

“Wicked recklessness” is also something to be inferred from what’s been proved to have been said and done, and from the nature of the attack and the severity of the injuries inflicted, and the surrounding circumstances. It’s acting in such a way as to show total indifference as to whether or not the other person's death results. It involves committing an attack of such severity that it could easily have led to death, being completely indifferent to whether that might result. It is a wicked disregard for the consequences. There must also have been an intention to cause injury.

The only difference between murder and attempted murder is that death did not result.

For the Crown to prove this charge, you would need to be satisfied:

1. that the accused attacked (the person named in the charge)
2. in doing so the accused acted either:

- with a wicked intention to cause death, or
- in a way which showed wicked recklessness as to the (the person named in the charge’s) fate.

3. (the person named in the charge) survived the attack.
4. (if aggravation libelled) the attack resulted in

- a severe injury (to the person named in the charge)
- permanent disfigurement (to the person named in the charge)
- permanent impairment (to the person named in the charge)
- danger to the life of (the person named in the charge)

Where mitigation factor pleaded: provocation

In this case the defence have argued that the accused was provoked into acting as he/she/they did, and this negates the “wicked” element in the conduct. They say that

excludes the wicked intent or the wicked recklessness of the consequences required for attempted murder. They say the accused should be convicted of assault.

[Take in relevant portions of directions on assault]

Provocation may be an excuse for attempting to kill someone, but it never justifies it. It doesn't lead to an acquittal, but to a conviction of assault. If there's provocation that excludes the element of wickedness in the accused's intention or reckless conduct. In that case your verdict would be guilty of assault (under provocation). So, whether your verdict is one of attempted murder or of assault will depend on whether you thought the accused was acting under provocation.

Disclosed sexual impropriety

Provocation can arise in certain circumstances only, broadly where the accused has been the subject of a physical attack, or where the accused has learned of another person's infidelity, where fidelity is expected. There are also rules about what amounts to provocation. I want to explain these now.

[Take in relevant directions on provocation]

Possible form of direction on diminished responsibility at common law

Please note that this can now only apply to a crime of murder, and possibly attempted murder, committed before 25 June 2012.

"In this case the defence raise the issue of diminished responsibility. They say that, if the accused killed the deceased, the accused was not fully responsible for his/her/their actions because of his/her/their mental condition. So the criminal quality of the conduct is reduced.

The law presumes that if you are of sound mind, you are responsible for your actions. But sometimes your mind can be affected, permanently or temporarily, so that it works abnormally. The law recognises this and as a result your responsibility for what you have done is diminished. That can arise if your ability to control your behaviour is substantially impaired by reason of abnormality of mind.

The law sets out that if the ability of an accused to determine or control conduct for which the accused would otherwise be convicted of murder/attempted murder was,

at the time of the conduct, substantially impaired by reason of abnormality of mind, then that person is to be convicted of culpable homicide/assault on the grounds of diminished responsibility.

The courts have determined that the abnormality must be a recognised mental disorder.

Abnormality of mind includes mental illness, personality disorder and learning disability. However, it covers more than this. If you are afflicted, you might:

- perceive things differently from the normal person
- suffer from delusions
- lose the ability to judge rationally between right and wrong.

But some things do not give rise to diminished responsibility, such as:

- commonly experienced emotions like anger, jealousy, short temper,
- an unusually excitable nature,
- lack of self-control,
- and psychopathic personality disorder.

[Where appropriate add in any necessary direction on intoxication.

For the situation where there both a recognised abnormality of mind and intoxication may be in play, see the directions at the conclusion of the chapter "Diminished responsibility" which offers a style for diminished responsibility under section 51B of the 1995 Act and thus does not exclude psychopathic personality disorder.]

While the Crown has to prove beyond reasonable doubt that the accused committed this crime, the burden of proving diminished responsibility is on the accused. The accused has to prove that only on a balance of probabilities. Proof on a balance of probabilities is a lower burden than beyond reasonable doubt. It means it is more probable or more likely than not. If, on balance, you thought it was more probable than not that the accused was suffering from diminished responsibility at the time the crime was committed, that would be enough. The accused does not need to prove that by corroborated evidence.

To establish diminished responsibility, the defence must prove four things:

1. That at the time of committing the crime the accused was suffering from a mental abnormality.
2. That mental abnormality is scientifically or medically recognised.
3. Whether permanently or temporarily, it must have affected the accused's mind substantially, so that it did not work like the mind of a normal adult: i.e., there must have been something far wrong with the accused, which affected the way he/she/they acted.
4. As a result of that, the accused's ability to determine and control his/her/their behaviour was substantially impaired.

(Where evidence of diminished responsibility sufficient in law – murder cases)

"In this case, there is enough evidence in law to show that the accused was of diminished responsibility at the time of the crime. But whether you decide that was so depends on how you view the evidence about this. The defence say you should hold diminished responsibility has been established. It relies on these factors… If you decide that diminished responsibility has been established, the result is not an acquittal, but a reduction in the criminal quality of the act. Your verdict would be guilty of culpable homicide. On the other hand, the Crown says you should not reach that conclusion. It relies on these factors… If you decide that the accused was not suffering from diminished responsibility, your verdict would be guilty of murder if you are otherwise satisfied that the crime amounts to murder as I have defined it."

- ***(Where evidence of diminished responsibility sufficient in law – attempted murder cases)***

"In this case, there is enough evidence in law to show that the accused was of diminished responsibility at the time of the crime. But whether you decide that was so depends on how you view the evidence about this. The defence say you should hold diminished responsibility has been established. It relies on these factors … If you decide that diminished responsibility has been established, the result is not an acquittal, but a reduction in the criminal quality of the act. Your verdict would be guilty of the charge but you would delete the words "and did attempt to murder him." On the other hand, the Crown says you should not reach that conclusion. It relies on these factors…. If you decide that the accused was not suffering from diminished responsibility, your verdict would be guilty of attempted murder if you are otherwise satisfied that the assault was murderous as I have defined it."

- ***(Withdrawal of issue of diminished responsibility)***

"I direct that, in law, diminished responsibility does not arise for your decision in this case and must play no part in your deliberations."

Possible forms of direction on murder and attempted murder

Murder

[**Where appropriate**] In this case, you will see the charge begins with the word 'assault.' An assault is an attack on another person carried out with evil intent, which simply means that the attack was deliberate. Accidental or careless contacts are not assaults. The assault is said to have caused the death of the deceased and is said to amount to the crime of murder.

The crime of murder involves the unlawful killing of another person, either wickedly intending to kill him, or acting in a way that shows wicked recklessness as to whether the other person lives or dies. In the second formulation, wicked recklessness, there must have been an assault which was intended to injure.

Proof of motive is not necessary, but it must be shown that the accused either had a wicked intention of killing the other person, or that he intended to cause physical injury and acted with wicked recklessness as to whether the other person lived or died.

A word about each of these requirements.

Intention is a state of mind, to be inferred or deduced from what has been proved to have been said or done. "Wicked" in the context of intention has no particular legal significance. It just has its ordinary meaning. Intending to kill someone is obviously wicked.

"Wicked recklessness" is also something to be inferred from what has been proved to have been said and done, and from the nature of the attack and the severity of the injuries inflicted, and the surrounding circumstances. It is acting in such a way as to show total indifference as to whether or not the other person's death results. It involves committing an attack of such severity that it could easily have led to death and being completely indifferent to whether that might result. It's a wicked disregard for the consequences. There must also have been an intention to cause injury.

For the Crown to prove this charge, you would need to be satisfied:

1. that the accused killed (the person named in the charge)
2. in doing so he acted either:

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Where mitigation factor plead: provocation

In this case the defence have argued that the accused was provoked into acting as he did, and this negates the "wicked" element in his conduct. They say that excludes the wicked intent or the wicked recklessness of the consequences required for murder. They say the accused should be convicted of culpable homicide.

Culpable homicide is causing someone's death by an unlawful act which is culpable or blameworthy. It's killing someone where the accused didn't have the wicked intention to kill, and didn't act with such wicked recklessness as to make him guilty of murder. The unlawful act must be intentional or reckless. But the recklessness is less extreme than what's required for murder.

Provocation may be an excuse for killing someone, but it never justifies it. It doesn't lead to an acquittal, but to a conviction of culpable homicide. If there's provocation, that excludes the element of wickedness in the accused's intention or reckless conduct. So, whether your verdict is one of murder or of culpable homicide will depend on whether you thought the accused was acting under provocation.

Provocation can arise in certain circumstances only, broadly where the accused has been the subject of a physical attack, or where he's learned of another person's infidelity, where fidelity is to be expected. There are also rules about what amounts to provocation. I want to explain these now.

[Take in relevant parts of rules on provocation]

(in cases of disclosed sexual impropriety)

Provocation recognises human frailty, that some people can't control their passions, and act through weakness, not wickedness. Learning of another's sexual infidelity may cause loss of self-control, and a violent reaction, leading to killing in hot blood. That could deprive a killing of the wickedness that's essential for murder.

That could arise only where:

1. Faithfulness in sexual matters was to be expected in the relationship between the accused and the deceased. Whether such a bond existed depends on the nature of their relationship, its history, whether it had ended or still continued. Without a mutual expectation of sexual fidelity there can be no provocation.
2. The deceased's sexual conduct broke, and was seen by the accused as breaking, that bond of sexual fidelity. It must have been improper, otherwise there can be no provocation.
3. Discovering the deceased's behaviour caused the accused immediately to lose his self-control, and he killed in the heat of the moment. He must have reacted in hot blood, otherwise there can be no provocation.
4. An ordinary person would have acted as the accused did. If you thought his reaction was more extreme than what would be expected of the ordinary person facing that situation, there can be no provocation.

Remember this, in such cases of partner-killing, culpable homicide isn't the only verdict available. There can be a verdict of murder. If the answer to any of these four issues is "no", your verdict should be guilty of murder. But if you thought the answer to each was "yes", or if your left with a reasonable doubt about whether the Crown has excluded provocation, your verdict should be guilty of culpable homicide.

Mitigation: diminished responsibility

In this case the defence have argued that at the time of the incident the accused was of diminished responsibility, and this negates the "wicked" element in his conduct. They say that excludes the wicked intent or the wicked recklessness of the consequences required for murder. They say the accused should be convicted of culpable homicide.

Diminished responsibility may be an excuse for killing someone, it never justifies it. It doesn't lead to an acquittal, but to a conviction of culpable homicide. If there's diminished responsibility that excludes the element of wickedness in the accused's intention or reckless conduct. So, whether your verdict is one of murder or of culpable homicide will depend on whether you thought the accused was of diminished responsibility."

[Take in directions on diminished responsibility]

Attempted murder

“Charge is a charge of attempted murder. To define attempted murder I first have to define murder.

The crime of murder involves the unlawful killing of another person, wickedly intending to kill him, or acting in such a way as to show wicked recklessness as to whether the other person lives or dies. In the second formulation, wicked recklessness, there must have been an assault which was intended to injure.

Proof of motive is not necessary, but it must be shown that the accused either had a wicked intention of killing the other person, or that he intended to cause physical injury and acted with wicked recklessness as to whether the other person lived or died.

A word about each of these requirements.

Intention is a state of mind, to be inferred or deduced from what has been proved to have been said or done. “Wicked” in the context of intention has no particular significance. It just has its ordinary meaning. Intending to kill someone is obviously wicked.

“Wicked recklessness” is also something to be inferred from what’s been proved to have been said and done, and from the nature of the attack and the severity of the injuries inflicted, and the surrounding circumstances. It’s acting in such a way as to show total indifference as to whether or not the other person's death results. It involves committing an attack of such severity that it could easily have led to death, being completely indifferent to whether that might result. It is a wicked disregard for the consequences. There must also have been an intention to cause injury.

The only difference between murder and attempted murder is that death did not result.

For the Crown to prove this charge, you would need to be satisfied:

1. that the accused attacked (the person named in the charge)
2. in doing so he acted either:

- with a wicked intention to cause death, or
- in a way which showed wicked recklessness as to the (the person named in the charge’s) fate.

3. (the person named in the charge) survived the attack.
4. (if aggravation libelled) the attack resulted in

- a severe injury (to the person named in the charge)
- permanent disfigurement (to the person named in the charge)
- permanent impairment (to the person named in the charge)
- peril to life of (the person named in the charge)

Provocation

In this case the defence have argued that the accused was provoked into acting as he did, and this negates the "wicked" element in his conduct. They say that excludes the wicked intent or the wicked recklessness of the consequences required for attempted murder. They say the accused should be convicted of assault.

[Take in relevant portions of directions on assault]

Provocation may be an excuse for attempting to kill someone, but it never justifies it. It doesn't lead to an acquittal, but to a conviction of assault. If there's provocation that excludes the element of wickedness in the accused's intention or reckless conduct. In that case your verdict would be guilty of assault (under provocation). So, whether your verdict is one of attempted murder or of assault will depend on whether you thought the accused was acting under provocation.

Disclosed sexual impropriety

Provocation can arise in certain circumstances only, broadly where the accused has been the subject of an physical attack, or where he's learned of another person's infidelity, where fidelity is expected. There are also rules about what amounts to provocation. I want to explain these now.

[Take in relevant directions on provocation]

Diminished responsibility

In this case the defence have argued that at the time of the incident the accused was of diminished responsibility, and this negates the "wicked" element in his conduct. They say that excludes the wicked intent or the wicked recklessness of the

consequences required for attempted murder. They say the accused should be convicted of assault.

Diminished responsibility may be an excuse for attempting to kill someone, but it never justifies it. It doesn't lead to an acquittal, but to a conviction of assault. If there's diminished responsibility that excludes the element of wickedness in the accused's intention or reckless conduct. In that case your verdict would be guilty of assault (by reason of diminished responsibility). So, whether your verdict is one of attempted murder or of assault will depend on whether you thought the accused was of diminished responsibility."

[Take in directions on diminished responsibility]