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In Re Ests. of Swansons: The Slayer Statute and the Impact of a Guilty Plea on Collateral Estoppel in Montana

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Jeanette Swanson told the police she shot and killed her two young children to protect them and send them to heaven where they would be safe. Her attending doctors all agreed she suffered from schizoaffective disorder, agnosia, depression, and psychosis. After Jeanette pleaded guilty to two counts of deliberate homicide, the district court committed her to the custody of the Department of Public Health and Human Services for treatment in lieu of imprisonment. But the story does not end there.

Following her criminal trial, the issue arose as to whether Jeanette, as her children’s killer, would nevertheless be allowed to collect from their estates. The children’s father, Gene Swanson, petitioned the district court to forfeit Jeanette’s rights of inheritance pursuant to Montana’s “Slayer Statute,” which provides that a person who kills another “feloniously and intentionally” may not inherit from the decedent’s estate. Relying on her guilty plea to deliberate homicide, the district court agreed with Gene, holding that Jeanette forfeited her inheritance rights as a matter of law. However, the Montana Supreme Court later reversed and remanded the district court’s decision.

The importance of In re Estates of Swansons is not merely confined to the issue of whether a killer with an adjudicated mental illness maintains inheritance rights to a decedent’s estate. Rather, this case is notable for how the Court, when faced with a statute that seemed to put this case to a close, arrived at just the opposite conclusion. Given Jeanette’s guilty plea to deliberate homicide—a statutory felony with the requisite mental state of “purposely” and “knowingly”—the Slayer Statute’s requirements of a felonious and intentional killing might seem satisfied at first glance. The
Court found the opposite to be true, however, finding several ways in which the Slayer Statute's requirements had not necessarily been met. Moreover, it found her guilty plea in criminal court did not carry over into the subsequent civil proceeding to preclude her from litigating whether she acted feloniously and intentionally.

The purpose of this note is to examine how the Court was able to find that Jeanette's guilty plea to deliberate homicide did not automatically bar her inheritance rights under the Slayer Statute. First, the note discusses the Slayer Statute and highlights its relevant portions in In re Estates of Swansons. Second, the note presents an overview of collateral estoppel and its applicability to nolo contendere pleas and guilty pleas. Third, it presents the reasoning set forth by the majority and the dissent. Lastly, the note provides an analysis of the Court's reasoning, and explores how the Court was able to rule in Jeanette's favor notwithstanding the plain language of the Slayer Statute that appeared to call for just the opposite ruling.

II. The Slayer Statute

A. Montana's Slayer Statute

Montana Code Annotated § 72-2-813 is commonly referred to as the State’s “Slayer Statute.” It provides that an individual who kills another “feloniously and intentionally” forfeits all benefits from the decedent’s estate. Its premise is straightforward and grounded in the long-standing common law principal that criminals should not be permitted to profit from their wrongdoing. The Slayer Statute derives from the Uniform Probate Code § 2-803, and it was adopted by the Montana Legislature in 1991. The Slayer Statute’s policy is also reflected in Montana Code Annotated § 1-3-208: “A person may not take advantage of the person’s own wrong.”

In addition to requiring a felonious and intentional killing, the Slayer Statute bars a killer from collecting from the decedent’s estate if a judgment of conviction establishes that the convicted individual was the decedent’s killer. If no such conviction exists, the court can determine if, “under the preponderance of the evidence standard, the individual would be found criminally accountable for the felonious and intentional killing of the decedent.” The statute also provides that: “For the purposes of this section, a

11. Id. at 635.
12. Id.
13. Id. at 633 (citing In re Marriage of Kotecki, 10 P.3d 828 (Mont. 2000)).
14. Id.
16. Id.
felonious and intentional killing includes a deliberate homicide as defined in § 45-5-102 and a mitigated deliberate homicide as defined in § 45-5-103.”

B. The Slayer Statute’s Applicability to a Killer with a Mental Disease or Defect

It is unclear whether the Montana Slayer Statute allows a killer with an adjudicated mental illness to collect from a victim’s estate. Such a determination would necessarily turn on whether a killer who is incapable of controlling his actions or appreciating their criminality can nevertheless satisfy the felonious and intentional requirements of the statute. Prior to In re Estates of Swansons, Montana had never been forced to rule on the applicability of the Slayer Statute to a killer suffering from a mental illness. However, several courts outside Montana taking up the matter have held that such a killer does not lose inheritance rights because his actions likely do not conform to the statute’s requirements of criminality. While those out-of-state decisions concerning the slayer statute provide some guidance, issuing the same ruling in Montana is no easy task because of a few key differences in how Montana law addresses criminal defendants with a mental illness.

Montana law employs the term “mental disease or defect” when referring to a criminal defendant with a mental illness. Montana defines a mental disease or defect as “an organic, mental, or emotional disorder that is manifested by a substantial disturbance in behavior, feeling, thinking, or judgment to such an extent that the person requires care, treatment, and rehabilitation.” A defendant wishing to assert his innocence based on a mental disease or defect may put forth evidence of his mental condition to prove he did not have the requisite mental state of the offense. For example, the offense of deliberate homicide requires the defendant have a mental state of “purposely or knowingly.” Thus, a defendant who had in fact killed another person could nevertheless be found not guilty if the court found his mental disorder prevented him from carrying out the act in a purposely or knowingly manner.

Montana’s Slayer Statute does not expressly address killers afflicted with a mental illness; however, the killer’s mental illness for purposes of

17. Id. at § 72-2-813(10).
18. See e.g. Ford v. Ford, 512 A.2d 389 (Md. 1986); Est. of Ladd, 153 Cal. Rptr. 888 (Cal. 1979); In re Est. of Lupka, 289 N.Y.S.2d 705 (N.Y. 1968); In re Est. of Wirth, 298 N.Y.S.2d 565 (N.Y. 1969).
20. Id. at § 46-14-101(2)(a).
21. Id. at § 46-14-102.
22. Id. at § 45-5-102.
the Slayer Statute would likely take center stage in determining whether the Statute’s requirements of a felonious and intentional killing are met.\textsuperscript{23} Then again, interpreting felonious and intentional under the Slayer Statute is no easy task in the case of a killer with a mental illness. Montana’s criminal code defines \textit{a felony} as an offense in which the sentence imposed is death or imprisonment in excess of one year.\textsuperscript{24} Deliberate homicide easily fits this definition.\textsuperscript{25} However, in the case of a killer with a mental disease or defect, using the term “felony” to describe his crime might actually be a misnomer if he is not actually sentenced to imprisonment in excess of one year. While this type of defendant may plead guilty to deliberate homicide—a statutory felony—he may be placed in the custody of the Department of Health and Human Services instead of being sentenced to a correctional facility.\textsuperscript{26} On one hand, it could be argued that there is no felony if the defendant is committed to a mental facility and is not actually imprisoned in excess of one year. But on the other hand, defendants with a mental disease or defect may become eligible for a transfer to a correctional facility if found to no longer suffer from a mental disease or defect or if the mental disease or defect no longer prevents them from appreciating the criminality of their conduct.\textsuperscript{27} If that were to occur, it might be argued the criminal code’s definition of “felony” has suddenly been satisfied.

Examining slayer statute decisions from other states provides guidance in deciding whether a killer with a mental illness in Montana meets the felonious and intentional requirements, but it does not solve the problem entirely. \textit{Ford v. Ford} was a 1986 Maryland decision holding the State’s common law slayer rule did not apply to a killer suffering from a mental disease or defect:

\begin{quote}
[For a homicide to be ‘felonious’ in the context of the slayer’s rule, it must be a felony for which the killer is criminally responsible under Maryland’s criminal insanity test. Therefore, if a killer is ‘insane’ at the time he killed, the killing is not felonious in the contemplation of the slayer’s rule. If the killing is not felonious, even though it may be intentional, the rule does not apply.\textsuperscript{28}}
\end{quote}

While \textit{Ford} relied on the lack of criminal responsibility under its criminal code, a Montana civil court facing the same scenario could not so easily find a lack of criminal responsibility by doing the same. In Montana, the way a killer with a mental disease or defect is absolved of his actions is if the criminal court finds he did not possess the requisite mental state of the

\begin{footnotesize}
\textsuperscript{23} See \textit{id.} at § 72–2–813(7).
\textsuperscript{24} \textit{id.} at § 45–2–101(23).
\textsuperscript{26} \textit{id.} at § 46–14–312(2).
\textsuperscript{27} \textit{id.} at § 46–14–312(4).
\textsuperscript{28} 512 A.2d at 398.
\end{footnotesize}
offense for which he is charged.\textsuperscript{29} Thus, if such a killer in criminal court had either pleaded guilty or was nonetheless found guilty despite his mental disease or defect, a Montana civil court would have a difficult time finding a lack of criminal accountability the way the \textit{Ford} Court did.

On the other hand, \textit{In re Estates of Josephsons} was a decision in which the North Dakota Supreme Court faced a somewhat similar dilemma.\textsuperscript{30} The issue in that case was whether a minor who had killed his parents could have satisfied the felonious requirement when the State’s criminal code provided that a minor could not commit a felonious act.\textsuperscript{31} The \textit{In re Estates of Josephsons} Court chose to not be bound by the criminal code’s definition of felony and instead defined felonious as a wrongful or unlawful killing without legal excuse or justification.\textsuperscript{32} Though \textit{Ford} and \textit{In re Estates of Josephsons} might not provide a Montana court with a definitive answer to its interpretation problem, the comments of the \textit{Restatement (Third) of Property} recommend a possible departure from the criminal code when interpreting “felonious.” The comments suggest that “the terms ‘felonious’ and ‘intentional’ should be defined in light of the public policy to which the slayer rule is directed—to prevent the wrongdoer from profiting from the wrong.”\textsuperscript{33}

A related mental disease or defect interpretation issue arises with the Slayer Statute’s provision stating: After all right to appeal has been exhausted, a judgment of conviction establishing criminal accountability for the felonious and intentional killing of the decedent conclusively establishes the convicted individual as the decedent’s killer for the purposes of this section.”\textsuperscript{34} An individual with a mental disease or defect pleading guilty to deliberate homicide receives a criminal conviction under Montana law because no statute expressly provides otherwise. In form, this individual’s conviction of deliberate homicide appears to establish him as the killer for the purposes of the Slayer Statute. But in substance, it is unclear whether this conviction would establish the same definition of criminal accountability, as mentioned in the Slayer Statute.

III. AN OVERVIEW OF COLLATERAL ESTOPPEL AND ITS APPLICATION TO GUILTY PLEAS AND \textsc{nolo contendere} PLEAS

Collateral estoppel is considered a form of res judicata that bars parties from relitigating an issue in a second cause of action that has already been
litigated and determined in a prior lawsuit. The purpose of collateral estoppel is to "relieve parties of the cost and vexation of multiple lawsuits, conserve judicial resources, and, by preventing inconsistent decisions, encourage reliance on adjudication."

In Montana, collateral estoppel bars litigation of issues when the following three requirements are satisfied: "(1) [T]he issue decided in the prior adjudication is identical with the one presented in the action in question; (2) there was a final judgment on the merits; and (3) the party against whom the plea is asserted was a party or in privity with a party to the prior adjudication."

In Montana, to decide if there has been a final judgment on the merits, courts look to see if the issue was actually litigated and adjudged as shown on the face of the judgment. This analysis requires two things: first, that the issue was effectively raised in the pleadings or through development of the evidence and argument at trial or on motion; and, second, that the losing party had a "full and fair opportunity" procedurally, substantively, and evidentially to contest the issue in a prior proceeding.

If the prior case ended in a verdict, it is straightforward that there was a final judgment on the merits; however, if the prior case ended with a guilty plea, it is not so clear-cut. For example, if a defendant charged with arson takes the criminal case all the way to trial, putting forth evidence and calling witnesses, it is easy to see how a verdict would constitute a final judgment on the merits. After all, the defendant has already litigated the essential elements of the case in a court of law and a decision was rendered based upon a full presentation of the case. It is not so clear, however, whether a final judgment on the merits took place if the same defendant pleads guilty to the crime before the case is fully presented to the court. In that instance, the defendant had a full and fair opportunity to present his case, but one would be hard-pressed to say the issues of his case were effectively raised.

A *nolo contendere* plea and a guilty plea are the two types of pleas a subsequent civil case might confront. *Nolo contendere*, from the Latin "I do not wish to contend," is sometimes referred to as a "no contest" plea. Most jurisdictions do not consider a *nolo contendere* plea a factual admission that the defendant committed a crime, but rather a statement of unwillingness to contest the government's charges and willingness to accept the same punishment as a guilty person. A *nolo contendere* plea is not actual litigation under the doctrine of collateral estoppel because "[i]f the charges

are uncontested, they are necessarily unlitigated.” 41 Montana, like most states, recognizes a nolo contendere plea does not preclude the litigation of issues in subsequent civil proceedings. 42 However, whether a guilty plea should also preserve a defendant’s opportunity to litigate the issues of his case during a subsequent civil proceeding presents courts with a more difficult challenge. While Safeco held a nolo contendere plea did not collaterally estop the litigation of issues, 43 prior to In re Estates of Swansons Montana had never been forced to hold the same was true of a guilty plea. Putting a guilty plea and a nolo contendere plea on equal footing in a subsequent civil case may sound a bit drastic, but doing so is actually in accordance with the law in most states. 44 Just like nolo contendere pleas: [W]ith a guilty plea “no issues have been drawn into controversy by a full presentation of the case,” and the guilty plea “may reflect only a compromise or belief that paying a fine is more advantageous than litigation.” 45 Moreover, this finding would also conform to the Restatement (Second) of Judgments § 27: “[I]n the case of a judgment entered by confession, consent, or default, none of the issues is actually litigated.” 46

On the opposite side of the spectrum, the Supreme Court of Iowa has recognized a guilty plea as a final judgment on the merits and, thus, a bar to the litigation of issues in the subsequent case. 47 Iowa made this determination based on the requirement that a criminal court ascertain that a factual basis exists for the guilty plea:

Although the parties do not litigate the question of whether the accused committed each element constituting the crime, the effect of the factual basis rule is to require the existence of evidence sufficient to convince the trial court that the plea is founded on fact. Once a guilty plea is accepted, a judicial determination has thus been made with respect to the essential elements of the crime. We hold the factual basis requirement for guilty pleas is sufficient to meet the second requirement of our issue preclusion principle. We think a result is fair which precludes relitigation concerning an essential element of a crime when the accused has tendered a guilty plea, which necessarily admits the elements of the crime, and the court has ascertained that a factual basis exists for the plea and accepts it . . . . Although our holding is premised on the law of issue preclusion and therefore ostensibly inconsistent with the position adopted by the American Law Institute, we view our position as consis-

42. Safeco, 16 P.3d at 407.
43. Id.
45. Id. at 408 (citing Teitelbaum Furs, Inc. v. Dominion Ins. Co., 375 P.2d 439, 441 (Cal. 1962)).
46. Restatement (Second) of Judgments § 27 cmt. e (1982).
tent with the rationale underlying the actual litigation requirement of the Re-
statement. \(^{48}\)

Though Montana criminal courts have the same factual basis rule in
addition to numerous other safeguards for accepting a guilty plea, \(^{49}\) the
Montana Supreme Court has never recognized a guilty plea as a final judg-
ment on the merits for collateral estoppel purposes. Thus, with collateral
estoppel's second requirement not satisfied, a guilty plea from criminal
court likely will not bar the litigation of issues in a subsequent civil pro-
ceeding.

Though the guilty plea will not preclude issue litigation, in Montana, a
guilty plea may be admitted in a subsequent civil action as an admission
against the interest of the party making the plea. \(^{50}\) Furthermore, under the
Montana Rules of Evidence, Rule 803(22) provides: "Evidence of a final
judgment, entered after a trial or upon a plea of guilty (but not upon a plea
of nolo contendere) . . . is an exception to the hearsay rule." Thus, even if
the guilty plea does not bar the litigation of certain issues, it may still stand
as a damaging admission in the eyes of the court.

IV. THE IN RE ESTATES OF SWANSONS DECISION

A. Factual and Procedural Background

Jeanette Swanson shot and killed her two youngest children on August
26, 2002. \(^{51}\) Jeanette suffered from the delusion that someone wanted to
harm her children and that by shooting them she was sending them to
heaven where they would be protected. \(^{52}\) On October 17, 2002, Jeanette
pleaded guilty to two counts of deliberate homicide. \(^{53}\) The doctors who
examined her all agreed she had long been afflicted with schizoaffective
disorder, agnosia, depression, and psychosis. \(^{54}\) Thus, the State recom-

\(^{48}\) Id. at 295–296.
\(^{49}\) Under Montana Code Annotated § 46–12–212, a criminal court cannot accept a guilty plea
unless there is a factual basis for the plea. The court must solicit an admission from a defendant concern-
ing the acts he committed and "must ascertain, from admissions made by the defendant at the plea
colloquy, that the acts of the defendant, in a general sense, satisfy the requirements of the crime to which
he is pleading guilty." State v. Frazier, 153 P.3d 18, 21 (Mont. 2007). Moreover, under Montana Code
Annotated § 46–12–210, courts are required to ensure defendants understand an exhaustive list of poten-
tial consequences of entering a guilty plea and the alternatives to which they are entitled. Courts must
also certify the plea is voluntary and not the result of force, threats, or promises apart from the plea
agreement pursuant to Montana Code Annotated § 46–12–204(2).
\(^{50}\) Sikora v. Sikora, 499 P.2d 808, 812 (Mont. 1972).
\(^{51}\) Br. of Respt. at 6, In re Ests. of Swansons, 187 P.3d 631.
\(^{52}\) In re Ests. of Swansons, 187 P.3d 631.
\(^{53}\) Br. of Respt. at 6, In re Ests. of Swansons, 187 P.3d at 633.
\(^{54}\) In re Ests. of Swansons, 187 P.3d at 631.
of Public Health and Human Services for treatment in lieu of imprisonment.\textsuperscript{55}

\textit{In re Estates of Swansons} was the action filed to address Jeanette’s inheritance rights to her children’s estates.\textsuperscript{56} The children’s father, Gene Swanson, acting as the personal representative of their estates, invoked the Slayer Statute in his motion to forfeit Jeanette’s interest in the estates.\textsuperscript{57} The presiding district court judge, Dorothy McCarter, granted Gene’s motion, stating:

The language in these statutes could not be more clear. Jeanette Swanson pled guilty to deliberate homicide and admitted that she purposely killed her children. The conviction is conclusive. She, therefore, as a matter of law has forfeited her rights of inheritance and benefits related to her children’s estates.\textsuperscript{58}

On appeal, Jeanette argued the district court erred as a matter of law by giving conclusive effect to her guilty plea in the criminal proceeding and by extending the presumption beyond the Slayer Statute’s plain language.\textsuperscript{59} Relying on Maryland’s 1986 \textit{Ford}\textsuperscript{60} decision, Jeanette argued the Slayer Statute “does not apply when a person is insane.”\textsuperscript{61} She also turned to \textit{Safeco Insurance Co. of America. v. Liss},\textsuperscript{62} where the Court held a \textit{nolo contendere} plea in a criminal case does not preclude litigation of the same issues in a subsequent civil case.\textsuperscript{63} Furthermore, she argued her guilty plea did not conform to the Slayer Statute because “the statute’s plain language addresses only the identity of the killer, not whether the killer did so feloniously and intentionally.”\textsuperscript{64}

In response, Gene argued \textit{Ford} was distinguishable because Maryland does not hold defendants like Jeanette criminally responsible for their actions, while Montana does.\textsuperscript{65} Gene argued \textit{Ford} relied on a “common thread” in other states’ statutes that turns not on whether the individual was insane, but whether the insanity statute permits imposition of criminal punishment.\textsuperscript{66} Gene claimed Jeanette did not challenge her fitness to proceed and stand trial, nor did she argue her mental disease or defect precluded her

\textsuperscript{55} Id.
\textsuperscript{56} Id.
\textsuperscript{57} Id.
\textsuperscript{58} Id. at 634.
\textsuperscript{59} Id.
\textsuperscript{60} \textit{Ford}, 512 A.2d 389.
\textsuperscript{61} Br. of App. at 1, \textit{In re Ests. of Swansons}, 187 P.3d 631.
\textsuperscript{62} 16 P.3d at 407–408.
\textsuperscript{63} Br. of App. at 2, \textit{In re Ests. of Swansons}, 187 P.3d 631.
\textsuperscript{64} Id. at 6–7.
\textsuperscript{65} Br. of Respt. at 13, \textit{In re Ests. of Swansons}, 187 P.3d 631.
\textsuperscript{66} Id.
from having the requisite mental state of purposely or knowingly. Moreover, Gene argued Montana Code Annotated §§ 72–2–813(7) and 72–2–813(10), read together, create a statutory presumption that Jeanette is the killer for purposes of that statute. Section 72–2–813(7) states that “a judgment of conviction establishing criminal accountability for the felonious and intentional killing of the decedent conclusively establishes the convicted individual as the decedent’s killer for purposes of this section,” and § 72–2–813(10) states that “a felonious and intentional killing includes a deliberate homicide as defined in 45–5–1032 . . . .”

B. Montana Supreme Court Holdings

In a six-to-one majority opinion written by Justice Leaphart, the Montana Supreme Court reversed and remanded the district court’s decision that Jeanette had forfeited her rights to her children’s estates as a matter of law. Justices Gray, Nelson, Cotter, Warner, and Morris concurred, while Justice Rice dissented. The Court held: (1) Jeanette’s guilty plea did not have collateral estoppel effect with respect to whether Jeanette acted feloniously and intentionally under the Slayer Statute, and (2) Jeanette’s guilty plea did not conclusively establish that the killings were felonious and intentional.

1. The Majority’s Reasoning

The majority based its first holding on Safeco, which held a nolo contendere plea fails the second prong of collateral estoppel’s three-part test because it does not constitute a judgment on the merits. Going beyond Safeco, though, the majority in In re Estates of Swansons equated a nolo contendere plea with a guilty plea, finding that neither is a final judgment on the merits. It highlighted the Safeco Court’s extensive reliance on Teitelbaum Furs, Inc. v. Dominion Insurance Co., a 1962 California case in

67. Id. at 7–8.
68. Id. at 15; Montana Code Annotated § 72–2–813(7) provides that “a judgment of conviction establishing criminal accountability for the felonious and intentional killing of the decedent conclusively establishes the convicted individual as the decedent’s killer for purposes of this section,” while § 72–2–813(10) states that “a felonious and intentional killing includes a deliberate homicide as defined in 45–5–103.”
69. In re Ests. of Swansons, 187 P.3d at 638.
70. Id.
71. Id.
72. Id.
73. Id. at 633.
74. Id. at 634–635.
which Justice Traynor distinguished a guilty plea from a guilty verdict based on the respective weight accorded them in subsequent civil proceedings.\textsuperscript{75} The Court relied on \textit{Teitelbaum}'s reasoning that a guilty plea is not a final judgment on the merits because "no issues have been drawn into controversy by a full presentation of the case" and because a guilty plea might "reflect only a compromise or a belief that paying a fine is more advantageous than litigation."\textsuperscript{76} In \textit{In re Estates of Swansons}, the majority jumped on the bandwagon of this reasoning, asserting "Jeanette's guilty plea may have been a strategic decision, or perhaps even a choice to spare her family the added trauma of a public trial" and that her plea meant the court never fully examined whether the crime was "felonious and intentional."\textsuperscript{77} Consequently, the Court held Jeanette was not barred by collateral estoppel from litigating these issues and, therefore, they must be heard by the district court on remand.\textsuperscript{78}

To reach its second holding—that Jeanette's guilty plea did not conclusively establish that the killings were felonious and intentional—the majority focused on the plain language of the Slayer Statute and found its requirements had not necessarily been satisfied.\textsuperscript{79} The majority began the discussion of its second holding by refuting Gene's argument that Montana Code Annotated § 72-2-813(10) and § 72-2-813(7) together created a statutory presumption that Jeanette was a killer under the Slayer Statute.\textsuperscript{80} The majority pointed out two differences between Montana's Slayer Statute and that of other states.\textsuperscript{81} First, it found some states hold that an acquittal in criminal court bars their slayer statutes from applying, while Montana's statute could still be satisfied even in the event of an acquittal.\textsuperscript{82} Second, it found some states have held the slayer statute only applies to deliberate homicide that is unmitigated.\textsuperscript{83} According to the Court, these two items differ with Montana's Slayer Statute because, in the absence of a conviction establishing criminal accountability, a Montana court can still use the preponderance of the evidence standard to find criminal accountability for a felonious and intentional killing.\textsuperscript{84} Put more simply, a civil court has more leeway in making a finding of a felonious and intentional killing and is not inextricably bound by the determinations of the criminal court.

\textsuperscript{75} \textit{In re Ests. of Swansons}, 187 P.3d at 635 (citing \textit{Teitelbaum}, 375 P.2d at 441 (Cal. 1962)).
\textsuperscript{76} Id.
\textsuperscript{77} Id.
\textsuperscript{78} Id.
\textsuperscript{79} Id. at 636-637.
\textsuperscript{80} Id. at 636.
\textsuperscript{81} \textit{In re Ests. of Swansons}, 187 P.3d at 636.
\textsuperscript{82} Id.
\textsuperscript{83} Id.
\textsuperscript{84} Id.
The majority pointed out that with this kind of freedom a court could still bar inheritance rights, despite an outright acquittal or even a conviction for a lesser crime than deliberate homicide. Though § 72–2–813(10) states a “felonious and intentional killing includes a deliberate homicide,” the majority reasoned that nothing in the plain language suggests all deliberate homicides are automatically “felonious and intentional killings.” The Court also found that pleading guilty to deliberate homicide is not an automatic indicator that the defendant killed the decedent feloniously and intentionally. It found § 72–2–813(7) purposefully distinguishes between guilty pleas and guilty verdicts, and, therefore, matters of “felonious” and “intent” had not been litigated as required.

Both holdings in In re Estates of Swansons relied heavily on defining feloniously and intentionally, as they appear in the Slayer Statute. From the outset, the majority looked to the longstanding common law principle now codified in the Uniform Probate Code from which the Slayer Statute derived: a killer may not profit from his own wrongdoing. Through the lens of this principle, the majority viewed an offense such as accidental manslaughter as not satisfying the felonious and intentional requirements. Extending this reasoning even further, it also found the statute would exclude “slayers who lack the requisite intent and homicides that are not ‘felonious.’” Presumably, this could apply to a killer with a mental disease or defect as well, as was the case in In re Estates of Swansons.

The majority also determined that “felonious” is not limited to the criminal code’s definition of “felony.” Instead, the Court concluded felonious “includes all killings ‘done with a mind bent on wrong,’” by synthesizing the findings of In re Estates of Josephsons and Ford in combination with State v. Souhrada and State v. Rechnitz. While In re Estates of Josephsons and Ford were out-of-state slayer statute decisions, Souhrada and Rechnitz were Montana criminal cases from 1949 and 1898 respectively, in which the Court held the term felonious referred to “all killings done with a mind bent on wrong.”

85. Id.
86. Id. at 636–637.
87. In re Ests. of Swansons, 187 P.3d at 637.
88. Id. at 637.
89. See e.g. id. at 633–638.
90. Id. at 633 (citing In re Marriage of Kotecki, 10 P.3d 828 (Mont. 2000)).
91. Id.
92. Id. at 633–634.
93. In re Ests. of Swansons, 187 P.3d at 637 (citing Mont. Code Ann. § 45–2–101(23)).
94. 204 P.2d 792, 797 (Mont. 1949).
95. 52 P. 264, 265 (Mont. 1898).
96. In re Ests. of Swansons, 187 P.3d at 637–638 (Souhrada, 204 P.2d at 797).
2. The Dissent’s Reasoning

Justice Rice asserted that Montana’s Slayer Statute does not distinguish between a conviction obtained from a plea and one obtained through a jury or bench trial. He alleged the Court erred in reading a distinction into the statute and that this error improperly allowed the majority to analyze the preclusive effect of a guilty plea on collateral estoppel. Rice also argued Jeanette’s guilty plea to deliberate homicide does, in fact, satisfy the “felonious and intentional” requirement of the Slayer Statute because deliberate homicide is a felony with an intentional mental state. Furthermore, the dissent found that Jeanette’s guilty plea to deliberate homicide and subsequent failure to appeal her case satisfied the requisite “conviction establishing criminal accountability for the felonious and intentional killing of the decedent.”

V. Analysis

At first glance, the Slayer Statute might appear to bar Jeanette’s inheritance rights because she pleaded guilty to killing the very individuals whose estates were the subject of this case. However, upon closer examination, whether the statute applies to a killer with a mental disease or defect is not entirely clear. In remanding this case, the Court did not have to find the Slayer Statute was altogether inapplicable to the facts at hand. Rather, it simply had to raise enough doubt as to the statute’s applicability to a person like Jeanette. First of all, with its collateral estoppel holding, the Court found Jeanette never had the opportunity to challenge the statute at the lower court level. With this ruling, she would be allowed to litigate the essential elements of her case and challenge the applicability of the Slayer Statute on remand. But, in addition to its collateral estoppel ruling, the Court also engaged in a meticulous examination of the Slayer Statute in order to question its relevance to the case. By thoroughly examining the statute’s plain language, its treatment in the case law, and the public policy reasons behind the statute, the Court pointed to enough uncertainty regarding the statute’s applicability to necessitate remanding the case to the lower court.

First, the Court found that collateral estoppel’s second requirement of a judgment on the merits had not been satisfied with Jeanette’s guilty plea to deliberate homicide. With this ruling, the Court sent a clear message

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97. Id. at 638 (Rice, J., dissenting).
98. Id.
99. Id.
100. Id.
101. Id. at 637 (majority).
that neither nolo contendere pleas nor guilty pleas would thereafter preclude a party in Montana from litigating issues in a subsequent civil proceeding. This was the first time Montana had expressly put a nolo contendere plea and a guilty plea on the same footing. Though it may sound groundbreaking, equating a nolo contendere plea with a guilty plea in the context of collateral estoppel was in accordance with prior precedent outside Montana as well as the Restatement (Second) of Judgments.\textsuperscript{102} 

In re Estates of Swansons's collateral estoppel holding may not be groundbreaking given its adherence to the case law, but it does serve as a reminder of how costly the failure to recognize a guilty plea can sometimes be. For example, if a defendant pleads guilty to assault in criminal court and is later sued for the intentional tort of battery, a civil court cannot view his guilty plea as conclusive evidence of his actions. Having to hear this particular defendant's case from scratch may not sound like a huge expenditure of time and resources, but the court will have to extend the same privilege to more serious criminal offenses and also when larger judgments are at stake. For example, a guilty plea to arson or even deliberate homicide still paves the way for a defendant to litigate the essential elements of his case in a subsequent civil proceeding. Thus, an insurer seeking reimbursement from a fire destroying its insured's property must still partake in costly litigation despite the defendant having already admitted in criminal court to setting the same fire. Of course, the same is also true of a family seeking redress in a civil cause of action following the murder of a loved one. Not only does added litigation in this kind of case come at a great financial cost, but likely an emotional one, too.

When it comes to certain guilty pleas, some might argue there are criminal offenses serious enough that pleading guilty to them can no longer "reflect only a compromise or a belief that paying a fine is more advantageous than litigation."\textsuperscript{103} As Iowa has already done, perhaps Montana will one day view the criminal court's safeguards for accepting guilty pleas as satisfying collateral estoppel's second prong of a final judgment on the merits. With so many safeguards in place, a civil court's failure to assign a guilty plea a more prominent role in its proceedings may come across as a great distrust of the criminal justice system. But a civil court is indeed justified in viewing a guilty plea with a certain level of distrust. As In re Estates of Swansons illustrates, it is dangerous to make assumptions about a guilty plea, even for an offense as serious as deliberate homicide because a guilty plea may not tell the entire story. For that reason alone, a state want-

\textsuperscript{102} See supra n. 42; Restatement (Second) of Judgments § 27 cmt. e.  
\textsuperscript{103} In re Ests. of Swansons, 187 P.3d at 635 (citing Teitlebaum, 375 P.2d at 441).
ing to move towards the Iowa position should proceed with the utmost caution.

In addition to its collateral estoppel holding, much of the discussion in In re Estates of Swansons is devoted to a rigorous analysis of the Slayer Statute. The Court carefully deconstructed the statute’s plain language, examined the way other courts interpreted it when faced with similar sets of facts, and examined its legislative history. Though some of the provisions seemed to speak directly to Jeanette’s case at first glance, as the Court dug deeper it uncovered more than enough uncertainty to justify remanding the case for further findings.

The Court faced a difficult challenge with one provision in particular: "[A] felonious and intentional killing includes a deliberate homicide." With Jeanette’s guilty plea to deliberate homicide, finding this provision did not apply presented a worthy obstacle. But before the Court even began to attack the provision, one slight error in paraphrasing might have made it easier than it should have been to dismiss this provision so quickly. Though the Court first quoted the provision verbatim, it later paraphrased it with one slight inaccuracy. Instead of stating “a felonious and intentional killing includes a deliberate homicide,” the opinion paraphrased the provision as: “a ‘felonious and intentional killing’ may include a deliberate homicide.” In reality, the word “may” does not appear in this provision.

Albeit a small and likely harmless departure from the statute, the insertion of the more permissive word “may” before the word “include” makes the plain language more malleable than the legislature might have intended. It was immediately following this paraphrasing error that the Court dismissed Gene’s argument that deliberate homicide was satisfied by the statute: “Gene, however, apparently interprets the statute to mean that all deliberate homicides are ‘felonious and intentional killings’ for the purposes of the Slayer Statute. Nothing in the plain language of the statute supports this reading, and Gene has not advanced any authority in support of his interpretation.” Perhaps the Court might have lightened its definitive tone here had it not incorrectly paraphrased the statute, but this error would still prove harmless in the long run. In fact, the Court would locate enough uncertainty elsewhere in the statute’s plain language so as to negate any effects this slight paraphrasing error may have had, if at all, on the final ruling.

105. In re Ests. of Swansons, 187 P.3d at 636.
106. Id. (emphasis added).
108. In re Ests. of Swansons, 187 P.3d at 636.
The Court also had to tackle another provision that seemed equally as damaging to Jeanette’s side: “After all right to appeal has been exhausted a judgment of conviction establishing criminal accountability for the felonious and intentional killing of the decedent conclusively establishes the convicted individual as the decedent’s killer for the purposes of this section.” Montana clearly defines a conviction as a “judgment or sentence entered upon a guilty or nolo contendere plea or upon a verdict,” meaning Jeanette’s guilty plea to deliberate homicide amounted to a conviction. However, the Court found that Jeanette’s mental disease or defect suggested the criminal accountability component required by the Slayer Statute was missing.

The Court’s equating the presence of a mental disease or defect with a lack of criminal accountability suffers from one potential shortcoming. Unlike states that fail to impose criminal accountability on defendants with a mental disease or defect, Montana’s criminal code suggests it does. A defendant’s mental disease or defect absolves him of his actions if, at the time he committed the crime, his mental condition prevented him from possessing the requisite mental state that is an essential element of the crime. Despite putting forth evidence of a mental disease or defect, if a defendant pleads guilty or else is found guilty by the Court, his mental disease or defect does not appear to provide immunity from criminal accountability under the criminal code. Though the court takes into consideration the defendant’s mental disease or defect at sentencing, the criminal accountability aspect does not somehow vanish. Therefore, because Jeanette pleaded guilty to deliberate homicide, there was likely a conviction establishing criminal accountability notwithstanding her mental disease or defect.

A similar interpretation flaw is seen in the Court’s view that because Jeanette did not technically receive a sentence of imprisonment for over one year, her offenses did not comply with the statutory definition of a felony under Montana law. This reasoning is slightly misguided because the nature of Jeanette’s sentence could one day change and be considered imprisonment if she were transferred from a mental facility to a standard correctional facility. Under Montana law, the defendant or the director of the Department of Health and Human services can petition the sentencing court for the defendant’s sentence to be reviewed if (1) the professional person treating the defendant certifies the defendant no longer suffers from a

110. Id. § 46-1-202(3).
111. In re Ests. of Swansons, 187 P.3d at 635.
113. Id.
114. In re Ests. of Swansons, 187 P.3d at 637 (citing Mont Code Ann. § 45-2-101(23)).
mental disease or defect or (2) the mental disease or defect no longer prevents the defendant from appreciating the criminality of his conduct.\textsuperscript{115} The court may then change the sentence, but the length of the confinement or supervision must be the same.\textsuperscript{116} Thus, Jeanette may be in the custody of a mental facility, but she is still under the time restrictions imposed by the sentencing court. Her sentence “for the remainder of her natural life” cannot be altered. If Jeanette were one day transferred to a correctional facility, the one year imprisonment requirement of a felony could still be satisfied. Consequently, the mere possibility a statutory felony might still be on the horizon means the Court’s stated reasoning at the time of \textit{In re Estates of Swansons} might one day necessitate the opposite conclusion.

To clarify how the term felonious should be interpreted, the Court reached all the way back to 1898 and 1949 to impose a definition of felonious on the Slayer Statute that originated from within its own case law.\textsuperscript{117} The problem, of course, was that these were not Slayer Statute decisions. One involved larceny and the other vehicular manslaughter.\textsuperscript{118} To make the jump, it first had to rely on \textit{In re Estates of Josephsons}, a North Dakota decision holding feloniously under the Slayer Statute meant a killing that is wrongful and without legal excuse or justification.\textsuperscript{119} That case, though, concerned a juvenile defendant, not one with a mental disease or defect.\textsuperscript{120} However, by synthesizing the holdings of these three decisions, the \textit{In re Estates of Swansons} Court concluded felonious under the Slayer Statute was not limited to the statutory definition of felony, “but includes all killings 'with a mind bent on doing wrong.'”\textsuperscript{121} While detractors might find this definition of felonious to be overly broad, assigning this particular definition to the term comports with the underlying current of relevant case law as well as the stated public policy reasons behind the statute.

Indeed, public policy played an integral role in \textit{In re Estates of Swansons}. Throughout the opinion, the Court looked to the public policy considerations behind both the doctrine of collateral estoppel as well as the Slayer Statute to inform its decision. First, for its collateral estoppel holding, the Court largely relied on a public policy argument that a guilty plea should not be viewed as a final judgment on the merits. As \textit{Teitlebaum} and \textit{Safeco} suggested, considering a guilty plea a final judgment on the merits may be

\begin{itemize}
  \item \textsuperscript{115} Mont. Code Ann. § 46–14–312.
  \item \textsuperscript{116} Id. § 46–14–312(4).
  \item \textsuperscript{117} \textit{In re Ests. of Swansons}, 187 P.3d at 637–638 (citing \textit{Souhrada}, 204 P.2d at 797).
  \item \textsuperscript{118} See \textit{Souhrada}, 204 P.2d 792; \textit{Rechnitz}, 52 P. 264.
  \item \textsuperscript{119} \textit{In re Ests. of Swansons}, 187 P.3d at 637.
  \item \textsuperscript{120} \textit{In re Ests. of Josephsons}, 297 N.W. 2d at 446–447.
  \item \textsuperscript{121} \textit{In re Ests. of Swansons}, 187 P.3d at 638.
\end{itemize}
both an inaccurate assumption and an unfair reason to deprive a person like Jeannette of her day in court.\textsuperscript{122}

Second, as the Court deconstructed the Slayer Statute provision by provision, the Court then went about building it back up with a foundation rooted in public policy considerations. The Court pointed out the Slayer Statute arose from "the long-standing common law principle that a killer should not profit from his own wrongdoing."\textsuperscript{123} Thus, as other courts had done previously, it was necessary to interpret and even redefine the statute’s provisions at times to adhere to this principle. Terms like felonious, intentional, and criminal responsibility were construed through this public policy lens.

In support of this approach, the comments of the Restatement (Third) of Property indicate "the terms 'felonious' and 'intentional' should be defined in light of the public policy to which the slayer rule is directed—to prevent the wrongdoer from profiting from the wrong."\textsuperscript{124}

In the end, the Court was reluctant to rule a killer with an adjudicated mental illness could somehow meet the "feloniously and intentionally" requirements of the Slayer Statute and, thus, be barred from her children’s estates. The Court was right to have such reluctance. After all, an individual incapable of controlling her actions or appreciating the criminality of them is likely outside the statute’s policy consideration. Therefore, from a public policy angle, the Court was justified in construing the Slayer Statute in the light most favorable to Jeanette and to remand the case to the lower court.

VI. Conclusion

For those who might take issue with how In re Estates of Swansons was decided, it is important to recognize the two unfavorable rulings from which the Court had to choose in this case. Strictly interpreting the Slayer Statute’s plain language would mean an individual with an adjudicated mental illness would be denied her day in court to assert her actions were not criminal. On the other hand, embracing the statute’s public policy considerations would potentially allow a mother who had brutally killed her children to still be able to financially benefit from their estates. In the end, the Court sided with the public policy argument and granted Jeanette her day in court. But choosing this option and calling into question the Slayer Statute’s applicability to this case was no easy task. Examining In re Estates of Swansons in detail is to appreciate just how many hoops the Court

\textsuperscript{122} Id. at 635.
\textsuperscript{123} Id. at 633 (citing In re Marriage of Kotecki, 10 P.3d 828 (Mont. 2000)).
\textsuperscript{124} Restatement (Third) of Property: Wills and Other Donative Transfers § 8.4 cmt. f.
had to jump through to arrive at its final conclusion. By carefully breaking down this decision’s legal framework, what may at first appear to be a puzzling ruling clarifies not only why the Court ruled as it did, but also how it was even possible to do so in the first place.