

A man and his friend were watching a televised football game at the man's home. Upset by a penalty called by the referee, the friend threw a bottle of beer at the man's television, breaking the screen. Enraged, the man picked up a nearby hammer and hit the friend on the head with it. The friend died from the blow.

The crimes below are listed in descending order of seriousness.

In a jurisdiction that follows common law principles, what is the most serious crime of which the man could properly be convicted?

- A. Murder.
- B. Voluntary manslaughter.
- C. Involuntary manslaughter.
- D. Assault.

Explanation:

Under the common law, a defendant can be convicted of **murder** if he/she **unlawfully killed** another with **malice aforethought**—ie, acted with:

intent to kill – the purpose or knowledge to a substantial certainty that death will result
intent to inflict serious physical harm
reckless disregard for an **obvious** or unjustifiably high **risk to human life** *or*
intent to commit an inherently dangerous felony.

Here, the man killed his friend by hitting the friend on the head with a hammer. And a reasonable jury could find that the man acted with malice aforethought—(1) the intent to kill or seriously injure his friend with the hammer or (2) a reckless disregard of the obvious risk that his conduct would kill his friend. Therefore, the most serious crime of which the man could be convicted is murder.

(Choice B) Voluntary manslaughter is the intentional killing of another in response to adequate provocation—ie, conduct or circumstances that would cause a *reasonable person* to lose control. But since a reasonable person would not hit someone on the head with a hammer in response to a broken television screen (no adequate provocation), the man will likely not be convicted of this crime.

(Choice C) Involuntary manslaughter is the unintentional killing of another *without* malice aforethought through criminal negligence or an unlawful act. But here, a reasonable jury could find that the man acted *with* malice aforethought, so he could be convicted of the more serious crime of murder.

(Choice D) Assault occurs when a defendant (1) attempts to commit a battery or (2) intentionally places a victim in fear of imminent harmful contact. Although the man may have committed assault, the most serious crime of which he could be convicted is murder.

Educational objective:

A defendant is guilty of common law murder when a jury finds that he/she unlawfully killed another with malice aforethought—eg, intent to kill or inflict serious bodily harm, reckless disregard for an obvious or unjustifiably high risk to human life.

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Common law murder

Did defendant cause another's death?

- Actual cause: but for or substantial factor
AND
- Proximate cause: death was foreseeable

No → **Not guilty**

Yes ↓

Did defendant act with malice aforethought?

- Reckless disregard of obvious/high risk of death or serious bodily harm
- Intent to commit Inherently dangerous felony
- Intent to cause Serious physical injury
- Intent to Kill

No → **Not guilty**

Yes ↓

Guilty