

A defendant is charged with murder. The evidence shows that the defendant pointed a gun at the victim and pulled the trigger. The gun discharged, killing the victim. The gun belonged to the victim. At trial, the defendant testified that the victim told her, and she believed, that the "gun" was a stage prop that could fire only blanks, and that she fired the gun as part of rehearsing a play with the victim at his house.

If the jury believes the defendant's testimony and finds that her mistaken belief that the gun was a prop was reasonable, what verdict should the jury render?

- A. Guilty of murder.
- B. Guilty of manslaughter.
- C. Guilty of either murder or manslaughter.
- D. Not guilty of murder or manslaughter

Explanation:

Murder is an **unlawful killing** committed with **malice aforethought**, which exists if the defendant has any of the following mental states:

Intent to kill

Intent to inflict serious bodily injury

Reckless indifference to an unjustifiably high risk to human life (ie, depraved-heart murder)

Intent to commit an **inherently dangerous felony** (ie, felony murder rule)

But **mistake of fact** is a **defense** to murder—a malice crime—when the defendant's **honest, reasonable, but mistaken belief** negates the required mental state (ie, mens rea).

Here, the defendant pointed a gun at the victim and pulled the trigger. But the defendant testified that she thought that the gun was a stage prop that could only fire blanks. If the jury believes the defendant's testimony and finds that her mistaken belief was reasonable, then it should find her *not guilty* of murder. That is because the mistake would negate each type of malice aforethought **(Choices A & C)**.

A reasonable mistake of fact can also serve as a defense to **manslaughter**—a **general intent crime**—when the mistake negates the required mens rea. Manslaughter can be either:

voluntary – an **intentional** killing mitigated by adequate provocation (ie, heat-of-passion killing) or other factors (eg, imperfect self-defense) *or*

involuntary – an **unintentional** killing committed during an unlawful act or with **criminal negligence** (ie, the substantial failure to act as a reasonable person would act under similar circumstances).

If the jury believes the defendant's testimony, it cannot find that she intentionally killed the victim (no voluntary manslaughter). And if the jury finds that the defendant's mistaken belief that the gun was a prop was reasonable, it cannot find that the killing was committed with criminal negligence (no involuntary manslaughter). Therefore, the jury should not find the defendant guilty of manslaughter **(Choices B & C)**.

Educational objective:

Mistake of fact is a defense to murder and manslaughter (ie, malice and general intent crimes) when the defendant's honest, reasonable, but mistaken belief negates the required mental state.

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Applicability of mistake-of-fact defense

