

A statute in the jurisdiction defines murder in the first degree as knowingly killing another person after deliberation. Deliberation is defined as "cool reflection for any length of time no matter how brief." Murder in the second degree is defined as "all other murder at common law except felony murder." Felony-murder is murder in the third degree. Manslaughter is defined by the common law.

At 2 a.m., the defendant held up an all-night liquor store using an assault rifle. During the holdup, two police cars with flashing lights drove up in front of the store. In order to create a situation where the police would hesitate to come into the store (and thus give himself a chance to escape out the back), the defendant fired several rounds through the front window of the store. The defendant then ran out the back but upon discovering another police car there, surrendered quietly. One of the shots he fired while in the store struck and killed a burglar who was stealing items from a closed store across the street.

What is the most serious degree of criminal homicide of which the defendant is guilty?

- A. Murder in the first degree.
- B. Murder in the second degree.
- C. Murder in the third degree.
- D. Manslaughter.

Explanation:

This jurisdiction divides criminal homicide into four levels:

First-degree murder: knowingly killing another person after deliberation

Second-degree murder: all other common law murder (except for felony murder), including **depraved-heart murder**—ie, an unlawful killing committed with **reckless disregard** of an obvious or unjustifiably high risk of **serious bodily harm or death**

Third-degree murder: felony murder—ie, a killing committed during the commission, or attempted commission, of an **inherently dangerous felony**

Common law manslaughter: either (1) voluntary manslaughter—an intentional killing based on adequate provocation or imperfect self-defense—or (2) involuntary manslaughter—an unintentional killing caused by criminal negligence or the commission of an unlawful act

Here, the defendant killed a burglar across the street when he fired his assault rifle through the front window of the store he was robbing. Since the defendant only intended to create an opportunity to escape out the back—not to knowingly or deliberately kill the burglar—he is not guilty of first-degree murder (**Choice A**). However, he recklessly disregarded the obviously high risk of serious bodily harm or death posed by firing an assault rifle toward people in the street. Therefore, he is guilty of second-degree murder.

(Choice C) The defendant is guilty of felony murder (here, third-degree murder) since the killing occurred while he was committing a **robbery**—an inherently dangerous felony. But he is also guilty of the more serious crime of second-degree murder (depraved-heart murder).

(Choice D) The defendant is not guilty of *voluntary* manslaughter since he did not intentionally kill the burglar. However, he may be guilty of *involuntary* manslaughter because the unintentional killing was caused by his criminal negligence—ie, a substantial failure to act in the same manner a reasonably prudent person would act under similar circumstances. But this crime is less serious than second-degree murder.

Educational objective:

Depraved-heart murder is an unintentional killing committed with reckless disregard for an obvious or high risk of serious bodily harm or death.

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