

A state statute divides murder into degrees and defines murder in the first degree as murder committed willfully with premeditation and deliberation. The statute defines murder in the second degree as all other murder at common law and defines voluntary manslaughter as at common law.

A man hated one of his coworkers. Upon learning that the coworker was at a neighbor's house, the man grabbed his gun and went to the neighbor's house hoping to provoke the coworker into attacking him so that he could then shoot the coworker. After arriving at the house, the man insulted the coworker and bragged that he had had sexual relations with the coworker's wife two weeks earlier. This statement was not true, but it enraged the coworker, who grabbed a knife from the kitchen table and ran toward the man. The man then shot and killed the coworker.

What is the most serious homicide offense of which the man could properly be convicted?

- A. Murder in the first degree.
- B. Murder in the second degree.
- C. Voluntary manslaughter, because he provoked the coworker.
- D. No form of criminal homicide, because he acted in self-defense.

Explanation:

In this state (and most jurisdictions), the most serious homicide offense is first-degree murder—ie, a killing committed willfully with both:

premeditation – when the defendant fully forms the specific intent to kill an appreciable time (no matter how brief) before committing the act *and*

deliberation – when the defendant makes the decision to kill after reflecting on the act and its likely consequences in a cool and dispassionate manner.

Here, the man fully formed the intent to kill his coworker when he grabbed a gun and went to the coworker's location (premeditation). The man hoped to provoke the coworker into attacking so that he could then shoot the coworker (deliberation). And since the man then willfully shot and killed the coworker, the most serious homicide offense of which the man could be convicted is first-degree murder—unless he has a viable defense.

The man may argue that the coworker's attack justified the man's use of **deadly force in self-defense**. Deadly force is justified when the defendant actually and reasonably believes that such force is necessary to protect him/herself from imminent death or serious bodily harm. But this defense is generally **unavailable** if the **defendant provoked the victim's attack**—as seen here (**Choice D**).

(Choice B) In this state, second-degree murder includes all murder at common law—ie, the unlawful killing of another with **malice aforethought** (eg, intent to kill)—other than first-degree murder. Although the man could be convicted of second-degree murder since he intentionally and unlawfully killed the coworker, he could also be convicted of the more serious crime of first-degree murder.

(Choice C) Voluntary manslaughter is an intentional killing committed (1) in the heat of passion upon adequate provocation *or* (2) in imperfect self-defense—ie, an *honest* but unreasonable belief that deadly force is necessary to defend oneself. Here, the man committed the killing after deliberation—not in the heat of passion. And since he purposely provoked the coworker, the man could not honestly act in self-defense.

Educational objective:

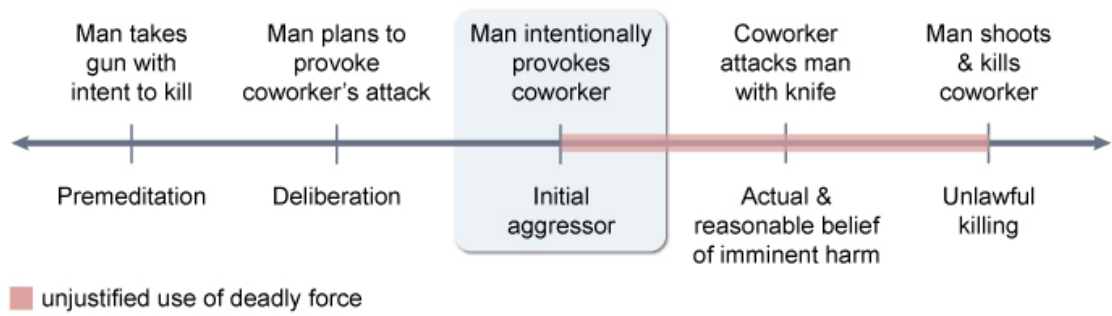
First-degree murder encompasses willful killings committed with (1) premeditation—a specific intent to kill fully formed an appreciable time before the killing—and (2) deliberation—a decision to kill made after cool and dispassionate reflection. And though a killing may be justified if the defendant acted in self-defense, this defense is generally unavailable when the defendant was the initial aggressor.

References

40 Am. Jur. 2d Homicide § 43 (2002) (premeditation and deliberation).

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