

A two-year-old became ill with meningitis. Her parents were members of a group that believed fervently that if they prayed enough, God would not permit their child to die. Accordingly, they did not seek medical aid for their child and refused all offers of such aid. They prayed continuously. The child died of the illness within a week.

The parents are charged with murder in a common law jurisdiction.

What is their best defense to the charge?

- A. The child's death was not proximately caused by their conduct.
- B. They did not intend to kill or to harm the child.
- C. They neither premeditated nor deliberated.
- D. They were pursuing a constitutionally protected religious belief.

Explanation:

Common law murder is an **unlawful killing** committed with malice aforethought. The actus reus (unlawful killing) element is met when the unlawful result (death) is **caused by** any of the following:

Voluntary act – the defendant consciously performed a bodily movement

Omission – the defendant had a **legal duty to act**, could physically perform that act, but failed to do so

Vicarious liability – the defendant was responsible for another's actions

But a murder conviction also requires proof of **concurrence**—ie, that the defendant had the requisite **mens rea** (malice aforethought) **at the time** the actus reus was **actuated and committed**.

Here, the two-year-old died of meningitis when her parents breached their legal duty to the child by failing to seek and accept medical aid. Although this omission satisfies the actus reus requirement, the parents can only be convicted if there also was concurrence. Therefore, their best defense is that they did not have the necessary malice aforethought (eg, intent to kill or harm the child) at the time the unlawful killing occurred.

(Choice A) The child's death was **proximately caused** by the parent's conduct since it was foreseeable that a child with meningitis would die if left untreated.

(Choice C) Most jurisdictions distinguish between murder in the first degree (ie, premeditated and deliberated) and second degree (ie, all other murder)—but the common law does not. Therefore, the parents can be convicted even if they lacked premeditation and deliberation.

(Choice D) Although the parents were pursuing their religious belief, this does not immunize them from laws that are applied equally to all (eg, common law murder). Therefore, the First Amendment free exercise clause is no defense.

Educational objective:

Crimes generally require proof of concurrence—ie, that the defendant had the requisite mens rea (criminal mind) at the time the actus reus (criminal act) was actuated and committed. And the actus reus can stem from the defendant's voluntary act, omission, or vicarious liability.

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Malice aforethought

