

A bank teller was fired by the president of the bank. The teller decided to take revenge against the president but decided against attempting it personally because he knew the president was protected around the clock by bank security guards. The teller also knew that his friend had a violent temper and was very jealous. The teller falsely told his friend that the friend's wife was having an affair with the president. Enraged, the friend said, "What am I going to do?" The teller said, "If it were my wife, I'd just march into his office and blow his brains out."

The friend grabbed a revolver and rushed to the bank. He walked into the bank, carrying the gun in his hand. One of the security guards, believing a holdup was about to occur, shot and killed the friend.

If the teller is charged with the friend's murder, which verdict should be rendered?

- A. Guilty, based upon extreme recklessness.
- B. Guilty, based upon transferred intent.
- C. Not guilty, because the teller did not intend for the friend to be shot by the security guard.
- D. Not guilty, because the teller did not shoot the friend and was not acting in concert with the security guard.

Explanation:

Malice aforethought

Intent to kill	Conscious desire to cause death <i>or</i> substantial certainty that death will result
Intent to inflict serious bodily harm	Conscious desire to cause serious physical injury <i>or</i> substantial certainty that such injury will result
Depraved-heart murder	Reckless disregard for high risk of death <i>or</i> serious bodily harm (ie, abandoned & malignant heart murder)
Felony murder	Killing during an inherently dangerous felony (ie, BARRK—burglary, arson, rape, robbery, kidnapping)

Murder is the **unlawful killing** of another committed with some type of **malice aforethought**. Here, the teller did not act with the intent to kill or seriously harm his friend (**Choice C**). But he did know that the bank president was heavily guarded and that the friend was violent and jealous. Therefore, the teller acted recklessly when he lied to the friend about his wife's affair and encouraged him to shoot the president.

But the teller can only be convicted of **depraved-heart murder** if his **reckless disregard** of the **high risk of serious bodily harm** to the friend was the **actual and proximate cause** of the friend's death. And since the friend would not have carried a gun into the bank but for the teller's lie (actual cause) and it was foreseeable that a bank security guard would shoot the friend (proximate cause), the teller is guilty of murder.

(**Choice B**) Under the doctrine of **transferred intent**, a defendant's *intent* to harm one person is transferred to another unintentionally harmed by the defendant. But a defendant's *recklessness* (as seen here) is not transferred under this doctrine.

(**Choice D**) The security guard (not the teller) shot the friend. And the teller was not the security guard's accomplice since they acted independently (not in concert). But the teller is still guilty of murder because his reckless conduct caused the friend's death.

Educational objective:

Depraved-heart murder occurs when a person's reckless disregard of a high risk of serious bodily harm is the actual (but for) and proximate (foreseeable) cause of another's death.

Copyright © 1995 by the National Conference of Bar Examiners. All rights reserved.

Copyright © UWorld. All rights reserved.