

One evening, a woman was driving above the speed limit on a country road. As she rounded a sharp curve, she lost control of the car and crossed over to the shoulder on the other side of the road. Her car hit a truck that was parked on the shoulder with its hood up while its driver waited for a tow truck. The force of the collision threw the driver out of the truck and down an embankment. The driver died from his injuries.

Driving above the speed limit and causing an accident can be charged as reckless driving, a misdemeanor in the jurisdiction.

What is the most serious homicide offense, if any, of which the woman can properly be convicted?

- A. Murder, based on malice aforethought. (6%)
- B. Voluntary manslaughter, based on reckless operation of a vehicle. (9%)
- C. Involuntary manslaughter, based on the misdemeanor of reckless driving. (80%)
- D. No homicide offense. (2%)

Incorrect

Correct answer C

80% Answered correctly

59 secs Time Spent

2023 Version

Explanation:

Homicide

Murder	Common law	Modern approach
	Unlawful killing committed with malice aforethought:	First-degree: murder committed with:
	Intent to kill	premeditation & deliberation
	Intent to cause serious bodily harm	heinous acts (eg, bombing, torture)
	Depraved-heart murder	enumerated felony murder
	Felony murder	Second-degree: any murder that is not first-degree murder
Voluntary manslaughter	Intentional killing mitigated by either: adequate provocation (ie, heat of passion) other mitigating factors (eg, imperfect self-defense)	
Involuntary manslaughter	Unintentional killing either: caused by criminal negligence (or recklessness under MPC) occurs during commission of criminal act (eg, misdemeanor manslaughter)	

MPC = Model Penal Code.

This jurisdiction recognizes the following types of **criminal homicide**:

murder – an unlawful killing committed with malice aforethought—ie, (1) intent to kill, (2) intent to inflict serious bodily injury, (3) reckless disregard for an obvious or unjustifiably high risk of death, or (4) intent to commit an inherently dangerous felony

voluntary manslaughter – an intentional killing based on (1) adequate provocation or (2) imperfect self-defense *and*

involuntary manslaughter – an unintentional killing committed (1) with criminal negligence or (2) during the commission of an [unlawful act](#).

A **malum prohibitum misdemeanor**—ie, one that is not inherently wrong but is prohibited by statute—is an unlawful act that can serve as a basis for involuntary manslaughter if it is committed willfully or constitutes criminal negligence.

Here, the woman did not *intend* to kill or injure the driver when she lost control of her car. Additionally, mere speeding does not constitute the type of reckless disregard for an

obvious or *unjustifiably high* risk of death that would support a depraved-heart murder conviction. And since the woman had no intent to commit an inherently dangerous felony, she cannot be properly convicted of murder based on malice aforethought **(Choice A)**.

The woman also cannot be properly convicted of voluntary manslaughter, as it too requires an intentional killing **(Choice B)**. But a jury *could* find that the driver's unintentional death occurred during the woman's commission of an unlawful act—the malum prohibitum misdemeanor of reckless driving **(Choice D)**. Therefore, the woman can be properly convicted of involuntary manslaughter.

Educational objective:

Involuntary manslaughter is an unintentional killing committed (1) with criminal negligence or (2) during the commission of an unlawful act. A malum prohibitum misdemeanor is an unlawful act that can serve as a basis for involuntary manslaughter if it is committed willfully or constitutes criminal negligence.

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