

At a party, a girl and a boy agreed to play a game they called "spin the barrel." The boy took an unloaded revolver, placed one bullet in the barrel, and spun the barrel. He then pointed the gun at the girl's head and pulled the trigger once. The gun did not fire. The girl then took the gun, pointed it at the boy, spun the barrel, and pulled the trigger once. The gun fired, and the boy fell over dead.

A statute in the jurisdiction defines murder in the first degree as an intentional and premeditated killing or one occurring during the commission of a common law felony, and murder in the second degree as all other murder at common law. Manslaughter is defined as a killing in the heat of passion upon an adequate legal provocation or a killing caused by gross negligence.

What is the most serious crime for which the girl can properly be convicted?

- A. Murder in the first degree, because the killing was intentional and premeditated and, in any event, occurred during the commission of the felony of assault with a deadly weapon.
- B. Murder in the second degree, because the girl's act posed a great threat of serious bodily harm.
- C. Manslaughter, because the girl's act was grossly negligent.
- D. No crime, because the boy and the girl voluntarily agreed to play a game and each assumed the risk of death.

Explanation:

Common-law murder

Unlawful killing of another with malice aforethought:

Intent to kill

Intent to inflict serious bodily harm

Reckless disregard of obvious or high risk to human life (ie, depraved-heart murder)

Intent to commit inherently dangerous felony (ie, felony murder)

This jurisdiction divides criminal homicide—the killing of another with the requisite mens rea—into three degrees:

First-degree murder – (1) an intentional and premeditated killing or (2) a killing committed during the commission of a common law felony.

Second-degree murder – all other **common law murders**, including **depraved-heart murder**—ie, a killing committed with a **reckless disregard** of a **great threat of serious bodily harm** or death.

Manslaughter – (1) a killing committed in the heat of passion upon an adequate legal provocation or (2) a killing caused by gross negligence.

Here, the girl shot and killed the boy while they played "spin the barrel," a game where they took turns shooting at each other with a revolver loaded with one bullet (ie, Russian roulette). Since the girl recklessly disregarded the great threat of serious bodily harm posed by the game when she decided to pull the trigger, she can be convicted of second-degree (depraved-heart) murder.

(Choice A) The girl cannot be convicted of first-degree murder because (1) she did not intentionally kill the boy and (2) assault with a deadly weapon is not a [common law felony](#).

(Choice C) The girl likely committed manslaughter since the boy's death was caused by her gross negligence—ie, her substantial failure to act as a reasonably prudent person would act under similar circumstances. But she can also be convicted of the greater offense of second-degree murder.

(Choice D) Consent is a valid defense when lack of consent is (or consent negates) an element of the charged crime—eg, lack of consent is an element of rape, so consent is a defense. Since consent (or lack of consent) is not an element of murder, the fact that the boy and girl voluntarily agreed to play the game and assumed the risk of death does not excuse her criminal conduct.

Educational objective:

A defendant may be convicted of common law murder—even if he/she did not intend to kill the victim—when the defendant acted with a reckless disregard for a high risk of serious bodily harm or death (eg, playing Russian roulette).

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