

Suffering from painful and terminal cancer, a wife persuaded her husband to kill her to end her misery. As they reminisced about their life together and reaffirmed their love for each other, the husband tried to discourage his wife from giving up. She insisted, however, and finally the husband held a gun to her head and killed her.

What is the most serious degree of criminal homicide of which the husband could legally be convicted?

- A. No degree of criminal homicide.
- B. Involuntary manslaughter.
- C. Voluntary manslaughter.
- D. Murder.

Explanation:

Possible homicide defenses

Self-defense/defense of others

Mistake of fact

Alibi

Entrapment

Insanity

Intoxication

Infancy

Prevention of inherently dangerous felony

Necessity

Mnemonic: **S**ome **M**urders **A**re **E**xcused **I**f **I**t **I**s **P**lainly **N**ecessary

Criminal homicide—a killing committed with the requisite mens rea—is divided into three degrees:

Murder – an **unlawful killing** with **malice aforethought** (eg, intent to kill)

Voluntary manslaughter – an intentional killing mitigated by adequate provocation or other factors

Involuntary manslaughter – an unintentional killing with criminal negligence or during the commission of an unlawful act

A victim's terminal illness does not absolve the defendant of homicide when the defendant caused the victim to die sooner. And **consent** is only a defense when it negates an element of the charged crime—eg, consent is a defense to rape since lack of consent is an element of that crime. Since consent **does not negate an element** of any degree of criminal homicide, it is **not a defense** to this crime.

Here, the husband intentionally shot and killed his wife. Although his wife persuaded him to kill her so that she would no longer suffer from painful cancer, her consent and terminal illness do not justify or excuse the husband's criminal conduct. Therefore, the most serious crime of which he can legally be convicted is murder **(Choice A)**.

(Choice B) Since the husband *intentionally* killed his wife, he cannot be convicted of involuntary manslaughter—an *unintentional* killing of another.

(Choice C) Although the husband intentionally killed his wife, he cannot be convicted of voluntary manslaughter since there was no adequate provocation—ie, an action likely to invoke a sudden and intense passion in a reasonable person. Instead, the wife merely persuaded him to kill her.

Educational objective:

Consent is only a defense when it negates an element of the charged crime. Since consent does not negate an element of any degree of criminal homicide, it is not a valid defense. Additionally, the victim's terminal illness does not absolve a defendant of criminal homicide.

Copyright © 1997 by the National Conference of Bar Examiners. All rights reserved.

Copyright © UWorld. All rights reserved.