

A man allowed his friend to borrow a debit card to buy a computer. When the friend refused to return the card during a later conversation in a bar, the man pointed a handgun at the friend, held his finger on the trigger, and said, "Give it back!" A bystander screamed and threw a beer bottle at the man. The bottle struck the man's hand and caused the gun to discharge, killing the friend instantly.

The man was convicted of murder in a jurisdiction that follows the common law of homicide. On appeal, he argues that the evidence, which essentially set out the facts above, was insufficient to support a verdict of murder.

Should the man's conviction be reversed?

- A. No, because the evidence was sufficient to support a verdict of depraved-heart murder.
- B. No, because the evidence was sufficient to support a verdict of felony murder.
- C. Yes, because the evidence showed that the man did not intentionally pull the trigger.
- D. Yes, because the evidence showed that the man's intent was not to kill the friend, but to take property from him under a claim of right.

### Explanation:

A conviction should be reversed when the evidence presented at trial was insufficient to support a guilty verdict—ie, no reasonable fact finder could find proof of every element of the crime beyond a reasonable doubt. Common law murder requires proof of two elements: (1) the defendant **unlawfully killed** another (2) while acting with **malice aforethought**—ie:

intent to kill – purpose or knowledge that one's actions will cause death

intent to cause serious bodily injury – purpose or knowledge that one's actions will cause serious bodily injury

**depraved-heart murder** – **reckless disregard** for a **high risk to human life** or serious bodily injury *or*

felony murder – intent to commit an **inherently dangerous felony**.

Here, the friend was *accidentally* killed when a bystander's beer bottle hit the man's hand and caused his gun to discharge (unlawful killing) **(Choice C)**. Since the man had held his finger on the trigger while his gun was pointed at the friend, the man acted with reckless disregard for the high risk that his gun could discharge (malice aforethought). Therefore, the evidence is sufficient to support a verdict of depraved-heart murder, and the man's conviction should be affirmed (not reversed).

**(Choice B)** Felony murder is the unintentional killing of another during the commission, or attempted commission, of an inherently dangerous felony like robbery—ie, the trespassory taking and carrying away of *another's* property by force or threat with the intent to permanently deprive the owner thereof. Here, the killing occurred while the man was trying to recover his *own* debit card—not during an inherently dangerous felony.

**(Choice D)** An assertion that the defendant took property under a claim of right (ie, a claim of greater ownership) is a defense to theft crimes (eg, larceny, robbery)—not murder. And though the man did not intend to kill, the evidence supports a murder conviction since he recklessly pointed a loaded handgun at the friend.

### Educational objective:

A common law murder requires proof that the defendant unlawfully killed another person with malice aforethought, such as reckless indifference to human life (depraved-heart murder)—eg, pointing a loaded gun at another.

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**Depraved-heart murder**  
(reckless indifference to human life)



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