

A man was at work when he received a call from his wife. She told the man that their neighbor had severely beaten their son for merely walking across the neighbor's lawn. Incensed, the man rushed home from work only to find the neighbor being led away in handcuffs by the police. Ten days later, the man was shopping at a local grocery store when he spotted the neighbor, who had been released on bail. As they crossed paths, the neighbor looked directly at the man and said, "Hitting your boy sure was fun." The man became enraged, immediately drew a knife, and stabbed the neighbor repeatedly, killing him.

The man was charged with murder. At trial, the man has requested that the court instruct the jury on voluntary manslaughter.

Should the court grant the man's request?

- A. No, because a reasonable person in the man's position would have cooled after 10 days.
- B. No, because words alone do not constitute adequate provocation.
- C. Yes, because the man had not actually cooled off in the days between the son's beating and the neighbor's death.
- D. Yes, because the neighbor's taunt provoked the man again.

## Explanation:

A court should issue an instruction on any offense of which a reasonable jury could convict the defendant. In a prosecution for **murder**, an instruction on **voluntary manslaughter** is warranted when a reasonable jury could find that the defendant **intentionally killed** the victim:

in response to **adequate provocation** – an act that would cause a sudden and intense passion in a reasonable person (eg, serious assault on a family member) *and* in the **heat of passion** – a reasonable person would not have cooled off in the time between the provocation and the killing, and the defendant did not cool off.

However, the **rekindling doctrine** allows a defendant to argue that, even though enough time had passed since the initial provocation to allow for cooling off, another encounter with the victim was sufficient to "rekindle" the defendant's passion. Such encounters commonly involve mocking or taunts about the initial provocation.

Here, the man was adequately provoked after the neighbor severely beat the man's son. However, a reasonable person likely would have cooled off in the 10 days between the son's beating and the man's encounter with the neighbor. But since a reasonable jury could find that the neighbor's taunt—"Hitting your boy sure was fun"—was sufficient to rekindle the man's passion, the court should grant his request for a voluntary-manslaughter instruction (**Choice A**).

**(Choice B)** Mere words are typically not enough to constitute adequate provocation. But a second encounter involving taunting or mocking may be sufficient to rekindle passion from a prior adequate provocation (as seen here).

**(Choice C)** The man may not have actually cooled off in the time between the son's beating and the man's encounter with the neighbor. But since a reasonable person likely would have, this does not provide a basis for an instruction on voluntary manslaughter.

## Educational objective:

Voluntary manslaughter is an intentional killing committed (1) in response to adequate provocation and (2) in the heat of passion. But even if enough time had passed for cooling off, a secondary encounter with the victim may be sufficient to rekindle the defendant's passion under the rekindling doctrine.

## References

People v. Berry, 556 P.2d 777 (Cal. 1976) (establishing the rekindling doctrine).

## Rekindling doctrine



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