

Despondent over losing his job, a man drank all night at a bar. While driving home, he noticed a car following him and, in his intoxicated state, concluded he was being followed by robbers. In fact, a police car was following him on suspicion of drunk driving. In his effort to get away, the man sped through a stop sign and struck and killed a pedestrian. He was arrested by the police.

The man is prosecuted for manslaughter. What verdict should the jury render?

- A. Acquittal, because he honestly believed he faced an imminent threat of death or severe bodily injury.
- B. Acquittal, because his intoxication prevented him from appreciating the risk he created.
- C. Conviction, because he acted recklessly and his apprehension of danger was not reasonable.
- D. Conviction, because he acted recklessly and in fact was in no danger.

## Explanation:

In most jurisdictions, manslaughter is divided into two types:

Voluntary manslaughter – an intentional killing mitigated by adequate provocation (ie, heat of passion) *or* other mitigating factors (eg, imperfect self-defense)

**Involuntary manslaughter** – an **unintentional killing** committed during an unlawful act *or* with **criminal negligence**—the substantial failure to act as a reasonable person would act under similar circumstances (sometimes called recklessness)

**Mistake of fact** is a **defense** to manslaughter (and other **general intent** crimes) when the defendant's **honest, reasonable, but mistaken belief** negates the requisite mental state (ie, mens rea).

Here, the man sped through a stop sign and unintentionally killed a pedestrian. He acted recklessly (ie, with criminal negligence) since a reasonable person would not have driven while intoxicated and run a stop sign. And though he honestly believed that robbers were pursuing him and that he needed to escape this threat of harm, his mistaken belief was *unreasonable* since it was brought about by his intoxication—not his pursuers (the police). Therefore, the jury should convict the man of involuntary manslaughter **(Choice A)**.

**(Choice B)** Voluntary intoxication is a defense to **specific intent crimes** when it prevents the defendant from forming the requisite intent. But it is not a defense to crimes requiring a lesser mens rea (eg, involuntary manslaughter). So though the man's voluntary intoxication may have prevented him from appreciating the risk he created, it is no defense here.

**(Choice D)** Although the man acted recklessly and was not actually in danger, his honest but mistaken belief that he was in danger could have been a defense had that belief been reasonable.

## Educational objective:

Mistake of fact is a defense to non-specific intent crimes (eg, manslaughter) when the defendant's honest, *reasonable*, but mistaken belief negates the requisite mental state.

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## Applicability of mistake-of-fact defense

