

A man bought a new rifle and wanted to try it out by doing some target shooting. He went out into the country to an area where he had previously hunted. Much to his surprise, he noticed that the area beyond a clearing contained several newly constructed houses that had not been there before. Between the houses there was a small playground where several children were playing. Nevertheless, the man nailed a paper target to a tree and went to a point where the tree was between himself and the playground. He then fired several shots at the target. One of the shots missed the target and the tree and hit and killed one of the children in the playground.

The man was convicted of murder. He appealed, contending that the evidence was not sufficient to support a conviction of murder.

How should the appellate court rule?

- A. Affirm the conviction, as the evidence is sufficient to support a conviction of murder.
- B. Reverse the conviction and order the case dismissed, because the evidence is sufficient only for a finding of negligence and negligence alone cannot support a criminal conviction.
- C. Reverse the conviction and remand for a new trial, because the evidence is not sufficient for murder but will support a conviction of involuntary manslaughter.
- D. Reverse the conviction and remand for a new trial, because the evidence is not sufficient for murder but will support a conviction of voluntary manslaughter.

Explanation:

An appellate court should affirm (ie, uphold) a defendant's conviction if a reasonable fact finder could conclude that there was sufficient evidence at trial to establish every element of the crime beyond a reasonable doubt. To support a **murder** conviction, the evidence must show that the defendant **unlawfully killed another** with **malice aforethought**—ie, the defendant:

intended to kill – acted with purpose or knowledge that his/her actions would cause a death

intended to cause serious bodily injury – acted with purpose or knowledge that his/her actions would cause significant but nonfatal injury

acted with **reckless indifference** to an obvious or unjustifiably **high risk of serious bodily harm or death** (ie, **depraved-heart murder**) *or*

intended to commit an **inherently dangerous felony** (ie, felony-murder).

Here, the defendant did not intend to shoot the child, but he knew that several children were playing in a small playground beyond a clearing. Therefore, a reasonable fact finder could conclude that he consciously disregarded the unreasonable risk that he could seriously harm or kill a child by firing several shots in that direction (depraved-heart murder). As a result, there is sufficient evidence to affirm the murder conviction.

(Choice B) Ordinary negligence (ie, the failure to use reasonable care) cannot support a criminal conviction. But here, the evidence is sufficient to support a finding of reckless disregard (ie, malice aforethought) necessary for a murder conviction.

(Choice C) Involuntary manslaughter is an unintentional killing committed (1) with criminal negligence—ie, the substantial failure to exercise reasonable care—or (2) during the commission of an unlawful act—eg, misdemeanor assault. Here, although the man's actions were criminally negligent, they also were serious enough to support his murder conviction.

(Choice D) Voluntary manslaughter is an intentional killing committed in response to adequate provocation or in imperfect self-defense. Since the man acted recklessly (not intentionally) and without provocation or a need for self-defense, the evidence does not support a voluntary manslaughter conviction. But since there is sufficient evidence to support his murder conviction, the court should affirm it.

Educational objective:

Common law murder requires proof that the unlawful killing of another was committed with malice aforethought—eg, proof that the defendant consciously disregarded an obvious or unjustifiably high risk of serious bodily injury or death (depraved-heart murder).

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Depraved-heart murder
(reckless indifference to human life)



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