

In a jurisdiction that has abolished the felony-murder rule but otherwise follows the common law of murder, a husband and wife, both armed with automatic weapons, went into a bank to rob it. The husband ordered all the persons in the bank to lie on the floor. When some were slow to obey, the wife, not intending to hit anyone, fired about 15 rounds into the air. One of these ricocheted off a stone column and struck and killed a customer in the bank.

The husband and wife were charged with murder of the customer.

Which of the following is correct?

- A. Both can be convicted of murder.
- B. Neither can be guilty of murder, but both can be convicted of manslaughter based upon an unintentional homicide.
- C. The wife can be convicted of murder, because she did the act of killing, but the husband cannot be convicted of either murder or manslaughter.
- D. The wife can be convicted only of manslaughter, but the husband cannot be convicted of murder or manslaughter.

**Explanation:**

A defendant is guilty of common law murder if he/she unlawfully killed another with malice aforethought—ie:

intent to kill

intent to inflict serious bodily harm

**reckless disregard** of a **high risk of serious bodily injury or death** (ie, depraved-heart murder) *or*

intent to commit an inherently dangerous felony (ie, felony murder)—abolished in this jurisdiction.

And under **accomplice liability**, a person who **intentionally aided or encouraged** the defendant (principal) with the intent that the crime be completed can be convicted of (1) the **encouraged crime** and (2) **any crimes** that occurred as a **foreseeable consequence** of that crime.

Here, the wife committed murder when she recklessly disregarded the high risk to human life posed by shooting 15 rounds into the air inside the bank (malice aforethought) and killed a bank customer (unlawful killing). The husband is also guilty of murder as an accomplice because (1) he intentionally assisted his wife with the armed bank robbery and (2) the murder was foreseeable since they used automatic weapons **(Choice C)**.

**(Choices B & D)** The husband and wife may be guilty of involuntary manslaughter—an unintentional killing caused by an unlawful act or criminal negligence. But since the wife killed the customer with malice aforethought (recklessness) and the husband was her accomplice, they can be convicted of the more serious crime of murder.

**Educational objective:**

Common law murder is an unlawful killing with malice aforethought (eg, depraved-heart murder). An accomplice—one who intentionally aided or encouraged another with the intent that the crime be completed—can be convicted of the encouraged crime *and* any crimes that occur as a foreseeable consequence thereof.

Copyright © 2002 by the National Conference of Bar Examiners. All rights reserved.

Copyright © UWorld. All rights reserved.

**Accomplice liability**  
(liable for assisted & foreseeable crimes)

