

A man was at home watching sports when his teenaged son walked into the living room and told him that he had just been severely assaulted. When asked who had hurt him, the son replied that it was a neighborhood boy. Enraged, the man grabbed his pistol and set off for the neighbor's house located across the street. The man arrived at the house and banged on the door. Unbeknownst to the man, the neighbor had an identical twin brother. The neighbor's twin answered the door, and the man shot and killed him.

The man is charged with murder as defined under the common law. At trial, he requests the court to charge the jurors that they can find him guilty of voluntary manslaughter rather than murder.

Assuming that the court believes that there is sufficient evidence that the man was adequately provoked and committed the killing in the heat of passion, should the court grant the man's request?

- A. No, because a court cannot instruct the jury on two different crimes stemming from the same incident.
- B. No, because the man was not provoked by the twin.
- C. Yes, because a jury could find that the man unintentionally killed the twin.
- D. Yes, because a jury could find that the man's mistake as to the twin's identity was reasonable.

Explanation:

Types of common law homicide

(in descending order of seriousness)

Murder	Unlawful killing of another with malice aforethought: Intent to kill Intent to cause serious physical injury Depraved heart – reckless disregard of obvious/unjustifiably high risk to human life Felony murder – intent to commit inherently dangerous felony
Voluntary manslaughter	Intentional killing of another based on: adequate provocation <i>or</i> imperfect self-defense: defendant started confrontation defendant honestly but unreasonably believed deadly force was necessary
Involuntary manslaughter	Unintentional killing of another: with criminal negligence <i>or</i> during unlawful act

A common-law murder conviction requires proof that the defendant unlawfully killed another with malice aforethought—eg, with the specific intent to kill or inflict serious bodily harm (as seen here). However, a court should issue an instruction on all lesser crimes for which a reasonable jury could convict the defendant.

An instruction on **voluntary manslaughter** is appropriate if a reasonable jury could find that the defendant **intentionally killed** the victim in the **heat of passion** generated by **adequate provocation**. And under the doctrine of **transferred provocation**, such an instruction is appropriate even if the defendant:

killed someone the defendant **mistakenly but reasonably believed** was the **provoker** *or* **accidentally killed another** while trying to kill the provoker.

Here, the man intentionally killed the twin brother after a serious assault on his son (adequate provocation) and before he and a reasonable person would have cooled off (heat of passion). And though the man mistakenly killed the twin instead of the actual provoker, a jury could find that the man's mistake as to the twin's identity was reasonable (**Choice B**). Therefore, the man is still entitled to a voluntary-manslaughter instruction.*

*This question is focused on whether the man is entitled to a voluntary-manslaughter jury instruction. Regardless of whether that instruction is given, the jury can still find the man guilty of murder if it so chooses.

(Choice A) A court may instruct a jury on multiple crimes stemming from the same incident. The jury will then weigh the evidence to determine which crime the defendant committed (if any).

(Choice C) An involuntary-manslaughter instruction is appropriate when a reasonable jury could find that the defendant unintentionally killed the victim with criminal negligence or during an unlawful act. But here, the man *intentionally* killed the twin.

Educational objective:

Voluntary manslaughter occurs when a defendant intentionally kills a victim in the heat of passion generated by adequate provocation. This is true even if the victim is someone the defendant (1) mistakenly but reasonably believed was the provoker or (2) accidentally killed while trying to kill the provoker.

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