

A man purchased a new rifle and wanted to try it out before bringing it on a hunting trip the following day. After leaving the gun store, the man drove to a remote part of town and stopped at a building that, by all outward appearances, had been abandoned. The man fired upon the building, using the building's boarded-up windows as targets. Unbeknownst to the man, a small group of people had taken shelter inside the building. The man ceased firing once he heard voices yelling from inside the building. However, one of the man's bullets struck and killed a woman inside the building.

The above facts were set out at trial, and the man was convicted of murder. On appeal, the man argues that the evidence was insufficient to support his conviction.

If the jurisdiction follows the common law of homicide, should the man's conviction be overturned?

- A. No, because the killing occurred during the commission of an inherently dangerous felony.
- B. No, because the man acted with negligent disregard of an obviously high risk of death by shooting at the building.
- C. Yes, because the man did not intend to kill the woman when he fired at the building.
- D. Yes, because the man was unaware of the danger posed by firing at the seemingly abandoned building.

Explanation:

Homicide

Murder	Common law	Modern approach
	Unlawful killing committed with malice aforethought:	First-degree: murder committed with:
	Intent to kill	premeditation & deliberation
	Intent to cause serious bodily harm	heinous acts (eg, bombing, torture)
	Depraved-heart murder	enumerated felony murder
	Felony murder	Second-degree: any murder that is not first-degree murder
Voluntary manslaughter	Intentional killing mitigated by either: adequate provocation (ie, heat of passion) other mitigating factors (eg, imperfect self-defense)	
Involuntary manslaughter	Unintentional killing either: caused by criminal negligence (or recklessness under MPC) occurs during commission of criminal act (eg, misdemeanor manslaughter)	

MPC = Model Penal Code.

A conviction should be overturned if the evidence was insufficient to support a guilty verdict because no reasonable fact finder could find proof of every element of the crime beyond a reasonable doubt. **Common-law murder** requires proof that the defendant unlawfully killed another while acting with **malice aforethought**—ie:

intent to kill

intent to inflict serious bodily injury

reckless disregard of an **obvious or unjustifiably high risk** of causing **death** or **serious bodily injury** (ie, depraved-heart murder) *or*

intent to commit an **inherently dangerous felony** (ie, felony-murder rule)

Here, the man did not intend to kill or seriously injure the woman, and firing a rifle at a seemingly abandoned building does not qualify as an inherently dangerous felony (**Choices A & C**). However, he could still be guilty of depraved-heart murder if he recklessly

disregarded an obvious or unjustifiably high risk of causing death or serious bodily injury by shooting at the building.

In a majority of jurisdictions (and under the Model Penal Code), a defendant must have **actually realized** the **danger to human life or safety** posed by his/her conduct to be guilty of depraved-heart murder.* Here, there is no evidence that the man was *actually* aware of the danger posed by his conduct because the building was in a remote area and lacked signs of being occupied. Therefore, his conviction should be overturned.

*A minority of jurisdictions impose guilt for depraved-heart murder if a reasonable person in the defendant's position would have realized the danger posed by his/her conduct.

(Choice B) Involuntary manslaughter requires proof that the defendant unintentionally killed another with criminal negligence or during the commission of an [unlawful act](#). But since the man was convicted of murder, not involuntary manslaughter, the fact that he may have been negligent is irrelevant to his appeal.

Educational objective:

Depraved-heart murder is the reckless disregard of an obvious or unjustifiably high risk of causing death or serious bodily injury. In most jurisdictions, the defendant must actually realize the danger posed by his/her conduct to be convicted of common-law murder under this standard.