

A man, despondent and angry over losing his job, was contemplating suicide. With his revolver in his pocket, he went to a bar and drank until he was very intoxicated. He overheard a customer on the next barstool telling the bartender how it was necessary for companies to downsize in order to keep the economy strong. The man turned to the customer and said, "Why don't you shut the hell up." The customer responded, "This is a free country, and I can say what I want," all the while shaking his finger at the man. The man became enraged, snatched his revolver from his pocket, and shot the customer, killing him.

A state statute defines first-degree murder as "knowingly causing the death of another person after deliberation upon the matter." Deliberation is defined as "cool reflection for any length of time, no matter how brief." Second-degree murder is defined as "knowingly causing the death of another person." Manslaughter is defined as at common law.

What crime did the man commit?

- A. First-degree murder, because deliberation can take place in an instant.
- B. First-degree murder, because he contemplated taking a human life before becoming intoxicated.
- C. Manslaughter, because there was a reasonable explanation for his becoming enraged.
- D. Second-degree murder, because he knowingly caused the customer's death without deliberation.

Explanation:

Intoxication

Voluntary Deliberate ingestion of substance that person knew or should have known has intoxicating effects

Involuntary Unknowing or forcible ingestion of intoxicating substance

In this state, criminal homicide—the killing of another with the requisite mens rea (ie, state of mind)— is divided into three levels:

First-degree murder – knowingly killing another after deliberation (ie, cool reflection for any length of time, no matter how brief)

Second-degree murder – knowingly killing another (ie, acting with substantial certainty that death will occur)

Common law manslaughter – intentionally killing another in the heat of passion upon adequate provocation or in imperfect self-defense (voluntary manslaughter) *or* unintentionally killing another with criminal negligence or during an unlawful act (involuntary manslaughter)

Voluntary intoxication is the deliberate ingestion of a substance that a person knows or should know has intoxicating effects. This is a **defense to specific intent crimes** if the intoxication prevented the person from forming such intent. First-degree murder is a specific intent crime since it requires a person to deliberate upon the killing, so voluntary intoxication is a defense. But it is **not a defense** to second-degree murder since that crime requires a **lesser mental state** (ie, knowledge).

Here, the state statute establishes that deliberation can take place instantly. But the man's intoxication prevented him from deliberating upon the killing since he killed in a rage—not after cool reflection. Therefore, he did not commit first-degree murder (**Choice A**). However, the man *knowingly* killed the customer since it was substantially certain that the customer would die from being shot at close range. And since his intoxication did not negate that knowledge, the man still committed second-degree murder.

(Choice B) Voluntary intoxication is not a defense to first-degree murder when the defendant contemplated killing *another* person before becoming intoxicated. Here, the man contemplated killing *himself* (not another) before becoming intoxicated, so voluntary intoxication is an available defense.

(Choice C) Voluntary manslaughter is the intentional killing of another in response to adequate provocation—ie, conduct that would cause a reasonable person to lose control (more than mere words). Here, the man became enraged when the customer said, "This is a

free country, and I can say what I want" while shaking his finger. Since that would not provoke a reasonable person to kill, the man did not commit voluntary manslaughter.

Educational objective:

Voluntary intoxication—deliberately ingesting a substance that a person knows or should know has intoxicating effects—is a defense to specific intent crimes (eg, first-degree murder) when the intoxication prevented the person from forming such intent.

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