

A man became ill while at work and decided to go home early. When he entered his bedroom, the man saw his wife engaged in sexual intercourse with a neighbor. The man grabbed a gun from a dresser drawer and shot and killed the neighbor. He was later charged and prosecuted.

In a jurisdiction that follows the common law for homicide offenses, which crimes should the court instruct the jury on?

- A. Murder and involuntary manslaughter.
- B. Murder and voluntary manslaughter.
- C. Murder, voluntary manslaughter, and involuntary manslaughter.
- D. Voluntary manslaughter and involuntary manslaughter.

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 court should **instruct** the jury on **all possible crimes** for which a **reasonable fact finder could convict** a defendant. Therefore, an instruction on **common law murder** is appropriate when a reasonable jury could conclude that the defendant unlawfully killed another with **malice aforethought**—eg, the defendant acted with the **specific intent to kill** or inflict **serious bodily harm** upon the victim.

Here, the man shot and killed the neighbor (unlawful killing). A reasonable jury could find that the man acted with malice aforethought since he grabbed a gun from a dresser drawer and shot the neighbor after finding him engaged in sexual intercourse with the man's wife (intent to kill or seriously harm). Therefore, the court should instruct the jury on murder.

Additionally, an instruction on **voluntary manslaughter** (ie, heat-of-passion killing) is appropriate when a reasonable jury could find that the defendant intentionally killed another in response to **adequate provocation**. Provocation is adequate if it would cause a **reasonable person to lose control**—eg, discovering one's spouse engaged in adultery (as seen here). Therefore, the court should also instruct the jury on voluntary manslaughter.

(Choices A, C & D) Involuntary manslaughter is an *unintentional* killing caused by an unlawful act (eg, misdemeanor manslaughter) or criminal *negligence* (ie, the substantial

failure to act as a reasonably prudent person). Here, since the evidence shows that the man *intended* to kill or seriously harm his neighbor, a jury instruction on involuntary manslaughter is inappropriate.

Educational objective:

A jury instruction on common law murder is appropriate when a reasonable fact finder could conclude that the defendant unlawfully killed another with malice aforethought (eg, intended to kill or inflict serious bodily harm). And a voluntary manslaughter instruction is appropriate if the jury could find adequate provocation for the killing.

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