

A husband and wife took their 12-year-old son to a political rally in an auditorium to hear a controversial United States senator speak. The speaker was late, and the wife stepped outside the auditorium to smoke a cigarette. While there, she saw a man placing what she believed to be a bomb against the back wall of the auditorium. She went back inside and told her husband what she had seen. Without alerting anyone, they took their son and left. Some 20 minutes later, the bomb exploded, killing eight persons and injuring 50.

In the jurisdiction, murder in the first degree is defined as an intentional homicide committed with premeditation and deliberation; murder in the second degree is defined as all other murder at common law; and manslaughter is defined as either a homicide in the heat of passion arising from adequate provocation or a homicide caused by gross negligence or reckless indifference to consequence.

As to the deaths of the eight persons, what crime, if any, did the wife commit?

- A. Manslaughter.
- B. Murder in the first degree.
- C. Murder in the second degree.
- D. No crime.

Explanation:

To commit **criminal homicide**, a person must unlawfully kill another (actus reus) with the requisite mental state (mens rea). Criminal liability typically stems from a voluntary act—an overt movement over which the defendant has conscious control (eg, deliberately pulling a gun's trigger). But criminal liability can also arise from a **failure to act** (ie, omission) if the defendant had a **legal duty** to act and could have reasonably done so. A legal duty to act can arise under any of the following circumstances:

The defendant and the victim are in a **special relationship** (eg, parent/child, spouses).

The defendant assumed the victim's care by rendering aid.

The defendant's conduct created the risk of harm to the victim.

A statute imposes a duty.

A contract imposes a duty.

Here, the wife saw a man place what appeared to be a bomb in the auditorium. She told her husband, and they left with their son. The bomb went off shortly thereafter and killed eight people. Although the wife had a legal duty to protect her husband and son from the bomb based on their special relationship, she had no legal duty to warn anyone else. Therefore, she did not commit any degree of criminal homicide—first-degree murder, second-degree murder, or manslaughter (**Choices A, B, & C**).

Educational objective:

A person is not criminally liable for failing to act unless he/she had a legal duty to do so. A legal duty can be based on (1) a special relationship, (2) assumption of care, (3) creation of the risk of harm, (4) a statute, or (5) a contract.

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Actus reus

Voluntary act
(conscious, overt movement)

Omission
(failure to perform legal duty)

