

In a criminal trial, the evidence has shown that the defendant's neighbor entered the defendant's house with a knife and told the defendant that she was going to kill him. The defendant ran to his bedroom, picked up a gun, and told the neighbor to back off. The neighbor did not stop and stabbed the defendant in the arm. The defendant then shot the neighbor twice. The neighbor fell to the floor and lay quietly moaning. After a few seconds, the defendant fired a third shot into the neighbor.

The case has gone to the jury, which has thus far found that the neighbor died instantly from the third shot and that the defendant was no longer in fear of being attacked by her when he fired the third shot.

Of which of the following degrees of criminal homicide, if any, can the jury properly convict the defendant?

- A. Attempted murder only.
- B. Manslaughter only.
- C. Murder or manslaughter.
- D. No degree of criminal homicide.

Explanation:

A person can use **deadly force** in **self-defense** when he/she (1) **actually and reasonably believes** that deadly force is necessary to prevent **imminent serious bodily harm or death** and (2) was not the initial aggressor. But this right **expires** once the person **no longer actually or reasonably believes** that he/she is in danger. At that point, if the person continues to engage in deadly force and kills another, that person may be guilty of **criminal homicide**—ie:

Murder – an unlawful killing committed with malice aforethought (eg, **intent to seriously harm or kill**)

Voluntary manslaughter – an intentional killing committed in the **heat of passion upon adequate provocation** (eg, a serious battery) *or*

Involuntary manslaughter – an unintentional killing that resulted from criminal negligence or an unlawful act.

Here, the defendant's first two shots were justified since he reasonably believed this force was necessary to stop his neighbor (initial aggressor) from stabbing him (imminent serious bodily harm). Those shots caused the neighbor to fall to the ground, terminating the defendant's fear of an attack. Therefore, the defendant's third shot was unjustified. And since that shot killed the neighbor, the defendant could be convicted of either:

murder because the jury could find that he intended to seriously harm or kill the neighbor **(Choice B)** *or*

voluntary manslaughter because the jury could find that he intentionally killed the neighbor in the heat of passion after he was adequately provoked by the stabbing **(Choice D)**.

(Choice A) Attempted murder requires proof that the defendant (1) possessed the specific intent to kill another, (2) acted in furtherance of the killing, but (3) failed to complete it. But since the man accomplished the killing, he will likely be convicted of murder or voluntary manslaughter.

Educational objective:

A person can use deadly force in self-defense when he/she (1) actually and reasonably believes that deadly force is necessary to prevent imminent serious bodily harm or death and (2) was not the initial aggressor. But this right terminates once the fear of danger ends.

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Deadly force in self-defense

