

## 9.6: Manslaughter

### Learning Objectives

1. Compare murder and manslaughter.
2. Define voluntary manslaughter.
3. Ascertain the basis of an adequate provocation.
4. Explain the concurrence of a voluntary manslaughter killing and the heat of passion.
5. Compare voluntary and involuntary manslaughter.
6. Describe the three types of involuntary manslaughter.
7. Analyze manslaughter grading.

What distinguishes murder from manslaughter is the **criminal intent element**. Manslaughter is an unlawful killing *without* malice or murder intent. N.R.S. § 200.040, accessed February 13, 2011, <http://law.onecle.com/nevada/crimes/200.040.html>. The criminal act, causation, and harm elements of manslaughter and murder are fundamentally the same. Thus criminal intent is the only manslaughter offense element that is discussed in this section.

### 9.6.1 Voluntary Manslaughter

Manslaughter has two basic classifications: **voluntary** and **involuntary**. **Voluntary manslaughter** has the same criminal intent element as murder. In fact, a voluntary manslaughter killing is typically supported by express malice, specific intent to kill, or purposely. However, in a voluntary manslaughter, an emotional state called a **heat of passion** negates the murder intent. An **adequate provocation** from the *victim* inspires the heat of passion. Tenn. Code Ann. § 39-13-211, accessed February 24, 2010, <http://www.lexisnexis.com/hottopics/tncode>. The Model Penal Code does not require adequate provocation from the victim per se, but it does have a similar provision that reduces murder to manslaughter when there is a reasonable explanation or excuse (Model Penal Code § 210.3(1)(b)).

The **adequacy** requirement is essential to any voluntary manslaughter analysis. Many defendants are provoked and thereafter kill with murder intent. Nonetheless, most provocations are not **adequate** to drop the crime from murder to manslaughter. The victim's provocation must be serious enough to goad a *reasonable person* into killing. *People v. Steele*, 47 P.2d 225 (2002), accessed February 13, 2011, [http://scholar.google.com/scholar\\_case?case=18208208560981664037&q=voluntary+manslaughter+reasonable+person+adequate+provocation&hl=en&as\\_sdt=2,5](http://scholar.google.com/scholar_case?case=18208208560981664037&q=voluntary+manslaughter+reasonable+person+adequate+provocation&hl=en&as_sdt=2,5). A reasonable person is a fictional and objective standard created by the trier of fact. Of course, *the defendant* must *actually* be provoked, which is a subjective standard. *People v. Steele*, 47 P.2d 225 (2002), accessed February 13, 2011, [http://scholar.google.com/scholar\\_case?case=18208208560981664037&q=voluntary+manslaughter+reasonable+person+adequate+provocation&hl=en&as\\_sdt=2,5](http://scholar.google.com/scholar_case?case=18208208560981664037&q=voluntary+manslaughter+reasonable+person+adequate+provocation&hl=en&as_sdt=2,5).

### 9.6.2 Example of Inadequate Provocation

Revisit the situation discussed in [Section 9](#), in which Dillon kills his supervisor Frank with a brass paperweight after Frank fires him. Clearly, Frank's conduct provokes Dillon into killing Frank. However, getting fired would not provoke a *reasonable person* into a killing frenzy. In fact, reasonable people are fired all the time and learn to live with it peacefully. Therefore, in this example, Dillon's crime is most likely *murder*, not voluntary manslaughter.

### 9.6.3 Example of Adequate Provocation

A traditional example of provocation that is adequate to reduce a crime from murder to manslaughter is an observation by one spouse of another spouse in the act of adultery. *Ohio v. Shane*, 63 Ohio St.3d 630 (1992), accessed February 24, 2011, [http://scholar.google.com/scholar\\_case?case=8752055493993855988&q=voluntary+manslaughter+spouse+act+of+adultery&hl=en&as\\_sdt=2,5](http://scholar.google.com/scholar_case?case=8752055493993855988&q=voluntary+manslaughter+spouse+act+of+adultery&hl=en&as_sdt=2,5). For example, José comes home from work early and catches his wife in bed with his best friend. He becomes so enraged that he storms over to the dresser, grabs his handgun, and shoots and kills her. Clearly, José acts with intent to kill. However, the victim *provoked* this intent with an act that could cause a *reasonable person to kill*. Thus José has probably committed voluntary manslaughter in this case, not murder.

### 9.6.4 Other Examples of Adequate Provocation

Other examples of adequate provocation are when the homicide victim batters the defendant and a killing that occurs during a mutual combat. *Ohio v. Shane*, 63 Ohio St.3d 630 (1992), accessed February 24, 2011, [http://scholar.google.com/scholar\\_case?case=8752055493993855988&q=voluntary+manslaughter+spouse+act+of+adultery&hl=en&as\\_sdt=2,5](http://scholar.google.com/scholar_case?case=8752055493993855988&q=voluntary+manslaughter+spouse+act+of+adultery&hl=en&as_sdt=2,5). Cases have generally held that *words alone* are *not* enough to constitute adequate provocation. *Girouard v. State*, 583 A.2d 718 (1991), accessed February 24, 2011, [www.audiocasefiles.com/acf\\_cases/8711-girouard-v-state](http://www.audiocasefiles.com/acf_cases/8711-girouard-v-state). Thus in the adequate provocation example in [Section 9](#), if a friend told José that his wife was committing adultery, and José responded by shooting and killing his wife, this would probably be murder, not voluntary manslaughter.

### 9.6.5 Concurrence of the Killing and the Heat of Passion

The second requirement of voluntary manslaughter is that the killing occur *during* a heat of passion. Defendants generally exhibit rage, shock, or fright when experiencing a heat of passion. This emotional state negates the calm, deliberate, intent to kill that supports a charge of murder. However, heat of passion mental states are typically brief in duration. Thus there cannot be a *significant time lapse* between the victim's provocation and the killing. *State v. Cole*, 338 S.C. 97 (2000), accessed March 1, 2010, [www.judicial.state.sc.us/opinions/htmlfiles/SC/25037.htm](http://www.judicial.state.sc.us/opinions/htmlfiles/SC/25037.htm). Analyze the adequate provocation example discussed in [Section 9](#). If José waits until the next day to shoot and kill his wife, the crime is most likely premeditated first-degree murder, *not* voluntary manslaughter.

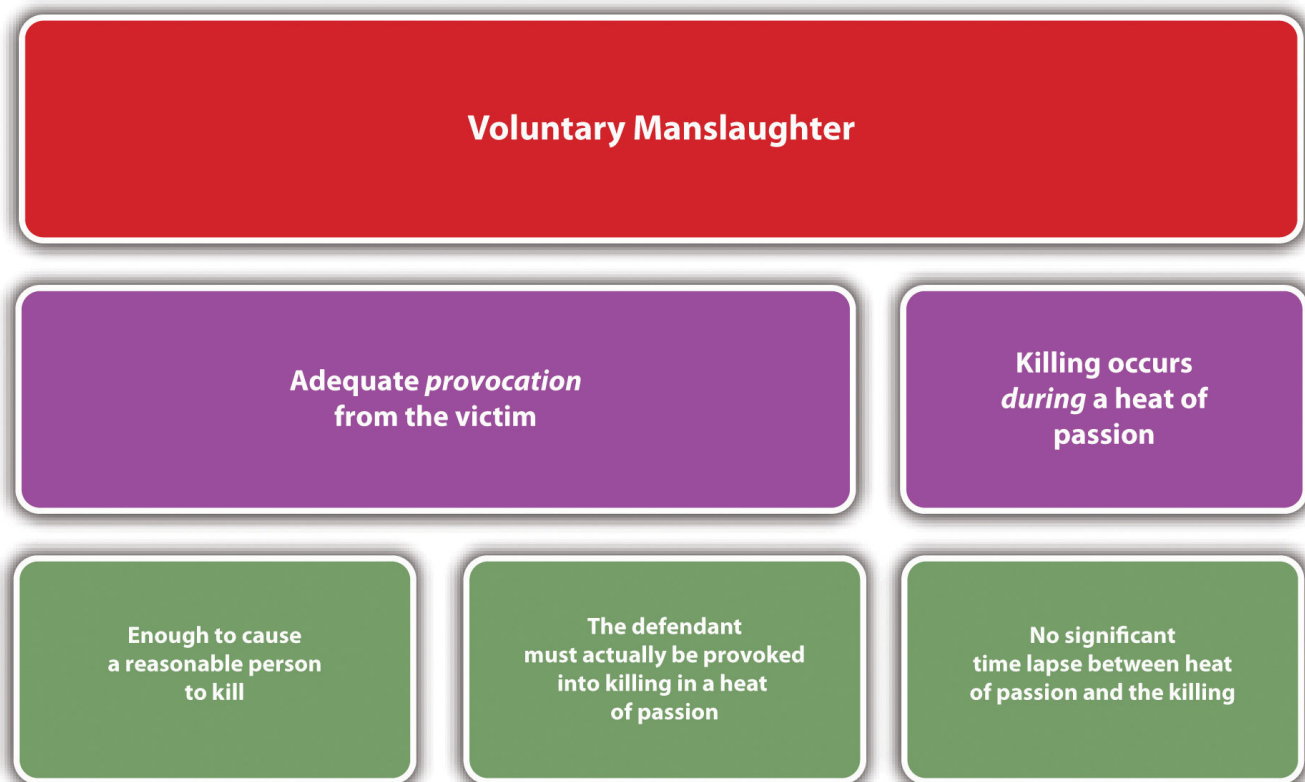


Figure 9.7 Diagram of Voluntary Manslaughter

### 9.6.6 Involuntary Manslaughter

**Involuntary manslaughter** is an unlawful killing that completely lacks murder intent. Involuntary manslaughter is distinguishable from voluntary manslaughter, which generally includes a murder intent that has been *negated*. Involuntary manslaughter generally can be classified as **misdemeanor manslaughter**, **reckless or negligent involuntary manslaughter**, or **vehicular manslaughter**.

### 9.6.7 Misdemeanor Manslaughter

Misdemeanor manslaughter, also called **unlawful act manslaughter**, is a criminal homicide that occurs during the commission or attempted commission of a *misdemeanor*. The Model Penal Code completely rejects misdemeanor manslaughter. There is a trend to

follow the Model Penal Code's example and abolish misdemeanor manslaughter. Most states that prohibit misdemeanor manslaughter only include misdemeanors that are inherently dangerous to life in the criminal statute, excluding strict liability misdemeanors or *malum prohibitum* crimes. K.S.A. § 21-3404 (b), accessed July 28, 2010, [kansasstatutes.lesterama.org/Chapter\\_21/Article\\_34/21-3404.html](http://kansasstatutes.lesterama.org/Chapter_21/Article_34/21-3404.html). A minority of states and the federal government include strict liability or *malum prohibitum* crimes in their misdemeanor manslaughter statutes. 21 O.S. § 711(1), accessed July 28, 2010, <http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=69314>. In either jurisdiction, the defendant need only possess the criminal intent *for the misdemeanor* to be guilty of the killing.

### 9.6.8 Example of Misdemeanor Manslaughter

Roberta points an unloaded gun at Jennifer to scare her into breaking up with Roberta's ex-boyfriend. This crime is called brandishing a weapon and is often classified as a misdemeanor. At the sight of the gun, Jennifer suffers a heart attack and dies. Roberta has most likely committed misdemeanor manslaughter in this case. Brandishing a weapon is not always inherently dangerous to life. However, if Jennifer has a heart attack and dies because of Roberta's commission of this misdemeanor offense, Roberta still could be criminally responsible for misdemeanor manslaughter in many jurisdictions.

### 9.6.9 Reckless or Negligent Involuntary Manslaughter

States and the federal government also criminalize **reckless** or **negligent** involuntary manslaughter. Ala. Code § 13A-6-3(a) (1), accessed February 13, 2011, [law.onecle.com/alabama/criminal-code/13A-6-3.html](http://law.onecle.com/alabama/criminal-code/13A-6-3.html). Reckless or negligent involuntary manslaughter is a more common form of manslaughter than misdemeanor manslaughter. The Model Penal Code defines reckless homicide as *manslaughter* and a felony of the second degree (Model Penal Code § 210.3). The Model Penal Code defines negligent homicide as a felony of the third degree (Model Penal Code § 210.4).

Reckless involuntary manslaughter is a killing supported by the criminal intent element of **recklessness**. Recklessness means that the defendant *is aware* of a risk of death but acts anyway. Negligent involuntary manslaughter is a killing supported by the criminal intent element of **negligence**. Negligence means that the defendant *should be aware* of a risk of death, but is not. This category includes many careless or accidental deaths, such as death caused by firearms or explosives, and a parent's failure to provide medical treatment or necessities for his or her child. Reckless and negligent criminal intent is discussed in detail in Chapter 4.

As stated in [Section 9.5.1 "Depraved Heart Murder"](#), reckless or negligent involuntary manslaughter is often similar to second-degree depraved heart murder. If the prosecution charges the defendant with both crimes, the trier of fact determines which crime is appropriate based on the attendant circumstances.

### 9.6.10 Example of Reckless or Negligent Involuntary Manslaughter

Steven, an off-duty sheriff's deputy, brings his shotgun into the local rifle shop to be repaired. Steven thinks that the shotgun is unloaded and hands it to the employee with the *safety off*. Unfortunately, the gun is loaded and discharges, shooting and killing the employee. In this case, Steven *should know* that at certain times the safety on his shotgun must always be on because he is a registered gun owner and a sheriff's deputy who has been trained to handle guns. However, Steven is unaware of the risk and believes that the gun is unloaded. If the employee dies, Steven could be convicted of negligent involuntary manslaughter in jurisdictions that recognize this crime. If Steven is in a jurisdiction that only recognizes **reckless** involuntary manslaughter, the prosecution may have to prove a higher degree of awareness, such as Steven's knowledge that the shotgun was *loaded*.

### 9.6.11 Vehicular Manslaughter

**Vehicular manslaughter** is typically either the operation of a motor vehicle with **recklessness** or **negligence** resulting in death or the operation of a motor vehicle *under the influence* of alcohol or drugs resulting in death. N.Y. Penal Law § 125.12, accessed March 5, 2010, [wings.buffalo.edu/law/bclt/web/NewYork/ny3%28a%29%281%29-.htm](http://wings.buffalo.edu/law/bclt/web/NewYork/ny3%28a%29%281%29-.htm). Some states have specific vehicular manslaughter statutes. Cal. Penal Code § 191.5, accessed February 7, 2011, <http://law.onecle.com/california/penal/191.5.html>. In states that do not, the defendant could be prosecuted under a jurisdiction's misdemeanor or unlawful act manslaughter statute if the defendant violates a vehicle code section. Vehicular manslaughter can also be prosecuted under a jurisdiction's reckless or negligent involuntary manslaughter statute, depending on the circumstances. If the defendant uses a motor vehicle as a weapon to kill the victim, the intent to kill is present and the appropriate crime would be **murder**.

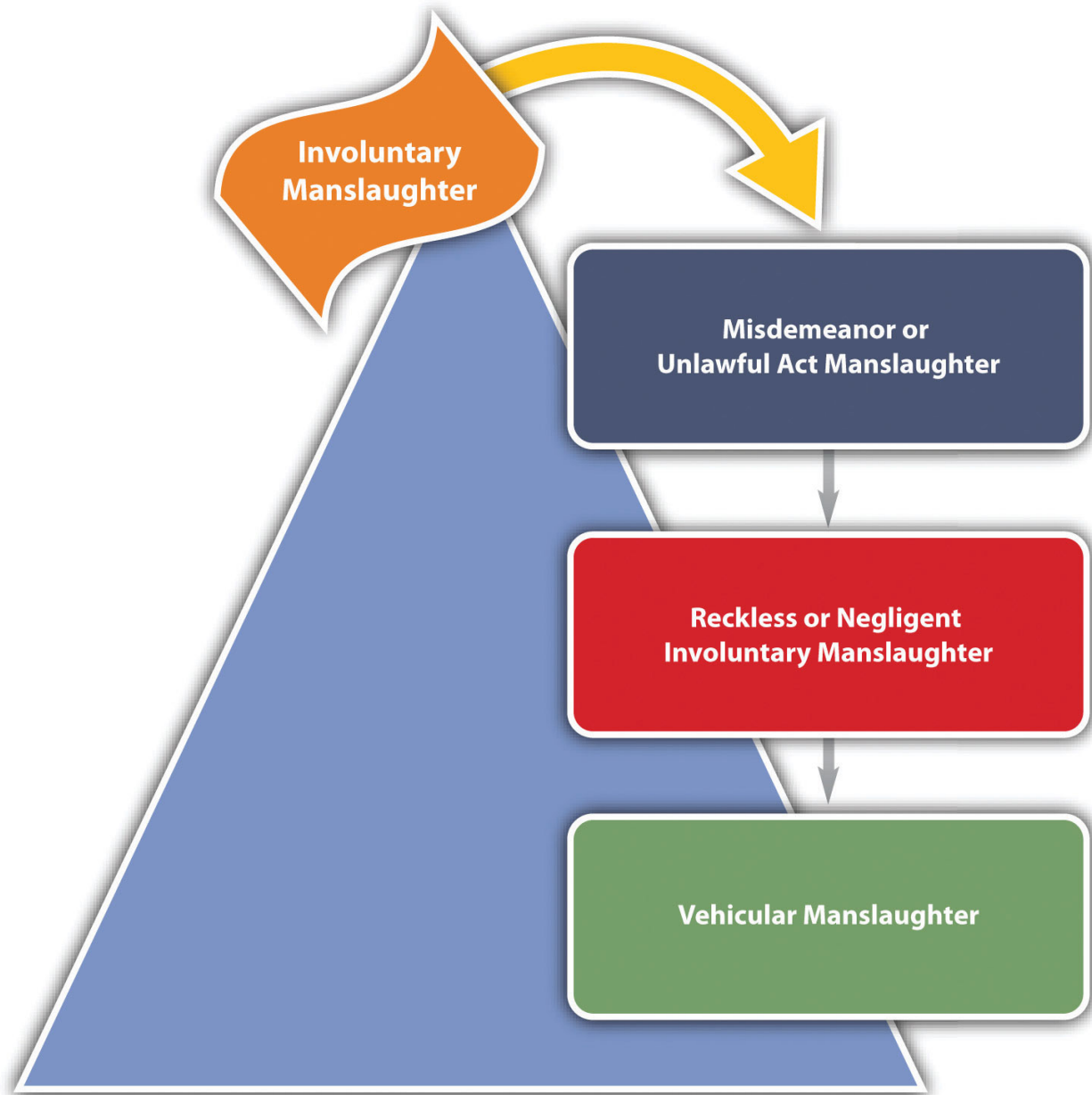


Figure 9.8 Diagram of Involuntary Manslaughter

### 9.6.12 Manslaughter Grading

Voluntary and involuntary manslaughter typically have a more lenient punishment scheme than murder because the criminal intent is less heinous. N.R.S. § 200.080, accessed February 13, 2011, <http://law.onecle.com/nevada/crimes/200.080.html>. Often manslaughter functions as an imperfect *defense* to murder, based on the less serious sentencing options. In general, voluntary manslaughter is **graded** higher than involuntary manslaughter. N.R.S. § 200.090, accessed February 13, 2011, <http://law.onecle.com/nevada/crimes/200.090.html>. Some states divide manslaughter into degrees, rather than classifying it as voluntary and involuntary, with first-degree manslaughter punished more severely than second-degree manslaughter. N.Y. Penal Law §125.20, accessed February 24, 2011, <http://ypdcrime.com/penal.law/article125.htm#125.20>. The Model Penal Code grades all manslaughter as a felony of the second degree (Model Penal Code § 210.3(2)) and grades negligent homicide as a felony of the third degree (Model Penal Code § 210.4(2)).

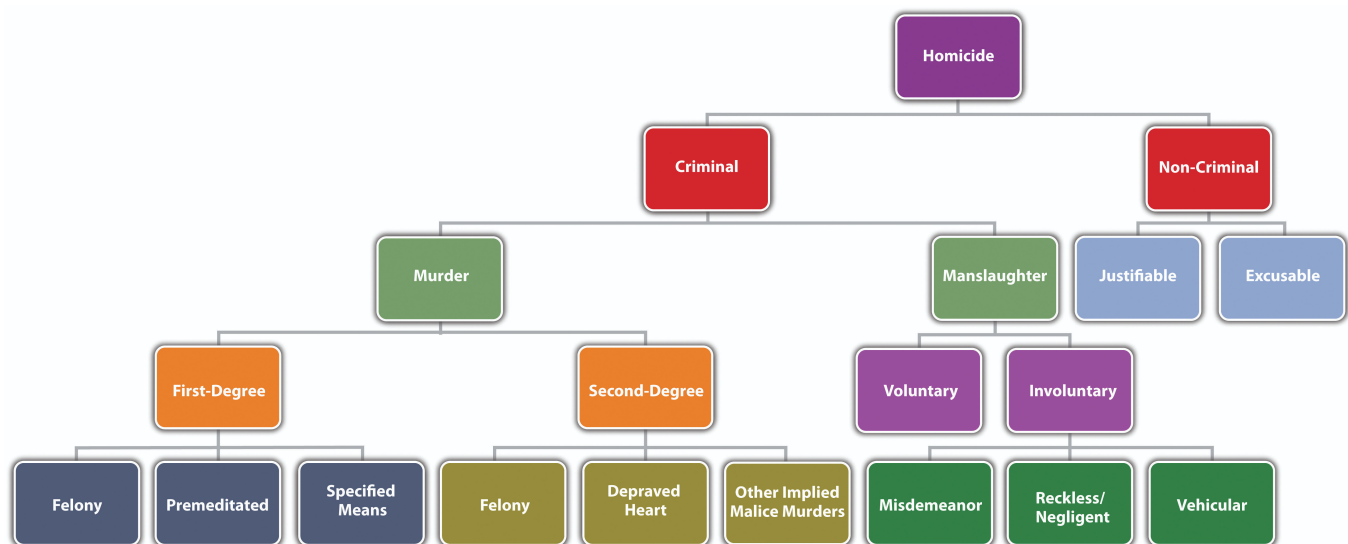


Figure 9.9 Diagram of Homicide

### 9.6.13 Exercises

- Murder is a killing supported by the criminal intent of malice or purposely, knowingly, or recklessly under circumstances manifesting extreme indifference to life. Manslaughter is a killing supported by malice negated by a heat of passion, reckless, or negligent criminal intent.
- Voluntary manslaughter is a killing that occurs during an adequately provoked heat of passion.
- An adequate provocation is one sufficient to goad a reasonable person into killing and that actually provokes the defendant into killing.
- A killing must occur during a heat of passion to be classified as voluntary manslaughter. If a killing occurs before the heat of passion is provoked or after the heat of passion has cooled, it probably will be classified as murder.
- Voluntary manslaughter is supported by murder intent that has been negated in an adequately provoked heat of passion. Involuntary manslaughter lacks murder intent altogether.
- The three types of involuntary manslaughter are misdemeanor manslaughter, reckless or negligent involuntary manslaughter, and vehicular manslaughter.
- Manslaughter is typically graded lower than murder. Voluntary manslaughter is typically graded higher than involuntary manslaughter. The Model Penal Code grades all manslaughters as felonies of the second degree and grades negligent homicide as a felony of the third degree.

### 9.6.14 Exercises

Answer the following questions. Check your answers using the answer key at the end of the chapter.

1. How does the Model Penal Code classify criminal homicides?
2. Read *Stevens v. State*, 691 N.E.2d 412 (1997). Why did the Indiana Supreme Court affirm the lower court's decision to refuse a jury instruction on voluntary manslaughter in this case? The case is available at this link: [http://scholar.google.com/scholar\\_case?case=1747625552972024733&q=stevens+v.+state+691+ne2d+412&hl=en&as\\_sdt=2002&as\\_vis=1](http://scholar.google.com/scholar_case?case=1747625552972024733&q=stevens+v.+state+691+ne2d+412&hl=en&as_sdt=2002&as_vis=1).
3. Read *Tripp v. State*, 374 A.2d 384 (1977). In this case, the defendant killed his ex-girlfriend, her mother, her niece, and her son. Did the Maryland Court of Appeals hold that *the victim* must be the source of adequate provocation in a voluntary manslaughter case? The case is available at this link: [http://scholar.google.com/scholar\\_case?case=17743318345966072534&hl=en&as\\_sdt=2002&as\\_vis=1](http://scholar.google.com/scholar_case?case=17743318345966072534&hl=en&as_sdt=2002&as_vis=1).
4. Read *Walker v. Superior Court*, 47 Cal.3d 112 (1988). What was the basis for the involuntary manslaughter charge against the defendant in this case? Did the California Supreme Court uphold this charge? The case is available at this link: [http://scholar.google.com/scholar\\_case?case=11713950418773441100&hl=en&as\\_sdt=2&as\\_vis=1&oi=scholar](http://scholar.google.com/scholar_case?case=11713950418773441100&hl=en&as_sdt=2&as_vis=1&oi=scholar).

#### 9.6.14.1 LAW AND ETHICS

Should Killing an Abortion Doctor Be Voluntary Manslaughter?

Scott Roeder left his pew during a church service, walked up to a well-known abortion doctor, and deliberately shot him in the head, killing him. During Roeder's trial for first-degree premeditated murder, the defense asked the court to allow a second charge of voluntary manslaughter. The defense claimed that defendant Roeder was acting in *defense of others* in the attempt to save the lives of unborn children. "Man Testifies he Killed Kansas Abortion Doctor," *USA Today*, accessed July 27, 2010, [http://www.usatoday.com/news/nation/2010-01-28-tiller-murder-trial\\_N.htm](http://www.usatoday.com/news/nation/2010-01-28-tiller-murder-trial_N.htm).

1. What are some of the consequences of allowing the charge of voluntary manslaughter in this situation?

Check your answer using the answer key at the end of the chapter.

#### 9.6.14.2 Scott Roeder Verdict Video

Scott Roeder Convicted of Murder

Scott Roeder's murder verdict is shown in this video:

([click to see video](#))

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