

At 9:00 p.m. on a Sunday evening, Adam, age 18, proposed to his friend Bob, also age 18, that they dump Adam's collection of 2,000 marbles at a nearby intersection. "It'll be funny," Adam said. "When cars come by, they'll slip on the marbles and they won't be able to stop at the stop sign. The drivers won't know what happened, and they'll get really mad. We can hide nearby and watch." "That's a stupid idea," Bob said. "In the first place, this town is deserted on Sunday night. Nobody will even drive through the intersection. In the second place, I'll bet the cars just drive right over the marbles without any trouble at all. It'll be a total non-event." "Oh, I'll bet someone will come," Adam replied. "And I'll bet they'll have trouble; maybe there will even be a crash. But if you're not interested, fine. You don't have to do anything. Just give me a ride to the intersection—these bags of marbles are heavy."

At 10:00 p.m. that same night, Bob drove Adam and his bags of marbles to the intersection. Adam dumped several hundred marbles in front of each of the two stop signs at the intersection. Adam and Bob stayed for 20 minutes, waiting to see if anything happened. No one drove through the intersection, and Adam and Bob went home.

At 2:00 a.m., a woman drove through the intersection. Because of the marbles, she was unable to stop at the stop sign. Coincidentally, a man was driving through the intersection at the same time. The woman crashed into the side of the man's car. The man's eight-year-old child was sitting in the front seat without a seat belt, in violation of state law. The child was thrown from the car and killed. If the child had been properly secured with a seat belt, as required by state law, he would likely not have died.

Adam has been charged with involuntary manslaughter as defined at common law, and Bob has been charged with the same crime as an accomplice. State law does not recognize so-called "unlawful-act" involuntary manslaughter.

1. Could a jury properly find that Adam is guilty of involuntary manslaughter? Explain.
2. If a jury did find Adam guilty of involuntary manslaughter, could the jury properly find that Bob is guilty of involuntary manslaughter as an accomplice? Explain.

*Copyright © 2012 by the National Conference of Bar Examiners. All rights reserved*

## Question Presented

Adam proposed dumping 2,000 marbles at an intersection so cars would slip and not stop: maybe there will even be a crash.

← conscious disregard of a known risk  
= recklessness (Adam)

Bob called it a stupid idea, said the town was deserted, and predicted cars would drive right over them, a total non-event.

← Bob subjectively discounts the risk  
→ no recklessness

Adam asked only, give me a ride to the intersection, and Bob drove him there.

← even slight aid + intent to assist =  
an accomplice act

Hours later a woman could not stop, crashed, and a child was killed.

← the criminal result: a death →  
manslaughter

The child was unbelted in violation of law and would likely have survived if belted.

← intervening cause? foreseeable →  
not superseding

State law does not recognize unlawful-act involuntary manslaughter.

← so liability must rest on recklessness  
/ criminal negligence

1. Could a jury properly find Adam guilty of involuntary manslaughter?

← → mens rea + causation

2. If so, could the jury find Bob guilty as an accomplice?

← → assist + shared mens rea

## Adam: Mens Rea (Recklessness / Criminal Negligence)

**Issue.** Whether Adam acted with the mens rea required for involuntary manslaughter.

Reckless or criminally negligent?

**Rule.** INVOLUNTARY MANSLAUGHTER: an unintentional killing without malice caused by recklessness (conscious disregard of a known substantial risk of death or serious bodily injury) or criminal negligence (a gross deviation from reasonable care, judged objectively). The prosecution need not show the defendant knew when or where a specific injury would occur.

Recklessness = subjective awareness;  
criminal negligence = objective gross deviation.

**Analysis.** Here, Adam wanted cars to slip and lose control and even predicted **maybe there will even be a crash**, showing he consciously disregarded a known risk of a collision, a common source of death or serious injury. His points that traffic was light and he foresaw only a crash, not a death, are weak: a reasonable person knows a crash risks death, and he bet cars would come.

**Conclusion.** Therefore, a jury could properly find Adam acted recklessly.

*His own words show he foresaw the crash risk and pressed on.*

*Recklessness satisfied.*

### Adam: Causation & the Unbelted Child

**Issue.** Whether Adam's conduct was both the actual and proximate cause of the child's death.

**Rule.** Causation requires cause-in-fact (but-for) and proximate cause (the result is within the risk created; the defendant is not liable for extraordinary results). An intervening cause breaks the chain only if it is a superseding, unforeseeable force; a foreseeable intervening cause does not.

**Analysis.** Here, **but for the marbles there is no crash and no death**, so cause-in-fact is met, and a crash and resulting death are within the risk of dumping marbles at an intersection, so it is proximate. The **unbelted child is an intervening cause, but driving unbelted is common and foreseeable**, so it is not superseding.

**Conclusion.** Therefore, a jury could properly find Adam caused the death and is guilty of involuntary manslaughter.

*But-for + proximate cause?*

*Foreseeable intervening cause does not cut off liability.*

*The seat-belt violation is foreseeable, not superseding.*

*Q1: yes, a jury could convict Adam.*

### Bob: Accomplice Liability

**Issue.** Whether Bob is guilty of involuntary manslaughter as an accomplice.

**Rule.** ACCOMPLICE LIABILITY: the defendant must (1) assist the principal (even slight aid suffices) and (2) act with the intent that the crime be committed. For a crime whose mens rea is recklessness or negligence, most jurisdictions require that the accomplice intend to assist AND himself act with that same reckless or negligent state of mind.

**Analysis.** Here, **Bob drove Adam and the marbles to the intersection**, which is sufficient assistance, and he intended to give that ride. But the shared mens rea is harder: Bob called the plan a **stupid non-event and thought no one would come**, so he likely did

*Accomplice to a reckless/negligent crime?*

*Must intend to aid + share the reckless/negligent mens rea.*

*Assistance is clear; recklessness is doubtful, negligence is possible.*

not consciously disregard a known risk (no recklessness). A jury could still find criminal negligence if a reasonable person would have recognized the risk.

**Conclusion.** Therefore, a jury could properly convict Bob as an accomplice only if it finds he acted with criminal negligence, not on a recklessness theory.

*Q2: only on a criminal-negligence finding.*

## Step-by-Step: Involuntary Manslaughter + Accomplice

*Establish Adam's mens rea and causation first, then test Bob's assistance and shared culpable state of mind.*

### 1. Adam's mens rea?

→ Conscious disregard of a known risk of death or serious injury = recklessness. **wanted a crash**



### 2. Did Adam cause the death?

→ But for the marbles, no death; crash + death are within the risk = proximate.  
→ Unbelted child = intervening but foreseeable → NOT superseding. **seat-belt violation**



### 3. Bob: assist + share the mens rea?

→ Driving Adam = assistance, but he thought it a non-event → no recklessness.  
→ Guilty only if a jury finds **criminal negligence**. **'stupid non-event'**