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. 1 WITH WHAT CRIMES CAN DEBORAH REASONABLY BE CHARGED, WHAT DEFENSES CAN SHE REASONABLY RAISE AND THE LIKELY OUTCOME?

Burglary

Burglary is the breaking and entering of the dwelling house of another at night with intent to commit a felony therein (Common Law).

Here, Deborah decided to go into the garage, she broke the window to get into the garage and decided to stay in the garage. A garage is a curtilage of a dwelling house evidenced by the fact that it was attached, and there was a door connecting it to the house. By breaking the window into the garage, Deborah satisfied the element of breaking and entering. The house and its garage belonged to another possibly Stuart but there are no facts that specify this. Nevertheless, Deborah is homeless so it is not her home. Deborah did not intend to go into the garage to commit a felony therein because she was cold the temperature was below freezing and continuing to drop and realized she could die if she did not find shelter.

Thus, there was no intent to commit a felony therein. This element is not satisfied. Deborah cannot be charged with burglary.

Larceny

Larceny is the taking away and carrying the property of another with intent to permanently deprive.

Here, Deborah took some of the wood in the garage to build a fire outside the garage.

There is a taking away and carrying because Deborah took it outside merely moving it slightly to another area would be considered taking and carrying away. Deborah had the intent to build a fire with the wood outside the garage to keep herself warm but she decided to stay inside because of the extreme col, thus there is the intent to permanently deprive, the wood belonged to the owner of the run-down house so it is the property of another. Thus all the elements of larceny is satisfied.

Thus, Deborah may be charged with larceny.

Arson

Arson is the malicious and intentional burning of another's property

Here, Deborah had the intent to build a fire, she intentionally gathered wood scraps and paper to start a small fire. However, the malice element is not met because Deborah did not do it with the intent to burn the rundown house but rather to build a fire outside the

garage to keep herself warm because of the extreme cold.

She had no malicious intent as evidenced by the fact that she fell asleep by the fire awaking only to flames and smoke.

Although it can argued that Deborah's conduct was reckless and wanton because she was inside a garage where oil and other ignitable substances are commonly found, and she used scraps of wood and paper which are also very combustible. However, the intent to burn the house is missing, Deborah was extremely cold and was driven inside the garage by the dropping temperature and her physical need to survive. The burning element is satisfied because the small fire ignited some oil on the floor, and the fire quickly engulfed the house

Murder

Murder is the causing the death of another with malice aforethought and can be shown through

Intent to Kill, Intent to Cause Serious Bodily Harm, Depraved Heart, Felony Murder Rule.

Here, Deborah did not have the intent to kill Stuart as she thought the house was unoccupied from its run-down appearance. She did not have the reckless, wanton intent to cause Stuart's death because she did not enter the house but remained in the garage to keep warm. She also did not intend to start a fire to kill Stuart but to stay warm. She did not intend for a fire to start to engulf the garage and spread to the house where Stuart was sleeping on the bed because she was unaware he was there.

Felony Murder:

Felony murder is the killing of another during the commission of an inherently dangerous felony. The inherently dangerous felony in this case would be if Deborah is charged with Arson.

Here, If Deborah can prove that she did not meet the necessary elements to commit arson, then she would not satisfy the elements of felony murder as well.

Voluntary Manslaughter: would not apply since there is no heat of passion or anything that would have provoked Deborah to kill Stuart

Involuntary Manslaughter: would not apply since Deborah did not commit a misdemeanor leading to the killing akin to a misdemeanor-manslaughter.

Defenses

Necessity

Deborah would raise defenses of necessity because

she was cold the temperature was below freezing and continuing to drop and realized she could die if she did not find shelter.

She also would argue that she thought the house was run down and unoccupied.

Deborah might be able to prevail using this defense at least for the charges of theft crimes and arson, if she can show she did not have the malice intent to cause them.

Consent

Deborah would not be able to raise this defense because she did not know the owner she was homeless and without money. She went into the garage to get out of the cold, not because she was given permission by the owner.

2. SHOULD THE COURT GRANT DEBORAH'S MOTION TO SUPPRESS HER STATEMENT?

Deborah may not be able to suppress her statement "I started the fire" under the 5th Amendment, her rights were not violated because her statement was involuntary or uncoerced need not be given Miranda rights.

5th Amendment Right Against Self-Incrimination

Miranda

Custodial

A police officer must provide an arrestee Miranda rights if he/she is in custody and is subject to interrogation

An individual in in custody is a reasonable person would not feel free to leave a situation or end an encounter. A custodial environment is such that is coercive, adversarial akin to a traditional arrest in a station house.

Here, Deborah was not in custody because she was walking on the sidewalk three blocks from the fire. A reasonable person in Deborah's situation would not feel she was not free to leave or could not end the encounter with Officer Oliver, because she was outside not in jail bound by walls, or in an intimidating environment such as handcuffed in the back of a patrol car or in the police station surrounded by law enforcement officials.

Therefore, Deborah was not in custody.

Interrogation

An interrogation exists when a police officer or agent of law enforcement elicits an incriminating response for an arrestee.

Here, Deborah was not being interrogated by Officer Oliver because he was not attempting to

elicit an incriminating response but he merely asked Deborah what she was doing outside on a cold night. Officer Oliver was not merely patrolling the area where Deborah was walking, not asking her about a topic that may incriminate her at a future trial or use as testimony against her. Deborah was 3 blocks from the fire and there was no reason Officer Oliver would suspect she had anything to do with its cause.

Therefore, there is no interrogation.

THus, Officer Oliver did not have to read Deborah her Miranda rights.

Due Process

Deborah's Statement was Voluntary

A confession must abide by due process standards and must not be coerced, or acquired through intimidation or threat of punishment. A confession is admissible if it is done knowingly, intelligently or voluntary.

Here, Deborah voluntarily said "I started the fire" without coercion from O. Oliver since he just asked her what she was doing walking alone on a cold night. She knew that by saying the stating that she is abandoning her rights and nit is intelligently because she was aware that a police officer was present and asking her a question.

Thus, Deborah's statement was voluntary, no due process rights were violated if her statement was admitted.

Conclusion: the court should deny Deborah's motion to suppress her statement.

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