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1.

Larceny

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

Trespassory

Trespass occurs when an individual goes onto the property of another without the individual's permission.

Here, one night, the temperature was below freezing and continuing to drop. Deborah found a run-down house with an attached garage that had a door connecting it to the house. Deborah went around to the side of the garage, looked through a window, and saw a stack of wood. Deborah decided to go into the garage, take some of the wood, and build a fire outside the garage to keep herself warm. Deborah finding the run-down house with the attached garage and deciding to go into the garage and ultimately breaking a window to get into the garage and stay in the garage is trespassory because Deborah is in the garage without Stuart's permission. This is evidenced by the fact that Deborah had to break a window to get into the garage. If Deborah had permission, it is likely that Stuart would have opened the door to the garage as opposed to having Deborah break the window to get into the garage. Thus, Deborah trespassed onto Stuart's property.

Taking and Carrying Away

Taking and carrying away of the personal property of another need only be a mere movement, does not need to be substantial movement.

Here, Deborah saw a stack of wood when she looked through the garage window. Deborah decided to go into the garage to take some of the wood and build a fire outside the garage to keep herself warm. She gathered wood scraps and paper, started a small fire to keep herself warm, and fell asleep. Here, Deborah took the wood and carried it away when she gathered the wood scraps and paper and started a small fire to keep herself warm. Though Deborah stayed near the garage where she found the wood, Deborah did not need to move the wood far to satisfy a taking and carrying away. Thus, Deborah committed a taking and carrying away of the wood that Stuart had housed in the garage.

Personal Property

Here, Deborah saw the stack of wood when she looked through the garage window. Presumably this stack of wood was Stuart's who we can infer went out and either chopped down the wood himself or purchased the wood for his personal use. This is the personal property of Stuart because it sits in his garage, the garage that is attached to his run-down house. Thus, Deborah took the personal property -- the wood -- of Stuart.

Of Another

Here, as analyzed above, the wood was in Stuart's garage before Deborah removed it to start a small fire to keep herself warm. Thus, the wood was the personal property of Stuart.

Intent to Permanently Deprive

Here, Deborah decided to go into the garage, take some of the wood, and build a fire outside the garage to keep herself warm. Deborah deciding to go into the garage to take some of the wood demonstrates her intent to permanently deprive Stuart of the wood because she wanted to use the wood to create a fire to keep herself warm. Deborah may argue that she had no such intent because she thought the house was unoccupied and based on the fact that the house looked run-down, she had assumed that the house was possibly abandoned. The Court will likely find that though the house looked run-down, it was not enough for Deborah to assume that the house was unoccupied and potentially abandoned given the fact that the garage had wood that arguably looked like it was prepared by someone to be used as firewood. Moreover, because Deborah used the wood to build a small fire to keep herself warm, she permanently deprived Stuart of the wood because once wood is burnt, it cannot be re-purposed to be burnt again. Thus, Deborah had the intent to permanently deprive Stuart of the wood.

Conclude

The Court will likely find that Deborah committed larceny.

Burglary

Burglary is the breaking and entering of the dwelling place of another at night with the intent to commit an inherently dangerous felony.

Breaking and Entering

A breaking and entering occurs when there is even the slightest passage across the threshold of a dwelling (i.e., reaching through a window).

Here, Deborah broke the window to get into the garage. This indicates that Deborah broke and entered into the garage because she broke the window to get into the garage and then she proceeded to pass through the threshold into the garage as evidenced by the fact that not only did she gather the wood scraps and paper from the garage floor but she also started a small fire and decided to stay in the garage to sleep. Thus, Deborah committed a breaking and entering into the garage.

Dwelling

Under common law, a dwelling must be the home of another. However, under modern rules, the dwelling need not be a home. Instead, it can be any structure.

Here, the facts state that the run-down house had a garage that was attached and there was a door in the garage that connected it to the house. If this jurisdiction applies the common law rule, Deborah may argue that she did not enter a dwelling because she entered into the garage which presumably is not a dwelling because it is typically not used to house individuals. The garage instead housed wood and so, in this case, the garage certainly did not house any individual. This is further evidenced by the fact that Deborah though the house was unoccupied. However, the Court will likely find that there is a dwelling given the fact

that the garage was attached to the house and there was a door from the garage to the house that connected the two spaces. It is likely the Court will find that the garage is part of the dwelling given the connectedness of the two spaces. Under the modern rules, the dwelling can be any structure and so, Deborah did enter a dwelling because a garage is a structure. Thus arguably, the Court will find that Deborah entered into a dwelling under both the common law rules and the modern rules.

Of Another

Here, the facts state that Stuart was sleeping in his bed in the house. From this we can infer that presumably the house and the attached garage was that of Stuart's.

At Night

Under common law, a burglary must occur at night. However, under modern rules, the burglary need not occur at night. Instead, it can occur at any time of the day.

Here, the facts state that the occurrence of Deborah breaking the window of the garage and then entering into the garage, to stay there and sleep, occurred at night when the temperature was below freezing and continuing to drop. Thus, under common law, Deborah's entrance into the garage did occur at night.

Intent to Commit an Inherently Dangerous Felony

Here, the facts state that Deborah was homeless and without money. The night of the events, the temperature was below freezing and continuing to drop. Deborah realized she might die if she did not find shelter. It was then that Deborah found a run-down house with an attached garage that had a door connecting it to the house. Deborah will argue that she did not have the intent because she broke the window of the garage and decided to go into the garage to take some wood to build a fire, not to commit an inherently dangerous felony. Deborah will argue that given her homelessness and inability to afford housing, combined with the freezing temperatures, she merely was looking for shelter to survive. Despite the fact that arson, which is the burning of a dwelling of another that permanently destroys the dwelling, is an inherently dangerous felony, it is likely that the Court will agree with Deborah. There are no facts evidencing that Deborah had the intent to break into the garage to commit arson, but rather, she broke into the garage to find shelter.

Conclude

It is unlikely that the Court will find Deborah for burglary.

Common Law Murder

Common law murder requires malice aforethought. Malice crimes include (1) intent to kill; (2) intent to commit bodily harm; (3) depraved heart murder; (4) felony murder.

Intent to Kill

Here, there are no facts that support the contention that Deborah had the intent to kill Stuart. that Deborah thought the house was unoccupied. This shows that Deborah could not have had the intent to kill Stuart if she thought that the house was unoccupied.

Intent to Commit Bodily Harm

Here, there are no facts that support the contention that Deborah intended to commit bodily harm to Stuart. The facts indicate that Deborah broke into the garage and started the fire not because she intended to commit bodily harm to Stuart but because she realized that she might die if she did not find shelter. Moreover, when she built the fire and it spark from the fire ignited some oil on the floor, Deborah was asleep. Thus, Deborah did not intentionally spark the fire to harm Stuart by smoke inhalation or any other means.

Depraved Heart Murder

Depraved heart murder requires a showing that an individual demonstrated a reckless disregard for life through their conduct by acting in a manner that creates an unjustifiably high risk to life.

Here, the prosecution may argue that Deborah showed a regardless disregard for life when she built the fire so closely to the garage, a structure that easily could have burned if the fire got too large. Moreover, the prosecution may argue that Deborah falling asleep while the fire was going on, instead of putting out the fire before falling asleep also demonstrated a reckless disregard for life because most individuals would put out a fire before sleeping for fear the fire would catch onto something or become larger and cause destruction. Deborah will argue that she did not demonstrate a regardless disregard for life because when she built the fire and inhabited the garage she thought she was alone given that she thought the house was unoccupied. Moreover, the house was run-down and so presumably, Deborah was in an area that was not near other individuals or homes. The Court must balance these two arguments to determine whether or not Deborah demonstrated a reckless disregard for life. The Court could go either way on this one.

Felony Murder

Felony murder is the a killing that occurs during the commission of a inherently dangerous felony.

Here, as analyzed above, though the fire had quickly engulfed the house where it killed Stuart, there are not facts indicating that Deborah was in the process of committing an inherently dangerous felony like arson. Instead the facts demonstrate that Deborah was trying to find shelter in freezing temperatures that were continuing to drop. Thus, in this instance there are no facts to show that Deborah was amidst the commission of arson or any other inherently dangerous felony.

Conclude

The prosecution may be able to establish a claim for common law murder under depraved heart murder.

Voluntary Manslaughter

Voluntary manslaughter is the killing of another when there is a situation that would reasonably to act passionately, the individual was provoked, and the provocation caused the murder.

Here, there are no facts to indicate that there was an act that would reasonably provoke an individual to act passionately (i.e., a spouse catching their partner in the act of cheating). Thus, voluntary manslaughter does not apply here.

Involuntary Manslaughter

Involuntary manslaughter is the killing of another with (1) criminal negligence or (2) due to an unlawful act (misdemeanor manslaughter).

Here, the prosecution may be able to establish that Deborah committed involuntary manslaughter through either criminal negligence or an unlawful act. This is because as analyzed above, it is likely the Court will find that Deborah did in fact commit larceny, which is an unlawful act. Though Deborah was trying to find shelter and warmth, her act of breaking the window of the garage and entering was in fact an unlawful act that is not permitted by law. Moreover, the Court may find that Deborah was criminally negligent because after creating the fire to maintain warmth, she proceeded to fall asleep without first putting out the fire. Given that Deborah slept on the floor of the garage, we can infer that Deborah may have noticed the oil on the floor of the garage because she had to lay in it. This fact would go to support the argument that Deborah was criminally negligent when she didn't put the fire out first before falling asleep. Thus, the Court will likely find that Deborah committed involuntary manslaughter on the basis of either criminal negligence or due to the unlawful act of larceny.

Defense: Necessity

Deborah may argue that because she realized that she might die if she did not find shelter that her entering into the garage was out of necessity of survival. Though the Court may agree with Deborah's necessity, it may discount this defense because of the fact that Deborah should have put the fire out before falling asleep to avoid the tragedy that did occur.

Conclude

Likely the Court will find Deborah guilty of either depraved heart murder or involuntary manslaughter.

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5th Amendment

An individual has a right against self incrimination under the 5th Amendment. Law enforcement must provide an individual who is in custody and being interrogated their Miranda Warnings to avoid such self incrimination.

Custodial

An individual is in custody when a reasonable person would not feel as if they were free to leave.

Here, Officer Oliver was patrolling the area when he saw Deborah walking on the sidewalk three fire. Officer Oliver asked Deborah what she was doing outside on such a cold night. Deborah will argue that a reasonable person in her position who is stopped by an officer when they are walking on the sidewalk, would not feel free to leave. Moreover, Deborah may

argue that as a homeless person who is stopped by law enforcement, oftentimes there is a sense of vulnerability that they cannot leave. The prosecution may argue that a reasonable person would feel free to leave because they are out in public in the open and not confined. It is likely that the Court will find that Deborah was free to leave without more facts because we are not told that Officer Oliver blocked Deborah's way or tried to intimidate her or force her to stay where she was and answer his questions.

Interrogation

An individual is interrogated if law enforcement proceeds to question them in a manner that is meant to elicit an incriminating response.

Here, Deborah will argue that Officer Oliver asking her what she was doing out on such a cold night was a question that was meant to elicit an incriminating response because they were only three blocks from the fire. Likely that Deborah may have signs of smoke or burnt clothing from the fact that she awoke to flames and smoke, so she was in the fire and may have smelled like fire. The prosecution will argue that Officer Oliver's questioning was not meant to elicit an incriminating response but was merely meant to check on Deborah given that it was a cold night and the temperatures were freezing. It is likely that the Court will find that Deborah was not under interrogation given the fact that Officer Oliver's questioning was merely asking Deborah what she was doing out on such a cold night. This may be perceived as Officer Oliver checking on Deborah as opposed to trying to get an incriminating response from her.

Conclude

The Court will likely not grant Deborah's motion to suppress her statement because she was not under custodial interrogation at the time Officer Oliver asked her what she was doing outside on such a cold night. Instead the Court may find that Deborah voluntarily provided the statement that she started the fire.

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