

1)

1. With what crime or crimes can Deborah reasonably be charged; what defense or defenses can she reasonably raise; and what is the likely outcome?

Burglary

Burglary is a theft crime that requires specific intent. The elements for burglary under the common law are the breaking and entering, of another's dwelling, at night, to commit a felony therein and modernly the elements of night and dwelling have been removed but still apply under the common law.

Breaking

Here, the prosecution will argue that Deborah was looking through a window of a home that seemed to be unoccupied in an attempt to steal some wood to keep herself warm. In an effort to take the wood Deborah broke the window of the garage to get in.

Thus, Deborah satisfied the element of breaking.

Entering

Here, the prosecution will argue that once Deborah broke open the window she entered the garage.

Thus, Deborah satisfied the element of entering.

Another's Dwelling

Here, the prosecution will argue that Deborah entered Stuart's dwelling which constitutes another dwelling. To this Deborah might counter-argue that the dwelling appeared to be unoccupied from the outside but this does not negate the fact that someone was occupying the dwelling. Deborah will also further argue that because the garage was just attached to the house it was not a part of the dwelling itself, however to this prosecution will argue that because the garage is not unattached it is a part of the home as well.

Thus, Deborah satisfied the element of breaking and entering another's dwelling.

At Night

Here, the prosecution will argue that Deborah also satisfied the element of "at night" because Deborah entered at Stuart's house at night to escape temperatures from outside that were below freezing.

Thus, Deborah satisfied the element of breaking and entering another's dwelling.

To Commit a Felony Therein

Here, the prosecution will argue that Deborah had the specific intent to commit a felony because she

wanted to steal the wood to create a fire for herself and that constitutes as a crime of larceny, of taking another's property. Deborah will counter-argue that she did not have the specific intent to commit a felony because it was not her intention to commit a larceny but rather to find a place of shelter because she was homeless and without money on a cold winter night and could not find or afford a different place for shelter. However, the prosecution will counter-argue that Deborah did have the specific intent to take another's property.

Thus, the element of to commit a felony therein is satisfied.

Conclusion

For these reasons, Deborah will be found guilty of Burglary.

Arson

Arson is a general intent crime and the elements for arson are the malicious burning of another's dwelling.

Malicious

Here, the prosecution might attempt to argue that Deborah intentionally set fire to Stuart's house and had the malicious intent necessary. However, Deborah will argue that she was not aware that Stuart was within the house when the burning took place and her reasons for setting a fire in the garage were not malicious because she was trying to stay warm on a cold winter night. The prosecution will argue that because arson is a general intent crime it does not matter if Deborah acted with the requisite malicious intent.

Thus, Deborah does satisfy the element of malicious that is required for the crime of arson.

Burning

Here, the prosecution will argue that a burning occurred because of Deborah. Deborah gathered wood scraps and papers once she was in the garage and created a small fire, the spark from the fire ignited some oil on the floor and caused the entire house to engulfed in flames and smoke. However, Deborah will counter argue that the only reason she started the fire because she needed to keep warm and did not want to go outside as originally planned because the temperature kept dropping but the prosecution will show that Deborah made the decision to stay inside and the negligently fell asleep after creating the fire as well.

Thus, Deborah does satisfy the element of burning.

Of another's Dwelling

See above for analysis on another's dwelling under burglary.

Conclusion

For these reasons, Deborah will be found guilty for the crime of arson.

Homicide

Common-Law Murder

Common-law murder is defined as the killing of another with malice aforethought which can be satisfied through intent to kill, intent to inflict great bodily injury, depraved heart, or through the felony murder rule.

Intent to Kill

The intent to kill can be satisfied if the defendant had possessed the requisite intent to kill another and was the actual or proximate cause of the injury.

Here, Deborah will argue that she did not have any intent to kill Stuart and did not even know of his presence within the home. However, the prosecution will argue that Deborah was the actual and proximate cause of Stuart's death because but for Deborah starting the fire Stuart would not have died and it was reasonably foreseeable that Deborah starting a fire indoors could lead to someone's death that is why she jumped out of the window herself. However, to this Deborah will argue she did not have the requisite intent needed to kill Stuart.

Thus, Deborah will not be found guilty under an intent to kill.

Intent to Inflict Great Bodily Injury

Under the intent to inflict a great bodily injury one must only possess the intent to inflict great bodily injury which then results in the victim's death.

Here, Deborah will argue that she did not have the intent to inflict great bodily injury she was just trying to find shelter on a cold winter night and was not even aware of Stuart's presence.

Thus, Deborah will not be found guilty under the intent to inflict great bodily injury.

Depraved Heart Murder

Under depraved heart murder, a defendant is guilty if they acted with a great insignificant risk towards human life.

Here, Deborah will argue that she was not aware of Stuart's presence within the home or she would not have started an enclosed fire. However, the prosecution will argue that she acted with great insignificant life by taking this action which caused Stuart's death and could have caused her own but Deborah did not have the intent to do so.

Thus, Deborah will not be found guilty under Depraved Heart Murder.

Felony Murder

Felony murder is murder committed during the attempt or completion of a dangerous felony. Dangerous felonies are considered to be burglary, arson, rape, and kidnapping.

Here, the prosecution will argue that Deborah can be found guilty of felony murder because she committed the felony of burglary and arson. This argument might stand in a court of law.

Thus, Deborah can be found guilty of felony murder.

First Degree Murder

First-Degree murder occurs when there is premeditation and deliberation. A mere second of planning will satisfy premeditation and deliberation of the killing must be done in a cool and dispassionate manner.

Here, Deborah will argue that she cannot be found guilty of first-degree murder because she did not have specific intent and Stuart's death was not premeditate or deliberate.

Thus, Deborah will not be found guilty of first degree murder.

Second-Degree Murder

Second-degree murder is statutory murder that has the same requirement as common-law murder including felony murder. See above for analysis.

Voluntary Manslaughter

Voluntary Manslaughter occurs when the defendant acts under the heat of passion, an event must evoke the defendant, and they must actually be evoked.

Here, Deborah did not act under a heat of passion.

Thus, Deborah will not be found guilty of voluntary manslaughter.

Involuntary Manslaughter

Involuntary manslaughter occurs when a defendant is criminally negligent.

Here, as stated above it has been determined that Deborah was criminally negligent in starting the fire within Stuart's home that led to his death.

Thus, Deborah can be found guilty of involuntary manslaughter.

Defenses

Mistake of Law

Under a mistake of law defense, a defendant may argue that they were not aware that they were committing a crime or they lacked the specific mens rea to commit the crime.

Here, Deborah will argue that she did not know that she was committing a crime when she entered Stuart's home for shelter and then later started the fire. Because burglary is a specific intent crime this argument will fare and can be raised for a defense however because arson is a general intent crime this will not apply to the crime of arson. Deborah will further argue she should not be found guilty under felony murder because she did not intend to commit the crime of arson but again for the same reasons due to arson being a general intent crime she will still be found guilty.

Conclusion

For these reasons, Deborah will be found guilty of arson and felony murder or involuntary manslaughter.

2. Should the court grant Deborah's motion to suppress her statement?

5th Amendment

The 5th Amendment (AMD) of the U.S. Constitution protects a defendant from being a witness against themselves.

Here, the 5th AMD applies to Deborah but she must have reasonably been in custody and subject to interrogation.

Custody

Custody is when a defendant would not reasonably feel free to leave.

Here, Deborah was walking on the sidewalk which was three blocks from the fire when Officer Oliver approached and because she was walking freely on the street she was not in custody.

Thus, Deborah does not satisfy the element of being in custody.

Interrogation

Interrogation occurs when a government actor asks a defendant a question that is sure to elicit an incriminating response.

Here, Officer Oliver asked Deborah what she was doing outside on such a cold night to which her response was "I started the fire." Because Officer Oliver's question was directed out of concern for Deborah rather than attempting to ask her if she was the one that started the fire it is not done under interrogation tactic.

Thus, Deborah does not satisfy the element of being interrogated.

Miranda Warnings

Once a defendant is placed in custody they must be given Miranda Warnings which give them the right to remain silent and a right to counsel. The officer must make sure that the defendant understands their

warnings and once they are invoked questions must cease until an attorney is present.

Here, Officer Oliver will argue that Deborah was not in custody when she made the voluntary statement she started the fire. In fact she was walking on the sidewalk freely and was not a suspect to the crime.

Thus, Officer Oliver did not need to give Deborah Miranda Warnings.

Exclusionary Rule

Any evidence or information obtained under a violation of the 4th, 5th, or 6th AMD must be excluded unless an exception applies.

Here, Deborah will argue that because her statement was made under a violation of the 5th AMD it should be excluded. However, Officer Oliver will prove that it was a voluntary statement that was made by Deborah herself because she was not in custody or being interrogated.

Thus, the exclusionary rule does not apply and Deborah's statement will come in.

Conclusion

For these reasons, the court will not grant Deborah's motion to suppress her statement.

Question #1 Final Word Count = 1872

END OF EXAM