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1. What Crimes can Deborah ("D") be reasonably charged and what defenses can she reasonably raise?

D's Crimes

Larceny

Under common law, Larceny is the trespassory taking and carrying away the property of another with the intent to permanently deprive the owner of the property.

Here, D could be charged with larceny because; 1) there was trespassory taking and carrying away because she took the wood away (after entering the garage without permission) 2) the wood belong to another as it did not belong to D 3) the intent to permanently deprive the owner of using the wood is obvious as once D burns the wood to keep warm, the wood would become incinerated and likely become a pile of ash - preventing the owner of the wood to use the wood for herself or himself.

Thus, D could be charged with larceny.

D's Defense- defense of necessity

The defense of necessity happens when an emergency as triggered by nature requires that a person to commit a crime to save one's self or another. Here, D will argue that it was necessary for her to burn the wood, otherwise she could have suffered from frost bite on such a freezing night. However, this defense is not viable as D could have sought shelter in another place earlier before the temperature became unbearable - such as the church or a shelter that would normally be open to the homeless on freezing night.

In conclusion on this charge, D could be convicted.

Burglary

Under common law, burglary is the breaking and entering of a dwelling at night with the intention to commit a felony within. Modernly, the statute(s) have not required the night time element nor the dwelling requirement.

BREAKING AND ENTERING

Here, D could be charged with burglary because the breaking and entering element was met because D simply broke the window to get to the garage. Thus, there was breaking and entering.

D's Defense

The defense of necessity happens when an emergency as triggered by nature requires

that a person to commit a crime to save one's self or another. Here, D will argue that it was necessary for her to burn the wood, otherwise she could have suffered from frost bite on such a freezing night. However, as stated this defense is not viable as D could have sought shelter in another place earlier before the temperature became unbearable - such as the church or a shelter that would normally be open to the homeless on freezing night.

INTENT COMMITTING A FELONY THEREIN

HERE, D did have the intent to commit a felony as well when she entered the garage because she decided to take the wood which was not hers to burn it to keep her warm. As such, assuming that larceny is a felony in the jurisdiction, D would be guilty of the intent to commit a felony.

In conclusion, D could be charged with burglary because the elements for burglary are met.

Trespass to Property

Under law, trespass to property is the intentional entering of another's property without consent or permission.

Here, D could be charged with trespass to property because she entered the garage without permission or consent.

D's Defense

The defense of necessity happens when an emergency is triggered by nature requires that a person to commit a crime to save one's self or another. Again, this claim by D would not likely to work for the reason stated above.

Arson

Under common law, arson is defined as the burning of a dwelling of another. Modernly, statutes have expanded this definition to cover any structure or building. And, one could be convicted of committing arson to one's own place.

Here, D could be charged with trespass to property because the elements are met.

D's Defense

Please see above for the defense of necessity and why it would not be viable.

HOMICIDE OF STUART

Under common law, murder is the unlawful killing of a human being. Murder under common law is one done with malice aforethought. In addition, there are less severe degrees of homicide such as voluntary manslaughter and involuntary manslaughter. First degree murder is defined as murder with premeditation and deliberation.

Here, D could be charged with murder (common law murder) or murder and the second degree

and involuntary manslaughter.

First degree Murder - Felony Murder

This is applicable as a charge because although D did not plan or even have the time to thinking about killing Stuart, if arson is one of the enumerated crimes in the jurisdiction, D could be charged with felony murder. The reason is that the killing of Stuart happened while D was in the act or process of committing arson - while she escaped from the fire. The killing also happened while D committed another felony - burglary.

Thus, D could be charged with first degree murder

Common law Murder (Second degree murder)

Second degree murder is defined by: intent to kill; intent to do ravelly bodily harm; reckless disregard for human life and also felony murder.

Here, If the state is not able to convict D on a first degree murder charge. D could be convicted of a second degree murder charge because, with wanton disregard to human life, she left the structure. The reason is, although the structure looked abandoned, in acutality it was not.

Thus, D could convicted of second degree murder.

Voluntary manslaughter

Voluntary manslughter is the murder done with adequate provocation or imperfect self-defense. Here, this charge would not be applicable as the facts do not indicxate that D was provok3d by the sleeping Stuart or do the facts indicate that D started the fire in self-defense/

Involuntary manslaughter

Here, this charge would not be applicable as arson and/ or burglary is not a misdeameaor.. However, D could be charged with this crime because with gross negligence, she left the buring structure, without informing anyone - not even the police officer.

More likely than not, the officer could have responded to the burning structure by calling the fire departmebnt to contain it so as not to kill Stuart.

The defense of necessity

While D may claim that her conduct was done out of necessity, it would not work because necessity is never a defense to any homicide crimes.

In conclusion, D could be charged with anyone of the following: First Degree Murder (based on the Folony Murder Theory). Second degree Murder as well as Involuntqry Manslarughter.

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

Exclusionary Rule

The Exclusionary Rule is an evidentiary rule prohibiting the introduction of evidence in violation of one's 4th, 5th or 6th Amendment rights. As such, D will assert that her statement "I started the fire" was made involuntary under the 5th Amendment

Incorporation Doctrine

Under law, the 5th Amendment was made applicable (or incorporated) into the 14th Amendment to be applicable to the States. Here, the incorporation doctrine would allow the 5th Amendment to apply as the Officer was apparently not a federal officer but a state-hired one.

4th Amendment

The 4th Amendment protect one from unreasonable search and seizure when there is an expectation of privacy.

Here, D would not have any constitutional rights under the 4th Amendment for several reasons. First, D was not searched or even touched by the Officer. In addition, there is no expectation of privacy when one is engaged in a public conversation with anyone - including an officer on a public side walk.

Thus, the 4th Amendment is not applicable.

5th Amendment and D's Standing

Here, D will contend that her statement "I started the fire" should be excluded based on the violation of her constitutional right to the 5th Amendment - the right to be free free from self incrimination.

However, under law, for the 5th Amendment right in Arizona v. Miranda would trigger only if the D is 1) under custody and 2) during an interrogation. As such, a voluntary statement would not be in violation of the 5th Amendment. As such, Miranda rights would not be applicable when one's statement is voluntary.

Custody

To be in custody means that a person is not free to leave. Here, D was not in custody because she was walking on the sidewalk when the Officer asked her the question. The reason is, at no time was D in any shape or form physically stopped or restrained from continuing her walk on the sidewalk.

Thus, D was not under custody since she was free to go about walking the sidewalk.

Interrogation

Under law, interrogation occurs when a question from the state actor (such as the Officer) is likely to trigger an incriminating response. Here, D was also not under intrerrogation

where an incriminating response could be elicited when the Officer asked that question. The reason is, the officer's question was not accusatory at all. As a matter of fact, the question, "what are you doing outside on such a cold night?" could simply be a question to show that the Officer was conducting a welfare check to make sure that D or someone in her shoes would not suffer from freeze on such a cold time.

In addition, at no point in time did the officer see the fire from three blocks away to even have the requisite knowledge that the fire even started. Thus, there was not accusation of any sort from the Officer. And under the totality of the circumstances, a court would not likely find that the officer's conduct was an interrogation.

Thus, there was no interrogation.

Voluntary Statement under the totality of the circumstances.

As stated, a voluntary statement would not be in violation of one's Miranda rights. And the threshold for this test is the totality of the circumstance.

Here, D's statement was voluntary under the totality of the circumstances because she spontaneously and (perhaps reflexively) said that she "started the fire". To further illustrate this point, D, under the circumstances could have answered anything in the affirmative but the start of the fire. As such, given that the officer was not being accusatory at all and that there seemingly was not menacing conduct from the officer, a court would likely rule that the statement was totally voluntary. In addition, although D's statement could be construed as incriminatory, it was not coerced or elicited by Officer under the circumstances.

Thus, the statement from D was voluntary under the circumstances.

In conclusion, there was no 4th or 5th Amendment violation of D's rights. As such, the Exclusionary Rule would not be applicable and a court would not likely suppress D's statement.

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END OF EXAM