

A woman experiencing homelessness broke into the basement of a hotel and fell asleep. She was awakened by a security guard, who demanded that she leave. As the woman was leaving, she cursed the security guard. Angered, the guard began to beat the woman on her head with his flashlight. After the second blow, the woman grabbed a fire extinguisher and sprayed the guard in his face, causing him to lose his sight in one eye.

The jurisdiction defines aggravated assault as assault with intent to cause serious bodily injury.

The crimes below are listed in descending order of seriousness. What is the most serious crime of which the woman could be properly convicted?

- A. Aggravated assault.
- B. Burglary.
- C. Assault.
- D. Trespass.

Explanation:

Self-defense

(justification for criminal conduct)

	General requirements	Duty to retreat
Nondeadly force	Actual & reasonable belief of imminent <i>unlawful</i> harm Force reasonably necessary to prevent harm Not initial aggressor	No duty to retreat
Deadly force	Actual & reasonable belief of imminent <i>serious harm</i> or <i>death</i> Deadly force necessary to prevent harm Not initial aggressor	Majority rule: No duty to retreat Minority rule: Duty when safe retreat available <i>unless</i> inside one's home

Criminal trespass is an **intentional entry** upon another's property **without permission or legal privilege**. Persons are privileged to enter premises held open to the public (eg, a hotel lobby), but not other areas of the building (eg, a hotel basement). Since the woman had no such privilege or permission when she broke into the hotel's basement, she could be convicted of criminal trespass. And this could be elevated to **burglary** had the woman entered the building with the **specific intent to commit a crime** therein. But since she entered the hotel to sleep (not to commit a crime), no burglary occurred (**Choice B**).

Assault occurs when a person (1) attempts to commit a battery *or* (2) intentionally **places another in apprehension of imminent harmful or offensive contact**. Here, the woman may have committed an assault since she likely placed the security guard in apprehension of imminent harm before spraying his face with a fire extinguisher. And this could be elevated to aggravated assault if she intended to cause him serious bodily injury. But her conduct would be a privileged act of **self-defense** since:

she **actually and reasonably believed** that force was **necessary to protect herself** from the security guard's imminent use of unlawful force (beating her head with a flashlight) *and*

she used **no more force than was reasonably necessary** to resist the security guard's unlawful force.

Therefore, she could not be convicted of assault or aggravated assault (**Choices A & C**).

Educational objective:

Criminal trespass is an intentional entry upon another's property without permission or legal privilege. And self-defense is a defense to assault if a person (1) actually and reasonably believed that force was necessary to protect him/herself from another's imminent use of unlawful force and (2) used no more force than necessary to do so.

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