

The CEO of a company, who spent many of her work hours surfing stamp-collector websites, frequently ordered expensive stamps that she had delivered to her work address. One day, a very rare and expensive stamp arrived in the mail. The CEO's assistant, who was resentful about the meager pay he received from the CEO, decided to steal the stamp. He checked the CEO's calendar and saw that she was attending the opera the following evening. The next night, after the CEO left for the opera, the assistant retrieved a spare key hidden under a rock and entered the CEO's home through the front door, which led straight into the living room where the stamp collection was prominently displayed. As the assistant searched through the stamp collection for the rare stamp, the front door suddenly opened and the CEO walked in. Upon seeing the assistant, the CEO reached into her purse, pulled out a gun, told the assistant to stay where he was, and called the police.

In a common law jurisdiction, which of the following crime(s) can the assistant be found guilty of?

- A. No crime.
- B. Burglary only.
- C. Attempted larceny only.
- D. Burglary and attempted larceny.

## Explanation:

**Common law burglary** requires proof that the defendant:

unlawfully broke and entered another's dwelling at night *and* did so with the **specific intent to commit** a **felony** (eg, larceny) therein.

An unlawful breaking occurs if the defendant used *any amount* of force to create an opening into the dwelling without consent. And once the defendant enters the dwelling with the requisite intent, the burglary is complete. This means that there is **no need to prove** that the **defendant completed** the **underlying felony** to obtain a burglary conviction.

In addition, a burglary defendant who **failed to complete** the **underlying felony** is **guilty of the attempted commission** of that felony. That is because the defendant (1) specifically intended to commit the felony and (2) performed an overt act in furtherance of the felony—the unlawful breaking and entering.

Here, the assistant unlawfully broke and entered the CEO's home at night with the specific intent to commit larceny—ie, the unlawful taking and carrying away of another's personal property (rare stamp) with the specific intent to permanently deprive the owner of that property. Therefore, the assistant is guilty of burglary (**Choices A & C**). And since the assistant performed the overt act of unlawfully entering the CEO's home, he is also guilty of attempted larceny (**Choice B**).

## Educational objective:

Burglary is complete when the defendant unlawfully breaks and enters another's dwelling with the specific intent to commit a felony therein—the underlying felony need not be committed. And a burglary defendant who fails to complete the underlying felony is also guilty of the attempted commission of that felony.

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