

A man was paroled after serving five years in prison for forgery. Three weeks later, he found a handgun in a high school parking lot. Fearing that students from the school might find the gun and get into trouble using it, the man put it in the trunk of his car. The man drove off, was lawfully stopped by a police officer for speeding, and allowed the officer to search his car and the trunk. During the search, the officer discovered the gun.

The man was charged under a federal statute prohibiting the knowing possession of a firearm by a convicted felon.

Which of the following additional facts, if established, would be most helpful to the man's defense?

- A. He did not intend to use the gun for an unlawful purpose.
- B. He did not know about the federal statute.
- C. He was driving to the police station to give the gun to the authorities when the officer stopped his car.
- D. His previous conviction did not involve the use of a gun or other weapon.

Explanation:

Justifications for criminal acts

Necessity	Reasonable belief that conduct was necessary to avoid imminent & substantial harm No reasonable legal alternative Harm caused < harm avoided
Self-defense	Actual & reasonable belief that harm is imminent Reasonable force used to prevent harm Not initial aggressor
Defense of others	Actual & reasonable belief that force is necessary to protect victim from imminent harm Reasonable force used to protect victim
Defense of property	Force reasonably necessary to prevent imminent & unlawful interference with possessed property Nondeadly force used
Law enforcement	Prevent imminent crime Make lawful arrest <i>or</i> Prevent suspect's escape from custody
Resisting arrest	Reasonable force permitted to resist unlawful arrest or arrest by unknown police officer

The man violated the federal statute making it a crime for a convicted felon to knowingly possess a firearm. But the man only took the gun because he was worried that students might find the gun in the school parking lot and use it. Therefore, he can **justify** his criminal conduct and escape criminal liability if he can show that the crime was brought about by **necessity**. This requires proof that:

he reasonably believed that the crime was necessary to **avoid imminent and substantial harm**

no reasonable legal alternative was available *and*

the **harm caused** by the criminal conduct was **less than** the **harm avoided** (ie, the lesser of two evils).

Necessity must **exist at all times** that the defendant is engaged in the criminal conduct. Therefore, the fact that the man was driving to the police station to give the gun to the authorities when he was stopped would be most helpful to his defense.

(Choice A) The statute imposes criminal liability for knowingly *possessing* a firearm—even if there was no intent to use the gun for an unlawful purpose.

(Choice B) Ignorance of the law is almost never a defense. Therefore, the man's lack of knowledge about the federal statute will not absolve him of criminal liability.

(Choice D) The statute applies to all convicted felons—regardless of whether their prior conviction involved the use of a gun or other weapon.

Educational objective:

Necessity justifies criminal conduct if (1) the defendant reasonably believed that such conduct was necessary to avoid imminent and substantial harm, (2) no reasonable legal alternative was available, and (3) the harm caused was less than the harm avoided.

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