

A state statute provides: "Aggravated robbery of the elderly consists of robbery committed against a victim who is 65 years of age or older." Another state statute provides that when a criminal statute does not designate a necessary mental state, the mental state required is recklessness. A third state statute provides that a person acts recklessly if the person "consciously disregards a substantial and unjustified risk that the material element exists or will result from the person's conduct."

The evidence at a criminal trial showed that the defendant robbed a 66-year-old man outside a senior citizens' center. The defendant testified truthfully that the robbery had occurred on a dark night, that she had had no idea how old the victim was and had not cared how old the victim was, and that she had intended to rob whomever she encountered.

Could the defendant properly be convicted of aggravated robbery of the elderly?

- A. No, because the only evidence on the issue showed that the defendant did not know, nor could she reasonably have known, the victim's age.
- B. No, because there was no evidence of a substantial risk that the victim was age 65 or older.
- C. Yes, because the evidence was clear that the victim was 66 years old, and the robbery statute is designed to protect the elderly.
- D. Yes, because the jury could find that there was no justification for the defendant's conduct and that she was willing to take the risk that the victim was age 65 or older.

Explanation:

This jurisdiction defines aggravated robbery of the elderly as robbery committed against a victim who is 65 years of age or older. And since this statute does not designate the necessary mental state, the **required mental state** in this jurisdiction is **recklessness**—ie, the **conscious disregard** of a **substantial and unjustified risk** that:

the material element exists *or*

the material element will result from the defendant's conduct.

Since this robbery statute is specifically designed to protect the elderly, the material element is the victim's age. Therefore, a defendant can only be convicted if he/she consciously disregarded a substantial and unjustified risk that the victim was 65 years of age or older.

Here, the evidence shows that the defendant robbed a 66-year-old man. And though the defendant did not know how old the victim was, the jury could still find that the defendant acted recklessly **(Choice A)**. That is because she consciously disregarded the substantial and unjustified risk that the victim was 65 or older since she (1) did not care how old the victim was, (2) intended to rob whomever she encountered, and (3) committed the robbery outside a senior citizens' center **(Choice B)**. Therefore, the jury can properly convict her.

(Choice C) Although there was clear evidence that the victim was 66 years old and the robbery statute is designed to protect the elderly, the defendant can only be convicted if she acted with the requisite mental state—recklessness.

Educational objective:

A defendant can only be convicted of a crime if he/she acted with the requisite mental state—eg, recklessness.

Copyright © 2011 by the National Conference of Bar Examiners. All rights reserved.

Copyright © UWorld. All rights reserved.

Criminal mental states

