

A woman was envious of her coworker for receiving a promotion they had both sought. After receiving the promotion, the coworker bought himself a very expensive watch to celebrate. The woman wanted to buy a similar watch, but she could not afford to do so. The coworker later invited the woman to attend a game night he was hosting, and the woman concocted a plan to steal the watch from him.

When the woman arrived at the coworker's house the following night, the coworker invited her in and showed her to the living room where they were playing games. Later in the evening, when no one was looking, the woman snuck into the coworker's bedroom, opened the bedroom closet, and rummaged through the closet until she found a display box in which the coworker kept his valuables. As anticipated, she found the watch inside the box, hid the watch in her jacket, and left with it at the end of the night.

The coworker reported the incident upon discovering that his watch was missing. The police interviewed all of the guests who attended the game night, and after seeing the woman wearing the watch in plain view, the police arrested the woman and charged her with burglary.

Is the woman guilty of burglary?

- A. No, because opening the coworker's watch box does not qualify as a breaking.
- B. No, because the woman had permission to enter all areas within the coworker's home.
- C. Yes, because the woman entered the coworker's home with the intent to steal the watch.
- D. Yes, because the woman opened the coworker's closet door with the intent to steal the watch.

Explanation:

When, as here, the question does not indicate that the majority rule is being tested, apply the common law rule for [burglary](#). **Common-law burglary** is the:

unlawful breaking and entering of another's dwelling at nighttime with the specific intent to commit a felony (eg, larceny) therein.

A **breaking** is accomplished when **even slight force** is used to create an opening into a dwelling—eg, opening an unlocked door or window. If the defendant instead entered the dwelling with consent, a breaking can still occur if the defendant later **enters part of the dwelling structure** (eg, opening a closet door or wall safe) **without permission**.

Here, the woman went to the coworker's house with the intent to steal his watch. But since the coworker invited the woman into his home for a game night, she did not break into his dwelling when she initially entered his home. However, she did break into the coworker's bedroom closet—part of the dwelling structure that she did not have permission to enter—later that evening. And since the woman entered the closet with the specific intent to steal the coworker's watch (ie, commit larceny), she is guilty of burglary (**Choices B & C**).*

*This fact pattern also meets the less-stringent majority and Model Penal Code standard for burglary, which merely requires the unlawful entry of a building or other structure with the specific intent to commit any crime therein.

(Choice A) Merely opening an object within a dwelling (eg, watch box, desk drawer, trunk) does not constitute a breaking because common law burglary seeks only to protect a person's right of habitation. However, the woman did commit burglary when she opened the bedroom closet with the requisite intent.

Educational objective:

For burglary, a breaking can still occur after a defendant enters a dwelling with consent if the defendant subsequently enters part of the dwelling structure (eg, opening a closet door or wall safe) without consent. But merely opening an object within a dwelling (eg, desk drawer, trunk, box) is not a breaking.

References

Charles E. Torcia, 3 Wharton's Criminal Law § 318 (15th ed. 2020) (stating that a breaking may occur within a dwelling by opening a closed inner door, such as a bedroom door, with the intent to commit a felony therein).

Breaking requirement for burglary

