

A man was invited to attend a party at a neighbor's house. The man knew that the neighbor kept his valuable sports memorabilia collection in the basement game room and intended to steal it. On the night of the party, guests gathered on the main floor of the house and in the basement game room. The man made his way to the basement and waited until the number of guests dwindled to none. The man then went to grab the memorabilia but found that there was too much to carry out without being noticed. As a result, he decided to hide in the basement until the neighbor went to bed, at which time he would sneak out of the house with the memorabilia. Once the house was quiet, the man tried to exit the basement but found that the basement door had been closed and locked from the outside. Left with no other choice, the man broke a small basement window and climbed out of it with the memorabilia.

The man has been charged with burglary in a common law jurisdiction.

Can the man properly be convicted of burglary?

- A. No, because the man did not intend to break the basement window when he decided to steal the memorabilia.
- B. No, because there was not a breaking sufficient to support a burglary conviction.
- C. Yes, because the man broke the basement window to escape with the memorabilia.
- D. Yes, because the man had the intent to steal the memorabilia upon entering the neighbor's house.

Explanation:

Common law burglary is the **unlawful breaking** and entering of another's dwelling at night with the specific intent to commit a **felony** therein. A breaking occurs when a person **uses force** to create an **opening into a dwelling**—eg, by opening an unlocked door or breaking a window to gain entry. But the use of **force to exit a dwelling** after commission of a felony therein **does not constitute a breaking**. Therefore, the man cannot be properly convicted of common law burglary (**Choice C**).

(Choice A) The fact that the man did not intend to break the window when he decided to steal the memorabilia is no defense to burglary since a breaking is accomplished by even a slight use of force (eg, opening an unlocked door or window).

(Choice D) The man did have the intent to steal the memorabilia upon entering the neighbor's house and entering the basement. But since he entered the home and the basement with the neighbor's consent, no unlawful breaking and entering occurred. Therefore, the man cannot be convicted of common law burglary.

Educational objective:

The breaking element of common law burglary is satisfied when a person unlawfully uses force to create an *opening* into a dwelling. Therefore, use of force to *exit* a dwelling is insufficient to support this element.

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Common law burglary (breaking requirement)



Breaking with force



Breaking without force



Breaking within dwelling



Use of force to exit ≠ breaking