

A woman was walking her dog one evening when she saw a strange man walking toward her neighbor's house holding a suspicious-looking tool. She decided to walk her dog past the side of the house to get a better view of the man. When she got closer, she noticed that he was using the tool to pry open a window. The woman also noticed that the man had an empty bag on the ground next to him. When the man managed to pry the window open, he grabbed the empty bag and began to climb inside. The woman ran toward the man, grabbed one of his shoes, and began hitting him until he fell back on the ground.

Given these facts, can the woman properly be convicted of criminal battery?

- A. No, because the woman acted justifiably.
- B. No, because the woman may use any amount of force to prevent a crime.
- C. Yes, because the woman had the requisite general intent for battery.
- D. Yes, because the woman was not the owner of the house.

Explanation:

Criminal battery is the unlawful application of force to another that causes bodily harm or offensive contact. However, a defendant's otherwise unlawful use of force may be **justifiable** if it is deemed socially acceptable due to the circumstances in which it occurred. For example, a person may use force to **prevent a crime**, but the level of force permitted depends on the seriousness of the crime:

Deadly force may be used to prevent the commission of a **serious felony** involving **imminent death or serious bodily harm**.

Nondeadly force may be used to prevent the commission of a **lesser felony** (here, **burglary**) or a **breach-of-the-peace misdemeanor**.

Here, the woman committed a battery when she grabbed the man's shoe and hit him. However, she only hit the man because she saw that he was trying to break into her neighbor's home. And since she applied only *nondeadly* force to prevent this felony, she acted justifiably and cannot properly be convicted of criminal battery.

(Choice B) The use of deadly force is justified only when the defendant actually and reasonably believes that such force is necessary to prevent imminent death or serious bodily harm to him/herself or others. Here, there is no indication that the man presented such a threat, so only nondeadly force could be used to stop him.

(Choice C) Criminal battery is a general intent crime because it requires that the criminal act be consciously performed (or criminally negligent). Here, although the woman acted with the requisite intent (by consciously grabbing and hitting the man), this does not impact her "crime prevention" defense.

(Choice D) For the "crime prevention" defense to apply, the crime being prevented need not be directed against the person, habitation, or property of the defendant; it may be directed against a third person or his/her property (here, the neighbor's house).

Educational objective:

A person may use deadly force to prevent the commission of a serious felony involving imminent death or serious bodily harm. But only nondeadly force may be used to stop a lesser felony or a breach-of-the-peace misdemeanor.

References

Wayne R. LaFave, 2 Substantive Criminal Law § 10.7(c) (3d ed. 2020) (discussing the privilege to use force to prevent the commission of a felony or breach-of-the-peace misdemeanor).

