

A woman broke off her engagement to a man but refused to return the engagement ring the man had given her. One night, the man entered the woman's house after midnight to retrieve the ring. Although the woman was not at home, a neighbor saw the man enter the house and called the police. The man unsuccessfully searched for the ring for 10 minutes. As he was walking out the front door, the police arrived and immediately arrested him.

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

Which of the following, if proved, would serve as the man's best defense to the charge?

- A. The man incorrectly and unreasonably believed that he was legally entitled to the ring.
- B. The man knew that no one was at home when he entered the house.
- C. The man knew that the woman kept a key under the doormat and he used the key to enter the house.
- D. The man took nothing of value from the 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. The intended felony is often **larceny**—ie:

the unlawful taking and carrying away of another's personal property with the **specific intent** to permanently **deprive the owner of that property**.

Therefore, a **defendant's belief** that he/she is **entitled to the property**—even if incorrect and unreasonable—serves as a **defense to larceny** since it negates the intent requirement (ie, mistake of fact defense). And if larceny is the intended felony for common law burglary, that belief is also a **defense to burglary**.

Here, the man unlawfully entered the woman's house after midnight to retrieve the engagement ring he had given her. But he did not intend to commit a felony (ie, larceny) therein because he believed that he was legally entitled to that ring. Although this belief was incorrect and unreasonable, it still negates the intent requirement for larceny—and therefore burglary. As a result, this belief is the man's best defense.

(Choice B) Common law burglary has no requirement that the dwelling be *occupied* at the time of entry. Therefore, it is no defense that the man knew that no one was at the woman's home when he entered.

(Choice C) Since a "breaking" occurs when *any* amount of force is used to enter a dwelling (eg, pushing an already-open door), the man's use of a key to enter the home would satisfy this requirement—not negate it.

(Choice D) Common law burglary requires an intent to commit a felony inside another's dwelling, but that felony need not be completed. Therefore, the fact that the man took nothing of value from the house (ie, did not commit larceny) is no defense to burglary.

Educational objective:

Larceny requires the intent to permanently deprive another of his/her property, so a person who takes property under the belief that he/she owns it is not guilty of this crime. And if larceny serves as the intended felony for common law burglary, this belief would be a defense to both crimes.

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Applicability of mistake-of-fact defense

