

A defendant was charged in federal court under the Assimilative Crimes Act, which provides that the criminal law of the state in question applies to crimes committed on federal enclaves within the state. Federal prosecutors charged the defendant with aggravated theft for stealing computer equipment from a store on a federal military base. Under the controlling state's criminal law, the crime of aggravated theft, punishable by up to 10 years in prison, requires that the stolen property be worth \$1,000 or more. If the stolen property is worth less than \$1,000, the crime is simple theft with a maximum punishment of five years in prison.

The value of the equipment was disputed. The prosecutor offered evidence that the computer equipment was worth more than \$1,000, but an expert witness called by the defense testified that the equipment was worth much less.

The defense attorney has requested that the trial court instruct the jury on the lesser included offense of simple theft. The prosecution objects, arguing that the court should only instruct on the charged offense of aggravated theft.

Upon the defense attorney's request, should the trial court instruct the jury on the lesser included offense of simple theft?

- A. No, because a court cannot instruct on an offense not charged by the prosecution. (16%)
- B. No, because the value of the stolen computer equipment is only a sentencing factor and not an offense element. (7%)
- C. Yes, because a court must instruct on all lesser included offenses. (3%)
- D. Yes, because the jury could rationally find the defendant not guilty of the greater offense but guilty of the lesser included offense. (72%)

Correct

72% Answered correctly

01 min, 32 secs Time Spent

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Explanation:

A **lesser included offense** is a less serious offense that is **necessarily committed during** the commission of a **greater offense**. A court should **instruct the jury** on a lesser included offense if, based on the evidence presented at trial, a rational **jury could *acquit*** the defendant of the **charged offense** but ***convict*** the defendant of the **lesser offense**.

Here, the defendant was charged with aggravated theft for allegedly stealing computer equipment. Under the controlling law, aggravated theft requires that the stolen property be worth \$1,000 or more, while simple theft requires that the stolen property be worth *less* than \$1,000. Therefore, a simple theft is necessarily committed during the commission of an aggravated theft, making simple theft a lesser included offense.

The parties offered conflicting evidence as to the value of the computer equipment at trial. A rational jury could believe the defendant's expert witness, who testified that the equipment was worth less than \$1,000, over the prosecution's contrary evidence. Therefore, a rational jury could acquit the defendant of aggravated theft (greater offense) but convict the defendant of simple theft (lesser included offense). Accordingly, the court should grant the requested instruction on the lesser included offense of simple theft.

(Choice A) A court *can* instruct on a lesser included offense that was not charged by the prosecution if a rational jury could acquit the defendant of the charged offense but convict the defendant of the lesser offense.

(Choice B) The value of the stolen computer equipment is an offense element that must be proven to convict the defendant of simple or aggravated theft. It is not a sentencing factor—ie, a fact that, if proven, would increase the statutorily imposed sentencing range of an offense.

(Choice C) A court should instruct on a lesser included offense only if the evidence presented at trial supports such an instruction (as seen here).

Educational objective:

A court should instruct the jury on a lesser included offense if, based on the evidence presented at trial, a rational jury could acquit the defendant of the charged offense but convict the defendant of the lesser offense.

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Greater & lesser included offense

