

A man decided to steal a car he saw parked on a hill. After he got in and started the engine, the car began rolling down the hill. The man quickly discovered that the car's brakes did not work. He crashed through the window of a store located at the bottom of the hill.

The man was charged with larceny of the car and with the crime of malicious damage to property. At trial, the judge instructed the jury that if the jury found both that the man was guilty of larceny of the car and that the damage to the store was the result of that larceny, then it should also find him guilty of malicious damage to property.

The man was convicted on both counts. On appeal, he argued that the conviction for malicious damage to property should be reversed because the instruction was not a correct statement of the law.

Should the man's conviction be affirmed?

- A. No, because it would violate double jeopardy to convict the man of two crimes for a single act.
- B. No, because the instruction wrongly described the necessary mental state.
- C. Yes, because he was committing a felony.
- D. Yes, because his intent to steal the car provides the necessary mental element.

Explanation:

Larceny occurs when a defendant unlawfully takes and carries away another's property with the **specific intent to permanently deprive** that person of the property (ie, steal). In contrast, **malicious damage to property** occurs when a defendant damages another's property with malice. **Malice** requires proof of either:

knowledge – practical certainty that one's act will cause a particular result *or*

recklessness – conscious disregard of a substantial and unjustifiable risk of harm.

Here, the man committed larceny when he intentionally stole the car. But his intent to steal does *not* provide the necessary mental element for malicious damage to property (**Choice D**). That is because he could not have known with practical certainty, or consciously disregarded the risk, that stealing the car would cause damage to the store—especially since he had no idea that the car lacked working brakes. And since the jury instruction left out the malice requirement, the man's conviction for malicious damage to property should be reversed.

(Choice A) **Double jeopardy** prohibits multiple punishments for the same offense. Two crimes constitute the same offense when (1) both crimes have identical elements or (2) every element of one crime is an element of the other crime. But since larceny and malicious damage to property have distinct elements, they are separate offenses. As a result, convicting the man of both crimes would not violate double jeopardy.

(Choice C) Commission of a felony is not an element of malicious damage to property. Therefore, this is not a basis for affirming the man's conviction.

Educational objective:

Malice crimes (eg, malicious damage to property) require proof that the defendant was practically certain that his/her act would cause a particular result (knowledge) *or* consciously disregarded a substantial and unjustifiable risk of harm (recklessness).

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