

A woman went to an art gallery and falsely represented that she was an agent for a museum and wanted to purchase a painting that was hanging in the gallery. The woman and the gallery owner then agreed on a price for the painting to be paid 10 days later, and the woman took the painting. When the gallery failed to receive the payment when due, the owner called the museum and discovered that the woman did not work there. The owner then notified the police.

When interviewed by the police, the woman admitted to making the false representation and acquiring the painting, but she said she believed that the painting had been stolen from her by someone who worked in the gallery.

Is the woman guilty of obtaining property by false pretenses?

- A. No, because she believed that the painting belonged to her.
- B. No, because the gallery owner would have sold the painting to anyone who agreed to pay the price.
- C. Yes, because even if her representation was not material, she never intended to pay for the painting.
- D. Yes, because she knowingly made a false representation on which the gallery owner relied.

Explanation:

The crime of obtaining property by **false pretenses** occurs when a person:

knowingly misrepresents a past or existing material fact

does so with the **specific intent to defraud** and

thereby obtains title to the property of another.

Intent to defraud is the intent to induce the owner of the property to permanently part with it. Therefore, such intent **does not exist** if the defendant either (1) **believes** that he/she has the **right to appropriate** the property or (2) **intends** to and is **able to return** the property.

Here, the woman falsely represented to the gallery owner that she was an agent for a museum and wanted to purchase a painting (knowing misrepresentation). They then agreed on a price to be paid 10 days later and the woman took the painting (obtained title). The woman never made that payment. But since she believed that the painting had been stolen by someone at the gallery and that it belonged to her (right to appropriate), she lacked the intent to defraud needed to be guilty of false pretenses **(Choice D)**.

(Choice B) The fact that the gallery owner would have sold the painting to anyone who agreed to pay the price does not excuse the woman's knowing misrepresentation. But she cannot be found guilty of *false pretenses* since she lacked the requisite intent.

(Choice C) The woman's false representations about her employment and desire to buy the painting could be deemed immaterial if the gallery owner did not rely on them. But her false promise to make a future payment would amount to a **material misrepresentation** in most jurisdictions. Nevertheless, she cannot be convicted of *false pretenses* because she had no intent to defraud.

Educational objective:

The crime of false pretenses requires proof that the defendant intended to defraud the property owner. Such intent does not exist when the defendant (1) believes that he/she has the right to appropriate the property or (2) intends to and is able to return it.

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Specific intent for property crimes

Intent to permanently deprive
= Intent to defraud



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Intent & ability to return
≠ Intent to defraud



Intent to retrieve own property
≠ Intent to defraud

