

Instead of going to work one evening, a man decided to visit a bar to watch a basketball game. The man started drinking when he arrived and quickly became intoxicated. While the man was watching the game, his girlfriend arrived at the bar. The girlfriend approached the man and began arguing with him about skipping work to drink. The man in turn accused the girlfriend of visiting the bar alone to flirt with other people. The argument escalated and the girlfriend tried to scratch the man's face. The man tried to grab the girlfriend's wrists to push her arms away, but because his intoxication made him clumsy, he accidentally pushed her backward hard enough to knock her down. The man has been charged with criminal battery.

Can the man properly be convicted of criminal battery on these facts?

- A. No, because the man acted justifiably.
- B. No, because the man's criminal behavior is excused.
- C. Yes, because battery is a general intent crime.
- D. Yes, because the man made no attempt to retreat from the altercation.

Explanation:

Self-defense

(justification for criminal conduct)

	General requirements	Duty to retreat
Nondeadly force	Actual & reasonable belief of imminent <i>unlawful</i> harm Force reasonably necessary to prevent harm Not initial aggressor	No duty to retreat
Deadly force	Actual & reasonable belief of imminent <i>serious harm</i> or <i>death</i> Deadly force necessary to prevent harm Not initial aggressor	Majority rule: No duty to retreat Minority rule: Duty when safe retreat available <i>unless</i> inside one's home

Criminal battery occurs when a person **unlawfully applies force** to another, resulting in **bodily harm** or **offensive contact**. However, the person'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, the application of force against another is justified if committed in **self-defense**—ie, if the actor:

actually and reasonably believed the force was necessary to protect against imminent unlawful harm

used reasonable force (ie, no more than necessary) to prevent such harm *and* was not the initial aggressor—ie, did not provoke the altercation.

The reasonableness of a **voluntarily intoxicated** person's response to imminent unlawful harm is measured through the eyes of a **reasonable, sober individual**.

Here, the man's belief that force was necessary to protect himself from the girlfriend's imminent and unlawful scratching was reasonable. His use of force was also reasonable because it is likely that a reasonable, sober person also would have tried to push the girlfriend away. And since the man was not the initial aggressor, his actions constitute justifiable self-defense. As a result, he cannot properly be convicted of criminal battery.

(Choice B) Voluntary intoxication serves as an **excuse** for the commission of a **specific intent crime** if it prevented the defendant from forming the requisite intent. But since criminal battery is a general intent crime, a voluntary intoxication defense would be meritless.

(Choice C) Criminal battery *is* a general intent crime because it requires that the criminal act be consciously performed (or criminally negligent). But this does not impact the man's ability to successfully claim that he justifiably acted in self-defense.

(Choice D) There is no duty to retreat before using *nondeadly* force in self-defense (as seen here)—even if there is an opportunity to do so safely.

Educational objective:

Use of force against another is justified as self-defense if the actor (1) actually and reasonably believed the force was necessary to protect against imminent unlawful harm, (2) used reasonable force to prevent such harm, and (3) was not the initial aggressor.

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