

A woman and her partner robbed a bank. Although they split the money they had stolen in half, the woman became greedy and decided to steal the partner's share. The woman knew that the partner had stashed his share of the money in a house that had been abandoned for some time. She decided to sneak into the house at night and steal the money. That night, the woman went to the back door of the house, and when she tried the doorknob, she discovered that it was unlocked. She snuck into the house, walked around until she found the partner's money in one of the rooms, and took it. A neighbor heard the woman rummaging in the house and immediately called the police. The police tracked the woman down and arrested her for burglary.

In a jurisdiction that follows the common law with respect to criminal offenses, is the woman guilty of burglary?

- A. No, because the back door to the house was unlocked.
- B. No, because the house was abandoned.
- C. Yes, because the woman intended to permanently deprive the partner of the money.
- D. Yes, because the woman used force to enter 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. A **dwelling** is defined as a structure regularly **occupied for habitation**. Although the structure need not be occupied at the time of the breaking, it **must not be abandoned**. That is because common-law burglary seeks only to protect a person's right of habitation.

Here, the woman broke into the house at night with the specific intent to steal the partner's money (ie, to commit larceny) **(Choice C)**. However, the house was abandoned when she broke in. As a result, the house does not constitute a dwelling for purposes of a common-law burglary, and the woman is not guilty of this crime.

(Choices A & D) A breaking can be accomplished by using even slight force, such as *opening* an unlocked door (as seen here). However, walking through an already open door would not constitute a breaking.

Educational objective:

For common-law burglary, a dwelling is defined as a structure regularly occupied for habitation. Although the structure need not be occupied at the time of the breaking, it must not be abandoned.

References

Wayne R. LaFare, 3 Substantive Criminal Law § 21.1(c) (3d ed. 2020) (defining "dwelling of another").

Dwelling requirement for common-law burglary



Regularly occupied for habitation = Dwelling

Abandoned ≠ Dwelling