

A woman told a man to accompany her into her friend's unlocked barn and retrieve an expensive black saddle that she said she had loaned to the friend. The man accompanied the woman to the friend's barn, opened the door, found a black saddle hanging high above the ground, and climbed a ladder to reach it. He handed the saddle down to the woman, and the two left with it together. In fact, the saddle belonged to the friend, and when the friend discovered the saddle missing, she suspected that the woman was the thief. The friend used a screwdriver to break into the woman's house to find the saddle. Upon discovering the saddle on the woman's kitchen table, the friend took it back and called the police.

The jurisdiction follows the common law, except that burglary covers structures in addition to dwellings and the nighttime element has been eliminated.

Which of these individuals is guilty of burglary?

- A. All of them.
- B. Only the friend.
- C. Only the woman.
- D. The man and the woman.

## Explanation:

In this jurisdiction, **burglary** is:

the **unlawful breaking and entering** of another's structure or dwelling—eg, use of slight force to open a door and step through the doorway

with the **specific intent to commit a felony** therein.

Larceny is a felony that occurs when a person unlawfully takes and carries away another's personal property with the specific intent to permanently deprive the owner of it. And a person is guilty of these crimes if he/she personally committed the crime OR **used an innocent agent** to commit the criminal acts. An innocent agent is a person who **lacked the requisite mens rea** but was **tricked or forced into committing the crime**.

Here, the man was an innocent agent of the woman since she falsely told him that she had loaned the saddle to the friend to trick the man into helping her take it from the friend's barn. The woman then used the man to open the unlocked barn door (unlawful breaking) and they entered the barn. Since the woman entered intending to steal the friend's saddle (larceny), she is guilty of burglary. But since the man believed that the woman owned the saddle (no intent to commit larceny or other felony), he is not guilty of burglary (**Choices A & D**).

The friend then discovered that her saddle was missing. She immediately suspected that the woman stole it, so the friend broke and entered the woman's house to retrieve it. But the friend did not intend to steal *another's* property because she owned the saddle. And since she did not intend to commit larceny or any other felony, the friend is not guilty of burglary (**Choices A & B**).

## Educational objective:

A person is guilty if he/she personally commits a crime or uses an innocent agent to commit the criminal acts. An innocent agent is a person who lacked the requisite mens rea but was tricked or forced into committing the crime.

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### **Liability for burglary**

Directly liable

Liable through innocent agent

Not liable