

Late one evening, a woman sitting in her living room with the lights off saw a man using a flashlight to look into her car, which was parked on the street in front of her home. The woman had left an expensive laptop computer on the front seat of the car and knew that there had been a series of car thefts in the area. After seeing the man break her car window, the woman retrieved a shotgun, fired it, and hit the man. She then called the police. When the police officers arrived, they arrested both the man and the woman.

The woman is charged with aggravated assault. At trial, her attorney has asked the court to instruct the jury that she was permitted to use force in defending her property. The jurisdiction follows common law principles for defenses.

Should the court give the jury the requested instruction?

- A. No, because the woman had a duty to retreat before using deadly force.
- B. No, because the woman was not entitled to use deadly force in defense of property.
- C. Yes, because the woman did not use deadly force but simply injured the man.
- D. Yes, because the woman was entitled to use deadly force to defend her home.

Correct

Collecting Statistics

01 min, 47 secsTime Spent

2023Version

Explanation:

Justifications for criminal acts

| | |
|----------------------------|--|
| Necessity | Reasonable belief that conduct was necessary to avoid imminent & substantial harm No reasonable legal alternative Harm caused < harm avoided |
| Self-defense | Actual & reasonable belief that harm is imminent Reasonable force used to prevent harm Not initial aggressor |
| Defense of others | Actual & reasonable belief that force is necessary to protect victim from imminent harm Reasonable force used to protect victim |
| Defense of property | Force reasonably necessary to prevent imminent & unlawful interference with possessed property Nondeadly force used |
| Law enforcement | Prevent imminent crime Make lawful arrest <i>or</i> Prevent suspect's escape from custody |
| Resisting arrest | Reasonable force permitted to resist unlawful arrest or arrest by unknown police officer |

Aggravated assault occurs when the defendant uses a deadly weapon (eg, shotgun) to commit either:

attempted battery – when the defendant has the specific intent to commit and takes a substantial step toward committing a battery *or*

"fear of harm" assault (ie, apprehension assault) – when the defendant intentionally places another in reasonable apprehension of imminent harmful or offensive contact.

However, an otherwise **unlawful use of force** may be **justified** if it was done to **defend property**. This defense requires proof that the force used was **reasonably necessary** to **prevent imminent and unlawful interference** with the defendant's possession of property. But in defending property, the defendant **cannot use deadly force**—ie, force that is intended or likely to cause death or serious bodily injury.

Here, the woman committed aggravated assault when she intentionally fired the shotgun at the man. However, the woman was not entitled to use deadly force to prevent the man from stealing the laptop from her car. Therefore, the court should not give the jury the requested defense-of-property instruction.

(Choice A) In most jurisdictions, a defendant has no duty to retreat before using deadly force in [self-defense](#). But this rule does not apply here because deadly force can never be used to defend property.

(Choice C) Deadly force is force that is intended to cause death or serious bodily injury—regardless of whether death or serious bodily injury actually occurs. Therefore, the woman did use deadly force because shooting a shotgun at the man was intended to cause him death or serious bodily injury.

(Choice D) Deadly force is permitted to terminate a forcible entry into a dwelling if the occupant reasonably believes that the intruder intends to commit a felony inside. However, the woman used deadly force to defend her laptop—not her home.

Educational objective:

An otherwise unlawful use of force may be justified if it was done to defend property. This defense requires proof that the force used was reasonably necessary to prevent imminent and unlawful interference with the defendant's possession of property. But the defendant cannot use deadly force in defending property.

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