

At 11:00 p.m., a husband and wife were accosted in the entrance to their apartment building by a man, who was armed as well as masked. The man ordered the couple to take him into their apartment. After they entered the apartment, the man forced the wife to bind and gag her husband and then to open a safe which contained a diamond necklace. The man then tied her up and fled with the necklace. He was apprehended by apartment building security guards. Before the guards could return to the apartment, but after the man was arrested, the husband, straining to free himself, suffered a massive heart attack and died.

In a common law jurisdiction, of which crimes is the man guilty?

- A. Robbery only.
- B. Burglary and robbery only.
- C. Robbery and murder only.
- D. Burglary, robbery, and murder.

Explanation:

Common law **burglary** is the (1) **breaking and entering** of another's dwelling at night (2) with the specific intent to commit a felony therein. The breaking of another's dwelling can be:

actual – when physical force is used to gain entry (eg, opening a window) *or*

constructive – when fraud, deception, or **threat of force** is used to gain entry.

Here, the man ordered the couple to take him into their apartment at gunpoint (constructive breaking). He then entered their apartment at 11:00 at night to rob them (intent to commit felony). Therefore, the man is guilty of burglary (**Choices A & C**).

Robbery is the use or threat of **force** to unlawfully **take and carry away** another's property with the specific intent to permanently deprive the owner of that property. Here, the man used a gun to force the wife to open the safe, took her diamond necklace, and fled. Therefore, he is also guilty of robbery.

After the robbery, the husband died while trying to escape from his binds. **Common law murder**, under the **felony murder** rule, is any killing of another during the commission, or attempted commission, of an **inherently dangerous felony** (eg, robbery, burglary). The perpetrator is responsible for deaths that occur after the felony was committed if the **death and felony** were **closely related in time and space** (as seen here). Therefore, the man is also guilty of murder (**Choices A & B**).

Educational objective:

Felony murder occurs when the defendant kills another during the commission, or attempted commission, of an inherently dangerous felony—eg, burglary or robbery.

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Burglary



Robbery



Felony murder



