

## Criminal Exam 8

Mary entered the Super Electronics' Store, proceeded to the music section and picked up five CD's. Mary had every intention of paying for the CD's when she picked them up, but she started daydreaming about winning the lottery and she put the CD's in her purse and walked out of the store without thinking. In the parking lot a security guard approached her and tried to grab the CD's out of her purse. Thinking the security guard was trying to steal her purse she kicked the security guard in the shin and ran off. Mary jumped in her car and began speeding out of the parking lot. As Mary was speeding away a little old lady was slowing crossing the road in front of Mary's car.

Mary screamed at her, "get out of the way before I run you over!"

The little old lady had a heart attack and died instantly.

What common law crimes is Mary be guilty of? What are her defenses?

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## Example Answer

### Larceny

Is Mary guilty of larceny?

Larceny is the taking and carrying away of personal property of another without consent and with intent to steal. Larceny is a specific intent crime requiring the intent to steal a particular item.

Here Mary took the CD's, put them in her purse, and walked out of the store. This would be the taking and carrying away of the store's property. There is no evidence that the store gave their consent for this action, in fact the confrontation in the parking lot with the security guard is evidence that the store did not consent. Larceny, however, requires a specific intent to steal a particular item. Here the facts state that Mary intended to pay for the CD's but simply forgot. Mary did not have the requisite intent to commit larceny.

Because Mary did not intend to steal the CD's, Mary is not guilty of larceny.

### Battery of security officer

Battery is an unlawful application of force to the person of another that results in physical harm or an offensive touching. Battery is a general intent crime requiring only an intent for the force, not the physical harm or offensive touching.

Here Mary kicked the security guard in the shin. This would be the application of force (i.e. kicking) which results in an offensive touching (i.e. being kicked in the shin). Battery is only a general intent crime meaning that Mary only needs to have the intent to do the kicking to meet the requisite mens rea. Here the facts indicate that Mary had every intention of kicking the security guard.

Under these facts, Mary has likely committed the crime of common law battery.

Defenses: Mary can probably successfully argue that her kicking was an attempt to defend her property.

A person has the right to use non-deadly force to defend her property against an unlawful taking. Here, Mary believed that the security guard was attempting to steal her purse. From Mary's point of view this was an illegal taking where she was authorized to use non-deadly force. The question will be whether Mary's actions were reasonable under the circumstances. Here it was a security guard who was trying to stop her which is some evidence that Mary should have stopped and listened before kicking the security guard. On the other hand, the

security guard was outside the store and it could have been some crazy off of the street.

Based on the facts, since Mary had no idea why anyone would be grabbing at her purse she was likely justified in kicking the security guard in the shin. Mary will be able to successfully claim she was defending her property when she kicked the security guard.

### Assault of little old lady

Did Mary commit assault?

Assault is an attempted battery or intentionally placing another in fear of imminent bodily harm. Assault is a specific intent crime requiring an intent to batter or an intent to place someone in harm.

Here Mary was speeding out of the parking lot when she told an old lady that she was going to run her over. Screaming at someone that you are going to run them over would put a reasonable person in fear of imminent bodily harm (i.e. fear of being run over).

It is likely that Mary did assault the old lady.

Defenses: Mary may again attempt to argue that she was defending her property. This defense will likely fail. As stated above, a person has the right to use non-deadly force to defend their property against an unlawful taking. Although her yelling at the old lady is non-deadly force, there is no indication from the facts that Mary's property was still in danger of being taken as she has already gotten away from the security guard. Because there is not indication that Mary is actually defending her property at this point, any argument regarding defense of property will likely fail.

### Murder of the little old lady

Is Mary guilty of murdering the little old lady?

Murder is the unlawful killing of a person with malice aforethought. Murder is a general intent crime requiring only "malice aforethought" which means either an intent to kill, an intent to cause serious bodily harm, or an intent to commit a dangerous felony.

Here, while the little old lady did die of a heart attack, there is no indication that Mary intended to kill her or cause serious bodily harm to her. Although Mary did state she would run the old lady over, Mary prefaced that by telling the old lady to

“get out of the way.” Because Mary wanted the old lady to get out of the way, Mary did not have the requisite mens rea for common law murder.

Mary is not guilty of murdering the old lady.

### Voluntary manslaughter

Is Mary guilty of voluntary manslaughter?

Voluntary Manslaughter is the unlawful killing of a person committed in the heat of passion. The mental state required for voluntary manslaughter, i.e. the heat of passion, requires all four of the following: the defendant was in a situation where a reasonable person would lose control; the defendant actually did lose control; There was not enough time for a reasonable person to cool off before the killing; and the defendant did not cool off before the killing.

Here Mary was fleeing the parking lot when she yelled at the little old lady. Although Mary was in a panic, there is no indication she was in the “heat of passion.” Mary was not in a situation where a reasonable person would lose control. Running away from a security guard is not the type of situation which would send a reasonable person over the edge.

In addition there is no indication that Mary has actually lost control. Although she was speeding, she does take the time to tell the old lady to get out of the way.

Because Mary was not in the “heat of passion” when the old lady died, Mary is not guilty of common law voluntary manslaughter.

### Involuntary manslaughter

Is Mary guilty of involuntary manslaughter?

Involuntary Manslaughter is the unlawful killing of a person through gross negligence or during the commission of a misdemeanor. Involuntary manslaughter is a general intent crime requiring only an intent to do the negligent act or misdemeanor.

Here Mary yelled at the old lady to get out of the way, the old lady got scared and had a heart attack. There was no gross negligence on Mary’s part as although she was speeding, she stopped when she saw the old lady. Unknown to Mary, however, she was committing a misdemeanor (larceny) when she was yelling at the old lady. This was the killing of a person during a misdemeanor.

Mary, however, does not meet the requisite intent for involuntary manslaughter. In order to meet even the general intent standard of involuntary manslaughter, Mary would have needed to intended to commit the misdemeanor (larceny). As explained above, the facts indicate that Mary had no intention of committing larceny.

Because Mary does not have the requisite mens rea to commit involuntary manslaughter, Mary is not guilty of involuntary manslaughter.

Finally for all three charges of murder, voluntary manslaughter and involuntary manslaughter, even if Mary did meet the elements of those crimes, it would be extremely tough to link up Mary actions of yelling at the old lady with the old lady having a heart attack and dying. The heart disease or other heart defect experienced by the old lady was likely not caused by being yelled at.