

Kern County College of Law  
CRIMINAL LAW  
Midterm Examination  
Fall 2022  
Prof. D. Kinnison

**General Instructions:**

**Essay Questions: Answer Three (3) Essay Questions**

**Total Time Allotted: Three (3) Hours**

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QUESTION 1

Al proposed to his friend Bill that the two of them rob the First Western Bank. Bill, thinking that Al was joking, said "Sure, why not?" Al then produced three pistols and three ski masks, and told Bill "Okay, let's go." Bill thought it would be dangerous to back out at that point. Bill therefore took a pistol and a ski mask, but he secretly resolved to try to thwart the robbery.

On the way to the bank, Al said "We need someone else." Al then approached a person in the area, Cal, pointed a pistol at Cal and told him "We are going to rob the First Western Bank. You are going to help us, or we will kill you." Cal gulped, accepted an unloaded pistol and a ski mask, and went to the bank with Al and Bill, but only because he reasonably believed that the threat to his life was real.

When the three of them entered the bank, Al assigned Bill to act as lookout. Al told Cal to approach a teller with the pistol drawn, and demand all of the teller's cash. Al then stood back to cover everyone in the bank, including Cal. Al then whispered to Bill "We will kill anyone who gives us trouble." Bill said nothing.

Immediately thereafter, Dan entered the bank, dressed in a security guard uniform. Al shot at Dan, but missed and instead killed Ed, a bank customer. Dan fired back, missing Al, but accidentally killing Cal. Al and Bill then fled from the bank, without obtaining any money from the bank.

Discuss the possible charges and defenses concerning Al, Bill and Dan in the incident.

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## QUESTION 2

Adam and Bob operate a business in which they sell used vehicles. Adam recently sold a Camry to Carl for \$5,000. Carl gave Adam a check from an account owned by Dave, and Carl signed Dave's name to the check without Dave's permission. Adam gave Carl the Camry and a certificate of title for the Camry.

On another day, Bob drove a Camaro taking customer Eric for a demonstration of the Camaro's condition. Bob drove the Camaro in an unsafe manner, and as a result injured Frank, a pedestrian, who died two weeks later. Bob sold the Camaro to Eric for \$8,000, with terms of \$1,000 down and the balance at the end of the month, at which time Eric would receive the vehicle. Eric paid the down payment that day, but when he returned at the end of the month with the balance, he learned that Bob had sold the Camaro to George. Eric came to pay Bob the balance owed, and when Bob said the Camaro had been sold to George and tried to return Eric's \$1,000 deposit, Eric left his check for the balance of the purchase price on Bob's desk. Eric then forcibly repossessed the Camaro from George. Bob did not cash Eric's check for the balance of the purchase price.

Discuss all possible crimes of the parties.

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### QUESTION 3

Abe suffers from schizophrenia, for which he has been prescribed medication. Schizophrenia is a psychiatric condition that causes a person to suffer delusions. Abe is not always able to afford his medication, so he sometimes turns to illegal narcotics such as methamphetamine to deal with his schizophrenia.

One evening, after using methamphetamine instead of his prescription medication, Abe becomes convinced that his neighbor's house is possessed by evil spirits. In order to get rid of the evil spirits, Abe decides to burn down the neighbor's house. Abe lights a candle and approaches the neighbor's house. Abe picks up a rock and breaks the front window of the house. Officers in a passing police car notice Abe breaking the window, and stop to investigate. As they approach, Abe is seen reaching in through the broken window with the hand holding the lighted candle. When the officers are about 35 feet away from Abe they yell at Abe to stop what he is doing. Abe then pulls the lighted candle back out of the neighbor's house and runs away. The officers catch and arrest Abe. When questioned by the officers, Abe tells them that he just needed to get rid of the evil spirits in that house. No one was in the house at the time of the incident.

Discuss the possible charges against Abe, and any defenses that could apply.

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KCCL  
Crim Law & Proc.  
Midterm-Fall 2022  
Prof. Dana Kinnison

## ANSWER TO QUESTION 1

### *Al's Crimes*

#### *Solicitation.*

*Al could be charged with solicitation, for proposing the bank robbery to Bill. At common law, solicitation was committed when a person incites, counsels, advises, induces, urges, or commands another to commit a crime, with the specific intent that the person solicited commit the crime. General approval or agreement is insufficient. Solicitation is complete at the time that the solicitation is made, and does not require that the person solicited agree to commit the crime. Modern statutes usually follow the common law solicitation rules, though some limit the crime of solicitation to solicitation of certain serious felonies.*

*The prosecution will argue that Al urged Bill to commit the robbery with him. The fact that guns and masks were produced by Al clearly indicated the requisite specific intent that the robbery be committed.*

*The defense could argue that Al merely put the idea of a robbery up for discussion, and therefore he did not meet the element of "inciting, advising, inducing", etc. The defense would likely not prevail with this argument, given that the facts state that Al "proposed" the robbery, which indicates a desire that the two of them commit the robbery, not a mere discussion of a possible robbery.*

*Al would likely be convicted of solicitation, both at common law, and under modern statutes. Even where a modern jurisdiction limited the solicitation crime to certain serious felonies, robbery is highly likely to be enumerated as a serious felony.*

#### *Conspiracy*

*Al would likely be charged with conspiracy to commit robbery. At common law, conspiracy involved (1) an agreement between two or more persons, (2) an intent to enter into an agreement, and (3) an intent to achieve the objective of the agreement. Modern law in a majority of states also requires an overt act in the furtherance of the conspiracy.*

*The prosecution will argue that Al is guilty of conspiracy because he and Bill agreed to commit the robbery, and overt acts in the furtherance of the conspiracy occurred, namely passing out pistols and ski masks, plus obtaining the assistance of Cal.*

*The defense would likely argue that there was no conspiracy because only Al, and not Bill or Cal, intended to enter into the agreement, and Bill and Cal did not voluntarily intend to commit the robbery. Bill thought Al was joking when Al proposed the robbery, and Bill was joking when he said he would agree to it. The facts indicate that Bill thought it would be dangerous to back out once the guns were brought out by Al, and Bill maintained a desire to attempt to thwart the robbery. Consequently, while it could be argued whether Bill's fear precluded a finding that he intended to enter into an agreement with Al, it seems clear that Bill did not intend that the robbery be successful. Further, the facts seem clear that Cal did not*

*voluntarily enter into the agreement, nor intend that the robbery be successful, given the threat to his life by Al.*

*At common law, Al would likely be successful in defending against a conspiracy charge given that neither Bill nor Cal appear to have intended that the robbery be successful.*

*However, the modern trend in conspiracy law is a "unilateral" approach, such that a person with the requisite intent will be guilty of conspiracy even if the other party is feigning the intent to enter into the agreement and/or commit the crime. Under the modern trend, Al would most likely be convicted of conspiracy since he had the requisite intent, regardless of the possible lack of requisite intent by Bill and Cal.*

### *Kidnapping*

*Al would likely be charged with the kidnapping of Cal. At common law kidnapping was the forceable taking of a person from one country to another. Most kidnapping rules prohibit much shorter movements accomplished by force or threat of force.*

*The prosecution would argue that since Cal was forced to go with Al to assist with the robbery, there was movement by force. Although the movement was insufficient under common law, it would be sufficient for most if not all modern kidnapping statutes.*

*The defense might argue that since Cal did not express any opposition, he voluntarily joined the robbery in the hope of receiving a share of the money obtained. This position does not seem to be supported by the facts, given the stated "gulp" and lack of other indications of consent to the venture.*

*Al will most likely be convicted of kidnapping.*

### *Burglary*

*Al will likely be charged with burglary. At common law, burglary was the unlawful breaking and entering of an inhabited dwelling at night with the intent to commit a felony inside. In most, if not all, modern jurisdictions a burglary requires only entry for the purpose of theft or any felony.*

*At common law, Al would clearly not be guilty of burglary, since the bank was not an inhabited dwelling, there was no "breaking", and the entry may not have been at night. Under modern law, the prosecution would argue that there was an entry of the bank by Al to commit robbery. There is little that the defense could argue to defend against a burglary charge. The fact that the robbery was not completed does not affect the burglary charge, since the intent to commit robbery was present at the time of entry.*

*Consequently, Al would almost certainly be convicted of burglary under modern law.*

### *Attempted Robbery*

*Al would likely be charged with attempted robbery. Robbery is the unlawful taking and carrying away of the personal property of another with the intent to permanently deprive the other of that property. Attempt has two elements: (1) specific intent to commit the target crime, and (2) an overt act in the furtherance of that intent. At common law, and under a minority of modern jurisdictions, a proximity test is used. Typically, the question is whether the defendant was "dangerously close" to completing the crime. The modern majority rule requires only that the overt act be a "substantial step" in the course of conduct toward the commission of the crime.*

*The prosecution would argue that under either test, Al would be guilty of attempted robbery. Al clearly intended to commit the robbery, and entry into the bank with two other people to assist him, all armed with guns and masks, would appear to satisfy the common law proximity test, as well as the modern majority substantial step test.*

*The defense may try to argue abandonment of the attempted robbery. However, in the majority of jurisdictions, abandonment is never a defense to a completed attempt. In a minority of jurisdictions, abandonment would be a defense if (1) fully voluntary, and (2) it is a complete renunciation of the criminal purpose, not just a decision to postpone or find another victim. Even under the minority rule, the defense is not likely to be successful with abandonment, since it occurred only upon appearance of a security guard, which resulted in a shooting likely to bring more attention to the would-be robbers.*

*Al would very likely be convicted of attempted robbery.*

#### *Assault*

*Al could be charged with assault for shooting at Dan. Assault is an attempted battery, under common law. The majority of modern jurisdictions include an attempt to frighten a victim as an assault. A minority of modern jurisdictions follow the common law rule.*

*The prosecution would argue that Al's shooting at Dan constituted an attempt to hit him with a bullet, which would clearly qualify as an attempted battery.*

*The defense may attempt to argue that the shot was not intended to hit Dan, and therefore no assault was committed. Without more detail as to how wide the shot was away from Dan, this argument would likely fail, especially given the statement from Al to Bill. In the unlikely event that the jury found no intent to shoot Dan, in the minority of jurisdiction's the alternative motive of attempting to frighten Dan would suffice for an assault conviction.*

*Dan would very likely be convicted of assault against Dan.*

#### *Attempted Murder*

*Al would likely be charged with assault and the attempted murder of Dan. Attempt is defined above. Murder is the unlawful killing of another human being with malice aforethought.*

*The prosecution will argue that Al's shooting at Dan demonstrated an intent to kill Dan. Use of a deadly weapon has been held to demonstrate a permissive inference of intent to kill. Also, Al's statement to Bill that they would kill anyone who tried to interfere seems to clearly indicate Al's intent to kill.*

*The defense may try to argue that Al's shot, since it missed Dan, was merely an attempt to stop Dan from interfering, and to bring Dan to avoid any action to interfere with the robbery. Without more detail as to how wide the shot was away from Dan, this argument would likely fail given the statement from Al to Bill.*

*Al would likely be convicted of attempted murder and assault of Dan.*

#### *Murder*

*Al would likely be charged with the murder of Ed.*

*Murder is the unlawful killing of another human being with malice aforethought. This common law rule is generally followed, with some variations (such as degrees of murder) in modern murder statutes.*

*The prosecution would likely proceed under both murder and felony murder against Al. The prosecution would argue that Al saw Dan dressed as a security guard, and decided to try to kill him. Al's*

*statement to Bill in the bank supports this assertion. Under the doctrine of transferred intent, a defendant's harmful intent as to Dan would be transferred to his act as it occurred against Ed. Thus, if the jury found that Dan intended to kill or cause great bodily injury to Dan, that intent would suffice as malice aforethought regarding the killing of Ed.*

*Unless the jury found that Al did not intend to kill or cause serious injury to Dan, Al would most likely be found guilty of murder.*

### *Felony Murder*

*Al could be charged with the murders of Ed and Cal under the felony murder rule. Felony murder is the killing of a human being during the commission of an inherently dangerous felony.*

*The felony murder rule provides that a killing, even if accidental, during the commission of an inherently dangerous felony, provides implied malice from the intent to commit the underlying felony, making the killing murder.*

*The prosecution would argue that since attempted robbery is clearly a dangerous felony, and the killings of Ed and Cal occurred during the attempted robbery, Al should be found guilty of both murders under the felony murder rule.*

*The defense might argue that the majority rule in modern jurisdictions is that the killing must have been foreseeable. Further, the argument would be that the killing of Ed during the shooting at Dan was not foreseeable. The facts do not provide sufficient basis for such an argument. Absent some additional facts indicating a lack of foreseeability, this argument would likely fail.*

*As to the killing of Cal by Dan, the defense would likely argue that Al is not guilty of Cal's murder since the majority of modern jurisdictions hold that liability for murder cannot be based upon the death of a co-felon from resistance by the victim or police pursuit. (The minority rule is that death of a co-felon can be the subject of the felony murder rule.)*

*The prosecution may respond that the above exception to the felony murder rule does not apply because Dan was a security guard, not a victim or a police officer. It seems likely that Dan's position would be found to be substantially similar to that of a victim or a police officer, and therefore the majority rule would likely apply.*

*The prosecution would also argue that since Cal was not a co-conspirator, but an unwilling participant under duress, the co-felon exception should not apply. Further, Dan's shooting in response to Al's shooting at Dan would seem highly foreseeable.*

*Consequently, Al would likely be found guilty of murders of both Ed and Cal under the felony murder rule.*

### *Crimes of Bill*

#### *Conspiracy*

*Bill may be charged with conspiracy, defined above.*

*The prosecution will argue that although Bill may have had some reservations, his actions indicated his willingness to participate in the robbery. At no time did Bill take any action to attempt to thwart the*

robbery, despite his intentions. Bill's cooperation included taking the gun and the mask, and even entering into the bank with Al and Cal. Further, the moment Al shot at Dan did not include any intervention by Bill, who likely had a loaded gun (the facts state only that Cal's gun was unloaded).

The defense will likely argue that Bill never intended to enter into the agreement to commit robbery, much less intending the successful completion of the robbery. Although Bill did not take any action to thwart the robbery up to the point that it got to, the robbery was not completed. Further, Al was at all times armed with a loaded gun, and had told Bill that anyone who attempted to interfere would be killed. This would add an argument of duress to the defense.

Since Bill did not intend to enter into the conspiracy agreement, and did not intend that the robbery be successful, with the addition of a probable duress defense, Bill would likely be found not guilty of conspiracy.

### *Kidnapping*

Bill may be charged with the kidnapping of Cal. Kidnapping is defined above.

The prosecution would argue that as an accomplice, Bill is liable for any other probable or foreseeable crimes committed by other accomplices. Since the kidnapping provided another person to assist in the crime, it was at least foreseeable. Further, Bill did nothing to interfere with the kidnapping of Cal.

The defense will argue that Bill was not an accomplice, since he did not desire that the robbery be accomplished, and instead planned to try to thwart it. Further, even if Bill had been an accomplice, Al's kidnapping of a random stranger to assist with a robbery while en route to the site of the robbery would seem improbable and unforeseeable. Bill's failure to interfere with the kidnapping lacks an actus reus, since Bill did not take any action and had no duty to intervene.

Bill would most likely be found not guilty of kidnapping.

### *Burglary*

Bill may be charged with burglary, defined above.

As with the conspiracy charge discussed above, the prosecution would likely argue that Bill's lack of actions to attempt to thwart the robbery indicate a willingness to assist. His entry into the bank armed with a gun would be argued as an indication of his intent to go ahead with the plan.

The defense arguments concerning burglary would likely be similar to those for conspiracy, discussed above. In addition, given the lack of intent to allow the robbery to be successful, the intent element of burglary would appear to be missing.

It would thus seem likely that Bill would not be found guilty of burglary.

### *Attempted Robbery*

Bill may be charged with attempted robbery, defined above.

The prosecution's argument will likely be similar to those for conspiracy and burglary, above. Bill's lack of action to attempt to thwart the robbery would be highlighted.



*The defense would likely offer arguments similar to those for conspiracy and burglary. In addition, since attempted robbery requires specific intent to accomplish the robbery, this element is lacking as to Bill per the facts stated in the question.*

*Consequently, Bill would likely be found not guilty of attempted robbery.*

#### *Assault*

*Bill may be charged with assault, defined above.*

*The prosecution would likely argue that as a co-conspirator, Bill would be liable for crimes of a fellow conspirator (Al) in the furtherance of the conspiracy.*

*The defense would likely offer the same arguments as for conspiracy and burglary, above. In addition, only Al, not Bill, shot at Dan. It is true that co-conspirators may be liable for acts of fellow conspirators in the furtherance of the conspiracy. But if, as seems likely, Bill is not guilty of conspiracy, as discussed above, then liability for the actions of alleged co-conspirators would not attach.*

*Thus it appears that Bill would not be found guilty of assault.*

#### *Attempted Murder*

*The analysis for Bill being charged with attempted murder is essentially the same as that for assault, above.*

*Thus it appears that Bill would not be found guilty of attempted murder.*

#### *Murder*

*Bill may be charged with the murder of Ed. Murder is defined above.*

*The prosecution would likely argue that as a co-conspirator, Bill would be liable for crimes of a fellow conspirator (Al) in the furtherance of the conspiracy.*

*The defense would likely offer the same arguments as for conspiracy and burglary, above. In addition, only Al, not Bill, shot at Dan. It is true that co-conspirators may be liable for acts of fellow conspirators in the furtherance of the conspiracy. But if, as seems likely, Bill is not guilty of conspiracy, as discussed above, then liability for the actions of alleged co-conspirators would not attach.*

*Thus it appears that Bill would not be found guilty of murder.*

#### *Felony Murder*

*Bill may be charged with the murders of Ed and Cal under the felony murder rule, defined above.*

*Whether Bill would be convicted of the murders of Ed and/or Cal under the felony murder rule would be determined again by the finding on Bill's intent to participate in the planned robbery or not. As discussed above, the likely finding that Bill did not intend to agree to the plan or intend to see the robbery successfully completed should constitute a successful defense to the felony murder charges. In the unlikely event that the jury found that Bill did intend to join the conspiracy, the felony murder analysis discussed above regarding Al's responsibility for Cal's death would also apply to Bill.*

*Thus it appears that Bill would not be found guilty under the felony murder rule for the deaths of Ed and/or Cal.*

#### *Crimes of Dan*

##### *Assault and Murder*

*Dan might be charged with assault and/or murder concerning Cal, and possibly assault concerning Al. Those crimes are defined above.*

*The prosecution could argue that Dan shot at Al with the intent to kill or cause great bodily injury to Al. Thus assault would be established as to the attack on Al, and transferred intent would provide malice aforethought concerning Dan's shot that killed Ed.*

*The defense would argue that Dan's shooting was in self-defense. He was shot at by Al, which entitled Dan to use deadly force to defend against that attack. Absent additional facts, the self-defense justification for Dan's shot would appear to allow him to successfully defend against these charges.*

*Dan would likely be found not guilty of assault and murder.*

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## **ANSWER TO QUESTION 2**

#### *Crimes of Adam*

##### *Murder*

*Adam might be charged with murder for the killing of Frank. Murder is the unlawful killing of a human being with malice aforethought. Malice may be established where the defendant acts with reckless indifference to an unjustifiably high risk to human life.*

*The facts are unclear as to the specific nature of Adam's "unsafe" driving. In order to constitute wanton disregard for human life sufficient for malice, Adam's driving would have had to have presented a high probability of death or serious injury to others. For example, if Adam had driven at 75 miles per hour through crowded downtown streets, malice may be found. The prosecution would likely argue that Frank's death proved that Adam's driving was with reckless indifference.*

*The defense would likely argue that a vehicle hitting a pedestrian is not always the result of reckless indifference. Pedestrians sometimes run into the street without sufficient warning to nearby drivers. Also, the defense would likely point out that Adam was demonstrating a vehicle to his passenger/customer, and would therefore be highly unlikely to drive with reckless indifference to an unjustifiably high risk to others.*

*Adam would likely be found not guilty of murder.*

##### *Involuntary Manslaughter*

*Adam might be charged with involuntary manslaughter for the killing of Frank. Involuntary manslaughter is a killing that results either from criminal negligence or the commission of an inherently dangerous misdemeanor.*

*The prosecution would likely argue that Adam is guilty of involuntary manslaughter under either of the two ways that crime can be committed – criminal negligence and commission of an inherently dangerous misdemeanor – which Adam's driving constituted.*

*The defense may argue that the actions of Frank, not Adam's driving, was the proximate cause of Frank's death. The given facts lack specific details to support the defense argument. Instead, Adam was said to have been driving in an unsafe manner. Absent additional facts demonstrating Frank's actions to have been the proximate cause, the most likely result is that Adam's driving proximately caused Frank's death.*

*Consequently, Adam is likely to be found guilty of involuntary manslaughter.*

### *Crimes of Bob*

#### *Larceny*

*Adam might be charged with larceny in the transaction with Eric.*

*Larceny is the unlawful taking and carrying away personal property of another with intent to permanently deprive the owner thereof. At common law there were a number of variations of larceny, including larceny by trick and larceny by false pretenses. Modern theft statutes often include theft and embezzlement, but have done away with the other common law forms of larceny. Embezzlement is the fraudulent conversion of property of another by a person in lawful possession of that property. Larceny by trick involves a person receiving custody, but not title, of personal property as the result of misrepresentations of fact, with intent to defraud. Larceny by false pretenses occurs when a person receives both title and possession of personal property as a result of misrepresentations of fact, with intent to defraud.*

*The prosecution might argue that Bob committed larceny by taking the down payment from Eric when he intended to attempt to sell the Camaro to someone else. The facts do not indicate that. Therefore, the prosecution would therefore argue that Bob is guilty of embezzlement, in that Bob had sold the Camaro to Eric, but retained possession until the payment of the balance of the purchase price. Common law larceny by trick might be argued if Bob gave title to Eric while retaining possession. Common law larceny by false pretenses would not appear to apply, since Bob did not obtain title from Eric.*

*The defense would likely argue that Bob committed no crime, but merely breached a contract of sale. The argument would be that at the time the contract was entered into, Bob had no intent to defraud Eric. Rather, when George later wanted to purchase the Camaro, Bob decided to sell to George, and try to reach another agreement with Eric. In support of this argument, the defense would point out that neither title nor possession were obtained by Bob from Eric. Further, the defense would point out that Bob attempted to reimburse Eric for the deposit payment that was made, and did not cash the check for the balance of the purchase price.*

*While possibly a close call, Bob would probably not be found guilty of any of the above theft offenses since neither title nor possession were obtained from Eric by Bob in the transaction.*

## *Crimes of Eric*

### *Robbery*

*Eric might be charged with robbery (or the related crime of carjacking) in the taking of the Camaro from George. Robbery is the unlawful taking of personal property of another from their presence by use of force or threat of force with intent to permanently deprive him/her of the property.*

*Although the facts are somewhat unclear, the description "forcibly" seems to sufficiently indicate the use of force. The prosecution would likely argue that the George was rightfully in possession of the Camaro since he purchased it and received it from Bob.*

*The defense would likely argue that Eric was acting under claim of right, in that he had paid (or at least tendered payment) under a valid contract of sale for the vehicle. Therefore, the Camaro was rightfully his, and as such the property taken was not "of another", and thus no robbery (or carjacking) occurred.*

*The prosecution would likely respond that Eric's belief that he owned the vehicle cannot be valid, given that Bob told him that the Camaro had been sold to George. Unless title had been transferred to George, which is not indicated in the facts, this defense would likely fail.*

*Eric would likely be found guilty of robbery and/or carjacking.*

### *Larceny*

*If the element of force for robbery/carjacking is found to be absent, for the reasons discussed above concerning robbery, Eric would likely be found guilty of larceny.*

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## **ANSWER TO QUESTION 3**

### *Malicious Mischief*

*Abe could be charged with malicious mischief. At common law malicious mischief involved (1) malicious, (2) destruction or damage, (3) to property of another. The malice required does not require hatred or ill will, but simply an intent to cause damage.*

*In this case the prosecution will argue that Abe intended to cause damage when he threw the rock at the window. Since Abe sought entry into the residence, and broke the window to accomplish that, the damage was clearly intended.*

*The defense will be hard-pressed to argue the absence of an element of this crime.*

*Thus, Abe would be found guilty of malicious mischief unless a valid defense is established, as discussed below.*

### *Attempted Arson*

*Abe would likely be charged with attempted arson. At common law, arson was the malicious burning of the dwelling of another. Modern arson statutes have expanded the types of burning that can constitute*

arson, but since the structure here is a dwelling, no explanation of the expanded rules is necessary. Attempt is committed where there is (1) a specific intent to commit the crime, and (2) an overt act in the furtherance of that intent beyond mere preparation. At common law, the test for sufficiency of the overt act was the "proximity test", i.e. whether the defendant got "dangerously close" to completing the crime. The majority of modern jurisdictions follow the "substantial step" test, i.e. was the act done a substantial step in a course of conduct planned to culminate in the commission of the crime.

The prosecution would argue that under either the common law test or modern majority rule, Abe's actions were sufficient for the crime of attempted arson. Reaching inside the house with a lighted candle would appear to be more than enough for the "substantial step" test, and would also satisfy the "proximity test."

The defense might argue that Abe was holding the candle inside to determine whether he could verify the presence of evil spirits, and that until that was verified he was not going to ignite the house. That position is supported by the fact that although the officers yelled at him, they were not in a position to stop Abe from throwing the lighted candle into the house. The fact that Abe pulled the candle out instead of throwing it inside indicates that lack of intent to commence the burning until Abe was satisfied that burning was necessary.

The prosecution would likely respond that the light from a candle is far inferior to the light which an average flashlight would provide. Abe brought no flashlight, only a burning candle, which indicated only an intent to burn.

Given that the facts state that Abe had decided to burn the neighbor's house down before he approached it. Absent a valid defense, discussed below, Abe would likely be convicted of attempted arson.

### *Burglary*

Abe will likely be charged with burglary. At common law, burglary was the unlawful breaking and entering of an inhabited dwelling at night with the intent to commit a felony inside. In most, if not all, modern jurisdictions a burglary requires only entry for the purpose of theft or any felony. The intended crime does not have to be committed for the crime of burglary.

The prosecution will argue that Abe entered the house, having placed his hand inside. The courts have routinely held that entry is accomplished when any portion of the defendant's body enters the residence. Here, that was clearly accomplished. The intent to commit arson was given in the facts.

The defense might again argue, as with attempted arson, that Abe was holding the candle inside to determine whether he could verify the presence of evil spirits, and that until that was verified he was not going to ignite the house. Therefore, Abe had not formed the intent to burn at the time of entry.

As with attempted arson, absent a valid defense, discussed below, Abe would likely be found guilty of burglary.

### *Attempted Murder*

Abe might be charged with attempted murder. Attempt is defined above. Murder is the unlawful killing of another human being with malice aforethought. Unlike some versions of the crime of murder, attempted murder requires a specific intent to kill.

The prosecution might argue that although no one was in the house at the time, it was likely to appear to Abe that someone would have been in the neighbor's house during the incident, since it occurred in the evening. Thus under the "substantial step" test, if not the "proximity test", Abe should be found guilty of attempted murder.

The defense would likely argue that since the facts do not provide any indication that Abe intended to kill his neighbor or anyone other than "evil spirits", which do not constitute human beings, there was no intent to kill, and therefore no attempted murder.

The prosecution may respond that "evil spirits" as described by Abe might include living human beings who Abe believes are possessed by evil spirits.

Absent further facts supporting the assertion that Abe intended to kill people and not just "spirits", Abe would likely be found not guilty of attempted murder.

## Defenses

### Insanity

The defense might assert that Abe's crimes should be excused by the fact that Abe was legally insane at the time of the incident. At common law, pursuant to the M'Naghton case, insanity was defined as (1) a mental defect, (2) that results in either an inability to understand the nature and quality of his/her actions, or an inability to understand the difference between right and wrong. Modern jurisdictions have adopted (1) the M'Naghton rule, (2) a variation of M'Naghton involving inability to understand right and wrong, but not inability to understand the nature and quality of his/her actions, (3) an irresistible impulse test, which involves a mental illness that leaves the defendant unable to control his/her actions or to conform his/her conduct to the law, (4) the Durham or New Hampshire test, which provides a defense when the defendant's actions were the product of a mental disease or defect, or (5) the American Law Institute or Model Penal Code test, which provides a defense where the defendant suffers from a mental defect and lacks substantial capacity to either (a) appreciate the wrongfulness of his/her conduct, or (b) control his/her conduct.

The defense, which has the burden of proof, would argue that since Abe was diagnosed with schizophrenia, a mental defect clearly exists. The argument will be over the other prong of the test, whichever applies in the jurisdiction.

1. M'Naghton. The defense argument under M'Naghton would likely be that although Abe appeared to know what he was doing, his intent to eradicate evil spirits by burning the house showed an inability to understand right and wrong.

The prosecution's response would be that Abe showed his understanding that his actions were wrong when he ran from police upon being interrupted.

Under M'Naghton, Abe would likely be found legally sane.

2. M'Naghton Variation. Under the more restrictive M'Naghton variation described above, since inability to understand right and wrong is required, as discussed in A above, his actions undermine that assertion, and Abe would likely be found legally sane.

3. *Irresistible Impulse.* The facts do not appear to support an argument that Abe was unable to control his actions. Rather, his actions were chosen to combat the supposed evil spirits. The better argument for the defense here would be that Abe was unable to conform his conduct to the law, based on his lack of current appropriate medication.

The prosecution's response would likely be that Abe showed an ability to follow the law when he pulled the candle out of the house as police approached.

Under irresistible impulse, Abe would likely be found legally sane.

4. *Durham.* The defense under Durham would likely be that Abe suffered from schizophrenia, and because Abe was not properly medicated during the incident, his actions were a product of his mental disease. The prosecution's argument might be that Abe's actions during the incident were primarily the result of his methamphetamine use.

Expert testimony would likely be helpful for this analysis. Subject to expert testimony, it appears that Abe would be likely to be found insane under the Durham test.

5. *ALI/MPC.* The defense would likely argue under the ALI/MPC test that Abe's actions showed a lack of ability to control his behavior and to understand right and wrong. As discussed above, these arguments would likely fail given Abe's reactions to police intervention.

Abe would likely be found sane under the ALI/MPC test.

#### *Intoxication*

Although voluntary intoxication is generally not going to provide a defense, the defense might argue that Abe's voluntary intoxication provided a defense to the specific intent elements of burglary and attempted arson. There is no specific intent element to malicious mischief. Although arson is a general intent crime, attempted arson, like all attempt crimes, requires a specific intent to complete the attempted crime.

The defense argument would be that Abe's methamphetamine use caused him delusions which prevented his forming the requisite specific intent. Abe's belief that evil spirits possessed the neighbor's house indicates that Abe suffered delusions. The defense might also argue that the intoxication in combination with Abe's unmedicated schizophrenia prevented Abe from forming the requisite specific intent.

The prosecution would likely argue that Abe's actions and statement to police undermine the assertion that Abe was unable to form specific intent. The facts indicate that Abe went to the neighbor's house because he wanted to burn it down because it was possessed by evil spirits. Notwithstanding the delusion, Abe made a decision to attempt to burn the house by taking a lighted candle, breaking a window to allow entry, and holding the candle inside the house. Such actions, while misguided, show an ability to formulate a plan and to attempt to carry it out.

Intoxication, along with schizophrenia, will likely not present a successful defense to the specific intent elements of burglary and attempted arson.

1)

Exam ID: 263087

### **Al's Crimes**

#### **Al's murders of Dan and Cai**

Al would be charged with murder. Murder under the common law is the unlawful killing of another human with malice aforethought.

#### **Unlawfulness of the Killing**

Homicide under the common law is divided into three categories: excused homicide, justifiable homicide, and murder. Excused homicide occurs when a killing is committed pursuant to a lawful order (such as soldiers during wartime or an executioner carrying out a lawful execution.) Here, there was no lawful order.

Justifiable homicide occurs when a lawful excuse for the killing exists. A lawful excuse for a killing includes self defense. To raise a proper self defense claim, the perpetrator of the killing must have been in reasonable fear of death or great bodily injury being inflicted on him by another. Further, the perpetrator must not have been the instigator of the fight, quarrel, or crime leading to his fear of harm.

Al may attempt to claim that he was defending himself from Dan, who he may have believed intended to harm him. This belief would be reasonable: it would not be unusual or unexpected for a security guard at a bank to defend the bank using force. But because self defense may not be contrived (in other words, a person may not create a situation that justifies their use of force to defend themselves) Al's claim of self defense would fail.

Because the killing was unlawful, the first element necessary to prove murder is met.

#### **Killing of a Human Being**

To be murder, the act must be the actual and proximate cause of death to another human. Here, the act was Al's firing of the gun. The bullet struck Ed, killing him. Ed would not have died had it not been for Al's gunshot, and the natural and probable consequence of a gunshot wound is death.



There is no reasonable argument AI could make that his shooting of Ed was not the actual and proximate cause of his death.

Because AI's gunshot was the actual and proximate cause of Ed's death, the second element necessary to prove murder is met.

### **Malice Aforethought**

"Malice aforethought" can be proved if the prosecution can prove one or more of the following: that AI intended to kill Ed or someone else, that AI intended to inflict great bodily injury on Ed or someone else, that AI acted with reckless indifference to human life (with a "depraved heart"), or that Ed's death resulted during the commission of an inherently dangerous felony.

#### **a) Intentional Killing**

If AI intended to kill Dan, then AI had the required mental state to kill Ed. This is because of the doctrine of transferred intent. If AI intended to kill Dan, but missed and killed Ed (which is the case here), then AI's intent to kill Dan has been transferred to Ed, and the prosecution can prove that AI is guilty of murder.

#### **b) Intent to inflict Great Bodily Harm**

If AI did not intend to kill Dan, but intended to inflict great bodily harm on him, AI will still be guilty of murder. The doctrine of transferred intent still applies here. Because AI used a deadly and dangerous weapon in the commission of his crime, there is a presumption that AI intended to inflict great bodily harm on Dan. This intent transfers to Ed as well.

#### **c) Reckless Indifference to Human Life**

A person acts with reckless indifference to human life when they commit an act with a conscious disregard to an unjustifiably high risk of serious injury or death to another. Firing a gun at another person always creates a high risk of serious injury or death. Because there was no way to justify this risk under these facts, AI acted with reckless indifference to human life, and has the requisite mental state to commit murder.

#### **d) Felony Murder**

Finally, AI can be convicted of murder under the felony murder theory. If a death occurs during the commission of an inherently dangerous felony (here, robbery of a bank), then the perpetrator of that

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felony is also guilty of murder under the felony murder rule. This particular felony resulted in two deaths: the first was Ed and the second was Cal. Al may attempt to defend himself from the felony murder of Cal by saying that Cal was a co-felon. Ordinarily, if a co-felon in the crime is killed while resisting or fleeing the scene of a felony they committed, then the other principals may not be convicted of their felony murder. However, as explained below, Cal was not a co-felon at all and Al would be liable for his death as well under the felony murder rule.

-1  
Applies only to murder not F.M.

what would defence argue re Ed's death? Possibly that Al did not intend to kill or injure Dan; merely fired a warning shot? or ??

**Conclusion:**

Because Al intended to kill Dan, but killed Ed, Al will be convicted of the murder of Ed. Further, because Cal died during the commission of a dangerous felony, Al will be convicted of Cal's murder as well.

**Degree of Al's Murders:**

The modern law divides murder into two degrees: 1st degree murder, which requires premeditation and deliberation, and 2nd degree murder, which includes all other murders.

**Al's Deliberation and Premeditation**

Al's words to Bill that "we will kill anyone who gives us trouble" is excellent evidence of deliberation and premeditation. Al coolly reflected on his choice, even though it was for a brief period of time. Al will likely be charged with 1st degree murder for the murder of Ed.

Al may also be charged with 1st degree murder for the murder of Cal; however, Al will not be convicted of 1st degree murder unless the jurisdiction the crime occurred in includes bank robbery as an 'enumerated felony.' The first degree murder statutes in California include bank robbery as an enumerated felony, so if the crime occurred in California, Al would be convicted of 1st degree murder. Otherwise, his murder of Cal is 2nd degree murder.

**Voluntary or Involuntary Manslaughter**

Al's attorney will attempt to reduce Al's murder charge to a lesser charge of Voluntary or Involuntary manslaughter. Al could argue that he is guilty of voluntary manslaughter via an imperfect self-defense claim. If Al unreasonably, but actually, believed that he was in danger of great bodily injury or death from Dan, he would be guilty of voluntary manslaughter for killing Ed and not murder. This argument would fail, however, since the situation which led to Al's peril was contrived by Al.

Al may also argue that he is guilty of involuntary manslaughter and not murder. Al would be guilty of involuntary manslaughter if he acted with criminal or gross negligence, and not malice. There are no facts to support Al's claim here.

### **Al's Attempted Murder of Dan**

Al could be charged with the attempted murder of Dan. A person is guilty of an attempt if they intend to commit the target offense and perform a substantial act toward the completion of the target offense. Here, for Al to be guilty of the attempted murder of Dan, he would have to possess the actual intent to murder Dan. Al would attempt to argue that he did not intend to kill Dan, but only meant to scare him. This would be unsuccessful: due to the totality of the circumstances, as well as the fact that Al shot at Dan with a gun (which is a deadly weapon) it can be implied that Al intended to murder Dan, so Al would be guilty of attempted murder.

-1 Prosecution would argue that Al's intent was clear from his statement that Al's Solicitation of Bill anyone who gave them trouble would be killed.

Under the common law, a person is guilty of solicitation when they induce another to commit a felony, a breach of the peace, or obstruction of justice. Under the modern rule, a person simply has to incite, encourage, aid, or support the commission of a crime with the intent that the crime be actually committed. Here, Al suggested to Bill that they to rob First Western Bank, and when he did so, Al intended for the robbery to occur. At that moment, Al's solicitation of Bill was complete. Al may argue that he did not intend for Bill to commit the crime, but there is strong evidence that Al intended Bill commit the crime with him, since he produced pistols and ski masks.

Because Al solicited Bill's participation in a crime, with the intent that the crime actually be committed, Al is guilty of solicitation.

### **Conspiracy with Bill and Cal**

Al may also be charged with conspiracy. Under the common law, the only requirement of a conspiracy is that two or more individuals agree to commit an unlawful act. The modern view requires not only the intent to agree to commit a crime, and the actual agreement to commit a crime, but also an overt act taken in the furtherance of the conspiracy. Here, Al agreed to commit a bank robbery with both Bill and Cal. Even though Bill and Cal did not actually agree to commit the crime (as explained below), Al thought they did. Al is therefore guilty of conspiracy, even though his alleged co-conspirators may not be. Under the common law, all of the participants in the conspiracy would have to be actual conspirators, but this is no longer the case. Al is guilty of conspiracy

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because he believed when he agreed to commit the crime with Bill and Cal that they were also in agreement.

The agreement, however, is not quite enough to get to conspiracy. One of the co-conspirators must perform an overt act in the furtherance of the conspiracy. Here, Al committed several. He produced weapons and disguises, he drove everyone to the bank, and stood guard while Bill and Cal were supposed to rob the bank. Each of these overt acts alone would be sufficient to prove a conspiracy.

Because Al intended to agree to commit a crime, and actually agreed to commit a crime, and subsequent to that agreement committed an overt act in the furtherance of the conspiracy, Al is guilty of conspiracy.

The two conspiracies in this case are linked and in the furtherance of one criminal transaction. Therefore, there is only one conspiracy even though there were two separate agreements.

#### **Merger of Al's Solicitation and Conspiracy**

Under the common law, Al's solicitation of Bill and his conspiracy with Bill would be merged into one offense, and he would only be guilty of the conspiracy, since dual conviction was prohibited. The modern trend tends to disallow this merger and may punish the solicitation and conspiracy separately.

#### **Al's Solicitation of Cal**

Al is also guilty of the solicitation of Cal for the reasons explained above, but this solicitation would also merge into the conspiracy under the common law.

#### **Al's Attempted Robbery of the Bank**

Robbery is committed when the personal property of another is taken by force or fear from their immediate possession or control. A person is guilty of an attempt when they take a substantial step <sup>modern rule</sup> towards the commission of the target offense, with the specific intent that the target offense be committed. Here, Cal attempted to get the teller's cash, but was not successful. He brandished a gun at the teller and demanded the money, but they ultimately left with nothing. The brandishing of the gun and demand for money was a substantial step toward the completion of the robbery. Had Dan not interrupted the robbery, it would have been successful. The proximity test here is satisfied, and there was definitely a substantial step toward completion.

-1 Lacked clarification that proximity test is the common law rule, and substantial step is the modern rule.

Al will argue that he is not guilty of an attempted robbery, because he did not actually attempt to take anything by force or fear. Even though Al did not attempt to rob the bank teller directly, Al conspired with Cal to do so. Because a conspirator is guilty of the crimes of all his co-conspirators, as long as those crimes were reasonably foreseeable, then Al is guilty of the attempted robbery Cal committed when he pointed the gun at the teller and demanded all of the money.

If Cal is not a co-conspirator, Al would still be guilty of attempted robbery because he acted through an innocent agent, in this case Cal. Because Al threatened to kill Cal if he did not commit the robbery on his behalf, Al is still guilty of the attempted robbery.

### **Crimes of Bill**

#### **Bill's Conspiracy with Al**

Bill would be charged with conspiracy for agreeing to commit the robbery with Al. But Bill has a valid defense: he did not actually intend that the target crime be committed. To be a conspiracy, the conspirators must intend to agree to commit the target offense, and actually agree to commit the offense. At the time Bill agreed to commit the offense, he did not believe Al was serious. When it became clear to Bill that Al was in fact serious, Bill thought it would be dangerous to back out of the conspiracy and resolved to thwart the robbery. Bill therefore did not actually intend to commit the offense at the time he made the agreement.

Because Bill did not have the required mental state for conspiracy, he is not guilty of conspiracy.

If, however, a jury found that Bill did have the required mental state to commit a conspiracy, he will attempt to argue that he withdrew. To successfully withdraw from a conspiracy, Bill would have had to notify all of his co-conspirators that he was withdrawing, and he would be required to neutralize all of the assistance he had provided up to that point. But Bill formed this intent secretly and did not tell the others. Because Bill failed to inform the others of his withdrawal, his withdrawal was unsuccessful and he would be guilty of the conspiracy and all of the crimes of his co-conspirators.

#### **Bill's Murder of Ed and Cal**

The prosecution would attempt to charge Bill with the murder of Ed and Cal, both under the felony murder rule. Bill did not commit an act that directly led to either death, however, he would be guilty if the prosecution successfully proved that he was involved in a conspiracy with Al. But as explained above, Bill did not have the required intent to conspire with Al. This shields Bill from liability for the crimes of his alleged co-conspirators. However, if the prosecution successfully proved that Bill was

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guilty of the conspiracy, he would be guilty of all the crimes AI was guilty of, including the murders of Ed and Cal, because bank robbery is inherently dangerous and any deaths would be considered reasonably foreseeable.

*3* *should also discuss murder as aider and abettor, in addition to F.M. rule.*  
**Cal's Conspiracy with AI**

Cal would have a complete defense to the conspiracy charge: the defense of duress. Duress is a complete defense to a crime, meaning that Cal would not be guilty of the charged offense if he could prove by a preponderance of the evidence that he reasonably believed that he would suffer great bodily harm or death if he did not agree to commit the crime he is charged with. Duress is a defense to every crime except homicide.

Here, AI directly threatened Cal with a pistol and told him that he would be killed if he did not participate. Cal was clearly an unwilling participant, and had he survived the event, the state could not have successfully brought any charges against him. Of course, Cal did not survive, and the dead cannot be charged with crimes.

**Dan's Murder of Cal**

It is unclear from the facts presented whether Dan is in fact a law enforcement officer, or just dressed as one. If Dan is in fact a law enforcement officer, Dan would not be guilty of the murder of Cal. Law enforcement is authorized to use deadly force to stop a felon if they reasonably believe that the felon is a danger to the officer or to the public. Because Dan shot at AI, intending to kill him or inflict great bodily harm on him, he could be charged with attempted murder. However, if Dan were actually law enforcement, the homicide would be excused, and Dan would not be guilty.

If, however, Dan is not actually law enforcement but is simply dressed as a security guard, Dan would still probably not be convicted of attempted murder. Under the facts here, AI shot at Dan first. Dan would argue that he was in reasonable fear of death or serious bodily injury, which would justify his use of deadly force against AI.

Dan, of course, did not kill AI: he killed Cal. The intent to kill AI would be transferred to Cal, but the defense does as well. Because Dan was acting in self defense, and his use of deadly force was authorized under these circumstances, Dan would not be guilty of murder.

**Involuntary Manslaughter of Cal**

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It is conceivable that the prosecution would charge Dan with the involuntary manslaughter of Cal. The prosecution would argue that Dan acted recklessly when he attempted to defend himself. This is more likely to be successful in a state which imposes a duty to retreat. In that case, Dan would have had the duty to retreat to a place of safety if he could have done so without increasing his own risk of harm. But California imposes no duty to retreat, so if Dan were charged in California, he would likely be acquitted of involuntary manslaughter as well.

Missed issues:

Al

-2 Kidnapping

Bill

-2 Kidnapping

Dan

-2 Assault (against Al)

Excellent job!

2)

STATE v. CARL

FALSE PRETENSES:

The crime of false pretenses is defined as: 1) obtaining the title of; 2) another's property; 2) using a statement of past or present fact 3) with the intent defraud.

Here, Carl intentionally provided Adam a check that he did not have permission to use (he forged the signature). It can be implied that for Adam to accept the check that Carl gave him--Carl must have presently stated that he was allowed to use the check or showed Adam the forged signature. Adam then handed over the legal title of the camry, as he had been effectively defrauded.

-1 What could defense argue? No intent to defraud, mere breach of contract repayment  
Therefore, Carl can viably be charged with the crime of false pretenses.

FORGERY:

Forgery is defined as: 1) the alteration of; 2) a document of legal importance; 3) with the intent to defraud.

Here, Carl forged David's signature on a check, effectively altering it, with the intent to defraud the Adam into accepting the check as money to purchase the camry.

A check, being a legal instrument that can empower one to make document, suffices to be a document of legal importance.

-1 What could defense argue? No intent to defraud, mere breach of contract.  
Thus Carl could viably be charged for the crime of forgery.

STATE v. BOB:

MURDER:

Murder is defined as the unlawful killing of another with malice aforethought; malice aforethought is comprised of: 1) intent to kill; 2) intent to cause great bodily harm; 3) depraved heart (wanton



disregard to the risk to human life); and 4) killing of another in commission of an inherently dangerous felony (felony murder rule).

Here, Bob is driving a camaro in a manner that is deemed "unsafe" and as a result hits and injures Frank who ends up dying 2 weeks later. There is not many facts but if the prosecution can prove that Bob's unsafe manner of driving exceeded that of criminal negligence (i.e., rose to a depraved heart) then Bob may viably be charged with murder.

The defendant's conduct must be the actual and proximate cause of Frank's death. But for Bob's conduct and driving Frank would not have succumbed to his injuries two weeks later--thus, Bob's conduct is the actual cause of Frank's death. Additionally the death qualified further for actual cause as it occurred within the common law year and a day rule. In satisfying the requirement of proximate cause, it must be determined that the outcome is a reasonable and foreseeable result of Frank's death. It is reasonable to surmise that a pedestrian, who was struck by a vehicle, and subsequently hospitalized could ultimately die from those injuries.

-3 What could defense argue? Frank might have been the proximate cause of the accident.

INVOLUNTARY MANSLAUGHTER:

Involuntary manslaughter is defined as the unlawful killing of another that must occur in the presence of one of the following elements: 1) the killing occurs whilst the defendant is acting with substantial risk to human life (exceeds civil negligence); or 2) the killing occurs in the commission of a misdemeanor.

Here, Bob is driving a camaro in a manner that is deemed "unsafe" and as a result hits and injures Frank who ends up dying 2 weeks later. There is not many facts but if the prosecution can prove that Bob's unsafe manner of driving exceeded that of civil negligence then Bob may viably be charged with involuntary manslaughter.

The defendant's conduct must be the actual and proximate cause of Frank's death. But for Bob's conduct and driving Frank would not have succumbed to his injuries two weeks later--thus, Bob's conduct is the actual cause of Frank's death. In satisfying the requirement of proximate cause, it must be determined that the outcome is a reasonable and foreseeable result of Frank's death. It is reasonable to surmise that a pedestrian, who was struck by a vehicle, and subsequently hospitalized could ultimately die from those injuries.

-3 What could defense argue? Proximate cause discussion should include Frank as possible cause of the accident.

STATE V. ERIC:

LARCENY:

The crime of larceny is defined as: 1) the trespassory taking away of; 2) another's property; 3) with the intent to permanently deprive.

Here, Eric took the camaro that was in George's rightful possession and intended to keep it for himself as he had be previously in line to purchase it from Bob. The facts show that Eric did not have George's consent as he had to use force to take the camaro, and the facts also show that he did not intend to return the vehicle to George.

Therefore, Eric can be viably charged with the crime of larceny. However if he is subsequently charged and found guilty of robbery the larceny charge will merge with the higher charge of robbery.

~~What could defense argue? "Claim of right," i.e. Eric had right to possession.~~  
(Discussed below)

ROBBERY:

Robbery is defined as: 1) the trespassory taking away of; 2) another's property; 3) in their presence with immediate threat of force or harm; and 4) with the intent to permanently deprive.

The elements required to satisfy the requirements for a charge of robbery are the same as those required for larceny(supra), however, the victim must also be in the presence of immediate force and threat of harm from the defendant. Here the evidence shows that Eric "forcibly" took possession of the camaro from George. It can be inferred that there was physical force used by Eric to take the camaro.

~~What could defense argue? "Claim of right"~~  
(Discussed below)

Therefore, Eric can viably be charged with robbery.

Conclusion should be whether conviction would occur.

DEFENSES:

Eric will argue that he was recapturing property that was rightfully his as he had already put down a \$1,000 down payment on the vehicle. Whether or not the court finds that he was entitled to complete his transaction and subsequent ownership is immaterial because the law does not allow one to recover their property by force—even if they are in fresh pursuit.

Missed issue:

-5 Bob / Larceny, for possibly taking Eric's check without intending to sell the car to him.

3)

**Burglary**

Abe could be charged with burglary. Burglary under the common law is the breaking and entering of the dwelling of another at night (defined as a level of natural light making it impossible to discern the countenance of the burglar) with the intent to commit a felony. The modern law has eliminated the requirement that there be breaking, and it is now possible to commit a burglary of commercial structures and vehicles. Under the modern law, burglary of dwellings and vehicles tends to be punished more harshly than burglaries of commercial structures. The requirement that the crime occur at night has also been eliminated. However, as explained below, the facts of this case make those distinctions irrelevant.

5 What could defense argue? No intent to burn at time of entry? Only if evil spirits found?  
Here, Abe broke the window of his neighbor's house and reached inside with the intent to burn it down. Arson, as explained below, is a felony. Because Abe committed a breaking and entering of the dwelling of another, with the intent to commit arson, he could be found guilty of burglary.

**Defenses to Burglary - Insanity**

However, Abe may be able to successfully raise an insanity defense based on his schizophrenia. Under the M'Naughton rule, if Abe suffers a defect of the mind which creates a defect of reason in Abe such that he is not able to recognize either the nature of his acts, or the wrongfulness of his acts, or both, then he is not guilty of any crime he may have committed. Here, Abe's schizophrenia led him to believe that the house next door was possessed by evil spirits. His acts were motivated by a desire to rid the house of evil spirits, which is evidence that Abe could not distinguish between right and wrong at the time the crime was committed.

Ultimately, though, Abe would not pass the M'Naughton test. When officers yelled at Abe to stop what he was doing, Abe immediately withdrew the hand from the window and ran away, presumably to avoid arrest. A defendant's flight tends to show evidence of a guilty mind, and Abe's fleeing the scene immediately upon being caught is strong evidence of his knowledge that his acts were wrong.

If, instead, the jurisdiction in which Abe is charged follows the irresistible impulse test, Abe would be required to prove that his acts were driven by a mental defect which created in him the irresistible impulse to commit the crimes with which he is charged. If his schizophrenia were so severe that he found himself compelled to burn down the house to make the voices stop, Abe would have a strong insanity defense. The crimes here would be the result of Abe's mental defect, and not by Abe's guilty mind.

### **Defenses to Burglary - Voluntary Intoxication**

Voluntary intoxication is a defense available to an individual charged with a specific intent crime only. Burglary is a specific intent crime. To be guilty of burglary, the person charged must specifically intend to commit a felony once inside. Here, Abe voluntarily ingested methamphetamine. If Abe were able to prove by a preponderance of the evidence that he was so intoxicated by the methamphetamine that he was unable to form the requisite intent to commit a burglary, he may be acquitted.

Under these facts, Abe would not be successful. It is clear from his statement to the officers that Abe intended to burn down the house. Abe clearly had the intent to commit arson, even though he was intoxicated.

### **Defenses to Burglary - Mistake of Fact**

Mistake of fact is sometimes allowed as a defense to crimes. If, under the facts as the defendant reasonably believed them to be, the acts he committed would not have constituted a crime, then the defendant may be acquitted of the offenses charged because he lacked the proper mens rea. Here, Abe mistakenly believed that the house next door was possessed by evil spirits. Assuming that the house actually was possessed, though, the act committed by Abe would still be burglary.

### **Attempted Arson**

Arson under the common law is the malicious burning of the dwelling of another. The modern rule has eliminated the requirement that the structure burned be a dwelling. Here, though, the distinction is not important, because the target structure was his neighbor's house. Arson is a general intent crime, even though it requires "maliciousness." As used in the common law, the word "malicious" means to commit an act knowing that a result will occur or is very likely to occur. To illustrate the point, if one sets a fire in the living room of their neighbor, but does not specifically intend the house to be burned, they would still be acting maliciously, since setting a fire in the living room is very likely to burn down the house.

A person is guilty of an attempt when they take a substantial but ultimately unsuccessful step toward the completion of the target offense, with the specific intent that the target offense be completed. Attempt is a specific intent crime, even though the target crime may be a general or specific intent crime.

Here, Abe brought a lighted candle to his neighbor's house. He broke the window and was in the act of placing the lighted candle inside when he was caught. Preparation to commit arson (setting fuel and a mechanism to light it) is not sufficient to constitute an attempt, but here, there was an open flame. This is considered a substantial step toward completion when evaluated under the proximity rule. Abe was extremely close to committing the arson, and had it not been for the interference of law enforcement, would have had a very high chance of success. Abe therefore committed a substantial step toward the completion of the target crime (arson), and when he did so, he intended to complete arson.

#### **Defenses to Attempted Arson - Abandonment**

Abe may attempt to argue that he abandoned his attempt to commit arson by withdrawing from the window with the lighted candle. However, in most jurisdictions, this would not be sufficient. To successfully abandon an attempt, the defendant must abandon his attempt with a complete renunciation of criminal purpose. In other words, he must freely change his mind and permanently abandon his attempt at the crime on his own accord. Here, Abe only abandoned the attempt because he was caught by police officers. This is not a complete renunciation of criminal purpose, so Abe would still be convicted despite his attempt to abandon his crime.

#### **Defenses to Attempted Arson - Insanity**

Abe may raise the same insanity defense to the charge of attempted arson as he would to burglary. It would be highly unusual, and probably prohibited by the court, to attempt to raise the insanity defense for one charge and not the other. Ultimately, if Abe was successful in his insanity defense to burglary, he would also be successful in his defense to attempted arson. Likewise, if he was convicted of burglary, he would be convicted of attempted arson.

#### **Defenses to Attempted Arson - Voluntary Intoxication**

Had the arson been actually completed, this defense would not be available to Abe, because voluntary intoxication is no defense to a general intent crime. However, because attempted arson is a specific intent crime, Abe may raise this defense like he could to burglary. Abe would have to prove by a preponderance of the evidence that he was so intoxicated he could not form the intent to commit arson. If he successfully argued voluntary intoxication as to the burglary charge, it would likely be successful as to the attempted arson charge. A jury would be unlikely to find he was able to form the intent for one crime, but not the other.

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Like his defense to burglary, though, Abe's defense of voluntary intoxication as to attempted arson is likely to fail. Abe was able to explain to the officers who arrested him that he intended to burn down the house. His motive for doing so does not enter the equation when discussing this defense: the only fact that matters is that Abe intended to commit arson. Because there is evidence that Abe actually intended to commit arson, his voluntary intoxication defense would fail.

### **Malicious Mischief**

Finally, Abe could be charged with malicious mischief for damaging the window of the house. Malicious mischief is a misdemeanor, where someone commits an intentional act that causes damage to the property of another. If Abe were charged in California, he would be charged with vandalism. Abe intentionally broke the window of the house next door, so he is guilty of malicious mischief under the common law and would be guilty of vandalism in California. Insanity is a defense to malicious mischief, but as it is a general intent crime, voluntary intoxication is not.

**END OF EXAM**

*Missed issue:*

*-5 Attempted murder. Did Abe believe the "evil spirits" were his neighbors?*

*Excellent answer.*