

June 2013 Baby Bar
Question 1 – Criminal Law

1. With what crimes, if any, can Angela reasonably be charged, and what defenses, if any, can she reasonably raise? Discuss.

Solicitation

Solicitation is the, inciting, or inducing of another to commit or to join in the commission of an unlawful act.

Angela was an animal rights activist. Angela lived near a horse ranch and she told her friend Bart, another animal activist, that she suspected horses were being abused because she saw people going in and out of her neighbor's barn at all hours of the day. She suggested to Bart that they should investigate the matter. Thus, the prosecution will argue Angela's act of asking Bart to go over and investigate shows her intent to entice and encourage Bart to participate in an unlawful act.

Angela will counter that she was merely asking Bart to help her check the situation out in order to see if they should be reporting the incident to the authorities. However, she knew Bart was an animal activist, just as she was, and that to investigate the matter meant to place a stop to it if the horse were being abused. Hence, her act of suggesting to Bart to investigate shows she had the intent to entice or encourage Bart to commit the unlawful act of preventing the abuse, by trespassing onto Chris's property.

Therefore, Angela can be charged with solicitation.

Conspiracy

Conspiracy is the agreement between two or more to commit an unlawful act.

Angela suspected that horses were being abused when she saw people going in and out of her neighbor Chris's barn at all times of the day and night. She suggested to Bart that they go investigate. They climbed over the fence and crossed the yard and opened the barn door. Pursuant to Angela's request, Bart and Angela went to investigate their belief of horse abuse. Thus, there was an agreement. The agreement was between Angela, and Bart, i.e., two or more. They agreed to investigate the potential horse abuse that was taking place on her neighbor Chris's property. In order to investigate they needed to trespass onto Chris's property and enter inside his barn. Therefore, their agreement was to do an unlawful act, i.e., a trespass or burglary (discussed infra).

Therefore, Angela will be charged with conspiracy.

Justification – Prevention of Crime

At common law, deadly force may be used to prevent perpetration of a felony. Modernly, only non-deadly force reasonably necessary to prevent a misdemeanor or felony may be used unless there is a need to prevent present public danger. Further, the party using this defense must be a non-official in hot pursuit, and within a reasonable time after the crime was committed.

Angela was entering Chris's barn in order to see if he was abusing horses. Upon entering the barn she discovered healthy horses, however, she also discovered a large amount of stolen electronic equipment. Thus, Chris had stolen the goods, a crime. However, the fact that Angela went to the barn in order to see if her suspicions about animal abuse were true, and then discovered the stolen equipment, indicates that she was not in hot pursuit and that she was not pursuing Chris within a reasonable time once the crime was discovered. Since Angela was not in hot pursuit, she was not legally justified in pursuing Chris.

Thus, prevention of crime is not a valid defense.

Mistake of Fact

As a general rule, mistake of fact is not a defense where there is an ignorance or mistake as to the fact.

Angela will claim that she was only investigating her belief that Chris was abusing his horses. She needed to substantiate her belief before reporting it to the authorities by going onto Chris land and looking inside the barn. However, even if Angela was under a mistaken belief of fact that she had the authority to check to see if her suspicions were correct, no abuse was taking place, thus she had no right.

Therefore, mistake of fact is no defense.

Common Law Burglary

Burglary, at common law, is the nighttime breaking and entering into the dwelling house of another with the specific intent to commit a felony therein.

The facts are silent as to the time of day. Hence, we will assume the events took place at night. Thus, night time can be shown.

Unable to open the ranch gate Angela and Bart climbed the fence, crossed the yard and opened the barn door. Since neither was given consent to enter the barn, they gained access without the owner's consent. Thus, there was a breaking when they opened and entered the barn.

Angela and Bart opened the barn door and stepped inside. Thus, there was an entry. Angela and Bart entered the barn. Thus, not a dwelling house of another.

At the time Angela and Bart entered into the barn, they intended to only see if the horses were being abused. The prosecution will argue that they would have taken steps to release the horses if their investigation turned out to be true, since they are both animal activists. Hence, they arguably had the specific intent at the time of entry to commit a crime therein.

However, trespass is not a felony. Further, they only entered the barn in order to confirm her suspicions of horse abuse. Thus, she and Bart did not have the specific intent commit a felony therein at the time of entry.

In light of the above argument, not all of the elements of a common law burglary are present. Thus, Angela or Bart will not be charged with common law burglary.

Modern Law Burglary

Modern law burglary is the trespassory entry into a structure to commit an unlawful act.

Angela and Bart entered the barn without Chris's consent, in order to see if her suspicions of horse abuse were correct. Thus, her entry was trespassory. Angela entered the barn, which is a structure. As discussed above, Angela did not have the specific intent to commit a crime in the barn when she entered.

Therefore, Angela will not be charged with modern law burglary.

Murder

Murder is an unlawful killing committed with malice aforethought. Malice aforethought can be evidenced through willful and wanton conduct.

Angela and Bart went over to Chris's barn in order to investigate Angela's belief that the horses were being abused. They climbed the fence and crossed the yard and opened the barn door. They found healthy horses, but saw a large amount of stolen electronic equipment. Chris was surprised to see intruders and pointed a rifle that he was carrying at Angela and Bart. He accidentally caused a discharge of the rifle and the bullet hit the side of the barn. The noise startled the horses and Angela and Bart fled, letting the horses out. A motorist who was driving down the road swerved to avoid hitting the horses and crashed into a tree and died. Thus, an unlawful killing occurred. Angela and Bart were fleeing from the barn since they had a rifle pointed at them and it discharged. Based on their conduct and the facts that she was trying to get out of the barn before Chris fired again shows they had no intent to kill, or intent to cause great bodily harm.

However, their act of trespassing and going into the barn and allowing the startled horses out of the barn shows a reckless disregard for human life. Therefore, Angela's and Bart's conduct was willful and wanton.

Angela will argue that she was merely trying to get out of the barn before Chris fired another shot. Further, letting the horses out was a mere accident and such conduct does not equate to a reckless disregard for human life. Thus, no malice is established.

Angela and Bart will not be convicted of murder. However, if the court does find murder causation will need to be proven.

Actual Causation

“But for” letting the horses out motorist would not have swerved that made him crashed into the tree and die.

Therefore, Angela is the actual cause of motorist’s death.

Proximate Causation

Angela did allow the startled horse out of the barn. Thus, the act of letting the startled horses out of the barn and causing a stamped motorist death is a foreseeable result of Angela’s conduct.

Therefore, Angela is the proximate cause of motorist’s death.

First Degree Murder

First degree murder is shown by specific intent to kill, plus premeditation and deliberation.

Angela’s act of accidentally letting the horses out of the barn that cause motorist to swerve and crash establishes she did not have premeditation to kill. Thus, Angela did not have the requisite specific intent to kill motorist.

Therefore, Angela may not be convicted of first degree murder.

Second Degree Murder

Second degree murder is all murder that is not first degree murder.

If Angela’s conduct is found to be wanton and reckless, she will be found guilty of second degree murder.

Involuntary Manslaughter

Involuntary manslaughter is the unintentional killing of a human being without malice.

As stated above, Angela’s act of letting the horses out of the barn after being startled by a firing rifle which resulted in a car crash of motorist, killing him shows Angela acted in a criminally negligent manner.

Angela will be guilty of involuntary manslaughter.

2. With what crimes, if any, can Bart reasonably be charged, and what defenses, if any, can she reasonably raise? Discuss.

Conspiracy

Defined and Discussed supra

Co-conspirator liability: Pinkerton's Rule

Since Bart was a co-conspirator, he will be held liable for all crimes committed in furtherance of the conspiracy including the murder of motorist if this crime was a foreseeable consequence of the conspiracy.

3. With what crimes, if any, can Chris reasonably be charged, and what defenses, if any, can she reasonably raise? Discuss.

Attempted Murder

An attempted crime is the taking of a substantial step with the specific intent to commit a crime where one has the apparent ability to commit the crime. A substantial step is more than mere preparation, but less than perpetration of the crime.

Angela and Bart climbed the fence and crossed the yard in order to open the barn door. Once they opened the door they discovered healthy horses, but a large amount of stolen electronic equipment. Chris, who was carrying a rifle, was surprised by the intruders. He pointed the rifle at Angela and Bart and accidentally caused it to discharge. Hence, the fact that he pointed the rifle at them he had taken a substantial step. Chris accidentally discharged the rifle showing he did not have the specific intent to commit murder, a crime. Further, since Angela and Bart surprised him, and he accidentally discharged the rifle he did not have the specific intent to kill. Moreover, Chris had the apparent ability to commit the crime given the fact that he had a loaded rifle. Since the specific intent is missing there is no attempt.

Thus, Chris can't be charged with attempt.

Assault

Assault is an intentional placing of another in reasonable apprehension of an imminent harmful or offensive touching.

Chris was surprised to see intruders and pointed his rifle at Angela and Bart. Since Chris he acted with a substantial certainty to either scare or prevent Angela and Bart from leaving, his act was intentional.

Chris actions of pointing the rifle at Angela and Bart which scared them shows they were in reasonable apprehension of an imminent harmful touching.

Therefore, Chris is guilty of the act of assault.

Defense of Property

One may use reasonable force to protect personal property.

Chris will contend that when Angela and Bart opened the barn door and was surprised to see intruders, accidentally caused his rifle to discharge. Chris had a right to use reasonable force to protect his property. However, the prosecution will rebut by stating Chris was involved in illegal activity, and did not have a right to protect that property.

Therefore, the defense of property is not a valid defense.