

Question 2 – Criminal Law

What crimes, if any did Bob commit? Discuss.

Larceny

Larceny is the trespassory taking and carrying away of personal property of another, with the specific intent to permanently deprive.

Bob on his lunch hour went into a store where he noticed a valuable necklace on the counter. Bob picked it up and put it in his pocket. Hence, he committed a trespassory taking. By moving the necklace off the counter and placing it in his pocket, would be a carrying away. The necklace belonged to the store. Hence, it was the property of another. Bob removed the necklace from the counter and placed it in his pocket. Therefore, he had the specific intent to permanently deprive the store of the necklace.

Bob will argue that he did put the necklace back, and thus he had no specific intent to permanently deprive the store of its necklace. However, the only reason why Bob placed the necklace back on the counter was due to the fact that Clare, a clerk approached him and asked him to put the necklace back. Hence, Bob's act of placing the necklace in his pocket does show he had the specific intent to permanently deprive the store of its necklace, and only returned the necklace upon being caught.

Thus, Bob can be charged with larceny.

Assault

An assault is the intentional placing of another in fear of an imminent harmful or offensive touching.

Bob assaulted Clare, the clerk in the store, by punching her when she asked him to put the necklace back. Bob's act of punching Clare shows his intent to harm her. Thus, Bob acted with intent.

Bob assaulted Clare. His act of assaulting Clare placed her in fear of an imminent harmful touching evident by the fact that Bob fled back to his job at the Bank once he punched her.

Therefore, Bob will be charged with an assault.

Battery

Battery is the unlawful application of force.

When Bob punched Clare for no reason other than she caught him in the act of trying to steal the necklace, there was an unlawful application of force.

Therefore, Bob will be charged with battery.

Solicitation of Fred

Solicitation is the enticing or encouraging of another to commit an unlawful act.

Bob was an underpaid bank teller. A customer by the name of Fred was at Bob's window. Fred is a close friend of Bob. When Fred placed a ten-dollar bill down and asked for a roll of quarters, Bob told Fred that he would secretly pass him one hundred dollars if Fred would later give him half. Fred agreed. Thus, Bob's statement to Fred enticed, and encouraged him to commit an unlawful act, i.e. larceny.

Thus, Bob can be charged with solicitation.

Conspiracy

Conspiracy is an agreement between two or more persons with the specific intent to commit an unlawful act.

Bob told his friend Fred that he would secretly pass him one hundred dollars and later he could give him half. Fred agreed. Thus, an agreement was formed. The agreement was between Bob and Fred. Thus, it involved two persons. Bob and Fred agreed that Bob would secretly pass him one hundred dollars and Fred would give Bob one-half. Therefore, both Bob and Fred had the specific intent to commit an unlawful act.

Therefore, Bob and Fred are guilty of conspiracy.

Embezzlement – The \$100

Embezzlement is the fraudulent conversion of the rightfully entrusted property.

Bob is a bank teller at Bank. His job is to wait on customers who are in the Bank doing their banking business. His job would include accepting money from customers for their deposit, or taking money out of his till in order to give a customer funds based on their request for a withdraw from one of their accounts. The prosecutor will argue Bob did not have custody of the money in his till as an employee, and thus he never had rightful possession, making any taking a larceny.

However, the better argument is that as a bank teller, his employer has delegated significant authority to Bob, who handles large amounts of his employer's cash as an integral part of his job. Thus, he is rightfully entrusted with all the money in his till.

Further, when Bob took \$100 out of the cash till and passed the \$100 to Fred, his friend, he seriously interfered with his employer's rights in the money. Therefore, Bob fraudulently converted the \$100. Moreover, in taking the \$100, Bob intended to defraud his employer of the money as evidenced by his intent to split the cash with Fred.

Thus, Bob can reasonably be charged with embezzlement.

Battery of Marilyn

Defined supra.

Marilyn, the bank manager, began questioning Bob in her office. Alarmed at this Bob, grabbed a letter opener and stabbed Marilyn in the arm. Thus, there was an unlawful application of force.

Therefore, Bob will be charged with battery.

Battery of Gina

Defined supra.

After Bob stabbed Marilyn in the arm he fled to his girlfriend's house. When he got there he told her what had happened. Gina, his girlfriend decided to call the police. Bob knocked her unconscious and placed her in his car. Thus, there was an unlawful application of force.

Therefore, Bob will be charged with battery.

Kidnapping

Kidnapping is the intentional, unlawful movement of another.

Bob after knocking Gina unconscious, placed her in his car and drove to Fred's, his friends, house. Bob drove her to Fred's house in order to hide her. Thus, Bob's actions were intentional. Further Bob's act of placing Gina in the car in order to hide her, equates to an unlawful movement of another. Further, since the intent of Bob was to conduct the movement in order to hide Clare, the movement was unlawful.

Therefore, a kidnapping occurred.

Burglary – Common Law

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

The facts state the next morning after Bob passed Fred the \$100 his bank manager questioned him in her office. Bob then fled and went to Gina's home, and then to Fred's home. Thus, it was not nighttime. Bob drove over to Fred's house in order to hide Gina, since he just had knocked her unconscious. When he arrived at Fred's house the door was locked. Bob broke in the door and went inside and hid Gina. Thus, there was a breaking and entering. Since it was Fred's house, it is a dwelling house of another. Bob entered the home in order hide Gina, thus he had no specific intent to commit a felony therein. The prosecution will argue that Bob knocked Gina unconscious in order to prevent her from calling the police. He broke into Fred's house in order to prevent his capture, and thus he had the specific intent to commit a felony therein.

However, at the time Bob entered into Fred's home, he entered with the intent to hide his act of harming Gina. Thus, he did enter with the intent to hide Gina, and not the specific intent to commit a felony therein.

In light of the above argument, all of the elements of a common law burglary are not present.

Thus, Bob will not be charged with common law burglary.

Modern Law Burglary

Modern law burglary is the trespassory entry into a structure to commit any crime.

Bob drove over to Fred's house in order to hide Gina, since he just had knocked her unconscious. When he arrived at Fred's house the door was locked. Bob broke in the door and went inside and hid Gina. Thus, there was a trespassory entry. Since it was Fred's house, it is a structure.

Bob knocked Gina unconscious in order to prevent her from calling the police, he broke into Fred's house in order to prevent his capture. Thus he had to commit a crime.

Therefore, Bob can be charged with modern law burglary.

Battery of Fred

Defined supra.

Fred appeared and protested to Bob for what he was doing. i.e. hiding Gina. Bob then struck Fred, pushing him down. Thus, there was an unlawful application of force.

Therefore, Bob will be charged with battery.

Arson

Arson is the malicious burning of the dwelling house of another.

Bob struck Fred and pushed him. When Fred fell he knocked over a lamp. The lamp started a fire. Thus, Bob's conduct of knocking Fred down which resulted in a fire caused the house to burn. However, Bob was trying to prevent Fred from notifying the police of his conduct, evident by his protest. Therefore, Bob's act that caused the fire was not malicious.

The subsequent fire resulted in Fred's house burning thus, a dwelling house of another.

Since Bob did not act with maliciousness, Bob will not be charged with arson.

Therefore, there was no arson.

Murder

Murder is an unlawful killing committed with malice aforethought. Malice aforethought can be evidenced through the felony murder rule.

Felony Murder – Robbery

Any death caused in the commission of, or in an attempt to commit, a dangerous felony is murder. Malice is implied from the intent to commit the underlying felony. However, the felony must be distinct from the killing itself.

Bob, who had just broken into Fred's house in order to hide Gina, since she was going to call the police on him. Once in Fred's house, Fred appeared and protested to Bob. Bob struck Fred, and pushed him down. As Fred fell he knocked over a lamp and started a fire.

Bob then panicked and ran out of the house leaving Fred and Gina behind. The fact Bob caused the fire inadvertently, but knowing that a fire began and ran leaving Gina behind established that Bob was still in the res gestae of the kidnapping Gina. He had not reached a place of safety. When the fire broke out, Bob was still in perpetration of the underlying crime, i.e. kidnapping.

Bob will contend that Fred was the one that started the fire by knocking down the lamp. Further he did take Gina into Fred's house in order to prevent her from calling the police, thus, he was not in the res gestae of the kidnapping. Therefore, the killing of Gina was not caused in the perpetration of the kidnapping since he did reach a place of safety. Further, the death of Gina was not foreseeable based on his actions of telling her what he done and his need to knock her unconscious to prevent her from turning Bob into the police. After all, Bob was only trying to prevent Gina from calling the police.

However, the prosecutor will find that Bob was still in the commission of the kidnapping, since Fred did protest, thus he has not reached a place of safety.

Therefore, Bob would be guilty of felony murder for the death of Gina

Actual Causation

“But for” Bob knocking Fred down which caused him to knock over a lamp and start a fire and but for Bob fleeing leaving Gina unconscious in Fred's burning home, Gina would not have been killed.

Therefore, Bob is the actual cause of Gina's death.

Proximate Causation

With the act of leaving Gina unconscious in a house that has caught fire it is foreseeable that Gina would not be able to escape and die in the fire.. Thus, Gina's death is a foreseeable result of Bob's conduct.

Therefore, Bob is the proximate cause of Gina's death.

First Degree Murder

First degree murder is shown by felony murder rule.

Felony Murder Rule

Defined supra.

Bob had just knocked Gina unconscious and put her into his car in order to hide her at Fred's house. When Fred protested he pushed him down resulting in a lamp being knocked down starting a fire. Bob fled leaving Gina, who was unconscious. His conduct resulted in Gina dying in the fire. Gina died while Bob was still in the commission of kidnapping her. When Gina died in the fire this was the result of Bob's act. Even if the court does not find the event occurred in the commission of kidnapping on behalf of Bob, the attempted burglary of Fred's home will still show liability under the felony murder rule.

Therefore, Bob would be guilty of felony murder for the death of Gina.

Therefore, Bob may be convicted of first degree murder.