

Question 2 – Criminal Law

1. What crimes, if any, has Donna committed, and does she have any defenses? Discuss.

State v. Donna

Solicitation

Solicitation is one who has the intent to induce another to commit an unlawful act.

Donna and her daughter, Alice, were walking down an alley when they walked passed a parked car with its window open. Her daughter said to her mom “Look, mom, there is a purse on the seat of that car.” Alice’s mom, Donna, then said to her daughter, “I want you to go to the corner and shout to me if you see a police officer.” Donna’s act of having her daughter shout to her if she sees a police officer is an act of inducing her daughter to help her commit a crime. Thus, to ask for her daughter’s help in order to obtain the purse’s belongings establishes her intent to induce Alice to commit an unlawful act.

Donna will counter that she was merely asking her daughter to act as a look out and not to participate in the crime. However in asking your daughter to shout out if you see a police officer, you are asking her to help you with the act of larceny, i.e. a crime. Thus, she had the intent to have Alice commit an unlawful act.

Thus, Donna will be charged with solicitation.

Conspiracy

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

When Alice passed a car with its window down, she said to her mom, there is a purse on the seat of that car. Donna stopped and said, Alice I want you to go to the corner and shout to me if you see a police officer. Alice walked to the corner, thus there was an implied agreement based on her conduct. However, Alice will argue she did not agree with her mother to commit an unlawful act. She is a child and was only following her mother’s instructions, as most children often do. However, based on the facts, the daughter pointed out the purse in the car and we can infer that both the mother and the daughter have committed this type of act before, thus, an agreement was formed based on Alice’s conduct.

The agreement was with Alice and Donna, thus, between two or more persons. In addition, they agreed based on Alice’s statement about the purse on the seat of the car that they agreed to take the purse, and/or its contents. Thus, they agreed to commit the unlawful act of larceny.

Therefore, Donna and Alice are guilty of conspiracy.

Burglary

Burglary is the nighttime breaking and entering into a dwelling house of another with the intent to commit a felony therein. While walking down the alley Alice and Donna passed a parked car with the windows down. Hence, since they are walking down an alley, we will assume it was daytime, thus no nighttime.

When Donna reached into the open window of the car and grabbed the purse, there was no breaking since the window was open. Donna did reach into the parked car through the window, but she did not know the owner of the car, thus, her reaching in and taking of the purse was without the owner's consent. Therefore there was a trespassory entry.

Donna entered through an open window of the car, thus the car is not a dwelling of another. Donna grabbed the purse, opened it, removed the cash from the wallet and threw the purse back. Hence, she entered with the intent to commit a felony therein. i.e. larceny.

However, Donna will argue she threw the purse back into the car, thus she had no specific intent to permanently deprive the owner of the purse. But, the fact that she took the purse in order to obtain the access to the wallet in order to get the money, and kept the money she took from the wallet she did have the intent to permanently deprive the owner of the car of their money obtained from the purse.

However, since there was no nighttime, breaking or dwelling house of another no common law burglary will be found.

Therefore, Donna will not be found guilty of common law burglary.

Modern Law Burglary

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

Donna reached in the open car window and grabbed the purse off the seat thus, there was an entry. Since Donna did not have the consent of the owner of the car to take the purse the entry was a trespassory entry.

Donna reached into the car, hence, a structure.

Donna reached into the car in order to grab the purse and take the money out of the wallet that was in the purse. Hence, she arguably entered with the intent to commit a larceny which shows the intent to commit a crime.

Therefore, Donna can be charged with modern law burglary.

Larceny

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

Alice noticed a purse on the seat of a parked car that had the window open. Alice told Donna of the purse and Donna reached into the car and grabbed the purse, therefore, there was a trespassory taking.

Donna grabbed the purse and took out the money located in the wallet that was in the purse and removed the cash, tossing the purse back into the car. Hence, there was a carrying away. The purse belonged to the police. Thus, it was the property of another. Donna took the cash from the wallet in the purse, which establishes she had the specific intent to permanently deprive the owner of the purse of their money.

Thus, Donna has committed a larceny.

Entrapment

There are two views for entrapment. First the majority view is the predisposed test and then the minority view that looks to the police activity.

Majority view

Under the majority view the court would look to the Defendant and see if the Defendant was predisposed to commit the crime.

Based on the facts Alice told her mom that there was a purse on the seat of a parked car that had its window open. It can be inferred that they have committed this type of act. Once the statement was made, the mom asked her daughter to go to the corner and be a look out for the police. The conduct establishes that they have taken items in the past, and this was not the first time. In addition, theft must have been going on in the area since the police set up a scenario in order to catch the person or persons who were taking articles from parked cars. Therefore, Donna and Alice were predisposed to commit the larceny.

Hence, entrapment is not a valid defense.

Minority View

Under the minority view the court would look to the police activity to see if a reasonable person would succumb to commit the crime.

When a person walks by a parked car with the window open, they generally do not ask their daughter to be a look out and reach in and grab the purse and take the money from the wallet within the purse. A reasonable person under those circumstances would try to find the owner of the car to alert them that the window is open and a purse is on the seat in plain view.

Thus, entrapment is not a valid defense.

2. What crimes, if any, has Alice committed, and does she have any defenses? Discuss.

Conspiracy

Defined and discussed supra.

Co-Conspirator Liability – Pinkerton’s Rule

A co-conspirator may be held liable for a crime committed in furtherance of the conspiracy that are the natural and probable consequence of the unlawful act and are foreseeable consequences thereof.

Since Donna and Alice are co-conspirators, Alice may be held liable for all crimes in furtherance of the conspiracy.

Based on the agreement between Donna and Alice, Donna was to obtain the money from the purse. The act of Donna grabbing the purse and taking the money out of the wallet in the purse was in furtherance of the conspiracy. Further, the agreement was to obtain the purse and its contents. The fact that Donna did grab the purse and remove the money in the purse was a natural and probable consequence of the larceny, an unlawful act. Therefore, Donna's act of taking the money from the purse was within the scope of the conspiracy.

Therefore, Alice is guilty of the Modern law burglary and larceny committed by Donna based on Pinkerton's Rule.

Entrapment

Defined and discussed supra.

Infancy

Infancy is a defense to a crime. However, between the ages of 7-14 there is a rebuttable presumption that the child could not commit the crime, and the burden is on the prosecution to rebut that presumption that the child did have the intent and ability to commit the crime.

Alice will argue that she is only 12 years old making her a minor and she does not have the requisite intent to commit a crime.

The prosecutor will rebut, stating that Alice was fully aware of her actions. When she told her about the purse lying on the seat of a parked car, she knew what her mom was going to do. Alice even went to the corner of the alley and acted as a look out to warn her mother if she saw any police officer. Alice did keep an eye out for the police and did not shout to her mom as there appeared to be no police officer around, otherwise she would have shouted out to her mom. Based on actions and the fact she told her mom about the purse in the parked car establishes she had intent and the ability to commit a crime.

Therefore, infancy is no defense for Alice and she will be charged with the above stated crimes.