

**October 2017 Baby Bar
Question 2 – Criminal Law**

1. With what crimes, if any, can Andy reasonably be charged? Discuss.

Burglary

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

One night Andy went into a local bar. Thus, it was nighttime.

After becoming intoxicated, the bar tender refused to serve him any more drinks. Flying into a rage, Andy went to his car and got his gun. Intending to return to the bar, Andy mistakenly went into the convenience store that was next to the bar. Since the store was open to the public there was no breaking.

Andy did enter the convenience store, thus, there was an entry.

Andy entered a convenience store, thus since it was a store it is not a dwelling of another.

Upon entry Andy said give me a drink or I'll shoot. Hence, he entered with the intent to commit a felony therein. i.e. larceny of a drink.

However, Andy will argue he was upset since the bartender would not serve him a drink, and that he did not have the intent not to pay for the drink. However, since Andy demanded the store cashier to give him a drink, he had the intent to get a drink no matter what he had to do in order to get the drink.

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

Therefore, Andy 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.

Andy stumbled into the convenience store with a gun intending to get a drink. Since an owner of a convenience store would not consent to Andy entering the store demanding a drink, Andy's entry was a trespassory entry.

Andy went into the convenience store hence, a structure.

Andy entered the convenience store and at gun point stated to the cashier give me a drink or I'll shoot. Hence, he arguably entered with the intent to commit a larceny which shows the intent to commit a crime.

Therefore, Andy can be charged with modern law burglary.

Attempted Robbery

An attempted crime is the specific intent to commit a crime with the taking of a substantial step towards perpetration of a crime by one who has the apparent ability to commit the crime.

Andy's conduct of pointing a gun at the convenience store cashier and stating "Give me a drink or I'll shoot." shows his specific intent to commit a crime. The act of Andy going to his car and getting his gun, and then stumbling into the convenience store and pointing the gun at Charles, the cashier, and demanding that he give him a drink or he will shoot, shows he had the apparent ability to rob the convenience store. The prosecutor will argue that Andy's act of firing the gun into the ceiling was a substantial step towards the robbery of the convenience store.

Andy entered the convenience store with a gun in order to get another drink. Based on his actions and his statement "Give me a drink or I'll shoot." shows that he had the apparent ability to commit the crime of robbery.

Thus, there was an attempted robbery.

Murder of Walter

Murder is an unlawful killing committed with malice aforethought. Malice aforethought can be evidenced through intent to kill, intent to cause great bodily pain or willful and wanton conduct.

When Andy shot the gun into the ceiling at the convenience store, several customers rushed outside. One of the fleeing customers bumped into Walter, who was standing on the sidewalk, causing him to fall into the street and was struck and killed by an oncoming car. Thus, an unlawful killing occurred. Andy shot his gun into the ceiling, showing he had no intent to kill or cause great bodily harm.

However, Andy's act of shooting the gun into the ceiling of the convenience store causing the customers to run outside shows his act was a reckless disregard for human life. Therefore, Andy's actions were willful and wanton.

Dan will argue he only wanted a drink and did not have any intent to hurt anyone. Thus, the death of Walter was a mere accident.

However, the prosecution will rebut by stating Andy's act of shooting his gun into the ceiling at the convenience store causing customers to panic and run outside the store equates to a reckless disregard for human life. Thus, malice is established.

Dan will be convicted of murder.

Actual Causation

“But for” Andy shooting his gun causing the customers in the convenience store to run outside for safety, Walter would not have been bumped into and fallen into the street and struck by an oncoming car which resulted in Walter being killed.

Therefore, Andy is the actual cause of Walter’s death.

Proximate Causation

It is foreseeable that if you have a gun and shoot that gun in a convenience store, that the customers, fearing the worse, would run outside the convenience store and bump into others that are standing on the sidewalk. In addition, it is foreseeable while rushing out of the convenience store, and bumping into another person knocking him into the street that the oncoming traffic could strike the person and a death could result.

Thus, it is foreseeable if you cause a panic by shooting a gun into the ceiling while at the convenience store that the rushing customers would knock into other people causing them to fall into the street and be run over by oncoming traffic. Thus, Walter’s death is a foreseeable result of Andy’s conduct.

Therefore, Andy is the proximate cause of Walter’s death.

First Degree Murder

Special Felony murder rule

If a killing is done by an innocent party then a co-felon may be guilty of the murder. Under the Redline view, the prosecutor will need to show that an innocent party did the killing in order to impose guilt on a co-felon.

Based on the facts, one of the stores fleeing customer knocked Walter into the street into oncoming traffic which resulted in him being run over and killed. Since the customer was trying to get away from harm, the customer is an innocent party. Since a killing did result, Andy may be guilty for the murder of Walter depending on the jurisdiction.

Under the Common Law view liability will be found if a killing did occur. Based on the facts a customer fleeing for safety knocked Walter into the street into oncoming traffic, killing him. Thus, under a common law jurisdiction Andy will be guilty of murder.

Under the Modern view liability for the killing will only be found if the killing was done by the felons. Based on the facts the customer of the convenience store, caused Walter to be knocked into the street and hit and killed by an oncoming car.

Thus, under the modern law view Andy will not be guilty of the murder of Walter.

Murder of Vickie

Defined Supra.

Andy fired the gun and the bullet struck a metal pipe and bounced off the pipe and hit Vickie in the arm. Vickie was rushed to the hospital and died from an infection she contracted at the hospital. Since Andy shot his gun in which the bullet hit Vickie that resulted in her death, the killing was unlawful. Thus, an unlawful killing occurred.

The prosecution will argue that Andy's act of shooting a gun in a convenience store causing the bullet to strike a metal pipe making it bounce and hit a customer shows a reckless disregard for human life. Therefore, Andy's conduct was willful and wanton.

Actual Causation

"But for" Andy shooting his gun in the convenience store Vickie would not have been hit by the bullet and obtain an infection while in at the hospital that resulted in her death.

Therefore, Andy is the actual cause of Vickie's death.

Proximate Causation

It is foreseeable that if you have a gun and shoot that gun in a convenience store, that the bullet would hit a customer.

Andy will contend that he did not directly shoot Vickie, and that the bullet hit a metal pipe which caused it to bounce off the pipe and hit her. In addition, the bullet only hit Vickie in the arm and did not cause her death.

However, it is foreseeable that an act of shooting a gun in a convenience store that causes a bullet to hit a pipe and ricochet off the pipe to injure another. In addition, since the bullet did injure Vickie it is foreseeable that while being treated for the bullet injury that one could contract an infection, resulting in death.

Thus, Vickie's death is a foreseeable result of Andy's conduct.

Murder in the first degree

Defined supra

Felony Murder

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.

Andy was committing an attempted robbery when he demanded the cashier to give him a drink or he'll shoot. Since Andy entered the convenience store with his gun in his hand and demanded a drink or he will shoot, and then pointed the gun in the air and shot the gun causing the bullet to hit Vickie established that Andy was within the res gestea of the criminal act of attempted robbery.

Therefore, Andy would be guilty of first degree murder based on the felony murder rule for the death of Vickie.

2. What defenses, if any, can Andy reasonably raise? Discuss.

Intoxication

Intoxication is a complete defense to a specific intent crime. The defendant must prove a lack of mens rea to negate the specific intent.

Based on the facts, Andy had a large number of drinks and became intoxicated. When the bartender refused to serve him any more drinks he flew into a rage and went to his car to get his gun. Being intoxicated, Andy who intended to return to the bar instead got confused and stumbled into the convenience store. He was not aware of what he was doing evident by the fact that he went into the convenience store and demanded a drink versus the bar.

However, although he was intoxicated he was able to demand the cashier to give him a drink and he had the ability to raise the gun in the air and fire a bullet. Since he was aware of what he was doing based on his actions this shows that he was fully aware of his act of pointing a gun and then firing it. Thus, he had the specific intent for the crime of attempted robbery.

Hence, intoxication is no defense.

Mistake of Fact

A mistake of fact generally is no defense. However, it will be a defense if the defendant can prove that there was no mens rea for the criminal act based on the facts he believed.

Andy will argue that he went into the convenience store when his intent was to return to the bar. Since he had no mens rea to commit an unlawful act in the convenience store, mistake of fact should be a defense.

However, Andy left the bar and although he returned and mistakenly entered the convenience store his action of demanding a drink and stating if he does not get a drink he will shoot shows

he was aware that he was shooting a gun in a store which could result in a death. Hence, he did have the intent to obtain the drink, no matter the circumstances. Therefore based on Andy's actions he did have the mens rea to commit an unlawful act.

Thus, mistake of fact is no defense.