

**October 2018 Baby Bar
Question 2 Criminal Law
Model Answer**

1. With what crimes, if any, can Andrew and Belle be reasonably charged? Discuss.

State v. Andrew

Solicitation

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

Andrew is facing battery charges against his ex-girlfriend, Belle. He asked his present girlfriend, Claire to help him convince Belle not to testify against him. Since he wants Claire to help convince Belle, knowing that battery charges have already been filed, shows his act of inducing Claire to help him commit a crime. Thus, to ask Claire to help him in convincing Belle not to testify against him establishes his intent to induce Claire to commit an unlawful act.

Andrew will counter that he was merely asking her to talk to Belle and persuade her not to testify. However, in asking Claire to help convince Belle not to testify, knowing that charges are already pending shows his intent to have Claire commit an unlawful act i.e. interfere with prosecution, a crime.

Thus, Andrew had committed solicitation. Solicitation is a lesser included offense and will merger with the underlying crime.

Conspiracy

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

When Andrew asks his present girlfriend Claire to help him convince Belle to testify that the battery never happened and Claire agreed, thus there was an agreement.

The agreement was with Andrew and Claire, thus, between two or more persons. In addition, they agreed to convince Belle to testify that the battery never happened, knowing that it did occur. Thus, they agreed to commit the unlawful act of interference with a prosecution; a crime.

Therefore, Andrew and Claire are guilty of conspiracy.

Assault

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

When Belle arrives in the parking lot, Claire gets out of her car and confronts Belle. Andrew tells Claire to get Belle who is holding a knife. Claire then goes back to get a baseball bat and goes after Belle. Claire's act of obtaining the baseball bat and threatening Belle shows her intent to harm Belle. Thus, Claire acted with intent.

The facts state that Belle had exchanged angry words and threats with Claire and Claire goes after Belle with a baseball bat placing her in fear of an imminent harmful touching.

Therefore, Claire committed an assault and Andrew will be charged with an assault under the Pinkerton's rule discussed infra.

Murder

Define and discussed infra

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, Claire and Belle were threatening each other when Claire got a baseball bat and came after Belle. Belle brandishes a knife and stabbed Claire causing serious bodily injury. Claire was transported to the hospital and later died. Since a killing did result, Andrew may be guilty for the murder of Claire depending on the jurisdiction.

Under the Common Law view liability will be found if a killing did occur. Based on the facts the killing occurred because Belle was defending herself from being attacked by Claire. As a result a killing occurred. Thus, under a common law jurisdiction Andrew 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 Belle stabbed Claire causing her to die. Claire and Andrew are co-felons. Since the killing was done by another, and not by Andrew, hence, under the modern law view Andrew will not be guilty of the murder of Claire.

State v. Belle

Assault

Defined supra.

Andrew, based on the agreed plan between him and Claire, calls Belle and asks her to meet him in the parking lot at his work. Claire waiting in her care for Belle sees Belle arrive and gets out of her car to confront her. Claire yells at her to withdraw her complaint against Andrew. Andrew comes out of the building and tells Claire to get Belle.

Belle sees Claire coming toward her and brandishes a knife. Belle's act of brandishing a knife and threatening Claire shows her intent to harm Claire. Thus, Belle acted with intent.

Belle brandished a knife and angry words and threats were exchanged placing Claire in fear of an imminent harmful touching.

Therefore, Belle will be charged with an assault.

Battery

The unlawful application of force to a person.

Belle brandished a knife and stabs Claire causing serious bodily injury. Therefore, there was an unlawful application of force, to Claire, a person.

Hence, Belle's actions equate to a battery and she will be found guilty.

Murder

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

After being confronted by Claire and told to drop the battery charges placed against Andrew, Belle brandished a knife. Threats between Claire and Belle were exchanged and Belle stab Claire. The stabbing caused serious bodily harm and Claire died from the wound inflicted upon her by Belle. Thus, an unlawful killing occurred. Belle used the knife because Claire had a baseball bat and was going after her. Being fearful and thought Claire was going to beat her with the baseball bat she stabbed Claire resulting in her death. Hence, Belle had the intent to kill.

Belle was afraid and fearful when she saw Claire coming after her with a baseball bat. Believing that she was going to beat her stabbed Claire with her knife that she brought along for protection, thus she had the intent to cause great bodily harm.

Further, by Belle's act of stabbing Claire and killing her, shows a reckless disregard for human life. Therefore, Belle's conduct was willful and wanton.

Belle will be convicted of murder.

Actual Causation

"But for" immediately stabbing Claire, she would not have been killed.

Therefore, Belle is the actual cause of Claire's death.

Proximate Causation

The act of stabbing someone with a knife is foreseeable that a death could result. Thus, Claire's death is a foreseeable result of Belle's conduct.

Therefore, Belle is the proximate cause of Claire's death.

First Degree Murder

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

The state may argue Belle carried a knife on her and when she saw Claire coming toward her with a baseball bat she pulled the knife out and stabbed Claire which constituted purposeful and deliberate thought enough to be considered premeditation. However, Belle will argue that she was carrying the knife for her own protection only.

She was meeting her ex-boyfriend who battered her in the past and brought the knife to defend herself if Andrew started to beat her again. The fact that she was previously beaten by Andrew led her to believe, even if mistakenly, she needed to protect herself from Andrew. Therefore, Belle believed she was protecting herself and there is not a sufficient act to prove premeditation and deliberation. Thus, Belle did not have the requisite specific intent to kill Claire.

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

Second Degree Murder

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

Belle's conduct was wanton and reckless. Thus, she will be found guilty of second degree murder.

Self Defense

Defined and discussed infra.

Crime Prevention

Defined and discussed infra.

If the court finds that either defense fails, Belle will be charged with manslaughter.

Voluntary Manslaughter

Voluntary manslaughter is a killing that would be murder but for the existence of adequate provocation.

Adequate Provocation

Provocation is adequate only if: 1) It was a provocation that would arouse sudden and intense passion in the mind of an ordinary person, causing him to lose self-control; 2) The defendant was in fact provoked; 3) There was no sufficient time between provocation and killing for passions of a reasonable person to cool and 4) And the defendant in fact did not cool off between the provocation and the killing.

Belle arrives to meet Andrew. His girlfriend Claire gets out of the car and confronts Belle. Claire yells at her to withdraw her complaint against Andrew, when Andrew comes out and yells to Claire to get Belle. Belle, who had carried a knife on her and she saw Claire coming toward her with a baseball bat, stabbed Claire. Based on Claire's yelling and coming at Belle, establishes reasonable provocation. In addition, the act was spontaneous showing she didn't have sufficient time to cool off.

Belle will argue that she had a right to defend herself, and the fact she did, if found to not be reasonable, the murder should be mitigated based on the imperfect defense allowing murder to be mitigated to voluntary manslaughter.

Therefore, Belle will be charged with voluntary manslaughter.

2. Do Andrew and Belle 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.

Andrew will argue that he did not stab Claire which caused her death. However, since Andrew and Claire were co-conspirators, Andrew may be held liable for all crimes in furtherance of the conspiracy.

Based on the agreement between Andrew and Claire, he wanted Claire to convince Belle to withdraw the complaint against Andrew. The act of Claire grabbing a baseball bat in order to get Belle to agree to drop the charges was in furtherance of the conspiracy. Further, the agreement was to cause Belle to withdraw the charges against Andrew. The fact that Claire yelled and Belle threatened her and then grabbed her baseball bat to convince her which caused Belle to stab Claire in order to protect herself was a natural and probable consequence of the act to interfere with the prosecution, i.e. an unlawful act. Therefore, Claire’s act of going after Belle was within the scope of the conspiracy.

Therefore, Andrew is guilty of the murder, as discussed supra, committed by Belle based on Pinkerton’s Rule.

Self Defense

One may use reasonable force to protect one’s self which may rise to deadly force if reasonable belief life is being threatened.

Belle will argue she was reasonably and truly afraid for her life when she saw Claire go back to her car, grab a baseball bat and go after her. She will argue that she took the knife along for protection and when Claire came after her believing she was going to attack her she stabbed her, using reasonable force to protect herself.

However, the state will argue that Claire’s use of a baseball bat versus Belle’s use of a knife is unreasonable force. However, based on the circumstances of Claire yelling at Belle to withdraw her complaint against Andrew, exchanging threats, and then getting a baseball bat out of her car and going after her, her actions of stabbing Claire were reasonable. Based on the facts, Belle couldn’t have walked away.

Therefore, self defense is a valid defense.

Crime Prevention

A defendant can use the deadly force when a felony is being committed in his presence if he has reasonable belief that another person’s conduct would have caused death or serious bodily harm to another.

Belle will contend when she saw Claire coming after her with a baseball bat, not long after that exchanged threats, she became fearful that she may be in danger. Believing that Claire was coming at her with a baseball bat caused fear in her. Thus, based on her fear she has the right to use deadly force. Based on Claire's actions she was going to attack. Therefore, she had reasonable belief that she was in danger of death or serious bodily harm. Therefore, Belle had a right to use any force to protect herself.

Therefore, crime prevention is a valid defense.