

**October 2021 Baby Bar
Question 3 – Criminal Law**

1. with what crimes can Doug be reasonably charged? Discuss.

Larceny

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

Doug saw a blue bicycle in the garage of Smith. Convinced it was his bicycle he went to Smith's and accused them of theft and took the blue bike. Hence, since the owner was Smith and he did not consent for Doug to take the bike, there was a trespassory taking. Doug took the bike and shoved Smith. Hence, there was a carrying away. The bike belonged to Smith. Thus, it was the property of another. Doug believed all blue bikes in the world he owned. When he saw the blue bike in Smith's garage he was convinced it was his, and went over to Smith's and took the bike. Although he believed the bike was his, when in fact it was not, establishes he had the specific intent to permanently deprive Smith, the owner of the blue bike.

Thus, Doug has committed a larceny.

Robbery

Robbery is the trespassory taking and carrying away of the personal property of another by force, fear or intimidation with the intent to permanently deprive.

As discussed Doug went over to Smith's garage because he was convinced it was his bicycle that was in Smith's garage. He went to Smith's and accused them of theft and took the blue bike. Hence, since the owner was Smith and he did not consent for Doug to take the bike, there was a trespassory taking. Doug left with the bike, thus there was a trespassory taking and the carrying away of the personal property of another. However, when Doug went to Smith's garage he accused them of theft, shoved Smith and took the bike. Therefore, the taking of the bike did occur with force, fear or intimidation since Smith did not try to stop Doug and called the police. Doug intended to apparently deprive Smith of his bike, establishes he had the specific intent to permanently deprive Smith of his bike.

Therefore, if the court finds the taking of the bike was by force Doug will be charged with robbery. Since larceny is a lesser included offense of robbery, Doug can only be convicted of larceny or robbery.

Burglary

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

commit a felony therein.

One day, Doug stopped taking his medicine and went to Smith's garage to take the blue bike he convinced himself that was his. Thus, it was not nighttime.

Doug saw the blue bike in Smith's garage and went to Smith's garage in order to get the blue bike. Since he could see the bike the garage must have been open, thus, there was no breaking.

Doug did enter Smith's garage, thus, there was an entry, but not into a dwelling of another. .

Upon entry, convinced that Smith stole his bike, Doug took the bike, shoved Smith and left. Hence, he entered with the intent to commit a felony therein i.e. larceny of the bike.

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

Therefore, Doug 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.

Doug was convinced that Smith had taken his blue bike and went over to Smith's accused him and took the bike. Since he entered Smith's garage without Smith's consent, the entry was a trespassory entry.

Doug entered Smith's garage, hence, a structure.

Doug entered Smith's garage in order to take the blue bike. Hence, he entered with the intent to commit a larceny, which shows the intent to commit a crime.

Therefore, Doug can be charged with modern law burglary.

Battery

Battery is the unlawful application of force.

When Doug went over to Smith's to take the blue bike he shoved Smith as he was taking the bike, thus, there was an unlawful application of force.

Therefore, Doug will be charged with battery.

Solicitation

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

unlawful act.

Since Smith called the police, the police made Doug give back the bike. During the afternoon the next day after the bike was returned Doug enlisted Kira's help. Doug told her that he owned the bike in Smith's garage and needed it back. Thus, Doug's asking of Kira enticed and encouraged her. Further, he offered Kira \$5 to take the blue bike from Smith's. Thus, his act of giving the \$5 to Kira was made in the commission of getting Kira to commit a larceny, an unlawful act.

Thus, Doug can be charged with solicitation.

Conspiracy

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

Doug offered to pay Kira \$5 if she would get the bike that was in Smith's garage and she did agree. Thus, an agreement was formed. The agreement was between Doug and Kira. Thus, it involved two persons. Doug and Kira agreed that she would get the bike from Smith's garage. However, she knew nothing about Doug's dispute with Smith and Doug told her that the bike was his. Therefore, she did not have the specific intent to commit an unlawful act. Since, Doug knew that he did not own the bike, especially when the police made him return the bike, there is a unilateral agreement formed.

Therefore, Doug is guilty of conspiracy.

Death of Kira

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.

Based on the agreement between Doug and Kira, Kira went to Smith's garage and removed the bike. She began to ride the bike across the street to Doug's but failed to look for traffic and was hit by a car and was killed. Thus, an unlawful killing occurred.

Doug decided to have Kira get the bike from Smith's when Kira failed to look for traffic when she was hit by a car and killed, thus Doug did not act with the intent to kill. Further, since Kira was killed based on her failure to look for traffic, Doug did not have the intent to cause great bodily harm.

Doug's act of having Kira obtain the bike from Smith's garage is not willful and wanton.

In addition, by entering Smith's garage in order to get the bike was not a killing during a commission of an inherently dangerous felony, no Felony Murder.

Thus, there is no malice is established.

Involuntary Manslaughter

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

As previously stated Doug solicited Kira to go over to Smith's garage and removed the bike. She began to ride the bike across the street to Doug's but failed to look for traffic and was hit by a car and was killed. Thus, by Doug having Kira commit a larceny, shows he acted with criminal negligence.

Therefore, Doug could be found guilty for involuntary manslaughter for Kira's death.

2. Can Doug successfully assert the defense of insanity? Discuss.

M'Naghten

Because of a mental disease, Defendant did not what he did was morally wrong and did not know the nature or quality of his acts.

Doug had a long history of serious mental illness. The illness caused him to experience delusions, where he had false beliefs not based in objective reality. Doug was taking medication for his illness, but the symptoms became more severe when he stopped taking his medication. However, one day Doug stopped taking his medication because of its unpleasant side effect. He became convinced that he owned all blue bicycles in the world. Because of this he took a blue bike from Smith's garage. Because of his mental disease he did not know what he was doing was morally wrong, since he believed the blue bike was his bike. Thus, when he took the bike he did not know the nature or quality of his actions.

However, Doug only became convinced that he owned all of the blue bikes in the world because he stopped taking his medication. His belief was not the result of his mental illness.

Since taking the medication is the only way to help with his illness, and his failure to take the medication causing his delusions is a product of his mental illness.

Therefore, M'Naghten will be a valid defense for Doug.

Irresistible impulse

Because of a mental disease Defendant has the inability to control his conduct.

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Model Penal Code (Substantial capacity Test)

Because of a mental disease or defect in reasoning the Defendant lacks the substantial capacity to

Durham Rule

The crime committed was because of the mental illness.