

**October 2022 Baby Bar
Question 3 Criminal Law
Model Answer**

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

State v Andy

Solicitation

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

Out of work and out of money, Andy and Bruce spent the entire day drinking beer and playing video games in Andy's apartment. After their game console quit working, Andy told Bruce that they should go to a nearby store and get a console that worked. The prosecution will argue that Andy's conduct of asking Bruce to go get a console at a nearby store, knowing they were out of money establishes his intent to induce Bruce to commit an unlawful act.

Andy will counter that he was merely asking his friend, Bruce for help to get a console, thus he had no intent to have Bruce commit an unlawful act.

However, since Andy knew neither he or Bruce had any money and suggesting they go to a nearby store and get a console that worked shows his intent to induce Bruce to commit an unlawful act.

Therefore, there is a solicitation.

Conspiracy

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

Bruce drove them to the store in his car. After Bruce parked in front of the store, Andy told Bruce, "Listen, you stay in the car and keep the motor running while I go grab us a new game console.", thus an agreement. Bruce will argue he did not agree evident by the fact that he against Andy's wishes had turned off the car. The prosecution will argue the fact he waited parked in front of the store, knowing that Andy had no money and was getting a new console there was an agreement.

The agreement was between Andy and Bruce, and thus was between two or more. Since they agreed to rob the store, they were to commit an unlawful act.

Therefore, a conspiracy exists.

Burglary – Common Law

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

Since the facts state Andy and Bruce spent the entire day drinking, “daytime” is presumed. Andy entered the store, thus there was an entry. However, since the store was open to the public, there was no breaking. Since the building was a store, it is not a dwelling house of another. Andy entered to rob the store, thus specific intent to commit a felony therein.

Because there was no “nighttime” “breaking” into the “dwelling house of another,” no common law burglary occurred.

Modern Law Burglary

Modernly, the trespassory entry into a structure to commit an unlawful act.

Andy will argue that since the store was open to the public, there was no trespassory entry. However, if one enters with the intent to steal, the owner’s consent is vitiated such that Andy’s entry was trespassory. He entered the store, thus a structure, with the intent to rob, thus an unlawful act.

Thus, a modern law burglary.

Robbery

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

Andy took a box with a \$1,000 game console and headed to the front door. When confronted by a security guard who asked him for his receipt, Andy yelled, “You’d better get out of my way, or else and ran out of the store. Thereby a trespassory. Since he left with the console, he carried it away, and it belong to store taking the personal property of another. The console was taken from the store after pushing the security guard out of the way and threatening him. Thus, the taking did occur in the presence of the security guard such that the taking was by force, fear, or intimidation. Thus, there was robbery.

If the court finds Andy already had the console, and no force was used to obtain the console an attempt would be argued.

Attempted Robbery

An attempt is taking a substantial act towards perpetration of an intended crime, here a robbery.

Andy decided to go to a nearby store and get a console. He entered the store and took a box with a game console and headed to the front door, thus they took a substantial act towards perpetration of the intended robbery. He wanted to obtain a working console; thus, he had the specific intent. If the court found that Andy took the console without force, fear, or intimidation, he would have committed an attempt robbery.

Thus, attempted robbery.

Larceny

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

Once in the store, Andy took a box with a \$1,000 game console and headed to the front door. When confronted by a security guard who asked him for his receipt, Andy yelled, "You'd better get out of my way, or else." When the security guard did not move, Andy pushed the guard, and ran out of the store. Hence, there was a trespassory taking and carrying away of the console. The console belonged to the store. Thus, it was the property of another. Andy took the console and ran out of the store and told Bruce "Let's get out of here before the cops come!", which establishes there was specific intent to permanently deprive the store owner of the console.

Thus, Andy has committed a larceny.

Battery

Battery is the unlawful application of force to the person of another.

Andy took the game console and headed to the front door. When confronted by a security guard, Andy yelled, "You'd better get out of my way, or else." When the security guard did not move, Andy pushed the guard, who lost his balance and fell, hitting his head on the floor. Thus, the unlawful application of force. Further, pushing the security guard shows force to the person of another.

Thus, Andy will be charged with battery.

2. What defenses, if any, do Art and Ben have to the criminal charges? Discuss.

Voluntary Intoxication

Voluntary intoxication is only a defense to specific intent crimes.

Bruce drove Andy to the store since he was clearly drunk. However, once at the store Andy took a game console and headed to the front door. When confronted by a security guard he yelled, "You'd better get out of my way, or else." When the security guard did not move, Andy pushed the guard, and ran out of the store jumping in the car, yelling to Bruce, "Let's get out of here before the cops come!"

In light of the above facts, voluntary intoxication will not be a defense because Andy knew what he was doing showing he had the specific intent to commit the crimes based on his conduct.

Diminished Capacity

Where the perpetrator's capacity is so diminished that he cannot form specific intent to commit the crime.

Considering the facts above, and the absence of evidence that Andy's capacity was diminished, diminished capacity will not be a defense.

Thus, there are no defenses to the crimes.

3. With what crimes can Bruce be reasonably charged? Discuss.

State v. Bruce

Conspiracy

Defined and discussed supra.

Pinkerton's Rule

Each member of a conspiracy is chargeable with all crimes in furtherance of or the natural and probable consequence of the conspiracy.

Bruce will reiterate he did not agree with Andy to commit any crime, thus no conspiracy.

However, if the court did find an agreement between Andy and Bruce, he will argue that he could foresee the robbery and the modern law burglary based on the discussion with Andy to go to a nearby store and get a console that worked. However, he could not foresee the battery and thus it was not in furtherance of the conspiracy since the agreement was to rob the store.

The prosecution will argue that it is foreseeable that when you burglarize a store the perpetrator might use force to obtain the item. Since the security guard confronted Andy on his way out of the store, and to obtain the console he had to push the guard out of the way, thus, the battery was part of the conspiracy.

Thus, under Pinkerton's Rule, Bruce will be liable for the modern law burglary, larceny and attempted robbery and battery.

If the court finds there is no conspiracy Bruce can be found to be an accomplice.

Accomplice Liability

Any person who aids, abets, or assists a principal in committing a crime with the specific intent that the crime be carried out will be held liable for accomplice liability.

Andy was clearly drunk, so Bruce drove them to the store in his car. After Bruce parked in front of the store, Andy told Bruce, "To keep the motor running while I go grab us a new game console". Andy did grab the console and ran out of the store stating, "Let's get out of here before the cops come!" Bruce, then drove away. Thus, Bruce's conduct of providing the escape to Andy aided Andy's capture in committing the crime of larceny. Further, his action of providing the escape shows Bruce's intent to assist Andy with his "plan" even though Bruce did not participate in robbing the store.

Therefore, Bruce will be held liable as an accomplice.

Scope of Accomplice Liability

An accomplice is liable for any of the crimes that he aided, abetted, or assisted with.

Bruce will be held liable for all the crimes that occurred after Andy's actions of running out of the store since he will be considered an accessory after the fact.

Thus, Bruce will be guilty of helping Andy in evading his arrest and none of the other crimes since the crimes occurred prior to Bruce aiding Andy.

4. What, if any, defenses does Bruce have? Discuss.

Voluntary Intoxication

Defined supra.

Bruce drove Andy to the store since he was clearly drunk. When Andy ran out of the store stating "Let's get out of here before the cops come!" and when Bruce, asked Andy, "What happened?" he did drive away. Andy's reply to Bruce "Just like I told you. I grabbed it and ran!" shows Bruce understood what had transpired. (i.e., Andy stole the console)

In light of the above facts, voluntary intoxication will not be a defense because Bruce knew what he was doing showing he had the specific intent to commit the crimes based on his conduct.

Diminished Capacity

Defined supra.

Considering the facts above, and the absence of evidence that Bruce's capacity was diminished, diminished capacity will not be a defense.

Thus, there are no defenses to the crimes.