

**June 2004 Baby Bar  
Question 3 – Criminal Law**

**1. What criminal charges, if any, should be brought against Art and Ben? Discuss.**

**State v Art**

Conspiracy

An agreement between two or more persons to commit an unlawful act.

Art and Ben decided to rob the all night convenience store, thus an agreement. The agreement was between Art and Bob, and thus was between two or more. Since they agreed to rob the store they were to commit an unlawful act. Thus 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 it was an all night convenience store, “nighttime” is presumed. Art and Ben 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. Art and Ben entered to rob, thus specific intent to commit a felony therein.

Because there was no “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.

While Art 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 Art’s and Bob’s entry was trespassory. They entered into a 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.

Ben took \$250 from the cash register which belonged to the convenience store, thereby a trespassory taking the personal property of another. Since he left with the money, he

carried it away. The money was taken from the register when Mark and Fran were locked in the refrigerator. Thus, the taking did not occur in the presence of a clerk such that the taking could be through force, fear or intimidation. Thus, no robbery.

### Attempted robbery

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

Art and Ben decided and drove the truck to the store. They entered the store brandishing unloaded pistols, thus they took a substantial act towards perpetration of the intended robbery. Except for the fact that they took the money without force, fear or intimidation, they would have committed a robbery.

Thus, attempted robbery.

### False Imprisonment

Unlawful detention or confinement of another.

Art locked Mark and Fran in the refrigerator, thus a confinement of another. Since Mark and Fran were put in the refrigerator against their will and during the course of the burglary, their confinement was unlawful.

Therefore, Art committed false imprisonment.

### Kidnapping

The intentional, unlawful movement of another.

Although Art drove Mark and Fran just a very short distance down the dirt road in the truck, such movement of Mark and Fran was sufficient. Further, since the intent of Art was to conduct the movement in order to lock Mark and Fran in the refrigerator, the movement was unlawful.

Therefore, a kidnapping occurred.

### Homicide

Killing of a human being by another human being.

Mark died when Art locked him in the refrigerator.

Thus, homicide.

### Actual cause

“But for” Art locking Mark in the refrigerator, Mark would not have died.

### Proximate Cause

It is foreseeable that by locking Mark in the refrigerator, even though Art may not have known he had an extraordinary susceptibility to pneumonia, that he could catch pneumonia and die.

Thus Art proximately caused Mark’s death.

### Murder

Is the unlawful killing with malice aforethought.

Art became enraged when he saw Fran with Mark in the store, thus he decided to “chill these lovers out.” Thus, Art had the intent to cause bodily harm. By placing someone into a refrigerator would equate to wanton and reckless conduct. Further, his actions were done while he was in the perpetration of a felony, i.e. burglary and larceny, thus felony murder rule establishes malice.

### Voluntary Manslaughter

Intentional criminal homicide with mitigated malice. Requires a showing of adequate provocation and insufficient time to cool off.

Art was enraged, and regarded Fran as his girlfriend. He became jealous when he saw her in the store with Mark. A reasonable person would not have been so enraged to kill. Thus no voluntary manslaughter.

### Attempted Murder of Fran

Defined supra. Here, the intended crime is murder.

Art was enraged when he saw Fran with Mark and announced he would “chill these lovers out” and placed her in a refrigerator. Thus he had the specific intent to harm Fran, although he did not intend to kill her. Art locked Fran in the refrigerator such that he had the apparent ability. When Art left Fran in the locked refrigerator it could equate to a substantial step towards perpetration.

Since Art did not intend to kill Fran, there was no attempted murder.

## State v. Ben

### 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.

Ben will argue that he could foresee the robbery and the burglary since he and Art agreed to rob the store. However, he could not foresee the kidnapping, false imprisonment, or the murder, and thus they were not in furtherance of the conspiracy since the agreement was to rob the store. It was only once they entered the store Art saw Fran and became enraged. The prosecution will argue that it is foreseeable that when you burglarize a store the perpetrator might falsely imprison or kidnap, or kill a customer or clerk as part of the burglary. However, since it appears that Art's motivation for placing Mark and Fran in the refrigerator was jealousy over the Mark-Fran relationship, not the crimes, the kidnapping, false imprisonment and murder were not part of the conspiracy.

Thus, under Pinkerton's Rule, Ben will be liable for the burglary and attempted robbery only.

### Larceny

Trespassory taking and carrying away of the personal property of another with the intent to permanently deprive.

Ben took the money from the cash register such that a trespassory taking occurred. Further, when he left the store with the money, he carried away the personal property of another with the intent to permanently deprive.

Thus, a larceny occurred.

## **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.

Here, Art drove to the convenience store, loaded Mark and Fran into the truck, drove a short distance, locked the victims in the refrigerator, returned to the store for Ben who had taken the money from the cash register, and Art picked up Ben from the store to escape.

In light of the above facts, voluntary intoxication will not be a defense because Art and Ben still had the specific intent to commit the crimes.

#### Diminished Capacity

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

In light of the facts above, and the absence of evidence that Art's or Ben's capacity was diminished, diminished capacity will not be a defense.

Thus, there are no defenses to the crimes.