

June 2006 Baby Bar
Question #3 - Criminal Law

1. **With what crime or crimes, if any, can Dan reasonably be charged and what defenses, if any, can he reasonably assert? Discuss.**

Conspiracy

To be discussed Infra in call 2, State v Fred

Common Law Burglary

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

The facts state later that night, Dan and Fred drove over to the house. Thus, it was nighttime. Dan jumped through an open window. Since the window was opened there was no breaking. Dan jumped through the open window, entering into the home. The prosecution will argue that Dan was separated from his wife and had moved out of the home. Since Dan had moved out he had no right to be there without consent from Bess. Mere ownership does not give a right to enter the dwelling house if you are not a habitant of the home. Since Dan had no consent to be in the house, we have established a dwelling house of another. Therefore, Dan had no right to enter the home. Thus, a dwelling house of another.

Dan jumped into the window and started yelling at Bess, "How could you do this?", and went to the closet and grabbed his gun, Dan at the time of entry had the intent to commit a felony therein.

However, the prosecution cannot establish the breaking element. Therefore, Dan will not be found guilty of common law burglary.

Modern Law Burglary

Modern law burglary is the trespassory entry into a structure to commit any crime.

Dan jumped through the open bedroom window into the home, without Bess' consent. As discussed, supra, Dan will argue that he owns the house with his wife so he had the right to enter. However, Dan was separated from his wife and had moved out of the home he had no right to enter the home. Thus, there was a trespassory entry.

Dan jumped through a window into the bedroom of the home. Thus, a structure.

Since Dan jumped into the window and started yelling at Bess, “How could you do this?”, and went to the closet and grabbed his gun, Dan at the time of entry had the intent to commit a crime.

Therefore, Dan will be found guilty of modern law burglary.

Defenses Of Others

A defendant can use the defense of others if he has reasonable belief that another person is under imminent threat of unlawful harm. Under the majority view the defense is valid only if the defendant stands in the shoes of the person he is assisting and the right to defend oneself exists.

Dan will contend when he saw a man on the bed with his wife after she told him earlier that night that she was going out with her girlfriends. Thus, he feared that his wife was in danger. Based on this fear that Chris was about to hurt his wife he jumped through the bedroom window and went to the closet and grabbed his shotgun. Thus, Dan had reasonable belief that his wife, another person was under imminent threat of unlawful harm.

However, the prosecution will rebut the facts by showing when Dan jumped through the window and yelled at his wife “How cold you do this”, that he had no reasonable belief that his wife was under imminent threat of unlawful harm. Further, once he grabbed the shotgun, he never took the shotgun out of the case. This establishes his belief to be unreasonable.

Thus, the defense of others is not a valid defense.

Defense Of Property

One has a right to use deadly force to protect one’s home.

Dan will contend that when he entered the bedroom window he did so because he had feared that his wife had been in danger from an intruder in the bedroom. Upon entering the home Dan obtained his shotgun from the closet. Thus, based on his fear, Dan has the right to use deadly force. However, the prosecution will rebut by stating Dan had separated from his wife and had moved out of the house. Therefore, it was not Dan’s home to protect. Therefore, Dan has no right to use deadly force to protect the home.

Therefore, defense of property is not 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.

Dan will contend that when he entered the bedroom window he did so because he had feared that his wife had been in danger. Once he entered the home Dan obtained his shotgun from the closet. Thus, based on his fear Dan has the right to use deadly force. However, the prosecution will rebut by stating Dan looked into the window and saw his wife and another man sitting on the bed. Therefore, he had no reasonable belief that Bess was in danger of death or serious bodily harm. Therefore, Dan has no right to use any force to protect.

Therefore, crime prevention is not a valid defense.

Attempted Murder

An attempt crime is the specific intent to commit a crime with the taking of a substantial step towards completion of the crime by one who has the apparent ability to commit the crime and in combination with the acts that go beyond mere preparation and entering the zone of perpetration.

Dan's act of jumping through the open bedroom window and yelling at Bess, and then proceeding to the closet grabbing his shotgun, chasing Chris and yelling deadly threats shows his specific intent to commit a crime. However, Dan will argue that he was angry and that he never took the shotgun out of the case. Thus, he had no specific intent to kill Chris.

When Dan grabbed his shotgun and chased Chris down the stairs shows a substantial step towards completion of the crime. By grabbing his shotgun he had the apparent ability to kill him. Further, Dan's act of chasing Chris with a shotgun and yelling deadly threats appears to show a substantial step towards perpetration of the intended crime, murder.

However, since the specific intent to kill Chris is lacking, Dan will not be charged with attempted murder.

Defenses Of Others

Defined and discussed supra.

Defense Of Property

Defined and discussed supra.

Crime Prevention

Defined and discussed supra.

Assault

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

Dan seeing Chris on the bed with his wife jumped through the window grabbed his shotgun and started to chase Chris. Dan's act of chasing Chris and yelling deadly threats shows his intent to harm Chris. Thus, Dan acted with intent.

Dan Chased Chris down the stairs yelling deadly threats placing Chris in fear of an imminent harmful touching.

Therefore, Dan will be charged with an assault.

Battery

Battery is the unlawful application of force.

When Dan jumped through the window and grabbed his shotgun and started chasing Chris while yelling deadly threats, Chris tripped and fell and hit his head. Dan's act of chasing Chris down the stairs caused Chris' injuries. Thus, there was an unlawful application of force.

Therefore, Dan will be charged with battery.

2. **With what crime or crimes, if any, can Fred reasonably be charged and what defenses, if any, can he reasonably assert? Discuss.**

Solicitation

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

Dan went and told his friend, Fred, about a pair of men's shoes he saw in the entryway of his home. The prosecution will argue that Fred's statement "Let's go over there and check it out. We'll use my car so Bess won't recognize it" establishes his intent to induce Dan to commit an unlawful act.

Fred will counter that he was merely helping his friend to determine if what he saw was true. He had no intent to have Dan commit an unlawful act.

Thus, there is no solicitation.

Conspiracy

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

Dan was separated from his wife. Late one night Dan went over to the house and rang the bell. When Bess answered Dan saw a pair of men's shoes at the door. Dan left and told his friend Fred about the shoes. Fred said, "Let's go over there and check it out. We'll use my car so Bess will not recognize it." Dan and Fred drove over to the house together. Thus, there was an agreement. The agreement was between Dan and Fred, i.e., two or more. Dan and Fred agreed to go over to the house together and check it out. The statement "to check it out" does not imply Dan and Fred are going to do anything, other than to confirm a man is with Bess. Therefore, there agreement was not to do an unlawful act.

Therefore, there is no conspiracy.

Accomplice Liability

Accomplice liability arises when someone knowingly and intentionally abets or incites a crime that is performed by another. An accomplice is a principal in the second degree when present at the scene of the crime when it is performed by the actual perpetrator.

Later that night Dan told his friend about the shoes he saw at his wife's home. Fred said to Dan "Let's go over there and check it out." Fred drove Dan over to the house and parked the park a block away so the car would not be seen by Bess, Dan's wife. Thus, when Fred took Dan over to the home he intentionally aided Dan. Fred will argue that he drove Dan over to his ex-wife's home to check it out and had no knowledge that Dan may jump in the window and grabbed his shotgun. Moreover, since he was waiting in the car a block away he was not present when the crime was performed by the perpetrator, Dan.

Thus, Fred will not be charged as an accomplice.