

**October 2009 Baby Bar  
Question 2 Criminal Law**

**Model AnswerWhat crimes, if any, might Donald, Brenda, and Corky reasonably be charged with, and what defenses, if any, might each assert? Discuss.**

**State v Donald**

**Solicitation**

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

Donald was owed a gambling debt from Vladimir. Knowing that Vladimir had a new laptop computer and knowing that Vladimir was going to be out of town, Donald sent Brenda an e-mail and told her he had permission to pick up his laptop that he had left at Vladimir's home. Thus, Donald's e-mail to Brenda enticed and encouraged her. Further, Donald sent the e-mail to Brenda so that she would burglarize Vladimir's home to steal Vladimir's laptop, albeit for repayment of a gambling debt. Thus, his e-mail to Brenda was made in the commission of getting Brenda to commit a burglary, an unlawful act.

Thus, Donald can be charged with solicitation.

**Conspiracy**

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

Donald was owed a gambling debt from Vladimir. Knowing that Vladimir would be out of town, Donald sent an e-mail to Brenda informing her that he had left his laptop over at Vladimir's and that he had permission to retrieve his laptop. Brenda did arrive at Vladimir's to retrieve the laptop computer. Thus, there was an agreement. The agreement was between Donald and Brenda, i.e., two or more.

However, Donald will argue since Brenda believed the laptop was Donald's and that she believed he had consent from Vladimir to enter his house in order to retrieve the laptop, Brenda was not knowingly agreeing to commit an unlawful act. Further, she would not have known that Donald did not have consent since he knew Vladimir was away for the weekend and where the spare key was located in order to get into Vladimir's house. Therefore, Donald will argue that Brenda had a good faith belief she was entering Vladimir's home to retrieve Donald's laptop, with Vladimir's consent. Hence, she had no intent to enter into an agreement with Donald for an unlawful act of burglary. As such, there was no agreement between two or more persons to commit an unlawful act.

However, since Donald had the intent to commit an unlawful act, a unilateral conspiracy will be found because Donald had the intent to have Brenda steal Vladimir's laptop. Donald and Brenda agreed that Brenda would go over to Vladimir's house, use the spare key under the door mat in order to get into Vladimir's house to retrieve the laptop. Therefore, there was a unilateral

agreement to do an unlawful act, i.e., burglary.

Therefore, Donald will be charged with conspiracy.

### **Mistake of Fact**

As a general rule mistake of fact is not a defense where there is an ignorance or mistake as to the facts.

Donald will claim he was owed a gambling debt from Vladimir. Further, Donald will claim he was entitled to take the laptop since he was owed money. However, even if Donald is under a mistaken belief of fact that he was entitled to take the laptop since he was owed a gambling debt, no such right exists.

Therefore, mistake of fact is no defense.

### **Pinkerton's Rule**

Under Pinkerton's Rule, a co-conspirator may be held liable for a crime committed in furtherance of the conspiracy that is a natural and probable consequence of the unlawful act and a foreseeable consequence thereof.

Since Donald was a co-conspirator, he may be held liable for all crimes in furtherance of the conspiracy.

Based on the agreement between Donald and Brenda, they were to take the laptop from Vladimir. The act of Brenda, who removed Vladimir's laptop, was within the scope of the conspiracy.

Therefore, Donald will be found guilty of the unlawful acts within the scope of the conspiracy under Pinkerton's Rule i.e. larceny.

### **State v Brenda**

#### **Conspiracy**

Defined and discussed supra.

Since Brenda believed that she was going to retrieve Donald's laptop, there was no agreement to commit an unlawful act involving Vladimir's laptop given her belief.

Therefore, Brenda can't be charged with conspiracy.

#### **Burglary**

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

to commit a felony therein.

The facts do not state the time of day. Hence, we will assume nighttime. When Brenda arrived at Vladimir's house to retrieve the laptop for Donald, she found the back door open and Corky ransacking the house. Further, Brenda went upstairs where she searched for the laptop. Therefore she entered. Thus, she entered the open door and there was no breaking.

Brenda entered into Vladimir's house, the dwelling of another. Brenda went upstairs and searched for the laptop. Once she found the laptop she placed the laptop in her purse to keep for herself. Hence, she entered with the intent to commit a felony therein.

Brenda will counter stating that she went over to Vladimir's house in order to retrieve Donald's laptop. Based on the e-mail sent to her by Donald she believed that she was getting Donald's laptop that he had left over at Vladimir's house. She will further argue that at the time she went upstairs she had no intent to take the laptop and keep it for her own. Thus, she entered without the intent to commit a felony therein.

Therefore, no common law burglary.

### **Modern Law Burglary**

Modern law burglary is the trespassory entering into a structure in order to commit a crime.

When Brenda arrived at Vladimir's house to retrieve the laptop for Donald, she found the back door open and Corky ransacking the house. Brenda went upstairs where she searched for the laptop. Since Brenda entered without Vladimir's consent, her entry was a trespassory entry.

Brenda entered Vladimir's house, a structure.

Brenda went upstairs and searched for the laptop. Once she found the laptop she placed the laptop into her purse to keep for herself. Hence, she arguably entered with the intent to commit a crime.

However, as discussed supra, Brenda will counter stating that she went over to Vladimir's house in order to retrieve Donald's laptop. At the time she went upstairs she had no intent to take the laptop and keep it for her own. Thus, she entered without the intent to commit a crime.

Therefore, no modern law burglary.

### **Larceny**

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

Brenda went upstairs and searched for Vladimir's laptop and put it into her purse to keep for herself. Hence, there was a trespassory taking. Brenda left Vladimir's house with the laptop.

Hence, a carrying away. The laptop belonged to Vladimir. Thus, it was the property of another. Brenda placed the laptop in her purse in order to keep it for herself. Therefore there was specific intent to permanently deprive Vladimir of his laptop.

Thus, Brenda committed larceny.

### **Murder**

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

Brenda arrived at Vladimir's house and saw Corky ransacking the house. Corky was so startled he fell backwards, and hit his head. Brenda always wanting a laptop went upstairs and placed the laptop in her purse. She then called 911. Before the police arrived at Vladimir's house, Corky regained consciousness and fled. When the police went to his house they found him dead. Thus, an unlawful killing occurred. Brenda's act of not calling 911 right away when Corky hit his head, but rather going upstairs and searching for the laptop in order to keep it for herself shows her reckless disregard for human life. Therefore, Brenda's conduct was willful and wanton.

Brenda will argue she did call 911 and Corky regained consciousness and fled. The fact that when the police arrived to Corky's house, finding him dead was caused by his own accident of hitting his head.

Therefore, no malice is established.

Brenda will not be convicted of murder.

### **Involuntary Manslaughter**

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

As stated above, Brenda's act of not calling 911 right away when Corky hit his head shows she acted only with criminal negligence, and with no intent to harm.

Thus, Brenda will argue she is not guilty of any killing of another. The facts support that Corky fell and hit his head. After she called 911, he regained consciousness and fled out the back door and went home. He caused his own death, by not seeking help or waiting for the police to arrive.

Therefore, Brenda will not be found guilty of involuntary manslaughter.

### **State v Corky**

#### **Common Law Burglary**

Defined and discussed supra.

The facts do not state the time of day. Hence, we will assume nighttime. Corky rushed over to Vladimir's house in order to steal the laptop. Since Corky read the e-mail to Brenda where the key was to get into Vladimir's, and Vladimir did not give any consent to enter there was a breaking. When Brenda arrived at Vladimir's home she saw Corky ransacking the house. Thus, an entry.

Vladimir owed the home, thus a dwelling house of another. At the time Corky entered into Vladimir's home, he went with the intent to steal the laptop. Thus, he intended to commit a felony therein, i.e., a larceny of the laptop. Thus, he had the specific intent commit a felony therein.

Therefore, a common Law burglary.

### **Attempted Larceny**

An attempted crime is the specific intent to commit a crime with the taking of a substantial step towards perpetration of a crime by one who has the apparent ability to commit the crime.

Corky after reading the e-mail sent to Brenda decided to go to Vladimir's house. He entered Vladimir's house and started to ransack the house, thus he took a substantial act towards perpetration of the intended burglary, a crime. Except for the fact that Brenda arrived later and surprised Corky, he would have found the laptop and taken it, showing that he had the apparent ability to commit the crime of larceny.

Thus, attempted larceny.

However, based on the fact, Corky is dead and the state will not be able to bring any criminal charges against him.