

CRIMINAL LAW
SECTION B3

Mid-Term Examination
December 17, 1980

Two and 1/2 Hours
1:00-3:30



"I got a haircut and a new suit just for this, Your Honor. I think forty-five years in the slammer shows damned little appreciation."

OPEN BOOK

Instructions

Each of the three problems is of equal weight. Budget your time accordingly.

Answer all the questions reasonably raised in each problem even though your resolution of a prior issue in the same problem may technically make decision of the other issues immaterial. If you believe that you need more facts than are presented to adequately resolve an issue, indicate specifically what facts you believe you need and why.

Specific citations to cases are welcome but not as a substitute for thinking, i.e. do not use case citations instead of clearly stating the relevant point of law.

I.

"Dane Gafford and four teenage girls, Barbara Dee Ferguson, Jennifer Denise Wright, Patty Whitmarsh, and Emmaline Long, along with the victim, James Holloway, drove in the victim's automobile from Panama City Beach to Ebro [in the State of Nausea], on what Holloway led Gafford and the girls to believe was the beginning of a trip to California. After Holloway consulted with a friend regarding carrying the girls to California, he informed Gafford and the girls that they would spend the night at a deserted house in West Bay owned by Holloway's uncle and would continue the trip the next morning. Holloway's decision to delay the trip to California, combined with Barbara Dee Ferguson's desire to obtain his automobile and money, led her to plan with the other girls and Gafford to leave Holloway at the deserted house.

"At the house, Barbara Dee Ferguson placed a knife underneath a couch cushion and disclosed its whereabouts to Gafford and his girl friend, Jennifer Wright. A plan was then formed to lure Holloway into a bedroom with one of the girls under the pretense of sexual intercourse. True to the plan, Holloway went into a bedroom with Barbara Dee Ferguson and Patty Whitmarsh, leaving Emmaline Long in the living room, while Gafford and his girl friend, Jennifer Wright, were in another of the bedrooms. While the parties were so located, Emmaline Long left the living room and brought to Gafford the knife which had been concealed under the couch cushion by Ferguson. Gafford insisted on having the handle of the knife covered before handling it and put on what he described as 'electrical gloves' before accepting it. A few minutes later Ferguson called in a loud voice for Gafford to come and help, whereupon he went to the bedroom where he found Ferguson and Whitmarsh holding Holloway, who was naked, on his back on the bed. Whitmarsh then left the room claiming not to want to 'be a party to killing' Holloway. Nonetheless, the victim Holloway, was choked to death by Gafford after Barbara Dee Ferguson had repeatedly kicked him in the face and Emmaline Long and Gafford had stabbed him with at least two knives. The corpse was placed in a closet following the murder, and the four girls and Gafford left in the victim's car with his money."

You have been appointed defense counsel representing Gafford, Ferguson, Wright, Whitmarsh and Long, all of whom have been charged in a criminal trial court in the State of Nausea with first degree murder and conspiracy to commit homicide in the killing of James Holloway. What defenses do you have? What chance of success do you have with each defense? Why? [Cf. Gafford v. State, 387 So. 2d 333 (Fla. 1980)]

II.

X is President and Chairman of the Board of UFO Sentinels of America, Inc., an organization incorporated in the State of Delaware which believes that hostile alien beings periodically visit the Earth and run for elective office. One day, while X was peaceably sitting on his porch drinking beer, he observed what appeared to him to be a spacecraft hovering over his house. This "spacecraft" was actually an apparition caused by atmospheric conditions which made some local "swamp gas" appear to take the form of a saucer-shaped flying object. In any case, X immediately ran into the house, grabbed a rifle, and shot at the "UFO." Since there was no UFO, X missed, of course, but as luck would have it, he hit Y who happened to be flying by in his private plane. Y was killed immediately and his plane fell to the ground out of control where a part of it hit a car driven by Z. Z had been driving her car at 100 MPH in a 30 MPH zone at the time of impact and the combination of the impact of a piece of the plane and the high speed caused the car to jump a curb striking and killing a 4-year old blonde girl dressed in a dog costume.

All of the foregoing took place in Vacuous County, in the State of Ignorance. You are the District Attorney in Vacuous County. (It was the best job you could get after law school given your poor training in criminal law.) What charges can you bring against X and/or Z, if any? What defenses do they have? Who is likely to prevail? Why?

III.

"So far as ordinary language is concerned, the only occasions on which it is proper to speak of a person having intended a consequence or having acted intentionally with reference to it is when he decided to bring it about, insofar as it lay within his power (i.e. he aimed at producing it). However, some such concept as oblique intention is essential for law and morals because it is generally considered that there are many situations in which a person who acts with the knowledge that a particular consequence will, or will probably, ensue is just as blameworthy as the man who aimed at producing those consequences. According to the moral doctrine of 'double effect' a person is less blameworthy in respect of the unwanted consequences of his conduct however clearly he must have realised that they would occur, than for those which he sought to achieve, but the doctrine certainly does not represent English law." Cross & Jones, Introduction to Criminal Law 32 (8th ed.) (London 1976).

Does the foregoing analysis apply equally to American criminal law? Why or why not? [Please include in your answer reference(s) to area(s) of American criminal law which support your conclusion.]

Professor Burkoff