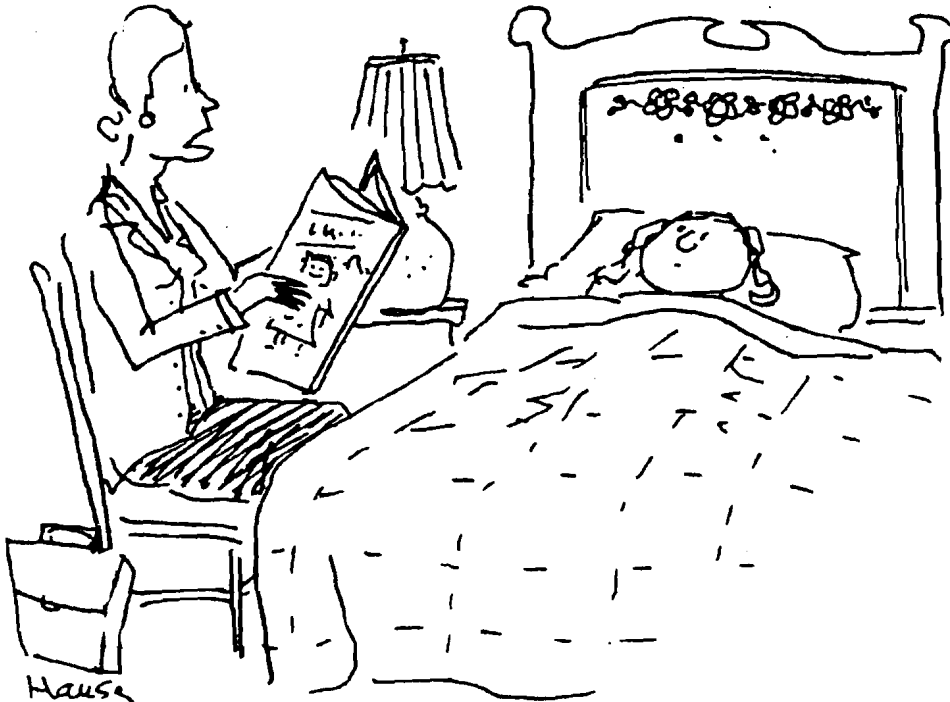


CRIMINAL LAW
Section CFinal Examination
December 22, 1993Two and 1/2 Hours
1:00-3:30

THIS EXAMINATION MUST BE RETURNED WITH YOUR BLUEBOOKS



"And the wicked stepmother pleaded 'nolo contendere,' and was given six months probation along with stiff fines."

OPEN BOOK
Instructions

The three problems are of unequal weight in grading. Each is worth a point value proportionate to its suggested testing time. 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.
(60 minutes)

Consider the following facts:

On June 14, 1991, Diadra Nelson had an altercation with her boyfriend, Joe Bob Shelby. It is undisputed that the subject matter of the fight was crack cocaine, although who was using the drug was in conflict. Nelson, who denied ever using drugs, claimed that the argument arose over her demand that Shelby keep his supply of cocaine out of her apartment. However, another witness stated that she and Nelson had been smoking crack cocaine all that day, and that the fight developed when Shelby came over to Nelson's house and became irate over their using the drug without him. Nelson's father was present (he owned the home) and tried to end the argument, but at some point Nelson retrieved a pistol from a bedroom and shot Shelby in the mouth. Shelby never regained consciousness and died, still comatose, after catching pneumonia in the hospital 13 months later.

Nelson told the police that the shooting was accidental, with the weapon having discharged when she was waving it in an attempt to make Shelby leave her alone. According to Nelson, Shelby had been slapping and "cuffing her" around just prior to the shooting and had hit her with an ashtray. During their investigation of the scene, the police officers observed a shattered glass ashtray on the living room floor, but also found drug paraphernalia, cocaine residue, and empty vials on the dining table, and 49 hits of crack cocaine in a hallway storage area. The officers also removed crack cocaine from both front pockets of Nelson's pants. Nelson denied having cocaine in her pockets, and explained to the police that she had merely been holding in her hand some cocaine that had fallen out of Shelby's jacket pocket.

Cf. Nelson v. State, 431 S.E.2d 464 (Ga. Ct. App. 1993).

Having heard and loved the Ray Charles song "Georgia on the Mind," you assumed he was referring to the intellectual climate and moved. You are now a public defender in Fulton County,

Georgia, appointed to defend both Diadra Nelson and her father, Ricky Nelson, who have both been charged with homicide in the shooting of Shelby and with possession of cocaine. What defenses do you have to these charges? What are your chances of success? Why?

II.

(60 minutes)

The City Council in Halls Cove, Maine, has enacted an ordinance (Halls Cove Ordinance 93-401A) making it a felony punishable by up to 6 months in the county jail for the owner of a pet snake to "knowingly permit his or her snake to appear in public without a leash or other restraining equipment."

Dudley Do-Right, a retired Canadian Mountie, lived with his common law wife, Diedre Malone, in Halls Cove. Dudley owned a pet python snake named Paula. Dudley and Diedre were having "marital difficulties." More specifically, Diedre suspected that Dudley was having an affair with Chadwina Brown, the owner of a local pet store, Snake Shoppe, and like Dudley, a dedicated snake-lover.

Distraught and distracted by Dudley's suspected infidelity, Diedre attempted to forget all of her problems by consuming five bottles of Boone's Farm Apple Wine (25 proof) with her best friend, Eve Appleton. After drinking the wine, Diedre decided to get back at Dudley for his suspected affair by hurting the one creature in all the world she thought Dudley truly loved: Paula. Eve tied Paula by her tail (or what she assumed was the tail; it was hard to tell) to the back of Diedre's car, a bright purple 1955 Chevy. Diedre then dragged Paula through the streets of downtown Halls Cove, loudly honking the horn, while Eve, sitting in the passenger seat, held a sign out the window which read: "This is what happens to snakes like Dudley."

Diedre then spotted Dudley walking along the street and, hitting the accelerator, she steered the car onto the sidewalk to run him over. However, it was not actually Dudley who was walking along the street, rather it was Maurice Do-Right, Dudley's identical twin brother, who had just that morning been released from the hospital after suffering his seventh heart attack. Diedre missed Maurice by inches, but scared him so badly that he had another heart attack.

Alerted by all the noise, Dudley who had been about to commit an act of adultery with Chadwina and had removed all of his clothing but had not yet removed his shoes, looked out the window of Chadwina's pet store and saw what had happened to his brother. Without bothering to put on his clothes, Dudley dashed out the front door, ran over to and jumped through the window of Diedre's car, grabbed Diedre by her antique brass-buckle belt and

flung her out the window, screaming: "What's this world coming to when a man can't leave his snake alone for just a few minutes to sleep with a pet store owner without it being dragged to death by a woman in a bright purple 1955 Chevy who is running over his brother?"

Maurice died on the way to the hospital when the ambulance which was transporting him fell into a sinkhole which suddenly opened up in the highway. Diedre was badly injured by being thrown from the car, suffering two broken ribs, a broken leg, and numerous bruises and lacerations. Paula was barely alive when Dudley rescued her. He carried her home cradled in his arms where she died two hours later of severe internal pythonic damage (or whatever). Dudley had Paula buried wearing his green polka dot bow tie tied tenderly around her slimy neck (or what he assumed was her neck; it was hard to tell).

Having heard the phrase "Remember the Maine," somewhere in your past, but not quite recalling what it meant, you have moved to Hulls Cove to figure it out and, in the interim, are employed as an assistant district attorney. The District Attorney has told you that she wants to prosecute Dudley for attempted murder, public nudity, attempted adultery, and for violation of Hulls Cove Ordinance 93-401A (when he carried Paula home without a leash). She also wants to prosecute both Eve and Diedre for conspiracy to commit cruelty to animals, cruelty to animals, and for the murder or attempted murder of Maurice. She has asked for your analysis of the tenable defenses which might be raised to each of these charges and your likelihood of success with each of them. What is your answer?

III.
(30 minutes)

Consider the following comment:

"The American criminal justice system is riddled with crimes code provisions which are totally unjust and unfair because they:
(1) punish defendants for criminal acts that they did not actually intend to commit; and
(2) cumulate punishment for commission of essentially the same act (e.g., sentencing convicted defendants for both inchoate offenses and the completed offense itself; sentencing convicted defendants for any number of separate events [e.g., rape and kidnapping] that actually occur as part of a single criminal episode)."

John Burkoffenstein, "Cindy Crawford and Other Heuristic Models," 16 *Journal of Law & Compulsivity* 343 (1992).

Is Professor Burkoffenstein's description and criticism of the American criminal justice system correct in your view? Why or why not.



Professor Burkoff