

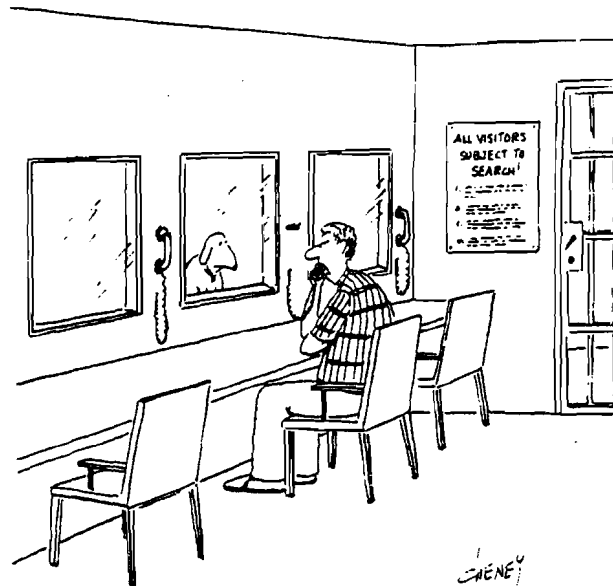
EXAM NO. _____

CRIMINAL LAW
Section A

Final Examination
December 22, 1994

2½ Hours
9:00-11:30

THIS EXAMINATION MUST BE RETURNED WITH YOUR BLUEBOOKS



"Bad dog!"

OPEN BOOK
Instructions

The three problems are of equal weight in grading. 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.

On December 10, 1990, at approximately 2:00 a.m., Steven MacDonald and Ed Brown, both employed by Credit Casualty Recovery Company, attempted to repossess Robert Willner's 1983 Chevy Crew Cab pickup truck which was parked in Willner's driveway. Brown gained entry to the pickup truck, started it without the ignition key, and backed it from Willner's driveway while MacDonald watched him from his tow truck parked several houses away.

MacDonald has told the police that shortly thereafter he heard two loud "pops" and, alarmed, immediately drove his vehicle towards the pickup truck. As he pulled close to the pickup, MacDonald saw a man--later identified as Willner--clad only in green underwear and standing about three to five feet in front of the pickup truck with an automatic pistol in his hand. Willner's arm was extended and the pistol was pointed at the truck. MacDonald further saw that Brown was slumped over in the driver's seat of the pickup truck. When Willner saw MacDonald, he fired one shot in his direction which went well over the top of his tow truck. MacDonald drove away immediately and radioed the police.

Willner was caught and arrested and told the police that he ran from his house with his semiautomatic weapon in his hand in the belief that his pickup truck was being stolen. He added that, during this short time span, no thought had entered his mind about repossession. Willner admitted that he had shot and killed Brown, but claimed that Brown drove the truck toward him immediately before the shooting and he responded by running backwards and firing a warning shot into the air which hit the top of the truck. Willner additionally stated that he fired several more shots wildly in order to prevent being run over. Willner stated that he fired directly at the driver's compartment only when he saw a flash or glint from inside the vehicle which he thought might be a weapon.

According to the responding police officer and a neighbor, however, the pickup's "back up" lights were still on, indicating that the vehicle was in reverse. Because the gunshots incapacitated Brown, if the truck had been heading toward Willner, as he claimed, it would have been unlikely that Brown could have shifted the truck back into reverse after the shooting. Moreover, a few days after the shooting, a police examination of the pickup truck revealed that the transmission fluid smelled burnt and, because the transmission kept slipping out of gear, the pickup's maximum speed was only a few miles per hour.

The medical examiner has reported that the autopsy he performed established that Brown had died from brain injuries due to a bullet wound. He reports that had Brown received treatment within 20 minutes after receiving this wound, he might have recovered. However, because the 911 operator who took the call

from neighbors got the location wrong, the ambulance did not reach Brown for half an hour. In any event, according to the medical examiner, it would have been very difficult for Brown to function normally ever again after receiving this severe head wound.

Cf. People v. Willner, 879 P.2d 19 (Colo. 1994).

Having taken literally the politically-correct command to "Go West, young person," you now find yourself a prosecutor in Denver, Colorado, where this incident took place. When you come in to the office after skiing, would you assess what your chances are of successfully prosecuting Willner on homicide charges with respect to his shooting of Brown and for attempted murder with respect to the shot fired at MacDonald. What defenses do you anticipate may be raised to such charges? How will they fare? Explain your answers.

II.

Responding to a confidential informant's tip that she had observed numerous drug sales at the house next door, the Spittsburgh, Spennsylvania Police Department began a surveillance operation on the house, 6104 Kentucky Avenue, which turned out to be the marital residence of O.J. and Nicole Schwartz. The police surreptitiously watched the house from the street disguised as postal employees so that no one would be suspicious when they just hung around and did no work. After only five hours of surveillance, the police observed an individual, subsequently identified as one Donald Goldman, knock on the front door, hand money to O.J. who had answered the door, and receive something wrapped in a glassine baggie from O.J.

Believing that a drug sale had just taken place, the police immediately stripped off their postal uniforms and rushed into the house, yelling "Freeze! Police!" They detained Goldman, O.J., and Nicole (who they found asleep in an upstairs bedroom). Upon inspection, the object in the baggie which had been handed to Goldman by O.J. turned out not to be drugs at all; it was a pair of stolen sunglasses which Goldman had just purchased from O.J. for \$3.00. In rushing into the house, however, the police did spot four ounces of marijuana, in plain view on the kitchen table, contained in a cute ceramic pot bearing the inscription "POT POT." A subsequent search of the house pursuant to a search warrant turned up an additional three pounds of marijuana which police found inside a number of stuffed animals (all dogs, i.e. this was "marijuana in a dog suit"), all of which were found on the bed in the bedroom in which Nicole was earlier found sleeping. The other 62 stuffed animals the police disembowelled in their search for drugs contained nothing but stuffed animal stuffing.

Nicole was subsequently identified by a cashier at the Giant Spiegle grocery store from which the sunglasses had been stolen as the person who stole them. The cashier has stated that Nicole appeared to be disoriented at the time she came into the store and left with the glasses; she "sort of staggered around" humming the theme song from the TV show, "Cops," and wandered all around the store.

You are an Alhabaghenny County public defender (Spittsburgh is located in Alhabaghenny County in the state of Spennsylvania). You represent O.J., Goldman, and Nicole. O.J. and Nicole have been charged with possession of marijuana and conspiracy to possess marijuana. O.J. and Goldman have been charged with receiving stolen property. Nicole has also been charged with theft of the sunglasses. Your initial thought was to challenge the lawfulness of the police searches which netted all this evidence, but because you won't learn the applicable law on that subject until next semester when you take Criminal Procedure, you've decided to focus instead upon defending these three individuals against the criminal charges filed against them on substantive grounds. What tenable defenses do you have to these charges? What are your chances of success? Why?

III.

A legislative committee of the General Assembly of the State of Bliss is considering reporting out a bill that would make it a crime to discard toxic wastes that contaminate the soil or the water supply. The committee is considering four different versions of this bill, namely:

- (a) Any person who or corporate entity that intentionally or knowingly discards toxic waste that contaminates the soil or water supply is guilty of a felony of the third degree punishable by up to two years in prison and/or a fine of up to \$5,000.
- (b) Any person who or corporate entity that recklessly discards toxic waste that contaminates the soil or water supply is guilty of a felony of the third degree punishable by up to two years in prison and/or a fine of up to \$5,000.
- (c) Any person who or corporate entity that negligently discards toxic waste that contaminates the soil or water supply is guilty of a felony of the third degree punishable by up to two years in prison and/or a fine of up to \$5,000.
- (d) Any person who or corporate entity that discards toxic waste that contaminates the soil or water supply is

guilty of a felony of the third degree punishable by up to two years in prison and/or a fine of up to \$5,000.

(1) Explain how a Vice-President of a corporation that discarded toxic waste that contaminated the water supply, but who reasonably believed that the corporation was dumping harmless refuse, would fare if prosecuted under each version of this statute. Would your answer change if the Vice-President's belief that the refuse was harmless was unreasonable? Why or why not?

(2) Considering the criminal law doctrines and policies discussed in this course, explain which, if any, of these versions of this statute is preferable as a matter of legislative policy? On the same basis, which of these versions, if any, is problematic?



"We tried to talk her into coming, but you know how cats are."

Professor Burkoff