

I. (60 minutes)

Consider the following facts:

Shortly after Gary and Brenda Lawrence were married, they separated, and another man, Michael Finken, moved in with Brenda and her two daughters, Stephanie and Kimberly, and Stephanie's friend, Rachel. On July 28, 1994, Gary and Michael drove Brenda to work and then drank beer at a friend's house. Later, Gary and Michael picked Brenda up and the three returned to the friend's house where they drank two six-packs of beer each. After the three returned to Brenda's apartment, Gary and Michael argued and Gary hit Michael when he learned that Michael had been sleeping with Brenda. Gary and Michael seemed to resolve their differences, and Michael fell asleep on the couch. Gary and Brenda conversed, and Brenda went through the house collecting weapons—including a pipe and a baseball bat. Gary and Brenda told Kimberly and Rachel that they were "going to knock off Mike." Gary told Kimberly to "stay in your bedroom no matter what you hear."

Thereafter, the girls heard what they described as a pounding sound. At one point, Rachel stated that she heard the victim say, "stop it, if you stop, I'll leave." She stated that she heard that statement several times. Kimberly stated she heard the victim say "please don't hit me, I'm already bleeding." The victim's pleas, however, were met with more pounding. Once the pounding stopped, the three girls were required to assist in the clean up. Kimberly stated that much of the victim's right side of his face was missing and his chin was knocked over to his ear. Rachel stated that there was no skin left on the victim's face and part of his nose was missing. Stephanie later admitted that she took the nose as a "souvenir." Apparently the victim was still alive. Kimberly observed her mother coming out of the kitchen area with what appeared to be a dagger and then, although not seeing the dagger in her hand at the time, observed her mother make a stabbing motion toward the victim with something in her hand.

It was at that time when Brenda requested that the girls obtain the assistance of Chris Wetherbee. Upon his entrance into the home, Chris Wetherbee observed the victim's head caved in, blood all over, the victim's eyeball protruding approximately three inches and a mop handle shoved into the victim's throat.

Wetherbee asked Gary, “what’s going on?” At which time, Gary responded by saying “this is what’s going on” and pointed at the victim. Wetherbee then removed the mop handle from the victim’s throat and gave him a kick. Immediately after removing the mop handle from the victim’s throat and before the kick, Wetherbee heard the victim take approximately three or four ragged breaths at which time the victim stopped breathing and apparently expired.

Gary and Brenda then removed a small amount of money from Michael’s pockets, wrapped the body in a shower curtain and placed the body in Michael’s car, and Gary drove to a secluded area where he set the body afire. When Gary returned home, he and Brenda danced. The medical examiner has reported as follows: Michael died of blunt trauma and possible asphyxia; Michael was alive when the mop handle was thrust down his throat; Michael’s blood alcohol level was very high; and one or more of the blows to Michael’s head could have caused loss of consciousness.

Cf. Lawrence v. State, 698 So. 2d 1219 (Fla. 1997).

Having left Pittsburgh for the safe streets of Florida, you are now an Assistant District Attorney in Santa Rosa County, Florida, the county where the facts recited above took place. You have been asked to assess the likelihood of successfully convicting Gary, Brenda, Chris, Stephanie, Kimberly, and Rachel on charges of homicide, conspiracy to commit murder, and larceny (taking the money from the victim’s pockets). What defenses do you anticipate these defendants would make to these charges? What are your chances of success in prosecution?

II. (60 minutes)

Jerry and Elaine had been married for 6 years in what was (for Elaine) a physically and psychologically abusive relationship. On November 16, 1996, Jerry came home to their second-floor apartment intoxicated late one night and forced Elaine, who had been sleeping when he arrived home, to have sexual intercourse with him. Elaine attempted to resist, but Jerry struck her several times and overpowered her physically.

After Jerry fell asleep, Elaine got out of bed quietly, and tiptoed to the hall closet where she knew Jerry kept his gun. She then returned to the bedroom, aimed the gun at Jerry, who was sleeping, and pulled the trigger. However, the gun was not loaded so nothing happened. Elaine then left the bedroom again, located some bullets, loaded the gun, and returned to the bedroom. Once again, she pointed the gun at the sleeping Jerry, and pulled the trigger. This time, the gun fired, but the bullet simply passed through the covers and the bed as Elaine had shot through a

pillow; Jerry had left the bed while Elaine was out of the room and was in the bathroom on the toilet when she fired.

Upon hearing the gun fire, Jerry left the bathroom and ran after Elaine in a rage. Elaine ran out of the apartment and dashed down the stairs and, halfway down, turned around and threw the gun at Jerry, who was chasing her. The gun hit Jerry in the forehead, causing him to fall down the stairs and hit his head against a baby stroller that was sitting at the bottom of the stairwell. Jerry thereupon lapsed into a coma and subsequently died, on November 18, 1997, as a result of this head wound.

Meanwhile, the bullet that Elaine earlier fired through the bed had passed through the floor of her apartment and struck George, who was sleeping in the apartment below, in the head. George died immediately. Unfortunately, George was solely responsible for taking care of his senile, 96-year-old father, Kramer, who also lived in his downstairs apartment. No one was aware that George had died until eleven days later when the superintendent entered the apartment to try to track down a terrible smell coming from the premises. When the super entered, he discovered that both George and Kramer and Kramer's cat, Newman (Newman!!!) were all three dead. Both Kramer and Newman had died of starvation.

You are an assistant public defender in the state of Seinfeldia, one of the United States, the jurisdiction in which all of the foregoing events took place. You have been assigned the defense of Elaine, who faces five charges: (1) the attempted murder of Jerry based on her act of trying to shoot him with the unloaded gun; (2) involuntary manslaughter in the death of Jerry based on throwing the gun at him leading to his death; (3) the murder of George; (4) the involuntary manslaughter of Kramer; and (5) cruelty to animals in the death of Newman. (Newman!!!) What defenses do you have to these charges? What are your chances of success? Why?

III. (30 minutes)

The Roman Law of the *Twelve Tables* (451-450 B.C.) contained a provision that provided as follows:

Whoever destroys by burning a building or a stack of grain placed beside a house, shall be bound, scourged, and burned to death, provided that knowingly and consciously he has committed this crime; but if this deed is by accident, that is, by negligence, either he shall repair the damage or if he is unable, he shall be corporally punished more lightly.

Discuss in what ways the *mens rea* and *actus reus* elements in this criminal code provision appear similar to or different from their contemporary counterparts in American crimes codes.

(NOTE: Students who perform poorly on this question will be scourged, but will not be bound or burned to death.)

Professor Burkoff

