

CRIMINAL LAW
Section B

Final Examination
December 10, 2009

3 Hours
9:00-12:00

THIS EXAMINATION MUST BE RETURNED WITH YOUR ANSWERS



“What the hell was I supposed to do? I’ve been declawed!”

OPEN BOOK

Instructions

The three problems are of unequal weight in grading. Each is worth a point value proportionate to its suggested 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 view.

I. (75 minutes)

Consider the following description of the events which occurred last December in Beaumont, Texas, resulting in the shooting death of Justin Slider:

“According to defendant Lonnie Brown, on the day in question, he drove his golf cart over to Justin Slider’s and Chasity Stone’s mobile home to talk to them about one of their pit bull dogs getting loose and chasing another resident of the mobile home park. At the time, Brown carried a handgun concealed in the waistband of his pants as was his habit. Brown had a concealed handgun permit and had been carrying a handgun for protection while on the premises of his mobile home and RV parks. Upon arriving at Slider’s and Stone’s home, Brown testified he was attacked by one of Slider’s pit bull dogs, bitten twice, and was forced to shoot the dog to end the attack. Seconds later, Stone exited the home, angrily grabbed Brown by the arms and shouted, ‘You son of a b* * * *, you shot my dog. You shot Precious. You shot my dog[.]’ Brown pushed Stone off him, at which point she turned her attention to the dog lying on the ground.

“Shortly after that, Slider came ‘flying out of the trailer,’ and stated to Brown, ‘You shot my dog, you son of a b* * * *. You shot my dog. . . . I’m going to kill you. . . . You shot Precious. I’m going to kill you.’ Brown proceeded to describe his confrontation with Slider as follows:

“[Brown:] [Slider] come flying out of the trailer, rushed out, and grabbed me and started hitting me in the head. When he come off that trailer, he had his fist back and he hit me. And I ducked down. I backed up, but there was a car there. I backed up against the car and I put my hands up – I had the gun – still had the gun in my hand. I put my hands up to keep him from hitting me in the face. And he hit me. I bent down and he hit me in the top of the head. It seemed like every time he hit me he was saying, ‘I’m going to kill you, you son of a b* * * *. You killed my dog. I’m going to kill you.’

“[Trial Counsel:] And so – I mean, he came at you like what? Describe that to the jury.

“[Brown:] Like a – like a crazy person. I never seen anybody that upset and mad about anything. I couldn’t talk to him. He wouldn’t talk. I mean, he just –

“[Trial Counsel:] How much time was there from the time he came to that door and the time he hit you in the head?

“[Brown:] Maybe three seconds, if that much.

“Brown then described for the jury his fatal encounter with Slider:

“[Trial Counsel:] And so, y’all are struggling. I mean, did he have any momentum when he hit you? Did his body hit you, too?”

“[Brown:] Yes, sir. He come off – inside the trailer, which is about 2 foot off the ground. And I wasn’t but, like, maybe 4 or 5 foot away. And he come flying out – rushing out there. And his body momentum knocked me back against the car, which is about a foot and a half, 2 foot behind me. That’s the only thing that kept me from going on the ground, was that car. And he was steady beating me in the head and the face.

“[Trial Counsel:] And then you were struggling. Did he have ahold of the hand you had the weapon in?”

“[Brown:] Yes. When I put my hands up, he grabbed me.

“[Trial Counsel:] And y’all were then doing what?”

“[Brown:] Moving around. He was hitting me. I was moving around. I had my hand up.

“[Trial Counsel:] Did you grab him?”

“[Brown:] No. I grabbed his t-shirt. I grabbed the only thing I could get, was his shirt; and I pulled it.

“[Trial Counsel:] So, what were you trying to do to him?”

“[Brown:] Keep him off of me is what I was trying to do, just keep him off of me and keep him from getting the gun. I was concerned about him getting the gun.

“[Trial Counsel:] All right. Did the gun go off?”

“[Brown:] Yes, sir, the gun went off. And when it went off, I had him by the shirt and he had me by the hand.

“[Trial Counsel:] And what happened next?”

“[Brown:] Well, when it went off, he didn’t let go of me. He slacked up a little bit. I guess it startled him. It startled me, too. I was able to pull the gun back down by my side. Because like I said, when he first run out there, I had my hands up. And he grabbed that gun hand and was beating

me in the head. And when the gun went off, I jerked the gun back down. And when I did, I shot it two more times.

“[Trial Counsel:] And how – what was the sequence of the shell – I mean, the firing?”

“[Brown:] There were – all three of them was close together; like pow, pow, pow.”

“[Trial Counsel:] And after the third shot, what happened, if anything?”

“[Brown:] He relaxed and let me go and turned around and walked about one step and fell down. He fell right on that foundation their home sits on and, you know, that cracked his head open. Then he done died.”

Cf. Brown v. State, ___ S.W.3d ___, 2009 WL 3030363 (Tex. Ct. App. Beaumont 2009).

(a) Assuming that Brown’s account is truthful, could he be prosecuted successfully for one or more homicide offenses in the death of Slider? Discuss why or why not.

(b) Suppose that an eyewitness claims that Brown’s account is incomplete, that she saw Brown staggering and chugging from a beer bottle as he approached Slider’s and Stone’s home, and that Brown hurled the half-full bottle against their door and yelled at them to come out, that he was “pissed off” at them, at which point, the door opened and the pit bull bounded out and bit him. If this witness’ account is truthful, does this change any of your analysis about whether Brown could be successfully prosecuted for a homicide offense? Discuss why or why not.

(c) Suppose again that the eyewitness’ account described in (b) was truthful, but also suppose that Chasity Stone ordered the pit bull to attack Brown (“Kill, Precious, kill!”) when she heard the beer bottle break against their door and Brown yelling outside their home. Could Stone be successfully prosecuted for attempting to murder Brown? Discuss why or why not.

II. (60 minutes)

Mario, Sidney, Evgeni, and Marc-Andre all worked at the Spittsburgh Aviary, located in Spittsburgh, Spennsylvania. One day, while the four of them were cleaning out bird cages, they started talking about how they really had to find themselves some better jobs, jobs that didn’t involve bird poop.

Mario whispered to Sidney, “Pssst. I think what we should do is go down to Mexico and bring a ton of marijuana back, sell it, and just retire. What do you think?” Sidney responded in a whisper: “Sounds good. If you’re serious, I’ll think about it.” The next day, Mario called a friend of his, Pascal, who lived in Guadalajara, Mexico, and arranged to purchase 1,000 pounds

of marijuana and 2,600 large stuffed animals (all penguins). His plan was to remove the original stuffing from the animals, replace it with marijuana, and then have Sidney fly down to Guadalajara and drive the newly-stuffed animals back to Spittsburgh in a van.

But when Sidney heard about this plan, he had second thoughts about being a part of it. Although he told Mario that he would drive the marijuana back, he actually never intended to even fly to Mexico at all. He figured that he would simply pretend to have the H1N1 flu when he was supposed to leave for Mexico, and that would get him out of having to be involved. Before that occurred, however, Sidney was arrested by the police for cross-checking (a misdemeanor in Spennsylvania) and after his arrest, he broke down and revealed Mario's whole plan to the police.

Because Sidney had not been able to post bond and was still in jail, Mario decided to send someone else to Guadalajara to bring back the marijuana. He told Evgeni and Marc-Andre that he would pay them \$800 each if they flew to Mexico and drove back a truckload of stuffed penguins to Spittsburgh. He told Evgeni that the penguins would be stuffed with marijuana, but he did not tell Marc-Andre that. Marc-Andre agreed to do it as his goal was to make more money. Evgeni agreed to do it because he didn't understand that smuggling or possessing or using marijuana was illegal. Evgeni was a little bit "off" mentally. His friends sometimes referred to him as "one goal short of a hat trick," whatever that meant.

Amazingly, the van full of marijuana-stuffed penguins made it across the border without incident. Evgeni and Marc-Andre each took turns driving while the other one slept. The first evening, when Evgeni was driving, Marc-Andre went back into the van to sleep on a pile of stuffed penguins. As he was lying there, he smelled something "funny" inside one of the penguins, opened it up, and discovered the secreted contents. Without letting Evgeni know what was up, Marc-Andre removed some and smoked it, keeping his hand outside the van window while he was smoking so that Evgeni wouldn't see or smell what he was doing. Eventually, Marc-Andre passed out, and Evgeni had to drive the rest of the way to Spittsburgh by himself.

When Evgeni and a just-barely conscious Marc-Andre arrived back in Spittsburgh and pulled into Mario's driveway, they were met by the Spittsburgh police who had been waiting for them, having been alerted to the marijuana-stuffed penguin scheme by Sidney's earlier confession. Evgeni, Marc-Andre and Mario were immediately arrested. (Sidney was, of course, already arrested.)

As it turned out, the "marijuana" inside all of the stuffed penguins wasn't marijuana at all. It was cocaine. Pascal was a good friend of Mario's, and he had decided to give Mario a narcotics "upgrade" without telling him about it.

Mario, Sidney, Evgeni, and Marc-Andre have each been charged with: (1) conspiracy to import marijuana; (2) possession of cocaine; (3) attempted possession of marijuana; and (4) possession of large stuffed animal penguins manufactured in Mexico (which is a misdemeanor in Spennsylvania). You are an Assistant Public Defender in Spittsburgh. Your

boss, the Chief Public Defender, John Burkoff (played by Kanye West), has asked you what the prosecution's chances of success are with respect to each of these charges against each of these defendants. What is your response?

III. (45 minutes)

Consider the following recent description by a German law professor of criminal law in the various countries ("member states") that are part of the European Union:

"Criminal law is different, it is often said, from other areas of law in that it is rooted in and thus depends on national heritage to a great extent. This uniqueness is recognized by European institutions, as expressed by [a European judge] in a case concerning the protection of the environment by means of criminal law:

'In many respects, criminal law stands out from other areas of law. Availing itself of the most severe and most dissuasive tool of social control – punishments – it delineates the outer limits of acceptable behaviour and in that way protects the values held dearest by the community at large. As an expression essentially of the common will, criminal penalties reflect particular social disapproval and are in that respect of a qualitatively different nature as compared with other punishments such as administrative sanctions.

'Thus, more so than other fields of law, criminal law largely mirrors the particular cultural, moral, financial and other attitudes of a community and is especially sensitive to societal developments.

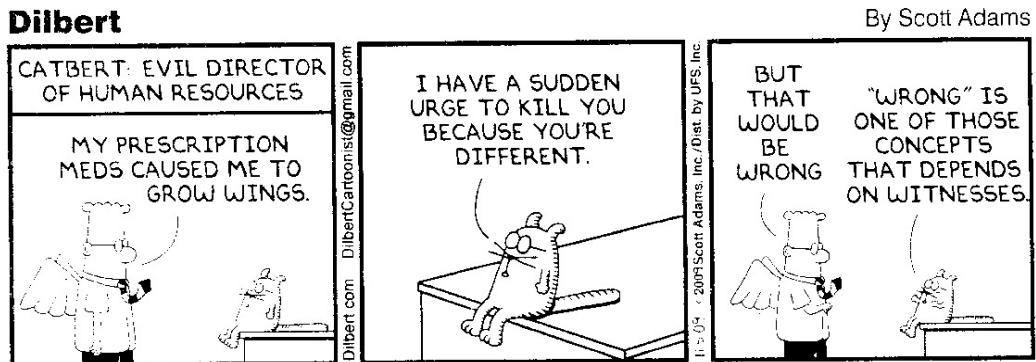
'There is, however, no uniform concept of the notion of criminal law and the Member States may have very different ideas when it comes to identifying in closer detail the purposes which it should serve and the effects it may have. It is thus difficult to talk about criminal law in general terms and without specific national connotations.'

"For examples of laws with specific national connotations one is often referred to topics like drug prevention, abortion, or euthanasia. The criminalization of the so-called 'holocaust denial' by § 130(III) German Criminal Code is also often mentioned in this context. Yet the idiosyncrasies of national criminal laws are also positioned at a much more fundamental level, as there is no definite common understanding regarding general principles of criminal law respecting inchoate offences, co-perpetration, or even the requirements of intentional behavior. European national systems differ at the very heart of criminal law whether and to what extent criminal responsibility requires individual guilt. Although it is mostly accepted that a perpetrator can only be blamed for the deed and be convicted if he or she had a real alternative to behave differently, criminal law

systems do not concur regarding . . . the necessary mental state of the perpetrator, knowledge, or for that matter mistake of law.”

Christoph J.M. Safferling, “Europe as Transnational Law – A Criminal Law for Europe: Between National Heritage and Transnational Necessities,” 10 German Law Journal 1383, 1383-84 (Oct. 1, 2009).

Using examples from this class, discuss to what extent this excerpt is or is not also an accurate description of substantive criminal law in the different crimes codes of the various states in the United States.



Professor Burkoff