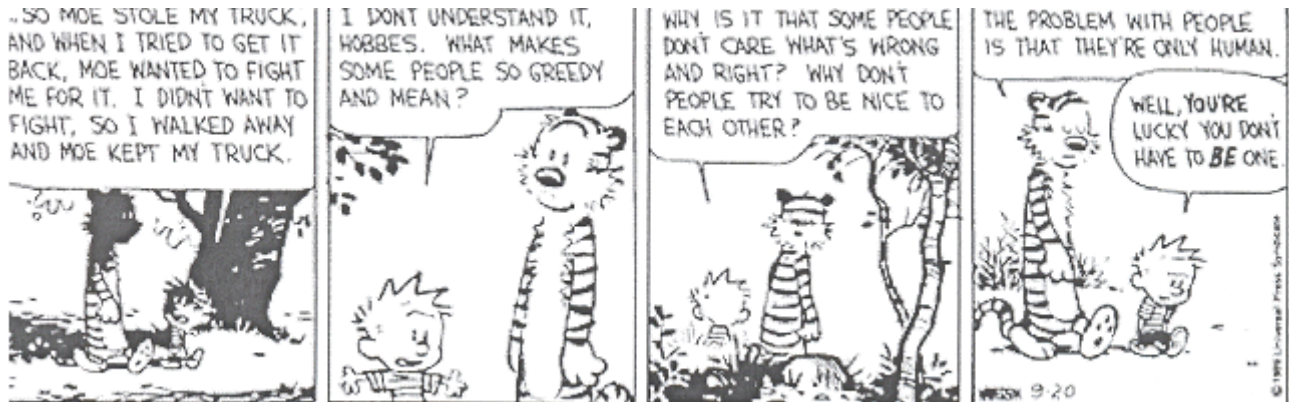


CRIMINAL LAW
Section C

Final Examination
December 13, 2010

3 Hours
1:00-4:00



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. (60 minutes)

Reginald Johnson was at work on August 20, 2007, when his colleague, Eddie Porter, told him that Johnson needed to talk to Amy Whiteman, Johnson's common-law wife. Johnson, suspicious that Whiteman might be cheating on him, asked Porter if Whiteman was "stepping out" on him. Porter confirmed Johnson's suspicions and provided Johnson with a name: Anthony.

Johnson called Whiteman, and asked that she meet with him in a nearby parking lot. Johnson confronted Whiteman, and she told him that Anthony was "just a friend." Johnson did

not believe her and demanded that she give him back his truck and move out of their house. Whiteman suggested they go home and talk, but instead they went to see her therapist.

They arrived at the therapist's office only to discover she was unavailable, and again began discussing their situation in the office parking lot. Johnson again asked Whiteman about Anthony, and she continued to deny that he was anything more than a friend. Johnson told her to give him her car keys and cell phone because both belonged to him. He then told her that he would have her belongings waiting for her in the front yard, "so there was no reason for her to come in the house." Johnson then left in the truck Whiteman had been driving. Whiteman called her friend Lisa Sandoval to pick her up and take her home.

Johnson arrived home, took some sedatives he had on hand, and then started moving Whiteman's clothes into the front yard. As he was doing so he noticed a rose and a card he had given to Whiteman the day before. "At that point," Johnson testified, he "didn't want to live any more." Johnson, who suffered from depression and had previously attempted suicide, called his therapist, Linda Noll, and briefly told her what had happened and asked her what he should do. "It's time to finally make a break, Reggie," she advised him, "you can't keep going on like this. Do something dramatic. Take control of your life. Amy is history. Do what you have to do. Be done with her." Johnson then retrieved his shotgun, planning on doing something dramatic by committing suicide. Noticing Sandoval's car arrive in front of the house, however, he instead put the gun in the closet by the front door and went out to the front yard. There, he again confronted Whiteman about her infidelity and their relationship.

Sandoval reminded Whiteman and Johnson that their son, Josiah, would be home from school soon and suggested they remove Whiteman's belongings from the yard. Johnson and Whiteman started carrying them back into the house. While they were doing this, Josiah arrived home. Johnson told Josiah that his mother was sleeping with another man and that they were separating. Josiah indicated he did not want to move away and left to ride his bike around the neighborhood.

After Josiah left, the couple continued talking. Eventually, Johnson told Whiteman to pack up her things, saying "my therapist told me to be done with you now and that's what I'm doing." Whiteman agreed to leave, but saying she needed "closure" so she could "move on," she then told him she had been having an affair with Anthony. Johnson told her he did not want to hear about it, but she continued, telling him she had slept with him four times. Johnson told her he did not want to know any more, yelling, "Could you just get your things and leave?" Whiteman instead continued to provide details of the affair. When Johnson yelled at her to stop, she ignored him and kept telling him more about her sexual relationship with Anthony. She also began to throw household objects at Johnson, including a heavy, brass lamp that grazed and cut his ear before it smashed into the wall behind him.

Then, according to Johnson, his "heart started beating really fast, just pounding," his head started to hurt, and everything went black. He did not remember getting the shotgun from the closet, did not remember hearing it "being discharged," never intended to hurt Whiteman, but

simply wanted her to “get her things and leave.” At some point, a noise at the door roused him, and he opened his eyes. Whiteman was lying on the floor, shot to death. The State described these events this way: “Johnson silenced Whiteman when he retrieved his Mossberg pump-action shotgun from the living room closet, pointed it at her, and shot her four times.”

Realizing the noise at the door was Josiah coming home, Johnson pulled Whiteman’s body into the bedroom because he “didn’t want Josiah to see his Mom like that.” As he dragged her corpse, one of her splayed arms struck the shotgun which was lying on the floor beside her, causing it to discharge. The shotgun blast went through the wall and hit Josiah in his right shoulder. Johnson did not believe that there were any more rounds in the shotgun at the time that it went off and wounded Josiah.

Cf. State v. Johnson, 236 P.3d 517 (Kan. 2010).

The preceding events all took place in Wichita, Kansas, where you went to work as a Public Defender after graduating from Pitt Law School. You moved to Wichita because of the many, many exciting things to do and see there, like visiting the newly-remodeled Kansas Aviation Museum, which includes an exhibit of old airplane engines. Reginald Johnson and Linda Noll have each been charged with first-degree murder and conspiracy to commit murder in the shooting death of Amy Whiteman. Johnson has also been charged with attempted involuntary manslaughter with respect to the wounding of Josiah. The Chief Public Defender, John Burkoff (played by his body double, Jake Gyllenhaal), has asked you to defend both Johnson and Noll on these charges. What tenable defenses can you make to each charge? What are your chances of success in making those defenses? Explain.

II. (75 minutes)

Heidi Klum ran a dry cleaning shop, Cleanzilla, in Spittsburgh, Spennsylvania (a state in the United States). Late one afternoon, Michael Kors and Nina Garcia came into the shop and each of them pointed a gun toward Heidi and the two customers who were present, Yves St. Laurent and Coco Chanel. Michael ordered Heidi, Yves, and Coco to hand over all of the money in the cash register, and in their purses and wallets. He also ordered Heidi to give him all of the couture evening gowns hanging in the shop, waiting to be picked up by Cleanzilla customers. (The guns that Michael and Nina were brandishing were actually not real guns; they looked realistic, but they were actually made of black licorice.)

Instead of complying with these orders, however, Heidi grabbed a Mossberg pump-action shotgun (which she got from Question I) from under the counter, aimed it at Michael and Nina, and yelled at them to drop their weapons. Michael responded by immediately running out of the shop. Heidi quickly ran to the doorway after him, and shot him in the back, wounding and immobilizing him. “Das unterrichtet Sie! Eine was für heisse Verwirrung,” she growled at him. (“That will teach you! What a hot mess.”)

Meanwhile, Nina, frozen with fear, screamed: “Don’t shoot! Don’t shoot! It’s just f***ing licorice!” And saying that, Nina immediately jammed the barrel of the “gun” into her mouth and started to bite a piece off of it. Yves, however, who was “buzzed” on methamphetamines, not realizing that the gun was fake and thinking that Nina was trying to kill herself by shooting herself through the mouth, grabbed a baseball bat that was leaning against a wall of the shop and tried to whack the “gun” out of Nina’s hand. Unfortunately, Yves’ swing of the bat did knock the “gun” out of Nina’s hand, but it also struck her squarely in the head, killing her instantly.

The other customer in the shop, Coco, who had downed four extra-spicy Bloody Marys (containing Grey Goose vodka) and a pomegranate mimosa (containing Clos des Goisses Champagne Philipponat, 1999 Brut vintage) at brunch before she entered the shop, was traumatized and confused by all of these mystifying events. She ran screaming—“*Aiyeeee*”!—out of the shop. Not looking where she was going, Coco ran directly into the path of Mondo, who was motoring along the sidewalk outside on a rented Segway vehicle. Coco violently knocked Mondo off the Segway and he fell directly—and heavily—on top of a passing Vietnamese pig. *Oh . . . no . . .* wait a minute, it wasn’t actually a Vietnamese pig at all. Sorry. It was Tim Gunn, a seven-year-old little boy, dressed in a Vietnamese pig suit.

The force of the impact when Mondo smashed on top of Tim crunched the hard-plastic snout part of the pig costume and jammed it straight into Tim’s nasal cavity. As the Medical Examiner described the result: “When the ambulance arrived at the scene, Gunn was in a state of cardiopulmonary arrest and was bleeding profusely from his right nostril. He was confirmed dead at the hospital. The autopsy showed a laceration of the right upper lip extending to the right nostril. In the basal skull there was a notable perforation at the ethmoid bone together with the central part of the sphenoid bone including the sella turcica. In accordance with the basal skull bone fractures, there were pronounced contusion injuries at the brain stem and a contusion injury was also observed in the right part of the cerebellum. After careful investigation of a causative snout-like, plastic item that was present at the scene, it was concluded that a severe movement of Gunn’s body, as a result of the impact from Mondo, caused this object to become impaled in Gunn’s right nostril. The object passed through the nasal cavity and into the basal skull bones, resulting in fatal brain stem injuries leading to death.”

At the morgue, when the Medical Examiner examined Nina’s corpse, she discovered that Nina had concealed a gram of crack cocaine on her body.

You are an Assistant District Attorney in Spallegheny County, Spennsylvania. The District Attorney, John Burkoff (played with understated elegance by Calvin Klein, dressed in a white silk Hermes sports jacket), has told you that he is considering filing the following charges, and that he wants your analysis of their likelihood of success, any tenable defenses that might be available to defend against these charges, and these defenses’ chances of success. The charges he is considering filing are these: attempted robbery, possession of cocaine (the cocaine found on Nina’s body), and two counts of felony murder (in the deaths of Nina and Tim), all against Michael Kors; attempted murder (in the shooting of Michael) against Heidi Klum; involuntary

manslaughter (in the death of Nina) against Yves St Laurent; and involuntary manslaughter (in the death of Tim) against Coco Chanel. What will you advise DA Burkoff (who by now has changed into a Pierre Cardin gabardine split tails tuxedo, speckled grey with satin lapels and dove grey rayon lining) about these charges?

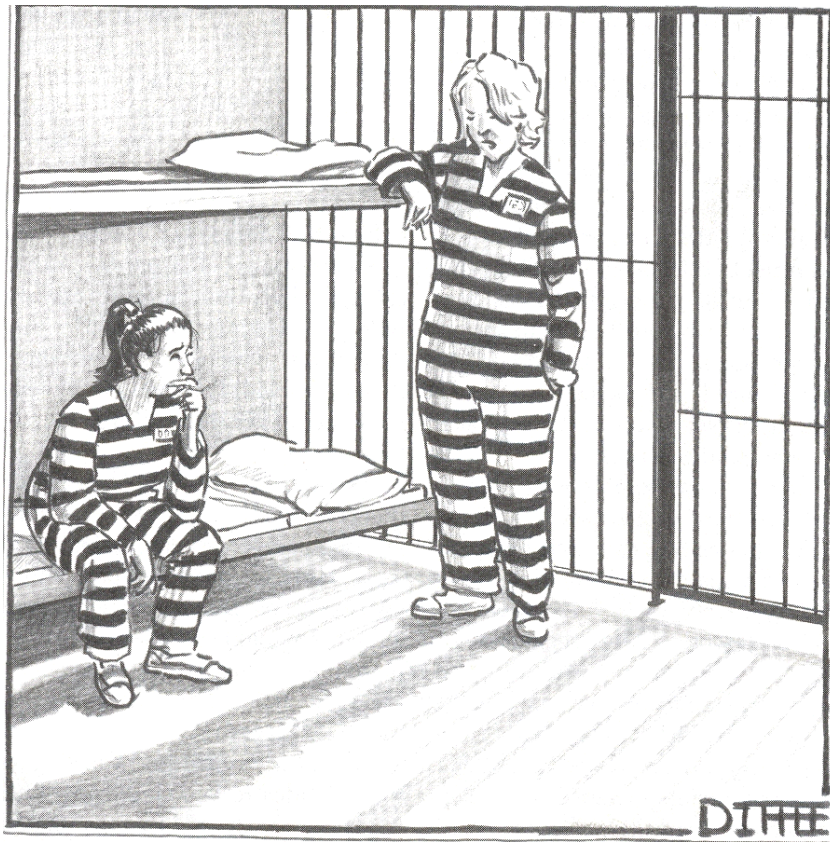
III. (45 minutes)

You are a Pennsylvania legislator. (*Congratulations!*) A colleague of yours has told you that she is considering introducing a bill to criminalize the possession or use of “novelty” cigarette lighters, lighters that are designed to look like cartoon characters, toys or guns or that play musical notes or have flashing lights. Her belief is that these novelty items are attractive to children, who play with them and then burn themselves. She wants to make such an offense a misdemeanor, punishable by a mandatory minimum of 3 days in jail for a first offense, 30 days in jail for a second offense, and 1 year for a third or subsequent offense.

(1) Considering expressly the rationales for criminal punishment discussed in this course, do you think that this is a good and sensible piece of legislation? Explain why or why not.

(2) Whatever your views of the merits (or lack thereof) of this proposed legislation, if it is likely to be enacted, what mens rea, if any, do you think should be included as an element of this crime? Explain your choice.

(3) Suppose further that this proposed legislation would add an additional mandatory 60-day imprisonment penalty if the novelty cigarette lighter possessed or used is a “torch lighter,” a lighter with a flame that exceeds four and one-half inches in length. Should a sentencing judge add this additional penalty to the sentence she would otherwise impose if she decides by a preponderance of evidence that the novelty lighter flame possessed by the defendant in a particular case was five inches in length?



"The worst part is the horizontal stripes."

Professor Burkoff