

Criminal Exam 19

Judy's stepfather had just died. Instead of mourning, however, Judy was plotting on how she could get the most money from her step father's estate. She approached her friend Jerry who had always liked Judy and would be foolish enough to go along with any silly plan Judy cooked up.

Judy asked Jerry to draft a few modifications to her step father's will in the form of codicils. These codicils were to provide that the bulk of Judy's step-father's estate would go to her. Jerry happily complied because he assumed this would mean that Judy would like him better.

Judy also decided it would be a good idea to break into her deceased step-father's safe and grab whatever she could before anyone else did. Judy asked Jerry to act as a lookout while she opened the safe and grabbed what she believed she had coming to her. Jerry happily complied and Judy grabbed a stack of negotiable bonds from the safe. Judy gave Jerry a few of the bonds for his "troubles" and Jerry happily accepted.

Judy then told Jerry that she needed Jerry to burn down the neighbor's house to create a distraction while she hauled some of her step-father's silver out of the backyard vault. Jerry grabbed some lighter fluid and headed over to the neighbor's house. He started pouring lighter fluid on the neighbor's house but then changed his mind. This is stupid, he thought. Judy doesn't like me, she's just using me. Jerry wiped the lighter fluid off the side of the house, walked back over to Judy who was digging up the silver and punched her in the face. Jerry walked away while a slightly stunned Judy kept digging up the silver.

What common law crimes is Jerry guilty of? What are his defenses?

Example Answer:

Forgery

Is Jerry guilty of forgery?

Forgery is the material altering a document with intent to defraud. Forgery is a specific intent crime requiring an intent to defraud. As stated above, an attempted crime is the commission of an overt act which is a substantial step in the completion of the crime.

Here Jerry materially altered Judy's step-father's will with an intent to defraud the other heirs out of their inheritance. Jerry had the specific intent to defraud the heirs out of their inheritance when he drafted the codicils.

Jerry is guilty of forgery.

Accomplice Liability for Larceny of bonds

Is Jerry guilty of accomplice liability for larceny of the bonds?

An accomplice aids, abets, encourages or assists the carrying out of a crime. Accomplice liability is a specific intent crime requiring the intent to aid in the commission of the crime. An accomplice is liable for the crime itself.

Here Jerry acted as a lookout while Judy stole the bonds. Acting as a lookout is aiding or abetting Judy in her crime of larceny.

Jerry is guilty of accomplice liability for larceny of the bonds.

Receiving stolen property

Is Jerry guilty of receiving stolen property?

Receiving stolen property is the taking possession of stolen property, knowing the property is stolen. Receiving stolen property is a specific intent crime requiring the intent to deprive the true owner of his property.

Here Jerry took some of the bonds from Judy knowing the Judy had just stolen the bonds. There is no indication that Jerry had an intention to give back the bonds, but rather Jerry specifically intended to deprive the true owner of his or her property.

Jerry is guilty of receiving stolen property.

Attempted Arson

Is Jerry guilty of attempted Arson?

Arson is the malicious or reckless burning of the dwelling of another. An attempted crime is the commission of an overt act which is a substantial step in the completion of the crime.

Here Jerry took lighter fluid and poured it on the neighbor's house. This is a substantial step in the completion of the crime of arson. As explained below, Jerry may be able to argue renunciation.

Renunciation

Can Jerry argue renunciation as a defense to arson?

Renunciation is the voluntary abandonment of an attempt to commit a crime.

Here Jerry stopped pouring lighter fluid on the house and even wiped the lighter fluid off. Under the facts it appears that Jerry came to his senses and realized that Judy was just using him. Jerry should be able to successfully argue the defense of renunciation.

Jerry is not guilty of arson as Jerry's renunciation of the crime before its completion is a defense to the crime.

Accomplice Liability for Larceny of silver

Is Jerry guilty of accomplice liability for the larceny of the silver?

An accomplice aids, abets, encourages or assists the carrying out of a crime. Accomplice liability is a specific intent crime requiring the intent to aid in the commission of the crime. An accomplice is liable for the crime itself.

Here Jerry attempted to commit arson (see above) to create a diversion and assist Judy in stealing her step-father's silver. Attempting to create a diversion was an attempt to aid and abet Judy in carrying out the crime of larceny. Jerry is technically guilty of accomplice liability for larceny of the silver, but as explained below Jerry may be able to use the defense of withdraw.

Withdraw

Did Jerry withdraw as to not be guilty of the accomplice liability for the larceny of the silver.

A person can only withdraw from accomplice liability if he can undo the assistance and repudiates any past encouragement.

Here Jerry never actually created a diversion by setting a fire and wiping the lighter fluid off of the neighbors house. Jerry has therefore successfully undone all the steps he took towards the creating of a diversion. Jerry will therefore successfully be able to argue he withdrew from accomplice liability.

Jerry is not guilty of accomplice liability as he withdrew from the commission of arson.

Battery

Is Jerry guilty of battery?

Battery is an unlawful application of force to the person of another that results in physical harm or an offensive touching. Battery is a general intent crime requiring only an intent for the force, not the physical harm or offensive touching.

Here Jerry punched Judy in the face. Punching someone in the face is an offensive touching. There is no indication that Judy gave Jerry permission to punch her in the face. There is also every indication that Jerry was upset at Judy for using him and fully intended to punch her in the face.

Jerry is guilty of battery.

Defense of property

Can Jerry claim he was defending the silver by punching Judy as a defense to battery?

A person has the right to use non-deadly force to defend his property against an unlawful taking.

Here, the facts seem to indicate that Jerry was mad for being used and was simply interested in punching Judy in the face. In fact, after he punched Judy she continued her attempts to steal the silver.

Because the facts indicate that Jerry was not defending the silver, Jerry cannot use the defense of property to absolve him of his battery of Judy.