

## **Criminal Exam 2**

Bad Buck (not his real name) entered Victor's electronic superstore Saturday morning. He nervously walked up and down the aisles looking extremely suspicious. He picked up the most expensive laptop computer in the store and approached the checkout counter. Victor rang up the laptop, smiled and asked, "Anything else we can get for you today?" "No." Bad Buck said, handing Victor three thousand dollars in cash. As Victor was counting the cash he noticed that on the \$100 bills Benjamin Franklin had a mustache. Victor turned to Bad Buck and threw the money at him. "Trying to rip me off?" Victor said, "These Franklins are fake."

Bad Buck picked up the computer and raced out of the store. Victor chased after Bad Buck with a baseball bat, yelling at him to drop the computer. Victor then took a swing at Bad Buck, but missed. The bat went flying out of Victor's hand and landed within reach of Bad Buck who picked up the bat. Bad Buck held the bat high and screamed at Victor not to come any closer. Victor kept coming and Bad Buck smacked Victor over the head with the bat. Victor was killed instantly.

Questions:

1. Was Victor justified in chasing after Bad Buck and swinging a baseball bat at him?
2. What crimes has Bad Buck committed? What are his defenses?

## **Example Answer:**

### **I. Victor chasing Bad Buck and swinging a baseball bat at him**

#### Victor chasing Bad Buck

Was Victor justified in chasing after Bad Buck?

A person has the right to use non-deadly force to defend his property against an unlawful taking. Here, Bad Buck unlawfully took Victor's laptop after attempting to pay Victor in counterfeit bills. The taking was unlawful as Bad Buck was committing larceny (see below). Victor chased after Bad Buck and shouted at him to drop the computer.

Victor was justified in chasing after Bad Buck as Victor was attempting to defend his property from Bad Buck's unlawful taking of it.

#### Victor swinging bat at Bad Buck

Was Victor justified in taking a swing at Bad Buck with a baseball bat?

By swinging a baseball bat at Bad Buck Victor committed Assault. Assault is an attempted battery or intentionally placing another in fear of imminent bodily harm. Assault is a specific intent crime requiring an intent to batter or an intent to cause fear. Here Victor took a swing at Bad Buck and missed. This is a failed battery attempt.

Ordinarily Victor would be guilty of assault, but under the facts in this case he was likely justified as he was defending his property.

As stated above, a person has the right to use non-deadly force to defend his property against an unlawful taking. Here, Bad Buck unlawfully took Victor's laptop after attempting to pay Victor in counterfeit bills. Victor swung a baseball bat at Bad Buck in an effort to get him to stop.

The question here is whether swinging a baseball bat is appropriate non-deadly force to defend Victor's property. Although Victor was later killed by this same baseball bat, hitting someone with a baseball bat is typically non-deadly force. Under these facts it is likely that Victor was justified in taking a swing at Bad Buck with a baseball bat.

## **II. Crimes committed by Bad Buck**

### Attempted False Pretenses

Is Bad Buck guilty of attempted false pretenses?

False pretenses is knowingly falsifying or concealing a material fact to fraudulently induce another to pass or receive title to property. False pretenses is a specific intent crime requiring an intent to defraud.

An attempted crime is the commission of an overt act which is a substantial step in the completion of the crime.

Here Bad Buck handed Victor \$3,000 in cash. The \$100 bills were fake. When the Ben Franklin moustache was pointed out, Bad Buck grabbed the computer and ran. Bad Buck's running creates an inference that Bad Buck knew that the \$100 bills he handed to Victor were fake and that he was concealing that fact. Bad Buck's concealment of this material fact to fraudulently induce Victor to pass title to the laptop was a substantial step in completion of the crime of false pretenses.

Bad Buck is guilty of attempted false pretenses. Bad Buck is not guilty of completing the crime of false pretenses as he never received title to the laptop.

### Larceny

Did Bad Buck commit larceny?

Larceny is the taking and carrying away of personal property of another without consent and with intent to steal. Larceny is a specific intent crime requiring an intent to steal a particular item.

Here Bad Buck ran out the door when Victor discovered the counterfeit money with Victor's laptop. The running out the door with the laptop was the taking and carrying away; the laptop had not been paid for and therefore no title had transferred to Bad Buck, making it still property of Victor; and Bad Buck intended to carry away that laptop which is the requisite specific intent.

Bad Buck is guilty of larceny.

## Assault

Did Bad Buck commit assault?

Assault is an attempted battery or intentionally placing another in fear of imminent bodily harm. Assault is a specific intent crime requiring an intent to batter.

Here Bad Buck held the bat high in the air and screamed at Victor not to come any closer. This action would reasonably put Victor in fear of imminent bodily harm, namely being potentially struck with a baseball bat. Bad Buck likely did have an intent to batter as he later did batter Victor (see below).

Bad Buck did commit assault.

## Battery

Did Bad Buck commit 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 to use the force, not the physical harm or offensive touching.

Here Bad Buck swung a baseball bat at Victor, which hit Victor. Swinging the baseball bat and hitting Victor was an unlawful application of force which resulted in physical harm to Victor, namely death. Bad Buck intended to swing the baseball bat and therefore had the requisite intent for battery.

Bad Buck is guilty of battery.

## Murder

Did Bad Buck commit murder?

Murder is the unlawful killing of a person with malice aforethought. Murder is a general intent crime requiring "malice aforethought" which is defined as either an intent to kill, an intent to cause serious bodily harm, a reckless indifference for the value of human life or an intent to commit a dangerous felony.

Here there was an act by Bad Buck, i.e. swinging the baseball bat, which directly caused Victor's death.

Regarding the necessary mental state Bad Buck probably did intend to cause serious bodily harm when he swung the baseball bat at Victor. By swinging the

bat, Bad Buck was attempting to stop Victor from chasing him and it was very likely that serious bodily harm would result.

The felony-murder rule, where a person is guilty of murder for a death accruing during the commission of a dangerous felony likely does not apply. Here the killing took place during a larceny (see above) and during the crime of false pretenses (see above). Unlike robbery, which involves violence or threats of violence, larceny and false pretenses are not inherently dangerous crimes.

Bad Buck is likely guilty of murdering Victor.

### Voluntary Manslaughter

If Bad Buck did not commit murder, did he commit voluntary manslaughter?

Voluntary Manslaughter is the unlawful killing of a person committed in the heat of passion. The mental state required for voluntary manslaughter, i.e. the heat of passion, requires all four of the following: the defendant was in a situation where a reasonable person would lose control; the defendant actually did lose control; There was not enough time for a reasonable person to cool off before the killing; and the defendant did not cool off before the killing.

As stated above, here there was an act by Bad Buck, i.e. swinging the baseball bat, which directly caused Victor's death.

There are no facts, however, to suggest that Bad Buck was in the heat of passion when he killed Victor. Bad Buck was committing larceny, not in a situation where a reasonable person would lose control nor are there any facts to suggest Bad Buck actually lost control.

Bad Buck is likely not guilty of voluntary manslaughter.

### Involuntary Manslaughter

If Bad Buck did not commit murder, did he commit involuntary manslaughter?

Involuntary Manslaughter is the unlawful killing of a person through gross negligence or during the commission of a misdemeanor. Involuntary manslaughter is a general intent crime requiring only an intent to do the negligent act or misdemeanor.

As stated above, here there was an act by Bad Buck, i.e. swinging the baseball bat, which directly caused Victor's death. This was the unlawful killing of a person.

The killing took place during a larceny (see above) and during the crime of false pretenses (see above). Larceny and false pretenses are either misdemeanors or non-dangerous felonies. Because Bad Buck killed Victor as he was attempting to escape from committing the larceny and the false pretenses and since he intended to commit both of those crimes (see above), these facts meet the requisite mental state for involuntary manslaughter.

If Bad Buck did not commit murder, he is likely guilty of involuntary manslaughter.