

## **Criminal Exam 20**

Lee had just had a baby girl, Rosa. Lee drove down to the pier with Rosa and his friend Eugene to spend an afternoon on the shore. After a while, Lee told Eugene to watch Rosa while Lee went into town to run a few errands. When Lee came back from running errands he spotted Eugene screaming at Rosa and threatening her with a knife. Lee ran over to them screaming for Eugene to stop. Lee grabbed the knife from Eugene.

"Hey," said Eugene, "that's my knife I just stole from the knife shop, give it back." Eugene grabbed the knife from Lee, but then Lee grabbed it back.

"Nope," said Lee, "I'm keeping this."

"Well," said Eugene, "then I'm killing your little girl!"

Eugene grabbed Rosa and held her over the pier. Lee grabbed Rosa, and ran back to the car and strapped her in. Lee then ran back onto the pier and stabbed Eugene, killing him.

What common law crimes can Lee be charged with? What are his defenses?

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## **Example Answer:**

### Receiving stolen property

Can Lee be charged with 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 Lee took Eugene's knife and kept it after learning that Eugene had stolen the knife. This action was the taking possession of stolen property knowing that the property is stolen. It is a close call whether Lee has the requisite mens rea of receiving stolen property. Under our facts Lee seems to be trying to help Rosa, not deprive the true owner of his knife. On the other hand, Lee does state that he is going to keep the knife rather than return it to its true owner. Because of Lee's statement, the balance would tip in finding that Lee did take possession of the stolen knife with an intent to deprive the true owner of his property.

While Lee technically met the standard for receiving stolen property, Lee does have a defense. Specifically, Lee can argue the defense of others to the charge of receiving stolen property.

### Defense of others

A person has the right to use non-deadly force to defend persons from serious bodily harm and the right to use deadly force to defend a person from deadly force.

Here Lee took Eugene's knife in an effort to protect Rosa. This is reasonable non-deadly force used to protect his daughter from serious bodily harm or death.

### Conclusion

While Lee may be technically guilty of receiving stolen property, Lee will be able to successfully argue that his actions were necessary to defend Rosa. Because of this defense, Lee will not be guilty of receiving stolen property.

### Manslaughter (Voluntary)

Is Lee guilty of the crime of 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.

Here, while Lee killed Eugene after Eugene almost killed his daughter. The killing of Eugene was unlawful; a reasonable person might lose control if their daughter was being threatened and Lee did lose control. However, the facts state that Lee took Rosa to the car and strapped her in before going back and killing Eugene. Since Rosa was out of danger at this point, a reasonable person would have had enough time to cool off before the killing.

Lee is therefore not guilty of voluntary manslaughter, but may be guilty of murder (see below).

Lee may attempt to argue that he was merely defending Rosa by killing Eugene. This argument will fail. As stated above, a person has the right to use non-deadly force to defend persons from serious bodily harm and the right to use deadly force to defend a person from deadly force. Here the facts state that Rosa was strapped into the car and out of harms way before the killing took place. Lee will not be able to argue that he was defending Rosa by killing Eugene.

## Murder

Is Lee guilty of the crime of Murder?

Murder is the unlawful killing of a person with malice aforethought. Murder is a general intent crime requiring only "malice aforethought" which means either an intent to kill, an intent to cause serious bodily harm, or an intent to commit a dangerous felony.

As discussed above, the killing of Eugene was unlawful. Also as discussed above, Lee had sufficient time to cool off and know what he was doing when he went back on the pier and stabbed Eugene to death. Also as discussed above Lee will not be able to successfully argue that he was defending Rosa. Lee unlawfully killed Eugene with the intent to kill or cause serious bodily harm by stabbing him.

Lee is guilty of the crime of murder.