

Criminal Exam 4

Andy was drunk at the Moose Head bar. Not just a little drunk, but rip-roaring drunk. Which of course gave Andy a great idea.

"I've got a great idea," Andy slurred to himself, "I really nifty neat-o idea-o."

Andy walked over to Bill. "Hey Bill, you see that giant moose head on the wall? If you steal it for me, I'll give you \$500."

Bill turned and looked at Andy. "What did you say?" asked Bill.

"I forgot," said Andy as he stumbled away.

As Andy was stumbling he stumbled into Candice.

"Hey Candice," said Andy, "you see that giant moose head on the wall? If you steal it for me, I'll give you \$500."

Candice gave Andy a funny look and asked, "There's giant mice in the bathroom stalls?"

"Oh forget it," said Andy stumbling away again.

Andy then stumbled into Dirk.

"Hey Dirk," said Andy, "you see that giant moose head on the wall? If you steal it for me, I'll give you \$500."

"OK," said Dirk.

"Here," said Andy, "you can use this hook to get the moose off the wall."

"Great," said Dirk, "wait for me out back."

Andy went out back to wait for Dirk and promptly passed out on the ground. Dirk snagged the moose head off the wall and headed out back. One of the bartenders saw him and tried to stop. Dirk raised his fist and shouted to the bartender, "get out of my way!"

Dirk then headed out back to find Andy passed out on the ground.

"Wake up Andy," said Dirk, "here's your moose head, you can pay me the \$500 later."

"Whoa, whose moose head is that?" asked Andy.

"It's yours of course," said Dirk.

Andy took the moose head and put it in his car. He promptly passed out on the ground again.

What common law crimes can Andy be guilty of? Does Andy have any defenses?

Example Answer:

Solicitation of Bill

Did Andy commit the crime of solicitation when speaking to Bill?

Solicitation is asking another to commit a crime.

Here Andy asked Bill to steal the moose head. Andy has solicited Bill to commit a crime, namely 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 the intent to steal a particular item. Here there is no indication that Bill owns the moose head and Andy is requesting that Bill take and carry away a specific item the moose head. Andy is therefore requesting that Bill commit larceny.

Andy may attempt to argue as a defense that Bill did not agree to the request. It makes no difference, however, whether Bill agrees to the request, only that the request was made.

Andy may also attempt to argue as a defense that Bill never heard the request. It makes no difference, however, whether the request is received. Stating the request completes the crime.

Andy may attempt to argue that he withdrew his request before the crime was carried out. Andy, however, only “forgot” what he said. Andy did not withdraw his request.

Finally Andy may attempt to use the defense of intoxication. Voluntary, self-induced intoxication is generally not a defense to a crime criminal act. Here Andy is at the moose head bar and there is no indication that anyone surreptitiously spiked his drink. His presumptively voluntary intoxication will not be a defense to his actions.

Andy will be guilty of solicitation of Bill to commit larceny.

Solicitation of Candice

Did Andy commit the crime of solicitation when speaking to Candice?

As stated above, solicitation is asking another to commit a crime.

As with Bill, Andy asked Candice to steal the moose head. As explained above, this is a request that Candice commit Larceny. Also as stated above, Andy’s

defenses of Candice not agreeing to the request, Candice not hearing the request, and the fact that Andy was drunk will fail.

Andy may be able to successfully argue that he withdrew his request before the crime was carried out. Andy, told Candice to “forget it” as he walked away. This is likely enough to be considered a withdraw of the solicitation request.

Because Andy withdrew his request to Candice he will not be guilty of solicitation of Candice.

Solicitation of Dirk

Did Andy commit the crime of solicitation when speaking to Dirk?

As stated above, solicitation is asking another to commit a crime.

As with Bill and Candice, Andy asked Dirk to steal the moose head. As explained above, this is a request that Dirk commit Larceny. Also as stated above Andy’s possible intoxication defense will fail.

Andy will be guilty of solicitation of Dirk to commit larceny.

Accomplice liability

Will Andy be guilty of accomplice liability for assisting Dirk?

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.

Here Andy provided Dirk the hook he would need to get the moose head off the wall. Andy has actually aided Dirk in the commission of the crime. Andy also had the requisite specific intent as he knew that Dirk was going to use the hook to steal the moose.

Andy will be found guilty of accomplice liability in assisting Dirk commit larceny.

Larceny

Will Andy be found guilty of the crime of larceny?

An accomplice is liable for the crime he assisted.

As stated above, Andy will be found guilty of accomplice liability in assisting Dirk in committing larceny.

Since Andy assisted Dirk commit larceny Andy will also be guilty of larceny.

Assault

Will Andy be guilty of assaulting the bartender though accomplice liability?

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 Dirk raised his fist and shouted at the bartender. These actions would reasonably put the bartender in fear of an imminent bodily harm, namely the fear of Dirk hitting him.

Although Andy did not assist in the assault, under the common law, an accomplice is guilty of additional crimes which are the natural and probable consequence of the original crime and the additional crimes are committed in furtherance of the original crime.

Here, Andy assisted Dirk in committing larceny at the moose head bar. It is probable that someone might attempt to stop Dirk while he committed the crime and that Dirk might have to threaten someone or even batter someone to escape.

Because an assault under these facts is a natural and probable consequence of a larceny committed at a bar during business hours, Andy would be guilty of assault.

The model penal code rejects the common law view that an accomplice is automatically guilty of additional crimes unless the accomplice intended to aid in the additional crimes. However, because this question asked for the result under the common law, Andy would be guilty of assault.

Receiving Stolen Property

Is Andy 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 Andy took possession of the stolen moose head and put it in his car. This was the taking possession of stolen property.

There is no indication that Andy knows the property is stolen, apparently because he is too drunk. In addition, Dirk states that the moose head belongs to Andy.

Under these facts Andy may be able to successfully argue the defense of intoxication. As stated above, voluntary, self-induced intoxication is generally not a defense to a crime criminal act, however, intoxication may be a defense to a crime which requires a specific intent. Here receiving stolen property requires the specific intent to deprive the true owner of his property. Here Andy appears to believe that the moose head is his.

Under these facts Andy is not likely guilty of receiving stolen property because he did not have the requisite specific intent to commit that crime.