

Criminal Exam 05

Nancy was walking down the street minding her own business when she spotted Sally shooting a hand gun at cars driving down the street. Thinking quickly Nancy grabbed the gun from Sally, put the gun in her pocket and then threw Sally to the ground. Sally got up and took a swing at Nancy, but missed. Nancy countered with a pummeling series of jabs to the face followed by an uppercut. Sally got up again and this time tried to run. Nancy grabbed her and tied her up. Nancy then dragged Sally across the street and tied her to a nearby tree.

“Let me go,” shouted Sally.

“You’re not going anywhere until the cops get here,” replied Nancy.

What crimes is Nancy guilty of? What are her defenses?

Example Answer

Larceny

Is Nancy guilty of 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 Nancy took the gun from Sally and put the gun in her pocket. This was the taking and carrying away of property not belonging to Nancy. Nancy fully intended to take the gun from Sally and there is every indication that Nancy believed the gun was Sally's. Nancy is therefore technically guilty of larceny.

Defenses: Nancy should be able to successfully argue the defense of necessity. Necessity is the commission of a criminal act to avoid bodily injury or property damage. There must be no alternative which would avoid the harm and be non-criminal.

Here, Nancy grabbed Sally's gun in order to stop Sally's shooting spree. This was the commission of a criminal act, i.e. larceny, to avoid bodily injury to person or property damage to automobiles. It might be argued that there was a non-criminal way to stop the harm, e.g. merely asking Sally to stop shooting. Under these facts, however, Sally was in the process of shooting and the danger to human life was so great that Nancy will be able to successfully use the defense of necessity.

Nancy will not be found guilty of larceny as she will successfully be able to argue the defense of necessity.

Battery

Is Nancy 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 to use force, not an intent to inflict physical harm.

Here Nancy pummeled Sally with a series of punches. This was the application of force, namely punching, to another person, namely Sally, that resulted an offense touching, namely jabs to the face. Under the facts Nancy appears to have intended to punch Sally which would meet the mens rea for this crime.

Defenses: Nancy should be able to argue the defense of self defense to the charge of battery. Self defense is the right to defend oneself against the present

or imminent use of unlawful force by another. In order to claim self defense, the force used must be reasonable and the defender must not have been the initial aggressor or have been able to retreat.

Here Sally took a swing at Nancy before Nancy hit Sally. Someone swinging at you is a present or imminent use of force by another. The two questions in this case are whether Nancy's force was reasonable or if she could have safely retreated. The facts of this case are that Nancy "pummeled" Sally which may have been an unreasonable response to one swing at you. In addition, there is nothing to suggest that Nancy could not have retreated. Nancy already had the gun and could have presumably run off after that. Nevertheless, based on the facts of this case, specifically that Sally was shooting a gun at passing cars, a court would likely find that Nancy pummeling Sally was justified after Sally took a swing at Nancy.

Nancy will not be found guilty of battery as she will be able to argue self defense.

False imprisonment

Can Nancy be guilty of false imprisonment?

False imprisonment is the unlawful confinement of a person without his valid consent. False imprisonment is a general intent crime requiring only an intent to confine the person.

Here Nancy tied up Sally. This was the purposeful confinement of Sally. There is no indication that Sally consented to being tied up. Nancy is therefore technically guilty of false imprisonment of Sally.

Defenses: Nancy should be able to argue the defense that she was making a citizen's arrest. A citizen has the right to use reasonable non-deadly force to make a citizen's arrest.

Here Nancy tied up Sally and stated she was holding Sally until the cops arrived. Tying up Sally was likely reasonable under the circumstances as she had just been shooting at cars going down the street. Nancy will be able to successfully use the defense of citizen's arrest to any charge of false imprisonment.

Nancy will not be found guilty of falsely imprisoning Sally as she will be able to argue she was making a citizen's arrest.

Kidnapping

Can Nancy be guilty of kidnapping?

Kidnapping is the unlawful confinement and moving of a victim or the unlawful confinement of victim in secret. Kidnapping is a general intent crime requiring only an intent to unlawfully confine the victim.

Here Nancy tied up Sally and then moved her across the street. This is a confinement of a person, namely tying Sally up, and the moving of the victim, namely moving Sally across the street. Under the facts, Nancy fully intended to tie Sally up and move her across the street to tie her to a tree. Nancy is therefore technically guilty of kidnapping.

Defenses: Nancy should be able to argue as a defense that she was making a citizen's arrest. As explained above, a citizen has the right to use reasonable non-deadly force to make a citizen's arrest. The same analysis explained above under false imprisonment would apply to kidnapping. Nancy would therefore be able to successfully use the defense of citizen's arrest to any charge of kidnapping.

Nancy will not be found guilty of kidnapping Sally as she will be able to argue she was making a citizen's arrest.