

Kern County College of Law  
CRIMINAL LAW  
Midterm Examination  
Fall 2023  
Prof. D. Kinnison

General Instructions:

Essay Questions: Answer Three (3) Essay Questions

Total Time Allotted: Three (3) Hours

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Question 1

Sondra dropped her diamond necklace, resulting in damage that needed repair. Sondra took her necklace to Jay's Jewelry Shop. Jay accepted the necklace and gave Sondra a receipt with an estimate for the cost of the repairs.

Jay was deeply indebted to others as a result of gambling losses. Jay quickly repaired the damage to the necklace, and then placed it in the store display cabinet offering it for sale.

A week later, Sondra came to the shop and asked Jay about her necklace. Jay told Sondra that the repairs had not been completed yet. The next day Jay sold the necklace to Belinda for \$350. Later that same night Sondra went to her favorite bar, where she saw Belinda wearing her necklace. Sondra rushed up to Belinda and demanded her necklace. Belinda, mindful of a recent unrelated argument with Sondra, quickly reached into her pants pocket trying to produce the receipt for her purchase of the necklace. Sondra, believing that Belinda was reaching for a weapon, struck Belinda on her head with a beer bottle, causing serious injury.

A few days later, Deter, a police detective assigned to investigate the incident, went to Jay's Jewelry Shop in an undercover capacity. While speaking with Jay, Deter saw that Jay was repairing a watch. Deter offered Jay \$80 for the watch. Jay told Deter that the watch was not for sale, as it had been brought to the shop by the owner for repairs. Before leaving, Deter offered Jay \$150 for the watch, and Jay accepted the \$150 and gave the watch to Deter.

Discuss all charges that are likely to be brought against the parties, and the most likely outcomes of the resulting criminal proceedings. Discuss the likely outcome under common law, as well as under modern law trends. Do not include a discussion of possible crimes against Deter.

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Question 2

Al, Bill, and Carl got together for a night of drinking and poker. At one point Al tells the others that he has heard that Dan, the owner of Dan's Jewelry Store, carries a lot of cash with him at the end of each business day. Al suggests that the three of them overpower Dan as he leaves the store and take the cash from Dan. Al, Bill and Carl discuss how the operation could be done, with each making suggestions. After the complete their discussions, having a plan in mind, Al and Bill agree to go ahead with the plan. Carl wishes Al and Bill good luck, but declines to participate.

Before the date of the planned operation at the jewelry store, Al went to the jewelry store and took photos of the building. Afterwards he drew a diagram of the store, showing all possible points of entry on the building. He and Bill studied the photos and the diagram, and further discussed their plan. Bill borrowed a gun from a friend for the operation.

On the night of Dan's planned break in at the jewelry store, as Al and Bill were driving toward the jewelry store, though they were still several blocks away, Bill told Al "I've changed my mind. You go ahead if you want, but stop the car and let me out." Al let Bill out, and continued on to the jewelry store. When he arrives, Al sees Carl in the area, watching the store from a short distance. Al took up another vantage point to watch for Dan.

A short time later, Dan entered the jewelry store using a key, and subsequently exited with a pouch full of cash. Carl ran to Dan, and tried to grab the pouch, but Dan moved it out of Carl's reach. However, at the point Al jumped on Dan from behind and held Dan's arms while Carl took the pouch from Dan. Al and Carl then ran toward Al's car, intending to drive away. However, police arrived at that moment, responding to a 911 call from a witness. Al and Carl ran from the police, and during the pursuit Carl pulled out a gun and attempted to shoot at the officers. Instead of firing, the gun exploded, killing Carl.

Discuss the possible crimes and possible defenses for Al and Bill. Discuss the likely outcome under common law, as well as under modern law trends.

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Question 3

Guy is a 23-year-old first year teacher at North High, teaching English to seniors. He soon becomes besotted with Desiree, one of his students, and offers her private tutoring. One evening at Guy's apartment, Guy made his move on Desiree. One thing led to another, and they both ended up naked. However, at that point Desiree said to Guy "Maybe this isn't a good idea. It would be my first time. I think I'll go home." Guy responded "Don't worry, this is the right thing. I love you, and I want to marry you."

Although nearly all seniors at North high are at least 17, Desiree was only 16. School enrollment rules at the school district that North High is a part of make all students at North High on their normal academic schedule 17 at the beginning of their senior year. Guy was unaware of Desiree's actual age, and unaware that Desiree had skipped the 4<sup>th</sup> grade due to her advanced academic abilities. In this state, the age of consent is 17.

After intercourse, Desiree sobs quietly and gets dressed. Guy remained in bed. At that time Helen, Guy's fiancé, enters the apartment. Seeing the situation, she shouts "I knew I couldn't trust you!" Guy gets out of bed and walks toward Helen, to try to calm her down. Helen then picked up a bowling ball and threw it at Guy, but Guy ducked and the bowling ball hit Desiree, killing her instantly. Guy grabbed a pistol from the nightstand, and fired a shot, which missed Helen. Helen then ran from the apartment and called police.

Discuss the possible crimes and defenses. Discuss the likely outcome under common law, as well as under modern law trends.

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ANSWER OUTLINE

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Model Answer for Question 1

Charges Against Jay

Larceny

*Larceny is the unlawful taking, with asportation, of the personal property of another, with the intent to permanently deprive the owner thereof.*

*The prosecution may take the position that when Jay delivered the necklace to Belinda, and delivered the watch to Deter, the elements of two counts of larceny were satisfied.*

*The defense would likely argue that Jay's actions did not include a trespassory taking, since in both instances the owners had voluntarily delivered the items to Jay.*

*The defense might also argue that Jay's actions did not include asportation, as Jay merely handed the items to Belinda and Deter.*

*As to asportation, under both common law and modern law, a very small amount of movement of the item will suffice for asportation. The movement of the items from Jay to the purchasers would thus appear to constitute the requisite asportation.*

*As to trespassory taking, at common law a trespassory taking was required. As to both items, Jay's taking was non-trespassory, as both necklace and watch were voluntarily delivered by their owners to Jay. Under common law, Jay would not be found guilty of larceny in the absence of a showing of intent to steal at the time of receipt of the items.*

*The prosecution may argue that the fact that Jay sold both the necklace and the watch indicated an intent to misappropriate the items as of the time they were received by Jay. At common law, such a scheme would likely have charged as larceny by trick, involving false representations which cause the owner to deliver possession, but not title, to the thief.*

*The defense would likely argue that the allegation that Jay intended misappropriation at time of receipt of the items is undermined by Jay's unequivocal refusal, initially, to sell the watch to Deter. Had the intent to misappropriate been there at the time Jay received the watch, instead of refusing to sell because the watch was there for repairs only, Jay would likely have instead focused on negotiating a sale price.*

*Under common law it is not likely that the prosecution would be able to prove beyond a reasonable doubt the intent to defraud at the time of receipt of each of the items, and Jay would not be found guilty of larceny or larceny by trick.*

*However, under modern law, most jurisdictions have abandoned common law theft variants (e.g., larceny by trick, larceny by false pretenses, etc.) and have enacted general theft statutes that encompass various forms of theft. Nevertheless, one form of theft established under common law that has been retained by many modern jurisdictions is the crime of embezzlement. Unless the applicable jurisdiction has included embezzlement into its larceny or general*

*theft statute, Jay would likely avoid a larceny conviction under modern statutes, but may not fair as well in an embezzlement prosecution.*

### *Embezzlement*

*Embezzlement is the fraudulent misappropriation of personal property of another, when possession of the item, but not title, was rightfully in possession of the defendant.*

*The prosecution would be able to show that even though Jay was given possession of the necklace and the watch, arguably without intent to misappropriate, Jay's subsequent sale of the items constituted embezzlement.*

*The defense would have little to argue to attempt to defeat embezzlements charges under the given facts. There is nothing to indicate any mistake regarding ownership of the items on the part of Jay.*

*Consequently, Jay would very likely be convicted of embezzlement at common law or under a modern embezzlement statute.*

### *Charges Against Sondra*

#### *Assault*

*Assault at common law was the attempted unlawful battery of another. Most modern jurisdictions have added another form of assault – the intentional creation, other than by mere words, of a reasonable apprehension in the mind of the victim of imminent bodily harm.*

*The prosecution would have little difficulty in showing an attempted battery on the part of Sondra against Belinda, since a battery was in fact completed with the striking of Belinda with the beer bottle.*

*The defense would most likely argue self-defense. Sondra and Belinda had argued in the past. At the time of this incident, Belinda's reaction to Sondra's demand for the necklace was to quickly reach into her pocket without a word of explanation. The defense will argue that it was objectively and subjectively reasonable for Sondra to believe that Belinda was reaching for a weapon to attack Sondra with.*

*The prosecution would likely argue that even if Sondra subjectively believed Belinda was reaching for a weapon, that belief was not objectively reasonable. The reasonable person in that situation would not believe that Belinda was retrieving a weapon. The fact that the two had argued in the past is simply not enough, as there was nothing to indicate any prior physical attacks, nor even any threats thereof.*

*The defense might also argue that the owner of property is entitled to use non-deadly force to recover his or her personal property possessed by another. This argument would fail because the rule authorizing use of force to defend property is available only when the property is in possession of the owner, not when it is in the possession of another.*

*Consequently, Sondra would likely be found guilty of assault.*

#### *Battery*

*Battery is the unlawful application of force to the person of another resulting in either bodily injury or an offensive touching.*

*As with assault, the prosecution would have little difficulty in showing a battery on the part of Sondra against Belinda.*

*The same potential defenses discussed above regarding assault could be offered by the defense, with similar lack of effect.*

*Sondra would likely be found guilty of battery.*

*Belinda*

*Assault*

*As stated above, assault at common law was the attempted unlawful battery of another. Most modern jurisdictions have added another form of assault – the intentional creation, other than by mere words, of a reasonable apprehension in the mind of the victim of imminent bodily harm.*

*The prosecution might charge Belinda with assault, based on her wordless reaching for her pocket following Sondra's demand for the necklace. As discussed above, it seems unlikely that the prosecution could prove beyond a reasonable doubt that Belinda's actions constituted an attempted battery or an attempt to frighten Sondra that she was at risk of imminent bodily harm. Belinda could just as easily have been reaching for her cell phone to call police.*

*Belinda will likely not be convicted of assault.*

*Receiving Stolen Property*

*Receiving stolen property involves receipt of possession and control of stolen personal property, known to have been obtained in a manner constituting a criminal offense by another person.*

*The prosecution could prove that the necklace was stolen, and that it was received by another. However, the difficulty would be proving Belinda knew or should have known that the necklace was stolen.*

*The defense would argue that Belinda purchased the necklace at a jewelry store, for \$350. Unless the nature of the necklace made it obvious that the actual value of the necklace was considerably more – a fact not provided in the facts, it would appear that Belinda could not be shown to know or should have known that the necklace was stolen.*

*Belinda will likely not be convicted of receiving stolen property.*

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### Model Answer for Question 2

#### *Charges Against Al*

##### *Solicitation*

*Solicitation occurs where a person requests or encourages another person to participate in a crime, with the intent that the other person commit the crime.*

*Since Al suggested participation in the theft from Dan to both Bill and Carl, and nothing indicated a lack of intent that they commit the theft, Al committed solicitation at that point.*

*The defense may try to argue that on a night of drinking and poker, Al was just engaging in idle talk. However, the facts indicate a discussion of how the operation might occur, and ended with an agreement by Al and Bill.*

*The defense might further argue that since Carl initially declined to participate, Al should not be found guilty of solicitation as to Carl. However, the crime of solicitation does not require that the party solicited agree to commit the crime.*

*Al would likely be found guilty of two counts of solicitation. In most modern jurisdictions, solicitation merges into a formed conspiracy.*

##### *Conspiracy*

*Conspiracy occurs where there is an agreement between two or more persons to commit a crime, where there is a specific intent to make an agreement and that the crime be committed. At common law, once the agreement is entered into a conspiracy occurs. Most modern jurisdictions also require an act in the furtherance of the conspiracy.*

*Since Al and Bill agreed to steal from Dan, under common law both Al and Bill were guilty of conspiracy as of the time of the agreement. Under modern law, the requirement in most jurisdictions of an overt act in the furtherance of the conspiracy was satisfied by Al's surveillance of the store, preparation of the diagram for discussions with Bill.*

*Al may argue that since Bill dropped out of the operation before arriving at the area of the store, the conspiracy ended before the theft began.*

*The prosecution will counter that conspiracy does not require the completion of the target crime. All of the elements of conspiracy were satisfied prior to Bill's abandonment.*

*Al will likely be convicted of conspiracy.*

##### *Robbery*

*Robbery is the unlawful taking of personal property from another person through the use of force or threat of force.*

*Accomplices are guilty of crimes committed by others when they provide assistance in the commission of those crimes.*

*The prosecution will argue that Al used force against Dan by jumping on him and holding his arms, while Carl took the pouch full of jewelry.*

*The defense may argue that Al did not commit robbery, but merely attempted robbery, because Carl had not agreed to enter into the conspiracy with Al. The argument will be that Carl was acting on his own, and merely took advantage of the situation, rather than being involved as a conspirator or accomplice with Al.*

*The prosecution would likely respond that Al's having seen Carl watching the store before the attack on Dan, the two acting nearly simultaneously against Dan, and most tellingly the two of them running toward Al's vehicle afterwards, indicate that Carl acted as Al's accomplice, and perhaps as a co-conspirator.*

*Al will likely be found guilty of robbery.*

### *Felony Murder*

*The felony murder rule provides that when someone is killed during the commission of, or attempted commission of, an inherently dangerous felony, the persons who committed the crime are guilty of murder. The felony murder rule existed under common law, and in most if not all modern jurisdictions.*

*There can be little doubt that robbery is an inherently dangerous felony.*

*The defense will likely argue the lack of a conspiracy, and the lack of Carl being Al's accomplice, as discussed above. At a minimum, as discussed above Carl will likely be found to have been Al's accomplice.*

*Al may attempt to argue that the robbery was completed at the time of Carl's shooting at the officers.*

*The prosecution would respond that the felony murder rule applies until the criminals have reached a place of temporary safety. Since Al was still in the immediate area of the store, had not left in his vehicle, and the police were present, and a pursuit was under way, it cannot be concluded that Al had not reached a place of relative safety prior to the shooting.*

*The defense may also argue that the felony murder rule was not intended to convict accomplices for the death of one of their comrades. Especially when that killing was self-inflicted. This argument has some intellectual appeal, and has been adopted in some, but not all, jurisdictions.*

*The defense may also argue that Carl's death was not proximately caused by the commission of the robbery.*

*As to causation, it is true that "but for" the robbery, Carl's death would not have occurred. However, under the modern majority rule for the felony murder rule, proximate cause the death must have been a foreseeable result of the commission of the felony.*

*The defense will argue that the chain of events does not support a finding of foreseeability. It was probably foreseeable that someone might try to intervene during the robbery of Dan, and the intervention by police would clearly have been foreseeable. Further, Carl's use of a firearm to avoid arrest would be foreseeable. However, the misfiring of the gun resulting in the shooter's death seems beyond the realm of foreseeability. Rather, it seems much more akin to the setting off of fireworks from the Palsgraf v. Long Island Railroad Co. case from tort law's analysis of foreseeability. Stated another way, the killing here would seem to be a highly extraordinary result in light of the circumstances, the standard of unforeseeability stated in People v. Acosta, a California case contained in our casebook.*

*Perhaps just as significantly, the defense will argue that no homicide occurred, since homicide is the killing of another human being, thus homicide would not include self-inflicted death.*



*Finally, the defense would also argue that the felony murder rule was not intended to convict accomplices for the death of one of their comrades. Especially when that killing was self-inflicted. This argument has some intellectual appeal, and has been adopted in some, but not all, jurisdictions.*

*The prosecution may argue that while the chain of events may be unlikely, they were not unforeseeable. Each succeeding event could be foreseen, even if unlikely.*

*However, the defense seems to have the stronger argument on foreseeability, and the prosecution cannot argue that Carl's killing was not self-inflicted.*

*Al would most likely not be convicted under the felony murder rule, even if the jurisdiction follows the accomplice death exception, due to the lack of proximate cause for Carl's death.*

### *Charges against Bill*

#### *Conspiracy*

*Conspiracy occurs where there is an agreement between two or more persons to commit a crime, where there is a specific intent to make an agreement and that the crime be committed. At common law, once the agreement is entered into a conspiracy occurs. Most modern jurisdictions also require an act in the furtherance of the conspiracy.*

*Since Al and Bill agreed to steal from Dan, under common law both Al and Bill were guilty of conspiracy as of the time of the agreement. Under modern law, the requirement in most jurisdictions of an overt act in the furtherance of the conspiracy was satisfied by Al's surveillance of the store, preparation of the diagram for discussions with Bill.*

*The defense may argue a defense of withdrawal from the conspiracy, since he departed prior to arrival at the scene of the crime.*

*The prosecution would respond that withdrawal was not a defense at common law, nor under the law in most modern jurisdictions. A minority rule, supported by the Model Penal Code, authorize a withdrawal defense where the withdrawal is communicated to all other members of the conspiracy, and the withdrawer takes action to thwart the crime, usually by notifying police. Even if this is a minority rule jurisdiction, since Bill did not make efforts to thwart the crime, he would not qualify for the withdrawal defense.*

*Bill will likely be convicted of conspiracy.*

#### *Robbery*

*Robbery is defined above.*

*The defense will argue that even if Bill is guilty of conspiracy, his withdrawal from the conspiracy was effective to prevent his responsibility for crimes committed by co-conspirators after his withdrawal. This is consistent with the law in most if not all jurisdictions.*

*The prosecution may claim that Bill's participation was sufficient to provide assistance in the commission of the robbery, as he was in the vehicle as it was heading toward the scene of the planned theft. As such, Bill provided a set of eyes that could observe any potential impediments to going forward with the plan. This is likely to be an ineffective argument, since Al and Bill never got within sight of the store before Bill left Al's vehicle.*

*Bill will likely not be convicted of robbery.*

### *Attempted Robbery*

*The crime of attempt is committed if the person does an act done with specific intent to commit a crime. The common law standard is the "proximity test", i.e. that the act must have come dangerously close to completion of the crime. The modern majority rule requires that the act be a "substantial step" towards completion of the crime that strongly corroborates the actor's criminal purpose.*

*The defense will argue that Bill's departure from Al's vehicle was not an attempt under either of the above standards. Since the store was never even in Bill's sight on the night in question, it cannot be said that the theft was dangerously close to completion. Although a closer call, merely driving toward but still being a significant distance away from the crime scene is insufficient to establish a substantial step.*

*The prosecution would likely respond that driving toward the scene of the crime with the co-conspirator would satisfy both standards. Bill's possession of a gun for use in the robbery further establishes Bill's substantial involvement toward accomplishing the robbery. "Dangerously close" is shown by the parties driving toward the location. "Substantial step" is also satisfied by the driving, which also is clearly corroborative of Bill's criminal purpose.*

*Bill will likely not be found guilty of attempt in a jurisdiction that follows the proximity test, but would probably be found guilty of attempt in a jurisdiction that follows the substantial step test.*

### *Felony Murder*

*The felony murder rule is defined above.*

*Bill would likely make arguments similar to those discussed for Al, above.*

*In addition, as discussed in the robbery section above, Bill will argue that since he withdrew from the conspiracy he would not be responsible for under felony murder because withdrawal precludes liability for crimes committed by co-conspirators after the withdrawal.*

*Even if Bill was to be found to have committed an attempted robbery, and even if he was found guilty of attempted robbery, the proximate cause analysis discussed above regarding Al would appear to apply to Bill in his defense against a felony murder charge.*

*Bill would likely not be found guilty under the felony murder rule.*

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Model Answer for Question 3

*Charges Against Guy*

*Statutory Rape*

*At common law, the British had a statutory crime for intercourse with a female under the age of 10. In modern jurisdictions, statutory rape is an adult having sexual intercourse with a person under the age of consent, which in the state where the events occurred is age 17.*

*It is clear that the elements of statutory rape were met. However, the defense would likely assert a defense of mistake of fact. Mistake of fact as to the age of the alleged victim is currently recognized in about one-third of American jurisdictions. Most of those require the mistake to be objectively reasonable.*

*The facts state that Guy was unaware that Desiree was 16. Since most seniors at the school were at least 17, it would be reasonable for Guy to presume that Desiree was at least 17. It is very likely that a jury would find that there is no basis for a finding that a person would always be able to tell the difference between a 16-year-old female and a 17-year-old female. Puberty would have occurred years earlier, and full development of the female body is common by age 16.*

*The prosecution might try to assert that as Desiree's teacher he had access to school records, which would have provided her actual age. As such, Guy should have consulted the readily available records to determine Desiree's age before commencing a sexual relationship with her.*

*The defense would likely count that Guy had no duty to determine Desiree's actual age in his role as her teacher. Further, no legal duty existed that required him to consult the school records in this situation. It was perfectly reasonable for him to presume that Desiree was at least 17, like virtually every other senior*

*The mistake of Desiree's age would appear to be objectively reasonable, given that seniors at North High, due to the district's enrollment rules, are normally least 17. It is common knowledge that a student skipping a grade in school is highly unusual, and therefore it was reasonable for Guy to believe that Desiree was 17.*

*Under common law rules, Guy would not have been guilty of statutory rape, since Desiree was older than 10 years old. Under the applicable state statutory law, Guy would be guilty of statutory rape unless the state is a minority jurisdiction that recognizes the reasonable mistake of age defense. If that defense is available, Guy would most likely be found not guilty of statutory rape.*

*Rape*

*At common law rape was sexual intercourse by a male with a female (not his wife) without her consent and with the use of force. If the female did not resist "to her utmost" it was not rape. Most modern rape laws dispense with the spousal exception, and the requirement of resistance "to the utmost", as well as other changes.*

*The prosecution would likely argue that Desiree never gave consent, and involuntarily yielded to Guy when she saw that he would not be dissuaded.*

*The defense would likely respond that Guy's statements never included any threat of force, nor did the described actions include any reference to force or implied threat of force. Further, the facts do not indicate any effort by Desiree to interfere with the impending sexual act by use of force or attempt to flee.*

*Guy would probably not be found guilty of rape.*

#### *Attempted Murder*

*A criminal attempt is an act that, although done with the intention of committing a crime, falls short of completing the crime. An attempt consists of two elements:*

- 1. A specific intent to commit the crime; and*
- 2. An overt act in furtherance of that intent*

*Murder is the unlawful killing of a person by another person with malice aforethought.*

*The deadly weapon rule provides a permissive inference of intent to kill. A deadly weapon is an instrument used in a manner calculated to or likely to inflict death or serious bodily injury.*

*The prosecution would likely argue that Guy's firing the pistol constituted a clear effort to cause Helen's death or at least serious injury. A firearm is obviously a deadly weapon, and thus the deadly weapon rule would allow the jury to infer an intent to kill.*

*The defense would likely argue that Guy was acting in self-defense. His use of the gun was a response in the immediate aftermath of Helen's throwing a bowling ball at Guy, which he avoided, but which killed Desiree. Clearly that was an attack with deadly force. Self-defense law allows a person attacked with deadly force to use deadly force to defend against the attack.*

*The prosecution may argue that at the time of the shooting, Helen had ended her attack, and instead of self-defense Guy shot in an attempt at revenge for Helen attacking him and killing Desiree. Given the lack of significant delays in the chain of events, this prosecution argument will likely fail.*

*The defense would also likely argue that given the close proximity of Guy and Helen, within a room in an apartment, it would have been very hard to fail to shoot Helen if that was Guy's intent. Instead, the facts show that Guy merely tried to frighten Helen to deter her from any further attacks against him.*

*The prosecution would likely respond that failure to shoot Helen was more likely the result of the stress of the moment. Guy had been attacked with deadly force, and had seen the death of Desiree, all within the prior few moments.*

*The question of Guy's intent is a close call, which might very well go against him. However, the claim of self-defense appears compelling, and Guy would therefore likely result in Guy being found not guilty of attempted murder.*

#### *Assault with a Deadly Weapon*

*At common law assault was an attempted battery. Under modern law, most jurisdictions provide for two types of assault:*

- (1) Attempted battery*
- (2) Intentional creation, other than by mere words, of a reasonable apprehension of an imminent battery*

*In this case there can be no doubt that a gun is a firearm, and that a deadly weapon was used.*

*The prosecution would likely offer arguments regarding the attempted murder charge discussed above, and the defense would likely offer similar arguments as discussed above.*

*The remaining issue not covered by the attempted murder discussion concerns a finding that Guy did not intend to kill or injure Helen, but merely intended to frighten her into leaving.*

*In that event, under common law Guy would be not guilty of assault with a deadly weapon because there was no attempt at battery.*

*However, if the jurisdiction follows the modern majority rule, an intentional creation of imminent harm would ordinarily constitute an assault.*

*The defense would likely argue that the act of creating apprehension of an imminent assault was justified under self-defense principles.*

*Under either the common law definition or the modern majority rule, Guy would likely not be found guilty of assault with a deadly weapon.*

### *Charges against Helen*

#### *Attempted Murder*

*Attempted murder is defined above, in the section of Charges against Guy. A bowling ball is most likely going to be considered to be a deadly weapon, given its weight and the manner used (throwing it), especially in light of the fact that the act did in fact kill Desiree.*

*The prosecution would likely argue that Helen's actions were the result of her anger against Guy for his apparent infidelity. Her intent in throwing the bowling ball that missed Guy only because he ducked was clearly to cause either death or serious injury. Under those circumstances, the requisite act and intent for attempted murder have been established.*

*The defense would likely argue that Helen's actions were the result of heat of passion, in discovering her fiancé in circumstances of infidelity. At common law, the availability of heat of passion in such circumstances was significantly limited, restricting it to actual spouses. Most modern jurisdictions have afforded broader applicability, and would likely include the situation here.*

*Although under common law Helen would likely be found guilty of attempted murder of Guy, under the modern majority rule Helen would likely be found guilty of the lesser charge of attempted voluntary manslaughter.*

#### *Murder*

*Murder is the unlawful killing of one human being by another with malice aforethought.*

*The doctrine of transferred intent provides that if a person intended a harmful result against one person, but the act resulted in similar harm to another unintended person, the intent will be transferred from the intended person to the person harmed. Any defenses that the defendant could have asserted as to the intended victim would also apply to the actual victim.*

*The prosecution would assert the same arguments as to Helen's intent as discussed above for attempted murder of Guy. Clearly there was intent to cause either death or serious injury to Guy, and that intent would be transferred as to Desiree.*

*The defense would assert the same heat of passion argument discussed above for the attempted murder of Guy.*

*Under the principles discussed above, the likely outcome would be a murder conviction under the common law rules, and a voluntary manslaughter conviction under the modern majority rules.*

1)

**SONDRA**

**BATTERY**

Battery under common law is defined as the use of unlawful force against a person causing an offensive touching or a bodily injury. Sondra struck Belinda on her head with a beer bottle causing serious bodily injury and as a result, Sondra may be charged with a battery. The defense will most likely argue that Sondra acted with a reasonable belief that force was going to be used against her because Belinda reached into her pocket to what looked to Sondra was to get a weapon out and that Sondra had every reason to defend herself against Belinda. The prosecution will most likely argue that Sondra did not actually see a weapon come out of Belinda's pocket and there should not have been a reasonable belief that Belinda was going to bring a weapon out just because Sondra had an idea in her mind that the necklace was hers. Sondra just assumed that the necklace was hers and proceeded to strike Belinda with little to no warning. Sondra will most likely be convicted of a Battery against Belinda.

**ASSAULT**

*Common law assault was attempted battery.  
Modern law assault is either attempted battery or*

Assault under ~~common law is defined~~ as an act by the defendant that is an intentional reasonable apprehension causing a threat of an imminent bodily harm. Sondra struck Belinda on her head with a beer bottle causing serious bodily injury and as a result, Sondra may be charged with an assault against Belinda. The defense will most likely argue that Sondra acted with a reasonable belief that force was going to be used against her because Belinda reached into her pocket to what looked to Sondra was to get a weapon out and that Sondra had every reason to defend herself against Belinda. The prosecution will most likely argue that Sondra did not actually see a weapon come out of Belinda's pocket and there should not have been a reasonable belief that Belinda was going to bring a weapon out just because Sondra had an idea in her mind that the necklace was hers. Sondra just assumed that the necklace was hers and proceeded to strike Belinda with little to no warning. Sondra will most likely be convicted of an assault against Belinda as Sondra caused an apprehension of threat to Belinda.

## ATTEMPTED MURDER

Homicide under common law is defined as either a murder or a manslaughter. Under common law, there are no degrees of murder as defined below.

Murder under common law is defined as the unlawful killing of another human being with malice aforethought. Malice aforethought is the intent to kill, the intent to inflict a great bodily injury, the wanton/reckless indifference to a human life with the conscious disregard to the high risk of great bodily injury or death (depraved heart murder) and the intent to commit a felony (felony murder rule). The intent to inflict a great bodily injury, the wanton/reckless indifference to a human life with the conscious disregard to the high risk of great bodily injury or death and the intent to commit a felony are the elements of implied malice.

First degree murder under the modern trend is the premeditated and deliberate killing of another with malice aforethought.

Second degree murder is all other murder that is not under first degree murder

Voluntary manslaughter is the killing of another human being with adequate provocation, a lack of a cooling off period and is usually done in the heat of passion.

Involuntary manslaughter is the killing of another human being during the act of criminal negligence/gross negligence or a misdemeanor manslaughter where the death of another person occurred as a result of the gross negligence or a person died on an accident as a result of the commission of the misdemeanor.

Misdemeanor murder as defined under the common law is the killing of another person during the commission of a misdemeanor.

Attempt under the common law is measured by the proximity test. If the defendant was reasonably close or dangerously close to committing the intended crime then the defendant will most likely only then be charged with attempt. Under the modern trend, attempt is measured by an overt action in the furtherance of the crime or a substantial step made towards completing the intended crime.

In this situation Sondra may be convicted of the attempted murder of Belinda which may have been a result of the battery that Sondra committed to Belinda. The prosecution will most likely argue that Sondra acted with malice, acted recklessly and intended to kill Belinda. The way that Sondra talked to Belinda and the force to which Sondra approached Belinda could have been deemed to satisfy

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the elements of intent to kill and intent to cause great bodily injury to Belinda. The depraved heart murder rule has also been met. The defense will most likely argue that Sondra did not intend to commit a felony so the elements of common law murder or first degree murder are not met. In the event that Sondra did kill Belinda, the defense would most likely argue that Sondra acted in a heat of passion by seeing Belinda and because she acted so quickly with no sufficient cooling off period, the murder will come down to a voluntary manslaughter. Sondra under the modern trend definition of attempt did take a substantial step of potentially attempting to murder Belinda by the force that was used however, as no murder was committed and the injuries that were sustained to Belinda did not seem to be deadly, Sondra will most likely not be convicted of attempted murder of Belinda.

### VOLUNTARY INTOXICATION

Under common law, Voluntary intoxication may be used to negate specific intent crimes. After Sondra talked to the jeweler, she went down to the bar while she was probably frustrated that her necklace was not done yet. Sandra proceeded to get drinks <sup>No - not stated in the facts</sup> and the defense will most likely bring up the defense of voluntary intoxication as Sondra was not in the right state of mind and did not have the sufficient mens rea available to form the needed intent to harm Belinda. The prosecution will most likely argue that besides the fact that Sondra was drunk, there was no excuse for Sondra to assault Belinda. The defense of voluntary intoxication will most likely allow Sondra to negate the charges of a battery and assault as the necessary mens rea was not formed.

### SELF DEFENSE

Under common law, a person may use self defense if they reasonably believe they are under an imminent the threat of force or harm by another person. In this case, the defendant will most likely argue that she acted in self-defense against Belinda because of a previous unrelated argument and it looked like Belinda was going to use a deadly weapon against her. The defense will argue that Sondra had every right to do so in protecting herself, deadly force was not necessarily used. The prosecution will most likely argue that Sondra acted out of spite and did not reasonably believe that Belinda had a deadly weapon on her as Sondra did not actually see a deadly weapon. Sondra will most likely be found not guilty of the aforementioned crimes as she was acting in self defense with a reasonable belief that she was under a imminent threat of harm.

### JAY

### LARCENY AND LARCENY BY TRICK

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Under common law, larceny is defined as the unlawful taking or carrying away (asportation) of another's personal property with the intent to permanently deprive them of that item. Jay may be held guilty of two counts of Larceny because he sold Sondra's necklace to Belinda and he also sold someone else's watch to the police detective. Jay may also be held liable for Larceny by trick as he received custody of these items and chose to permanently deprive the owners of them. The defense will most likely argue that Jay accidentally sold the necklace that Sondra dropped off to Belinda and that he did not mean to do so and that he did not have the sufficient mens rea of intent necessary for this crime to be committed. The prosecution will most likely argue that Jay not only performed larceny once by selling the necklace to belinda but also sold the watch which conveys a pattern and that Jay did intend to permanently deprive both Belinda and the owner of the watch from their personal property. Jay will most likely be convicted of two counts of larceny.

- | *What did Jay refuse to sell the necklace to Deter indicate? Intent to sell not present at time necklace received.*

Under common law, Embezzlement is defined as the fraudulent conversion of the property of another by a person that was in lawful possession of the item. Jay may be convicted of two counts of embezzlement for the same above reasoning that he will most likely be convicted of two counts of larceny. both the defense and prosecution will most likely argue the same argument before stated in regards to larceny. Jay will most likely be found guilty of two counts of embezzlement as he will in legal possession of both items and through the act of conversion he intended to defraud both owners of the jewelry.

DURESS *Not supported by the facts*

Duress may be used when you are in a reasonable belief or threatened that you will suffer a great bodily injury or threat of death to yourself or to a close family member and you commit a crime as a result. The defense will most likely argue that Jay was under duress that if he did not pay the others that he owed money to that he would suffer great bodily injury or be killed as a result of his deep debt. Jay immediately put the necklace in the shelf as he needed to make money fast to pay off his debt which shows that he may have been threatened to pay up fast. The prosecution will most likely argue that Jays actions were careless and knowingly committed the crime with no disregard to the consequences of another. If Jay in fact was found to be held under duress by his debtors, he may be off the hook for the previous crimes that he committed.

**BELINDA**

**RECEIPT OF STOLEN PROPERTY**

Receipt of stolen property under common law is defined as taking possession or control of the property of another with the knowledge that the personal item was obtained in a manner of criminal activity. The prosecution will most likely argue that Belinda knew that the necklace was stolen and that Sondra had every right to go and obtain her stolen personal property and that Belinda was reaching for a weapon because she knew that the necklace was actually not rightfully sold to her. However, the defense will argue that Belinda had no knowledge that the necklace was stolen as her mens rea and actus reus portrayed that she was reaching for her receipt that was in her pocket because she rightfully paid for the necklace. If Belinda actually had a receipt in her pocket, Belinda will not be charged with the receipt of stolen property.

Missed issue: Assault by Belinda against Sondra.  
-5

2)

People vs. Al

• **Solicitation**

- Asking another person to commit a crime with the intent that the person commit that crime.
- The prosecution would argue that Al solicited both Bill and Carl for the commission of Robbery when he suggested that the 3 of them overpower Dan and take cash from Dan. The act of solicitation would be complete upon the suggestion being made to Bill and Carl, whether they agreed to commit the crime or not.
- The defense would argue that Al was intoxicated. Voluntary intoxication occurs when a person consumes a substance known to intoxicate. Here, Al and the other two were having a boy's night drinking and playing poker and any suggestions made would negate specific intent.
- Al would not be found guilty of solicitation because, since they went forward with the target crime, this charge would merge with the more serious target crime.

• **Conspiracy**

- An agreement between 2 or more persons to commit a crime. Under common law, the agreement in itself would be sufficient. Under modern trends, the addition of the commission of an overt act in furtherance of the target crime would also be necessary.
- The prosecution would argue that the agreement to commit a robbery was made while Al and the other two discussed how the operation of taking Dan's cash could be done, each of the 3 co-conspirators making suggestions. The overt acts that would count toward the commission of the robbery are: (1) Al going to the jewelry store; (2) Al taking photos of the jewelry store building; (3) Al drawing a diagram of the store; (4) Al showing all possible points of entry on the building; (5) Bill borrowing a gun from a friend for the operation; and (6) Al and Bill driving toward the jewelry store on the night of the planned crime.
- There would be no viable defense for Al because he participated throughout the entire crime without attempting to stop it from completion.

→ How does Bill's withdrawal affect the conspiracy?

- Al would be found guilty of conspiracy to commit a robbery under both common law and modern trends because he was part of the agreement and there were a substantial number of overt acts in furtherance of the robbery.

• **Robbery**

- The unlawful taking of another person's property with the intent to permanent deprive that person of their property, while using force or the threat of force.
- The prosecution would argue that Al and Carl both attacked Dan with the intent to take Dan's cash pouch and permanently deprive him of it. The cash pouch was Dan's property because it came from Dan's business, his jewelry store. The use of force used by Al was jumping on Dan from behind and holding Dan's arms while Carl took the pouch.
- The defense would argue that Al did not physically take any property from Dan, and therefore could not be held liable for robbery.
- The prosecution would counter-argue that because Al and Carl were working together and were co-conspirators, the Pinkerton Rule would render Al liable for any foreseeable acts by his co-conspirator in furtherance of the crime.
- Al would be found guilty of robbery. This would NOT be an aggravated robbery because no deadly weapon was used. Bill probably took the gun with him when he withdrew.

• **Battery**

- The unlawful application of force upon another person that causes bodily harm or offensive touching for that person.
- The prosecution would argue Al jumping on Dan without Dan's consent was an unlawful application of force. Al went on to further hold Dan's arms to disable him while Carl took the pouch. Although this did not cause Dan bodily harm, it does constitute offensive touching to a reasonable person.
- The defense would argue that Al did not apply any force upon Dan and cause not harm. This would not be a viable defense.
- Al would be found guilty of battery against Dan.

• **Assault**

- Attempted battery or the creation of reasonable apprehension upon another person of imminent threat or harm upon that person.
- The prosecution would argue that Carl created reasonable apprehension upon Dan when he ran to Dan and tried to grab the pouch. Dan's reaction of moving the pouch out

-1 Carl refused to join the conspiracy, so Al could argue he and Carl acted independently because only Carl got the \$, Al only guilty of attempted robbery.

Extra credit +1

of Carl's reach clearly indicates apprehension and Dan felt an imminent threat. Through accomplice liability and in his role as co-conspirator, Al would be liable for Carl's actions.

- The defense would argue that Al was not the principal aggressor in the assault and was not the one who created the reasonable apprehension.
- Al would be found guilty of assault.

• **Homicide**

◦ **Felony Murder** (both common law & modern law-1st degree)

- Under common law, a murder is the unlawful killing of another human being with malice aforethought. Malice can be met by (1) having the intent to kill; (2) having the intent to cause serious bodily injury; (3) during the commission of an inherently dangerous felony; or (4) depraved heart--the reckless disregard or creation of substantial risk with disregard for human life. Under modern law, any murder is 2nd degree murder unless the prosecution can prove it to be 1st degree by the killing being (1) deliberate and premeditated; (2) during the commission of an inherently dangerous felony; or (3) lying in wait, poison or torture in some jurisdictions.
- The prosecution would argue that Carl's death was a foreseeable outcome - proximate cause - from their intended crime of Robbery, an inherently dangerous felony. Actual cause - if it had not been for the act of committing the robbery and fleeing from the authorities, Carl would not have had to try and fire the gun that exploded, killing him.
- The defense would argue that Al would not be liable for Carl's death because Carl was a co-felon and they had not reached a place of temporary safety before Carl died.
- Under both common law and modern trends, Al would not be found guilty of felony murder/ 1st degree murder for Carl's death.

◦ **Involuntary manslaughter**

- The unintentional killing of another person while acting with recklessness or creating a substantial risk with disregard for human life.
- The defense may argue imperfect self defense for Al in order to downgrade the charge from murder to manslaughter, as Al was part of the parties that initiated the pursuit.

Additional issues

- 1 Was there a homicide?  
Death was self-inflicted.
- 1 Common law FM and modern minority FM cover accomplice deaths.
- 2 Was cause of death foreseeable?  
Proximate cause analysis needed.

People vs. Bill

• **Conspiracy**

- Rule: see above
- The prosecution would argue that the agreement to commit a robbery was made while Bill and the other two discussed how the operation of taking Dan's cash could be done, each of the 3 co-conspirators making suggestions. The overt acts that would count toward the commission of the robbery are: (1) Al going to the jewelry store; (2) Al taking photos of the jewelry store building; (3) Al drawing a diagram of the store; (4) Al showing all possible points of entry on the building; (5) Bill borrowing a gun from a friend for the operation; and (6) Al and Bill driving toward the jewelry store on the night of the planned crime.
- Bill's defense would argue that Bill withdrew from the conspiracy when he told Al that he had changed his mind and wanted to be let out of the car before the commission of the crime. Although Bill did announce this to his co-conspirator, he did not attempt to thwart the target crime. But, it can be argued that the 911 call from a witness causing the police to arrive to the scene of the crime, was made by Bill.
- Prosecution would counter-argue that Bill's actions were a little too late to back out from the crime as he had taken substantial steps in furtherance of the crime. Additionally, Bill's last minute withdrawal would be considered more of an abandonment, which is not a viable defense.
- Bill would be found guilty of conspiracy to commit a robbery under both common law and modern trends because he was part of the agreement and there were a substantial number of overt acts in furtherance of the robbery that he was part of before he tried to withdraw.

- | • **Attempted Robbery**

- The specific intent to commit a crime and commission of an overt act in furtherance of that crime. Robbery, see above. *Discussion of common law proximity test, modern law substantial step test needed!*
- | ◦ The prosecution would argue ?? *Bill aided by surveillance during vehicle ride?*
- | ◦ The defense would argue that Bill abandoned.

- | • **Accomplice Liability** *Conclusion = ?*

- Under common law, a person would be considered an accomplice in a crime if they fell into one of the following categories (1) principal in the 1st degree; (2)

principal in the 2nd degree; (3) accessory before the fact; (4) accessory after the fact. Under modern law, an accomplice is an aider and abetter to the principal of a crime and has both the intent to assist the principal and intent for completion of the crime.

-5 Robbery discussion need re: Bill



3)

### People v. Guy

#### Statutory Rape

Statutory rape is defined as sexual intercourse with a minor.

The prosecution will likely argue that Guy is a 23 year old who had sex with Desiree who's 16 and is not of the age of consent. They will argue that this is a strict liability crime and therefore Guy should automatically be found guilty. Generally, mistake of fact is not a defense in majority jurisdictions.

The defense will argue that in minority jurisdictions mistake of age is a defense and because Guy works for a school that has rules that at the beginning of their senior year every senior had to be 17 which, in this state is the legal age of consent. Guy was also unaware that Desiree had skipped the 4th grade. They were already naked by the time Desiree said she didnt think it was a good idea. Guy should not be faulted for the mistake that the school made. For all he knew Desiree was of legal age.

-| Thus, it is likely that Guy will be convicted of statutory rape. *only if this is a state that has adopted the minority age mistake rule.*

#### Rape

Rape is defined as sexual intercourse or penetration (however slight) done by force or threat of force, without consent. At common law this was an act that could only be against a woman who was not a mans wife.

The prosecution will argue that should Guy not be convicted of statutory rape, he should be convicted of rape. Consent must be freely given no coerced or forced in anyway. Desiree said early on that she wanted to go home and that she didnt think that moving forward with Guy was a good idea. Desiree also, sobbed quietly after the act was done.

The defense will argue that absent any other facts Desiree did consent to sexual intercourse with Guy because she never expressly said "no" to him. The facts also do not indicate that she tried to push him off or stop the acts in any other way. Guy convinced her to stay and she willingly did.

-| *Desiree's statements were ambiguous: "Maybe this isn't a good idea" "I think ~~that~~ I'll go home"*  
Thus, it is likely that Guy will not be convicted of Rape.

#### Aggravated assault

Assault is defined as the intentional act by the defendant that causes reasonable apprehension of an immediate harmful or offensive touching or at common law it was the attempted battery of a person. This can be enhanced by the use of a weapon or if it's against a protected class of people.

Here, the prosecution will argue that Guy fired a shot at Helen but missed therefore putting Helen in reasonable apprehension of imminent harmful contact or of a serious bodily injury.

The defense will argue that Guy fired the shot at Helen in self-defense after seeing that Desiree was killed by the bowling ball.

*1. Only one shot was fired, showing lack of intent to kill or injure.  
2. Missing the shot at such close range showed lack of intent to kill or injure.  
-2 Defense could also argue:  
-1 Prosecution could argue shot missed due to stress of events, not lack of intent to kill or injure.*

Thus, it is likely that Guy will not be convicted of aggravated assault.

### Attempted Murder

An attempt is defined as a specific intent to commit a crime but falls short of completing the crime. Under modern law there must be a substantial step or an overt act in the furtherance of the crime. At common law an attempt was gauged by a proximity test or how dangerously close one came to completing the crime. Murder at common law was the unlawful killing of another human being with malice aforethought. Malice is defined as the intent to kill, intent to inflict serious bodily injury, extreme recklessness with an unjustifiably high risk to human life, or felony murder. Under modern trends it was the deliberate killing of another with premeditation and deliberation.

The prosecution could argue that Guy could be charged with attempted murder since he used a gun to defend himself against Helen who only used a bowling ball. He fired the shot but it missed Helen.

*-3 same as notes above re: assault.*

The defense will likely have the same argument as above for aggravated assault. Guy did not mean to kill Helen merely to protect himself from his possible death.

Thus, it is likely that Guy will not be convicted of attempted murder.

### People v. Helen

#### Aggravated assault

Assault is defined as the intentional act by the defendant that causes reasonable apprehension of an immediate harmful or offensive touching or at common law it was the attempted battery of a person. This can be enhanced by the use of a weapon or if it's against a protected class of people.

The prosecution will argue that Helen should be convicted of aggravated assault because she threw a bowling ball at Guy.

Absent any other facts the defense could argue that Helen was provoked by Guy when she caught him in bed with another woman.

Thus, it is likely that Helen will be convicted with aggravated assault.

-4 Attempted murder should also have been discussed.

### Common law Murder

Murder at common law was the unlawful killing of another human being with malice aforethought. Malice is defined as the intent to kill, intent to inflict serious bodily injury, extreme recklessness with an unjustifiably high risk to human life, or felony murder. In order to convict a person a murder they must be the actual and proximate cause of the victims death.

The prosecution will argue that Helen should be charged with murder because she intended to inflict serious bodily injury or acted with extreme recklessness with an unjustifiable high risk to human life when she picked up the bowling ball and threw it at Guy.

The defense will argue that she was adequately provoked under common law, by seeing her husband in bed with another person. They will argue that she did not intend to kill Desiree but meant to harm Guy. However the prosecution will argue that under the transfer intent doctrine whatever harm Helen meant to inflict on Guy should transfer to Desiree.

-1 At common law, heat of passion applied only to married couples. Now it's more broadly available.  
Thus, it is unlikely that Helen will be convicted of Murder under common law.

### First and Second Degree Murder

The deliberate killing of another human being done with premeditation and deliberation, felony murder, and killings done with extreme recklessness with an unjustifiable high risk to human life . Second degree murders are all other murders that dont constitute first degree. Murders done without premeditation and deliberation and all murder's done during a felony thats not inherently dangerous.

Absent additional facts, the prosecution will have a hard time arguing that Helen premeditated and deliberated Desiree's death.

The defense will argue that there was no premeditation and deliberation on Helen's part because she reacted instantly without cooling off and taking time to reflect. However should the prosecution fail to successfully convict Helen with first degree murder, they could try to argue second degree murder because she acted with extreme recklessness when she threw the bowling ball at Guy. Bowling balls are heavy and require much force to throw them. Therefore, proving that Helen tried to inflict serious bodily injury.

Thus, it is likely that Helen will be convicted of first degree murder or she could be convicted of second degree murder.

### **Voluntary Manslaughter**

The intentional killing of another human being but in the heat of passion, with no cooling off time.

The defense will likely argue that Helen should be convicted of manslaughter either voluntary or involuntary. The defense will argue that under common law there was adequate provocation because Helen caught her husband in bed with another person. Under modern law the adequate provocation standard is based on the reasonable person standard.

The prosecution will argue that a reasonable person would not try to inflict harm on another person just because they are upset. However, the defense will argue the opposite that any reasonable person would be upset if they caught their spouse in bed with another person.

Thus, it is likely that Helen could be convicted of voluntary manslaughter.

### **Involuntary Manslaughter**

At common law there was the criminal or gross negligent killing of another or the gross reckless killing of another. There was misdemeanor manslaughter which was the killing of another human being during the commission of an inherently dangerous misdemeanor.

The defense will likely argue that Helen's charges should be mitigated to involuntary manslaughter because she acted grossly reckless or negligent in throwing the bowling ball at Guy. The facts don't indicate she had the specific intent to kill him or Desiree. She acted in the heat of the moment.

The prosecution will likely argue that Helen's acts were the type of recklessness to get someone murdered under the common law not involuntary manslaughter. The argument would be the same as it was for second degree murder.

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Thus, it is likely that Helen could be convicted of Involuntary manslaughter.

**END OF EXAM**