

EXAMINERS' ANALYSIS OF QUESTION NO. 10

Darryl can be charged and likely convicted under Michigan's Home Invasion, First Degree statute. MCL 750.110a(2). This statute provides numerous ways a person may be convicted of Home Invasion, First Degree, including entering a dwelling without permission with the intent to commit a larceny, while armed with a dangerous weapon, or while another person is lawfully present. Darryl clearly entered Nick's dwelling. No facts suggest he did so with permission. Moreover, he was after Nick's TV and intended to pawn it. Darryl had a loaded revolver in his possession, clearly a dangerous weapon. Additionally, Nick was present in his own home. These facts taken together would prove Darryl guilty of Home Invasion, First Degree. It does not matter that Darryl took nothing.

Darryl can also be charged and likely convicted under Michigan's Felon in Possession statute, MCL 750.224f. This statute disqualifies convicted felons from possessing a firearm until, among other things, the person has successfully completed all conditions of parole. Here the facts indicate Darryl is a convicted felon, is still on parole, and had a loaded revolver in his possession. These facts support the conclusion that the applicable statute has been violated and that Darryl can be found guilty of Felon in Possession.

Darryl can also be convicted under Michigan's Carrying a Concealed Weapon statute, MCL 750.227. This statute prohibits the carrying of a firearm "concealed on or about his or her person" or in a vehicle occupied by the person. The facts support conviction here in many ways. Darryl was arrested with the gun underneath his jacket. He also had the gun in the vehicle. He had the gun concealed, before he went into Nick's home. Various ways of supporting a conviction are presented.

When Darryl saw and heard police behind him, he was obligated to stop his vehicle. When he failed to do so by speeding up and running stop signs and a red light, he committed the crime of Fleeing and Eluding a Police Officer under Michigan law, MCL 750.479a (1) and (2). Indeed, Darryl did not even stop his car for a mile and a half while police pursued him, it simply stalled out and stopped itself.

Darryl possessed the gun while committing the crimes mentioned above. Accordingly, Darryl could also be convicted under Michigan's so-called Felony Firearm statute, MCL 750.227b. This statute requires nothing more than carrying or having in one's possession a firearm when one commits or attempts to commit a felony. All the crimes mentioned above are felonies.

Finally, the chances of charging and convicting Darryl of Possession of Cocaine are much slimmer. Michigan's controlled substance possession statute, MCL 333.7403(1), states "[a] person shall not knowingly or intentionally possess a controlled substance" (emphasis added). Michigan's Criminal Jury Instructions also indicate knowledge of the presence of the substance is a required element. See CJI 2d 12.5. Here, Darryl was driving a car he had never driven, that he had never before been in, and that he had borrowed from a person described only as an "acquaintance." Moreover, the cocaine was not easily visible in the car, having been taped underneath a backseat floor mat. Indeed, police did not discover the cocaine until the car was impounded and inventoried. The knowledge element would be difficult to prove on the facts presented.