

**JULY 2014 MICHIGAN BAR EXAMINATION
EXAMINERS' ANALYSES**

EXAMINERS' ANALYSIS OF QUESTION NO. 1

The elements of Larceny from the Person are:

- 1) the defendant took someone else's property;
- 2) the property was taken without consent;
- 3) there was some movement of the property;
- 4) the property was taken from a person or from a person's immediate control or immediate presence;
- 5) at the time the property was taken, the defendant intended to permanently deprive the owner of the property.

MCL 750.357; Mi Crim JI 23.3; *People v Chambliss*, 395 Mich 408 (1975), overruled in part on other grounds, *People v Cornell*, 466 Mich 335 (2002).

The elements of the crime of Conspiracy are:

- 1) an agreement, express or implied, between two or more persons;
- 2) to commit an illegal act; or
- 3) to commit a legal act in an illegal manner; and
- 4) specifically intending to commit or help commit the crime.

See *People v Bettistea*, 173 Mich App 106 (1988).

Dan

The chances of convicting Dan of Larceny from the Person are high. He grabbed the moneybag containing the store's

receipts. He did not have anyone's consent to take the bag, as evidenced by his wearing the gorilla mask and the manager's hollering. The bag containing the money was moved from inside to outside the store. The facts provide that the manager was present with the bag in his office, clearly indicating the bag was taken from his immediate control or presence. Dan's running away with the money and the earlier agreement with Jim to share the money proves that Dan intended to permanently deprive the store of the money.

Dan's chances of conviction of Conspiracy to Commit Larceny from the Person are also high. He entered into an express agreement with Jim to steal the moneybag. While the agreement constitutes the crime of conspiracy without an overt act, in accordance with the agreement, any such distinction is not germane here where multiple steps were taken to advance the conspiracy. See Mi Crim JI 10.1.

Jim

Jim's chances of conviction for Larceny from the Person are also high, although under a slightly different analysis. While Jim did not take the store's money, his criminal liability is as an aider and abettor, sometimes called an accomplice. The pertinent Michigan statute, MCL 767.39, states:

Every person concerned in the commission of the offense, whether he directly commits the act constituting the offense or procures, counsels, aids or abets in its commission, may hereafter be prosecuted, indicted, tried and, on conviction, shall be punished as if he had directly committed such offense.

The elements of aiding and abetting are:

- 1) the crime charged was committed by the defendant or some other person;
- 2) the defendant performed acts or gave encouragement that assisted the commission of the crime;
- 3) the defendant intended the commission of the crime or had knowledge that the principal intended its commission at the time that the defendant gave an encouragement.

People v Bennett, 290 Mich App 465, 472 (2010); Mi Crim JI 8.1.

Applying the foregoing to the facts presented yields the conclusion that Jim is guilty of Larceny from the Person as an aider and abettor. He shared Dan's intention to steal the store's money, was fully aware of what Dan was going to do, was to share in the fruits of the crime, and aided Dan by going with him and acting as a lookout for police so as to facilitate the crime's commission. That he botched his job by not seeing the patrol officer does not affect his criminal liability.

Jim is also highly likely to be convicted as Dan's co-conspirator. He fully entered into the agreement to commit the larceny. While originally the crime was Dan's idea, no conspiracy can exist without a second participant. Jim and Dan forged their conspiratorial agreement the day before the larceny and took specific steps to advance that agreement. Jim and Dan's dual intents - to enter into an agreement and to commit the crime - are identical.

Mike

Mike has no criminal responsibility for the charged crimes. He did not leave the car while the others went to the store. Although it could be claimed he acted as an accomplice, such a claim would fail because he had no awareness a crime was to be committed. Indeed, he was purposely left in the dark. His parking the car 75 feet away from the store was done not to aid in the commission of the crime as the "get-away" driver but because it was the closest spot to the store. Moreover, even driving Dan and Jim to the store was not done to facilitate the crime; he often drove Dan to pick up his check. Finally, to confirm Mike's non-involvement with the crime, when he reasonably became aware of the larceny (i.e. when he saw Dan running to the car with a gorilla mask on and carrying a moneybag, followed by Jim and the officer), he locked his car doors preventing Dan and Jim from getting into the car. This action, along with remaining on the scene, did not aid the boys' getaway; it foreclosed it. Mike was merely present on the scene, without the requisite knowledge to be an aider and abettor. If mere presence - even with knowledge a crime is to be committed - is insufficient to establish criminal liability, *People v Norris*, 236 Mich App 411, 419-420 (1999) *a fortiori*, mere presence *without* knowledge is also insufficient.

Similarly, Mike cannot be convicted of Conspiracy. He was not part of Dan and Jim's agreement, and no facts suggest the two varied from their understanding not to tell Mike of their

plan. While a co-conspirator need not be involved at a conspiracy's incipency, and one may join an ongoing conspiracy, the facts indicate there was no discussion in the ride to the store about the larceny plan, nor any discussion to include Mike in the conspiracy.

Mike will not be found guilty of either crime charged.