

## EXAMINERS' ANALYSIS OF QUESTION NO. 6

Dan can be charged with two counts of assault with intent to commit great bodily harm, one for shooting at Victor, and one count for shooting Val, via transferred intent. Dan can also be charged with two counts of felony firearm.

### Assault With Intent To Do Great Bodily Harm:

In connection with assault with intent to do great bodily harm, MCL 750.84 provides:

(1) A person who does either of the following is guilty of a felony punishable by imprisonment for not more than 10 years or a fine of not more than \$5,000.00, or both:

(a) Assaults another person with the intent to do great bodily harm, less than the crime of murder.

"The elements of assault with intent to do great bodily harm less than murder are: '(1) an attempt or threat with force or violence to do corporal harm to another (an assault), and (2) an intent to do great bodily harm less than murder.'" *People v Blevins*, 314 Mich App 339, 357 (2016) quoting *People v Parcha*, 227 Mich App 236, 239 (1997).

The crime of great bodily harm requires proof of specific intent. *People v Mack*, 112 Mich App 506, 611 (1981); *Parcha* 227 Mich App at 239; *People v Joeseype Johnson*, 407 Mich 196, 220 (1979). The requisite intent is to "do serious injury of an aggravated nature." *Blevins*, 314 Mich App at 357; see also *People v Troy*, 96 Mich 530, 537 (1883); *People v Howard*, 179 Mich 478, 488 (1914). The intent can be derived from the facts and circumstances, *People v Griffin*, 77 Mich 585, 587 (1889); established by "conduct as well as words," *Mack*, 112 Mich App at 611; or inferred from defendant's use of physical force. *People v Miller*, 91 Mich 639, 644 (1892).

'Actual injury' to a victim is not an element of the

offense. *People v Stevens*, 306 Mich App 620, 629 (2014). Intent cannot be established by "the mere fact" of an injury. *People v Smith*, 217 Mich 669, 674 (1922). However, an injury suffered by a victim may be indicative of the defendant's intent. *People v Cunningham*, 21 Mich App 381, 384 (1970).

Shooting a person in the arm manifests an intent to commit great bodily harm. *People v Townsend*, 120 Mich 661, 663-664, 666 (1899); *People v Montgomery*, 43 Mich App 205, 207 (1972).

#### Transferred Intent:

Where the defendant shoots at one intended victim and hits another, two assaults have occurred. The doctrine of transferred intent provides the requisite intent to fulfill the intent to the person shot. The necessary state of mind must exist but it need not be "directed at a particular person." *People v Lovett*, 90 Mich App 169, 172 (1979); *People v Hodges*, 196 Mich 546, 550-551 (1917). "Merely because he shot the wrong person makes his crime no less heinous. It is only necessary that the state of mind exist, not that it be directed at a particular person." *Lovett*, 90 Mich App at 172.

The requisite mens rea is fulfilled when Dan shot at Victor with the intent to do serious harm, but not kill him. *Montgomery*, 43 Mich App at 207. Dan's acts (conduct) and prior words to Victor can be used to establish intent.

It could be argued that since only one shot was fired, there is only one offense. However, a person, by a single act, can violate more than one criminal statute and be found guilty of multiple offenses. *People v Hanna*, 85 Mich App 516, 524 (1978). "Where crimes against persons are involved we believe a separate interest of society has been invaded with each victim and that, therefore, where two persons are assaulted, there are two separate offenses." *Lovett*, 90 Mich App at 174.

#### Felony Firearm:

Dan can also be charged with two counts of felony firearm, one as to each victim. MCL 750.227b. The elements are: i) that he possessed a firearm, ii) during the commission of each

felony of assault with the intent to commit great bodily harm less than murder, (one to Victor, the other to Val). *People v Morton*, 423 Mich 650, 658 (1985).