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Examination No. _____

504-001 CRIMINAL LAW
Semester I, 2004-05

UNM School of Law
Final Examination
Three Credits

Professor Norman Bay
Monday, December 13, 2004
1:30 p.m. to 5:00 p.m.

EXAMINATION FORMAT

1. **Laptop** computer users: start the Secureexam program by entering your examination number, course name, professor's name, and date of examination. Click "proceed" to enter the program. Type START in the next window that is displayed but do NOT press the enter key until the proctor says to begin the exam.
2. **Bluebooks** for writing: write in ink, legibly, skipping lines and only on one side of each page of the bluebook. On the front of each bluebook record the class name, professor's name, and date of examination. Be sure to number each bluebook in order.

Go to the exam check-in table at the conclusion of the exam & fill out the examination receipt.

PROFESSOR'S INSTRUCTIONS

1. This is a three-and-one-half-hour in-class examination. The question is designed to be answered in three hours. There is an additional half hour for reading the question carefully, and for organizing and preparing your answer.
2. In preparing your answer, you may consult your casebook, class handouts, class notes, and any outlines you have prepared yourself or in collaboration with your classmates. You may not consult commercial outlines or treatises.
3. This exam contains one question and includes a statutory appendix. Be sure to use the correct statutes, citing to the relevant section when appropriate. Assume that the facts set forth in the question are uncontested.
4. Check to see that there are six pages in your copy of the exam not including this page.

GOOD LUCK!

QUESTION

Jerry Lee, the rockabilly singing sensation, married his childhood sweetheart, the equally sensational country singer, Peggy Sue. Peggy Sue was not yet 14 years old when they wed, but already a seasoned performer. The following events occurred 6 months after the wedding in the City of Nashville, State of Nashville.

Peggy Sue wrote a song that quickly became a smash hit. It was called, "You Can Have My Husband, But Please Don't Take My Man." The song made Jerry Lee doubt Peggy Sue's loyalty and affection.

He confided his fears to his friend, Waylon. Waylon was also in love with Peggy Sue, although Jerry Lee did not know it, and his jealousy was stirred by the thought that Peggy Sue might have a new love interest. Jerry Lee fumed, "It's that handsome devil Garth. I've seen the way they look at each other. I've had my suspicions since he released his new song, "She Wears His Ring, But Her Heart Belongs To Me."

"It's just a song, " Waylon answered. "They're close because they're cousins."

"Phooey," replied Jerry Lee, "I bet you Peggy Sue has a lover."

Waylon suggested a way to find out if Garth was her lover. "Tell Peggy Sue you're on the road again tomorrow on business and won't be back until the next day. I'll go to your house and pretend to be Garth tomorrow night. If she rejects me, you'll know she's true. If she doesn't, you'll know the worst."

The plan worked perfectly. Waylon stood outside Peggy Sue's window the next night and softly serenaded her with "She Wears His Ring...." He whispered in his best imitation of Garth's voice, "I heard that Jerry Lee had to leave town in a hurry. Let me in." Peggy Sue, called out in response, "Garth, baby, what's wrong with your voice tonight. You got a cold?" Still more asleep than awake, she called, "Come on in here."

Waylon went in to the house and got into bed with Peggy Sue, who in her sleepy condition believed he was Garth. He began to make love to Peggy Sue, who murmured, "Garth, honey," and put her arms around Waylon. When she realized he wasn't Garth, she tried to push Waylon away, saying, "Stop, please

stop." Waylon ignored her cries of protest, and her not very forceful efforts to push him away, for she had been deeply asleep and was now frightened. After completing the sex act, Waylon left. Waylon had been wearing a mask to conceal his true identity, and a wig to simulate Garth's distinctive hairstyle. Peggy Sue never guessed that Waylon was the intruder.

An hour later, Jerry Lee met Waylon at the Oasis Bar and Grille as pre-arranged. Waylon told Jerry Lee that his fears had been well founded. Peggy Sue and Garth were lovers. Jerry Lee, a jealous man under any circumstances, flew into a towering rage. "I'm going to kill her! I won't let that bleating, no-talent Garth have her!"

Waylon had a brainstorm. He thought to himself, "If Jerry Lee kills Garth, Garth will be out of the picture. And if Jerry Lee goes to prison for killing Garth, I'll have Peggy Sue all to myself." So Waylon told Jerry Lee, "If only Garth was out of the picture, she would come to her senses and come back to you." Jerry Lee looked thoughtful. He said, "You know, I love Peggy Sue and I would really hate to have any harm come to her. I've already done something I feel bad about. I tested positive for AIDS two months ago. The doctor told me I should practice safe sex to avoid infecting my wife. I never told Peggy Sue because I was afraid she would leave me, and I never use a condom. I sure hope she's all right."

Then Jerry Lee's face brightened. He said, "I'll kill Garth, that tone deaf S.O.B. And I know just how to do it. I'll put rare curare poison on his guitar strings. It'll seep into his fingers and kill him next time he plays that awful song."

"That's an excellent idea," said Waylon. "If you go to the Everly Brothers' store, Gifts from Around the World, you can buy curare. I happen to know that 6 drops of curare absorbed through the skin is fatal."

Jerry Lee set off immediately because the store would close in half an hour's time. Jerry Lee asked Phil Everly for 6 drops of curare. "Gee," said, Phil, "We never get orders for more than 3 drops. People use the stuff to kill ants, and three drops will kill a whole colony of ants."

"Well, I have a really big ant problem," Jerry Lee said, winking at Phil, "so give me six drops. Waylon says you're always willing to help someone like me."

"Oh, of course," said Phil, doubling the usual price for curare, "if Waylon sent you," and sold him the six drops.

Jerry Lee headed immediately for Garth's residence, the Versailles Estate. On the way, without telling Waylon, he reconsidered his plan. "I want to get back at Garth," he thought, "but I don't want to kill him. He is after all a fellow musician. And besides, if I go to prison, I'll lose Peggy Sue."

Garth's Versailles Estate had several buildings, all of which looked like French chateaux, a look that Garth greatly admired. Although Jerry Lee thought he was sneaking into Garth's home, he actually broke into Garth's sound studio. Once inside, he found Garth's favorite guitar and poured three drops of curare on its strings, enough to make Garth very ill, but not enough to kill him.

As Jerry Lee was leaving the sound studio, he saw a horseshoe. "Aha!" he thought to himself, "Garth's lucky horseshoe!" Jerry Lee gleefully pocketed the horseshoe, not realizing that it was actually his lucky horseshoe – a 40th birthday present from Peggy Sue. (Unbeknownst to Jerry Lee, Peggy Sue had lent it to Garth before Garth's "Achy-Breaky-Momma-Don't-Make-Me Farewell Tour"). Even a cursory examination of the horseshoe would have revealed the engraving: "*Jerry Lee & Peggy Sue 4-Ever.*"

Next to the horseshoe was a copper spittoon. Jerry Lee thought it was his spittoon and hastily took that as well. "How inarnation did Garth get my spittoon?" he wondered. In fact, it was Garth's spittoon, not Jerry Lee's. A cursory examination of the spittoon would have revealed the engraving, "GARTH'S FAVORITE SPITTOON." Jerry Lee then returned home.

Peggy Sue went to Garth's to tell him her troubles. When she didn't find him home, she went to his sound studio. There, she picked up his guitar and played it to pass the time. Meanwhile, Jerry Lee had second thoughts about what he had done. He called Garth's house, disguised his voice, and left a message saying, "Whatever you do, Garth, don't touch the strings on your guitar, I'm sorry. It was a mistake." Because she was so much lighter than Garth, and only 14 years old, the 3-drop dose was enough to make Peggy Sue fall into a coma.

Half an hour later, Garth arrived at the studio, where he found Peggy Sue. He shook her once or twice. Unable to find a pulse, he became distraught and began to croon endlessly, "If you knew Peggy Sue, then you'd know why I feel blue! My Peggy! My Peggy Sue--ooh--ooh!" Unbeknownst to Garth, Peggy Sue's life could have been saved had he obtained prompt medical assistance for her. But he thought she was dead and feared the bad publicity that would result if

her body were found at Versailles Estate. Instead of calling 911, he decided to load her body into his truck and to dump it elsewhere.

Not having heard from either Peggy Sue or Garth, Jerry Lee became anxious and called Waylon to ask him to see what was going on at Versailles Estate. "You got it, pardner," Waylon said. As Waylon drove into the grounds, he saw Garth carrying Peggy Sue towards a truck. Peggy Sue's head lolled backwards and her arms dangled to the ground. Fearing that Garth had harmed her or was going to kill her, Waylon slammed on the brakes, grabbed the closest object (his famed 30-inch electric ukulele), jumped out of the car, and charged Garth, yelling a blood curdling whoop.

Garth, startled and in his haste to arm himself, dropped Peggy Sue. Alas! Peggy Sue fell headfirst onto the driveway! *THUNK!* Though in a fatal coma at that point anyway, she died instantly from head injuries suffered in the fall.

Garth retrieved the Uzi from his truck and emptied the 15-round clip, as he fired madly at Waylon. Not a single shot hit Waylon. (It was the first time Garth had ever fired a gun. Despite his success as a pop country star, he'd been born and raised in Brooklyn.) Instead, two stray rounds hit and killed Garth's next door neighbor, Merle, who was checking the hams in his custom smokehouse.

Waylon turned, ran back to his car, and sped away. Worried that the police would learn that Jerry Lee had bought curare from the Everly Brothers, Waylon resolved to stealthily remove all curare from the store. As Phil Everly helped L'il Abner (a blind, elderly customer) in the rear of the store, Waylon leaned across the counter and snatched the bottle of curare. Phil, however, saw him doing this and roared, "Hey, Waylon! What the hell do you think you're doing?" Waylon ran out of the store. Phil's ranting so upset L'il Abner that L'il Abner had a massive heart attack and died.

Assume that you are an assistant district attorney in Nashville. What charges would you bring against the characters and what problems do you foresee in obtaining convictions? Please limit your consideration to offenses included in the Appendix to this examination, as well as any applicable common law defenses. You should be aware that the Model Penal Code sometimes influences Nashville Courts.

[End of Question; see Statutory Appendix]

STATUTORY APPENDIX

NASHVILLE CRIMINAL CODE (portions)

Sec. 101. Murder. Murder is the unlawful killing of a human being with malice aforethought. All murder which is perpetrated by means of a destructive device, explosives, poison, lying in wait, torture, or by any kind of willful, deliberate, and premeditated killing, or which is committed in the perpetration or attempt to perpetrate arson, rape, robbery, burglary, mayhem, or train wrecking is murder in the first degree, and all other kinds of murder are of the second degree.

Sec. 102. Manslaughter. Manslaughter is the unlawful killing of a human being without malice aforethought. It is of two kinds:

- (a) Voluntary -- upon a sudden quarrel or heat of passion.
- (b) Involuntary -- producing death, in an unlawful manner, without due caution and circumspection.

Sec. 110. Simple Assault. A person who attempts to cause physical injury to another, coupled with the present ability to cause physical injury, commits simple assault, a misdemeanor punishable by up to six months imprisonment.

Sec. 111. Aggravated Assault. A person who willfully causes serious physical injury to another by means of a deadly or dangerous weapon commits aggravated assault, a felony punishable by up to ten years imprisonment.

Sec. 114. Reckless Endangerment. A person who recklessly engages in conduct that places or may place another in danger of death or serious physical injury is guilty of reckless endangerment, a misdemeanor punishable by up to one year imprisonment.

Sec. 121. Rape. A male who has sexual intercourse with a female forcibly and against her will is guilty of rape, a felony punishable by up to 20 years imprisonment.

Sec. 122. Statutory Rape. A person who has sexual intercourse with another person who is less than fifteen years old is guilty of statutory rape, a felony punishable by up to 10 years imprisonment.

Sec. 123. Marriage as a Defense. It shall be an affirmative defense to statutory rape that the defendant was married to the victim at the time of the offense.

Sec. 200. Burglary. A person who breaks and enters the dwelling house of another with the intent to commit a felony therein is guilty of burglary, a felony punishable by up to 10 years imprisonment.

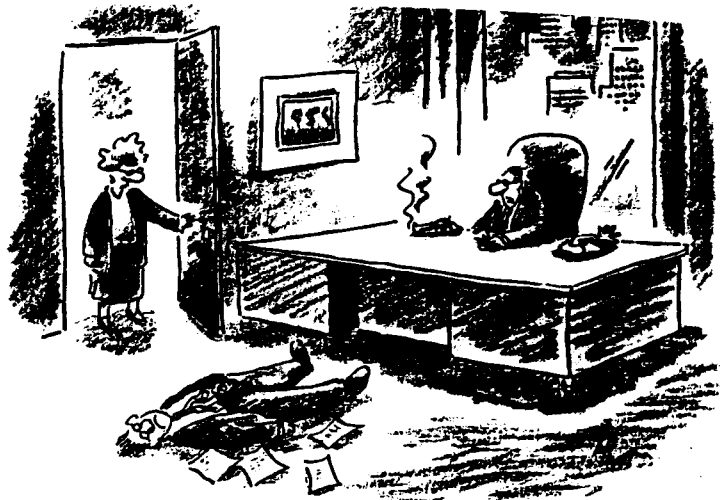
Sec. 225. Robbery. Whoever by force, violence, or intimidation takes from another person anything of value is guilty of robbery, a felony punishable by up to fifteen years imprisonment.

Sec. 250. Larceny. Whoever unlawfully takes and carries away the property of another with the intent to permanently deprive him of it is guilty of larceny, a felony punishable by up to five years imprisonment.

Sec. 400. Attempt. A person is guilty of attempt to commit a felony, if, acting with the kind of culpability otherwise required for the commission of the felony, he or she purposely does or omits to do anything which is a substantial step in a course of conduct planned to culminate in the commission of the felony.

Sec. 500. Complicity. A person is an accomplice if, with the mens rea required of a principal, he or she advises, encourages, or assists the principal in the commission of a felony or misdemeanor. Accomplices are punished as if they were principals in the commission of the offense.

Sec. 520. Conspiracy. Conspiracy is an agreement between two or more persons to commit a crime. Conspiracy is a felony punishable by up to 10 years imprisonment.



"We could argue forever about whether or not that was justified."