

CRIMINAL LAW MIDTERM EXAMINATION - SPRING 2007 - Prof: JOHNSON

1. You will have NINETY MINUTES to complete the examination.
2. Please write only on one side of the paper, use ink, and write legibly.
3. This is a closed book exam.
4. The midterm exam consists of two questions, each of equal weight in grading.

Question #1

A feud erupts between two gangs: the Monarchs and the Kings. At 10:30 a.m. on March 5, Roderick, a member of the Monarchs, drives to the home of Big Jim, a member of the Kings, and fires a gun at the house. One of the bullets enters the kitchen, where it strikes Big Jim's mother. Big Jim, who was home at the time, hears the shots and hears his mother cry out. He runs into the kitchen and sees his mother lying bleeding on the floor. He sees that she has been seriously wounded. Feeling rage, Big Jim tells her that he will "find the one who did this," and he rushes out of the house to see if he can see who fired the shots. By the time he does so, though, Roderick is gone. Big Jim runs down the street to look for the shooter, and encounters Shorty, another member of the Kings. Big Jim breaks down in tears when he sees Shorty, and he tells him what has happened. Big Jim sits in Shorty's car while Shorty talks to people on the street who might have seen the shooter.

After twenty minutes of talking to witnesses, Shorty comes to suspect that Janet, a member of the Monarchs, was the shooter. Shorty then drives himself and Big Jim across town to Janet's house. Meanwhile, Big Jim's mother has tried to telephone an ambulance, but passes out from loss of blood before she can do so. The bullet that struck her did not damage any vital organs, and immediate medical care might have saved her life, but she dies within thirty minutes of the shooting from loss of blood. Forty minutes after the shooting, Big Jim and Shorty arrive at Janet's house. By this time, Big Jim has become almost catatonic, in shock over his mother's shooting. Because no car is parked outside the house, because Shorty doesn't see anybody inside when he circles the house looking in windows, and because nobody answers his knock on the door, Shorty concludes that Janet isn't home. After waiting for ten minutes for her to return, he decides to fire shots into her house for the purpose of intimidation, and then to return later in the hope of finding her home and killing her. Shorty then shoots into the house. Unfortunately, Janet's ten-year old brother is home sick from school. One of the bullets strikes him, killing him. At 2:00 p.m. that afternoon, Big Jim and Shorty, while driving around, happen to see Janet walking along the street. Big Jim rouses himself from his stupor, jumps out of the car and shoots Janet, killing her.

The jurisdiction follows the common law approach to the definition of homicide in all respects, except that it further subdivides murder into first degree and second degree, per the following statutes.

Section 651 (First Degree Murder)

A person is guilty of murder in the first degree when:
(1) with a premeditated intent to cause death, he or she causes the death of a human being:

(2) with intent to cause death, he or she causes the death of a police officer, judge, or other law enforcement official, while such official is engaged in the performance of official duties;

(3) he or she kills using poison, an explosive device, or torture; or

(4) he or she causes the death of a human being while engaged in the commission, attempt to commit, or flight after committing, kidnapping, rape, armed robbery, or burglary.

Section 652 (Second Degree Murder)

All other murder, as defined at common law, shall be second degree murder.

You are an assistant in the prosecutor's office. Big Jim and Shorty have been arrested. Roderick remains at large. Thus, the chief prosecutor has asked you to identify what homicide charges could be brought against Big Jim and/or Shorty, in connection with the scenario described above. With respect to each possible charge, please identify likely defense arguments. To the extent that you need further information to provide a definitive answer to the question, please indicate what information you need.

Question #2

Police officers on routine patrol on a residential street in Pierce City see a person lying on the ground in the driveway in front of a house. Near the person in the driveway is a battery-operated, electrically-powered wheelchair. Officers awaken the person, who spontaneously says he "must have taken too much medicine." He identifies himself as "Sam Suspect," and asks the police to help him get back into his wheelchair. Suspect is unable to walk without the assistance of a wheelchair. Believing Suspect to be intoxicated, and when their investigation reveals that Suspect does not live in the house in front of which they find him, the police arrest Suspect. The prosecutor charges him with driving while intoxicated, under the statute below. A breath test shows that Suspect has a blood alcohol concentration of 0.04. Suspect testifies at trial that while proceeding down the sidewalk on the day in question, he suddenly felt very strange. As soon as the feeling came upon him, he went toward the house, planning to knock on the door to ask for help. Before reaching the door, he passed out in the yard, where the police later found him.

Driving while intoxicated

- (A) A person commits an offense if the person is intoxicated while operating a motor vehicle in a public place.
- (B) "Intoxicated" means not having the normal use of mental or physical faculties by reason of the introduction of alcohol, a controlled substance, a drug, a dangerous drug, a combination of two or more of those substances, or any other substance into the body; or having an alcohol concentration of 0.08 or more.
- (C) "Motor vehicle" means a device in, on, or by which a person or property is or may be transported or drawn on a road, except a device used exclusively on stationary rails or tracks.
- (D) The offense shall be a misdemeanor, in the case of persons who have no more than two prior convictions. The offense shall be a felony, punishable by no less than ten and no more than fifteen years in prison, for persons who have three or more prior convictions under this statute.

At the time of his arrest, Suspect, an alcoholic, has three prior convictions for driving while intoxicated. Assume that the prosecution has established the facts as stated above, and that the jurisdiction has enacted the Model Penal Code in its entirety. You are the judge who presided over the bench trial. Assume that the parties have made all appropriate arguments. What verdict do you return? Write an order explaining your

reasoning as to all of the elements of the crime. If you convict, what sentence will you impose? Explain your reasoning.