

## DISCUSSION FOR QUESTION 1

Bob can be charged with burglary of both Carl's and Al's homes and attempted larceny. He would raise the defense of voluntary intoxication as to all crimes.

### I. Burglary

Under the common law, burglary is the unlawful breaking and entering of a dwelling of another at night with intent to commit a felony therein. *See Perkins v. State*, 788 So.2d 826 (Miss. App. 2001); *State v. Surcey*, 139 N.C. App. 432, 533 S.E.2d 479 (2000); *State v. Kyle*, 333 N.C. 687, 430 S.E.2d 412 (1993); Wayne R. LaFave and Austin W. Scott Jr., *Substantive Criminal Law*, Vol II § 8.13 at 464 (1986); Rollin M. Perkins, *Perkins on Criminal Law*, 2d.Ed. at 192 (1969).

#### A. Burglary of Carl's house

Bob entered Carl's house at night by breaking a glass back door. He thought he was in Al's house and entered the house with the intent of committing the common law felony of battery against Al. The fact that Bob entered the wrong house does not undermine the conclusion that he committed burglary when he broke into Carl's house. *See State v. Jordan*, 651 S.E.2d 917 (N.C.App. 2007); *Com. v. Brzezinski*, 2007 WL 4967503 (Pa.Com.Pl. 2007). Moreover, the actual commission of the intended felony is not an essential element of the crime of burglary. *See State v. Jordan*, 651 S.E.2d 917 (N.C.App. 2007); *State v. Brady*, 299 N.C. 547, 564, 264 S.E.2d 66, 76 (1980)(a burglary "has been committed even though, after entering the house, the accused abandons his intent to commit the designated felony"). Thus, Bob is guilty of burglary even though he did not commit the intended felony (battery against Al) while in Carl's house.

#### B. Burglary of Al's house

Bob entered Al's house through a window at night with the intent to steal his piano. Again, the fact that he did not actually commit the intended felony is irrelevant. He is thus guilty of burglary of Al's house.

### II. Attempted Larceny

Initially, the better examinees might point out that the burglary of Al's house was complete after Bob broke into the house, and that the attempted commission of the intended felony is a separate crime. Thus, Bob can be convicted of both burglary and attempted larceny. *See State v. Cunningham*, 140 N.C.App. 315, 536 S.E.2d 341 (2000).

Larceny is the unlawful taking and carrying away (asportation) of the personal property of another without consent and with the intent to permanently (or for an unreasonable time) deprive the owner of his property. *See Commonwealth v. Mills*, 436 Mass. 387, 764 N.E.2d 854 (2001); LaFave and Scott Jr., *supra* Vol II § 8.2 at 333; Perkins, *supra* at 334.

At common law, to be convicted of criminal attempt, the defendant must: (1) specifically intend to commit the crime, and (2) commit an overt act in furtherance of that intent other than mere preparation. *See e.g., Grill v. State*, 651 A.2d 856 (Md. 1995); *State v. Mayo*, 443 S.E.2d 236 (W.Va. 1994). Bob intended to take and carry away Al's piano to deprive Al of it. However, Bob was unable to move the piano. Because Bob did intend to commit larceny, and he took substantial steps toward completing the offense that went beyond mere preparation (breaking the window and trying to move the piano), Bob is guilty of attempted larceny.

### **III. Defense of Voluntary intoxication**

Voluntary intoxication is not a defense to the charge, but a denial that an element of the crime has been met. By contrast, when a defendant raises a defense to a charge, he admits that the elements of the offense have been met, but claims that his conduct was justified or was not criminal because of the application of the defense (for example, self-defense). *See People v. Villarreal*, 131 P.3d 1119, 1125 (Colo. App. 2005) (defendant was not entitled to instruction on defense of voluntary intoxication where it was inconsistent with her theory of defense that she was not the person who attacked the victim).

Evidence of the defendant's voluntary intoxication may be introduced when he is charged with a crime that requires purpose (intent or knowledge) to establish that the intoxication prevented him from formulating the requisite intent. *State v. Robertson*, 138 N.C. App. 506, 508, 531 S.E.2d 490, 492 (2000). Thus, it may negate the intent element of specific intent crimes, but not general intent crimes. *See e.g.*, Cal. Penal Code § 22(b) ("Evidence of voluntary intoxication is admissible solely on the issue of whether or not the defendant actually formed a required specific intent . . . when a specific intent crime is charged"); § 18-1-804(1), C.R.S. ("in any prosecution for an offense, evidence of intoxication of the defendant may be offered by the defendant when it is relevant to negate the existence of a specific intent if such intent is an element of the crime charged"); *People v. Bachofer*, \_\_\_ P.3d \_\_\_, \_\_\_ (Colo. App. 2008); 2 *Wharton's Criminal Law* (15<sup>th</sup> Edition) § 111.

#### **A. Burglary of Carl's House**

Burglary is a specific intent crime. *See Velasquez v. Com.*, 661 S.E.2d 454 (Va. 2008); *State v. Spurlock*, \_\_\_ So.2d \_\_\_ (2008 WL 2190806) (La. App. 5 Cir., 2008); *State v. Turnage*, 660 S.E.2d 129 (N.C.App. 2008). It is thus a crime to which the voluntary intoxication defense could apply. However, Bob's assertion of the defense with respect to the charge of burglary of Carl's house will be unsuccessful.

The facts indicate that Bob got drunk to "give himself a good excuse for what he was about to do." Thus, he had decided what he was going to do, and thus formed the intent to commit the burglary before he became intoxicated. In fact, he formed the intent to commit the crime, then got drunk for the purpose of avoiding criminal liability. Thus, Bob's intoxication did not interfere with his ability to form the intent to commit the crime and is not a defense to this charge.

## **B. Burglary of Al's House and Attempted Larceny**

Attempted Larceny is also a specific intent crime to which the defense of voluntary intoxication could apply. See *State v. Pascal*, \_\_\_ A.2d \_\_\_, \_\_\_ (2008 WL 2581585, Conn.App. 2008)(larceny is a specific intent crime); *State v. LaCroix*, 911 A.2d 674, 678(R.I. 2006)(“diminished capacity claim” applies to specific intent crimes such as larceny); *State v. Kiles*, 175 Ariz. 358, 370, 857 P.2d 1212, 1224 (1993) (“[A]ttempt is a specific intent crime and by definition involves intentional conduct.”); *State v. Miller*, 123 Ariz. 491, 493, 600 P.2d 1123, 1125 (App.1979) (“In order to sustain a conviction for attempt there must be proof of a specific intent on the defendant's part to commit the substantive crime.”)..

Although Bob formed the intent to break into Al's house to beat him up before becoming intoxicated, he formed the intent to break into Al's house to steal his piano after he got drunk (on the way home from Carl's house). Thus, his intoxication could have prevented him from forming the necessary intent to break into Al's house for that purpose. Likewise, his intoxication could have interfered with his ability to form the intent to commit larceny and with his commission of overt acts in furtherance of that intent. Whether voluntary intoxication would be a successful defense to the burglary of Al's house and attempted larceny charges is a question of fact for the jury to decide. See *State v. Kessler*, 276 Kan. 202, 210, 73 P.3d 761, 768 (2003); *State v. May*, 79 P.3d 795, 795(Kan. App. 2003); *State v. Robertson*, *supra*, 128 N.C.App at 508, 531 S.E.2d at 492; *Bryant v. State*, 83 Md.App. 237, 574 A.2d 29, 35 (1990).

