Pre-Writing Analysis
Working with Rules and Facts

Teddy Washburn’s Gun¹

This exercise takes you through the ground work needed to make a prediction and helps you organize raw materials – rules, facts, statutes, cases – into an outline before you begin to write out that analysis.

Facts

In his prime, Gorilla Morrell was often on the bill at Friday Night Wrestling. Now he is reduced to hanging around Washburn’s Weights Room & Gym, which is next door to Washburn’s Bar & Grill. Gorilla is good for Teddy Washburn’s business because customers in the Weights Room try to take Gorilla on. When this happens, customers from the Bar wander into the Weights Room to watch. There they order more drinks, which Washburn passes through a hole he has cut through the wall. Afterward, Gorilla, his adversary, and the spectators tend to adjourn back to the Bar, where the spirit of conviviality usually leads to games of billiards accompanied by further orders of food and drink.

Washburn has let Gorilla build up a bill of $283.62, dating back over several weeks. Last night, they had words over the matter. Gorilla took a swing at Washburn, who came out from behind the bar and chased Gorilla out into the street. There Gorilla took another swing at Washburn, and Washburn, demanding his money, pulled out a gun (which he bought and for which he has a license).

Gorilla grabbed for the gun, but it fell out of Washburn’s hand, sliding five or six feet along the sidewalk and coming to rest at the feet of Snare Drum Bennett, a mechanic who was returning from work. Bennett happened onto this scene only in time to hear Washburn demand money and to see him pull out the gun and have it knocked from his hand.

Bennett, Washburn, and Gorilla looked at the gun, then at each other, and then at the gun again. Finally, Bennett crouched down, picked up the gun, checked to make sure the safety was on, and put it in her coat pocket. “Washburn,” she said, “you haven’t paid me yet for the front end work I did on your car.”

“I will,” said Washburn.

“It’s $575,” said Bennett, “and it’s been three weeks. I think you should go back inside. You ought to pay your own debts before you accuse other people of not paying you.”

“How can I pay you,” exclaimed Washburn, “if he won’t pay me?”

“That’s your problem,” said Bennett, “I’m holding on to the gun. You can’t seem to handle it right now, and I want my money.”

At that point, Gorilla clobbered Washburn in the face and sent him staggering. Bennett turned around, walked a half-dozen steps, and began to turn into a dark alley. Washburn started to get up, called out “Hey, you!” and took a step in Bennett’s direction. Bennett took the gun from her coat, pointed it at Washburn, smiled, and said, “Back off, bucko.”

Washburn froze, and Bennett walked into the alley. As soon as she was out of sight, she dropped the gun into an open but full trash dumpster. The dumpster belongs to a grocery store and is about five feet inside the alley, which in turn is about twenty feet from the front door of Washburn’s bar.

An hour or so later, the police came to Bennett’s home and arrested her for robbing Washburn of his gun. Bennett told them where she had dropped it. The police went straight to the dumpster but found nothing inside, not even the trash that had muffled the gun’s fall.

Statutes

Criminal Code § 10: No person shall be convicted of a crime except on evidence proving guilt beyond a reasonable doubt.

Criminal Code § 302: A person commits robbery by taking, with the intent to steal, the property of another, from the other’s person or in the other’s presence, and through violence or intimidation. A person does not commit robbery if the intent to steal was formed after the taking.
Cases

Butts v. State

The defendant had worked for the Royal Guano Company for two and a half days when he was fired. He demanded his wages but was told that he would have to wait until Saturday, which was payday. He was ordered off the premises and left. After a few hours, he returned with a gun, found the shift foreman, and demanded his wages again. The foreman told him to come back on Saturday. (The company agrees that it owed the defendant wages, but insists that he wait until payday to receive them.) When the foreman refused, the defendant showed the gun and demanded again. The foreman then paid the amount the defendant requested.

An intent to steal is an intent to deprive the owner permanently of his property. There is no intent to steal if the defendant in good faith believes that the property taken is the defendant’s own property and not the property of somebody else.

The defendant could reasonably have supposed that he was entitled to his pay when his connection with the company was severed. He was wrong because the money was the property of the company until the company paid it to him. But he acted in good faith and therefore did not have the intent to steal (although he may be guilty of crimes other than robbery).

Green v. State

We reverse the defendant’s conviction for robbing Mrs. Lillie Priddy.

Although there was evidence that the defendant assaulted Mrs. Priddy, that alone does not prove robbery. Mrs. Priddy testified as follows: She was walking along a road and came upon the defendant, who struck her so that she lost consciousness. After a minute or two, her mind cleared, and she saw the defendant standing in the road and her purse on the ground about five feet from each of them. The contents of the purse were spilled out on the ground. She kicked him and ran, never seeing her purse again.

The issue is whether there was a “taking” sufficient to support a charge of robbery. A taking is the securing dominion over or absolute control of the property. Absolute control must exist at some time, even if only for a moment.
If Mrs. Priddy was unconscious, she could not know whether the defendant ever had control of her purse, or whether it simply fell to the ground and was later taken away by someone else. None of its contents were found in the defendant’s home. The testimony showed a very violent assault and battery upon her by the defendant, but does not establish a robbery.

**State v. Smith & Jordan**

The defendants overpowered and disarmed the complainant of his knife. He had surprised them after they broke into his gas station. With the complainant’s knife (but not the complainant), they got into their car and drove off. Later, the police found the defendants standing by their wrecked car. The complainant’s knife was on the ground nearby. The defendants were convicted of robbery.

To convict for robbery, the defendant must have intended permanently to deprive the complainant of the taken property. If a defendant takes another’s property for the taker’s immediate and temporary use with no intent permanently to deprive the owner of his property, he is not guilty of robbery.

It would be unreasonable to assume that the defendants, fleeing from arrest for the crime of breaking into the gas station, had any expectation of returning the knife. They would have been captured if they had tried. For the purpose of decision here, we assume that defendant took the knife “for temporary use” and that after it had served the purpose of escape; they intended to abandon it at the first opportunity lest it lead to their detection. That, however, would leave the complainant’s recovery of his knife to mere chance and thus constitute a reckless exposure to loss that is consistent with an intent permanently to deprive the owner of his property. In abandoning it, the defendants put it beyond their power to return the knife. When, in order to serve a temporary purpose of one’s own, one takes property (1) with the specific intent wholly and permanently to deprive the owner of it, or (2) under circumstances which render it unlikely that the owner will ever recover his property and which disclose the taker’s total indifference to his rights, one takes with the intent to steal.

**Instructions**

1. You have been asked to determine whether Bennett is likely to be convicted of robbing Washburn of his gun. Make a list of the rules. Disassemble the rules.

2. Reassemble the rules when different authorities are addressing the same issue. Some rules may only be addressed by one authority, others by more than
one. Make an outline of all the reassembled rules including a notation of the passages from the authorities that prove the reassembled rule.

2. Does each rule dispose of the issue? What does it mean if you cannot find a rule that would dispose of the issue?

3. What facts in Bennett’s story would each party emphasize and why?

4. Now take your outline of the reassembled rules and add the facts that each party would emphasize and why they would emphasize them directly after each reassembled rule.