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Answer Outline for Criminal Law Exam

I. Question One—Liability of Mr. Orange Under New York Homicide Statutes

A. Killing of the Woman Whose Car Was Hijacked

1. Potential Charges

Did Mr. Orange intend to kill her? If so, there is a potential murder charge for plain-old **intentional killing**. Arguments in support: He shot her at close range. He knows how guns work. He was jacking her car, showing a willingness to mistreat her. Arguments in opposition: The fact pattern does not say if he intended to kill, where he shot her, or how many times.¹ He may have been stunned by his own gunshot wound and unable to form requisite intent. If not intentional murder, his intentional shooting of the woman is almost certainly first-degree manslaughter. Note that killing someone for a good reason does not negate intent. For example, if Mr. Orange chose to kill the woman so that he could stay undercover (or prevent Joe Cabot from committing more crimes, etc.), he still “intended” to kill her, even if he thought he had a good reason. The same is true in more clear cut self-defense cases, in which self-defense provides a justification for intentional killing, as opposed to making the killing “unintentional.”

Felony Murder: Was Mr. Orange in flight from the bank robbery? Yes, and he may even have committed all of the *actus reus* elements of robbery; however, he was there as an undercover officer and has a justification defense for his actions.² Accordingly, he’s not on the hook for **felony murder** with the bank robbery as a predicate felony. There is, however, another robbery—the forcible taking of the woman’s car.³ You will recall that robbery is the stealing of property by force.⁴

Unlike Mr. Orange’s presence at the bank robbery, which was a legitimate police activity, it is much more difficult to argue that Mr. Orange has the authorization to hijack a civilian’s car. Indeed,

¹ In response to arguments from a few of you suggesting that Mr. Orange did not intend to kill her, I wrote things on certain exams like “what about his intention to cause grievous bodily harm”? I do not mean to suggest that an intention to cause such a wound (absent actual intent to kill) satisfies New York’s intentional murder provision, and I stopped writing this on exams when I realized the potential for confusion. I meant only that his intentional shooting from close range, which resulted in death, is pretty good evidence of intent to kill. Enough of you questioned this intent, however, that I’m willing to admit that his intent is not obvious from the exam fact pattern, even if it initially seemed clear to me.

² If you disagree, imagine the result in the following scenario: A police officer goes undercover to a bank robbery, and the real robbers are all arrested at the scene just as the cops plan. A prosecutor then charges the undercover cop with robbery. If the undercover is guilty of robbery, will anyone serve as an undercover police officer again? Consider the arguments at trial concerning the officer’s mental state, not to mention her public authority defense. (On a more practical level, even if you disagree with my assessment of Mr. Orange’s liability for bank robbery, his liability for the car robbery is far less ambiguous and would be the predicate felony of choice for any prosecutor.)

³ Surely Mr. White is guilty of robbery for the car incident. The facts say of Mr. Orange and Mr. White, “They hijack a car.” Mr. White has no credible defenses to this robbery charge. As discussed *infra* at note 8 and accompanying text, it is nearly impossible to read the fact pattern without concluding that Mr. Orange is guilty of robbery, either through his own actions or as an accomplice to Mr. White.

⁴ Under N.Y. Penal Law § 160.15, forcible stealing becomes robbery in the first degree if the robber is “armed with a deadly weapon.” Mr. Orange was carrying a gun, as was Mr. White.

the result of his carjacking (an officer gut shot and an innocent woman dead) demonstrates the problems. If Mr. Orange is a car robber, then his shooting of the woman constitutes second degree felony murder even if he did not intend to kill when he shot her.

Depraved Indifference Murder: Alternatively, one could describe Mr. Orange's decision to carjack as reckless conduct "evinced depraved indifference to human life." Of course, his conduct cannot demonstrate depraved indifference to human life if it was legitimate. Accordingly, if Mr. Orange is guilty of depraved indifference murder he is almost certainly also guilty of felony murder. It would be difficult to argue that although Mr. Orange did not rob the woman whose car he hijacked he nonetheless somehow acted with depraved indifference to human life when taking her car.⁵

Felony Murder in the First Degree: If Mr. Orange was in flight from or was committing a robbery when he killed the woman, he could be guilty of murder in the first degree. Note, however, that Section 125.27(1)(a)(vii) is not a "true" felony murder statute, as it deals only with **intentional** killings related to a felony (either carried out by the defendant or performed at his command by a confederate). Accordingly, one cannot argue that Mr. Orange lacked the intent to kill necessary for a conviction under Penal Law § 125.25(1) but could be guilty under Section 125.27(1)(a)(vii). Mr. Orange will be guilty of first-degree murder of the woman only if he *both* (1) killed her intentionally *and* (2) was committing, or was in flight from, a robbery.

Bottom line: The prosecution can likely prove all the elements needed to convict Mr. Orange of murder, either second-degree (by showing it was intentional or related to a felony) or first degree (by showing it was intentional **and** related to a felony). Felony murder in the second degree does not require an intent to kill, making this prosecution the easiest.

Even if (in your view) the facts do not clearly show Mr. Orange was either committing a robbery when he carjacked or intending to kill the woman when he shot her,⁶ then the prosecution can still prove the elements of first degree manslaughter (intentional serious injury that causes death). If it seems unclear whether he intended even to injure her, then the prosecution can likely establish that his decision to carjack was reckless, making him guilty of manslaughter in the second degree.

⁵ Although I did not expect you to know (much less recite) the recent New York case law on depraved indifference murder, I note that the past few years have seen a flurry of decisions from the Court of Appeals construing this provision and sharply limiting its use. *See* New York Practice Series, *Chapter 6. Homicide—Article 125, § 6:13. Depraved indifference murder* (available on Westlaw at NYPRAC-CRIM § 6:13) ("In a series of cases decided between 2003 and 2006, the Court of Appeals dramatically changed the law of depraved indifference in three critical respects."). For purposes of the exam, all I expected you to know was that if Mr. Orange's conduct qualifies as depraved indifference murder, then a prosecution for felony murder (based on the robbery of the woman's car) is nearly certain to succeed. Also, it was a mistake to propose extreme emotional disturbance as an affirmative defense to depraved indifference murder without noting that Section 125.25 precludes the defense. *See infra* note 7.

⁶ I disagree with this conclusion, but it's not crazy. If you adopted this conclusion, I evaluated the rest of your answer assuming it is correct (*i.e.*, you should consider the first degree manslaughter charge).

2. Potential Defenses

If the prosecution can prove all elements of intentional second degree murder, Mr. Orange may present a defense of extreme emotional disturbance (“EED”).⁷ If successful, the charge would be reduced from murder to manslaughter; EED is not a complete defense. Facts in favor include the chaotic bank robbery, during which Mr. Orange saw innocent civilians killed by Mr. Blonde, the subsequent fatal shooting of Mr. Brown while Mr. Orange was in a car driven by Mr. Brown, and the shootings of multiple police officers, some of whom may have been known personally to Mr. Orange. In addition, Mr. Orange’s own gunshot wound might be relevant. Facts in opposition include Mr. Orange’s position as a police officer, which might call for a higher standard; we don’t want cops killing civilians in stressful situations.

Unlike the EED defense, which if successful knocks a murder charge to manslaughter but does not eliminate all criminal liability, certain justifications can completely exonerate someone otherwise guilty of murder. Mr. Orange could advance a **self-defense** argument, saying he shot in response to the woman’s use of deadly force. As the victim of a robbery, however, the woman was entitled to use deadly force to defend herself. *See, e.g., Goetz*. In addition, she was not the victim of some trivial form of robbery that might give rise to questions of whether robbery victims should be permitted to resist with deadly force. Rather, she was carjacked by two men, each of them armed, who were in flight from a scene of deadly mayhem. While one can imagine a scenario in keeping with the exam fact pattern in which her use of a gun was unreasonable,⁸ such scenarios would be quite farfetched. If the woman was reasonable in shooting Mr. Orange to resist being robbed, Mr. Orange would not be allowed to respond with deadly force.

Mr. Orange might also advance a defense of **public authority**. As discussed above, no one should have proposed this defense without considering the policy implications of allowing police officers to carjack (and, if it comes to it, gun down) innocent civilians. Because of the harrowing implication—a police officer would be allowed to kill people as he sees fit in the hope of capturing a criminal—this defense is highly unlikely to prevail here.

Other defenses that might be advanced, with limited likelihood of success, are **necessity (a.k.a. “justification”)** and **duress**. The necessity defense depends on the same logic as the public authority argument, *i.e.*, that Mr. Orange needed to carjack (and, if necessary, kill) a civilian to remain undercover and catch Joe Cabot. The duress defense has problems in that (1) it is not normally allowed as a defense to murder, although New York’s statute (like the MPC and unlike the majority

⁷ Note that the EED provision in Penal Law § 125.25 (murder in the second degree) provides this defense only for intentional murder, *not* for depraved indifference murder or felony murder. *See People v. Fardan*, 82 N.Y.2d 638, 642 (1993) (noting “clear statutory language”). However, those of you who discussed First Degree Murder (under Section 125.27(1)(a)(vii)) were welcome to raise EED as a potential affirmative defense. *See* N.Y. Penal L. §125.27(2)(a) (allowing EED defense to “any” charge under §125.27(1), which includes the first-degree felony murder provision), *see also, e.g., People v. Harris*, 98 N.Y.2d 452, 472-73 (2002) (discussing jury’s rejection of proffered EED defense to charges of first-degree murder with robbery as predicate felony).

⁸ For example, perhaps neither Mr. White nor Mr. Orange brandished a weapon (despite both having guns), and perhaps neither of them was covered in Mr. Brown’s blood. Perhaps the woman had no independent knowledge of the chaotic escape attempt in progress at the time of her carjacking. Further, perhaps neither of the carjackers threatened her with serious bodily harm or otherwise acted to create a reasonable belief on her part that she might face serious bodily harm if she refused to surrender her car. If this sounds more than a little strained, perhaps it is simply impossible, or close to it, to jack someone’s car without creating in them a reasonable fear of serious bodily harm. Try to imagine someone seizing your car without making you fear for your safety.

view at common law) does not prohibit the possibility, (2) Mr. Orange created his own problems when he decided to participate in a carjacking, and (3) all the reasons that a public authority defense will likely fail are relevant here. If the theory is that Mr. White applied the duress (*i.e.*, that Mr. White would have killed Mr. Orange if he didn't participate in the hijacking), a prosecutor will ask why Mr. Orange did not simply arrest Mr. White after Mr. Brown crashed the initial getaway car. After all, police already knew the location of the rendezvous point (as Mr. Orange revealed to the uniformed officer later). If Mr. White resisted, Mr. Orange could have shot him—a criminal resisting arrest and in flight from a bank heist—instead of a civilian.

B. Killing of Mr. Blonde

This killing is substantially simpler to analyze than that of the hijacked woman. Shooting Mr. Blonde repeatedly in the chest, Mr. Orange clearly killed him intentionally.⁹ Accordingly, there is a potential charge of murder in the second degree.

Unlike the killing of the woman, the killing of Mr. Blonde does not create any potential liability for felony murder, either in the first or second degree, because Mr. Blonde was a participant in the only potential felony that might give rise to such liability—the bank robbery.¹⁰

The intentional second degree murder charge might be lessened with an EED defense (for similar reasons that this defense might be relevant to the killing of the woman). More important; Mr. Orange has better—complete—defenses available. Mr. Blonde had attacked a helpless police officer and was about to murder him. Accordingly, Mr. Orange was fully justified in killing Mr. Blonde to save the uniformed officer, and he could base his justification either on **defense of others** (a.k.a. **defense of a third party**) or **public authority** (even more than you and I, a police officer has authority, albeit not unlimited authority, to use force to stop crimes in progress). This case is not a close one, and Mr. Orange should face no criminal liability for killing Mr. Blonde.

II. Question 2—Liability of Mr. White Under the Common Law of Crimes

A. Mr. White's Failure to Bring Mr. Orange to a Hospital

This question raises the issue of liability for omissions. Generally, a failure to act is not punishable at common law. To find Mr. White guilty of a crime based on his failure to provide medical care to Mr. Orange, the prosecution must establish that Mr. White owed a duty to Mr. Orange that was breached by his failure to secure help.

The primary potential sources of this duty would be (1) that Mr. White contributed to Mr. White's peril, perhaps by shooting at cops before the carjacking or by participating in the carjacking itself, and (2) that Mr. White assumed responsibility for Mr. Orange by taking him away from others who might help him. The result will depend in part on what standard of care one criminal owes to a

⁹ One might claim that Mr. Orange's true intent was not to kill Mr. Blonde, but only to save the other policeman's life—but like the argument discussed above, this claim seems to relate more to Mr. Orange's *reasons* for intentionally killing Mr. Blonde than to whether he did intend to kill Mr. Blonde. And as above, even if correct, this claim would only reduce the degree of homicide from second-degree murder to first-degree manslaughter, as Mr. Orange indisputably intended to cause serious injury.

¹⁰ Even if Mr. Orange was a "participant" in the heist—which is dubious, as noted above—Mr. Blonde was a fellow participant in the crime, meaning his death cannot be charged as felony murder.

confederate (which is what Mr. White believed Mr. Orange to be). The best argument for finding a duty likely is (2), the assumption-of-responsibility argument. Had Mr. White left Mr. Orange behind at the carjacking scene, perhaps help would have arrived (in response to the shooting of the woman and of Mr. Orange on a public street). By removing Mr. Orange from the street and taking him to a secluded warehouse, Mr. White has worsened the situation. Once at the warehouse, the presence of other conspirators opposed to taking Mr. Orange to a hospital could create a duress defense; however, Mr. White's voluntary joining of the gang likely prevents him from relying on this argument.

If a duty existed, Mr. White almost surely breached it. It is not certain, however, how much harm (if any) was caused by Mr. White's failure to act. Perhaps Mr. Orange's initial gunshot wound was so serious that no medical intervention could have helped.

If Mr. White indeed breached a duty and thereby caused harm, one might consider various charges, such as:

1. Involuntary (unintentional) manslaughter¹¹

Involuntary manslaughter is homicide in which there is no intention to kill or do grievous bodily harm, but that is committed (1) with criminal negligence or (2) during the commission of a crime not included within the felony-murder rule. Mr. White's behavior seems pretty reckless because he knows Mr. Orange has been shot and seriously wounded, considers taking Mr. Orange to a hospital, and nonetheless takes Mr. Orange to a secluded warehouse. Also, Mr. White was committing all sorts of crimes during his omission to help Mr. Orange; if nothing else, he was driving a stolen car and fleeing the scene of an accident.

2. Felony murder (first degree murder at common law)

Then again, Mr. White may have been committing (or in flight from) a felony when he neglected to help Mr. Orange, in which case a felony murder charge becomes possible. The relevant felonies would be the bank heist (burglary, robbery, etc.) and the carjacking (robbery).

3. Depraved indifference murder (second degree)

Perhaps Mr. White was so reckless, so outrageous in his conscious disregard of Mr. Orange's mortal peril, that a charge arises for murder in the second degree based on depraved indifference to human life. This is a stretch but credible.

¹¹ For this charge (and any other homicide charge related to the omission), there are some strange—almost metaphysical—issues presented by the wording of the exam question. For example, if you know that Mr. White later shoots Mr. Orange dead, it becomes hard to charge him with killing Mr. Orange by omission. You can't murder the same man twice. Accordingly, some students considered crimes like "attempted involuntary manslaughter" and discussed the *mens rea* required in attempting to commit a crime of recklessness. Others proposed that the eventual shooting was an intervening cause precluding conviction for the omission, for all the good that does for Mr. White, who of course was the shooter. Still others discussed the omission as though Mr. Orange died from his abdominal wound (the most straightforward approach) and then discussed Mr. White's shooting of Mr. Orange in the head as a totally separate matter. All of these approaches were reasonable and allowed interesting answers, and I graded responses to this question assuming the underlying assumption of a given answer was accurate.

4. Voluntary (intentional) manslaughter

From the fact pattern, it seems hard to argue that Mr. White intended for Mr. Orange to die as a result of Mr. White's omission. Indeed, Mr. White seems quite concerned about keeping Mr. Orange alive (at least until he changed his opinion). Accordingly, no voluntary manslaughter charge makes sense here.

5. Reckless Endangerment

A number of students discussed potential reckless endangerment charges. This crime did not exist at common law—penal codes have such provisions because drafters found the common law unsatisfying in this respect—and accordingly should not have been proposed as a charge in answers to this question, which asks about “any charges that might plausibly be brought under the common law of crimes against Mr. White.”¹²

B. Mr. White's Shooting of Mr. Orange

The question asks students to assume that Mr. White “fatally shot Mr. Orange.” Accordingly, discussions of attempted murder and other inchoate crimes were outside the scope of the question.

1. Second degree murder

This is a fairly straightforward homicide charge; the interesting issues concern grading. With a point-blank head shot, Mr. White's intent to kill can be assumed, and the resulting death is stipulated by the question. A charge of second degree intentional murder therefore seems pretty solid. With intent to kill so obvious, there was no need to resort to depraved indifference or intent to cause grievous bodily harm.

2. First degree murder

The grading questions go in both directions. First, might there be a first-degree murder charge? At common law, killings during the commission of felonies (particularly dangerous ones like armed bank robbery) were first-degree murder. The issues for discussion concerned whether the bank heist (and, for that matter, the carjacking) were complete (or Mr. White was at a place of temporary safety) when Mr. White shot Mr. Orange. If the crime was ongoing (loot yet to be divided, criminals still on the run), or Mr. White remained in immediate flight, his killing of Mr. Orange becomes first-degree felony murder. If not, the felony murder rule does not apply.

Absent felony murder, proving first-degree murder would be difficult. Although the killing was intentional and likely “premeditated,” the element of “deliberation” seems to be missing because Mr. White acted quickly upon learning Mr. Orange's true identity as a cop. Note that premeditation and deliberation are elements needed to increase a regular (second degree) murder to a more serious crime of first degree murder. These elements are *not* part of the “malice aforethought” *mens rea* that is an element of second degree common law murder. Malice

¹² Another potential penal code charge would have been negligent homicide. This crime, however, also did not exist at common law. *Mens rea* below that needed for a manslaughter conviction was not culpable as a homicide crime.

aforethought, like other *mens rea* terms, is a legal term of art, and it includes (1) intent to kill, (2) intent to cause grievous bodily harm, (3) depraved indifference to human life, and (4) intent to commit a felony.¹³

3. Manslaughter

Assuming a good case for second-degree murder and no first-degree murder, Mr. White might seek to reduce his offense to manslaughter by arguing that he killed Mr. Orange in the “heat of passion” in response to provocation.

The subjective emotional response seems well-established by the facts; Mr. White was devastated by the revelation of Mr. Orange’s identity. Mr. White acted quickly, precluding any arguments about “cooling time.” The hot issue becomes whether the provocation is objectively the kind of provocation that should serve as a partial excuse to intentional homicide. It might be described as “mere words,” or it could be likened to the betrayal of an unfaithful spouse. Perhaps the courts would wish to bar this defense, lest criminals have an incentive to kill undercover officers. While one could imagine it going either way, a cop-killing jewel thief might not seem the most sympathetic figure to a judge or jury deciding the issue.

III. Question 3—Liability of Mr. Pink Under the Model Penal Code

This question presented issues concerning Mr. Pink’s liability for the conduct of others. Because he did not personally kill either the uniformed officer or Mr. Orange, he can be prosecuted for their deaths in a Model Penal Code state only if the MPC’s complicity provisions allow the state to attribute the fatal conduct to him. Note that because the MPC specifically rejects the *Pinkerton* rule of liability for the acts of co-conspirators, such liability is not a proper basis for assigning liability to Mr. Pink for purposes of this question.¹⁴

A. The Deaths of the Uniformed Police Officer and of Mr. Orange

1. The Uniformed Officer

Mr. Pink did not shoot the uniformed officer; “Nice Guy” Eddie did. Accordingly, Mr. Pink is liable for the homicide only if he is complicit under MPC § 2.06. Under that provision, “A person is legally accountable for the conduct of another person when ... he is an accomplice of such other person in the commission of the offense.” Further, “A person is an accomplice of another person in the commission of an offense if ... with the purpose of promoting or facilitating the commission of the offense, he

- (i) solicits such other person to commit it, or
- (ii) aids or agrees or attempts to aid such other person in planning or committing it, or
- (iii) having a legal duty to prevent the commission of the offense, fails to make proper effort so to do”

MPC § 2.06(3).

¹³ The commission of a felony both establishes malice aforethought and increases the offense to first degree murder.

¹⁴ Extended discussion of *Pinkerton* liability was a common mistake. Note that the MPC’s rejection of this doctrine was addressed in the exam review discussion on the TWEN site.

Eddie is guilty of intentional murder.¹⁵ To convict Mr. Pink as an accomplice, the prosecution must show that he either solicited Eddie's shooting, aided or agreed to aid or attempted to aid Eddie in committing it, or failed to make a "proper effort" to prevent Eddie's shooting (if Mr. Pink had a duty to prevent it). Mr. Pink, who was apparently just standing in the warehouse when Eddie, "furious with Mr. Orange, shoots the uniformed officer dead," did not solicit the shooting, nor did he aid in it or agree or attempt to aid in it.¹⁶ When one considers how dangerous any intervention by Mr. Pink would have been, it becomes hard to imagine how the prosecution could show that Mr. Pink failed to "make proper effort" to stop the killing, even if it could somehow establish that he had a duty to do so.

Note also that under MPC § 2.06(4), "When causing a particular result is an element of an offense, an accomplice in the conduct causing such result is an accomplice in the commission of that offense if he acts with the kind of culpability, if any, with respect to that result that is sufficient for the commission of the offense." Death of the victim is a result element of any homicide crime. It would likely be difficult to prove that Mr. Pink acted with the mental culpability necessary for a conviction for murdering the officer. There is no evidence that Mr. Pink took any action because he wanted the officer dead (or performed any act with knowledge that it would lead to the officer's death),¹⁷ and he stayed out of the subsequent shootout.

In sum, there is likely no Model Penal Code homicide charge against Mr. Pink for Eddie's shooting the uniformed officer.

2. Mr. Orange

Mr. Pink did not shoot the undercover officer; Mr. White did. All of the reasoning concerning Eddie's murder of the uniformed officer applies to Mr. White's murder of the undercover Mr. Orange. Indeed, Mr. Pink's case is even stronger for the second murder because he was not even in the warehouse when it happened. He stayed out of the shootout—which arose because of an argument about Mr. Orange's fate—and left with the stolen goods. A prosecutor in an MPC jurisdiction would have no homicide charge to bring against Mr. Pink for the killing of Mr. Orange.

¹⁵ See MPC § 210.2(1)(a). An argument for manslaughter based on a "reasonable explanation or excuse" of extreme emotional disturbance would be extremely weak. See MPC § 210.3(1)(b).

¹⁶ A contrary view holds that by joining Mr. Blonde and Mr. White in brutalizing the officer, Mr. Pink was complicit in a kidnapping or a series of assaults that he knew would end with the officer's murder. From that perspective, Mr. Pink would have "aided" one or more persons in the kidnapping or torture of the officer, making him complicit in the eventual murder by Eddie.

These arguments, which a few students raised, seem to rely on a felony murder theory (based on MPC § 210.2(1)(b)). This provision, however, creates a presumption of "extreme indifference" only upon the "actor"—that is, the person who kills the victim. Interpreting this provision to impose felony murder liability not only on the actual killers but also on any accomplice to the underlying felony would expand the MPC's felony murder rule well beyond its intended scope.

¹⁷ It is possible to argue that Mr. Pink's participation in the officer's brutalization demonstrates a purpose to eventually kill him, or at least to aid in his eventual killing. More likely, Mr. Pink was merely reckless as to the possibility that Mr. Blonde would kill the officer. Had that happened, a manslaughter conviction of Mr. Pink might have been possible; however, Mr. Blonde was thwarted, thereby getting Mr. Pink off the hook for any complicity with Mr. Blonde (at least with respect to a homicide charge).

The analysis of Mr. Pink's homicide liability (or lack thereof) demonstrates the quite different treatment by the MPC and the common law of deaths that occur during the commission of and flight from serious crimes. Under the common law, Mr. Pink's participation in the officer's kidnapping and brutalization would almost surely create liability for the eventual murder of the uniformed officer, and even the death of Mr. Orange might be attributable to Mr. Pink under an expansive interpretation of traditional felony murder doctrine, not to mention under *Pinkerton*.

B. Any Other Non-Homicide Crimes

Mr. Pink's association with a sprawling crime spree subjects him to liability for many crimes, both his own and those of others. With limited time, an exam taker could focus on only some of them. A good answer almost always discussed liability based on (1) the bank heist and (2) the mistreatment of the uniformed officer. Below are some of the leading candidates:

1. Assault (MPC § 211.1)

When Mr. Blonde arrives with an officer in his trunk, Mr. Pink and Mr. White "brutalize" him. A simple assault charge is obvious. More debatable is whether Mr. Pink is guilty of aggravated assault, either on the basis of his own conduct or that of Mr. Blonde.

2. Reckless Endangerment (MPC § 211.2)

Mr. Pink pointed a firearm at Mr. White, making him guilty of this misdemeanor. Other charges for this offense may also be possible.¹⁸

3. Kidnapping (MPC § 212.0) and lesser included offenses

Mr. Blonde clearly kidnapped the uniformed officer. The question is whether Mr. Pink's conduct makes him complicit. If not, he may be guilty of lesser included offenses such as **felonious restraint** or **false imprisonment** based on his own conduct.

4. Robbery (MPC § 222.1) or Conspiracy to Commit Robbery

The bank heist is a robbery. Although Mr. Pink's precise role in his heist is not specified, he almost certainly provided sufficient aid to the rest of the gang to be guilty of robbery. In addition, even if his conduct is not sufficient for a robbery conviction, his agreement to help makes him guilty of conspiracy to commit robbery under MPC § 5.03. The crime of conspiracy, however, merges with the crime of robbery; Mr. Pink can be convicted guilty of only one.¹⁹ Because Mr. Pink's **theft of property** is a lesser included offense of robbery, he could not be convicted of both theft (MPC § 223.2) and robbery for his actions at the bank. Note that under the MPC, conspiracy to commit robbery is generally punished with the same severity as the completed offense of robbery; the same is true of attempted robbery. *See* MPC § 5.05(1).

¹⁸ For example, Mr. Pink prevented Mr. White from seeking medical care for Mr. Orange.

¹⁹ *See* MPC § 1.07(1)(b). Unlike at common law, under which attempt merges with the completed offense but conspiracy does not, the MPC allows any crime of preparation to merge with the completed offense in most cases. The exception would be a conspiracy to commit crime X and crime Y, after which only crime X is completed; conviction would be allowed for conspiracy to commit crime Y as well as for the completed crime X. Multiple crimes of preparation (*e.g.*, a conspiracy to commit a crime and an attempt to commit it) also merge with one another. MPC § 5.05(3).

5. Burglary (MPC § 221.1)

Because of the MPC's definition of burglary, a burglary conviction based on the bank heist is highly unlikely; the MPC includes as an element that the premises to be burgled were not "at the time open to the public." The facts strongly suggest that the bank was robbed during business hours. A charge based on Mr. Pink's entry into the warehouse is also unlikely. The MPC provides an affirmative defense if the premises "was abandoned,"²⁰ and the fact pattern describes an "abandoned warehouse."

6. Other Charges

The above list is by no means exhaustive, especially if one considers charges for which Mr. Pink's guilt remains in doubt based upon the fact pattern. That said, listing most of the above charges was more than sufficient for a top-notch answer to this question.²¹

²⁰ This defense also precludes a charge of **criminal trespass** under MPC § 221.2.

²¹ Some other options might include illegal possession of a weapon, theft of the jewels *from his confederates* at the end of the story (which might not merge with the earlier robbery), and the making of terroristic threats.