

CRIMINAL LAW REVISION COMMISSION

SUBJECT: Former Jeopardy; Preliminary Draft No. 3; December 1971

INTRODUCTION: The following examples illustrate the application of the definition of "criminal episode" (section 1, subsection (4)) to specific fact situations. These examples do not try to distinguish among different degrees of the same crime or lesser included offenses, but are concerned only with testing the definition as applied to separate and distinct offenses.

1. FACTS: D enters bank, points a pistol at a teller and demands money. D flees the bank with money and shoots a bank guard who attempts to prevent his escape.

ANALYSIS: One criminal episode consisting of crimes of robbery and assault.

2. FACTS: Same facts as #1, but the bank guard is killed as result of gunshot wound.

ANALYSIS: One criminal episode consisting of crimes of robbery and felony murder.

3. FACTS: D enters bank, confronts teller and manager with a gun and demands money. After taking possession of the money, D ties up the manager and takes the teller with him as hostage.

ANALYSIS: One criminal episode consisting of crimes of robbery and kidnapping.

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4. **FACTS:** D enters 24-hour market late at night, points gun at lone female clerk and demands money. After getting money, D forces her to back room, rapes her and flees with money.

**ANALYSIS:** Crimes of robbery and rape. Whether D's conduct is a single episode is questionable. His conduct is "continuous and uninterrupted." The conduct is closely joined in "time, place and circumstances." However, it is difficult to determine whether such conduct is "directed to the accomplishment of a single criminal objective." Because the robbery was already completed before the rape took place, it would appear that D's objective was robbery. The rape would not seem to be directed to the accomplishment of the robbery. However, it could be argued that D's objective was rape and that the robbery was preliminary to the commission of the rape. Or, D's objective could be both robbery and rape.

5. **FACTS:** Same facts as #4, except D forces the clerk to go with him when he flees the store. He takes her to remote area where, two hours after the robbery, he rapes her and leaves her on deserted road.

**ANALYSIS:** Two criminal episodes. Episode I consisting of crimes of robbery and kidnapping. Episode II consisting of crime of rape. It would seem much clearer that the rape was not directed to the accomplishment of the first objective, the robbery.

6. FACTS: Same facts as #4, except that D takes the clerk to a remote cabin in the mountains and locks her in bedroom. D rapes the clerk the following day, then flees, leaving her at the cabin.

ANALYSIS: Two criminal episodes. Episode I consisting of robbery and kidnapping. Episode II consisting of rape. Because of the greater length of time elapsing between the robbery and the rape, it would make even stronger argument than in #5 that the rape was a separate criminal objective from the original crime of robbery.

7. FACTS: D steals a car at 9 p.m., robs market at 9:30 p.m. and flees in stolen car.

ANALYSIS: One criminal episode consisting of crimes of theft and robbery.

8. FACTS: Same facts as #7, except that D is seen entering a tavern at 11 p.m. by a police officer. The officer attempts to arrest D and is wounded by D in an exchange of gunfire.

ANALYSIS: Two criminal episodes. Episode I consisting of crimes of theft and robbery. Episode II consisting of crimes of resisting arrest and assault.