

To: ILTL Workshop Participants
From: Joy Radice
Re: *State vs. Jones* case file
Date: May 17, 2013

Over the course of an entire semester, a hybrid criminal law course will cover basic criminal law doctrine that is complemented by a simulated case file, *State v. Jones*. The case file will be grounded in state statutes, rules and cases. Through the *State v. Jones* exercises, students will play the role of defense attorneys and prosecutors in four different lawyering exercises: interviewing a client, writing a legal memo, counseling a client, and plea bargaining. These course components will weave together theory and practice for both the skills and substantive law covered.

The packet of attached materials will guide us through the workshop, *Teaching Criminal Law through a Lawyering Lens: Theory, Law, and Practice*. In the actual course simulation, students will prepare a legal memorandum for a supervising attorney using a closed universe of cases (that the class identifies together). The students write their office memos individually in response to the question presented and then are grouped with three other students to critique each others final memo submissions. The four students will all be assigned as either assistant public defenders or assistant district attorneys.

As participants, we will work specifically on developing and critiquing this interactive criminal law legal writing component. The simulation will place workshop participants in role as students assigned as assistant public defenders. The aim is to engage us in envisioning one way for students to see criminal law doctrine in practice.

The following attached materials are part of the *State v. Jones* case file in the second simulation: writing an office memorandum¹:

1. *Client Interview Memo* – This memo will have been prepared by the students for their supervising attorney after their interview session with their client (as the final writing assignment in that exercise).
2. *Witness Statement* – This document will be given to the students by the public defender’s investigator as part of an update to their case file.
3. *Supervising Attorney’s Office Memo prompt* – This document will be given to the students as part of the case file after they submit their interview memos.
4. *Office Memo Sample* – This document will be created by the students and critiqued by the professor and other students in small groups. We will use this sample in our workshop session as we take on the role of students.
5. *Critique Guidelines* – This document will be used in our mock student critique session. We will discuss its value, critique its shortcomings, and revise it as part of the workshop.

¹ This writing exercise builds on the first simulation: interviewing a client. It will be followed by counseling a client.

To: Joy Radice, Supervising Attorney
From: Audrey Montes and Michael Tice, Student-Attorneys
Re: *State v. Jones* PRIVILEGED & CONFIDENTIAL
Date: September 10, 2013 ATTORNEY WORK PRODUCT

We interviewed our new client, Piper Jones, on September 10th.

Piper was arrested on Friday, September 6, 2013 at 6:30 a.m. for aggravated burglary and theft. She was held until Monday, when she was arraigned and released on a \$5000 bond. We were appointed to the case by Judge Cerney because Piper asked for a lawyer and met the court's income eligibility requirements.

Piper just turned 18 on August 20, and is a senior at Bearden High School. She has average grades, mostly Bs and Cs, and is planning to apply to Pellissippi State. Piper is on the basketball team and works after school at Dick's Sporting Goods on Peters Road. She lives with her mother, step-father, and two younger brothers, Elijah, who is 12, and Jacob, who is 10.

Piper was leaving her job on September 6th at 10:30 p.m. after working the closing shift. She called her boyfriend, Darrell Williams who is 17, to pick her up, just as she does every night that she works. Her car broke down at the end of July, and she needs about \$2000 to fix it. So she has been asking her mother, Darrell, and other friends to drive her to school, work, and the gym.

When Darrell arrived, he was not in his car. He was with his friend, James Elliot, and two other girls, Alex Johnson and Keisha Elliot (James' sister). Piper has known all of them for at least two years. James and Alex, both 18, graduated from Bearden last year. Alex played basketball with Piper. Keisha is a sophomore at Bearden and is only fifteen.

All five of them were planning to hang out that evening. Alex knew of a college party downtown, and they were headed there after picking up Piper. Piper didn't know about these plans, but it wasn't surprising. They often hang out on the weekends. Usually, James did not bring his sister though. In the parking lot, before they left, they shared a joint, and then went to the party. At the party, they drank and hung out with friends. Piper probably had 4 beers. After the party was breaking up around 2 a.m., they left and went to grab pizza. While they were eating, James mentioned that they should go somewhere and sleep for the night. He said that the parents of a friend of his were on vacation and that they could crash there. He knew where they left the key and no one would be home until Monday. Darrell and Keisha agreed, but Alex and Piper thought it was a bad idea. They wanted to hang out but did not want to break into a house. Then James mentioned that the father of his friend collected guns and that the mother has some really nice jewelry that they didn't keep in a safe. The girls then said that they did not want to go or they could be dropped off home. So the boys agreed not to go.

Instead, they drove around and then James said he had to stop somewhere. James got out of the car and bought more marijuana, which they smoked. They stayed in the car and listened to music for about an hour in a dark apartment complex near Piper's house, and they all fell asleep.

Piper woke up at about 5:00 a.m., when James yelled something at her. She was startled, but was still really out of it. She just sat up and looked around, yelling, "Okay, Okay. Stop yelling." She grabbed the keys that he threw at her from the floor, and fell back asleep. James got out of the car with Darrell, and they both ran into a wooded area. She did not know what street they were on. She did not know at the time where they went.

Piper remembered waking up again when James handed her a box and took the keys out of her hand, saying, "Good job. Let's go." She looked down at the box and noticed it was a jewelry box. She opened it and pulled out a set of pearls. She put a bracelet on. And the other girls tried on some too.

James and Darrell were now in the front seats again with the girls still in the back. Darrell suggested that they go to Waffle House. Alex and Piper said that they wanted to go home. Piper said that she was freaking out because she was scared they actually robbed someone. James drove away from the wooded area and toward Piper's street. They stopped at a Pilot on the way to fill an almost empty tank. As they drove out of the Pilot parking lot, James drove through an all-way stop sign right in front of a parked police car. The officer, Officer George Hitchens, saw that the SUV did not stop and signaled the driver with his lights to pull over.

James pulled over and waited for the officer to approach. Alex began crying in the backseat when Officer Hitchens started talking to James. Her distress drew Hitchens' attention, and he went around to the backseat on the passenger's side to speak to her. Then the officer noticed Darrell shuffling his feet. On the floor of the car, he saw a small gun. He proceeded to call for back up and asked all five of them to get out of the car. Piper still had the box in her lap when she got out of the car.

Officer Hitchens and three other officers interviewed all of the passengers separately. The officers arrested Piper, Darrell, and James, charging them all with burglary and theft of property over \$500. Hitchens called Alex's and Keisha's parents to pick them up. He arrested Alex at around 6:30 a.m.

Piper heard Hitchens tell Alex's mother that the girls were essentially kidnapped by James so Piper doesn't understand why she was arrested, and the other girls were not. She was in the backseat sleeping with them the entire time that the boys went into the house. She had nothing to do with it.

Piper's case is set for a preliminary hearing on October 9th at 9 a.m.

To: Assistant Public Defenders
From: Ben Robinson, PD investigator
Re: *Witness Interview with Alex Johnson* PRIVILEGED & CONFIDENTIAL
Date: September 13, 2013 ATTORNEY WORK PRODUCT

Alex is 18 years old and spoke to me today. She graduated from Bearden High School last May and is working at Kroger on Kingston Pike. She lived with her parents and older sister.

On September 6th, she was hanging out at her house with James, and his sister when Darrell called to hang out. They got in the car, picked him up and went to Darrell's house and drank a couple of beers. About four hours later, they went to get Piper from Dick's.

Alex does not seem to remember much from that night. She remembered that they picked up Piper. Alex and Piper have been friends since they were in middle school. She is so upset that Piper was arrested, but said that Darrell and James are always getting themselves into trouble. A few weeks before, they were caught shoplifting four pairs of jeans at Kmart. The store got the jeans back and decided not to press charges.

Alex remembered that they went to a party and that the boys joked about sleeping at a house. She doesn't remember them saying anything about stealing anything. She remembers going into Darrell's friend's apartment to use the bathroom while he bought marijuana. She remembers singing and laughing in the car, but not much else before falling asleep at 3 a.m.

She remembers waking up when the boys were starting up the car around 4:45 a.m. She said that they drove to a residential neighborhood and started talking about the house of a friend who was away for the weekend. They said something about a set of handguns that they could sell. They stopped the car and made a plan.

Alex said that James threw the car keys at Piper, yelling at her to jump in the front seat and watch for anyone suspicious. But Piper who was startled by the yelling and flying keys did not seem to wake up. Piper told James to stop yelling. Alex then went back to sleep. She didn't remember Keisha waking up at all or talking to her.

To: Assistant Public Defenders
From: Joy Radice, Supervising Attorney
Re: *Office Memo Assignment*
Date: September 14, 2013

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ATTORNEY WORK PRODUCT

Thank you for interviewing Piper Jones and keeping me posted about the case. Given your interview and the memo from Ben Robinson, there seems to be a legal issue about whether or not Piper can be guilty of burglary or theft given the nature of her involvement. I have not had a case like this for quite sometime, but know that the Tennessee legislators codified aiding and abetting liability under T.C.A. § 39-11-402. Find the code and cases decided after the statute was passed. Then prepare a four-page legal memorandum about whether Piper can be held criminally responsible for Darrell and James' acts given the level of her involvement in the burglary and theft.

To: Joy Radice, Supervising Attorney
From: Audrey Montes, Student Attorney
Re: Office Memo in *State v. Jones*
Date: September 21, 2013

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ATTORNEY WORK PRODUCT

Question Presented

Does being in a car during a burglary meet the elements of T.C.A. § 39-11-402?

Short Answer

Probably not. T.C.A. § 39-11-402 requires that the defendant act to help commit a crime even if the defendant is not present at the commission of the crime. Piper was near the crime scene and was asked to assist in the commission of the crime, but never woke up to help.

Facts

Piper Johnson was out late on September 6, 2013 with her boyfriend and three other friends, James, Alex and Keisha (See Interview Memo in file). They went to a party after picking Piper up from work. After the party, they went to a secluded apartment complex where they bought marijuana, hung out, and fell asleep. Piper did not wake up until James, started yelling something at her and threw her the car keys. She barely woke up to look around and fell asleep again. She woke up again when James was taking the keys out of her hand and giving her a box. As James was driving her home, he ran through a stop sign and was pulled over. The officer saw the gun on the floor of the passenger's side of the car and asked them all to get out of the car while calling for backup. The police spoke to each of them individually and decided to arrest, Piper, James and Darrel for burglary and theft of

property over \$500. Piper was arraigned, made bond and was assigned to our office.

Piper's case is set for a preliminary hearing on October 9th at 9 a.m.

Analysis

Aiding and abetting in the commission of a criminal act was a common law principle in Tennessee for many decades. Many cases held that for a person to aid another in the commission of a crime, the person must have a "common purpose" or "join intent." A common purpose though does not require a person to be present, but also presence is not enough. A person can also be found guilty if the joint purpose results in other naturally foreseeable consequences even if a person does not know about the additional acts. It is a combination of knowledge and action that is required of a person who is aiding and then up to the jury to decide if there is enough evidence to show that.

T.C.A. § 39-11-402 codified criminal responsibility for conduct of another:

A person is criminally responsible for an offense committed by the conduct of another, if:

- (1) Acting with the culpability required for the offense, the person causes or aids an innocent or irresponsible person to engage in conduct prohibited by the definition of the offense;
- (2) Acting with intent to promote or assist the commission of the offense, or to benefit in the proceeds or results of the offense, the person solicits, directs, aids, or attempts to aid another person to commit the offense; or
- (3) Having a duty imposed by law or voluntarily undertaken to prevent commission of the offense and acting with intent to benefit in the proceeds or results of the offense, or to promote or assist its commission, the person fails to make a reasonable effort to prevent commission of the offense.

To be found criminally responsible, there must be some evidence, at least circumstantial that the person participated in the crime. *State v. Mains*, 634 S.W.2d 280

(1982). Presence at the commission of the crime is not sufficient, but constructive presence by keeping watch or guard would be. *Cavert v. State*, 158 Tenn. 531 (1929) rejected by *State v. Hurley*, 876 S.W.2d 57 (1993). The person must be “associated with the venture” and “act with the knowledge” that a crime is being committed. *Hembree v. State*, 546 S.W.2d 235 (1976). The requisite intent is the same as that of the principle. *State v. Williamson*, 919 S.W.2d 69 (1995). In *State v. Baldwin*, 867 S.W.2d 358 (1993), the defendant merely helped the police find the cocaine dealer, but did not have the intent to sell drug by her actions.

In *State v. Maxey*, 989 S.W.2d 756 (1994), the court held that the intent required by the statute is “demanding” because the defendant must unite with the criminal intent of the principle. In *Maxey*, even though the defendant gave the victim of a rape alcohol, lied about her age and “placed her in the situation where she was raped,” that behavior fell short of intending the rape of the victim.

In this case, even if Piper had knowledge of the intended crimes, she did not act in any way to help James or Darrell commit the crimes. They asked for her help and she fell asleep. She did not stand watch as a lookout, acting as the eyes and ears to help commit a burglary or theft. She merely asked them to stop yelling and grabbed the keys that were thrown at her before falling back to sleep. She must have actually rendered aid.

Conclusion

Piper Jones did not intend to aid the commission of the burglary or theft so she cannot be found guilty under a theory of criminal responsibility for the act of another.

Critique Guidelines – Office Memorandum

- 1. Rules:**
 - a. Using and citing to authority
 - b. Analyzing legal rules
 - c. Articulating coherent legal narratives.
 - *What is your sense about the completeness of the memo's review of relevant authority and why? Describe any research or analysis questions that remain.*
 - *Did the Question Presented effectively communicate to the central issue in the memo?*
 - *Did the Short Answer adequately summarize the analysis to come and provide an organizing principle for approaching the analysis?*
 - *Is the Analysis consistent with the Short Answer?*

- 2. Facts:**
 - a. Developing and identifying material facts
 - b. Applying facts
 - c. Developing factual narratives
 - *If you had not interviewed the client, would the memo provide you with a useful and complete overview of the relevant facts?*
 - *Are there any facts in the memo that you did not find particularly relevant or useful?*

- 3. Goals:**
 - a. Identifying client's goals
 - b. Responding to/reconciling client's goals
 - c. Choosing among competing goals of client, lawyers, decision-maker, others
 - *How do the author's goals relate to or differ from the client's goals?*
 - *Did the author offer suggestions that reconcile the legal analysis with client's goals?*

- 4. Context:**
 - a. Making strategic writing and rhetorical choices
 - b. Conforming to/departing from standard organizational structure
 - c. Accounting for institutional, social, and cultural position and audience
 - *How did the document conform to or depart from the conventional language, style, and organizing structure of a memo?*
 - *Who is the audience(s)? How specifically is the memo responsive to that audience?*

- 5. Professional Roles & Responsibilities:**
 - a. Representing relevant authority
 - b. Maintaining advocacy and credibility
 - c. Critiquing peers and self
 - *Identify specific areas in which your critique of the author's work caused you to reevaluate your own.*

Critique Grid

*Please record your observations electronically, if possible, so that the document can expand to accommodate your comments as needed.

Critique by (Your name) _____

Critique of (Exercise and student name(s)) _____

LAWYERING DIMENSION	SPECIFIC OBSERVATIONS
Rules	
Facts	
Goals	
Context	
Professional Roles & Responsibilities	

Other Comments: