CHAPTER SEVEN: ATTEMPT, CONSPIRACY, AND SOLICITATION

INTRODUCTION

This chapter will focus on inchoate crimes: attempt, conspiracy, and solicitation. The New York Penal Law provides defenses to these crimes. The defense is called renunciation and will be discussed at the end of this chapter.

ATTEMPT

Article 110 of the Penal Law defines the crime of attempt. As the textbook indicates, three elements of attempt are required: a requisite intent to commit a specific underlying offense, an act toward the commission of the crime, and a failure to commit the act. The first two elements must be proven by the prosecution beyond a reasonable doubt. A detail of the elements required to prove attempt are established by statute and are detailed in the case law, which will be discussed shortly.

Section 110.00, Attempt to commit a crime, states:

A person is guilty of an attempt to commit a crime when, with intent to commit a crime, he engages in conduct which tends to effect the commission of such crime.

Attempt is graded into degrees of punishment which are dependent upon the severity of the attempted crime.

Section 110.05, Attempt to commit a crime; punishment, states:

An attempt to commit a crime is a:

1. Class A-I felony when the crime attempted is the A-I felony of murder in the first degree,
   criminal possession of a controlled substance in the first degree, criminal sale of a controlled substance in the first degree, criminal possession of a chemical or biological weapon in the first degree or criminal use of a chemical or biological weapon in the first degree;

2. Class A-II felony when the crime attempted is a class A-II felony;

3. Class B felony when the crime attempted is a class A-I felony except as provided in
   subdivision one hereof;

4. Class C felony when the crime attempted is a class B felony;

5. Class D felony when the crime attempted is a class C felony;

6. Class E felony when the crime attempted is a class D felony;

7. Class A misdemeanor when the crime attempted is a class E felony;

8. Class B misdemeanor when the crime attempted is a misdemeanor.

Mens Rea

The first element of attempt the prosecution must prove is whether the offender committed the attempt with the same intent as he would have had he completed the underlying offense. In *People v. Alameen,*[1] the Supreme Court of New York, Appellate Division, Third Department stated, "a person may be convicted of attempted criminal sale of a controlled substance for a consummated sale where there is proof that he or she mistakenly believed the substance he or she sold was a controlled substance, when in fact it was not."

The next case in this chapter also addresses the issue of *mens rea* but in reference to an attempt to commit a robbery.

Actus Reus

The second element that the prosecution must prove is whether the actions toward the commission of an offense are consistent with the elements of the offense if it had been completed. Unlike the substantial step test followed by the Model Penal Code, New York State requires the test based on the physical proximity to the commission of the crime. It is known as "dangerous proximity" and is a stricter test than the one offered by the Model Penal Code.

Dangerous proximity means that the "act or acts must come or advance very near to the accomplishment of the intended crime." The focus is on the actor's proximity to the completion of the crime. Dangerous proximity to the crime "exists when the defendant's acts have set in motion a chain of events that are likely to lead to the completion of the crime unless some external force intervenes." This concerns more than "mere preparation" which is defined as the devising of means necessary for the commission of the offense. New York requires more affirmative acts. In order to be guilty of attempt, the accused must have both "acquired the wherewithal to commit the object crime and made some direct movement toward the ultimate object."[2]

For example, the defendant in *People v. Charon*[3] was properly convicted of attempted burglary since he was found outside a commercial premises at midnight in possession of locksmith tools. The padlock on the premises was damaged, and the tip of one of his tools was broken off and found under the damaged padlock. In this case, defendant went beyond mere preparation and was "very near" the completion of a burglary.

In *People v. Warren,*[4] the Court of Appeals found that defendants had not carried their actions forward within dangerous proximity to the criminal end. Several contingencies stood between them and completion. Although defendants had agreed to purchase eight ounces cocaine, at $2,050 per ounce, from a police informant, the transaction was not consummated. The informant had only six ounces available, defendants did not have the full amount of the purchase on them, defendant's accomplice wanted the cocaine wrapped in four two-ounce packages but they were wrapped in six one-ounce packages, and they agreed to conduct the deal later in the evening to test the cocaine and then make the sale. In the court's view, the defendants did not come very near to the accomplishment of the crime, the intended purchase. The indictment for attempted criminal possession of a controlled substance was therefore dismissed.

People v. Bracey and Foster-Bey
Court of Appeals of New York
41 N.Y. 2d 296 (1977)

Opinion By: Wachtler, J.

The issue in this case concerns whether there was sufficient evidence from which the jury could conclude, as they did, that the defendants acted with intent to commit a robbery.

Defendants, among other acts, went into a stationary store in the middle of the afternoon armed with a gun in a concealed canvas shoulder bag. Once in the store, they looked around, made a minor purchase, went outside, and went separate ways. Bracey drove his car around the block and parked down the street while his co-defendant, Foster-Bey, first stationed himself outside the store and then went into the store with the gun drawn. He withdrew from the store after he saw the police approach. The store owner spoke briefly to the police who then went over to Foster-Bey, frisked him, found a loaded pellet pistol in the canvas bag, and arrested him. The store owner then pointed out Bracey's car to another police unit. The police went to the car and Bracey was then arrested. Defendants were convicted of attempted robbery in the second degree and misdemeanor possession of a weapon. The Supreme Court, Appellate Division reversed the convictions based on insufficiency of the evidence.

The Court of Appeals stated that, "although [a] defendant may have failed in his purpose, his conduct is nevertheless culpable and if carried far enough causes a sufficient risk of harm to be treated as a crime in itself. [A] defendant's criminal responsibility is less than, but necessarily dependent upon, the crime he has attempted to complete."

"In order to prove an attempt," according to the Court, "the prosecution must establish two elements. First, it must establish that the defendant acted with the specific intent required for the underlying crime. Secondly, the prosecution must prove that the defendant acted to carry out his intent. The law does not punish evil thoughts alone."

The Court of Appeals further added, "[I]n many, if not most attempt cases, it will not be possible to look only at the act and its 'natural consequences' to discover intent 'since by definition of a criminal attempt the ultimate consequences do not ensue. Thus in the case now before us the fact that Foster-Bey entered a stationary store with a gun in his hand does not unequivocally establish that he intended to
commit a robbery." The Appellate Division noted that he may also have intended to commit assault or menace the owner, or have an innocent purpose in mind. The act rarely speaks for itself.

However, the Court of Appeals noted that "intent can also 'be inferred from the defendant's conduct and the surrounding circumstances'…and 'indeed this may be the only way of proving intent in the typical case' of criminal attempt…The question is then whether the jury, considering the act and all the surrounding circumstances, could conclude that there was no reasonable doubt that these defendants acted with an intent to rob the store." In the Supreme Court's view, this was clearly a robbery in that the only additional act that could have "made this intention plainer was an actual demand for money." It follows, therefore, that the jury could also find that defendants possessed the weapon with intent to use it to commit a robbery.

However, the Court of Appeals reversed the Appellate Division's order and remitted the cases to the Supreme Court for further review of the facts.

Defense of Attempt

The Penal Law clearly states that when an attempt cannot factually or legally end in a completed crime, the defendant is still culpable for the attempted crime.

According to **Section 110.10,** Attempt to commit a crime; no defense:

> If the conduct in which a person engages otherwise constitutes an attempt to commit a crime pursuant to section 110.00, it is no defense to a prosecution for such attempt that the crime charged to have been attempted was, under the attendant circumstances, factually or legally impossible of commission, if such crime could have been committed had the attendant

circumstances been as such person believed them to be.

People v. Coleman[5] provides an example where a defendant attempted to commit a crime that could not legally be completed, yet he was still guilty of the attempt. Defendant approached a 24-year old undercover police officer whom he believed to be a 15-year old runaway. He encouraged her to engage in prostitution and he would be her pimp. He was convicted of attempted promoting prosecution in the second degree. The promotion of prostitution statute specifically states that a person is guilty of this offense "when he knowingly…[advances] or profits from prostitution of a person less than sixteen years old."

According to the Court of Appeals, "[A]lthough there is ample evidence that the defendant believed the officer to be 15 when he encouraged her to become a prostitute, it was nonetheless impossible for him to have been convicted of the completed crime…since the officer was in fact 24." According to §110.10, the defendant's belief that his intended victim was 15 instead of 24 in no way negated his knowledge that he was acting to promote prostitution. He would have been guilty of the completed crime if the "attendant circumstances" had been as he believed them to be, that is, if the officer had been 15 instead of 24. Defendant's conviction was affirmed.

CONSPIRACY

Article 105 of the Penal Law contains the sections associated with the crime of conspiracy. New York State concurs with the textbook that the core of conspiracy is an agreement to commit a criminal act.

Mens Rea

The agreement to commit a criminal act must be accompanied by a specific intent to commit a crime. "The mere fact that there was an agreement [of]…the doing of an act which may be unlawful, although followed by the doing for the act, does not [alone] constitute the crime; it must also be found that the parties were [moved] by a criminal intent."[6] In a prosecution of alleged conspiracy, proof of an overt act corroborates, but may not necessarily prove, the illicit agreement. Specific intent must be established.

Additionally, New York follows the unilateral test. The unilateral approach to conspiracy was affirmed in *People v. Negri*.[7] This doctrine "focuses on the defendant's individual state of mind rather than on the collective intent or 'meeting of the minds' of the conspirators." Further, "[t]he requisite intent is to join with others to commit a substantive crime." In the instant case, intent was established with "defendant's specific intent to participate in the conspiracy to convert stolen bearer bonds to cash." Defendant's meeting with a co-conspirator and an undercover detective "was further evidence of his intent to aid in the planning or commission of the underlying crimes of grand larceny and criminal possession of stolen property. Once there is proof of an illicit agreement, 'the overt act of any conspirator may be attributed to other conspirators to establish the offense of conspiracy.'"

Actus Reus

Additionally, an overt act in furtherance of the conspiracy, by at least one of the co-conspirators, must be committed, even if that act is not the object crime. Section 105.20 of the Penal Law clearly states that no conspiracy can be committed without an overt act. However, an overt act itself is not the crime in a conspiracy prosecution; it is merely an element of the conspiracy.

Section 105.20, Conspiracy; pleading and proof; necessity of overt act, states:

A person shall not be convicted of conspiracy unless an overt act is alleged and proved to have

been committed by one of the conspirators in furtherance of the conspiracy.

Conspiracy presents challenges for the prosecution. First, the conspiracy itself and any subsequent crimes are each charged as separate offenses. A participant in a conspiracy does not have the same liability as one who completes the intended offense. Defendants to a conspiracy may be charged separately for the object crime only if it can be proven that they did commit it and had the requisite *mens rea.* Thus, in cases where both a conspiracy and an object crime are found, the prosecution has the burden of proving the roles of each defendant as well as the elements of both offenses: the conspiracy and completed crime. New York has expressly refused to follow the Pinkerton rule described in the textbook. The following case addressed these issues.

In *People v. McGee, et al.,*[8] the Court of Appeals stated, "The crime of conspiracy is an offense separate from the crime that is the object of the conspiracy…[I]t is repugnant to our system of jurisprudence, where guilt is generally personal to the defendant,…to impose punishment, not for the socially harmful agreement to which the defendant is a party, but for the substantive offenses in which he did not participate…We refuse to sanction such a result and thus decline to follow the rule adopted for Federal prosecutors in *Pinkerton v. United States."* In *McGee*, defendant was convicted for bribery. But the Court of Appeals found that since there was no evidence that McGee was complicit in the bribery, it reversed his bribery conviction. His conviction for conspiracy in the third degree, however, was upheld.

In New York, the Penal Law identifies six degrees of conspiracy. The purpose for the severity levels is to raise the penalties for adults who engage in conspiracy with juveniles. The Legislature intended to punish more severely those adults who conspired with juveniles by increasing the penalty by one degree when a juvenile is involved. The age factor does not, however, require that the juvenile be the person who engaged in the underlying offense. [9]

Section 105.00, Conspiracy in the sixth degree, states:

A person is guilty of conspiracy in the sixth degree when, with intent that conduct constituting a crime be performed, he agrees with one or more persons to engage in or cause the performance of such conduct.

Conspiracy in the sixth degree is a class B misdemeanor.

Section 105.05, Conspiracy in the fifth degree, states:

A person is guilty of conspiracy in the fifth degree when, with intent that conduct constituting:

1. a felony be performed, he agrees with one or more persons to engage in or cause the performance of such conduct; or
2. a crime be performed, he, being over eighteen years of age, agrees with one or more persons under sixteen years of age to engage in or cause the performance of such conduct.

Conspiracy in the fifth degree is a class A misdemeanor.

Section 105.10, Conspiracy in the fourth degree, states:

A person is guilty of conspiracy in the fourth degree when with intent of that conduct constituting:

1. a class B or class C felony be performed, he agrees with one or more persons to engage in or cause the performance of such conduct; or

2. a felony to be performed, he, being over eighteen years of age, agrees with one or more persons under sixteen years of age to engage in or cause the performance of such conduct.

Conspiracy in the fourth degree is a class E felony.

Section 105.13, Conspiracy in the third degree, states:

A person is guilty of conspiracy in the third degree when, with intent that conduct constituting a class B or a class C felony to be performed, he, being over eighteen years of age, agrees with one or more person under sixteen years of age to engage in or cause the performance of such conduct.

Conspiracy in the third degree a class D felony.

Section 105.15, Conspiracy in the second degree states:

A person is guilty of conspiracy in the second degree when, with intent that conduct constituting a class A felony be performed, he agrees with one or more persons to engage in or cause the performance of such conduct.

Conspiracy in the second degree is a class B felony.

The following case considers procedural claims made by the defense, i.e., Inadmissibility of hearsay evidence, ineffective counsel, and prosecutorial misconduct, but it nevertheless illustrates the elements required for conspiracy in the second degree.

People v. Caban
Court of Appeals of New York
800 N.Y.S.2d 70

Opinion By: Kaye

Defendant was convicted of conspiracy to commit murder based largely on the testimony of the main prosecution witness, George Castro. Castro was a street level dealer who worked for the defendant, selling crack in the Bronx. He lived in defendant's stash house. In 1995, it was there that the conspiracy to kill Angel Ortiz, a rival drug dealer, was planned. Castro was packaging drugs in the stash house, along with two other dealers and the defendant's brother, Derrick Garcia. The defendant told the group that Ortiz needed to be killed because he was competing with defendant's drug business. The defendant offered to pay $5,000 for the murder. Defendant's brother responded that he would do it. One of the dealers in the stash house, Pello Torres, offered to provide the gun.

About two and a half months later, Ortiz was murdered in a playground in the neighborhood of the drug operations. He was killed in the presence of three of his drug dealers and his girlfriend's four-year-old daughter. Castro testified that he was in front of the stash house when Garcia came out with a friend. Castro followed Garcia and the friend to the playground and watched Garcia approach Ortiz, argue with him over the defendant's drug spot, and shoot and kill Ortiz as he turned and walked away.

Defendant was indicted for murder in the second degree, manslaughter in the first degree, conspiracy in the second degree, and criminal possession of a weapon in the second degree. The jury convicted him of conspiracy, but acquitted him of the "substantive crimes." The Appellate Division affirmed the conviction to which defendant appealed.

According to the Court of Appeals, "A conspiracy consists of an agreement to commit an underlying substantive crime (here, murder), coupled with an overt act committed by one of the

conspirators in furtherance of the conspiracy" according to Penal Law §§105.15 (conspiracy in the second degree) and 105.20 (conspiracy in the first degree). "[W]ith respect to the conspiracy charge, Garcia's acceptance of defendant's solicitation to murder Ortiz was relevant…as evidence of an agreement to commit the underlying crime—itself an essential element of the crime of conspiracy…[w]hether or not Garcia in fact killed Ortiz, his acceptance of defendant's invitation to do so was a verbal act which rendered defendant and his coconspirators culpable for the inchoate crime of conspiracy, even if the planned substantive crime never came to fruition. Indeed, even if Garcia had no genuine intent ever to commit the murder, defendant would [still] be guilty of conspiracy."

The Court further argued that the "requisite intent [mens rea] is to join with others to commit a substantive crime. If an individual believes he has so joined, it is sufficient to establish complicity, regardless of the actual fact of agreement."

For these and other reasons, the Court disagreed with the defendant's claims and affirmed the order of the Appellate Division on the conviction for conspiracy to commit murder.

Section 105.20, Conspiracy in the first degree, states:

A person is guilty of conspiracy in the first degree when, with intent that conduct constituting a class A felony be performed, he, being over eighteen years of age, agrees with one or more persons under sixteen years of age to engage in or cause the performance of such conduct.

Conspiracy in the first degree is a class A-I felony.

An example of first degree conspiracy is in *People v. Ventimiglia, et al.*[10] where defendants planned the murder of defendant Ardito's lover, Mattana. Ardito accused Mattana of planning to leave her for another woman. Ardito hired defendants Ventimiglia and Russo to kill Mattana. Defendants, with Ardito's assistance, forcibly removed Mattana from his home, brought him to "the tall weeds of the marshes bordering Jamaica Bay" and shot him dead. Another defendant, Dellacona, testified for the prosecution about the conversations which preceded the kidnap and murder. At trial, Ardito was found incompetent, and Ventimiglia and Russo were convicted for murder in the second degree, kidnapping in the first degree, and conspiracy in the first degree.

CRIMINAL SOLICITATION

Criminal solicitation is found in Article 100 of the Penal Law. Solicitation is an offense irrespective of whether the crime solicited is a felony or a misdemeanor. It occurs when the individual seeks by soliciting, commanding, importuning, or otherwise causing another person to engage in criminal conduct. The criminal solicitation statutes were enacted to fill the gap created when conduct falls short of an attempt to commit a crime, but the conduct involves sufficient culpability to warrant criminal sanctions. As with conspiracy, criminal solicitation is divided into five degrees.

An example of solicitation is found in *People v. Weiss.*[11] An apartment building maintenance man was called to defendant's apartment. When the maintenance man arrived, he witness the confinement of defendant's estranged wife. Defendant also invited him to participate in a sexual act with her and defendant. Defendant was convicted of, among other charges, assault in the second degree, assault in the third degree, unlawful imprisonment in the first degree, and criminal solicitation in the fourth degree.

Section 100.15 of the Penal Law states that liability to criminal solicitation does not depend on the culpability of the individual soliciting the offense (defined in §20.05(1) in Chapter 6). As such, infancy, insanity, or lack of culpability of the person solicited does not constitute a defense to a prosecution for criminal solicitation.

Defense of Criminal Solicitation

Section 100.15, Criminal solicitation; no defense, states:

It is no defense to a prosecution for criminal solicitation that the person solicited could not be guilty of the crime solicited owing to criminal irresponsibility or other legal incapacity or exemption, or to unawareness of the criminal nature to the conduct solicited or of the defendant's criminal purpose or to other factors precluding the mental state required for the commission of the crime in question.

RENUCIATION

Renunciation represents a defense available for inchoate offenses. The section of the statute is located in Article 40 of the Penal Law which contains excuses (see Chapter Nine of this supplement for excuses). However, renunciation was written into the revised Penal Law to apply to inchoate offenses: criminal solicitation, conspiracy, attempt, and facilitation, and so is added to this chapter. It is also a defense to accomplice liability (§20.00 of the Penal Law). Renunciation is an affirmative defense. As such, the defendant must acknowledge her participation in the inchoate crime, but her sincere desire to desist from criminal activity provides her defense for renunciation.

Renunciation is difficult to prove. The defendant is required to show that she made either a substantial effort to stop the anticipated crime or actually prevented it. Evidence toward proving either element includes statements by the defendant indicating an intention to withdraw, evidence related to warning the prospective victim or the police about the existence of the anticipated offense, an appreciable interval between the abandonment and the anticipated offense, and communicating to co-conspirators the opportunity to follow and refrain from further action.[12] Finally, the defense requires that the renunciation of the anticipated crime result from a genuine desire to prevent the act rather than fear of detection or desire to complete the offense on another victim or at another opportunity. Renunciation is not an available defense to a defendant acting alone.

Section 40.10, Renunciation, states:

1. In any prosecution for an offense, other than an attempt to commit a crime, in which the defendant's guilt depends upon his criminal liability for the conduct of another person pursuant to section 20.00, it is an affirmative defense that, under circumstances manifesting a voluntary and complete renunciation of his criminal purpose, the defendant withdrew from participation in such offense prior to the commission thereof and made a substantial effort to prevent the commission thereof.

2. In any prosecution for criminal facilitation pursuant to article one hundred fifteen, it is an affirmative defense that, prior to the commission of the felony which he facilitated, the defendant made a substantial effort to prevent the commission of such felony.

3. In any prosecution pursuant to section 110.00 for an attempt to commit a crime, it is an affirmative defense that, under circumstances manifesting a voluntary and complete renunciation of his criminal purpose, the defendant avoided the commission of the crime attempted by abandoning his criminal effort and, if mere abandonment was insufficient to accomplish such avoidance, by taking further and affirmative steps which prevented the commission thereof.

4. In any prosecution for criminal solicitation pursuant to article one hundred or for conspiracy pursuant to article one hundred five in which the crime solicited or the crime contemplated by the conspiracy was not in fact committed, it is an affirmative defense that, under circumstances

manifesting a voluntary and complete renunciation of his criminal purpose, the defendant prevented the commission of such crime.

5. A renunciation is not 'voluntary and complete' within the meaning of this section if it is motivated in whole or in part by (a) a belief that circumstances exist which increase the probability of detection or apprehension of the defendant or another participant in the criminal enterprise, or which render more difficult the accomplishment of the criminal purpose, or (b) a decision to postpone the criminal conduct until another time or to transfer the criminal effort to another victim or another but similar objective.

The following case shows the difficulty a defendant will have when trying to apply the renunciation defense. In *People v. Dolan*,[12] defendant, who was admittedly distraught over the victim's decision to end their 17-year relationship, followed the victim one day and confronted her in a public parking lot. When she saw him, she ran to her vehicle, but before she could lock the door inside, he pushed his way in and began the assault her. The victim resisted and the defendant repeatedly struck her with a loaded weapon, as well as with fists. The victim was able to escape from the vehicle. Defendant followed her and attempted to force her back into the car. She screamed for help and bystanders began to gather, after which the defendant fled in his vehicle. He was stopped moments later during a routine traffic stop for failure to wear a seat belt. The officer, who was unaware of what just transpired, discovered the defendant, in an apparent suicide attempt, had stabbed himself in the chest with a large kitchen knife. At the hospital, hospital personnel gave the defendant's clothes to police. A search of the clothes revealed what appeared to be a suicide note.

Defendant was found guilty of attempted kidnapping in the second degree and assault in the second degree. He was sentenced to 10 ½ years imprisonment. His appeal, among other claims, was that the Supreme Court erred by failing to charge the jury the affirmative defense of renunciation. The Supreme Court, Appellate Division, Third Department disagreed. It stated, "[A] defendant has the burden of proof…that the proposed defense is supported by a reasonable view of the evidence [in which] the jury…could reasonably conclude that the defendant has proven the existence of the defense by a preponderance of the credible evidence." Furthermore, "[t]o obtain the benefit of an affirmative defense such as renunciation, defendant must prove that he voluntarily and completely renounced his attempt to abduct the victim and, in the process, acted in such a way as to clearly manifest his intention to fully and completely abandon the criminal effort. He must also prove that the renunciation was not motivated in whole or in part by a concern that he would be detected or apprehended or that the surrounding circumstances rendered the victim's abduction more difficult."

The Supreme Court agreed that the evidence in this case did not support the conclusion that defendant's decision to leave the scene was motivated by a "change of heart" or that he "voluntarily abandoned his intention to abduct the victim." Only when passersby gathered and heard the victim repeatedly scream for help did the defendant leave. "Taken as a whole, this testimony supports but one conclusion [that] defendant fled the scene out of fear of detection or apprehension and not because he voluntarily abandoned his effort to abduct the victim." The court concluded that the trial court properly denied defendant's request to submit this defense to the jury.

REVIEW QUESTIONS

1. A man leaving a bar sees his friend and another patron engaged in a fight. The man immediately comes to the aid of his friend by participating in the fight. He can be charged with:

   A. conspiracy.
   B. attempt.
   C. solicitation.

D. none of the above.

2. A man hires whom he believes is an arsonist and agrees to pay the arsonist $500 to set fire to an apartment building which he owns. The arsonist is an undercover police officer. The man pays the officer $250 as a down payment, the balance of which will be paid after the fire. The man is arrested. He can be charged with:

   A. solicitation.
   B. attempt.
   C. conspiracy.
   D. facilitation.

3. In New York, the *actus reus* for attempt requires proof of which of the following elements?

   A. substantial step
   B. dangerous proximity
   C. clear and present
   D. unilateral

4. Renunciation is **not** a defense to which of the following offenses?

   A. facilitation
   B. assault
   C. conspiracy
   D. attempt

5. Which of the following elements is not required for conspiracy?

   A. an agreement by two or more people
   B. an overt act
   C. criminal intent to commit a crime
   D. commission of a crime

REFERENCES

[1] 697 N.Y.S.2d 173 (1999)
[2] *People v. Mahboubian; People v. Sakhai* (74 N.Y. 2d 174 (1989))
[3] 529 N.Y.S. 2d 556 (1988)
[4] 66 N.Y. 2d 831 (1985)
[5] 547 N.Y.S.2d 814 (1989)
[6] People v. Flack, et al. (125 N.Y. 324 (1890))
[7] 518 N.Y.S. 139 (1987)
[8] 49 N.Y. 2d 48 (1979)
[9] People, etc. v. Austin, et al. (780 N.Y.S. 2d 23 (2004))
[10] 52 N.Y. 2d 350 (1981)
[11] 513 N.Y.S. 2d 238 (1987)
[12] 858 N.Y.S.2d 490 (2008)

ANSWERS

1. D; 2. A.; 3. B; 4. B; 5. A.