

4)

1. Crimes of AI

Conspiracy

Conspiracy is the agreement between two or more persons with the specific intent to commit an unlawful act. Modernly, an overt act is required.

Here, needing money and willing to do anything to get it, Don and AI set out for Vic's house around midnight to steal from him. The agreement was between two persons AI and Don, and they had the specific intent to steal from Vic's house. The unlawful act of larceny and burglary were committed.

The overt act of Don and AI setting out to go the Vic's house and entering Vic's house, are overt acts that satisfy the modern requirement.

AI is guilty of conspiracy to steal from Vic.

Defenses

Withdrawal

A coconspirator may use withdrawal as a defense for crimes in furtherance of the conspiracy. To withdraw, the coconspirator has to thwart the crime occurring by renouncing his acts and thwarting the crime by informing the police.

Here, although AI renounced his act by telling Don, on the way, that he did not want to get involved, he was slapped by Don in the face. AI did not thwart the crime but entered the home of Vic and completed the crime.

This defense will fail.

Duress

Duress is defense by threat that is applicable for non serious crimes, such as murder.

Here, AI may assert that because Don slapped his face when he stated that he no longer wanted to go to steal from Vic' house, being short and Don being tall, he was coerced into not carrying out the crime.

Furthermore, because Don told him that "If you do not come along now, I will break your legs tomorrow. This however is a conditional assault which will not be a defense to A's crime of conspiracy.

Al will be charged with conspiracy to steal from Vic's house.

Larceny

Larceny is the trespassory taking and carrying away the personal property of another with intent to permanently deprive.

Here, when Don took a wallet from the table in Vic's house in the foyer, without Vic's consent, there was a trespassory taking and carrying away. When Don and Al ran away there was intent to permanently deprive Vic of the wallet.

Pinkerton Doctrine

By Pinkerton, all coconspirators are guilty of any crime done in furtherance of the conspiracy.

Here, Al and Don conspired to steal from Vic's house.

Al is guilty of Larceny

Defense.

Rightful reclaim of property

Al may not assert reclaim of his wallet because the wallet belongs to Vic.

Withdrawal

Invalid defense (supra)

Al is guilty of larceny of Vic's wallet.

Burglary

Traditionally, Burglary is the breaking and entering the dwelling of another at night with intent to commit a felony therein. Modernly, burglary is the breaking and entering the structure of another at any time to commit a crime therein.

Traditional burglary

Here, Al and Don break and entered Vic's house when at Vic's house, Don opened the unlocked front door and he and Al went inside. Further this was done at night. Don and Al set out fro Vic's house around midnight, before sunrise, hence at noight. Furthermore, Wanda caught sight of both men running out of Vics house. "That night,"she described the taller man to police but could not describe the shorter man.

However as a defense, Al may claim that no felony was committed therein, since simple larceny was not a felony.

Since both men set out to steal from Vic and not intend to commit a felony therein, Al may use this as a defense to burglary.

However this should fail under modern definition of burglary, because they both intended to commit a crime therein.

Pinkerton Doctrin

Although Don grabbed the wallet, the crime will be committed by Al as well by furtherance of the conspiracy.

Al has committed modern burglary and has no defense for burglary.

2. Fifth Amendment

While in custody, one should not be exposes to unnecessarily suggestive Identification.

Here, Wanda described the taller man to police as clean shaven with shrt hair, however, the newspaper printed a recent photo of Don as having long berad and long hair. When Wanda saw the photo in the paper, she immediately went to the police station and told Officer Oliver that she was concerned that Don might be the wrong man.

Because Officer Oliver told Wanda that Don had Vic's wallet in his pocket, he suggested to her that Don was the man she saw running from Vic' house.

Furthermore, Officer Oliver arranged for Wanda to view a lineup of six berded men after Wanda has seen Don's picture in the paper. This was unecessarily suggestive, and violate Don's 5th Amemndment rights.

As a result of the unnecessarily suggestive tactics by Officer Oliver, Wanda identified Don as one of the man she saw running from the house.

Don may move to suppress evidence of Wanda's identification at the line up as unnecessarily suggestive.

Miranda Violation

One who is in custody should not be interrogated until given Miranda rights.

Here, Don was subjected to custody, when he was arrested, however, pre-indictment does not guarantee him a lawyer to prevent line up identification.

Pre-indictment identification is not interrogation because it is not testimonial.

Don may not suppress evidence of line up on basis of Miranda violation.

14th Amendment

Procedural Due Process

There shall be no loss of life, liberty or property without due process of the US Constitution

Here, Don is about to be denied his liberty on mounting evidence against him, some justified and Wanda's unjustified.

There needs to be a notice and hearing and unbiased decision maker, which Don will get if he takes his case to trial and not plead guilty.

Don may suppress evidence against him under denial of procedural due process if denied a fair trial.

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END OF EXAM