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1. With what crimes can Jim reasonably charged regarding the events at the store?

Solicitation

Solicitation is urging another to commit a crime with the intent that the crime be committed.

Here, the facts state that Jim and Fred armed themselves with handgun and drove to a store on Avon street. There are no facts that Jim urged Fred to commit the crime, although an agreement between them to commit a crime can likely be inferred. However, because there was no urging by Jim, he likely will not be criminally liable for solicitation.

Therefore, Jim *cannot* be reasonably charged with solicitation.

Accomplice Liability

Under the theory of accomplice liability, an accomplice can be charged with any crime that is reasonably foreseeable of the target offense if that person encouraged, aided, or abetted criminal activity.

Here, Jim and Fred both armed themselves with handguns and went to the store on Avon street. As an accomplice, Jim can be liable for any foreseeable crimes if he aided, encouraged, or abetted the crimes. Here, it can be inferred that Jim partook in these crimes and aided, encouraged, or abetted the target crimes and any foreseeable crimes.

Therefore, Jim can be reasonably charged as an accomplice to the target crimes, and any foreseeable crimes.

Conspiracy

A conspiracy is an agreement between two or more parties to commit a criminal offense. Under common law, a conspiracy could be *bilateral*, meaning that two guilty minds were needed to be guilty of conspiracy. Under modern law and the Model Penal Code, however, they have abolished the bilateral requirement and allow for *unilateral* conspiracies.

Here, although there are no facts to support an express agreement between the two, one can be implied through the conduct of both Jim and Fred. The facts state they armed themselves with handguns went to the store, inferring an agreement. Jim would be both guilty of conspiracy unilaterally and bilaterally, since Fred partook in the inferred agreement as well.

Therefore, Jim can be reasonably charged of conspiracy with Fred.

Larceny

Larceny is the (i) taking, (ii) carrying away, (iii) the personal property of another, (iv) with the intent to permanently deprive.

Taking

There must be a physical taking of property by the defendant. Here, the facts state that Salma handed Jim the money and after, he dropped his gun nervously. The facts do not indicate that Jim took any steps after the money was handed to him. The taking requirement has likely been met to suffice for larceny.

Carrying Away

A defendant must take at least one step away to constitute a proper "carrying away" of the property. Here, there are no facts to support that Jim carried the property away. However, when Jim dropped his gun nervously, there are no facts to support that he dropped the money. Additionally, the facts do state that after Fred was killed, Jim picked up his gun and ran out of the store. If he still had the money in his possession, this element will likely be met.

Property of Another

It must be the property of another. Here, the facts state that Salma, the employee, gave Jim the store's money. Thus, it was the property of the store and this element is satisfied.

Intent to Permanently Deprive

There must be an intent to permanently deprive the property owner of his or her property. Here, Jim took the money and ran out of the store, so there was a clear intent to permanently deprive. Additionally, Fred and Jim's agreement to rob the store armed with guns shows a clear intent that will be difficult to overcome.

Therefore, Jim can reasonably be charged with Larceny.

Merger Doctrine

Under the merger doctrine, a lesser included offense will merge into a more serious offense.

Here, Jim can likely be charged with Robbery (discussed below), so the larceny would likely merge into the robbery, and Jim would be charged instead with just robbery.

Therefore, the merger doctrine would likely apply.

Robbery

A robbery is a (i) larceny plus (ii) using force or fear while accomplishing the larceny.

Larceny

As discussed above, the facts have been analyzed to show there is a (i) taking, (ii) carrying away, (iii) the personal property of another, (iv) with the intent to permanently deprive.

Therefore, there is a larceny.

Force or Fear

There must also be force or fear, which is what differentiates robbery from larceny.

Here, the facts state that both Jim and Fred drew their guns and demanded that Salma give them the money. Therefore, force, fear, or intimidation was used.

Therefore, Jim can reasonably be charged with robbery.

Felony Murder

Under the felony murder rule, a defendant will be liable if a killing occurs during an inherently dangerous felony. A killing committed during an inherently dangerous felony satisfies the malice requirement (discussed below under call #2)

Here, there must be an inherently dangerous felony present in order for Jim to be reasonably charged with felony murder.

Inherently Dangerous Felony

Inherently dangerous felonies include arson, battery, rape, robbery, and kidnapping.

Here, as discussed above, Jim can likely be charged with robbery. Thus, a felony murder is likely to have occurred.

Therefore, Jim can reasonably be charged with felony murder.

Redline Rule

Under the redline rule, a co-conspirator is liable for the death of their co-felon, a bystander, or a police officer.

Here, Jim will likely argue that he should not be criminally liable for the death of Fred when

Salma grabbed the shotgun from underneath the counter and killed him. However, the prosecution will likely successfully argue that under the redline rule, Jim will still be held liable for the death of Fred.

Therefore, Jim will likely be liable for the killing of Fred under the Redline rule.

2. With what crimes could Jim reasonably be charged with regarding the incident on Park street?

Attempted Murder

An attempted murder is an direct but ineffectual act toward the completion of murder. We must break down this analysis further and analyze both attempt and murder.

Attempt

Attempt is the direct but ineffectual act toward the completion of a crime. There must be a substantial step that amounts to perpetration of the crime, rather than mere preparation. An attempt is a specific intent crime. Therefore, in order to charge Jim with attempted murder, he must have had the specific intent to commit murder. The facts indicate that Jim saw Salma while walking down Park street, and thinking he could *eliminate her* as a witness, Jim shot at Salma. This shows Jim had the specific intent to kill Salma, and thus had the specific intent.

Homicide

Homicide is the killing of another human being.

Here, when in the store, Salma killed Fred with a shotgun by shooting him, and Fred is another human being.

Therefore, there was a homicide.

Murder

Murder is the killing of another with malice aforethought. Malice can either be express or implied.

Here, although I will discuss the merit of the specific intent Jim had, he did not kill anyone.

Therefore, there was no murder. However, he still may be criminally liable for attempted murder.

Express Malice

Express malice is the express intent to kill.

Here, the facts state that Jim saw Salma while walking down Park street, and, thinking he could eliminate her as a witness, he showed Salma with his gun. The prosecution will argue that Jim had express malice. Jim will argue that he was just trying to scare Salma, but the facts are quite irrefutable.

Therefore, Jim had express malice to kill Salma.

First Degree Murder

First degree murder is the killing of another with malice aforethought, plus premeditation and deliberation.

Premeditation

There must be a planned killing. Here, Jim wanted to eliminate Salma as a witness, so it is clear that he thought about it and reflected on it before the attempted killing. Thus, there was premeditation.

Deliberation

There must be a period of deliberation where the defendant reflects on it in a cool, collected manner and still decides to go through with the killing. Therefore, there was deliberation.

Defenses

Withdrawal

Withdrawal is not an effective defense for an attempt. You cannot withdraw from an attempt because once the substantial step is taken, the crime of attempt is complete. Jim will try to argue that he withdrew before completing the crime of murder, but the prosecution will likely be able to effectively argue that the attempt had already taken place.

Therefore, Jim will not be able to use this defense effectively.

Conclusion

Jim can be reasonably be charged with the attempted murder of Salma.

3. Motion to suppress Jim's gun from being introduced into evidence?

Fourth Amendment

The Fourth Amendment protects individuals from unreasonable searches and seizures by the government. Under the Fourth Amendment, one has a reasonably expectation of privacy in certain places, especially their own home. Additionally, there must be standing and state action.

Here, the facts state that the officer pulled Jim over, and patted him down and found Jim's gun. There was state action, and Jim has standing.

Therefore, there may have been a Fourth Amendment violation by the police officer.

Reasonable Expectation of Privacy

As discussed, there is a reasonably expectation of privacy in one's own home, but that does not extend to an automobile. Generally, you have a lesser expectation of privacy in a car. However, you do have a reasonable expectation of privacy on one's own person.

Here, Jim will argue that the officer pulled over Jim on mere suspicion, and that Jim had a reasonable expectation of privacy of the possession on his person.

Therefore, the officer may have violated Jim's reasonable expectation of privacy.

Warrant Requirement

There must be a valid warrant when there is a reasonable expectation of privacy. For a warrant to be valid, it must be (i) particular, (ii) issued by a neutral magistrate, and (iii) based on probable cause.

Here, the officer patted down Jim when he got out of the car due to the suspicion he had of possible weapons on his person. Therefore, it may have been a valid *Terry* stop and a warrant was not needed (discussed below).

Therefore, there may have been no warrant required,

Lawful stop?

There must have been a lawful stop in order for the stop and frisk to be lawful.

Here, the facts says the officer stopped Jim based off mere suspicion. However, Jim volunteered himself out of the car. Jim will argue the officer stopped him unlawfully and without probable cause, and the prosecution will argue that the officer had probable cause due to the suspicion. Jim will likely be unsuccessful.

Therefore, the stop was valid.

Exception - Stop and Frisk

An officer may stop and frisk a suspected person when there is suspicion of criminal activity afoot. The officer can stop the suspect for a reasonable time and conduct a reasonable pat down search of his person, so search for weapons or contraband.

Plain Feel Doctrine

The pat down must be compliant with the plain feel doctrine, and must not be a "manipulated feel."

Here, the facts state that when Jim got out of his car, Officer Bakari noticed a bulge under his shirt and then patted him down and found the gun. There are no facts to support he manipulated the feel, and found exactly what he was looking for.

Therefore, there was an acceptable stop and frisk by Officer Bakari.

Conclusion

Therefore, Jim will not be successful in his motion to suppress the gun.

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