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1. With what crime(s) could Jim reasonably be charged regarding the events at the store?

### Conspiracy



The agreement by two or more people to commit a crime, and actually commit the crime intended.



Here, it can be presumed from the facts that Jim and Fred agreed to commit robbery at a store on Avon Street because they were both armed with handguns and drove together to Avon Street.

Thus, Jim and Fred would have been charged with conspiracy.

### Robbery

Robbery is the taking of possession of property by threat or force.

Here, Jim and Fred were armed with handguns when they entered the store on Avon Street and drew their guns and demanded that Salma (store employee), give them the store's money- Salma being forced by Jim with his handgun handed Jim the money. Jim ran out of the store, presumably with the store's money in his hand, and drove back to his apartment completing the crime of robbery.

Thus, Jim threatened Salma with his handgun to force her to hand the store's money over.

### Chris - Store Customer

Murder is the unlawful killing of another human being with malice aforethought.

Here, as Salma handed Jim the money he nervously dropped his gun. The gun discharged when it hit the floor and the bullet hit and killed Chris(store customer/innocent

bystander). Jim being armed with a handgun is demonstrating a reckless disregard (malice) when entering the store to commit robbery as the potential for the gun to be discharged in any manner is high. While Jim did not directly point his gun at Chris and shoot him, the gun dropped and discharged hitting and killing Chris.

Thus, Jim could face being charged with the murder of Chris.

### Felony Murder

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Felony murder is the unlawful killing of another person during the commission of a felony (burglary, arson, robbery, kidnapping).

 Here, as discussed above, Jim was robbing the store on Avon Street when he dropped his gun, that discharged and the bullet hit Chris, killing him.

Jim was still in the store and had just been handed the store's money when the event was still ongoing.

Thus, Jim could be charged with felony murder.

Fred-Accomplice/Co-Conspirator

Murder

Defined above.

Fred, Jim's accomplice/conspirator to the robbery was killed during the felony by Salma. Salma got a shotgun from under the counter and shot Fred, killing him following Chris being killed.

 Here, **when an accomplice/co-conspirator to a crime is killed during the commission, the other accomplice/co-conspirator is charged with their murder.** Because Fred was shot by Salma will not protect Jim since they were robbing the store together and the event occurred as a result of the crime. If Fred had been shot by the police or someone trying to stop the crime, Jim would not face this charge. Moreover, Salma was acting in self-defense (person having a reasonable fear of harm and acting in protection to prevent that harm. Response with the same force) and would likely not be charged for Fred's murder.

Thus, Jim will also be charged with Fred's murder.

Conclusion

Jim could reasonably be charged with conspiracy (if not merged with the other crimes), robbery felony murder of Chris and Fred.

2. With what crime(s) could Jim reasonably be charged regarding the incident on Park Street?

Attempted Murder

 Attempt is the intent to commit a crime, but failing to see it to completion. Murder is defined above.

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First Degree Murder/Second Degree Murder

Murder in the first degree is the intentional killing with premeditation and deliberation. If without premeditation and deliberation, it would fall to second degree murder.

Here, Jim saw Salma, later that evening, while walking down Park Street. Thinking that he could eliminate her as a witness, Jim shot at Salma with his gun, but the bullet missed her. Jim drove away in his car. When Jim saw Salma walking down Park Street he happened upon Salma he did not have premeditation to kill Salma or deliberated on how to kill her. Instead when he saw her he thought eliminating her by killing her would prevent Jim from being caught and Salma testifying to the earlier events.

Thus, Jim could face attempted second degree murder because he shot at Salma intending to kill her, but the bullet missed her.

3. Under the Fourth Amendment to the US Constitution, can Jim successfully move to suppress Jim's gun from being introduced into evidence at trial?

Fourth Amendment

The fourth amendment of the US Constitution prevents the unreasonable search and seizure of a person/item.

Standing

In order for a defendant to assert this claim he/she must show government conduct and reasonable expectation of privacy.

Here, because Jim was in his car when he was pulled over, he had a reasonable expectation of privacy while driving in his car.

Thus, Jim has standing.

Search Incident to Arrest

Government agent can stop and search a person/car for reasonable suspicion.

Here, a few minutes later after Jim's encounter with Salma, Police Officer Bakari, saw Jim driving down the street. Officer Bakari, who had no knowledge of the events at the store, or on Park Street, pulled Jim over because he looked nervous.

When Jim got out of his car, Officer Bakari noticed a bulge under his shirt. Officer Bakari then patted Jim down and found Jim's gun. Officer Bakari arrested Jim for possession

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of concealed firearm and seized the gun. While we do not from the facts what Officer Bakari had Jim exit the car, it can be presumed that based on the officer's observation of Jim's nervousness he had him step out of the car to search inside. However, Officer Bakari noticed a bulge and patted Jim down, which the officer was permitted to do in reasonably suspicion/probable cause.

Thus, there was a search incident to arrest.

### Exclusionary Rule

The exclusionary rule applies when there has been a violation of a person's 4th, 5th and 6th amendment rights.

Here, Jim would raise that both his 4th and 5th amendment rights were violated during the arrest by Officer Bakari in an attempt to prevent his gun from being introduced into evidence at trial.

### 4th Amendment

Defined above.

Here, Jim will claim that his 4th amendment rights were violated by Officer Bakari when he was pulled over and patted down. However, as discussed above, when there is a search incident to arrest event, any evidence seized during that search is permissible for entry barring another exception. Because there is a gap in the facts as to why Officer Bakari had Jim exit the vehicle, if there is something that occurred outside the bounds, Jim may have a claim for a 4th amendment violation.

Thus, Jim would likely not prevail on the 4th amendment claim.



### 5th Amendment

The 5th amendment provides the right to prevent self-incrimination. The right to remain silent, if you choose not to remain silent anything you say can be used against you in court, an attorney can be provided if you cannot afford one. (Miranda Rights).

Here, from the facts it appears that upon Jim's arrest Officer Bakari did not mirandize Jim to inform him of his rights.

Thus, if this did not occur, Jim may have a claim to suppress his gun for lack of being read his rights.

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**END OF EXAM**