

## Question 2 – Criminal Law

### State v. Steve

#### Conspiracy

Conspiracy is the agreement between two or more persons to commit an unlawful act.

When Will asked Steve a professional assassin to kill Adam, and Steve accepted, there was an agreement. The agreement was with Will and Steve, thus, between two or more persons. In addition they agreed that Steve would kill Adam, a business rival of Will's. Thus, they agreed to commit the unlawful act of murder.

Therefore, Steve and Will are guilty of conspiracy.

#### Murder

Murder is an unlawful killing committed with malice aforethought. Malice aforethought can be evidenced through intent to kill, intent to cause great bodily harm, willful and wanton conduct or the felony murder rule.

Steve assaulted Adam late at night on a dark deserted street. Adam did resist vigorously putting Steve's life at risk. Steve overcame Adam's resistance and succeeded in killing him. Thus, an unlawful killing occurred. Steve's act of assaulting Adam and then killing him establishes his intent to kill. Therefore, Steve's conduct was intentional. Further, the act of assaulting Adam in order to kill him pursuant to his agreement with Will, shows Steve acted with the intent to cause great bodily harm.

Steve's act of assaulting Adam late one night in a dark deserted street in order to fulfill his agreement of killing Adam shows he acted with willful and wanton conduct.

Lastly, a death that results from the commission of perpetration of an underlying crime, i.e., assault, establishes malice aforethought.

Steve will be convicted of murder.

#### Actual Causation

"But for" Steve, a professional assassin, accepting the job to kill Adam, and then assaulting Adam in a deserted dark street, Adam would not have been killed.

Therefore, Steve is the actual cause of Adam's death.

#### Proximate Causation

With the act of being hired as a professional assassin and assaulting your target it is foreseeable

that a death from the assault could result. Steve may argue that Adam was getting the better of him and he had to defend himself. However, it is foreseeable that if you are hired to assassinate a person and you take steps to assassinate, a death would result. Thus, Adam's death is a foreseeable result of Steve's conduct.

Therefore, Steve is the proximate cause of Adam's death.

### **First Degree Murder**

First degree murder is shown by premeditation and deliberation with specific intent to kill.

Steve a professional assassin was hired by Will to kill Adam. Steve assaulted Adam late at night in a dark street. Although Adam resisted vigorously Steve succeeded in killing him. The fact that he was a hired assassin was a sufficient act to prove premeditation. Further, assaulting Adam in a dark deserted street established that Steve deliberated on how he was going to kill Adam. Steve's act of assaulting Adam shows he had the requisite specific intent to kill Adam.

Steve will argue that Adam was resisting vigorously and put Steve's life at risk. Steve had no choice but to overcome Adam and kill him. Thus, he did not have the specific intent to kill, with premeditation and deliberation.

However, he was a hired assassin. The fact that he initiated the assault in a dark and deserted street shows he had premeditation and deliberation to kill Adam. Further his act of killing Adam shows he had the specific intent to kill.

Therefore, Steve will be convicted of first degree murder.

### **Second Degree Murder**

Second degree murder is all murder that is not first degree murder.

If Steve's conduct is found to be wanton and reckless, he will be found guilty of second degree murder.

### **Self Defense**

One may use reasonable force to protect one's self, which may rise to deadly force if in reasonable belief that your life is being threatened.

Steve will argue he was reasonably and truly afraid for his life when Adam was resisting and put his own life at risk. Believing that Adam placed his life at risk Steve overcame Adam's resistance and killed him, therefore, using reasonable force to protect himself. Being fearful that Adam was going to kill him and by overcoming Adam's resistance killing him shows he had reasonable belief his life was being threatened.

However, the state will argue that Steve was the aggressor and assaulted Adam. A natural event of Adam would be to try and protect himself from the attack. That is what Adam did. Steve's act of assaulting shows he was the aggressor and he does not have a reasonable belief that he is being assaulted giving him the right to use reasonable force to protect himself. The fact that Steve was the original aggressor invalidates his claim to self defense.

Therefore, self defense is not a valid defense.

### **Voluntary Manslaughter**

Murder can be mitigated to voluntary manslaughter based on an imperfect defense.

Steve will argue that he thought he had a right to defend himself, and the fact he did not is an imperfect defense allowing murder to be mitigated to voluntary manslaughter. However, since Steve was a hired assassin and was the aggressor he does not have a good faith right to assert self defense. Hence, Steve can't claim an imperfect defense of self defense and mitigate murder to voluntary manslaughter.

Therefore, Steve will not be charged with voluntary manslaughter.

### **Assault**

An assault is the intentional placing of another in fear of an imminent harmful or offensive touching.

Steve assaulted Adam late at night in a dark deserted street. Steve's act of assaulting Adam shows his intent to harm him. Thus, Steve acted with intent.

Steve assaulted Adam. His act of assaulting Adam placed Adam in fear of an imminent harmful touching evident by the fact that he resisted vigorously.

Therefore, Steve will be charged with an assault.

### **Battery**

Battery is the unlawful application of force.

When Steve assaulted Adam late at night in a dark deserted street he caused Adam's death. Thus, there was an unlawful application of force.

Therefore, Steve will be charged with battery.

If Steve is found guilty of murder, assault and battery are lesser included offenses of murder and the prosecution may not charge Steve with assault and battery charges.

## **State v Will**

### **Solicitation**

Solicitation is the counseling, inciting, or inducing of another to commit or to join in the commission of an unlawful act.

The prosecution will argue when Will asked Steve, a professional assassin to kill Adam, a business rival, Will's request of Steve was an inducement of Steve, another, to join in the unlawful act of murdering Adam. Will's asking Steve to kill Adam, establishes that Will wanted Steve to murder Adam which is an unlawful act.

Therefore, Will had committed solicitation.

Solicitation is a lesser included offense and will merge with the underlying crime.

### **Withdrawal**

The general rule one may not withdraw from a solicitation. However, under the Model Penal Code you can withdraw if it is voluntarily and completely abandonment of the crime.

Will asked Steve to kill Adam since he was a business rival. After Steve, the assassin agreed to kill Adam, Will heard that Adam's business was failing. Will told Steve that he had changed his mind and no longer wanted him to kill Adam. Although Steve responded that he was going to kill Adam anyway, Will did not take any steps to prevent Steve from killing Adam.

Thus, Will's attempted withdrawal will not be a defense for the solicitation charge.

### **Conspiracy**

Defined and discussed supra.

### **Withdrawal by Will**

Generally, withdrawal from a conspiracy is not a defense for conspiracy, because the conspiracy is complete as soon as the agreement is made and an act in furtherance is performed.

Will asked Steve to kill Adam since he was a business rival. After Steve, the assassin agreed to kill Adam, Will heard that Adam's business was failing. Will told Steve that he had changed his mind and no longer wanted him to kill Adam. However, Steve responded that he was going to kill Adam anyway.

Although Will will argue that he was trying to prevent the death, withdrawal is no defense to common law conspiracy. Modernly, one must take steps to thwart the crime in order for a withdrawal to be effective. Since Will did not take any steps he could be found guilty in the furtherance of the conspiracy.

Will did tell Steve that he had changed his mind and did not want Adam killed. However, he took no affirmative steps to prevent Steve from killing Adam. In fact, Will did not thwart the crime since Steve told him that he was going to kill Adam anyway. Thus, Will's attempted withdrawal will not be a defense for the conspiracy charge since the conspiracy was completed upon the formation of the agreement and he will be liable for anything in furtherance of the conspiracy.

Therefore, Will's withdrawal is not effective.

### **Co-Conspirator Liability – Pinkerton's Rule**

A co-conspirator may be held liable for a crime committed in furtherance of the conspiracy that are the natural and probable consequence of the unlawful act and are foreseeable consequences thereof.

Since Will and Steve are co-conspirators, Will may be held liable for all crimes in furtherance of the conspiracy.

Based on the agreement between Will and Steve, Steve was to assassinate Adam, Will's business rival. The act of Steve, who assaulted Adam on a dark deserted street, was in furtherance of the conspiracy. Further, the agreement was to kill Adam. The fact Will heard Adam's business was failing, and telling Steve he changed his mind about killing Adam, and Steve told him that he was going to kill him anyway was a natural and probable consequence of the killing, an unlawful act. Therefore Steve's act of assaulting Adam and then killing him was within the scope of the conspiracy.

Therefore, Will is guilty of the murder committed by Steve based on Pinkerton's Rule.