

**October 2014 Baby Bar
Question 3 – Criminal Law**

State v Frank

What charges, if any, can reasonably be brought against Frank for the beating of Art and the taking of his wallet? Discuss.

Conspiracy

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

Steve and Frank became acquainted at a correctional facility for mentally ill offenders. Once they discovered that they both wanted to be actors, they hatched a scheme to kidnap a famous actor, Art. Thus, there was an agreement as evidenced by Frank and Steve's statement that they would kidnap Art and show him their acting skills.

The agreement was between Steve and Frank, i.e., two or more. Further, the facts show both Steve and Frank hatched a plan to kidnap Art in order to show him their talent so Art would help them get acting jobs. Therefore, the agreement was to do an unlawful act, i.e. kidnapping.

Therefore, Frank can be charged with conspiracy.

Co-Conspirator Liability: Pinkerton's Rule

Since Frank was a co-conspirator, he will be held liable for all crimes committed in furtherance of the conspiracy, including the battery and robbery since these crimes were foreseeable consequences of the conspiracy.

However, Frank will argue that the battery and the robbery were not foreseeable. The agreement was to kidnap Art in order to show him how talented they were so he would help them get acting jobs. When Frank was out Steve beat Art and took his wallet. Frank will further argue that he only agreed to the kidnapping, and not the intentional acts of Steve harming Art. Although a battery is a foreseeable act for kidnapping, the crime of battery was not within the scope of the kidnapping and not committed in furtherance of the conspiracy. The crime of robbery is not an act that would be a consequence of a kidnapping, thus robbery is outside the scope of the conspiracy.

Therefore, Frank will be charged with conspiracy to kidnap and kidnapping.

Assuming that the court finds that the battery and robbery are within the scope of the conspiracy, the prosecutor would have to prove the underlying crimes that were committed by Steve in order to impute them to Frank.

Battery

Battery is the unlawful application of force to the person of another.

Steve beat Art and took his wallet. Thus, there is an unlawful application of force. Further, beating Art establishes the act being to the person of another.

Thus, Steve will be charged with battery.

Robbery

Robbery is the trespassory taking and carrying away of the personal property of another by force, fear or intimidation with the intent to permanently deprive the victim of his personal property.

Bob beat Art severely and took his wallet, thereby a trespassory taking of the personal property of another. Since Steve attempted to escape upon the taking of the wallet, there was a carrying away. The items were taken from Art after Steve beat him. Thus, the taking did occur in the presence of Steve with force, fear and intimidation. Steve intended to apparently deprive Art of his property, because of the violent nature of how he took the wallet and he believed that the kidnapping, battery and robbery were discovered, and he attempted an escape. Thus, Art, evident by his conduct, demonstrated that he had the intent to permanently deprive Art of his property.

Therefore, Steve will be charged with robbery.

2. What Charges, if any can reasonably be brought against Frank for the death of the police officer? Discuss.

Conspiracy

Defined and discussed supra.

Murder

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

After kidnapping Art, Steve was left alone with Art while Frank was out. Steve beat Art and believing that the kidnapping, battery and the robbery had been discovered, attempted to escape by driving greatly in excess of the speed limit. A police officer followed and during the high speed chase, the officer's car spun out of control and the officer died in the accident. Thus, there was no unlawful killing of another.

Instead, Steve was attempting to escape thinking that his criminal activity had been discovered when an officer followed him and lost control of the patrol car and died. Thus, Steve did not have the intent to kill police offer, or the intent to cause great bodily harm. However, Steve's act

of attempting to escape, driving in excess of the speed limit and not stopping when being pursued by a police officer shows a reckless disregard for human life. Therefore, Steve's conduct was willful and wanton.

Lastly the prosecution will argue the death of the police officer occurred during a felony.

Kidnapping

Kidnapping is the intentional, unlawful movement of another.

Steve and Frank located Art's house and kidnapped Art and took him to a remote location. The movement of Art without his consent was sufficient to establish an unlawful movement. Further, since the intent of Steve and Frank was to show Art their acting skills in order for Art to get them acting job, they kidnapped Art establishing the movement of another.

Therefore, a kidnapping occurred.

Felony Murder – Kidnapping

Any death caused in the commission of, or in an attempt to commit, a dangerous felony is murder. Malice is implied from the intent to commit the underlying felony. However, the felony must be distinct from the killing itself.

In order to apply the felony murder rule we will need to prove up a kidnapping. Such kidnapping occurred, as argued above.

If the court should find that Steve is not guilty of first degree murder based on the felony murder rule he will be charged with second 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 only wanton and reckless, he will be found guilty of second degree murder.

Co-Conspirator Liability: Pinkerton's Rule

Since Frank was a co-conspirator, he will be held liable for all crimes committed in furtherance of the conspiracy.

Frank will argue that the murder of the officer was not foreseeable. The agreement was to kidnap Art in order to show him how talented they were so he would help them get acting jobs. When Frank was out Steve beat Art and took his wallet, panicked and stole a car.

Driving at a high rate of speed a police officer tried to stop Steve. Believing that the kidnapping had been discovered Steve attempted to escape by driving in excess of the speed limit. During the chase the officer's car spun out of control killing him. Frank only agreed to the kidnapping, and not the intentional acts of Steve stealing a car and getting into a high speed chase. Although an attempt to flee is a foreseeable act, the facts that Steve panicked from beating Art and stealing a car and getting into a high speed chase was not within the scope of the kidnapping and not committed in furtherance of the conspiracy.

Frank will likely argue that the battery and the robbery were not within the scope of the original kidnapping and cannot be used to support a finding of malice. He will likely argue that the crime of murder is not an act that would be a consequence of a kidnapping, thus murder of the officer is outside the scope of the conspiracy. However, kidnapping is one of the dangerous felonies that supports a finding of malice in the felony murder rule and he is guilty of kidnapping Art.

As such, Frank will be found guilty of felony murder.

Assuming that the court finds that the kidnapping is within the scope of the conspiracy based on the Pinkerton's rule the murder will be imputed to Frank.

3. What defenses, if any, can Steve reasonable raise against a charge of kidnapping. Discuss

Defense of Insanity - M'Naghten Rule

Due to the mental defect, a defendant who did not know what he was doing was wrong is not guilty under M'Naghten.

Steve has to take antipsychotic medication to prevent paranoia. He and Frank hatched a scheme to kidnap Art, an actor, in order to show him their acting skills so he could get them an acting job. Steve stopped taking his antipsychotic medication. As a result, he went in and out of paranoia. Once they kidnapped Art, Steve developed a belief that Frank had supernatural powers and that he had to do what Frank said or Frank would kill him. All of these facts tend to show that Steve had a mental defect at the time his actions occurred. Further, after the kidnapping and bringing Art to a remote area, Steve beat him and took his wallet. Under the belief that Frank would kill him if he did not do what he was told, he committed the acts due to his mental defect.

However, Frank and Steve agreed to kidnap Art in order to show him their acting skills. Steve, while Frank was out beat him and took his wallet, without any direction from Frank. Further, they never showed Art their acting skills. The facts ultimately indicate that Steve understood what he was doing was wrong since, at the high speed chase, he believed the kidnapping, battery and robbery were discovered and he fled. A defendant who did not believe his actions were wrong would not flee from a crime scene.

Thus under the M'Naghten rule Steve does not have a valid defense.

Model Penal Code

Under the Model Penal Code, a defendant who lacks the substantial capacity to conform his acts to the law due to mental defects has a defense to the crime.

Steve suffers from a mental disorder that gives rise to paranoia. After stopping from taking his medication he went in and out of paranoia. Once they kidnapped Art, Steve developed a belief that Frank had supernatural powers and that he had to do what Frank said or Frank would kill him. Steve beat Art and took his wallet. Due to the defect, his mental disorder, Steve lacks the substantial capacity to conform his acts to the law since his mental disorder gives him homicidal desires. However, Frank did not ask Steve to beat and take of Art's wallet. His actions were not due to his lack of substantial capacity to conform to the law since he fled the scene at a time that he believed that his kidnapping, battery and robbery were discovered.

Thus under the Model Penal Code rule Steve does not have a valid defense.

Irresistible Impulse

A defendant is not guilty where due to the mental defect Defendant did not have the ability to control the conduct.

Steve suffers from paranoia. Steve formulated a plan to kidnap Art. Due to the defect of paranoia, Art did not lack the ability to control his conduct since he was not directed by Frank to beat Art, how can he believe that Frank was going to kill him for not doing what he was told. A better argument would be that Frank left Steve in charge to watch Art while he was out.

Thus, under the Irresistible Impulse Rule Steve does not have a valid defense.

Durham Rule

A defendant is not guilty where due to the mental defect the act by defendant was the product of his mental illness.

Steve suffers from a mental disorder that gives rise to paranoia. Under the influence of the paranoia, Steve beat and took Art's wallet. Due to the defect, Steve's act was not the product of his mental illness since Frank did not direct him to beat Art.

Thus, under the Durham Rule Steve does not have a valid defense.