

June 2018 Baby Bar
Question 4 Criminal Law
Model Answer

1. With what crimes, if any, can Al be reasonably charged, and what defenses, if any can he reasonably raise? Discuss.

Conspiracy

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

Al, Bob and Carl are members of a group opposed to nuclear power. They decided to break into the Gigantic Power Company (GPC) headquarters to remove a model of a proposed nuclear plant. Thus, there was an agreement.

The agreement was with Al, Bob and Carl. As such, there was an agreement between two or more persons.

They decided to break-in GPC and remove a model of a proposed nuclear plant, thus Al, Bob and Carl had the intent to commit an unlawful act, i.e. larceny.

Therefore, Al, Bob and Carl will be charged with conspiracy.

Withdrawal

Generally, withdrawal from the conspiracy is not a defense to the conspiracy, because the conspiracy is complete as soon as the agreement is made and act in furtherance is performed. At common law withdrawal may be a defense to crimes committed in furtherance of the conspiracy, including the substantive target crime of the conspiracy if a conspirator performs an affirmative act that notifies all members of the conspiracy of his withdrawal. Under the Model Penal Code the conspirator needs to thwart the success of the conspiracy under circumstances manifesting a complete and voluntary renunciation.

Two hours before they were to leave for GPC headquarters, Al tells Bob and Carl that he will not participate in the break-in. Thus, Al a conspirator notified Bob and Carl, the other members of the conspiracy showing his intent to withdraw. Since Al communicated to all co-conspirators, his withdrawal is effective and thus he is not guilty of any of the crimes made in furtherance of the conspiracy.

Under the Model Penal Code Al only communicated that he was not going to participate in the break-in of GPC. He did not take any steps to thwart the success of the conspiracy and thus, his withdrawal will not be effective and Al will be liable for any crimes in furtherance thereof.

Hence, common law the withdrawal is effective. Under the Model Penal Code, the withdrawal is not effective.

Conspirator Liability: Pinkerton's Rule for the Murder

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

Al, as a co-conspirator can be liable under the Pinkerton's theory for the burglary, larceny, kidnapping and murder. The agreement between Al, Bob and Carl was to break-in GPC and remove a model of a nuclear plant. Hence, the burglary and larceny are foreseeable. In addition, once the model was removed a GPC's security spotted them and drove after them. In pursuit Bob gave Carl a gun and they ran toward an apartment building. In order to try to flee, Bob graded a tenant as hostage. The police arrived and Bob shot at them. As Hostage was running a police officer mistakenly kills him. Since it is foreseeable one would take steps from being captured, Al as a co-conspirator, under the Model Penal Code will be liable for the kidnapping. However, since the killing was done by an officer, Modernly, Al will have no liability. (See Infra)

Since Al was a conspirator, he will be held liable for all crimes committed in furtherance of the conspiracy including the kidnapping since this crime was a foreseeable consequence of the conspiracy.

Since the murder was committed by a police officer, to be discussed infra, Al will not be liable for the murder of Hostage.

2. With what crimes, if any, can Bob be reasonably charged, and what defenses, if any, can he reasonably raise? Discuss.

Conspiracy

Defined and discussed supra.

Common Law Burglary

At common law, burglary is the nighttime breaking and entering into a dwelling house of another with the intent to commit a felony therein.

The facts state Al, Bob and Carl decided to break-in GPC at night, thus the events occurred in the night time. Thus, the nighttime element is satisfied. Further, Bob and Carl broke into CPC's headquarters. Thus, there was a breaking. Bob and Carl entered and removed the model, thus there was an entry. The entry was into GPC's headquarters, thus, not a dwelling of another. Because Bob and Carl entered with the intent to remove the nuclear model i.e. larceny, they had the intent to commit a felony therein.

Since GPC's headquarters is not a dwelling house of another, Bob should not be charged with common law burglary.

Modern Law Burglary

Modern law burglary is the trespassory entry into a structure to commit any crime.

In order to help facilitate the plan to remove a model of a nuclear plant Bob and Carl broke into GPC's headquarters. Thus, there was a trespassory entry.

Bob and Carl entered GPC's headquarters, a structure. Bob and Carl entered GPA headquarters to remove a model of a nuclear power plant, i.e., larceny a crime.

Thus, there is a modern law burglary.

Larceny

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

Bob and Carl broke into GPC's headquarters and removed the model. Hence, since GPA did not give consent to remove the model, there was a trespassory taking. Bob and Carl took the model and started to drive away. Hence, there was a carrying away. The model belonged to GPA. Thus, it was the property of another. Bob and Carl removed the model and started to drive away, establishing they had the specific intent to permanently deprive the GPC of its model.

Thus, Bob and Carl have committed a larceny.

Kidnapping

Kidnapping is the intentional, unlawful movement of another.

As Bob and Carl were driving away, they were spotted by a GPC's security personnel. After a short pursuit, Bob and Carl jumped from their car and ran towards an apartment building. Bob grabbed a tenant to use for a hostage. Thus, Bob's actions were intentional. Further Bob's act of grabbing a tenant and forcing him back towards the building equates to an unlawful movement of another. Further, since the intent of Bob was to conduct the movement in order to prevent his capture, the movement was unlawful.

Therefore, a kidnapping occurred.

Murder

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

Bob and Carl were trying to escape. They jumped out of their car and took a hostage and went to an apartment building. Carl convinces Bob to let the hostage go. When the hostage starts to run, the police mistakenly shoots and kills him. Based on the officer's act of shooting the hostage and killing him, an unlawful killing occurred. Firing a gun directly at someone, i.e. Police officer shooting the hostage, shows the police officer had the intent to kill, or at least the intent to cause great bodily harm.

The police officers act of shooting the hostage shows a reckless disregard for human life. Therefore, Police's conduct was willful and wanton. Thus, malice is established.

Actual Causation

"But for" the police officer shooting the hostage, Hostage would not have died.

Therefore, the police officer is the actual cause of Hostage's death.

Proximate Causation

It is foreseeable aiming a gun and shooting at someone that a death would result. Thus, the hostage's death is a foreseeable result of the police officer's conduct.

Therefore, Police officer is the proximate cause of Hostage's death.

First Degree Murder

Special Felony murder rule

If a killing is done by an innocent party then a co-felon may be guilty of the murder. Under the Redline view, the prosecutor will need to show that an innocent party did the killing in order to impose guilt on a co-felon.

Based on the facts the police officer shot and killed the hostage. Since the police officer was trying to apprehend Bob and Carl, and mistaking the hostage as a suspect and shot and killed the hostage. Hence, police officer is an innocent party. Since a killing did result, Bob may be guilty for the murder of Hostage depending on the jurisdiction.

Under the Common Law view liability will be found if a killing did occur. Based on the facts the police officer shot and killed Hostage. Thus, under a common law jurisdiction Bob will be guilty of murder.

Under the Modern view liability for the killing will only be found if the killing was done by one of the felons. Based on the facts a police officer did the killing and he was not a felon to the crime.

Thus, under the modern law view Bob will not be guilty of the murder of the hostage.

3. With what crimes, if any, can Carl be reasonably charged, and what defenses, if any can he reasonably raise? Discuss.

Conspiracy

Defined and discussed supra.

Conspirator Liability: Pinkerton's Rule for the Murder

Defined Supra.

Carl as a co-conspirator will be liable for under the Pinkerton's theory for the burglary, larceny, kidnapping and murder. The agreement between Al, Bob and Carl was to break-in GPC and remove a model of a nuclear plant. Hence, the burglary and larceny are foreseeable. In addition, once the model was removed a GPC's security spotted them and drove after them. In pursuit Bob gave Carl a gun and they ran toward an apartment building. In order to try to flee, Bob graded a tenant as hostage. The police arrived and Bob shoots at them. As a hostage was running a police officer mistakenly kills him. Since it is foreseeable one would take steps from being captured, Carl as a co-conspirator, under the Model Penal Code will be liable for the kidnapping. However, since the killing was done by an officer, Modernly, Carl will have no liability.

Since Carl was a conspirator, he will be held liable for all crimes committed in furtherance of the conspiracy including the kidnapping since this crime was a foreseeable consequence of the conspiracy.

Duress

Duress is a defense if the defendant can show the criminal act was done while under coercion based on a threat of another person.

Carl will argue that Bob pulled out two guns, which he was unaware Bob had, and tosses one to him. Then he grabbed a tenant to use as a hostage. Carl continually pleads with Bob to let the hostage go.

Bob yells at Carl “Get in here or I’ll shoot you.” Hence, Carl acted under the belief that Bob would have shot him in the event he did not follow Bob’s orders and enter into the building.

Carl’s further action of pleading with Bob to let the hostage go is consistent with any claim he was acting under duress. If he did not get in the building, he believed Bob was going to shoot him. Hence, duress to the kidnapping may be a viable defense.