

June 2020 Baby Bar
Question 3 – Criminal Law

With what crimes can Doug reasonably be charged; what defenses, if any, may reasonably raise; and what is the likely result? Discuss.

Burglary

Burglary is the nighttime breaking and entering into a dwelling house of another with the intent to commit a felony therein.

Doug went to Bob's grocery store in order to shoot him. Since the facts are silent to the time of day, nighttime will be presumed. Thus, it was nighttime.

Doug entered Bob's grocery store. Since the store was open to the public, there was no breaking.

Doug did enter the convenience store, thus, there was an entry.

Doug entered the grocery store, thus, since it was a store, it is not a dwelling of another.

Upon entry, Doug shot Bob twice with his handgun. Hence, he entered with the intent to commit a felony therein. i.e. murder.

However, since there was no breaking or dwelling house of another, no common law burglary will be found.

Therefore, Doug will not be found guilty of common law burglary.

Modern Law Burglary

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

Doug went to Bob's grocery store because he was angry at Bob for falsely accusing him of shoplifting twice. Since Bob, as the owner of the grocery store would not consent to Doug entering the store for the purpose of killing him, Doug's entry was a trespassory entry.

Doug went into the grocery store hence, a structure.

Doug entered the grocery store and shot Bob twice with his handgun. Hence, he arguably entered with the intent to commit murder which shows he had the intent to commit a crime at the time of entry.

Therefore, Doug can be charged with modern law burglary.

Murder of Bob

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

Doug went into Bob's store and shot Bob twice with his handgun killing him. Thus, an unlawful killing occurred.

Doug decided to kill Bob, the owner of a small grocery store because Bob had twice falsely accused him of shoplifting. Doug went into Bob's store and shot Bob twice with his handgun. Thus, Doug acted with the intent to kill. Further, shooting a gun at someone shows Doug had intent to cause great bodily harm.

Doug's act of shooting the gun and killing Bob shows his act was a reckless disregard for human life. Therefore, Doug's actions were willful and wanton.

In addition, by entering Bob's grocery store, Doug committed a modern law burglary, as discussed supra. Thus, the killing of Bob was during a commission of an inherently dangerous felony. Thus, malice is established.

Actual Causation

"But for" Doug shooting his gun at Bob twice he would not have been killed.

Therefore, Doug is the actual cause of Bob's death.

Proximate Causation

It is foreseeable that if you have a gun and shoot that gun in a convenience store, that the bullet would hit a customer.

It is foreseeable that an act of shooting a gun twice at someone that a death would result.

Thus, Bob's death is a foreseeable result of Doug's conduct.

Murder in the first degree

First degree murder is shown by specific intent to kill, plus premeditation and deliberation or based on the felony murder rule.

Doug's act of deciding to kill Bob, and going to his grocery store and shooting him twice with his handgun shows he acted with premeditation to kill Bob. Since he acted with the intent to shoot Bob because he falsely accused him of shoplifting he had the requisite specific intent to kill Bob at the time of shooting him.

Therefore, there is first degree murder.

If the court should find that Doug is not guilty of first degree murder for lack of specific intent he will be guilty based on the felony murder rule.

Felony Murder – Modern Burglary

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 modern law burglary. A modern law burglary occurred, as argued above.

Doug was committing a burglary when he decided to kill Bob and entered Bob's grocery store and shot him twice. Thus, the killing occurred within the res gestae of the criminal act of modern law burglary.

Therefore, under the felony murder rule, Doug will be charged with first degree murder.

Larceny

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

After shooting Bob, Doug noticed the cash register and opened it and took all of the money out. Hence there was a trespassory taking,

Further, he took the money and went out of the store, thus, there was a carrying away. The money in the cash register belonged to Bob, the owner of the grocery store. Thus, it was the property of another. Doug took the money and left the store, establishing he had the specific intent to permanently deprive the store owner, Bob of his money.

Thus, Doug has committed a larceny

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.

While in the grocery store Doug saw Sally hiding behind some shelves, and pointed his gun at her and took her purse and left the store with Sally and her purse. Thus, there was a trespassory taking and the carrying away of the personal property of another. Doug pointed the gun at Sally and took her purse. Therefore, the taking of Sally's purse occurred with force, fear and intimidation. Doug intended to apparently deprive Sally of her purse as he left got into his car and sped out of the parking lot.

Therefore, Doug will not be charged with robbery.

Battery

Battery is the unlawful application of force.

When Doug pointed his gun at Sally in the grocery store and took her purse there was an unlawful application of force.

Therefore, Doug will be charged with battery.

Kidnapping

Kidnapping is the intentional, unlawful movement of another.

Hiring sirens after killing Bob, Doug ordered Sally at gunpoint out of the store and into his car. The movement of Sally without her consent was sufficient to establish an unlawful movement. Further, since the intent of Doug was to remove Sally from the grocery store in order to have a hostage to allow him to escape from this act of killing Bob, shows the movement of another.

Therefore, a kidnapping occurred.

False Imprisonment

Unlawful detention or confinement of another.

Doug pointed his gun at Sally and ordered her to get into his car, thus, there was an unlawful confinement. Since Doug placed Sally in his car without her consent and against her will, there was a confinement of another.

Therefore, Doug committed false imprisonment.

Murder of Sally

Murder

Defined supra.

Doug sped out of the parking lot in his car and Officer Fran gave chase. Doug pulled into an empty parking lot and fired several shots at Officer Fran. Officer Fran returned fired back and missed and shot Sally. Thus, an unlawful killing occurred. Doug firing several shots at Officer Fran, Officer Fran returned fire and shot her gun in order to protect herself. Officer Fran missed Doug and hit and killed Sally. Since Officer Fran mistakenly hit Sally, and Doug was firing at Officer Fran and not Sally there was no intent to kill or to cause great bodily harm.

However, Doug's act of shooting at Officer Fran, and Officer Fran's act of shooting her gun at Doug and missing and hitting and killing Sally shows an act that was a reckless disregard for human life. Therefore, Doug's actions were willful and wanton. Thus, malice is established.

Doug will be convicted of murder.

Actual Causation

"But for" Doug shooting at Officer Fran and Officer Fran returning fire, Sally would not have been killed.

Therefore, Doug is the actual cause of Sally's death.

Proximate Causation

It is foreseeable that if you have a gun and shoot that gun at a police officer, that the police officer would return fire. Thus, it is foreseeable that Sally could be mistakenly hit by a bullet and die. Thus, Sally's death is a foreseeable result of Doug's conduct.

Therefore, Doug is the proximate cause of Sally'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, one of the stores fleeing customer knocked Walter into the street into oncoming traffic which resulted in him being run over and killed. Since the customer was trying to get away from harm, the customer is an innocent party. Since a killing did result, Andy may be guilty for the murder of Walter depending on the jurisdiction.

Under the Common Law view liability will be found if a killing did occur. Based on the facts Doug pulled into an empty parking lot and fired several shots at Officer Fran. Officer Fran responded by firing her gun and missed and hit Sally, killing her. Thus, under a common law jurisdiction Doug will be guilty of murder.

Under the Modern view liability, the killing will only be found if the killing was done by the felons. Based on the facts, Officer Fran was the one that shot Sally. Therefore, since the killing was done at the hand of another, Doug will not be charged for the murder of Sally.

Thus, under the modern law view Doug will not be guilty of the murder of Sally.

Attempted Murder

An attempted crime is the specific intent to commit a crime with the taking of a substantial step towards perpetration of a crime by one who has the apparent ability to commit the crime.

Doug's conduct of pointing a gun and shooting twice at Officer Fran shows his specific intent to commit a crime. The act of pulling into an empty parking lot and firing a gun at an Officer who is pursuing you, shows Doug had the apparent ability to kill Officer Fran. The prosecutor will argue that Doug's act of firing twice at Officer Fran and missing her was a substantial step towards the act of murder.

Doug's act of shooting at Officer Fran shows that he had the apparent ability to commit the crime of murder.

Thus, there was an attempted murder.

Battery

Defined supra.

When Doug tried to run away from Officer Fran, she tackled him. Doug got up and punched Officer Fran with his fist. Hence, there was an unlawful application of force.

Therefore, Doug will be charged with battery of Officer Fran.