

**November 2020 Baby Bar
Question 1 – Criminal Law**

1. With what crimes could Dave be reasonably charged? Discuss.

Embezzlement

Embezzlement is the fraudulent conversion of the rightfully entrusted property.

Dave and Ed were partners in D&E's Delicious Donuts (D&E's). Ed was the baker and Dave waited on customers. Dave would routinely enter less than the actual amount paid by customers into the cash register and keep the difference. Since Dave is a partner and he took the money without Ed's knowledge the taking was a fraudulent conversion. Since Dave and Ed are partners and Dave is the cashier he was rightfully entrusted with the property evident by the fact of his job waiting on customers, taking their orders and collecting the money. Once he entered less than the actual amount paid by customers and keep the difference he committed an embezzlement.

Thus, Dave will be charged with embezzlement.

Solicitation

Solicitation is one who has the intent to induce another to commit an unlawful act.

Dave would often talk to Jayne, a customer. Based from their conversations he knew that she withdrew \$250 on Friday mornings to cover her personal expenses for the following week. One Thursday, Dave suggested to Bob, a regular customer, that when Jayne came into the store on Friday, he should grab her purse and run away and he and Bob could later split the money. The prosecution will argue that Dave's act of suggesting Bob to grab Jayne's purse establishes his intent to induce Bob to commit an unlawful act i.e. larceny.

Therefore, Dave has committed a solicitation.

Conspiracy

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

Dave suggested to Bob, a regular customer, that when Jayne came into the store on Friday, he should grab her purse and run away and he and Bob could later split the money. Bob said that he would think about it. Thus, there was no express agreement. However, the next day, when Jayne came into D&E's she set her purse down on a table. Bob walked past her table, took Jayne's purse and ran toward the door. Hence, based on his conduct there was an implied agreement between Dave and Bob.

The agreement was between Dave and Bob, i.e., two or more. The agreement was for Bob to grab Jayne's purse, and run away with it and later split the money with Dave. Thus, there was an

agreement to commit larceny, an unlawful act.

Therefore, Dave and Bob will be charged with conspiracy.

Co-Conspirator Liability: Pinkerton's Rule

Since Dave was a co-conspirator, he will be held liable for all crimes committed in furtherance of the conspiracy, including the larceny since the crime was a foreseeable consequence of the conspiracy.

The agreement was that Bob should grab Jayne's purse and run away and then he and Bob could later split the money. Bob's act of taking Jayne's purse, i.e. larceny is reasonably foreseeable and in furtherance of their agreement.

Therefore, Dave will be guilty of the larceny based on the Pinkerton's rule.

Battery of Phil

In addition, since it is foreseeable that a customer may try to prevent the act of taking another patron's purse, Bob's act of committing a battery on Phil in order to escape and not be caught, is in furtherance and foreseeable result of the conspiracy.

Thus, the battery to Phil is foreseeable and in furtherance of their agreement between Dave and Bob.

Murder of Arlene

2. With what crimes could Bob be reasonably charged? Discuss.

Conspiracy

Defined and discussed supra.

Larceny

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

After Dave, suggesting to Bob, to take Jayne's purse, Bob took Jayne's purse and ran out the door. Hence, there was a trespassory taking.

Further, he took Jayne's purse and ran out of D&E's donuts, thus, there was a carrying away. The purse belonged to Jayne. Thus, it was the property of another. Bob took the purse and ran out of

D&E's donuts, establishing he had the specific intent to permanently deprive Jayne, the owner, of the purse of her money.

Thus, Bob has committed a larceny

Battery

Battery is the unlawful application of force.

When Bob took Jayne's purse and ran toward the door, another customer, Phil, tried to block the door. Bob knocked Phil over and ran outside with Jayne's purse. Thus, there was an unlawful application of force.

Therefore, Bob will be charged with battery.

Murder of Arlene

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.

Bob took Jayne's purse and ran down the street. While running Bob looked back to see if anyone was following him and he collided with Arlene, knocking her to the ground where she hit her head on the sidewalk and died. Thus, an unlawful killing occurred.

Bob looked back to see if anyone was following him when he collided with Arlene, knocking her to the ground that resulted in her death. Thus, Bob did not act with the intent to kill. Further, running down the street trying to flee from being caught and accidentally knocking into a person shows Bob did not have the intent to cause great bodily harm.

Bob's act of running and not looking where he was going, knocking another to the ground where she hit her head on the sidewalk and died shows his act was a reckless disregard for human life. Therefore, Bob's actions were willful and wanton.

In addition, taking Jayne's purse, Bob committed a larceny, as discussed supra. Thus, the killing of Arlene was during a commission of a crime. However, since larceny is not an inherently dangerous felony, the felony murder rule is inapplicable.

Thus, malice is established based on willful and wanton conduct.

Actual Causation

"But for" Bob knocking into Arlene knocking her to the ground where she hit her head on the sidewalk and died, she would not have been killed.

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

Proximate Causation

It is foreseeable that running down the street and not looking where you are going, and knocked another to the ground, that the person could hit their head on the sidewalk and die.

It is foreseeable that an act of running into someone causing them to fall and hit their head on the sidewalk that a death would result.

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

Bob did not act with premeditation to kill Arlene. Since his act was negligent, he did not act with the requisite specific intent to kill Arlene at the time he knocked her to the ground that resulted in her death.

The court should find that Bob is not guilty of first-degree murder for lack of specific intent. However, he will be guilty based on the felony murder rule.

Felony Murder – Larceny

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 larceny. Larceny occurred, as argued above.

Bob was committed a larceny and was in the res gestae when he knocked into Arlene causing her to hit her head on the sidewalk and die. Thus, the killing occurred within the res gestae of the criminal act of larceny. However, since larceny is not an inherently dangerous felony the felony murder will not apply.

Therefore, Bob will not be charged with first degree murder.

Second Degree Murder

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

Bob's conduct was wanton and reckless. Thus, he will be found guilty of second degree murder.

Involuntary Manslaughter

Involuntary manslaughter is the unintentional killing without malice aforethought.

Bob was acting in disregard for others that he knocked Arlene to the ground causing her to hit her head resulting to her death. Such reckless conduct would be sufficient to establish criminal negligence. If Bob is not found guilty of second degree murder and his conduct was reckless in hitting Arlene causing her to hit her head, the death was an unintentional killing without malice aforethought, thus, he can be charges with involuntary manslaughter.

Therefore, Bob should be found guilty of involuntary manslaughter.