

**Question 1– October 2021
Criminal Law**

With what crimes may Dave reasonably be charged? Discuss.

State vs. Dave

Solicitation

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

Dave suggested to Fred that they rob a bank. Thus, the prosecution will argue Dave's act of asking Fred to rob a bank shows his intent to entice and encourage Fred to participate in an unlawful act.

Therefore, Dave can be charged with solicitation.

Conspiracy

Conspiracy is an agreement between two or more persons with the specific intent to commit an unlawful act. At modern law you need an overt act.

Dave suggested to Fred that they rob a bank and Fred agreed with Dave and said he would go along with Dave when he tries to rob the bank. However, unbeknownst to Dave, Fred didn't want to rob the bank, but rather fulfill his goal in exploding a hand grenade in a public place. Further Fred would have Dave along as an unwilling armed backup. Thus, there was no agreement to commit an unlawful act.

Although Fred did not actually want to rob the bank he did agree with Dave in order to have an unwitting armed backup in order to explode a hand grenade in a public place. Therefore, based on Fred agreeing, there was an agreement.

The agreement was between Dave and Fred, i.e., two or more.

Dave and Fred agreed to rob the bank thus, they agreed to commit the unlawful act of larceny, a crime.

Therefore, Dave will be charged with conspiracy.

Burglary – Common Law

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

The facts state that the next day Dave and Fred approached the bank. Thus, no nighttime. Dave and Fred approached the bank and just as they walked in the bank's front door, Fred removed the

grenade and pulled the pin and threw it. Thus, since the bank was open to the public there was **no** nighttime or breaking. Fred and Dave did enter the bank. Therefore, there was an entering. Since it was the bank, it is not a dwelling house of another. Dave entered the bank carrying a handgun in order to rob the bank. As such, Dave had the specific intent to commit a felony therein, i.e. robbery.

In light of the above argument, nighttime and dwelling house are not present. Thus, Dave will not be charged with common law burglary.

Modern Law Burglary

Modern law burglary is the trespassory entry into a structure to commit an unlawful act.

Dave and Fred entered the bank with handguns in order to rob the bank. Thus, Dave's entry was trespassory. Dave entered the bank, which is a structure. As discussed above, Dave had the specific intent to commit a crime when he entered the bank.

Therefore, Dave will be charged with modern law burglary.

Attempted Robbery

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.

Dave approached and entered the bank with handguns in order to rob the bank. Dave's conduct shows his specific intent to commit a crime. The act of Dave entering the bank with a handgun shows he had the apparent ability to rob the bank. The prosecutor will argue that Dave's act of walking into the bank's front door with his gun drawn was a substantial step towards robbery of the bank.

Dave walked into the bank with his handgun drawn. Based on his actions this shows that he had the apparent ability to commit the crime of robbery.

Thus, there was an attempted robbery.

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.

When Dave and Fred approached and entered the bank. Fred pulled out a hand grenade, pulled the pin and threw the grenade into the bank. There was an explosion and the bank guard Gus, saw Fred and Dave running away with their guns drawn. Gus shot his gun at Fred and killed him. . Based on the bank guard Gus's act of shooting Fred and killing him, an unlawful killing occurred.

Firing a gun directly at someone, i.e. Bank Guard shooting the potential robbers, shows there was the intent to kill, or at least the intent to cause great bodily harm.

The act of shooting at the one trying to rob the bank shows a reckless disregard for human life. Therefore, Gus' conduct was willful and wanton. Thus, malice is established.

Actual Causation

"But for" Gus shooting at Fred, he would not have died.

Therefore, the bank guard Gus is the actual cause of Fred's death.

Proximate Causation

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

Therefore, bank guard Gus is the proximate cause of Fred's death.

There was a murder.

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 bank guard, Gus shot and killed Fred. Since the bank guard was trying to stop Fred from fleeing, and shot and killed him, he is an innocent party. Since a killing did result, Dave may be guilty for the murder of Fred depending on the jurisdiction.

Under the Common Law view liability will be found if a killing did occur. Based on the facts bank guard, Gus shot and killed Fred. Thus, under a common law jurisdiction Dave 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 the bank guard, Gus, shot and killed Fred and he was not a felon to the crime.

Thus, under the modern law view Dave will not be guilty of the murder of Fred.

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.

Since the agreement between Dave and Fred was to go to the bank and rob the bank, the throwing of a hand grenade by Fred causing an explosion damaging the bank was not reasonably foreseeable and in furtherance of their agreement between Dave and Fred. Dave will argue the causing an explosion was not in furtherance of the conspiracy therefore, he should not be liable for malicious mischief of bank.

Therefore, Dave will not be guilty of the Malicious Mischief based on the Pinkerton's rule.