

## Question 2 – Criminal Law

### 1. Did Al commit any crime relating to the death of Vic? Discuss.

#### State vs. Al

#### Murder

Murder is an unlawful killing committed with malice aforethought. Malice aforethought can be evidenced through willful and wanton conduct.

Al was throwing rocks against a tree with enough force that when the rock missed the tree and hit a car windshield, the windshield of the car shattered. When the windshield shattered, the driver, Bill swerved and ran off the road and struck and killed Vic. Thus, an unlawful killing occurred. By Al's act of throwing rocks against the tree, hitting Bill's car windshield, which caused the windshield to shatter allowing Bill to lose control of the car, this shows a reckless disregard for human life. Therefore, Al's conduct was willful and wanton.

Al will argue he was merely waiting for the school bus, and in order to pass the time, he was throwing rocks against a tree in order to amuse himself while waiting for the bus. The fact that the rock he was throwing missed the tree and hit and shattered a car windshield, which caused the driver to run over Vic, was a mere accident.

However, the prosecution will rebut by stating Al's act of throwing rocks with such force that a car windshield would shatter is conduct that equates to a reckless disregard for human life. Thus, malice is established.

Al will be convicted of murder.

#### Actual Causation

“But for” Al throwing the rocks against the tree and missing hitting Bill's car windshield, which shattered and made Bill lose control and run over Vic, Vic would not have been killed.

Therefore, Al is the actual cause of Vic's death.

#### Proximate Causation

With the act of throwing rocks with such force that would break a car windshield it is foreseeable that the driver of the car could lose control and hit a pedestrian. Thus, Vic's death is a foreseeable result of Al's conduct.

Therefore, Al is the proximate cause of Vic's death.

### **First Degree Murder**

First degree murder is shown by specific intent to kill, plus premeditation and deliberation. Al was throwing rocks at a tree while waiting for the school bus. The fact that he missed the tree and shattered a car windshield which caused the driver to lose control and hit Vic is not a sufficient act to prove premeditation. Thus, Al did not have the requisite specific intent to kill Vic.

Therefore, Al may not be convicted of first degree murder.

### **Second Degree Murder**

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

If Al's conduct is found to be wanton and reckless, he will be found guilty of second degree murder.

### **Involuntary Manslaughter**

Involuntary manslaughter is the unintentional killing of a human being without malice.

As stated above, Al was throwing rocks against a tree with enough force that when the rock missed the tree and hit a car windshield, the windshield of the car shattered. When the windshield shattered, the driver, Bill swerved and ran off the road and struck and killed Vic. Thus, Al's intent was to hit the tree, and not the car. However, by the facts the car windshield shattered causing Vic to be hit by Bill's car. Al acted in a criminally negligent manner.

Al will be guilty of involuntary manslaughter.

### **Justification -- Infancy**

A child between the age of seven and fourteen years of age is presumed incapable of forming criminal intent. However, the presumption is rebuttable and the prosecution can introduce evidence sufficient enough to establish that the defendant knew what he was doing was wrong.

Based on the facts Al is a twelve-year-old boy. Thus, he is presumed incapable of forming criminal intent. Further, there are no facts to establish that Al was aware that he knew what he was doing was criminally wrong.

Therefore, it appears that Al has a valid infancy defense and will not be found guilty of murder.

**2. Could Bill be found guilty of any crime relating to the death of Vic? Discuss.**

**State v Bill**

**Felony Murder – Robbery**

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.

Bill, who had just left a bank he had robbed, was driving carefully and below the speed limit in order to avoid attracting attention from the police. The fact that Bill was driving below the speed limit to prevent his capture established that Bill was still in the res gestae of the robbery. He had not reached a place of safety. When the rock hit his windshield which caused him to lose control and run over Vic, Bill was still in perpetration of the underlying crime, i.e. robbery.

Bill will contend that the police were unaware who had robbed the bank. He was driving carefully and below the speed limit in order to avoid capture. Since the police did not know that Bill robbed the bank he had reached a temporary place of safety once he was in his car. Further, if it is established by the facts that Bill was within the res gestae of the robbery, the killing of Vic was not caused in the perpetration of the robbery. The death of Vic was not foreseeable based on his actions of robbing the bank. After all, Bill was driving below the speed limit and was driving carefully. The fortuitous act a twelve-year-old boy throwing a rock and hitting his windshield, and thereby making him lose control and running over Vic was merely an accident and had no relationship to the robbery of the bank.

Therefore, Bill would not be guilty of felony murder for the death of Vic.

**3. Did either Chuck or Dave, or both, commit:**

**a. Conspiracy to murder Al? Discuss**

**State v. Chuck**

**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.

Chuck and Dave decided that the accident was Al's fault and carefully planned to avenge Vic's death. Thus, an agreement was formed. The agreement was between Chuck and Dave. Thus, it involved two persons. Chuck and Dave planned to avenge Vic's death. They pooled their money and bought a shotgun, planning to use it to shoot Al. Therefore, both Chuck and Dave had the specific intent to commit an unlawful act. Further, based

on the facts, Chuck and Dave pooled their money together in order to in order to purchase a shotgun to use in killing Al. Thus, an overt act.

Therefore, Chuck and Dave are guilty of conspiracy.

### **Withdrawal by Chuck**

Generally, withdrawal from the conspiracy is not a defense in the conspiracy, because the conspiracy is complete as soon as the agreement is made and act in furtherance is performed.

When it came time to go looking for Al in order to avenge Vic's death, Chuck told Dave "I'm not going, if you want to do it your on your own." and Charlie's withdrawal will not be a defense for the conspiracy charge since the conspiracy was completed after the agreement and the preparation at Al's house

### **b. Murder of Al? Discuss?**

#### **Conspiracy**

Defined and discussed supra.

#### **Co-conspirator liability: Pinkerton's Rule**

Since Chuck was a co-conspirator, he will be held liable for all crimes committed in furtherance of the conspiracy including the murder of Al since this crime was foreseeable consequences of the conspiracy.

#### **Withdrawal by Chuck**

Defined and discussed supra.

Therefore, Chuck's withdrawal is not effective. Because the murder of Al was within the scope of the conspiracy, he will be found guilty for the murder of Al.

### **c. Theft of Al's watch? Discuss?**

#### **Co-Conspirator Liability: Pinkerton's Rule**

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

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

Based on the agreement between Chuck and Dave, they were to avenge the death of their brother, Vic by killing Al. The act of Dave, who removed Al's watch after killing him, was outside the scope of the conspiracy.

Therefore, Chuck will not be found guilty of the theft of Al's watch.

### **State v. Dave**

#### **a. Conspiracy to murder Al? Discuss.**

##### **Conspiracy**

Defined and discussed supra.

Therefore, Dave is guilty of conspiracy.

#### **b. Murder of Al? Discuss.**

##### **Murder**

Murder is a killing with malice aforethought.

Dave carried out the plan, and shot and killed Al. Thus, since Dave knew shooting a person with a shotgun would be lethal, Dave had the intent to kill Al.

The state will contend by shooting Al, Dave had the intent to cause serious bodily harm. Further, Dave's act of shooting Al demonstrated a wanton and reckless disregard for human life.

Thus, malice can be shown by intent to kill, intent to cause great bodily harm and wanton and reckless conduct.

Therefore, there was a murder by Dave.

##### **First Degree Murder**

First degree murder is the killing with the specific intent to kill plus premeditation and deliberation.

Dave carried out the plan of killing Al in order to avenge his brother's death. Dave purchased a shotgun, and then shot and killed Al. Thus, Dave acted with the specific intent to kill Al.

Further, Dave's act of purchasing the gun, finding Al and shooting him shows premeditation and deliberation.

Therefore, Dave will be convicted of first degree murder.

**c. Theft of Al's watch? Discuss.**

**Larceny**

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

Dave removed Al's watch after killing Al and kept it for himself. Hence, a trespassory taking and carrying away. The watch belonged to Al. Hence, it was the property of another. Dave removed the watch that belonged to Al, and kept it for himself after shooting Al. Therefore there was specific intent to permanently deprive Al of his watch.

Thus, Dave committed larceny.