

QUESTION

Art and Bill agreed to kidnap Vickie and to make a ransom demand of her parents. Because he knew that Art had been convicted of a forcible sexual offense in the past, Bill insisted that Art agree that no harm would be inflicted on Vickie. Art assured Bill that he would not harm her.

Art and Bill kidnapped Vickie, locked her in a room in Art's home, and communicated a \$100,000 ransom demand to Vickie's parents. Her parents promptly contacted the police, who were unsuccessful in efforts to locate and rescue Vickie.

Several days after the kidnapping, Art raped Vickie. Despondent over the confinement and mortified by the rape, Vickie killed herself only hours after the rape. Bill was not present and had no knowledge of the rape or suicide until Art told him that Vickie had killed herself shortly after Art had raped her. Art also told Bill that he was going to dispose of Vickie's body. Bill immediately turned himself in to the police. He then told the police: a) about the kidnapping in detail; b) what Art had said about the rape and suicide; and c) that Art had said he was going to dispose of Vickie's body.

Police arrested Bill, went to Art's home where they found Vickie's body, and arrested Art.

Based on the above facts:

1. On what theory or theories of liability might Bill be convicted of rape? Discuss.
2. Are Art and Bill, or either of them, guilty of the murder of Vickie? If so, is the offense first or second degree murder? Discuss.
3. Is Bill's statement to the police, or any part of it, admissible at a joint trial of Bill and Art if neither testifies? Assume all proper objections are made. Discuss.

ANSWER A

1. Bill's liability for rape

Conspiracy

Co-conspirators are liable for foreseeable crimes committed by fellow co-conspirators that are in furtherance of the objectives of the conspiracy.

Liability for conspiracy requires an intentional agreement to commit a crime. Most jurisdictions also require an overt act (which may be mere preparation) done in furtherance of the conspiracy.

In this case, Art and Bill are certainly liable for conspiracy because they agreed to kidnap Vickie. The overt act requirement is obviously satisfied because they did kidnap Vickie.

Therefore, Bill will be liable for Art's rape of Vickie if the rape was a foreseeable crime in furtherance of the objectives of the conspiracy. In this case, the rape was clearly foreseeable because Bill knew that Art had been convicted of a forcible sexual offense in the past. Bill will argue, however, that the rape was not in furtherance of the objectives of the conspiracy, which was to obtain ransom money. Bill will probably succeed in this argument, especially if he can establish that it was part of his agreement with Art that Art would not harm Vickie.

Accomplice liability

An accomplice is one who aids, abets or encourages another in the commission of a crime. An accomplice is liable for all foreseeable crimes committed by the principal in the course of committing the crime aided or encouraged.

In this case, Bill aided Art in kidnapping Vickie and so is an accomplice. As noted above, Art's rape of Vickie was foreseeable. Bill may try to argue that because he had elicited a promise from Art not to harm Vickie, the rape was not foreseeable. This argument is weak, however, because Bill had no reason to believe that Art could be trusted and nevertheless participated in locking Vickie into a room in Art's home where Art would have access to her.

Withdrawal

With respect to both the co-conspirator and accomplice liability charges, Bill could try to argue that he withdrew by going to the police. This defense cannot succeed, however, because in order for withdrawal to constitute a defense, it must be done and clearly communicated while there is still time to prevent the crime. Bill cannot claim that he withdrew because he went to the police only after the crime had been completed.

2. Murder

Art and Bill could be convicted of murder because they actually and proximately caused Vickie's death and because they satisfy the intent requirement for at least second degree murder.

Actual cause

But for the kidnapping and rape, Vickie would not have killed herself. Hence, Art and Bill actually caused her death.

Proximate cause

As discussed above, it was foreseeable that if Vickie was confined in Art's house, he would rape her. It was also foreseeable that someone who had been forcibly confined for several days and then raped might commit suicide. Hence, Art and Bill proximately caused Vickie's death.

Second degree murder

In order to be guilty of second degree murder, one who causes another's death must have acted with malice aforethought, Le.:

- (I) intended to kill;
- (ii) intended to cause serious injury;
- (iii) had a reckless disregard for an unjustifiably high risk to human life;
- or,
- (iv) have killed during the commission of an inherently dangerous felony.

In this case, neither Art nor Bill intended to kill Vickie. It could be argued that Art, by raping her, intended to cause Vickie serious injury. However, one need not rely on this argument because, by placing Vickie in a situation in which her suicide was foreseeable, both Art and Bill acted sufficiently recklessly to satisfy the malice aforethought requirement.

Felony murder

Both Art and Bill would also be guilty of felony murder. Felony murder requires: (I) guilt of the underlying felony; (ii) killing distinct from the underlying felony; (iii) killing a foreseeable consequence of the underlying felony; (iv) killing prior to culprit reaching a place of temporary safety.

In this case Art is guilty of kidnapping and rape - both felonies. Bill is guilty of at least kidnapping. The death of Vickie was distinct from these felonies, yet a foreseeable consequence. Hence, Art and Bill are guilty of felony murder.

First-degree murder

The requirements for first degree murder vary from jurisdiction to jurisdiction. Premeditation is often required. Since neither Art nor Bill had the specific intent to kill Vickie, neither would have engaged in the necessary premeditation.

However, some jurisdictions treat felony murder as first degree murder. In such a jurisdiction, as discussed above, both Art and Bill would be guilty.

3. Bill's confession:

The facts suggest that Bill's confession was voluntary and not obtained in violation of his Miranda rights. Therefore, the confession would, ordinarily, be admitted against Bill.

The difficulty in this case arises because Bill's confession also implicates Art. Art has a Sixth Amendment right to confront the witnesses against him. Therefore, since Bill will not take the stand, his confession cannot be introduced against Art.

The confession may still be introduced against Bill, even though Bill and Art are being tried jointly, if the confession is redacted; references to Art must be replaced by non-identifying pronouns.

ANSWER B

1. Theories of Liability to Convict Bill for Rape

Accomplice Liability

An accomplice is liable for all crimes committed and all foreseeable crimes. To be guilty as an accomplice requires active aiding, abetting and/or encouraging the other to commit the crime.

Here, Bill was an accomplice with Art for the kidnapping of Vickie. He agreed to do it; he helped Art do it. The state would argue that he is also liable for the rape as an accomplice. The state would have to show that rape was foreseeable. Here, Art had been convicted previously of forcible sexual assault. Bill was aware of this when he aided in the kidnapping. Further, they kept Vickie at Art's home. This made it even more foreseeable that Vickie would be assaulted.

Bill's Defense

Bill will argue that he only helped in the kidnap. That he explicitly told Art and insisted that Art promise not to harm Vickie. He will argue that he never agreed or assented in any way to the rape. Nevertheless, because he aided in the kidnapping and knew Art was a perpetrator, it was highly foreseeable, and he could be liable for rape.

Co-Conspirator Liability

A conspirator is liable for all crimes committed in furtherance of the conspiracy. Was there a conspiracy?

Conspiracy

This requires an agreement of two or more people to commit a crime. It requires intent to enter the agreement and intent to commit the objective. A minority of states also require an overt act (minor act) in furtherance.

Here, Art and Bill agreed to kidnap Vickie. They also carried through with the crime. Therefore, Bill is guilty of conspiracy.

Acts of Co-Conspirators

All crimes committed in furtherance of the crime will be imputed to all conspirators. Here, the state will argue that Bill should be guilty for the rape because it was done to further the crime of kidnapping.

Bill will argue that he never conspired to rape nor was rape an act in furtherance of the conspiracy. He will argue that several days had passed, and the kidnapping had been completed.

However, the fact is that they still had Vickie and the crime was continuing. The tough issue is whether the rape furthered the crime.

Because the conspiracy was to kidnap, and the goal was to get \$100,000 - not to harm Vickie Bill will probably not be liable under this theory for the rape.

2. Are Art or Bill Guilty of Murder

Murder

Murder is the unlawful killing of another human being with malice aforethought. Malice can be demonstrated in the following ways: 1) intent to kill, 2) intent to inflict great bodily injury, 3) reckless indifference to a high degree of risk to human life, and 4) the Felony Murder Rule.

Felony Murder

All deaths that occur during the attempt or commission of a felony will be murder. Here, Vickie was killed while Art and Bill kidnapped her. The state will argue they are both guilty for the death as a murder. However, the crime must be inherently dangerous or provided for in the statutory scheme.

Bill and Art will argue that this should not apply because kidnapping is not inherently dangerous.

This argument will likely fail because common sense and history attest to the fact that kidnapping and attempts often end in death.

Death Must Occur Before Crime Complete

Generally, the death must occur before the felons reach a place of temporary safety. Bill and Art will argue that the crime was completed days before the death occurred. However, the facts show that the crime was still continuing because Vickie was still being unlawfully kept. Thus, Bill and Art could be guilty of murder under Felony Murder Rule.

Art Guilty of Murder - Intent to do Great Bodily Harm

As stated, malice is found where one does an act subjecting another to great bodily harm. Here, Art raped Vickie. She subsequently killed herself, and therefore, the state will argue he murdered her.

Causation

To be liable for murder, the defendant's acts must be the cause of death. Art will argue that Vickie, not he, caused her own death with an intervening act.

Actual Cause

Art is the actual cause if "But for" the rape, Vickie would not be dead. Here, this is satisfied because Vickie committed suicide.

Proximate Cause

Death must have resulted from a foreseeable cause. Here, Art will argue this was independent and not foreseeable. The state will argue that it was within the scope of foreseeable risk that Vickie would be despondent and kill herself.

If the argument is persuasive, Art will be liable for her murder and possibly Bill if he is found guilty as an accomplice to the rape (as discussed above under accomplice).

3. Bill's Statement

5th Amendment

The Fifth Amendment incorporated by the due process clause of the 14th Amendment holds that defendants are to be free from compelled self-incrimination.

Here, Bill went to the police and turned himself in. The statement appears to be voluntary and would, therefore, be admissible against Bill.

Use of Statement Against Art - Sixth Amendment Right to Confront Witnesses

The Sixth Amendment as incorporated by the due process clause of the 14th Amendment holds that defendants have a right to confront their accusers. Here, if Bill does not testify the use of his confession against Art would not be valid because it would deprive Art of his right to confront witnesses. However, if the portions of the statement that refer to Art can be properly redacted or taken out of the statement, then it could still be used against Art.

Co-Conspirators

The state would argue that this was a statement by a co-conspirator and should be admissible. Art will argue it was not made in furtherance of the conspiracy and, therefore, can't come in.

Based on these, it will be admissible at least against Bill.