

Question 1

On August 1, 2002, Dan, Art, and Bert entered Vince's Convenience Store. Dan and Art pointed guns at Vince as Bert removed \$750 from the cash register. As Dan, Art, and Bert were running toward Bert's car, Vince came out of the store with a gun, called to them to stop, and when they did not do so, fired one shot at them. The shot hit and killed Art. Dan and Bert got into Bert's car and fled.

Dan and Bert drove to Chuck's house where they decided to divide the \$750. When Chuck said he would tell the police about the robbery if they did not give him part of the money, Bert gave him \$150. Dan asked Bert for \$300 of the remaining \$600, but Bert claimed he, Bert, should get \$500 because his car had been used in the robbery. Dan became enraged and shot and killed Bert. He then decided to take all of the remaining \$600 for himself and removed the money from Bert's pocket.

On August 2, 2002, Dan was arrested, formally charged with murder and robbery, arraigned, and denied bail. Subsequently, the court denied Dan's request that trial be set for October 15, 2002, and scheduled the trial to begin on January 5, 2003. On January 3, 2003, the court granted, over Dan's objection, the prosecutor's request to continue the trial to September 1, 2003, because the prosecutor had scheduled a vacation cruise, a statewide meeting of prosecuting attorneys, and several legal education courses. On September 2, 2003, Dan moved to dismiss the charges for violation of his right to a speedy trial under the United States Constitution.

1. May Dan properly be convicted of either first degree or second degree murder, and, if so, on what theory or theories, for:
 - a. The death of Art? Discuss.
 - b. The death of Bert? Discuss.
2. May Chuck properly be convicted of any crimes, and, if so, of what crime or crimes? Discuss.
3. How should the court rule on Dan's motion to dismiss? Discuss.

Answer A to Question 1

1)

1. A. Dan - Liability for Art's Death

Murder

Murder is the unlawful killing of a human being with malice aforethought. Malice can be shown by either intent to kill, intent to cause grievous bodily harm, or reckless indifference to human life. Here, Dan is probably not liable under any of these theories. Because Vince, the shopkeeper, shot Art, causing his death, Dan did not exhibit intent to kill or cause grievous bodily harm. Likewise, fleeing probably does not constitute reckless indifference to human life.

Felony Murder Rule

However, Dan might be convicted under the felony murder rule. The felony murder rule holds defendants liable for foreseeable killings committed during the commission of inherently dangerous felonies. Here, Dan, Art, and Bert were engaged in a robbery. A robbery is the taking and carrying away of the personal property of another by force with the intent to permanently deprive the victim of the property. Dan, Art and Bert robbed Vince because they took \$750 from him at gunpoint, with the intent to keep the money. A robbery - especially an armed robbery of a convenience store - is likely an inherently dangerous felony. Art's death was the kind of death that frequently results from armed robberies, and thus was foreseeable.

Limitation of Felony Murder Rule - Fleeing

Liability for felony murder generally ends when the felons reach a place of safety after the felony. Here, because Art was killed while fleeing - before the felons reached a place of safety - this limitation will not apply.

Limitation on Felony Murder Rule - Death of a Co-Felon

However, most states have enacted limitations on the felony murder rule when the death of a co-felon is at issue. Under states that follow the agency rationale, a defendant can be found guilty if the killing was done by a felon or his agent. Under this view, Dan is likely not liable for felony murder because it was Vince rather than Dan or Bert who shot Art.

Under the proximate cause view of the felony murder rule, any killing proximately caused by the felony can make a defendant liable for felony murder. Under this rule, it is arguable that Dan should be liable for Art's death. Being shot while fleeing from a convenience store robbery is foreseeable. Thus, if the jurisdiction follows this view, Dan might be liable

for Art's death under a felony murder theory.

First Degree Murder

In most states, first degree murder requires premeditation or deliberation. Many states also include murders that fall under the felony murder rule in the definition of first degree murder. Thus, if this jurisdiction adheres to that view, Dan may be liable for first degree murder for Art's death.

Second Degree Murder

Second degree murder generally is murder that does not involve premeditation and deliberation, but also does not amount to any form of manslaughter. If the applicable statute defines felony murder as second degree murder, Dan may be liable for that crime instead.

Conspiracy

Conspiracy requires an agreement to commit a crime between two or more people, an intent to agree, an intent to commit a crime, and an overt act. A conspirator is liable for all reasonably foreseeable crimes committed in furtherance of the conspiracy. Here, Art, Dan, and Bert clearly agreed to rob Vince's store with the intent to commit the crime. Conspiracy does not merge with the completed crime. Thus, if Dan was liable for conspiracy, and a court found that Art's death was foreseeable, Dan could potentially be liable on these grounds as well. However, this is a stretch, especially since Vince killed Art.

B. Dan's Liability for the Death of Bert

Murder

As mentioned, one potential grounds of liability for murder is intentional killing or killing with an intent to cause great bodily harm. Here, Dan probably intended to kill Bert or at least intended to cause him great bodily harm. Dan simply shot Bert - there is no indication that he was merely trying to scare him.

First Degree Murder

Dan may be liable for first degree murder. Although premeditation and deliberation are generally prerequisites to a charge of first degree murder, some courts have held that one can premeditate or deliberate in very short periods of time. However, Dan will argue that he was "enraged" and had no time to deliberate or premeditate. Due to the spontaneous nature of the crime, Dan will likely not be found guilty of first degree murder. In addition, as discussed below, he is likely not guilty of felony murder. Thus, even if the state murder statute includes felony murder as first degree murder, Dan will likely not be liable for this

crime.

Second Degree Murder

Dan is much more likely to be guilty of second degree murder. As discussed above, he intended to kill Bert, but likely did not premeditate or deliberate. As discussed below, he is unlikely to be guilty of voluntary manslaughter or felony murder.

Felony Murder

A felony murder charge against Dan would be problematic. For one, liability for felony murder generally ends when the perpetrators have reached a place of safety. Dan and Bert had reached Chuck's house when Dan killed Bert. Indeed, they had begun to divide up the money. This would likely cut off any liability for felony murder based on the robbery of Vince's store.

In addition, the prosecution might argue that Dan is liable for felony murder because he took \$600 from Bert's pocket. The prosecution might argue that this is a robbery, and that Dan's killing was a foreseeable result of the robbery. However, this is a weak argument. Dan only decided to take the money from Bert after he shot him. In addition, Dan might also be able to argue that since Bert did not have lawful title to the money, no robbery took place. This is because one element of a robbery is that the money be "property of another." Thus, Dan is likely not liable for felony murder for Bert's death.

Voluntary Manslaughter

Dan may argue that he is only liable for voluntary manslaughter. Voluntary manslaughter is a killing that would be murder, but was conducted while the perpetrator was highly upset. The upsetting incident must be the sort that would upset a reasonable person, the defendant must have been upset, a reasonable person would not have had time to cool off, and the defendant must not have cooled off. Dan will argue that he was "enraged" by Bert's demand of extra money. However, this argument is unlikely to succeed. For one, Bert's actions do not rise to the type of extremely upsetting provocation that generally suffices to reduce a murder charge to voluntary manslaughter. Moreover, there is no indication that a reasonable person would have had such a violent reaction to Bert's demand for money. Thus, Dan is likely not liable for voluntary manslaughter.

Conspiracy

As discussed above, any underlying conspiracy to rob Vince's store had likely ended by the time that the robbers reached Chuck's house.

2. Chuck's Liability

Accessory After the Fact

Chuck is likely guilty of being an accessory after the fact. An accessory after the fact is one who shields, shelters, or assists criminals after a crime. Chuck is clearly aware that Dan and Bert have committed a robbery. He threatens to tell the police about the crime unless he receives some of the money. He provides his house as a safe haven for Dan and Bert. If found guilty of this charge, Chuck would not be guilty as an accomplice - he would simply be guilty of an independent, lesser offense.

Accomplice

Chuck is probably not an accomplice to either Dan's killing of Bert or the robbery of Vince. To be an accomplice, one must assist a crime with the intent that the crime be committed. Here, there is no indication that Chuck had any idea that Dan, Art and Bert were going to rob Vince's store. In addition, given the spontaneous nature of Dan shooting Bert, there is no indication that Chuck intended that crime either. Mere presence at a crime scene does not necessarily result in accomplice liability.

Extortion

Chuck perhaps is guilty of extortion. Extortion involves the obtaining of property through threats. Here, Chuck threatened to tell the police about the robbery. As a result, he obtained \$150 from Dan and Bert. Thus, because he obtained property through the use of threats, he might be guilty of extortion.

Conspiracy

There is no indication that Chuck was involved in any agreement - or even knew about - the convenience store robbery. Also, Dan seems to have acted alone when he shot Bert. Accordingly, Chuck is likely not be [sic] guilty of conspiracy.

Misprisi]on of Felony

If the jurisdiction recognizes this crime, Chuck may be guilty because he aided and assisted Dan and Bert to cover up their crime.

3. Dan's Motion to Dismiss

The Sixth Amendment to the United States Constitution protects an accused's right to a speedy trial. When evaluating whether such a right has been violated, courts consider several factors. Among them are the reason for the delay, whether the defendant has objected to the delay, and the length of the delay.

Here, Dan's strongest argument is that the prosecutor's reasons for delaying the trial are simply not compelling enough to warrant impinging upon his constitutional rights. The prosecutor's desire to go on vacation and attend meetings and legal education classes seems more like a personal pred[i]lection than a good reason to delay Dan's trial. Dan will languish in jail during this time - nearly thirteen months after he was arrested and arraigned. Moreover, with the exception of the vacation, it is not at all clear why the prosecutor cannot attend the meeting or legal education courses on his own time. Finally, in any event, it is not clear why those events warrant delaying the trial from January 3 to September 1 - a delay of nine months. Dan will also note that he initially moved to have trial set in October, 2002. Finally, Dan will point out that the prosecutor's motion was granted on Jan. 3, which was essentially the eve of trial. Waiting until the last minute to continue a trial so long seems unfair and may have prejudiced his ability to mount an effective defense.

However, the prosecution will counter that Dan should have moved to have his charge dismissed on Jan. 3. Indeed, Dan waited until September 2 to move to dismiss. Although he "objected" on Jan. 3, he should have moved to dismiss then. By waiting to move to dismiss until after the trial began, Dan likely waived his rights. Accordingly, Dan's motion should be denied.

Answer B to Question 1

1)

May Dan ("D") be convicted of murder.

The first question is whether Dan may be convicted of murder in the 1st or 2nd degree. At common law, murder was the unlawful killing of a human being with malice aforethought. Malice aforethought was committing murder with any of the following mental states (1) intent to kill, (2) intent to do serious bodily harm, (3) reckless indifference to the unjustifiably high cost to human life and (4) intent to commit a felony. The types of felonies included in felony murder were inherently dangerous felonies.

Murder in the first degree is a statutory creation that involves the unlawful killing of another human being with premeditation and deliberation. In addition, many state statutes have also included in the definition of murder in the first degree murders committed while committing a felony -- also enumerating inherently dangerous felonies.

Voluntary manslaughter is the unlawful killing of a human being which would be murder but for the existence of adequate provocation, and involuntary manslaughter is the killing of another human being with criminal negligence or during the commission of an unenumerated felony or misdemeanor.

2d Degree murder is a residual murder category that covers the unlawful killing of another human being that does not fall within the Murder in the 1st Degree or Voluntary or Involuntary Manslaughter categories. With this in mind, we can investigate whether Dan is liable for murder in the first or second degree.

All homicide crimes also require actual and proximate causation as well as the result of death.

KILLING OF ART.

Here, Dan did kill Art. Vince killed Art. Thus, the only theory that could convict Dan of the murder of Art would be the felony murder. Here, Art and Dan and Bert were committing robbery, an inherently dangerous felony.

Robbery is the taking of personal property of another from their person or presence by force or threats of force with the intent to permanently deprive.

Here, Dan, Bert and Art entered the convenience store and pointed guns at Vince (the requisite threat of force) and took \$750 (personal property) from Vince's person. This, especially because of the existence of guns, qualifies as an inherently dangerous felony that should rise to the level of a felony that would qualify for Felony murder. Thus,

because the killing of Art took place whil[e] Dan was committing an inherently Dangerous felony, if this occurred in a jurisdiction where felony murder is included in the definition of first degree murder, Dan could be guilty of first degree murder.

There are however some limiting doctrines to felony murder. Notably in this instance, the killing must be a foreseeable result of the felonious conduct, and the redline view of felony murder provides that defendants cannot be guilty of felony murder for the murder of one of their co-felons by the police or by third parties. Thus, although the killing of Art certainly is a foreseeable result of committing a robbery, if this is a jurisdiction that follows the redline view, Dan will not be guilty of felony murder for Art, and will not be guilty of either first or second degree murder for Art.

It is noteworthy that Vince's killing of Art was not lawful because one may never use deadly force in defense of property, and here, Vince chased Art out of the store (after the physical danger to him passed) and killed Art, when Art failed to stop.

FOR DEATH OF BERT

The next question is whether Dan can be guilty of murder in the first or second degree of Bert.

The standards for murder in the first and second degree are set forth above. Here, the question will revolve around whether (1) Dan possessed the requisite premeditation and deliberation to kill Bill, (2) whether Dan could be guilty of felony murder, since this happened right after the robbery, or (3) whether adequate provocation existed to reduce the killing to a charge of involuntary manslaughter.

Premeditation.

Dan can be guilty of first degree murder of Bert if he committed the murder with premeditation and deliberation. Here, the facts do not indicate that he possessed that premeditation. Dan and Bert just committed a robbery together and were returning to divide the money. There is nothing to suggest that he had a prior plan to kill Bert. In fact, he only became enraged when Bert insisted on taking the entire share for himself. Thus, on these facts, he cannot be convicted of first degree murder on a premeditation and deliberation theory.

Felony Murder

The next question is whether he could be convicted of felony murder for the murder of Bert. Dan did just commit a felony (robbery) as discussed above. He had the requisite intent to commit that felony and it was an inherently dangerous felony. Thus, could his killing of Bert qualify for felony murder?

The felony murder rule also has the limited doctrine that the killing must occur during the commission of the felony. Once the felons reach a point of temporary safety, they are no longer considered as carrying out the felony for purposes of the felony murder rule.

Here, Dan and Bert had reached the safety of Chuck's house and[,] therefore, were no longer in the commission of a felony and[,] therefore, Dan cannot be guilty of felony murder.

2d Degree Murder and Voluntary Manslaughter

The next question is whether adequate provocation existed to make the killing a voluntary manslaughter. If not, the murder will fall into the residual category of Murder in the 2d degree. Here, since Dan acted with intent to do serious bodily damage to Bert (he shot and killed him), or at a minimum proceeded with reckless disregard for the unjustifiably high risk to human life, he will be guilty of second degree murder if the charge isn't reduced to voluntary manslaughter.

Vol manslaughter requires (1) provocation arousing extreme and sudden passion in the ordinary person such that he would not be able to control his actions, (2) the provocation did in fact result in such passion and lack of control, (3) not enough time to cool off between the provocation and the killing [g] [gna] d (4) the defendant did not in fact cool off.

Here, Bert refused to give Dan his \$300. While it is understandable that the failure to give such money would arouse anger in an ordinary person that had just put their freedom and life on the line in a robbery attempt, we are only talking about \$300. While understandably angry, it is hard to imagine that an average person would lose control over \$300 to the point of taking another person's life. Thus, Dan will not qualify for the reduction to voluntary manslaughter and will be convicted of 2d degree murder.

MAY CHUCK BE CONVICTED OF ANY CRIMES

The possible crimes Chuck could be convicted of is [sic] either all of the crimes that the principals committed (under an accomplice liability theory), or at a minimum an Accessory After the Fact.

ACCOMPLICE LIABILITY

If one aids, abets or facilitates the commission of a crime with the intent that the crime be committed, one can be found guilty on accomplice liability theories. The scope of liability includes liability for the crimes committed by the principals and all other foreseeable crimes. The common law used to distinguish between principals in the first and second degrees and accessories before and after the fact. Largely those distinctions have been discarded, although, most jurisdictions still do recognize the lesser charge of accessory after the fact.

Here, there is no evidence that Chuck aided, abetted or facilitated the crime until after it was committed. He provided a safehouse and subsequently demanded money. But mere presence or knowledge is not enough to ground accomplice liability.

ACCESSORY AFTER THE FACT

However, Chuck did assist after the crime happened (he provided a safehouse, and agreed not to tell the authorities in exchange for money), so at a minimum he will be guilty of accessory after the fact.

Extortion

Chuck may also be liable for extortion. Extortion is the illegally obtaining property through threats of force or threats to expose information. Here, he threatened to expose the criminals to the police if he didn't get paid, and so he will be liable.

Receiving Stolen Property

Chuck also will be liable for receiving stolen property. The requirement for this crime are [sic] that you know the circumstances around the property (ie, that it is stolen) and that you willing [sic] receive it. Chuck knew this money was the fruit of a robbery and received it in exchange for his providing a safehouse. Thus he will be liable of receipt of stolen property.

CONSPIRACY

Chuck also could be guilty of conspiracy. Conspiracy is (1) an agreement between two or more people, (2) the intent to agree, (3) the intent to pursue an unlawful objective and (4) in some jurisdictions, some overt act. Conspiracy does not merge into the completed crime.

HOW SHOULD COURT RULE ON DAN'S MOTION TO DISMISS.

The 6th amendment provides each defendant the right to a speedy trial. The 6th amd is applied to the states through its incorporation into the due process clause of the 14th amendment. The right to a speedy trial attaches post charge. Whether the defendant has been given a speedy trial depends on an analysis of the totality of the circumstances.

Here, Dan was arrested on August 2, and immediately charged. Thus his right to a speedy trial attached sometime in early August. The initial trial date was set for January 5, 2003. It is not likely that the denial of Dan's request for a trial 2 months after his charge is a violation of his constitutional rights since the court set a date very closely thereafter in January. However, the prosecutor's delay subsequent to that date does not rise to the level of providing adequate excuse for moving Dan's date (coupled with the fact that the request was made only days before the January trial was to commence). Here, the

prosecutor wanted to take a vacation cruise and take some legal education classes, and meet for a statewide meeting of prosecutors. First, none of these seem to rise to the level of an adequate excuse to delay a trial 9 months. Particularly since the defendant was denied bail and was sitting in jail. While the court could have granted a continuance for a short period of time for the meeting or to accommodate the prosecutor, given the defendant's status (sitting in jail), it was improper for the court to grant this motion, and the court may dismiss Dan's case.

It should be noted, however, that Dan should have moved earlier than September 2, as this would have permitted the court to fashion relief without having to dismiss the charge altogether. Accordingly, a court could find that he was not entitled to dismissal because of his delay.