

1)

**1. With what crimes could Jim (J) reasonably be charged regarding the events at the store?**

Murder

J's conduct in this case implicates murder.

Murder

Murder is the unlawful killing of another human being (actus reus) with malice aforethought (mens rea). Malice aforethought can be established by 1) intent to kill 2) intent to cause serious bodily harm 3) reckless disregard for human life (depraved heart murder) and 4) intent to commit an inherently dangerous felony (felony murder).

Depraved Heart Murder

Depraved heart murder is the unlawful killing of another human being (actus reus) with reckless disregard of a substantial risk to human life (mens rea). Here, Chris (C) was killed by a stray bullet that went off when J's nervously dropped his gun. Although J did not intend to shoot C, he had gone into the store with a loaded gun. Therefore, J can reasonably be charged with depraved-heart murder since he recklessly disregarded the risk of bringing a loaded gun into a store filled with human beings.

Felony Murder

Felony murder is the unlawful killing of another human being (actus reus) during the commission or attempted commission of an inherently dangerous felony (mens rea) such as armed robbery.

Armed Robbery

Armed robbery is the taking and carrying away of another person's personal property by way of force or threat of force with the intent to permanently deprive the owner of that property. Here, J and Fred (F) entered the store, while armed, and demanded that the employee give them the store's money. Therefore, since J killed C while committing armed robbery, J can reasonably be charged with felony murder for C's death.

Agency Theory or Proximate Cause Theory

J's liability for F's death depends on whether the jurisdiction follows the agency or proximate cause

---

---

theory. Under the agency theory, a defendant is only criminally liable for deaths caused by they themselves or by a fellow co-felon. Under the proximate cause theory, a co-felon is liable for any deaths proximately caused by the commission of an inherently dangerous felony. This includes deaths caused by third-parties. J will argue that he is not criminally liable for felony murder since he did not shoot F, Salma (S) did. However, the prosecution will counterargue that J is criminally liable for F's death because under the majority proximate cause theory, J is also criminally liable for deaths caused by third-parties. This includes innocent bystanders. Therefore, J can also reasonably be charged with felony murder for the death of his co-felon F by S, an innocent bystander.

**2. With what crimes could J reasonably be charged regarding the incident on Park Street?**

Attempted Murder

Attempt occurs when the defendant takes a substantial step toward the commission of a crime with the intent that the crime be committed. Here, J attempted to shoot and kill S with the intent of eliminating her as a witness. Since J took a substantial step toward killing S, J can be reasonably charged with attempted murder of S.

**3. Under the Fourth Amendment to the United States Constitution, can J successfully move to suppress J's gun from being introduced into evidence at trial?**

Fourth Amendment Standing

California's search and seizure law derives from the Fourth Amendment, which prevents unreasonable searches and seizures of property that have a reasonable expectation of privacy. As such, police officers must have a warrant before conducting a search or seizure. Here, Police Officer Bakari (B) pulled J over because J looked nervous. After B noticed a bulged under J's shirt, he then proceeded to search J and seize J's gun. Since B did not have a warrant when he searched and seized J's gun, the court must determine whether an exception to the warrant requirement applies.

Terry Stop

A police officer can conduct a warrantless search and seizure during the course of a "stop and frisk" *Terry* stop as long as the officer has reasonable suspicion to suspect that criminal activity is afoot. Here, O will argue that he had reasonable suspicion to suspect that criminal activity was afoot due to J's nervousness and bulge under his shirt. J will counterargue that his nervousness was insufficient reasonable suspicion since many people become nervous when stopped by the police. However, since reasonable suspicion is a pretty low standard to meet, O can show that his reasonable

suspicion was sufficient to suspect that criminal activity was afoot.

Conclusion

J cannot successfully move to suppress his gun from being introduced at trial under the *Terry* stop exception to the warrant requirement.

Question #1 Final Word Count = 754

**END OF EXAM**