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

The issue is what crimes could Jim be reasonably charged with for the events at the store.

Conspiracy

Conspiracy is when two individuals agree to commit a crime and there is an overt act. Under Common Law, there is a bilateral approach required for conspiracy, meaning there were two people that agreed to move forward with the plan. Modernly, only one mind is required, meaning the second person could be an undercover police officer and the first individual would still be liable for conspiracy.

Here, Jim and Fred drove to Avon street and drew their guns, presumably they both agreed to do this before they went into the store and did not decide this on a whim. The fact that they both drove to the store, drew their hand guns and demanded that Salma, the employee, give them the store's money indicates that there was an agreement on both parts to go to the store for this purpose.

Thus, Jim could reasonably be charged with conspiracy.

Robbery

Robbery is larceny with force or threat of force. Larceny is the trespassory taking and carrying away property of another with the intent to permanently deprive.

Here, Jim and Fred demanded that Salma give them the money with threat of force because they demanded the money with a gun drawn which indicates that he is threatening to use the gun should she not comply. Further, there was a taking and carrying away of money when Salma handed Jim money from the store, money that was not Jim's, and finally Jim intended to take the money and permanently deprive the store of said money.

Thus, Jim could be reasonably charged with robbery.

Felony Murder - Chris

A felony murder is a murder that occurs during an inherently dangerous felony, such as a burglary, arson, robbery, rape or kidnapping. The underlying felony merges into the murder if the murder occurs during the commission of that felony. Murder is a killing with malice aforethought. Malice aforethought can be satisfied by intent to harm, a depraved heart, or a

felony.

Here, Jim nervously dropped the gun which caused it to discharge when it hit the floor and as a result Chris, a store customer, died and even though Chris was not the one being threatened and Jim probably didn't intend to kill Salma either, the gun was discharged during the commission of an inherently dangerous felony, robbery (see above).

Causation

In order to be guilty of felony murder the cause of death must also be the but for cause and the proximate cause, foreseeable.

Causation -Actual, But For

Here, but for Jim carrying a gun into the store to threaten Salman and steal money the gun would not have discharged and killed Chris.

Thus, there is actual causation.

Causation - Proximate

Here, it is foreseeable that if you use a gun at a robbery the carrier may drop it and the gun will discharge because it is a gun that has that capability of causing that kind of reaction if used improperly.

Thus, there is proximate causation.

As stated above, the robbery will merge into the felony murder. Thus, Jim can reasonably be charged with felony murder instead of robbery.

Murder - Fred

Murder rule, see above. Deaths that occur during the commission of a crime can be attributed to the aggressor, however, if the death is caused by the victim, then the aggressor cannot be charged.

Here, Salma was the victim of the robbery and even though she got a shotgun from under the counter and shot Fred in self-defense, the death of Fred will not be a murder that Jim can be charged with because he was not the one who shot him.

Thus, Jim cannot reasonably be charged for the death of Fred.

2. With what crimes could Jim reasonably be charged regarding the incident on Park

Street?

Attempted Murder

An attempt is one in which there is an act short of completing the crime. Murder is the killing of another with malice aforethought. Malice aforethought can be proven in four different ways, see above.

Here, Jim in wanting to eliminate Salma as a witness, Jim shot at Salma and he was one step short of completing the crime because he missed her.

Thus, Jim could reasonably be charged with attempted murder of Salma.

3. Can Jim suppress Jim's gun from being introduced into evidence at trial?

Under the Fourth Amendment of the United States Constitution a person cannot be searched without a warrant. A warrant shall not be issued unless there is probable cause, issued by a neutral and detached magistrate stating with particularity the places to be searched and the items to be seized.

State Action

In order to bring a claim under the Fourth amendment, there must be a search by the government, state action.

Here, the Police Officer is the one that stopped Jim. A police officer is a state actor.

Thus, there is state action.

Search

In order to bring a claim under the Fourth Amendment, there must be search.

Here, Officer Bakari searched Jim's person.

Thus, there was a search.

Reasonable Expectation of Privacy

The individual must have a reasonable expectation of privacy in the place searched, expectation of privacy depends on the location of the search.

Here, Jim was searched on his person, under his search. One has a reasonable expectation of privacy on ones person under clothes.

Thus, Jim had a reasonable expectation of privacy of his body and clothes.

Warrant

There must be a warrant in order to conduct a search, unless an exception applies.

Here, Officer Bakari did not have a warrant as he was just driving down the street when he pulled up next to Jim.

Thus, there is not a valid search unless an exception applies.

Exceptions to Warrant - Search Incident to Lawful Arrest

A search may be conducted in order to protect the officer from any weapons that may be on the individual, but this may occur only during a lawful arrest.

Here, Jim was not arrested prior to the search, Officer Bakari only noticed that he looked nervous and arrested him after he conducted the search.

Thus, this exception does not apply.

Exceptions to Warrant - Plain View

A search and subsequent seizure may be done if the officer, while legally present at that location, sees something in plain view. The item has to be obvious and no manipulation is required.

Here, there was a bulge in Jim's shirt, but the Officer Bakari ("OB") did not know it was a gun and thus was not in plain view.

Thus, this exception does not apply.

Exceptions to Warrant - Consent

A search may be conducted if the individual gives the officer consent.

Here, the facts are silent as to whether OB asked Jim for permission to be searched.

Thus, this is not a valid exception.

Exceptions to Warrant - Exigent Circumstances

Under exigent circumstances, an officer may seize evidence if in the process of hot pursuit or there is a risk that the evidence will be destroyed.

Here, OB was neither in hot pursuit of Jim and neither was there an obvious threat of destruction of evidence.

Thus, this exception does not apply.

Exceptions to Warrant - Stop and Frisk

Under a stop and frisk search an officer may briefly pat down the individual for weapons in order for officer safety. The pat down must be only for weapons and any items found can't be manipulated. Further, the officer must have some suspicion that illegal activity is afoot in order to conduct this search.

Here, OB saw Jim driving down the street and even though he had no knowledge of the events at the store or on Park Street, his experience told him that Jim looked nervous. Jim may argue that the fact he looked nervous does not rise to the level of suspicion required by a stop and frisk search and thus, not a valid search. On the other hand, OB did ask Jim to step out of the car and it wasn't until he saw the bulge under Jim's shirt that he decided to proceed with the stop and frisk. The fact that Jim looked nervous and then had an obvious bulge out of his search gave OB the suspicion required to conduct the pat down of Jim's person.

Thus, this is a valid warrant exception and the gun will likely not be suppressed from evidence.

Exclusionary Rule

Evidence obtained in violation of the Fourth, Fifth, and Sixth Amendment will not be introduced into evidence.

If on the other hand, the stop and frisk exception is not a valid exception to the warrant requirement, then Jim may be able to suppress the evidence as evidence that has been illegally obtained.

Thus, if the stop and frisk was not a valid exception, Jim can suppress the gun from being introduced as evidence.

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END OF EXAM