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1. What crimes can Jim be reasonably charged with regarding the store?

Conspiracy:

A conspiracy is the agreement between two or more individuals to commit a target crime, here, robbery, and an overt act taken in furtherance of the agreement that goes beyond mere planning or preparation. Unlike attempt, the doctrine of merger does not apply and conspiracy may be charged separately even if the target offense occurs. There must be two or more defendants for the charge of conspiracy to apply.

Here, Fred and Jim armed themselves with handguns and drove themselves to the store. Presumably, they agreed to execute this plan to Rob the store, as circumstantial evidence of their simultaneous demands for money from the store clerk and the use of the firearms. It would appear from the facts that neither party made any attempt to abandon or thwart the conspiracy. However, conspiracy requires that two or more defendants be charged, and because Fred was killed, the charge of conspiracy to commit robbery will fail.

Robbery:

Robbery is the intentional taking of another's property with force or fear.

Here, Jim drew his gun and demanded that Salma, the store clerk, give them the store's money. The demand shows intent to cause Salma to relinquish her property. Salma did in fact hand over the store's money to Jim, who then took the money. The use of the firearms in the commission of this crime would reasonably cause another to fear for their lives, and it appears from the facts that Salma did in fact fear for her life, because after Jim dropped his firearm, Salma pulled out a shotgun and shot at Fred--which she could do if she reasonably believed her life was in danger and the use of deadly force was reasonable to defend herself.

Therefore, Jim will likely be charged with and found guilty of robbery.

Felony Murder:

When an inherently dangerous felony--robbery, rape, and arson--occurs, resultant deaths may give rise to the charge of felony murder. The time for felony murders to occur is within the commission and escape phase of the inherently dangerous crime.

Here, Jim drew his gun, and then demanded money from Salma. Salma then gave Jim the

money. Jim had committed a robbery. Jim dropped his gun unintentionally, and the gun went off killing Chris, a store customer. Despite, Jim's lack of intent to kill Chris, the nature of the inherently dangerous crime of robbery makes Chris a foreseeable victim under the circumstances. Jim may attempt to argue that the robbery had already been completed, but a robbery is still in progress until the robber has escaped to a place of relative seclusion. Here, Jim was still in the store when he dropped his gun, and even though he did not intend for it to go off, he intended to draw it, and it went off.

2. What crime(s) could Jim reasonably be charged with regarding the incident on Park Street?

Attempted 1st Degree Murder:

Attempt is defined as any overt act taken with the intent to cause a target offense. The merger doctrine applies to attempt, therefore, if the target offense is committed, the attempt merges with that offense. Murder is the intentional killing of another with malice aforethought. Malice aforethought is defined as premeditation and deliberation.

Here, Jim saw Salma walking down Park Street, and he thought to himself that he could eliminate her as a witness. This goes to show that he had premeditation, because he considered the outcomes. Jim then fired his gun at Salma intending to kill her. This goes to intent and also deliberation--weighing the choices and making a choice. Premeditation and deliberation does not require a certain amount of time beyond the time sufficient to consider the choices and make a choice. However, Jim missed, and he did not actually kill Salma.

Therefore, Jim will likely be found to have committed attempted murder.

Caveat: in an alternative theory, Jim may be found to have committed attempted felony murder because he was still likely within the escape phase from his earlier felony, robbery. The facts indicate that it was later in the same evening when this occurred and Jim was trying to tie up loose ends from the prior robbery by killing a witness.

3. Can Jim successfully move to suppress Jim's gun from being introduced as evidence at trial?

The Fourth Amendment:

The Fourth Amendment of the U.S. Constitution protects all citizens from unreasonable searches and seizures by the government. A seizure is defined as the taking of a person or property without probable cause. A search is defined as the physical manipulation of the property of an individual with the intent to gain information.

Search:

In order for the government to conduct a search of a person or place, they must have a valid warrant. A warrant is obtained when an officer presents an affidavit listing with particularity the place or person to be searched and the things to be seized, supported by probable cause, and signed by a magistrate. If there is no warrant, an exception to the warrant requirement must apply such as: the automobile exception, searches incident to a lawful arrest, or exigent circumstances.

Here, the fact do not indicate there is a warrant. However, the Officer patted Jim down and found his gun after stopping him on the street.

Therefore, the officer must identify an exception to the warrant requirement.

Search Incident to a Lawful Arrest:

When an officer arrests an individual, they may search the wingspan of an individual for officer's safety. An arrest occurs when an individual reasonably believes that he is not free to go.

Here, the Officer stopped Jim who was driving on the street because he looked suspicious. Suspicion alone is not a reason to stop an individual, and the officer had no knowledge of the other crime. Therefore, he could not arrest an individual. Nevertheless, Jim was then patted down by the officer because of a bulge the officer had seen. It would be reasonable at that point for Jim to consider himself under arrest and no longer free to go. However, the arrest was not support by probable cause, and was improper.

Therefore, the search incident to a lawful arrest exception to the warrant requirement will not apply.

Terry Stop Terry Pat Down:

A terry stop and pat down occurs when an officer has reasonable suspicion that a crime is afoot, and effects a stop of an individual in order to investigate further. At that time, the officer is free to do a safety pat down of the outer layer of the individuals close for officer's safety to find weapons. Reasonable suspicion requires more than a hunch, and the officer must be able to identify.

Here, as discussed above, the Officer stopped Jim because he looked suspicious. This is not a reason to pull someone over. If Jim had been stopped and acting suspiciously, California law allows an officer to alight an individual from their car to check their status. However, those facts are missing here. Again, the officer had no knowledge of any crime and nervousness is not a

crime. The pat down itself and seeing the bulge was proper provided the officer did not manipulate the object to effect a search with his hands--it must be obvious it is a weapon.

Therefore, the officer did not perform a proper *Terry stop or pat down*.

Conclusion:

The officer had no reasonable suspicion to pull over Jim, and therefore the stop was illegal. The resultant search was also without a warrant. Due to the nature of this stop, the firearm itself will likely be considered fruit of the poisonous tree, and the prosecutor will run into evidentiary issues in proving up the claims above. The gun can't come in unless through an independent source.

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