

Practice Hypotheticals

Criminal Law

Evaluation Sheet: "Murder of the Federal Express Man?"

Issue:

_____ Whether, in a common law jurisdiction, a defendant's felony murder charge can be reduced to an involuntary manslaughter charge when defendant unintentionally caused the death of another during the commission of a crime.

Rule(s):

Felony Murder

- _____ Unintentional homicide that occurs during the commission or attempted commission of a dangerous felony.
- _____ If defendant is acquitted of the underlying felony, there can be no felony murder conviction.
- _____ No intent to kill need exist; however, intent needed as element for the "murder" is replaced with the required intent to commit the underlying [or predicate] felony.
- _____ Includes any death that occurs during the *res gestae* of the underlying crime or in immediate flight therefrom.
- _____ Defenses to felony murder are:
 - _____ Defendant was unarmed AND
 - _____ Defendant did not commit the homicide AND
 - _____ Defendant had no reason to believe that his conduct was likely to result in death

Involuntary Manslaughter

- _____ Two types of involuntary manslaughter under the common law, with *mens rea* of either recklessness or negligence.
 - _____ Defendant is aware that there is a substantial risk of death [but not a grave risk, as required for Depraved Heart Murder] yet still proceeds to act recklessly, causing another's death.
 - _____ Negligent Homicide: defendant fails to perceive substantial risk of death, and this is a gross deviation from the conduct of a reasonably prudent person.

Burglary

- _____ Unlawfully entering [breaking and entering] or remaining in a dwelling [a structure used for sleeping purposes] at nighttime, with the intent to commit a crime therein.
- _____ Under the common law, burglary is considered a dangerous felony and is one of the underlying felonies that can sustain a felony murder charge.

Larceny

- _____ Wrongfully taking another's personal property [requiring only the slightest movement of the chattel] with the specific intent to permanently deprive the owner of that property or to deny the owner of possession for an unreasonable length of time or to use in a manner that deprives the owner of economic value.
- _____ Under the common law, larceny is not considered to be a sufficiently dangerous felony to sustain a felony murder charge.

Application: To sustain a felony murder charge:

- _____ Fed Ex man's death was unintentionally caused by George when George threw the briefcase at him [and the man died from those injuries].
- _____ George committed this act of throwing the briefcase as he was fleeing from the site of the underlying crime, thus his act was within the time frame parameters established for a felony murder charge.
- _____ George expressed the intent, the *mens rea* to knowingly, purposely harm another or another's property when he said he'd "get that delivery man and teach him a lesson" and "rip something to shreds" [e.g. the Fed Ex man and/or his belongings]; to that end, George armed himself with a scissors which he placed in his briefcase and went looking for the man. George therefore was armed with a potentially deadly weapon and intended to commit an act of violence upon the man or his belongings, once he found him. George's statement, "We'll see if he likes to have his property destroyed" combined with the fact that it was George's property that was damaged, is a strong indication that George's intent was to damage property. This could constitute the element of intent required for the dangerous felony of burglary or merely for the felony of larceny.
- _____ George would have had to commit a burglary for the felony murder charge to be sustained. While George's act in seeking shelter from the rain by entering the fitness center was clearly not criminal [indeed, it was open to the public], he did enter an apartment through a closed door at nighttime. It is questionable whether walking through a closed but unlocked door would be deemed "breaking," a requirement under the common law for burglary. Further, George was in a public place where entering a closed but unlocked door would not be considered unlawful.