

QUESTION 3

Anna owned a business and stored insured business inventory at a warehouse owned by Bob. Anna was experiencing financial problems and needed funds to pay her creditors. Bob, after hearing of Anna's money problems, suggested that they hire someone to burn down the warehouse since he was planning to build condominiums on the warehouse property and could use the insurance proceeds for the construction of the condominiums. Bob told Anna that he knew someone who would handle burning the warehouse in return for a percentage of the insurance proceeds. Anna agreed and Bob contacted Cindy to burn down the warehouse. Cindy obtained the location of the warehouse from Bob and proceeded to set fire to the warehouse. Unbeknownst to Anna, Bob or Cindy, a homeless person, Daryll, was living in the warehouse. Daryll died as a result of the fire.

After hearing about Daryll's death, Anna and Bob decided not to make any insurance claims. After an investigation Anna, Bob and Cindy were arrested.

With what crimes, if any, might Anna, Bob and Cindy be charged and what defenses, if any, could each assert? Discuss.

ANSWER A TO QUESTION 3

I. Anna's Crimes

A. Conspiracy. A Conspiracy is where two or more people agree/intend to commit an unlawful act and do something in furtherance of the act. Here, after hearing of Anna's money, Bob suggested that they hire someone to burn down the warehouse since Bob wanted to build condominiums on the warehouse property and they could both use the insurance proceeds. Their conspiracy was complete once Bob contacted Cindy to burn down the warehouse—they have now done an act of doing something in furtherance of their unlawful act. Both (sic) Bob, Anna and Cindy will be charged with conspiracy to burn down (arson) the warehouse.

1 Pinkerton's Rule. This rule states that all co-conspirators will be responsible for the unlawful acts of other co-conspirators done in furtherance of the conspiracy. Here, Anna will be held responsible for all acts done by Bob and Cindy to further their unlawful conspiracy.

B. Solicitation. Solicitation is when one encourages, asks, incites another into committing an unlawful act. Here Anna would be charged with the solicitation of Cindy because Bob asked Cindy to burn down the warehouse. However, when Cindy agreed she then merged the crime of solicitation into conspiracy.

C. Attempted Insurance Fraud. To be charged with the crime of attempt the defendant must specifically intend to commit the unlawful act and do something in furtherance to show that the defendant actually intended the crime. Here, Anna will be charged with the intent to commit insurance fraud. Because Anna and Bob agreed to commit arson in order to collect insurance money. The attempt will be considered complete when Bob asked Cindy to burn down the warehouse and Cindy set fire to the warehouse as instructed. Even though Anna and Bob decided not to make any insurance claims they

will still be charged with attempted insurance fraud. It was because Daryll the homeless man was killed that they did not want anyone to be suspicious of them. And possible guilt of him dying that caused Anna and Bob to not go through with their insurance claims. Anna will be charged with attempt to commit insurance fraud.

D. Arson is when the defendant intentionally burns down the house of another. Modernly, basically all structures are included, including one's own business or property in order to collect insurance money. The burning must be at least some type of charring to suffice, blackening will not. Here, Cindy set the fire to the warehouse and we assume that it was burned because it was significant enough to cause Daryll's death and burning also qualified because Anna and Bob could collect insurance claims. The burning of the warehouse was intentional as Anna and Bob conspired to have it burned down by asking Cindy to burn it down for a percentage of the insurance proceeds. Anna also burned her own property (business inventory) and the burning is supposed to be of another's property. However if one commits arson with the intention of collecting insurance money then this qualifies as arson because Anna did so for illegal purposes. She also destroyed other people's property that was destroyed in the warehouse.

E. Murder. A homicide is the unlawful killing of another human being. It will be considered murder if malice is proved.

1. Malice. Malice will be proved if any of the following four elements are met: 1) intent to kill (premeditation and deliberation); 2) intent to seriously injure; 3) wanton and willful conduct (depraved heart); and 4) a killing done in connection with a dangerous felony. Here, the state would most likely focus on a killing done in connection with a dangerous felony as this element and intent to kill/murder the defendant is eligible for a first degree murder charge.

2. Felony-Murder. Felony murder is charged when the defendant kills

another human being in the course of a dangerous felony. For a felony to qualify the felony must be considered extremely dangerous so as to show dangers to other people. Most jurisdictions list dangerous felonies as a killing during the commission of arson, rape, robbery, burglary or a kidnaping. It does not matter that you did not intend to kill another person but because of the dangerous situation involved in committing the felony a death could foreseeably occur because of the defendant's actions. Here, Anna conspired to commit the crime of arson, burning down the warehouse and by doing so she was committing a dangerous felony when Cindy went ahead and set fire to the warehouse. Because fire is considered dangerous, a chance of loss of life is easily foreseeable, then Anna will be charged with the felony murder of Daryll.

1. Involuntary manslaughter. Anna will claim that by her planning to burn down the warehouse and Cindy burning it down that they did not intend that Daryll would die. That the fire was an act of criminal negligence and the felony-murder charge should be reduced to involuntary manslaughter. However, this is an unlikely defense because Anna planned on committing arson which qualifies as a dangerous felony because it was foreseeable that another person might be seriously injured or die because of their actions.

II. Bob's Crimes.

A. Conspiracy. See supra. Bob will be charged with the crime of conspiracy as proven in the discussion above under Anna.

1. Pinkerton's Rule. Supra. Bob is a conspirator and has co-conspirators. He will be charged for any crimes by his co-conspirators in furtherance of the crimes.

B. Solicitation. Supra.

C. Attempted Insurance Fraud. Supra.

D. Arson. Supra.

E. Murder. Supra.

1. Felony Murder. Supra.

2. Involuntary manslaughter. Supra.

III. Cindy's Crimes.

A. Conspiracy. Supra.

1. Pinkerton's Rule. Supra.

B. Attempted insurance fraud. Supra.

C. Arson. Supra.

D. Murder. Supra.

1. Felony Murder. Supra.

2. Involuntary Manslaughter. Supra.

ANSWER B TO QUESTION 3

People v. Anna

Conspiracy Liability

At common law a conspiracy is an agreement between two or more persons to commit an overt illegal act or a legal act by illegal means. Modernly an overt act is required. The Warton rule requires one more person in the agreement than is necessary to commit the crime. A party may withdraw from a conspiracy provided the withdraw [sic] is done voluntary [sic] (without duress or immediate apprehension), is disclosed to all other parties of the conspiracy, and is in sufficient time before the crime is committed. A party to a conspiracy is liable for the foreseeable crimes committed by the other parties to the conspiracy prior to the withdrawal.

Here Bob and Anna formed an agreement because “Anna agreed.” The agreement was to burn down the warehouse, an arson. They committed an overt act by contracting with Cindy to burn down the building. Arson is the malicious burning of the dwelling of another. Modernly, the dwelling has been expanded to including most structures and other places, i.e. forest, etc. . . . Likewise the structure can be the defendant's own, if done with criminal intent, i.e., insurance fraud.

Therefore, Anna conspired with Bob to burn the warehouse with the intent of defrauding the insurance company. (At common law, the act of the arson would not be a crime since the structure was not a dwelling, but the intended result of insurance fraud would be a crime, supra, and therefore would still result in a conspiracy.

CONSPIRACY TO COMMIT LARCENY/FRAUD

Conspiracy, defined supra.

Larceny is the trespasser taking and carrying away of the personal property of another with the intent to permanently deprive. Fraud is larceny by trick through misrepresentation of a fact to another to induce the other to give up personal property.

Here Anna (and Bob) intended to burn down the warehouse to collect upon Bob's insurance policy, the personal property of another, the insurance company. Anna agreed to the act. The intent was to defraud the insurance company, an illegal act. By contracting with Cindy an overt act was commenced.

Anna will be charged with Conspiracy to commit fraud.

CONSPIRACY TO COMMIT SOLICITATION OF A CRIME

Conspiracy, defined supra.

Solicitation is the act of urging or encouraging another to commit a criminal act, with the intent of the act being committed. The solicitation can be of any criminal act.

Modernly, however, at common law, the solicitation must have been for the commission of a felony. If the act solicited is committed the solicitation is merged into the crime. Here Bob and Anna agreed to solicit Cindy to commit an arson, a crime. When Bob and Anna contracted with Cindy to burn the warehouse they committed an overt act and can be charged with conspiracy to solicit Cindy to commit arson. Since the arson was committed, infra, the solicitation will merge into the arson.

ARSON

Defined Supra.

Accomplice Liability

An accomplice in the first degree is one who is present at the time of the commission of the crime who may not actually be the principal. An accomplice in the second degree is not present at the time of the crime, but who has the intent to commit the crime and who aids or abets the others in the commission of the crime. Here, Anna was neither present, [n]or apparently aided nor abetted in the arson and therefore would not be liable as [an] accomplice. However, as a member of a conspiracy, supra, all parties are liable for the foreseeable criminal acts of the other parties. Here Anna conspired to burn the structure. If Cindy committed Arson, Anna would be held liable.

Based on conspiracy liability, at common law Anna would not be guilty of Arson because the building was not a dwelling. However, modernly the dwelling has been expanded and would include the warehouse. Because Cindy intentionally (maliciously) burned the warehouse, Anna would be charged with Arson.

MURDER.

Murder is the unlawful killing of another human being with malice aforethought. Malice aforethought is the intentional killing or implied killing through infliction of great bodily harm, unreasonable risk to human life (depraved heart), commission of felony or in some jurisdictions resisting lawful arrest. There must be a causation between the act and the killing.

All murder is second degree unless it is premeditated, killing by enumerated means, or during the commission of a dangerous felony. Then it is statutory first degree murder. Arson, supra, is a dangerous felony.

Here a killing of another occurred because Daryll died. The killing was the actual cause because but for the arson, Daryll would not have died. The arson is the proximate cause of the killing because there were not unforeseen intervening factors that negated the arson as the cause in fact of Daryll's death. Therefore the killing was caused by the arson.

Felony first degree murder is applicable because arson is a dangerous felony. Daryll's death is a result of and occurred during the arson. Further, since a conspirator is responsible for the crimes committed by the other parties to the conspiracy, that are foreseeable, which a death is foreseeable during an arson, Anna would be responsible for Daryll's death and charged with Statutory first degree murder.

Alternative second degree murder. In the event the jury does not believe that it was foreseeable Daryll would be in there because the building was a warehouse and people do not live in warehouses, the jury could find Anna responsible for second degree murder under the theory of unjustifiable risk to human life since the burning of any structure is an uncontrollable event and the likelihood is the fire can get out of control, the agreement to burn the warehouse places human life in unjustifiable risk.

DEFENSE TO MURDER: A mistake of fact, i.e., the warehouse is empty, does not apply because a mistake of a fact is not a defense to a general intent crime, which second degree murder and arson are both (sic).

There are not other defenses to the crime that are applicable.

ATTEMPT FRAUD: An attempt is a significant step towards the commission of a crime coupled with the intent to commit the crime. An attempt can be for any form, but the defendant must have the specific intent of desiring the commission of a[n] actual crime. Fraud, supra, is a crime. Anna intended to partake in the fraud with Bob of his insurance company. Here [sic] and Bob took a significant step towards

the crime then they hired Cindy to burn down the building. Anna will argue that the significant step to the fraud is the filing of the insurance claims and because they did not they did not take a significant step and therefore are not guilty of attempt[ed] fraud. The prosecution will argue that one [sic] the burning occurred, the attempt was in place, and it was too late to back out since a withdrawal of an attempt is generally not a defense as the crime is the “attempt” and the specific means to commit that crime. If not for the burning of the warehouse, Anna could argue the significant step did not occur. However, Anna will be charged with attempt to commit fraud.

PEOPLE V. BOB: Bob will be charged for the same reasons as set forth above for Anna with crimes of conspiracy to commit arson, conspiracy to commit fraud, murder and attempted fraud. In addition Bob will be charged with solicitation, supra, of arson, and fraud.

Solicitation to commit arson, for the same reasons set forth in Anna. (In addition Bob solicited Anna to commit arson.) Bob will not be charged with solicitation to commit arson as the arson occurred and the solicitation is merged into that crime.

However, Bob did encourage Anna to commit fraud by suggesting they hire someone to burn down the warehouse and collect the insurance proceeds, since the fraud was not committed, Bob will be charged with solicitation of Anna to commit fraud.

PEOPLE V. CINDY: As set forth above Cindy will be charged with conspiracy to commit arson, arson and murder.