

Monterey College of Law
Criminal Law & Procedure – Section 2 (Hybrid)
Midterm Examination
Fall 2023

Prof. K. Smith

Instructions:

Answer two (2) Essay Questions.

Answer twenty (20) MBE Questions.

Total Time Allotted: Three (3) hours.

Recommended Allocation of Time: One (1) hour per section.

Complete sentences are required. Clearly identify which party you are discussing in your answers.

Please recite the applicable law from the previously reviewed CALCRIM instructions.

Conclusions MUST be definitive. No “on one hand” answers for your conclusions.

Headings for each section are STRONGLY encouraged for grading purposes.

Numbering the elements of the rule(s) is STRONGLY recommended for grading purposes.

QUESTION 1

Daniel is at his home with his friend, David. Daniel and David begin discussing how they need to buy marijuana for an upcoming weekend party they will be attending together. David jokes that they should look into a marijuana buy from marijuana sellers on Facebook.

To David's surprise, Daniel immediately agrees. Daniel asks David for his smart phone to access Facebook to search for marijuana sellers. David gives his smart phone to Daniel. As Daniel is searching Facebook, Daniel gets a gun from his car and returns to the residence.

Once Daniel returns to the residence, he sees David holding several twenty-dollar bills and taking photos of them. David and Daniel then discuss how to safely conduct a marijuana buy from a stranger on Facebook.

The buy is scheduled for later that night. David and Daniel drive to a previously arranged site in a poorly lit alleyway. Upon arrival, David and Daniel meet up with Victor. Victor has a small brown paper bag in his hand as well as his right hand in the front pocket of his hoodie. There is a visible lump inside of Victor's hoodie.

David attempts to hand Victor the previously agreed upon \$60 for an ounce of marijuana. Victor states, "Nah, man. Heat's out tonight. For you, first-time buyer, make it \$80." Victor and David begin to argue, and both Daniel and Victor step in closer, their hands nearing their pockets and waistband.

Finally, David obtains an extra \$20 in his wallet and hands \$80 total to Victor. Victor laughs, taking the money, stating, "Thought so, you punk-ass. You got a girlfriend? Tell her to call me when she figures out she can have a real man in her life. I'll take care of her like she's never dreamed of." As Daniel and David back away slowly, both hear Victor laughing.

Several minutes later, as David is driving away, Daniel opens the bag. Inside is a quarter ounce of marijuana. When Daniel shows David the bag, David curses audibly. After driving back towards their house for five minutes, David asks Daniel, "You bring your gun?" Daniel nods yes. David turns the car around and drives back towards the location of the buy.

After searching for fifteen minutes, Daniel spies Victor standing near a convenient store a block ahead. David asks Daniel, "You ready?" Daniel says, "Let's go."

David parks around the block, and both walk towards the convenient store. When David and Daniel get within twenty feet, Daniel pulls his gun out from his pocket and holds it at his side. David yells out, "Hey! You screwed me!" Victor places his hand inside of his hoodie pocket. David looks at Daniel, saying, "Do it."

Daniel raises his weapon and fires his weapon twice at Victor. Victor attempts to run from the scene, with one bullet hitting the wall one foot above his head from where he was originally standing. The second bullet strikes Victor in the chest, killing him. Both David and Daniel flee the scene. Police are called, and a search of Victor's body reveals a cell phone in his hoodie pocket. No weapon is recovered from the scene. Through surveillance video and witness testimony, both David and Daniel are arrested the next day.

What crime(s) can David and Daniel be charged with? Please specify the degree(s) of a crime, if applicable.

Please discuss any defenses David and Daniel may argue.

QUESTION 2

For two days, Dylan has been casing a single-family home in an upscale neighborhood. One night, at 1 a.m., Dylan approaches the home after parking several streets away. No lights are on in the home; however, there is a car parked at the curb in front of the house. Dylan is dressed in dark clothing and has a crowbar and a large duffel bag with him. Dylan approaches the house and walks down a short flight of stairs to the basement. After looking around, Dylan attempts to pry open the basement door to no avail. Dylan then sees that there is a window slightly open next to the basement door. Using his crowbar, Dylan inserts it through the window into the basement and uses it to pull on the door handle, opening the door. Dylan's hand or arm never enters the basement.

Dylan finds nothing of value inside of the basement. As he slowly walks up the stairs to the kitchen, Dylan does not hear anything inside of the home. Dylan walks through the kitchen and into the living room, quietly grabbing items of value: silverware, an Alexa speaker, and a porcelain vase. Dylan then walks into the hallway where he sees two closed doors. Dylan opens one door and finds an unoccupied bedroom. Dylan quickly inspects the room, taking jewelry found in a dresser, as well as a fur coat hanging in the closet.

Upon opening the second closed door, Dylan discovers that there is a human shape in the bed located against the wall. Dylan quietly closes the door and walks to the living room and exits the front door after unlocking it. Dylan begins walking back towards his vehicle with the items from the home inside of his duffel bag.

As Dylan is placing the duffel bag in the trunk, he hears a shout from down the street and sees an adult male in a bathrobe running towards him. As the man, Vernon, is running towards Dylan, Dylan closes the trunk, turns, and places his hand inside his pocket, stating, "Stop right there or you are dead." Vernon stops, angrily looking at Dylan. Dylan says, "You got a phone on you? Empty your pockets!" Vernon slowly removes a cell phone from his pocket and places it on the ground. Vernon backs away to a distance of ~ 20 feet. Dylan bends down, picks up the phone, and gets into his car and leaves.

Once Dylan arrives home, he is thinking about Vernon attempting to stop him. The more he thinks about Vernon, the angrier he gets. After an hour, Dylan picks up the phone to call his friend, Walter. Once Walter answers the phone, Dylan states, "Man, I just finished a job and the guy was home. He actually tried to get his stuff back! You gotta help me get him back." Walter says, "What do you mean?" Dylan states, "I need you to take care of him for me. Once you do, I'll split the proceeds with you." Walter agrees and hangs up the phone.

Walter never follows through with Dylan's request; however, Walter also does not go to law enforcement to report Dylan.

What crimes can Dylan be charged with? Please specify the degree(s) of a crime, if applicable.

Please also discuss any defenses Dylan may argue.

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Midterm Examination – Answer Key

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QUESTION 1

Theories of Liability:

Second-Degree Murder: CALCRIM 520

First-Degree Murder – Premeditation and Deliberation: CALCRIM 521

Aiding and Abetting: CALCRIM 401

Possible Defenses:

Heat of Passion: Reduction to Voluntary Manslaughter: CALCRIM 570

Imperfect Self-Defense: CALCRIM 571

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Theories of Liability for Daniel:

Issue: *Is Daniel guilty of the Second-Degree Murder (CALCRIM 520) of Victor?*

Rule:

- 1) The defendant committed an act that caused the death of another person;*
- 2) When the defendant acted, he had a state of mind called malice aforethought;*
- 3) He killed without lawful justification.*

Sub-Rules:

Express malice: If he unlawfully intended to kill.

Implied Malice:

- 1. He intentionally committed the act;*
- 2. The natural and probable consequences of the act were dangerous to human life;*
- 3. At the time he acted, he knew his act was dangerous to human life; AND*
- 4. He deliberately acted with conscious disregard for human life.*

Analysis:

As to Element 1, shooting twice at Victor proximately caused the death of Victor.

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As to Element 2, we must determine if malice aforethought exists.

*As to **Express Malice**, firing twice and one of the bullets almost striking Victor in the head as well as the second shot striking Victor in the chest shows Daniel's unambiguous intent to kill.*

Express malice is likely found here.

*Alternatively, as to **Implied Malice**:*

As to Element 1, there is no indication that Daniel was under the influence, unconscious, or under duress. Daniel intentionally fired his weapon twice, which cuts against the idea of an accidental discharge.

Element 1 is likely met.

As to Element 2, the facts state that Daniel fired the weapon twice from a distance of ~ 20 feet, with one of the bullets striking the wall ~ 1 foot above Victor's head and the second striking Victor in the chest. Firing a weapon a close range is incredibly dangerous to human life.

Element 2 is likely met.

As to Element 3, there is no indication that Daniel does not know that firing a weapon at close range is dangerous to human life. In addition, firing it twice at the same person shows that he knows his acts will likely result in injury or death to the target. Also, because Daniel brought his firearm without being asked, and because he acknowledged he had a gun upon David asking him, he knows that his actions are dangerous to human life.

Element 3 is likely met.

As to Element 4, there is no indication that he pulled the trigger accidentally. Firing twice also cuts against that argument. Also, because Daniel fired twice and one of those shots hit the wall ~ 1 foot above Victor's head and the second struck Victor in the chest, that increases the danger to human life.

Element 4 is likely met.

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Therefore, implied malice to kill Victor exists.

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As to element three, there are no facts that give rise to a lawful justification.

Element three is met.

Conclusion: *Daniel is guilty of a second-degree murder of Vincent.*

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Issue: *Is Daniel guilty of a first-degree murder (CALCRIM 521) of Victor?*

Rule:

The defendant is guilty of first-degree murder if the People have proved that he acted willfully, deliberately, and with premeditation.

The defendant acted willfully if he intended to kill.

The defendant acted deliberately if he carefully weighed the considerations for and against his choice and, knowing the consequences, decided to kill.

The defendant acted with premeditation if he decided to kill before completing the acts that caused death.

Analysis:

As to willfully, firing twice shows an intent to kill. Accidental discharge is much less likely as a result.

Willfully is found.

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As to acting deliberately, since Daniel got his gun near the start of the fact pattern, he knows that drug deals are inherently dangerous and got protection for himself and for David. Daniel also had the opportunity to drive around for 15 minutes looking for Victor. During that time, the likelihood of a physical confrontation escalates and Daniel has time to consider his actions and the consequences. In the end, he fired twice at Victor anyway.

Deliberately is found.

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As to premeditation, the facts state that Daniel has the firearm at his side when he gets within twenty feet, not that he pulled it after the verbal confrontation. Daniel is ready to use the weapon. Daniel raises the weapon, aims, and fires twice at Victor.

Premeditation is found.

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Conclusion:

Daniel is guilty of a first-degree murder of Vincent.

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Theories of Liability for David:

Issue: Is David guilty of a second-degree murder of Vincent (CALCRIM 520 & 562) through an aiding and abetting theory (CALCRIM 401)?

Rule:

1. The perpetrator committed the crime;
2. The defendant knew that the perpetrator intended to commit the crime;
3. Before or during the commission of the crime, the defendant intended to aid and abet the perpetrator in committing the crime; AND
4. The defendant's words or conduct did in fact aid and abet the perpetrator's commission of the crime.

Someone aids and abets a crime if he or she knows of the perpetrator's unlawful purpose and he or she specifically intends to, and does in fact, aid, facilitate, promote, encourage, or instigate the perpetrator's commission of that crime.

Analysis:

As to element 1, the perpetrator is Daniel in this instance. As shown above, he committed a first-degree murder of Victor.

Element 1 is met.

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As to element 2, David knew that Daniel intended to commit the crime since he knew that Daniel had a gun on him, that he did not object during the 15 minutes of looking for Victor, and that he pulled his gun out once he was within 20 feet of Victor. This was a "get back at them" situation.

Element 2 is met.

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As to element 3, David drove the car and spotted Victor. David parked the car around the corner as to not be seen. David approached with Daniel, and David saw Daniel remove the firearm and hold it at his side. David never asked Daniel to stop, to reconsider, to only "scare" the duo.

Element 3 is met.

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As to element 4, David drove around for ~ 15 minutes looking for Victor, David drove Daniel to the scene, parked around the corner, out of sight. This gave them an element of surprise. David also asked Daniel if he had his gun with him. David then turned to Daniel after words had been exchanged and told Daniel to fire by saying, "Do it."

Element 4 is met.

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Conclusion: David is guilty of a second-degree murder of Vincent through an aiding and abetting theory.

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Issue: Is David guilty of a first-degree murder of Vincent (CALCRIM 521 & 562) through aiding and abetting (CALCRIM 401)?

Rule: See first-degree murder (CALCRIM 521) as listed above. The aider and abettor must share the same intent as the shooter.

Analysis: Since express malice was proven above, and since implied malice was proven above, David likely shared the same intent given his actions of looking for the duo, parking out of the duo's line of sight, and approaching with Daniel, who clearly had his gun out.

David shares the same analysis with Daniel as to willfulness, deliberation, and premeditation.

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Conclusion: David is guilty of a first-degree murder of Vincent through an aiding and abetting theory as well as transferred intent as listed above.

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Possible Defenses:

David's Possible Defenses to the Charges:

Issue: Can David have his murder charges reduced to voluntary manslaughter through a heat of passion defense (CALCRIM 570)?

Rule:

The defendant killed someone because of a sudden quarrel or in the heat of passion if:

1. The defendant was provoked;
2. As a result of the provocation, the defendant acted rashly and under the influence of intense emotion that obscured his reasoning or judgment; AND
3. The provocation would have caused a person of average disposition to act rashly and without due deliberation, that is, from passion rather than from judgment.

While no specific type of provocation is required, slight or remote provocation is not sufficient. Sufficient provocation may occur over a short or long period of time.

In deciding whether the provocation was sufficient, consider whether a person of average disposition, in the same situation and knowing the same facts, would have reacted from passion rather than from judgment.

If enough time passed between the provocation and the killing for a person of average disposition to “cool off” and regain his or her clear reasoning and judgment, then the killing is not reduced to voluntary manslaughter on this basis.

Analysis:

As to element one, the evidence showing provocation as to David includes Victor’s increase in price, Victor’s statements re: David’s girlfriend, the quarter ounce instead of the full ounce of marijuana, and Victor laughing as David leaves the scene. Once David arrives at the scene of the murder, Victor speaks no words and commits no actions.

David has been taken advantage of, has lost extra money, has been insulted as to his GF, has been cheated out of the amount of marijuana promised to him, and was laughed at as he left the scene. The average person would likely chalk this one up to inexperience and to the dangers of a drug transaction, not something that would arouse a violent or intense emotion.

Element one is likely not met.

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As to element two, the facts show that David discovered the smaller amount of marijuana after several minutes of driving. David then spent ~ 15 minutes driving around and looking for Victor. During that time, he asks Daniel if he brought his gun. One could argue that if provocation is sufficient, then David is acting rashly and under the influence of that intense emotion. David clearly is not taking time to plan or to plot his next actions. David knows he has a gunman with him, and David is looking for revenge as soon as possible. His statement of “Hey, you screwed me!” shows he is still upset by the drug deal gone bad.

Element two is likely met.

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As to element 3, again, an average person would likely suffer the loss of extra money and marijuana and chalk it up to the dangers of a drug deal. They would not get a co-defendant who is armed, go look for the offenders, park around the block, walk up to the offenders, and order his co-defendant to fire.

Element three is likely not met.

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In addition, “cooling off period” should be considered in this instance. The alleged provocation occurred ~ 15-20 prior to the shooting. This likely makes this an invalid defense as well.

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Conclusion:

David likely will NOT have his charge reduced to voluntary manslaughter in this instance.

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Issue: *Can David have his charges reduced to voluntary manslaughter though imperfect self-defense (CALCRIM 571)?*

Rule:

The defendant acted in imperfect self-defense if:

- 1. The defendant actually believed that he was in imminent danger of being killed or suffering great bodily injury; AND*
- 2. The defendant actually believed that the immediate use of deadly force was necessary to defend against the danger; BUT*
- 3. At least one of those beliefs was unreasonable.*

Belief in future harm is not sufficient, no matter how great or how likely the harm is believed to be.

In evaluating the defendant's beliefs, consider all the circumstances as they were known and appeared to the defendant.

Analysis:

As to element one, the facts state that Victor took no threatening actions or said anything towards David before the shooting took place. If we look back at the drug deal, Victor had his hands in his hoodie pocket with a lump visible inside. However, that was ~ 15-20 minutes prior. No facts exist in this instance that would implicate self-defense at the time of the shooting.

Element one is not met.

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As to element two, the facts do not support that danger existed at that moment for David to tell Daniel to fire at Victor. Again, the prior possibility of danger had likely lapsed.

Element two is not met.

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As to element three, both prior elements are not met.

Element three is not met.

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Conclusion:

Imperfect self-defense is not a viable defense for David.

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Possible Defenses for Daniel:

Can Daniel have his murder charges reduced to voluntary manslaughter through a heat of passion defense (CALCRIM 570)?

Rule: Same as listed above (CALCRIM 570).

Analysis:

As to element one, the focus of Victor's comments and actions appear to be focused on David, not Daniel. Aside from Victor stepping forward towards Daniel during the drug deal, no facts exist to show that Daniel was the target of the provocative statements or actions.

Element one is not met.

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As to element two, Daniel only acted after David told him to do so, NOT as a result of any other statement or action at the time of the shooting. Daniel knew of the purpose of the search and of the approach.

Element two is not met.

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As to element three, a person of average disposition would likely have taken the loss and not gone looking for the drug dealers. Daniel's actions were exceedingly violent and took place only after 15-20 minutes had passed. Daniel had time to think about and deliberate on his actions.

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In addition, the same "cooling off period" analysis applies here. ~ 15-20 minutes elapsed before the second confrontation occurred. Because no words or statements were made at the shooting scene, no further provocation occurred. A person of average disposition likely had time to "cool off" from the effects of the provocation, if any.

Conclusion:

Daniel cannot use heat of passion as a valid defense under these facts.

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Issue:

Can Daniel have his murder charge reduced to a voluntary manslaughter under imperfect self-defense (CALCRIM 571)?

Rule:

Same rule applies as above.

Analysis:

As to element one, no facts exist to show that Daniel was spoken to or threatened in any way. The only possible factoid would be when Victor stepped towards Daniel during the drug deal with his hand in his hoodie.

Element one is not met.

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As to element two, no danger existed at the time of the confrontation at the murder scene. Daniel was never spoken to or threatened with violence by Victor.

Element two is not met.

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As to element three, neither element fits within the fact pattern.

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Conclusion:

Daniel cannot use imperfect self-defense to reduce his murder charge to voluntary manslaughter.

QUESTION TWO

Theories of Liability:

Burglary: CALCRIM 1700

Larceny: CALCRIM 1800

First-Degree Burglary: CALCRIM 1701

Robbery: CALCRIM 1600

Solicitation: CALCRIM 441

Possible Defenses:

Nothing specific from the CALCRIMs. Students can try to argue specific elements were not met.

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Issue: *Is Dylan guilty of a second-degree burglary?*

Rule:

- 1. The defendant entered a building; AND*
- 2. When he entered a building, he intended to commit theft.*

Under the law of burglary, a person enters a building if some part of his or her body or some object under his or her control penetrates the area inside the building's outer boundary.

Analysis:

As to element one, the thrust of the argument is at what point does Dylan enter the building? Since an object under his control; specifically, the crowbar, enters into the building in order to open the door, this would be when an entry occurs.

Element one has been met.

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As to element two, we need to define larceny.

Sub-Rule:

- 1. The defendant took possession of property owned by someone else;*
- 2. The defendant took the property without the owner's consent;*
- 3. When the defendant took the property, he intended to deprive the owner of it permanently,*
AND
- 4. The defendant moved the property, even a small distance, and kept it for any period of time, however brief.*

Sub-Analysis:

As to element one, Dylan has burglar's equipment with him, as well as a bag. Dylan is entering into a home that is not his own. This is further evidenced by Dylan actually taking a few items from the house once he gets into the kitchen and living room.

Element one is met.

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As to element two. There are no facts to show that this was a consensual taking. In addition, why break in if consent was given?

Element two is met.

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As to element three, there is no indication that Dylan planned to return the property. Dylan was placing it in his car and was about to drive away.

Element three is met.

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As to element four, Dylan moved the property from the house to the trunk of his car, which was several streets away.

Element four has been met.

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As a result, element two of burglary has been met.

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Conclusion:

Dylan is guilty of a second-degree burglary.

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Issue:

Is Dylan guilty of a first-degree burglary?

Rule:

First degree burglary is the burglary of an inhabited house.

Analysis:

When Dylan entered the residence, it was a single-family residence. In addition, despite Dylan believing that no one was home, he found Vernon sleeping in bed.

Conclusion:

Dylan is guilty of a first-degree burglary.

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Issue: *While Dylan would be guilty of a first-degree burglary upon his entry into the residence, some students may look into the room within a building as an additional burglary under 1700. We have discussed concurrent burglaries, so they should not spend time on this. Bonus if they do.*

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Issue: *When confronted by Vernon, and after Dylan takes his phone, is Dylan guilty of a robbery?*

Rule:

- 1. The defendant took property that was not his own;*
 - 2. The property was in the possession of another person;*
 - 3. The property was taken from the other person or his immediate presence;*
 - 4. The property was taken against that person's will;*
 - 5. The defendant used force or fear to take the property or to prevent the person from resisting;*
- AND*
- 6. When the defendant used force or fear, he intended to deprive the owner of the property permanently.*

Fear, as used here, means fear of injury to the person himself or herself.

Analysis:

As to element one, the property at issue was the cell phone. There is no indication that anyone other than Vernon owned the phone.

Element one is met.

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As to element two, the property was in the personal possession of Vernon since he took the phone from his bathrobe pocket before setting it on the ground.

Element two is met.

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As to element three, when the property was taken, it was on the ground within ~ 20 feet. This would qualify within immediate presence. Alternatively, the property was taken from Vernon's person due to the actions of Dylan which caused Vernon to place it on the ground.

Element three is met.

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As to element four, the property was not given willfully as Vernon relinquished the phone only after a threat of force was made.

Element four is met.

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As to element five, there was no force used. Instead, there was a threat of force designed to invoke fear. Because Dylan had his hand in his pocket simulating a gun, and because he said he would kill Vernon, fear exists in this scenario.

Element five is met.

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As to element six, Dylan's intent is illustrated by driving away from the scene with the phone with no plans to return it.

Element six is met.

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Conclusion:

Dylan is guilty of a robbery.

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Issue: *Is Dylan guilty of solicitation for murder?*

Rule:

- 1. The defendant requested another person to commit the crime of murder; AND*
- 2. The defendant intended that the crime of murder be committed.*

Analysis:

As to element one, "take care of him" is ambiguous if Dylan means murder, a battery, an ADW, etc. Given the lack of specifics around this statement, it is unlikely that this is definitively a request for a murder to occur.

Sub-Rule:

See CALCRIM 520 for murder.

Sub-Analysis:

Implied malice would be difficult to reach here. The only information we have of Dylan's genuine request is an offer to "split the proceeds" with him. The items taken would not rise a significant amount of money is split between two people.

Element one is too ambiguous as to the crime requested.

Element one is likely not met.

--

As to element two, express and/or implied murder is difficult to prove under these facts as listed above. There is a monetary element, but it is likely a low amount of money for a murder for hire. The ambiguity of the statement also cuts against this element being proven.

Element two is likely not met.

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Conclusion:

Dylan is NOT guilty of solicitation to commit murder.

1)

What crime(s) can David and Daniel be charged with and what degrees if applicable? Also discuss any defenses David and Daniel may argue.

I. Can David and Daniel be charged with Conspiracy?

Rule:

- 1) The defendant intended to commit a crime or attempt to commit a crime with at least one other participant *agreement* ✓
- 2) At least one member of the conspiracy would commit the crime *by intent* ✓
- 3) An overt act was taken to commit the crime ✓

Analysis:

Element 1) David and Daniel were upset when they found out that they had been shorted by Victor during the marijuana sale because of that David asks Daniel "You bring your gun?", Daniel nodded yes and David turned the car around to drive back towards the location of the buy. Because of these facts we can infer that David and Daniel intended to commit a crime between the two of them. While D and D could claim that they didn't explicitly talk about which crime they were going to commit the fact that a gun was involved would tend to infer that some crime would be attempted or carried out between the two of them.

Element 2) We can infer that at least one member intended to commit a crime because Daniel had his gun on him and when David asks, You Ready? Daniel said "Let's go." Element 2 has been met

Element 3) The overt act happened when David turned the car around and headed back to the direct of the buy to look for Victor. At that point the conversation had moved beyond just planning and into an over act. Element 3 has been met

Conclusion: David and Daniel are guilty of Conspiracy.

II. Can David be charged with aiding and abetting?

Rule:

- 1) The Perpetrator committed a crime
- 2) The Defendant knew the perpetrator intended to commit a crime
- 3) Before the crime occurred or during the commission of it, the Defendant intended to aid and abet the perpetrator in the commission of the crime.
- 4) The Defendants words or conduct did aid and abet the perpetrator in the commission of the crime.

Analysis:

Element 1) Daniel committed a crime because he shot Victor. Element 1 has been met

Element 2) David knew Daniel intended to commit a crime because Daniel showed him his gun. He also raised his gun and fired at Victor. Element 2 has been met.

Element 3) David established his intent in aiding and abetting the commission of the homicide by encouraging and facilitating David in committing it because he drove the car to the scene of the crime, Asked Daniel if he had brought his gun, drove for 15 minutes while Daniel was looking for Victor and once they found him asked Daniel if he was ready, looked at Daniel once they had found Victor and said, "Do it." That phrase

happened right before David raised his gun and fired. Plus David "looks at Daniel" right beforehand..we could interpret that as looking for encouragement. Element 3 has been met.

Element 4) David's actions and words as outlined in element 3 also clearly show that he helped aid and abet Daniel in killing Victor. He's driving the car. He's offering words of encouragement. Would Daniel have followed through on getting shorted on some marijuana by tracking down Victor and shooting him unless David had been there the whole time encouraging him? Doubtful. Element 4 has been met.

Conclusion: David can be charged with aiding and abetting Daniel in the commission of the homicide of Victor.

Can Daniel be charged with 2nd Degree?

Rule:

Murder is the unlawful killing of a human being with malice aforethought.

Analysis:

Element 1) The defendant's act results in the death of another. Daniel firing his weapon and one bullet striking Victor in the chest is what killed him. Element one has been met.

Element 2) Before the act occurred the defendant was in a state of mind called malice aforethought.

There are two types of malice: Express and Implied

Express Malice is the unlawful intent to kill

Implied Malice is when

- 1) The defendant intentionally commits an act
- 2) The natural and probable consequences of which are dangerous to human life
- 3) The defendant knew the act was dangerous to human life, and
- 4) Deliberately acted with conscious disregard to human life.

Sub-Analysis (Express or Implied Malice)

Express Malice: Daniel could have express malice because he had a gun, he spent 15 minutes tracking down Victor with help from his friend, and when he saw Victor fired at him killing him.

Implied Malice: It is easier to prove implied malice however because

Element 1) Daniel intentionally committed an act of firing a gun at Victor. Element 1 has been met

Element 2) Natural and probable consequences are met because firing a gun at someone is dangerous to human life. Element 2 has been met

Element 3) It is pretty reasonable to assume that Daniel knew the act was dangerous to human life because everyone knows that firing a gun at someone is dangerous to human life. Element 3 has been met.

Element 4) We can also see that Daniel acted with conscious disregard for human life because once again firing a gun at someone is a reckless act that a reasonable person would know would be dangerous to do. Element 4 has been met.

X
2 shots?

Conclusion: Daniel can be charged with 2nd degree murder. But we need to run through 1st degree murder to see if he can be charged with that.

Can Daniel be charged with 1st Degree Murder?

Rule:

The defendant is guilty of murder if they acted willfully, deliberately and with premeditation

Element 1) Willfully means they unlawfully intended to kill. Daniel had a gun, tracked Victor down and shot him those are all acts that show unlawful intent to kill. Element 1 has been met.

Element 2) 2) Deliberately means they weighed the considerations for and against their action and knowing the consequences decided to act. We have the conversation between Daniel and David about bringing the gun. They also drove around for 15 minutes. That is a lot of time to weigh considerations. Element 2 is likely met.

3) Premeditation means the defendant decided to act before committing the act which killed another. This was not done rashly, impulsively or without careful consideration. The amount of time can be short for the defendant to reach a decision to kill. Cool and calculated. In this situation, we have the conversation between David and Daniel and at no time do we see Daniel being under the influence of extreme emotion. At least the facts don't tell us this. So element 3 has been met.

Conclusion: Daniel can be charged with 1st degree murder.

We also need to see if Felony Murder applies.

Rule:

1) Defendant Committed or attempted to commit Burglary, Arson, Robbery Rape or Kidnapping.

2) During the commission of one of those felonies, someone was killed.

Analysis: There are not facts that suggest that one of those felonies was happening in this scenario. Element 1 is not met

Conclusion: Felony Murder does not apply.

Defenses: Could Daniel Claim Voluntary Manslaughter? There are two options here:

Could Daniel Claim Voluntary Manslaughter: Heat of Passion?

Rule:

- 1) The defendant was provoked. ✓
- 2) As a result of being provoked the defendant acted rashly and under the influence of intense emotion that obscured reason and judgment. ✓
- 3) A person of average disposition would have also reacted in a similar fashion under the situation. ✓
1/2

Analysis:

Element 1) Daniel could try and claim that he was provoked by being shorted marijuana, overcharged by \$20 and also had disparaging remarks about David's girlfriend being hurled by Victor. Ok, let's say Element 1 has been met.

Element 2) Do we see any facts that imply that Daniel was acting rashly, under intense emotion, with no cooling off period? Not really. In fact there is nothing that implies any strong emotion in the fact pattern. Perhaps Daniel is motivated by revenge but revenge is the one emotion that won't work in this situation. Plus he had 15 minutes driving around ✓
✓

looking for Victor which could reasonably be called a cooling off period. Element 2 has not been met ✓

Element 3) Ok, so element 2 hasn't been met but let's go look at element 3 just to look at all of it. It is unlikely that a person of average disposition would be acting rashly and under intense emotion because a guy selling them marijuana said a few disparaging things about a girl, over charged twenty bucks and then didn't give them the agreed upon amount of weed. Element 3 has not been met. ✓

Conclusion: Daniel will not be able to claim Voluntary Manslaughter: HOP. ✓

Can Daniel Claim Imperfect Self-Defense or Defense of Another?

Rule:

- 1) Defendant believed they were in imminent danger of great bodily injury or death ✓
- 2) Defendant believed the use of deadly force was necessary to protect themselves from harm ✓
- 3) One of those beliefs was unreasonable. ✓

Analysis:

Element 1) once Daniel and David find Victor Daniel pulls out his gun and holds it at his side. He is the aggressor here. Victor places his hand inside his hoodie pocket which is most likely him just attempting self-defense by pretending he also has a gun. Turns out it was actually a cell phone. Maybe he was going to call the cops. We don't know precisely but Victor's actions do not lead one to assume that Daniel and David are in imminent danger of GBI or death. ✓

Element 2) It was an unreasonable belief also that deadly force was necessary because there is nothing about Victor's behavior that states deadly behavior is forthcoming. ✓

Element 2 is not met.

Conclusion: Daniel cannot plead Voluntary Manslaughter: Imperfect Self-Defense because he doesn't meet the elements. ✓

Can Daniel be charged with Assault With a Deadly Weapon?

Rule:

- 1) The defendant committed an act with a deadly weapon the nature of which would directly and probably result in the application of force that is likely to cause great bodily injury. ✓
- 2) Defendant committed the act willfully
- 3) At the time of the act, the defendant was in possession of facts that would lead a reasonable person to determine the act would directly and probably result in the application of force likely to cause great bodily injury. ✓
- 4) At the time of the act the defendant had the present ability to apply force
- 5) Defendant did not act in self-defense or defense of another.

Analysis:

Element 1) This is met because Daniel is using a gun that by its nature is a deadly weapon. ✓ And he is firing at Victor. Firing at someone would directly and probably result in the application of force and firing a gun at someone can cause GBI. Element 1 is met

Element 2) Daniel willfully committed this act because he was the one that raised his hand and fired. He was intentional about it. Element 2 has been met. ✓

Element 3) This element is met because a reasonable person would know firing a weapon at someone would result in that application of force capable of GBI. Element 3 has been met.

Element 4) Daniel had the present ability to apply force because he had the gun and victor in his sights and he fired bullets. Element 4 has been met. ✓

Element 5) We have already determined that self-defense cannot be used. Element 5 has been met. ✓

Conclusion: Daniel is guilty of Assault with a Deadly Weapon (for firing a bullet that missed) ✓

Can David be held Liable for his Coconspirators Actions?

Rule:

- 1) Coconspirators can be held liable for the crimes other members of the conspiracy commit.
- 2) If the crime is a murder, a Defendant cannot have malice imputed to them, they themselves have to have had express malice in order to be held liable.

Analysis: In this case David was a major participant in aiding and abetting Daniel in killing Victor. As already stated above he was found liable for aiding and abetting Victor. He also encouraged David to, "Do It." therefore establishing that he harbored malice. The killing of Victor was the target crime. David can also be charged with the same crimes as Daniel ✓

Final Conclusion: David and Daniel can be held liable for conspiracy and murder in the first degree of Victor as well as assault with a deadly weapon. David can also be found guilty for aiding and abetting Daniel.

2)

**What crimes can Dylan be charged with (including degrees of crime if applicable).
What defenses may Dylan argue?**

I. Can Dylan be charged with Burglary? ✓

Rule:

1) Burglary occurs when the defendant enters a building or a room within a building ✓

2) With intent to commit a larceny or felony ✓

Analysis:

Element 1) Dylan committed burglary because he entered a single-family home by prying open a window in the basement with his crowbar. Dylan entered a building. Dylan also walked up the stairs of a basement and entered into the kitchen, living room, an unoccupied bedroom and a bedroom that is occupied. Element 1 has been more than met. ✓

The facts state that Dylan's hand or arm never enters the basement, perhaps Dylan may try to argue he used the crowbar instead of his hand or arm but that doesn't make sense at all, he got into the house. He has no defense to element one. ✓ *close*

Element 2) Dylan had intent to commit larceny because he had been casing this single-family home for two days. He also approached the home at 1 am after parking several streets away and in dark clothing. Clearly he didn't want anyone to see him and 1 am is not a typical time for invited guests. We can also see that he clearly intended to commit a larceny because once inside he actually did commit larceny. Element 2 has been met and Dylan has no valid defenses. ✓

Conclusion: Dylan is guilty of Burglary

II. What degree of Burglary can Dylan be charged with?

Rule:

- 1) Burglary of a dwelling someone inhabits is 1st Degree Burglary
- 2) All other Burglaries are 2nd Degree

Analysis: Dylan entered a single-family home in which the occupant was sleeping at the time in a bedroom. Element one has been met.

Conclusion: Dylan is guilty of 1st Degree Burglary

III. Is Dylan Guilty of Larceny?

Rule:

- 1) Defendant takes possession of property of another ✓
- 2) Without their consent ✓
- 3) With intent to deprive them of it permanently ✓
- 4) Moves the property and takes possession of it for time, no matter how slight. ✓

Analysis:

Element 1). Dylan take possession of property that is not his own because he breaks into a house that is not his own and grabs silverware, an Alexa speaker, a porcelain vase, jewelry, and a fur coat. There is no indication Dylan is there to take back his things aka a "Claim of Right" defense. Element 1 has been met. ✓

Element 2) Dylan did not get the consent of the owner because Dylan is there at night while the owner, Vernon, is asleep. When Vernon figures out what Dylan is up to, he runs towards him in a bathrobe shouting. By Vernon's behavior we can assume he did not consent to Dylan taking his things. Element 2 has been met. ✓

Element 3) Dylan can be shown he intended to deprive Vernon of the items permanently because he stuck them in his duffel bag and walked back to his vehicle which was parked several streets away. Also, Dylan has put a great deal of effort into casing the place for two days so it is reasonable to assume he did not intend to give these items back. Element 3 has been met. ✓

Element 4) Dylan moved the items into a duffel bag and then he started walking back to his car. The elements of movement and time have been met. Element 4 is met. ✓

Conclusion: Dylan is guilty of Larceny

IV. Did Dylan Commit Petty Theft of Grand Theft?

Rule:

- 1) Petty theft can be of an item whose value is slight
- 2) Grand theft is of an item \$950 or more ✓

Analysis: While the facts don't specifically state prices, it is safe to assume Dylan took items whose value would be more than \$950 because of the type of items that were listed such as silverware, jewelry, and a fur coat. The fur coat alone could possibly be more ✓

than \$950. Element 2 has been met while Element 1 has not (the items were not slight in value)

Conclusion: Dylan committed Grand Theft.

V. Is Dylan guilty of Robbery?

Rule:

- 1) Defendant took property that is not their own ✓
- 2) The property was in the possession of another ✓
- 3) The property was taken from their person or immediate presence ✓
- 4) The property was taken against the person's will ✓
- 5) The property was taken using force or fear ✓
- 6) The property was taken with the intent to deprive the owner of it permanently. ✓

Analysis:

Element 1) Dylan took property that was not his own because in addition to the items he took out of the house he also took the Vernon's cell phone. Element 1 has been met. ✓
(Keep an eye on the cell phone taking though because it will be featured in more depth shortly).

Element 2) The cell phone and the items from the house were in the possession of Vernon. Element 2 has been met. ✓

Element 3) Dylan took the cell phone from Vernon because Vernon was carrying it. The items in the house and the cell phone were also in Vernon's immediate presence because ✓

he had control over them. The cell phone was also on Vernon's person because Dylan makes him empty his pockets and that's where the cell phone is located. He threatens Vernon which allows him to ensure Vernon removes the cell phone from his pocket, place it on the ground, and that allows Dylan to get it. Element 3 has been met. ✓

Element 4) We know the items were taken against Vernon's will because he chases Dylan and then when Dylan states "Stop right there or you are dead." Vernon stops but "angrily" looks at Dylan. Clearly he is not consenting to having his stuff being taken by Dylan. Element 4 has been met. ✓

Element 5) This is where things get interesting because we have to look at if and when Dylan used force or fear. When he was in the house, Vernon was sleeping, Dylan was able to take the items from the house peacefully. Dylan only used fear when Vernon starts chasing him down outside of the house and Dylan places his hand inside his pocket (which is a classic bad guy move for pretending to have a gun, which we can infer would make anyone afraid for themselves). It was Dylan shouting "Stop right there or you are dead," as well that caused Vernon to stop in fear. Dylan might try to state that he didn't use force on Vernon in that he didn't actually touch Vernon or that when he shouted "Stop right there or you are dead" that that just made Vernon angry instead of fearful however it is likely to assume that Vernon was only obeying Dylan because he was afraid Dylan would do something to his person. So when Dylan got the cell phone element 5 has been met. ✓

Element 6) While the facts don't specifically state what Dylan's plans were for his ill-gotten gains, it is safe to assume that since he put so much work into casing the place and headed back to his car and left after picking up the cell phone that he intended to keep the property permanently. ✓

Conclusion: When Dylan took the phone off of Vernon he was guilty of committing a robbery. ✓

VI. What Degree of Robbery did Dylan Commit?

Rule:

- 1) Robbery of a dwelling, ATM, or locked car is 1st degree
- 2) All other robberies are of the 2nd degree

Analysis:

The elements of the robbery were met outside of the house when Dylan took the cell phone from Vernon.

Conclusion: Dylan is guilty of committing Robbery in the 2nd degree.

VII. Is Dylan Guilty of Solicitation?

Rule:

- 1) The defendant requested that another person commit a crime or assist in committing a crime,
- 2) Intending for the crime to be committed,
- 3) The defendant communicated this request to the other person.

Analysis:

Element 1) Dylan requested Walter to commit a crime because he called him up and said, "Man I just finished a job and the guy was home. He actually tried to get his stuff back? You gotta help me get him back. And when Walter says "What do you mean?" Dylan tells him "I need you to take care of him for me, I'll split the proceeds with you." Dylan wants to get Vernon back and rewarding Walter by splitting the proceeds from stolen

property. While the facts don't tell us what he means by that exactly. (for example, if he was asking Walter to commit murder then Dylan would need to have express malice but he could also mean to beat him up and that would be assault and battery). We don't really know exactly what Dylan meant but it is safe to infer that these were likely crimes that Dylan intended to be committed against Vernon. Element 1 has been met

Element 2) Dylan intended for a crime to be committed because he said "I need you to take care of him for me. You gotta help me get him back." Element 2 has been met

Element 3) The solicitation was effectively communicated because we have evidence of Walter receiving a phone call and then hanging up the phone. Element 3 has been met.

For solicitation it doesn't matter if the actor solicited went through with the crime, requesting with intent and having that communication received is all that matters. It also doesn't matter that Walter didn't go to the police, this isn't like what is required when withdrawing from conspiracy or aiding and abetting.


Conclusion: All elements have been met, Dylan is guilty of Solicitation.

Is Dylan Guilty of Conspiracy?

Rule:


- 1) Defendant intended to attempt or accomplish a crime with at least one other person
- 2) At least one member of the conspiracy would be responsible for committing the crime
- 3) And at least one overt act was committed towards that crime


Analysis:

Element 1) We know Dylan did attempt to get Walter to commit a crime because we have determined solicitation happened when Dylan wanted Walter to "get him back". Element 1 has been met. 

Element 2) We know that at least one member of the conspiracy was going to commit a crime because Walter agreed to "Help take care of him." Element 2 has been met

Element 3) In this case Dylan can use the defense that there was not an overt act committed that went beyond planning. All they did was have a conversation about "taking care of Vernon." but nothing happened after that. Element 3 has not been met.

Conclusion: Dylan is not guilty of conspiracy. 

Defenses: Dylan really doesn't have much to defend himself here for his actions. As mentioned above he could argue that the robbery should be reduced to 2nd degree  instead of 1st because the taking of the possessions in the house wasn't done with force or fear. He also can't use self-defense when Vernon was running after him. In order to claim self-defense he can't have provoked the aggressor and he also needed to be in imminent danger of some sort of force that required an immediate defense. He can't get off the hook for solicitation by claiming that his request was vague to the point of not being able to determine if he wanted Vernon murdered or beat up, he clearly intended that no good would happen to Vernon.

In final conclusion: Dylan can be found guilty for first degree burglary, second degree robbery, Larceny (grand theft), and solicitation but he won't be found guilty of conspiracy.