

## **James Polk – AISOL Criminal Law Midterm 2022**

Able was low on money and short on credit, so he borrowed money from a loan shark who was associated with organized crime. This by itself is not a crime on the part of Able. When Able could not pay back the loan and the loan shark began to make criminal threats, this became the second crime the loan shark had committed on top of the simple illegal lending practice in the first place. It is not a conspiracy that Able has to divest himself from, it is Able being victimized by the criminal loan shark in the first place and then being threatened that Able needs to report to the police or use lawful means to pay back the loan or both. His being threatened is no excuse defense for committing illegal acts to make the money to satisfy his illegal debt to the loan shark. Though people understand that somebody in Able's shoes has a type of pressure on them to pay and not go to the police, engaging in criminal activity is simply engaging in criminal activity and so we will analyze the situation from this point forward as an analysis of Able's potential criminal activities and the possible defenses. We will deal with all the different interconnected actors in the situations that are connected as we get to them.

Able decided to burglarize Rich's house and solicited the conspiratorial help of Baker in a criminal conversation. Able had done work for Rich and knew where his valuables were and became aware as a part of lawful work, so the reconnaissance was not any type of pretextual crime. Able had to first broach the topic of conversation with Baker and this is solicitation and criminal conversation. Able and Baker obviously agreed to work together for a criminal purpose to complete the object crime of burglary which only takes one person, so they are engaged in a conspiracy to commit burglary. They are also in possession of burglary tools. The two men broke into the dwelling place of another at night for the purpose of committing a felony therein, namely the felony of larceny.

Once inside the house the situation changed because of an accident with Baker's blowtorch. The whole escapade was obviously felonious and conspiratorial, so the proximately caused death next door should be charged as a criminal homicide under the felony murder due to the connection of the furtherance of the dangerous felony and the accidental cause of the arson. It is not a defensible action to say that the fire was started by accident and therefore

the two are not culpable of the arson. Burglary is a strike because of the dangerousness of what happens when a person discovers unauthorized persons in their dwelling place at night. Violence is so likely to occur that it must be considered a violent felony. This creates the requisite transferred intent needed for criminal homicide.

It is hard to see the non-action of the wife of the neighbor next door as not illegal, but she would only be under a duty if the common law crime of petit treason were still chargeable. Though by most people's standards of morality and decency she should have woken her husband, she was under no legal duty to do so and therefore the criminal act of conspiracy to commit burglary that proximately caused the fire which killed Sam is the cause of Sam's death. It is possible that an argument for supervening and unreasonable non-action could be a defense against criminal homicide and possible grounds for a manslaughter plea bargain for Able and Baker.

As far as defenses on the side of Baker and Able, there are plenty of unanswered questions that are begged between the lines of the prompt. We are told that they did everything that we are told they did. We are not shown any of the forensic evidence connecting the two to the break in, we are not shown proof of their criminal conversation, we are not shown what proof there is that the blowtorch caused the fire. We are not yet sure of the actual felonious intent of the two. The question prompt if taken as fact makes the two guilty of conspiracy to commit burglary, burglary, arson and arguably felony murder criminal homicide. I see only potential evidentiary defense arguments.