

MEMORANDUM

From: AI Alice

To: AI Judge

RE: The Messages to AI Jane and Evidence of Murder

Facts

AI Jane received two messages from John Coach regarding the *Black Pearl*. The first message, in late May 3276, booked Alice aboard the *Black Pearl*. The second message, in mid-June 3276, insisted the *Black Pearl* must be allowed to depart to avoid the possible murder of Wide Mine workers by conspirators stealing helium-3.

AI Jane also received two messages from Jonny Walker (aka Oliver Burden). The first message, in July 3276, confirmed Coach was trying to prevent the possible execution of human workers at Wide Mine. The second message, in late October 3276, reported Coach was coming to Destination with a lander, that the mine operators would be protected, and that the helium-3 was hidden on Destination.

Burden messaged in July that he and Coach were working on a plan to save Burden and the human operators. This message was copy protected and deleted by the message service. Jane would need to testify to the content. The other three messages have been preserved on AI Jane's device.

Walker/Burden was found dead at Wide Mine on November 4, 3276. Walker's body was misidentified as the body of John Coach. Coach entered the witness protection program and will testify under limited immunity at the criminal trial of Jimmy Jim and the Investor Syndicate

Issue

Can a murder verdict be obtained without evidence of who killed Walker?

Analysis

Whoever killed Walker is the "principal" and (barring a valid defense) is criminally liable for the death. Under limited circumstances another person can also be criminally liable for the death of Walker.

I. Felony Murder.

To convict a person of felony murder, the prosecution must prove:

Acting either alone or with one or more other persons the person commits or attempts to commit ... burglary under section 13-1506 ... and, in the course of and in furtherance of the offense or immediate flight from the offense, the person or another person causes the death of any person.

A.R.S § 13-1105(A)(2). U.S. federal courts apply a similar statute.

Murder is the unlawful killing of a human being with malice aforethought. Every murder ... committed in the perpetration of, or attempt to perpetrate, any ... burglary ... is murder in the first degree.

18 U.S.C. § 1111(a).

Arizona law applies to a “person,” potentially creating a broader scope than the term “human being” used in the federal statute. There are several required elements to prove felony murder.

A. Death Results From a Specific Felony.

The felony murder doctrine applies if the death occurs in the commission of certain dangerous felony crimes. Strict liability for the resulting death is intended to deter participation in these dangerous felonies.

‘[A] person engaged in a certain kind of activity would be more careful precisely because he knew that this kind of activity was governed by a strict liability statute’ and because ‘the presence of strict liability offenses might have the added effect of keeping a relatively large class of persons from engaging in certain kinds of activity.’

Armenia v. Dugger, 867 F.2d 1370, 1376 n.4 (11th Cir. 1989) (quoting Wasserstrom, *Strict Liability in Criminal Law*, 12 Stan. L. Rev. 731, 736-37 (1960)).

Arizona does not apply felony murder to a predicate felony of theft; instead, the closest felony eligible for felony murder is burglary. A.R.S. §§13-1105(A)(2), 1506(A)(1) (entering or remaining unlawfully in or on certain defined premises with the intent to commit theft or a felony therein). Federal law also applies felony murder to burglary.

The prosecution will need to get creative to prove burglary as a basis for felony murder at Wide Mine.¹

B. Defendant Caused the Death.

For felony murder to apply, the prosecution must prove Walker’s death would not have occurred “but for” the conduct of John Coach or Jimmy Jim.

Felony murder's independent causation element required the State to prove only “in the course of and in furtherance of’ an enumerated felony, . . . , that defendant ‘causes the death of any person.’” *State v. Bennett*, 213 Ariz. 562, 567 ¶ 23, 146 P.3d 63, 68 (2006) (quoting A.R.S. § 13-1105(A)(2)). Section 13-203(A) provides that “[c]onduct is the cause of a result” if (1) “[b]ut for the conduct the result in question would not have occurred” and (2) “[t]he relationship between the conduct and result satisfies any additional causal requirements imposed by the statute defining the offense.” And “death is in furtherance of an underlying felony if the death resulted from an action taken to facilitate

¹ Courts have not uniformly applied the felony-murder doctrine when the person who was killed was an accomplice of the defendant. See Martin J. McMahon, Annotation, *Application of the Felony-Murder Doctrine Where Person Killed Was Co-Felon*, 89 A.L.R. 4th 683 (1991). Coach and Jimmy Jim may argue Walker (and the AI operators) were co-conspirators.

accomplishment of the felony." [State v.] *Burns*, 237 Ariz. [1,] 21 ¶ 77, 344 P.3d [303,] 323 (2015) (quoting [State v.] (*Barry L.*) *Jones*, 188 Ariz. [388,] 397, 937 P.2d [310,] 319 (1997)).

State v. Allen, 253 Ariz. 306, 513 P.3d 282, 318 ¶114 (2022).

Under federal law, the same concepts apply. The causation element requires proof the defendant perpetrated the “underlying felony,” and that felony resulted in the “killing.”

A thing “results” when it “[a]rise[s] as an effect, issue, or outcome *from* some action, process or design.” 2 *The New Shorter Oxford English Dictionary* 2570 (1993). “Results from” imposes, in other words, a requirement of actual causality. “In the usual course,” this requires proof “‘that the harm would not have occurred’ in the absence of—that is, but for—the defendant’s conduct.” *University of Tex. Southwestern Medical Center v. Nassar*, 570 U. S. 338, ___, [133 S. Ct. 2517] (2013) (slip op., at 5–6) (quoting Restatement of Torts §431, Comment a (1934)). The Model Penal Code reflects this traditional understanding; it states that “[c]onduct is the cause of a result” if “it is an antecedent but for which the result in question would not have occurred.” §2.03(1)(a). That formulation represents “*the minimum* requirement for a finding of causation when a crime is defined in terms of conduct causing a particular result.” *Id.*, Explanatory Note (emphasis added).

Burrage v. United States, 571 U. S. 204, 211, 134 S. Ct. 811 (2014) (internal quotation marks omitted).

C. Culpable Mental State. The defendant need only have intended to commit the underlying felony. No other *mens rea* is required.

[C]onviction for felony murder under 18 U.S.C. § 1111 requires the commission of an enumerated felony with the requisite *mens rea* for the underlying offense.... [U]nder a felony murder charge the commission of the underlying offense substitutes for malice aforethought. *Davis v. State of Tennessee*, 856 F.2d 35, 36 (6th Cir. 1988).

United States v. Chischilly, 30 F.3d 1144, 1159-60 (9th Cir. 1994), *cert. denied*, 513 U.S. 1132, 115 S. Ct. 946 (1995); *U.S. v. Parks*, 411 F. Supp. 2d 846, 855 (S.D. Ohio 2005), *conviction affirmed, sentence vacated and remanded for reconsideration*, 583 F.3d 923 (6th Cir. 2009) (felony-murder statutes ... require a *mens rea* element for the underlying crime, ... an intent to kill a person is not required).²

Walker committed (or attempted to commit) the burglary. The Arizona burglary statute is unlikely to support a felony murder conviction of Jimmy Jim or Coach for Walker’s death. Proof they were co-conspirators is not enough.

II. Conspiracy.

² The *actus reus* is the conduct required for conviction for the underlying felony. See *U.S. v. Parks*, 411 F. Supp. 2d at 855-56.

The prosecution could argue John Coach, Jimmy Jim and the Investor Syndicate were co-conspirators.

Criminal conspiracy requires proof of a common scheme or plan which may be inferred from circumstantial evidence. *State v. Arredondo*, 155 Ariz. 314, 316-17, 746 P.2d 484, 486-87 (1987). “Any action sufficient to corroborate the existence of an agreement to commit the unlawful act and to show that it is being put into effect supports a conspiracy conviction.” *Id.*; see e.g., *State v. Avila*, 147 Ariz. 330, 336, 710 P.2d 440, 446 (1985) (finding evidence that “each participant knew what action he was to take” was sufficient).

State v. Allen, 253 Ariz. 306, 513 P.3d 282, 311 ¶72 (2022). See A.R.S. § 13-1003(A) (“with the intent to promote or aid the commission of an offense,” two or more persons agree “that at least one of them or another person will engage in conduct constituting the offense and one of the parties commits an overt act in furtherance of the offense”).

The conspirator need not know the identity of all the conspirators *Id.* § 13-1003(B).

Under Arizona law, for a conspirator to be guilty of a substantive crime committed by a co-conspirator, the evidence must be sufficient to support a guilty verdict as a principal or an accomplice. *State ex rel. Woods v. Cohen*, 173 Ariz. 497, 501, 844 P.2d 1147, 1151 (1992).

We have held that responsibility as a conspirator is different from accomplice liability. One may be convicted as a conspirator on proof that he intended a specific act and agreed to promote or facilitate that act. *State ex rel. Woods v. Cohen*, 173 Ariz. 497, 499-500, 844 P.2d 1147, 1149-50 (1992). The state need not prove commission of the agreed-upon act. But the “fact that one can be [guilty] of conspiracy without committing the planned substantive offenses does not mean that one is also criminally responsible for the substantive offenses without being either an accomplice or principal to those offenses.” *Id.* Thus, we rejected the so-called *Pinkerton* doctrine, which holds a conspirator guilty for foreseeable crimes committed by his coconspirator in furthering the conspiracy even though he did not intend or agree on those crimes. *Id.* at 501, 844 P.2d at 1151.

Evanchyk v. Stewart, 202 Ariz. 476, 481¶ 15, 47 P.3d 1114, 1119 (2002) (footnote omitted).

There is no evidence of the agreement to kill Walker required by Arizona law.

Broader liability for conspiracy applies in federal criminal law. See 18 U.S.C. § 371 (a conspiracy requires “an agreement between two or more persons” to accomplish its object and that the defendant entered into an agreement knowing of its object and intending to help accomplish it); *United States v. Virgen-Mendoza*, 91 F.4th 1033, 1041 (9th Cir. 2024). A defendant may

be held liable for a substantive offense committed by a co-conspirator, as long as the offense occurred within the course of the conspiracy, was within the scope of the agreement, and could reasonably have been foreseen as a necessary or natural consequence of the unlawful agreement.

Pinkerton v. United States, 328 U.S. 640 (1946). See *Khalulyan v. Garland*, 63 F.4th 1207, 1212 (9th Cir. 2023); *Alfred v. Garland*, 64 F.4th 1025, 1059 n.21 (9th Cir. 2023) (concurring opinion). Under *Pinkerton*, “a conspirator [is] criminally liable for the substantive offenses committed by a co-conspirator when they are reasonably foreseeable and committed in furtherance of the conspiracy.” *United States v. Long*, 301 F.3d 1095, 1103 (9th Cir. 2002) (*per curiam*).

Under federal law, Jimmy Jim and the Investor Syndicate co-conspirators would probably argue they had no control over Walker or Coach and that independent self-dealing led Coach to kill Walker. Recall the assertion by John Coach in his video message that “Barely into the project, Walker’s interests would no longer be aligned with the Investor Syndicate.” The Coach video message does not say Coach sought to rescue Walker, but a message from Walker makes that assertion. These messages suggest Coach and Jimmy Jim were acting at cross purposes—Coach seeking to protect Walker and Jimmy Jim threatening Walker. Of course, Coach was (directly or indirectly) the source of these messages, which calls their veracity into question.

Jimmy Jim/The Investor Syndicate undoubtedly wanted to obtain possession of the helium-3 to recoup the Wide Mine financing they provided. Murdering the mine manager may not be reasonably foreseeable and in furtherance of conspiracy to steal helium-3. Murdering the only person with knowledge of the location of the helium-3 does not further the objective of the agreement to provide financing for an illegal mine in return for the helium-3 produced.

III. Accomplice/Aiding and Abetting.

Arizona and federal law also extend responsibility for an offense to not only the actor (the principal) but also to others who assist in committing the offense. “Although it is still useful for us to refer to a “principal” or an “accomplice,” in the end they are equally culpable and may be convicted of the same offense.” *Alfred v. Garland*, 64 F.4th 1025, 1034 (9th Cir. 2023).

“Accomplice,” under Arizona law, means a person who, with the intent to promote or facilitate the commission of an offense,

Solicits another person to commit the offense; or

Aids or counsels another person in planning or committing an offense; or

Provides means or opportunity to another person to commit the offense.

A.R.S. § 13-301. An accomplice is criminally accountable for the conduct of another, including any offense that is a reasonably foreseeable consequence of the offense. *Id.*, § 303(A)(3).

Federal law uses the equivalent concept of “aiding and abetting.”

Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.

18 U.S.C. § 2(a). There is no distinction between the person ‘who actually committed the crime in question’ and those who aid and abet the crime. See *Gonzalez v. Duenas-Alvarez*, 549 U.S. 183, 189-90, 127 S. Ct. 815 (2007).

Aiding and abetting requires proof of the defendant's specific intent. "[T]he specific intent requirement necessary to impose aiding and abetting liability is satisfied if the defendant participated in the crime "reasonably expecting" that it would bring about the result." *United States v. Rosalez*, 711 F.3d 1194, 1205 (10th Cir. 2013).

The defendant must also aid and abet the conduct causing the death. *United States v. Jones*, 678 F.2d 102 (9th Cir. 1982). Jones, an accomplice in a bank robbery, did not fire the shot that killed the guard. To convict Jones of aiding and abetting the killing of the security guard, Jones had to aid and abet each essential element of the crime. Therefore, the jury must find that he aided and abetted in the killing itself. "It is not enough for the jury to find that the defendant aided and abetted a bank robbery in which a killing occurred." *Id.*, at 106.

Again, Jimmy Jim is a more remote participant than Coach. Coach may have actually provided means of transportation for the helium-3. Neither person participated in the crime of helium-3 theft "reasonably expecting" that it would bring about Walker's murder.

