

To: Partner

From: Associates: Marlene Lara and Laura Santos

Re: California Penal Code 189 Felony-Murder: Defendant Charles Smith

Date: November 27, 2018

Issue:

Our client, Charles Smith, is facing three counts of first-degree murder under the felony-murder doctrine for the deaths of Ana Schneider, Emily Schneider and his co-conspirator, David Roberts. We need to determine if the elements that have been established under California Penal Code §189 and previous cases are present to determine if our client will be found guilty of the three murders for committing, aiding or abetting in the burglary in which the murders occurred.

The pertinent questions are:

- A) Can an individual who commits, aids or abets a burglary be charged for felony-murder if he/she did not commit the murder?
- B) Can an individual who commits a felony in which a murder(s) occur be charged for the murder if the murder is of his co-conspirator?
- C) Can an individual who commits, aids or abets a burglary be held responsible for the death of an innocent bystander when their death was caused by one of the victims?
- D) Does the felony-murder still apply if there was no intent to kill when individual(s) conspired to commit the robbery?
- E) If an accomplice is not aware that his/her co-conspirator was carrying a gun, can the accomplice still be found liable for any killing their co-conspirator committed with that gun?
- F) Can an individual who commits, aids, or abets a robbery where a murder occurs get a lessened sentence, since the individual did not do the killing?

Short Answer:

- A) Yes, under law an individual who commits, aids, or abets a felony is equally responsible for any killing committed during the robbery that is committed in furtherance of committing the felony.
- B) Yes, an individual who commits a felony and his/her co-conspirator is killed can be convicted for their murder if provocative murder rule can be proven.
- C) Possibly, an individual can be held responsible for the death of an innocent bystander. It is yet to be determined that if the death of the innocent bystander was committed by victim the individual would be held responsible through transferred intent.
- D) There being no premeditated intent to kill is not (relevant) when an individual(s) intended to commit, aid, or abet in a felony.
- E) Even if non-killers who committed, aided, or abetted felony were not aware that their co-conspirator had a gun that was used to kill the victim(s) they can still be convicted to first-degree felony-murder.
- F) If an individual is found guilty of committing, aiding, or abetting a felony in which a murder is committed per statute first-degree murder is the ultimate and only conviction.

Facts:

On September 29th, 2018 our client, Charles Smith, and his co-conspirator, David Roberts, entered the home of Ana Schneider and Andrew Schneider with the intent to commit burglary. Our client was under the assumption that no one was home; David Roberts had told Mr. Smith that Mr. and Mrs. Schneider were out of town. Our client stated that when they arrived there was no car on the premises. Charles Smith and David Roberts entered the home from the back doorway. They went up to the second floor to acquire any valuable jewelry that Mrs. Schneider had. They walked right into Mr. and Mrs. Schneider's room, where they found Ana Schneider and her daughter sleeping and decide to still rummage through her belongings while they slept. Mrs. Schneider awoke by the sounds of the rummaging and screamed when she saw Charles Smith and David Roberts in her room. In a panic and fear of being caught David Roberts who had a concealed gun on his person decided to take it out and shot Ana Schneider who instantly died. During this time Andrew Schneider arrived at the home, he heard Ana scream and grabbed the gun he had stored in a liquor cabinet in the living room. He rushed up to the master bedroom and saw our defendant and David Roberts looming over Ana Schneider's dead body. David Roberts attempts to shoot Mr. Schneider. Andrew Schneider fires back a few shots one accidentally hits his daughter and the other two hit David Roberts, the two are pronounced dead at the scene.

The police arrived at the scene shortly after, reporting that they received a call from a neighbor who heard gunshots.. The police took our client into custody where he was questioned. Our client told the police that he had no knowledge that David Roberts was in possession of a firearm. Our client also stated that they had no intent to kill during the act of burglary. He and his co-conspirator were under the impression that no one was home.

Discussion:

The California Penal Code §189 states that all murder that is committed in the preperetuation of a felony is murder of the first degree and the the murder was deliberate and premeditated. We need to establish the intent, the liability, and the degree of charge of our client. We also need to determine what elements apply for each murder charge.

I. Murder of Ana Schneider

Our client, Charles Smith, states that he did not intend any killing to occur during the burglary. Mr. Smith states he nor his co-conspirator spoke of killing any of the victims as they were in the assumption no one was home. This claim does not deflect the liability of our client in the death of Ana Schneider. In People v. Garrison, (47 Cal. 3d 746, 759, 765 P.2d 419, 422 (1989)) co-conspirator, Roelle, did not intend any killing to occur in the burglary. However, that defense was not sufficient to dismiss liability for the murder, "one who aids and abets is not only guilty of the particular crime that to his knowledge his confederates are contemplating committing, but he is also liable for the natural and reasonable or probable consequence of any act that he knowingly aided or encouraged." Although, our client proclaims there was no intention to kill during the burglary he is mostly likely to still be held liable of the killing done by his co-conspirator David Roberts.

Per penal code §189, in committing, aiding, and abetting in the burglary of the Schneider

home our client would be held liable for any murder that occurs during the perpetuate of the burglary. In the court case, People v. Washington, (62 Cal. 2d 777, 402 P.2d 130 (1965)) the court interprets penal code §189 holds, “all persons aiding or abetting the commission of a robbery guilty of first-degree murder when one of them kills while acting in furtherance of the common design.”((People v. Boss, 210 Cal. 245, 249, 290 P. 881; People v. Kauffman, 152 Cal. 331, 334, 92)

II. Murder of David Roberts

The liability of the death of a co-conspirator by a victim or bystander may fluctuate depending of the presence of the provocative murder element.

The California Penal Code §189 has progressively changed in its application of liability of killing when the murder is that of the co-conspirator by a victim, bystander. In People v. Washington, (62 Cal. 2d 777, 402 P.2d 130 (1965)) Supreme Court overturned the previous ruling that held defendant responsible for the killing of his co-conspirator who was killed by the victim of the burglary. The supreme court established that in Penal Code §189, it is required that the felon or his accomplice commit the killing or the killing is not committed to perpetrate the felony.

This differs in People v. Concha, 47 Cal. 4th 653, 218 P.3d 660 (2009) where the court determined that an accomplice could be held liable for a murder that was not intentional. In this case one of the co conspirators died at the hands of the intended victim. The conspirators attempted to commit a robbery, the victim fled from the conspirators and the conspirators chased him down. One or more of the assailants stabbed the victim, the victim fought back and “began to stab as many of them as [he] could.” One of the assailants died from the stab wounds. Charges were brought up against the surviving assailants, one of those charges being the murder of their co conspirator.

The previous case decision ruled that a killing must be intentional and must be made by one of the conspirator in order to convict that individual of a felony murder. Yet, we see in People v. Concha that it is no longer necessary for the murder to be done by the defendant. The reasons that the court gives for this is that a provocative murder occurred. That is when the conspirators create a situation in where the victim is provoked to kill someone, which is the case in People v. Concha. Given that a provocative murder occurred the court decides to extend that liability to an accomplice. Elements of this case can be applied to our client’s situation given that the death of our client’s co conspirator was done by a victim. Given the result and reasoning of People v. Concha our client will be charged with David Roberts death as a first degree felony murder charge.

III. Murder of Emily Schneider

According to our client Emily Schneider was just an innocent bystander. Despite her death be unintentional and not premeditated, our client is still being held liable for her death. A similar situation is seen in People v. Sanchez, 26 Cal. 4th 834, 29 P.3d 209 (2001). In this case two defendant who are rival gang member are being charged for the murder of an unintentional victim. Both these gang members were engaged in a

confrontation that involved both parties shooting each other. One of those bullets ended up hitting a neighbor killing him instantly. The defendant in this case was charged with murder regardless because of the transferred intent doctrine they applied in stating that the malicious intent to hurt the other defendant (the target) can be transferred to the actual victim.

If the death of Emily were to be committed by either our client or the dead co-conspirator then the result of this case can be fully applied. Since Emily's death was caused by a shot that was fired by Andrew Schneider, only elements of the *People v. Sanchez* case can be applied. One of those elements could be that of transferred intent. Andrew Schneider's intent was to shoot David Roberts. The resulted death of David Roberts could be charged to our client as explained above. The murder charge for Emily Schneider's death is one that can be potentially contested in court given that despite application of the transferred intent doctrine the murder was still done by one of the victim and not the client or his co conspirator.

IV. Intent

Our client has stated that he was unaware that his co conspirator was carrying a firearm. He was also unaware of his co conspirator's intention to shoot one of the victims. Our client wants to use this as a defense. We advise that this would not be possible given the decision of *People v. Ellenberg*, 165 Cal. App. 2d 495, 331 P.2d 1053 (1958). In this case

the court determined that a defendant's claim that the death was accidental is not justification for the victim's death. Court states "Under Penal Code 189 "an accidental killing committed in the commission of a robbery has the same consequence as an intentional one." Given the decision that was established in *People v. Ellenberg* the client's defense would not have a basis.

V. Degree of Murder

According to *People v. Mendoza*, (23 Cal. 4th 896, 4 P.3d 265 (2000)) California Penal Code § 189 is not a "crime which is distinguished into degrees." Per operation of the statute first-degree murder is only degree of murder a person can be sentenced if established to be found guilty of committing any felony listed in penal code §189. If the trial court only instructs jury on "first-degree felony-murder" and puts it upon the jury to decide if the defendant is guilty or not guilty of committing, aiding, or abetting in the felony. Then the only question before the jury is if our client is guilty of committing, aiding, or abetting in the felony.

Our client's sentence can not be lessened because his case meets all the elements to establish the murder that took place as a murder under the felony-murder doctrine. Our client conspired to commit burglary of the Schneiders home with David Roberts. Our client had the intent to commit the burglar making him liable for any killings caused in this dangerous felony even if the killing was not done by him or even if the killing was not premeditated. Our client will get first-degree murder under the felony murder penal code 189.

Conclusion with Recommendations:

Unfortunately, our client, Charles Smith, does not hold a strong legal position against all three counts of murder under felony-murder burglary conviction. For the murder of Ana Schneider, not having premeditated intent to kill when committing the burglary is not a defense that is viable under the felony-murder penal code. For the murder of David Roberts, our client would be held liable for his murder if the element of provocative murder is found. The murder of Emily Schneider could be contested on the grounds that despite the application of the transferred intent doctrine the murder was not done by our client or his co-conspirator but by the victim.

Since, our client decided to partake in the commission of a dangerous felony it is sufficient for the court to convict our client of first-degree murder because there was an intentional decision to commit the crime of burglary, causing there to exist a conscious disregard for life. What is yet to be decided is, out of the three murder charges which ones could our client be held accountable. There is a high probability that the jury will find our client guilty of committing, aiding, or abetting the burglary in which the murder of Ana Schneider and David Roberts was committed. The murder of Emily Schneider is yet to be determined, pending on whether transferred intent can be established to our client. By the sole finding of guilt in committing or act to commit burglary, in the case where a murder occurs, the jury has no decision but to convict the defendant on a first-degree murder charge. We recommend that our client, not speak to anyone about any details of his case and await trial.

Appendix:

Statue:
Cal. Penal Code § 189

Cases:

People v. Concha, 47 Cal. 4th 653, 218 P.3d 660 (2009)
People v. Ellenberg, 165 Cal. App. 2d 495, 331 P.2d 1053 (1958)
People v. Garrison, 47 Cal. 3d 746, 759, 765 P.2d 419, 422 (1989)
People v. Mendoza, 23 Cal. 4th 896, 4 P.3d 265 (2000)
People v. Sanchez, 26 Cal. 4th 834, 29 P.3d 209 (2001)
People v. Washington, 62 Cal. 2d 777, 402 P.2d 130 (1965)