

REHABILITATION OR RETRIBUTION?: HOW MANDATORY LIFE SENTENCES LEAD TO YOUTH RECIDIVISM

*Leah Ferro, Staff Editor, Vol. 31*¹

Deterrence is the foundation of the American criminal justice system.² The felony murder rule embraces a theory of transferred intent, namely, that the intent of the co-felon who kills during the course of a felony is transferred to others who participate in the crime, thus a criminal defendant can be charged and sentenced for a crime that was neither intended nor personally committed.³ Justice Appel of the Iowa Supreme Court stated that the felony murder rule amounts to “a frontal assault on the traditional notion of criminal justice.”⁴ When applied to juvenile defendants, the jurisdiction of juvenile courts ends, leading to the trial and sentencing of the youth offender as an adult.⁵ The sentence of life with the possibility of parole leaves a lasting impact on the juvenile’s social, psychological, and financial development, leading to a greater risk of recidivism.⁶ This article will examine how the felony murder rule affects youth offenders and discuss the concept of the deterrent effect as it pertains to this legal issue.

The common law felony murder rule states that if “a person kills another in doing or attempting to do an act amounting to a felony, the killing is murder.”⁷ The origins of the modern

¹ Leah Ferro is a third-year regular division J.D. student at Widener University Delaware Law School. Leah earned her B.A. in Psychology, *summa cum laude*, from Rowan University in Glassboro, New Jersey. Leah serves as a Staff Editor of *Widener Law Review*, Volume 31. After graduation, Leah intends to take the Delaware Bar Exam and practice corporate law.

² See *State v. Harrison*, 914 N.W.2d 178, 210–23 (Iowa 2018) (Appel, J., dissenting); see also Leonard Birdsong, *Felony Murder: A Historical Perspective by Which to Understand Today’s Modern Felony Murder Rule Statutes*, 32 T. MARSHALL L. REV. 1, 1–2 (2006).

³ See *Harrison*, 914 N.W.2d at 217 (Appel, J., dissenting).

⁴ *Id.* at 210.

⁵ Emily Robb, *The Disproportionate Effect of Felony Murder on Children in Pennsylvania*, LEGAL INTELLIGENCER (Apr. 15, 2024), <https://www.law.com/thelegalintelligencer/2024/04/15/the-disproportionate-effect-of-felony-murder-on-children-in-pennsylvania/?slreturn=20240716071654>.

⁶ Richard Mendel, *Why Youth Incarceration Fails: An Updated Review of the Evidence*, SENTENCING PROJECT (Mar. 1, 2023), <https://www.sentencingproject.org/reports/why-youth-incarceration-fails-an-updated-review-of-the-evidence/>.

⁷ See Birdsong, *supra* note 2, at 1 (stating it does not matter whether the death was intended or the product of a reckless disregard for the risk to human life or criminally negligent behavior).

felony murder rule can be traced to Lord Coke when he wrote and published “that a death caused by unlawful act is murder.”⁸ This assertion is thought to be the mistaken understanding of what Lord Bracton wrote back in the mid-thirteenth century that such a killing would amount to a “homicide.”⁹ Lord Coke’s statement appears within Chapter 8 of his commentary in *The Second Year Book*, which is primarily concerned with manslaughter.¹⁰ In this chapter, Coke distinguishes between homicide by misadventure—an act that, though not unlawful, results in death without evil intent—and murder, which requires both unlawfulness and malice aforethought.¹¹ However, Coke’s statement suggesting that any unlawful act constitutes murder, regardless of intent, conflicts with his own definition of murder, which includes the necessity of malice.¹²

I. COMMON LAW FELONY MURDER

Micheal Foster is renowned as the “true father of the modern felony murder rule.”¹³ In 1763, Foster, drawing from the writings of Bracton and Coke, posed the critical question of “whether the poacher shooting at the deer intends to steal it.”¹⁴ Foster concluded that if he did intend to steal it, then he was guilty of a felony, and if he killed someone in the bush, “it will be

⁸ Birdsong, *supra* note 2, at 8; *see also infra* note 9 and accompanying text.

⁹ *Id.* at ___. Bracton wrote:

If the act be unlawful it is murder. As if A meaning to steale [sic] a Deere [sic] in the Park of B, shooteth [sic] at the Deere [sic], and by the glance of the arrow killeth a boy, that is hidden in a bush: this is murder, for that the act was unlawful, although A had no intent to hurt the boy, nor knew not of him. But if B the owner of the Park had shot at his own Deere [sic], and without any ill intent had killed the boy by the glance of his arrow, this had been homicide by misadventure, and no felony.

So if one shoot at any wilde [sic] fowle upon a tree, and the arrow killeth any reasonable creature afar off, without any evil intent in him, this is per infortunium [sic]: for it was not unlawful to shoot at the wilde fowle: but if he had shot at a Cock or Hen, or any tame fowle of another mans and the arrow by mischance had killed a man this had been murder, for the act was unlawfull [sic].

Id. at 8–9.

¹⁰ *Id.* at 9.

¹¹ *Id.*

¹² *See id.* (noting that the message Coke may have been trying to convey was that an unintentional killing in the course of an unlawful act would be felonious).

¹³ Birdsong, *supra* note 2, at 12.

¹⁴ *Id.*

murder by reason of the felonious intent.”¹⁵ This has formed the basis of the modern felony murder rule.¹⁶

By the beginning of the Civil War, most of the American jurisdictions had adopted legislation on the question of homicide in the course of a crime.¹⁷ By the 1830’s almost every new state adopted such legislation as part of a comprehensive criminal code.¹⁸ However, liability under the felony murder rule did not materialize until the late nineteenth century, with only fifty-three convictions under such statutes recorded between 1841 and 1900.¹⁹ The felony murder rule has been normalized in America due to two assumptions that are commonly taught by our criminal law teaching, scholarship, and adjudication: (1) the English common law held felons strictly liable for all deaths caused in the course of all felonies; and (2) that the English common law became the law in every American jurisdiction at our independence.²⁰

II. *STATE V. HARRISON*

State v. Harrison provides a comprehensive breakdown of the legal issues with the application of the felony murder rule to adolescents.²¹ Keyon Harrison, a sixteen-year-old boy, was sentenced to life imprisonment with the possibility of parole after being convicted of first-degree felony murder.²² Harrison was accompanying his friend, Keith Collins, on a trip to purchase some marijuana.²³ Harrison was aware that Collins was planning on robbing McHenry, the

¹⁵ Birdsong, *supra* note 2, at 12–13 (for him, it was essential that the underlying unlawful act was a felony and it is presumably immaterial whether the felony committed is dangerous).

¹⁶ Guyora Binder, *The Origins of American Felony Murder Rules*, 57 STAN. L. REV. 59, 132 (2004).

¹⁷ *Id.* (noting that before this period, 83% of the United States were without a felony murder statute).

¹⁸ *Id.*

¹⁹ *Id.* at 134.

²⁰ *Id.* at 201–02 (stating that English common law had no felony murder rule at the time of the American Revolution and English rules of criminal law were authoritative in the United States only insofar as they were enacted by legislatures and courts).

²¹ *See generally* 914 N.W.2d 178 (Iowa 2018).

²² *Id.* at 184–85.

²³ *Id.* at 185.

marijuana dealer, but unbeknownst to Harrison, Collins was armed with a gun.²⁴ During the course of the robbery, Harrison stood to the side and did not participate in the robbery-turned-murder of McHenry.²⁵ At the conclusion of his trial, a unanimous jury found Harrison guilty of first-degree felony murder.²⁶

What is troublesome within this case is that the court allowed the jury to find sufficient moral culpability for the felony murder charge based solely on the presence of the mens rea for the robbery.²⁷ The limited moral culpability that was found was not enough to support such a conviction because the moral culpability of juveniles, even for horrendous crimes, is diminished by their lack of neurological and psychological development.²⁸

While the sentencing might have been proper in accordance with *State v. Sweet*, where the court adopted a categorical rule that juvenile offenders may not be sentenced to life without the possibility of parole, the conviction itself was improper.²⁹ Justice Appel would conclude that the application of the felony murder rule to persons under the age of eighteen is so lacking in relationship to criminal culpability as to amount to a violation of due process under both the United States and the Iowa Constitutions.³⁰ Therefore, when the Supreme Court of Iowa upheld Harrison's conviction and sentencing it was a direct manipulation of his due process rights due to his age and moral culpability.³¹

²⁴ Harrison, 914 N.W.2d at 186–87.

²⁵ *Id.* at 187.

²⁶ *Id.*

²⁷ *Id.* at 221 (Appel, J., dissenting).

²⁸ *Id.* at 221–22.

²⁹ 879 N.W.2d 811, 839 (Iowa 2016); *see generally* Miller v. Alabama, 567 U.S. 460, 479 (2012) (holding that the Eighth Amendment forbids a sentencing scheme that mandates life in prison without the possibility of parole for juvenile offenders).

³⁰ Harrison, 914 N.W.2d at 221–22 (Appel, J., dissenting).

³¹ *Id.* at 221–23.

III. PSYCHOLOGICAL IMPLICATIONS

Aside from the purely legal issues with the application of the felony murder rule to youth offenders, there are also some serious psychosocial issues.³² In the state of Pennsylvania, 51% of people convicted of felony murder are under the age of twenty-five.³³ Why would this be? Teens are known to be impulsive, uniquely susceptible to peer pressure, risk-takers, and unable to appreciate long-term consequences.³⁴ Teenagers are underdeveloped in the skills of concentration, planning, decision-making, insight, judgment, thinking long-term, and weighing consequences.³⁵ The felony murder rule targets the exact areas of the brain that young people are still developing, resulting in children as young as ten years old being charged and incarcerated as adults.³⁶ The main premise behind the felony murder rule is to punish perpetrators for all the foreseeable risks of their actions.³⁷ But with youth offenders, were the risks truly foreseeable to their adolescent brains?³⁸ All the research suggests it is the opposite.³⁹ In these cases, the punishment is so disproportionate to their role in the crime that it would be unconscionable to punish them in the name of deterrence.⁴⁰

While boys are most often the population being convicted of felony murder, girls are also vulnerable to these disproportionate sentences.⁴¹ Emily Robb, the director of advocacy at the Youth Sentencing & Reentry Project In Philadelphia, Pennsylvania, spoke about one of her minor

³² Mendel, *supra* note 6; *see also* Robb, *supra* note 5.

³³ Robb, *supra* note 5.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ Robb, *supra* note 5.

⁴⁰ *See id.*

⁴¹ *See id.*

female clients who was a victim of sex trafficking and was used as bait in a robbery scheme that ended in the unexpected death of the robbery victim.⁴² Her client was faced with the difficult decision to accept a guilty plea and spend years in a juvenile facility, or get tried as an adult and face a far lengthier sentence in an adult correctional facility.⁴³

If the youth offender does in fact end up incarcerated for an extended period of time, there are many detrimental psychosocial issues that develop.⁴⁴ Studies have shown that the school re-enrollment rates of youth returning home from incarceration are staggeringly low, therefore leading to the majority of youth offenders not obtaining a high school diploma.⁴⁵ This creates a severe impact on youth offenders' ability to obtain employment when they are finally free, leading to recidivism out of necessity.⁴⁶ Incarceration is directly linked to depressed mental maturing, which puts the youth offender in a situation where they are more likely to not be deterred from the same or similar conduct in the future.⁴⁷

IV. CONCLUSION

In conclusion, the felony murder rule's application to youth offenders is profoundly unjust, given the unique developmental vulnerabilities inherent in adolescence.⁴⁸ This legal doctrine, which holds individuals criminally liable for a death occurring during the commission of a felony, fails to account for the developmental immaturity and heightened susceptibility to peer influence that characterize young people.⁴⁹ As a result, youth offenders are disproportionately impacted by

⁴² Robb, *supra* note 5.

⁴³ *See id.*

⁴⁴ Mendel, *supra* note 6.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *See* Robb, *supra* note 5.

⁴⁹ *See* Birdsong, *supra* note 8.

the felony murder rule, often facing severe penalties that do not align with their level of culpability or potential for rehabilitation.⁵⁰ Recognizing that adolescents are still undergoing emotional and cognitive development, it is imperative to reform the felony murder rule to exclude youth offenders from its reach.⁵¹

⁵⁰ See Robb, *supra* note 5.

⁵¹ See *id.*