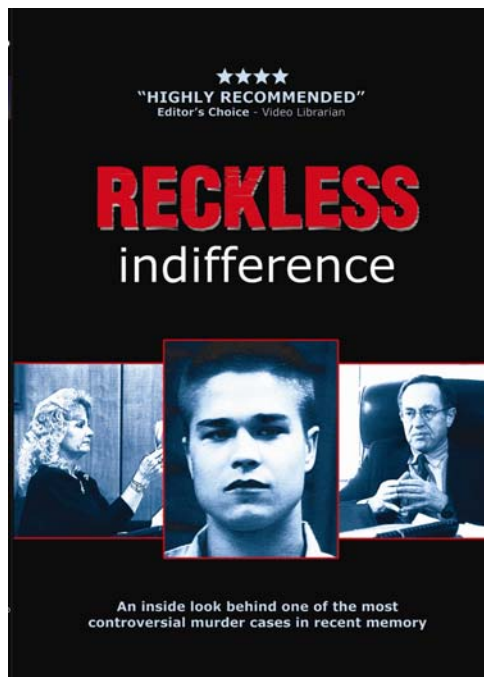




Reckless Indifference

Guidebook



To order this and other programs call:
(888) 570-5400

www.choicesvideo.net

Choices, Inc.
421 S. Beverly Drive 5th Floor
Beverly Hills, California 90212

© 2006 Choices, Inc. All rights reserved

Felony Murder Rule

History and Introduction:

The common law felony murder rule dates back to the twelfth century England. The rule was later adopted by the United States in the eighteenth century. The rule originated under the concept of transferred intent. In other words, the malicious intent inherent in the commission of any crime, however minor, was considered to apply to any consequences of that crime, however unintended. As an example, if a hunter unlawfully enters the property of another and shoots at a rabbit but kills a hiker, this is transferred intent. Although the illegal hunter intended no harm to the hiker, and did not even suspect his presence, the guilt of trespassing is transferred to the act of the killing. The felony murder rule requires no intent to kill, or even to do bodily harm. The rule punishes consequences of an action not the intent. The felony murder rule was abolished in the United Kingdom in 1957, but remains part of the law under the Federal Government and many of the states (1).

Application:

The doctrine of the **felony murder rule** holds a perpetrator responsible for first degree or aggravated murder for committing or found to be involved in a serious felony during which another person dies as a result of that felony. The rule applies even if one does not personally or directly cause the person's death. Co-conspirators are culpable regardless of their involvement or association with the murder. The intent of the rule is to deter violent crimes which may result in death. Thus, gang violence such as drive by shootings where several gang members are involved in a shooting are equally responsible even though only one or two may be the actual shooters.

For jurisdictions that apply the felony murder rule, any death which occurs during the commission of certain specified felonies is murder of the first degree and all

participants in that felony or attempted felony can be charged with and found guilty of murder. Let's apply an example of a convenience store robbery involving several criminals. If one intentionally shoots and kills a store clerk, or the clerk is accidentally killed by the fleeing robbers, all of the participants can be found guilty of felony murder, including those who did no harm, had no gun, and/or did not intend to hurt anyone. In other words, if one of the robbers was a lookout and another just driving the getaway car, they are equally culpable for the death of the clerk even though they didn't actually shoot the clerk or intended for the clerk to die. In another unusual example, if one of the holdup men or women is killed, his/her fellow robbers may also be charged with first degree murder. This may occur if the robbers flee the scene and the police follow in pursuit. If the robber's vehicle crashes causing the death of one of the robbers, the surviving robber can be charged under the felony murder rule. The reasoning is that the proximate cause of the death was the robbery. Had the robbery not occurred in the first place, the death of anyone would not have followed.

The case of Brandon Hein took place in California. And like many states which employ the rule, California lists a number of felonies that if committed and resulting in death of another are considered first degree murder. In California, Section 189 of the California Penal Code states that any "murder perpetrated by means of a destructive device or explosive, a weapon of mass destruction, knowing use of ammunition designed primarily to penetrate metal or armor, poison, lying in wait, torture, or by any other kind of willful, deliberate, and premeditated killing, or which is committed in the perpetration of, or attempt to perpetrate, arson, rape, carjacking, robbery, burglary, mayhem, kidnapping, train wrecking, or any act punishable under the sex offense sections of 206, 286, 288, 288a, or 289, or any murder which is perpetrated by means of discharging a firearm from a motor vehicle, intentionally at another person outside of the vehicle with the intent to inflict death, is murder of the first degree." The punishment in California for first degree murder is the death penalty, life in prison

without the possibility of parole (as was Brandon Hein), or a sentence of 25 years to life.

Many states follow the model penal code. The American Law Institute's Model Penal Code lists robbery, rape, or forcible sexual intercourse, arson, burglary, kidnapping, and felonious escape as offenses under the rule. In addition, Federal law specifies additional crimes, including terrorism and carjacking as felony murder rule offenses.

Criticism of the rule:

The felony murder is intended to hold all conspirators accountable for the commission of violent crimes resulting in death regardless of each person's involvement, role, intent, and so forth. The rule is designed to crack down on violence, especially gang violence, where death may result. But is this a fair rule? Does it violate due process? Is it fair to punish consequences and not intent?

One of the arguments against the rule is based on the concept of proportionality of the punishment. Punishing one for first degree murder because of association or playing a minor role in the crime raises due process questions such as found in the eighth amendment (cruel and unusual punishment).

Another criticism is that the rule gives prosecutors too much discretion suggesting a misuse of power and authority (as alleged in the Brandon Hein case).

Summary:

For the present, the felony murder rule is applied in many jurisdictions. The death penalty is unlikely for those perpetrators who play a minor role in the crime (Enmund v. Florida, 1982). However, for those more involved in the crime, court decisions have left open the possibility of death (Jackson v. state, 1979; Tison V. Arizona, 1987).

Notes:

1. States may vary on the definition and culpability of the felony murder. The reader is advised to consult respective states laws to determine if or how the rule is applied.

Sources:

Reid, Titus Sue, *Criminal Law* (McGraw Hill, New York, N.Y. 6th ed)(2004)

Binder, Guyora (October 2004). "The Origins of American Felony Murder Rules."
Stanford Law Review.

Gould's California Penal Code, Section 189 (2005)

Relevant web sites:

<http://ncfelonymurder.org/home.html>

http://en.wikipedia.org/wiki/Felony_murder

<http://www.findlaw.com/?DCMP=KWC-G-HOME>

Key cases involving the felony murder rule:

Enmund v. Florida, 458 U.S. 782 (1982)

The United States Supreme court ruled that the death penalty cannot be imposed under the felony murder rule if one of the perpetrators did nothing more than drive a getaway car, and had no knowledge that the other perpetrators had killed another.

Jackson v. State, 408 A.2nd 711 (Md.1979)

In this Maryland appellate case, two robbers took a hostage resulting in a police chase. Gunfire between the robbers and the police occurred at a roadblock. The hostage was killed by police gunfire and the robber's conviction for first degree murder felony murder was upheld.

Tison v. Arizona, 481 U.S. 137 (1987) 481 U.S. 137

Three brothers who broke their father out of prison and went on a crime spree killed a family traveling along a highway. They did so by flagging down their car under the pretense of being distressed motorists, then leading them out into the desert and shooting them execution-style. The father was the one who actually pulled the trigger, but the brothers were present at the killings and could have stopped them. A statewide police manhunt ensued; the father and brothers parted ways, and the father and one of the brothers died of exposure in the desert. The two remaining brothers were later apprehended, and the Supreme Court ultimately ruled that imposing the death penalty on them did not violate the Constitution.

Discussion Questions:

1. Does the felony murder rule serve any social or moral benefit to society? Explain or defend its use for the cause of justice.
2. In the Brandon Hein case, what punishment do you feel is justified? Why do you feel that he and the others received such punitive sentences? Do any of the youth involved in the incident that day deserve first degree murder sentences?
3. What due process issues are raised by the felony murder rule (other than the eighth amendment)? Make a case that the rule is unconstitutional or misused.
4. Read about the Janet Danahey case from the following website (<http://ncfelonymurder.org/home.html>). How does this case differ from the Hein case? How would you punish each?

Prepared by:

Robert J. Meadows, Ph.D.

August 2, 2006

Word count 1416