

CRIM LAW SEC 4

Weeks 7 and 8

- I. Homicide Continued
 - a. Felony murder rule continued (a person who kills during the commission/attempted commission of a felony)
 - i. Can be first or second degree. Usually controlled by state statutes. Some states do it differently from others...
 - ii. Review:
 1. Enumerated felonies can be one way of limiting the felony murder rule. BARRK: burglary, arson, robbery, rape, and kidnapping are the most common enumerated felonies.
 2. What intent does the prosecutor have to prove in felony murder?
 - a. Not intent to kill/malice/premeditation/recklessness/whatever other various intents can be used to get us to a murder conviction of varying levels.
 - b. Intent to commit a felony is required. "imputation of implied malice" D can't escape murder conviction by saying he was unaware of the danger to human life.
 - c. Justified by policy of deterrence...
 3. Differences from depraved heart murder
 - a. Depraved heart murder requires reckless/negligent behavior with a high risk to other person's life...this is a type of mens rea.
 - b. Felony murder rule: you don't need to act with risk to another person's life, just intent to commit a felony.
 - iii. Res Gestae requirement: temporal and geographical concurrence between the felony and the homicide, in addition to a causal connection between the felony and the homicide
 1. Close in time and distance: the timeline during which the felony is being committed. The rule is sometimes called the "place of temporary safety rule," i.e. the felony is ongoing until the defendant escapes to a place where he is momentarily safe from arrest, etc.
 2. People v. Bodely
 - a. Defendant took 75 from a supermarket and ran away and got into his car. Several employees were chasing him, and one was run over and killed. (different from robbery where force is involved).
 - b. Held, felony murder liability continues into an escape until the defendant has reached a location of temporary safety.
 3. People v. Stamp
 - a. Defendant robbed a company with a gun, threatened the tellers at gun point, etc, and a victim who was overweight and had heart problems subsequently had a heart attack (doctors testified that the fear precipitated the heart attack) and died.
 - b. Held, the defendant takes his victim as he finds him, and cannot claim an unknown disease as an intervening cause when they

act to scare someone and as a result, they are scared. (the fact that the burglars had left the premises before death not relevant). Doctrine is not limited to those deaths which are foreseeable.

4. King v. Commonwealth
 - a. King and co-felon were flying drugs interstate when bad weather caused King (a licensed pilot) to examine maps closely while co-felon (not a licensed pilot) was piloting. They got lost, co-felon crashed them into a mountain and co-felon was killed instantly.
 - b. Held, although accidental deaths can lead to felony murder conviction, they can only do so when the cause of death was an act in furtherance of the felony. Co-felon died as a result of his own actions, not of Kings.
5. Bodely, Smith, and King applied to a hypothetical...
 - a. A house is burglarized, a bunch of property and the car are stolen. The person who is arrested drops his friend off at his friend's house, and is cruising around town in his fancy new Oldsmobile. Later, he sees the police across from him at the intersection and freaks out, does a U-turn, and speeds in town. Flight ensues (police officer didn't know this was a burglar, but is concerned about the driving). During a chase, the driver kills someone with his vehicle. Can the felony murder rule apply?
 - b. Bodely: the defendant in our hypothetical may have reached temporary safety. He has been cruising for a while, and there is no one in pursuit. Or maybe it is not, he hasn't taken his money or the vehicle where he wants to go yet.
 - c. Stamp: the foreseeability doesn't matter...this doesn't really change any analysis in the hypothetical.
 - d. King: no causal relationship in the death by plane crash and the transportation of marijuana. In this case, there is no causal relationship between a high speed car chase and an unrelated burglary.
 - e. What actually happened in this case? Court did not buy that the burglary had ended, and he was convicted under the felony murder rule.
- iv. Merger rule: an assaultive felony cannot be used to support a felony murder conviction (because prosecutors would not have to prove malice aforethought [premeditation and deliberation] ever, because so many murders are assaultive in nature).
 1. If the actions that result in the murder are also the basis for an assaultive felony, no felony murder rule under the merger doctrine, because there was no separate act.
 2. Rose v. State
 - a. The felony was assault with a deadly weapon. The defendant argued that they were playing around with a gun when he

aimed it at the victim, and it somehow went off. He didn't believe he was loaded...he aimed it at her and told her to get off the phone.

- b. The intent behind assault is to put the person in an apprehension of harm.
- c. Convicted of felony murder – felony equals assault with a deadly weapon, and then the death of his friend
- d. Remanded for new trial under merger doctrine. If we allow prosecutors to use assaultive felonies with felony murder, they will not ever have to prove mental state in murder (because the majority of murders are assaultive in nature).
- e. Can however use the assaultive actions for implied malice.
- f. Usually, the merger issue is a question of law handled by the judge.
- g. You need a separate felony. Any murder would always be felony murder if you allow assaultive felonies.

v. Simulation

- 1. Defense attorney doesn't have confidentiality issues with the story his client told him because his client told the police the exact same answer.
- 2. Ethical duty to turn in your client?
 - a. You may turn him in if he is about to commit a crime which causes bodily harm/risk to life, but need not if he already has committed a crime (under the model rules of ethics)
 - b. No duty to go find the body yourself. Defense counsel should not seek to acquire evidence personally for the sole purpose of hiding evidence. You should investigate as defense counsel, but want to be careful that your investigation doesn't interfere with the state's investigation.
 - c. Duty to tell the cops there is a body somewhere? Only if someone is still living. IN this case, the client told us he was positive that the victim was dead.
- 3. What other information would you want to know?
 - a. Where is the victim's truck?
 - b. Where was the shotgun in the victims truck mounted?
 - c. More about the sale of land and the victims contract for lease of the land
 - d. Who is Shaw, what is he like? Aggressive? Has he talked about anger over the land deal with others?
- 4. Felony murder charge
 - a. Under the statute for first degree felony murder, you can charge felony murder where there is a forcible felony
 - b. Forcible felony includes intimidation with a deadly weapon. The defendant told us that he pulled out his gun and displayed it, telling the victim to stop what he was doing/stay right there.