People v Aaron

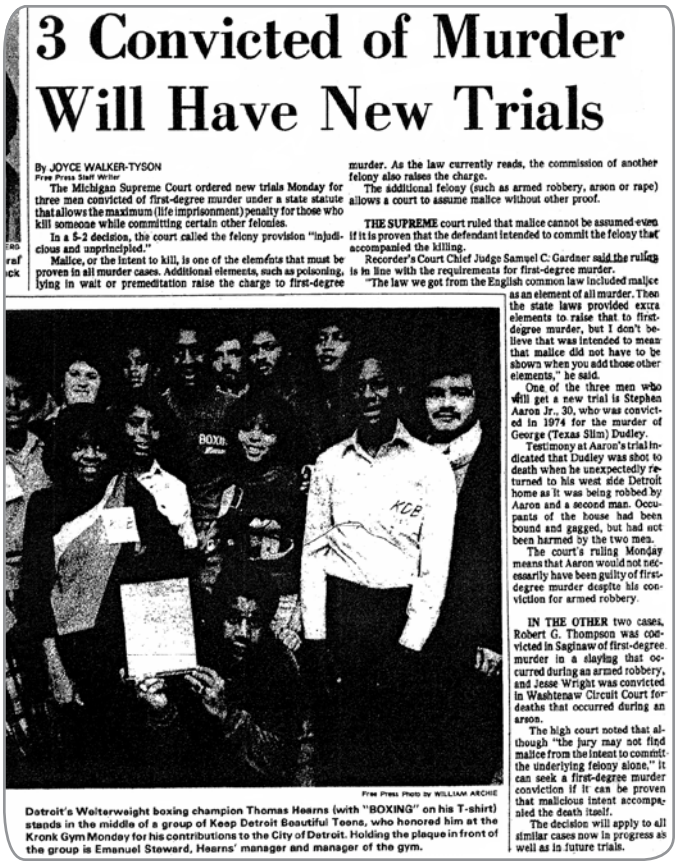
Exorcising the Ghost of Felony Murder

409 Mich 672 (1980)

In 1980, the Michigan Supreme Court abolished a confused and tangled crime known as "felony murder." At its most expansive, felony murder meant that if a death occurred while somebody was committing a felony, the felon was guilty of murder, regardless of his motive or role in causing the death. Scholars dispute the origins of the felony murder doctrine, and each state had its own version of the crime. By the end of the twentieth century, many jurists regarded it as a harsh, unfair, out-of-date vestige of the common law, which many states reformed or abolished.

Ironically, felony murder arose as part of the effort to liberalize criminal law in the United States.[1] Old English law punished all felonies with death. The American colonies and states tried to mitigate this system. Pennsylvania's 1776 constitution, the most liberal and democratic of the new fundamental laws, stated, "The penal laws as heretofore used shall be reformed by the Legislature of this state, as soon as may be, and punishments made in some cases less sanguinary, and in general more proportionate to the crimes."[2] The Pennsylvania legislature adopted a statute in the 1790s to define degrees of murder, and the Michigan legislature copied this statute verbatim in 1837. It read, "All murder which shall be perpetrated by means of poison, or lying in wait, or other kind of willful, deliberate and premeditated killing, or which shall be committed in the perpetration, or attempt to perpetrate any arson, rape, robbery, or burglary, shall be murder of the first degree." Michigan having abolished capital punishment (except for treason), the statute imposed life imprisonment for first-degree murders. The legislature later added larceny, extortion, and kidnapping to the list of "enumerated" felonies. The statute defined all other murders as second-degree, and empowered judges to sentence the murderer to any term of years in prison.[3]

However, the legislature never defined "murder." The term evolved over centuries in the common law of England and the American states. The most serious crime in American law, murder exceeded mere killing. Indeed, the biblical commandment often translated as "thou shalt not kill" should really read "thou shalt not murder." Murder involved more than the mere killing of a human being, or "homicide," for some homicide is excusable or even praiseworthy. Societies award medals and erect monuments to soldiers who take many lives in war. They also permit killing in self-defense or the defense of others (see *Pond*). Nor does all *criminal* homicide rise to the level of murder. Killing done negligently or in the heat of passion became known as "manslaughter" (see the *Maher* and *Beardsley* cases). The common law defined murder as



3 Convicted of Murder Will Have New Trials

By JOYCE WALKER-TYSON
Free Press Staff Writer

The Michigan Supreme Court ordered new trials Monday for three men convicted of first-degree murder under a state statute that allows the maximum (life imprisonment) penalty for those who kill someone while committing certain other felonies.

In a 5-2 decision, the court called the felony provision "injudicious and unprincipled."

Malice, or the intent to kill, is one of the elements that must be proven in all murder cases. Additional elements, such as poisoning, lying in wait or premeditation raise the charge to first-degree murder. As the law currently reads, the commission of another felony also raises the charge.

The additional felony (such as armed robbery, arson or rape) allows a court to assume malice without other proof.

THE SUPREME court ruled that malice cannot be assumed even if it is proven that the defendant intended to commit the felony that accompanied the killing.

Recorder's Court Chief Judge Samuel C. Gardner said the ruling is in line with the requirements for first-degree murder.

"The law we got from the English common law included malice as an element of all murder. Then the state laws provided extra elements to raise that to first-degree murder, but I don't believe that was intended to mean that malice did not have to be shown when you add those other elements," he said.

One of the three men who will get a new trial is Stephen Aaron Jr., 30, who was convicted in 1974 for the murder of George (Texas Slim) Dudley.

Testimony at Aaron's trial indicated that Dudley was shot to death when he unexpectedly returned to his west side Detroit home as it was being robbed by Aaron and a second man. Occupants of the house had been bound and gagged, but had not been harmed by the two men.

The court's ruling Monday means that Aaron would not necessarily have been guilty of first-degree murder despite his conviction for armed robbery.

IN THE OTHER two cases, Robert G. Thompson was convicted in Saginaw of first-degree murder in a slaying that occurred during an armed robbery, and Jesse Wright was convicted in Washtenaw Circuit Court for deaths that occurred during an arson.

The high court noted that although "the jury may not find malice from the intent to commit the underlying felony alone," it can seek a first-degree murder conviction if it can be proven that malicious intent accompanied the death itself.

The decision will apply to all similar cases now in progress as well as in future trials.

Free Press Photo by WILLIAM ARCHIE

Detroit's Welterweight boxing champion Thomas Hearns (with "BOXING" on his T-shirt) stands in the middle of a group of Keep Detroit Beautiful Teens, who honored him at the Kronk Gym Monday for his contributions to the City of Detroit. Holding the plaque in front of the group is Emanuel Steward, Hearns' manager and manager of the gym.

November 25, 1980, edition of the *Detroit Free Press.*
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criminal homicide plus "malice." As the Michigan Supreme Court put it in an 1858 case, "Murder is where a person of sound memory and discretion unlawfully kills any reasonable creature in being, in the peace of the state, with malice prepense or aforethought, either express or implied."[4] It defined malice as "the intention to kill, the intention to do great bodily harm, or the wanton and willful disregard of the likelihood that the natural tendency of one's behavior is to cause death or serious bodily harm."[5]

Historians long sought the origins of the felony murder rule among the murky bogs of legal history. Most often, commentators claimed that it was an English common-law rule that colonial and early state jurisdictions adopted. But the most thorough inquiry into it reveals not a single felony murder case in pre-Revolutionary England, nor in any American colony. The doctrine seems to have originated in nineteenth-century America, and was a legislative

(statutory), not a judicial (common-law), creation. Caselaw discloses no common-law felony murder convictions until very late in the nineteenth century, and very few even then. Thomas Jefferson proposed to preclude felony murder in his 1779 "bill for proportioning crimes and punishments." "Where persons meaning to commit a trespass only, or larceny, or other unlawful deed, and doing an act from which involuntary homicide hath ensued, have heretofore been adjudged guilty of manslaughter or of murder, *by transferring such their unlawful intention to an act, much more penal than they could have in probable contemplation;* no such case shall hereafter be deemed manslaughter unless manslaughter was intended, nor murder, unless murder was intended." This defined the essential idea of felony-murder: transferring the intent to commit any felony into the intent to commit murder. However, far from following Jefferson's late eighteenth-century advice to prevent felony murder, American states extended the principle in the early nineteenth century. Illinois enacted the first felony murder statute in 1827. Half of the states had enacted one by the time of the Civil War.[6]

Felony murder also acquired the reputation of being a particularly harsh rule. Commentators claimed that it led to the execution of defendants who inadvertently and indirectly caused the death of someone during the commission of a felony. For example, if, during a bank robbery, a bank customer accidentally killed another customer or a police officer while trying to prevent the robbery, the bank robber was held responsible for the killing. He would be punished, not for robbery, but for first-degree murder. In another example, robbers tied up a house owner while ransacking his house, and intended to publicize the fact and have the man untied after they got away. Nobody untied the man, who then died. The burglars were tried for first-degree murder. Many commentators argued that killings like these, not involving malice or premeditation, were not murder.

But among such hard cases, few states adopted the felony murder principle to its full extent—calling it murder if *any* death occurred while somebody was committing a felony, regardless of his motive or role in causing the death. Most convictions resulted from the shooting of robbery victims. In the nineteenth century, courts "almost always conditioned murder liability on causing death with fault," and almost never in cases of accidental death. Far from being an oppressive and arbitrary rule, most felony murder rules were "limited in scope and applied fairly." Judges interpreted felony murder statutes and rules narrowly and limited their application, most often to felonies that were inherently dangerous—arson, for example, but not larceny.[7]

Michigan did not really have a felony murder statute. The 1837 statute, which elevated murders committed in the commission of enumerated felonies to first-degree murder, was more accurately a "felony aggravator statute." Michigan judges began to elaborate a common-law doctrine of felony murder, beyond the 1837 statute's requirements, in the late nineteenth century. Some courts limited its application to inherently dangerous felonies; Michigan was among the first states to try to contain common-law felony murder this way. But some Michigan courts did not require prosecutors to prove malice. Rather, they allowed prosecutors to argue that the commission of the felony provided the malicious requirement for murder.[8] The twentieth-century trial court record displayed no clear rule. The Michigan Supreme Court never made any definite statement that the state actually had a common-law felony murder doctrine.[9]

By the 1970s, the legal academic world attacked the felony murder rule, and the Michigan Court of Appeals was at loggerheads over it. New Hampshire abolished felony murder by statute in 1974; the Kentucky and Hawaii legislatures followed by the end of the decade. The Iowa Supreme Court abolished it in 1979.[10] The Michigan Court of Appeals decided in 1976 that the state had neither a statutory nor a common-law felony murder rule. In a killing during a robbery, the prosecution must prove malice to the jury as a matter of fact; the judge could not instruct the jury that intent to commit robbery was a sufficient substitute for proof of malice in the killing. But the following year, a different panel of the Court of Appeals held that Michigan *did* have a felony murder rule to the extent that commission of an enumerated felony would turn manslaughter into murder.[11] The Supreme Court had to step in and settle the matter.

The Court consolidated three cases from the Court of Appeals (*People v Aaron, People v Thompson,* and *People v Wright*). Robert G. Thompson was convicted of felony murder for a killing that took place during an armed robbery. The judge instructed the jury that "the evil intent to commit the robbery carries over to make that crime murder in the first degree." The Court of Appeals reversed the conviction, ruling that the prosecution had to prove to the jury malicious intent to kill. Similarly, the Court of Appeals reversed the conviction of Daniel J. Wright, who was found guilty of first-degree murder for two deaths that occurred as a result of the arson he committed. The State brought these appeals. Stephen Aaron was also convicted of first-degree murder for a homicide that arose out of an armed robbery. In his case, the Court of Appeals upheld the conviction, but the Supreme Court overturned the decision and instructed the trial court to resentence Aaron for a second-degree murder conviction. The trial court imposed the same sentence (life imprisonment), and Aaron appealed again.[12] The Supreme Court took up the issue of the status of felony murder in Michigan.

The Court unanimously ended felony murder. With considerable understatement, Justice Fitzgerald observed in his majority opinion, "Felony murder has never been a static, well-defined rule at common law." He noted its obscure origins, which he located in England, which had abolished it in 1957 by statute. He also described the ways in which American jurisdictions had limited, and some recently abolished, the rule. These "modifications and restrictions…reflect dissatisfaction with the harshness and injustice of the rule…. To the extent that these modifications reduce the scope and significance of the common-law doctrine, they also call into question the continued existence of the doctrine itself." Above all, felony murder "completely ignores the concept of determination of guilt on the basis of individual misconduct." It was possible that "an accidental killing occurring during the perpetration of a

felony would be punished more severely than a second-degree murder requiring intent to kill."[13]

Indeed, the Court doubted that Michigan ever had a common-law felony murder rule. No cases "expressly considered whether Michigan has or should continue to have a common law felony murder doctrine." Some cases contained language that suggested a common-law rule, but never in a way that established a clear precedent. Due to the confusion among appellate courts on the issue, the Supreme Court exercised its power under Article III, section 7 of the State Constitution to abrogate the common law. Ironically, the first definite recognition of the felony murder rule came during its abolition. "We believe that it is no longer acceptable to equate the intent to commit a felony with the intent to kill," Fitzgerald wrote. Prosecutors would have to prove malicious intent to kill, beyond a reasonable doubt, to the jury. The new rule would apply to all current and future prosecutions.[14]

Fitzgerald and other commentators earnestly asserted that the abolition of felony murder should have little practical effect. While courts could not translate intent to commit a felony into malicious intent to commit murder, they could consider the felonious intent as a factor in establishing intent to kill. This would be particularly likely in cases of the dangerous felonies enumerated in the Michigan murder statute. But the new rule would prevent courts from treating accidental killings, committed without malice, as murders. As one review noted, "*Aaron* barely aids defendants at all."[15] Justice Ryan's concurring opinion reinforced the point that the Court was simply clarifying the confusion that had arisen in lower courts. "It is sufficient to state only that *if* felony murder existed in Michigan, by virtue of today's decision it no longer does." He noted that, "Today we simply declare that the offense popularly known as felony murder, which, properly understood, has nothing to do with malice and is not a species of common law murder, shall no longer exist in Michigan, if indeed it ever did."[16]

In retrospect, there was a lot less to *Aaron* than met the eyes of both supporters and critics. Justice Levin later commended Justice Fitzgerald's opinion for "eliminat[ing] a harsh and outdated view of criminal responsibility."[17] The decision did eliminate opportunities for illogical applications, if not outright miscarriages of justice. As one commentator noted, "To consider a killing without malice to be more blameworthy than a killing with malice merely because the former was committed during the course of a felony is irrational."[18] But such cases were rare, and reformers reinforced this point by repeated claims that the abolition of the rule would make no serious difference. But critics saw the decision as another irresponsible exercise of liberal judicial activism, coddling felons in a period of rising crime rates. The murder rate in the United States doubled between 1963 and 1970, years in which the United States Supreme Court imposed significant liberalization of criminal procedure in the states.

Observers also debated the Court's exercise of its power to alter the common law. As Justice Levin said, "the Court acted in the exercise of its constitutional authority to declare the common law, and thereby make clear that the common law does not become mortified when embodied in the statute."[19] Others noted that it was unusual for the Court to use its constitutional common-law power to alter the *criminal* law, which was mostly codified by statute. Decisions like *Placek,* which altered civil common law, were more acceptable.[20] Some complained that the Court was usurping legislative authority.[21] But *Aaron* really restored Michigan law to the legislature's original 1837 statute. That act was not a felony murder act at all—there is no way to read the statute as doing anything but elevating *murders* committed during certain felonies to first-degree murder; never did it turn *homicides* committed during felonies into murders. Insofar as felony murder had insinuated its way into Michigan law, it did so through incoherent lower-court opinions. If anything, *Aaron* deferred to the original intent of the Michigan legislature, and put an end to the Victorian-era judicial activism that had fabricated a common law of felony murder.

FOOTNOTES

1. Binder, *The origins of American felony murder rules,* 57 Stan L R 59 (2004).
2. Pa Const 1776, XXXVIII.
3. Sidney, *The felony murder doctrine in Michigan,* 25 Wayne L R 70 (1978).
4. *People v Potter,* 5 Mich 1, 8 (1858).
5. *People v Aaron,* 409 Mich 672, 733; 299 NW2d 304 (1980).
6. Binder, *Origins of American felony murder rules, supra* at 63–65, 71, 120, 161; Ford, ed, *The Works of Thomas Jefferson* (New York: Putnam, 1904–05), vol II, p 400.
7. Binder, *Origins of American felony murder rules, supra* at 66–68, 72.
8. *Id.* at 120, 141, 150, 160.
9. Sidney, *The felony murder doctrine, supra* at 71.
10. Conley, *Criminal law,* 15 Suffolk U L R 1312 (1981).
11. Martin, *The Michigan Supreme Court uproots the felony murder rule,* 50 UMKC L R 122 (1981) [*People v Fountain,* 71 Mich App 491; 248 NW2d 589 (1976) and *People v Till,* 80 Mich App 16; 263 NW2d 586 (1977)].
12. *People v Aaron, supra* at 687–689.
13. *Id.* at 689, 698, 707–09.
14. *Id.* at 722, 727, 734; Cutlip, Jr, *Criminal law,* 59 U Det J Urb L 433 (1982).
15. *People v Aaron, supra* at 729–731; Cohn, *The demise of the felony murder doctrine in Michigan,* 28 Wayne L R 237 (1981).
16. *People v Aaron, supra* at 744, 746.
17. Presentation of the Portrait of the Honorable John W. Fitzgerald, 447 Mich ccviii (1994).
18. Cohn, *The demise of the felony murder doctrine, supra* at 234.
19. Presentation of the Portrait of the Honorable John W. Fitzgerald, *supra.*
20. *People v Aaron, supra* at 722; Cutlip, *Criminal law, supra* at 438.
21. Baughman, *Justice Moody's lament unanswered: Michigan's unprincipled retroactivity jurisprudence,* 79 Mich B J 664 (2000).