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It's Time Maryland Reexamined its Felony Murder Rule

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White Collar Defense and Investigations

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To make sense of premeditated murder, we demand to understand the killer's motive, the reason for the crime.

Juries do, too. But they don't always have to.

Across the vast majority of the United States, including Maryland, a defendant can be found guilty of first-degree murder — sometimes defined as "deliberate, premeditated, and willful killing" — even if they had no intent to kill. Even if they acted in self-defense, in fact. Under the so-called felony murder rule, someone who causes the death of another person in the course of committing a separate felony — a robbery, for example — is guilty of first-degree murder, with the same consequences as if they had planned out the crime in advance.

The rule can be cruel in its application. Last year, with a brilliant team, I represented an indigent teenager named Antonio Lawrence in a felony murder trial in state court. Barely 16 at the time of the offense, Mr. Lawrence went with a friend to a Target store in Bethesda to obtain two "zips" — ounces — of marijuana from a younger teenager they knew. He told investigators in an interview after his arrest, at which no lawyer was present, that he was planning to take the marijuana without paying for it.

But when Mr. Lawrence and his friend showed up at Target, they encountered a 33-year-old drug dealer named Larry Wilson instead of the teenager they were expecting. Mr. Wilson arrived with a knife. Mr. Lawrence came unarmed. So another friend who was there, and saw Mr. Wilson, slipped Mr. Lawrence a knife for his protection. After the two spent time together in an outside stairwell, a struggle ensued, during which Mr. Lawrence stabbed and killed Mr. Wilson. There was no evidence that Mr. Lawrence intended to commit murder that day, but there was evidence that he intended to take marijuana from another teenager. There was also considerable evidence that Mr. Lawrence acted in self-defense.

After eight hours of deliberation, the jury filed into our Rockville courtroom to announce its verdict. The forewoman had tears streaming down her cheeks, as did several other jurors. The sense was palpable in the courtroom that day that at least some members of the jury recognized the injustice of convicting a teenager of first-degree murder even though the

prosecution could not prove he had any intent to kill, and the evidence indicated that he had acted in self-defense.

But under the felony murder rule, they had little choice. All the state had to prove was that Mr. Lawrence caused Mr. Wilson's death — something we could not contest — and that he did so in the course of committing another felony. Yet, trials contain surprises. After the verdict was read, the judge polled the members, asking each juror, "Is the jury's verdict your verdict?" The first eight, as expected, said "yes." But the ninth juror, reflecting the jury's ambivalence about the whole enterprise, stunned the courtroom: "No, but yes," she said.

I immediately moved for a mistrial, which the court denied. The judge instead told the ninth juror, in front of everyone, "We just want to confirm that the jury's verdict is your verdict," to which she responded, "Yes." I was disquieted by the outcome. So, as the judge was about to thank the jurors for their service and send them home, I requested that he ask her again. He refused.

Under Maryland law, when a court is presented with an ambiguous juror response, it is required to seek clarification in a way that does not threaten the constitutional guarantee of a unanimous verdict, for example, by sending the jury back for further deliberation or questioning the ambivalent juror in private. The court failed to do either in Mr. Lawrence's case, which almost certainly entitled him to a new trial. We promptly moved for one and, facing the prospect of having the conviction overturned, the state prosecutors, for the first time in the case, offered Mr. Lawrence a deal: a maximum sentence of 30 years in prison, which would make him eligible for parole in half that time, rather than the life sentence he very likely would have received otherwise. He took the deal.

First-degree murder is a horrific crime, the most serious the law recognizes, and it appropriately carries severe consequences. So when asked to convict, jurors have a visceral need to determine motive and intent. The felony murder rule short-circuits that inquiry, requiring the jury to ignore both. This puts jurors in a bind. In Mr. Lawrence's case, doubtless as in many others, that moral struggle between following the law and following their conscience played out, tearfully, in the courtroom.

Felony murder was abolished in England decades ago. But the vast majority of American states still have some form of the rule. It is past time for a reexamination.

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