



Testimony before House Judiciary Committee
on May 30, 2024, submitted by
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Felony Murder Testimony

Good Morning Chairman Briggs, Chairman Kauffman and members of the House Judiciary Committee. My name is Kelly Callihan, and I am the Executive Director of the Pennsylvania District Attorneys Association. I am also a former elected district attorney having served in Cambria County from 2010-2020. I have prosecuted violent individuals, including some convicted of second degree murder.

Under Pennsylvania law, criminal homicide constitutes second degree murder when it is committed while the defendant was engaged as a principal or an accomplice in the perpetration of certain violent felonies, not all felonies. Robbery, rape or involuntary deviate sexual intercourse by force or threat of force, arson, burglary, and kidnapping are the enumerated felonies that may predicate a second degree murder charge, 18 Pa. C.S. § 2502(d).

As this list demonstrates, only killings committed during these heinous and brutal crimes can subject a defendant to conviction for murder of the second degree. These offenses are all appropriate predicate felonies for felony murder because those engaged in these violent offenses know or should know that they involve a substantial risk of death.

Additionally, Pennsylvania law provides that both a principal and an accomplice can be convicted of second degree murder. But this does not mean that merely being present when one of these dangerous felonies and accompanying homicides occurs is sufficient to convict someone of felony murder. To be considered an accomplice, the Commonwealth must prove the following two elements to the factfinder beyond a reasonable doubt: 1) that the person had the intent of promoting or facilitating the commission of the violent felony; and 2) that the person solicited, encouraged, or requested the other person to commit the felony, or aided, agreed to aid,

or attempted to aid the other person in planning or committing the felony. These acts represent affirmative and significant acts in committing the felony.

In other words, individuals who have committed these offenses, have engaged in specific and intentional acts which ultimately caused or significantly contributed to someone else's death. This does not mean that we cannot consider reform as it relates to felony murder, but we must recognize the cold reality that any reform is murder reform.

To review the level of culpability of offenders charged with and convicted of second degree murder, there is no "one size fits all" analysis that can be performed. Each individual and case is factually unique requiring a case-by-case assessment. Convicted perpetrators include not only accomplices who meet the threshold of proof beyond a reasonable doubt set forth above, but those who directly commit the killing. There are many prosecutions where a single perpetrator acts alone without accomplices and is convicted of second degree murder. Culpability issues are raised in pre-trial and trial phases and often mitigating factors are considered in plea negotiations and charging decisions. They are often reviewed on appeal and in post-conviction proceedings as well.

There is currently an avenue for relief that some of those convicted of second degree murder may seek. Current Pennsylvania law does permit murderers serving these sentences to prove that they are rehabilitated and seek release through the commutation process. The commutation process is available to all inmates. Article 4, Section 9 of the Pennsylvania Constitution vests in our Governor the power to order a commutation on unanimous recommendation of the Board of Pardons.

The Board looks at many factors and can examine culpability factors such as whether the convicted individual was a "mere look-out" or instead played a meaningful role in the

commission or planning of the crime. Therefore, if an inmate can convince the Board of Pardons that he or she is worthy of a commutation based on these reasonable, common-sense factors, the Board will send a favorable commutation recommendation to the Governor. If the Governor agrees with the Board, the inmate can obtain a release from custody. Therefore, there is a remedy in place now under current law.

One of the most critical issues here relates to victims' rights. Families of murder victims rely on the finality of judgments. It is especially difficult and trying when the family member of a murder victim who expected a life sentence is faced with the very real possibility that the person convicted of the murder of his or her family member could be paroled, notwithstanding an original life sentence. The Victims' Rights Act affords victims the opportunity for input in plea offers; most certainly there are second degree murder convictions that resulted from defendants entering guilty pleas voluntarily and knowingly.

Reopening cases for retroactive review could retraumatize victims' families and reopen wounds that may be decades old, creating a sense of anxiety and despair. We have seen these reactions following the decision by our Supreme Court in *Miller v. Alabama*, which held that mandatory life sentences for juvenile murderers are unconstitutional, and that decision applied retroactively. If there were ever to be a change in law, therefore, applying it retroactively would be devastating and harmful.

Thank you for your invitation to appear before the House Judiciary Committee. PDAA hopes that our identification of these issues is helpful and looks forward to further discussion at the hearing.