DISSECTING THE FELONY MURDER RULE AND THE MENTALLY ILL DEFENDANT

Nadine W. Mathieu

I. INTRODUCTION

Imagine being told that if you did not participate in a felony, you or one of your family members would be killed. Should you participate in the felony due to the threat of being harmed? In the following scenario, imagine being intimidated and threatened into being the getaway driver for a group of individuals involved in an armed bank robbery. One of those individuals then shot and killed a security guard during the commission of the robbery. Even though the getaway driver was coerced into participating in the robbery and did not know or have the intention to cause a death, the driver would also be held liable for the murder of the security guard under the felony murder rule. Under the felony murder rule, anyone who commits

a homicide during the commission or attempted commission of a felony would be found guilty of murder, regardless of whether the person was coerced into participating in the felony.[1] This doctrine is not only limited to those deaths that are foreseeable.[2] The felony murder doctrine also applies to unforeseeable and unexpected deaths because the felon is held strictly liable for all killings committed during the course of the felony.[3]

Because anyone, regardless of whether the person was the primary actor or just an accomplice, can be found guilty of murder if a homicide is committed during a felony, the felony murder rule is often heavily criticized.[4] What if the defendant was mentally ill at the time the felony was committed and could not distinguish between right and wrong? This Article analyzes the felony murder doctrine in Florida and how it affects mentally ill defendants and defendants who plea affirmative

[1]. J. Rafael Rodriguez, Column, Criminal Law: Attempted Felony Murder—An Improbable Legal Fiction Meets Its Demise, 69 FLA. B.J. 63, 63 (1995).
[2]. People v. Stamp, 82 Cal. Rptr. 598, 603 (Ct. App. 1969).
[3]. *Id*.
[4]. Rodriguez, supra note 1, at 63.

defenses, such as insanity and duress.[5] Section II introduces the many criticisms of the felony murder rule.[6] Section III examines how the felony murder rule came into existence and introduces its many limitations and restrictions, such as the inherently dangerous felony limitation, the independent felony limitation, the agency approach, and the proximate causation approach.[7] Section III also analyzes the felony murder doctrine and its purpose.[8] In Section IV, the insanity defense is analyzed, including the several different methods for defining legal insanity.[9] Section V examines the court cases of Anthony A. Hall, Calvin Carlos Campbell, and Ivonne Rosso, and how the insanity defense is considered in each of their convictions.[10] Section VI provides a comparison of how juvenile defendants are affected by the felony murder doctrine and how

[5]. Hall v. State, 568 So. 2d 882, 883 (Fla. 1990) (per curiam); Campbell v. State, 227 So. 2d 873, 875 (Fla. 1969); Rosso v. State, 505 So. 2d 611, 612 (Fla. 3d Dist. Ct. App. 1987) (per curiam).
[6]. Rodriguez, supra note 1, at 63.
[7]. JOSHUA DRESSLER, UNDERSTANDING CRIMINAL LAW 522-33 (5th ed. 2009).
[8]. *Id*.
[9]. DRESSLER, supra note 7, at 346.
[10]. Hall, 568 So. 2d at 883; Campbell, 227 So. 2d at 875; Rosso, 227 So. 2d at 612.

the mental capacity of a juvenile can be compared to a mentally ill defendant.[11] Section VII considers the role of the duress defense in felony murder. In Section VIII, the constitutionality of the felony murder rule is examined.[12] Then in Section IX, a conclusion is provided on whether the felony murder doctrine should be abolished in Florida.

II. DEFINING THE FELONY MURDER DOCTRINE

Under common law, the felony murder doctrine establishes that anyone who committed a homicide during the commission or attempted commission of a felony would be found guilty of murder.[13] This is also known as the felony murder rule.[14] The felony murder rule is one of the most controversial doctrines in the United States justice system

[11]. Steven A. Drizin & Allison McGowen Keegan, The Aftermath of the Lionel Tate Case: Abolishing the Use of the Felony-Murder Rule When the Defendant Is a Teenager, 28 NOVA L. REV. 507, 529 (2004).
[12]. DRESSLER, supra note 7, at 345.
[13]. *Id*. at 521; see also Jennifer DeCook Hatchett, Comment, Kansas Felony Murder: Agency or Proximate Cause?, 48 U. KAN. L. REV. 1047, 1047 (2000).
[14]. DRESSLER, supra note 7, at 521.

because a felony murder conviction does not carry the same *mens rea* requirement as a murder conviction.[15] For a murder conviction, the prosecution must prove that the defendant carried the necessary *mens rea*, or actual intent, to kill another human being and that the killing was premeditated, deliberate, or was caused by gross negligence.[16] However, for a felony murder conviction, the prosecution does not need to prove that the defendant had the actual intent to kill another human being.[17] The prosecution only needs to prove that the defendant carried the necessary *mens rea* to commit the felony and that the criminal act caused the death of another.[18] Therefore, the defendant will be found guilty of felony murder regardless of whether he or she had the actual intent to kill another human being.[19]

---

[15]. Douglas Van Zanten, Note, Felony Murder, the Merger Limitation, and Legislative Intent in State v. Heemstra: Deciphering the Proper Role of the Iowa Supreme Court in Interpreting Iowa's Felony-Murder Statute, 93 IOWA L. REV. 1565, 1567 (2008).
[16]. *Id.*
[17]. *Id.*
[18]. *Id.*
[19]. *Id.*; see also People v. Stamp, 82 Cal. Rptr. 598, 603 (Ct. App. 1969) (stating that a felon is held strictly liable for any and all

Under Section 189 of the Model Penal Code of the felony murder rule, a murder committed in either the commission of, or attempted commission of, any felony is:

> [M]urder of the first degree. This is true whether the killing is willful, deliberate and premeditated, or merely accidental or unintentional, and whether or not the killing is planned as a part of the commission of the robbery [or felony]. . . . There is no requirement that the killing occur, 'while committing' or 'while engaged in' the felony, or that the killing be 'a part of' the felony, other than that the few acts be a part of one continuous transaction. Thus the homicide need not have been committed 'to perpetrate' the felony.[20]

One of the most contentious factors of the felony murder rule is that a defendant cannot raise certain affirmative defenses for the murder conviction.[21] A defendant convicted of felony

killings committed by the individual or by an accomplice during the course of the felony).

[20]. Stamp, 82 Cal. Rptr. at 602.

[21]. People v. Aaron, 299 N.W.2d 304, 317 (Mich. 1980).

murder can only raise affirmative defenses pertaining to the mental element of the felony, such as mental illness or insanity, but cannot raise affirmative defenses to the mental element of the murder like a defendant convicted of premeditated murder can.[22] Thus, a defendant convicted of felony murder cannot raise defenses such as self-defense, duress, or unintentional accident even though these defenses are permitted for defendants charged with first degree murder.[23] Felony murder and first degree murder are essentially the same and should be treated by the justice system equally.[24]

The independent act doctrine is one accepted legal defense to a felony murder conviction that some states recognize.[25] However, even though Florida allows this doctrine to be introduced, there are some problems that occur when trying to invoke the defense.[26]

---

[22]. *Id.*
[23]. *Id.*
[24]. *Id.*
[25]. David Brener, Florida's Felony Murder Rule Sweeps with a Broad Brush, AVVO (Feb. 26, 2011), https://www.avvo.com/legal-guides/ugc/floridas-felony-murder-rule-sweeps-with-a-broad-brush.
[26]. *Id.*

> Florida recognizes a defense to felony murder if the homicide was not committed by the defendant, the defendant did not intend for the homicide to occur, and the killing was not part of the plan and not a reasonably foreseeable consequence of the plan to commit the underlying felony. This last part . . . is where the problem lies, and where the litigation has centered. Some authorities suggest that when the defendant is aware that firearms are involved in the underlying felony, then the independent act defense is unavailable, even if the defendant did not carry. Thus, the getaway driver and the guy who planned the robbery but stayed home, can be charged and convicted of murder even though violence was not supposed to occur, and are precluded from presenting an independent act defense, if the evidence shows knowledge of a substantial risk of violence.[27]

[27]. *Id.*

III. THE ORIGIN AND HISTORY

Although the origin of the felony murder doctrine can be traced back to the 16th century in England, application of the rule cannot be traced back to one specific case.[28] For its origin, historians often cite to the case of *Lord Dacres*[29] from 1535 and the case of *Herbert*[30] from 1558 as the first formal statements of the felony murder rule.[31] In *Lord Dacres*, all the defendants were convicted of murder and hanged even though not all the members were present at the time a gamekeeper was killed during an illegal hunt.[32] The court held that "Lord Dacres and his companions were [not] guilty of murder because they had joined in an unlawful hunt in the course of which a person was killed, but rather that those not present physically at the killing were held liable as principals on the

[28]. Van Zanten, supra note 15, at 1569; see also Aaron, 299 N.W.2d at 307 (stating historians and scholars have determined that the felony murder rule is of "questionable origin." *Id*.).
[29]. Aaron, 299 N.W.2d at 307.
[30]. *Id*. at 308.
[31]. *Id*. at 307–08.
[32]. *Id*. at 308.

theory of constructive presence."[33] Therefore, this case established that an accomplice or co-conspirator can be held liable for the actions of another even if the accomplice was not present at the time the offense occurred.[34]

Herbert was decided after *Lord Dacres* as another example of the felony murder rule.[35] In *Herbert*, a large group of members collectively went to an individual's house under false pretenses as law enforcement to take items, and it resulted in the unintentional death of an unarmed woman.[36] The entire group was found guilty of murder.[37] The court held that "if one deliberately performed an act of violence to third parties, and a person not intended died, it was murder regardless of any mistake or misapplication of force."[38] The dissenting opinion, however, found that the accident should have been manslaughter because the

[33].*Id*.
[34].Aaron, 299 N.W.2d at 308.
[35].*Id*.
[36].*Id*.
[37].*Id*.
[38].*Id*.

criminal act was not intended toward the woman who died.[39]

Even though the felony murder rule has common law roots from England, England abolished the doctrine in 1957 due to its controversial nature.[40] Section 1 of England's Homicide Act of 1957 establishes that a death that occurs during the commission of a felony does not constitute a murder unless malice aforethought is present.[41] England recognized that the defendant's mental state of mind, or *mens rea*, is an essential element for a murder conviction and, therefore, should be a required element for felony murder. For these reasons, England abolished the doctrine and the rule never came into existence in France or Germany.[42] Kentucky and Hawaii have also abolished the doctrine.[43] Hawaii's reason for abolishing the doctrine is stated in its murder statute which reads: "It is not sound principle to convert an

[39].Aaron, 299 N.W.2d at 308.
[40].*Id*. at 312.; see also DRESSLER, supra note 7, at 521.
[41].Aaron, 299 N.W.2d at 312.
[42].DRESSLER, supra note 7, at 521.
[43].Aaron, 299 N.W.2d at 314.

accidental, negligent, or reckless homicide into a murder simply because, without more, the killing was in furtherance of a criminal objective of some defined class."[44]

Although some states, such as Michigan, Kentucky, Hawaii, and Ohio, have abolished the felony murder rule like England, the doctrine still stands in some form throughout the United States today.[45] Due to the rule's controversial nature, most states have adopted limited forms of the rule, such as: the inherently dangerous felony limitation, the independent felony or merger limitation, the agency approach and the proximate causation approach.[46] States such as New York, Alaska, Utah, Pennsylvania, and Louisiana have all reduced felony murder to second degree murder, and seven

[44].*Id*.
[45].Van Zanten, supra note 15, at 1572.
[46].Aaron, 299 N.W.2d at 315 (stating that the limitations of the felony murder rule include restrictions on the underlying felony which require that the death be a proximate cause of the felony, that the underlying felony be violent, forceful, or extremely dangerous to human life, that the felon or co-felon actually caused the death, that the death be a probable or reasonably foreseeable result of the felony, and that the victim is not one of the co-felons); see also DRESSLER, supra note 7, at 522-33.

states have limited and downgraded its punishment.[47]

A. The Inherently Dangerous Felony Limitation

Because anyone involved in the commission of a felony can be held liable if a death occurs, many states, including Florida, adopted the inherently dangerous felony limitation to the felony murder rule.[48] This means that only homicides that occur while perpetrating or attempting certain felonies that are inherently dangerous to human life are considered.[49] Pursuant to Section 782.04 of the *Florida Statutes*, some of these inherently dangerous felonies are trafficking, arson, sexual battery, robbery, burglary, kidnapping, aggravated child abuse, aggravated abuse of the elderly, and carjacking.[50]

---

[47].Aaron, 299 N.W.2d at 315.
[48].FLA. STAT. §782.04(4) (2016).
[49].DRESSLER, supra note 7, at 526.
[50].FLA. STAT. §782.04(4) (2016); Green v. State, 680 So. 2d 1067, 1068 (Fla. 3d Dist. Ct. App. 1996) (stating that a person will be found guilty of felony murder if he or she caused a death during the commission of any one of ten established dangerous felonies).

Courts often consider the elements of the crime instead of the actual facts of the case in the abstract to determine whether an offense is an inherently dangerous felony.[51] The Supreme Court of California in *People v. Burroughs*[52] reasoned that an offense is inherently dangerous if the crime, "by its very nature, . . . cannot be committed without creating a substantial risk that someone will be killed."[53] This means that there would need to be a "high probability that death will result"[54] in the crime in order to characterize the offense as an inherently dangerous felony.[55] Under this test, crimes like petty theft and false imprisonment are not considered inherently dangerous even if a death occurs during the perpetration of these crimes.[56]

On the other hand, many states only consider the facts and the surrounding circumstances of the specific case to determine whether an offense is an

[51].DRESSLER, supra note 7, at 526.
[52].678 P.2d 894 (Cal. 1984), overruled in part by People v. Blakeley, 999 P.2d 675 (Cal. 2000).
[53].*Id.* at 900; see also Dressler, supra note 7, at 526.
[54].DRESSLER, supra note 7, at 526.
[55].*Id.*
[56].*Id.*

inherently dangerous felony.[57] The Supreme Court of Rhode Island in *State v. Stewart*[58] held that "the facts and circumstances of the particular case [should] determine if such felony was inherently dangerous in the manner and the circumstances in which it was committed, rather than have a court make the determination by viewing the elements of a felony in the abstract."[59]

B. The Independent Felony Limitation

Under the independent felony limitation, or collateral felony limitation, a person could be found guilty of murder if the felony committed is "independent of, or collateral to, the homicide."[60] Some states, such as New York, adopted this limitation to the felony murder rule and have held that the felony murder rule can only apply if the felony committed was separate and independent

[57].*Id*. at 527.
[58].663 A.2d 912 (R.I. 1995).
[59].*Id*. at 919.
[60].DRESSLER, supra note 7, at 527.

from the homicide.[61] Florida, however, refuses to adopt this approach because it can be interpreted that a homicide committed during the commission of any felony would be considered felony murder instead of the specified limited dangerous felonies.[62]

C. The Agency Approach

Under the agency approach of the felony murder rule, an accomplice or co-felon of an offense can be held liable for a homicide committed by another even though the individual was just a secondary actor or an agent of the felon.[63] This approach applies regardless of whether or not the accomplice or co-felon formed the intent or *mens rea* necessary for murder because, under the felony murder rule, the intent the felon formed to commit the offense is transferred to the homicide.[64] "[T]he identity of the

[61].Robles v. State, 188 So. 2d 789, 792 (Fla. 1966).
[62].*Id*.
[63].DRESSLER, supra note 7, at 532; see also Hatchett, supra note 13, at 1051.
[64].State v. Amaro, 436 So. 2d 1056, 1059–60 (Fla. 2d Dist. Ct. App. 1983) (holding that the intent formed does not need to be the intent to

killer becomes the threshold requirement for finding liability under the felony-murder doctrine."[65] The doctrine's purpose is to "relieve the state of the burden of proving premeditation and malice because these elements are supplied by the underlying felony."[66] Therefore, malice aforethought is presumed on the basis of the commission or attempted commission of the felony.[67]

In *People v. Stamp*,[68] the Court of Appeal held that "no intentional act is necessary [under the rule] other than the attempt to or the actual commission of the robbery itself. When a robber enters a place with a deadly weapon with the intent to commit robbery, malice is shown by the nature of the crime."[69] Therefore, a defendant could be found

---

commit murder. Only the intent to participate in the underlying offense is necessary for a felony murder conviction); see also DRESSLER, supra note 7, at 525.

[65].Hatchett, supra note 13, at 1051 (alteration in original).

[66].*Id.* at 1056.

[67].People v. Stamp, 82 Cal. Rptr. 598, 602 (Ct. App. 1969). Malice aforethought and premeditation is imputed from the underlying felony in order to support a murder conviction under the felony murder doctrine. Hatchett, supra note 13, at 1047.

[68].82 Cal. Rptr. 598 (Ct. App. 1969).

[69].*Id.* at 602.

guilty of felony murder if a co-conspirator killed an innocent person just for participating in the underlying offense.[70] Many courts, including Florida, have held accomplices and those who aid and abet responsible for the crimes committed by their co-felons.[71] The defendant does not even need to be present at the time the homicide is committed.[72] In *State v. Amaro*,[73] the Second District Court of Appeal upheld the felony murder rule and stated that even though the death of the police officer was not premeditated, the homicide was still felony murder because the death occurred during a felony.[74] The court also held that "one who participates with others in a common criminal scheme is liable for all offenses committed in furtherance of the scheme, regardless of whether or

[70].DRESSLER, supra note 7, at 532.
[71].State v. Amaro, 436 So. 2d 1056, 1060 (Fla. 2d Dist. Ct. App. 1983).
[72].*Id.* at 1061; Mills v. State, 407 So. 2d 218, 222 (Fla. 3d Dist. Ct. App. 1981) (holding that the fact that the appellant was not present during the murder does not matter). "Appellant's presence during the actual killings is simply irrelevant for the purposes of this issue; the critical fact is his participation in the underlying felony." Mills, 407 So. 2d at 222.
[73].436 So. 2d (Fla. 2d Dist. Ct. App. 1983).
[74].*Id.* at 1061.

not the individual physically participates in the commission of the additional crime."[75]

Additionally, courts have often found that any homicide committed during, a part of, or in the furtherance of a felony is felony murder.[76] This means that homicides committed while fleeing from the scene of a crime are still considered to be a part of the underlying felony.[77] In *Mills v. State*,[78] it was held that "[i]n the absence of some definitive break in the chain of circumstances beginning with the felony and ending with the killing, the felony, although technically complete, is said to continue to the time of the killing."[79] The underlying felony continues to occur even if one of the accomplices is still in active flight from the scene of the crime and most of the other suspects have been arrested and

[75].*Id*. at 1060.
[76].*Id*. at 1061.
[77].*Id*.; see also State v. Hacker, 510 So. 2d 304, 306 (Fla. 4th Dist. Ct. App. 1986) (stating that the robbery was not completed until the car stopped, therefore, the murder that occurred while the defendants were fleeing is considered felony murder).
[78].407 So. 2d 218 (Fla. 3d Dist. Ct. App. 1981).
[79].*Id*. at 221; see also State v. Williams, 776 So. 2d 1066, 1070 (Fla. 4th Dist. Ct. App. 2001) (stating "what the Supreme Court calls 'a break in the chain of circumstances' between the killing and the underlying felony, courts focus on the time, distance, and causal relationship between the underlying felony and the killing).

are detained because the co-felon's participation in the felony is still ongoing.[80]

Felons are also liable for deaths that are unforeseeable.[81] Suppose during a bank robbery, one of the bank tellers had a massive heart attack and died after the robbery. The bank robbers would be liable for the death even though the health of the victim was unknown and unforeseen at the time. This distinction also applies if the felons leave the scene of a crime and cause a car crash during the escape. The felons would be held liable for the deaths that resulted from the unexpected car accident. The defendants in *Stamp* were convicted of felony murder after one of the victims died twenty minutes after the robbery.[82] The victim was an obese elderly man with a history of heart disease and had an advance case of atherosclerosis, which is a fatal disease.[83] Even though the victim had a history of bad health and a fatal disease, the

[80].State v. Amaro, 436 So. 2d 1056, 1060 (Fla. 2d Dist. Ct. App. 1983).
[81].People v. Stamp, 82 Cal. Rptr. 598, 603 (Ct. App. 1969).
[82].*Id.* at 601.
[83].*Id.*

defendants were responsible for the death because it occurred during the commission of the felony.[84]

D. The Proximate Causation Approach

There are only a small number of states that follow the proximate causation approach of the felony murder rule.[85] Under the proximate causation approach, a person could be found guilty of murder for any death that occurs as a direct result of the felony, regardless of whether the death was caused by a co-felon or a third party such as a police officer or innocent bystander.[86] Therefore, if a police officer shot and killed one of the suspects of a bank robbery, the other suspect can be found liable for the death of the co-conspirator even though the accomplice was not the shooter and did not do the actual killing. The same applies if the shooter was a victim of an attempted burglary. Any accomplice to the underlying felony can be found

[84].*Id*.
[85].DRESSLER, supra note 7, at 533; see also Hatchett supra note 13, at 1052 (stating only a minority of states follow the proximate cause approach).
[86].DRESSLER, supra note 7, at 533.

guilty of felony murder due to the death that was a direct result of the felony.[87]

There are some cases in Florida that have followed the proximate causation approach and have held defendants responsible for deaths that have occurred by third parties.[88] Examples of such cases are when the victims were police officers or bystanders killed by other police officers.[89] The reasoning for this approach is:

> [W]hen a felon's attempt to commit a forcible felony sets in motion a chain of events which were or should have been within [the felon's] contemplation when the motion was initiated, [the felon] should be held responsible for any death which by direct and almost inevitable sequence results from the initial criminal act.[90]

[87].All participants are held liable for any and all deaths caused by others during the commission of the felony. Hatchett supra note 13, at 1051.
[88].State v. Williams, 254 So. 2d 548, 549 (Fla. 2d Dist. Ct. App. 1971).
[89].*Id*.
[90].DRESSLER, supra note 7, at 533.

For example, in *Mikenas v. State*,[91] the Florida Supreme Court affirmed a felony murder conviction after the defendant's co-felon was killed by a police officer.[92] The court reasoned that the Florida second degree felony murder statute does not preclude applying the felony murder rule to situations where the death is a co-conspirator.[93] Since the statute states when "a person is killed,"[94] the "person" in the statute refers to "any person" and not just "innocent" persons.[95]

IV. THE INSANITY DEFENSE

In order to raise the affirmative defense of insanity, the defendant has the burden of proving his or her mental condition at the time the offense was committed and must provide evidence that he

[91].367 So. 2d 606 (Fla. 1978) (per curiam).
[92].*Id.* at 607.
[93].*Id.* at 609.
[94].*Id.* at 608.
[95].*Id.* The statute "provides that one who perpetrates a felony commits murder if 'a person' is killed — without limitation on the term 'person'—the court upheld the felony-murder conviction." Hatchett supra note 13, at 1065.

or she suffers from a mental disease or defect.[96] In Florida, the defendant has the burden of proving insanity by clear and convincing evidence.[97] "Clear and convincing evidence is evidence that is precise, explicit, lacking in confusion, and of such weight that it produces a firm belief, without hesitation, about the matter in issue."[98] If the defendant is able to prove insanity, in some instances, he or she can be excused of the crime and will not be convicted.[99]

A mental disease or defect is "any abnormal condition of the mind which substantially affects mental or emotional processes and substantially impairs behavior controls."[100] In order to determine a person's legal culpability, there are three main types of tests used to determine insanity: The *M'Naghten* test; the irresistible impulse test; and the product test.[101]

---

[96].DRESSLER, supra note 7, at 344.
[97].FLA. STAT. § 775.027 (2016).
[98].Rodriguez v. State, 172 So. 3d 540, 542 (Fla. 5th Dist. Ct. App. 2015).
[99].DRESSLER, supra note 7, at 345.
[100].*Id*. at 349.
[101].*Id*. at 346.

A. The *M'Naghten* Test

There are currently seventeen states, including Florida and the federal government, that follow the *M'Naghten* test, which is a cognitive-based test, to determine if a person is legally insane.[102] Under the *M'Naghten* test of insanity, "an accused is not criminally responsible if, at the time of the alleged crime, the defendant, by reason of a mental disease or defect, (1) does not know of the nature or consequences of his or her act; or (2) is unable to distinguish right from wrong."[103]

In regards to the right and wrong element of the *M'Naghten* test, whether or not a person actually believed his or her actions were morally wrong is not important, rather, whether he or she "knowingly violated societal standards of morality" is evaluated.[104] Therefore, the defendant is not insane

[102].*Id*. at 350.
[103].Rodriguez, 172 So. 3d at 543; see also DRESSLER, supra note 7, at 350 (stating a person is deemed legally insane if he or she was suffering from a mental disease and he or she: "(1) did not know the nature and quality of the act that she was doing; or (2) if she did know it, . . . did not know the difference between right and wrong" at the time the act was committed).
[104].DRESSLER, supra note 7, at 351.

if he or she "commits an offense that [he or] she knows society will condemn, even if (as a result of mental illness) [he or] she is personally convince[d] [his or] her conduct is morally proper."[105]

B. The Irresistible Impulse Test

Currently, there are only three states that follow the irresistible impulse test to determine insanity.[106] The irresistible impulse test adds a volitional element to the *M'Naghten* test.[107] Under this test, a person is deemed legally insane if, at the time the offense was committed, he or she:

> (1) acted from an irresistible and uncontrollable impulse; (2) lost the *power to choose* between right and wrong, and to avoid doing the act in question; . . .or (3) the [defendant's] will . . . has been otherwise than voluntarily so completely destroyed that [her] actions are not subject to it, but are beyond [her] control[108]

[105].*Id*.
[106].*Id*. at 353.
[107].*Id*.
[108].*Id*. (alteration in original).

C. The Product Test

The product test, also known as the Durham Rule, was first introduced in New Hampshire in *Durham v. United States*.[109] Under the product test, the defendant would not be held criminally responsible for his or her criminal acts, if the "unlawful act was the product of a mental disease or defect."[110] Therefore, if the fact finder determines that the defendant had a mental disease or defect at the time the offense was committed, and his or her acts were the result of the mental disease or defect, then the defendant would not be convicted of the crime.[111]

New Hampshire is the only state that currently follows the product test because this test is heavily criticized by the courts.[112] When the test was first implemented, the essential element that required the defendant to have a mental disease or defect was

[109].214 F.2d 862 (D.C. Cir. 1954), overruled by United States v. Brawner, 471 F.2d 969 (D.C. Cir. 1972); see also DRESSLER, supra note 7, at 355.
[110].DRESSLER, supra note 7, at 355.
[111].*Id.*
[112].*Id.*

never defined.[113] The uncertainty in the meaning of the phrase left many inconsistencies in case decisions because the fact finder had to rely solely on mental health professionals and expert witnesses to determine whether the defendant was insane.[114]

D. The Standard in Florida

In Florida, the insanity defense can be raised if the defendant had a mental disease or defect that caused the defendant to either not know what he or she was doing at the time the act was committed, or "kn[o]w what he or she was doing and its consequences, [but]…not know that what he or she was doing was wrong."[115] This evaluation is the *M'Naghten* test.[116] Because Florida only recognizes

[113].*Id*.
[114].*Id*. at 355–56.
[115].FLA. STAT. § 775.027 (2016). A person is legally insane if: He or she "had a mental infirmity, disease, or defect [and b]ecause of this condition, [he] [she] did not know what [he] [she] was doing or its consequences or although [he] [she] knew what [he] [she] was doing and its consequences, [he] [she] did not know it was wrong." Rodriguez v. State, 172 So. 3d 540, 542 (Fla. 5th Dist. Ct. App. 2015) (alteration in original).
[116].The M'Naghten test has "long been the legal test in Florida for determining insanity in criminal cases." Rodriguez, 172 So. 3d at 543.

a cognitive-based test for insanity and does not recognize the volitional element of the irresistible impulse theory, many defendants do not get a fair opportunity to be heard.[117]

In *Van Eaton v. State*,[118] the defendant, Richard Van Eaton, was convicted of murder even though he had "a sociopathic personality disturbance."[119] Sociopathic personality disturbance is a mental illness that causes the person to disrespect societal standards because he or she cannot abide by the rules and regulations society sets.[120] The defendant's psychiatrist testified that a person with sociopathic personality disturbance may know the difference between right and wrong and can plan and facilitate murder, but the person cannot control his or her actions due to the mental disease.[121] Even though the defendant knew the difference between right and wrong, and is therefore deemed legally sane under the *M'Naghten* test, Van Eaton was

[117].Van Eaton v. State, 205 So. 2d 298, 303 (Fla. 1967).
[118].205 So. 2d 298 (Fla. 1967).
[119].*Id.* at 302.
[120].*Id.*
[121].*Id.*

incapable of controlling his actions due to the mental disease.[122] Van Eaton would be considered legally insane under the irresistible impulse test if Florida applied this standard of insanity instead of the *M'Naghten* test.[123] However, because Florida does not recognize the impulse theory, the defendant was found guilty of murder.[124] The court stated:

> [T]his Court was urged to abandon the 'right or wrong' test (the rule in *M'Naghten*) in favor of the 'irresistible impulse' or 'moral insanity' test adopted by New Hampshire and the similar rule adopted by the [C]ourt of [A]ppeal for the District of Columbia . . . [W]e have not been convinced that the *M'Naghten* rule is not the best available rule for measuring the mental condition of the individual in terms of accountability for criminal acts. We therefore adhere to the Rule in *M'Naghten's* case as do all other

[122].*Id.*
[123].Van Eaton v. State, 205 So. 2d 298, 302–03 (Fla. 1967).
[124]."The irresistible impulse rule, however, has never been followed in this jurisdiction; therefore, the language of the Second District . . . which could be construed as approving the irresistible impulse rule is hereby disapproved." *Id.* at 304.

> jurisdictions except the two above mentioned.[125]

Consequently, the *M'Naghten* test is often heavily criticized because it is outdated and not current with the continuously changing modern rules of insanity.[126] The *M'Naghten* test is outdated because it bases insanity solely on the mental element of the mental disease and does not take into account the person's uncontrollable actions that can be a result of the mental disease.[127] "A cognitive disorder is one that undermines a person's ability to perceive reality accurately. [Whereas a] volitional disorder is one that undermines a person's ability to control her conduct."[128]

A person, who cannot control his or her actions due to a legitimately classified mental illness, should be able to raise the insanity defense even though he or she may be able to distinguish between right and wrong because the individual's actions

[125].*Id*. at 303.
[126].*Id*.; see also DRESSLER, supra note 7, at 352.
[127].DRESSLER, supra note 7, at 352.
[128].*Id*. at 345 n.40.

were beyond that person's control.[129] Punishing a defendant who is incapable of controlling his or her actions because of a mental illness is highly inappropriate and morally wrong.[130]

In *Rodriguez v. State*,[131] the defendant, Jason Rodriguez, was charged with first degree murder for a shooting spree he committed that left five employees of the defendant's former place of employment wounded and one killed.[132] Rodriguez raised the insanity defense at trial and provided seven expert witnesses who all testified that the defendant was a paranoid schizophrenic suffering from hallucinations and delusions.[133] The expert witnesses also testified that Rodriguez was legally insane under the *M'Naghten* test because he could not distinguish between right and wrong during the time the shooting spree occurred.[134] However, the

[129].*Id*. at 352–53.
[130].*Id*. at 352.
[131].172 So. 3d 540 (Fla. 5th Dist. Ct. App. 2015).
[132].*Id*. at 542.
[133].*Id*.
[134].*Id*.

prosecution requested to introduce a jury instruction on hallucinations instead.[135]

The Fifth District Court of Appeal held that the trial court erred in allowing the hallucinations instruction in the defendant's trial because only the *M'Naghten* test can be used in Florida to determine insanity.[136] The Court also held that "even if the hallucinations instruction was applicable and if the jury found Rodriguez insane under the *M'Naghten* instruction, the hallucinations instruction could not be used by the State to suggest or argue that Rodriguez should nevertheless be found sane."[137] The defendant was only required to prove that he could not distinguish between right and wrong for a jury to find him "not guilty by reason of insanity."[138] "No further 'critical element or evaluation' was required."[139]

---

[135].*Id*. at 543.
[136].Rodriguez, 172 So. 3d at 545. "Pursuant to [S]ection 775.027, any issue of insanity is to be determined solely under the M'Naghten Rule." *Id*. at 543 (emphasis added).
[137].*Id*. at 546.
[138].*Id*.
[139].*Id*.

V. CASE STUDIES OF THE MENTALLY ILL

A. Anthony A. Hall

In *Hall v. State*,[140] the defendant, Anthony A. Hall, and three other individuals devised a plan to stop a car in the middle of the road to rob and steal that person's vehicle.[141] They posed as hitchhikers, and when a vehicle stopped, they attacked the driver, bound his wrists, mouth, head, and ankles with tape, and placed him in the trunk of the car.[142] The gang later drove the car into the woods where one of the individuals, Bunny Dixon, performed what Hall described as a "satanic ritual"; and carved a cross on the victim's chest and stomach.[143] The others, including Hall, then shot and killed the victim seven times.[144] Hall was subsequently arrested and found guilty of both felony and premeditated murder.[145]

---

[140].568 So. 2d 882 (Fla. 1990) (per curiam).
[141].*Id*. at. 883.
[142].*Id*.
[143].*Id*. at 883–84.
[144].*Id*. at. 883.
[145].Hall, 568 So. 2d at 883.

During his trial, the trial court refused to allow expert witness testimony that would have supported Hall's claim that he was insane at the time the felony was committed because the court did not recognize his defense.[146] According to Hall's expert witnesses, Hall was temporarily insane at the time the murder was committed and was "under the influence of both Satan and/or Bunny Dixon and therefore [was] robbed of his free will."[147] He also could not distinguish between right and wrong under the *M'Naghten* test of insanity at the time the offense was committed.[148]

Finding that the trial court erred in refusing to allow Hall to present his defense of insanity, the Florida Supreme Court reversed his conviction and remanded the case to the trial court for a new trial.[149] The Supreme Court held that even though the trial court holds the discretion on determining whether to allow expert testimony, the trial court clearly erred by refusing to allow the testimony

[146].*Id*.
[147].*Id*. at 884.
[148].*Id*.
[149].*Id*. at 883.

because one of Hall's expert witnesses was significantly qualified to produce testimony pertaining to Hall's mental state, and it was clearly relevant to the case.[150] Hall's expert witness was a clinical psychologist specialized in interpreting a person's mental state of mind.[151] The psychologist was able to determine that Hall "displayed characteristics of individuals with schizophrenic disorders and that, on the day of the shooting, Hall was operating with a state of altered consciousness brought on by extreme stress."[152] Therefore, Hall was not able to distinguish right from wrong at the time the murder was committed and should not have been convicted of felony murder.[153]

B. Calvin Carlos Campbell

In *Campbell v. State*,[154] the appellant, Calvin Carlos Campbell, was convicted of first-degree murder without recommendation of mercy after a

[150].Hall, 568 So. 2d at 884.
[151].*Id.*
[152].*Id.* at 885.
[153].*Id.*
[154].227 So. 2d 873 (Fla. 1969).

police officer was shot and killed.[155] After robbing a bank in Kingsland, Georgia, Campbell fled the scene in a rented vehicle and a chase by law enforcement officials from both Georgia and Florida ensued.[156] During pursuit by law enforcement officials, Campbell lost control of his car and crashed into a dich.[157] The officer in pursuit ordered the appellant out of the car and attempted to detain him in handcuffs, when Campbell overpowered the officer, took the gun from the officer's holster, and shot the officer twice.[158] Campbell then continued to escape in the officer's patrol car when he was later apprehended at a road block.[159]

Campbell pled not guilty by reason of insanity and denied having the intent to shoot the officer.[160] Campbell also pleaded with the court to consider the irresistible impulse test, as opposed to the *M'Naghten* "right or wrong" test, to determine his

[155].*Id*. at 875.
[156].*Id*.
[157].*Id*.
[158].*Id*.
[159].Campbell, So. 2d at 875.
[160].*Id*.

mental state of mind and whether Campbell was legally insane at the time the offense was committed.[161] However, Campbell was prevented from introducing expert testimony that he "had little control over his impulsive behavior," and was not able to "conform his acts to the requirements of the law"[162] because Florida only follows the *M'Naghten* test to determine insanity.[163]

Campbell was convicted of first-degree murder because the Florida Supreme Court determined that the robbery offense was not yet completed at the time the officer was killed.[164] The felony continued from the time the robbery was committed and for the duration of the escape, until Campbell was finally apprehended at the roadblock.[165] The Supreme Court held that "[a]lthough separated by time and space from the original felony, . . . it is

[161].*Id*. at 877.
[162].*Id*.
[163].See Van Eaton v. State, 205 So. 2d 298, 302 (Fla. 1967) (stating that the M'Naghten test of insanity has been implemented in the State of Florida for over one hundred years). The M'Naghten test is the best test for determining whether a defendant is legally culpable for his or her criminal acts. Campbell, So. 2d at 877.
[164].Campbell, So. 2d at 878.
[165].*Id*.

clear that, in the circumstances, the death of [the officer] was the inevitable result of and an integral part of the same transaction, i.e., the robbery."[166] Even though Campbell was found guilty, Campbell should have been allowed the opportunity to raise his defense of insanity and produce his expert witness in the matter of justice and due process.

C. Ivonne Rosso

In *Rosso v. State*,[167] the defendant, Ivonne Rosso, was convicted of attempted first degree murder, second degree murder, and unlawful possession of a firearm during the commission of a criminal offense for shooting her roommate and her fifteen year old neighbor.[168] Although the roommate survived the attack, the fifteen year old did not, and later died.[169] Rosso introduced two expert witnesses during the trial, who testified that Rosso cannot be held criminally responsible

[166].*Id.*; see also State v. Hacker, 510 So. 2d 304, 306 (Fla. 4th Dist. Ct. App. 1986).
[167].505 So. 2d 611 (Fla. 3d Dist. Ct. App. 1987) (per curiam).
[168].*Id.*
[169].*Id.*

because Rosso suffered from a mental illness at the time the offense occurred.[170]

In the prosecution's opening and closing arguments, the prosecutor continuously criticized and belittled Rosso's insanity defense.[171] The prosecutor criticized the insanity defense by making statements that denounced the defense as just a means for getting away with murder even though Rosso was able to provide evidence that she was legally insane at the time the murder was committed under the *M'Naghten* Rule.[172] During the prosecution's closing argument, the prosecutor made demeaning comments and defined the insanity defense with the following statement: "The defense by which a person comes into [c]ourt and says, 'I murdered a 15 year old girl and almost murdered my best friend and blew her eye away, and I get to walk. I get to get off. I am not legally guilty. I am not responsible.'"[173]

[170].*Id.*
[171].*Id.* at 612.
[172].Rosso, 505 So. 2d at 611–12.
[173].*Id.* at 612.

The District Court of Appeal agreed with the defense that the prosecution's statements were improper and reversed the conviction for a new trial.[174] The court held that the "statements were derogatory of both Rosso's failure to testify and her legitimate insanity defense."[175] The court also found that the "prosecutor's statements were of such magnitude as to achieve fundamental error, thus rendering this error amenable."[176] Because the prosecutor's statements were improper, the Third District correctly remanded the case for a new trial. False statements such as the ones the prosecutor made, are considered to be prosecutorial misconduct because they deny the defendant the unmistakable right to a fair trial.[177]

[174].*Id*. at 616.
[175].*Id*. at 612.
[176].*Id*. at 613. "While [a] prosecutorial comment in reference to the defense generally as opposed to the defendant individually cannot be 'fairly susceptible' of being interpreted by the jury as referring to the defendant's failure to testify, . . . the comments here were specifically directed toward Rosso individually and toward her personal insanity defense." Rosso, 505 So. 2d at 613 (alteration in original).
[177].*Id*.

VI. THE FELONY MURDER RULE'S EFFECT ON JUVENILE DEFENDANTS—A COMPARISON

Considering the fact that one of the main reasons why the felony murder doctrine is so controversial is because the required element of proving criminal intent is not necessary,[178] it is particularly clear that this doctrine should not be applied to juvenile defendants. Instead, juveniles should be charged for their crimes within the juvenile justice system. Based on the infancy defense, it is presumed that juveniles between the ages of seven and fourteen are unable to form the necessary criminal intent required for criminal culpability.[179] "The common law infancy defense can be stated as 'children under the age of seven are conclusively presumed to be without criminal capacity, [while] those who have reached the age of fourteen are treated as fully responsible, . . . those between the ages of seven and fourteen [are given] a rebuttable presumption of criminal

[178].Van Zanten, supra note 15, at 1567.
[179].Drizin & Keegan, supra note 11, at 529.

incapacity.'"[180] This defense demonstrates the law's "unwillingness to punish those thought to be incapable of forming criminal intent."[181]

Additionally, the felony murder rule should not be applied to juvenile defendants because longstanding developmental and psychological research has proven that juveniles under the age of fourteen lack the cognitive capacity necessary to complete these crimes,[182] which is similar to mentally ill defendants, who lack the cognitive capacity to commit some of their crimes. Proven research studies have established that children under the age of fifteen are more susceptible to coercion and influence, such as peer pressure; are more impulsive; and are less equipped to realize future consequences of their actions than adults.[183]

---

[180].*Id*.
[181].*Id*.
[182].*Id*. at 508. "This research reveals that many pre-adolescents and adolescents are not competent to stand trial, [are] incapable of understanding the legal proceedings against them, and [are] unable to meaningfully assist in their own defense." *Id*. (footnote omitted).
[183].*Id*.; see also Christie Thompson, Charged with Murder Without Killing Anyone: The Paradox of "Felony Murder" Laws, THE MARSHALL PROJECT, https://www.themarshallproject.org/2015/09/24/a-person-can-be-charged-with-murder-even-if-they-haven-t-killed-anyone#.qyot4Iv52

Research also shows that juveniles react differently and go through different decision-making processes than adults.[184] The inability to control certain impulses and the psychological disadvantages compared to that of an adult, make the felony murder rule particularly unfair to apply to juveniles—especially when it comes to unintentional crimes.

In 2012, the Supreme Court in *Miller v. Alabama*[185] held that mandatory life sentences without the possibility of parole for juvenile defendants were unconstitutional.[186] Supreme Court Justice Stephen Breyer stated in his concurring opinion that "'the kinds of homicide that can subject a juvenile offender to life without parole must exclude instances where the juvenile himself neither

(last visited Mar. 3, 2017) ("Felony murder laws are especially controversial when it comes to children because, lawyers and advocates claim, they can be easily manipulated into playing a role in an older offender's crime.").

[184].Drizin & Keegan, supra note 11, at 508. "[E]merging research from the field of neuroscience, using MRIs and other technologies which scan the brain, suggests that differences in the organic structure and function of the teenage brain extend these disabilities in impulse control and decision-making into the late teens and early twenties." *Id*. at 509.

[185].132 S.Ct. 2455 (2012).

[186].*Id*. at 2469; Thompson supra note 184.

kills nor intends to kill the victim.'"[187] There are many cases that demonstrate the unjustness of the felony murder rule when applied to juvenile defendants. In 2005, a report conducted by Human Rights Watch and Amnesty International reported that out of all the juvenile defendants sentenced to life without parole, 26% had been convicted of felony murder.[188]

A. Corey Rocker

At the age of sixteen, Corey Rocker was arrested and convicted for felony murder and was sentenced to life in prison for being at the wrong place at the wrong time.[189] After 18 year old Brennon Darvane Days was shot and killed by Mitterrio D. Banks in his car, Rocker was arrested along with Banks, and served more than eight years

[187].Miller, 132 S.Ct. at 2476; Thompson supra note 184.
[188].Thompson, supra note 184.
[189].Craig Pittman, Judge Tosses Out Felony Murder Conviction for Man Who Never Touched Gun, TAMPA BAY TIMES (Sept. 30, 2016), available at http://www.tampabay.com/news/courts/criminal/judge-tosses-out-felony-murder-conviction-for-man-who-never-touched-gun/2295971.

in prison simply for being affiliated with Banks.[190] During his trial, it was determined that Banks fired the bullet that killed the 18 year old, and Rocker had never even seen or held the gun.[191] "[N]o witness saw Rocker at or near [the victim's] car during the shooting [and] 'Rocker was not carrying the pistol, and made no demand for money.'"

Nonetheless, Rocker was convicted under Florida's felony murder rule and served eight years in prison until an appellate court realized the harshness of his conviction and threw it out.[192] "[T]he appellate court ruled that without proof he was committing one of the designated felonies, he could not be convicted of murder, much less sent to prison for the rest of his life."[193] The state later appealed, but the Florida Supreme Court refused to hear the case.[194]

---

[190].*Id*.
[191].*Id*.
[192].*Id*.
[193].*Id*.
[194].Pittman, supra note 190.

B. Curtis Shuler

Curtis Shuler was only 16 years old when he was charged with attempted burglary and first-degree felony murder for the death of Larry Steven Tyler during a four day shooting spree in Hines City, Florida in 1998.[195] Shuler was convicted of murder even after eye witness testimony revealed he was not present during the shooting.[196] Additionally, one of the other perpetrators of the shooting spree later recanted his testimony that Shuler was involved in the burglary, and testified that Shuler was not present during the murder.[197] However, the jury still convicted Curtis Shuler of first-degree felony murder even though the jury found him not guilty for the murder due to the

[195].Melissa Higgins, Eliminate Florida's Felony Murder Rule, CHANGE.ORG, https://www.change.org/p/eliminate-florida-s-felony-murder-rule, (last visited Mar. 3, 2017); Jeff Scullin, Jury Finds Shuler Guilty of Murder, THE LEDGER (Mar. 29, 2003), available at http://www.theledger.com/news/20030329/jury-finds-shuler-guilty-of-murder.
[196].Higgins, supra note 196; Scullin, supra note 196.
[197].Higgins, supra note 196.

felony murder rule.[198] After his trial, Shuler's attorney, Gil Colon Jr., was stunned by the verdict and stated, "'[i]t's a little puzzling because the jury, on their own, rejected [the prosecution's and the defense's] theory. They obviously did not believe he was the shooter,' but thought he was there."[199]

Shuler maintained his innocence and refused to accept a plea deal from the state after prosecutors offered him a 12 year sentence as opposed to a life sentence in prison.[200] Had Shuler accepted the plea agreement, he would have only had to serve five additional years of that sentence due to the time he already served in prison.[201] Shuler refused to accept the plea deal, and refused to plead guilty to a murder that he did not commit.[202] "'This young man gambled a life sentence for what was a few years,' Colon said. '(But) he says he's not guilty . . . . Obviously, he's not happy with the verdict. He's

[198].*Id.* "[T]he felony murder doctrine allowed the courts to give [Shuler] the maximum sentence possible: life without any possibility of parole." *Id.*
[199].Scullin, supra note 196.
[200].*Id.*
[201].*Id.*
[202].*Id.*

not happy with the sentence. Now, if the appeal fails, he's going to die in prison.'"[203]

VII. THE ROLE OF THE DURESS DEFENSE IN FELONY MURDER

The felony murder rule is also often condemned because it prohibits defenses such as self-defense and duress.[204] Duress, which is similar to coercion, excuses criminal actions "where 'the actor was under an unlawful threat of imminent death or serious bodily injury, which threat caused the actor to engage in conduct violating the literal terms of the criminal law' . . . 'unless that crime consists of *intentionally* killing an innocent third person."[205] The duress defense can be established by proving that the defendant was under an "immediate threat

[203].*Id*. (alteration in original).
[204]."[T]he defense of duress is not available, as a matter of law, to a charge of killing a person in the course of a bank robbery, sometimes informally called federal felony murder." United States v. Johnson, 416 F.3d 464, 466 (6th Cir. 2005).
[205].Steven J. Mulroy, The Duress Defense's Uncharted Terrain: Applying It to Murder, Felony Murder, and the Mentally Retarded Defendant, 43 SAN DIEGO L. REV. 159, 164 (2006); see also Hunt v. State, 753 So. 2d 609, 613 (Fla. 5th Dist. Ct. App. 2000) (emphasis added).

of death or serious bodily injury,"[206] there was "a well-grounded fear that the threat would be carried out,"[207] and there was "no reasonable opportunity to avoid the threatened harm."[208]

In order to establish a claim of duress, the defendant must provide sufficient evidence to establish the six required elements of the defense:

1. the defendant reasonably believed that a danger or emergency existed that he did not intentionally cause;

2. the danger or emergency threatened significant harm to himself or a third person;

3. the threatened harm must have been real, imminent, and impending;

4. the defendant had no reasonable means to avoid the danger or emergency except by committing the crime;

[206].*Id*. at 165.
[207].*Id*.
[208].*Id*.

5. the crime must have been committed out of duress to avoid the danger or emergency; and

6. the harm the defendant avoided outweighs the harm caused by committing the crime.[209]

In *Cawthon v. State*,[210] a case of first impression in Florida involving the duress defense for murder, the First District Court of Appeal held that "coercion [or duress] does not excuse or justify the murder or attempted murder of an innocent third party."[211] The appellant testified that the sole reason the appellant shot and killed the victim was because members of his immediate family were being threaten with harm.[212] However, the court refused to allow a coercion instruction because "the evidence did not show that the danger was imminent or impending within the meaning of the

[209].Mickel v. State, 929 So. 2d 1192, 1196 (Fla. 4th Dist. Ct. App. 2006).
[210].382 So. 2d 796 (Fla. 1st Dist. Ct. App. 1980).
[211].*Id*. at 797; see also Hunt v. State, 753 So. 2d 609, 613 (Fla. 5th Dist. Ct. App. 2000) (stating duress is not a defense to an intentional homicide).
[212].Cawthon, 382 So. 2d at 797.

case law [and] the availability of the defense should not be extended to the commission of, or the attempted commission of, homicide."[213]

The Third District Court of Appeal in *Wright v. State*[214] also held that the defendant was not entitled to an instruction on duress because the duress defense is not an acceptable defense for a murder charge.[215] Duress is only available as a defense to other crimes in Florida.[216] The court reasoned that "a reflection that the rule that duress will never justify the killing of an innocent third party accords with the mores of our society. [This Court] unhesitatingly adopt the rule that duress is not a defense to an intentional homicide."[217]

In *Hunt v. State*,[218] the defendant was convicted of first-degree murder for shooting and killing a victim who was tied to a tree.[219] The defendant testified that at the time the murder was committed,

---

[213].*Id*.
[214].402 So. 2d 493 (Fla. 3d Dist. Ct. App. 1981).
[215].*Id*. at 497.
[216].*Id*.
[217].*Id*. at 498; see also Hunt v. State, 753 So. 2d 609, 613 (Fla. 5th Dist. Ct. App. 2000).
[218].753 So. 2d 609 (Fla. 5th Dist. Ct. App. 2000).
[219].*Id*. at 611.

her boyfriend had a rifle pointed at her head and demanded that she shoot the victim, or else she would be killed.[220] The defendant also testified that the only reason she killed the victim was because she was under the direct control of her boyfriend.[221] Evidence was introduced at trial to show the continuing pattern of abuse, threat, and intimidation the defendant endured, "which ultimately deprived [the defendant] of the ability to even resist, let alone disobey" her boyfriend.[222] The defendant also introduced testimony from expert witnesses, who testified that the defendant's boyfriend continuously preformed sadistic rituals on the defendant such as cutting her with knives and razors, burning her flesh with cigarettes, sucking her blood, and several other acts of torture, causing the defendant to be entirely dependent on her boyfriend due to her mental illness.[223] Even after the evidence of torture and intimidation was presented, the court still disagreed with the defendant's claim of duress and affirmed

[220].*Id.*
[221].*Id.*
[222].*Id.* at 611–12.
[223].Hunt, 753 So. 2d at 611.

the conviction.[224] The court held that coercion was not an acceptable excuse to murder and the defendant made a "conscious decision" to kill the victim.[225]

The idea that duress cannot be a valid defense to felony murder is unreasonable because the general rule does not consider circumstances when the actual killing was caused by a co-felon or was unforeseen. Suppose the defendant was coerced and threaten into kidnapping a person for the principal offender and the principal offender then shot and killed the individual, the defendant who was coerced into kidnapping the victim would not be able to raise the defense of duress because an innocent third person was killed. In instances when the defendant is merely present due to coercion or assisting a co-felon during a crime, the defendant also cannot raise the duress defense if a murder

[224].Common law has "refused to recognize any compulsion, even the threat of death, as sufficient to excuse taking the life of another." Wright v. State, 402 So. 2d 493, 498 (Fla. 3d Dist. Ct. App. 1981) (quoting Jackson v. State, 558 S.W.2d 816, 820 (Mo. Ct. App. 1977); see also Hunt, 753 So. 2d at 613.
[225].Hunt, 753 So. 2d at 616.

occurs from the underlying felony.[226] Additionally, under the utilitarian perspective of deterrence, there is no relevant evidence that supports the idea that prohibiting the duress defense in felony murder and murder convictions actually deters an individual from killing another if he or she is under the immediate threat of harm and there is no reasonable means to escape the danger.[227]

VIII. SHOULD THE FELONY MURDER RULE BE UNCONSTITUTIONAL?

The felony murder rule was first established when essentially every felony was punishable by death.[228] Therefore, during early common law, it did not matter whether the defendant was punished for the underlying felony or whether the defendant was punished for the death that occurred during the course of the felony.[229] Now, however, the purpose of the doctrine is to "protect the public from

[226].Mulroy, supra note 214, at 206.
[227].*Id*. at 175.
[228].People v. Aaron, 299 N.W.2d 304, 310 (Mich. 1980).
[229].*Id*. at 311.

inherently dangerous situations caused by the commission of the felony."[230]

The rule was also established to deter gross negligent and accidental deaths by making everyone involved in the felony strictly liable for any and all deaths that occur during the commission or attempted commission of the felony.[231] The deterrence approach consists of two parts: "(1) the felony-murder rule deters a felon from acting negligently or accidentally during the commission of the felony; and (2) the felony-murder rule deters people from taking part in dangerous felonies in the first place."[232] The deterrence theory is accomplished by creating a "deterrent to the commission of [inherently dangerous] felonies by substituting the mere intent to commit those felonies for the premeditated design to effect death which would otherwise be required in first degree murder if someone were killed in the commission

[230].State v. Hacker, 510 So. 2d 304, 306 (Fla. 4th Dist. Ct. App. 1986); State v. Williams, 776 So. 2d 1066, 1069 (Fla. 4th Dist. Ct. App. 2001).
[231].DRESSLER, supra note 7, at 523.
[232].Van Zanten, supra note 15, at 1570; see also Hatchett supra note 13, at 1048.

thereof."[233] In reality, however, this deterrence approach fails because a felon cannot be deterred from committing an accidental or unforeseen act.[234] Although the felon has the intention to commit the underlying felony, the resulting death is often unintended and cannot be deterred.[235]

The felony murder rule can also be justified under the retribution theory.[236] Under the retributive approach, "[h]e whose felonious act is the proximate cause of another's death is criminally responsible for that death and must answer to society for it . "[237] This is explained by the just deserts theory.[238] Because a crime in which a death occurs is far more serious than one in which a death does not occur, the felon deserves a more serious punishment for the death.[239] Therefore, under this approach, the defendant should be held criminally

[233].Hacker, 510 So. 2d at 306.
[234].Van Zanten, supra note 15, at 1570.
[235].*Id*.
[236].*Id*. at 1571; Hatchett supra note 13, at 1048.
[237].Van Zanten, supra note 15, at 1570; see also Hatchett supra note 13, at 1048 (stating "a crime during which an individual is killed 'should be punished more severely than the same crime that does not [result] in death.") (alteration in the original).
[238].Hatchett supra note 13, at 1050.
[239].*Id*.

liable and punished for his or her actions regardless of whether the death was accidental or negligent.

Criticisms of both approaches of the felony murder doctrine, the utilitarian theory and the retributivism theory, reveal that punishment for defendants with mental illnesses is pointless.[240] Under the utilitarian perspective, defendants with a mental disease or defect cannot be deterred from felony murder because, most of the time, the mental illness causes the person to act against the person's own free will and the individual cannot distinguish between right and wrong. If the purpose of the utilitarian approach is to deter future crimes, this has no effect on defendants with mental illnesses. Punishment under the retributivism perspective is also pointless for defendants who are mentally ill because the purpose of retribution is for the punishment to be proportional to the crime. Punishing someone for actions caused that are a result of a mental disease or illness can be the equivalent of punishing a child for crying too much

[240].DRESSLER, supra note 7, at 345.

or punishing a puppy for having an accident in the house.[241] This is morally wrong because the individual cannot control his or her behavior. The United States Court of Appeals in *Holloway v. United States*[242] held, "[t]o punish a man who lacks the power to reason is as undignified and unworthy as punishing an inanimate object or an animal. A man who cannot reason cannot be subject to blame. Our collective conscience does not allow punishment where it cannot impose blame."[243]

The felony murder rule is heavily criticized and is often considered unconstitutional due to the strict liability the rule imposes.[244] In *Aaron*, the Supreme Court of Michigan held that "[t]he felony-murder doctrine is unnecessary and in many cases unjust in that it violates the basic premise of individual moral culpability upon which our criminal law is based."[245] It is also viewed as unconstitutional

[241]."To blame such an individual for her acts is much like blaming a sick person for sneezing or an infant for dropping her glass of milk." *Id*. at 346.
[242].148 F.2d 665 (D.C. Cir. 1945).
[243].*Id*. at 666–67; see also DRESSLER, supra note 7, at 346.
[244].People v. Stamp, 82 Cal. Rptr. 598, 603 (Ct. App. 1969).
[245].People v. Aaron, 299 N.W.2d 304, 328 (Mich. 1980).

because it presumes malice aforethought and the intent to kill as opposed to requiring proof of such intent to kill as required for murder. In most states, the punishment for first-degree felony murder that resulted from an accidental death is more severe than the punishment for second degree murder which requires the intent to kill or cause grave bodily harm.[246]

IX. CONCLUSION

Aside from the fact that England fundamentally created the felony murder rule and then later renounced it, the doctrine still thrives throughout the United States today with only a few states

[246].*Id.* at 317.
Florida's felony murder rule applies to not only the killer, but the killer's co-participants in the underlying felony. That is the purpose of this law–to hold people responsible for a homicide which they did not commit because they took the risk associated with committing the underlying crime. The fact that a person did not intend for the homicide to occur, and did not know that someone, be it co-perpetrator or police officer, was going to kill, is no defense. This results in an extremely harsh application of the law, and one that really does not treat people who kill differently than those who do not. It is for this reason that the country which invented felony murder, England, has abolished it, and why a number of states, unlike Florida, have severely limited its application.
Brener, supra note 25.

abolishing the rule.[247] A petition on Change.org was created in 2014 to eliminate the felony murder rule in Florida and gained 1,599 supporters.[248] States, such as Michigan and Iowa, no longer recognize the rule, and have refused to allow the required mental state of murder to be inferred from the intent to commit the underlying felony.[249] The courts in New Mexico have held that "the presumption that the defendant has the requisite *mens rea* to commit first-degree murder 'is a legal fiction [the court] no longer can support.'"[250]

More states should follow England's path in abolishing the rule or should significantly limit its application because felony murder is easier to prove than murder.[251] For a felony murder conviction, the prosecution only needs to prove that the underlying

[247].Van Zanten, supra note 15, at 1572; see also People v. Aaron, 299 N.W.2d 304, 312 (Mich. 1980) (citing that the felony murder rule has been constantly revised and restricted in England, "the country of its birth," until it was finally abolished in 1957 by Parliament).
[248].Higgins, supra note 196.
[249].Aaron, 299 N.W.2d at 328–29. The Iowa Supreme Court held that the malice aforethought required for a murder conviction cannot be demonstrated by the intent to commit the underlying felony. *Id*. at 314. Three states now require proof of a mental element beyond the intent to commit the felony. *Id*. at 315.
[250].*Id*. at 314.
[251].Hatchett supra note 13 at 1049.

offense was committed and it resulted in a death.[252] The prosecution does not need to prove the elements of the intent to kill or malice aforethought as required for a murder conviction.[253] Because felony murder is easier to prove, a felony murder conviction by a jury is easier to achieve, and the state is relieved from the burden of having to prove premeditation.[254] This is one of the many reasons why the felony murder rule is heavily criticized and disfavored.[255]

The purpose of the doctrine, which is to deter felons from committing inherently dangerous felonies, has also been disproven because a person cannot be deterred from committing an accidental or unintentional act.[256] Therefore, a felon cannot be deterred from committing an accidental or negligent murder. Additionally, the reasons and purpose behind the doctrine when it was first created in

[252].*Id*. at 1048.
[253].*Id*.
[254].*Id*. at 1056.
[255].*Id*. at 1049.
[256].Hatchett supra note 13, at 1049.

common law, no longer exist today because the doctrine is extremely inconsistent and unjust.[257]

When applied to juvenile defendants, the Supreme Court held that mandatory life sentences without the possibility of parole for juvenile defendants were unconstitutional because they violate the Eighth Amendment's prohibition against cruel and unusual punishment.[258] Additionally, due to longstanding developmental and psychological research which has proven that juveniles under the age of fourteen lack the cognitive capacity necessary to complete these crimes, the felony murder rule especially should not be applied.[259] Children under the age of fifteen are more impulsive and are more susceptible to coercion, influence, and have different decision-making capabilities than adults.[260] Similarly, mentally ill defendants, who lack the cognitive capacity to commit some of their crimes, should not be held

[257].Aaron, 299 N.W.2d at 328.
[258].Miller v. Alabama, 132 S.Ct. 2455, 2469 (2012); Thompson supra note 184.
[259].Drizin & Keegan, supra note 11, at 508.
[260].*Id.*; see also Thompson supra note 184.

accountable for their impulsive and unintentional crimes.

Although a defendant should be held liable for his or her actions and for his or her participation in the underlying felony, holding a defendant liable for murder due to unintended or accidental results goes against the core values of the United States justice system.[261] In situations where the death was purely accidental or participation in the underlying felony was coerced, applying the felony murder rule is unjust. For defendants with mental illnesses, applying the felony murder rule seems particularly unjust because, in most cases, the defendant is incapable of controlling his or her actions and cannot distinguish between right and wrong. "While it is understandable that little compassion may be felt for the criminal whose innocent victim dies, this does not justify ignoring the principles underlying our system of criminal law."[262]

[261].Drizin & Keegan, supra note 11, at 318.
[262].*Id.*