

# Criminal Law - The Felony Manslaughter Doctrine in Louisiana

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creates a reasonable doubt as to his mental capacity is also unsatisfactory. This rule treats sanity as a part of the criminal intent, or *mens rea*, and thus as a necessary element of the crime. However, mental capacity and criminal intent, as a general rule, are not one and the same thing.<sup>18</sup> Criminal intent involves the question of whether the defendant actively desired (specific intent) or could be expected to know (general intent) that certain consequences would result from his act, whereas the test of insanity as applied in Louisiana and other jurisdictions essentially deals with whether the defendant appreciated the wrongness of his conduct. The existence of insanity should only be considered as an affirmative defense for urging the lack of criminal responsibility when both the facts relative to the commission of the proscribed conduct and the requisite intent element have been established.<sup>19</sup> In addition, as a practical matter the second rule is preferable to the third because the latter disregards the presumption of sanity and places the burden on the state to establish the defendant's sanity after only "some evidence"<sup>20</sup> of insanity has been presented by the defense.<sup>21</sup> In effect the state is required to prove beyond a reasonable doubt that the mental condition of the defendant was in fact that which society initially presumed it to be. Also, the defendant is certainly in a better position to prove his insanity than is the state to prove his sanity.

*Bernard E. Boudreaux, Jr.*

#### CRIMINAL LAW — THE FELONY MANSLAUGHTER DOCTRINE IN LOUISIANA

Defendant attempted to kill a bartender with a knife and the bartender fired a pistol in self-defense. The bullet from the pistol struck and killed a customer sitting at the bar. Defendant

18. It would seem that the only instance in which insanity should be treated as an element of the crime is, as in voluntary intoxication, where its presence precludes the possibility of any intent. Generally, voluntary intoxication is no defense, but it may preclude the presence of a specific intent or knowledge, which is an element of a crime, when the defendant is so intoxicated that he could not possibly desire or know that certain consequences will result from his act. Similarly, if the defendant is so insane that he cannot desire or know that certain consequences will result from his act, then he lacks criminal intent. However, this insanity must be an extreme case, possibly bordering on the old wild beast classification. Practically, such a person will not be brought to trial, and this exception is more in the realm of theoretical speculation than in reality.

19. *State v. Surrency*, 148 La. 983, 88 So. 240 (1921).

20. 9 WIGMORE, EVIDENCE § 2491(2) (3d ed. 1940).

21. *Id.* §§ 2485-2491, 2497.

was indicted for manslaughter under a statute which provides that a killing while the offender is committing or attempting to commit a misdemeanor directly affecting the person or a felony not enumerated in the murder article is manslaughter.<sup>1</sup> The trial judge sustained a motion to quash the indictment and discharged the defendant. On appeal the Louisiana Supreme Court *held*, affirmed. Since the word "offender" means "actual killer," the defendant felon could not be indicted for manslaughter where the fatal injury was inflicted by a weapon in the hands of one resisting the felony.<sup>2</sup> *State v. Garner*, 238 La. 563, 115 So.2d 855 (1959).

The Louisiana Criminal Code provides that a killing "when the offender is engaged in the perpetration or attempted perpetration" of certain dangerous felonies is murder even though he had no intent to kill.<sup>3</sup> If the crime accompanying the homicide is any other felony, or a misdemeanor directly affecting the person, the criminal is chargeable with manslaughter.<sup>4</sup>

The extent to which a killing must be connected with a felony in order for the felony murder doctrine to apply has presented a serious question in jurisdictions adhering to a felony murder rule. A difficult problem within this area arises when the lethal injury is inflicted by an instrumentality in the hands of one attempting to resist or prevent the crime.<sup>5</sup> Prior to the instant case the question of liability in such a situation had not arisen in Louisiana, and since the Louisiana felony manslaughter and murder provisions have their bases in the common law,<sup>6</sup> it is appropriate to see how common law courts have handled this problem.

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1. LA. R.S. 14:31 (1950) provides that "Manslaughter is . . . (2) A homicide committed, without any intent to cause death or great bodily harm. (a) When the offender is engaged in the perpetration or attempted perpetration of any felony not enumerated in Article 30, or of any intentional misdemeanor directly affecting the person. . . ."

2. The accompanying felony in the instant case was attempted murder.

3. LA. R.S. 14:30 (2) (1950).

4. *Id.* 14:31 (2) (a).

5. See generally CLARK & MARSHALL, A TREATISE ON THE LAW OF CRIMES § 10.07 (6th ed. 1958); Morris, *The Felon's Responsibility for the Lethal Acts of Others*, 105 U. PA. L. REV. 50 (1956).

6. Under the common law felony murder rule one who unintentionally killed another while committing or attempting to commit a felony was guilty of murder. The rule was based on the idea that the malicious state of mind of a person committing a felony should be said to make any death stemming from his crime a killing with malice aforethought, and, hence, murder. CLARK & MARSHALL, A TREATISE ON THE LAW OF CRIMES § 10.07 (6th ed. 1958). Louisiana, along with some other American jurisdictions, has mitigated the harshness of this doctrine to some extent by making the homicide only manslaughter unless the accompanying felony is highly dangerous to life.

Some of the cases dealing with this problem use what is known as the "act or constructive act" rule, while others use the "proximate cause" rule. Though favoring the "act or constructive act" rule generally, some courts have held it to be not applicable, and the defendant responsible, in a special factual situation which has come to be called a "shield" case.

According to the "act or constructive act" rule, one cannot be held responsible for a homicide attending a felony unless the fatal act was actually or constructively his own and it cannot be constructively his unless done by someone acting in concert with him or in furtherance of a common purpose. From this it follows that a felon could not be held for a homicide accompanying his crime if the fatal injury was inflicted by a weapon in the hands of someone resisting the felony.<sup>7</sup>

The "proximate cause" theory holds the felon for all deaths of which the felony was a "proximate cause." The most striking applications of this theory have been in cases involving armed robberies, where it has been held that the robbers were responsible for the death of a victim of the robbery even if he was accidentally shot by another victim,<sup>8</sup> and for the fatal shooting of one policeman by another officer engaged in a gun battle with the robbers.<sup>9</sup> The deaths were held to have been "proximately caused" by the robberies because the defendants began a chain of events which had as reasonably foreseeable consequences such killings as actually occurred.

The "shield" cases draw the line of liability between that

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7. *Commonwealth v. Moore*, 121 Ky. 97, 88 S.W. 1085 (1905) (robbers were not guilty of murder where the victim, shooting in self-defense, accidentally killed an innocent bystander). See also *Commonwealth v. Campbell*, 89 Mass. 541 (1863) (participant in a riot not guilty of manslaughter if the shot which killed an innocent person was not fired by a rioter); *State v. Oxendine*, 187 N.C. 658, 122 S.E. 568 (1924) (one carrying out a conspiracy to assault and batter another not guilty of manslaughter if the shot which killed an innocent person was fired in self-defense by the victim of the assault and battery).

8. *People v. Payne*, 359 Ill. 246, 194 N.E. 539 (1935) reached this result. See also *Commonwealth v. Moyer*, 357 Pa. 181, 53 A.2d 736 (1947), where the Pennsylvania Supreme Court stated (in a passage that the court later, in *Commonwealth v. Redline*, 391 Pa. 486, 137 A.2d 472 (1958), maintained was dicta) that robbers could be held for first degree murder even if the shot which killed a filling station attendant had been fired by the owner of the station in his attempt to prevent the robbery. Robbers and burglars, said the court, should know that their crimes invite dangerous resistance of which the death of some person at the hands of a resister is a reasonably foreseeable consequence. Hence the crime is a "proximate cause" of such a death. This has been the rationale of the cases applying this rule.

9. *People v. Podolski*, 332 Mich. 508, 52 N.W.2d 201 (1952), cert. denied, 344 U.S. 845 (1952); *Commonwealth v. Almeida*, 362 Pa. 596, 68 A.2d 595 (1949) (off-duty policeman who grabbed a fleeing robber was killed).

imposed by a rigid adherence to one or the other of the two rules previously examined. A "shield" situation arises when the defendants force the deceased into a position where there is great danger of his death at the hands of one resisting the felony. A good example of this is an Arkansas case where robbers escaping from a bank forced a teller to accompany them and the teller was shot by the town marshal.<sup>10</sup> Even courts which ordinarily favor the "act or constructive act" rule have held that under such circumstances the defendant is responsible for the homicide.<sup>11</sup> In this case the Arkansas Supreme Court held the robbers guilty of murder, emphasizing the fact that they forced the deceased into a dangerous position and so caused his death.

In the instant case the Louisiana Supreme Court reviewed authority supporting both the "act or constructive act" and the "proximate cause" rules in an attempt to determine the intended meaning of Louisiana's felony manslaughter statute. The court based its finding of no liability on the ground that criminal statutes should be construed "strictly."<sup>12</sup> Thus the word "offender" in the statute was held to have been intended to mean "actual killer."

The problem of how close a connexity will be required between the felony and homicide for application of the felony murder or felony manslaughter rules is essentially one of public policy. The "proximate cause" idea is apparently based on a belief that the result achieved protects the public by deterring some potential felons and eliminating some dangerous felons from circulation. This rule is also probably based to some extent on a desire for just retribution. Critics of the "proximate cause" rule point out that the effectiveness of the felony murder doctrine as a deterrent is doubtful, since it comes into play in only a small number of cases. The "proximate cause" rule subjects the defendant to an admittedly harsh punishment and probably has no substantial deterrent effect upon would-be felons. A recent Pennsylvania case,<sup>13</sup> later overruled,<sup>14</sup> which held that one

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10. *Wilson v. State*, 188 Ark. 846, 68 S.W.2d 100 (1934).

11. *Taylor v. State*, 41 Tex. Crim. 564, 55 S.W. 961 (1900) (train robber who forced fireman to accompany him to express car could be convicted of murder if a bullet fired at the robber by one of the passengers killed the fireman).

12. See Note, 20 LOUISIANA LAW REVIEW 600 (1960).

13. *Commonwealth v. Thomas*, 382 Pa. 639, 117 A.2d 204 (1955).

14. *Commonwealth v. Redline*, 391 Pa. 486, 137 A.2d 472 (1958) expressly overruled the *Thomas* case and specifically reserved the question of the validity of the *Almeida* decision (362 Pa. 596, 68 A.2d 595 (1949)) for a later case, thus casting some doubt on the applicability of the "proximate cause" rule in Pennsylvania. *Redline* and *Thomas* were distinguished from *Almeida* on the technical

robber could be guilty of murder when his partner in the crime was killed by their victim, shows what hard results a court thinking in terms of "proximate cause" may reach. In the writer's opinion the "act or constructive act" rule furnishes adequate protection to the public and is the wiser rule for a case that does not fall into the "shield" category.

Now that the instant case has been added to Louisiana jurisprudence, the result reached in subsequent cases in Louisiana should be the same as that reached by a common law court following the "act or constructive act" rule.<sup>15</sup> The case does not, however, make clear what result would be reached in a "shield" situation. It might be logically held that a felon who intentionally forced an innocent person into a position where there was a high danger of his death at the hand of one resisting the felony was as much an "actual killer" as was the person who inflicted the lethal injury. Considerations of social policy would seem to dictate such a conclusion.

*Robert Butler III*

#### CRIMINAL PROCEDURE — VENUE REQUIREMENTS FOR THE PROSECUTING PARISH

Defendant, a member of the Board of Commissioners of the Pontchartrain Levee District, which is domiciled in St. James Parish, was indicted for public bribery<sup>1</sup> in that parish. Upon a stipulation of facts by the district attorney admitting that no offer, acceptance, receipt, or deposit of anything of value was made in the parish, the defense moved to quash the information because of improper venue. It was argued that the offense was not committed in St. James Parish and, moreover, that the pro-

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ground that the killing of an escaping robber by his victim or a police officer was "justifiable," while the accidental killing of one policeman by another engaged in a gun battle with robbers was "excusable." This seems a poor basis for distinction. The court might have done better to hold the felony murder rule not applicable to a case where the deceased was a felon, justifying this conclusion on the ground that the doctrine developed as a means of protecting the innocent public.

15. If the defendant inflicts the fatal injury himself, he is covered by the phrase "actual killer." If his accomplice does the killing, he can still be held for the homicide under LA. R.S. 14:24 (1950). It should be noted that the phrase "when the offender is engaged in the perpetration or attempted perpetration" appears in both the murder and manslaughter articles, so the result reached in the instant case should also be reached in a murder case.

1. LA. R.S. 14:118 (1950) provides that the "acceptance of, or the offer to accept, directly or indirectly, anything of apparent present or prospective value [from named persons with the intent to influence the person's conduct in relation