

# Life Without Parole: A Reconsideration – 2017 update re Felony Murder

On September 20, 2017, the Massachusetts Supreme Judicial Court (SJC) ruling in the case COMMONWEALTH vs. TIMOTHY BROWN , abolished felony murder as the equivalent of first degree murder. The case involved Mr. Brown, convicted of felony murder for supplying the murder weapon and hooded shirts to the individuals who were involved in a home invasion and armed robbery. Brown was not present during the actual invasion. Despite rejecting several arguments of the defendant challenging the trial court's determinations, the SJC "in the interest of justice" reduced Brown's sentence from first degree murder to second degree murder. Addressing the issue of felony murder, the court wrote the following:

"As to whether we should abolish the common-law felony-murder rule, a unanimous court concludes that the felony-murder rule is constitutional. However, a majority of Justices, through the concurrence of Chief Justice Gants, conclude that the scope of felony-murder liability should be prospectively narrowed, and hold that, in trials that commence after the date of the opinion in this case, a defendant may not be convicted of murder without proof of one of the three prongs of malice. As a result, in the future, felony-murder is no longer an independent theory of liability for murder. Rather, felony-murder is limited to its statutory role under G. L. c. 265, § 1, as an aggravating element of murder, permitting a jury to find a defendant guilty of murder in the first degree where the murder was committed in the course of a felony punishable by life imprisonment even if it was not committed with deliberate premeditation or with extreme atrocity or cruelty."

Of note, Gants wrote in his concurrence:

"I also believe that we should abandon the fiction of constructive malice -- that where a killing occurs in the commission of a felony, the intent to commit the felony is sufficient alone to establish malice.

"As noted in the opinion of the court, following the issuance of this concurring opinion, which is joined by three other Justices, a conviction of felony-murder will require a finding of actual malice, not merely *constructive malice*." (italics added).

While the opinion notes that this abolition of felony murder only applies prospectively, it remains for another day whether or not this will be applied retroactively.

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Slip opinion is at: <https://www.scribd.com/document/359437648/Massachusetts-Felony-Murder-Ruling>

Ibid. Pg. 31.

Ibid. Pg. 3.

Ibid. Pgs. 3,4. The defendant's appeal included an argument that the felony murder statute was not constitutional and should be repealed.

Ibid. Pg. 1 of Gants' concurring opinion.