

Felony Murder Affidavit of Patricia Coffey, Ph.D. and Odile Rodrik, M.S.

Patricia Coffey and Odile Rodrik, being duly sworn, state as follows:

1. This affidavit is based on empirical research articles and clinical experience working with young people involved with the justice system. This affidavit was prepared by Patricia Coffey, Ph.D. in collaboration with Odile Rodrik, M.S.
2. Dr. Patricia Coffey is a clinical psychologist with over 25 years of experience conducting psychological evaluations of young people in the justice system. Dr. Coffey is currently a Teaching Faculty in the University of Wisconsin-Madison Psychology Department and has been teaching a criminal psychology course for over 15 years, including a focus on youth.
3. Odile Rodrik, M.S. is a fifth-year graduate student in the University of Wisconsin-Madison Clinical Psychology Ph.D. program with experience conducting mental health research in prison settings as well as supervised experience providing psychotherapy to incarcerated adults and conducting psychological court-ordered evaluations within the juvenile justice system.
4. The following affidavit serves as a summary of psychological research explaining the development of youth's psychological functioning and how this research should be considered as applied to felony murder.

Brief Summary of Findings Presented in Affidavit

5. In brief summary, there is reason to conclude that felony murder cannot be reasonably applied to youth – and is especially concerning when applied to youth who are involved in the felony but not directly responsible or involved in the killing of another individual during that felony.
6. Felony murder assumes a certain level of executive control, measured weighing of risks/benefits, and resistance to peer influence that is not supported by psychological research on these very topics.
7. Psychological scholars have long since argued that normative developmental differences between youth and adults must be considered in the juvenile justice system (e.g., see Steinberg & Scott, 2003 for a comprehensive review).
8. Felony murder is at odds with what research demonstrates about young people's psychological, cognitive, and brain development (see Dobscha, 2019; Flynn, 2009 for comprehensive arguments on such).

Felony Murder Imposes Particular Harm on Young People because it is Inconsistent with Adolescent Development Research and Perpetuates Racial Disparities

9. Felony murder posits that any individual who has the intent to commit a felony understands the associated risks of the crime (e.g., potential for violence, murder). This

removes the prosecution's need to prove intent to cause the resulting death during the commission of a felony and instead assumes implied intent during the commission of the felony (Dobscha, 2019; Drizin & Keegan, 2004; Flynn, 2008).

10. Felony murder applies not only in adult cases, but also in youth cases. Even more, felony murder can be applied in cases for those who participated in the commission of the felony but who were not otherwise directly involved in the commission of the murder (Dobscha, 2019; Drizin & Keegan, 2004; Flynn, 2008). For example, during the commission of a robbery by two individuals, where only one individual has a gun and shoots someone, both individuals can be charged with felony murder.
11. In felony murder cases, the prosecution only needs to prove intent to commit the felony. Prosecution does not need to prove intent to kill, or direct involvement in the killing itself (Dobscha, 2019; Drizin & Keegan, 2004; Flynn, 2008). Even in youth cases, a felony murder conviction can carry with it a maximum adult sentence (life in prison).
12. Felony murder as applied to young people is not supported by research on the biopsychological development of youth because the period of adolescence is marked by a young person's developing brain which implicates their ability to regulate behavior, resist peer influence, and foresee long-term consequences.
13. Applying felony murder against young people may result in disproportionately long periods of confinement, which is inconsistent with the research on desistance that shows that as young people mature, the majority naturally stop engaging in risky or antisocial behavior.
14. Further, felony murder disproportionately harms Black and Latino/a individuals (Ghandnoosh et al., 2022; Cohen et al., 2023). Specifically, studies have found that racial biases are associated with judgements of culpability in felony murder cases for Black and Latino/a individuals, among other factors (Cohen et al., 2023). As such, the application of felony murder likely exacerbates existing racial disparities in the juvenile and criminal legal systems.

Research on Brain Development Reveals that Youth Experience More Difficulty with Controlling, Regulating, and Coordinating Their Thoughts and Behavior due to Their Brain Development

15. Biologically, research on brain development has highlighted important differences between youth and adults. There are three changes that have particular relevance to the psychological developments discussed (Steinberg & Scott, 2003).
16. Development for young people and emerging adults is marked by changes in brain chemistry and neurotransmitters. During this time, the release of dopamine, a neurotransmitter involved in reward and sensation-seeking behaviors, is increased (Romer, 2010; Steinberg & Scott, 2003). In line with this, sensation-seeking and risk-taking behavior has been shown to peak during this developmental period (Romer, 2010).

17. A critical aspect of brain development is the process of “synaptic pruning,” where unused pathways or connections in the brain are pared down. This process facilitates more reliable and efficient communication in the brain.
18. During adolescence, this process occurs most heavily in the prefrontal cortex – an area of the brain involved in executive functioning and cognitive and behavioral control (Romer, 2010; Steinberg & Scott, 2003). Synaptic pruning in this brain region during development aligns with increases in the ability to regulate mood and behavior.
19. During development, neural pathways are coated in myelin – a tissue that improves the speed and reliability of communication in the brain. In turn, communication among brain regions becomes more efficient and more reliable over time and may help explain increases in executive function with age (Blakemore & Choudhury, 2006; Steinberg & Scott, 2003).
20. Due to ongoing brain development, youth struggle more with the ability to control, regulate, and coordinate thoughts and behavior (Blakemore & Choudhury, 2006; Steinberg & Scott, 2003).
21. These biological differences lend support to psychological differences seen in adults and youth. Youth are more influenced by their peers, view risky behavior differently than adults, struggle with future thinking, and have difficulty with executive functioning (Steinberg & Scott, 2003).
22. Felony murder, when applied to youth, fails to recognize important biopsychosocial differences between young people and adults in decision-making and self-control capacities.

Young People are More Vulnerable to Peer Influence and More Likely to Engage in Risk-Taking Behavior Around Peers Due to Developmental Processes

23. It is common knowledge that youth are more vulnerable to peer influence than adults. Research supports this (e.g., Steinberg, 2008; Steinberg & Monahan, 2007), and further suggests that this is true not only for direct pressure from peers but also for indirect pressure.
24. Young people’s desire to fit in motivates them to seek peer approval and may motivate them to engage in behaviors to gain or maintain social status (Steinberg & Scott, 2003).
25. Simply the presence of other peers – even without direct pressure to behave in a certain way – has been shown to influence risky decision making for youth and emerging adults (Foulkes & Blakemore, 2016; Gardner & Steinberg, 2005; O’Brien et al., 2011). In one such study, researchers found that telling youth that peers were observing their performance on a simulated driving task increased activity in reward-related brain regions and, in turn, increased risk-taking on the task itself (Chein et al., 2011).
26. Research shows that young people balance risks and rewards differently than do adults, and that the developmental period of adolescence is crucial in this cost-benefit analysis. Youth place more emphasis on the rewards of their actions than the associated potential

risks associated (Galvan et al., 2007; Steinberg & Scott, 2003). In other words, youth are often more focused on potential rewards than deterred by potential risks.

27. The ability to place more weight on immediate risks and rewards as compared to long-term ones increases with age and maturity (Steinberg & Scott, 2003).
28. Applying felony murder to youth fails to recognize research related to their particular susceptibility to increased risk-taking and peer influence.

Young People Are Less Likely to Consider Long-Term Consequences Due to Their Developmental Stage

29. Future orientation is a term referring to the complicated process of thinking ahead, setting goals, understanding consequences of our behavior, and understanding to what extent we have control over our own future (Steinberg et al., 2009).
30. During adolescence, greater future orientation is associated with less risk orientation (Jackman & MacPhee, 2017).
31. In general, youth are less likely than adults to engage in future-oriented thinking (Steinberg & Scott, 2003). In other words, as compared to adults, youth think less about long-term consequences of their actions, and instead tend to place greater weight on short-term outcomes. This is likely due to the fact they simply have less life experience, combined with other processes such as brain development.
32. Accordingly, penalizing a young person based on what they should have anticipated as a possible consequence of their actions does not recognize important scientific evidence that young people are less likely to consider and foresee consequences of their actions due to their developmental stage.

The Vast Majority of Young People Will Stop Engaging in Risky Behavior as They Mature

33. Research shows that engagement in antisocial behavior follows a developmental pattern, coinciding with biological and psychological growth that take place during these formative developmental years.
34. This is demonstrated by the age-crime curve which shows that, for most, crime increases during adolescence, peaks during the mid- to late-teen years, and then declines thereafter (Farrington, 1986; Moffit, 1993; Sweeten et al., 2013). In other words, for the majority of young people, engagement in antisocial behavior follows a normative developmental trajectory wherein it naturally declines over time without intervention.
35. Further, the adolescent years are marked by a period of identity formation, where one's identity is under a period of development and trial-and-error (Steinberg & Scott, 2003), where youth "try out" various behaviors. This is supported by research which demonstrates that approximately 90% of individuals who engage in antisocial behavior during their teen years no longer do by their mid-20's (Moffit, 1993).

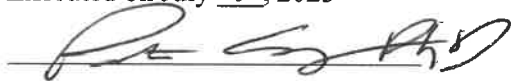
36. Steinberg and Scott write, “at least until late adolescence, individuals’ values, attitudes, beliefs, and plans are likely to be tentative and exploratory expressions rather than enduring representations of personhood” (2003).
37. In other words, there is a natural desistence from antisocial behavior seen in the majority of young people who engage in such behaviors during their developmental teen years.
38. Accordingly, applying felony murder to young people, and thus exposing them to long periods of confinement, not only affects their development but also is counterproductive in light of research showing that the majority of young people naturally mature out of risk-taking behavior.

Summary

- 39. Research supports the notion that young people’s ongoing – and yet unfinished – brain and psychosocial development contributes to difficulty with processes that are relevant to felony murder. These are normative developmental processes and are expected differences between youth and adults.**
- 40. Felony murder assumes a certain level of executive control, measured weighing of risks/benefits, and resistance to peer influence that is not supported by psychological research. Considering this review of relevant biopsychosocial literature, research does not support the application of felony murder to young people.**

Further, affiant sayeth not. I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 13, 2023



Patricia Coffey, Ph.D.



Odile Rodrik, M.S.

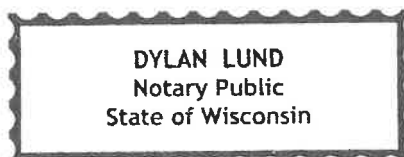
Sworn to me and subscribed in my presence on July 13, 2023



NOTARY PUBLIC

My commission expires: 6/14/2027

Seal:



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