First Supplement to Memorandum 2024-14
Accomplice and Other Liability for Murder and Firearm Enhancements and Related Matters
Panelist Materials

Memorandum 2024-14 gave an overview of accomplice and other liability for murder and firearm enhancements and related matters. This supplement summarizes written submissions from panelists scheduled to appear before the Committee on October 29, 2024.

Discussion Panel 1:
Liability for Murder

Exhibit A: Jennifer Hansen, Attorney, California Appellate Project

Ms. Hansen discusses how courts have applied the legal standard for aiding and abetting implied malice murder since the California Supreme Court decision in *People v. Reyes,* 14 Cal.5th 981 (2023), which has been cited by courts more than 250 times since June 2023. Ms. Hansen highlights areas where courts have difficulty applying the *Reyes* standard: fatal acts that are too broadly defined, the accomplice's knowledge of the direct perpetrator's use of a weapon is unclear, and gang cases that fail to distinguish whether death was merely a possible outcome or had a "high degree of probability" of occurring.

Exhibit B: Nathaniel Miller, Attorney at Law

Mr. Miller, a criminal defense appellate attorney who has at least one client directly impacted by this issue, proposes limiting the use of the felony-murder rule in provocative-act murder cases so that these offenses can only be second-degree murder. The submission presents research on other states' murder laws where the killing is committed by a non-accomplice third-party or where the person killed is the defendant's accomplice. In contrast to California, some states preclude all murder liability in these types of cases, and other states limit the degree of murder available.

Respectfully submitted,

Rick Owen
Senior Staff Counsel

Exhibit A

Jennifer Hansen

Attorney, California Appellate Project

TO: Committee on Revision of the Penal Code Committee

FR: Jennifer Hansen, Appellate Attorney
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DT: October 22, 2024

RE: Changes to Law of Implied Malice in Recent Years

People v. Reyes (2023) 14 Cal.5th 981 (*Reyes*), decided June 29, 2023, has already been cited by more than 280 cases in the Court of Appeal. In March 2024, the Judicial Council modified CALCRIM 520 to comply with the clarification of elements provided in *Reyes*.

Per CALCRIM 520, implied malice murder now requires that a defendant:

> (1) intentionally engaged in an act
> (2) the natural and probable consequences of that act involved a high degree of probability that it would result in death
> (3) at the time the person acted, they knew the act entailed that danger; and
> (4) the person acted with conscious disregard for life.
> (CALCRIM No. 520: see also Judicial Council of Cal. Crim. Jury Instns. (2024) Bench Notes to CALCRIM No. 520, p. 251.)

As developed in caselaw, to be liable for an implied malice murder, the direct aider and abettor must, by words or conduct, aid the commission of the life-endangering act. The *mens rea*, which must be personally harbored by the direct aider and abettor, is knowledge that the perpetrator intended to commit the act, intent to aid the perpetrator in the commission of the act, knowledge that the act is dangerous to human life, and acting in conscious disregard for human life. (*Reyes, supra*, 14 Cal.5th at pp. 990-991)

The author's informal survey of published and unpublished implied malice cases citing *Reyes* revealed that in most cases the Courts of Appeal are more rigorously evaluating questions such as: What was the fatal act? Was the act something that was merely dangerous or something that objectively involved a high likelihood of death? Did the defendant know the perpetrator was armed? Did the defendant do an act that actually aided and abetted the fatal act?

Some murder convictions have been reversed on direct appeal and there have been some reversals in murder resentencing petitions (Pen. Code, § 1172.6) that were initially denied in the trial courts. It does seem as if the Courts of Appeal are generally aware of the *Reyes* case as binding authority, although some are applying it inconsistently.

As this Committee is considering further changes to the law of murder, it is important to recognize that in this limited sample size there are some commonalities in the types of cases that are "falling through the cracks" after the changes to murder liability made by Senate Bill 1437 and the more narrowed *Reyes* Standard as a test for implied malice. If there are changes in this area of murder law, any bill proponents will need to be aware of recurring fact patterns in these cases and be ready to make compelling arguments as to why the law needs to be updated.

1) ***People v. Ortiz*** **(Second Dist., Div. 6) 2024 Cal.App.Unpub. Lexis 3762 (June 18, 2024)**

A gang fight turned deadly. The person who became the actual killer had a personal grudge against the victim. Appellant and five others, including two gang members, assaulted the victim, who was unarmed. After the victim was stabbed, appellant and others continued to hit and kick him. On appeal, citing *Reyes*, the defense argued, "[T]he life-endangering act was the actual killer's stabbing of the victim." The Court of Appeal rejected that analysis and said, "In fact, the life-endangering act was a six-against-one brutal gang beating of a defenseless victim. Substantial evidence supports this theory of implied malice murder." Citing its own pre-*Reyes* case, *People v. Schell* (2022) 84 Cal.App.5th 437, 440, 442-443 (*Schell*), [evidence sufficient to support conviction of implied malice murder where defendant "was one of at least eight gang members or gang associates who participated in a vicious assault upon the victim," even though, like appellant, defendant's participation was limited to an "attack with his fists and feet"], the Court of Appeal effectively did not give weight to the elements as described in *Reyes*. The Court refused to credit the fact that there was no confirmation that defendant knew that a knife was being used by the perpetrator. The second-degree murder conviction was affirmed. A petition for review was filed and denied.

2) *People v. Rodriguez* (Fifth Dist.) 2024 Cal. App. Unpub. LEXIS 4684 (July 26, 2024)

A gang-related chase and retaliation attack perpetrated by several gang members and associates against a single rival gang member. The victim was shot and killed. Appellant was present and participated in the beating, but did not shoot the victim and likely did not know the shooter was going to shoot. Appellant relied on *Reyes* to support her assertion that the government needed to prove that appellant knew the actual killer was going to shoot the victim since the shooting was the act that proximately caused the death. The Court of Appeal rejected the narrow *Reyes* test as to the life-endangering act and held that it was enough that appellant "knew her coparticipants intended to perpetuate a violent group beating against" the victim and "knew this act was dangerous to human life given that it was motivated by gang retaliation, and the perpetrators used dangerous weapons and blows to the head." The Court found that by acting to help surround the victim during the group beating, "the totality of the circumstances support[ed] a finding that appellant acted with conscious disregard for human life." By reframing the test, with a cite to *Schell*, the Court of Appeal effectively skirted the more rigorous *Reyes'* requirements that a person know of the perpetrator's intent to do the life-endangering act that actually killed the person. The Court also ignored *Reyes*' counsel that not every gang fight involves a high probability of death.[1] The second-degree murder conviction was affirmed. A petition for review was filed and denied.

3) *People v. Quiroz* (Sixth Dist.) 2024 Cal. App. Unpub. LEXIS 3402 (May 31, 2024)

Appellant had a grudge against rival gang members who had been harassing his son. Appellant and a fellow gang member kicked open an apartment door looking for the rivals. Appellant saw a "young man" trying to jump out a

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[1] An act that merely creates a dangerous situation in which death is possible, depending on how circumstances unfolded, standing alone will not satisfy the proximate causation requirement of implied malice murder. (*Reyes, supra*, 14 Cal.5th at p. 989.) Rather, implied malice murder requires a high degree of probability death will result; the danger to life cannot be merely vague or speculative. (*Ibid.*)

back window and yelled, "Hey." Appellant's co-defendant fired a gun twice, which appellant testified was the first time he became aware that the shooter was armed. Appellant ran out of the apartment. Appellant heard more gunshots a few seconds later when he was downstairs on the lawn, before getting in a car and driving away with the shooter. The Court made the inference that appellant knew the perpetrator was armed before the break-in. The Court said, "Kicking open the door of an apartment containing rival gang members with an armed accomplice adequately supports a finding that defendant acted with conscious disregard for human life." The Court considered as part of its analysis appellant's "willingness to use violence against rival gang members the month before the homicide when he stabbed one with a pocketknife." The Court of Appeal initially cited *Reyes* but never grappled with the questions of whether anything appellant did involved the high probability of death, subjectively or objectively. The second-degree murder conviction was affirmed and no petition for review was filed.

CONCLUSIONS

The above three highlighted cases are just a sampling of the types of cases that have been upheld as implied malice murder in the last year. In general, the Courts seeking to circumvent the more strict evidentiary requirements of *Reyes* seem to:

1) back up from the fatal act being the stabbing or the shooting, and instead, focus on earlier acts where death was possible but not necessarily likely.
2) not strictly require that an aider and abettor knew of a perpetrator's plan to use a weapon or do a life-endangering act.
3) infer that crimes where gang members are involved seemingly always involve a high-degree of likelihood of death without assessment of whether the death was possible as opposed to highly probable.

A way to remedy this twisting of the caselaw might be an attempt to codify the holding of *Reyes* for implied malice cases. For the defense, however, some of the best language in the test for implied malice (including that implied malice must involve doing something with the high-probability of death) does not come directly from the text of the Penal Code. There may be unintended

consequences of changing the text of the murder statutes if it would mean we would lose the good language from the *Reyes* Opinion that defense practitioner just had affirmed in 2023.

In this author's humble opinion, for the time being, application of the caselaw from *Reyes* is successfully narrowing the class of people swept up in implied malice murder convictions. There are still cases that are possibly wrongly decided but it is not clear that the problem is the existing law. If anything, more attention needs to be paid to advocacy around the changes in the law in the trial courts and the appellate courts. For example, lawyers and judges in the trial court need to be uniformly *required* to use the most updated version of CALCRIM instructions. Obviously jury instructions can always be modified, but if judges or attorneys are not starting out with the most updated CALCRIM instructions, then the defendants may not be getting the benefit of current law.

As this Committee considers possible changes to the Penal Code, I hope these observations are helpful.

Exhibit B

Nathaniel Miller

Attorney at Law

Proposal to Limit the Use of the Felony Murder Rule in Cases of Provocative Act Murder

For the Committee on Revision of the Penal Code, October 29, 2024
Nathaniel Miller, Attorney at Law

Introduction

This is a proposal to limit the use of the felony murder rule in cases of provocative act murder, i.e., cases where the killing occurring in the course of another offense is committed not by the defendant or their accomplice, but by a non-accomplice third party (such as a responding officer or resisting victim), and the defendant is convicted of murder under the provocative act doctrine.[1]

The proposal, if enacted, would not eliminate or modify the provocative act doctrine itself – it would merely limit the use of the felony murder rule in cases of provocative act murder. Specifically, the proposal would amend the felony murder rule, as codified at Penal Code Section 189, to prohibit its application in cases where either: (a) the killing is committed not by the defendant or their accomplice, but by a non-accomplice third party (the broader option, impacting more cases); or (b) the person killed is the defendant's accomplice (the narrower option, impacting less cases).

The proposal would also create a statutory mechanism, either through amendments to Penal Code Section 1172.6 or through the enactment of a new statute, to ensure that the amendments to Section 189 would apply fully retroactively, including to final cases.

Legal Background

The overwhelming majory of states that have considered the issue already prohibit or limit the use of their respective felony murder rules in cases

[1] Under the provocative act doctrine, a defendant may be convicted of murder based on a killing committed by a non-accomplice third party where the killing is proximately caused by the defendant's commission, with implied malice, of a "provocative act," i.e., an act "that goes beyond what is necessary to accomplish [the underlying offense] and whose natural and probable consequences are dangerous to human life, because there is a high probability that the act will provoke a deadly response." (*See, e.g.,* Appendix A [CALCRIM 560].)

where the killing is committed by a non-accomplice third party, in particular where the person killed is the defendant's accomplice. (*See, e.g.,* Appendix B [Out-of-State Authorities]; Paul J. Arougheti, *Imposing Homicide Liability on Gun Battle Participants for the Deaths of Innocent Bystanders* (1994) 27 Colum. J.L. & Soc. Probs. 467, 494, 494 n.30 ["the majority of jurisdictions that have considered the question maintain that the felony murder rule cannot be used to impose murder liability on a defendant when the lethal act is committed by a person other than the [defendant] or his accomplices"]; Wayne R. LaFave (2020) 2 Subst. Crim. L. § 14.5(d), citations omitted ["it is now generally accepted that there is no felony murder liability when one of the felons is shot and killed by the victim, a police officer, or a bystander"].) As reflected in Appendix B, some of these states prohibit felony murder liability in such cases, some of the states limit felony murder liability to second degree in such cases, and some of the states prohibit not just felony murder liability but all murder liability in such cases. These states thus uniformly prohibit the use of their respective felony murder rules to impose first degree felony murder liability in such cases (although they are not uniform in their approach to doing so).

California is among the minority of states that do not do this. Instead, under current California law, while the felony murder rule may not be used to *establish* murder liability in a case where the killing is committed by a non-accomplice third party, the felony murder rule may be used to *elevate* the defendant's murder liability from second to first degree in such a case, so long as the defendant's murder liability is established under the provocative act doctrine.

California's unusual approach to the issue traces back to a pair of Supreme Court cases, *People v. Washington* (1965) 62 Cal.2d 777 and *People v. Gilbert* (1965) 63 Cal.2d 690. In *Washington*, the Supreme Court held that the felony murder rule does not apply where the killing is committed by a non-accomplice third party. (*Washington, supra,* 62 Cal.2d at 781-83.) The court observed that in cases where "[d]efendants ... initiate gun battles" and "their victims resist and kill," murder liability may be imposed instead under the provocative act doctrine. (*Id.* at 782.) The court has since repeatedly affirmed that the felony murder rule does not apply where the killing is committed by a non-accomplice third party. (*See, e.g., People v. Gonzalez* (2012) 54 Cal.4th 643; *People v. Concha* (2009) 47 Cal.4th 653, 661 n.2; *People v. Cervantes* (2001) 26 Cal.4th 860, 868.)

However, in *Gilbert*, issued less than a year after *Washington*, the Supreme Court stated in dicta that "[w]hen murder is established under … sections 187 and 188 pursuant to [the provocative act doctrine], section 189 may properly be invoked to determine the degree of that murder." (*Id.* at 705, citations omitted.) Based on this statement, courts have since held that, while the felony murder rule may not be used to *establish* murder liability in a case where the killing is committed by a non-accomplice third party, where murder liability is established under the provocative act doctrine in such a case, the felony murder rule may be used to *elevate* the defendant's murder liability from second to first degree. (*See Pizano v. Superior Court* (1978) 21 Cal.3d 128, 139 n.4; *People v. Baker-Riley* (2012) 207 Cal.App.4th 631, 635-36; *People v. Mejia* (2012) 211 Cal.App.4th 586, 619-20; *People v. Briscoe* (2001) 92 Cal.App.4th 568, 595.)

Thus, under current California law, where a defendant participates in a qualifying felony during which a non-accomplice third party commits a killing, even of the defendant's accomplice, the defendant may be convicted of first degree murder pursuant to the felony murder rule, so long as the defendant is also found guilty of murder under the provocative act doctrine. (*See, e.g.,* Appendix A [CALCRIM 560].) And once the defendant is convicted of first degree murder, the defendant may also potentially be convicted under the felony murder special circumstance (§ 190.2, subds. (a)(17), (d)), meaning that the defendant may potentially be sentenced to life without the possibility of parole, or even death, based on a killing that neither they nor their accomplice either committed or intended. (*See, e.g., Briscoe, supra,* 92 Cal.App.4th 568.)

Notably, persons convicted of first degree murder under this theory have been largely excluded from the ameliorative changes enacted by SB 1437 and SB 775. Courts have held that, because of the distinction between the felony murder rule and the provocative act doctrine, and because a conviction for murder under the provocative act doctrine generally requires a showing that the defendant personally acted with implied malice, a defendant convicted of murder under the provocative act doctrine is categorically ineligible for relief under Section 1172.6, even where the defendant's murder liability was elevated from second to first degree pursuant to the felony murder rule. (*See,*

e.g., People v. Swanson (2020) 57 Cal.App.5th 604; *People v. Johnson* (2020) 57 Cal.App.5th 257; *People v. Lee* (2020) 49 Cal.App.5th 254.)[2]

Proposed Amendments

This use of the felony murder rule in cases of provocative act murder can be addressed through minor amendments to Section 189. For example:

(a) All murder that is perpetrated by means of a destructive device or explosive, a weapon of mass destruction, knowing use of ammunition designed primarily to penetrate metal or armor, poison, lying in wait, torture, or by any other kind of willful, deliberate, and premeditated killing, or that is committed in the perpetration of, or attempt to perpetrate, arson, rape, carjacking, robbery, burglary, mayhem, kidnapping, train wrecking, or any act punishable under Section 206, 286, 287, 288, or 289, or former Section 288a, or murder that is perpetrated by means of discharging a firearm from a motor vehicle, intentionally at another person outside of the vehicle with the intent to inflict death, is murder of the first degree.

[…]

(e) A participant in the perpetration or attempted perpetration of a felony listed in subdivision (a) in which a death occurs is liable for murder only if one of the following is proven:

(1) The person was the actual killer.

(2) The person was not the actual killer, but, with the intent to kill, aided, abetted, counseled, commanded, induced, solicited, requested, or assisted the actual killer in the commission of murder in the first degree.

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[2] A likely exception to the analysis in this paragraph is where the defendant is convicted of murder under the provocative act doctrine based on a provocative act committed by an accomplice rather than by the defendant themselves. While there is limited case law on this issue, it appears that, prior to SB 1437, such a defendant could be convicted of murder under the provocative act doctrine without regard to whether they personally acted with implied malice, and that, in light of SB 775, such a defendant should now be eligible for relief under Section 1172.6. The California Supreme Court appears set to resolve this issue in *People v. Antonelli*, S281599, which has been fully briefed since June 2024.

(3) The person was a major participant in the underlying felony and acted with reckless indifference to human life, as described in subdivision (d) of Section 190.2 [broader option – , and the actual killer was another participant in the perpetration or attempted perpetration of the underlying felony] / [narrower option – , and the person killed was not another participant in the perpetration or attempted perpetration of the underlying felony].

[…]

A statutory retroactivity mechanism can also easily be created, either through minor amendments to Penal Code Section 1172.6 or through the enactment of a new statute.

Need for Proposed Amendments

These proposed amendments are needed for at least two reasons.

First, California's approach to this issue allows for the imposition of sentences far more severe than appropriate given the circumstances. As reflected in Appendix B, the overwhelming majority of states that have considered this issue have concluded that subjecting a defendant to first degree felony murder liability based on a killing committed by a non-accomplice third party stretches the concepts of criminal causation and criminal accountability beyond reason, in particular where the person killed is the defendant's accomplice.

Second, California's approach to this issue is illogical as a matter of statutory construction. That is, it is illogical for the felony murder rule, as codified in Section 189, to *not* apply in cases of provocative act murder for the purpose of establishing murder liability, but *to* apply in such cases for the purpose of elevating murder liability from second to first degree. Nothing in Section 189 supports such a reading of the statutory language, and it is implausible that the Legislature intended such a convoluted reading in enacting the statute. (*See Pizano, supra,* 21 Cal.3d at 141-43, dis. opn. of Bird, C.J. [making similar points in dissenting from the majority's analysis of this issue].)

Effect of Proposed Amendments

The effect of the proposed amendments to Section 189 would be limited. They would not eliminate or modify the provocative act doctrine itself. Nor would they eliminate the possibility of liability for first degree murder in cases of provocative act murder. (*See, e.g., Gonzalez, supra,* Cal.4th 643 [where a non-accomplice third party kills the defendant's accomplice in response to an attempted murder that the defendant personally premeditated and deliberated, the defendant may be convicted of first degree murder under the provocative act doctrine, without the use of the felony murder rule].) They would merely limit the use of the felony murder rule in such cases.

The effect of the proposed statutory retroactivity mechanism would likewise be limited, at least in terms of the number of defendants impacted and the burden placed on the judiciary. Given how relatively infrequently the felony murder rule is used in cases of provocative act murder, there are likely between approximately 30 and 60 defendants in the state who would qualify for retroactive relief under the proposed amendments. Further, because the issue of whether a given killing either (a) was committed by a non-accomplice third party, or (b) was of the defendant's accomplice, is generally an easily-ascertained and not-easily-disputed issue, determining whether a given defendant qualified for relief under the proposed amendments would generally be relatively straightforward. On the other hand, the effect on the individual defendants who qualified for relief would be massive, potentially reducing their sentences on their murder convictions from 25 years to life, or even LWOP, to the far more appropriate (although still severe) 15 years to life.

Possible Broader Alternatives

The proposal set out above is a narrow one, focused exclusively on limiting the use of the felony murder rule in cases of provocative act murder. Two possible broader alternatives are worth noting.

First, the provocative act doctrine itself could be eliminated. This would likely require either an amendment to the definition of malice in Penal Code Section 188, or the enactment of a new statute.

Second, all forms of first degree provocative act murder – and not just first degree provocative act murder based on the felony murder rule – could be eliminated. There are at least two other provisions of Section 189 that have

been used to elevate a defendant's murder liability for a provocative act murder from second to first degree: the deliberation-premeditation provision (i.e., where a provocative act murder occurs in the course of a "willful, deliberate, and premediated" murder or attempted murder), and the shooting-from-a-motor-vehicle provision (i.e., where a provocative act murder occurs in the course of the defendant or their accomplice "discharging a firearm from a motor vehicle, intentionally at another person outside of the vehicle with the intent to inflict death"). Thus, to eliminate all forms of first degree provocative act murder, there would need to be either additional amendments to Section 189 or the enactment of a new statute.

Appendix A

CALCRIM 560: Homicide: Provocative Act by Defendant[3]

The defendant is charged in Count One with an underlying Section 189 felony. The defendant is charged in Count Two with murder. A person can be guilty of murder under the provocative act doctrine even if someone else did the actual killing. To prove that the defendant is guilty of murder under the provocative act doctrine, the People must prove that:

1. In committing the underlying Section 189 felony, the defendant intentionally did a provocative act;

2. The defendant knew that the natural and probable consequences of the provocative act were dangerous to human life and then acted with conscious disregard for life;

3. In response to the defendant's provocative act, X person killed Y person; and

4. Y person's death was the natural and probable consequence of the defendant's provocative act.

A provocative act is an act:

1. That goes beyond what is necessary to accomplish the underlying Section 189 felony; and

2. Whose natural and probable consequences are dangerous to human life, because there is a high probability that the act will provoke a deadly response.

In order to prove that Y person's death was the natural and probable consequence of the defendant's provocative act, the People must prove that:

1. A reasonable person in the defendant's position would have foreseen that there was a high probability that his or her act could begin a chain of events resulting in someone's death;

2. The defendant's act was a direct and substantial factor in causing Y person's death; and

3. Y person's death would not have happened if the defendant had not committed the provocative act.

A substantial factor is more than a trivial or remote factor. However, it does not need to be the only factor that caused the death.

If you decide that the defendant is guilty of murder, you must decide whether the murder is first or second degree.

To prove that the defendant is guilty of first degree murder, the People must prove that:

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[3] For readability, some bracketed and alternative language removed, and some boilerplate language added.

1. As a result of the defendant's provocative act, Y person was killed during the commission of the underlying Section 189 felony; and

2. Defendant intended to commit the underlying Section 189 when they did the provocative act.

In deciding whether the defendant intended to commit the underlying Section 189 felony and whether the death occurred during the commission of the underlying Section 189 felony, you should refer to the instructions I have given you on the underlying Section 189 felony.

The People have the burden of proving beyond a reasonable doubt that the killing was first degree murder rather than a lesser crime. If the People have not met this burden, you must find the defendant not guilty of first degree murder. Any murder that does not meet these requirements for first degree murder is second degree murder.

Appendix B

Out-of-State Authorities

List of states (24 in total) that prohibit or limit application of their respective felony murder rules in cases where the killing is committed by a non-accomplice third party, or, at the very least, where the person killed is the defendant's accomplice:

State	Rule	Authority
Alaska	no felony murder liability where person killed is accomplice; manslaughter liability only	Pfister v. State (Alaska Ct. App. 2018) 425 P.3d 183
Arkansas	no felony murder liability where killing is committed by non-accomplice third party, except where defendant uses victim as human shield	Johnson v. State (1972) 252 Ark. 1113
Colorado	no felony murder liability where killing is committed by non-accomplice third party	Alvarez v. District Court (1974) 186 Colo. 37
Connecticut	no felony murder liability where killing is committed by non-accomplice third party	Conn. Gen. Stat. Ann. § 53a-54c
Delaware	no felony murder liability where killing is committed by non-accomplice third party	Weick v. State (Del. 1980) 420 A.2d 159
Florida	second degree felony murder liability only where killing is committed by non-accomplice third party	State v. Wright (Fla. 1979) 379 So.2d 96
Idaho	no felony murder liability where killing is committed by non-accomplice third party	State v. Pina (2010) 149 Idaho 140
Kentucky	no felony murder liability where killing is committed by non-accomplice third party	Commonwealth v. Moore (1905) 121 Ky. 97
Maryland	no felony murder liability where killing is committed by non-accomplice third party, except where defendant uses victim as human shield	Campbell v. State (1982) 293 Md. 438
Massachusetts	no felony murder liability where killing is committed by non-accomplice third party; manslaughter liability only	Commonwealth v. Dawson (2022) 490 Mass. 521
Michigan	no felony murder liability where person killed is accomplice	People v. Austin (1963) 370 Mich. 12
Minnesota	no felony murder liability where killing is committed by non-accomplice third party	State v. Branson (Minn. 1992) 487 N.W.2d 880
Missouri	second degree felony murder liability only where killing is committed by non-accomplice third party	State v. Burrage (Mo. Ct. App. 2015) 465 S.W.3d 77
Nebraska	no felony murder liability where person killed is accomplice	State v. Rust (1977) 197 Neb. 528

Nevada	no felony murder liability where person killed is accomplice	Sheriff, Clark County v. Hicks (1973) 89 Nev. 78
New Jersey	no felony murder liability where killing is committed by non-accomplice third party	State v. Bonner (1992) 330 N.C. 536
New Mexico	no felony murder liability where person killed is accomplice	Jackson v. State (1979) 92 N.M. 461
New York	no felony murder liability where person killed is accomplice; second degree felony murder liability only where killing is committed by non-accomplice third party	N.Y. Penal Law § 125.25; People v. Hernandez (1993) 82 N.Y.2d 309
North Carolina	no felony murder liability where killing is committed by non-accomplice third party	State v. Bonner (1992) 330 N.C. 536
Pennsylvania	no felony murder liability where person killed is accomplice	Commonwealth v. Redline (1958) 391 Pa. 486
Tennessee	no felony murder liability where person killed is accomplice	State v. Severs (Tenn. Crim. App. 1988) 759 S.W.2d 935
Utah	no felony murder liability where person killed is accomplice	State v. Hansen (Utah 1986) 734 P.2d 421
Virginia	no felony murder liability where person killed is accomplice	Wooden v. Commonwealth (1981) 222 Va. 758
West Virginia	no felony murder liability where person killed is accomplice	Davis v. Fox (2012) 229 W.Va. 662

List of states (7 in total) that do not prohibit or limit application of their respective felony murder rules even in cases where the person killed is the defendant's accomplice:

State	**Authority**
Arizona	State v. Lopez (Ariz. Ct. App. 1992) 173 Ariz. 552
California	People v. Briscoe (2001) 92 Cal.App.4th 568
Georgia	Robinson v. State (2016) 298 Ga. 455
Illinois	People v. Lowery (1997) 178 Ill.2d 462
Indiana	Jenkins v. State (Ind. 2000) 726 N.E.2d 268
Oklahoma	Kinchion v. State 2003 OK CR 28
Wisconsin	State v. Oimen (1994) 184 Wis.2d 423