

A writer in desperate need of money decided to hold up a local convenience store. Determined not to harm anyone, he carried a toy gun that resembled a real gun. In the store, he pointed the toy gun at the clerk and demanded money. A customer who entered the store and saw the robbery in progress pulled his own gun and fired at the writer. The bullet missed the writer but struck and killed the clerk.

If the writer is charged with felony murder, what is his best argument for being found NOT guilty?

- A. He did not commit the robbery because he never acquired any money from the clerk.
- B. He did not intend to create any risk of harm.
- C. He did not intend to kill.
- D. He is not responsible for the acts of the customer.

Explanation:

Felony murder occurs when a defendant kills another during the commission, or attempted commission, of an **inherently dangerous felony**. The defendant's **responsibility for deaths caused by others** during the felony depends on the theory adopted by the jurisdiction:

Agency theory (majority rule) – the defendant is responsible for deaths caused by **co-felons**

Proximate cause theory (minority rule) – the defendant is responsible for deaths caused by **any person** (eg, co-felon, police, bystander)

Here, the writer attempted to rob a convenience store with a fake gun (inherently dangerous felony). A customer (not a co-felon) shot at the robber but killed the clerk instead. And since most jurisdictions follow the agency theory, the writer's best argument for being acquitted (ie, found not guilty) of felony murder is that he is not responsible for the customer's acts.

(Choice A) Although the writer did not commit **robbery** because he failed to acquire the money, he did *attempt* to commit robbery. And since felony murder applies when the defendant attempts to commit an inherently dangerous felony, this argument would not protect the writer.

(Choices B & C) Felony murder is *any* killing committed during an inherently dangerous felony, so it does not require proof that the defendant intended to create a risk of harm or intended to kill. Therefore, these arguments would not help the writer.

Educational objective:

Under the agency theory of felony murder (majority rule), a defendant is responsible for deaths caused by him/her or co-felons during the commission, or attempted commission, of an inherently dangerous felony—not for deaths caused by others.

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Felony murder
(defendant's liability for death caused by others)

