

A man was charged with felony murder because of his involvement in a bank robbery. The evidence at trial disclosed that a coworker invited the man to go for a ride in her new car, and after a while asked him to drive. As they drove around town, the coworker explained to the man that she planned to rob the bank and that she needed him to drive the getaway car. The man agreed to drive to the bank and to wait outside while the coworker went in to rob it.

As they approached the bank, the man began to regret his agreement to help with the robbery. Once there, the coworker got out of the car. As she went out of sight inside the bank, the man drove away and went home. Inside the bank, the coworker killed a bank guard who tried to prevent her from leaving with the money. The coworker ran outside and, finding that her car and the man were gone, ran down an alley. She was apprehended a few blocks away. The man later turned himself in after hearing on the radio that the coworker had killed the guard.

The jurisdiction has a death penalty that applies to felony murder.

Consistent with the law and the Constitution, of which crime may the jury convict the man?

- A. Felony murder and impose the death penalty.
- B. Felony murder but not impose the death penalty.
- C. Bank robbery only.
- D. No crime.

Explanation:

Accomplice liability extends to any person who (1) intentionally aids or encourages the principal before or during a crime (2) with the specific intent that the crime be completed. Both parties are equally liable for the **encouraged crime** and any crimes that occur as a **natural and probable** (ie, foreseeable) **consequence** of that crime.

Here, the man became an accomplice when he drove his coworker to the bank so that she could rob it. The man then fled the crime scene and did not encourage the commission of felony murder—the killing of another during the commission, or attempted commission, of an **inherently dangerous felony** like robbery. But he is guilty of felony murder since the coworker killed a bank guard who tried to prevent her from taking the money—a foreseeable consequence of robbery **(Choice D)**.

However, due to the Eighth Amendment prohibition against cruel and unusual punishment, the **death penalty cannot be imposed** on an **accomplice to felony murder** who did not kill or intend to kill—**unless** the accomplice **significantly participated in the underlying felony** and acted with **reckless indifference to human life**. And since the man merely dropped the coworker off at the bank, he did not significantly participate in the robbery. Therefore, the jury may convict him of felony murder but *cannot* impose the death penalty **(Choice A)**.

(Choice C) In felony murder cases, the underlying felony is a lesser included offense that merges into the crime of felony murder. Therefore, a defendant can be convicted of either offense—but not both. So, though the man could be convicted of bank robbery (lesser offense), he will likely be convicted of felony murder (greater offense) instead.

Educational objective:

The death penalty cannot be imposed on an accomplice to felony murder who did not kill or intend to kill—unless the accomplice (1) significantly participated in the felony and (2) acted with reckless indifference to human life.

References

Enmund v. Florida, 458 U.S. 782, 790–91 (1982) (holding that the death penalty cannot be imposed on a felony-murder accomplice who did not kill or intend to kill).

Tison v. Arizona, 481 U.S. 137, 158 (1987) (imposing the death penalty on a felony-murder accomplice who was a major participant in the underlying felony and acted with reckless indifference to human life).

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Accomplice liability & punishment for felony murder

