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Homicide conviction set aside over faulty jury instruction

Massachusetts joins other states in questioning limits of felony-murder rule

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BOSTON — The jury in a homicide case that arose from a drug deal gone awry should have been instructed that it could consider, in response to a felony-murder charge, whether the defendant was acting in self-defense, the Appeals Court has decided.

The victim allegedly had attempted to rob the defendant, who had gotten into the victim's SUV thinking he was going to sell narcotics to him. The defendant claimed he fired the fatal shots in self-defense after the victim pointed a Taser at him and the victim's companion held a knife to his throat.

The commonwealth charged the defendant with second-degree murder and felony murder. The trial judge gave the jury a self-defense instruction for the second-degree murder charge but refused to do so for the felony-murder charge, for which the predicate felony was illegal weapon possession. Instead, the judge applied the general rule that self-defense is not a defense to felony murder.

The jury ultimately convicted the defendant of voluntary manslaughter, though it did not specify whether it was in mitigation of the second-degree murder or felony-murder charge.

The defendant argued that the trial judge erred by not permitting the jury to consider whether he acted in self-defense.

The Appeals Court agreed, reversing the conviction.

"Where the felony was not inherently dangerous, and the defense was based on the

assertion that the defendant was not the aggressor and initiator of the violence, an instruction on self-defense in relation to felony-murder should have been given," Chief Judge Scott L. Kafker wrote for the court. "We do so recognizing that this is a very close question, because bringing a firearm to a drug transaction presents obvious risks of violence."

The 23-page decision is Commonwealth v. Fantauzzi, Lawyers Weekly No. 11-030-17. The full text of the ruling can be found here.

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'Blunt instrument'

Jake Wark, a spokesman for Suffolk County District Attorney Daniel F. Conley, whose office handled the prosecution, said Conley may decide to take the issue to the Supreme Judicial Court.

"We're reviewing the decision to determine whether it warrants further scrutiny," Wark said, adding that it was too early to comment on the potential ramifications of the ruling for the state should the decision stand.

Defense counsel Katherine C. Riley of Foxborough declined to comment, but Murat Erkan, a criminal-defense lawyer in Andover, said the ruling will be helpful for defendants facing felony-murder charges.
"With the court's decision, Massachusetts has joined a growing number of states which have questioned the limits and utility of the felony-murder rule," Erkan said, referring to the general rule that a self-defense instruction is unavailable in such cases.

The general rule substitutes legal presumptions for a jury's crucial factual determinations regarding the actions and intentions of the defendant, he added.

"One-size-fits-all theories such as this are often too blunt an instrument for the fine determinations of evidence necessary for individualized justice and the overall truth-seeking mission of the court," Erkan said. "[This] case illustrates the point well. Assuming the truth of [the defendant's] version of events, he unwittingly walked into a trap set by an experienced, predatory stick-up crew. His lack of a gun permit, which was the sole basis for the predicate felony, was certainly not the impetus for the violence that ensued. The real issue in the trial was whether or not [the defendant] acted in self-defense. If he did, he ought to have been acquitted of felony murder."

Vikas S. Dhar, a criminal-defense lawyer in Boston, said that by drawing a distinction between predicate felonies that are inherently dangerous and those that are not for the purpose of a self-defense instruction in felony-murder cases, and determining that the underlying felony in Fantauzzi was not inherently dangerous, the Appeals Court left the door wide open for future courts to raise the bar for which felonies are to be considered inherently dangerous.

"The question then becomes, if the felony-murder doctrine is not designed to discourage the illegal carrying of a firearm and commission of the sale of heroin in the back of an SUV, especially given the nationwide opioid epidemic to which these felonies are surely contributing, then what is its purpose?" he said.

Still, Dhar said, in light of the ruling in Fantauzzi, defense attorneys need to be aware that any time a felony-murder charge is brought, self-defense can now be argued as an absolute defense, provided the underlying felony is not inherently dangerous, with the definition of "inherently dangerous" being up for grabs.

The case should also serve as a reminder to defense lawyers that having a "robust and adaptable" set of instructions ready to be offered is critical, particularly in a case like Fantauzzi, which Dhar described as "mired with overlapping charges, nebulous precedent, and a jury that was asked to essentially navigate a 'Choose Your Own Adventure' story in the course of their deliberation."

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Alleged self-defense

On Oct. 27, 2012, the defendant, Miguel Fantauzzi of Chelsea, made plans via text message to sell 10 grams of heroin to Christopher Powell of Dedham.

Shortly after 6:30 that evening, Fantauzzi entered the rear passenger seat of Powell's SUV, which was parked on the street in Chelsea. Powell was in the driver's seat and his friend Robert Dobay was in the front passenger seat.

According to Fantauzzi, he decided to bring a gun with him because it was getting dark and he had been robbed twice at night in Chelsea.

After getting into the SUV, Fantauzzi allegedly handed the drugs to Powell, who weighed them on an electronic scale sitting atop the center console of the vehicle.

At that point, Dobay allegedly turned, reached around the seat, held a knife to Fantauzzi's throat and told him, "Give me everything you got or I'll stab you."

Fantauzzi tried to reach for the passenger side door, at which point Powell grabbed his jacket and pulled him back into the SUV while pointing a stun gun at Fantauzzi.

As that was happening, Dobay reiterated to the defendant that if he did not give him everything he had, he would "f--king stab" him.

Fantauzzi claimed that he managed to slap Dobay's knife away, grabbed his gun and, without aiming, fired two shots inside the SUV. He then allegedly dove out of the vehicle and fell to the ground, when he heard another door open and responded by firing two more times toward the front passenger seat.

Fantauzzi said he stood up, fired two more shots in the air, and began walking toward a cross street.

Powell died of bullet wounds he suffered in the shooting. Fantauzzi was arrested and charged with second-degree murder and felony murder, with the predicate felony being unlawful possession of a firearm.
The case went to trial in Superior Court, where Judge Christine M. Roach instructed the jury that if it found Fantauzzi not guilty of second-degree murder or felony murder, it should consider the lesser-included offense of voluntary manslaughter. She also instructed the jury that while self-defense was a complete defense to the second-

degree murder charge, it did not apply to the felony-murder charge.

The defense objected to the absence of a self-defense instruction for felony-murder under the circumstances. Meanwhile, through questions to the judge, the jury expressed its confusion, based on apparently convoluted jury instructions, about the interplay between voluntary manslaughter, the two murder charges and self-defense.

The jury ultimately found the defendant guilty of voluntary manslaughter without identifying whether it did so in mitigation of second-degree murder or felony murder or whether it simply concluded that the separate offense of voluntary manslaughter had been proven.

Fantauzzi, who received a sentence of 12 to 15 years in prison, appealed.

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Not inherently dangerous

The Appeals Court found that Roach should have instructed the jury on self-defense in relation to the felony-murder charge.

While the panel conceded that the model instructions, which the trial judge applied in not giving such an instruction, suggest that a self-defense instruction is unavailable in felony-murder cases, it also noted that the cases cited in the model instructions suggest the rationale for such a rule is that the nature of the underlying felony marks the defendant as an "initiating and dangerous aggressor."

But Fantauzzi did not fit so neatly within that framework, the court continued.

"Here, viewing the evidence in the light most favorable to the defendant … the evidence showed that the defendant only used the firearm once the drug deal went awry and after the victim pointed a taser at him and the victim's compatriot held a knife to the defendant's throat," Kafker wrote.

Meanwhile, Massachusetts appellate cases exist where, in the context of felony-murder charges, instructions on self-defense have been given without objection, Kafker noted.

And while there were no specific rulings on the applicability of such an instruction in those cases, the case law nonetheless suggests a recognition that such cases differ from ordinary felony-murder cases in which the defendant is the first aggressor, Kafker continued.

Accordingly, the Appeals Court decided, the general rule that self-defense is inapplicable in felony-murder cases does not apply where the predicate felony is not inherently dangerous and the defense is based on an assertion that the defendant was neither the aggressor nor the initiator of the violence.

Because the absence of such an instruction was prejudicial to Fantauzzi, the Appeals Court concluded that it had to reverse the defendant's conviction and set aside the verdict.

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