

Policy Committee Hearing – 9/17/26

Second-degree/Felony murder

Good morning,

My name is David L. Ashworth. In January of this year, I retired as a judge of the Court of Common Pleas of Lancaster County after serving for 26 years with 5 years serving as President Judge. I presided over criminal and civil cases and started our first Drug Treatment Court back in 2005. Following my retirement, I began working with the Law Firm of Barley Snyder handling Arbitration and Mediation matters.

I welcome the opportunity to testify here today as a retired judge and a private attorney to share my thoughts and experiences. To be clear, I am not speaking on behalf of any Court or judge or the Pennsylvania Conference of State Trial Judges. My comments are my own based upon my experience as a judge and my previous 20 years in private practice.

First, I commend this Committee for holding these hearings and seeking the input of those who are down in the trenches interpreting and applying the laws as written. Following the Supreme Court's decision in Commonwealth v. Derek Lee, the question is: What is the best method of addressing the ruling that the imposition of life imprisonment without parole for felony murder without consideration of a defendant's culpability is unconstitutional?

My goal is to provide the Committee with useful information as someone who has "been there, done that." My hope is that "real world" experiences will be of value in drafting effective legislation.

During my time on the bench, I presided over many of the most infamous homicide cases in Lancaster County, including cases involving second-degree/felony murder convictions. These cases are never easy, never the same and always difficult to manage. Any judge will tell you it is challenging balancing the interests of the victims, the community, the prosecution as well as the constitutional rights of the defendant.

As a judge, I welcomed any guidelines, established case law and well-reasoned legislation upon which I could rely in any given situation. Predictability was always important. All parties, including victims and their families, were better able to make informed decisions if they knew what to expect. They felt the legal system was working properly if everyone understood the potential outcome. Even if a case did not turn out as expected, people understood the possibilities. Chaos and unpredictability were never good. Of course, it was always important that I was able to exercise my discretion in cases involving unique facts and circumstances. The "one size fits all" or "cookie cutter" type guidelines or legislation do not work in the real world. For that reason, I have never been a fan of mandatory sentences except in limited situations. In felony murder cases, however, a mandatory minimum sentence in lieu of mandatory life without parole would make sense given the decision in *Lee*.

I spoke to jurors in my Chambers after every trial. Felony murder convictions were often the result of a compromise verdict. Occasionally, I had trials where a jury would convict several defendants of felony murder because they could not decide who did the actual killing, although all defendants may have been present and involved in committing the underlying felonies. In those cases, when I spoke to the jury and explained the sentencing guidelines, they had no objection to each defendant receiving the same sentence. However, in every felony murder case, jurors explained that during deliberations they always discussed the level of culpability of the defendants. For example, jurors would differentiate between the person holding a gun alongside the actual shooter and the person down the street acting as a “lookout.” Jurors were always surprised when I explained that in terms of sentencing, all individuals convicted of felony murder, regardless of culpability, would be sentenced to life without parole. Of course, prior to rendering a verdict a jury is never instructed on what sentence, if any, would be imposed. It is clear, however, that juries consider the issue of culpability even without an understanding of the sentencing consequences or instruction from the judge.

In addition, felony murder convictions are oftentimes the result of negotiated guilty pleas between the prosecution and defense to enable the defendant to avoid the risk of the death penalty. I am concerned the decision in *Lee* will be held to be retroactive before legislation is enacted to address past cases. It is inequitable for the prosecution to have waived its right to seek a first-degree and/or a death penalty conviction only to have a defendant later released earlier than all parties and the victims expected. Even if the Commonwealth had an opportunity to retry the case, the case might be too old for the prosecution to effectively proceed to trial, and the Commonwealth would be prejudiced.

The practical implications created by *Lee* are analogous to those following the Supreme Court’s post-*Miller* rulings addressing the resentencing of juveniles convicted of first-degree murder who had been sentenced to life imprisonment without parole. Following *Miller* and the *Batts* decisions I was required to hold resentencing hearings in many juvenile cases. This process retraumatized families and friends of the victims and created tremendous turmoil within the community. Many mistakenly believed all juveniles convicted of first-degree murder would be immediately released. Of course, this was not correct, but this nonetheless caused great anxiety and mistrust in the legal process. The need for resentencing also placed a tremendous burden on the entire court system.

I encourage you not to allow that to happen again. The same chaos will occur following *Lee* if the Senate and the House fail to enact workable legislation promptly. Indeed, if as anticipated the *Lee* decision will follow the same course as *Miller* and be held to be retroactive, the process will be even more burdensome and traumatic than the juvenile cases because of the sheer volume of cases impacted by the decision.

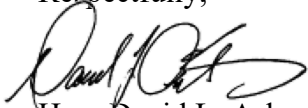
I have spent my entire legal career believing in our three separate but co-equal branches of government. It has been ingrained in me that the judicial branch is responsible for interpreting the laws, resolving disputes, and ensuring that the Constitution and laws are applied fairly. As a judge, it was never my responsibility to enact the laws. In Pennsylvania, such is the job of the General Assembly. To be blunt, it is now in your lap.

Since I was asked to testify here today, I reviewed both Senate Bill 1400 and House Bill 1042. My focus was on the procedural application of the text and not necessarily the content. For example, I make no comment on whether I agree or disagree with the amount of time an offender is required to serve before being eligible for parole. That is within the sole province of the General Assembly. With that said, with a few exceptions, I find the bipartisan Senate Bill 1400 to be the most pragmatic, reasonable method of effectuating penal reform as noted by the Court in *Lee*.

I welcome further discussion on the text of the proposed Bills but encourage the General Assembly to pass appropriate legislation promptly. Please give the Courts and all litigants as well as the victims the tools necessary to address this issue and avoid the chaos, unpredictability and trauma which would otherwise result.

I am happy to answer any questions.

Respectfully,

A handwritten signature in black ink, appearing to read 'David L. Ashworth', written in a cursive style.

Hon. David L. Ashworth (Retired)
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