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Juveniles and the Ability to Form Intent to Kill

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The number of homicides committed by juveniles between the ages of fourteen and seventeen skyrocketed after 1985, even surpassing the rates of older age groups. In 1998 alone the Federal Bureau of Investigation reported approximately seven percent (1,169 of 16,019) of murder and non-negligent manslaughter arrests were made of children under the age of eighteen. These statistics are disturbing when viewed collectively, and even more so when considered on an individual basis. The perpetrators of these violent acts are not the typical “hardened” criminals; they are mere children. Yet their actions are not the actions of children, thus raising several questions when considering how to handle such youthful criminals. Behind the hand that pulls the trigger is there a fully functioning mental process and conscience capable of comprehending the magnitude of such an act? What is really going on inside the mind and heart of a juvenile killer? Is this teenager a killer in the same sense that an adult criminal is a killer?

As violent youth are brought to trial, an essential issue facing the courts is determining the juvenile’s ability to form intent to kill. The developmental differences between juveniles and adults demand that higher scrutiny be given to determining intent. More so than adults, juveniles have a larger number of native San Francisco, Clements is a senior graduating with university honors with a B.A. in English and a minor in business. She is interested in pursuing a J.D./M.B.A. and working as an executive.


of influences that would hinder their ability to form intent. As a result, juveniles are often not fully capable of forming intent to kill, and courts should consider a juvenile's cognitive decision-making ability and psychological distress at the time of the crime. These two factors require a higher level of scrutiny to determine intent in juvenile homicide cases.

**Present State of Law Regarding Intent**

Intent is an essential element to establishing guilt in murder cases. Intent to commit a specific crime, or *mens rea*, must be proven in order for a conviction to be made. However, the law regarding intent varies from jurisdiction to jurisdiction. Federal law specifies that murder is a "specific intent crime" and thus, "proof that [the] deed was done with premeditation is necessary." And yet intent is not a tangible element; it must be inferred through other means. Federal Law specifies the following:

Law attaches intent to every act that is not accident and, under predecessor to 18 USCS § 1111, every act that produces death that is outside definition of "accident"—something occurring after exercise of care that law requires to be exercised to prevent occurrence—is intentional, whether growing out of specific design to take life or growing out of gross carelessness or arising from condition of mind prompting engagement in some other wrongful or criminal act in execution of which life is taken.

Today the courts are split on this issue of identifying intent or *mens rea*; some allow psychological evaluations as evidence while others disregard such considerations. Because intent is a function of psychological and mental processes, it is logical that psychological analysis would be a major consideration of juvenile homicide cases. Indeed John Parry, director of the ABA Commission on Mental and Physical Disability Law and Eric Y. Drogin, associate clinical professor of psychiatry and behavioral sciences at the University of Louisville School of Medicine, assert that "often, lack of intent

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4 18 USCS § 1111 (2001) 11, 10.

5 Ibid.
is based on mental impairment." However, the psychological approach yields many conflicting results. A number of recent cases have dealt with the required mental state of the offender necessary to establish intent and the culpability of the accused. The Illinois Supreme Court ruling in *People v. Jones* (1979) ruled in contradiction to the federal legal interpretation, that intent must include a specific desire to kill a person. The court clarified their definition with the statement “knowledge that the consequences of an accused’s act may result in death (or grave bodily injury), or intent to do bodily harm, is not enough.” As the commentators point out, “it would appear that knowledge that the consequences of one’s act may result in death does not satisfy the specific intent requirement for attempted murder.” Thus if homicide offenders were not aware that their actions would lead to death, then they could not be considered to have the requisite intent to kill. This ruling is a much broader interpretation than the federal statement that intent be necessarily involved in “every act that produces death that is outside definition of ‘accident.’” Whether intent is an inherent component of a homicidal crime or a separate entity remains subject to debate.

An additional concern regarding mens rea that has divided the courts handling homicide cases is the question of allowing expert psychiatric evidence to establish the presence or absence of intent at the time of the murder. Two state supreme court cases, *United States v. Brawner* (United States Court of Appeals, District of Columbia Circuit) and *State v. Wilcox* (Supreme Court of Ohio), stand at opposite ends of the issue. The court ruled in the Brawner case that “the defendant did not have the specific mental state required for a particular crime or degree of crime—even though he was aware that his act was wrongful and was able to control it, and hence was not entitled to complete exoneration.” It was proved that his mental state at the time of the crime was of such nature that he could not be held

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6 Parry and Drogin, 12.
8 Kadish and Schulhofer, 588.
10 *United States v. Brawner*, United States Court of Appeals, District of Columbia Circuit 471 F2d 969 (1972), qtd. in Kadish and Schulhofer, 999.
responsible to the same degree, for the reason that “an offense like deliberated and premeditated murder requires a specific intent that cannot be satisfied merely by showing that defendant failed to conform to an objective standard.”11 The defendant’s “abnormal mental condition” was judged to have overridden the possibility of forming intent and premeditating the murder.12

In the Wilcox case, however, the defendant, who was charged with aggravated felony murder during a burglary, was found by psychiatrists to suffer from several mental disabilities yet the judge would not allow these mental conditions to be permitted in court as evidence of his ability or lack thereof to form intent. Primarily he denied that “the defendant’s mental condition could negate the specific intents required for aggravated murder and aggravated burglary.”13 This single decision of psychological evidence completely altered the outcome of the Wilcox case. Because the element of intent cannot be determined by physical evidence, it must be inferred by other means, which are essential to the judgment of a murder crime.

Courts and legislatures remain divided along the lines of the Brawner/Wilcox decisions. In accordance with Wilcox, many recent decisions have ruled that psychiatric evidence is “never admissible” for proving the mental state and ability to form intent of a defendant.14 Yet the federal courts and approximately half the states “continue to favor the Brawner view that expert psychiatric evidence should be admissible whenever relevant to negate the mens rea of a specific intent crime.”15 The Model Penal Code comments regarding this issue:

The Institute perceived no justification for a limitation on evidence that may bear significantly on a determination of the mental state of the defendant at the time of the commission of the crime. If states of mind are accorded legal significance, psychiatric evidence should be admissible

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11 Ibid.
12 Ibid.
13 State v. Wilcox, 436 NE 2d OH 523 (1982), qtd. in Kadish and Schulhofer, 1000.
14 Ibid., 1004.
15 Ibid.
when relevant to prove or disprove their existence to the same extent as any other relevant evidence.\textsuperscript{16}

The state of the law regarding intent to kill is complicated. The vast difference between interpretations illustrated in the case of \textit{People v. Jones} and the Brawner and Wilcox decisions make our examination of intent likewise difficult. Interpreting "intent to kill" remains a perplexing issue, but given the psychological and mental processes involved in the act of forming intent, courts that allow a psychological approach to the issue are headed in the right direction. The decision of the Brawner case accurately allows the mental capacity of a defendant to be considered in establishing intent. The psychological evidence in the Brawner case proved that the mental state of the defendant limited his ability to form intent. Juvenile killers are especially susceptible to psychological factors that could impair their ability to form intent. We will now consider two of those factors: cognitive development and emotional distress at the time of the crime.

\textbf{Cognitive Development}

Given the significance of psychological evidence in evaluating a defendant's intent, we must examine the dominant psychological factors influencing teenagers in these moments of crisis. Although many fields of psychology pertain to juvenile behavior, developmental psychology is particularly helpful in exploring the differences between juvenile and adult offenders, and it provides valuable research and theory regarding their cognitive decision-making abilities.

Elizabeth Scott, professor of law at the University of Virginia Law School, explains that there are various ways in which developmental issues could adversely affect adolescent decision making.\textsuperscript{17} In considering the cognitive development of adolescents—that part which affects reasoning and

\textsuperscript{16} \textit{Model Penal Code and Commentaries}, Comment to §4.02 at 219 (1985), qtd. in Kadish and Schulhofer, 1994.

understanding—Scott presents a wide range of research with conflicting results suggesting both that teenagers have abilities similar to adults and that they are significantly limited when compared to adults.\(^\text{18}\) However despite the contradictory conclusions, Scott insists in her analysis that "the research does not demonstrate the youthful cognitive decision-making capacity is like that of adults."\(^\text{19}\) She finds fault with the studies that demonstrate adolescents' ability to be equal to adults, and she submits the following as likely developmental differences that would preclude a teenager's ability to form intent: (1) "adolescents may use information differently from adults. They may consider different or fewer options in thinking about their available choices or in identifying consequences when comparing alternatives,"\(^\text{20}\) (2) "Substantial theoretical arguments hold that while older adolescents may have adult-like capacities for reasoning, they may not deploy those capacities as uniformly across different problem-solving situations as do adults, and they may do so less dependably in ambiguous or stressful situations,"\(^\text{21}\) and (3) "Adolescents, for developmental reasons, could differ from adults in the subjective value that is assigned to perceived consequences in the process of making choices."\(^\text{22}\) These three factors could significantly prevent an adolescent from possessing the requisite ability to form intent to kill.

Limited ability to process and comprehend the magnitude of homicidal actions may preclude the formation of specific murder intent in a teenager's mind. In contrast to adults, adolescents are more prone to be lacking in these areas responsible for creating intent. Although some adult killers may also lack full development in these areas, as a group, juveniles are more likely to have insufficient cognitive development. And in addition to the normal developmental differences between adolescents and adults, Alan Kazdin

\(^{18}\) Ibid., 299.
\(^{19}\) Ibid., 302.
\(^{20}\) Ibid., 305. See also C. Lewis, "How Adolescents Approach Decisions: Changes over Grades Seven to Twelve and Policy Implications," *Child Development* 52 (1981): 538-44.
from the Yale University Department of Psychology adds that when considering the decision-making abilities of delinquent adolescents, one must understand "the fact that, as a group, these youths have a much higher rate of mental disorders than do adolescents in general. These disorders can directly impair decision making insofar as symptoms of various mental disorders (such as impulsiveness and cognitive deficiencies) guide actions in everyday situations." An adolescent’s limited cognitive decision-making ability inhibits a clear ability to form intent. Defendants should not be held completely accountable for something over which they have limited ability.

EMOTIONAL DISTRESS

As a further limitation to juveniles’ ability to form intent to kill, some researchers of adolescent homicide trends are now voicing the opinion that extreme emotional duress or other overwhelming psychological conditions may render adolescent homicide offenders unable to rationally understand their actions as they are committed. Professor Michael D. Kelleher of the California State College system examines the increasingly frequent cases in which seemingly good, normal teenagers acted violently when overcome by emotions of rage or fear. He explains that “for some individuals, adolescent rage overpowers all else in their lives and impels them to a moment of explosive violence that is beyond our understanding and theirs.” In effect these teenagers kill without recognizing what they are doing.

The horrifyingly common occurrence of adolescent perpetrated neonaticide, or the killing of an infant within twenty-four hours after birth, may attest to this phenomenon. Within the United States, it is estimated that between three to four hundred infants die each year due to neonaticide, though the actual number is probably much higher. One such case occurred in January 1986 when a sixteen-year-old Wisconsin girl gave birth.

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25 Ibid., 13.
after concealing her pregnancy from her parents for eight months. She bore the infant at home and then killed it by stabbing it with a knife. She wrapped the body in a plastic bag and hid it in the garage of her parents’ home. After the body was discovered, the teenager was brought to trial and pleaded guilty to one count of second-degree murder. When she was questioned regarding her motive for killing her child, she answered “that she was desperately afraid of what those around her, especially her parents, would think of her if they discovered that she was pregnant.”

This teenager as well as other perpetrators of neonaticide seem to have been overwhelmed by feelings of fear as well as a denial of reality as they committed their crimes.

The majority of these neonaticide cases appear to have occurred completely without forethought or rational comprehension. Though the status and condition of the mother varies widely in terms of education, socioeconomic conditions and family background, Kelleher identifies two elements common in almost every case: (1) “fear of the birth of her child and the impending, seemingly overwhelming, responsibilities of motherhood, which signal the collapse of her adolescent life as she knows it,” and (2) “strong, often insurmountable, denial of her own pregnancy.”

The female adolescents examined in Kelleher’s study all came from stable, middle-class homes with nonviolent histories. They performed well in school and were expected to excel in life. Faced with pregnancy most did not seek abortions and instead worked (quite successfully) to hide their pregnancies from parents and friends. They usually felt loneliness and guilt and an overwhelming sense of fear that increased as the time of birth arrived. Yet in spite of their conscious efforts to hide the pregnancies, most had no premeditated plan to murder their children once they were born. Kelleher explains that when a teenage mother does commit neonaticide,

it is almost always her first significant act of violence against another human being. In this sense, it is an unexpected, terrifying moment of fatal aggression that is sometimes as incomprehensible to the juvenile murderer as it is to those who later learn of the deed. When the teenage mother

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26 Ibid., 16.
27 Ibid., 14.
28 Ibid.
murders her infant, it is rarely, if ever, anything but a desperate act that horrifyingly demonstrates her unshakable conviction that, to her, there were no other options.  

Morris Brozovsky, assistant professor of psychiatry at State University's Downtown Medical Center in Brooklyn, New York, who has studied cases of neonaticide comments that this group of adolescent offenders "will deny that they are pregnant until the delivery, and the stress of the delivery will put them into a brief psychotic state."  

Defendants in neonaticide cases have argued that they could not form intent to kill because of the overwhelming feelings of fear and denial. Courts have differed in their acceptance of this defense, but the trend established in previous homicidal case rulings involving psychologically disturbed offenders should have bearing on neonaticide cases. Indeed, in the case of Kleeman v. United States Parole Commission, in which the mental abilities of a defendant were under question, the court ruled that the defendant's crime was comparable to voluntary manslaughter instead of second-degree murder, because in "her extremely irrational and paranoid state of mind brought about by external manipulation of her already confused thinking, she could not have formed intent to kill necessary to establish malice."  

These cases of neonaticide present conditions of intent to kill that are very different from the cold-blooded murder of other homicide situations. The emotional trauma surrounding the pregnancy creates a situation in which a teenager might not fully understand the extent of her actions. Feelings of fear, shame, and denial are possibly so overwhelming that a mother could murder her child without actual intent to kill.  

Neonaticide is only one example in which a teenage killer acts without full intent to kill. Many other traumatic situations could place an adolescent in a position in which he or she is overwhelmed by the consequences of a decision, perceives limited possibilities, and kills out of fear or denial. A teenager in this situation does not have the capacity to form intent to kill.

29 Ibid., 15.
30 Morris Brozovsky, qtd. in Kelleher, 19.
31 Kleeman v. United States Parole Commission, 125 F3d 725.
CONCLUSION

An adolescent killer’s ability to form intent to kill cannot be viewed in the same light as the ability of adult killers. The two major psychological factors influencing teenagers in these situations, cognitive decision-making ability and extreme emotional distress, must be taken into consideration when a defendant’s guilt is being determined. These issues require that a higher standard of inquiry be determined and applied to inferring a juvenile’s intent to kill.