You Decide

7.2 Sanexay Sophophone and three other individuals broke into a house in Emporia, Kansas. Police officers responded to a call from residents and spotted four individuals leaving the back of the house. They shined a light on the suspects and ordered them to stop. An officer ran down Sophophone, handcuffed him, and placed him in a police car.

Another officer chased fellow suspect Somphone Sysoumphone. Sysoumphone crossed railroad tracks, jumped a fence, and then stopped. The officer approached with his weapon drawn and ordered Sysoumphone to the ground and not to move. Sysoumphone complied with the officer's command but, while lying face down, rose up and fired at the officer, who returned fire and killed him. Sophophone was charged with conspiracy to commit aggravated burglary, obstruction of official duty, and felony murder. The question of law before the Kansas Supreme Court was whether Sophophone could be convicted of felony murder for the "killing of a co-felon not caused by his acts but by the lawful acts of a police officer acting in self-defense in the course and scope of his duties in apprehending the co-felon fleeing from an aggravated burglary."

The Kansas Supreme Court held that the "overriding fact . . . is that neither Sophophone nor any of his accomplices 'killed' anyone. . . . We believe that making one criminally responsible for the lawful acts of a law enforcement officer is not the intent of the felony-murder statute." The dissent pointed out that the rationale for felony murder is that it serves as a general deterrent. Potential felons will be hesitant to engage in criminal activity if they realize that they risk being convicted of first-degree murder in the event that a death occurs during the commission of a felony. "Sophophone set in motion acts which would have resulted in the death or serious injury of a law enforcement officer had it not been for the highly alert law enforcement officer." This "could have very easily resulted in the death of a law enforcement officer . . . [and] is exactly the type of case the legislature had in mind when it adopted the felony-murder rule. . . . It does not take much imagination to see a number of situations where a death is going to result from an inherently dangerous felony and the majority's opinion is going to prevent the accused from being charged with felony murder."

What is your view? Should the Kansas court use the agency or proximate cause theory? See *State v. Sophophone,* 19 P.3d 70 (Kan. 2001).

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