ADVANCE SHEET HEADNOTE
June 23, 2025

2025 CO 41

No. 23SC605, *People v. Gallegos*—Criminal Law—Felony Murder—Raising the Affirmative Defense to Felony Murder.

Participants in certain "predicate" felonies that result in a death may be liable for murder, even if the defendant was not the killer, pursuant to the felony murder statute. The statute includes an affirmative defense, which provides a means by which felony murder defendants who meet certain conditions may avoid murder liability. In this case, the Supreme Court considers whether felony murder defendants must admit to committing the predicate felony to raise the affirmative defense to felony murder. Because the felony murder statute includes no such requirement, the Supreme Court holds that a defendant need not admit the predicate felony to raise the affirmative defense to felony murder.

The Supreme Court of the State of Colorado
2 East 14th Avenue • Denver, Colorado 80203

2025 CO 41

Supreme Court Case No. 23SC605
Certiorari to the Colorado Court of Appeals
Court of Appeals Case No. 21CA976

Petitioner:

The People of the State of Colorado,

v.

Respondent:

Kenneth Alfonso Gallegos.

Judgment Affirmed
en banc
June 23, 2025

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JUSTICE BOATRIGHT delivered the Opinion of the Court, in which **CHIEF JUSTICE MÁRQUEZ**, **JUSTICE HOOD**, **JUSTICE GABRIEL**, **JUSTICE HART**, **JUSTICE SAMOUR**, and **JUSTICE BERKENKOTTER** joined.

JUSTICE BOATRIGHT delivered the Opinion of the Court.

¶1 Kenneth Alfonso Gallegos and three friends set out to obtain vaping products from a high school classmate, L.C. During the encounter, a struggle ensued, and one of Gallegos's friends fatally shot L.C. The People charged Gallegos with felony murder, with predicate felonies of aggravated robbery, attempted robbery, and conspiracy to commit aggravated robbery, along with other charges not relevant here. At trial, Gallegos denied the charges; his theory of defense was that he had not planned to rob L.C. and was unaware a gun was present until it was too late to prevent the shooting. Gallegos also requested a jury instruction on the affirmative defense to felony murder, section 18-3-102(2), C.R.S. (2018). The trial court denied the proposed instruction, deeming the affirmative defense incompatible with Gallegos's theory of defense, which the court characterized as an "outright denial" of any involvement in the underlying crime.

¶2 After a jury found Gallegos guilty, he appealed, and a division of the court of appeals reversed his felony murder conviction. *People v. Gallegos*, 2023 COA 47, ¶ 6, 535 P.3d 108, 113. The division held that defendants may both deny the predicate felony and raise the affirmative defense to felony murder, and that therefore the trial court erred by failing to give Gallegos's requested instruction. *Id.* at ¶¶ 41–46, 57, 535 P.3d at 118–19, 121.

¶3 We granted the People's petition for certiorari review and now hold that a defendant need not admit the predicate felony to raise the affirmative defense to felony murder.[1] Accordingly, we affirm the judgment of the court of appeals.

I. Facts and Procedural History

¶4 Gallegos, along with Dominic Stager and Demarea Mitchell, picked up Juliana Serrano from work. Gallegos drove the group to meet with an acquaintance, L.C., purportedly to purchase vaping products. At least some members of the group, however, had decided that they would take the products without paying. When the group arrived, L.C. approached the vehicle but refused to produce the vaping materials before he was paid. Gallegos, Stager, and Mitchell began searching the car, supposedly for a lost wallet. During this search, Mitchell took a gun Stager had brought, exited the vehicle, and confronted L.C. The two began grappling over the weapon and both fell to the ground. During the scuffle, Mitchell shot L.C., who ran into the house screaming. The group quickly returned to the vehicle, and Gallegos drove them away. L.C. later died from the gunshot wound.

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[1] We granted certiorari to review the following issue:

> Whether the division erred in concluding that a defendant need not be compelled to admit the predicate felony to raise the statutory felony murder affirmative defense when the evidence conflicted as to whether the defendant was involved in the predicate felony.

¶5 At trial, there was conflicting testimony regarding Gallegos's role in these events. Stager testified that the robbery was Gallegos's idea and that Gallegos had told him they "just needed a gun." Yet Stager also testified that others possessed the gun on the day of the attempted robbery, not Gallegos, and that when Gallegos saw the fight over it, he immediately moved to intervene, encouraging Serrano and Stager to help him stop the altercation. Mostly contradicting Stager, Serrano testified that "[t]here wasn't really a plan," and she didn't remember if Gallegos was involved in any discussion of the robbery on the way to L.C.'s home. She also could not remember whether Gallegos had discussed or had seen the gun before the scuffle, or whether he had moved to stop the fight.

¶6 Gallegos's theory of defense was that he should be acquitted of all counts because he did not shoot L.C., plan the robbery, or even know that the gun was present. Gallegos also sought to assert the affirmative defense to felony murder. In doing so, Gallegos requested a jury instruction tracking the language of section 18-3-102(2), which provides defendants with an affirmative defense to felony murder if they meet certain conditions.[2]

[2] In 2021, the legislature reclassified felony murder from first to second degree murder. Ch. 58, sec. 1–2, §§ 18-3-102 to -103, 2021 Colo. Sess. Laws 235, 235–36; § 18-3-103(1)(b), C.R.S. (2024). Because the 2018 statute was in effect at the time of the events in this case, that version applies to Gallegos's felony murder charge.

¶7 The trial court declined to issue the instruction, concluding that the affirmative defense to felony murder was "diametrically opposed" to Gallegos's theory of defense, which the court described as an "outright denial of everything." Moreover, the court stated that it could not "find even a scintilla of evidence" supporting one of the affirmative defense's conditions—that Gallegos "had no reasonable ground to believe that no other participant was armed with a gun." *See* § 18-3-102(2)(d). The jury found Gallegos guilty of felony murder and other charges.[3]

¶8 On appeal, a division of the court of appeals held that Gallegos's theory of defense did not preclude him from raising the affirmative defense to felony murder. *Gallegos*, ¶¶ 41–46, 535 P.3d at 118–19. The division noted that neither this court nor the legislature has imposed a "categorical requirement that the defendant admit to the underlying charged offense" to raise an affirmative defense. *Id.* at ¶ 35, 535 P.3d at 117. The division distinguished this case from other court of appeals cases holding that defendants who denied committing the charged offense *could not* raise an affirmative defense, reasoning that, unlike the defenses in those cases, the felony murder defense was not "inextricably intertwined with the elements of the [predicate] offense." *Id.* at ¶¶ 28–38, 535 P.3d

[3] Gallegos was also convicted of attempted aggravated robbery, conspiracy to commit aggravated robbery, and attempted theft.

at 116–18. Consequently, the division overturned Gallegos's felony murder conviction, affirmed his lesser convictions, and ordered a new felony murder trial. *Id.* at ¶ 57, 535 P.3d at 121.

¶9 We granted the People's petition for certiorari.

II. Analysis

¶10 We begin by introducing the relevant legal framework, which includes the applicable standard of review and principles of statutory interpretation, the differences between traverses and affirmative defenses, and the felony murder statute. We then evaluate whether defendants must admit to the predicate felony to raise the affirmative defense to felony murder and conclude that no such admission is required. Hence, we affirm the court of appeals.

A. Legal Framework

1. Standard of Review and Principles of Statutory Interpretation

¶11 Interpretation of a statute defining an affirmative defense, including evaluation of the defense's elements or conditions, is a question of law that we review de novo. *People v. Speer*, 255 P.3d 1115, 1119 (Colo. 2011); *see also People v. Garcia*, 113 P.3d 775, 780 (Colo. 2005). Our objective is to ascertain and give effect to the legislative intent underlying the statute. *People v. Laeke*, 2012 CO 13M, ¶ 11, 271 P.3d 1111, 1114. "To ascertain legislative intent, we first look to the statutory language." *Id.* When the plain language is unambiguous and the legislature's

intent is reasonably certain, our inquiry ends. *Jefferson Cnty. Bd. of Equalization v. Gerganoff*, 241 P.3d 932, 935 (Colo. 2010).

2. Traverses and Affirmative Defenses

¶12 There are two primary defenses to criminal charges: traverses and affirmative defenses. *Roberts v. People*, 2017 CO 76, ¶ 19, 399 P.3d 702, 705. A traverse defense seeks to "refute[] the possibility that the defendant committed the charged offense by negating one or more elements of that offense." *Id.* at ¶ 21, 399 P.3d at 705.

¶13 In contrast, "[a]n affirmative defense essentially admits the defendant's commission of the elements of the charged act but seeks to justify, excuse, or mitigate the commission of the act." *Id.* at ¶ 20, 399 P.3d at 705. In other words, by asserting an affirmative defense, the defendant attempts to "justif[y] the conduct on grounds deemed by law to be sufficient to render the participant exempt from criminal responsibility for the consequences of the conduct." *People v. Huckleberry*, 768 P.2d 1235, 1239 (Colo. 1989).

¶14 Affirmative defenses are premised on "conditions" analogous to a crime's elements. To raise such a defense, defendants must point to "some credible evidence" to support each of its conditions. § 18-1-407(1), C.R.S. (2024); *see also Speer*, 255 P.3d at 1119. This is a low bar: We have previously explained that "some credible evidence" includes "'any credible evidence . . . even highly improbable'

evidence," and is synonymous with "a scintilla of evidence." *Galvan v. People*, 2020 CO 82, ¶ 24, 476 P.3d 746, 754 (first quoting § 18-1-407(1); then quoting *Speer*, 255 P.3d at 1119; and then quoting *People v. Saavedra-Rodriguez*, 971 P.2d 223, 228 (Colo. 1998)). Moreover, such evidence need not have been initially presented by the defendant. *See* § 18-1-407(1). It may also conflict with other evidence relied on, or arguments made, by the defendant. *See Mathews v. United States*, 485 U.S. 58, 66 (1988) (declining to "make the availability of an [affirmative defense] instruction . . . subject to a requirement of consistency to which no other such defense is subject").

¶15 Once properly raised, an affirmative defense effectively adds a new element to the prosecution's burden regarding the charged offense. *Martinez v. People*, 2024 CO 48, ¶ 12, 550 P.3d 713, 716. In that instance, the prosecution must then both prove the original elements of the charged offense and disprove the validity of the affirmative defense beyond a reasonable doubt. *People v. Pickering*, 276 P.3d 553, 555 (Colo. 2011); *see also* § 18-1-407(2). Prosecutors can overcome an affirmative defense by disproving at least one of its conditions beyond a reasonable doubt. *See Huckleberry*, 768 P.2d at 1239 ("[E]ven if the People establish each element of the offense beyond a reasonable doubt, the defendant cannot be found guilty unless the additional questions of fact raised by the pleading of the affirmative defense are disproved."); *see also* § 18-1-407(2).

3. The Affirmative Defense to Felony Murder

¶16 Felony murder is a unique crime because it requires the defendant's commission of another, underlying felony, which results in the death of a non-participant in the criminal conduct.[4] Under section 18-3-102(1)(b), a defendant commits felony murder if (1) the defendant commits or attempts to commit an enumerated offense (the "predicate" felony), and (2) "in the course of or in furtherance of" that predicate felony, the death of someone other than one of the participants in the offense "is caused by anyone."[5] Felony murder is a strict liability crime; there is no requirement that the defendant intended the victim's death. *People v. Fisher*, 9 P.3d 1189, 1191 (Colo. App. 2000); § 18-3-102(1)(b).

¶17 The General Assembly first established the crime of felony murder in 1971. Comments included with the original statute expressed the drafters' desire to provide nonkiller defendants with a means to avoid felony murder liability in instances where its imposition would be unduly harsh:

> [T]he felony murder doctrine, in its rigid automatic envelopment of all participants in the underlying felony, may be unduly harsh in particular instances; . . . cases do arise, rare as they may be, where it would be just and desirable to allow a nonkiller defendant of relatively minor culpability a chance of extricating himself from

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[4] Here, the underlying felony charges were aggravated robbery, attempted aggravated robbery, and conspiracy to commit aggravated robbery.

[5] The 2021 update narrowed this requirement, limiting criminal liability to a death "caused by any participant." 2021 Colo. Sess. Laws at 235–36.

> liability for murder—though not, of course, from liability for the underlying felony.

§ 40-3-102 cmt., 8 C.R.S. (1963 & Supp. 1971). To address this concern, the legislature included an affirmative defense specifically for felony murder. *See id.*; § 18-3-102(2).

¶18 The affirmative defense effective at the time of Gallegos's case featured six conditions, requiring that the defendant:

> (a) Was not the only participant in the underlying crime; and
>
> (b) Did not commit the homicidal act or in any way solicit, request, command, importune, cause, or aid the commission thereof; and
>
> (c) Was not armed with a deadly weapon; and
>
> (d) Had no reasonable ground to believe that any other participant was armed with such a weapon, instrument, article, or substance; and
>
> (e) Did not engage himself in or intend to engage in and had no reasonable ground to believe that any other participant intended to engage in conduct likely to result in death or serious bodily injury; and
>
> (f) Endeavored to disengage himself from the commission of the underlying crime or flight therefrom immediately upon having reasonable grounds to believe that another participant is armed with a deadly weapon, instrument, article, or substance, or intended to engage in conduct likely to result in death or serious bodily injury.

§ 18-3-102(2).[6]

[6] In the 2021 update, the legislature removed conditions (d) and (f) from the affirmative defense. 2021 Colo. Sess. Laws at 235–36.

¶19 The question presented by this case is whether a defendant must admit to the predicate felony to raise the affirmative defense to felony murder. With the foregoing legal framework in mind, we now consider this question.

B. Defendants Need Not Admit the Predicate Felony to Raise the Affirmative Defense to Felony Murder

¶20 The People maintain that the plain language of the affirmative defense to felony murder "presupposes a defendant committed a qualifying felony" and is therefore "incompatible with [a] denial of participation in the underlying felony." In support of this position, they note that four of the affirmative defense's six conditions reference the defendant being among a group of "participants" in the predicate offense. § 18-3-102(2). The People also highlight the sixth condition's requirement that the defendant attempt to "disengage," § 18-3-102(2)(e), arguing that defendants can't *disengage* unless they have *engaged* in the commission of the predicate felony in the first place.

¶21 To bolster their plain language arguments, the People assert that allowing defendants to both deny the commission of the underlying felony and raise the affirmative defense is contrary to the premises underlying affirmative defenses generally. In doing so, they rely on a line of Colorado cases explaining that, by asserting an affirmative defense, a defendant essentially admits his presence at and participation in the charged conduct, but nonetheless seeks to justify, excuse, or mitigate his liability. *See, e.g.*, *Huckleberry*, 768 P.2d at 1238 ("[A]n affirmative

defense basically admits the doing of the act charged but seeks to justify, excuse or mitigate it."); *see also Pearson v. People*, 2022 CO 4, ¶ 18, 502 P.3d 1003, 1007 ("[A] defendant essentially acknowledges 'presence at and participation in the event' but claims that they were legally justified in doing so . . . ." (quoting *Huckleberry*, 768 P.2d at 1239)). The People also point to *People v. Hendrickson*, 45 P.3d 786, 792 (Colo. App. 2001), which held that defendants must admit to the underlying crime to raise the affirmative defense of entrapment, to argue that affirmative defenses *generally* presuppose that the defendant committed the relevant crime.

¶22 To assess these arguments, we now look to the felony murder statute and evaluate each of the affirmative defense's conditions in turn.[7]

1. The Plain Language of the Affirmative Defense to Felony Murder Includes No Admission Requirement

¶23 The felony murder defense's first condition requires that the defendant "[w]as not the only participant in the underlying crime." § 18-3-102(2)(a). Hence, this condition requires some credible evidence that the defendant, along with others, *participated* in the predicate felony. *Id.*; § 18-1-407(1). But *participation* in criminal conduct does not equate to *commission* of an offense. Commission denotes

[7] In the People's reply brief, they argue, for the first time, that any error in the trial court's refusal to issue Gallegos's requested instruction was harmless. Because we need not review arguments raised for the first time in a reply brief, we decline to do so here. *See Davis v. Pursel*, 134 P. 107, 112 (1913).

a completed crime, entailing a concurrence of both an unlawful act (actus reus) and a culpable mental state (mens rea). *See Morissette v. United States*, 342 U.S. 246, 251–52 (1952). Participation falls short of requiring that the criminal act be completed and indicates nothing regarding a culpable mental state. Thus, pointing to some evidence of *participation* in the underlying crime does not presuppose its *commission* and is not inconsistent with a defendant's denial of the predicate offense.[8]

¶24 Turning to the second through fifth conditions, they are essentially *denials* of the defendant's acts or knowledge. Indeed, the second condition is supported by evidence that the defendant did "*not* commit the homicidal act or in any way solicit, request, command, importune, cause, or aid the commission thereof," while the third condition requires evidence that the defendant was "*not* armed with a deadly weapon." § 18-3-102(2)(b)–(c) (emphases added); *see also* § 18-1-407(1). To support the fourth condition, a defendant must point to evidence that they had "*no* reasonable ground to believe that any other participant was armed" with a deadly weapon. § 18-3-102(2)(d) (emphasis added); *see also* § 18-1-407(1). Likewise, for the fifth condition, a defendant must offer evidence

[8] This reasoning applies with equal force to the "participation" aspects of the felony murder affirmative defense's fourth through sixth conditions. *See* § 18-3-102(2)(d)–(f).

indicating that they did *not* "engage in" conduct creating a substantial risk of death or serious bodily injury, did not plan to do so, and had "*no* reasonable ground to believe that any other participant intended to engage in [such] conduct." § 18-3-102(2)(e) (emphasis added); *see also* § 18-1-407(1). As denials, we perceive nothing in the second through fifth conditions requiring a defendant to admit the underlying felony. § 18-3-102(2)(b)–(e).

¶25 Lastly, the sixth condition is supported by evidence that the defendant attempted to "disengage himself from the commission of the underlying crime . . . immediately upon having reasonable grounds to believe that another participant [was] armed with a deadly weapon . . . or intended to engage in conduct likely to result in death or serious bodily injury." § 18-3-102(2)(f). As with "participation," the word "disengage" implies that the defendant was, to at least some degree, engaged in the first place. However, for the same reasons applicable to participation, pointing to evidence of *disengagement* from the underlying criminal conduct does not require a defendant to admit *commission* of the predicate felony.

¶26 We therefore perceive nothing in the plain language of the affirmative defense to felony murder that requires the defendant to admit the commission of the underlying felony. § 18-3-102(2).

¶27 Moreover, as explained above, a defendant may present evidence supporting an affirmative defense that is inconsistent with the defendant's other arguments or with the evidence relied on to make those arguments. *See Mathews*, 485 U.S. at 66. Indeed, arguing an affirmative defense in the alternative is a long-accepted practice. *See, e.g.*, *Stevenson v. United States*, 162 U.S. 313, 322–23 (1896) (concluding that the defendant was entitled to both a manslaughter instruction based on heat of passion and the arguably inconsistent affirmative defense of self-defense; explaining, "[I]f there be any evidence fairly tending to bear upon the issue of manslaughter, it is the province of the jury to determine from all the evidence what the condition of mind was, and to say whether the crime was murder or manslaughter."). Assuming sufficient evidence supports the affirmative defense to felony murder, it is the province of the jury to weigh the credibility of any conflicting evidence and decide both (1) whether the defendant committed the underlying crime and, if so, (2) whether the affirmative defense shields the defendant from felony murder liability.[9] Whether to present

[9] Even though the crime of felony murder necessarily involves committing a predicate felony, its affirmative defense is just that—a defense to *felony murder*, which is separate from the predicate felony. That is, prevailing on the affirmative defense to felony murder doesn't excuse commission of the predicate offense or alter any potential liability for that offense.

inconsistent theories of defense, including the felony murder affirmative defense, is a trial strategy decision within defense counsel's discretion.

¶28 Indeed, the facts of this case illustrate how a defendant may satisfy the conditions required to properly raise the felony murder affirmative defense without admitting to the commission of the predicate felony.

¶29 We begin with the first condition: participation. Here, the evidence showed that Gallegos drove the group to and from the scene of the shooting. Gallegos did not deny his involvement in this regard, and this evidence was sufficient to support the first condition, along with the participation aspects of the fourth through sixth conditions. *See* § 18-3-102(2)(a), (d)–(f).

¶30 Next, it is undisputed that Mitchell, not Gallegos, shot L.C., which was sufficient to support the second condition. *See* § 18-3-102(2)(b) (requiring that the defendant was not the killer and did not assist in or plan the killing).

¶31 Moving to the third condition, Stager and Serrano's testimony indicated that the gun was never in Gallegos's possession. The third condition was therefore also supported. *See* § 18-3-102(2)(c) (requiring that the defendant was unarmed).

¶32 As to the fourth condition—whether the defendant had reasonable grounds to believe others were armed—Serrano testified that "[t]here wasn't really a plan," and she didn't remember if Gallegos was involved in any discussion of the robbery or knew of the gun before the altercation. True, evidence conflicted on this point,

with Stager testifying that Gallegos had told him they "just needed a gun." However, as with any affirmative defense, the felony murder defense's fourth condition requires only a scintilla of evidence in support—even highly improbable evidence will suffice. *See Galvan*, ¶ 24, 476 P.3d at 754. Hence, sufficient evidence supported the fourth condition. *See* § 18-3-102(2)(d); § 18-1-407(1).

¶33 Under the fifth condition, the defendant must not take part in conduct that created a substantial risk of death and must have lacked reason to expect others would engage in such conduct. § 18-3-102(2)(e). Serrano's testimony that she didn't remember if Gallegos was present during any discussion of the robbery plans, and didn't know whether he was aware of the gun, was sufficient to support this condition. *See id.*

¶34 Finally, regarding disengagement, Stager testified that Gallegos moved to intervene in the scuffle over the gun and encouraged Stager and Serrano to help stop the altercation. This evidence of an immediate attempt to disengage was sufficient to support the sixth condition. *See* § 18-3-102(2)(f). Hence, sufficient evidence existed for Gallegos to put the felony murder defense before the jury, despite his denial of the predicate felonies. *See* § 18-3-102(2); § 18-1-407(1).

2. Previous Colorado Affirmative Defense Cases Do Not Resolve the Issue Before Us

¶35 The People nevertheless rely on cases like *Huckleberry* and *Pearson* for the proposition that "[i]n asserting an affirmative defense, a defendant admits to the

conduct that gives rise to the charged offense." *Pearson*, ¶ 18, 502 P.3d at 1007 (citing *Huckleberry*, 768 P.2d at 1238). But these cases do not resolve the question before us.

¶36 In cases like *Huckleberry* and *Pearson*, we wrote in broad terms about the theory animating affirmative defenses *generally*, often to explain a related concept. *See Huckleberry*, 768 P.2d at 1238–39 (explaining how an alibi defense differs from an affirmative defense; holding that an alibi defense is not an affirmative defense); *see also Pearson*, ¶¶ 18, 33, 502 P.3d at 1007, 1010 (explaining the difference between traverse and affirmative defenses; holding that defendants may raise the affirmative defense of self-defense against harassment charges). Such generalities may well apply to *some* affirmative defenses.

¶37 For example, *Hendrickson*, which cites *Huckleberry*, considered the entrapment defense. *Hendrickson*, 45 P.3d at 790–93. The entrapment statute provides: "The *commission of acts* which would otherwise constitute an offense is not criminal if the defendant engaged in the proscribed conduct because he was induced to do so by a law enforcement official . . . ." § 18-1-709, C.R.S. (2024) (emphasis added). Hence, the plain language of the entrapment defense explicitly contemplates that the defendant *committed* the underlying crime. *Id.* Consequently, the "admission" theory explained in cases like *Huckleberry* fits with the language of the entrapment statute.

¶38 But the felony murder affirmative defense includes nothing analogous to the entrapment statute's reference to "*commission of acts* which would otherwise constitute an offense." *Compare* § 18-1-709 (emphasis added), *with* § 18-3-102(2). Although the felony murder statute requires that the defendant was "not the only participant" and attempted to "disengage" for its affirmative defense to apply, § 18-3-102(2)(a), (f), neither participation nor disengagement equate to the commission of the charged offense, as discussed above. Hence, unlike the entrapment defense, the affirmative defense to felony murder is not "inextricably intertwined" with the commission of the underlying offense. *See Gallegos*, ¶¶ 30, 38, 535 P.3d at 117–18. Thus, the "admission" theory animating affirmative defenses generally doesn't address the specific statutory language of the felony murder defense—and is therefore not determinative of the question before us.[10]

¶39 In sum, we agree with the division that the felony murder defense is "consistent with a defendant's denial that he engaged in criminal conduct," *id.* at ¶ 40, 535 P.3d at 118, and hold that defendants need not admit the predicate felony to raise the affirmative defense to felony murder.

[10] Because this case is specific to the felony murder defense, we decline to address whether a defendant may raise other affirmative defenses while also denying committing the underlying crime.

III. Conclusion

¶40 For the foregoing reasons, we affirm the judgment of the court of appeals.