Research Memorandum #71: Felony-Murder and "Merger"

State v. Iman, 198 Maj. 2d 214 (20XX-28): "Appellant was convicted of felony-murder based upon a death occurring during an assault with a deadly weapon. At trial Appellant tried to present evidence that he did not have the requisite 'malice' for murder due to his ingestion of alcohol and medication. The trial court ruled such evidence irrelevant inasmuch as the felony-murder rule itself imputes malice. Appellant's counsel thereupon objected to the use of the felony-murder rule in a case such as defendant's. We agree with defendant's trial counsel. The net effect of the imputation of malice by the felony-murder rule is to eliminate the possibility of finding unlawful killings resulting from the commission of a felony to be manslaughter, rather than murder. Applying the doctrine to a case such as the present one would mean that intentional killings with deadly weapons would always be murders, never manslaughter, since all such killings include *in fact* an assault with a deadly weapon. This kind of bootstrapping finds support in neither logic nor law. We therefore hold that a felony-murder instruction should not be given when it is based upon a felony which is an integral part of the homicide and which the evidence produced by the prosecution shows to be an offense included *in fact* within the offense charged."

Concurring, Davis, J.: "I agree with the majority, save that they have made their reasoning too obscure. This jurisdiction has spent decades refining the distinctions between intentional killings which we call 'murder' and those which, because there exists that elusive quality in the mind of the perpetrator known as 'heat of passion,' we call the far less serious offense of 'manslaughter.' Now, probably no one outside of a law professor could conceive of an intentional killing that is not carried out by some form of felonious assault (guns, mailing poison, etc.). So all intentional killings could be charged as felony-murder if this underlying assault could be used as the underlying felony. With me so far? Good. The problem is that 'heat of passion' has no place in the analytic framework of felony-murder (take my word for it.) It won't reduce felony-murder to manslaughter. So all intentional killings would be murder, even if there were heat of passion, if the underlying assault could be used to charge felony-murder. And if that's the case, why have we spent decades developing the law of 'manslaughter' "?

Kern v. Superior Court, 93 Maj. App. 3d 41 (20XX-24): "Cases decided after *State v. Iman,* 198 Maj. 2d 214 (20XX-28), demonstrate the unwillingness of the courts to expand the *Iman* holding – the so-called merger rule – much beyond the *Iman* facts. In *State v. Vipman*, 270 Maj. App. 2d 714 (20XX-21), defendant entered a home to kill his victim. A felony-murder conviction based upon burglary was upheld as the *Vipman* court distinguished *Iman* on the grounds that an assault in one's home, one's inner sanctum, is far more likely to have fatal results than one in public such as *Iman.* In *State v. Bruto*, 277 Maj. App. 2d 57 (20XX-19), the court refused to accept an argument that the 'merger rule' should apply to robbery because robbery is basically an 'assaultive' crime. The *Bruto* court held that, unlike the assault in *Iman,* in the case of a robbery there is an 'independent felonious purpose' for committing the assault (i.e., to wrongfully acquire money or property belonging to another). 'One who embarks upon a course of conduct directed at achieving such felonious purpose falls directly within the prohibition of the felony-murder statute.' *State v. Bruto*, supra, 277 Maj. App. 2d at 59."