Ancient Decisions

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2) the assault, with elements common to the homicide, must be merged with it; and
3) there being no underlying separate felony, there was no felony murder. The
defense thus read the facts as showing an intent to enter the home solely to assault
Sisler, i.e. one continuous criminal trans­
action from entry to homicide.

The doctrine of merger, where not
abrogated by statute, is applicable so that
an accused will not face “double punish­ment” for one act. At common law, the
rule was given effect where the same act
generated more than one offense. Klein v.
State, 151 Md. 484, 135 A.591 (1926);
MILLER, CRIMINAL LAW, 50 (1934); CLARK AND
MARSHALL, CRIMES, § 2.03 (7th Ed. 1968).

The defense theory in Harris failed for
three basic reasons. First, the burglary
was a distinct offense committed for the
demonstrated purpose of finding an in­
dividual the attackers thought was other
than the murder victim. See Harris v.
United States, 373 A.2d 590, 593 n. 8.
This intent to enter to find the “third par­
ty” gave the burglary a specificity apart
from the homicide—an element of intent
separate from the killing. Second, 22 D.C.
Code § 2401 proscribes as felony murder a
killing in any housebreaking. Third,
 “[T]he societal interest served by the
burglary statute [22 D.C. Code § 1801],
protection of occupied dwellings, is sepa­
rate and distinct from that of the murder
statute, security and value of the person.”
377 A.2d at 38.

As the Court of Appeals stated in a case
clearly on point:

[Defendant] committed burglary by
knowingly entering [victim’s] home
with the intent to assault him. Having
committed the burglary and violated
the appurtenant societal interests, it
was still possible for [defendant] and
his companions to withdraw from the
premises without attacking [the vic­
tim]. But continuation of this criminal
conduct resulted in the death . . . and
the commission of a second distinct
crime.

Biango v. United States, 373 A.2d 885,

The court in Biango found that a con­
viction for felony murder was appropriate
for policy reasons even where the criminal
event was isolated, in terms of both mens
rea and actus reus, to the immediate par­
ties, i.e. no intent was shown to enter for a
purpose other than to kill the immediate
victim. An even stronger case against
merger is thus found in Harris where there
are indicia of two separate criminal pur­
poses.

In this case, where the homicide is an­
cillary to the attempted burglary, the
following observation is appropriate:

It is said that if [the accused] armed him­
self with the intent to shoot anyone
who interferes with the commission of
the burglary, he is chargeable with such
premeditation as to render him guilty of
murder in the first degree.

1 WARREN ON HOMICIDE § 74 at 332 (1938).

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There it is, volume one, number one. It
is all done in one paragraph and about
one-quarter of the page. Still it is the first
reported case in United States jurispru­
dence.

In days when Maryland was more freely
dispensed than it is today, one William
Boreman filed a preliminary claim to four
hundred acres at Nanjemoy. Charles
County people take note. He had the
ground surveyed, occupied it, and con­
ested it himself. He failed, however, to
perfect a patent to his land within the time
specified in the original warrant.

Meantime, Captain William Stone, ap­
parently realizing the defect in Boreman’s
claim, filed and perfected a patent to the
same land. When Captain Stone under­
took to occupy land then his dispute
naturally arose. It came to the attention of
the provincial court, Stone v. Boreman 1
H & McH 1 (1658).

The court held that Boreman had lost
his claim by falling timely to perfect his
patent. Stone was the rightful owner of
the land in question. Boreman was still
entitled to four hundred acres and might
have it elsewhere in a “convenient place.”
Id. at 2. Basic equity is affordable where
land is plentiful.

The interesting part of this rather short
report concerns the treatment of the sur­
evoyer who laid out Boreman’s original
claim. The court seems to hold that he
should have known of the fault in Bore­
man’s filing and should have either
warned him of it or simply refrained from
the commission. At any rate he is held
responsible for surveying, without charge,
such new claim as Boreman shall take and
perfect.

This is a decision hardly possible in to­
day’s circumstances. Land is not granted
four hundred acres at a time; rather it is
bitterly litigated by the foot. It is neces­
sarily the product of an era when royal
charters were framed in terms of latitudes
north and south to the setting of the sun.
Still, it is a decision embodying the virtues
of brevity and fairness, criteria we yet
strive to meet.

An Afternoon Spent Browsing in the
Dusty Section of a Small Law Library
1 Harris & McHenry (1658)