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Edge v. State: The Modified Merger Rule Comes Up Short

I. INTRODUCTION AND FACTUAL STATEMENT

In *Edge v. State*,¹ the Supreme Court of Georgia held that a verdict convicting a defendant of voluntary manslaughter and felony murder based in the underlying felony of aggravated assault was improper.² The court reasoned that because the jury found Edge guilty of voluntary manslaughter, malice did not exist and therefore, could not be transferred to support a felony murder conviction. Regrettably, the supreme court failed to adopt the merger rule. However, the court adopted a modified merger rule that precludes a conviction for felony murder when a conviction would prevent the jury from an otherwise proper finding of voluntary manslaughter.³

On Friday night, July 6, 1990 at 9:24 p.m., a dispatcher with the Perry Police Department in Perry, Georgia received a call from Edge.⁴ Edge had shot and killed his estranged wife with a pistol.⁵ A grand jury in Houston County, Georgia indicted Edge for murder with malice aforethought, felony murder predicated on aggravated assault, and possession of a firearm during the commission of a crime.⁶ During the trial and prior to charging the jury, Edge's attorney objected and asked that the trial court not give both a charge on felony murder and murder with malice aforethought because it would cause confusion in the minds of the jury.⁷ However, the trial judge overruled the objection and proceeded to instruct the jury on malice murder, felony murder, and their lesser included offenses.⁸ The

1. 261 Ga. 865, 414 S.E.2d 463 (1992).

2. 261 Ga. at 865, 414 S.E.2d at 464.

3. *Id.* at 866-87, 414 S.E.2d at 465. Voluntary manslaughter is a proper finding when defendant committed the acts "solely as the result of a sudden, violent, and irresistible passion resulting from serious provocation." O.C.G.A. § 16-5-2 (1992).

4. Trial Transcript at 45, *Edge v. State*, 261 Ga. 865, 414 S.E.2d 463 (1992) (No. 90-C-16239-N).

5. 261 Ga. at 865, 414 S.E.2d at 464.

6. Indictment, *Edge v. State*, 261 Ga. 865, 414 S.E.2d 463 (1992) (No. 90-C-16239-N).

7. Trial Transcript at 495.

8. Trial Transcript at 458-89. Specifically, regarding malice murder, the judge charged the jury as follows:

I charge you that a person commits murder when he unlawfully and with malice aforethought, either express or implied, causes the death of another human being.

jury found Edge guilty of voluntary manslaughter, felony murder, and possession of a firearm during the commission of a crime.⁹ The trial judge denied defendant's motion for new trial.¹⁰ The judge sentenced Edge to imprisonment for life and to a term of years.¹¹ Edge appealed the convictions of both felony murder and voluntary manslaughter by filing his notice of appeal on April 24, 1991.¹²

II. THE COURT'S REASONING: STUBBORN RELUCTANCE TO CHANGE

In *Edge* the supreme court concluded that a jury could not consistently render a verdict for voluntary manslaughter and felony murder based on the same underlying aggravated assault.¹³ By finding Edge guilty of voluntary manslaughter, the jury necessarily found that the malice of the underlying felony of aggravated assault was mitigated by provocation.¹⁴

Express malice is that deliberate intention unlawfully to take away the life of another human being, which is shown by external circumstances capable of proof. Malice may be implied where no considerable provocation appears, and where all the circumstances of the killing show an abandoned and malignant heart.

Trial Transcript at 471-72. The judge gave the jury the following charge relating to felony murder:

A person also commits the crime of murder when in the commission of a felony he causes the death of another human being irrespective of malice. Under our law, aggravated assault with a deadly weapon is a felony and is defined as follows: an assault is an attempt to commit a violent injury to the person of another or an act which places another person in reasonable apprehension of immediately receiving a violent injury.

Trial Transcript at 472-74. Finally, the court gave the following charge regarding voluntary manslaughter:

I charge you as follows. A person commits voluntary manslaughter when he causes the death of another human being, under circumstances which would otherwise be murder, if he acts solely as the result of a sudden, violent and irresistible passion, resulting from serious provocation, sufficient to excite such passion in a reasonable person.

Trial Transcript at 474.

9. 261 Ga. at 865, 414 S.E.2d at 464. Voluntary manslaughter is a lesser included offense of malice murder. Voluntary manslaughter, unlike malice murder, does not involve malice aforethought. ROBERT E. CLEARY, JR., KURTZ, *CRIMINAL OFFENSES AND DEFENSES* 246 (3rd ed. 1991).

10. 261 Ga. at 865 n.1, 414 S.E.2d at 464 n.1.

11. *Id.* at 865, 414 S.E.2d at 464. See Final Disposition, *Edge v. State*, 261 Ga. 865, 414 S.E.2d 463 (1992) (No. 90-C-16239-N) (Count 1, Voluntary Manslaughter, twenty years; Count 2, Felony Murder, Life in Prison; and Count 3, Possession of a Firearm During the Commission of a Crime, five years consecutive to Count 2).

12. 261 Ga. at 865 n.1, 414 S.E.2d at 464 n.1.

13. *Id.* at 865, 414 S.E.2d at 463.

14. *Id.* at 865-66, 414 S.E.2d at 464-65.

The court initially reaffirmed its holding in *Malone v. State*.¹⁵ In *Malone* the court recognized that in proper circumstances, a jury charge on both felony murder predicated upon aggravated assault and voluntary manslaughter was appropriate.¹⁶ In *Edge* the court reasoned that to support a conviction for felony murder, the jury must impute the *mens rea* of the underlying felony to the murder.¹⁷ The supreme court found that the jury made a specific determination that Edge acted with sufficient provocation to warrant a verdict of voluntary manslaughter; and therefore, the jury could not at the same time decide that Edge had a different and higher mental state necessary for conviction of felony murder.¹⁸ The supreme court recognized that a jury could find a defendant guilty of felony murder predicated on the felony of aggravated assault committed with malice.¹⁹ The court concluded that once the jury convicted defendant of voluntary manslaughter, the same felonious assault could not underlie a conviction for felony murder because there was no malice to impute.²⁰ The court adopted Edge's contention that the trial court erred in entering judgment against him for voluntary manslaughter and felony murder predicated upon the same assault.²¹

A. Merger Rule

In reaching its decision, the court considered the merger rule; a rule inextricably intertwined with the felony murder rule. The merger rule prohibits the use of a felonious assault as the basis for felony murder.²² Many states reject the use of a felonious assault to support a felony murder conviction, and instead require felonies that are independent from the homicidal act.²³ However, in Georgia, prior to the decision in *Edge*, any felony could support a felony murder conviction.²⁴

In an effort to remain consistent with previous decisions, the supreme court in *Edge* rejected the adoption of the merger rule.²⁵ Instead, the court adopted a modified merger rule.²⁶ "[T]he modified version adopted by this opinion precludes a felony murder conviction only where it would

15. 238 Ga. 251, 232 S.E.2d 907 (1977).

16. *Id.* at 252, 232 S.E.2d at 908.

17. 261 Ga. at 865-66, 414 S.E.2d at 464-65.

18. *Id.* at 866, 414 S.E.2d at 465.

19. *Id.*

20. *Id.*

21. *Id.* at 865, 414 S.E.2d at 464.

22. *Id.* at 866, 414 S.E.2d 465.

23. ROBERT E. CLEARY, JR., KURTZ, *CRIMINAL OFFENSES AND DEFENSES* 252 (3rd ed. 1991).

24. CLEARY, *supra* note 23, at 251.

25. 261 Ga. at 866, 414 S.E.2d at 465.

26. *Id.* at 867, 414 S.E.2d at 465.

prevent an otherwise warranted verdict of voluntary manslaughter."²⁷ A voluntary manslaughter verdict is improper when the jury finds that provocation mitigated the homicide.²⁸ Therefore, when the killing is mitigated by provocation sufficient to find voluntary manslaughter, a conviction for felony murder cannot stand.

The court relied on its prior decisions in *Lewis v. State*²⁹ and *Baker v. State*³⁰ in refusing to completely accept the merger rule.³¹ If a court does not adopt the merger doctrine, it must bootstrap the malice present in the underlying aggravated assault to support a felony murder conviction.³²

Instead of adopting the merger rule in total, the supreme court adopted a modified version of the merger rule.³³ The court considered the policy reasons behind the "strict liability" felony murder rule as a means of explaining its adoption of a modified merger rule.³⁴ The court noted:

The purpose of the felony-murder rule is to deter felons from killing negligently or accidentally by holding them strictly responsible for killings they commit. [Cit] The Legislature has said in effect that this deterrent purpose outweighs the normal legislative policy of examining the individual state of mind of each person causing an unlawful killing to determine whether the killing was with or without malice, deliberate or accidental, and calibrating our treatment of the person accordingly. Once a person perpetrates or attempts to perpetrate one of the enumerated felonies, then in the judgment of the Legislature, he is no longer entitled to such fine judicial calibration, but will be deemed guilty of first degree murder for any homicide committed in the course thereof.³⁵

The purpose behind the rule is important to the decision in *Edge* because the supreme court, in effect, balances the purposes of the felony murder rule against the requirement of *mens rea*, and adopts the modified merger rule as a compromise.³⁶

27. *Id.*

28. *Id.* at 866, 414 S.E.2d at 465.

29. 260 Ga. 404, 405 n.2, 396 S.E.2d 212, 213 n.2 (1990).

30. 236 Ga. 754, 757, 225 S.E.2d 269, 271 (1976).

31. 261 Ga. at 866, 414 S.E.2d at 465.

32. *Id.* Improper bootstrapping takes place when a jury is permitted to find a defendant guilty of felony murder by first finding that defendant acted with malice, and then finding that a homicide occurred during the commission of the felony. *People v. Ireland*, 450 P.2d 580, 589-90 (Cal. 1969).

33. 261 Ga. at 867, 414 S.E.2d at 465.

34. *Id.* at 866-67, 414 S.E.2d at 465.

35. 261 Ga. at 866-67, 414 S.E.2d at 465 (quoting *People v. Burton*, 491 P.2d 793, 801-02 (Cal. 1971)).

36. 261 Ga. at 866-67, 414 S.E.2d at 465.

The court, recognizing that the holding in *Edge* requires precision, established guidelines to help trial courts in charging the jury.³⁷ An instruction preventing the jury from deliberating on voluntary manslaughter incorrectly precludes consideration of provocation and/or passion.³⁸ The supreme court now requires the trial court to instruct the jury in a manner that ensures consideration of both voluntary manslaughter and felony murder instead of considering felony murder in isolation.³⁹ Here, the court concluded that since the jury found *Edge* guilty of voluntary manslaughter, it must have found that *Edge* fired the shots with provocation and passion and not with malice imputable to murder; and as such, the jury wrongfully convicted of felony murder.⁴⁰

III. ANALYSIS OF THE OPINION

We must consider the felony murder doctrine, the merger rule, and the applicable Georgia law in order to bring clarity and understanding to the opinion.

A. Felony Murder Doctrine

Georgia codifies its murder and felony murder doctrine at Official Code of Georgia ("O.C.G.A.") section 16-5-1.⁴¹ Under the felony murder doctrine, the *mens rea* present during the commission of the underlying felony serves as a basis for *mens rea* of malice in murder.⁴² "The felony murder rule imputes the actor's culpable mental state in committing a felony to any homicide that occurs in furtherance of or during the com-

37. 261 Ga. at 867, 414 S.E.2d at 465-66. "A sequential charge requiring the jury to consider voluntary manslaughter *only* if it has considered and found the defendant not guilty of malice murder and felony murder is not appropriate where there is evidence that would authorize a charge on voluntary manslaughter." *Id.* at 867, 414 S.E.2d at 466.

38. *Id.* at 867, 414 S.E.2d at 465-66.

39. *Id.*

40. *Id.* at 868, 414 S.E.2d at 466.

41. O.C.G.A. § 16-5-1 (1992). Georgia's murder and felony murder statute provides:

(a) A person commits the offense of murder when he unlawfully and with malice aforethought, either express or implied, causes the death of another human being.

(b) Express malice is that deliberate intention unlawfully to take the life of another human being which is manifested by external circumstances capable of proof. Malice shall be implied where no considerable provocation appears and where all the circumstances of the killing show an abandoned and malignant heart. (c) A person also commits the offense of murder when, in the commission of the felony, he causes the death of another human being irrespective of malice.

Id.

42. CLEARY, *supra* note 23, at 251.

mission of the felony."⁴³ In Georgia, the malice requirement for felony murder can be imputed or substituted from any felony.⁴⁴ In *Edge v. State*,⁴⁵ the jury improperly imputed the malice necessary to the commission of aggravated assault to convict Edge of felony murder.⁴⁶

Historically, the felony murder rule was logical because all felonies were capital, and therefore punishable by death.⁴⁷ The application of the rule was unlikely to result in an injustice because the same outcome resulted regardless of the conviction—death.⁴⁸ The English common law rule of felony murder provided that a person who caused the death of another during the commission of a felony was guilty of murder without concern for the underlying felony or its danger.⁴⁹ The initial felony murder rule in England provided that: "Homicide resulting from any felony committed in a dangerous way, is murder."⁵⁰ However, in England, there had been a continued decline in use of the felony murder rule, resulting in its abolishment in 1957.⁵¹

In the United States, the felony murder rule is alive and well in nearly every state,⁵² though not without its detractors.⁵³ Substantial policies support the felony murder doctrine.⁵⁴ The predominate purpose advanced is that the felony murder rule deters felons from negligently endangering the lives of others during the commission of a felony by holding them responsible for the resulting deaths.⁵⁵ The felony murder doctrine meets community and law enforcement goals by reflecting society's attitude that a death resulting during commission of a felony is more serious than a felony without a death; and that the felon deserves "just deserts."⁵⁶ Simi-

43. Barry Bendetowies, Note, *Felony Murder and Child Abuse: A Proposal for the New York Legislature*, 18 FORDHAM URB. L.J. 383, 387 (1990-91).

44. CLEARY, *supra* note 23, at 251.

45. 261 Ga. 865, 414 S.E.2d 463.

46. *Id.* at 865-66, 414 S.E.2d at 464-65.

47. ROLLIN M. PERKINS & RONALD N. BOYCE, CRIMINAL LAW 136 (1982).

48. *Id.*

49. 2 WAYNE R. LAFAVE & AUSTIN W. SCOTT, JR., SUBSTANTIVE CRIMINAL LAW § 7.5(a) (1986).

50. PERKINS & BOYCE, *supra* note 47, at 63.

51. *Id.* at 64.

52. Gail W. Stewart, Note, *The Felony Murder In Texas: The Merger Problem*, 33 BAYLOR L. REV. 1035, 1035 (1981).

53. CLEARY, *supra* note 23, at 251.

54. David Crump & Susan W. Crump, *In Defense of the Felony Murder Doctrine*, 8 HARV. J.L. & PUB. POL'Y. 359, 361 (1985).

55. *Id.* at 369-71.

56. *Id.* at 363. "Just dessert" refers to the classification and grading of criminal acts so that the punishment of the crime squares with society's view of what is proper. *Id.* at 362-63.

larly, the felony murder rule serves both to condemn strongly the killing and to reaffirm society's value of human life.⁵⁷

The Supreme Court of Georgia held that the purpose of the "strict liability" felony murder rule is to relieve the state of the burden of proving premeditation and malice when a death occurs during the commission of a felony.⁵⁸ In *Edge* the supreme court determined that the purpose of the "strict liability" rule is to deter negligent and accidental killing during the commission of a felony by holding the felon responsible for resulting deaths.⁵⁹

In *Edge* the court relied on *Baker v. State*⁶⁰ in which the supreme court recognized two often cited areas of criticism of the felony murder doctrine. First, without limiting the felonies that can underlie felony murder, any felony, including a non-dangerous felony can serve as a basis to impute malice.⁶¹ Second, death becomes murder when malice of the initial act of aggression, like aggravated assault, is imputed to allow the felony murder.⁶² In *Baker*, the court asserted that despite these reasons, the court was not free to adopt the solution—the merger rule—because the Georgia legislature intended felony murder to include all felonies.⁶³

B. The Merger Rule

To the contrary, because of the broad language of O.C.G.A. section 16-5-1, which does not restrict felonies that can support a felony murder

57. *Id.* at 367.

58. *Lewis v. State*, 260 Ga. 404, 405 n.2, 396 S.E.2d 212, 213 n.2 (1990).

59. 261 Ga. at 866-67, 414 S.E.2d at 465.

60. 236 Ga. 754, 225 S.E.2d 269 (1976).

61. *Id.* at 755, 225 S.E.2d at 270. The Supreme Court of Georgia indicated in *Young v. State*, 238 Ga. 548, 233 S.E.2d 750 (1977) that the felony of escape, in *Davis v. State*, 234 Ga. 730, 218 S.E.2d 20 (1975) that the felony of cruelty to children, and in *Lindsey v. State*, 227 Ga. 48, 178 S.E.2d 848 (1970) that the felony of conspiracy could underlie a felony murder conviction.

62. 236 Ga. at 755, 225 S.E.2d at 270.

63. 236 Ga. at 757-58, 255 S.E.2d at 271-72. In *Baker*, the court said that based on the narrow definition of voluntary manslaughter and involuntary manslaughter, it was unable to adopt the merger doctrine in toto because to do so would allow certain homicides to go unpunished. Specifically, the court stated that:

[V]oluntary manslaughter encompasses *only* those killings done in "sudden, violent, and irresistible passion." Involuntary manslaughter covers deaths in the commission of a lawful act in an unlawful manner, and deaths caused in the commission of an unlawful act *other than a felony*. Therefore, no death caused by a felony can possibly fall within either branch of involuntary manslaughter, and it can fall under voluntary manslaughter only if done in passion.

Id. at 757, 225 S.E.2d at 271-72 (citations omitted).

conviction, it is only the courts that can limit the application of the felony murder rule.⁶⁴

The reasoning in *Baker* has been criticized for

overlook[ing] the fact that malice can be implied if the killing exhibits an abandoned and malignant heart. It is submitted that extremely negligent behavior during a forcible felony would qualify under this rubric for a malice murder conviction. In fact, a persuasive argument could be made that virtually any crime when committed through the use of a weapon capable of killing illustrated an "abandoned and malignant heart."⁶⁵

Hence, the reasons provided in *Baker*, and adopted in *Edge*, are insufficient for failing to adopt the merger rule. The deaths committed during an aggravated assault, for example, are not accidental because the assaulter clearly intends to cause serious injury.⁶⁶

In the United States, the trend is to limit the underlying felonies upon which felony murder can be predicated to those felonies that are inherently dangerous.⁶⁷ However, in Georgia no limitation exists on the types of felonies that trigger the felony murder rule.⁶⁸ O.C.G.A. section 16-5-1 allows any felony to underlie a felony murder.⁶⁹

The merger rule serves to limit the application of the felony murder rule.⁷⁰ The merger rule refers to the process whereby the law considers an underlying felonious aggravated assault as part of a single transaction causing the homicide, and therefore, it requires the underlying assault to merge into the homicide and be "analyzed for the presence or absence of malice."⁷¹

The court in *Edge* refused to adopt the merger rule in toto.⁷² However, a strong argument can be made for its complete adoption. In *People v. Ireland*,⁷³ a case cited in *Edge*,⁷⁴ the Supreme Court of California con-

64. CLEARY, *supra* note 24, at 251; *See also* Note, *Felony Murder in Georgia: A Lethal Anachronism?*, 9 GA. ST. B.J. 462 (1973).

65. CLEARY, *supra* note 24, at 252.

66. *Id.*

67. PERKINS & BOYCE, *supra* note 48, at 65. Inherently dangerous has been interpreted in two different ways. One, whether under the circumstances, a foreseeable danger to human life existed. Two, the peril to human life must be determined from the elements of the felony in the abstract. 2 LAFAYE & SCOTT, *supra* note 50, § 7.5(b).

68. CLEARY, *supra* note 23, at 251.

69. 2 LAFAYE & SCOTT, *supra* note 50, § 7.5(b).

70. Stewart, *supra* note 52, at 1036.

71. 236 Ga. at 755-56, 225 S.E.2d at 269-71.

72. 261 Ga. at 867, 414 S.E.2d at 465.

73. 450 P.2d 580 (Cal. 1969).

74. 261 Ga. at 866-67, 414 S.E.2d at 465.

cluded that the felonious assault could not be used as the underlying felony for felony murder.⁷⁵ The court stated:

To allow such use of the felony-murder rule would effectively preclude the jury from considering the issue of malice aforethought in all cases wherein homicide has been committed as a result of a felonious assault—a category which includes the great majority of all homicides. This kind of bootstrapping finds support neither in logic nor in law. We therefore hold that a second degree felony-murder instruction may not properly 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.⁷⁶

The felony murder rule allows the prosecution to obtain a murder conviction simply by proving the intent to injure.⁷⁷ However, under *Ireland*, if the felonious act is an integral part of the homicide, jury instructions cannot be given that absolve the jury from having to find malice aforethought.⁷⁸

The punishing-accidental-deaths rationale, adopted in *Baker*,⁷⁹ is not a meritorious reason for allowing aggravated assaults to underlie felony murder and for failing to adopt the merger rule.⁸⁰ As stated in *Edge*, the purpose of the felony murder rule is to deter negligent and accidental killings during the commission of a felony.⁸¹ The overwhelming majority of deaths that occur during the commission of a felony do not result from accident or mistake.⁸² Aggravated assaults are not accidental deaths.⁸³ In all cases of aggravated assault, the acts of the defendants are done with the intent to cause great harm to another human being.⁸⁴ To obtain a murder conviction, the jury should be required to find an intent to kill (malice) before rendering a verdict for murder.⁸⁵ Both the accidental reasoning and the deterrence rationale are erroneous.⁸⁶

75. 450 P.2d at 590.

76. *Id.*

77. Bendetowies, *supra* note 43, at 393.

78. 450 P.2d at 590.

79. 236 Ga. at 757-58, 225 S.E.2d at 271-272.

80. CLEARY, *supra* note 23, at 252.

81. 261 Ga. at 866-67, 414 S.E.2d at 465.

82. CLEARY, *supra* note 23, at 252.

83. *Id.*

84. *Id.*

85. *Id.*

86. Crump & Crump, *supra* note 54, at 378. "The merger of assaultive offenses, which makes little sense in terms of deterrence, thus can be rationalized if one recognizes that proportionality is an important principle underlying the felony murder rule." *Id.* at 379.

In *Edge* the court's reliance on *Baker v. State*⁸⁷ proves to be illogical in law and reason. The continued rejection of the merger rule by the Georgia Supreme Court does not serve the purposes of the felony murder rule, namely to deter accidental killings during the commission of a felony. For some unknown reasons, the supreme court is unwilling to alter its position and limit the felony murder doctrine.

Georgia's handling of the felony murder rule and the merger doctrine shows no sign of changing. *Edge* provided hope for change; however, more recent cases indicate that the hope may be fleeting. In *Edge*, the court bypassed an opportunity to limit the felony murder rule by applying the merger rule.⁸⁸ More recently in *Battles v. State*,⁸⁹ the Supreme Court of Georgia rejected the opportunity to adopt the merger rule.⁹⁰ Limitation in Georgia is unlikely to come from statutory construction because the Georgia statute is broad and includes all felonies.⁹¹ Only in a few jurisdictions have the courts completely abolished the felony murder rule.⁹² Thus, the vast majority of the states continue to adhere to some form of felony murder rule, albeit limited.⁹³ Georgia, on the other hand, is one of the few states that does not limit the felony murder rule by statute.⁹⁴ *Edge* is a welcomed move toward the limitation of the rule. However, one must not expect Georgia to adopt the merger rule; and certainly one should not count on the abolishment of the felony murder rule. As for the rest of the country, many states limit the felony murder rule considerably.⁹⁵ However, expect the felony murder doctrine to survive far into the future.⁹⁶

IV. CONCLUSION

In *Edge* the court adopted a modified version of the merger rule. Specifically, the court held that when a jury finds voluntary manslaughter, it could not find felony murder based upon the same underlying aggravated

87. 236 Ga. 754, 225 S.E.2d 269.

88. 261 Ga. at 866, 414 S.E.2d at 465.

89. 262 Ga. 415, 420 S.E.2d 303 (1992); See also *Witherspoon v. State*, 262 Ga. 2, 412 S.E.2d 829 (1992) when the Supreme Court of Georgia again refused to adopt the merger rule.

90. 262 Ga. at 417, 420 S.E.2d at 305.

91. CLEARY, *supra* note 23, at 251.

92. In *People v. Aaron*, 299 N.W.2d 304, 328-29 (Mich. 1980), the Supreme Court of Michigan did away with the felony murder doctrine. In its opinion, the court cited to other jurisdictions, including Kentucky, Hawaii, and Ohio, as having abolished the felony murder rule. *Id.* at 314-15.

93. 2 LAFAVE & SCOTT, *supra* note 50, § 7.5(h).

94. CLEARY, *supra* note 23, at 251.

95. 2 LAFAVE & SCOTT, *supra* note 49, § 7.5(h).

96. *Id.*

assault.⁹⁷ If the true purpose of the felony murder rule is to deter felons from acting negligently during the commission of a felony, then this purpose is in no way served when a person deliberately intends to commit an aggravated assault upon another.⁹⁸

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97. 261 Ga. at 865, 414 S.E.2d at 464.

98. CLEARY, *supra* note 23, at 252-53. Recently, the Georgia Supreme Court appears to be stepping back from the decision in *Edge*. In *Staart v. State*, No. 592G127 (Feb. 25, 1993), the court, in 4-3 decision, determined that the fact that the jury asks questions about what constituted serious provocation as an indication that the jury properly considers voluntary manslaughter before returning a verdict of felony murder.

Furthermore, in *Head v. State*, No. 592A1242 (Feb. 25, 1993), the court found that the *Edge* sequential charge problem was not present in a malice murder case. Justice Willis B. Hunt, Jr., the author of *Edge*, in a concurring opinion, suggests changes to correct the problems the court identified with the sequential charge in *Edge*.

This unfortunate softening on the decision in *Edge*, will no doubt continue to deprive defendants of a fair trial, and continue to cause confusion in the minds of the jury when considering changes on voluntary manslaughter and felony murder sequentially.

