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Criminal Law - Misprision of Felony

Raymond Huevler

Clearly and logically, it follows that crimes committed outside of a reservation by white persons against Indians are also punishable under the laws of the state where such crime is committed. *State* v. *Campbell, supra.* Even a clause in an enabling act providing that "Indian lands shall remain under the absolute jurisdiction and control of the Congress of the United States," does not deprive the state courts of such exclusive jurisdiction over crimes on Indian reservations not committed by or against Indians. *United States* v. *Kagama, supra.* But *Donnelly* v. *United States, supra,* held that the jurisdiction of the federal courts over Indian reservations within state limits extends not only to crimes committed by an Indian, but also to crimes committed on the reservation against an Indian by a white person. An Indian who has taken land in severalty and who has voluntarily taken up within the limits of the state his residence separate from any tribe of Indians, and who has adopted habits of civilized life, is amenable to the general criminal laws of the state as to all criminal offenses, although committed within an Indian reservation, excepting only where the acts of Congress, by express provisions, in particular cases made the law of the United States applicable to such Indians. *Kitto* v. *State, supra; State* v. *Nimrod,* 30 S.D. 239, 138 N.W. 377 (1912).

The federal court has jurisdiction of a crime committed against an allottee Indian, or an allotment held in trust by the United States for the allottee, within the trust period. *United States* v. *Pelican,* 232 U.S. 442, 34 Sup. Ct. 396, 58 L.Ed. 676 (1914). The federal court has jurisdiction of a crime committed on an Indian reservation by an Indian allottee who has not received a patent from the United States and is under the charge of a United States agent. *State* v. *Condon,* 79 Wash. 97, 139 Pac. 871 (1914). But the United States courts have no exclusive jurisdiction over an offense committed by one Indian against another Indian on an Indian allotment upon the public domain outside the boundaries of any reservation and within the limits of the state. *Ex parte Moore, supra.* As to whether the federal courts have jurisdiction of offenses committed on Indian reservations by or against Indian allottees, who, by statute, have become citizens or have been made subject to state laws, there is an apparent lack of harmony in the decisions. It has been decided in some cases that the federal courts have jurisdiction. *United States* v. *Logan,* 105 Fed. 240 (C.C. Ore. 1900); *State* v. *Columbia George,* 39 Ore. 127, 65 Pac. 604 (1901). Other cases hold that the jurisdiction is in the state courts. *Louie* v. *United States,* 274 Fed. 47 (C.C.A. 9th 1921); *In re Now-ge-zhuck,* 69 Kan. 410, 76 Pac. 877 (1904); *State* v. *Lott,* 21 Idaho 646, 123 Pac. 491 (1912).

HERMAN J. GLINSKI.

Criminal Law—Misprision of Felony.—The defendant, having knowledge of the commission of the offense of armed robbery, failed to make a disclosure of this felony to the proper authorities and did nothing toward the apprehension of the persons guilty of the crime. The defendant was not a police officer. He had received no compensation for his failure to report the crime. Later the defendant was convicted of misprision of a felony due to his non-disclosure of the facts of the crime.

Held, Judgment reversed. Mere silence is not sufficient to be regarded as "concealment" of a felony unless such, in purpose, is in aid of an offender and of such nature as to constitute one an accessory after the fact. Short of this, the old time common law offense of misprision of a felony is not now a substan-

tive crime and not adopted by the Michigan constitution, because wholly unsuited to American criminal law and procedure as used in this state.

However, the dissenting opinion held that inasmuch as Michigan had adopted all the existing common law which was not repugnant to the constitution, and the legislature having passed no law forbidding the prosecution for misprision of a felony, the court is obliged to convict the defendant here. *People* v. *Lefkovitz,* 293 N.W. 642 (Mich. 1940).

Misprision of felony is defined as follows: "One to be responsible for a crime committed by another must in some way make a contribution thereto from his will. Yet without such contribution, he can commit a crime of his own in respect of the other's crime. So that if while another is perpetrating treason or a felony into which his will does not enter, he stands by without using the means in his power to prevent it; or if, after it has been done in his absence, he is made aware of the fact, yet neither discloses it to the authorities nor does anything to bring the offender to justice the law holds him to be guilty of a breach of duty due to the community and the government, and for this breach punishes him. The name which professional usage has given to the breach is misprision of treason or felony." 1 BISHOP, NEW CRIMINAL LAW, 9th Ed., § 720.

Misprision, that is, failure to use the means that one has to prevent a felony committed in his presence, was seriously regarded in Egyptian law, for whoever had it in his power to save the life of a citizen and neglected that duty, was punished as his murderer. 1 BISHOP, *op cit. supra,* § 718. Though prosecutions for misprision were extremely rare in England (*Williams* v. *Bayley, L. R.* 1 H. L. 200), one English writer has indicated that every man was bound to use all possible lawful means to prevent a felony. 1 HALE, P. C., 484-489. Blackstone speaks of this same duty but asserts that one may not resort to killing in order to prevent a felony unless the crime itself is punishable with death. 4 BL. COMM.* 181.

In the United States, Alabama requires the prevention of a felony by force, if necessary. *Suell* v. *Derricott,* 161 Ala. 259, 49 So. 895 (1909). Arkansas has declared it a common law misdemeanor not to prevent the commission of a felony "by the extinguishment of the felon's existence, if need be." *Carpenter* v. *State,* 62 Ark. 286, 36 S.W. 900 (1896). Kentucky has upheld the use of a springgun to prevent any type of felonious entry upon the principle that every man is bound to use all possible lawful means to prevent a felony. *Gray* v. *Combs,* 30 Ken. 478, 7 J. J. Marshall 478 (1832). Michigan, the state in which the principal case arose, has imposed a duty upon its citizens to prevent the commission of a felony, but will allow killing of the felon only in cases of violent or forcible crimes. *Pond* v. *The People,* 8 Mich. 150 (1860).

The principal case, however, is concerned only with misprision of felony wherein there is concealment and failure to report the fact of a crime. Here misprision of felony is not to be confused with compounding a felony. "Misprision of felony consist in a mere concealment of the offense or a procuring of the concealment thereof, while in compounding of felony, or theft-bote, one takes his goods again or other amends not to prosecute." 1 HAWKINS, *P. C.* 59, par 5.

Vermont and Delaware have had convictions for misprision of a felony, both asserting that the common law offense of misprision of a felony was definitely a part of the present law of their respective states. *State* v. *Wilson,* 80 Vt. 249, 67 Atl. 533 (1907); *State* v. *Biddle,* 124 Atl. 804 (Del. 1923). In the Vermont case, *supra,* the prosecution was for concealment of treason. The court asserted that

as treason was a crime more heinous than other felonies, so misprision of treason was a worse offense than mere misprision of a felony. This emphasized the distinction made at common law between misprision of treason and misprision of felony. 9 LORD HAILSHAM, HALSBURY'S LAWS OF ENGLAND, 2d ed. 354. The Delaware case of *State* v. *Biddle* charged and convicted the defendant of misprision of felony for neither preventing nor reporting the crime of robbery.

Section 856 of the Revised Statutes of Louisiana reads: "If any person having knowledge of the commission of any crime punishable with death, or imprisonment at hard labor, shall conceal and not disclose it to some committing magistrate or district attorney, on conviction he shall be fined . . . " One defendant in Louisiana was charged with being an accessory after the fact and, under this statute, with misprision of the crime of murder. The felony itself had been committed in Mississippi. The demurrer to the misprision charge was sustained on the ground that the proper venue of the offense of misprision of felony is the place where the disclosure should be made, i.e., Mississippi. The case also asserted that the noticeable lack of misprision prosecutions is due to the fact that, in the modern acceptation of the term, misprision of felony is almost if not identically the same offense as that of an accessory after the fact. *State* v. *Graham,* 190 La. 669, 182 So. 711 (1938).

Both Delaware and Vermont, on the other hand, hold that misprision of felony is without such previous concert or assistance of the felon as will make the concealor an accessory before or after the fact. *State* v. *Wilson, supra; State* v. *Biddle, supra.*

A felon cannot be guilty of misprision of his own felony. *Jones* v. *State,* 14 Ind. 120 (1860). Where the accused had lived with a woman for 5½ years in open fornication, but professing that the woman was his wife, a conviction for misprision of a felony was reversed on the grounds that the Indiana misprision statute must have meant the concealment of a crime, unconnected with the fact that the accused was the guilty perpetrator. *Robinson* v. *State,* 57 Ind. 113 (1877).

Concealment of certain felonies is a federal offense: "Whoever, having knowledge of the actual commission of the crime of murder or other felony cognizable by the courts of the United States, conceals and does not as soon as may be disclose and make known the same to some one of the judges or other persons in civil or military authority under the United States, shall be fined not more than $500, or imprisoned not more than three years, or both." *18 USCA 251.* In *Bratton* v. *United States,* 73 F. (2nd) 795, (C.C.A. 10th, 1934), though the defendant had accepted $300 not to reveal the felony of illegal possession of liquor, a judgment of conviction was reversed on the ground that the defendant had not performed an affirmative act of concealment. The court interpreted the words of the Statute, "conceal *and,*" as implying some act in addition to concealment of the felony, such as suppression of the evidence harboring of the criminal, intimidation of witnesses, or other positive act designed to conceal from the authorities the fact that a crime had been committed.

In *Neal* v. *United States,* 102 F. (2d) 643, (C.C.A. 8th, 1939) a conviction was reversed on the ground of insufficient proof that the defendant had performed an affirmative act of concealment. The court stated the elements of misprision of felony as follows: (1) a felony has been committed; (2) the defendant has full knowledge of that fact; (3) defendant fails to notify the authorities; (4) defendant takes affirmative steps to conceal the crime. All four elements must be present before there can be conviction for misprision of felony. *United States* v. *Farrar,* 38 F. (2d) 515, (W.D. Mass., 1930); *Marbury* v. *Brook,* 7 Wheat. 556, (U.S. 1822). RAYMOND HUEVLER.