Misprision of a Felony?
Using State and Federal “Failure to Report a Felony” Statutes to Illustrate Language Choices in Legislation
Motivation
Ohio Statute

Citation: Ohio Rev. Code §2921.22
Title: Reporting a Felony

(A) “No person, knowing that a felony has been or is being committed, shall knowingly fail to report such information to law enforcement authorities.”

(B) Addresses gun shot and stab wounds

(C) Addresses discovery of a body

…

(G) Exceptions?
Ohio Statute

Citation: Ohio Rev. Code §2921.22
Title: Reporting a Felony

(A) “No person, knowing that a felony has been or is being committed, shall knowingly fail to report such information to law enforcement authorities.”

…

(G) Exceptions ➔ if information would incriminate:
  – Husband and Wife
  – Immediate Family Member
Ohio Statute

Three elements:

1. Commission of a felony (by someone)
2. Knowledge of the commission of the felony
3. Failure to make known
Ohio Statute

• “Husband and wife” exception?

• Obergefell v. Hodges?
Citation: 18 U.S.C. § 4
Title: Misprision of Felony

“Whoever, having knowledge of the actual commission of a felony cognizable by a court of the United States, conceals and does not as soon as possible make known the same to some judge or other person in civil or military authority under the United States, shall be fined under this title or imprisoned not more than three years, or both.”
Federal Statute

Four elements:

1. Commission of a felony (by someone)
2. Knowledge of the commission of the felony
3. Concealment
4. Failure to make known

**NO spousal exception**
Client Fact Pattern
<table>
<thead>
<tr>
<th>Element</th>
<th>Client Facts?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Felony Committed</td>
<td>Yes: Domestic Terrorism</td>
</tr>
<tr>
<td>Knowledge Thereof</td>
<td>Yes: Spouse Admitted Involvement</td>
</tr>
<tr>
<td>Failure to Report</td>
<td>Yes</td>
</tr>
<tr>
<td>BUT</td>
<td>Spousal Exception</td>
</tr>
<tr>
<td>Element</td>
<td>Client Facts?</td>
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<td>Concealment?</td>
<td>?</td>
</tr>
</tbody>
</table>
# Building a Case Factor Chart

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Driving v. riding in a car</td>
<td>AC</td>
<td>NO AC</td>
<td>NO AC</td>
<td>AC</td>
</tr>
<tr>
<td>Drove the perps to retrieve stolen goods and clothes</td>
<td></td>
<td>Only rode as a passenger (passive)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Accepting stolen money</td>
<td></td>
<td>Just receiving $$ was not enough (could have been debt repayment?)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Camouflaging the felons or equipment</td>
<td>Used his wife, child, boat to camouflage</td>
<td></td>
<td></td>
<td>Hid a car with missing license plate; text messages/calls</td>
</tr>
<tr>
<td>Continuing normal routine</td>
<td></td>
<td></td>
<td></td>
<td>Continued writing prescriptions</td>
</tr>
</tbody>
</table>
Legal Issue: “Our client, _____________ (‘_____’), seeks legal advice regarding ________________.

RULES: Two Statutes
- Ohio (elements; explain briefly why it doesn’t apply)
- Federal
  - Four elements
  - Narrow to element at issue: active concealment

Synthesized RULE on active concealment

Transition to Rule Explanations

Transition to Rule Application

Conclusion
Factors Gleaned from the Cases

- The active or passive nature of the behavior?
- Efforts to hide the felon or the proceeds of the crime?
- Steps to enable the felon’s escape?
- Activities outside the person’s normal routine?
When determining whether a defendant concealed a felony, courts consider the following factors: (1) ________________; (2) ________________; (3)________________; and (4) ________________.

Challenge: Parallel Grammatical Structure!
Or a DEFINITION of concealment?

Concealment is _________.
Concealment means _________.

Challenge: not using the word “conceal” in the definition!
Should *concealment* be defined in the statute?

- Concealment is ______.
- Concealment means ______.

OR

- Just add the word “active”?
Common Issues I Noticed in Conferences

• Substantive:
  – Addressing both the Ohio statute’s exceptions
  – Expressly narrowing the memo’s issue to the concealment element of the federal statute
  – Constructing a helpful Rule Statement to define concealment (resistance to factors)
  – Being careful not to make assumptions about the reader’s knowledge (QP, BA, SOF, RES)
  – Addressing all of the client’s key facts → not just the helpful ones
  – Bias (lack of empathy)
Result

15 Students: Client was not likely to be charged with misprision

5 Students: GUILTY!
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