

Drafting Statutes and Rules: Pedagogy, Practice, and Politics

The Fifth Colonial Frontier Legal Writing Conference

Duquesne University School of Law

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Brooklyn Law School

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

2921.22 Reporting felony

Effective: July 10, 2014

Currentness

[*Edited for educational purposes*]

(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) No physician, limited practitioner, nurse, or other person giving aid to a sick or injured person shall negligently fail to report to law enforcement authorities any gunshot or stab wound treated or observed by the physician, limited practitioner, nurse, or person, or any serious physical harm to persons that the physician, limited practitioner, nurse, or person knows or has reasonable cause to believe resulted from an offense of violence.

(C) No person who discovers the body or acquires the first knowledge of the death of a person shall fail to report the death immediately to a physician whom the person knows to be treating the deceased for a condition from which death at such time would not be unexpected, or to a law enforcement officer, an ambulance service, an emergency squad, or the coroner in a political subdivision in which the body is discovered, the death is believed to have occurred, or knowledge concerning the death is obtained.

...

(G) Division (A) of this section does not require disclosure of information, when any of the following applies:

(1) The information is privileged by reason of the relationship between attorney and client; doctor and patient; licensed psychologist or licensed school psychologist and client; licensed professional clinical counselor, licensed professional counselor, independent social worker, social worker, independent marriage and family therapist, or marriage and family therapist and client; member of the clergy, rabbi, minister, or priest and any person communicating information confidentially to the member of the clergy, rabbi, minister, or priest for a religious counseling purpose of a professional character; husband and wife; or a communications assistant and those who are a party to a telecommunications relay service call.

(2) The information would tend to incriminate a member of the actor's immediate family.

(3) Disclosure of the information would amount to revealing a news source, privileged under the Revised Code.

(4) Disclosure of the information would amount to disclosure by a member of the ordained clergy of an organized religious body of a confidential communication made to that member of the clergy in that member's capacity as a member of the clergy by a person seeking the aid or counsel of that member of the clergy.

(5) Disclosure would amount to revealing information acquired by the actor in the course of the actor's duties in connection with a bona fide program of treatment or services for drug dependent persons or persons in danger of drug dependence, which program is maintained or conducted by a hospital, clinic, person, agency, or services provider certified pursuant to the Revised Code.

(6) Disclosure would amount to revealing information acquired by the actor in the course of the actor's duties in connection with a bona fide program for providing counseling services to victims of crimes that are violations of the Revised Code or to victims of felonious sexual penetration in violation of former section 2907.12 of the Revised Code. As used in this

division, "counseling services" include services provided in an informal setting by a person who, by education or experience, is competent to provide those services.

(H) No disclosure of information pursuant to this section gives rise to any liability or recrimination for a breach of privilege or confidence.

(I) Whoever violates division (A) or (B) of this section is guilty of failure to report a crime. Violation of division (A) of this section is a misdemeanor of the fourth degree.

(J) Whoever violates division (C) of this section is guilty of failure to report knowledge of a death, a misdemeanor of the fourth degree.

CREDIT(S)

(2014 H 232, eff. 7-10-14; 2013 H 59, eff. 9-29-13; 2008 S 248, eff. 4-7-09; 2002 S 115, eff. 3-19-03; 1996 S 223, eff. 3-18-97; 1996 H 445, eff. 9-3-96; 1994 H 335, eff. 12-9-94; 1992 S 343, eff. 3-24-93; 1989 H 317; 1987 H 273; 1980 H 284; 1977 H 1, S 203; 1975 S 283, H 750; 1972 H 511)

LEGISLATIVE SERVICE COMMISSION

1973:

Under this section, persons are required only to inform authorities of felonies of which they have knowledge, and are not required to attempt apprehension of the offender. Also, a number of relationships are privileged under this section which were not privileged at common law. These include: attorney and client; doctor and patient; licensed psychologist and client; priest and penitent; clergyman and parishioner; husband and wife, and other immediate family members; newsmen, with respect to confidential news sources; and those engaged in authorized drug treatment or counseling programs.

The rationale for requiring that serious crimes be reported is that effective crime prevention and law enforcement depend significantly on the cooperation of the public. The section covers, for example, the situation where bystanders ignore a murder victim's pleas for help because they do not want to "become involved." The rationale for the exceptions is that, in each case in which a privilege is applicable, the considerations favoring keeping silence override the general policy considerations requiring serious crimes to be reported.

United States Code Annotated
Title 18. Crimes and Criminal Procedure (Refs & Annos)
Part I. Crimes (Refs & Annos)
Chapter 1. General Provisions (Refs & Annos)

18 U.S.C.A. § 4

§ 4. Misprision of felony

Currentness

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.

CREDIT(S)

(June 25, 1948, c. 645, 62 Stat. 684; Pub.L. 103-322, Title XXXIII, § 330016(1)(G), Sept. 13, 1994, 108 Stat. 2147.)

Notes of Decisions (73)

18 U.S.C.A. § 4, 18 USCA § 4
 Current through P.L. 114-186. Also includes P.L. 114-188, 114-189, 114-191 to 114-194, 114-196, 114-197, and 114-199.

MEMORANDUM

TO: Law Firm Associates
FROM: Dylan Casciello, Supervising Attorney
DATE: August 25, 2016
RE: Eliza Garcia; "Failure to Report a Felony" Statutes

Associates:

Welcome to the firm and to your first assignment. A prominent client of our firm, Henrietta Garcia, CEO of a company called Literacy is Power, LLC, has asked us to represent her daughter, Eliza Garcia, with regard to her possible arrest and charge for the crime of "failure to report a felony," under Ohio and federal law.

Eliza and her wife, Natalya Bhavsar, were married in New York City in 2014. In late 2015, Eliza gave birth to the couple's first child, a son named Andres. Earlier this year, the couple moved to Ohio to be closer to Natalya's elderly parents. Recently, Natalya was arrested for two felonies under both state and federal anti-terrorism statutes, for providing resources to be used in whole or in part to plan, prepare, carry out, or aid in an act of terrorism. Natalya is a member of an animal rights organization called the Animal Welfare Syndicate ("AWS"), which is committed to ending the abuse and exploitation of animals. Members of AWS allegedly committed an act of terrorism against an Ohio cosmetics company, Villari, known for testing its skin care products on animals. AWS allegedly tampered with the braking systems of vehicles belonging to four members of Villari's Board of Directors, resulting in a car accident which placed one of the Board members in a coma. Further, AWS allegedly tampered with Villari's water system, inserting red food dye into Villari's water pipes. The foregoing actions constitute state and federal felonies.

One of Eliza's friends warned her that she too could be arrested if she had known about Natalya's involvement with Villari yet failed to report it. Distraught over Natalya's arrest, exhausted from caring for her nine-month-old child, and afraid of being arrested, Eliza spoke to her mother, who then called our firm for legal assistance.

We need to advise Eliza on whether law enforcement authorities have a valid basis on which to proceed against her under the Ohio and/or federal "failure to report a felony" statutes. For our first meeting on Tuesday, August 30, 2016, please review the attached transcript of a preliminary phone interview I conducted with Eliza, plus the following two statutes:

- Federal Statute: 18 U.S.C. §4 (1994), entitled "Misprision of Felony"
- Ohio Statute: Ohio Rev. Code §2921.22 (2014), entitled "Reporting Felony"

Over the next three weeks, you also will read the following four cases:

- *United States v. Brantley*, 803 F.3d 1265 (11th Cir. 2015).
- *United States v. Gravitt*, 590 F.2d 123 (5th Cir. 1979).
- *United States v. King*, 402 F.2d 694 (9th Cir. 1968).
- *United States v. Goldberg*, 862 F.2d 101 (6th Cir. 1988).

Your eventual assignment is to draft a legal memorandum analyzing Eliza's circumstances in light of the two statutes and four cases, and determine whether law enforcement authorities justifiably can proceed against her under the Ohio and/or federal "failure to report a felony" statutes. The final deadline for your memorandum is **Sunday, October 16, 2016 at 11:59 p.m.** I will be flying to Ohio early the next morning to meet with Eliza and will read your memorandum on the flight.

The word count limit for your final memorandum is 2000 words. Please double-space your text, use 12-point, Times New Roman font, include page numbers on each page, and use margins of 1 inch on the sides of each page and .75 inches on the top and bottom of each page.

TRANSCRIPT OF TELECONFERENCE WITH ELIZA GARCIA

AUGUST 21, 2016

Commencing at 3:26 pm

Present: ATTORNEY DYLAN CASCIELLO and ELIZA GARCIA

CASCIELLO: Hello, Ms. Garcia. I'm Dylan Casciello. I'm a lawyer in New York and I've worked on several matters for your mother, Henrietta, for her company, Literacy is Power, LLC.

GARCIA: Yes, uh huh, she told me. Thanks for speaking with me today. I'm a nervous wreck about all this.

CASCIELLO: I can understand that. This is a stressful situation for you and your family, I'm sure.

But let's start at the beginning and walk through everything slowly, okay? Take your time.

Everything we discuss is 100% confidential and I'm here specifically just for you—no one else involved in this situation. Is it okay with you if I record our conversation though, so I can make sure I capture all the facts accurately?

GARCIA: Sure, I guess that's fine.

CASCIELLO: Thank you. Okay, so I understand you have a new baby?

GARCIA: Yes. He's the one good thing happening right now.

CASCIELLO: What is your son's name?

GARCIA: Andres.

CASCIELLO: Your mom has shown me pictures. Proud grandmom.

GARCIA: (laughs) Yes, she is. Although not proud of me right now.

CASCIELLO: Okay, well together let's sort all this out. Tell me a little bit about Natalya.

GARCIA: I'm so worried about her. She's just in over her head...well...okay, she and I met in college at The University of Virginia. She's from Ohio. We started dating in college, broke up for a little bit while we were in grad school on opposite coasts. She went to California for veterinarian

school. I went to New York to get my Master's in Fine Arts. Anyway, we reconnected in 2012 when she moved to New York after withdrawing from vet school. She had run out of scholarship money and couldn't afford to finish. We re-connected at a college alumni event in Brooklyn, started dating again, were basically inseparable and got married in 2014. We had Andres in December of 2015. Our best friend, Clay, was the sperm donor.

CASCIELLO: Great. When did Natalya begin working with the...

GARCIA: It's called Animal Welfare Syndicate, or AWS. She began working for them as soon as she got to New York in 2012. I was teaching art in Tribeca.

CASCIELLO: When did you move to Ohio?

GARCIA: Last year, Natalya's mom was diagnosed with Alzheimer's disease, and her dad was having a hard time taking care of her. Even though things were crazy with the recent arrival of Andres, we figured it might be good to get out of the city for a bit, so we picked up and moved to Ohio in February.

CASCIELLO: Of 2016?

GARCIA: Yes, just like seven months ago. My mom was not thrilled that I moved Andres farther away from her, but she understood.

CASCIELLO: Um, okay, let's fast-forward to the recent events for a few minutes. Was Natalya working with the Animal Welfare Syndicate in Ohio too?

GARCIA: Yes, she was part of this amazing First Responder Team. They basically find out about puppy mills and dog-fighting rings and go in and bust them and rescue all the dogs. She has probably rescued over a thousand abused animals so far. I honestly...(begins to cry)...don't know how they escalated into...

CASCIELLO: It's okay, take your time. So, the news is reporting that on August 12, 2016, members of AWS tampered with the braking systems of vehicles of four members of the Board of

Directors of a company named Villari, and also put red food dye in the company's water supply. One of the Board members drove his tampered vehicle, his brakes failed, and his car flipped over a guard rail and he's currently in a coma. Had you ever heard Natalya talk about Villari before?

GARCIA: No...I mean, maybe. Honestly, I love hearing about the rescues she does, but the stuff about animal testing, I just don't really understand. Plus, I'm completely exhausted half the time staying up half the night with Andres. She may have mentioned the specific company name but I honestly can't remember. The first time I recall actually knowing that name was when I heard about the car accident on the news. And when the reporters said AWS was potentially involved because they identified a car on security footage at Villari that belonged to an AWS worker, I freaked out. I called Natalya. She was supposed to be on a First Responder mission to rescue dogs from a hoarder in Michigan. But when she answered, I could tell something was wrong. She kept telling me, "Don't worry, don't worry, everything will be fine." She sounded frantic. I told her to come home immediately. She just kept saying, "It's okay, it's okay." And then she started rambling about how we were going to move back to New York with the baby, and bring her parents, and...(begins crying).

CASCIELLO: Did you suspect at that time that Natalya had been involved with the Villari events?

GARCIA: Yes, I knew she was. There was no question at all.

CASCIELLO: Did Natalya come home?

GARCIA: Yes. Later that night, around 11:30 pm, she finally came home in a cab. I have no idea where her car is. I was a wreck. She was a wreck. She said, "I'm so sorry, I didn't mean for it to get this far. We just meant to scare them a little, do a little property damage. I can't believe what I have done." I tried to get her to sit down and talk to me but she was incredibly jittery. She then went straight to our laundry room, stripped down, and put all her clothes into the washing machine, and then dumped a gym bag full of clothes onto the floor in front of the machine. She stuffed clothes—

some of which had red stains on them—into the machine. I asked her what the red stuff was. The news hadn't yet reported the red dye in Villari's water yet so I didn't know what it was. She ignored the question, but just dumped detergent and some bleach into the machine and turned it on. Then she went back to the kitchen, took a bunch of papers and receipts out of her purse, ran water over them in the sink, and shoved them in the garbage disposal and turned it on. She asked me for the keys to my car. I freaked out again and told her she had to stay with the baby and me and tell me what's going on. She just looked really scared and said she had to go take care of things but everything would be okay. She asked me again for my keys. I just gestured over to the kitchen counter. She grabbed my keys and my purse. She fumbled around with my purse and dropped it on the floor. I picked it up and handed her whatever money I had in there, maybe 40 bucks. She left right after that. They arrested Natalya a couple days ago and it's been really confusing about how to get her out of jail. I think I'm supposed to post bail tomorrow, but I'm freaking out about going near the jail after one of my friends from the gym told me I could be in trouble too. I can't get arrested...(crying)...I have no one to take care of Andres...

CASCIELLO: Tell me exactly what your friend said to you?

GARCIA: She said...that because the actions of AWS are considered domestic terrorism which is a felony, I could be in huge trouble for knowing that Natalya or others at AWS committed those acts but not reporting them. There's some statute or something? I mean, I know Natalya was involved. She basically admitted it and it was pretty obvious from the red dye on her clothes and her behavior. But Natalya's my wife, my family. She's confused and scared. I'm so confused...

CASCIELLO: What did you do after Natalya left the house that night?

GARCIA: After calling her a zillion times on her phone and getting no answer, I tried to lie down, but my mind was racing. By this point it was like three in the morning. I finally fell asleep and I woke up when the baby was crying. I fed Andres and put him back down to sleep. I looked at the

time and realized my babysitter was coming in thirty minutes—I should have called her and canceled but she always comes Saturday mornings so I can go to my art studio. I tried to clean up the house a little. Those stupid soggy receipts were clogging the garbage disposal. I dug them out and stuffed them in the kitchen garbage and took the bag to the outside bin that was already on the curb. I put Natalya's wet laundry into the dryer, and dumped the rest of the clothes that were still on the floor and covered in red stains into the washer and turned it on. I couldn't stand looking at that pile of clothes and the red stuff. After the babysitter left that afternoon and I still hadn't heard from Natalya, I took Andres and stayed at a friend's house. She finally called me, but I didn't pick up. I just needed some space from her and the whole situation. I haven't seen her since she left the house that first night and I don't know where she was between that time and the time of her arrest.

CASCIELLO: When did you find out that Natalya had been arrested?

GARCIA: She called me, from jail. Worst conversation of our lives. After that I left my friend's house and went back to our house.

CASCIELLO: I'm so sorry. I understand how stressful that must have been. What time did she call you?

GARCIA: I don't remember the exact time. That day was such a blur. I finally had to call my in-laws and tell them what happened. They came over to be with Andres and me. I called my mom in New York. Second worst conversation ever.

CASCIELLO: I can imagine. Have you had any other communication with Natalya since she called you from jail?

GARCIA: No. But her former boss from the New York office of AWS called me and asked if I needed help paying the bail and with legal fees. He also suggested that I deactivate Natalya's Facebook account—she was getting all kinds of angry rants on her Timeline because apparently she had posted some negative articles a while back about the Villari company, and there were pictures

of her protesting in front of the Villari headquarters in Ohio. The Timeline posts were acting like she's some sort of deranged domestic terrorist. I know her password so I deactivated her account right after I spoke to her former boss. Was that okay?

CASCIELLO: We're going to figure all this out. I'm going to have my associates research "duty to report a felony" statutes and find out what is going on with that. In the meantime, you focus on taking care of yourself and your child. I'll work with your mom to make sure Natalya gets good defense counsel in Ohio that can handle the bail situation immediately. In the meantime, feel free to call me if you think of any other details. And let me know immediately if anyone from the Ohio police or the FBI contacts you. If they do, be calm and respectful but request that counsel be present for any conversations, okay?

GARCIA: Okay. I just can't believe all this is happening. Oh, I don't know why I did this but, when I was deactivating Natalya's Facebook, I also looked at our Internet search history. There was stuff in there about car mechanics. I deleted our Internet history, which is something I do fairly regularly anyway.

CASCIELLO: Okay, Eliza. We'll figure this all out as soon as possible, okay?

GARCIA: Okay, thank you.

CASCIELLO: I'll give you a call later tonight or tomorrow once I have information about the bail, okay?

GARCIA: Okay, thanks so much.

CASCIELLO: You're very welcome. We'll talk soon.

GARCIA: Okay, bye.

CASCIELLO: Goodbye.

Call ended at 3:57 pm.