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## Criminal Law: Nature and Use of Flight

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one innocent party suffers. The dilemma presented suggests the need for adoption by the states of a uniform title law, perhaps requiring an original bill of sale with all encumbrances noted thereon, and then applying the maxim *caveat emptor*. This position is forcibly supported when the mobile and readily transferable character of an automobile, coupled with its similarity in many respects to realty, is considered. This dual aspect of an automobile is, in the main, responsible for the undesirable results reached under both the minority and majority views. A conditional vendor may, under the former, be deprived of his title security with comparative ease, as in the instant case; whereas under the latter view a bona fide purchaser may suffer loss of money for wrongs committed by others entirely beyond his control and against which he is, from a practical standpoint, defenseless.

Florida is by no means alone in the view adopted in the instant case,<sup>20</sup> that, as among innocent sufferers, its first duty is to its own citizens. There is strict logic, based on an accurate factual analysis, as well as practical common sense, to recommend it in the absence of the suggested legislation.

GROVER C. HERRING

### CRIMINAL LAW: NATURE AND USE OF FLIGHT

*Noeling v. State*, 40 So.2d 120 (Fla. 1949)

Defendant, charged with the crime of performing an abortion,<sup>1</sup> appeared when the trial was first set and was granted a brief continuance. He then went to Philadelphia on business. Although he failed to return on the appointed day, he appeared soon thereafter and explained the delay. The trial court charged that this absence could be regarded as flight and considered in determining guilt. On appeal from conviction, HELD, the several errors below necessi-

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<sup>20</sup>*Turnbull v. Cole*, 70 Colo. 364, 201 Pac. 887 (1921); *Allison v. Teeters*, 176 Mich. 216, 142 N. W. 340 (1913); *Consolidated Garage Co. v. Chambers*, 111 Tex. 293, 231 S. W. 1072 (1921).

<sup>1</sup>FLA. STAT. §797.01 (1949).

tated a new trial. Among the serious errors discussed in the opinion was the charge to the jury regarding flight.

The Biblical saying, "The wicked flee when no man pursueth: but the righteous are bold as a lion,"<sup>2</sup> gave rise to the early common-law maxim *Fatetur facinus qui fugit iudicium*.<sup>3</sup> This maxim is no longer followed by Anglo-American courts.<sup>4</sup> A federal statute<sup>5</sup> makes interstate flight a distinct substantive crime in certain instances; but, with this one statutory exception, flight is itself a conclusion of fact, which when once established is then to be considered as an evidentiary fact by the jury, under appropriate instructions and along with other evidentiary facts, in determining guilt.<sup>6</sup> Prior to any consideration of flight as evidence of guilt, flight itself must first be established. It is a legal concept requiring two factors: absence, and the motive of evading prosecution.

In the legal sense, flight and mere absence or departure following the commission of a crime are not synonymous,<sup>7</sup> although some courts inaccurately use the term "flight" in the latter sense.<sup>8</sup> Flight in the proper sense consists of a voluntary withdrawal in order to avoid arrest, detention, or the institution or continuance of criminal proceeding.<sup>9</sup> It may occur either before or after arrest;<sup>10</sup> and knowl-

<sup>2</sup>*Proverbs* 28:1.

<sup>3</sup>"He who flees from trial admits his misdeed."

<sup>4</sup>*United States v. Heitner*, 149 F.2d 105 (C. C. A. 2nd 1945); *People v. Gibson*, 385 Ill. 371, 52 N. E.2d 1008 (1944); *People v. Herbert*, 361 Ill. 64, 196 N. E. 821 (1935); *State v. Hedinger*, 126 N. J. L. 288, 19 A.2d 322 (1941); *People v. Giammatto*, 273 App. Div. 1023, 79 N. Y. S.2d 219 (1948); Note, 55 CENT. L. J. 403 (1902).

<sup>5</sup>Fugitive Felon and Witness Act, 48 STAT. 782 (1934), 18 U. S. C. §408e (1946).

<sup>6</sup>*Elmore v. State*, 98 Ala. 12, 13 So. 427 (1893); *Ray v. State*, 159 Fla. 101, 31 So.2d 156 (1947); *Cortes v. State*, 135 Fla. 589, 185 So. 323 (1938); *Blakely v. State*, 78 Ga. App. 421, 50 S. E.2d 762 (1948); *People v. Gibson*, 385 Ill. 371, 52 N. E.2d 1008 (1944).

<sup>7</sup>*Taylor v. State*, 138 Neb. 156, 292 N. W. 233 (1940); *State v. Turnage*, 107 S. C. 478, 93 S. E. 182 (1917).

<sup>8</sup>*Caveney v. State*, 210 Ind. 455, 4 N. E.2d 137 (1936); *Ranson v. State*, 149 Miss. 262, 115 So. 208 (1928); *Luke v. State*, 183 Ga. 302, 118 S. E. 542 (1937).

<sup>9</sup>*Lay v. State*, 42 Ark. 105 (1883); *State v. Washburn*, 48 Mo. 240 (1871); *Commonwealth v. Myer*, 131 Pa. Super. 258, 200 Atl. 143 (1938).

<sup>10</sup>*Blackwell v. State*, 79 Fla. 709, 86 So. 224 (1920); *Wooldridge v. State*, 49 Fla. 137, 38 So. 3 (1905); *Jones v. State*, 26 Ga. App. 635, 107 S. E. 166 (1921); *Napier v. Commonwealth*, 306 Ky. 75, 206 S. W. 2d 53 (1947); *Brown v. State*, 57 Tex. Cr. 570, 124 S. W. 101 (1910).

edge by the accused that he has been indicted,<sup>11</sup> or even suspected,<sup>12</sup> is generally held unnecessary, so long as he absents himself out of a sense of guilt or with an intent to avoid punishment or prosecution.

When the state has introduced no evidence of flight, proof that the accused voluntarily surrendered or failed to flee is inadmissible on the ground that it is a self-serving declaration.<sup>13</sup> Only when the prosecution has introduced evidence of flight may the accused introduce evidence to explain his actions,<sup>14</sup> any fact then being admissible in his behalf which shows that his motives were consistent with innocence rather than with guilt.<sup>15</sup> When the evidence shows conclusively that there was no flight, it is error for the jury to consider the question.<sup>16</sup> Such was the error in the principal case. Unexplained absence or concealment may permit an inference of guilt;<sup>17</sup> but, upon explanation of such absence, the jury must first determine under appropriate instructions whether such actions constitute flight before any inference of guilt may be drawn.<sup>18</sup> Flight of a co-conspirator is generally held inadmissible as evidence against the accused,<sup>19</sup> although

<sup>11</sup>*People v. Minamino*, 56 Cal. App. 386, 205 Pac. 463 (1922); *People v. Stillwell*, 244 N. Y. 196, 155 N. E. 98 (1926); cf. WIGMORE, EVIDENCE §276 (3rd ed. 1940).

<sup>12</sup>*Quinn v. State*, 55 Okla. Cr. 116, 25 P.2d 711 (1933); *State v. Wilson*, 26 Wash. 2d 468, 174 P.2d 553 (1946); *State v. Pettit*, 74 Wash. 510, 133 Pac. 1014 (1913).

<sup>13</sup>*Jordan v. State*, 32 Ala. App. 172, 24 So.2d 138 (1945); *Barnett v. State*, 165 Ala. 59, 51 So. 299 (1909); *Massey v. State*, 207 Ark. 675, 182 S. W.2d 671 (1944); *Welch v. State*, 104 Ind. 347, 3 N. E. 850 (1885); *Bailey v. State*, 94 Miss. 863, 48 So. 227 (1908); *Golin v. State*, 37 Tex. Cr. 90, 38 S. W. 794 (1897).

<sup>14</sup>*Hudson v. State*, 217 Ala. 479, 116 So. 800 (1928); *Compton v. State*, 74 Okla. Cr. 48, 122 P.2d 819 (1942).

<sup>15</sup>*People v. Autman*, 393 Ill. 262, 65 N. E.2d 772 (1946); *Rivera v. State*, 91 Tex. Cr. 501, 239 S. W. 955 (1922).

<sup>16</sup>*People v. Goodwin*, 202 Cal. 527, 261 Pac. 1009 (1927); *Orin v. People*, 68 Colo. 1, 188 Pac. 1114 (1920); *People v. Weisberg*, 396 Ill. 412, 71 N. E.2d 671 (1947); *State v. Weissengoff*, 89 W. Va. 279, 109 S. E. 707 (1921).

<sup>17</sup>*People v. Peak*, 66 Cal. App. 894, 153 P.2d 464 (1944); *People v. Rappaport*, 362 Ill. 492, 200 N. E. 165 (1936).

<sup>18</sup>*Wilson v. State*, 190 Ga. 824, 10 S. E.2d 861 (1940); *State v. Heidinger*, 126 N. J. L. 288, 19 A.2d 322 (1941); *Compton v. State*, 74 Okla. Cr. 48, 122 P.2d 819 (1942).

<sup>19</sup>*E.g.*, *People v. Draper*, 69 Cal. App.2d 781, 160 P.2d 80 (1945); *Lance v. State*, 166 Ga. 15, 142 S. E. 105 (1928); *State v. Dickerson*, 189 N. C. 327, 127 S. E. 256 (1925); *State v. Simon*, 113 N. J. L. 521, 174 Atl. 867 (1934).

there is some authority to the contrary.<sup>20</sup> Similarly, the flight of another, being in the nature of a confession, raises no reasonable doubt as to the guilt of the accused, and is accordingly inadmissible in his behalf.<sup>21</sup>

When evidence of flight has been introduced, the accused must be allowed to prove that he voluntarily returned and surrendered.<sup>22</sup> Absence or departure after the commission of a crime is sufficiently explained when the sole reason for the accused's absence was: carrying out a long determined purpose unconnected with the crime,<sup>23</sup> keeping a previous engagement,<sup>24</sup> procuring work,<sup>25</sup> protecting himself from a race-riot occasioned by the crime,<sup>26</sup> avoiding injury from an angry mob,<sup>27</sup> insanity,<sup>28</sup> or the advice of counsel or friends.<sup>29</sup> If, however, the accused was motivated also by a desire to avoid the administration of the law, these explanations can not negative flight;<sup>30</sup> in other words, once the improper motive is established, the existence of a good motive in conjunction therewith is immaterial.

If the accused admits the act alleged in the indictment, and the only question at issue is whether such act is criminal under the particular circumstances, it has been held, in the one case cited in the instant opinion, that flight is not to be considered as evidence

<sup>20</sup>*Cummings v. People*, 42 Mich. 142, 3 N. W. 305 (1879).

<sup>21</sup>*State v. Minella*, 177 Iowa 283, 158 N. W. 645 (1916); *Deloach v. State*, 151 Miss. 85, 117 So. 361 (1928).

<sup>22</sup>*Allen v. State*, 146 Ala. 61, 41 So. 624 (1906); *Dixon v. State*, 12 Ga. App. 17, 76 S. E. 794 (1912); see *Lester v. State*, 75 Ga. App. 42, 42 S. E.2d 141, 154 (1947).

<sup>23</sup>*United States v. Candler*, 65 Fed. 308 (W. D. N. C. 1894); *People v. Goodwin*, 202 Cal. 527, 261 Pac. 1009 (1922); cf. *State v. Potter*, 108 Mo. 424, 22 S. W. 89 (1891).

<sup>24</sup>See *Phillips v. State*, 162 Ala. 14, 23, 50 So. 194, 198 (1913).

<sup>25</sup>*Goforth v. State*, 183 Ala. 66, 63 So. 8 (1913); cf. *McAllister v. State*, 30 Ala. App. 366, 6 So.2d 32 (1942).

<sup>26</sup>*People v. Bundy*, 295 Ill. 322, 129 N. E. 189 (1920).

<sup>27</sup>*Webster v. State*, 211 Ala. 519, 101 So. 183 (1924); *People v. Jones*, 160 Cal. 358, 117 Pac. 176 (1911); *Miller v. State*, 198 Miss. 277, 22 So.2d 164 (1945); *Phillips v. State*, 24 Mo. 475 (1857).

<sup>28</sup>*People v. Easton*, 148 Cal. 50, 82 Pac. 840 (1905); *Peacock v. State*, 50 N. J. L. 653, 14 Atl. 893 (1888).

<sup>29</sup>*McAllister v. State*, 30 Ala. App. 366, 6 So.2d 32 (1942); *Caveney v. State*, 210 Ind. 455, 4 N. E.2d 137 (1936); *Brown v. State*, 57 Tex. Cr. 570, 124 S. W. 101 (1910).

<sup>30</sup>*Compton v. State*, 74 Okla. Cr. 48, 122 P.2d 819 (1942).