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People v. Williams

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There is a relevant moral and legal distinction between lying and misleading.¹ Lying is asserting as true what is literally false, while misleading merely “lead[s] the listener to believe something false by saying something that is either true or has no truth value.”² This is an important distinction in statutory interpretation. While some crimes require proof the defendant lied before there can be criminal liability (“lying crimes”), others only require proof of misleading behavior to satisfy the elements of the crime (“misleading crimes”).³ As a general rule, lying crimes involve deception aimed at obstructing justice or a government investigation, and utilize a narrow definition of deceit to impose criminal liability.⁴ On the other hand, misleading crimes typically involve deception intended to misappropriate money or property, and encompass a broader range of acts that satisfy the deceit element.⁵ Courts have struggled, however, to identify when deception crosses the line from mere misleading to lying, with significant consequences for a defendant.⁶

In *People v. Williams*, the New York Appellate Division, First Department held that defendant’s conduct constituted “deception” under New York’s hindering prosecution statute,⁷ after she reported a crime, gave a description of the suspect, turned over a video surveillance tape of the crime, but initially did not disclose the suspect’s identity.⁸ Although defendant did not lie to the police, the court nevertheless held that, as a matter of law, the trial court’s dismissal of the case for legal insufficiency should be reversed and remanded for further proceeding because she withheld the known identity of the perpetrator.⁹ This case comment contends that the *Williams* court interpreted the language of the statute too broadly by allowing mere silence to constitute deception for the purposes of determining liability under the hindering prosecution statute. The court should have interpreted the statute narrowly and found that mere silence absent some affirmative act is insufficient evidence to support a hindering prosecution charge.

In *Williams*, the defendant, Donna Williams, was the manager of a Taco Bell restaurant that was robbed on the morning of May 11, 2003.¹⁰ James Bazemore entered the restaurant and pointed a gun at Williams’s coworker.¹¹

1. See Stuart P. Green, *Lying, Misleading, and Falsely Denying: How Moral Concepts Inform the Law of Perjury, Fraud, and False Statements*, 53 HASTINGS L.J. 157, 164 (2001).

2. *Id.*

3. See *id.* at 173–74.

4. See *id.*

5. See *id.*

6. See *id.*

7. N.Y. PENAL LAW § 205.50(4) (McKinney 2005) (defining criminal assistance for purposes of hindering prosecution).

8. *People v. Williams*, 795 N.Y.S.2d 561, 562 (1st Dep’t 2005), *leave to appeal denied*, 5 N.Y.3d 811 (2005).

9. *Id.* at 567.

10. *Id.* at 563.

11. *Id.*

Although the robber's face was partially hidden, Williams recognized him as her boyfriend, James Bazemore.¹² Bazemore ordered Williams's coworker to get undressed and demanded money from the safe.¹³ Williams pled with Bazemore not to hurt anyone but she eventually obeyed and handed over the money.¹⁴ Bazemore fled immediately thereafter.¹⁵

Williams called the police to report the robbery.¹⁶ When the officers arrived, Williams told them the details of the robbery, gave them a description of the suspect, and turned over a video surveillance tape of the crime.¹⁷ She did not mention her knowledge of the robber's identity.¹⁸ However, police quickly learned the identity of the perpetrator and his relationship to Williams from one of her coworkers.¹⁹ Two days later, the officers brought Williams in for questioning.²⁰

After reading Williams her *Miranda* rights, the police asked her what had happened at the restaurant.²¹ Without any additional questions or any implication by the officers that they knew of her relationship to the robber, Williams told the police that her boyfriend, James Bazemore, was the perpetrator.²² Williams said she did not initially come forward with the information because she was afraid.²³

Williams was indicted by a grand jury on charges of hindering prosecution in the second and third degrees.²⁴ Under both statutes, "[a] person is guilty of hindering prosecution . . . when he renders criminal assistance to a person who has committed a . . . felony."²⁵ The definition of "criminal assistance" as provided in section 205.50 states:

[A] person "renders criminal assistance" when, with the intent to prevent, hinder or delay the discovery or apprehension of . . . a person he

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.*

16. *Id.*

17. *See id.* The case does not provide any statements made by Williams during this first encounter with the police.

18. *Id.*

19. *Id.*

20. *Id.*

21. *Id.*

22. *Id.*

23. *Id.*

24. *Id.*; N.Y. PENAL LAW §§ 205.55, 205.60 (McKinney 2005).

25. §§ 205.55, 205.60. According to § 205.60, a person is guilty of hindering prosecution in the second degree "when he renders criminal assistance to a person who has committed a class B or class C felony," while hindering prosecution in the third degree, under § 205.55 does not require a specific class of felony.

knows or believes has committed a crime . . . he . . . prevents or obstructs, by means of . . . deception, anyone from performing an act which might aid in the discovery or apprehension of such person.²⁶

Williams moved to dismiss the charges for lack of sufficient evidence.²⁷ The trial court granted the motion, holding that her omission fell short of the type of willful deception required to constitute “criminal assistance” under the statute.²⁸ The People appealed, arguing that the trial court erred in dismissing the charges for lack of sufficient evidence.²⁹ Under the government’s theory, Williams’s failure to disclose the known identity of the robber constituted deceptive conduct for the purposes of determining whether Williams had rendered “criminal assistance” and thus was guilty of hindering prosecution under the statute.³⁰

The First Department agreed with the government’s theory and reinstated the indictment.³¹ In arriving at its decision, the court analogized hindering prosecution to its predecessor crime, accessory after the fact.³² In most jurisdictions, affirmative deceptive conduct is required to support a charge for accessory after the fact and the mere failure to report a known felon is not criminal.³³ The First Department, however, drew a distinction between failure to disclose the identity of a known felon and the deliberate withholding of information sought by the police, the latter constituting an affirmative act of concealment.³⁴ The court found that because Williams reported the crime to the police and at the same time withheld the identity of the perpetrator, she committed an affirmative act of deception that fell within the statutory definition of criminal assistance.³⁵

Under *Williams*, a person can be held criminally liable for reporting a crime by not disclosing all the relevant information to the police. Allowing this result discourages people from reporting crimes and may chill the flow of helpful information to law enforcement. The *Williams* court should not have interpreted “deception” so broadly to include silence as an affirmative act.

26. N.Y. PENAL LAW § 205.50(4) (McKinney 2005).

27. *Williams*, 795 N.Y.S.2d at 563.

28. *Id.* at 563–64.

29. *Id.* at 564.

30. *Id.* at 565.

31. *Id.* at 567–68.

32. *Id.* at 565.

33. *Id.* at 565–66. “[C]ourts have required affirmative acts for a conviction as an accessory after the fact . . . [because] criminalizing a citizen’s mere failure to report a crime to the police is incongruous with our nation’s system of justice.” *Id.* at 567. The First Department is a jurisdiction where the mere passive failure to report a known felon will not incur criminal liability. *Id.* at 566 n.1; see WAYNE R. LAFAYE, CRIMINAL LAW 718–19 (4th ed. 2003) (defining the crime of misprision of a felony as the failure to report a known felon).

34. *Id.* at 567.

35. *Id.* at 566–67.

First, the court mischaracterized Williams's conduct by calling it an affirmative act of deception when it was actually an omission. Absent a duty requiring Williams to disclose the robber's identity, no criminal liability could result from her omission.³⁶ Second, even if Williams's conduct misled the police, the court should have more narrowly construed what constitutes "deception" because hindering prosecution is a lying crime and should require the actual telling of a lie before criminal liability ensues. Finally, the court should not punish an individual who provided useful information to the police but was too scared to disclose everything, especially when remaining completely silent about the commission of a crime is not a violation of the law.

Selective silence is not considered an affirmative act by other courts.³⁷ In *United States v. Ciambrone*, the defendant, Ronald James Ciambrone, placed an anonymous call to the United States Secret Service to arrange a meeting with one of its agents.³⁸ During the meeting, Ciambrone told the agent he had knowledge of some men involved in a counterfeiting scheme.³⁹ The agent asked Ciambrone to identify himself and the counterfeiters, but Ciambrone refused and demanded \$15,000 for the information.⁴⁰ Ciambrone was charged with misprision of a felony.⁴¹ On appeal, the Ninth Circuit ruled that his selective silence did not constitute an affirmative act of concealment.⁴² The *Ciambrone* court held that "[i]t is surely preferable that people make truthful partial disclosure of their knowledge of crime than they make no disclosure at all," and it would be irrational to hold that "partial disclosure [is] a crime when remaining totally silent is not a violation."⁴³ Although the *Ciambrone* court interpreted the definition of the word "concealment" in the misprision of a felony statute, the Ninth Circuit recognized that "where a person makes a partial disclosure of his knowledge of a crime but then decides, out of sudden fear or for some other reason, not to tell everything he knows," the partial omission would not lead to criminal liability.⁴⁴

36. LAFAVE, *supra* note 33, at 311 (explaining that for criminal liability to ensue from an omission there must be a legal duty to act).

37. *See* *United States v. Ciambrone*, 750 F.2d 1416, 1417 (9th Cir. 1984).

38. *Id.*

39. *Id.*

40. *Id.*

41. 18 U.S.C. § 4 (2000) ("Whoever, having knowledge of the actual commission of a felony . . . conceals and does not as soon as possible make known the same to [an individual with] authority under the United States, shall be fined . . . or imprisoned . . . or both.")

42. *Ciambrone*, 750 F.2d at 1418.

43. *Id.*

44. *Id.*

Crimes of omission are rare and can only exist when there is a legal duty to act.⁴⁵ Fraud, for example, is a crime involving deception where an omission to act makes one criminally liable.⁴⁶ This is because there is usually specific language in fraud statutes that create liability for a material omission.⁴⁷ There is no language in section 205.50 of the New York Penal Law criminalizing a material omission.⁴⁸ Furthermore, the court in *Williams* never discusses a duty to report the whole truth.⁴⁹ Instead, the court avoids the duty issue by characterizing Williams's silence as an affirmative act.⁵⁰

The *Williams* court might have found a duty to disclose based upon the theory of voluntary assumption of care. According to this theory, as soon as Williams took steps toward offering aid to the police investigation, it would have become her affirmative duty to disclose all the information she knew.⁵¹ If by reporting the crime Williams deterred other witnesses from coming forward to assist the police, she would be criminally liable for her omissions.⁵² Other citizens, however, are not likely to be deterred from helping the police if they see a witness step forward. In fact, the detectives learned of the robber's relationship to Williams from one of her coworkers.⁵³ Perhaps a duty could have arisen when Williams gave partial information because she left the police in a worse position by limiting their investigation based on her report.⁵⁴ But the police, having received some useful information, are surely in a better position than they were before Williams acted.

When examining a similar issue in the perjury context, the United States Supreme Court in *Bronston v. United States* held that defendant did not commit perjury when his statements were literally true, even if they misled the ques-

45. LAFAVE, *supra* note 33, at 310–11.

46. *E.g.*, 15 U.S.C. § 80b-7 (2000).

47. *E.g., id.* (“It shall be unlawful for any person willfully . . . to omit to state . . . any material fact which is required to be stated therein.”).

48. *See* N.Y. PENAL LAW § 205.50.

49. *See Williams*, 795 N.Y.S.2d 561.

50. *See id.* at 565–66 (using such language as “affirmatively conceals,” “actively deceived,” and “deliberate non-disclosure” to describe Williams's decision to remain silent as to the identity of the perpetrator); *see also Ciambrone*, 750 F.2d at 1418 (rejecting the government's argument that withholding material information can constitute an affirmative act).

51. *Cf. People v. Wong*, 588 N.Y.S.2d 119, 124–25 (1st Dep't 1992), *rev'd on other grounds*, 81 N.Y.2d 600 (1993) (creating a legal duty for defendants to act based on a theory of voluntary assumption of care).

52. *See* LAFAVE, *supra* note 33, at 314 (describing that liability is possible only if by starting to go to the other's aid, the defendant discouraged other potential rescuers from acting).

53. *Williams*, 795 N.Y.S.2d at 563.

54. *See generally* RESTATEMENT (SECOND) OF TORTS § 324(b) (1965) (explaining that in tort law there is liability when the actor assumes care of the other who is helpless, and then discontinues aid leaving the other in a worse position than when the actor took charge).

tioner.⁵⁵ In *Bronston*, defendant filed for bankruptcy and was questioned by an attorney representing a creditor during a bankruptcy hearing.⁵⁶ The attorney asked Mr. Bronston if he ever personally had a Swiss bank account.⁵⁷ Mr. Bronston's response was, "The company had an account there for about six months, in Zurich."⁵⁸ The attorney understood this to mean that Mr. Bronston never had a Swiss account.⁵⁹ It was later determined that Bronston had a personal account in Switzerland for many years.⁶⁰ The *Bronston* court ruled that even though the non-responsive answer given by the defendant may have misled the questioner, Congress did not intend to criminalize answers that were literally true although misleading.⁶¹ In that case the court placed the burden on the questioner to flush out the truth.⁶²

Williams may have misled the police officers by withholding information, but all of her statements to the police were literally true⁶³ and therefore should not be considered deceptive. The government claims that the police were deceived into thinking that Williams did not know the identity of the perpetrator,⁶⁴ but the officers were misled because of the inference they drew based on Williams's response.⁶⁵ If the police drew an incorrect inference from Williams's literally true statements, the police are at least partly at fault.⁶⁶ Williams should be less culpable than someone who tells an actual lie.⁶⁷ In *Bronston*, the court placed the responsibility on the questioner to flush out the whole truth from the witness and narrowly construed the perjury statute to exclude punishment of literally true statements.⁶⁸ New York's hindering prosecution statute should be similarly construed to exclude punishment of literally true statements made to the police.

The *Williams* court would not have found support in New York case law interpreting perjury. *People v. Neumann*, a New York Court of Appeals decision, is often compared to *Bronston* because both cases apply a perjury statute to

55. *Bronston v. United States*, 409 U.S. 352, 360 (1973).

56. *Id.* at 353.

57. *Id.*

58. *Id.*

59. *Id.* at 355.

60. *Id.* at 354.

61. *Id.* at 360.

62. *Id.*

63. *See Williams*, 795 N.Y.S.2d at 566 (noting that there is no evidence in the record to show that Williams gave a false description of Bazemore).

64. *Id.*

65. *See id.*

66. *See Green*, *supra* note 1, at 159–60 (referring to this distinction as "the principle of caveat auditor, or listener beware").

67. *See id.*

68. *Bronston*, 409 U.S. at 358–60.

a situation where the defendant claimed his statement was literally true.⁶⁹ In *Neumann*, the court ruled that a perjury conviction can be upheld under New York's perjury statute⁷⁰ when a defendant gives an answer that is literally true according to his subjective understanding of the terms used in the question.⁷¹ The defendant will not escape perjury charges based on his private understanding of the question, and it is the jury's duty to decide whether the false statement was intentionally given.⁷² However, *Bronston* and *Neumann* are actually distinguishable.⁷³ *Neumann* focuses on statements that *might* be true in the mind of the testifier and submits the question of their truth to the jury, while *Bronston* focuses on statements that are *objectively* true and therefore could not be considered false statements as a matter of law.⁷⁴ The statements that Williams gave to the police officers were objectively true, as in *Bronston*.⁷⁵ Furthermore, merely withholding certain facts, as Williams did,⁷⁶ does not constitute perjury in New York.⁷⁷

Finally, if Williams had remained completely silent instead of reporting the crime, she would not have violated the hindering prosecution statute.⁷⁸ In *Ciambrone*, the court rejected the government's position that selective silence was an affirmative act of concealment because it would criminalize partial disclosure but not complete silence.⁷⁹ The *Ciambrone* court recognized that it is beneficial to the police to receive at least some information because it could pro-

69. *People v. Neumann*, 51 N.Y.2d 658 (1980) (interpreting the New York state perjury statute); *see also Bronston*, 409 U.S. at 352–53 (interpreting the federal perjury statute).

70. N.Y. PENAL LAW § 210.00 (McKinney 2005).

71. *See Neumann*, 51 N.Y.2d at 666. In *Neumann*, the defendant was asked if he had ever discharged a firearm to disperse pigeons when he was working at a zoo. *Id.* at 662. The defendant answered "I have not" because in actuality he had fired a pellet gun. *Id.* at 662, 664–65. The defendant argued that he understood the word firearm to mean a weapon discharged by gunpowder. *Id.* at 665. Since a pellet gun discharges with air rather than gunpowder, the defendant argued that his answer was literally true. *Id.* at 664–65. The Court of Appeals rejected this argument, refusing to let the defendant define words in the question as he chooses. *Id.* at 666–67. The court looked at the context in which the statement was made and held there was sufficient evidence to send the question to the jury. *Id.* at 667–68.

72. *See id.* at 666–67.

73. *See id.* at 665–66; 7-73 NEW YORK CRIMINAL PRACTICE § 73.02(4) (2005).

74. *See Neumann*, 51 N.Y.2d at 665–67; 7-73 NEW YORK CRIMINAL PRACTICE § 73.02(4).

75. *See Bronston*, 409 U.S. at 360; *Williams*, 795 N.Y.S.2d at 566 (noting that there is no evidence in the record to show that Williams gave a false description of Bazemore).

76. *See Williams*, 795 N.Y.S.2d at 563.

77. *See id.* at 566; *People v. Dodge* 212 N.Y.S.2d 526, 537 (2d Dep't 1961) ("Perjury is not committed by failing to make a statement of a fact, no matter how relevant or material such statement, if made, might be to the subject matter in hand.").

78. *Williams*, 795 N.Y.S.2d at 567 (stating that the defendant "crossed the line from mere passive non-disclosure," which would not have been a crime, "to affirmative concealment of the identity of a known felon," which is a crime).

79. *Ciambrone*, 750 F.2d at 1418.

vide valuable leads.⁸⁰ Williams reported the crime to the police, described the suspect, and even provided a surveillance video of the crime.⁸¹ She clearly gave the police some valuable information and it does not make sense to charge her with hindering prosecution for withholding the robber's identity absent some duty to disclose the information.

In *Williams*, the court gave too broad an interpretation to what constitutes "criminal assistance" under New York's hindering prosecution statute, finding that an omission can constitute "deception." A broad interpretation is not appropriate for a lying crime because a lying crime should require an affirmative act to incur criminal liability. Withholding information under oath is not perjury,⁸² and withholding information during a criminal investigation should not give rise to criminal penalties. The *Williams* court confused the issue of whether this was an act or an omission and reinstated an indictment for hindering prosecution when in actuality she did not hinder, but assisted in solving the crime by bringing it to the police's attention. Courts should not punish individuals who come forward to report a crime and choose to withhold certain facts they are not comfortable disclosing. A narrower definition of deception under New York's hindering prosecution statute would benefit law enforcement officers and citizens alike by encouraging the free flow of information without the threat of prosecution.

80. *Id.*

81. *Williams*, 795 N.Y.S.2d at 563.

82. *See Dodge*, 212 N.Y.S.2d at 537.

