

ESTRADITION: Member of conspiracy in Kentucky, never present in Missouri, is not a fugitive, though conspiracy was consummated in Missouri. Jurisdiction of Missouri Courts to try conspirator living in Kentucky. **May 23, 1936.**

5-23



Honorable James Haw
Prosecuting Attorney
Mississippi County
Charleston, Missouri

Dear Sir:

We have your request for an opinion with reference to the murder of one Larry Bud King which occurred in Mississippi County May 3, 1936. From the statement of facts it appears that one Gilliam, a resident of Kentucky, hired Riley and Pugh in Kentucky to murder King in Missouri, the motive being the collection of insurance carried on King's life by Gilliam; that pursuant to such conspiracy Riley and Pugh came to Missouri and committed the crime and that Gilliam at all times remained in Kentucky. The two questions presented by you are: (1) The jurisdiction of the State of Missouri to try Gilliam. (2) Can Gilliam be extradited from Kentucky.

I.

THE JURISDICTION OF THE
STATE OF MISSOURI TO TRY
GILLIAM.

There is no doubt but that Gilliam could be tried in this state for first degree murder because he was a member of the conspiracy to kill and murder one King. In a conspiracy the act of one is the act of all. State vs. Reich, 293 Mo. 1. c. 423; State vs. Linders, 299 Mo. 671; State vs. Broyles, 317 Mo. 284; State vs. Nasello, 30 S. W. (2d) 133. With reference to hiring killers, and members of the conspiracy being absent at the time of the crime, State vs. Boesel, 64 S. W. (2d) 243, follows the well established rule that a conspirator is guilty personally even though he was not present at the commission of the crime. You will find an instruction laying down the general rule of conspiracy in this State in the case of State vs. Lackmann, 12 S. W. (2d) 424.

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It is therefore the opinion of this office that Gilliam may be tried in this State for first degree murder.

II.

CAN GILLIAM BE EXTRADITED
FROM KENTUCKY.

This matter presents a very serious problem since the right to extradite fugitives is purely a matter of Federal Law. Without such federal law there would be no authority for extradition. *Rummerfield vs. Watson*, 70 S. W. (2d) 895. From the *Watson* case the following facts must appear to authorize requisition:

"(1) That the person named in the requisition is demanded as a fugitive from justice; (2) that the demanding executive has produced a copy of an indictment found, charging the person demanded with having committed a crime; (3) that such copy has been certified as authentic by the Governor of the state making the demand; (4) that the person demanded is a fugitive from justice."

For the purpose of this opinion we concede that the first three above requirements can be met. We think the fourth requirement cannot be met in view of *Hyatt vs. New York*, 188 U. S. 691, 47 L. Ed. 657: Pertinent portions of that opinion by the Supreme Court of the United States are as follows, l. c. 661:

"It is, however, contended that a person may be guilty***within a state without being personally present in the state at the time. Therefore the indictments found were sufficient justification for the requisition and for the action of the governor of New York thereon. This raises the question whether the relator could have been a fugitive from justice when it is conceded he was not in the state of Tennessee at the time of the commission of those acts for which he had been indicted,* * * *

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The exercise of jurisdiction by a state to make an act committed outside its borders a crime against the state is one thing, but to assert that the party committing such act comes under the Federal statute, and is to be delivered up as a fugitive from the justice of that state, is quite a different proposition."

1. c. 662:

"It is difficult to see how a person can be said to have fled from the state in which he is charged to have committed some act amounting to a crime against that state, when in fact he was not within the state at the time the act is said to have been committed."

The Court finally held in the above case that since the defendant was not within the demanding state at the time of the alleged commission of the crime, he could not be a fugitive from justice within the meaning of the Federal Statute upon that subject; that in order to come within the fourth requirement of extradition as laid down by the Supreme Court of Missouri in the Watson case supra, a person cannot be a fugitive from justice if he were not in fact present in the demanding state on the day of the alleged crime.

It is therefore the opinion of this office that Gilliam cannot be extradited under the Federal Law.

Respectfully submitted,

FRANKLIN E. REAGAN,
Assistant Attorney General

APPROVED:

JOHN W. HOFFMAN, Jr.,
(Acting) Attorney-General

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