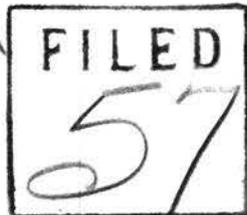


CRIMINAL PROCEDURE: Venue of jail break is in county where prisoner is confined from a county having no jail.

June 26, 1939



Hon. G. Logan Marr
Prosecuting Attorney
Morgan County
Versailles, Missouri

Dear Sir:

We are in receipt of your request for an opinion under date of June 24th, 1939, which reads as follows:

"Robert Denny was charged with a felony by affidavit in the justice court, and after being apprehended he waived any preliminary examination, and was by the justice duly and legally committed to jail.

"Morgan County does not have any jail, and this prisoner Robert Denny was legally and lawfully committed and lodged in the county jail at Boonville, Cooper county, Mo, which has been used as the jail for Morgan County for many years. He is the prisoner of Morgan County and maintained at the expense of Morgan County. While Robert Denny was in the Boonville jail awaiting trial in the circuit court, to the circuit court of Morgan County, Mo, Robert Denny broke jail at Boonville, Mo, and left the state. He has been located, and the question has been raised as to where to file the charge for breaking jail.

"Section 3916 seems to be the statute to use, but where is the venue of this crime? Should this charge for be filed in Morgan County or in Cooper county. Robert Denny was the prisoner of Morgan County, but he was lodged in the jail at Boonville and he broke jail in Cooper county."

Section 3916 R. S. Mo. 1929, reads as follows:

"If any person lawfully imprisoned or detained in any county jail or other place of imprisonment, or in the custody of any officer, upon any criminal charge, before conviction, for the violation of any penal statute, shall break such prison or custody and escape therefrom, he shall, upon conviction, be punished by imprisonment in the penitentiary for a term not exceeding two years, or in a county jail not less than six months."

It will be noticed in the above section that it states "If any person lawfully imprisoned or detained in any county jail * * * * *". According to your request the sheriff of Morgan County placed the defendant Robert Denny in the county jail of Cooper County. I am presuming that he was lawfully committed by the sheriff, in accordance with sections hereinafter set out. It will also be noticed in section 3916, supra, it is stated "shall break such prison or custody and escape therefrom". This section should be construed to mean the jail where the defendant is lawfully committed, and in accordance with sections hereinafter set out, it would mean the jail of Cooper county.

Section 8545 R. S. Mo., 1929, reads as follows:

"It shall be lawful for the sheriff of any county of this state, when there shall appear to be no jail, or where the jail of such county shall be insufficient, to commit any person or persons in his custody, either on civil or criminal process, to the nearest jail of some other county; and it is hereby made the duty of the sheriff or keeper of the jail of said county to receive such person or persons, so committed as aforesaid, and him, her or them safely keep, subject to the order or orders of the judge of the court for the county from whence said prisoner was brought."

It will be noticed under this section that where a jail is not situated in any county it authorizes the sheriff of any county in which a jail is not situated to commit any person in his custody to the nearest jail of some other county. Under this authorization the sheriff of Morgan county lawfully committed the defendant to the jail of Cooper County, where he remained under the orders of the Judge of the Circuit Court of Morgan County, and not under the orders of the sheriff. In other words, the sheriff of Morgan County has lost jurisdiction over the defendant, and in accordance with sections hereinafter set out, the defendant is only under the jurisdiction of the Circuit Court of Morgan County and the sheriff of Cooper County. It will also be noticed under section 8545, supra, that the section orders the sheriff of Cooper County to safely keep the prisoner and the responsibility of the sheriff of Morgan County has ceased.

Section 8546 R. S. Mo. 1929, reads as follows:

"When any person shall be committed to jail, in conformity to the next preceding section, it shall be the duty of

the sheriff of the county in which said jail is situated to take, or cause to be taken, the person thus committed, together with the day and cause of his capture and detention, before the circuit court of the county appointed for the trial of such prisoner, on the first day of the next term of such court."

It will be noticed under this section, and in accordance with your statement of facts, that the sheriff of Cooper County has the sole custody and the responsibility of safekeeping the defendant and having him appear before the Circuit Court of the county from which the defendant was sent, to the county jail of Cooper County.

Section 3377 R. S. Mo. 1929, reads as follows:

"Offenses committed against the laws of this state shall be punished in the county in which the offense is committed, except as may be otherwise provided by law."

Under this section it is mandatory that the defendant be punished in the county in which the offense is committed, except as may be otherwise provided by law. Under the statutes of Missouri breaking jail is not one of the exceptions to this section which describes the venue of a case. In view of the fact that the sheriff of Morgan County has lost jurisdiction of the prisoner, and the sheriff of Cooper County has the sole custody of the prisoner, the venue of the case is situated in Cooper County.

CONCLUSION

In view of the above authorities it is the opinion of this department that the charge of breaking jail, while

Hon. G. Logan Marr

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being confined in the county jail of Cooper County before a conviction, should be filed in Cooper County and not Morgan County.

Respectfully submitted,

W. J. BURKE
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APPROVED:

J. E. TAYLOR
(Acting) Attorney General

WJB:RW