

COMPOUNDING OR CONCEALING A FELONY

The defendant is charged with having violated section 36 of chapter 268 of our General Laws, which provides that:

“Whoever,
having knowledge of the commission of a felony,
takes money, or a gratuity or reward, or an engagement therefor,
upon an agreement or understanding, express or implied,
to compound or conceal such felony,
or not to prosecute therefor,
or not to give evidence thereof
shall . . . be punished”

In order to prove that the defendant is guilty of this offense, the Commonwealth must prove three things beyond a reasonable doubt:

First: That the defendant knew that a felony had been committed;

Second: That the defendant made an agreement, either expressly or by a silent understanding, either to conceal that felony, or not to prosecute it, or not to give evidence about it; and

Third: That the defendant made such an agreement in exchange for

something of value or a promise of something of value.

The essence of this offense is taking or agreeing to take money or something else of value in return for not prosecuting or giving evidence of a felony.

In this Commonwealth, offenses that are punishable by imprisonment in the state prison are called “felonies”; lesser offenses are called “misdemeanors.” I instruct you as a matter of law that [alleged felony] is a felony.

See, e.g., *Commonwealth v. Pease*, 16 Mass. 91 (1819) (acceptance of promissory note not to prosecute constitutes compounding a felony); *Chester Glass Co. v. Dewey*, 16 Mass. 94 (1819) (refusing to prosecute out of sympathy rather than for something of value is not compounding a crime). There continue to be separate common law offenses of obstructing justice by procuring a material witness to absent himself, *Commonwealth v. Perkins*, 225 Mass. 80, 82, 113 N.E. 780, 781 (1916), or concealing or compounding a misdemeanor, *Partridge v. Hood*, 120 Mass. 403, 407 (1876); *Jones v. Rice*, 18 Pick. 440 (1936). See also G.L. c. 276, § 55 (accord and satisfaction permissible for some misdemeanors).

General Laws c. 268, § 36 provides for aggravated punishment if the felony that was concealed or compounded is punishable by death or imprisonment for life. If a capital or life felony may be the predicate felony in a particular case, the judge should instruct the jury that they must additionally determine whether it has been proved beyond a reasonable doubt that such was the predicate felony. The judge should either (1) provide the jury with a verdict form permitting the jury in the event of conviction to indicate whether or not the predicate felony was such, or (2) submit a special question to the jury in accordance with Mass. R. Crim. P. 27(c).