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CRIMINAL PROCEDURE—INDICTMENT—BILL OF PARTICULARS

Defendant was charged with having committed "aggravated burglary of the inhabited dwelling [of certain named persons] with intent to commit a theft and forcible felony therein, while armed with a dangerous weapon, to-wit: a sharp instrument." The indictment also charged, in the same count, that, while in the dwelling, defendant "did commit an aggravated battery with said sharp instrument [upon a named woman] and did commit a battery [upon the same woman] with a personal part of his body."¹ Defendant requested a bill of particulars concerning the forcible felony which he allegedly intended to commit when he entered the building. The trial court sustained the state's refusal to furnish this information. On appeal, *held*, affirmed. The defendant was adequately informed of the nature of the forcible felony which he allegedly intended to commit by the statement in the bill of information that he had committed an aggravated battery while in the building. *State v. O'Brien*, 77 So.2d 402 (La. 1955).

Article 235 of the Louisiana Code of Criminal Procedure provides that the following form of indictment² is sufficient to charge the crime of aggravated burglary: "A.B. committed aggravated burglary of the dwelling of C.D." The article permits the addition of a more particularized statement of the offense to this short form. Since the defendant is entitled to know the nature of the charge against him,³ the article provides that the judge may require the state to grant the defendant a bill of particulars setting forth more specifically the nature of the crime charged. Although the Supreme Court has stated that this provision should be interpreted "liberally,"⁴ the granting or refusing of a bill of particulars rests largely in the discretion of the trial judge and few convictions have been reversed because the bill of particulars supplementing a short form indictment was refused or, if granted, was inadequate.⁵ A bill of particulars may also be

1. *State v. O'Brien*, 77 So.2d 402, 403 (La. 1955).

2. The term "indictment" includes bills of information. See LA. R.S. 15:216 (1950).

3. This right is guaranteed the defendant by LA. CONST. art. I, § 10.

4. *State v. Brooks*, 173 La. 9, 136 So. 71 (1931).

5. Only one reversal was found: *State v. Holmes*, 223 La. 397, 65 So.2d 890 (1953).

obtained by the accused when the indictment against him is in the more detailed long form.⁶

Defendant in the instant case first contended that the bill of information was defective, in that it charged him with the commission of several offenses in one count, presumably aggravated burglary and two batteries. The court disposed of this contention by referring to article 222 of the Code of Criminal Procedure. That article permits the conjunctive cumulation in one count of several offenses "disjunctively enumerated in the same law or in the same section of a criminal statute . . . when it appears that they are connected with the same transaction and constitute but one act." The court concluded that the bill of information satisfied these requirements.⁷ The court could also have found authority for treating the charges that defendant committed two batteries after entering the building as mere attempts to show the intent with which he entered.⁸ This would have been similar to the approach taken by the court in disposing of the principal question in the case, concerning defendant's right to a bill of particulars describing the forcible felony which the information charged he intended to commit upon entering. The court in this connection held that the charge in the information that defendant committed an aggravated battery while in the dwelling "described in detail in just so many words"⁹ the nature of the forcible felony which defendant entered with the intention to commit.

The court's holding that defendant knew he was charged with intending to commit aggravated battery before entering the building, simply because he was charged with having committed that crime after entering, seems questionable. As a matter of fact, the information also charged that, after entering the building, he committed a second battery, upon a woman, "with a personal part of his body." This allegation could as well be said to describe "in detail in just so many words" an intent upon entering to commit rape. It is doubtful that an accused's right to

6. *State v. De Arman*, 153 La. 345, 95 So. 803 (1923); *State v. Selsor*, 127 La. 513, 53 So. 737 (1910); *State v. Clark*, 124 La. 965, 50 So. 811 (1909). See also Comment, 12 LOUISIANA LAW REVIEW 457, 458 (1952).

7. Article 60 of the Criminal Code, which defines the crime of aggravated burglary, lists disjunctively the commission of a battery while in a dwelling as one form of an essential element of the crime. The court stated that the offenses charged were connected with the same transaction and constituted but one act.

8. *State v. Desselles*, 150 La. 494, 90 So. 773 (1922).

9. *State v. O'Brien*, 77 So.2d 402, 404 (La. 1955).

be informed of the nature of the charges against him should be satisfied by such subtle implications in an indictment. Little more justification for the state's refusal to grant defendant a bill of particulars as to the intended forcible felony can be found in the court's suggestion that this portion of the information could be disregarded as surplusage, since the charge that he intended to commit theft was sufficient. The accused was charged and tried under an information charging dual intents and was refused particulars as to one of them. If the fact that an information is valid means that the defendant's right to a bill of particulars has been satisfied, then the bill of particulars serves no useful purpose in Louisiana criminal procedure.

Maynard E. Cush

FEDERAL PRACTICE—JURISDICTION—LOUISIANA WATERCRAFT
STATUTE, LA. R.S. 13:3479 (1950)

Plaintiff, widow of a Louisiana resident killed while working as a ship repairman on a British steamer docked in New Orleans, brought suit in federal district court¹ under article 2315 of the Louisiana Civil Code² to recover damages for his alleged wrongful death. Service of process was made pursuant to the Louisiana Watercraft Statute, La. R.S. 13:3479, providing, in substance, for service of process on the Secretary of State in actions against nonresidents growing out of any accident arising from the non-resident's operation, navigation, or maintenance of watercraft in

1. The modes of service of process in federal courts are provided in the Federal Rules of Civil Procedure. Following is the pertinent provision of Rule 4:

"(d) Summons: Personal Service. The summons and complaint shall be served together. The plaintiff shall furnish the person making the service with such copies as are necessary. Service shall be made as follows:

"
"(7) Upon a defendant of any class referred to in paragraph (1) or (3) of this subdivision of this rule, it is also sufficient if the summons and complaint are served in the manner prescribed by any statute of the United States or in the manner prescribed by the law of the state in which the service is made for the service of summons or other like process upon any such defendant in an action brought in the courts of general jurisdiction of that State." (Emphasis added.) FED. R. CIV. P. 4(d)(7).

2. It is not within the limited scope of this note to consider the constitutionality of LA. R.S. 13:3479 (1950) as applied to a case arising under the Jones Act, 38 STAT. 1185 (1915), as amended, 46 U.S.C. § 688 (1952), instead of Art. 2315, LA. CIVIL CODE of 1870.