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Criminal Law - Guilty Knowledge as an Element of Unlawful Possession of Narcotics

Albert L. Dietz Jr.

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pointed out that even if the defendant did not intend to make an offer in the advertisement, it is to be noted that "there is entirely too much disregard of law and truth in the business, social, and political world to-day. It is time to hold men to their primary engagements to tell the truth and observe the law of common honesty and fair dealing."¹⁸ The instant case may indicate the court's attitude toward misleading advertisements currently being used in the conduct of many businesses. It would appear that in future cases involving advertisements to buy or sell merchandise, even when the import of the advertisement is ambiguous or tending to mislead, the social desirability of promoting fair business practices will prompt the court to find that an offer has been made.¹⁹ It should be noted that when such an advertisement is ambiguous, or tends to mislead, a contrary result would be reached at common law.²⁰ The Court of Appeal for the First Circuit is apparently taking a realistic attitude toward curbing business practices which are not in good faith. It is submitted that the court's position is a desirable one.

Thomas A. Warner, Jr.

CRIMINAL LAW — GUILTY KNOWLEDGE AS AN ELEMENT OF
UNLAWFUL POSSESSION OF NARCOTICS

Defendant was convicted of the crime of unlawful possession of narcotics.¹ Over defendant's objections, the trial judge admitted evidence of a subsequent offense as tending to prove guilty knowledge. On appeal defendant contended that the admission of this evidence constituted reversible error on the ground that guilty knowledge is not an element of the offense, but that possession alone is sufficient to constitute the crime. The statute defining the crime of unlawful possession of narcotics contains no mention of guilty knowledge as an element of the offense.² The Supreme Court *held*, affirmed. Guilty knowl-

18. *Id.* at 81.

19. L.A. CIVIL CODE art. 1957 (1870), upon which the court relies to resolve any doubt against the advertiser, would appear to announce a rule of interpretation for completed contracts, and not one applicable to determining whether an offer has been made. The article reads: "In a doubtful case the *agreement* is interpreted against him who has contracted the obligation." (Emphasis added.)

20. See note 12 *supra* and the accompanying text.

1. L.A. R.S. 40:962 (1950).

2. *Ibid.*: "It is unlawful for any person to manufacture, possess, have under his control, sell, give, deliver, transport, prescribe, administer, dispense, or compound

edge is an essential element of the crime of unlawful possession of narcotics. "No crime can exist without the combination of a criminal act and a criminal intent, or an evil motive, or with a guilty knowledge of its consequences."³ The opinion does not disclose whether "guilty knowledge" is used to mean defendant's knowledge that the substance is in his possession, or knowledge not only of the presence of the substance, but also that the substance is in fact a narcotic. *State v. Johnson*, 228 La. 317, 82 So.2d 24 (1955).

The degree of knowledge required to transform an act into a crime depends upon the nature of the offense.⁴ In some crimes knowledge of a particular fact is required.⁵ For example, to be guilty of receiving stolen property a person must know or have reason to believe that the property is in fact stolen.⁶ Conversely, in some crimes generally known as civil offenses or public torts, an act is made criminal without regard for the knowledge of the actor.⁷ Thus, in the offense of illegal sale of intoxicating liquor, the offender is not required to know that the liquid sold is an intoxicating liquor.⁸ When the criminal statute clearly designates the mental element required, as is ordinarily the case,⁹ the problem of determining the knowledge requirement does not arise. When the statute is silent regarding the mental element, however, as in the instant case involving the unlawful possession of narcotics, the court must determine whether the Legislature intended the act alone to constitute the crime, or whether it intended knowledge of a particular fact to be an element of the offense. At least two policy considerations influence the intention of the Legislature in this regard.¹⁰ If proof that an offender had knowledge of certain facts would be so difficult to establish that the effectiveness of the statute would be seriously impaired, the Legislature is constrained to omit such knowledge as an element of the offense.¹¹ Further, if the pri-

any narcotic drug, except as provided in this Sub-part, or to be or become an addict as defined in R.S. 40:961."

3. *State v. Johnson*, 228 La. 317, 334, 82 So.2d 24, 30 (1955).

4. Perkins, *Rationale of Mens Rea*, 52 HARV. L. REV. 905, 917 (1939).

5. *Ibid.*

6. See LA. R.S. 14:69 (1950).

7. Perkins, *Rationale of Mens Rea*, 52 HARV. L. REV. 905, 917 (1939).

8. In the case of *State v. Gardner*, 198 La. 861, 5 So.2d 132 (1941), which is factually similar to the instant case, the court indicated that knowledge is not an element of the crime of illegally selling intoxicating liquors.

9. For example, articles of the Louisiana Criminal Code which require a general criminal intent use the terms "intent" or "intentional."

10. Sayre, *Public Welfare Offenses*, 33 COLUM. L. REV. 55, 73 (1933).

11. *Mackey v. United States*, 290 Fed. 18 (6th Cir. 1923).

mary purpose of the statute is to benefit society rather than to punish the individual offender, a requirement of guilty knowledge has little relevance to the social evil the Legislature is combatting.¹² In view of the social evils resulting from traffic in narcotics and the extreme difficulty of proving that a possessor knows a substance to be a narcotic, legislatures which enact statutes making the unauthorized possession of narcotics a crime usually do not intend knowledge of the identity of the substance to be an element of the offense.¹³ This has been the interpretation the United States Supreme Court has given the Federal Narcotics Act,¹⁴ and the interpretation given by state courts of other jurisdictions to statutes similar to the Louisiana act.¹⁵

It is now settled in Louisiana that the crime of unlawful possession of narcotics is not committed if the defendant was ignorant of the presence of the substance found in his possession.¹⁶

If the broad language used by the court in the instant case means that in addition to knowledge of the fact of possession¹⁷ the offender must also know that the substance is a narcotic, the court would clearly be departing from the usual interpretations given such statutes. In view of the current trend of transforming violations of narcotic statutes into major crimes by the imposition of heavier penalties,¹⁸ such a departure may be justified. However, if this position is taken, requiring the prosecution in every instance to prove that a possessor knows

12. *United States v. Balint*, 258 U.S. 250 (1922).

13. Sayre, *Public Welfare Offenses*, 33 COLUM. L. REV. 55, 73 (1933).

14. *United States v. Balint*, 258 U.S. 250 (1922).

15. Interpreting the Uniform State Narcotic Law, a West Virginia court held that an indictment for possession which omits the element of intent sufficiently charges the offense. *State v. Hinkle*, 129 W.Va. 393, 41 S.E.2d 107 (1946). Likewise, a Texas court held that possession is unlawful unless it is one of the specific types of possession authorized by the act. *DeVine v. State*, 206 S.W.2d 247 (Tex. Civ. App. 1947).

16. The same day the Supreme Court decided the *Johnson* case, it also handed down the decision in *State v. Nicolosi*, 228 La. 65, 81 So.2d 771 (1955), in which the court squarely held knowledge of the fact of possession is an essential element of the crime. Similarly, in *Baender v. Barnett*, 255 U.S. 224 (1921), the United States Supreme Court indicated that a person must know that he possesses counterfeit dies in order to be guilty of illegal possession of those dies.

17. Even the most restricted interpretation of the language used in the *Johnson* case would indicate that knowledge of the fact of possession is an essential element of the crime.

18. I.A. R.S. 40:981 (1950) provides, in part, that a person violating any provisions of the act shall be imprisoned at hard labor for not less than two years nor more than fifteen years.

the identity of the substance, it would seriously impair the effectiveness of the statute. The court could adopt a compromise position by holding that proof of defendant's possession of a narcotic drug would give rise to a rebuttable presumption that the defendant knew the substance in question to be a narcotic. This procedure has been successfully used by the Supreme Court of the State of Washington,¹⁹ and has the effect of largely preserving the effectiveness of the statute in combatting traffic in narcotics.

Albert L. Dietz, Jr.

CRIMINAL PROCEDURE — SHORT FORM INDICTMENT —
CONSTITUTIONALITY

Defendant was convicted under a bill of information which charged that he did "unlawfully maliciously and feloniously commit gambling as denounced by Louisiana Revised Statutes, Title 14, Section 90." Additional information concerning the precise manner in which the crime had been committed was furnished defendant in a bill of particulars. On appeal defendant contended that the bill of information should have been quashed by the trial court, as it did not properly inform him "of the nature and cause of the accusation," as required by article I, section 10, Louisiana Constitution of 1921.¹ The Louisiana Supreme Court *held*, reversed.² Section 1 of Act 223 of 1944,³ amending article 235 of the Code of Criminal Procedure,⁴ insofar as it provides that "it shall be sufficient to charge the defendant by using the name and article number of the offense committed," is violative of article I, Section 10, Louisiana Constitution of 1921. The nature and cause of the offense must be fully stated in the initial criminal charge, and the bill of particulars can in no way supplement a deficient indictment or information. *State v. Straughan*, 229 La. 1036, 87 So.2d 523 (1956).

19. *State v. Wooten*, 44 Wash.2d 177, 266 P.2d 342 (1954). The court in this case applies this procedure in cases involving the crime of illegal sale of narcotics. The same principle would apply, however, to unlawful possession of narcotics.

1. LA. CONST. art. I, § 10: "In all criminal prosecutions, the accused shall be informed of the nature and cause of the accusation against him . . ."

2. Justices Hamiter, Hawthorne, and McCaleb dissenting.

3. La. Acts 1944, No. 223, § 1, p. 661; now LA. R.S. 15:235 (1950).

4. LA. R.S. 15:235 (1950). Article 235 of the Code of Criminal Procedure sets forth a specific short form indictment for each of 22 of the more important and recurring crimes.