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Criminal Procedure - Short Form Indictment - Constitutionality

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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).

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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.

The common law indictment form, with its prolixity of allegations, was developed during the time of Blackstone when there were some 200 capital crimes,[5] and when the courts were ever sympathetic to any device which would prevent an accused from being convicted.[6] With punishment reduced in severity,[7] so that only a few crimes presently carry capital punishment or mandatory long prison sentences, the long form indictment is frowned upon as a technical loophole for the accused.[8] In 1928 the Louisiana Legislature followed the trend toward simplicity by adopting article 235 of the Code of Criminal Procedure, which authorizes short form indictments for a number of the more important and recurring offenses.[9] The purpose of the short form is to do away with the verbose common law charge and to provide an accurate but terse form of indictment.[10] It has been held that use of the short form does not violate a defendant's constitutional right to be informed of the nature and cause of the charge against him;[11] he is clearly notified of the crime charged and may look to the statutory definition to determine its various elements; he may elicit any other relevant information as to the "nature and cause" through a bill of particulars.[12] In upholding the constitutionality of article 235, the Louisiana Supreme Court has often said that, when the short form is used, the defendant is entitled of right (with certain practical limitations)[13] to a bill

5. PUTTKAMMER, ADMINISTRATION OF CRIMINAL LAW 127 (1953).
6. 1 CHITTY, CRIMINAL LAW 114 (1819).
7. PUTTKAMMER, ADMINISTRATION OF CRIMINAL LAW 129 (1953).
8. Comment, 6 LOUISIANA LAW REVIEW 461 (1945).
9. LA. R.S. 15:235 (1950).
10. See Bennett, *Louisiana Legislation of 1944*, 6 LOUISIANA LAW REVIEW 16 (1944).
11. State v. Holmes, 223 La. 397, 65 So.2d 890 (1953); State v. Nichols, 216 La. 622, 44 So.2d 318 (1950); State v. Chanet, 209 La. 410, 24 So.2d 670 (1946); State v. Davis, 208 La. 954, 23 So.2d 801 (1945); State v. Pete, 206 La. 1078, 20 So.2d 368 (1944); State v. Brooks, 173 La. 9, 136 So. 71 (1931). See also Comment, 35 MICH. L. REV. 456 (1937); Comment, 6 LOUISIANA LAW REVIEW 78 (1944).
12. LA. R.S. 15:235 (1950): " . . . Provided further that the district attorney, if requested by the accused prior to arraignment, may be required by the judge to furnish a bill of particulars setting up more specifically the nature of the offense charged."
13. These practical limitations are: (1) The defense cannot force the state to disclose its evidence in advance of trial. State v. Fernandez, 157 La. 149, 102 So. 186 (1924). (2) The defense cannot force the state to choose in advance between responsive verdicts. State v. Iseringhausen, 204 La. 593, 16 So.2d 65 (1943). (3) Only facts and not legal conclusions need be given in a bill of particulars. State v. Rollins, 153 La. 10, 95 So.2d 264 (1922). (4) State not required to furnish a bill of particulars where it would be useless and would not aid accused in preparing his defense because of their immateriality. State v. Alford, 206 La. 100, 18 So.2d 666 (1944). (5) State does not have to furnish particulars when such particulars are not available. State v. Clark, 124 La. 965, 50 So. 811

of particulars[14] and his constitutional right to be informed is thereby fully protected.[15] This is in accord with decisions of other states having constitutional and statutory provisions similar to those of Louisiana.[16]

In 1944 article 235 was amended to provide that "in all cases of crime included in the Criminal Code but not covered by the short forms hereinbefore set forth, it shall be sufficient to charge the defendant by giving the name and article number of the offense committed."[17] The amended article received immediate interpretation. In *State v. Davis*[18] it was held that the use of an indictment for gambling stating only the name and article number of the crime satisfied the constitutional right of the accused to be informed of the nature and cause of the offense; this right was further satisfied by the bill of particulars furnished by the district attorney upon request of the defendant. This case, as well as the ones construing article 235 as originally enacted, suggests that the *indictment* is not the only means of informing the

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(1909). For a complete discussion of these limitations, see Comment, 12 LOUISIANA LAW REVIEW 457 (1952).

14. State v. Leming, 217 La. 257, 46 So.2d 262 (1950); State v. Masino, 214 La. 744, 38 So.2d 622 (1949); State v. Bessar, 213 La. 299, 34 So.2d 785 (1948). See also State v. Holmes, 223 La. 397, 406, 65 So.2d 890, 892 (1953), where the court stated that where a short form information is used, but it does not set forth sufficient facts to inform accused of nature and cause of accusation so as to enable him to prepare his defense properly, or it fails to allege essential elements of crime sought to be charged, accused is entitled to be furnished such details on timely requesting them by way of application for bill of particulars.

15. State v. Holmes, 223 La. 397, 65 So.2d 890 (1953); State v. Nichols, 216 La. 622, 44 So.2d 318 (1950); State v. Chanet, 209 La. 410, 24 So.2d 670 (1946); State v. Davis, 208 La. 954, 23 So.2d 801 (1945); State v. Pete, 203 La. 1078, 20 So.2d 368 (1944); State v. Brooks, 173 La. 9, 136 So. 71 (1931).

16. It should be noted that only two states have provisions similar to those of Louisiana. Eleven state constitutions, including Louisiana's, guarantee that an accused shall be *informed* of the nature and cause of the accusation. Of these eleven states, only three (Louisiana, New York, and Rhode Island) have adopted provisions authorizing the charging of crimes by statutory number and/or common law designation. See ALI, CODE OF CRIMINAL PROCEDURE §§ 154, 155, comments. New York's highest court, in approving their provisions, has said that the bill "must state such particulars as may be necessary to give the defendant and the court reasonable information as to the nature and character of the crime charged." State v. Bogdanoff, 254 N.Y. 16, 24, 171 N.E. 890, 893, 69 A.L.R. 1378, 1383 (1930). The Rhode Island Supreme Court has stated that the bill of particulars shall be furnished in order "to fully protect the accused." State v. Domanski, 57 R.I. 500, 505, 190 Atl. 854, 857 (1937).

17. LA. R.S. 15:235 (1950): ". . . Provided that in all cases of crimes included in the Criminal Code but not covered by the short forms hereinabove set forth, it shall be sufficient to charge the defendant by using the name and article number of the offense committed." The new short form was in line with a suggestion in the ALI, MODEL CODE OF CRIMINAL PROCEDURE § 154(a) (1931), to the effect that crimes might be charged "by using the name given to the offense by the common law or by a statute."

18. 208 La. 954, 23 So.2d 801 (1945), 6 LOUISIANA LAW REVIEW 715 (1946).

defendant of the "nature and cause of the accusation against him";[19] the bill of particulars also serves as a vehicle for furnishing such information.[20]

In the instant case the 1944 amendment to article 235 of the Code of Criminal Procedure was declared "null and void, and of no effect"[21] as "all of the essential facts necessary to describe the nature and cause of the offense must be incorporated in the initial charge, which must be by indictment or information."[22] The court specifically overruled the *Davis* case and indirectly repudiated the many statements in prior decisions to the effect that the accused's right to be informed is amply protected by a bill of particulars specifically setting forth the nature and cause of the offense charged. In discussing some of these prior decisions involving aggravated rape, manslaughter, simple burglary, and murder, the court noted that "a mere reading of the charge in the indictment or information in these cases will disclose convincingly that they met the generally accepted test for constitutional sufficiency, i.e., (1) they were sufficient to inform the court of the exact offense being charged so that the court could properly regulate the evidence sought to be introduced, (2) they informed the accused of the nature and cause of the offense charged so that he could properly prepare his defense, and (3) they were sufficient *on their face* to support a plea for former jeopardy in the event of a subsequent attempt to try the defendant for the same offense."[23] To exemplify its notion of a constitutionally sufficient bill of information, the court cited a theft case, *State v. Pete*,[24] wherein it was charged that the defendant did "unlawfully commit the theft of an automobile, of the value of Twelve Hundred and no/100 ($1200.00) Dollars, the property of Gordons Drug Store, Inc., a corporation." This information was considered sufficient although the theft might have been committed through embezzlement, larceny, obtaining by false

19. LA. CONST. art. I, § 9.

20. See dissent in State v. McQueen, 87 So.2d 727, 734 (1956). Justice McCaleb states that "the Constitution guaranteed defendant the right to be apprised of the nature and cause of the accusation; it did not specify that the prosecution shall be abated if the necessary information is not stated in the bill of information or indictment. On the contrary . . . all of the cases upholding the short forms provided by Article 235 are predicated upon the premise that the bill of particulars, which is available to the defendant under specific provisions, sufficiently protects him in his constitutional rights."

21. State v. Straughan, 229 La. 1036, 1078, 87 So.2d 523, 538 (1956).

22. *Id.* at 1072, 87 So.2d at 536.

23. *Id.* at 1047, 87 So.2d at 527.

24. 206 La. 1078, 20 So.2d 368 (1944).

pretenses, a confidence game violation, or any of several other offenses which have been cumulated in the single crime of theft.[25]

Considering the court's approval in the *Straughan* case of the use of the short form indictment in cases involving theft, aggravated rape, manslaughter, simple burglary, and murder, it would appear that the *Straughan* decision does not preclude the use of the short form to charge well-understood crimes, even though they may be susceptible of commission in a number of ways. On the other hand, the decision precludes any use of the super-abbreviated short form authorized by the 1944 amendment, which permitted the use of such indictments for charging crimes of a multifarious nature, such as gambling or obscenity which do not have a well-understood nature and cause. For charging these latter crimes, it will be necessary to use the form of indictment prescribed by article 227 of the Code of Criminal Procedure, that is to say, that "the indictment must state every fact and circumstance necessary to constitute the offense, but it need do no more, and it is immaterial whether the language of the statute creating the offense, or words unequivocally conveying the meaning of the statute be used."[26]

Thomas D. Hardeman

LEGISLATION — CONSTITUTIONAL LAW — REQUIREMENT THAT EACH BILL MUST BE READ ON THREE DIFFERENT DAYS IN EACH HOUSE

Plaintiff alleged the unconstitutionality of an act of the Louisiana Legislature[1] on the ground that it had not been read on three different days in each House of the Legislature as required by article III, section 24, of the Louisiana Constitution.[2] The *Journal* indicates that the bill was read on only two days in the Senate, twice on the day it was received from the House and again when it was passed the next day. Defendant contended that the bill was valid nonetheless, arguing that the constitutional provision is not mandatory and that a presumption of compliance with the Constitution should control.[3] On appeal

25. LA. R.S. 14:67 (1950). See Morrow, *The 1942 Louisiana Criminal Code in 1945: A Small Voice from the Past*, 19 TUL. L. REV. 483 (1945); Ralston, *Sufficiency of the Charge in an Indictment in Louisiana*, 20 TUL. L. REV. 220 (1946).

26. LA. R.S. 15:227 (1950).

1. La. Acts 1954, No. 536, p. 1001, incorporated as LA. R.S. 47:2190 (1950).

2. "Every bill shall be read on three *different* days in each house . . . ." (Emphasis added.) LA. CONST. art. III, § 24.

3. Both of these contentions were made by defendant in his brief, but the court