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Criminal Law—Amendment of Information

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Defendant concededly parked his Mack truck on the roadway side of another automobile for the purpose of unloading merchandise in the course of a delivery. There was no charge of traffic obstruction, but only that of a double parking violation.[16] The Court of Appeals reversed the conviction on the ground that an article of the Traffic Regulations entitled "Definitions" excludes vehicles "when actually or expeditiously engaged in loading or unloading merchandise"[17] from the applicable purview of the word "park." Since the contextual reading of the word, as "double park," does not require an inclusion of a vehicle stopped or standing, even though loading or unloading merchandise, and the phrase "double parking" appears only parenthetically in the article, the modifier "double" in no way changes the definitive meaning of the word "park"; and since defendant was not "parked" within the meaning of the Regulations, he was not "double parked".

A dissenting opinion by Chief Judge Lewis, concurred in by Judge Desmond and Judge Dye, expressed the view that the word "double" changed the word it modified, "park", and therefore the defendant was not excluded by the definition exception, section 1 (17) (a).

Amendment of Information

It has been a firm rule that an amendment to an indictment which supplies an omission altering the substance and not merely the form thereof is improper.[18] The reason which bases such a rule is that an indictment requires the action and intervention of a grand jury, and therefore an amendment thereto which affects its substantial character would amount to a usurpation of a function of the grand jury by the court.[19] An information, however, which does not require the action of a grand jury or any particular agency or body has been held to be the proper subject of amendment, even though such amendment goes to the substance of the charge.[20]

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16. TRAFFIC REGULATIONS OF CITY OF NEW YORK, Art. 2, § 10 (o).

17. *Id.* Art. 1, § 1 (17) (a) provides that park, parking or parked means the stopping or standing of a vehicle, occupied or not, except "when actually and expeditiously engaged in loading or unloading merchandise." The article indicates that the definitions it sets forth are applicable to terms in the Regulations, "unless the context or subject matter otherwise requires."

18. *People v. Van Every*, 222 N. Y. 74, 78, 118 N. E. 244, 245 (1917); see CODE CRIM. PROC. §§ 280, 284 (5).

19. *E. g., People v. Bromwich*, 200 N. Y. 385, 93 N. E. 933 (1911); *People v. Geyer*, 196 N. Y. 364, 90 N. E. 48 (1909). See also CODE CRIM. PROC. § 293 which provides that a court may amend an indictment to conform with the proof in respect to time . . . if the defendant cannot be thereby prejudiced in his defense on the merits.

20. *See, e. g., State v. Pritchard*, 35 Conn. 319, 326 (1868); *State v. Jensen*, 83 Utah 452, 454-455, 30 P. 2d 203, 204 (1934); *State v. Barrell*, 75 Vt. 202, 204, 54 A. 183 (1903); see also 1 WHARTON, CRIMINAL PROCEDURE §§ 128, 132 (10th ed. 1918); *see Ex Parte Bain*, 121 U. S. 1, 6 (1887).

The defendant in *People v. Easton*,[21] was convicted of driving while intoxicated.[22] City Court allowed an amendment to the information which permitted an allegation of the date of the commission of the violation as December 17, 1952 instead of December 17, 1953, the latter being a date yet in the future. County Court dismissed the information as fatally defective. The Court of Appeals reversed, and reinstated the judgment of City Court on the grounds that the amendment was allowed to correct a typographical error in the information, and that no purpose would have been served by a new information alleging the correct date sworn to by the arresting police officer, who was in court at the time amendment was sought, since defendant had ample notice of the crime charged and was neither surprised nor prejudiced by the correction. The court took pains to distinguish the amendment of the information from an amendment to an indictment, and pointed out the established rule in other jurisdictions which allows a court to amend freely an information even as to matters of substance.[23]

In a dissenting opinion by Judge Dye, in which Judge Froessel concurred, it was emphasized that an indictment which charges the commission of a crime subsequent to the finding of the same by the grand jury may not be amended, for the defect is deemed one of substance and not form.[24] The logical analogy from such a defect in an indictment to one in an information led the dissent to conclude that since in point of law no distinction exists between an indictment and an information as to the statement of facts sufficient to constitute a crime, an information cannot be amended when, as a matter of law, no crime has been charged.[25]

Grand Jury

a. Jurisdiction of motion for inspection of minutes: In *Schneider v. Aulisi et al.*,[26] the Court of Appeals was presented with the narrow inquiry, whether a motion for inspection of grand jury minutes may be made at Supreme Court in a county and judicial district other than that in which the indictment had been found, where such indictment, found in Supreme Court, had been transferred to County Court. Modifying, and affirming as modified, an order of the Appellate Division[27] denying the application of the District Attorney to prohibit Supreme Court Justice Aulisi

21. 307 N. Y. 336, 121 N. E. 2d 357 (1954).
22. VEHICLE AND TRAFFIC LAW § 70 (5).
23. See note 20 *supra*.
24. *People v. Guiley*, 222 N. Y. 548, 118 N. E. 1072 (1917); *People v. Schweizer*, 160 Misc. 23, 289 N. Y. Supp. 964 (County Ct. 1936); see note 18 *supra*.
25. *Cf. People v. Zambounis*, 251 N. Y. 94, 167 N. E. 183 (1929).
26. 307 N. Y. 376, 121 N. E. 2d 375 (1954).
27. 283 App. Div. 253, 126 N. Y. S. 2d 874 (4th Dep't 1954).