Volume 41 | Issue 1 Article 13

December 1934

Criminal Law--Description of Money in a Robbery Indictment

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had no alternative but to follow the mandate of the statute. It intimated that it was not concerned with what recognition other courts may give the decree in the principal case.

It is submitted that the validity of the decree and recognition other courts may give the decree is of grave importance. The better rule, as recognized by the Restatement, is that domicil within the territorial limits is essential to the jurisdiction of the court. This the West Virginia statute disregards. The situation would become more confused should a court of P state declare the parties married despite the West Virginia decree.

—JOHN L. DETCH.

CRIMINAL LAW — DESCRIPTION OF MONEY IN A ROBBERY INDICTMENT. — Defendants were convicted of robbery and brought error, alleging that the indictment insufficiently described the subject matter of the crime as, "certain bank notes, the description and denomination thereof being unknown to said grand jurors, of the value of eight hundred dollars." The indictment was sustained and the conviction affirmed. *State v. Fulks.*[1]

This decision reaches a very practical and desirable result.[2] It means that the defendant cannot defeat justice on a mere technicality, which does not infringe on his privilege of being, "fully and plainly informed of the character and cause of the accusation."[3] The same court has recently said that an indictment should be sufficiently descriptive to enable the court to determine that the property is the subject of larceny, to advise the defendant with reasonable certainty of the charge against him, and to enable the accused to plead the judgment rendered thereon in bar of a later prosecution.[4] As a practical matter, the description in the present case clearly fulfills all the requirements of the rule.

Under the cases, moreover, the decision is strengthened by the averment that a more particular description was unknown to the grand jury. There is a general rule, founded on necessity, that

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[1] 173 S. E. 888 (W. Va. 1934).

[2] Wood v. State, 98 Fla. 703, 124 So. 44 (1929). A similar result is frequently reached by statute. Roach v. State, 46 Okla. Crim. 85, 287 Pac. 1095 (1930); Criglow v. State, 183 Ark. 407, 36 S. W. (2d) 400 (1931); Rowan v. People, 93 Colo. 473, 26 Pac. (2d) 1066 (1933), followed by Carson v. People, 93 Colo. 478, 26 Pac. (2d) 1068 (1933). Note (1911) 34 L. R. A. (N. S.) 301.

[3] W. Va. Const., art. 3, § 14.

[4] State v. Robinson, 106 W. Va. 276, 145 S. E. 383 (1928).

facts not essential to the accusation and constituting merely description may be omitted by the grand jury when it is unable to obtain greater precision. The present case, however, holds, "actual knowledge of the grand jury must appear". This holding goes beyond the general rule, which requires the grand jury to make a reasonable effort to discover a better description.[5] In the principal case the prosecuting witness appeared at the trial and gave a detailed description of the money. He had previously appeared before the grand jury, where he presumably could have given equally definite information. Yet the state ws not required to obtain these facts for the accused. Thus a logical application of the rule can lead to the absurd result that a defendant is entitled to a complete description, but only when the grand jury cares to obtain it. In effect, his rights may be measured by the industry of that jury.

The present decision, delivered by the same judge, distinguishes the much discussed case of *State v. Robison,*[6] which held an indictment for the larceny of "thirty-five hundred dollars ($3,500.00)" bad on demurrer because of insufficiency in the description, largely on the difference between the crimes of larceny and robbery — the latter involving force and fear as its chief elements.[7] Although such a distinction be admitted it is difficult to see why this aggravated larceny requires a less complete description of money than simple larceny. The holding seems rather extreme in view of some early dicta[8] and the fact that the same court has frequently relieved minor mistakes of form.[9] The

[5] 2 BISHOP'S NEW CRIMINAL PROCEDURE (2d ed. 1913) 449.

[6] 109 W. Va. 561, 155 S. E. 649 (1930); Notes (1931) 37 W. VA. L. Q. 209 and (1931) 34 LAW NOTES 203; (1931) 11 B. U. L. Rev. 269.

[7] State v. McAllister, 65 W. Va. 97, 63 S. E. 758 (1908).

[8] See State v. Hurst, 11 W. Va. 54, 65 (1872) ("Notes circulating as currency which have been stolen, not being presumed to be in the possession of the prosecutor, and it being from their nature, difficult, if not impossible, for the prosecutor to give as accurate and minute description of them as he could give of other articles stolen from him, a less minute and accurate description of them has been permitted than of other articles stolen." Because the nature of stolen money "makes detailed description difficult the courts have been more liberal in permitting a general description of currency, either coin or circulating notes, than of other articles of stolen property."); State v. Jackson, 26 W. Va. 250, 253 (1885) (Robbery indictment for "silver coin of the value of $2.00 . . . . the description of the coin would have been sufficient in an indictment for larceny".)

[9] CODE 62-2-10 and 11; State v. McMillion, 104 W. Va. 1, 138 S. E. 732 (1927) (omission of date); State v. Ball, 30 W. Va. 382, 4 S. E. 645 (1887) (change of date); State v. Vest, 21 W. Va. 796 (1883) (interlineation); State v. Gilmore, 9 W. Va. 641 (1876) and State v. Rudy, 98 W. Va. 444, 127 S. E. 190 (1925) (clerical error); State v. Halida, 28 W. Va. 499 (1886) (indictment containing many mistakes in grammar and spelling but mean-

Robison case had considerable support in the early decisions,[10] but it is submitted that the better view supports a less technical holding. That result, however, is usually based on a statute allowing a more general description.[11] The actual result of the present case, and the current trend away from technical precision[12] are suggestive of a more liberal view in the matter of the sufficiency of an indictment.

—RALPH M. WHITE.

EQUITABLE DEFENSES — SEALED RELEASE — REPLICATION — FRAUDULENT INDUCEMENT. — In an action at law on an insurance policy, defendant by plea set up a sealed release. Plaintiff replied that she had been induced to execute the release by a false representation. Defendant's objection that the plaintiff in an action at law could not challenge a sealed instrument for fraudulent inducement was rejected. *Workman v. Continental Casualty Co.*[1]

The peculiar sanctity attached to sealed instruments by the common law[2] precluded the defense of fraud in the inducement as distinguished from fraud in the execution of a specialty.[3] Apart

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ing could be determined from the context), followed by State v. Rudy, *supra;* State v. Alie, 82 W. Va. 601, 96 S. E. 1011 (1918) (incorrect name of deceased). State v. Reece, 27 W. Va. 375 (1886) (incorrect name of third party).

[10] Note (1911) 36 L. R. A. (N. S.) 933.

[11] The following cases suggest the effect of such statutes:

Common v. State, 125 Ga. 785, 54 S. E. 692 (1906) ("twenty-seven hundred dollars in money of the value of twenty-seven hundred dollars"); Moore v. State, 179 Ind. 353, 101 N. E. 295 (1913) ("seven dollars and ten cents"); Hayes v. Commonwealth, 173 Ky. 188, 190 S. W. 700 (1917) ("the sum of $2.50"); State v. Walker, 115 Miss. 700, 76 So. 634 (1917) ("seventy-seven dollars and fifty cents, of the value of seventy-seven dollars and fifty cents"); State v. McKnight, 196 N. C. 259, 145 S. E. 281 (1928) ("$40 in good and lawful money"); Bell v. State, 62 S. W. 567 (1901) ("thirty-five dollars in money of the value of thirty-five dollars").

[12] Hardman, *Stare Decisis and the Modern Trend* (1926) 32 W. VA. L. Q. 163.

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[1] 175 S. E. 63 (W. Va. 1934).

[2] Ames, *Specialty Contracts and Equitable Defenses* (1895) 9 HARV. L. REV. 49.

[3] Wright v. Campbell, 2 Fost. & F. 393 (1861) ". . . . The plea of fraud, in an action on a specialty, was a kind of special plea of non est factum, and would let in evidence of fraud in regard to the actual execution . . . . but . . . . no other defense, founded on the nature of the transaction, is available."