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CRIMINAL LAW—SUFFICIENCY OF INDICTMENT

Defendant was charged with concealing moonshine, and contended that the amended information¹ failed to charge the commission of a crime. *Held*, the amended information was sufficient. *State v. Ellis*, 78 So.2d 729 (Fla. 1955).

In an effort to overcome the possibility of imposing a severe penalty for a minor wrong, courts have resorted to various methods of giving relief to defendants. One device effectively used was to insist on particularity of form and substance required of an information.² Since legislatures have made punishment approximate, in severity, the degree of the crime, the courts have lessened the requirement of strict compliance to form. Modern courts have almost completely done away with subterfuges and evasions, and employ a forthright common-sense approach to questions of form³ and substance⁴ of information.

In the case of *Brown v. State*,⁵ the information charged the accused with concealing a beverage "whereof a tax is imposed." The motion was quashed because it failed to state a criminal offense. The rationale is that there can be no imposition of state taxes on an illegally-manufactured product. Such was the feeling of the court up to and including the case of *State v. Pridgen*,⁶ but the court did much to aid the prosecution in future cases by indicating the wording required for a sufficient information.⁷ Armed with this dicta, the state in the case of *State v. Harris*⁸ conformed to the opinion in the *Brown* case and the conviction was upheld.

The courts rely on the hypothetical "reasonable man," in almost every field of law,⁹ and informations are now receiving a more reasonable interpretation. Misspelled names, omission of formal matter, verbiage and surplusage are no longer fatal to an information.¹⁰ The substance appears

1. The amended information charged that Ellis, "did conceal and was concerned in concealing a beverage for or in respect whereof a tax is imposed by the beverage law or would be imposed if such beverage were manufactured in or brought into the State in accordance with the regulatory provisions thereof with intent to defraud the State of Florida of such tax, namely two gallons of intoxicating liquor commonly called moonshine whiskey"

2. *People v. Cohen*, 303 Ill. 523, 135 N.E. 731 (1922) (" . . . Criminal law is fast outgrowing these technicalities which grew up when the punishment for crime was inhuman and it was necessary for courts to resort to technicalities to prevent injustice.").

3. *Lewis v. State*, 55 Fla. 54, 45 So. 998 (1908) ("It is the policy of the court as it evidently was of the legislature . . . to uphold . . . informations whenever there has been a substantial compliance with the law therein.").

4. *Brunson v. State*, 70 Fla. 387, 70 So. 390 (1915).

5. 152 Fla. 853, 13 So.2d 458 (1943).

6. 155 Fla. 31, 19 So.2d 510 (1944).

7. "If the information had alleged that it was a beverage in respect whereof a tax 'would be imposed if such beverage were manufactured . . . in accordance with the regulatory provisions of the Beverage Act,'"

8. 160 Fla. 720, 36 So.2d 372 (1948).

9. See PROSSER ON TORTS 225 *The Reasonable Man*; (The courts have dealt with this problem (i.e., conduct required by the community) by creating a fictitious person . . . the reasonable man of ordinary prudence).

10. *Pickerson v. State*, 94 Fla. 268, 113 So. 707 (1927); *Shumake v. State*, 90 Fla. 133, 105 So. 314 (1925); *Morris v. State*, 279 S.W. 273 (Tex. 1926); *Ross v. State*, 277 S.W. 667 (Tex. 1925).

to dominate, as was aptly stated by Mr. William Riewick Riddell, Justice of Appeal, Ontario, "There used to be technical objections . . . but these are practically obsolete. The accused may ask particulars of place, time, manner, etc., and these if proper will be ordered furnished, though probably there never was an accused who did not know perfectly well what he was charged with."¹¹

It follows then, that the use of descriptive words such as are commonly used by the community are capable of informing an accused of the charges against him, and therefore are sufficient informations.¹² Merely because a word or phrase is beyond precise definition does not mean that its use and interpretation are beyond the comprehension of the reasonable man. By requiring precisely definable words, the ends of justice are often submerged in formalism.¹³ For example, the defendant in the instant case was accused of manufacturing "moonshine". If he were accused of processing an aqueous solution of C_2H_5OH (ethyl alcohol) containing C_3H_7OH (propyl alcohol, 2 CH_3CH_2OH (Isolutyl alcohol) or $C_5H_{11}OH$ (Amyl alcohol),¹⁴ he may indeed be in the dark concerning the charges against him. The courts are not losing sight of the fact that the information must charge the necessary elements of the offense.¹⁵ The purpose of requiring exactness in the information is to clearly insert in the record and inform the defendant of the precise charges against him.¹⁶ So, in the present case, "where their (referring to descriptive words) meaning is familiar to anyone of general intelligence as designating liquor illicitly distilled for beverage purposes", the information was held to be sufficient.¹⁷

The principal case firmly establishes Florida as one of the many states which are removing the anachronistic impediments to justice. The *Harris* case¹⁸ which appeared to overrule the earlier rulings was strengthened by the present case. How far the liberal interpretation of descriptive words is to be carried is yet to be determined. The trend is in the direction of a more liberal interpretation of the wording of informations, without impairing the rights of defendants.

FRANK J. GREENE

11. *The Panel*, Vol. 10, n. 4 (1932).

12. American Law Institute in its CODE OF CRIMINAL PROCEDURE OFFICIAL DRAFT 1930, § 173, has adopted the reasonable construction of words . . . an information is sufficient to describe "by any term which in common understanding embraces such . . . thing and does not include . . . any thing which is not by law the subject of or connected with the offense."

13. 37 MICH. L.J. (1939).

14. Chemical content of wood alcohol. Some brands of "moonshine" contain wood alcohol.

15. *Dowling v. State*, 98 Fla. 523, 124 So. 12 (1929); *Streeter v. State*, 89 Fla. 400, 104 So. 858 (1925); *Hunter v. State*, 85 Fla. 91, 955 So. 115 (1923); *Randall v. State*, 82 Fla. 333, 89 So. 875 (1921).

16. *Jarl v. U.S.*, 19 F.2d 891 (8th Cir. 1927); *Horn v. U.S.*, 182 Fed. 721 (8th Cir. 1910).

17. *State v. Griffith*, 311 Miss. 630, 279 S.W. 135 (1925); *State v. Vamon*, 187 Miss. 510, 174 S.W.2d 146 (1943).

18. *Harris v State*, 160 Fla. 720, 36 So.2d 372 (1948).