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Criminal Law Case Notes and Comments: Abstracts of Recent Cases

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The only problem connected with these "enumerated acts" statutes, is one of fact—that is whether or not the defendant committed the particular act with which he is charged. The ease in enforcement and definition here obtained is obviously at the expense of an unnecessary restriction in the scope of the statute.

INTERPLAY WITH HOMICIDE STATUTES

Since reckless driving is an unlawful act lesser in quality than a felony, the reckless driver who kills a human being is guilty of manslaughter.⁵² Because it was felt that a manslaughter charge was too harsh a punishment in this field many states have passed Reckless Homicide Statutes. For a thorough exposition of when a motorist is to be charged with manslaughter and when with violation of the Reckless Homicide Statute, the reader is referred to a recent note in this *Journal*.⁵³ It is sufficient to note that the general rule is that one who kills another while violating the reckless driving statute is guilty of either manslaughter or reckless homicide.⁵⁴

CONCLUSION

The statutes found in the several states are unsatisfactory. All statutes are, and should be, aimed at a similar course of conduct—driving in a manner which is recognizable by a reasonable man as highly dangerous. But not one of the statutes in force specifically states this. The Uniform Act speaks in terms of "willfulness and wantonness," resulting in difficulties in determining what course of action is meant. The result is to force reliance on the tangled common law meaning of these words. The same interpretive problem is found in states following the "due circumspection" concept, but here the difficulty is increased by an added clause which seems to be merely surplage. The statutes which specifically enumerate acts of reckless driving may be theoretically sound, but in practice they encourage inadequate law enforcement. The net result is that traffic officers cannot look to the statute to determine what offenses are there included. What is needed is a clearer statute drafted along the following lines: "Reckless Driving is that driving which the ordinary driver can easily perceive will, under the circumstances, result in substantial danger to person or property, provided, however, that the danger must be to person or property other than that of the accused."

Abstracts of Recent Cases

Illegality of Co-conspirators' Confession as Affecting Defendant's Confession by Silence—In the recent case of *Commonwealth v. Johnson*, 74 A. (2d) 144 (Pa., 1950), the court extended the doctrine of confession by silence. The defendant, during the time he was held in custody and prior to the time that he was brought before the magistrate for a hearing, was confronted by a confession of his co-conspirator. He made no comment thereon, but signed the confession as a witness. Subsequently, but prior to the trial, this confession was held to be invalid by the United States Supreme Court. In spite of this invalidity, the trial judge admitted the confession, not for its substantive value but rather as evidence of a statement made in the defendant's presence and not denied by him. Largely on the basis of this evidence the defendant was convicted and the death penalty was imposed.

The rationale of the majority opinion, in admitting this confession, was

52. PERKINS, *The Law of Homicide*, 36 J. CRIM. L. 391 (1946).

53. KARABA, *Negligent Homicide or Manslaughter: A Dilemma*, 61 J. CRIM. L. 193 (1950).

54. PERKINS, *The Law of Homicide*, 36 J. CRIM. L. 391 (1946).

that the validity or probative value of the accusation made was immaterial, and that the silence of the accused was the significant factor in the application of the doctrine. This holding seems to be a departure from the accepted principle that to constitute an admission the silence must be in respect to a valid statement of charges made against him, and that the defendant is not required to answer every inquiry or accusation made to him if it is frivolous or without merit. The holding of the court in this case would seem to raise the very difficult question of just how irresponsible the statement made to the defendant must be before he has the right to disregard it without subjecting himself to the possible admission by silence.

Admissibility of Evidence of Intoxication Obtained After an Illegal Arrest—The case of *Rickards v. State*, 77 A. (2d) 199 (Del., 1950), delivers the State of Delaware into the fold of those states adopting the so-called "Federal Rule" which prohibits the introduction of testimony which has been illegally obtained.

The illegality in the *Rickards* case was the arrest of the defendant on the charge of drunken driving, subsequent to an accident in which he was involved. Upon a highly technical construction of the local statute, the court held that such an arrest, without the benefit of a warrant, was in violation of the law. At the trial, the sole evidence upon which the conviction was based was the testimony of police officers who observed the defendant during his illegal incarceration. It was this testimony which was objected to as being illegally obtained.

The court assumed, without argument, that such evidence was obtained in violation of the defendant's rights against self-incrimination and further that it was the result of an illegal search. Having established this, it proceeded to review the arguments pro and con the admissibility of such evidence. On the one hand there was the argument that the evidence should be admissible because the constitutional prohibitions apply only to actions of the state, rather than to officers who, when acting illegally, are not acting as representatives of the state. On the other hand, the argument was advanced that the only effective way in which these basic constitutional guarantees can be protected is by the exclusion of such evidence, since the civil remedy against the officers is deemed impotent. The court concluded that it believed the problem to be sufficiently menacing to make it mandatory upon it to adopt the second rationale of the situation, thus reversing its original position with regard to the "Federal Rule" as propounded in the leading case of *Wolf v. Colorado*, 338 U. S. 25 (1948).

Two dissenting judges took the position that the evidence in this case had no relation to either an illegal search or to the privilege against self-incrimination—that the defendant was forced to do nothing but was merely observed, and hence the evidence was not the result of any illegal act in the proximate legal sense. They also did not view with favor the notion that a rejection of illegally obtained evidence is necessary to a preservation of constitutional rights and privileges.

It would seem that the Supreme Court of the State of Delaware in reversing its original position on the "Federal Rule," and in considering the evidence in this case as violative of the constitutional guarantees against self-incrimination and illegal search and seizure, has swung around to the view which seems to be gaining in judicial popularity, that an overzealous police officer is a greater danger to the community than an unpunished violator of the law.