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Abstracts of Recent Cases

Furthermore, the bar associations should assume an active and aggressive role in supervising the prosecutors in the performance of the tasks of their office where there is reason to believe that diligence and honesty are being side-stepped. In turn, the prosecutor must exercise similar supervision over other law enforcement officials.

To effectively suppress organized crime, it is mandatory that there be cooperation at all levels of law enforcement. Corruption on any level must be attacked in such a manner as will best serve as an example to other officials and at the same time clearly demonstrate to syndicated criminals that there will be no tolerance of an alliance between them and the enforcers of the law. It is suggested that the most effective means is a fair but systematic use of criminal prosecutions for misconduct in office. Civil removal actions should be employed only where it is apparent that criminal prosecution may prove unsuccessful. If the criminal remedy, however, is used wisely and not prematurely, civil removal will become a less frequently used device than it is at the present time.

(The second article of this symposium will appear in the next issue. It will be devoted to "The Investigative Function of the Prosecuting Attorney.")

and removed from the county payroll. The chief of police of Cicero, Illinois, and a subordinate were indicted and removed from office. Gambling in Chicago and Cicero closed down for a while, and have never returned to previous strength, notwithstanding many bad areas still thriving.

ABSTRACTS OF RECENT CASES

Uncorroborated Testimony of Prosecutrix Sufficient to Sustain Conviction—The complaining witness alleged that the defendant had carnal knowledge of her at a time when she was not yet 16 years old. Under Indiana law, a person committing such an act with a minor is guilty of statutory rape. Prior to the first trial, the prosecutrix paid an unsolicited visit to the office of the defendant's attorney and executed an affidavit which stated that the defendant never had sexual relations with her. On the initial day of the first trial, she denied seven times that the defendant had sexual relations with her, but on the second day, while emotionally upset, she repeated her accusation. The defendant's conviction was reversed because of lack of jurisdiction of the trial court, and upon retrial he was again convicted solely on the accusation of the prosecutrix. The Supreme Court of Indiana, one judge dissenting, overruled previous precedent and held that the state need not require a prosecutrix, whose story is uncorroborated, to submit to a psychiatric examination, and that the uncorroborated testimony is sufficient to sustain a conviction of statutory rape. *Wedmore v. State*, 143 N.E.2d 649 (Ind. 1957).

The majority in the *Wedmore* case felt that in the case of *Burton v. State*, 232 Ind. 246, 111 N.E.2d 892 (1953), the Supreme Court of Indiana promulgated a rule that required the state to support the testimony of a prosecuting witness in a sex case with a report on the results of a psychiatric examination given to the witness. In the present case however, the court said that it lacked the power and authority to do so and thus "disapproved and overruled" the *Burton* case. The Legislature, according to the court, would be the proper body to set forth such a rule. The court refused to reverse the case on the grounds of insufficient evidence and stated that the credibility of the witness was a question for the trier of facts and not open upon review. Also the court would not consider the record in the first trial, even though the defendant contended that this record, taken with the record of the second trial, showed that the prosecutrix's testimony was impeached, contradicted, and perjured. The record of the second trial contained only one statement made by the prosecutrix indicating that she never had sexual relations with the defendant, and this record was the only one that the court would consider.

The dissent interpreted the holding of the

Burton case to be "that the *uncorroborated* testimony of a prosecutrix who had not had a psychiatric examination to test her credibility, was not substantial evidence of probative value upon which a conviction in a sex offense could rest" (emphasis added). In addition, the dissent stated that the majority did not reverse the *Burton* case because the reason for the rule had ceased. Extensively citing noted authorities, the dissent pointed out that the danger of a female's false accusations of rape have been recognized, yet "here the conviction must stand upon the sole testimony of a prosecutrix who by the records here was proved to be a pathological liar and perjurer". The dissent seemed to have found no barrier prohibiting it from considering the conflicting testimony of the prosecutrix as shown by the record of the first trial. However, the "most shocking aspect" of the proceeding, according to the dissent, was the fact that the State prosecuted the case knowing full well that the testimony of the prosecutrix was uncorroborated and yet a psychiatric examination was not obtained. The dissent accused the state, because of its continued prosecution after the perjuries had been discovered, of conduct amounting to nothing more than a face-saving procedure. In addition, the dissent pointed out that the state never attempted to deny the clear evidence that the prosecution was threatened "with reform school" prior to her signing the written charge against the defendant.

Traffic Ticket Is Not Sufficient Information to be Used as a Pleading and Defect Not Waived by Guilty Plea—A patrolman issued a "uniform traffic ticket" or summons to the defendant. The ticket notified the defendant to appear before a police justice the following day to answer to the charge of driving while intoxicated. The defendant, after being informed of his rights and possible penalties if convicted, pleaded guilty and was fined. Leave to appeal was granted and the Court of Appeals of New York, three judges dissenting, reversed and discharged the defendant on the ground that a traffic ticket is not a sufficient information to be used as a pleading and that the absence of a verified information was a jurisdictional defect that was not waived by a plea of guilty. *People v. Scott*, 3 N.Y.2d 148, 143 N.E.2d 901 (1957).

An information is an "allegation made to a magistrate, that a person has been guilty of some designated crime". This, according to the court, is not the function of a traffic ticket, which is merely a notice to appear at a given court at a certain time where the issuee will be charged with a specific crime. The court also indicated that another objection to the use of a traffic ticket as an information was that it was not verified. Thus, since no information or complaint was placed before the court, the conviction was defective unless the requirement was waived by the defendant. The court conceded that a plea of guilty will act as a waiver of all defects in the form of an information, but this is not so with respect to jurisdiction of the court. The lack of an information was then held to be a jurisdictional defect, and the court stated that to allow a "mere unverified summons . . . to be the equivalent of an information . . . would be a dangerous practice." The sworn information, according to the court is an essential guarantee to the fundamental right of not being punished for a crime without a formal and sufficient accusation, and this right can not be waived by a guilty plea.

The dissent stated that the traffic ticket not only performs the function pointed out by the majority, but also gives the defendant "in fullest detail the information as to what he is charged with doing or failing to do contrary to law". Thus, the traffic ticket by its very nature is an informal information, according to the dissent, and its only defect is the lack of verification. The dissent then pointed out that there is no statutory requirement that a misdemeanor information be sworn to, and the same is true at common law. Therefore, the dissent stated, the defect is one of form and is waived by a plea of guilty.

Indictment Valid Even Though Defendant Not Present at Preliminary Hearing—A justice of the peace held a preliminary hearing at which the defendant was charged with armed robbery, burglary, and a firearm vio-

lation. The defendant was not present at the hearing, but had been incarcerated in another county prison of the same state. The authorities of the county in which the hearing took place knew where the defendant was and that he could have been brought to the hearing. After the defendant was indicted he brought an action to quash the indictment. The Supreme Court of Pennsylvania, in a per curiam opinion with one judge dissenting, held that the defendant's absence at the preliminary hearing was not adequate grounds upon which an indictment could be quashed. *Commonwealth v. Laughlin*, 132 A. 2d 265 (Penn. 1957).

The court said that unless a bill of indictment is defective on its face, an adverse ruling to a defendant's motion to quash an indictment prior to trial is interlocutory and thus not appealable. Therefore, the defendant's appeal to the Superior Court need not have been decided on its merits. The dissent pointed out that the opinion of the superior court indicated that where a defendant is not present at a preliminary hearing, court permission should be obtained before a bill is presented to a grand jury. This was not done in the present case, and the dissent criticized the superior court for giving its retroactive consent to the procedure followed. In addition, the dissent commented that the definition of a preliminary hearing indicates that the defendant must be present, and the absence of the defendent circumvented one of the fundamental purposes of the preliminary hearing; that is, the defendant is not allowed the early opportunity to clear himself. The dissent stated that this "is part of the very robe of assumed innocence with which the state invests the accused from the very beginning of the prosecution." The dissent considered a preliminary hearing without the presence of the accused as shocking, and said that unless the accused has waived a hearing, purposely absents himself, or has fled the jurisdiction, the rights of an accused are violated.

Interrogation by Trial Judge as Grounds for New Trial—At the defendant's trial, the judge interrogated a number of the defense's witnesses and the defendant himself. Many of the questions were rhetorical. Objections and motions for a mistrial on the ground that portions of the judge's questions were prejudicial against the defendant were denied, and the Appellate Division affirmed. However, the Court of Appeals of New York granted the defendant a new trial and held that the questions the judge asked the defendant and his witnesses were of such a nature as to indicate a communicable disbelief of their testimony. *People v. Mendes*, 3 N. Y. 2d 120, 143 N. E. 2d 806 (1957).

The court stated the general rule that a trial judge may take an active part in the examination of witnesses where his questions may clarify or bring forth an issue, develop certain facts, or merely facilitate the orderly and expeditious progress of the trial. However, the court continued, this prerogative should be exercised with caution, especially in such a case as that at hand where a very close question was presented to the jury. The court indicated that the "questions posed the threat of a cumulative adverse effect on the defendant's position" which the court felt could not be ignored because of the close balance of the evidence.

The dissent contended that "there is no power and no precedent in this court for the reversal of a conviction on the ground that some of the trial judge's questions to defendant and his witnesses 'were of such a nature as to indicate a communicable disbelief of their testimony' ". Such a rule, according to the dissent, would be unworkable, against public interest and allow a judge to ask only the most "insipid and formal questions." The dissent also stated that in noncapital criminal cases the court of appeals is a court of law and has no general supervision over the conduct of trials. Thus, the question of whether the defendant received a fair trial was not a question for the highest court of New York.

(For other recent case abstracts see "Police Science Legal Abstracts and Notes", *infra* pp. 476–478.)