Journal of Criminal Law and Criminology

Volume 49 | Issue 4 Article 13

1959

Abstracts of Recent Cases

under which men may lose their liberty or their lives, should be so.

Society is well able to protect itself by application to the legislature when any inadequacies in the criminal statutes are found.[57] The individual, on the other hand, may be condemned to imprisonment on the finding of one judge or one court that his conduct was criminal.[58]

[57] After the decision in the *Mochan* case, five states, Indiana, Illinois, Delaware, Mississippi, and Tennessee enacted legislation prohibiting obscene phone calls.

[58] Will the test applied by the judge be his own concept of prevailing "public opinion"? See Redd v. State, 7 Ga. App. 575, 67 S.E. 709 (1910).

This power may have served well in those days when legislatures met infrequently and communities were isolated, but it is submitted that it today poses a threat to the

"nearly two hundred years of constitutional government in which the legislature and not the courts have been charged by the people with the responsibility of deciding which acts do and which do not injure the public to the extent which requires punishment."[59]

[59] Commonwealth v. Mochan, 177 Pa. Super. 454, 110 A.2d 788 (1955) (dissenting opinion).

ABSTRACTS OF RECENT CASES

Mistrial As Aquittal—At the defendant's trial on a charge of violating the bookmaking statute, it was discovered that one of the jury members was the mother of a client of the defense counsel. The prosecution moved for a mistrial, despite the warning of the trial judge that elements of double jeopardy would be involved on the retrial. At the second trial, the defense moved to dismiss the indictment. A Superior Court of New Jersey granted the dismissal, holding that the mistrial was in fact an acquittal and thus a subsequent trial on the same charge would place the defendant in double jeopardy. *State v. Preto*, 144 A.2d 19 (1958).

The court stated that since the mistrial was not granted for a reason that amounted to a compelling or necessitous circumstance and the jury was discharged without the consent of the defendant, the accused was entitled to be released, because any further proceedings placed him in double jeopardy.

Threatening Judge Outside Of Court Not Contempt—The defendant was the father of a boy who had been found guilty of two traffic offenses in the Recorder's Court. The Judge of the Recorder's Court was also an attorney in private practice. The defendant telephoned the judge at his office after the traffic cases had been disposed of and asked to see him. After a long and somewhat violent conversation, the judge hung up on the defendant. The defendant then appeared at the judge's private office and demanded, in a menacing manner, that the judge apologize for "hanging up" on him. The defendant was finally persuaded to leave the office, after the judge threatened to call the police, though he threatened the judge by saying, "You've got to come out of this office some time. When you do, I'll be waiting for you. I'll get you. Don't forget that." The Court of Appeals of Georgia unanimously held that this did not constitute contempt and reversed the lower court conviction. *Massey v. City of Macon*, 104 S.E. 2d 518 (1958).

The court applied the rule that conduct outside the courtroom cannot be contempt unless it amounts to an obstruction of the administration of justice. The defendant's manner and threats were considered as directed toward making the judge apologize for "hanging up" rather than toward the judge's disposition of the cases in which the defendant's son was involved. Though part of the son's penalty had been the suspension of his driver's license, and though the judge could have recommended that the license be re-instated before the expiration of the suspension period, the court did not feel that this amounted to having the cases still pending before the court, so consequently the rule of obstruction of the administration of justice could not be invoked.

Advertising Of Discounts Is Misleading—The defendant corporation was engaged in the retail sale of toys and games. Signs in the window of its place of business indicated that a discount of from 20% to 40% could be secured on the purchase of standard brand "toys." Actually, the defendant over-priced the toys and then applied the discounts. One of the defendant's competitors entered the store and purchased three "games."