Journal of Criminal Law and Criminology

Volume 53
Issue 3 *September*

Article 10

Fall 1962

Notes and Announcements

Court of Missouri upheld the law as consistent with both state and federal constitutional requirements, since the language of the statute, measured by common understanding and practices, sufficiently conveyed a definite warning as to what conduct was prohibited. Less than three months after *Katz* was decided, the Supreme Court of Kansas affirmed defendant's discharge on appeal by the State, holding that although the Kansas statute was copied from that of Missouri, the general rule that a statute adopted from another state carries with it the construction placed upon it by the courts of that state would not apply, since the Supreme Court of Missouri could not be substituted for that of Kansas in determining whether the statute contravened the Kansas constitution; and that the statute was void for the unconstitutional vagueness of the phrase "articles of immediate necessity," since the categorizing of an article as one of immediate necessity depends on the subjective judgment of each individual purchaser.

Unlawful Possession of Narcotics—*Simmons v. State*, 353 S.W.2d 215 (Tex. Crim. App. 1962). Defendant was convicted of unlawful possession of a dangerous drug in violation of TEX. PEN. CODE art. 762 d (1948). Contending that she had obtained the drug lawfully, defendant moved for rehearing after the Court of Criminal Appeals of Texas affirmed the judgment. The Court of Criminal Appeals granted the motion for rehearing, set aside the order of affirmance, and reversed and remanded, holding that since defendant obtained the drug by means of a doctor's prescription in compliance with specific provisions of the statute, her possession was lawful, in the absence of proof of false representation by defendant, regardless of the fact that defendant obtained the prescription over the telephone from a physician who erroneously believed that he was prescribing for another patient.

Witnesses—*Gradsky v. State*, 137 So. 2d 820 (Miss. 1962). Defendant was convicted of embezzlement. On appeal, he contended that the trial court's refusal to permit defendant to introduce his attorney as a witness constituted reversible error. The Supreme Court of Mississippi reversed and discharged defendant, holding that defendant's constitutional guarantee of the right to "compulsory process for obtaining witnesses in his favor" [MISS. CONST. §26] included the right to have his attorney summoned to give evidence in his favor when the attorney had evidence vital to the defense; and although an attorney might violate an ethical rule by taking active part in the trial of a case with knowledge that he would be called upon to testify, the court could not on that basis refuse to allow defendant to introduce competent evidence in his favor. *Cf.* Witnesses—*Jenkins v. State*, 136 So. 2d 580 (Miss. 1962), *infra*.

Witnesses—*Jenkins v. State*, 136 So. 2d 580 (Miss. 1962). Defendant was permanently enjoined from further violation of prohibition laws. On appeal from the Chancery Court's refusal to dissolve the injunction, defendant contended that the court should not have permitted the county attorney, who prosecuted the case, to testify over defendant's objection. The Supreme Court of Mississippi reversed and dissolved the injunction, holding that since the prosecuting attorney, as a quasi-judicial officer, was required to be fair and impartial, it was reversible error to allow him to act both as advocate for the state and as a prosecuting witness. *Cf.* Witnesses—*Gradsky v. State*, 137 So. 2d 820 (Miss. 1962), *supra*.

NOTES AND ANNOUNCEMENTS

ABA Adopts Resolution Describing Objectives of Criminal Law Section—The Criminal Law Section of the American Bar Association adopted a resolution on August 10, 1961, describing objectives of the Section. The resolution, which has been approved by the Board of Governors and the House of Delegates of the ABA, is as follows:

"*Whereas*, The administration of criminal justice affects more people than does any other branch of the law, and will continue to do so

to an even greater extent because of the constantly increasing crime rate; and

"*Whereas*, The public at large, and many members of the legal profession as well, have not been sufficiently aware of the seriousness of the current problems involved in the administration of criminal justice; and

"*Whereas*, The organized bar has neglected this most important branch of the law; and

"*Whereas*, The teaching of criminal law and criminal procedures in our law schools should always be assigned to one of the most highly qualified members of the faculty; and

"*Whereas*, The concept of the "rule of law" can hardly be exported abroad until it is effectively applied at home,

"*Be it resolved, that:*

"1. Greater attention must be focused by the organized bar on the administration of criminal justice, and more lawyers must interest themselves, as citizens as well as members of the bar, in the administration of criminal justice and in the actual practice of criminal law, even though it be to a much lesser extent than the criminal law specialist.

"2. It must be generally recognized that the defense of a criminal case is a respectable and honorable undertaking, regardless of the character of the accused or the nature of the offense itself; and toward that end the American Bar Association should devote specific attention to recognizing the status of the criminal law practitioner, both as regards the prosecuting officer as well as defense counsel.

"3. The Association should continue to sponsor and encourage research projects and studies regarding criminal justice, and particular attention should be devoted to the ethics of prosecution and defense, and the responsibilities of the judiciary with respect to criminal trials.

"4. In the selection of judges on all levels, important consideration should be given to the experience, interest, and participation in the administration of criminal justice of those persons under consideration for judicial office.

"5. The Association should encourage the law school teaching profession to devote greater attention to the teaching of criminal law and criminal procedure, and to the development of programs in the field of criminal justice, and to accord to the teaching of criminal law and criminal procedure an important status in the law school curriculum."

American Bar Foundation Studies Self-Incrimination Resolutions—Two resolutions concerning the privilege against self-incrimination were presented at the 1960 Annual Meeting of the American Bar Foundation by Lewis Mayers, Esq., of New York. The resolutions were referred to the Committee on Jurisprudence and Law Reform, which, with the approval of the House of Delegates of the ABA, has sent them for study to the American Bar Foundation. The resolutions are as follows:

Resolution No. 6

"*Whereas*, the witness' privilege against self-incrimination originated in the desire to protect the citizen against official oppression, and

"*Whereas*, an official asked by an appropriate judicial, executive or congressional agency to account for the discharge of his official duty requires no such protection, and should be obligated to answer all questions regarding his official conduct.

"Be it resolved, That the American Bar Association favors an amendment to the Constitution providing that in any inquiry by a federal judicial, executive or legislative agency empowered to require a witness before it to answer its questions, no person holding office or employment under the Government of the United States shall have the right, when appearing as such a witness, to refuse, on the ground of possible self-incrimination, to answer any question regarding his official conduct."

Resolution No. 7

"*Whereas*, the privilege of the witness in a federal proceeding to refuse to answer a question on the alleged ground that his answer may incriminate him constitutes a grave impediment to the enforcement of federal law and the administration of federal justice; and

"*Whereas*, under an 1892 decision of the Supreme Court, interpreting the Fifth Amendment, the witness making such claim in a federal proceeding may be compelled to answer only by a grant of absolute immunity from prosecution for any crime connected with the matter with respect to which he is compelled to answer;