Louisiana Law Review

Volume 5 | Number 3
December 1943

Theft - Cumulation of Several Misappropriations

C. C. L.

free ride to the prevalent hitchhiker or to some other casual invitee should not be liable to the recipient of his hospitality if an accident results from his ordinary negligence. Otherwise he pays a rather high price for his Good Samaritanism. The Louisiana legislature, especially in these times when drivers are encouraged to share their cars, would do well to get in step by the enactment of such a statute.

J.S.D.

THEFT—CUMULATION OF SEVERAL MISAPPROPRIATIONS—Defendant was charged in the indictment with having, through a series of misappropriations, embezzled $3,274.06 of public money. The indictment charged defendant with violating Sections 903 and 904 of the Louisiana Revised Statutes of 1870. The various misappropriations were lumped together in determining the amount of the alleged embezzlement, in accordance with the rule set out in Article 225 of the Louisiana Code of Criminal Procedure as re-enacted by Act 57 of 1940. Attorneys for defendant filed a motion to quash the indictment on the ground that public embezzlement was not a graded offense; and that Act 57 of 1940 was therefore inapplicable. The trial judge refused to quash the indictment, but did order the district attorney to amend the indictment so as to charge each of the acts of misappropriations in a separate count. The district attorney applied for a writ of certiorari which was granted. *Held,* it was lawful to cumulate the aggregate amount of the embezzlement into one count. *State v. Doucet,* 13 So. (2d) 353 (La. 1943).

In *State v. Rodosta*[1] the Louisiana Supreme Court had declared that Article 238 of the Code of Criminal Procedure was unconstitutional since it effected a change in the substantive law governing parties to crimes. The constitutional mandate under which the Code of Criminal Procedure was adopted expressly provided that the Code was to be a Code of Procedure, and this purpose did not include changes in the substantive law.[2] It would therefore seem that Article 225, which permitted a cumulation of various separate thefts to determine the grade of the crimes of embezzlement, larceny, obtaining money by false pre-

1. 173 La. 623, 138 So. 124 (1931), noted in (1932) 7 Tulane L. Rev. 144. That article was held unconstitutional insofar as it abolished the distinction between an accessory before the fact and the principal, thereby changing the substantive law.

2. Constitutional amendment proposed by La. Act 262 of 1926, adopted November 2, 1926. Cf. La. Act 276 of 1926 (enabling act).

tenses, and swindling would likewise amount to a change in the substantive law; and one district court decision held the article unconstitutional.[3]

Upon the recommendation of the Louisiana State Law Institute,[4] the legislature in 1940 re-enacted[5] Article 225 of the Code of Criminal Procedure in order to validate that article, insofar as it purported to change substantive law which was in force at the time of the adoption of the Code of Criminal Procedure.[6] The point of controversy in the instant case was whether the re-enacted Article 225 can be used in prosecutions for *public embezzlements*, it having been urged that this crime is not a graded offense.[7] Is this provision limited in its application to graded offenses? The article was evidently intended to cover all forms of embezzlements, and not limited to embezzlements by other than public officials,[8] which counsel for the defendant so strongly urged was the only graded embezzlement. The first part of Article 225 provides that anyone who shall embezzle money entrusted to him by virtue of his office may be charged in one indictment and one count with embezzlement of the aggregate amount embezzled by him during the entire time of his holding such office. From that language there seems to be no limitation as to what embezzlements that article covers. Following this line of thought, it may be urged that the specific provision, that the aggregate amount shall determine the grade of the offense, was not intended as a limitation upon the application of the article. It merely authorized a cumulation of the various amounts taken to determine the grade of the offense, *if* the offense was graded.

Assuming that Article 225 was limited to graded offenses, the further question arose as to whether "public embezzlement" was "graded." The court cited various definitions of the term "grades of crime,"[9] and concluded that, since the offender was

3. State v. Caldwell and Lorio, Criminal Docket No. 10,232, Division "B" Nineteenth Judicial Court for the Parish of East Baton Rouge (La. 1940). See Bugea, Lazarus, and Pegues, The Louisiana Legislation of 1940 (1940) 3 LOUISIANA LAW REVIEW 98, 160, n. 65.

4. See Special Report of the Louisiana State Law Institute to the Legislature of Louisiana Recommending Certain Criminal Statutes (May 1940) 6-7, 14-15.

5. La. Act 57 of 1940 [Dart's Crim. Stats. (1943) § 914.1].

6. La. Act 2 of 1928.

7. As defined by La. Rev. Stats. of 1870, § § 903, 904.

8. La. Rev. Stats. of 1870, § 905.

9. State v. Doucet, 13 So. (2d) 353, 361 (La. 1943): "In 1 Bouv. Law Dict., Rawle's Third Revision, p. 1368, and in Ballentine's Law Dictionary, and in Words and Phrases, Perm. Ed., vol. 18, p. 606, the term *Grade of Crime* is defined thus:

" 'Grades of crime in legal parlance are always spoken of and understood as higher or lower in grade or degree according to the measure of

required to restore the amount taken and *to pay a fine of equal amount,* the offense was a graded one. This holding appears out of line with the normal interpretation of the term "graded offense." Ordinarily that phrase is used to denote a crime where the entire penalty is graduated according to the amount taken, or some other similar factor. The general embezzlement statute[10] is a typical graded offense. It provides a penalty of imprisonment up to fifteen years if the amount embezzled is over $100; whereas if the amount embezzled is under $100, the person convicted is subject to an imprisonment, with or without hard labor, not to exceed five years. It appears to be stretching the concept of "graded offense" somewhat to say that an offense is graded merely because, in addition to the ungraded sentence, the offender must pay a fine equal to the amount stolen.

The question presented in the *Doucet* case is now an academic one. Article 67 of the recently enacted Criminal Code has combined all the various and sundry "stealing offenses" in one crime, designated as "theft." That article further provides that where there has been a misappropriation or taking by a number of distinct acts of the offender, the aggregate of the amount of the misappropriations or takings shall determine the grade of the offense. At the same time, Article 225 of the Code of Criminal Procedure has been amended and adapted to the new theft article.[11]

C. C. L.

---

punishment attached and meted out on conviction, and the consequences resulting to the party convicted.' "

10. La. Rev. Stats. of 1870, § 905.

11. La. Code of Crim. Proc. of 1928, Art. 225, as amended by La. Act 147 of 1942, § 1 [Dart's Crim. Stats. (1943) Art. 225] reads as follows: "It shall be lawful to insert several counts in the same indictment against the same defendant for any number of distinct acts of theft, and the aggregate amount of these thefts shall determine the grade of the offense charged; provided that whenever anyone, by virtue of his office, employment or of any fiduciary relationship which he may occupy toward another, shall be entrusted with any money or other thing of value, and shall misappropriate the same, he may be charged in one count with the theft of the aggregate amount misappropriated by him during the entire time of his holding such office, employment or relationship."