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The Bill of Particulars in Criminal Trials—Judicial Discretion

Under both the United States[1] and the Louisiana[2] Constitutions, the defendant in a criminal trial is given the right to be informed of the nature and cause of the accusation against him. In order to implement this basic right, the Louisiana Code of Criminal Procedure provides in Articles 253[3] and 288[4] that in the discretion of the trial judge the district attorney may be required to furnish the defendant a bill of particulars setting out more specifically the nature of the offense charged. This discretion is not entirely unlimited, however, and where there is manifest error and a showing of prejudice to the defendant the trial judge will be reversed.[5] It is the purpose here to set forth the various limitations upon this discretion of the trial judge and their applications in practice.

In determining the limits of the trial judge's discretion it is necessary to keep in mind the underlying function of a bill of particulars, namely, to inform the defendant of the nature of the accusations against him.[6] This principle has been expressed in a number of ways. For instance, in *State v. Selsor*[7] the Louisiana Supreme Court stated that "The accused is entitled of right to be informed of the facts necessary to enable him to prepare his defense." [8] There the court cited with approval *State v. Clark*,[9] in which it was said that the state must furnish particulars where it "would be so easy as in this case, and so conducive to the fairness of the trial." [10] In *State v. Mines*[11] the court

1. U.S. Const. Amend. XIV.
2. La. Const. of 1921, Art. I, § 10.
3. This article provides, "Provided further that the district attorney, if requested by the accused prior to arraignment, may be required by the judge to furnish a bill of particulars setting up more specifically the nature of the offense charged."
4. Article 288 provides, "Defects in indictments can be urged before verdict only by demurrer or a motion to quash, and the accused is not entitled to any bill of particulars as to the subject matter charged in the indictment, but the trial judge may in his discretion, require the district attorney to file in the case such data as, in the opinion of the judge, may be sufficient."
5. State v. Buhler, 132 La. 1065, 62 So. 145 (1913); State v. Sheffield, 201 La. 1055, 10 So. 2d 894 (1942); State v. Augusta, 199 La. 896, 7 So. 2d 177 (1942); State v. Poe, 214 La. 606, 38 So. 2d 359 (1948).
6. State v. Ezell, 189 La. 151, 179 So. 64 (1934); State v. Varnado, 208 La. 319, 23 So. 2d 106 (1945); Comment, 6 LOUISIANA LAW REVIEW 461 (1945).
7. 127 La. 513, 53 So. 737 (1910).
8. 127 La. 513, 515, 53 So. 737.
9. 124 La. 965, 50 So. 811 (1909).
10. 124 La. 965, 967, 50 So. 811, 812.
11. 137 La. 489, 68 So. 837 (1915).

expressed the view that particulars should be furnished as a matter of fairness and to put the defendant on his guard as to what offense he was charged with. In *State v. DeArman*[12] the court held that the defendant should be given certain particulars "in order that he may be prepared to meet or rebut the proof submitted by the State." [13]

In all of the foregoing cases it should be noted that the crime charged was in the nature of unlawfully selling or possessing intoxicating liquors. Such a crime is of a recurring type, that is, it may take place at many different times, in many different places, and in numerous ways.[14] The indictment or information charging such a crime, even when following the long form of indictment, is usually general and does not set out how or when the crime was committed. Since the defendant has probably repeated the unlawful act over a considerable period of time and has sold liquor to a number of different persons, when he is arrested and charged it could be for any number of the criminal acts. It seems apparent that in order to inform the defendant adequately of the nature and cause of the crime charged, it is necessary to inform him of the *particular* sale or possession for which he is being prosecuted. Thus, it has been held reversible error for the trial judge to refuse a bill of particulars when the indictment or information does not furnish enough information to put the accused on his guard as to the particular offense charged.[15]

The converse of this recurring crime situation was presented in *State v. Goodson*[16] and *State v. Augusta*.[17] In both of these cases the defendant was charged with murder, an act which is specific and to which there could be no possible mistake as to the particular act charged against the defendant. In *State v. Augusta* the court said, "Where the nature of the crime is such that it could only be committed in one place and by one act, which creates a status making the corpus delicti easy of proof,

12. 153 La. 345, 95 So. 803 (1923).
13. 153 La. 345, 347, 95 So. 803, 804.
14. Other crimes which have this recurring element are carnal knowledge of a juvenile (State v. Larocca, 156 La. 567, 100 So. 720 [1924]) and embezzlement (Clark, Criminal Procedure § 151 [2 ed. 1918]). Louisiana no longer has a statute specifically charging embezzlement, but the same rule should apply under the general theft article, Art. 67, La. Crim. Code of 1942, La. R.S. (1950) 14:67.
15. Clark, op. cit. supra note 14, at § 151; State v. Maloney, 115 La. 496, 39 So. 539 (1905); State v. Rollins, 153 La. 10, 95 So. 264 (1922); State v. Larocca, 156 La. 567, 100 So. 720 (1924).
16. 116 La. 388, 40 So. 771 (1906).
17. 199 La. 896, 7 So. 2d 177 (1942).

the uniform trend of opinion is that it is wholly sufficient to charge the accused in the language of the statute and that he needs no information to put him on his guard in the preparation of his defense." [18]

It would seem, however, that even in cases where "the nature of the crime is such that it could only be committed in one place and by one act," if the defendant is planning to rely on an alibi, he can force the state to give the date of the alleged crime.

Where the short form indictment[19] is used it was held in several recent Louisiana cases that the defendant is entitled of right to a bill of particulars.[20] In *State v. Bessar*,[21] *State v. Masino*,[22] and *State v. Leming*[23] the charge was for murder under the short form indictment, and the supreme court adopted the ruling that any time the short form indictment is used the defendant is entitled of right to a bill of particulars setting out the nature and cause of the crime. Here we should note briefly the case of *State v. Augusta*.[24] In that case the defendant was indicted under the short form of Article 235, and the supreme court upheld the trial judge in refusing the bill of particulars. The decision was posited on the ground that the act charged was a specific act and that the defendant knew of what crime he was being charged. Since the *Bessar*, *Masino*, and *Leming* cases are of a later date than the *Augusta* case it may safely be said that the *Augusta* case has been impliedly overruled and that the rule denying a bill of particulars where the indictment charges a non-recurring crime must be limited to cases involving the long form indictment.

It should be noted, however, that even where the defendant is found to be entitled to a bill of particulars, whether in connection with a short or long form indictment, there are certain practical limits as to what he can demand. One of the most important of these restrictions on the information which can be demanded is that the defense cannot force the state to disclose its evidence in advance of trial.[25] This rule had been held to apply

18. 199 La. 896, 903, 7 So. 2d 177, 180.
19. As provided for in Art. 235, La. Code of Crim. Proc. of 1928, La. R.S. (1950) 14:235.
20. State v. Bessar, 213 La. 299, 34 So. 2d 785 (1948); State v. Masino, 214 La. 744, 38 So. 2d 622 (1949); State v. Leming, 217 La. 257, 46 So. 2d 262 (1950).
21. Ibid.
22. Ibid.
23. Ibid.
24. 199 La. 896, 7 So. 2d 177 (1942).
25. State v. Fernandez, 157 La. 149, 102 So. 186 (1924); State v. Lee, 173

where the defendant requested the time of day and manner in which the alleged crime was committed, in a charge of robbery;[26] and the place and circumstances surrounding a charged conspiracy to commit robbery.[27] In a charge of attempted simple kidnapping this rule was employed when the defendant requested particulars as to the place where the offense occurred, the manner in which the parties or either of them attempted to seize the prosecutrix, the means or mode by which they or either of them attempted to carry her, the part taken by each defendant in the perpetration of the alleged offense, and the steps taken by each or either to effect the attempt.[28] The holdings in the above cases are not in contravention of the purpose of the bill of particulars, for the requested information was not necessary to place the defendant on his guard as to the offense charged. However, there seem to be no specific criteria as to what information or evidence is necessary to inform the accused properly of the crime charged; this matter is entirely dependent on the attitude of the trial judge as to whether the requested particulars are necessary for the proper defense of the accused.[29]

The case of *State v. Iseringhausen*[30] illustrates another limitation on the permissible scope of the bill of particulars, that is, the defense cannot force the state to choose in advance between responsive verdicts. There the defense requested that the state inform it as to whether the killing was intentional or the result of negligence, and if intentional, the type of intent present. The supreme court said, "It would appear from the motion for a bill of particulars that counsel for the defendant was endeavoring to place the State in the position of abandoning either one or the other of the responsive verdicts that might be rendered under the charge. Under the charge of manslaughter, a verdict of manslaughter, or a verdict of negligent homicide is responsive. A defendant charged in an indictment or information with a crime but convicted of a lesser crime is sufficiently informed of

La. 966, 139 So. 302 (1932); State v. Poe, 214 La. 606, 38 So. 2d 359 (1948). In State v. Leming, 217 La. 257, 46 So. 2d 262 (1950), the supreme court adopted the trial court's opinion to the effect that even where a short form indictment was used, the state could not be forced to furnish the defendant with all of the state's evidence.

26. State v. Lee, 173 La. 966, 139 So. 302 (1932).

27. State v. Fernandez, 157 La. 149, 102 So. 186 (1924).

28. State v. Poe, 214 La. 606, 38 So. 2d 359 (1948).

29. No case was discovered where a trial judge was reversed for the reason that he should have forced the state to disclose the requested evidence.

30. 204 La. 593, 16 So. 2d 65 (1943).

the nature of the accusation against him when the major crime has been properly alleged in the indictment." [31]

Only facts and not legal conclusions need be given in a bill of particulars. This was brought out in *State v. Rollins*,[32] in which the defendant asked to be informed of the type of possession he was charged with under an information for unlawfully possessing intoxicating liquors. The court said that this request "merely calls for a conclusion of law. Accused was only entitled to know the facts to be relied upon, and it would then become the duty of the court to determine the legal consequences of the facts so alleged or proven, as the case might be." [33]

The defendant has also been refused particulars where they would be useless and would not aid him in preparing his defense because of their immateriality. Such was the case in *State v. Alford*,[34] where the defendant was charged with carnal knowledge of a juvenile and sought specific information as to whether the offense occurred at night or in the daytime. Since this information would have no bearing on the defendant's guilt or innocence, the court concluded that the particulars would not be of any assistance to the defendant and refused to require the state to furnish the information. In *State v. Cox*[35] the defendant asked to be informed of the hour of the sale of intoxicating liquors charged against him; the court refused, saying that it is not an essential element of the offense charged that it be committed at a particular hour.

The courts have consistently recognized the inevitable rule that the state does not have to furnish particulars when such particulars are not available. This rule was first announced in *State v. Clark*.[36] The trial judge had stated that there might be a situation where the state could not give any particulars because it did not have any. While the supreme court failed to affirm the trial judge's refusal to require the bill of particulars in the instant case, it did recognize that a situation might exist where the state had no further information to offer and in such a case the state would be excused from furnishing the requested par-

31. 204 La. 593, 606, 16 So. 2d 65, 69. Since La. Act 161 of 1948, the quoted statement is no longer correct insofar as it states that the crime of negligent homicide is responsive to the charge of manslaughter.
32. 153 La. 10, 95 So. 264 (1922).
33. 153 La. 10, 13, 95 So. 264, 266.
34. 206 La. 100, 18 So. 2d 666 (1944).
35. 167 La. 277, 119 So. 48 (1928).
36. 124 La. 965, 50 So. 811 (1909).

ticulars. In *State v. Gould*[37] the supreme court upheld a trial court's refusal to grant particulars after the prosecutor had informed the court that he was not in a position to furnish the particulars because of the manner in which the books had been kept by the defendant.

CONCLUSIONS

Generalizations are misleading in an area of law so dependent upon the discretion of the trial judge as he views the facts and circumstances of the individual case. However, certain broad propositions emerge from a multitude of cases. First, when the long form indictment or information is employed, the defendant is entitled to such additional particulars as are necessary to apprise him of the charge against him so that he may adequately prepare his defense. Second, in the case of the short form indictment the defendant has a general right to a bill of particulars, but this right is subject to certain very practical limitations. The bill of particulars cannot be used to force the state to disclose specific evidence, or to abandon a responsive verdict. Neither can it be used as a dilatory tactic by requiring an enumeration of useless particulars or of conclusions of law. Finally, the state cannot be expected to perform the impossible, that is, to furnish particulars it does not have.

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Labor Law—Applicability of United States Arbitration Act[1] to Collective Bargaining Agreements

Since the recent decision of the United States Court of Appeals for the Third Circuit in *Motor Coach Employees v. Pennsylvania Greyhound Lines*,[2] quickly followed by *Pennsylvania Greyhound Lines v. Motor Coach Employees*,[3] a different

37. 155 La. 639, 99 So. 490 (1924).

1. 43 Stat. 883, 9 U.S.C.A. § 1 et seq. (1925).

2. 192 F. 2d 310 (3rd Cir. 1951).

3. 193 F. 2d 327 (3rd Cir. 1952). Plaintiff employer brought suit against defendant union for breach of no strike agreement. The district court had granted a stay of proceedings pending arbitration according to the collective bargaining agreement. The third circuit reversed the order and remanded the case in order that it might be proceeded with. It merely affirmed its position taken in Motor Coach Employees v. Pennsylvania Greyhound Lines, 192 F. 2d 310 (3rd Cir. 1951).