Louisiana Law Review

Volume 14 | Number 1
The Work of the Louisiana Supreme Court for the 1952-1953 Term
December 1953

Criminal Procedure - Double Jeopardy - Duplicity

Neilson Jacobs

In view of the court's repeated acknowledgment of the principle of state ownership of beds and navigable waters in the *Miami Corporation* decision, and further in view of the invocation of the same principle in the above quotation with reference to the very act under which the successful litigant in the *Humble Oil Company* case claimed title, it is surprising that the conclusion reached in the instant case was so "perfectly apparent."[27] It is submitted, therefore, that a re-examination of that conclusion is warranted in future cases involving the question of private title to beds of navigable waters.

Mary Ellen Caldwell

CRIMINAL PROCEDURE—DOUBLE JEOPARDY—DUPLICITY

The defendant had committed two batteries in connection with a single affray. He had been tried and convicted of one of the batteries and entered a plea of former jeopardy when brought to trial for the second. *Held*, the plea of former jeopardy could not be maintained as the defendant had committed distinct batteries on two individuals. The batteries were separate offenses regardless of the fact that they were closely connected in point of time and were accomplished by defendant while engaged in one unlawful transaction. *State v. Ysasi*, 222 La. 902, 64 So. 2d 213 (1953).

The *Ysasi* decision clearly enunciates the proposition that two criminal offenses are not to be considered as one crime because they result from a single unlawful transaction. The majority of the common law authorities take the same position and hold that if two or more persons are injured by several shots or blows the offender may be prosecuted for each as a distinct crime. Thus, where several shots are fired in rapid succession killing more than one person, indictments will lie for each killing.[1] The same rationale is applied in cases where the defendant

them with that character." See note 12 supra for other statutes purporting to alienate beds of navigable waters *after* they become dry.

27. 223 La. 47, 64 So. 2d 839, 840 (1953).

1. State v. Taylor, 138 Kan. 407, 26 P. 2d 598 (1933); Slone v. Commonwealth, 266 Ky. 366, 99 S.W. 2d 207 (1936); State v. Coolack, 17 N.J. Super. 192, 85 A. 2d 353 (1951); State v. Billot, 104 Ohio St. 13, 135 N.E. 285 (1922). In State v. Singleton, 66 Ariz. 49, 182 P. 2d 920 (1947), the court stated: "As to the contradiction that the defendant claims is inherent in the verdicts, we find it to be the settled majority rule of law that although several shots

holds at gun point several victims while taking property from each.[2] However, a contrary view obtains in a few jurisdictions where a confusing test dependent upon the intent of the accused is applied.[3]

Although not presented by a plea of double jeopardy, the same controlling question of whether one or two crimes had been committed was raised and confusingly treated in *State v. Morrison*.[4] In the *Morrison* case a mother was killed with an axe after she had apprehended the three defendants entering her home for the purpose of robbery. Subsequently, the woman's small daughter was shot for fear she had recognized one of the offenders. The defendants were charged with the killing of both mother and daughter in a single count of the indictment. Article 220 of the Louisiana Code of Criminal Procedure prohibits, as duplicity, the charging of more than one crime in a count of an indictment.[5] In considering an objection to the indictment on this ground, the court quoted from *State v. Batson*[6] to the effect that although a criminal act may operate on more than one person, it may still be charged as one offense provided it be but one act, consummated at one time.[7] The troublesome factor in the holding was the court's treatment of the axe killing of the mother and the shooting of the little girl as a single criminal

be fired in such rapid succession that they constitute, in effect, but one act, still, the result may involve more than one offense so that an acquittal on a trial for killing one will not prevent prosecution for killing another. The offenses though occurring almost simultaneously in point of time are rendered distinct and severable by a plurality of shots and subjects."

2. Thompson v. State, 90 Tex. Cr. 222, 234 S.W. 400 (1921); Keeton v. Commonwealth, 92 Ky. 522, 18 S.W. 359 (1892).

3. In Cook v. State, 43 Tex. Cr. 182, 63 S.W. 872 (1901), two shots were fired wounding *A* and causing the death of *B*. The defendant was acquitted of assault with intent to murder *A* and subsequently convicted of murdering *B*. Defendant claimed both shots were fired at *A*, while the prosecution maintained that one shot was fired at *B*. The court held it to be a question of fact and if the jury found defendant's volition and intent were directed toward *A* only, then he could not be convicted upon an act, intent, and volition for which he had previously been acquitted.

4. 184 La. 39, 165 So. 323 (1935).

5. Art. 220, La. Code of Crim. Proc. of 1928; La. R.S. 1950, 15:220: except as otherwise provided in this part, it is duplicity to include in the same count two separate and distinct offenses."

6. 108 La. 479, 32 So. 478 (1902).

7. "Though a criminal act may operate on more than one person or thing, nevertheless, if it be but one act, consummated at one time, it may be charged as one offense, and an indictment charging in one count the murder of six persons is not bad for duplicity unless it appears upon its face that the deaths resulted from two or more distinct acts. But if, upon the trial, it is shown that all the deaths did not result from the same act, the accused may then compel the state to elect upon which charge it will proceed."

act. The force of the holding was weakened by the fact that an objection of this type must be urged before the jury is sworn and the defendants were not timely in so doing.[8] However, the conclusion that the court actually treated the two killings as one crime is definitely strengthened by Chief Justice O'Niell's concluding statement that the court found it unnecessary to consider at what time, if any, the objection to the indictment should have been made.

A careful consideration of the issue dealt with by the court in the *Batson* case leaves one with the opinion that the language quoted does not support the position taken in the *Morrison* case. In the *Batson* decision the validity of an indictment containing in one count a charge of murdering six persons was sustained. The court did not consider the facts of the case but merely stated that there was nothing on the face of the indictment to indicate that the persons named had not been killed at the *same instant and by the same act.* It further added that if testimony showed the killing of two persons was not by the same act, the defendant had the right to compel the state to elect the charge upon which it would proceed. It appears that the court drew a clear distinction between the murder of several persons by a single act and two murders accomplished by two distinct and separate acts. The court in the *Batson* case was referring to the former situation while the facts of the *Morrison* case were those of the latter.

State v. Ysasi, therefore, appears to dispel completely any confusion which may have resulted from the *Morrison* decision and places this phase of Louisiana criminal jurisprudence on a firm and logical foundation. Henceforth, there should be no basis for the contention that two separate and distinct criminal acts should be treated as one offense because they arose from a single illicit transaction. This should be true whether the case presents a question of double jeopardy or a question of duplicity.

Neilson Jacobs

8. Art. 221, La. Code of Crim. Proc. of 1928; La. R.S. 1950, 15:221: "The objection of duplicity cannot be urged after the jury has been sworn, and must be set up either by demurrer or by a motion to quash the indictment."