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Criminal Law - Criminal Intent or Knowledge as an Element of Unlawful Possession Under the Narcotics Law

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awareness of a fundamental right of a shareholder. To protect this right the Corporation Act does not recognize any power to change or modify it in the articles or by-laws, and it should logically follow that it cannot be indirectly abrogated by agreements with the shareholders.

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CRIMINAL LAW — CRIMINAL INTENT OR KNOWLEDGE AS AN ELEMENT OF UNLAWFUL POSSESSION UNDER THE NARCOTICS LAW

In a prosecution for unlawful possession of a hypodermic syringe and needle, the state introduced in evidence (for the stated purpose of showing criminal intent and guilty knowledge) a barbiturate found in the box along with the hypodermic instruments. When the defense subsequently attempted to introduce evidence that defendant had never used the hypodermic instruments for administering narcotics, the prosecution's objection was sustained on the ground that it was irrelevant and immaterial as defendant was not charged with possession of narcotics. The statute defining the crime of unlawful possession of hypodermic instruments[1] makes no mention of any requirement of criminal intent or knowledge of any particular facts. On appeal, *held*, conviction reversed. "Unlawful possession" necessarily involves knowledge of the fact that one is possessing unlawfully, as well as knowledge of the criminal consequences which one should reasonably anticipate therefrom. The refusal of the trial judge to allow defendant to show that he was in "good faith" and that "his intent was anything but that of violating the law" deprived the defense of a substantial right. *State v. Birdsell*, 232 La. 725, 95 So.2d 290 (1957).

Article 11 of the Louisiana Criminal Code provides that "the definitions of some crimes require a specific criminal intent, while in others no intent is required," and that "some crimes consist merely of criminal negligence that produces criminal consequences."[2] In those crimes defined in the Criminal Code itself, the mental element is clearly spelled out. Article 10 of the Code[3] declares that criminal intent may be "general" or "specific" and

1. LA. R.S. 40:962 (1950).
2. *Id.* 14:11.
3. *Id.* 14:10.

defines these terms. The substantive articles express whether a general or a specific intent is required for the crime defined. For example, simple arson is defined as the "intentional" damaging of the property of another[4] and a general provision[5] declares that the terms "intent" and "intentional" without qualifying provisions have reference to general criminal intent. In some articles knowledge of a particular fact is expressly required as an element of the crime. Thus, in order to be guilty of the crime of receiving stolen property one must know or have reason to know that the property was in fact stolen.[6] However, many criminal statutes found in the revised statutes do not specify the intent or knowledge with which the proscribed act must be committed. The Louisiana Narcotics Act[7] is such a statute. Subsection A of the act provides that "it is unlawful for any person to . . . have . . . any narcotic drug, except as provided in this Sub-part." A possessor of a prohibited article may have any of a number of possible degrees of criminal intent or guilty knowledge. At one extreme, he may have no knowledge of the fact of possession at all. For example, the article might have been slipped into his pocket by someone without his knowledge. Or, he might be aware of the fact of possession without being aware of the identity and nature of the article. This could happen to a person receiving a narcotic drug from a druggist who has filled the wrong prescription. Then there is the possibility that a possessor knows that he possesses the article and is aware of its nature. In the first two postulates the possessor would obviously have no intent as to the *use* of the prohibited article for he is not aware of the identity and nature of the article. In the last postulate the possessor may have any of three possible intents as to its use. He may intend not to use it at all. Or, he may intend to use it but in a manner other than that expressly or impliedly prohibited by law. And then, of course, he may intend to use it in a manner which is prohibited.

Despite the fact that no mention of criminal intent or knowledge is contained in the Louisiana narcotics statute, the Supreme Court held in *State v. Nicolosi*[8] that one who is ignorant of the presence of narcotics found in his possession is not guilty of unlawfully possessing narcotics. In *State v. Johnson*,[9] decided on

4. *Id.* 14:54.
5. *Id.* 14:11.
6. *Id.* 14:11.
7. *Id.* 40:962.
8. 228 La. 65, 81 So.2d 771 (1955).
9. 228 La. 317, 82 So.2d 24 (1955), 17 LOUISIANA LAW REVIEW 229 (1956).

the same day as the *Nicolosi* case, it was held that "guilty knowledge is an essential ingredient of the crime of possession of narcotic drugs."[10] Following the *Johnson* case there was speculation as to whether the court meant that knowledge of the fact of possession of the substance would suffice or whether the offender must also know that the substance is a narcotic, in order to be found guilty.[11]

The instant case deals with Subsection B of the Louisiana Narcotics Act[12] which makes (with certain provisos and exceptions not pertinent to this Note) the possession of a hypodermic syringe or needle unlawful. The language of the opinion does not make clear what degree of criminal intent or knowledge the court deems necessary to constitute this crime. In one part of the opinion, the court declares that the defendant had a right "to show that the prohibited articles were in his possession as a result of mistake, accident, or from his own negligence."[13] If the opinion had gone no further than this it would be unclear whether the court meant that in addition to the obvious requirement that he know that he physically possesses the articles the offender must also know that the items are in fact hypodermic syringes or needles. However, the court also states that the defendant was entitled to prove his "good faith," that is, he "was entitled to prove that his intent was anything but that of violating the law."[14] Taken literally, this language would mean that a defendant who possesses the prohibited articles, *knowing them to be hypodermic needles or syringes*, could nevertheless exonerate himself by showing that he was in "good faith" and had no intention of "violating the law." Indeed, this would mean that the state, in order to secure a conviction, would have to prove that defendant *intended to violate the law*. The court also speaks of the requirement of "criminal intent," "guilty knowledge," "evil motive," "knowledge that one possesses unlawfully," and "guilty knowledge of the consequences of the act," and appears to use these expressions interchangeably. Therefore, while the precise extent of criminal intent of guilty knowledge which the court deems necessary is not clear, there can be no doubt that something more than mere awareness of the fact of possession of the articles will be required.

10. 228 La. 317, 334, 82 So.2d 24, 30 (1955).
11. Note, 17 LOUISIANA LAW REVIEW 229 (1956).
12. LA. R.S. 40:962B (1950).
13. State v. Birdsell, 232 La. 725, 731, 95 So.2d 290, 292 (1957).
14. *Ibid.*

The broad statement of the court in the instant case that "no crime can exist without the combination of a criminal act and a criminal intent"[15] is open to serious question. There is a class of acts, sometimes referred to as "civil offenses," which are made criminal without regard to the knowledge or intent of the actor.[16] For example, the statute defining unlawful sales to minors expressly provides that lack of knowledge of the minor's age shall not be a defense.[17] In a scholarly article Professor Sayre has traced the development of this field in England and in the United States.[18] He lists eight general categories of acts which have become "civil offenses" through the action of legislatures and courts.[19] When a statute contains no provision concerning intent or knowledge, the court must determine whether the act alone was intended to constitute the crime, or whether there is an implied requirement of criminal intent or guilty knowledge. It has been suggested[20] that two factors should be considered by the court in determining the probable intention of the legislature in such cases. (1) Where the effectiveness of the statute would be seriously impaired by a requirement of proof that an offender had knowledge of certain facts or intended to use the prohibited articles in a particular manner, it is likely that the legislature did not intend to require such proof. (2) Where the primary purpose of the statute is to protect society rather than to punish

15. *Id.* at 730, 95 So.2d 291.

16. PERKINS, CRIMINAL LAW 692 (1957); Sayre, *Public Welfare Offenses*, 33 COLUM. L. REV. 55 (1933).

17. LA. R.S. 14:91 (1950).

18. Sayre, *Public Welfare Offenses*, 33 COLUM. L. REV. 55 (1933).

19. "The offenses not requiring *mens rea* fall roughly within the following groups:

(1) Illegal sales of intoxicating liquor;
  (a) sales of prohibited beverage;
  (b) sales to minors;
  (c) sales to habitual drunkards;
  (d) sales to Indians [or] other prohibited persons;
  (e) sales by methods prohibited by law;
(2) Sales of impure or adulterated food [or] drugs;
  (a) sales of adulterated or impure milk;
  (b) sales of adulterated butter or oleomargarine;
(3) Sales of misbranded articles;
(4) Violations of anti-narcotic acts;
(5) Criminal nuisances;
  (a) annoyances or injuries to the public health, repose or comfort;
  (b) obstructions of highways;
(6) Violations of traffic regulations;
(7) Violations of motor-vehicle laws;
(8) Violations of general police regulations, passed for the safety, health or well-being of the community."

Professor Sayre documents this outline with extensive citation of cases, *id.* at 94.

20. PERKINS, CRIMINAL LAW 692 (1957); Sayre, *Public Welfare Offenses*, 33 COLUM. L. REV. 55 (1955).

the offender, criminal intent and guilty knowledge have little relevance to the social evil involved and it is not to be presumed that the legislature intended to require such a showing. On the strength of these considerations, it has been suggested[21] that legislatures enacting narcotics laws usually do not intend to require proof even of the knowledge that the substance is a narcotic, and the Federal Narcotics Act[22] and state statutes[23] similar to the Louisiana act have been so interpreted.

If the Louisiana court had taken into account only these two considerations it obviously would have felt compelled to hold that knowledge of the fact of possession alone would suffice. However, the language of the opinion in the instant case rather clearly shows that the court means to require a showing not only of knowledge of fact of possession and identity but also of an intention to use the hypodermic instruments in an unlawful manner. Although the opinion contains no indication of the underlying considerations for the ruling, it is believed that it was influenced by the extreme severity of the penalties imposed upon narcotics violators in Louisiana.[24] It is submitted that this overriding consideration,[25] that of the severity of the penalties, plus the fact that hypodermic instruments may be put to a great num-

21. *Ibid.*

22. United States v. Balint, 258 U.S. 250 (1922).

23. State v. Hinkle, 129 W.Va. 393, 41 S.E.2d 107 (1946); Devine v. State, 206 S.W.2d 247 (Tex. Crim. App. 1947). See other cases collected in Annotation in 39 A.L.R. 249.

24. LA. R.S. 40:981 (1950), as amended Acts 1956, No. 84, § 1. The 1956 Act provides that the penalties shall be as follows:

(1) For conviction of a person over twenty-one of selling, giving, administering or delivering a narcotic drug to a person under twenty-one — imprisonment at hard labor for not less than thirty years nor more than ninety-nine years without the benefit of parole, probation, or suspension of sentence;

(2) For conviction of a person over twenty-one of selling, etc., a narcotic drug to a person over twenty-one — imprisonment at hard labor for not less than ten years nor more than fifty years without benefit of parole, etc.

(3) For conviction of a person under twenty-one of selling, etc., a narcotic drug to any person — imprisonment at hard labor for not less than five years nor more than fifteen years without benefit of parole, etc.

(4) For conviction of manufacturing, possessing, or controlling any narcotic drug, or the violation of any other provisions of the statute — imprisonment at hard labor for not less than five nor more than fifteen years without benefit of parole, etc.

The act also contains special provisions for convicted narcotics addicts who are first offenders.

25. "[S]ome public welfare offenses involve a possible penalty of imprisonment or heavy fine. In such cases it would seem sounder policy to maintain the orthodox requirement of a guilty mind but to shift the burden of proof to the shoulders of the defendant to establish his lack of a guilty intent if he can." Sayre, *Public Welfare Offenses*. 33 COLUM. L. REV. 55, 79 (1933). "[T]he penalty for a civil offense should never be severe. The maximum should be a moderate fine or something of a comparable nature. It should never include imprisonment." PERKINS, CRIMINAL LAW 705 (1957).

ber of harmless and legitimate uses, justifies a requirement of proof that hypodermic instruments were intended to be used in a prohibited manner. The *Nicolosi* and *Johnson* cases contain no indication that in order to be found guilty of unlawful possession of a narcotic drug the possessor must intend to use the drug at all. Whether the ruling and the language of the instant case were intended to apply as well to cases involving possession of narcotic drugs is not clear. As there is very limited legitimate use to be made of narcotics, it is submitted that the court might very well intend to draw a distinction between the possession of hypodermic instruments and the possession of narcotics, and in the latter case to require only a showing that the possessor know that he possessed a narcotic.

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EVIDENCE — PRODUCTION OF DOCUMENTS — RIGHT OF ACCUSED TO INSPECT PRIOR STATEMENTS OF GOVERNMENT WITNESSES

Defendant was convicted in federal district court of falsely swearing that he was not a Communist. On cross examination two government witnesses admitted making oral and written reports to the FBI concerning alleged Communist activities of the defendant. Defendant then moved that the court order production of these reports by the government for inspection and use in impeaching the witnesses. The motion was denied. The court of appeals upheld this denial on the ground that defendant had not laid the necessary foundation of inconsistency between the contents of the reports and the witnesses' testimony. On certiorari to the United States Supreme Court, *held,* reversed and remanded. A foundation of inconsistency is not required for production. It is enough that the specific prior statements, written or orally made, touch the events and activities about which the witnesses have testified. Further, the practice of giving documents to the trial judge for his decision as to their relevancy without first allowing the defendant to see them and present arguments for their production is disapproved. Finally, if the government under a claim of privilege withholds the reports when ordered to produce them, the criminal action should be dismissed. *Jencks v. United States,* 353 U.S. 657 (1957).

In prosecutions involving the question of production by the government of prior statements of its witnesses, the federal