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Criminal Law - Prosecution for Two Crimes Resulting from a Single Criminal Act

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applied.[28] Unless congressional action is taken,[29] it appears likely that the boundaries of state-federal jurisdiction in the control of subversion will be established only through the process of "elucidating litigation."[30]

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CRIMINAL LAW — PROSECUTION FOR TWO CRIMES RESULTING FROM A SINGLE CRIMINAL ACT

Petitioner was convicted of assaulting two federal officers with a deadly weapon in violation of a federal statute which prohibited interference with federal officers engaged in official duties.[1] Evidence showed that petitioner had wounded the two

28. See, *e.g.*, International Association of Machinists v. Gonzales, 356 U.S. 617 (1958); United Construction Workers v. Laburnum Construction Corp., 347 U.S. 656 (1954). In Weber v. Anheuser-Busch, Inc., 348 U.S. 468, 480 (1955), Mr. Justice Frankfurter said: "[T]he areas that have been preempted by federal authority and thereby withdrawn from state power are not susceptible of delimitation by fixed metes and bounds. . . . [T]he Labor Management Relations Act 'leaves much to the states, though Congress has refrained from telling us how much' . . . . [T]his penumbral area can be rendered progressively clear only by the course of litigation." In *International Association of Machinists v. Gonzales*, *supra*, Mr. Justice Frankfurter stated: "The statutory implications concerning what has been taken from the states and what has been left to them are of a Delphic nature, to be translated into concreteness by the process of litigating elucidations." 356 U.S. 617, 619.

29. At the time of this writing, 24 bills to reverse the effect of the *Nelson* decision are pending congressional action. Typical of these proposed are S. 3 and H.R. 3, which propose to reinstate the jurisdiction of the states in dealing with control of subversion. The bills further provide that Congress' intent will not be interpreted as preempting state authority unless that intention is expressly indicated.

30. See note 28 *supra*. The *Nelson* case furnishes some indication of the policy factors which will influence the court in future litigation. "[T]he decision in this case does not . . . limit the jurisdiction of the States where the Constitution and Congress have specifically given them concurrent jurisdiction . . . [or] limit the right of the State to protect itself at any time against sabotage or attempted violence of all kinds. Nor does it prevent the State from prosecuting where the same act constitutes both a federal offense and a state offense under the police power." 350 U.S. 497, 500.

The majority seemed concerned over the possibility that state sedition statutes, if allowed to stand, might unjustly deny to defendants the protection of certain civil liberties. The court specifically mentioned the dangers inherent in a sedition statute which allows a prosecution to be initiated upon a bill of information made by a private individual. *Id.* at 507. The court was also concerned by the lack of protection of "fundamental rights" in several of the state sedition statutes. *Id.* at 508. The possibility of double jeopardy problems arising from concurrent prosecution was also discussed in the opinion. *Id.* at 509-10. These indications of the policy factors to be considered by the court seem to compel the conclusion that state prosecutions initiated as "elucidating litigation" must contain adequate safeguards for civil liberties. *Cf.* Bartkus v. Illinois, 27 U.S.L.W. 4233 (1959).

1. Former 18 U.S.C. § 254 (1940) provided: "Whoever shall forcibly resist, oppose, impede, intimidate, or interfere with any person [a federal officer] designated in section 253 . . . while engaged in the performance of his official duties,

officers with one blast from a shotgun. He was convicted for two assaults and given a ten-year sentence for each, the sentences to run consecutively. Upon completion of the first ten-year sentence petitioner moved to eliminate the second, claiming that since there was but one act on his part he was guilty of but one assault within the meaning of the statute. The United States Supreme Court on certiorari *held*, Congress did not intend a single wrongful act to constitute more than one offense under the statute, regardless of the number of victims. The single discharge of the shotgun constituted but one offense even though two persons were injured. *Ladner v. United States*, 3 L.Ed.2d 199 (1958).

A serious problem as to the extent of the offender's criminal liability arises when he kills or injures more than one person by a single act[2] — as where several persons die or are injured as the result of negligence causing a single automobile collision.[3] Such situations are not to be confused with those in which several deaths or injuries result from a sequence of separate criminal acts occurring in one affray.[4] The majority of the states follow the rule that in circumstances where, under a single statutory prohibition, plural criminal consequences result from a single act there is in the eyes of the law but one crime.[5] The states which adhere to this position urge various justifications. The most prevalent is that whatever the number of persons killed or injured by the single wrongful act there is still but one injury to the state.[6] In other words since it is the state who is the in-

or shall assault him on account of the performance of his official duties, shall be . . . imprisoned not more than three years; . . . and whoever, in the commission of any of the acts described in this section, shall use a deadly or dangerous weapon shall be . . . imprisoned not more then ten years."

18 U.S.C. § 111 (1948), the present recodification of Section 254, combines assault in with the rest of the offensive actions. It now provides: "Whoever forcibly assaults, resists, opposes, impedes, intimidates, or interferes with" any designated federal officer "while engaged in or on account of the performance of his official duties" commits a crime.

2. See People v. Vitale, 364 Ill. 589, 5 N.E.2d 474 (1936); Clem v. State, 42 Ind. 420 (1873); Berry v. State, 195 Miss. 899, 16 So.2d 629 (1944); Sadberry v. State, 39 Tex. Crim. 466, 46 S.W. 639 (1898).

3. See State v. Wheelock, 216 Iowa 1428, 250 N.W. 617 (1933); State v. Fredlund, 200 Minn. 44, 273 N.W. 353 (1937).

4. When a person commits several crimes at the same time or in inmmediate, consecutive order while carrying out a single criminal design, then each crime is considered to have occurred in a single transaction. Thus there is the possibility of having several distinct crimes resulting from several distinct acts even though there is but one transaction. For a good discussion see Annot., 20 A.L.R. 341 (1922).

5. For a discussion which gives the cases decided by each state on the problem, see Annot., 113 A.L.R. 222 (1938).

6. See Commonwealth v. Veley, 63 Pa. 489 (1916); Sadberry v. State, 39 Tex. Crim. 466, 46 S.W. 639 (1898); State v. Damon, 2 Tyler 387 (Vt. 1803).

jured party in a criminal prosecution because its law has been breached, there is but one breach of the statute and thus only one injury when there is a single act. Another group of states draw a distinction between a single intent of the offender as opposed to a so-called "plural intent." This plural intent is an intent on the part of an offender to injure *more than one person.*[7] According to this theory the number of crimes will correspond to the number of persons intended to be injured.[8] A third theory stresses the idea that there must be complete "identity of the offense" and not merely of the act.[9] Under this view there are multiple crimes where several persons are killed or injured since the evidence of the crime is not identical in that the victims are not the same. Thus when two or more persons are killed or injured, though it be by a single act, the number of crimes corresponds to the number of victims.[10] As one writer aptly states, these courts refuse to "put a bargain rate on multiple killings."[11]

In the instant case the Supreme Court of the United States declared: "There is no constitutional issue presented"[12] and rendered its decision on the construction of the criminal statute involved. The decision followed the majority rule and was based on two theories. First, in enacting the statute the congressional intent was to prevent hinderance to the execution of official duty and one act of hinderance could constitute only one violation of the statute no matter how many federal officers were involved.[13]

7. For example, in State v. Wheelock, 216 Iowa 1428, 250 N.W. 617 (1933), the court was of the opinion that the divergence of authority as to whether more than one crime results from a single act is due to the question of whether the intent of the perpetrator is single or plural. They held where it is single there can be but one crime resulting from one act. Thus, in cases where criminal negligence is involved there could be but one offense regardless of the number of victims. See also Annot., 13 A.L.R. 222 (1938).

8. Using this theory cases such as Sadberry v. State, 39 Tex. Crim. 466, 46 S.W. 639 (1898), would have to be decided differently because there the defendant fired upon four men with a shotgun intending to, and succeeding in, wounding all four, but the court held there was but one offense because there was but one act. Using the distinction between single and plural intent there would have been four offenses although but one act.

9. See Commonwealth v. Browning, 146 Ky. 770, 143 S.W. 407 (1912); State v. Fredlund, 200 Minn. 44, 273 N.W. 353 (1937); Jeppesen v. State, 154 Neb. 765, 49 N.W.2d 611 (1951).

10. See Berry v. State, 195 Miss. 899, 16 So.2d 629 (1944); Fay v. State, 62 Okla. Crim. 350, 71 P.2d 768 (1937); Lawrence v. Commonwealth, 181 Va. 582, 26 S.E.2d 54 (1943).

11. Perkins, citing State v. Fredlund, 200 Minn. 44, 273 N.W. 353 (1937), where separate prosecutions were allowed for the deaths of each of two victims in a traffic accident. See *The Work of the Louisiana Supreme Court for the 1953-1954 Term — Criminal Law and Procedure*, 15 LOUISIANA LAW REVIEW 358, 360 (1955).

12. 3 L.Ed.2d 199, 203 (U.S. 1958).

13. *Id.* at 204.

This is a rephrasing of the theory that where there is a criminal prosecution the state is the injured party and one act can give rise to but one injury to the state no matter the number of victims. Secondly, the court stressed policy considerations: To say there are as many crimes as there are victims could result in punishments totally disproportionate to the act. The Court illustrates this by pointing out that if a person "points a gun at five officers, putting all of them in apprehension of harm, he would commit five offenses punishable by 50 years imprisonment even though he does not fire the gun and no officer actually suffers injury."[14]

Thus the decision results in large measure from weighing the alternatives and applying the one that would produce the most desirable results. It is true that this position will eliminate the possibility of having penalties that are theoretically out of proportion to the act charged and also of placing a person in jeopardy numerous times when there is but one act involved. On the other hand the position taken apparently allows "a bargain rate to be placed on multiple killings." Seemingly unjust results could be reached by carrying either view to its fullest extent.

In Louisiana no case has squarely presented the issue of the instant case and the few dictum statements in point are contradictory. In *State v. Batson*[15] the court upheld an indictment which charged the murder of six persons in one count[16] on the theory that even though a single criminal act may operate upon more than one person or thing, nevertheless, so long as it is one act, consummated at one time, it may be charged as one offense.[17] Apparently this is in line with the majority position that where there is but one act there can be but one crime. However, in the recent case of *State v. McDonald*,[18] where the accused was charged with two crimes when he killed two persons in a single automobile collision, the court by way of dictum stated: "the killing of each person was a separate homicide, a separate crime."[19] The cases cited by the court as supporting this rule

14. *Id.* at 205.

15. 108 La. 479, 32 So. 478 (1902).

16. The problem arose in the *Batson* case as one of joinder because the defendant claimed a faulty indictment in that the murder of each person should have been charged in a separate count, because the killing of each was a separate crime.

17. *Id.* at 481, 32 So. at 479.

18. 224 La. 555, 70 So.2d 123 (1953).

19. *Id.* at 562, 70 So.2d at 125. The defendant had been indicted separately for the death of each person, but had been tried under but one of the bills of in-

are readily distinguishable since they were dealing with situations in which the injuries, while arising out of a single transaction had resulted from separate acts.[20] When the court is faced squarely with the problem it may be that the distinction between a single and plural intent of the offender may prove a practical one. It empowers the courts to deal harshly with the offender who intends multiple injuries or deaths, but would not authorize cumulative penalties for the offender who did not intend to cause more than one injury or death.

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CRIMINAL LAW — THEFT — A CAUSE OF ACTION NOT A THING OF VALUE

Defendant attorney was indicted for theft of a twenty percent interest in a cause of action. The theft was alleged to have been committed by the use of fraudulent conduct, practices, and representations in inducing the complainant to sign a contingency fee contract. The contract, which the defendant recorded and caused to be served on all parties concerned, contained a provision transferring an interest in the cause to the accused. It also provided that neither the client nor the defendant could "settle, compromise, release, or otherwise dispose of" the claim without the written consent of the other.[1] The district court sustained a motion to quash the indictment. On appeal to the Supreme Court, *held,* affirmed. A cause of action has only a potential value, thus it is not a thing of value within the requirement of the theft article.[2] *State v. Picou,* 107 So.2d 691 (La. 1958).

formation. The court decided that his objection was premature regardless of the question of whether a person can be charged with more than one crime when there has been but one act.

20. The court cited State v. Cannon, 185 La. 395, 169 So. 446 (1936), where the accused killed two women at the same time and place in "one continuous transaction" but the homicide did not result from a single act. They also relied on State v. Montcrieffe, 165 La. 296, 115 So. 493 (1928), where there was burglary followed by larcency involving two separate and distinct acts.

1. This provision was apparently written into the contract pursuant to the provisions of LA. R.S. 37:218 (1950).

2. The court also held that the indictment failed to allege an intent permanently to deprive the complainant of part of his cause of action on the date the contract was entered into. The rationale was that while the theft was alleged in the indictment to have occurred when the fraudulent conduct was used to procure the contract, the bill of particulars alleged that the intent permanently to deprive arose when the contract was recorded, which was 14 days after the alleged theft. The majority further reasoned that recordation of the contract could not change