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# Criminal Law - Indictments and Information - Sufficiency of Uniform Traffic Ticket as an Information

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In 1945 a California court upheld a curfew ordinance which made it a crime for any parent, guardian or other person having custody and control of any minor under 18 years of age to permit such minor to "remain" or "loiter" upon the streets or public places between the hours of 9 P. M. and 4 A. M.[7] It is interesting to note that the above ordinance originally made it a crime to allow a minor under 16 to "remain, stroll upon, use, loiter on or be upon any street . . ." etc. and that it was amended to read "remain" or "loiter" so as to narrow its purview.

A perusal of curfew ordinances enacted in several of the larger cities in North Dakota may serve to illustrate both desirable and undesirable features of such ordinances. One of the ordinances conspicuously fails to designate the hour of the day at which the minor may again depart from his dwelling.[8] Some ordinances provide for exceptions for emergency or necessity situations[9] but others do not.[10] None of the ordinances studied apply if the minor is in the presence of his parents or guardian,[11] or if the minor is engaged in a lawful trade or occupation.[12] In none of the ordinances examined is an exception provided for a minor who is married or who is otherwise emancipated from his parents.[13]

It is submitted that to satisfy both legal and practical considerations the ordinance should provide exceptions if the minor is engaged in a lawful occupation, if he is on an emergency errand or one directed by his parents or guardian,[14] if the minor is married[15] or otherwise emancipated, or if he can show reasonable cause as to why the ordinance should not apply.[16] The more recent ordinances prohibit merely loitering in lieu of total exclusion.[17] City attorneys indicate that in most jurisdictions curfew ordinances may be justified as an exercise of the police power; however, the ordinance must be both reasonable and carefully drawn.[18]

JOHN M. ORBAN.

CRIMINAL LAW — INDICTMENTS AND INFORMATION — SUFFICIENCY OF UNIFORM TRAFFIC TICKET AS AN INFORMATION. — Defendant was issued a uniform traffic ticket which required him to appear the following day before a police justice. The defendant, on his plea of guilty, was convicted of operating a motor vehicle while intoxicated. The Court of Appeals of New York

valid.); Mayor of Memphis v. Winfield, 27 Tenn. (8 Humph.) 706 (1848) (Ordinance to keep Negroes off the streets after 10 P.M. held invalid.).

7. People v. Walton, 70 Cal. App. 2d 862, 161 P.2d 498 (1945).

8. See Grand Forks Revised Ordinances, c. IX, art. 1, (1948).

9. See Fargo Revised Ordinances, c. X, art. 1 (1952); Jamestown, ordinance 141, § 1 (1953).

10. See Dickinson, ordinance 261, § 3 (1956); Grand Forks Revised Ordinances, c. IX, art. 1 (1948). See also Bismarck, ordinance 476, § 1 (1935); Devils Lake, ordinance 359, § 1 (1953)

11. *Ibid;* Fargo Revised Ordinances, c. X, art. 1 (1952); Jamestown, ordinance 141, § 1 (1953).

12. Dickinson is an exception. See ordinance 261, § 3 (1956).

13. Another facet of curfew ordinances but beyond the province of this case is the culpability of parents or guardians if the minor violates the ordinance. Some ordinances make the parent or guardian responsible whether they have knowledge of the violation or not. Others employ what is considered to be the sounder approach, making the parents or guardians responsible only if they knowingly permit the ordinance violation.

14. See American Municipal Association, Curfew Ordinances, p. 2 (1948).

15. See Florida Children's Commission, Reports on Curfew Laws (1956).

16. See Albert Lea, Minn., ordinance 1293, § 1 (1955).

17. See American Municipal Association, Curfew Ordinances, p. 2, (1948).

18. See *op. cit. supra.*, n. 18.

*held,* three justices dissenting, that a uniform traffic ticket is not a sufficient information to be used as a pleading, and that the absence of a verified information was a jurisdictional defect which was not waived by a plea of guilty. *People v. Scott,* 3 N.Y.2d 148, 143 N.E.2d 901 (1957).

The office of an information is not only to give the court jurisdiction, but it is also the pleading by the state which: informs the defendant of the charge against him,[1] enables the defendant to prepare for trial, and protects the accused from being tried a second time for the same offense.[2] At common law all proceedings of a criminal or quasi-criminal nature, except contempt proceedings, had to be initiated by an information.[3]

The express issue considered in the present case was the determination of whether the uniform traffic ticket met the requirements of an information. Research fails to reveal any other case where this question has been decided by the supreme tribunal of any state;[4] however, one authority in this field indicates that the preparation of a formal information is required to initiate an action for a motor vehicle offense.[5]

Advocates of the uniform traffic ticket take the position that it informs the violator of the exact nature of the violation charged and further that it acquaints the public with the kind of unsafe maneuvers which result in accidents.[6] The dissenting justices in the instant case view a traffic ticket as performing a duel function of a summons, which notifies the defendant to appear in court, and a complaint which informs the accused in full detail as to what he is charged with doing, or failing to do, contrary to law.[7] Thus, it is apparent that two of the requirements for a valid information have been complied with, but no mention is made as to whether or not the requirement of protection from double jeopardy is met.

The majority of the court in the principal case hold that a traffic ticket serves as a mere notification to the accused to appear in a given court on a given day at which time and place he will be charged with a specific crime.[8]

A recent lower court decision in North Dakota is in accord with the principle case.[9] In that case, the court refused to permit a traffic ticket to suffice

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1. See, *e.g.,* N.D. Rev. Code § 29-0113 (1943). See also People v. Gade, 6 N.Y.S.2d 1018 (City Ct. 1938); Snapp v. State, 2 Okla. Crim. 515, 103 Pac. 553 (1909); People v. Jacoby, 304 N.Y. 33, 105 N.E.2d 613, 618 (1952) (dissent).

2. People v. Schulz, 301 N.Y. 495, 95 N.E.2d 815 (1950); People v. Zambounis, 251 N.Y. 94, 167 N.E. 183 (1929). In State v. Tjaden, 69 N.W.2d 272 (N.D. 1955) the court stated that one test of the sufficiency of an information is whether it will protect the accused against a subsequent prosecution for the same offense.

3. 8 Blashfield, Cyclopedia of Automobile Law and Practice, §5427 (1950).

4. This is no doubt due to the fact that the amount involved is not great enough to warrant appeal to a court whose opinions are published.

5. This topic is given very extensive coverage in 8 Blashfield, Cyclopedia of Automobile Law and Practice, § 5422 and § 5431 (1950). However, in Yunker v. Quillin, 202 Ore. 362, 275 P.2d 240 (1954) a traffic ticket did suffice as an information for a traffic violation because of an express statutory provision.

6. 41 A.B.A.J. 869 (1955).

7. People v. Scott, 3 N.Y.2d 148, 143 N.E.2d 901, 905 (1957). It is interesting to note that New York has sought to escape the rigors of statutory formality in criminal proceedings for motor vehicle violations by express statutory provision which provides that all violations of the vehicle and traffic law were "traffic infractions" and not crimes unless expressly declared felonies or misdemeanors. This was to prevent the stigma of criminality which attached to a conviction of one of these trivial offenses. See 57 Colum. L. Rev. 441 (1957). The court was permitted to deviate, on the basis of the statute, from the regular procedure as the traffic infraction was not a crime in Lea v. MacDuff, 205 Misc. 24, 126 N.Y.S.2d 646 (Sup. Ct. 1953).

8. People v. Scott, 3 N.Y.2d 148, 143 N.E.2d 901 (1957).

9. State v. Trygg, (Dist. Ct., 4th Jud. Dist., N.D. 1957) Reported in 34 N. Dak. L. Rev. 84 (1958). Another aspect of North Dakota law on this subject is section 113

as an information in a criminal proceeding for a reckless driving charge because statutory procedure had not been followed. The court further indicated that such a ticket would not even suffice as a summons.[10]

No doubt the volume of motor vehicle violations necessitates expeditious disposition of offenders, but it is submitted that such a situation does not justify circumvention of the rights of the accused by eliminating the established statutory procedure. There is possibly a present need to amend the existing statutory procedure, but until the legislature enacts such statutes the courts are under a duty to administer the procedure that has been adopted and is currently in force.

DENNIS M. SOBOLIK.

DIVORCE — PROPERTY SETTLEMENT AGREEMENT — ALIMONY OR JUDGMENT DEBT REGARDING IMPRISONMENT FOR CONTEMPT. — Parties contemplating a divorce entered into a property settlement agreement which was adopted and made part of the divorce decree. The husband's failure to abide by the agreement led to a contempt proceeding. The Supreme Court of California, one justice dissenting, *held* that the payments due under the agreement constituted an adjustment of property interests, rather than alimony, support, or maintenance,[1] and therefore was a "debt" within the constitutional prohibition against imprisonment for debt.[2] *Bradley v. Superior Court of California*, 48 Cal. 2d___, 310 P.2d 634 (1957).

Contempt proceedings for failure to comply with a court order, brought about through property settlements which have been crystallized in the divorce decree, have led to many irreconcilable conflicts.[3] The determinative factor is whether the agreement is a substitute for alimony or support,[4] or is merely in the nature of a settlement or division of the property rights of the parties.

The more generally prevailing view is that decrees requiring compliance with a property settlement agreement are not alimony and therefore not enforceable by contempt proceedings.[5] The proponents of this view believe that

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of the N. D. Const. which provides that all prosecutions in police magistrates and justice of the peace courts shall proceed by way of information. *Compare*, § 29-0101 of the N. D. Rev. Code of 1943 which states that every public offense must be prosecuted by information or indictment unless it is one in which trial may be had in justice, police, or county court.

10. State v. Trygg, (Dist. Ct., 4th Jud. Dist., N. D. 1957). The court stated that "when a document, such as this one is, bears a semblance of a legal document and purports to be issued pursuant to law . . . even though such document may not be actually a legally sufficient document, it is a simulation of a legal document which would be sufficient to the ordinary citizen to indicate that his attendance had been legally required".

1. *Ex parte* Stephensen, 252 Ala. 316, 40 So. 2d 716 (1949); Application of Martin, 76 Idaho 199, 279 P.2d 873 (1955); Clubb v. Clubb, 334 Ill. App. 599, 80 N.E.2d 94 (1948); Wojahn v. Halter, 229 Minn. 374, 39 N.W.2d 545 (1949) (It is generally agreed that alimony and child support payments do not constitute a debt within the constitutional prohibition against imprisonment for debt).

2. Calif. Const., art I, § 15.

3. 2 Nelson, Divorce and Annulment, (2d ed. 1945) § 16.08.

4. Lyon v. Lyon, 21 Conn. 184 (1851); State *ex rel* Cook v. Cook, 66 Ohio St. 566, 64 N.E. 567 (1902); West v. West, 126 Va. 696, 101 S.E. 876 (1920) (Takes view that alimony is itself an adjustment of property rights).

5. Buchman v. Buchman, 157 Md. 166, 145 Atl. 488 (1929); Frohnapel v. Frohnapel, 309 Mich. 215, 15 N.W.2d 137 (1944); Goldfish v. Goldfish, 184 N.Y.Supp. 512, 193 App.Div. 686 (1st Dept. 1920) *Aff'd* 230 N.Y. 607, 130 N.E. 912 (1921). *But see* Edmundson v. Edmundson, 222 N.C. 181, 22 S.E.2d 576 (1942).