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Criminal Law—Alcoholic Content of Drink Subject of Circumstantial Proof

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The Court of Appeals rejected this theory of the extortionist having to create the fear. So long as a fear existed in the minds of the prospective victims, and the defendants used that pre-existing fear to extort tribute, the jury could find the necessary ingredients of extortion. Whether these defendants were in fact union officials, and whether they did in fact form and control the pickets were immaterial, as long as the jury was warranted in finding that the defendants professed to the employer of their control over the picketing, and that the employer was reasonable in believing the defendants.[52] It is true that in this action, if necessary, the jury could have found actual control over the picketing by the defendants, for before any money was paid, the picketing ceased, and such control to end the picketing indicates the power to continue it.

The defendants also argued that the crime committed was not extortion, but bribery of a labor representative, which is a felony under New York law.[53] The essence of bribery is voluntary giving, and the essence of extortion is giving under duress.[54] The two crimes are mutually exclusive, for succumbing to extortion is not a crime; whereas, succumbing to bribery is. The jury was charged that if it believed, as the defendants argued, that Kerin was guilty of bribery, then the defendants could not be guilty of extortion.[55] The determination of this isuue is solely a question of fact, and it cannot be said that, as a matter of law, the jury could not possibly find the defendants guilty of extortion.

ALCOHOLIC CONTENT OF DRINK SUBJECT OF CIRCUMSTANTIAL PROOF

In *People v. Leonard*[56] the State charged defendant, the proprietor of a tavern, with causing an alcoholic beverage to be served to a boy under eighteen.[57] Defendant was convicted by a Court of Special Sessions, after a jury trial, but such conviction was reversed by the County Court. The Court of Appeals reversed the County Court.

Defendant's employee took the boy's order which was for rye and ginger ale. Defendant, who was tending bar, made a drink and defendant's employee then served it to the boy. He tasted the drink but did not testify as to what it contained. The boy had with him three companions, all under eighteen, who also allegedly ordered alcoholic beverages but their presence was not of significance because the crime charged was for serving only the one boy.

52. United States v. Varlack, 225 F.2d 665 (2d Cir. 1955); Callahan v. United States, 223 F.2d 171 (8th Cir. 1955), cert. denied 350 U.S. 862 (1955).

53. N.Y. Penal Law § 380.

54. Horstein v. Paramount Pictures, 22 Misc. 2d 996, 37 N.Y.S.2d 404 (Sup. Ct. 1942), aff'd 226 App. Div. 659, 41 N.Y.S.2d 210 (1st Dep't 1943), aff'd 292 N.Y. 468, 55 N.E.2d 740 (1942).

55. People v. Feld, 262 App. Div. 909, 28 N.Y.S.2d 796 (2d Dep't 1941).

56. 8 N.Y.2d 60, 201 N.Y.S.2d 509 (1960).

57. N.Y. Alcoholic Beverage Control Law § 65(1):
No person shall sell, deliver or give away or cause or permit or procure to be sold, delivered or given away any alcoholic beverages to (1). Any minor actually or apparently, under the age of eighteen years; . . . .

The fact that the drink was referred to as rye and ginger ale was, by itself, sufficient to give the State a prima facie case. To get to the jury the State did not have to offer direct evidence that the drink was alcoholic. "The courts have noted as a matter of common knowledge that drinks of certain names and descriptions are alcoholic beverages within the meaning of regulatory statutes."[58] Thus, when a customer uses the common words rye and ginger ale in ordering a drink, the jury may presume, absent contrary proof, that such a drink contains alcohol. The prosecution need not offer chemical proof of alcohol.

The Court also reinforced two rules already firmly entrenched in New York law. First, provided his guilt is established beyond a reasonable doubt, a defendant may be convicted of a crime by mere circumstantial evidence as was the evidence in this case. Second, strict liability results from breach of the statutory duty not to serve or cause to be served alcoholic beverages to persons under eighteen. The intent or negligence of defendant is irrelevant.

CORROBORATION OF COMPLAINING WITNESS IN SEX CRIMES

Section 2013 of the New York Penal Law provides that no conviction can be had for rape or defilement upon the testimony of the female defiled, unsupported by other evidence. The rule requiring other corroborating evidence is of common law origin,[59] and based on the rationale that acts of rape or defilement are easily charged and difficult to disprove in view of the instinctive horror with which mankind regards them.[60] There is no such statutory requirement for a conviction of impairment of the morals of a minor.

In *People v. Lo Verde*,[61] the defendant was indicted on counts of first degree rape,[62] assault with intent to commit rape,[63] and endangering the health and morals of a 15-year-old minor.[64] The assault count was dismissed, on consent, at the close of the People's case and the jury acquitted the defendant of the first degree rape charge. He was found guilty under the third count which charged him with "causing and permitting said minor to be placed in such a situation that her morals were likely to be impaired, in that said de-

58. Supra note 56 at 62, 201 N.Y.S.2d 511 (1960).
59. People v. Friedman, 139 App. Div. 795, 124 N.Y. Supp. 521 (2d Dep't 1910).
60. Professor Wigmore would go even farther and require the female to be examined by psychiatrists in order to determine her credulity as a witness.

> Modern psychiatrists have amply studied the behavior of errant young girls and women coming before the courts in all sorts of cases. Their psychic complexes are multifarious, distorted partly by inherent defects, partly by bad social environment, partly by temporary psychological or emotional conditions. One form taken by these complexes is that of contriving false charges of sexual offenses by men. On the surface the narration of these offenses is straightforward and convincing. The real victim, however, too often in such cases is the innocent man. 3 Wigmore, Evidence 463 (3d ed. 1940).

61. 7 N.Y.2d 114, 195 N.Y.S.2d 835 (1959).
62. N.Y. Penal Law § 2010.
63. N.Y. Penal Law § 242.
64. N.Y. Penal Law § 483.