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Criminal Law—Corroboration of Complaining Witness in Sex Crimes

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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.

fendant did then and there perpetrate an act of sexual intercourse with said child.”

Since the defendant was under 21 and the complainant under 18 years of age, and the only act or conduct likely to impair the morals of this infant, which was either alleged or proven, was the single act of intercourse, the crime charged necessarily amounted to a misdemeanor rape.⁶⁵ The Court of Appeals reversed the conviction and ordered a new trial on the ground that the jury was erroneously instructed that corroboration was not necessary to support a conviction of impairment of the morals of a minor. The majority held that a prosecutor may not circumvent the requirement of corroboration necessary for conviction of misdemeanor rape simply by charging instead the impairment of the morals of a minor.

The dissent argued that the crime of rape and endangering the health and morals of a minor are separate offenses and there being no statute requiring corroborative evidence to support a conviction for the latter offense the Court should not read in such a requirement.

In order to support a conviction for impairment of the morals of a minor there need be no criminal nor malicious intent⁶⁶ and the consent of the child is immaterial.⁶⁷ A co-defendant of Lo Verde, who acted as lookout and drove the car in which the intercourse took place, was convicted of impairment of the morals of a minor. He did not appeal the conviction.

This case would seem to indicate that *any* conviction, based on uncorroborated evidence, must fail where *only* rape or defilement is proven, but will be sustained, regardless of corroboration, if the crime proven can stand independent of the proof necessary for a conviction of rape or defilement. This somewhat anomalous result is justified on the ground that it is doubtful the Legislature intended the statute to serve as a “catch-all” violation to prevent the acquittal of a defendant where the necessary corroboration is lacking.

MAXIMUM SPEED LIMIT IN ABSENCE OF MARKINGS

Defendant, convicted of speeding over fifty m.p.h. under then New York Vehicle and Traffic Law Section 56(3)⁶⁸ by a Justice of the Peace, obtained a reversal in County Court, Orange County. On appeal the Court of Appeals in *People v. Shapiro*,⁶⁹ reversed the County Court and upheld the validity of the Section under which the conviction was obtained. The pertinent part of Section 56(3) provides:

65. N.Y. Penal Law § 2010:

A person who perpetrates an act of sexual intercourse with a female, not his wife, under the age of 18 years, under circumstances not amounting to rape in the first degree or rape in the second degree is guilty of a misdemeanor.

66. *People v. Caminiti*, — Misc. —, 28 N.Y.S.2d 133 (City Ct. 1941).

67. *People v. Gibson*, 232 N.Y. 458, 134 N.E. 531 (1922).

68. Now N.Y. Vehicle and Traffic Law §§ 1180(2), 1620.

69. 7 N.Y.2d 370, 197 N.Y.S.2d 715 (1960).