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Criminal Law—Possession of Materials Used in the Policy Game

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jury centered on the charges as to felony murder, and that defendant's life depended upon the jury's proper understanding of the elements of the crime,⁷³ "a mere offer to reread the principal charge—although it was correct—would be of little help to a perplexed jury . . . This is so, even though the foreman later stated that it was not necessary to repeat the charge."

Thus we see, once again, that when a deliberating jury requests information pertaining to a vital point, a response that fails to provide a proper answer is reversible error—and a trial court's offer to reread the entire charge is not a proper answer.

SUFFICIENCY OF INDICTMENT FOR RECKLESS DRIVING

It is well settled that an indictment must apprise a defendant of every material element of the crime charged.⁷⁴ An indispensable element of the crime of reckless driving is that the defendant's driving had unreasonably interfered with the use of the highway.⁷⁵ In *People v. Armlin*⁷⁶ defendant was charged with reckless driving under an indictment which did not allege that he unreasonably interfered with the use of the highway, but which did allege that he drove his vehicle across the center line of the highway into the path of an approaching vehicle without any warning and at a high rate of speed, in violation of the statute forbidding reckless driving.

The defendant contended that the indictment failed to charge him with unreasonable interference with the use of the highway.

Reinstating the conviction, the Court of Appeals held that the indictment need not in terms charge that defendant acted unreasonably if it describes an act which constitutes unreasonable interference.⁷⁷ It is only when the indictment neither charges unreasonableness nor describes an act which is unreasonable that a defendant can complain that he has not been informed of that element of the crime.⁷⁸

Since the purpose of the rule is to enable a defendant to prepare his defense, a defendant can hardly claim surprise when all the elements of the crime charged are descriptively detailed in the indictment, and the statute availed of by the State is made known to him.

POSSESSION OF MATERIALS USED IN THE POLICY GAME

Section 974 of the New York Penal Law forbids knowingly possessing any article of any kind commonly used in promoting the policy game.⁷⁹ In *People*

73. *People v. Flynn*, 290 N.Y. 220, 48 N.E.2d 495 (1943).

74. *People v. Allen*, 5 Denio (N.Y.) 76 (1847); *Dedieu v. People*, 22 N.Y. 178 (1860); *People v. Santoro*, 229 N.Y. 277, 128 N.E. 234 (1920). Cf. *dicta* in *People v. Miller*, 143 App. Div. 251, 128 N.Y. Supp. 549 (1st Dep't 1911); *People v. Colburn*, 162 App. Div. 651, 147 N.Y. Supp. 689 (2d Dep't 1911).

75. N.Y. TRAFFIC & VEHICLE LAW § 58.

76. 6 N.Y.2d 231, 189 N.Y.S.2d 179 (1959).

77. N.Y. CODE CRIM. PROC. § 283, § 285.

78. *People v. Sas*, 172 Misc. 845, 16 N.Y.S.2d 380 (County Ct. 1939); *People v. Wojcinski*, 5 Misc. 2d 292, 159 N.Y.S.2d 539 (County Ct. 1957).

79. N.Y. PEN. LAW § 974.

*v. Lalli*⁸⁰ the Court of Appeals held that the possession of "dream books" and "tip-sheets," which policy game devotees resort to in their search for winning numbers, does not constitute possession of articles commonly used in promoting the policy game.

The statute is plainly broad in scope: it forbids the possession of any article used in carrying on, promoting or playing the game. However, the process of judicial construction has effectively limited its scope, so that it is now directed at only the activities of those persons directly involved in the game—operators, entrepreneurs, and players.⁸¹ Moreover, the articles possessed must be the actual tools required in the operation of the game.⁸² The Court in the present case, reversed the convictions because the sale of such guidebooks is only indirectly connected with the game, and because the guidebooks are not required to carry on the game.

The fact remains, however, that such guidebooks are sold only because the game exists, and such books encourage persons to play by aiding them in selecting winning numbers. Any activity which is intended to and does encourage the game promotes the very evil sought to be curbed.

CONVICTION FOR SABBATH BREAKING UPHOLD

Article 192 of the Penal Law contains a number of statutory offenses known as the Sabbath Laws, which are designed to protect the religious repose on Sundays.⁸³ The sections in this Article indicate in detail those acts which are prohibited on Sunday. Section 2147 prohibits the sale of any property on Sunday, with certain enumerated exceptions. The sale of gravestones and cemetery monuments is not within these exceptions. For this reason the Court of Appeals upheld a conviction for such a sale in *People v. Kupprat*.⁸⁴ The defendant argued that his acts did not actually disturb the repose and for that reason his conviction should not stand. Actual disturbance is not, however, the standard which the legislature has laid down for sabbath breaking.⁸⁵ Since the legislature has laid down in detail those acts prohibited, it is not the place of the courts to substitute a different and general standard.

A person . . . who shall have in his possession, knowingly, . . . any paper, print, writing, number, device, policy slip, or article of any kind such as is commonly used in carrying on, promoting or playing the game commonly called "policy," . . . or who aids, assists, or abets in any manner, in any of the offenses, acts or matters herein named, is a common gambler, and guilty of a misdemeanor.

80. 5 N.Y.2d 536, 186 N.Y.S.2d 262 (1959).

81. *People v. Hines*, 284 N.Y. 93, 29 N.E.2d 483 (1940); *People v. Wolosky*, 296 N.Y. 236, 72 N.E.2d 172 (1947); *People v. Engeman*, 129 App. Div. 462, 114 N.Y. Supp. 174 (2d Dep't 1908).

82. *People v. Adams*, 176 N.Y. 351, 68 N.E. 636, *aff'd* 192 U.S. 585 (1903).

83. N.Y. PEN. LAW §§ 2140-2154.

84. 6 N.Y.2d 88, 188 N.Y.S.2d 483 (1959), *reversing* 7 A.D.2d 739, 180 N.Y.S.2d 628 (2d Dep't 1958).

85. *People v. East Coast Attic & Basement Co.*, 4 N.Y.2d 954, 175 N.Y.S.2d 825 *affirming* 10 Misc. 2d 378, 174 N.Y.S.2d 789 (County Ct. 1958); *People v. Moses*, 140 N.Y. 214, 35 N.E. 499 (1893); *People v. Joyce*, 174 App. Div. 574, 161 N.Y. Supp. 771 (3d Dep't 1916).