

10-1-1958

## Criminal Law—Insufficiency of Information Which Did Not State Sources and Grounds of Belief

Buffalo Law Review

Follow this and additional works at: <https://digitalcommons.law.buffalo.edu/buffalolawreview>



Part of the [Criminal Procedure Commons](#)

---

### Recommended Citation

Buffalo Law Review, *Criminal Law—Insufficiency of Information Which Did Not State Sources and Grounds of Belief*, 8 Buff. L. Rev. 117 (1958).

Available at: <https://digitalcommons.law.buffalo.edu/buffalolawreview/vol8/iss1/60>

This The Court of Appeals Term is brought to you for free and open access by the Law Journals at Digital Commons @ University at Buffalo School of Law. It has been accepted for inclusion in Buffalo Law Review by an authorized editor of Digital Commons @ University at Buffalo School of Law. For more information, please contact [lawscholar@buffalo.edu](mailto:lawscholar@buffalo.edu).

## COURT OF APPEALS, 1957 TERM

### Insufficiency of Information Which Did Not State Sources and Grounds of Belief

The Code of Criminal Procedure defines an information as an "allegation made to a magistrate that a person has been guilty of some designated crime."<sup>65</sup> Where a defendant is charged with a misdemeanor an information is required.<sup>66</sup> The information must be verified<sup>67</sup> and in writing.<sup>68</sup> The Court of Appeals has now held (4-3) that an information used solely as a pleading must be based on competent legal evidence, supported by depositions, or, at least, state the sources of the information and grounds of the belief on which it is based.

In *People v. James*,<sup>69</sup> the defendant, after submitting to an illegal arrest, pleaded guilty to the unlicensed sale of alcoholic beverages.<sup>70</sup> The County Court reversed the conviction,<sup>71</sup> and at the trial the defendant reasonably moved for dismissal of the information on the ground that it was based on information and belief but did not state the sources and grounds of the belief and thus was legally insufficient even though used solely as a pleading and not as a basis for the issuance of a warrant of arrest. After denial of the motion, the District Attorney submitted to the court two written statements signed by his informants said to be the basis of the oral statements referred to in the information.

The Court held that the information was inadequate and that the defendant's motion should have been granted. In order to protect the defendant from baseless prosecutions which might involve his detention, the majority felt that an information even though used solely as a pleading should be required at least to indicate the grounds of the informant's belief. The majority further reasoned that since the depositions of the informants upon which the information was based were submitted after the defendant had taken exception to the denial of his motion, and without a motion to amend the pleading, the defect in the information was not cured.

The dissent maintained that since the information, in the instant case, served the function solely of a pleading it was sufficient if it informed the defendant of the nature of the crime she was charged with and prevented her from being placed

---

65. N. Y. CODE CRIM. PROC. §145.

66. See *People v. James*, 11 App.Div. 609, 43 N.Y.Supp. 315 (1896); *People v. Grogan* 260 N.Y. 138, 183 N.E. 273 (1932).

67. *People v. Scott*, 3 N.Y.2d 148, 164 N.Y.S.2d 707 (1957).

68. *People v. Jacoby*, 304 N.Y. 33, 105 N.E.2d 613 (1952).

69. 4 N.Y.2d 482, 176 N.Y.S.2d 323 (1958).

70. N. Y. ALCOHOLIC BEVERAGE CONTROL LAW §100(1).

71. The court reversed the conviction based on defendant's plea of guilty because in its opinion, the conditions under which the plea was made did not indicate that the defendant "acted freely, understandingly, competently and intelligently." It appears that the plea was made by the defendant without benefit of counsel.

twice in jeopardy for the same offense, particularly since the sources of the information were subsequently produced in court. The minority felt that the majority decision was unduly restrictive, in that it added new and unnecessary requirements for a pleading-type information, and that any restriction should come from the legislature.

The majority decision indicates a trend of the Court over the past few years to extend more protection to an accused against groundless prosecutions.<sup>72</sup> In the instant case, the majority recognized that to allow an information, insufficient to support a warrant of arrest, to confer jurisdiction on a magistrate to try the defendant would be to reward the prosecution for an illegal arrest. Little objection can be found to the majority's position that no defendant should be required to defend against criminal charges based solely on unidentifiable hearsay.

### Sufficiency of Indictment

Section 1864 of the Penal Law provides that a public officer who wrongfully obtains or converts property held, owned, or in the possession of any county is guilty of a felony. In a plan to get drugs for a retail store at institutional rates the defendant, a county health officer, purchased goods through a county home. When the drugs were delivered to the home, the defendant took possession of the drugs and transported them to a retail druggist who then paid the drug manufacturer by cashier's check. The defendant was indicted for a felony under section 1864. Upon appeal from denial of a motion to dismiss the indictment the defendant contended that he could not be guilty of violation of section 1864 because the county did not have an ownership interest in the property taken by the defendant. Until the present case there had been no judicial interpretation of the word "possession" in the section. The Court held that the county need not have an ownership interest in the property but only a right to possession in order that a public official be held liable under section 1864.<sup>73</sup> The county became a gratuitous bailee with a right and duty to retain possession for the manufacturer until he could determine the rightful owner. Thus the statute makes a public official criminally liable for purchasing goods for himself under the county or other office's name and with his own funds. The Court indicated that this reasoning would not apply where the seller knows that the goods were for other than official use.

The Court also refused to dismiss an indictment charging defendant with larceny, holding that a person who with criminal intent and false representation of fact relied on by the seller, obtains more than that to which he knows he would

---

72. See *People v. Scott*, *supra* note 67; *People v. Jacoby*, *supra* note 68.

73. *People v. Kirkup*, 4 N.Y.2d 209, 173 N.Y.S.2d 574 (1958).