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Criminal Law—Absence of Exit Speed Signs Not Fatal to Conviction for Speeding Where Reasonable Notice of Speed Limit Given—Per Curiam

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essential ingredient of this crime and therefore proof that defendant authorized the operator to drive his car, without more, will not suffice.

The dissent took issue with the majority on the ground that the legislative intent would be undermined by placing such a burden on the prosecution since the aim of the statute is to impose criminal responsibility upon the owner whenever an unlicensed person operates the motor vehicle with the authorization of the owner. It argued that the majority, in holding it incumbent upon the People to establish that the owner knew the person he had permitted to operate his motor vehicle was unlicensed, attributed to the legislature the enactment of a self-defeating measure.

In the light of traditional interpretation of penal statutes, the majority's position seems a sound and reasonable expression of the common law maxim that *mens rea* is an essential ingredient of a crime.¹⁰⁸ Unless the legislature expressly provides otherwise, the burden of proof of such intent is on the prosecution.¹⁰⁹ So-called public welfare offenses have been held punishable without regard to any mental element, but these have been offenses of a merely regulatory nature, involving monetary fines rather than imprisonment.¹¹⁰

Validity of Plea Made on Sunday

Section 5 of the Judiciary Law prohibits, with certain exceptions, the transacting of any business by the courts on Sunday. The exception upon which the case of *People v. Reedy*¹¹¹ turned was added by amendment in 1930 and reads: "except . . . for the receipt by a court of special sessions of a plea of guilty and the pronouncement of a sentence thereon in any case in which such court has jurisdiction."

The defendant was arrested on Saturday for driving while intoxicated and was brought before the court the following day when he pled guilty to the charge and was fined. On appeal, the Court rejected the contention that section 5 had been violated. The facts came within the express language of the exception.

Absence of Exit Speed Signs Not Fatal to Conviction for Speeding Where Reasonable Notice of Speed Limit Given — Per Curiam

A village ordinance proscribed traffic within the village at a speed greater than twenty-five miles per hour, imposed a fine for violation of the ordinance, and

108. See *People v. D. H. Ahrend Co.*, 308 N.Y. 112, 123 N.E.2d 799 (1954); *People v. McHugh*, 271 App.Div. 135, 63 N.Y.S.2d 319 (3d Dep't 1946); compare *People v. Rosenthal*, 197 N.Y. 394, 90 N.E. 991 (1910), *aff'd*, 226 U.S. 260 (1912).

109. *People v. Pieri*, 269 N.Y. 315, 199 N.E. 495 (1936).

110. See Sayre, *Public Welfare Offenses*, 33 COLUM. L. REV. 55 (1933).

111. 4 N.Y.2d 123, 173 N.Y.S.2d 1 (1958).

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further provided that violators could be prosecuted as disorderly persons. *Held*: the defendant charged with violation was validly convicted. The fact that end of speed zone signs were not up was not material since fair notice was given as to what the limit was within the village. Whether or not the "disorderly persons" portion of the ordinance was valid, defendant was not prosecuted thereunder and this provision was severable; hence, defendant could not complain.¹¹²

Personal Summation By Defendant Not Allowed When Represented By Attorney

In *People v. Richardson*,¹¹³ the defendant sought a reversal of a first degree murder conviction upon the ground that although represented by counsel, he had an absolute right to personally sum up to the jury. The Court held that no such right existed. The Court equated the constitutional right that an accused "shall be allowed to appear and defend in person and with counsel as in civil actions"¹¹⁴ to that right given a party in a civil suit. In a civil suit, a party has a right to appear personally but if the party has an attorney his participation will be allowed only at the discretion of the court.¹¹⁵ The Court, in the *Richardson* case found no abuse of the trial court's discretion in disallowing the defendant's participation and accordingly affirmed the judgment for conviction. To take a defendant's privilege to interfere out of the trial court's discretion would be disruptive of orderly court procedure and the proper administration of justice.¹¹⁶

Right to Counsel — Burden of Proof of Deprivation

In *People v. Prior*,¹¹⁷ the defendant was convicted and fined in a Police Justice Court upon a plea of guilty to driving while intoxicated.¹¹⁸ On appeal to County Court, the defendant stated in his affidavit of errors that "he did not have the benefit of counsel" and alleged generally that "he was not fully advised of his rights in the situation."

The Court of Appeals held that the defendant's allegation of "not having benefit of counsel" did not constitute matter to which the Police Justice need respond in his return.¹¹⁹ An allegation of "not having opportunity to secure counsel," however, would suggest that benefit of counsel was not waived¹²⁰ but deprived, thus requiring a specific response in the return of the police justice.

112. *People v. Lathrop*, 3 N.Y.2d 551, 170 N.Y.S.2d 326 (1958).

113. 4 N.Y.2d 224, 173 N.Y.S.2d 587 (1958).

114. N. Y. CONST., Art. I, §6.

115. N. Y. CIV. PRAC. ACT §236.

116. *Compare Webb v. Dill*, 18 Abb. Prac. 264 (1865).

117. 4 N.Y.2d 70, 172 N.Y.S.2d 155 (1958).

118. N. Y. VEHICLE AND TRAFFIC LAW §70(5).

119. N. Y. CODE CRIM. PROC. §756. Also see *People v. Marincic*, 2 N.Y.2d 181, 158 N.Y.S.2d 569 (1957); 7 BUFFALO L. REV. 122 (1957).

120. N. Y. CODE CRIM. PROC. §§335(2), 699(4).