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Criminal Law—Automobiles: Junior Operator

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ity granted must be as broad as the privilege. Hence, his testimony could not be grounds for either citation or indictment. Although the Court did not specifically hold §2447 unconstitutional, this decision will virtually vitiate any possible effect of the statute.

Amendment of Indictment

There are two methods of indictment procedure in New York; the first and older is a long form indictment,[19] which has been in use since 1881. The second method, authorizing a simplified indictment,[20] was enacted in 1929. Included in the chapter outlining the simplified indictment is a section permitting the indictment to be amended according to the proof, if the defendant cannot thereby be prejudiced.[21] The amendment may even add new counts to the indictment where it appears that the new crimes to be charged relate to the transactions which form the basis for the indictment.[22]

In *People v. Ercole,*[23] a long form indictment for larceny was returned which failed to allege false or fraudulent representations as required by statute.[24] On trial, and before proof of the larceny, an amendment of the indictment was permitted, to add new counts which were in conformity with the larceny statute.[25] The majority of the Court of Appeals felt that the chapter on simplified indictments was meant to relate only to indictments found under that chapter and could not be used to amend a long form indictment such as was used in the instant case. Only the amendment sections existing independently of the simplified indictment chapter[26] may be used to affect a long form indictment.

The dissent maintains that § 295-j is independent of the simplified indictment chapter and applies to any indictment, basing this argument largely on dicta found in previous rulings of the court.[27] The stautory scheme does not seem to support this contention.

Automobiles: Junior Operator

In *People v. Harms,*[28] defendant, a holder of a junior operator's license, was

19. N. Y. CODE CRIM. PROC. §§273-292-a.
20. *Id.*, §§295 (b)-295 (k).
21. *Id.*, §295 (j).
22. *Ibid.*
23. 308 N. Y. 425, 126 N. E. 2d 543 (1955).
24. N. Y. PENAL LAW §1290-a.
25. *Id.*, §1290.
26. N. Y. CODE CRIM. PROC. §§285, 293, 542.
27. *People ex rel. Prince v. Brophy,* 273 N. Y. 90, 6 N. E. 2d 109 (1937); *People v. Miles,* 289 N. Y. 360, 45 N. E. 2d 910 (1942); *People ex rel. Poulos v. Mc Donnell,* 302 N.Y. 89, 96 N. E. 2d 614 (1951).
28. 308 N. Y. 35, 123 N. E. 2d 627 (1954).

driving home from a high school after a basketball game in which his school had participated. He was arrested and convicted of operating a motor vehicle under a junior operator's license "*other than going to and from school,* during the hour of darkness (without being) accompanied by a duly licensed operator who is over eighteen years of age."[29] The defendant contended that at the time of arrest he was coming "from school." He felt the word "school" as used in the statutory exception included extra-curricular activities as well as formal school sessions. The Court, in affirming the conviction, held that "the exception as to going to and from school was added to allow a junior operator to drive an automobile during the hours of darkness, if his journey was to or from school sessions . . . It would be quite an extension of that idea to hold that such junior operator could, unaccompanied, drive, at any hour of the night, so long as he was returning from a school function."

The dissent is grounded on the general rule that penal statutes must be construed strictly in favor of the accused[30] and "to say that the term 'school' means only a regular session of school' is to construe this statute strictly against the defendant for such a conclusion can be reached only by ignoring the numerous broader meanings which the word 'school' admittedly has."

Public Welfare Offenses

In *People v. D. H. Ahrend Co.*[31] the Court was called upon to interpret the phrase "knowingly permit,"[32] as applied to the president of a corporation's failing to comply with the provision of the Labor Law[33] relating to prompt payment of wages. The majority *held* that the defendant was actively engaged in corporate affairs, and thus knowingly[34] failed to prevent the non-payment of wages; nothing more was required to establish his guilt. The dissent would have required proof that defendant had knowledge that the employees were not going to be paid when he permitted them to work for the corporation; since the evidence showed that defendant could not possibly have known this, they felt he should have been exculpated.

The rationale of the majority was predicated upon the difficulty of proving

29. N. Y. VEHICLE & TRAFFIC LAW, §§20, subd. 1, par. b; 70, subd. 1.
30. *People v. Nelson,* 153 N. Y. 90, 94, 46 N. E. 1040, 1041 (1897).
31. 308 N. Y. 112, 123 N. E. 2d 799 (1954).
32. ". . . the officers of any such corporation who knowingly permit the corporation to . . . (fail) to pay the wages of any of its employees . . . are guilty of a misdemeanor . . ." N. Y. PENAL LAW §1272.
33. "Every . . . (employer) shall pay weekly to each employee the wages earned to a day not more than six days prior to the date of such payment." N. Y. LABOR LAW §196 (2).
34. "The term 'knowingly' imports a knowledge that the facts exist which constitute the act or omission a crime, and does not require knowledge of the unlawfullness of the act or omission." N. Y. PENAL LAW §3(4).