

1-1-1956

Criminal Law—Public Welfare Offenses

Howard L. Meyer II

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



Part of the [Criminal Law Commons](#)

Recommended Citation

Howard L. Meyer II, *Criminal Law—Public Welfare Offenses*, 5 Buff. L. Rev. 183 (1956).

Available at: <https://digitalcommons.law.buffalo.edu/buffalolawreview/vol5/iss2/20>

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.

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 accused³⁰ 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. Abrend 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 Law³³ relating to prompt payment of wages. The majority held that the defendant was actively engaged in corporate affairs, and thus knowingly³⁴ 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 unlawfulness of the act or omission." N. Y. PENAL LAW §3(4).

knowledge of all the facts in this type of public welfare offense, and hence they believed that such a requirement would emasculate the statute. The dissent recoiled at imposing criminal sanctions when the defendant's act was free of criminal intent.

Conviction for crime without *mens rea* has become solidly entrenched in New York Law,³⁵ as it has throughout the United States.³⁶ The complexity of present society and the need for enforcement of minor violations of such statutes as the liquor, pure food, sanitary, building, and factory laws and the like has called for obviation of the requirement of *mens rea*. As long as this innovation does not gain a foothold³⁷ in the enforcement of traditional types of criminality, it does not seem particularly dangerous.

Use of Phototraffic Camera

In *People v. Hildebrandt*³⁸ defendant was convicted of a "traffic infraction"³⁹ driving an automobile at an illegal speed in a restricted zone.⁴⁰ The device employed to ascertain the rate of speed of defendant's car was a "phototraffic camera," which takes two pictures at a given interval. The driver was not arrested or indentified at the time of the alleged commission of the offense, nor was any direct proof as to who was in fact operating the car offered at the trial. The defendant appealed from an adverse ruling of the County Court⁴¹ directly to the Court of Appeals by permission of an associate judge; the Court reversed, holding that mere proof of ownership of a vehicle will not support an inference or presumption of an identity between the registered owner and the person who was operating the vehicle at the time of the traffic infraction.

Although it may be conceded that a "traffic infraction" falls outside the purview of "criminal law," it has been classified as "quasi-criminal" in that such cases are tried as misdemeanors,⁴² requiring the necessity of proof beyond a reasonable doubt.⁴³ Under certain conditions, speeding offenses constitute a misdemeanor;⁴⁴

35. *People ex rel. Price v. Sheffield Farm Co.*, 225 N. Y. 25, 121 N. E. 474 (1918) (employment of child under 14); *Ward v. O'Connell*, 280 App. Div. 1021, 116 N. Y. S. 2d 785 (3d Dep't 1952) sale of liquor to minors).

36. Sayre, *Public Welfare Offenses*, 33 COL. L. REV. 55 (1933).

37. Some cases which indicate that this foothold has been gained are *State v. Lindberg*, 125 Wash. 51, 215 Pac. 41 (1923); *State v. Quinn*, 131 La. 490, 59 So. 913 (1912); *United States v. Balint*, 258 U. S. 250 (1922); *State v. Hennessy*, 114 Wash. 351, 195 Pac. 211 (1921).

38. 308 N. Y. 397, 126 N. E. 2d 377 (1955).

39. N. Y. VEHICLE & TRAFFIC LAW §2(29).

40. *Id.* §§56(4), 95(c).

41. 204 Misc. 1116, 129 N. Y. S. 2d 48 (1954).

42. *Supra*, note 39.

43. *People v. Erickson*, 283 N. Y. 210, 28 N. E. 2d 381 (1940); *People v. Strong*, 294 N. Y. 930, 63 N. E. 2d 119 (1945).

44. See N. Y. PUBLIC AUTHORITY LAW §361(1).