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Criminal Law -- Sufficiency of Indictments in Statutory Language

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The North Carolina Constitution declares that every person charged with a crime has the right to be informed of the accusation made against him.[1] In considering this section of our Constitution, the North Carolina Supreme Court has observed that it is "an embodiment of the common law rule requiring the charge against the accused to be set out in the indictment or warrant with sufficient certainty to identify the offense with which he is sought to be charged, protect him from being twice put in jeopardy for the same offense, enable him to prepare for trial, and enable the court to proceed to judgment according to law in case of conviction."[2]

For statutory offenses, the general rule is that an indictment or warrant charging an offense in the language of the statute is sufficient.[3] Exceptions to this general rule were rare in North Carolina until recent years. Though our court has been reluctant to require more than the language of the statute, many cases involving this problem have been decided by a divided court. Gradually exceptions have been engrafted upon this general rule of pleading statutory offenses, and in three recent cases[4] the court ruled that an indictment in the language of the statute is not sufficient.

Determining the sufficiency of an indictment in statutory language is not a new problem in North Carolina. In a very early case[5] the majority decided that an indictment for murder must state the length and depth of the mortal wounds of the deceased. Even the majority expressed dislike for requiring such detail in an indictment but thought the problem should be left to the legislature for correction. Consequently in 1811 an act[6] was passed which stipulated that the charge for a criminal offense be stated only in a plain, intelligible, and explicit

[1] N. C. CONST. art. I, § 11 (1868): "In all criminal prosecutions, every person charged with crime has the right to be informed of the accusation and to confront the accusers and witnesses with other testimony, and to have counsel for defense, and not be compelled to give self incriminating evidence, or to pay costs, jail fees, or necessary witness fees for the defense, unless found guilty."

[2] State v. Jenkins, 238 N. C. 396, 397, 77 S. E. 2d 796, 797 (1953).

[3] JOYCE, INDICTMENTS § 454 (1924); United States v. Hess, 124 U. S. 483 (1887); United States v. Simmons, 96 U. S. 360 (1877); State v. Jackson, 218 N. C. 373, 11 S. E. 2d 149 (1940); State v. Williams, 146 N. C. 618, 61 S. E. 61 (1908); State v. Howe, 100 N. C. 449, 5 S. E. 671 (1888); State v. Liles, 78 N. C. 496 (1878); State v. Stanton, 23 N. C. 424 (1841).

[4] State v. Cox, 244 N. C. 57, 92 S. E. 2d 413 (1956); State v. Powell, 244 N. C. 121, 92 S. E. 2d (1956); State v. Lucas, 244 N. C. 53, 92 S. E. 2d 401 (1956).

[5] State v. Owen, 5 N. C. 452 (1810).

[6] Now N. C. GEN. STAT. § 15-153 (1811): "Every criminal proceeding by warrant, indictment, information, or impeachment is sufficient in form for all intents and purposes if it express the charge against the defendant in a plain, intelligible, and explicit manner; and the same shall not be quashed, nor the judgment thereon stayed, by reason of any informality or refinement, if in the bill of proceeding, sufficient matter appears to enable the court to proceed to judgment."

manner. Our court decided cases involving sufficiency of indictments again in 1819[7] and 1829[8] and in these decisions expressed pleasure in not having to require the formality and detail that obtained prior to the Act of 1811.

During the next seventy-five years the sufficiency of a number of indictments was questioned in cases in which the statutory language was not followed, and in every case the court required strict adherence to the statutory language.[9] Undoubtedly these cases served to mold an opinion among state law enforcement officials and members of the bar that an indictment following statutory language would be sufficient.

However, as previously noted, exceptions to this general rule were soon to be made and the court usually explained these exceptions by pointing out that the statute was written in mere general or generic terms, that the statute did not sufficiently define the crime, or that all essential elements of the crime were not included in the statute. In *State v. Whedbee*[10] an indictment for obtaining goods under false pretense was drawn in the words of the statute.[11] The court held the indictment insufficient in that it failed to inform the defendant of the offense charged as required by the North Carolina Constitution.[12] In *State v. Cole*[13] the indictment was drawn in the language of the statute declaring it unlawful to make a false entry in bookkeeping.[14] After reviewing the authorities concerning the general rule on indictments in statutory language, the court held that this statute did not set forth all essential elements of the offense and therefore an indictment in the language of this statute is insufficient.

The court has twice considered the sufficiency of an indictment drawn in the language of the statute making it an offense to assault a

[7] State v. Cherry, 7 N. C. 7 (1819).

[8] State v. Johnson, 12 N. C. 360 (1827).

[9] State v. Mays, 132 N. C. 1020, 43 S. E. 819 (1903); State v. Bagwell, 197 N. C. 859, 12 S. E. 254 (1890); State v. Noblett, 47 N. C. 418 (1855); State v. Hathcock, 29 N. C. 52 (1846).

[10] 152 N. C. 770, 67 S. E. 60 (1910).

[11] N. C. GEN. STAT. § 14-100 (1811): "If any person shall knowingly and designedly by means of any forged or counterfeited paper, in writing or in print, or by any false token, or other false pretense whatsoever, obtain from any person or corporation . . . with intent to cheat or defraud . . . shall be guilty of a felony . . . Provided further, that it shall be sufficient in any indictment for obtaining or attempting to obtain any such property by false pretenses to allege that the party accused did the act with intent to defraud, without alleging an intent to defraud any particular person, and without alleging any ownership of the chattel, money, or valuable security. . . ."

[12] For an illustration of a sufficient indictment charging violation of N. C. GEN. STAT. § 14-100 see State v. Howley, 220 N. C. 113, 16 S. E. 2d 705 (1941).

[13] 202 N. C. 592, 163 S. E. 594 (1932).

[14] N. C. GEN. STAT. § 53-129 (1921): ". . . whoever being an officer, employee, agent, or director of a bank, makes or permits the making of a false statement or certificate, as to a deposit, trust fund or contract, or makes or permits to be made a false entry in a book, report, statement or record of such bank . . . shall be guilty of a felony. . . ."

person with an intent to kill and the infliction of serious injury not resulting in death.[15] In *State v. Battle*[16] the court explained that the term "serious injury" used in an indictment drawn in statutory language was too vague and indefinite. Then forty-one years later in *State v. Gregory*[17] the court held that it was unnecessary to describe the extent of a serious injury in an indictment as the extent of injury became a matter of proof upon trial and an indictment in statutory language in this case was sufficient. Thus the latter decision removed an exception to the general rule of indicting in statutory language.

The court held that more was required than mere statutory language in three cases involving the "resisting arrest" statute.[18] In *State v. Jenkins*[19] and *State v. Scott*[20] the warrants were drawn according to the language of the statute, but the court refused to allow prosecution without specific statements as to the official character of the person alleged to have been resisted. In *State v. Eason*,[21] although the defendant was charged in the language of the statute, the arresting officer was not named, the official duty he was performing was not shown, and the manner in which the defendant resisted, delayed, or obstructed arrest was not stated. Because of the omission of these facts, the warrant was declared insufficient and the court explained that statutory words must be supplemented if necessary to set forth every essential element of the offense, so as to leave no doubt in the minds of the accused and court as to the specific offense intended to be charged.

State v. Burton[22] presents an example of the difficulties encountered in drafting that most frequent indictment, violation of a municipal ordinance. The warrant charged violation of a parking meter ordinance but failed to give the exact location of the defendant's car at the time of the offense. In explanation, the court said that the location of the parking meter must be stated so the defendant or his attorney can go to the city ordinance and see if parking at that time and place constituted a violation.[23]

The North Carolina statute pertaining to offering of bribes[24] was be-

[15] N. C. GEN. STAT. § 14-32 (1919): "Any person who assaults another with a deadly weapon with intent to kill, and inflicts serious injury not resulting in death, shall be guilty of a felony. . . ."

[16] 130 N. C. 655, 41 S. E. 66 (1902).

[17] 223 N. C. 415, 27 S. E. 2d 149 (1943).

[18] N. C. GEN. STAT. § 14-223 (1889): "If any person shall willfully and unlawfully resist, delay, or obstruct a public officer in discharging or attempting to discharge a duty of his office, he shall be guilty of a misdemeanor."

[19] 238 N. C. 396, 77 S. E. 2d 796 (1953).

[20] 241 N. C. 178, 84 S. E. 2d 654 (1954).

[21] 242 N. C. 59, 86 S. E. 2d 774 (1955).

[22] 243 N. C. 277, 90 S. E. 2d 390 (1955).

[23] This would seem to require a warrant charging multiple violations of a parking meter ordinance to state the exact time and location of each violation.

[24] N. C. GEN. STAT. § 14-218 (1870): "If any person shall offer a bribe, whether it be accepted or not, he shall be guilty of a felony. . . ."

fore our court in *State v. Greer*.[25] It was held that an indictment in the language of this statute was insufficient. The court pointed out that this statute neither defines bribery, nor sets forth its essential elements and declared that the statutory words must be supplemented by other allegations which would set forth the essential elements of the offense.

In *State v. Lucas*,[26] the Court noted that the commission of perjury is a basic element of the offense of subornation of perjury. Therefore, the court held that an indictment drawn in the language of G. S. 15-146, the subornation of perjury statute, is insufficient since the indictment must include the matter alleged to have been falsely sworn by the person suborned and also that the suborner knew such to be false or was in conscious ignorance of its truth. The court said that this statute must be read in conjunction with G. S. 15-145, the perjury statute, and indictments drawn accordingly.

A striking example of the difficulties encountered in drafting indictments for statutory offenses is furnished by the cases dealing with indictments under subsection 7 of our aiding and abetting prostitution statute.[27] The first six subsections of this statute described specific ways of violations; subsection 7 is the familiar "catch all" phrase and concludes by saying "by any means whatsoever." Even a cursory examination of cases dealing with indictments in the language of subsection 7 of this statute reveals the oscillation of the court's views on the matter of sufficiency. Indictments in the language of subsection 7 have been before the North Carolina Supreme Court four times in the past twenty-two years. In *State v. Waggoner*[28] it was decided that the indictment was in the language of subsection 7 and therefore sufficient. Then in *State v. Johnson*[29] the majority opinion declared an indictment in the language of this subsection was sufficient to afford the accused his constitutional rights. Thus indictments drawn in the words of subsection 7 came under the general rule of being sufficient. In the recent case of *State v. Cox*[30] the court overruled the *Johnson* case by declaring that indictments drawn in the language of subjection 7 are no longer sufficient.[31] The court explained that "by any means whatsoever" can cover a multitude of acts and therefore the warrant must charge the par-

[25] 238 N. C. 325, 77 S. E. 2d 917 (1953).
[26] 244 N. C. 53, 92 S. E. 2d 401 (1956).
[27] N. C. GEN. STAT. § 14-204 (1919): "It shall be unlawful: . . . (7) to engage in prostitution or assignation, or to aid or abet prostitution or assignation by any means whatsover."
[28] 207 N. C. 306, 176 S. E. 566 (1934).
[29] 220 N. C. 773, 18 S. E. 2d 358 (1941).
[30] 244 N. C. 57, 92 S. E. 2d 413 (1956).
[31] It should be noted that all these decisions pertained only to subsection 7 of the statute and so an indictment in the language of the first six paragraphs presumably would be sufficient.

ticular acts and circumstances constituting the offense. In an even more recent case,[32] the court reaffirmed its ruling set out in the *Cox* case.

From this brief review of the North Carolina cases of indictments in statutory language it might be concluded that at least seven exceptions to the general rule of charging an offense in the language of the statute now exist in North Carolina. Indictments or warrants charging offenses under the statutes pertaining to false pretense, false entry in bookkeeping, resisting arrest, offering of bribes, local ordinance on parking, subornation of perjury, and aiding and abetting prostitution have all been declared exceptions by the North Carolina Supreme Court in recent years. The solicitors and law enforcement officers of our state might take note of the tendency of our court to declare exceptions to the general rule and pay heed to the language in *State v. Albarty*:[33]

> "There can be no valid trial, conviction, or punishment for a crime without a formal and sufficient accusation. As a consequence it is impossible to overmagnify the necessity of the rules of pleading in criminal cases. The first rule of pleading in criminal cases is that the indictment or other accusation must inform the court and the accused with certainty as to the exact crime the accused is alleged to have committed."[34]

While it seems that most of the North Carolina Statutes defining or creating criminal offenses are so worded that the statutory language is sufficient for the indictment or warrant, exceptions do obviously exist. Those charged with the responsibility of preparing warrants and indictments would do well to note these exceptions.[35]

A study of the cases in which the indictment in statutory language has been declared insufficient reveals the most common fault to be a failure to describe the manner of circumstances under which the offense was committed. Although a rather general one, the best test for the drafter of an indictment for a statutory offense would seem to be:

> Are the circumstances surrounding the offense and the manner in which it was committed so specified that the defendant can prepare for trial and, if convicted, that he could not be tried again for this offense?

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[32] State v. Powell, 244 N. C. 121, 92 S. E. 2d 681 (1956).
[33] 238 N. C. 130, 76 S. E. 2d 381 (1953).
[34] *Id.* at 131, 76 S. E. 2d at 382.
[35] State v. Thorne, 238 N. C. 392, 395, 78 S. E. 2d 140, 141 (1953); "Scant heed was paid to the rules of pleading in criminal cases in the preparation of the warrant in the instant action."