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CRIMINAL LAW AND PROCEDURE - ESSENTIAL DEFINITENESS OF CRIMINAL STATUTES - AUTOMOBILE REGULATIONS

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CRIMINAL LAW AND PROCEDURE — ESSENTIAL DEFINITENESS OF CRIMINAL STATUTES — AUTOMOBILE REGULATIONS — Defendant was convicted of reckless driving under section 48 of the Illinois Uniform Traffic Act which reads, "Any person who drives any vehicle with a wilful or a wanton disregard for the safety of persons or property is guilty of reckless driving." [1] He appealed on the ground that the statute violated the Illinois Constitution [2] because it was too vague, indefinite, and uncertain. *Held*, that the statute did not violate the constitution and was a valid exercise of the police power of the legislature. *People v. Green*, 368 Ill. 242, 13 N. E. (2d) 278 (1938).

In creating a criminal offense, a statute must be sufficiently certain to indicate what acts the legislature meant to prohibit and punish.[3] The reason for the rule is either that criminal statutes must be strictly construed,[4] or that unless the statute is definite the due process clause of the constitution is violated.[5] In the instant case the court does not deny the rule, but sides with the great majority of courts which have held similar criminal statutes sufficiently certain in defining a crime.[6] Several decisions have held valid statutes which in general

[1] Ill. Laws (1935), p. 1247, Rev. Stat. (1937), c. 95½, § 145.

[2] Defendant contended the statute violated Art. 3, the separation of powers provision; Art. 2, § 2, the due process clause; Art. 2, § 9, the right to demand the nature and cause of the accusation against him; Art. 2, § 10, the double jeopardy provision; Art. 2, § 14, the clause prohibiting ex post facto laws.

[3] Czarra v. Board of Medical Supervisors, 25 App. D. C. 443 (1905); Connally v. General Construction Co., 269 U. S. 385, 46 S. Ct. 126 (1926); Brown v. State, 137 Wis. 543, 119 N. W. 338 (1909); Dekelt v. People, 44 Colo. 525, 99 P. 330 (1909).

[4] The Schooner Enterprise, 1 Paine (U. S. C. C.) 32 (1810); Patten v. Aluminum Castings Co., 105 Ohio St. 1, 136 N. E. 426 (1922).

[5] United States v. Capitol Traction Co., 34 App. D. C. 592 (1910); International Harvester Co. v. Kentucky, 234 U. S. 216, 34 S. Ct. 853 (1914); Collins v. Kentucky, 234 U. S. 634, 34 S. Ct. 924 (1914); United States v. L. Cohen Grocery Co., 255 U. S. 81, 41 S. Ct. 298 (1921); Connally v. General Construction Co., 269 U. S. 385, 46 S. Ct. 126 (1926).

[6] Usary v. State, (Tenn. 1938) 112 S. W. (2d) 7 (statute prohibited driving carelessly and heedlessly in wanton disregard of rights and safety of others); Barkley v. State, 165 Tenn. 309, 54 S. W. (2d) 944 (1932) (statute prohibited driving carelessly and heedlessly in wanton disregard of rights and safety of others, without due caution ,and so as to endanger person and property); State v. Andrews, 108 Conn. 209, 142 A. 840 (1928) (statute prohibited reckless driving, driving so as to endanger person or property, speed greater than reasonable or proper); Mulkern v. State, 176 Wis. 490, 187 N. W. 190 (1922) (prohibition of speed greater than is reasonable and proper under all the conditions and so as to endanger persons or property); State v. Schaeffer, 96 Ohio St. 215, 117 N. E. 220 (1917) (same statute as in Mulkern v. State, supra); State v. Goldstone, 144 Minn. 405, 175 N. W. 892 (1920) (statute similar to that in Mulkern v. State, supra); Ex parte Daniels, 41 Okla. Cr. 399, 273 P. 1010 (1929) (statute provided for careful and prudent driving, and reasonable speed under the circumstances, so as not to endanger persons or property); Ex parte Daniels, 183 Cal. 636, 192 P. 442 (1920) (statute similar to that in Mulkern v. State, supra; Schultz v. State, 89 Neb. 34, 130 N. W. 972 (1911) (statute with provisions similar to those in Mulkern v. State, supra); State v. Rountree, 181 N. C.

language prohibited speeds "greater than is reasonable or proper," where such provisions were followed and made more definite by the laying down of definite speeds as prima facie evidence that the statute had been violated.[7] In the case of *People v. Beak*,[8] the Illinois court had declared that such a statute was definite enough only in so far as it provided exact speed limits. But the court in the present case approves the general standard in the instant statute, which seems as uncertain as the general standard disapproved in the statute considered in *People v. Beak*. That case was expressly overruled in so far as it conflicted with the instant case. Exactly what the criteria are for determining whether a criminal statute is too uncertain or vague to be valid is not clear from the cases.[9] The courts upholding automobile regulations similar to the Illinois statute have based their decisions on the following grounds: that statutes should be construed wherever possible so that they have force and meaning,[10] that the definition in the statute under consideration was as certain as the definitions of other common crimes,[11] that the statutes are analogous to the anti-trust statute in that they call for the application of the "rule of reason" of the famous *Standard Oil* case,[12] that any person of reasonable and ordinary intelligence and experience will realize what specific acts are prohibited,[13] and that modern traffic conditions necessitate more general regulations to meet all situations.[14] On the other hand, three states have declared similar traffic statutes invalid for uncertainty,[15]

535, 106 S. E. 669 (1921) (statute similar to the one considered in Mulkern v. State); State v. Randall, 107 Wash. 695, 182 P. 575 (1919) (statute similar to the one considered in Mulkern v. State); Commonwealth v. Pentz, 247 Mass. 500, 143 N. E. 322 (1924) (prohibiting operation of automobiles so that lives and safety of the public might be endangered); State v. Smith, 29 R. I. 245, 69 A. 1061 (1908) (prohibiting speed greater than common traveling pace).

[7] Smith v. State, 186 Ind. 252, 115 N. E. 943 (1917); Gallaher v. State, 193 Ind. 629, 141 N. E. 347 (1923). In Byrd v. State, 59 Tex. Cr. 513, 129 S. W. 620 (1910), the court stated that although the section of the statute under consideration prohibiting speed "greater than was reasonable or proper" was too indefinite, the succeeding section setting definite speed limits was not thereby made uncertain.

[8] 291 Ill. 449, 126 N. E. 201 (1920).

[9] Aigler, "Legislation in Vague or General Terms," 21 MICH. L. REV. 831 (1923); 45 HARV. L. REV. 160 (1931).

[10] Ex parte Daniels, 41 Okla. Cr. 399, 273 P. 1010 (1929).

[11] Ex parte Daniels, 183 Cal. 636, 192 P. 442 (1920).

[12] Standard Oil Co. v. United States, 221 U. S. 1, 31 S. Ct. 502 (1911); the argument was used in Mulkern v. State, 176 Wis. 490, 187 N. W. 190 (1922), in State v. Schaeffer, 96 Ohio St. 215, 117 N. E. 220 (1917), and in Ex parte Daniels, 183 Cal. 636, 192 P. 442 (1920).

[13] State v. Andrews, 108 Conn. 209, 142 A. 840 (1928).

[14] State v. Schaeffer, 96 Ohio St. 215, 117 N. E. 220 (1917).

[15] Hayes v. State, 11 Ga. App. 371, 75 S. E. 523 (1912) (statute prohibiting speed greater than is reasonable or proper, or so as to endanger persons or property); Holland v. State, 11 Ga. App. 769, 76 S. E. 104 (1912); Elsbery v. State, 12 Ga. App. 86, 76 S. E. 779 (1912); Carter v. State, 12 Ga. App. 430, 78 S. E. 205 (1913); Howard v. State, 151 Ga. 845, 108 S. E. 513 (1921); Russell v. State, 88 Tex. Cr. 512, 228 S. W. 566 (1921) (statute stated that vehicles should be driven in a careful manner with due regard for pedestrians and traffic); Brown v. State, 103

arguing that the statutes in question left the creation and definition of the offense to the jury after the defendant was brought to trial,[16] that the statute was an ex post facto law,[17] and that it in effect delegated the legislative function to the judiciary.[18] A statute held to be too indefinite as a penal statute has, however, been declared sufficiently certain to provide a standard of care in civil cases.[19] In view of the fact that legislatures have very widely indicated their belief in the desirability of such acts for the public safety under modern highway conditions, and in view of the mass of authority supporting the instant case and showing the tendency of the courts toward a liberal construction of automobile traffic regulations, it would seem that the instant decision is in accord with sound public policy.

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Tex. Cr. 35, 279 S. W. 837 (1926); State v. Lantz, 90 W. Va. 738, 111 S. E. 766 (1922); Commonwealth v. Davidson, 21 Pa. Dist. 885 (1912), which was later overruled in Commonwealth v. Clime, 26 Pa. Dist. 663 (1916).

[16] State v. Lantz, 90 W. Va. 738, 111 S. E. 766 (1922); Hayes v. State, 11 Ga. App. 371, 75 S. E. 523 (1912).

[17] State v. Lantz, 90 W. Va. 738, 111 S. E. 766 (1922).

[18] Ibid. It might also be argued that the statute is a denial of due process of law, and that the statute fails to inform the defendant of any accusation against him.

[19] Solan & Billings v. Pasche, (Tex. Civ. App. 1913) 153 S. W. 672.