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Criminal Law and Procedure

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CRIMINAL LAW AND PROCEDURE

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For the 1956 Survey we have followed the pattern of the 1955 Survey insofar as practical application would permit, endeavoring to include: (1) Substantive Criminal Law, (2) Criminal Procedure, (3) Acts of the General Assembly, 1955, having a direct bearing on the criminal practice, and (4) a review of other matters pertinent to the practice of Criminal Law.

I. SUBSTANTIVE CRIMINAL LAW

Fraudulent Check — Bankruptcy

In *State v. T. I. Sutton*[1] in reaffirming the necessity of fraudulent intent as an element necessary for conviction under the bogus check law,[2] the court also restated that the failure of the defendant to pay the check within seven days after written notice of dishonor raised the presumption of fraudulent intent, and, upon the presumption being raised by the written notice and the time passage, an issue was made for the trial jury as to fraudulent intent. The court reversed the conviction because the trial Judge excluded defendant's evidence that, subsequent to the giving of the check and prior to written notice to him under the Statute, defendant was adjudicated Bankrupt. The court said that our court does not go as far as a cited Georgia decision[3] that Bankruptcy was an absolute defense, but if the Bankruptcy occurred before the written notice, evidence of such was competent to go to the jury as tending to negative the statutory presumption of fraudulent intent.

Violation of Liquor Law — Constructive Possession

In *State v. Littlejohn*[4] referred to in the 1955 Survey, a conviction of defendant for unlawfully possessing alcoholic liquors was reversed, and a verdict of acquittal ordered, on the grounds that the constructive possession by defendant was not sufficiently proved. The State's testimony was that the defendant owned the building where his cafe business was carried on on the first floor; the second floor of

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1. 228 S.C. 314, 89 S.E. 2d 874 (1955).
2. CODE OF LAWS OF SOUTH CAROLINA, 1952 §§ 8-176 and 8-178.
3. 27 Ga. App. 177, 107 S.E. 885 (1921).
4. 228 S.C. 324, 89 S.E. 2d 924 (1955).

the building was being used by employee-tenant as a residence. The liquor was on the second floor but the owner was charged with the possession. The circumstantial evidence thus relied on for proof of constructive possession was held as insufficient, as second floor occupant was bona fide tenant.

Rape — Penetration — Lesser Offense

In *State v. Collins*[5] the court clarified the questions which were raised in *State v. Henderson.*[6] In the *Henderson* case, the court inferred, that where there was testimony by the prosecuting witness and by the defendant, that penetration had occurred, that the only question left for the court's consideration would be the question of rape or no rape. In the *Collins* case both the prosecuting witness and the defendants testified that there was penetration and the jury having had submitted to it all three counts of an indictment charging rape, assault with intent to ravish, and assault and battery of a high and aggravated nature. The jury convicted of assault and battery of a high and aggravated nature. The court held, however, that the fact of penetration was insufficient to negative the lesser offense where there was evidence upon which a jury could make a finding that the prosecutrix did not consent to prior acts of defendants, prior to the admitted penetration, which prior acts constituted assault of a high and aggravated nature. The court went on to say that if the female resists for a time but finally consents to intercourse, the man may be guilty of assault with intent to commit rape. This, in effect, states, that where there is an issue of fact as to the resistance of the victim to any alleged attack, the mere fact that both parties admit penetration, is not sufficient to wipe the slate clean as to the prior assault, and that the counts of assault with intent to ravish and assault and battery of a high and aggravated nature, are proper in the indictment, and properly submitted to the jury, where the facts indicate resistance on the part of the female. It may be inferred that the resistance must be of some consequence, and not token resistance.

Rape — Elements Restated

In *State v. Whitener*[7] the court re-emphasized the elements of what the profession generally knows as common law rape and statutory rape, the former being generally considered a forceful commission of the crime, and the latter being predicated more on age of consent rather than actual force. Both of these crimes are now well

5. 228 S.C. 537, 91 S.E. 2d 259 (1956).
6. 226 S.C. 227, 84 S.E. 2d 626 (1954).
7. 228 S.C. 244, 89 S.E. 2d 701 (1955).

defined in our statutes.[8] If the female of age consents, there is no rape, and this case is further authority for the fact that generally, to constitute rape, force on the part of the male and resistance on the part of the female are necessary ingredients as indicative of non-consent. However, force may be actual or constructive, and the degree of force and resistance required to characterize the act as rape must of necessity vary with the circumstances of the particular case. Sexual intercourse with a woman unconscious or insane was defined as rape, neither force nor resistance being necessary under such circumstances. Generally, the issue of force and the issue of consent are for the jury.

Where, however, the female is below the statutory age of consent, neither force nor consent are necessary, and this offense, generally known as statutory rape, is predicated upon two material elements of the crime, to-wit: carnal knowledge, or sexual intercourse with a female, and, a female below the age of consent, and where the female is below the age of consent, the only material elements to the crime are carnal knowledge and the age of the female.

In this case, the state was allowed to submit evidence of an unnatural sexual act committed upon the prosecutrix some hours after the original offense. The court stated that while it was true as a general rule that in a trial for one crime testimony for other and distinct crimes is not admissible, an exception is made where such testimony tends to establish a common scheme or plan embracing the commission of two or more crimes so related to each other that proof of one tends to establish the others. Such exception is generally applied in cases involving sexual crimes, where evidence of acts prior and subsequent to the act charged in the indictment is held admissible as tending to show continued illicit intercourse between the same parties, citing *State v. Ritchie.*[9]

Homicide — Self Defense

The case of *State v. Henry Jackson*[10] is a case in which appellant was convicted of the murder of a policeman in appellant's own home. The question on appeal was whether an instruction on self-defense was proper. The testimony of appellant was that he had ridden in a cab to his home, partially intoxicated, went in to get the money to pay the cab-driver but was unable to get the money and so he did not go back out of his home; the taxi driver knocked on the door

8. CODE OF LAWS OF SOUTH CAROLINA, 1952 §§ 16-71 and 16-80.
9. 88 S.C. 239, 70 S.E. 729 (1911).
10. 227 S.C. 271, 87 S.E. 2d 681 (1955).

but received no response; later the taxi driver, accompanied by a policeman, came to appellant's home, without a warrant. Appellant testified that he woke up and that a companion told him somebody was out there and he heard his mother say, "Whoever that is, don't try to tear my door down." He got his gun and when a flashlight shined in his face he shot at the light and then heard a body fall, picked up the flashlight and found out it was a policeman. The testimony was conflicting on this point. The trial Judge ruled that there was no element of self-defense requiring instruction, but the Supreme Court ruled that if the defendant *believed* he was in eminent danger, that it was not necessary that he was *actually* in such danger because he had the *right to act upon appearances,* and under the circumstances, as they appeared to him. If he believed he was in such danger and a reasonable, prudent man of ordinary firmness and courage would have entertained the same belief, then he had a right to rely upon that element of self defense. The fact that the man was at home, or within his curtilage, and there was no arrest warrant, and the door was forced, were facts bearing on issues in the case. The court also ruled that appellant in defending his person from an unlawful entry or arrest had the right to use so much force as was apparently necessary to accomplish his deliverance and no more, and whether the arrest was unlawful or not was a question of fact for the jury.

II. CRIMINAL PROCEDURE AND EVIDENCE

Confessions — Evidence — Corroboration

In the *1955 Survey*[11] we discussed confessions, in connection with the Fifth Amendment and discussed confessions generally. The trend has not materially changed, and this may be by virtue of the fact that in the more serious cases, the officers are want to take some statement from the defendant, or from the witnesses, when, in cases of lesser importance, this practice is not followed. With the passage of time, we find confessions attack more and more by defense counsel, in order to exhaust every nook and cranny of the law in behalf of the accused, particularly in murder cases. Our Supreme Court, in keeping with an acknowledged dedication to protect the defendant's rights, especially in capital cases, has gratifyingly considered every objection made on appeal where the death penalty is involved.[12] In *State v. Fuller*[13] the accused was tried for murder; he did not

11. 8 S.C.L.Q. 1 (1955).
12. 227 S.C. 138, 87 S.E. 2d 287 (1955).
13. See Note 12, *supra.*

testify; the court did not instruct that his failure to testify should not be considered against him, but did instruct the jury that they could take into consideration, whether or not there had been any contradiction of any material testimony (part of which was a confession) or witness by testimony of any other witness. Upon appeal, from the conviction for murder, such charge was held to be prejudicial error, as the court stated that the charge on the question of contradiction, directed the attention of the jury to defendant's failure to testify just as surely as if the trial Judge had mentioned the defendant by name, and that the court was strengthened in that conclusion by the trial Judge's failure to charge that the defendant's failure to testify should not be considered against him and no inference of guilt should be implied therefrom. This raised the question which has been of practical moment to those in the criminal trial pit for many years. Is *any comment* on the failure of the defendant to testify, prejudicial to him, by directing attention to him? If the court directs the attention to his failure to testify, does this not violate his immunity?

The *Fuller* case reaffirmed the admeasurements of a voluntary confession.

In *State v. James Eugene Smith*[14] it was ruled that a confession or confessions may partake of many forms, such as a statement of one's own part in the crime, a series of questions and answers, or a letter or letters to one or more persons, or it may consist of detached conversations with many people; it may be a formal confession or all or part of these together so long as it or they come direct from the one charged with the commission of the crime. Appellant, upon conviction, imputed error to the trial court in admitting an oral confession (without copy being given to defendant) made by the defendant on Sunday, when a written confession, in accordance with the statute (with copy given to defendant) was made on Monday. Both confessions were allowed, the oral and the written.

The case was remanded for a new trial because on the question of contradiction or corroboration, the trial Judge charged that the jury "shall" take into consideration whether or not there had been any corroboration, instead of using the words that the jury "may" take same into consideration.

In *State v. William Jenkins*[15] the defendant was convicted of manslaughter. Subsequent to the homicide, he gave a statement to the officers which statement was introduced by the prosecution. Subse-

14. 227 S.C. 400, 88 S.E. 2d 345 (1955).
15. 228 S.C. 12, 88 S.E. 2d 770 (1955).

quent to that introduction, the State went on to prove the falsity of part of the defendant's statement. The defense took the position that the State was bound by all that was contained in the statement and had no right to prove by direct or circumstantial evidence the falsity of the statement, which was in the nature of a combination confession and self-serving declaration. In upholding the trial Judge's refusal of the motion for a directed verdict, the Supreme Court explained the right of the prosecution to attack exculpatory statements contained in a confession or an admission introduced by the prosecution, saying it was a question of fact for the jury, and the jury could believe a part of the statement and disbelieve another part.

In *State v. Chasteen*[16] the court reiterated the necessity of a free and voluntary confession and said that the question of whether confession is voluntary is one which is addressed to the court in the first instance, and if there is an issue of fact as to the voluntariness of the confession it should be submitted to the jury under proper instructions. The court also went on to say that the better practice is for the trial Judge to conduct a preliminary inquiry in the absence of the jury, but if the confession is finally determined to be admissible, the fact that an inquiry was conducted in the presence of the jury would not make its introduction defective or constitute a reversible error. It would seem, from this case, that the better practice is to exclude the jury when the matter is taken up before the court, and, if the court has determined either that the confession is voluntary, or that it should be submitted for determination by the jury, that the preliminary questions and answers should be repeated in the presence of the jury. This is in keeping with the duty and responsibility of the State to give the defendant a fair and impartial trial.

State v. Hamp Jones, Jr.[17] does not precipitate any novel question; there was some question raised in that defendant's statement was taken down in long hand and signed by him and he was not given a copy until the statement was transcribed on a typewriter the next day. The court held this was sufficient in compliance with the statute requiring a copy of a statement or confession to be given to the witness or accused making certain statement or confession. *State v. Boone*[18] is a case in which the court and the jury found the confession free and voluntary and the Supreme Court refused to disturb that decision.

16. 228 S.C. 88, 88 S.E. 2d 880 (1955).
17. 228 S.C. 484, 91 S.E. 2d 1 (1956).
18. 228 S.C. 438, 90 S.E. 2d 640 (1955).

Conduct of Counsel — Statements of Prosecuting Attorney

In *State v. Shackelford*[19] the court held it proper for a prosecuting attorney to comment on defendant's failure to produce witnesses who are or would be in possession of material or relevant facts concerning the defendant's whereabouts at the time of the commission of the crime. In *State v. Chasteen*,[20] the defendant did not take the stand and the prosecuting attorney stated, "Of course we will never know exactly what happened, because he was the only one here who could tell us, but he ain't going to tell us you know." The trial Judge expressly instructed the jury that the defendant's failure to take the witness stand and testify on his own behalf did not create any presumption against him. The Supreme Court, because of such charge and on the basis of the instructions, held that the words of the prosecuting attorney, in making such argument, did not direct the jury's attention to defendant's failure to take the stand, thereby commenting on his absence to do so, and even if he did, the instruction cured the defect.

Criminal Statutes — The Effect of Codification

State v. Conally[21] is unique in that it attacks certain changes made in the compilation of the 1952 South Carolina Code of Laws. The defendant pled guilty to having in possession alcoholic liquors which did not have South Carolina Revenue stamps on the containers. It was his second offense, having previously paid a fine in Oconee Magistrate Court. He was given a sentence of eighteen months by the trial Judge. His counsel took the position that, since, under the Alcoholic Beverage Act of 1945, having in possession of alcoholic liquors was an offense made punishable by a fine of not more than $100.00 or imprisonment for not more than fifteen days, that this should be the sentence, and that the omission of the 1952 Code to make this provision by reference, under the penal section of the Alcoholic Beverage Control Act, defendant was entitled to such fine. As it happened, in the compilation of the 1952 Code, the Alcoholic Beverage Control Act, like many other Acts, was broken down, rearranged, and otherwise changed. As a result of this change, those sections for which there was no specific punishment, were included in the general penal section of the Code and it was under this general section that the defendant was sentenced. Since the Legislature had adopted the 1952 Code, the court said that it was the intention of

19. 228 S.C. 9, 88 S.E. 2d 778 (1955).
20. See Note 16, *supra.*
21. 227 S.C. 507, 88 S.E. 2d 591 (1956).

the Legislature to leave the penal provision for this violation under the general penalty statutes, and as long as same did not exceed the limits, were not excessive. The conviction was affirmed.

Change of Venue

In *State v. Samuel Wright*[22] the defendant failed to appeal a murder conviction within ten days provided by statute. Later, on a motion for a new trial on the grounds of after-discovered evidence, appeal was taken within ten days after Order refusing the motion. Thereupon counsel took the position before the Supreme Court that the venue should have been changed originally on the grounds that the newspaper articles from the local gazette were prejudicial. Each juror was examined upon his voir dire to establish impartiality and the Supreme Court said that the newspaper reports alone, in the absence of sustaining affidavits, and in view of the voir dire examination, were insufficient to warrant a change of venue.

Sufficiency of Evidence — Accomplice

In *State v. Flemming*[23] the Supreme Court held that a conviction for robbery could be sustained upon the testimony of an accomplice alone if that testimony contained proof of the elements of the crime and the State does not have to prove beyond a reasonable doubt that the accomplice did commit the crime exclusive of the confession or testimony of the co-defendant.

Right of Accused to Have His Wife Present

In *State v. Eugene Smith*[24] the defendant was prosecuted for murder. He made a motion for a continuance on the ground that his wife was not present, that she had departed for a distant State approximately one week before the trial, was duly subpoenaed as a witness, left the State of her own volition, and she did not have funds necessary to make the trip back. There was no showing that she was a material witness, or in possession of facts which would possibly affect the result of the trial. Defendant relied upon the time honored opinion of Justice Watts in *State v. Williamson*[25] to the effect that ordinarily a person tried for a capital felony has a right to have his wife present at the trial, and the wife has a right to be present. The instant case, however, measured the importance and the necessity of her presence and stated that in the absence of a showing

22. 228 S.C. 432, 90 S.E. 2d 492 (1955).
23. 228 S.C. 129, 89 S.E. 2d 104 (1955).
24. See Note 14, *supra.*
25. 115 S.C. 315, 105 S.E. 697 (1921).

that her testimony was material to the defense, this was no grounds for a continuance and the presence of the wife is not a necessity. This changes a belief long held by most advocates familiar with the criminal forum, to the effect that in a capital case, the husband had the right to the wife's presence, whether she was a material witness or not, for the purpose of comfort, et cetera.

Inclusion of Other Offenses in the Indictment

In *State v. Whitener*[26] the indictment not only charged rape, but had three counts each charging a separate and distinct offense. Defense counsel moved to quash upon the ground that the three counts each charged a separate and distinct offense. The court said the rule in this State is that distinct offenses — felonies or misdemeanors — may be charged in separate counts in the same indictment, whether growing out of the same transaction or not. If they do not grow out of the same transaction then the prosecuting officer should be required to elect upon proper motion, but when they grow out of the same transaction the prosecuting officer is not required to elect. This raises another question, not novel in this State; in those cases where the indictment charges rape of a minor under the age of sixteen, is the prosecuting officer required to elect whether he will proceed under the *Common Law Rape* or *Statutory Rape,* or may he proceed under both and have the jury make the decision?

III. Legislative Action

Controlled — Access Traffic Violations

Act No. 621, South Carolina General Assembly, 1956, in Section 8 thereof, defines certain traffic violations as unlawful acts, anticipating the establishing of controlled access highway facilities in South Carolina. This is of minor importance on its face, but its bearing on future reckless homicides in automobile manslaughter cases may be important.

Wilfully Burning — Made a Felony

By Act No. 635, South Carolina General Assembly, 1956, Section 16-317 of the South Carolina Code for 1952, was amended to make wilfully burning of the lands of another a felony, instead of a misdemeanor, and the penalty was drastically increased.

Practice of Naturopathy — A Crime

Act No. 646, South Carolina General Assembly, 1956, outlaws the practice of Naturopathy in South Carolina, making same a mis-

26. See Note 7, *supra.*

demeanor and with the penalty of a fine not exceeding $500.00 or imprisonment not exceeding 1 year or both in the discretion of the court.

Child Welfare Agency — Criminal Provision

Act No. 659, South Carolina General Assembly, 1956, makes every agency or institution engaged in the business of receiving children for care or maintenance classify as a Child Welfare Agency, and provides that it shall be a crime to intentionally make any false statements to the Department of Public Welfare thereabout, and upon conviction to be punished by a fine of not more than $100.00, or imprisonment for not more than one year or both in the discretion of the court.

Japanese Textiles

By Act No. 672, South Carolina General Assembly, 1956, it is unlawful to sell Japanese textiles or garments made therefrom without displaying a sign advertising "Japanese Textiles are Sold Here."

Shoplifting — Penalties Increase

Act No. 756, South Carolina General Assembly, 1956, creates and defines the offense of shoplifting as "Any person who shall wilfully take possession of any goods, wares or merchandise offered for sale by any store or other mercantile establishment with the intention of converting the same to his own use without paying the purchase price thereof shall be guilty of the offense of shoplifting". Penalties are increased, first offense up to $300.00 fine and 6 months imprisonment or both; second offense up to $500.00 fine, 1 year imprisonment or both; third offense — imprisonment 1 to 5 years. The Act also creates certain presumptions.

Credit for Good Behavior — Prison

Act No. 760, South Carolina General Assembly, 1956, drastically changes the time given for good conduct by prisoners in South Carolina and makes other provisions thereabout.

False Statements — Insurance Companies

In an Act approved March 27, 1956, the South Carolina General Assembly provided for punishment by a fine of not more than $2,000.-00 or imprisonment for not more than 5 years, or both, for an insurance company, or any person or officer thereof or other persons subscribing to a false statement required by law.

Bank Robbing — New Penalty

By Act approved March 17, 1956, the South Carolina General Assembly provided that bank robbing would be a felony punishable by life imprisonment, unless the jury recommended mercy, in which instance the minimum punishment would be five (5) years (the maximum forty?).

Slow Speed Driver — A Misdemeanor

By Act approved February 28, 1956, the Legislature made it unlawful for a person to drive at such a slow speed as to consistently impede the normal and reasonable moving of traffic and gave the Highway Department the right to determine and declare a minimum speed limit in the parts of the Highway system.

New Liquor Law

By Section 15 of the General Appropriations Act, South Carolina General Assembly, 1956, rewrites the old Liquor Law providing generally for stiffer penalties, but, for some reason, penal provision is separated from this section defining the offense or degree of offense.

Section 1 provides that it is unlawful for a person to manufacture, store, keep, receive, have in possession, et cetera, except in accordance with the Act and provides penalty for a first offense of $600.00 or 6 months; second offense — $1,500.00 or one year; third offense — $3,000.00 or 2 years.

Section 2 of the Act declares it unlawful for a person to store or have in possession alcoholic liquors in his place of business other than a licensed liquor store and defines generally a place of business as any place where merchandise is sold or offered for sale, including places of amusement, and including residences and transportation vehicles if any sale is made therefrom, or any outbuilding or warehouse in connection therewith. For a first offense the fine is $200.00 or 60 days; second offense $1,000.00 or 12 months; third and subsequent offenses — $2,000.00 or 2 years.

In Section 3 we find the Act as advanced a rear guard pilot. Any person engaged in transportation as offense and provides the same penalties as Section 1 of the Act.

Section 4 makes it an offense to purchase except from a licensed liquor dealer, and provides penalties for a first offense of $100.00 or 30 days; second offense $200.00 or 60 days; third or subsequent offense — $300.00 or 90 days.

Section 5 provides for having in possession non-stamped liquor and provides the same penalties as Section 4.

Section 6 provides that any person found at any distillery was prima facie guilty of manufacturing — punishable for a first offense of $600.00 or 6 months; second offense $1,500.00 or 1 year; third or subsequent offense — $3,000.00 or 2 years.

Section 7 prohibits manufacturing, selling, giving away or having in possession any still or part of a still, and provides that unexplained possession of any part or parts are prima facie evidence of violation of the Act. The punishment is the same as provided for in the manufacturing in Section 6.

Section 8 makes it a crime for any person to permit manufacture on his premises, with the same penalties as the manufacturing provision.

Section 9 makes it unlawful to have on the premises any ingredient of the manufacture of the liquor and provides the same penalties as the manufacturing provision.

Section 10 provides for confiscation of any vessel used in the manufacture, or recently used, or used to haul alcoholic liquor.

Section 11 prohibits the transportation in vehicles for hire, it provides for the same penalties as distilling or manufacture and confiscation of the vehicle, but exempts legal alcoholic liquors belonging to a passenger being transported with such alcoholic liquors in the baggage of such person or upon his or her person (and we assume in his or her person).

Section 12 provides any person unlawfully manufacturing or assisting therein, and at the time having firearm or like weapon be guilty of a misdemeanor and upon conviction a fine of not more than three nor less than one year or a fine of not less than $500.00 nor more than $1,500.00, the possession of the weapon being the crucial element of the offense.

Section 13 provides that anybody taking seized whiskey from the arresting and investigating officers, upon conviction, shall be punished three months to twelve months — $500.00 to $1,500.00 or both.

Section 14 provides that any person faced with a legally executed Search Warrant, who refuses inspection or search of the premises, delays, hinders, shall be guilty of a misdemeanor and upon conviction fined not more than $200.00 or imprisonment of not more than 60 days or both, *but provides* that no occupied dwelling shall be searched between sun down and sun rise.

Section 15 makes it unlawful for any minor to work as an employee in a liquor establishment, the penalty being $100.00 or 30 days for a

first offense, $200.00 or 60 days for a second offense and $300.00 or 90 days for a third offense.

Section 16 makes it unlawful to drink alcoholic beverages in any liquor establishment, with the same penalties as Section 15.

Section 17 prohibits the sale on Sunday, Election day or during periods proclaimed by the Governor in the interest of law and order and the public morals of decorum. The penalty is $200.00 or 60 days for the first offense, $1,000.00 or 12 months for second offense and $2,000.00 or 2 years for third offense.

Section 18 prohibits the advertisement of alcoholic liquors on billboards along the highway and provides for the same penalties as Section 17.

Section 28 makes it unlawful to keep, store, have in possession, carry, ship, or transport in any vehicle, vessel or aircraft or other channel any alcoholic liquors, unlawfully acquired or manufactured which do not bear proper federal or South Carolina Revenue stamps. It prohibits the sale thereof; the penalty for first offense is $600.00 or 6 months, for second offense — $1,500.00 or 1 year, and for third offense — $3,000.00 or 2 years.

This Liquor Law has other provisions not appropos to this discussion, except that Section 38 provides that sentences imposed under provisions of the Act or any portions thereof shall not be suspended by the trial Judge provided that a plea of guilty or a plea of nolo contendre that he punish by a fine or imprisonment not less than one-half the sentence prescribed for conviction. This seems to provide that in the event of a conviction by a jury, the judge has no choice as to sentence, but if there is a plea of guilty or a plea of nolo contendre, which is the same thing, the judge may cut the fine or imprisonment, or both, in half.

IV. OTHER RELATED MATTERS

In *Costello v. United States*[27] Costello was indicted for wilfully attempting to evade income tax. The only evidence against him were Government accountants who relied upon what is known in the tax field as "net-worth" calculations to show that the accused had received a much greater income than he had reported. This is hearsay testimony, and Costello contended that as such it was in violation of the Fifth Amendment. The trial court and the Circuit Court of Appeals refused to dismiss the indictment. In an opinion delivered by Mr. Justice Black, the court pointed out that Grand Juries could act on their own knowledge and were free to make present-

27. 350 U.S. 359 (1956).

ments on such information as they deemed satisfactory. This is a boon and those prosecutors having difficulty with nuisance cases, where honkey-tonks and the like are causing nuisances, but the local community is afraid to appear because of threat and retaliation. It seems that if the Grand Jury believes the situation should be corrected, they can call on the solicitor to present an indictment.