Opinion No. 59-148

September 21, 1959

BY: HILTON A. DICKSON, JR., Attorney General

TO: Mr. Glenn B. Neumeyer Assistant District Attorney Third Judicial District Second Floor Court House Las Cruces, New Mexico

*{*224}* This is in response to your request for an opinion as to whether an offense could be predicated under § 64-18-1.1 (5), N.M.S.A., 1953 Compilation (P.S.), which reads as follows:

"In every event speed shall be so controlled as may be necessary to avoid collision with any person, vehicle or other conveyance or on entering the highway in compliance with legal requirements and the duty of all persons to use due care."

You have suggested that a citation under this section might be void for vagueness.

It is our opinion that the section of the statute referred to above is sufficiently definite and that a charge thereunder would be proper if the defendant was informed of the overt act or acts on his part which are alleged to be in violation thereof.

"A criminal statute must be sufficiently definite to give notice of the required conduct to one who would avoid its penalties, and to guide the judge in its application and the lawyer in defending one charged with its violation. But **few words possess the precision of mathematical symbols, most statutes must deal with untold and unforeseen variations in factual situations, and the practical necessity of discharging the business of government inevitably limit the specificity with which legislators can spell out prohibitions. Consequently, no more than a reasonable degree of certainty can be demanded." . . .** (Emphasis supplied) **Boyce Motor Lines v. U.S.,** 342 U.S. 337.

In **Jordan v. De George,** 341 U.S. 223, the Court stated:

"The test is whether the language conveys sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices."

In the case of **State v. Davis,** (N.H. 1954), 105 A. 2d 47, the complaint was as follows: That the defendant

*{*225}* "did operate a motor vehicle, to-wit: an Oldsmobile automobile on a public highway, Route 118, so called, at a rate of speed greater than was reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing, in that he did leave the highway on a curve and skid off the road and roll said motor vehicle over."

The statute in question read in part as follows:

"No person shall drive a motor vehicle on a highway at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing."

In holding the above language of the complaint to be sufficient under the quoted statute, the Court said:

"In the light of modern conditions, any complaint or indictment should be considered adequate, if it informs the defendant 'of the nature and cause of the accusation with sufficient definiteness' so that he can prepare for trial."

The court did state that the mere reciting of the section of the statute would be invalid as constituting a legal charge against the defendant, but that citing the statute together with the overt act on the part of the defendant would be sufficient.

It is our opinion that a statute defining what some courts refer to as a "rule of reason" in making it a crime to drive an automobile in such an uncontrolled manner as to collide with some object, including the road-bed, and making it a crime to operate a motor vehicle without due care, is sufficiently definite to apprise the defendant of the charges against him when he is complained against under such a statute.

Further, this section adequately warns and informs the public of the type of conduct which the legislature deems unlawful, namely, driving at a rate of speed at which the driver cannot control his vehicle to avoid colliding with persons, vehicles or conveyances on or entering the highways, **and driving without the exercise of due care.**

The New Mexico Supreme Court has stated in **State v. Alston,** 28 N.M. 379, that:

"The general rule is that to charge the same [offense] in the words of the statute is sufficient. **It is only where the terms of the statute are so general as to require specification of detail in order to identify the transaction or offense in question that the indictment should go beyond the terms of the statute."** (Bracketed word and emphasis supplied).

We feel, therefore, that a charge brought under this section of the statute (64-18-1.1) should contain the specific overt act or acts which the complaining party relies on to bring the accused within the section so that he is not forced to guess at what particular conduct on his part he should be prepared to defend. To simply cite the section would probably be insufficient to apprise the defendant of the charge or charges against him so that he could adequately prepare his defense and would therefore be invalid.

It might also be noted that § 64-22-8, N.M.S.A., 1953 Compilation (P.S.), specifically requires that the uniform traffic citation contain (1) the name and address of the person

charged, (2) the license number of the vehicle, if any, (3) **the offense charged,** and (4) the time and place of appearance in court. We interpret the underlined language above to mean a listing of the overt acts of the defendant which constitute the alleged violation. This would be particularly true where the section *{*226}* contains several specific prohibitions in addition to a "rule of reason" clause, as in this case. This is true even though the section is concerned with but one subject matter, that is, restrictions on speed of operation of motor vehicles.

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