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Criminal Law: Florida Requirements for Furnishing a List of State's Witnesses to a Defendant

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Thus a rationale appears. If the remedy is to be afforded, the donee beneficiary class becomes catch-all; the remedy is afforded; and the incidental beneficiary class is considered exclusive. But, if the remedy is not to be afforded, the incidental beneficiary class is considered as the catch-all; the remedy is not afforded; and the donee class is considered exclusive. Since the court must rely upon manifestations in the contract, and the situation of the parties at the time the contract was concluded, to resolve the question of whether the parties had intended to make a gift or to confer a right upon a third party, the line between these two classes is hazy indeed. The real test of the *Restatement* rationale is: Which of the two classes will be considered as the catch-all class by the court in view of the circumstances surrounding the contract? The vagueness which surrounded the law under the intent-to-benefit reasoning can but continue in only slightly abated form under the *Restatement* dichotomy. Both the intent-to-benefit test and the *Restatement* test are indefinite in application and are in reality equally prone to judicial manipulation. The *Restatement* has clarified the air only to the extent that it has recognized creditor beneficiaries as a separate class and has permitted courts to analyze in terms of rights rather than benefits.

DANA BULLEN

The following case comments, written by freshmen students in this College in fulfillment of a portion of the requirements in the course known as Introduction to Legal Research and Writing, are considered of sufficient quality to merit publication.

CRIMINAL LAW: FLORIDA REQUIREMENTS FOR FURNISHING A LIST OF STATE'S WITNESSES TO A DEFENDANT

Shields v. State, 64 So.2d 271 (Fla. 1953)

Defendant was indicted on a charge of first degree murder. The trial judge, on request of defendant, ordered the State to furnish defendant a full and complete list of witnesses and keep the list up to date. The State complied in advance of trial, but called a witness

during the trial who had not been listed. The State had notified the defendant on the morning of the witness' appearance that the witness probably would be called. Defendant unsuccessfully objected to the testimony of this witness. It did not appear that defendant would be prejudiced by allowing the witness to testify; no continuance was requested; and there was no showing that defendant had been denied an opportunity to examine the witness before he testified. From a conviction of second degree murder defendant appealed. HELD, there was no statutory requirement that the trial judge order the state to furnish a full list of witnesses; consequently the order was discretionary and the judge's ruling that it had not been violated was one which he was in a position to make. Judgment affirmed.

At common law it was not necessary to furnish the defendant in a criminal action a list of witnesses or to endorse their names on the indictment or information.[1] This right, where it now exists, is statutory; and such statutes are generally held to be merely directory rather than mandatory.[2] Florida enacted such a statute in 1939 which provides for furnishing a list of witnesses;[3] prior to this date the law of Florida was inconsistent. The Court had held that the prosecutor was under a duty to place on an indictment or information the names of the witnesses upon whose testimony it was based.[4] In later cases the Court indicated this procedure was not a requirement but a custom,[5] and that failure to do so was not error.[6] At trial the State could call witnesses other than those who appeared before the grand jury[7] without giving the defendant another list.[8] An earlier case[9] had indicated that upon application by the defendant it would be proper to require the prosecutor to submit the names of witnesses other than those listed on the indictment.

Section 906.29, Florida Statutes 1953, requires the court, upon

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[1]United States v. Oley, 21 F. Supp. 291 (E.D.N.Y. 1927); Lee v. State, 115 Fla. 30, 155 So. 123 (1934).

[2]*See* Padgett v. State, 64 Fla. 389, 395, 59 So. 946, 949 (1912).

[3]FLA. STAT. §906.29 (1953).

[4]Murray v. State, 25 Fla. 528 (1889).

[5]*See* Padgett v. State, 64 Fla. 389, 395, 59 So. 946, 949 (1912).

[6]Yarborough v. State, 94 Fla. 143, 114 So. 237 (1927).

[7]Padgett v. State, 64 Fla. 389, 59 So. 946 (1912); Murray v. State, 25 Fla. 528 (1889).

[8]Padgett v. State, 64 Fla. 389, 59 So. 946 (1912); Baker v. State, 51 Fla. 1, 40 So. 673 (1906).

[9]*See* Mann v. State, 22 Fla. 600, 609 (1886).

motion of the defendant, to order the prosecuting attorney to furnish the names of those witnesses on whose evidence the indictment or information is based. In the instant case the trial judge ruled that permitting the unlisted witness to testify was not in violation of his order. Since the Supreme Court accepted this ruling, it may follow that oral notification constitutes sufficient compliance with such an order. There are no Florida cases involving the method by which a list of witnesses must be submitted, although at least one other state has indicated that oral notification is sufficient under certain circumstances.[10] This problem of compliance does not affect the ruling of the Court in the instant case that the defendant was not entitled as a matter of right to a court order that the state furnish a complete list of witnesses.

Prior to the instant case the Florida Supreme Court had not ruled upon the application of this statute. In refusing to grant a defendant in a criminal case the right to compel the State to furnish a full and complete list of all the State's witnesses the Court pointed out that it was a matter of the trial judge's discretion. His refusal to grant a motion requesting such a list apparently would have been proper. This raises the questions of the basis of authority for allowing the discretion of the trial judge in this matter and of the criteria to apply in governing the use of such discretion.

There is no statutory provision in Florida which allows the use of judicial discretion but in a 1938 case the Supreme Court said, "The law clothes a trial court with broad power and discretion to be exercised by him in his efforts to do substantial justice."[11] The use of judicial discretion seems to be based on the concept of ultimately obtaining justice through a certain amount of judicial elasticity.

The Court gives no indication as to what might be considered an abuse of such discretion, but if the trial court can justifiably refuse to furnish the defendant with a full list of witnesses in a case where the State is able to furnish such a list it would appear to be inconsistent, arbitrary, and prejudicial to the defendant. In the instant case the Supreme Court neglected an opportunity to establish a standard for the use of the bar and bench in determining the guide posts for this important problem.

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[10]People v. Weil, 243 Ill. 208, 90 N.E. 731 (1909).
[11]Hysler v. State, 132 Fla. 209, 216, 181 So. 354, 357 (1938).