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Constitutional Law-Presumptions of Fact

Constitutional Law—Presumptions of Fact. Appellant was tried for murder. During the course of the trial the state was permitted to prove that appellant did not have a permit to carry a pistol or revolver. Appellant was convicted and appealed. Appellee, in its brief called attention to Sec. 8025, Burns' Ann. St. 1926, which reads: "In the trial of a person charged with committing or attempting to commit a felony against the person or property of another while armed with a pistol or revolver, without having a permit to carry such firearm as hereinbefore provided, the fact that such person was so armed shall be prima facie evidence of his intent to commit such felony." Although this was not embodied in an instruction below and appellant does not complain that it was read to the jury in argument, appellee urges that evidence of the fact that appellant did not have a permit was competent on the question of intent and that its proof established a prima facie case of felonious intent. Held, evidence inadmissible and prejudicial and the statute is beyond the power of the legislature.[1]

The court is clearly correct in its decision regarding the admission of evidence to the effect that the appellant had no permit to carry a firearm. Carrying a concealed weapon, though an offense in itself, is not a material element of the crime of murder,[2] nor does the mere carrying of a revolver without a permit render a defendant guilty of involuntary manslaughter.[3]

The general rule is well established that it is competent for a legislative body to provide by statute that certain facts shall be prima facie or presumptive evidence of other facts, if there is a natural and rational evidentiary relation between the facts proved and those presumed.[4] Such statutes are properly regarded as rules of procedure, changing the burden of proof and do not contravene the constitutional provisions for due process of law.[5] The opposite party must not be denied the right to rebut the presumption in some fair manner accorded by rules of law or procedure.[6]

On the other hand, the legislature cannot constitutionally make one fact conclusive evidence of another material fact in controversy, if the former is not, in and of itself, by virtue of its own force, conclusive, unless the statute may be regarded as declaring a rule of substantive law, dispensing with certain elements in the chain of proof necessary to establish a case—in which case the legislature would be making a new crime.[7] Such a statute would be arbitrary and have no relevancy to the facts already proved or those necessary to be proved.

In many cases statutes making certain facts presumptive evidence of other facts are very desirable as eliminating from the state's burden of proof matters that are almost taken for granted, but the proof of which would be considerable burden upon the state and of no practical aid or defense to the accused. The accused has his right to show that the inference to be made

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1 Powers v. State (Ind. Sup. Feb. 20, 1933), 184 N. E. 549.

2 Males v. State (1927), 199 Ind. 196, 156 N. E. 403.

3 Potter v. State (1904), 162 Ind. 213, 70 N. E. 129, 64 L. R. A. 942, 102 Am. St. Rep. 198, 1 Ann. Cas. 32.

4 Hawes v. Georgia (1922), 258 U. S. 1, 66 L. Ed. 431.

5 Chicago Terminal Transfer Co. v. Chicago (1905), 217 Ill. 343, 75 N. E. 499.

6 Goldstein v. Maloney (1911), 62 Fla. 198, 57 So. 342.

7 In re Buchanan (1918), 184 App. Div. 237, 171 N. Y. S. 708; Voght v. State (1890), 124 Ind. 358, 24 N. E. 680; Darbyshire v. State (1925), 196 Ind. 608, 149 N. E. 166; People v. Falkovitch (1917), 280 Ill. 321, 117 N. E. 398, Ann. Cas. 1918B, 1077, 16 A. L. R. 916; People v. Camberis (1921), 297 Ill. 455, 130 N. E. 712, 16 A. L. R. 916, Meyer v. Berlandi (1888), 39 Minn. 438, 40 N. W. 513.

by the statute is not the proper inference in this case, and the facts are generally more within his control than within the control of the prosecution. Some of the more common of these situations are:

Various cases sustain the constitutionality of statutes making a failure of a bank under certain circumstances prima facie evidence of knowledge on the part of the banker that the institution was insolvent at the time of the receipt of deposits or of an intent to defraud.[8]

Possession of gambling devices has been made prima facie evidence of crime.[9] And an ordinance may provide that a person found in a gambling house shall be presumed to be there for the purpose of gambling unless it is shown to the contrary.[10] A statute making renting a room for gambling purposes a crime is constitutional which provides that it is sufficient evidence of the fact if gaming is actually carried on with knowledge of the owner or under such circumstances as he ought to know.[11]

Statutes declaring the delivery of intoxicating liquors shall be prima facie proof of a sale, and that a sale shall be prima facie proof of illegality are constitutional.[12] The legislature may provide that the destruction of liquor by a tenant during search is prima facie proof that it is intoxicating liquor and intended for unlawful sale.[13] Proof of possession of intoxicating liquors is a prima facie case of illegality.[14]

A statute is valid which creates a speed limit in towns and makes speeds in excess thereof prima facie negligent.[15] Such a statute cannot be conclusive, however, and in the absence of something further on the question of negligence cannot sustain a conviction in the case of an accident alleged to have been caused by criminal negligence since the defendant must be shown actually guilty of criminal negligence.[16]

Statutory provisions intended to protect proprietors of hotels and similar places in obtaining payment for accommodations, through making certain facts prima facie evidence of an intent to defraud are constitutional. Surreptitious removal of baggage from a hotel without payment; giving in payment of a check or draft on which payment was refused; obtaining accommodations by false or fictitious show of baggage—are prima facie evidence of fraudulent intent.[17]

The legislature thus has the power to make, in many cases, proof of certain matters prima facie proof of other matters which have a close and definite relation thereto. However, the instant case strictly limits the power of the legislature in this respect as regards proof necessary to sustain a conviction for a crime or criminal intent. "Before a proven fact can constitute prima facie evidence of criminal intent, it must be sufficient evidence of itself to sustain a conviction without support of statutory enactment."[18] Such a restriction is necessary since any other rule would require the defendant to prove himself innocent regardless that the evidence against him without such statutory presumption was insufficient to sustain a conviction. P. C. R.

8 State v. Beach (1897), 147 Ind. 74, 43 N. E. 949, and cases cited.

9 Adams v. N. Y. (1904), 192 U. S. 585, 48 L. Ed. 575.

10 People v. Baum (1909), 133 App. Div. 481, 118 N. Y. S. 3.

11 Morgan v. State (1888), 117 Ind. 569, 19 N. E. 154; Voght v. State (1890), 124 Ind. 358, 24 N. E. 680.

12 Com. v. Wallace (1851), 7 Gray (Mass.) 222; State v. Higgins (1876), 13 R. I. 330; State v. Thomas (1880), 47 Conn. 546.

13 Darbyshire v. State (1925), 196 Ind. 608, 149 N. E. 166.

14 Rose v. State (1908), 171 Ind. 662, 87 N. E. 103.

15 Smith v. State (1917), 186 Ind. 252, 115 N. E. 943.

16 People v. Falkovitch (1917), 280 Ill. 321, 117 N. E. 398, Ann. Cas. 1918B, 1077, 16 A. L. R. 916; People v. Camberis (1921), 297 Ill. 455, 130 N. E. 712, 16 A. L. R. 916.

17 Smith v. State (1914), 141 Ga. 482, 81 S. E. 220, Ann. Cas. 1915C, 999; State v. Kingsley (1891), 108 Mo. 135, 18 S. W. 994.

18 Powers v. State (1933), 184 N. E. 549 at 552.