Michigan Law Review

Volume 35 | Issue 2

1936

EVIDENCE - STATUTORY PRESUMPTIONS IN CRIMINAL CASES - CONSTITUTIONALITY - DUE PROCESS

Malcolm L. Denise
University of Michigan Law School

EVIDENCE — STATUTORY PRESUMPTIONS IN CRIMINAL CASES — CONSTITUTIONALITY — DUE PROCESS — Defendant admitted killing deceased with unlicensed pistol. The trial court instructed the jury pursuant to a statute which provided that in the trial of a person charged with committing or attempting to commit a felony against the person of another while armed with any firearm capable of being concealed upon the person, without having a license or permit to carry such firearm, the fact that he was so armed should be prima facie evidence of his intent to commit such felony. Upon objection that the statute was unconstitutional as depriving defendant of due process of law, the court *held* that there was error in giving the instruction, because the legislature, although having the power to prescribe rules of evidence and procedure, could not arbitrarily authorize the inference of one fact from another fact which had no necessary tendency to establish it. *People v. Murguia,* (Cal. 1936) 57 P. (2d) 115.

Assertions that statutes similar to the one involved in this case are constitutional only if a reasonable connection exists between the preliminary fact and the fact to be inferred, or only if the connection is not so unreasonable as to be arbitrary, are frequently met with in the cases.[1] One searches in

[1] L. R. A. 1915C 717 at 718 (1915); 51 A. L. R. 1139 at 1146 (1927).

vain for any clear exposition of the reason behind this requirement,[2] further than vague references to due process of law, and it is doubtful whether the courts are empowered to place any such limitation upon the legislature. The statute may mean either that if the jury find fact A, it may find fact B, or that if the jury find fact A, the burden shall be upon defendant to show that fact B does not exist; depending upon the meaning to be placed upon the ambiguous words "prima facie." The former interpretation was adopted in the instant case. The courts have almost uniformly agreed that the legislature may pass such statutes[3] under its general power to prescribe rules of evidence and procedure.[4] But even if the authorized inference is "arbitrary," is there any denial of due process of law? The statute merely authorizes the inference, but leaves the jury free to decide whether it shall be drawn in a particular case. Defendant is deprived of none of his traditional safeguards: he still has the right to produce evidence, the right to require that the jury be convinced beyond a reasonable doubt, even if he produce no evidence, and the

[2] Perhaps the best reason suggested is that the legislature's power is exceeded unless the law is based on what human experience shows to be a fairly strong probability, so that no extreme violence is done to the presumption of innocence, as was apparently attempted in Casey v. United States, 276 U. S. 413, 48 S. Ct. 373 (1928); and Lincoln v. Smith, 27 Vt. 328 (1855). It is suggested that the legislature has no constitutional power to authorize punishment merely upon evidence of the existence of a fact which ordinarily has no tendency to establish guilt, in Opinion of the Justices, 208 Mass. 619, 94 N. E. 1044 (1911); but is there a distinction between the case supposed and a case where the fact does have a tendency to establish guilt? In either case, in the final analysis, it is left to the jury to decide whether the ultimate fact exists, and it is upon that that the punishment depends. There is little merit in the suggestion made in State v. Grimmett, 33 Idaho 203, 193 P. 380 (1920), that if the inference to be drawn is unreasonable the burden of proof is shifted to defendant. The most frequent practice seems to be to follow up the statement of the doctrine with an emphatic restatement in different terms.

[3] But see People v. Licavoli, 264 Mich. 643, 250 N. W. 520 (1933), where the court expressed the opinion that defendant is constitutionally relieved of all burdens, even of going forward, so that any statute which allows the possibility, under any circumstances, of a conviction before defendant's guilt has actually been proved, by the state, without the benefit of aiding rules of evidence, beyond a reasonable doubt, is unconstitutional. Is the argument sound, even considering the premise? Accord: State v. LaPointe, 81 N. H. 227, 123 A. 692 (1924).

[4] The cases are collected and annotated in 51 A. L. R. 1139 ff. (1927); L. R. A. 1915C 717 (1915); 2 WIGMORE, EVIDENCE, 2d ed., § 1356 (1923). The note in L. R. A. is especially good for a discussion of the various objections raised to the existence of the power and the disposals thereof, together with special circumstances under which one or another of them has prevailed. Since courts are usually quite reluctant to hold legislation unconstitutional, there have been extremely few cases holding statutes invalid simply because of a lack of reasonable connection, notably Opinion of the Justices, 208 Mass. 619, 94 N. E. 1044 (1911) (a declaratory judgment); and State v. Grimmett, 33 Idaho 203, 193 P. 380 (1920). The fact that courts have usually been willing to regard as "reasonable" anything beyond an "arbitrary mandate," when faced squarely with the problem, would tend to negative the supposed benefits deriving from the doctrine. (In the principal case, the court divided five to four on the question of reasonable connection, though under the facts of the case the actual drawing of the inference would have been clearly unreasonable.)

benefit of the presumption of innocence. A verdict may not be directed in a criminal trial.[5] Professor Wigmore suggests that the only effect of these statutes in criminal cases is to place upon defendant the burden of producing evidence.[6] If the statute cannot prejudice any of defendant's possible constitutional rights, it cannot be unconstitutional. Indeed, it might be suggested that there is a contradiction of terms involved in speaking of arbitrarily authorizing an inference, since inference is a mental process in which are necessarily found elements of selection and judgment. If the statute is taken to mean that if the jury find fact A, the burden shall be upon defendant to show that fact B did not exist, there is a constitutional problem as to whether the legislature can shift the burden of proof from the state to the defendant, upon which courts have differed.[7] Perhaps the constitution means only that there shall be a fair and reasonable trial.[8] At any rate, if the power of the legislature to shift the burden of proof in criminal trials is once conceded, it is difficult to see how the existence of the power is affected by its exercise for a poor reason, or for no reason at all, so long as defendant's constitutional rights are not infringed. The terms "reasonable trial" and "reasonable connection" do not imply the same thing, though courts sometimes seem to reason on some such basis. Defendant has just as much opportunity to establish his innocence when the burden is shifted for a poor reason as when it is shifted for a good reason.[9] But anyway, this statute is merely permissive, and does not require a finding either way in the absence of evidence. Under either interpretation of such statutes, once granting that the legislature has the general power to pass them, there would seem to be no justification for causing their validity to hinge upon judicial opinions as to what is a reasonable connection.[10]

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[5] People v. Cannon, 139 N. Y. 32, 34 N. E. 759 (1893).

[6] 2 WIGMORE, EVIDENCE, 2d ed., § 1356 (1923).

[7] See 1 COOLEY, CONSTITUTIONAL LIMITATIONS, 8th ed., p. 642 (1927), and cases cited. Holding that it may not: Hammond v. State, 78 Ohio St. 15, 84 N. E. 416 (1908); State v. Beach, 147 Ind. 74, 43 N. E. 949, 46 N. E. 145 (1896). Holding that it may: People v. Adams, 176 N. Y. 351, 68 N. E. 636 (1903); Casey v. United States, 276 U. S. 413, 48 S. Ct. 373 (1928). Holding that it may as to facts peculiarly within defendant's knowledge: Smith v. Commonwealth, 196 Ky. 188, 244 S. W. 407 (1922). Holding that it may as to purely statutory crimes: State v. Kline, 50 Ore. 426, 93 P. 237 (1907). Holding that it may, so long as the presumption of innocence is preserved: Diamond v. State, 123 Tenn. 348, 131 S. W. 666 (1910).

[8] The due process clause implies at least this much. How much more it implies is a matter of conflict among the various jurisdictions. But a court should be careful not to use the clause as a mere tool for making the legislature conform to the court's idea of what the law should be.

[9] The justification often given for allowing such legislation at all is to the effect that it will be easy for an innocent person to rebut the presumption or prima facie case. This should be more true, not less, when the influence upon which the presumption or prima facie case is based is weaker.

[10] The remark made by one of the judges in the instant case and concurred in by another, that the verdict could also be set aside as against the weight of the evidence, might indicate that the court fastened upon this doctrine as a means of doing justice in a hard case.