Buffalo Law Review

Volume 5 | Number 2 Article 21

1-1-1956

Criminal Law—Use of Phototraffic Camera

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Recommended Citation

Arnold Lieberman, *Criminal Law—Use of Phototraffic Camera*, 5 Buff. L. Rev. 184 (1956).
Available at: https://digitalcommons.law.buffalo.edu/buffalolawreview/vol5/iss2/21

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knowledge of all the facts in this type of public welfare offense, and hence they believed that such a requirement would emasculate the statute. The dissent recoiled at imposing criminal sanctions when the defendant's act was free of criminal intent.

Conviction for crime without *mens rea* has become solidly entrenched in New York Law,[35] as it has throughout the United States.[36] The complexity of present society and the need for enforcement of minor violations of such statutes as the liquor, pure food, sanitary, building, and factory laws and the like has called for obviation of the requirement of *mens rea.* As long as this innovation does not gain a foothold[37] in the enforcement of traditional types of criminality, it does not seem particularly dangerous.

Use of Phototraffic Camera

In *People v. Hildebrant*[38] defendant was convicted of a "traffic infraction"[39] driving an automobile at an illegal speed in a restricted zone.[40] The device employed to ascertain the rate of speed of defendant's car was a "phototraffic camera," which takes two pictures at a given interval. The driver was not arrested or indentified at the time of the alleged commission of the offense, nor was any direct proof as to who was in fact operating the car offered at the trial. The defendant appealed from an adverse ruling of the County Court[41] directly to the Court of Appeals by permission of an associate judge; the Court reversed, holding that mere proof of ownership of a vehicle will not support an inference or presumption of an identity between the registered owner and the person who was operating the vehicle at the time of the traffic infraction.

Although it may be conceded that a "traffic infraction" falls outside the purview of "criminal law," it has been classified as "quasi-criminal" in that such cases are tried as misdemeanors,[42] requiring the necessity of proof beyond a reasonable doubt.[43] Under certain conditions, speeding offenses constitute a misdemeanor;[44]

35. *People ex rel. Price v. Sheffield Farm Co.,* 225 N. Y. 25, 121 N. E. 474 (1918) (employment of child under 14); *Ward v. O'Connell,* 280 App. Div. 1021, 116 N. Y. S. 2d 785 (3d Dep't 1952) sale of liquor to minors).

36. Sayre, *Public Welfare Offenses,* 33 COL. L. REV. 55 (1933).

37. Some cases which indicate that this foothold has been gained are *State v. Lindberg,* 125 Wash. 51, 215 Pac. 41 (1923); *State v. Quinn,* 131 La. 490, 59 So. 913 (1912); *United States v. Balint,* 258 U. S. 250 (1922); *State v. Hennessy,* 114 Wash. 351, 195 Pac. 211 (1921).

38. 308 N. Y. 397, 126 N. E. 2d 377 (1955).

39. N. Y. VEHICLE & TRAFFIC LAW §2(29).

40. *Id.* §§56(4), 95(c).

41. 204 Misc. 1116, 129 N. Y. S. 2d 48 (1954).

42. *Supra,* note 39.

43. *People v. Erickson,* 283 N. Y. 210, 28 N. E. 2d 381 (1940); *People v. Strong,* 294 N. Y. 930, 63 N. E. 2d 119 (1945).

44. See N. Y. PUBLIC AUTHORITY LAW §361(1).

therefore, if a presumption of identity between the owner and the person operating the vehicle at a given time were to be upheld, by logical extension the same presumption should be operative to those infractions which are misdemeanors.

To satisfy the criteria of due process, any fact presumed in a criminal prosecution must have a natural and reasonable relationship to the facts proven.[45] A presumption is a deduction which the law requires the finder of facts to make, while an inference is a permissive conclusion which the triers of fact may reach from a given set of proven facts.[46] The majority of the Court denied the existence of a reaosnable natural relationship between proof of ownership and a conclusion that the owner was operating the vehicle at a given time, thus rejecting a permissive or mandatory conclusion to be drawn to that effect. In support of this contention the Court pointed out that at least one million more operators' licenses are issued than automobile registrations.

The dissenting judges relied heavily on *People v. Rubin*,[47] where the Court upheld a conviction for illegal parking solely on proof that the defendant was the owner of the automobile. The Court there stated that such proof of ownership supplied "sufficient basis for an inference of personal conduct." More persuasively, the minority decision contended that the supervening policy of employing scientific devices to aid in the enforcement of traffic laws, which facilitate the lessening of our mounting highway death toll, justifies a relaxation of the standards of proof in a prosecution of this nature. It should be noted, however, that no parking offenses constitute misdemeanors, and that the *Rubin* decision seems clearly distinguishable on this ground. In addition, in the absence of a legislative enactment providing for an inference or presumption of identity, the courts should not whittle away the traditional standard of proof beyond a reasonable doubt in criminal cases.[48]

Disorderly Conduct

The New York disorderly conduct statute,[49] always a fertile field for due process objection, withstood an assault upon its constitutionality[50] when the defendant in *People v. Harvey*[51] claimed that his attempt to relieve a policeman of his nightstick was arbitrarily prosecuted as a misdemeanor under section 720 of the Penal Law,[52] while the same elements may be treated as a mere offense

45. *Tot v. United States*, 319 U. S. 463 (1943); *People v. Pieri*, 269 N. Y. 315, 199 N. E. 495 (1936); *People v. Terra*, 303 N. Y. 332, 102 N. E. 2d 576 (1951).
46. BLACK, LAW DICTIONARY 917 (4th ed. 1951).
47. 284 N. Y. 392, 31 N. E. 2d 501 (1940).
48. *People v. St. Germain*, 302 N. Y. 580, 96 N. E. 2d 891 (1951).
49. N. Y. PENAL LAW §§720, 722.
50. U. S. CONST., amend. V.
51. 307 N. Y. 588, 123 N. E. 2d 81 (1954).
52. "Any person who shall . . . annoy . . . any person . . . shall be deemed guilty of a misdemeanor."