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Criminal Law—Disorderly Conduct

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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 reasonable 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 constitutionality⁵⁰ 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."

under section 722.⁵³ Hence, the whim of the prosecutor controls whether the greater or lesser crime will be charged.

A unanimous Court emphasized that section 720 requires that defendant's conduct must annoy a specific "person," while section 722, subdivision 2, requires that "others" be offended. The illogicality of punishing the former as a misdemeanor and the latter as a mere offense was recognized, but so was the fact that this is a legislative rather than a judicial problem. Defendant's contention that the same act can, at the prosecutor's discretion, be prosecuted as a misdemeanor or as an offense is in practice true, but so long as a legal distinction, no matter how illogical or tenuous, separates them, no violation of due process can successfully be claimed.

Misdemeanor-Manslaughter

The misdemeanor-manslaughter rule applies in cases where the independent misdemeanor itself was committed with a criminal intent.⁵⁴ This is analogous to the felony murder situation.⁵⁵ However, difficulties arise in the application of the rule in those cases where the initial offense is merely *malum prohibitum* and does not require criminal intent for conviction. In *People v. Nelson*⁵⁶ the Court extended the misdemeanor-manslaughter rule to its very limit in sustaining a conviction thereunder while specifically excluding from consideration the question of criminal intent in the commission of the misdemeanor. They held that a landlord, the condition of whose property violated the Multiple Dwelling Law in that it did not contain sufficient means of egress and other fire precautions⁵⁷ (these violations being misdemeanors),⁵⁸ could be held liable for manslaughter, First Degree,⁵⁹ when some tenants were killed during a fire because of the inadequate means of egress. The conviction was sustained merely on the basis of the landlord's knowledge of the physical condition of the premises, disregarding any question of criminal intent in the maintenance of such condition.⁶⁰

A vigorous and justified dissent maintained that the majority was carrying the definition of manslaughter beyond its bounds in permitting conviction without

53. "Any person who . . . (2) Acts in such a manner as to annoy . . . others . . ." shall "be deemed to have committed the offense of disorderly conduct."

54. 40 C. J. S., *Homicide* §57, 920-921 (b).

55. *People v. Grieco*, 266 N. Y. 48, 193 N. E. 634 (1934).

56. 309 N. Y. 231, 128 N. E. 2d 391 (1955).

57. N. Y. MULTIPLE DWELLING LAW §§187-189.

58. *Id.*, §304.

59. N. Y. PENAL LAW §1050 (1); ". . . homicide . . . committed without a design to effect death: (1) By a person . . . committing . . . a misdemeanor, affecting the person or property, either of the person killed, or of another . . ."

60. *People v. Alexander*, 293 N. Y. 870, 59 N. E. 2d 451 (1943), *affirming* 267 App. Div. 762, 45 N. Y. S. 2d 940 (1st Dep't 1944).