IN THE DISTRICT COURT OF THE FIRST CIRCUIT
HONOLULU DIVISION
STATE OF HAWAI`I

STATE OF HAWAII,	)	Case No. 160P of 3/07/02
	)	Case No. 50P of 2/22/02
Plaintiff,	)	Case No. 72P of 2/22/02
	)	
vs.	)	Non-Compliance with Speed
	)	Limit (Section 291C-102, H.R.S.)
WANDA M. PACHECO,	)	Citation No. 2012261VO
VERNON KAAHANUI, SR.	)	Citation No. 2008865VO
STEVEN YASUO NAGATA,	)	Citation No. 2008869VO
	)	
Defendants.	)	
	)	

ORDER GRANTING MOTION TO CONSOLIDATE
AND MOTION TO DISMISS TRAFFIC VIOLATIONS
FOR STATE'S FAILURE TO PROVE ALL THE ELEMENTS
UNDER SECTION 291C-102, H.R.S.
BEYOND A REASONABLE DOUBT

The above matters were heard on April 8, 2002. The State was represented by Deputy Prosecuting Attorney Renee Sonobe Hong and Defendants were represented by Michael H.M. Kam and Katherine Puana Kealoha. Defendants were not present.

I. Background

A. Procedural History

Contested civil hearings were previously held in all three cases, judgments were imposed and subsequently vacated when defendants requested trials in accordance with H.R.S. 291D - 13.[1] Trials for all three defendants are currently set for Monday, April 15, 2002 at 8:30 a.m. Defendants have filed a Motion to Consolidate and Motion to Dismiss Traffic Violations for State's Failure to Prove

all the Elements under Section 291C-102, H.R.S. Beyond a Reasonable Doubt ("Motion to Dismiss") as a pre-trial matter.

B. Legal Arguments

Defendants' Motion to Dismiss raise numerous arguments as to why the cases should be dismissed. Defendants' primary argument is that the statutory presumption that the registered owner was driving at the time of the alleged speeding offense is mandatory and thus, unconstitutional. Specifically, Defendants contend this presumption impermissibly shifts the burden to them to prove they weren't driving which violates their due process rights. Additionally, Defendants contend the rational basis for the presumption does not meet the requisite standard of proof beyond a reasonable doubt.

In its Memorandum in Opposition, however, the State characterizes the presumption as a permissive inference. Thus, it meets constitutional muster, as the court is free to disregard the inference at trial and the defendant is not obligated to prove his or her innocence. The State further contends that as long as there is a basis for the inference, it is rational and thus constitutional.

The photo citation legislation and the issues raised therein must be viewed in light of Hawai`I's existing traffic statutes.

C. Hawai`I's Traffic System

Prior to the enactment of Chapter 291D, traffic matters were criminal in nature in that many offenses carried imprisonment as a possible penalty in addition to fines. Appearance in court was mandatory. Failing to appear resulted

in the issuance of bench warrants and subsequent charges for criminal contempt, charged as either a petty or a full misdemeanor.

In 1993, the Legislature passed Act 214 which "decriminalized" certain traffic offenses by eliminating the jail penalty and by creating a civil system of traffic infractions which became effective July 1, 1994. Thus for "less serious" traffic offenses such as running a red light or speeding, the offense is classified as a civil traffic infraction. The requisite burden of proof is a "preponderance of the evidence." The defendant is allowed to respond by appearing in person at the hearing or by submitting a written statement. No prosecutor is present at the hearing. If a person fails to respond, then a default judgment is issued and ultimately a driver's license stopper is imposed which prevents the driver from renewing his or her license until the matter is resolved by payment or adjudication.

If the court deems the hearing to be contested and finds judgment in favor of the State, the defendant has thirty days in which to request a trial. At trial, the burden of proof is no longer a "preponderance of the evidence" as it was at the civil hearing stage but now it is "proof beyond a reasonable doubt." 1993 Senate Journal, Conference Committee Report No. 69 at p. 767. H.R.S. Section 291D-13 specifically provides that the matter "shall be adjudicated in a trial pursuant to the Hawaii Rules of Penal Procedure and the rules of the district court." In effect, the defendant has now opted out of the civil traffic system and into the criminal traffic system.[2]

D. Automated Photo Enforcement

In recent years, numerous countries including Canada, the United Kingdom, Germany, Sweden, Australia as well as the United States have adopted some type of automated enforcement. Although a compilation of all existing programs is beyond the scope of this opinion, it is apparent that many of them photograph the driver.[3] The system used in Hawai`I apparently has that capability.[4]

E. Hawai`I's Photo Citation Legislation

In 1998, Hawai`I's Legislature passed Act 234, the first photo citation legislation with respect to speeding and red light violations. This law was subsequently amended by Act 263 passed in 1999 and again in 2000 by Act 240. The purposes of the legislation include promoting traffic safety, better use of law enforcement officials, and cost savings.

Under Hawai`I's law, the vendor takes a photo of the speeding vehicle not the driver. The vendor must then mail a copy of the citation within three days to the registered owner.[5] The registered owner may then submit a written statement or appear in person at the civil hearing. If judgment is entered in favor of the State, the defendant may then request a trial at which time the State must prove the case against the defendant beyond a reasonable doubt. The only section which deals with the evidence and proof is Section 12 of Act 263, SLH 1999 which provides as follows:

> Section 12. Prima Facie evidence.
> (a) Whenever a citation for violation of Chapter 291C, Hawaii Revised Statutes is issued pursuant to section 291C-165, Hawaii Revised Statutes, or whenever a photo red light imaging system, photo technology system or photo speed imaging detector system determines a motor vehicle to be in violation of section 291C-102, 291C-38(c), or 291C-32(a)(3), Hawaii Revised Statutes, as applicable, evidence that the motor vehicle described in the citation or summons

issued pursuant to this Act was operated in violation of those sections of the Hawaii Revised Statutes, together with proof that the person to whom the summons or citation was sent was the registered owner of the motor vehicle at the time of the violation, shall constitute prima facie evidence that the registered owner of the motor vehicle was the person who committed the violation.

Under the statute, the registered owner may be relieved of liability in four ways. First, the registered owner may submit a declaration under penalty of perjury stating the name, current address, and the driver's license number of the driver along with the date, time, place and nature of the alleged violation. This declaration must be signed by both the registered owner and the driver. Second, the registered owner may testify in open court under oath that he or she was not the driver and then submit a declaration as described above. Third, if the vehicle was stolen, the registered owner may submit a letter of verification of loss from the police department. In the case of a rental car or u-drive company, the company must submit an affidavit with the name, address and driver's license of the lessee.[6]

At issue is whether Section 12 Prima Facie Evidence, regardless of whether it is considered a statutory inference or a presumption, meets the required rational basis standard.[7]

II. Discussion

A. Standard of Review

In assessing the constitutionality of statutory inferences, Hawai`I's courts have held that significant weight should be accorded to the Legislature's determination. *State v. Brighter*, 61 Haw. 99, 595 P.2d 1072 (1979) and *State v. Vallejo*, 9 Haw. App. 73, 823 P.2d 154 (1992). However due process imposes certain limitations. The rational basis for the statutory inference must nevertheless satisfy the reasonable doubt standard. *Barnes v. U.S.* 93 S. Ct. 2357 (1973) and *State v. Pone*, 78 Haw. 262, 269, 892 P.2d 455, 462 (1995).

B. Analysis

1. Rational Basis

In the instant case, the legislative history is silent concerning the basis for this presumption. Accordingly, the court may take into account through judicial notice, if necessary, other pertinent and helpful information which may be available. *State v. Brighter*, *State v. Pone,* 78 Haw. 262, 269, 892 P.2d 455, 462 (1995), and *State v. Dwyer*, 57 Haw. 526, 529-530, 560 P.2d 110, 113 (1977). This includes present day experience. *Leary v. United States,* 395 U.S. 6 (1969).

The court takes judicial notice that in Hawai`i, a teen-ager may apply for a driver's permit at the age of 15 1/2 with parental consent. According to the City and County of Honolulu's Department of Motor Vehicle (DMV) records there are 20,759 licensed drivers under the age of 20 on O`ahu. It is also likely that a large number of these teen-agers are not registered owners. To lower insurance rates, parents are likely to purchase vehicles and register them in their own names and add their son or daughter as an additional insured on their policies. In addition, vehicles are often held jointly. Section 286-49 of the H.R.S. presumes that if the names of two or more persons appear on the registration, the vehicle is owned in joint tenancy. According to DMV records as of December 2001, 580,706 passenger vehicles were registered, 37,180 trucks were registered and 13,351 motorcycles were registered on O`ahu. This data does not take into consideration the number of vehicles owned by the federal, state and county governments, as well as corporate owned vehicles. The total number of all licensed drivers on O`ahu as of December 2001 is 542,244.

Defendants cite to the "good faith defense" in no-fault insurance cases. Under H.R.S. Section 431-10C104, either the driver, the registered owner, or both may be cited for failing to have current no-fault insurance. However, H.R.S. Section 431-10C107 specifically recognizes that a driver may assert a good faith belief that he or she was unaware of whether the vehicle was insured at the time. Thus, legislators have recognized that registered owners lend their vehicles frequently to others.

Other jurisdictions have also examined the rationality of such a presumption. In *Commonwealth v. Slaybaugh*, 364 A.2d 687 (1976), a hit and run accident occurred. The victim followed the vehicle which struck him and found it abandoned. Noting the license number, he forwarded it to the state police who subsequently determined that the defendant was the registered owner. In accordance with Section 1212 of Pennsylvania's Motor Vehicle Code, the owner was presumed to be the operator at the time of the violation and accordingly was charged with failing to stop at the scene of an accident.[8]

At his trial, defendant testified that he was not driving at the time of the accident, that he did not know who was driving and that numerous persons had access to his vehicle. In convicting the defendant, the trial court relied on Section 1212. On appeal, Pennsylvania's Supreme Court held that Section 1212 was unconstitutional, stating "The inferred fact of operation of a motor vehicle at a specific time does not flow logically beyond a reasonable doubt from the mere established fact of ownership." Id at 690. A similar result was reached in *Commonwealth v. Leaman,* 388 A.2d 330 (1978).

In support of its position, the State cites *State v. DeBiaso*, 271 A.2d 857 (1970), which upheld similar language. In that case, the court held that the inference was constitutional as the "presumed fact is more likely than not to flow from proof of fact," following *Leary v. United States*, 89 S. Ct. 1532 (1969). However *DeBiaso* is easily distinguishable. At the time the U.S. Supreme Court decided *Leary,* it did not address the standard of proof necessary for a criminal case. It held that the standard for determining whether the rational connection was constitutional was if the "presumed fact is more likely than not to flow from proof of fact." This is the reasoning followed by the *DeBiaso* court. However, in a subsequent case, *Barnes v. United States,* 93 S. Ct. 2357, (1973), the U.S. Supreme Court noted that *Leary* did not address the issue as to what the standard was in criminal cases as the Leary Court had found that the challenged inference failed to satisfy the more-likely-than-not standard. *See footnote id at n.64.* In *Barnes*, the U.S. Supreme Court specifically held that the standard to be applied in criminal cases is the reasonable doubt standard. 93 S.Ct. at 2361.

Under Hawai`i's photo enforcement statute as currently drafted, the issue is not whether the registered owner should be held responsible for the traffic offense regardless of who is driving. That very well may provide a rational basis for a different statutory presumption as is done in documentation type offenses such as no-fault insurance as well as for parking citations.[9] Rather, the statute as currently worded infers that the registered owner was the driver at the time of the alleged offense. Given the number of teen-age drivers, the number of cars registered in dual names or in the names of corporations and the government, the

court cannot find that the inferred fact of driving at the time of the alleged offense flows logically beyond a reasonable doubt from the fact of registration.

2. Presumption or Inference

The court now turns to the issue of whether the presumption in Section 12 amounts to a permissive inference or a mandatory presumption. Defendants contend that this presumption is a mandatory one. However, no legal authority is cited in support of such a contention. To the contrary, the authorities cited in support of their argument, H.R.S. 707-117 and HRE 306, actually support the State's position that the presumption is a permissive inference.

The State correctly notes that Section 12 of Act 263 is labeled "prima facie evidence." Prima facie evidence has been interpreted by Hawai`i's courts to mean a permissive inference rather than a mandatory presumption. *State v. Cabrera*, 90 Haw. 359, 978 P.2d 797 (1999). However, labeling Section 12 as prima facie evidence may not be controlling in ultimately determining whether the inference is permissive or mandatory *as a practical matter*. *See State v. Dwyer*, 57 Haw. 526, 560 P.2d 110 (1977).[10]

As a practical matter, the State has acknowledged that in the majority of cases, there is no identification as to the driver of the vehicle at the time of the offense. See Memorandum in Opposition, pgs. 2-3. Thus, the State intends to rely on Section 12. If the trial court declines to accept the inference, the State is unable to meet its burden of proof beyond a reasonable doubt, *absent any other evidence regarding the driver's identity*. If the court accepts the inference and that is the only evidence which the State presents concerning identification of the

driver, the inference would then operate as a presumption and the defendant would be required to prove his or her innocence.

Hawai`i's courts have consistently held that such a shifting of the burden to the defendant is not permissible. In *State v. Cuevas*, 53 Haw. 110, 488 P.2d 322 (1971), our Supreme Court stated, "Under our legal system, the burden is always upon the prosecution to establish every element of crime by proof beyond a reasonable doubt, never upon the accused to disprove the existence of any necessary element. 53 Haw. at 113, 488 P.2d at 324. *See also State v. Pone*, 78 Haw. 262, 892 P.2d 455 (1995).[11] Thus, the State may not rely solely upon the inference to prove identification of the driver.[12]

III. Holding

Based on the foregoing, the court finds that there is no rational basis to support the presumption or inference that the registered owner was the driver at the time of the alleged speeding offense. Further, the State's reliance upon the inference that the registered owner was driving, would transform the inference into a mandatory presumption as a practical matter. Such a presumption impermissibly shifts the burden of proof to the defendant at trial. Accordingly for these reasons, such a presumption is unconstitutional. The court declines to address the other arguments raised in Defendants' Motion to Dismiss.

IV. Order

Defendants' Motion to Consolidate and Motion to Dismiss Traffic Violations for State's Failure to Prove All the Elements Under Section 291C-102

H.R.S. Beyond a Reasonable Doubt is hereby granted. This ruling addresses only the pending criminal traffic trials and does not affect the civil hearings for reasons stated herein. The State must now determine whether it can meet its burden of proof beyond a reasonable doubt to establish the identity of the driver at trial in each individual case without solely relying on the Section 12 inference.

Dated: April 11, 2002 at Honolulu, Hawai`i.

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Judge Leslie A. Hayashi
Judge of the above-entitled Court

FOOTNOTES

[1] Defendant Vernon Kalani Kaahanui, Sr. had his civil hearing on February 22, 2002 before the Honorable Russel Nagata. A fine of $60 plus the $7 assessment for the Driver's Education Fund and the $20 assessment for the administrative cost pursuant to H.R.S. 607-4(b)(8) was vacated; Defendant Steven Yasuo Nagata had his civil hearing on February 22, 2002 before the Honorable Russel Nagata. A fine of $90 plus the $7 assessment for the Driver's Education Fund and the $20 assessment for the administrative cost pursuant to H.R.S. 607-4(b)(8) was vacated; Defendant Wanda Pacheco was not present but was represented by defense counsel at her civil hearing which was held on March 7, 2002 before the Honorable George Y. Kimura. A fine of $55 plus the $7 Driver's Education Fund assessment and the $20 administrative cost pursuant to H.R.S. 607-4(b)(8) was vacated.

[2] Criminal traffic offenses such as driving without a license or driving without no-fault insurance, continued to be handled in the original traffic system. Thus the defendant must appear in court at the arraignment and plea date or request a trial. Failure to appear at the arraignment or at trial results in a bench warrant and the State is represented at every stage of the proceeding. If the person is alleged to have committed both a criminal traffic such as driving without a license or driving without no-fault insurance and a civil traffic infraction, such as running a red light or crossing over solid lines, the matters are kept together and both are treated as criminal traffic matters. Although an argument can be made that the decriminalized traffic offenses even at the trial level are civil, there is no dispute that the burden of proof is beyond a reasonable doubt, which standard does not exist in civil cases. The State has not elected to raise such an argument. *See also State v. Riveira*, 92 Haw. 546 (Haw. App. 2000), *rev'd on other grounds*, 92 Haw. 521 (2000) which held that the controlling factor in determining whether an offense is criminal or civil depends on whether the legislature intended to classify the penalties as criminal or civil noting that even offenses which do not carry the possibility of imprisonment can be considered criminal.

[3] See various websites including: "Photo-enforcement Sites in the United States" at www.photocop.com; "Invisible Traffic Cops" at www.ncsl.org/programs (National Conference of State Legislatures), and "FHWA Study Tour for Speed Management and Enforcement Technology, December 1995" at ntl.bts.gov/DOCS/speed06 which is particularly instructive on how to implement an automated enforcement program and the critical need for public support.

[4] House Journal, Standing Committee Reports, SCRep.30-00 in which the Department of Transportation recommended an amendment to allow identification of the driver in high occupancy vehicle lanes.

[5] In the event there is more than one name on the registration, the vendor has elected to mail the citation to the first name which appears on the registration. The statute is also silent as to how to handle corporate, business or government owners.

[6] See Section 7 of Act 263, SLH 1999, amending Section 12(b)(4) of Act 234, SLH 1998.

[7] This court has already impliedly ruled that the presumption or inference that the registered owner was the driver is not unconstitutional at the civil hearing.

[8] Pennsylvania's Motor Vehicle Code read, in part, as follows:
In any proceeding for a violation of the provisions of this act or any local ordinance, rule or regulation, the registration plate displayed on such vehicle or tractor shall be prima facie evidence that the owner of such vehicle or tractor was then operating the same. If at any hearing or proceeding, the owner shall testify, under oath or affirmation, that he was not operating the said vehicle or tractor at the time of the alleged violation of this act or any local ordinance, rule or regulation, and shall submit himself to an examination as to who at that time was operating such vehicle or tractor, and reveal the name of the person, if known to him, or, if the information is made in a county other than that of his own residence, shall forward to the magistrate an affidavit setting forth these facts, then the prima facie evidence arising from the registration plate shall be overcome and removed and the burden of proof shifted.

[9] *See Revised Ordinance of City and County of Honolulu, 15-26.4. See also People v. Bigman*, 100 P.2d 370 (Cal. Super. 1940) and *Cantrell v. Oklahoma City*, 454 P.2d 676 (Okl. 1969) upholding the presumption in parking citations.

[10] And perhaps Defendants meant to argue "substance over form" in their motion.

[11] In *Slaybaugh*, Pennsylvania's Supreme Court was presented with the identical issue when it was asked to determine whether Section 1212 of its Motor Vehicle Code was an inference or a presumption. Although the same prima facie evidence language was used in that statute, the court nevertheless held that Section 1212 was a statutory presumption because it shifted the burden to the defendant to disprove the presumed fact which violated the defendant's constitutional rights. The court further noted that assuming arguendo that the statute could be construed to create only an inference, the label did "not save the statute from constitutional infirmity." The inference still had to pass the "beyond a reasonable doubt" standard of proof which the court found it could not do, as previously discussed.

[12] Assuming arguendo that the State could show that there is a rational basis for the presumption and that the permissive inference does not operate as a presumption, under the State's scenario, the State acknowledges that it would present evidence in each case with the likelihood that ultimately the cases would be dismissed if the court fails to accept the inference and there is no other evidence concerning the driver's identity.