SUPREME COURT OF LOUISIANA

NO. 98-KA-1415

STATE OF LOUISIANA

V.

MICHAEL Q. CARUSO

ON APPEAL FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT,
FOR THE PARISH OF JEFFERSON,
HONORABLE KERNAN A. HAND, JUDGE

MARCUS, Justice*

Michael Q. Caruso was charged by bill of information with violation of La. R.S. 14:220 in that on or about February 27, 1997, "he did with fraudulent intent wilfully refuse to return a leased vehicle to Enterprise Rent-A-Car." Defendant filed a motion to quash the bill of information on the ground that La. R.S. 14:220 was unconstitutional in that the statute contains a mandatory presumption and makes a petty matter a felony. After a hearing, the trial judge granted defendant's motion to quash finding that the final sentence of La. R.S. 14:220A was unconstitutional. The trial judge did not address defendant's other constitutional challenges.

The state appealed to the court of appeal. The court of appeal transferred the case to this court pursuant to La. Const. Art. V, § 5(D)(1).[1] The sole issue presented for our determination is whether the final sentence of La. R.S. 14:220A is constitutional.

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* Knoll, J., not on panel. Rule IV, Part 2, § 3.

[1] La. Const. Art. V, § 5(D) provides in pertinent part: "a case shall be appealable to the supreme court if (1) a law . . . has been declared unconstitutional . . . . "

Statutes are presumed valid and their constitutionality should be upheld whenever possible. State v. Griffin, 495 So. 2d 1306 (La. 1986). Louisiana criminal statutes shall be given a genuine construction, according to the fair import of their words, taken in their usual sense, in connection with the context, and with reference to the purpose of the provision. La. R.S. 14:3.

At the time of the alleged offense, La. R.S. 14:220 provided in pertinent part:[2]

> A. If any person rents or leases a motor vehicle and obtains or retains possession of the motor vehicle by means of any false or fraudulent representation including but not limited to a false representation as to his name, residence, employment, or operator's license, or by means of fraudulent concealment, or false pretense or personation, or trick, artifice, or device; or, if the person with fraudulent intent wilfully refuses to return the leased vehicle to the lessor after the expiration of the lease term as stated in the lease contract, the person shall be guilty of a felony and upon conviction thereof shall be subject to the penalty provided for in Subsection B of this Section. **The offender's failure to return or surrender the motor vehicle within fifteen calendar days after notice to make such return or surrender has been sent by certified mail to the offender's last known address shall be presumptive evidence of his intent to defraud.** (Emphasis added)
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> B. Any person found guilty of violating the provisions of this Section shall be fined not more than five hundred dollars or imprisoned not more than five years with or without hard labor, or both.

Defendant contends that the use of the language "shall be presumptive evidence" in the last sentence of the statute creates a mandatory presumption establishing defendant's intent to defraud, an element of the crime for which he has been charged, and impermissibly shifts the burden of proof to defendant to rebut the presumption. We disagree.

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[2] The statute was amended by La. Acts 1997, No. 790, after the date of defendant's alleged offense, to change the time period for failure to return the vehicle from fifteen to seven days and to make other changes.

Due process requires the prosecution to prove each element of a crime beyond a reasonable doubt. In Re Winship, 397 U.S. 358 (1970). Inferences and presumptions are a staple of our adversary system of factfinding whereby a trier of fact is permitted to determine the existence of an element of the crime -- that is, an "ultimate" or "elemental" fact -- from the existence of one of more "evidentiary" or "basic" facts. In criminal cases, the ultimate test of the validity of evidentiary presumptions is that they must not undermine the factfinder's responsibility at trial, based on evidence adduced by the state, to find the ultimate facts beyond a reasonable doubt. County Court of Ulster County v. Allen, 442 U.S. 140, 156 (1979).

For purposes of due process analysis in criminal cases, a distinction has been made between presumptions which are mandatory and those which are permissive. A mandatory presumption instructs the factfinder that it must infer the presumed fact if the state proves certain predicate facts. Francis v. Franklin, 471 U.S. 307, 314 (1985).[3] A mandatory presumption is examined on its face to determine the extent to which the basic and elemental facts coincide. Ulster County, 442 U.S. at 158-59. To sustain the use of a mandatory presumption to prove a crime or element of a crime, the prosecution must demonstrate that the presumed fact must beyond a reasonable doubt flow from the proven fact on which it is made to depend. Ulster County, 442 U.S. at 165-66; State v. Lindsey, 491 So. 2d 371, 374 (La. 1986).

A permissive inference or presumption, on the other hand, allows, but does not require, the trier of fact to infer the

[3] A mandatory presumption may be either conclusive or rebuttable. A conclusive presumption removes the presumed element from the case once the state has proved the predicate facts giving rise to the presumption. A rebuttable presumption does not remove the presumed element from the case but nevertheless requires the jury to find the presumed element unless the defendant persuades the jury that such a finding is unwarranted.

elemental fact from proof by the prosecutor of the basic one and places no burden of any kind on the defendant. In this situation, the basic fact may constitute prima facie evidence of the elemental fact. Because the permissive presumption leaves the trier of fact free to credit or reject the inference and does not shift the burden of proof, it affects the application of the "beyond the reasonable doubt" standard only if under the facts of the case, there is no rational way the trier of fact could make the connection permitted by the inference. Ulster County, 442 U.S. at 157.

Over a decade ago, this court had the opportunity to address the constitutionality of a statute containing a presumption similar to the one in the instant case in State v. Lindsey, 491 So. 2d 371 (La. 1986). In Lindsey, the defendant challenged the constitutionality of La. R.S. 14:71 relative to issuing worthless checks. The statute provided that the offender's failure to pay a worthless check within ten days of constructive notice of its nonpayment "shall be presumptive evidence of his intent to defraud." Defendant argued in Lindsey as defendant does in this case that the presumption established by the statute was a mandatory one and that it was unconstitutional on its face. We concluded that the language of La. R.S. 14:71(A)(2) was ambiguous as to whether it created a mandatory or a permissive presumption. Applying the principle that ambiguous statutes should be interpreted in a constitutional rather than an unconstitutional manner and with lenity toward the defendant, this court concluded that the language in the statute created a permissive presumption that would allow the jury to be told that it may, but need not, find that the defendant possessed the intent to defraud based upon the basic facts set out in the statute. In reaching this conclusion the court recognized that a large number of other criminal statutes contained the language "shall be presumptive evidence" or "shall be prima facie evidence," including La. R.S.

14:220A which we are addressing today, and noted that these statutes would fail constitutional scrutiny if the language were construed to establish mandatory presumptions. We held:

> Reviewing all these statutes, it does not seem reasonable that the legislature would have intended to establish mandatory presumptions in all these cases. Few, if any, of the elemental facts flow beyond a reasonable doubt from the basic facts on which the statutes base their presumptions. It seems at least equally reasonable if not more reasonable to conclude that the legislature intended "presumptive evidence" and "prima facie evidence" to signify only permissible inferences. Hence, we conclude that the statutes are ambiguous and should be interpreted as creating permissive presumptions. Lindsey, 491 So. 2d at 375.

We adhere to our reasoning in Lindsey and find that the language "shall be presumptive evidence" in La. R.S. 14:220A creates a permissive presumption or inference, not an impermissible mandatory presumption. The application of the presumption in La. R.S. 14:220A **"allows but does not require"** the trier of fact to infer the presumed fact of intent to defraud from the presentation by the prosecution of evidence that defendant failed to return or surrender the motor vehicle within fifteen calendar days after notice to make such return or surrender was sent by certified mail to defendant's last known address. In interpreting the statute as a permissive presumption, the presumed fact (intent to defraud) does not beyond a reasonable doubt flow from the proven fact (offender's failure to return the vehicle). The validity of the presumption as it applies to a particular defendant may be tested by the instructions to the jury and all of the evidence in the case.[4] Lindsey, 491 So. 2d at 377.

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[4] We note that the jury instruction relative to the statute addressed in Lindsey found in the Louisiana Judge's Criminal Bench Book states in pertinent part that "if you find that the defendant failed to pay a check issued for value, within ten days after notice of its nonpayment upon presentation has been deposited by certified mail . . . to the defendant at his last known address . . . you may [but need not] infer from the evidence [alone] that the defendant had the intent to defraud. (Emphasis added)

Accordingly, we find that the last sentence of La. R.S. 14:220A is constitutional.[5] The trial judge erred by granting defendant's motion to quash. We must reverse. Since the trial judge did not rule on defendant's other constitutional challenges to La. R.S. 14:220, these issues are not properly before us. On remand to the district court, defendant may re-urge these other constitutional challenges.

DECREE

For the reasons assigned, the judgment of the trial court declaring the last sentence of La. R.S. 14:220A unconstitutional and sustaining the motion to quash is reversed. The case is remanded to the trial court for further proceedings according to law and consistent with the views expressed herein.

[5] We recognized in Lindsey that our holding conflicted with the statutory interpretation in some of our earlier cases, particularly, State v. Williams, 400 So. 2d 575 (La. 1981) and State v. McCoy, 395 So. 2d 319 (La. 1980). To the extent that these cases are in conflict with our pronouncements in this case and in our earlier Lindsey decision, they are hereby overruled.