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# Salt Lake City, A Municipal Corporation of The State of Utah v. Raymond S. Shuey : Brief of Defendant-Respondent

Utah Supreme Court


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IN THE SUPREME COURT

OF THE STATE OF UTAH

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| SALT LAKE CITY, a municipal corporation of the State of Utah, Plaintiff-Appellant, vs. RAYMOND S. SHUEY, Defendant-Respondent. | Case No. ~~14818~~ 14819 |

# BRIEF OF DEFENDANT-RESPONDENT

Appeal from a judgment of the Third Judicial District Court in and for Salt Lake County, State of Utah, the Honorable Stewart M. Hanson, Jr., Presiding.

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BRIEF OF DEFENDANT-RESPONDENT

## NATURE OF CASE

The City of Salt Lake is appealing an adverse Order of the District Court of the Third Judicial Dsitrict in and for Salt Lake County.

## DISPOSITION IN THE LOWER COURT

The District Court found for the defendant and held that the presumption rule upon which the City of Salt Lake relied in its conviction of the defendant was invalid.

## STATEMENT OF FACTS

The defendant-respondent herein named was convicted in Salt Lake City Court for violating the Salt Lake City Revised Ordinance, Section 156. The defendant appealed

said conviction in the District Court of the Third Judicial District in and for Salt Lake County. Said appeal was taken on stipulated facts, reserving to the Court a determination of the issue of law regarding the use of the alleged common-law presumption rule by the City.

The rule of presumption, as used by the City of Salt Lake, is that a registered owner of an automobile is presumed to have parked said automobile, and further, that said presumption constitutes prima facie evidence that the person in whose name such vehicle is registered as owner, committed or authorized the commission of such violation. A similar presumption was previously codified as Salt Lake City Revised Ordinance, §46-8-170, and, in 1973, was repealed.

The District Court reversed the decision of the City Court, found the defendant not guilty as charged, and held that the City of Salt Lake had no legal power to employ a common-law rule of presumption in the determination of defendant's guilt.

Prior to April of 1973, the City of Salt Lake enacted an ordinance enabling the City to use as prima facie evidence the presumption that the registered owner of a vehicle committed or authorized the commission of a parking violation. Salt Lake City Revised Ordinances, §46-8-170. In 1952, the Utah Court held that the power to pass an ordinance establishing a rule of evidence

binding on the courts is not granted to cities expressly by statute and is not fairly implicable from or incident to powers expressly given cities. Nasfell v. Ogden, 122 Utah 344, 249 P.2d 507 (1952). See also Walton v. Tracy Loan & Trust Co., 97 Utah 249, 92 P.2d 724 (1939); Wadsworth v. Santaquin City, 83 Utah 321, 28 P.2d 161 (1933); and, Salt Lake City v. Sutter, 61 Utah 533, 216 P.234 (1923).

Subsequently, in 1973, the City of Salt Lake repealed the offending portion of the ordinance which authorized the use of the presumption rule, but since the repeal, has been using a common-law presumption which closely parallels the repealed ordinance.

Although the Nasfell decision explicitly addressed itself to the validity of a codified presumption rule, by negative implication it also addressed itself to the issue of the existence of a similar common-law presumption rule. Inasmuch as the Nasfell court made no mention of a common-law presumption, it chose to give no legal vitality and no judicial recognition to a common-law presumption. Hence, the Nasfell decision held, albeit implicitly, that there was no common-law presumption rule which us under attack in the case at bar.

Even if the court finds that Nasfell, supra, is not controlling and that there is in existence a common-law presumption rule, the rule is invalid.

## POINT I

IN UTAH, THERE IS NO VALID COMMON-LAW PRESUMPTION THAT THE REGISTERED OWNER OF A MOTOR VEHICLE WAS IN CONTROL OF THE VEHICLE AT THE TIME IT WAS ILLEGALLY PARKED BECAUSE THERE IS NO RATIONAL CONNECTION BETWEEN THE FACTS PROVED AND THE ULTIMATE FACT PRESUMED.

## ARGUMENT

The judiciary cannot assert the existence of a common-law presumption if there is no rational connection between the facts proved and the ultimate fact presumed.

"A presumption upon a matter of fact, when it is not merely a disguise for some other principle, means that common experience shows the fact to be so generally true that courts may notice the truth." Greer v. United States, 245 U.S. 559, 561 (1918). More recently, the United States Supreme Court in Tot v. United States, 319 U.S. 463 (1943), laid out a test to apply when considering the validity of a presumption. That is, there must be a rational connection between the facts proved and the ultimate fact presumed.

> "If the inference of the one from proof is arbitrary because of lack of connection between the two in common experience" the presumption cannot be sustained. Tot, supra at 466.

The plaintiff-appellant's brief relies on statistics taken nearly 40 years ago in a Michigan poll which evidence

that in only 4.4% of all parking violations, "the violation was committed by some person other than the owner or an immediate member of his family." See pg. 5 of the Brief of the Appellant. In other words, in all but 4.4% of the violations, the registered owner or a member of his family committed the violation. Although the appellant does not expressly conclude that a presumption is valid which holds the registered owner liable for misdeeds committed by relatives, the inference is there. To infer that the registered owner of an automobile is responsible for the conduct of a relative who illegally parks a car is totally spurious and such an inference denies the registered owner due process of law. There is already in existence a statute on the subject of criminal responsibility for the conduct of another and it reads as follows:

> Criminal responsibility for direct commission of offense or for conduct of another.--Every person, acting with the mental state required for the commission of an offense who directly commits the offense, who solicits, requests, commands, encourages, or intentionally aids another person to engage in conduct which constitutes an offense shall be criminally liable as a party for such conduct. Utah Code Ann., §76-2-202, as amended, 1973.

The above statute explicitly requires intent to commit or intent that another commit the conduct constituting the offense. The City of Salt Lake, by applying the common-law presumption, infers that a registered owner has the requisite mens rea. This inference is false and as such,

invalidates the presumption which rests upon the false inference.

The presumption also lacks effect as applied to corporations. First, the corporation has no feet, cannot drive, is unable to park, but can be the registered owner of a vehicle. Second, there is already in existence a statute governing the criminal culpability of a corporation and it reads as follows:

> Criminal responsibility of corporation or association.--(1) A corporation or association is guilty of an offense when:
>
> (a) The conduct constituting the offense consists of an omission to discharge a specific duty of affirmative performance imposed on corporations or associations by law; or
>
> (b) The conduct constituting the offense is authorized, solicited, requested, commanded, or undertaken, performed, or recklessly tolerated by the board of directors or by a high managerial agent acting within the scope of his employment and in behalf of the corporation or association. Utah Code Ann., §76-2-204, as amended, 1973.

Sub-paragraph (a) of the above statute does not apply to the case at bar. Sub-paragraph (b) does apply and requires intent to commit or intent that another commit the conduct constituting the offense. Once again, the City's use of the presumption rule rests upon a false inference that automobile registration carries with it an assumption of legal and criminal responsibility for the misconduct of others. The inference is, once again, spurious and as the inference falls, so must the presumption rule fall.

A corollary to the Tot test is that the presumption must be more than a regulation of order of proof based upon the relative accessibility of evidence to prosecution and defense.

> "Nor can the fact that the defendant has the better means of information, standing alone, justify the creation of a presumption. In every criminal case, the defendant has at least an equal familiarity with the facts and in most a greater familiarity with them than the prosecutor. It might, therefore, be argued that to place upon all defendants in criminal cases the burden of going forward with the evidence would be proper. But the argument proves too much. If it were sound, the [Court] might validly [find] that mere proof of the identity of the accused should create a presumption of the existence of all the facts essential to guilt. This is not permissible." McFarland v. American Sugar Mfg. Co., 241 U.S. 79, 86.

The City of Salt Lake is predicating guilt of a parking violation on the mere identity of the registered owner of the automobile. For the City to create such a presumption based on the accessibility of evidence to the defendant is impermissible.

Moreover, using the presumption rule to ease the prosecutor's burden of proof is an arbitrary use of the presumption and often has been described as "first aid" to the prosecutor. See Chamberlain, Presumptions as First Aid to the District Attorney, 14 A.B.A.J. 287.

> "Once the thumbscrew and the [resulting] confession made conviction easy; but that method was crude and, I suppose, now would be declared unlawful on some ground. Hereafter, presumption

> is to lighten the burden of the prosecutor. The victim will be spared the trouble of confessing and will go to his cell without mutilation or disquieting outcry." Casey v. U.S., 276 U.S. 413, 420 (dissenting opinion).

More importantly, the Supreme Court of the United States made it crystal clear that rationality is only the first hurdle which a presumption must clear. A rational presumption cannot be used to convict a man of a crime if its effect is to deny him the protection of a constitutional right. Bailey v. Alabama, 219 U.S. 219. An accused has a constitutional right to not testify against himself pursuant to the Fifth Amendment of the United States Constitution made applicable to the states through the Fourteenth Amendment and pursuant to Article 1, Section 12, of the Constitution of Utah.

The City Ordinance forces the defendant to come forward and explain why, in his case, the presumption should not be applied. This clearly subjects the defendant to an impermissible compulsion to testify. If the defendant refuses to testify, the City uses the defendant's silence as an acknowledgement of guilt.

> Using a defendant's silence as evidence against him is one way of having him testify against himself. Scott v. California, 364 U.S. 471, 472.

Hence, using the silence of a defendant as evidence against him violates the Fifth Amendment. "It has long been the rule in Federal Courts that the defendant's

failure to testify ought not to be even the subject of unfavorable comment, "United States v. Gainey, 380 U.S. 63 at 72, 73, (J. Douglas dissenting opinion) (1965) let alone a tacit admission of guilt.

## CONCLUSION

Nasfell, supra, controls the resolution of the appeal and the presumption rule should be given no legal vitality and no judicial recognition.

In a criminal case, use of a presumption which is premised upon an inference of the requisite mens rea is invalid. Even supposing the Court could find that the presumption rule is valid, it can not be prima facie evidence of guilt because it lacks proof beyond reasonable doubt of intent to commit the crime. The City would ask the Court to extract a criminal violation from mere automobile registration. This is a ludicrous inference and the City should be precluded from using this presumption rule.

Furthermore, implementing a presumption rule to ease the prosecutor's burden of proof and forcing the defendant to rebut the presumption because he has a greater familiarity with the facts cannot be tolerated in a criminal case.

Finally, even a rational presumption must succumb to a valid assertion of a constitutionally protected right. If the effect of a presumption is to deny a defendant his Fifth Amendment right to not testify against himself, then the presumption must fall.

For all of the foregoing reasons, the defendant-respondent asks this Court to affirm the decision of the lower court and to invalidate the use by the appellant of the common-law presumption as evidence establishing guilt in parking violations.

Respectfully submitted,

D. Gilbert Athay