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United States - 84th Congress, 2d Session - Kidnapping - Statutory Presumption of Interstate Transportation of Victim

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LEGISLATION

UNITED STATES—84TH CONGRESS, 2D SESSION—KIDNAPING—STATUTORY PRESUMPTION OF INTERSTATE TRANSPORTATION OF VICTIM.*

Introduction.

In 1932, following the Lindbergh kidnaping, Congress hurriedly made the interstate transportation of kidnaped persons a federal criminal offense,[1] and in 1934, added the rebuttable presumption of such interstate transportation upon a failure to release the victim within seven days after the kidnaping.[2] The recently adjourned second session of the 84th Congress has reduced the period to twenty-four hours.[3] The presumption has not yet been tested, but this change may eventually prompt its presentation to the courts and so provide case authority to settle the questions raised in the succeeding paragraphs. These questions concern the validity of the presumption as it may be used for the purposes of trial or investigation. Is there a rational connection between the period set and the fact presumed? What factors might be considered in answering this question? How could the question be presented? This Comment is directed toward outlining the answers to these questions, drawing on the indications found in present case authority, available legislative history, and academic and professional comment. Neither the Federal Kidnaping Act per se, nor the subject of presumptions in general will be treated herein, but this is only for the sake of brevity. Such material is background to the matter below.

I.

THE TEST APPLIED TO PRESUMPTIONS.

Before examining the roles in which this statutory presumption may appear or be thought valuable, it is convenient to refer to the test to be applied to it. The justification for this presumption offered by the legislators was that:

> "The legality of such a presumption would seem to be fairly within the rule established by the United States Supreme Court . . . . 'That a legislative presumption of one fact from evidence of another

1. 18 U.S.C. § 1201 (1952); See 75 CONG. REC. 13282-13304 (1932).
2. 18 U.S.C. § 1201(b) (1952).
3. Pub. L. No. 983, 84th Cong., 2d Sess. (Aug. 6, 1956).

> may not constitute a denial of due process or a denial of the equal protection of the law, it is only essential that there shall be some rational connection between the fact proved and the fact presumed, and that the inference of one fact from proof of another shall not be so unreasonable as to be a purely arbitrary mandate.' " [4]

This is the so-called "rational connection" test, approved and held to be the only valid test of a statutory presumption in the case of *Tot v. United States*.[5] Other tests of statutory presumptions have been offered,[6] but it is not within the scope of this Comment to discuss them, and, since the *Tot* case, it may be considered unnecessary to do so. Here the standard of *Mobile, J. & K.C. R.R. v. Turnipseed,* given pre-eminence by the *Tot* case, will be used to examine the validity, and hence the usefulness of the provision in question.[7]

II.

THE USE OF THE PRESUMPTION.

The original Federal Kidnaping Act predicated federal jurisdiction on the actual transportation of kidnaped persons in interstate or foreign commerce.[8] This based government power in such matters squarely on the "commerce clause" of the Constitution [9] where it has been seen by the courts to rest rightly and beyond question.[10] The purpose of this presumption is expressly to assume this support for the intervention of federal authorities in a kidnaping case after the passage of a period of time.

Accompanying the original seven-day provision was a report stating:

> "The purpose of this provision is to clear up borderline cases, justifying federal investigation in most of such cases and assuring the validity of federal prosecution in numerous instances in which

4. H.R. REP. No. 1457, 73d CONG., 2d SESS. 2 (1934). The report quotes Mobile, J. & K.C. R.R. v. Turnipseed, 219 U.S. 35, 43 (1910).

5. 319 U.S. 463, 467 (1943): ". . . Under our decisions, a statutory presumption cannot be sustained if there be no rational connection between the fact proved and the ultimate fact presumed, if the inference of one from proof of the other is arbitrary because of lack of connection between the two in common experience." *But see* Professor Morgan's comments in 56 HARV. L. REV. 1324 (1943) and Note, 55 COLUM. L. REV. 527 (1955).

6. Tot v. United States, *supra* note 5; 4 WIGMORE, EVIDENCE § 1356 (3d ed. 1940, Supp. 1955).

7. 219 U.S. 35. See note 4 *supra.*

8. See note 1 *supra.*

9. See U.S. CONST. art. I, § 8, cl. 3. There was some opposition in Congress to this use of the commerce power. 75 CONG. REC. 13282-13304 (1932). See also Finley, *The Lindbergh Law,* 28 GEO. L. J. 908 (1939-40); 69 U.S.L. REV. 343 (1935).

10. Kelly v. United States, 76 F.2d 847 (1935); Bailey v. United States, 74 F.2d 451 (1934); *cf.* Caminetti v. United States, 242 U.S. 470 (1917); Hoke v. United States, 227 U.S. 308 (1913).

such prosecution would be questionable under the present form of this act." [11]

So, a dual intendment to supply a rebuttable presumptive basis for trial and investigative jurisdiction in the federal government seems to have been the original legislative motivation for this provision. A report accompanying the recent amendment stresses the utility of the presumption for the purposes of the entrance of the Federal Bureau of Investigation into a kidnaping case; the report also considers its usefulness for trial purposes as an additional recommendation and, further, suggests that the shortened span of official federal inactivity will have a greater deterrent effect.[12]

A.

In Prosecutions.

It is the use of the legislative presumption to attach federal jurisdiction in prosecutions for kidnaping that would seem most open to attack. Yet, it is hard to see how the question could properly be raised. Where state lines have obviously been crossed, or the United States has in some other way become involved,[13] the presumption is unnecessary; and where neither is true and state lines definitely have not been crossed, the act makes no provision for the entry of the Government, nor does the Constitution.[14] So, it is the "borderline" case indeed in which it would be incumbent upon the defendant to rebut the presumption.[15] If there is no other rebutting evidence or witness,[16] the accused is in a difficult position. In any case, assuming a plea of not guilty, he must provide some evidence of an alibi for the period of the presumption. The reasonableness of this requirement is helped by the recent amendment, shortening the time for which the defendant would have to give an account of his behavior, thus, lightening the defendant's burden.[17]

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11. H.R. REP. No. 1457, 73d CONG., 2d SESS. 2 (1934) (following the language of S. REP. No. 534, 73d CONG., 2d SESS., (1934) and a memo from the Department of Justice quoted therein.)

12. S. REP. No. 2820, 84th CONG., 2d SESS. (1956).

13. *E.g.*, if the mails have been used, federal jurisdiction may appear under 18 U.S.C. §§ 875-6 (1952).

14. See notes 1 and 9 *supra.*

15. See 4 WIGMORE, EVIDENCE § 1356 (3d ed. 1940, Supp. 1955) and 9 WIGMORE, EVIDENCE §§ 2490-1 (3d ed. 1940, Supp. 1955) (constitutionality and legal effect of a presumption).

16. *E.g.*, testimony of the victim might establish that there was no interstate movement.

17. Still the difficulty may be fatal. The federal courts might require a defendant to give evidence which will incriminate him in a state prosecution. United States v. Murdock, 284 U.S. 141 (1931) (tax case). It may be that even where the inference is a permissible one any unfairness that would result from making the defendant testify would be fatal to the presumption. Tot v. United States, 319 U.S. 463, 469-470 (dictum) (the presumption in question failed the test of rational connection).

That the length of the period of the presumption is important to its validity may be taken from the history of the amendment of 1934. In that year the original senate proposal was for a three-day period.[18] The bill as passed provided for a period of seven days.[19] This would indicate that Congress originally thought the longer period more in keeping with human experience. Although the accompanying reports are silent on the matter,[20] the difference may be referable to the words of the *Turnipseed* case quoted in the House Report.[21] Applying this "rational connection" test, this time in the words of *Tot,* may it be said of twenty-four hours as against the seven days of the previous enactment:

> ". . . where the inference is so strained as not to have a reasonable relation to the circumstances of life as we know them, it is not competent for the legislature to create it as a rule governing the procedure of the courts." [22]

It would seem that this could not be said in the light of today's experience. The criminal might be fairly supposed to be in flight during the time after the crime, and it is not unreasonable that within the twenty-four hour period this flight would put the felon and his victim beyond state lines though perhaps it cannot be called probable. This is the rationale used to support the legislative judgment.

But is this enough? Difficulties peculiar to the use of the presumption in criminal trials are in the objections posed on grounds of the privilege against self-incrimination, of due process under the Constitution, of the presumption of innocence, of the right to trial by jury, or that the burden of proof must remain on the prosecution.[23] The tenor of federal decision seems to be expressed in sum by *O'Neill v. United States* [24]

> "The general principle is well recognized that even in criminal prosecutions, Congress or a state legislature may with certain limitations enact that when certain facts have been proved they shall be prima facie evidence of the existence of the main fact question. The limitations are these: There must be some rational connection between the fact proved and the ultimate fact presumed; the inference of the existence of the ultimate fact from proof of the other fact must not be so unreasonable or unnatural as to be a purely arbitrary

18. S. REP. No. 534, 73d CONG., 2d SESS. 2 (1934).

19. 18 U.S.C. § 1201(b) (1952).

20. S. REP. No. 534, 73d CONG., 2d SESS. (1934) and H. R. REP. No. 1457, 73d CONG., 2d SESS. (1934).

21. See note 4 *supra.*

22. 319 U.S. at 468.

23. A consideration in full of all these objections is beyond the scope of this Comment, however, see a partial list of materials on the constitutionality of statutory presumptions in 4 WIGMORE, EVIDENCE § 1356 n. 1 (3d ed. 1940, Supp. 1955). See also Tot v. United States, 319 U.S. 473 (concurring opinion).

24. 19 F.2d 322, 327 (1927).

> mandate; and the accused must not be deprived of a proper opportunity to present his defense to the main fact so presumed and have the case submitted on all the evidence to the jury for its decision." (citations omitted)

While this is not a complete answer, it indicates that the courts will defer to legislative judgment in this area as long as there is some rational connection and settle all constitutional objections on this basis. The inference to be made must not only be unreasonable, but *so* unreasonable as to be purely arbitrary, before courts will overthrow the presumption. The Court in the *Tot* case, with an opportunity to decide on other principles,[25] fell back on the rational connection test. It is unlikely that the Court will always find this possible and only a little more likely that the Court will prefer the convenience of the Government above the liberty of the individual. If the present presumption be found to have some rational connection with the facts proven and to be reasonable in other aspects, it is nonetheless unlikely that the presumption will be found to have any real trial usefulness for it weighs heavily upon the accused's constitutional rights.

B.

In Investigations.

Having discussed the questions of the use of the statutory presumption in prosecutions, there remains a consideration of its position in justifying an official federal investigation in the "borderline" case. It is likewise difficult to imagine the situation in which the validity of the presumption in this context could be directly tested. It is unlikely that local police would try to prevent federal "interference."[26] Would a defendant object to the presence of the federal government? It would serve him no purpose to do so unless he was liable to a greater penalty under the federal law. Then, of course, the real objection again would be to a federal trial, involving much the same considerations of rational connection mentioned above. With no judicial interpretation available, it seems, by analogy to its use in the trial situation, that the presumption here, as a key for the government investigator, would be at least as valid. In this context it would be unfettered by any of the constitutional objections enumerated above—or for that matter any real opportunity to present an objection.

Conclusion.

It may be concluded that the recent reduction of the time required to elapse before the presumption of interstate transportation of a kidnaping victim will have little effect on the possibility of the device coming

25. See note 17 *supra.*

26. But remember the state's rights objections to the act as a whole. 75 CONG. REC. 13283-13304 (1932).

into question since other considerations intervene to make it unlikely. The reduction may even aid the presumption insofar as it minimizes the difficulty of rebutting it. The jurisdiction acquired under this clause is only necessary in a limited number of cases, and the provision is not usually involved in the case in such a way that the courts must pass on it. However, if it were put to the test prescribed by the United States Supreme Court, the present ability and the historic propensity of the criminal to flee the state would probably support the reasonableness of the presumption though it may fall in other areas. The entire appreciable utility of the provision is apparently limited to its investigatory-inhibitory possibilities.

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* KIDNAPING—STATUTORY PRESUMPTION OF INTERSTATE TRANSPORTATION OF VICTIM

CHAPTER 971, PUBLIC LAW 983

An act to amend section 1201 of title 18 of the United States Code to authorize the Federal Bureau of Investigation to initiate investigation of any kidnaping in which the victim has not been released within twenty-four hours after his seizure.

Be It Enacted by the Senate and House of Representatives of the United States in Congress Assembled, That:

Subsection (b) of section 1201 of title 18 of the United States Code is amended to read as follows:

> "(b) The failure to release the victim within twenty-fours after he shall have been unlawfully seized, confined, inveigled, decoyed, kidnaped, abducted or carried away shall create a rebuttable presumption that such person has been transported in interstate or foreign commerce."

Approved August 6, 1956.