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Criminal Procedure; Burglary-Inferences

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record, or trial in a justice's court, the court could order¹ a material witness to be released from liability² resulting from testimony or other evidence that the witness was required to produce.³ Chapter 497 provides this immunity only to witnesses called to testify at a grand jury investigation, trial in a court of record, or preliminary examination.⁴

1. 1967 Nev. Stat. c. 523, §373.2, at 1457 (enacting NEV. REV. STAT. §178.572). This order requires a motion from the state requesting a release from liability. *Id.*

2. *Id.* (liability for prosecution or punishment).

3. *Id.*

4. NEV. REV. STAT. §178.572 (amended by 1983 Nev. Stat. c. 497, §1, at 1346).

Criminal Procedure; burglary—inferences

NEV. REV. STAT. §§205.060, 205.065, 205.2715, 205.312 (amended).
SB 315 (Committee on Judiciary); 1983 STAT. Ch 294

Existing law provides that a judge may not direct the jury to find a presumed fact¹ against the accused in a criminal action.² When a presumed fact establishes guilt or is an element of the crime, the judge may submit the issue of its existence to the jury only if a reasonable juror could find the existence of the presumed fact beyond a reasonable doubt, based upon evidence of the proven facts.³

Prior to the enactment of Chapter 294, anyone breaking and entering⁴ or unlawfully entering a building was presumed to have the requisite intent to commit grand or petit larceny or a felony therein.⁵ In *Hollis v. State*,⁶ however, the Nevada Supreme Court held that using this identical language in a jury instruction⁷ violated the statutory prohibition⁸ against directing the jury to find a presumed fact.⁹ Chapter 294 changes the definition of burglary by replacing the statutory *pre-*

1. See *Ex parte Kline*, 71 Nev. 124, 134, 282 P.2d 367, 371 (1955)(a presumption is a deduction the law expressly directs to be made from particular facts); see also *State v. Vaughn*, 22 Nev. 285, 299, 39 P.2d. 733, 735 (1985)(a presumption is legitimate where a rational connection exists between the facts proved and the facts assumed.); see NEV. REV. STAT., §47.230(1)(definition of presumed fact).

2. NEV. REV. STAT. §47.230(2)(presumptions against accused in criminal actions); see also *Marshall v. State*, 95 Nev. 802, 804, 603 P.2d 283, 284 (1979). The jury could be instructed to draw an inference of guilty knowledge and intent, but could not be directed to do so. *Id.*

3. NEV. REV. STAT. §47.230(3).

4. *Id.* §193.010(3),(8) (definition of breaking; definition of entering).

5. 1959 Nev. Stat. c. 22, §1 at 19 (amending NEV. REV. STAT. §205.065).

6. 96 Nev. 207, 606 P.2d 534 (1980).

7. *Id.* at 207, 606 P.2d at 535. The jury instruction in *Hollis* directed the jury to find criminal intent to commit larceny presumed from the proven facts. *Id.* The issue of intent was the only disputed fact at trial. *Id.*

8. NEV. REV. STAT. §47.230(2).

9. *Hollis* 96 Nev. at 209, 606 P.2d at 535.

sumption of unlawful intent¹⁰ with a *reasonable inference*¹¹ of unlawful intent.¹²

Prior law also provided that any person who leased or rented a vehicle, and willfully failed to return the vehicle to its owner within a seventy-two hour period after the expiration of the lease or rental agreement, was presumed to have embezzled the vehicle.¹³ This presumption was expressly declared unconstitutional by the Nevada Supreme Court in *Sheriff v. Boyer*,¹⁴ because the presumption relieved the state of its burden of proving the crime of vehicle embezzlement.¹⁵ In apparent response to the *Boyer* decision, Chapter 294 was enacted to replace the statutory presumption of vehicle embezzlement with a reasonable inference of guilt.¹⁶ In addition, Chapter 294 makes the identical change in the provisions relating to vehicle larceny.¹⁷

Finally, under existing law, burglary is defined as the unlawful entry into specified residences, buildings, and conveyances, with the intent to commit grand or petit larceny or any felony therein.¹⁸ Chapter 294 expands the definition of burglary to include the unlawful entry into any airplane, glider, or boat.¹⁹

10. See generally Comment, *Statutory Criminal Presumptions*, 18 UCLA L. REV. 157, 164 (1970)(discussion of the constitutional issues involved in statutes that presume intent).

11. *Ex parte Kline*, 71 Nev. 124, 134, 282 P.2d 367, 371 (1955) (an inference may be defined as a deduction by the reason of the jury from the facts proved, without an express direction of law).

12. Compare NEV. REV. STAT. §205.065 (amended by 1983 Nev. Stat. c. 294, §2, at 718) with 1959 Nev. Stat. c. 22, §1, at 19 (amending NEV. REV. STAT. §205.065).

13. 1963 Nev. Stat. c. 234, §1, at 393 (enacting NEV. REV. STAT. §205.312).

14. 97 Nev. 599, 637 P.2d 834 (1981).

15. *Id.* at 601, 637 P.2d at 838.

16. Compare NEV. REV. STAT. §205.312 (amended by 1983 Nev. Stat. c. 294, §4, at 718) with 1963 Nev. Stat. c. 234, §1, at 393 (enacting NEV. REV. STAT. §205.2715).

17. Compare *id.* §205.2715 (amended by 1983 Nev. Stat. c. 294, §3, at 718) with 1973 Nev. Stat. c. 1686, §2, at 6698 (enacting NEV. REV. STAT. §205.2715). The *presumption* that one in possession of another's vehicle, without consent, has taken and carried it away, is changed to a *reasonable inference* of this unlawful action. Compare NEV. REV. STAT. §205.2715 (amended by 1983 Nev. Stat. c. 294, §3, at 718) with 1973 Nev. Stat. c. 1686, §2, at 6698 (enacting NEV. REV. STAT. §205.2715).

18. NEV. REV. STAT. §205.060.

19. Compare *id.* §205.060 (amended by 1983 Nev. Stat. c. 294, §1, at 717) with 1981 Nev. Stat. c. 295, §1, at 551 (amending NEV. REV. STAT. §205.060).

Criminal Procedure; complaints upon declaration

NEV. REV. STAT. §§171.102, 171.1778, 484.817 (amended).

SB 191 (Committee on Judiciary); 1983 STAT. Ch 188

Prior law provided that a criminal complaint must have been upon