

HB

159

# COMMITTEE REPORT

3/28/75

HOUSE

Mr. Speaker:

Date 4/10/75

The Committee on JUDICIARY has had HR 159

under consideration. A Majority of the members of the Committee

recommends it DO PASS

recommends it DO NOT PASS

recommends it DO PASS WITH ATTACHED AMENDMENT(S)

recommends it BE REPLACED WITH CS FOR HR 159 AND THAT

CS FOR HR 159 DO PASS

"and" recommends it BE REFERRED TO THE \_\_\_\_\_

COMMITTEE

reports it back WITHOUT RECOMMENDATION

"other"

Members signing the Majority report:

<u>[Signature]</u>	<u>[Signature]</u>	_____
_____	_____	_____
<u>[Signature]</u>	_____	_____
<u>[Signature]</u>	_____	_____

Members NOT concurring in the Majority report:

\_\_\_\_\_ recommends:

\_\_\_\_\_ recommends:

\_\_\_\_\_ recommends:

\_\_\_\_\_ recommends:

\_\_\_\_\_ recommends:

[Signature] Chairman

# STATE OF ALASKA

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

JAY S. HAMMOND, Governor

POUCH K - STATE CAPITOL  
JUNEAU 99801

March 19, 1975

The Honorable Nels Anderson  
Chairman  
Committee on Resources  
House of Representatives  
State of Alaska  
Juneau, Alaska 99811

Re: Opinion on CSHB 159

Dear Mr. Chairman:

This is in response to your request for an opinion from this department regarding certain provisions in the Committee Substitute for House Bill No. 159, dealing with waste of wild food animals. Specifically, your Committee has asked for a constitutional evaluation of proposed AS 16.30.012 (Section 2 of the bill), which would append to the existing waste control measure a presumption of unlawful waste where raw horns or antlers were not accompanied by most of the edible meat. Section 2 of the bill reads in part:

Sec. 16.30.012. POSSESSION OF RAW HORNS OR ANTLERS. The possession of the raw horns or antlers of a wild food animal without its being accompanied by most of its edible meat creates a presumption of failure to salvage most of the edible meat under secs. 10 - 30 of this chapter. The burden of proof is on the possessor to overcome the presumption of failure to salvage most of the edible meat and it is not overcome until substantial proof is offered other than a personal statement, establishing the fact that it was not salvaged due to circumstances beyond control as set out in (a) of this section, or that the horns or antlers were otherwise obtained lawfully. \* \* \*

Rebuttable presumptions, such as that contained in proposed sec. 12, are not uncommon. During the 1974 session, the Alaska Legislature approved at least two of them. See AS 11.20.350(b) (concerning receipt of stolen property) and AS 16.05.810 (pertaining to illegal possession of fish or game). However, not all presumptions are valid as a matter

→ example mailing letter - presumption disappears when evidence to the contrary is presented  
conclusive presumption - paternity - (strong social policy)

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Chairman, Committee on Resources

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of course. The Supreme Court of the United States has reviewed a number of statutory presumptions in criminal cases, usually in light of 14th Amendment due process claims, and has established some relatively firm guidelines on what is allowable and what is not.

The first and most often cited rule laid down by the Court was in Tot v. United States, 319 U.S. 463 (1942):

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 the one from proof of the other is arbitrary because of lack of connection between the two in common experience. This is not to say that a valid presumption may not be created upon a view of relation broader than that a jury might take in a specific case. But 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 courts. [319 U.S. at 467-468.]

The Supreme Court later reaffirmed the "rational connection" test in United States v. Gainey, 380 U.S. 63 (1965), sustaining a jury instruction tracking a statute authorizing conviction for operating an illegal still based on mere presence at the still site. See also United States v. Romano, 382 U.S. 136 (1965). The Court, however, apparently recognized that "rational connection" might not be sufficiently explicit in determining the permissibility of statutory provisions which necessarily involved a considerable amount of subjective judgment by the legislative body. Subsequent to Gainey and Romano, the Supreme Court decided Leary v. United States, 395 U.S. 6 (1969), in which the defendant was subjected to a presumption of illegal importation of marijuana when all that was proved was possession. The Court pointed out that a substantial volume of illegally possessed marijuana is in fact grown in the United States, and that a presumption of illegal importation from simple possession was unjustified. An inference, the Court said, is "irrational" or "arbitrary", and hence unconstitutional, unless it can at least be said with substantial assurance that the presumed fact is more likely than not to flow from the proved fact on which it is made to depend." 395 U.S. at 36. From this opinion originated the "more likely than not test". A similar evaluation appeared in Turner v. United States, 396 U.S. 398 (1970).

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Paralleling the Court's consideration of the contents of a valid presumption was the effect of the presumption as it operates in criminal proceedings. At the hearing on CSHB 159, Representative Eliason raised the question of whether a statutory presumption changes the fundamental principle that a person is presumed innocent until proven guilty. The Supreme Court has pointed out clearly that a statutory inference is not a rule of substantive law, but rather a rule of evidence which may serve as a guideline for the court and the jury. This same line of cases shows that the presence of a presumption does not mean that the defendant is automatically convicted. Two very substantial hurdles must be passed before a presumption can operate to contribute to a conviction. First, as was stated in United States v. Gainey, supra, at 69:

*evidence  
as opposed  
to substantive  
law*

Our Constitution places in the hands of the trial judge the responsibility for safeguarding the integrity of the jury trial, including the right to have a case withheld from the jury when the evidence is insufficient as a matter of law to support a conviction.

Second, even if the judge decides that the existence of the facts supporting a presumption constitutes sufficient evidence to send the case to the jury, there is no requirement that the jury accept the presumption and render a guilty verdict. In United States v. Turner, supra, the Court emphasized that the presumption in that case (possession of heroin allowed a presumption that it was illegally imported since no heroin is manufactured in the United States) was merely one fact among many that the jury was to consider in rendering its verdict; that the jury was in no way obligated to rely upon the presumption; and that the jury was still required to find the defendant guilty beyond a reasonable doubt regardless of the existence or nonexistence of the presumption. Of course, verdicts based upon presumptions are subject to further review in the form of motions for judgment notwithstanding the verdict, and appeals to a higher court. Up through the 1970 Turner decision, however, the Supreme Court had not satisfactorily explained the relationship between the "more likely than not" test and the "reasonable doubt" standard applied to all criminal trials. In 1972, the Court handed down an opinion in Barnes v. United States, 412 U.S. 837, which re-evaluated and reaffirmed the earlier decisions and attempted to explain their import. In conducting its review, the Court stated as follows:

*jury doesn't  
have to accept*

What has been established by the cases, however, is at least this: that if a statutory inference

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submitted to the jury as sufficient to support conviction satisfies the reasonable-doubt standard (that is, the evidence necessary to invoke the inference is sufficient for a rational juror to find the inferred fact beyond a reasonable doubt) as well as the more-likely-than-not standard, then it clearly accords with due process.

The statement of the opinion containing the holding is also instructive with respect to CSHB 159:

In the present case the challenged instruction only permitted the inference of guilt from the unexplained possession of recently stolen property. The evidence established that petitioner possessed recently stolen Treasury checks payable to persons he did not know, and it provided no plausible explanation for such possession consistent with innocence. On the basis of this evidence alone common sense and experience tell us that the petitioner must have known or been aware of the high probability that the checks were stolen. [Citations omitted.] Such evidence was clearly sufficient to enable the jury to find beyond a reasonable doubt that petitioner knew the checks were stolen. Since the inference thus satisfies the reasonable doubt standard \* \* \* we conclude that it satisfies the requirements of due process. [412 U.S. at 845-846.]

CSHB 159 appears to operate similarly to the presumption approved in Barnes. If a person possesses horns or antlers which are "raw" in appearance (a term defined in the bill), and they are not accompanied by most of the edible meat (which, by definition, includes actual or constructive possession), then it is incumbent upon him to deliver a plausible explanation for the absence of the meat. As in Barnes, it is reasonable to expect the defendant to perform this duty since the facts surrounding the absence of meat are best available to the defendant. If he has no explanation "consistent with innocence", then it would seem reasonable for a jury to rely upon the inference contained in the statute as the basis for a guilty verdict, and that such a finding could be beyond a reasonable doubt. Under such circumstances, a conviction under proposed sec. 12 would appear to satisfy the due process prerequisites set forth by the Supreme Court.

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Chairman, Committee on Resources

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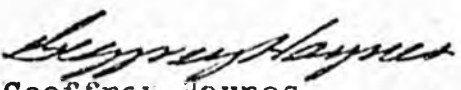
We notice, however, one element of sec. 12 which may be objectionable. On page 2, line 4, of CSHB 159, the "explanation" which the defendant must come up with cannot include a personal declaration. This provision may operate to prohibit the defendant from offering into evidence information which could prove his innocence. It is possible that such a presumption could be used in limited situations, but since the Committee has drafted this bill so that the presumption applies to the general public, it is probable that this requirement would violate due process. Consequently, it would be advisable to drop the phrase "other than a personal statement". A recent Supreme Court decision, Vladis v. Kline, 412 U.S. 441 (1972), strongly supports this interpretation. As a result, it would be well to delete similar language appearing in line 13 on page 1 of the bill.

Finally, in lines 5- 6 on page 2 of the bill, there appears the language "due to circumstances beyond control as set out in (a) of this section". Since there is no subsection (a) in sec. 12, we would presume this is intended to refer to subsection (a) of sec. 10, where the situations constituting circumstances beyond control are set out.

We hope that this opinion will be of assistance to you in your consideration of CSHB 159.

Sincerely,

AVRUM M. GROSS  
ATTORNEY GENERAL

By:   
Geoffrey Haynes  
Assistant Attorney General

GH:md

Original sponsor: Anderson, Bradley,  
Duncan, et al

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 159 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 NINTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to salvaging the edible meat of wild  
7 food animals."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 \* Section 1. AS 16.30.010(a) and (b) are repealed and re-enacted to read:

10 (a) It is unlawful for a person who kills a wild food animal to  
11 intentionally, knowingly, recklessly or negligently fail to salvage for  
12 human consumption most of the edible meat of a wild food animal, unless  
13 he shows that failure to salvage the meat was due to circumstances  
14 beyond his control, including but not limited to

- 15 (1) loss in the field to another animal;  
16 (2) weather or other acts of God;  
17 (3) theft.

18 (b) If the edible meat is not lawfully salvaged for human con-  
19 sumption under (a) of this section, the person who killed the animal is  
20 guilty of a misdemeanor and upon conviction

21 (1) is punishable by a fine of not more than \$5,000, or by  
22 imprisonment for not more than six months, or by both; and

23 (2) shall surrender to the Department of Fish and Game all  
24 portions of the animal that have been salvaged.

25 \* Sec. 2. AS 16.30 is amended by adding a new section to read:

26 Sec. 16.30.012. POSSESSION OF RAW HORNS OR ANTLERS. The posses-  
27 sion of the raw horns or antlers of a wild food animal without its being  
28 accompanied by most of its edible meat creates a presumption of failure  
29 to salvage most of the edible meat under secs. 10 - 30 of this chapter.

*presumption of guilt*

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CSHB 159 (Judiciary)

*is rebuttable - some evidence to contrary*

*if guy says nothing then guilty; if he rebuts then its up to the jury state must offer more proof to win case*

*plausible explanation - could be testimony*

The burden of proof is on the possessor to overcome the presumption of failure to salvage most of the edible meat and it is not overcome until substantial proof 's offered establishing the fact that it was not salvaged due to circumstances beyond control as set out in sec. 10(a) of this chapter, or that the horns or antlers were otherwise obtained lawfully. In this section,

(1) "being accompanied" means having most of the meat in actual possession with the horns or antlers unless the person is engaging in the act of transporting most of the meat from the same animal in portions at different times but in a continuous manner without unnecessary interruption, from the place of taking to its destination for human consumption;

(2) "raw" means an appearance, by reasonable observation, that indicates its having been taken from a wild food animal during the current or most recent lawful hunting season for that animal.

\* Sec. 3. AS 16.30.020 is amended to read:

Sec. 16.30.020. ANIMALS EXCEPTED. The provisions of secs. 10 - 12 [SEC. 10] of this chapter do not apply to animals which the department exempts by regulation.

*deleted sec 4 mov to front page*