CHAPTER 903

EVIDENCE — PRESUMPTIONS

NOTE: Extensive comments by the Judicial Council Committee and the Federal Advisory Committee are printed with chs. 901 to 911 in 59 W (2d). The court did not adopt the comments but ordered them printed with the rules for information purposes.

903.01 Presumptions in general. Except as provided by statute, a presumption recognized at common law or created by statute, including statutory provisions that certain basic facts are prima facie evidence of other facts, imposes on the party relying on the presumption the burden of proving the basic facts, but once the basic facts are found to exist the presumption imposes on the party against whom it is directed the burden of proving that the nonexistence of the presumed fact is more probable than its existence.

History: Sup. Ct. Order, 59 W (2d) R41.

See note to 856.13, citing in re Estate of Malnar, 73 W (2d) 192, 243 NW (2d) 435.

This section does not apply to presumption in favor of traveling employes under 102.03 (1) (f). Goranson v. DILHR, 94 W (2d) 537, 289 NW (2d) 270 (1980).

903.03 Presumptions in criminal cases. (1) SCOPE. Except as otherwise provided by statute, in criminal cases, presumptions against an accused, recognized at common law or created by statute, including statutory provisions that certain facts are prima facie evidence of other facts or of guilt, are governed by this rule.

(2) SUBMISSION TO JURY. The judge is not authorized to direct the jury to find a presumed fact against the accused. When the presumed fact establishes guilt or is an element of the offense or negatives a defense, the judge may submit the question of guilt or of the existence of the presumed fact to the jury, if, but only if, a reasonable juror on the evidence as a whole, including the evidence of the basic facts, could find guilt or the presumed fact beyond a reasonable doubt. When the presumed fact has a lesser effect, its existence may be submitted to the jury if the basic facts are supported by substantial evidence, or are otherwise established, unless the evidence as a whole negatives the existence of the presumed fact.

(3) INSTRUCTING THE JURY. Whenever the existence of a presumed fact against the accused is submitted to the jury, the judge shall give an instruction that the law declares that the jury may regard the basic facts as sufficient evidence of the presumed fact but does not require it to do so. In addition, if the presumed fact establishes guilt or is an element of the offense or negatives a defense, the judge shall instruct the jury that its existence must, on all the evidence, be proved beyond a reasonable doubt.

History: Sup. Ct. Order, 59 W (2d) R56.

Presumptions in criminal cases discussed. Genova v. State, 91 W (2d) 595, 283 NW (2d) 483 (Ct. App. 1979).

Instructions on intent created mandatory rebuttable presumption which shifted burden of production to defendant, but not burden of persuasion. Muller v. State, 94 W (2d) 450, 289 NW (2d) 570 (1980).

See note to 940.01, citing Steele v. State, 97 W (2d) 72, 294 NW (2d) 2 (1980).

Instruction to jury improperly placed upon accused burden of proving lack of intent to kill. State v. Schulz, 102 W (2d) 423, 307 NW (2d) 151 (1981).

See note to 346.63, citing State v. Vick, 104 W (2d) 678, 312 NW (2d) 489 (1981).

Instruction on intoxication defense did not shift burden of proof to defendant. State v. Hedstrom, 108 W (2d) 532, 322 NW (2d) 513 (Ct. App. 1982).

Jury instructions on intoxication defense, viewed as a whole, did not impermissibly shift burden of persuasion on issue of intent to defendant. Barrera v. State, 109 W (2d) 324, 325 NW (2d) 722 (1982).

See note to 940.09, citing State v. Caibaiosai, 122 W (2d) 587, 363 NW (2d) 574 (1985).

Instruction which required jury to find presumed fact necessary for conviction violated (3) and was not harmless error. State v. Dyess, 124 W (2d) 525, 370 NW (2d) 222 (1985).

Sandstrom error was harmless. State v. Zelenka, 130 W (2d) 34, 387 NW (2d) 55 (1986).

In case in which intent is element of crime charged, jury instruction, "the law presumes that a person intends the ordinary consequences of his voluntary acts," unconstitutionally relieves state from proving every element. Sandstrom v. Montana, 442 US 510 (1979).

Instructional error under Sandstrom can never be harmless. Connecticut v. Johnson, 460 US 73 (1983).

Sandstrom error wasn't harmless. Francis v. Franklin, 471 US 307 (1985).

Harmless error rule applied in case involving Sandstrom violation. Rose v. Clark, 478 US 570 (1986).

See note to 940.01, citing Hughes v. Mathews, 576 F (2d) 1250 (1978).

Prosecutor's argument to jury that "man intends natural and probable consequences of his intentional acts" did not prejudice accused. Mattes v. Gagnon, 700 F (2d) 1096 (1983).

Permissive intent instruction was rational as aid to jury in weighing circumstantial evidence of intent. Lampkins v. Gagnon, 710 F (2d) 374 (1983).

Instruction to jury that law presumes person intends all natural, probable, and usual consequences of his deliberate acts where there are no circumstances to rebut presumption unconstitutionally shifted burden of proof to defendant. Dreske v. Wis. Department of Health and Social Services, 483 F Supp. 783 (1980).

Presumptive intent jury instructions after Sandstrom. 1980 WLR 366.

After Sandstrom: The constitutionality of presumptions that shift the burden of production. 1981 WLR 519.

Restricting the admission of psychiatric testimony on a defendant's mental state: Wisconsin's Steel curtain. 1981 WLR 733.