

STATE OF MISSOURI )  
 ) SS  
CITY OF ST. LOUIS )

**MISSOURI CIRCUIT COURT  
TWENTY-SECOND JUDICIAL CIRCUIT  
(City of St. Louis)**

CITY OF ST. LOUIS, )  
 )  
 Plaintiff, )  
 ) Cause No. 0822-CR2674  
 vs. )  
 ) Division No. 29  
 JOHN HERRING, )  
 )  
 Defendant. )

JUDGMENT

Cause called for bench trial. City appears by Assistant City Counselor Sharon Stone. Defendant appears in person pro se. The Court has before it the issue of the sufficiency of Defendant's evidence to rebut the presumption set forth in §17.07.040(B) of the Revised Code of the City of St. Louis. Defendant was charged with a violation of §17.08.130 of the Revised Code of the City of St. Louis ("Traffic-control signal colors and terms—Steady red indication"), when his vehicle proceeded to make an illegal right turn at a red light by failing to properly stop at the clearly marked stop line. The City presented evidence that a motor vehicle was operated in violation of §17.08.130, and that Defendant is currently the registered owner of the offending motor vehicle. The Court finds the evidence that the motor vehicle violated §17.08.130 to be clear. However, Defendant then testified orally that he was not the operator of the vehicle at the time of the offense.

Revised Code of the City of St. Louis section 17.07.040(B)

states that "A rebuttable presumption exists that such owner of a motor vehicle operated or used in violation of the Traffic Code Ordinance as codified in Title 17 of the Revised Code was the operator of the vehicle at the time and place the violation was captured by the automated traffic control system record."

In this case, the City relies on the presumption in the ordinance to meet its burden of proof that Defendant was the operator of the vehicle at the time of the offense. Aside from the ordinance containing the presumption, the City presented no evidence that Defendant was operating the vehicle when the vehicle failed to make a proper stop at a red light in violation of Revised Code of the City of St. Louis Section 17.08.130. Further, the evidence in the case indicated it was evening, it was dark and it was impossible to see the driver of the automobile when photographed making the turn. The photograph was taken of the back of the vehicle; therefore, it was impossible to tell anything about the driver of the vehicle- whether male, female, etc.

A rebuttable presumption of law may, of course, be so rebutted. State ex rel. Baumann v. Doder, 121 S.W.2d 263, 265 (Mo.App. E.D. 1938). In civil cases,<sup>1</sup> a presumption is a rule of law which puts the burden of producing some substantial evidence on the party presumed against; that when substantial evidence, however slight, is adduced by the opponent, the presumption disappears and the triers of fact receive the issue free of any presumption. Neve

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<sup>1</sup> Prosecutions for violation of a city ordinance are in this state regarded as a civil action with quasi-criminal aspects. Independence v. Peterson, 550 S.W.2d 860, 862 (Mo.App. 1977).

v. Reliance Ins. Co., 357 S.W.2d 247, 251 (Mo.App. K.C. 1962).

Under the general rule in Missouri, the presumption only shifts the burden of production, and the burden of persuasion remains on the party with the burden of proof. Byous v. Mo. Local Gov't Emples. Ret. Sys. Bd. of Trs., 157 S.W.3d 740, 746 (Mo.App. W.D. 2005). Missouri courts have found that presumptions also shift the burden of persuasion, however, when the presumption is not merely a procedural rule. Id. The City argues that the presumption here should so operate to shift the burden of persuasion, and that Defendant should be required to disprove the presumed fact by a preponderance of the evidence, such as by clearly identifying an alternate driver.

In order for the presumption to work to shift the burden of persuasion, there must be strong social policy reasons underlying the presumption, such that the presumption continues to exist even when evidence has been introduced that tends to rebut the existence of the presumed fact. Id. In Byous, the Court found that "there is a strong social policy underlying this statute to provide compensation for firefighters if they develop debilitating heart and respiratory diseases that may have been caused by their work," and concluded that in order to respect the legislature's decision to provide the presumption in §87.006 that certain health impairments were suffered in the line of duty, the presumption should not just disappear based on evidence to the contrary. Id.

Here, there is no such stated policy objection for the

presumption that the registered owner of a vehicle was the operator at the time of an offense. Therefore, the Court believes that the presumption theory generally applicable to civil cases in Missouri should apply and the presumption contained in the ordinance does not shift the burden of persuasion to the defendant. Section 17.08.130 of the Revised Code of the City of St. Louis requires a "driver" to stop at a clearly marked stop line upon encountering a steady red signal. Under §17.07.040, there is a rebuttable presumption that the owner of a motor vehicle operated or used in violation of the Traffic Code Ordinance was the operator of such vehicle if the City proves 1) that a motor vehicle was being operated or used; 2) that the operation or use of the motor vehicle was in violation of Traffic Code Ordinance as codified in Title 17 of the Revised Code; and 3) that the defendant is the owner of the motor vehicle in question. The rebuttable presumption merely provides a critical element of the City's claim, in the absence of any other proof or any contrary evidence. See Parrish v. Kansas City Sec. Service, 682 S.W.2d 20, 23 (Mo.App. W.D. 1984).

The issue, therefore, is whether Defendant's testimony that he was not the operator of the vehicle is "substantial evidence" such that the presumption should be disregarded. "Upon introduction of such substantial evidence, the existence or nonexistence of the fact once presumed is to be determined from the evidence as if no presumption had ever been operative in the case." Union Electric Co. v. Brown, 783 S.W.2d 409, 411 (Mo.App. E.D. 1989). "If the evidence adduced is not 'substantial evidence,' the presumption, of

course, remains." Terminal Warehouses of St. Joseph, Inc. v. Reiners, 371 S.W.2d 311, 317 (Mo. 1963).

Substantial evidence "is evidence which, if true, has probative force upon the issues, i.e., evidence favoring facts which are such that reasonable men may differ as to whether it establishes them; it is evidence from which the trier or triers of the fact reasonably could find the issues in harmony therewith; it is evidence of a character sufficiently substantial to warrant the trier of facts in finding from it the facts, to establish which the evidence was introduced." Id. Oral testimony of a witness which has probative force upon the issues is generally regarded as substantial evidence. Id. Only trial testimony that inherently contradicts itself should be disregarded as substantial evidence. Laquid v. Kan. City Bd. of Police Comm'rs, 136 S.W.3d 786, 796 (Mo. banc 2004); Yoos v. Jewish Hosp. of St. Louis, 645 S.W.2d 177, 185 (Mo. App. E.D. 1982). The Court finds that Defendant's uncontradicted sworn testimony that he was not driving is substantial evidence that he was not driving.

When a presumption disappears because substantial evidence has been adduced, the issue is decided by the trier of fact as if no presumption had ever been operative in the case. Union Electric Co. v. Brown, 783 S.W.2d 409, 411 (Mo.App. E.D. 1989). Any facts which gave rise to the presumption remain in the case, as well as the facts to the contrary. Terminal Warehouse, 371 S.W.2d at 316-17.

The Court has considered the evidence of the parties,

including the testimony of the Defendant, and finds that the City has failed to meet its burden of proving that Defendant was the operator of the vehicle at the time of the offense in question.

THEREFORE, the Court finds Defendant John Herring not guilty as charged under sections 17.07 and 17.08.130 of the Revised Code of the City of St. Louis.

SO ORDERED:

\_\_\_\_\_  
Elizabeth Byrne Hogan, Judge

Dated: \_\_\_\_\_

cc: Sharon Stone  
John Herring, Defendant pro se