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RECEIVING STOLEN PROPERTY—The Doctrine of Recent Possession and Problems Associated with Defendant's Testimony, *Russell v. State*, 583 P.2d 690 (Wyo. 1978).

The crime of receiving stolen goods plays a crucial role in deterring misappropriation of property by punishing the person who provides pecuniary incentive to theft, the fence.[1] Receiving, which was a creation of the legislature developed to close gaps left by the common law doctrines of accomplice liability,[2] presents unique problems of proof to the prosecutor and unique perils for the defendant. It appears that courts have dealt with the former by permitting inferences which aid the prosecutor, while the latter have received less consideration.

THE FACTS IN RUSSELL

On February 5, 1976, Thomas Russell, Jr. was arrested by the police after he sold an intake manifold stolen from a car at a garage for $50.00 in marked bills, and charged with receiving stolen property.[3] At his trial, the State produced testimony indicating that the property was in fact that stolen from the garage sometime between December 15, 1975, and January 20, 1976; that the new or replacement value of the manifold was about $900; and that Karl Hoskins, then owner of the auto from which the manifold was taken, had been approached by one Charles Edwards, who advised him that the defendant Russell had the manifold. Hoskins testified that Russell later contacted him, and that an exchange had been arranged with the knowledge and cooperation of the local police department.

The defendant testified that he had received the manifold from Edwards to secure a $34 loan, that he believed the manifold to be worth about $200 at the time of receipt,

1. Walsh and Chappel, *Operational Parameters in the Stolen Property System*, 2 JOURNAL OF CRIMINAL JUSTICE 113, 126-127 (1974).
2. HALL, THEFT, LAW, AND SOCIETY 52-62 (2d ed. 1952).
3. WYO. STAT. § 6-7-304 (1977), providing that:

   Whoever buys, receives, conceals, or aids in concealment of anything of value, which has been stolen, embezzled, or obtained by false pretenses, knowing the same to have been stolen, embezzled, or obtained by false pretenses, shall if the goods are of the value of one hundred dollars ($100.00) or upwards, suffer the punishment prescribed for grand larceny, and if the goods are worth less than one hundred dollars ($100.00) shall suffer the punishment prescribed for petit larceny.

   WYO. STAT. §§ 6-7-301 and 6-7-302 (1977) prescribe a penalty of not more than ten years for grand larceny and not more than six months for petit larceny, except that a second conviction of petit larceny carries the same maximum as that for grand larceny.

and that Edwards had given him permission to sell in order to liquidate the debt. However, he denied knowledge that the property was stolen, although the State's evidence indicated that he had told Hoskins at the exchange that the manifold had come from Keith Spencer's car, the same vehicle that Hoskins had in the interim purchased.

Edwards corroborated the defendant's testimony about the loan, and further testified that he had originally received the manifold from Hoskins for $50, and that Hoskins sought its return after Edwards had transferred it to the defendant.

On rebuttal, the State produced a police officer and a deputy county attorney, who both testified that Edwards had told them that the foregoing was a fabrication conceived of by the defendant and induced by threat, and that Russell had in fact stolen the property himself. In a later trial, Edwards was convicted of perjury, and that conviction was affirmed on appeal.[4]

The jury returned a guilty verdict against Russell, who appealed assigning error (1) to the trial court's failure to grant his motion for acquittal[5] based on the insufficiency of the State's evidence to present a *prima facie* case, (2) to the refusal to grant a similar motion at the close of his defense, and (3) to the general insufficiency of the evidence to support a conviction based on guilt beyond a reasonable doubt.

The Court ruled that by introducing evidence of (1) possession of (2) recently stolen property, the State had made a *prima facie* case under the doctrine of recent possession. The Court also decided that the defendant's testimony and the State's rebuttal supplied further substantive evidence for the State, thus providing proof sufficient to sustain the jury's finding of guilt. The conviction was therefore affirmed.

THE COURT'S REASONING

A. The Doctrine of Recent Possession

The elements of receiving under Section 6-7-304 of the Wyoming Statutes, as enumerated by the Court, are (1) the

4. Edwards v. State, 577 P.2d 1380 (Wyo. 1978).
5. WYO. R. CRIM. P. 30(a), identical to FED. R. CRIM. PRO. 29(a).

receipt (2) of a thing of value (3) knowing it to be stolen.[6] It was obvious that the first two elements were present, as (1) Russell had been seen passing the property to Hoskins by the police and Hoskins, and (2) the defendant had stipulated to the stolen character of the manifold.[7] The problematic element, as in any receiving case, was the requirement that the defendant know that the goods were stolen at the time of receipt (scienter).[8] To permit the jury to find this element on the basis of the testimony adduced by the State, the Court permitted the State to rely on what has been described as "[a] presumption running through a dozen centuries,"[9] the substance of which is that proof by the State of (1) possession of (2) recently stolen property constitutes a *prima facie* case for the required scienter, and if this possession is not explained to the jury's satisfaction, the jury *may* find the defendant guilty of receiving.[10]

The Court observed that it could be argued that since the effect of this permitted inference is to place a great deal of pressure on the defendant to attempt an explanation of his possession, this might result in a violation of his self-incrimination privilege under the Fifth and Fourteenth Amendments.[11] However, that contention, as the Court pointed out, has been severely undercut by *Barnes v. United States,*[12] upholding the doctrine in a case involving stolen United States payroll checks against such a challenge, as well as against due process clause objections.

The *Russell* Court inserted a caveat, however, that "[n]aked possession" of property does not establish a *prima facie* case, absent "[o]ther incriminating surrounding cir-

6. Russell v. State, 583 P.2d 690, 693 (Wyo. 1978). *Cf.* LAFAVE AND SCOTT, CRIMINAL LAW 688 (1972), [hereinafter cited as LaFave and Scott], adding a fourth element. "Some sort of a bad state of mind, in addition to guilty knowledge, is required."
7. Russell v. State, *supra* note 6, at 693.
8. *Id.* Note that the problem is actually that of concurrence between the elements of receipt and knowledge. *See,* CLARK AND MARSHALL, CRIMES 976 (7th ed. 1967); LAFAVE AND SCOTT, at 688-689.
9. THAYER, A PRELIMINARY TREATISE ON EVIDENCE AT THE COMMON LAW 327 (1898). The defendant did not object to this instruction at trial. Russell v. State, *supra* note 6, at 15.
10. *See,* Rugendorf v. United States, 376 U.S. 528, 536-537, in which the Supreme Court applied the inference under the receiving provisions of 18 U.S.C. § 2315 (1964).
11. Russell v. State, *supra* note 6, at 696. *See* Note, *Constitutionality of Presumptions on Receiving Stolen Property: Turning the Thumbscrews in Michigan and Other States,* 21 WAYNE L. REV. 1437, 1439 (1975), dealing with statutory presumptions of this kind.
12. Barnes v. United States, 412 U.S. 837, 847 (1973). The Russell Court did not discuss Wyoming's privilege against self-incrimination, WYO. CONST. Art. 1, § 11 - "No person shall be compelled to testify against himself in any criminal case."

cumstances," citing in this case the value of the manifold, the fact that the defendant told Hoskins that the manifold was the stolen article, and the fact that the defendant had concealed the marked money when arrested.[13]

The dissenting opinion[14] vigorously contended that the State's case in no way showed that the defendant knew the property was stolen at the time of receipt, citing authorities holding that the defendant must personally believe the *res* stolen, and that mere failure to pursue an inquiry which would lead to knowledge of the stolen character of the goods would not suffice.[15]

B. False Exculpatory Statements

The majority ruled that "[t]he defendant's defense supplied further evidence of guilt and bolstered the State's case," relying on the defendant's testimony that he thought the manifold worth $200 when he ostensibly received it as collateral for the $34 loan, and more importantly, that Edwards' testimony, rebutted by the State, was a false exculpatory statement which was evidence of a consciousness of guilt.[16]

The dissent strenuously denied that any defense testimony could be considered substantive evidence for the State to meet its burden of proof, contending that such a rule "[c]an only have a chilling effect" on a defendant's decision to take the stand in his own defense.[17]

ANALYSIS

1. Recent Possession Doctrine

As noted above, the inference permitted from possession is an ancient one, and is undoubtedly a response to the fact that direct testimony as to a defendant's mental state is rarely available.[18] In effect, this troublesome element is eliminated unless the defendant can satisfactorily explain

13. Russell v. State, *supra* note 6, at 698.
14. Russell v. State, *supra* note 6, at 701.
15. Id.
16. *Id.* at 699.
17. *Id.* at 702-703.
18. LaFave and Scott, at 686.

his possession.[19] The respectability of such an inference is demonstrated by the enshrinement of a "presumption" in the Model Penal Code, which is calculated to affect only persons with stolen property from two or more crimes, a prior conviction of receiving, or dealers in the type of goods received who purchase them for a disproportionately low consideration.[20]

However, this inference is not the sole legal factor in *Russell.* The Court's holding that the defendant's defense bolstered the State's case adds a further dimension to the problem of fact-finding.

2. False Exculpatory Statements

The proposition that mere disbelief of a defendant's testimony can constitute substantive proof to be "added" to the State's case is far from universally accepted, although the absence of a generally accepted analytical framework renders generalization difficult.[21] It would seem, however, that there are distinctions which should be made with regard to this rule which bear on its legitimacy.

It is possible to conceive of a situation, at least in the abstract, in which no evidence of the defendant's guilt would be available other than his own disbelieved testimony. It has been held that in a criminal case, where the State bears a heavier burden of proof than in a civil case, the jury's dissatisfaction with a defendant's explanation never permits an inference of the elements of the crime charged.[22] Despite the absence of an authoritative Constitutional pronouncement on the issue, this statement has been described as "well-settled" by one commentator,[23] and apparently has its genesis in a line of civil cases beginning with *Cruzan v. New York C & H R. C.* in 1917.[24] In that case, a brakeman alighting from a car was struck by a passing train, the engineer

19. *See,* Chamberlain, *Presumptions as First Aid to the District Attorney* 14 A.B.A. J. 287 (1928), referring to statutory presumptions.
20. MODEL PENAL CODE 223.6 (2) (1974), MODEL PENAL CODE TENTATIVE DRAFT #2, 94 (1954).
21. Note, *False Statements as Substantive Evidence of Guilt,* 5 WILLIAMETTE L.J. 253, 265 (1968) [hereinafter cited as Note, *False Statements*].
22. State v. Taylor, 422 S.W.2d 633, 637 (Mo. 1968), a receiving case cited extensively in the Russell dissent.
23. Morgan, *The Law of Evidence 1941-1945,* 59 HARV. L. REV. 481, 558 (1946).
24. Cruzan v. New York City and H. R. Co., 227 Mass. 594, 116 N.E. 879, 880 (1917).

and fireman of which testified that they had not seen the man in time to stop. The jury returned a verdict for the plaintiff which the New York Court of Appeals overturned for lack of evidence of negligence produced by the plaintiff.[25]

However, the problem of convicting a defendant solely on the basis of his own disbelieved testimony seems unlikely to occur.[26] It seems that cases which have held that such unbelieved testimony may be allowed substantive force require circumstantial or direct evidence indicating the falsity of defendant's statement, as opposed to mere disbelief based on an unfavorable reaction to the defendant's demeanor. In *D'Arcangelo v. Tartar,* a civil case in the same jurisdiction as *Cruzan,* but reaching an opposite result on a similar issue,[27] it was held that because of circumstances in the record, "[m]ere disbelief" of testimony had not been given effect as positive proof of the fact denied,[28] as prohibited by *Cruzan.* Instead, the Court characterized such testimony as false, not merely disbelieved, relying on other testimony in the case as well as the defendants' demeanor, which the trial court felt indicated a consciousness of guilt.[29]

These civil cases are closely paralleled by two representative criminal cases. As noted above, *State v. Taylor* held that mere jury disbelief of a defendant's testimony never allows an inference of the elements of a crime, citing *Cruzan.*[30] On the other hand, a Maryland receiving case seems to parallel *D'Arcangelo.* In *State v. Carter,* the Court of Special Appeals held that while as a general rule disbelieved testimony is not evidence to the contrary, disbelieving a denial of guilt may provide a basis for finding *scienter.*[31] However, the Court went on to add that in order to find *scienter* in this fashion, there must be "[s]ome additional circumstances establishing the inherent improbability of defendant's denial,"[32] thus relying on the same criteria as *D'Arcangelo.*

25. *Id.* at 881.
26. Maguire and Vincent, *Admissions Implied From Spoliation of Related Conduct,* 45 YALE L. J. 226, 252 (1935). The article concerns itself solely with civil cases.
27. D'Arcangelo v. Tartar, 265 Mass. 360, 164 N.E. 87, 88 (1928). The case involved a suit against a taxicab company to recover for personal injuries caused by the negligence of a cabdriver. The driver and owner of the cab company both denied that the driver was operating the vehicle causing the plaintiff's injuries, the testimony at issue.
28. *Id.* at 88.
29. *Id.* at 88.
30. State v. Taylor, *supra* note 22.
31. State v. Carter, 10 Md. 70, 267 A.2d 743, 745 (1970).
32. *Id.* at 746.

The Wyoming Court in *Russell* seems to diverge on paths which follow the two cases to their opposite conclusions. The majority relied on something like the *D'Arcangelo-Carter* position, and found the presence of circumstances such as the disparity between the value of the manifold and the size of loan for which it was accepted as collateral as circumstances establishing the improbability of defendant's testimony,[33] although there is no discussion of the substantive effect of the jury's apparent disbelief of Russell's story. The dissent, in contrast, relied on the *Cruzan* conceptualization, quoting from *State v. Taylor* at length.[34]

It would appear, then, that the line between what would constitute a mere disbelief of the defendant's testimony, and what would constitute a statement the falsity of which has been supported by other evidence in the case is not very bright. However, such a distinction may well be crucial, as the acceptance of false statements as the basis for an inference of guilt is well accepted in the law,[35] while the idea that a defendant's testimony, even if disbelieved, should not absolve the state of the necessity of proving an element of the crime charged seems equally accepted.[36] The fact that most courts regard false statements as a mere ground for inference which the jury may make if it so desires may reduce the impact of the rule.[37] In addition, it appears that there are no reported cases which have relied solely on such an inference.[38]

It seems appropriate to inquire at this point into the value of false statements as evidence, on three grounds. First, the assumption that a false statement can be of any value as evidence of guilt must rest on the belief that an innocent man would not lie even under pressure.[39] It is likely that this idealistic view doesn't reflect the real possibility

33. Russell v. State, *supra* note 6, at 699.
34. *Id.* at 702-703.
35. *See,* Allen v. United States, 164 U.S. 492, 499 (1896) (manslaughter), and Wilson v. United States, 162 U.S. 613, 618 (1896) (murder). Both described the presence of false exculpatory statements as a basis for an inference of guilt. *See also,* MCCORMICK, EVIDENCE 662 (2d ed. 1972), [hereinafter cited as McCormick].
36. Russell v. State, *supra* note 6, at 702-703.
37. Note, *False Statements,* at 264-265. *Cf.* McCormick, at 661.
38. Note, *False Statements,* at 264-265.
39. *See,* Wilson v. United States, *supra* note 35, stating that false statements by the accused "are not in harmony with the great law of truth which in all its parts is constituent and harmonious." *Cf.* FRANK, LAW AND THE MODERN MIND 58-59 (1936); comparing such legal conceptions to Plato's Ideas with extensive criticism.

that even an innocent man in the shadow of a long prison sentence might yield to a lack of faith in the judicial process and attempt to better his position by resort to falsehood.[40]

Second, the question arises as to precisely what element of the crime, if any, the false statement reaches, assuming both falsity and reliability as evidence.[41] For example, in the *Russell* case, it might fairly be inferred that the statements by Edwards at Russell's behest, later proven false at his trial for perjury,[42] indicated that Russell knew the property was stolen. However, there is no demonstrated relevance of this evidence to prove that the defendant was aware that the goods were stolen *at the time of receipt,* the missing element of the State's case.[43] As one can readily see, the defendant's conception of his own legal guilt may be of little value, coming as it does from a layman untrained in the law. It might therefore be argued that the effect of an unstructured application of the false statement doctrine is to allow the defendant to "create" a crime in his own mind which is allowed to meet legal requirements because of the permitted inference.

Third, there are few guidelines as to what constitutes sufficient indication that a statement is false, as opposed to merely disbelieved by the jury. In the face of direct contradictory testimony of a credible witness, such a determination is relatively easy.[44] Likewise, if the defendant contradicts himself, it is clear that falsity can be inferred.[45] The real difficulty lies in the situation where the defendant's statements are unlikely, or "[w]here the truth of the statements necessarily depends on the subjective intent of the defendant."[46] Courts have apparently relied on criteria which defy analysis in this situation, such as that the jury must be morally certain, satisfied, or merely believe in the

40. WHARTON, 1 CRIMINAL EVIDENCE 268 (Anderson ed. 1955), "an innocent, though weak and timid man, sensible that appearances are against him and duly weighing the danger of his being detected in clandestine attempts to stifle proof, may naturally resort to this mode of averting danger." *See also,* McCormick at 661.
41. Note, *False Statements,* at 268.
42. Edwards v. State, *supra* note 4.
43. Note, *False Statements,* at 269.
44. Territory v. Truslow, 27 Haw. 109, 115. The case involved an embezzlement of stock belonging to an estate, which the defendant had inventoried with the son of the decedent. The issue turned on defendant's fraudulent intent, shown by his failure to report to the son that the stock in question had been sold.
45. State v. Redfearn, 246 N.C. 293, 98 S.E.2d 322, 326 (1956); The question in the case was the liability of defendant as a second degree principal in her son's murder of her husband. The defendant made conflicting statements as to the manner of death.
46. Note, *False Statements* at 267.

falsity of the statement.[47] One jurisdiction has developed somewhat more meaningful criterion; in New York "[i]ndependent evidence of such fabrication" is required to demonstrate the falsity of the evidence.[48] In *Russell,* the testimony of the police officer and deputy county attorney would certainly meet that standard.

3. The Eagan Doctrine in Receiving Cases

A related question is that of the effect to be given the defendant's testimony, absent direct evidence as to his knowledge of the stolen character of the goods at the time of receipt. In this context, the *Eagan rule*[49] seems worthy of consideration and comparison. In Eagan, the defendant was convicted of murder on the basis of circumstantial evidence; the defendant was the only surviving witness at the scene of the crime. In reducing his conviction to manslaughter, the Wyoming Supreme Court held that when an accused is the sole witness to a crime, his testimony must be accepted *if* (1) he has not been impeached, (2) his testimony is not improbable, and (3) is not inconsistent with the facts and circumstances known, but reasonably consistent therewith.[50] While it appears that the Eagan rule is still good law in Wyoming,[51] its applicability to the receiving context appears not to have been considered.

The English courts have confronted the relationship between an Eagan rule and the recent possession doctrine.[52] In the seminal case of *Rex v. Schama and Abramovitch,* the English Court of Criminal Appeal ruled that when an accused is in possession of stolen goods and offers an explanation, "[i]f the jury thinks that explanation might be true,

47. *Id.* at 267.
48. People v. Russell, 266 N.Y. 147, 194 N.E. 65, 68 (1934).
49. Eagan v. State, 58 Wyo. 167, 128 P.2d 215 (1942).
50. *Id.* at 225. Blume, J., characterized this rule as a modification of the principle that juries are "ordinarily the sole judges of the credibility of witnesses."
51. *See,* Cullin v. State, 565 P.2d 445, 452 (Wyo. 1977), written by Justice Raper, the author of the majority opinion in *Russell,* holding that the rule is only appropriate when the defendant's testimony is consistent with facts and circumstances. It seems a fair statement that the Court has limited its application of this rule severely. *See,* Doe v. State, 569 P.2d 1269, 1279 (Wyo. 1977), Ragiosa v. State, 562 P.2d 1009, 1016 (Wyo. 1977), Buckles v. State, 500 P.2d 518, 521 (Wyo. 1972), State v. Goettina, 61 Wyo. 420, 58 P.2d 865, 879 (1945); all declining to apply the Eagan rule because of contradictory evidence, either direct or based on fair inference. *Cf.* State v. Helton, 73 Wyo. 92, 276 P.2d 434, 443 (1954), applying the rule to reduce a conviction of first degree murder to manslaughter based upon inadequate contradiction of the defendant's testimony as to her mental state.
52. Fraser, *Stolen Property: The Defense That Might Reasonably Be True,* 1 U. B. C. L. REV. 553 (1962).

although they are not convinced that it is true, the prisoner is entitled to an acquittal."[53] Although the rule has been interpreted as merely a restatement of the reasonable doubt standard,[54] the most recent major case by the same court still requires that the jury be satisfied that the explanation offered by the defendant of his possession of stolen property is untrue.[55]

It seems clear that the English cases were intended to deal with the unique problems of stolen property created by the recent possession doctrine by requiring that the explanation of the defendant be accorded some deference, if only that offered by the requirement of proof beyond a reasonable doubt of the elements of the crime. It also seems that the doctrine of *Eagan* would require some sort of application, reconciliation, or differentiation in receiving cases in Wyoming.

CONCLUSIONS

A rule which permits the jury to appropriate a defendant's disbelieved testimony when that defendant is pressured by the recent possession doctrine to testify, may go too far in aiding the State unless the basis for determining falsity as well as the reliability of false statements by particular defendants are subjected to some scrutiny by trial courts. The problem of jury control looms large, for without a limitation on what kinds of "false" statements may be considered substantive there is nothing to prevent a jury from making unjustifiable inferences, once the State has made a *prima facie* case in reliance upon the recent possession doctrine.[56] The effect of this might be to allow the jury to negate the element that the defendant knew that the goods he received were stolen in virtually any receiving case.[57]

Moreover, the "stacking" of the inference permitted from disbelieved or false statements upon that afforded by the recent possession doctrine might well violate the due pro-

53. Rex v. Schama and Abramovitch, 112 L.T. 480, 482, 11 Cr. App. R. 45 (1914).
54. Fraser, *supra* note 54, at 557.
55. Rex v. Aves, 2 All E.R. 330 (1950). Note the similarity to the criteria for determining the falsity of a defendant's testimony.
56. Note, *False Statements*, at 275.
57. Maguire and Vincent, *supra* note 26, at 257.

cess clause, as the requirement that the prosecutor prove every element of a crime beyond a reasonable doubt has been held to be required by that clause of the Fifth and Fourteenth Amendments.[58] It is true that the *Barnes* case[59] did uphold the recent possession doctrine against a due process challenge, but that decision can only be considered a narrow one,[60] and does not in any case account for the problems related to the effect of defendant's testimony associated with these cases.[61]

A more thorough analysis of the rules applied in *Russell* is necessary to assure that the defendant receives a fair trial without fear of inadequate controls on the possible biases of the jury or excessive shifting of the State's burden of proof.

MICHAEL A. DEAHL

58. In Re Winship, 397 U.S. 358, 364 (1970). "We explicitly hold that the Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged." A related question is whether the legislature could Constitutionally redefine the elements of the crime so as to eliminate the requirement of guilty knowledge, thus making receiving a strict liability crime. The only case dealing directly with this issue is People v. Estreich, 272 App. Div. 698, 75 N.Y.S. 2d 267 (1967), *aff'd* 297 N.Y. 910, 79 N.E. 2d 742; in which the Appellate Division of the New York Supreme Court struck down a receiving statute without a knowledge or reasonable inquiry requirement, relying on the Fourteenth Amendment due process clause. United States Supreme Court cases considering this general problem have looked to whether the violation is an act or omission; whether the offense was a common law crime which would allow an inference of the knowledge requirement, thus avoiding a Constitutional issue; whether the nature of defendant's conduct, as of a business, is such as to make it fair to punish without knowledge; and of course the severity of the penalty, the most important consideration. LaFave and Scott, 144-146; 218-223. Note the Court's remarks in Powell v. Texas, 392 U.S. 514, 535 (1968),

> the doctrines of actus reus, mens rea, insanity, mistake, justification, and duress have historically provided the tools for a constantly shifting adjustment of the tension between the evolving aims of the criminal law and changing religious, moral, and medical views of the nature of man.

and those in Morrisette v. United States 342 U.S. 246, 260 (1951), that

> neither this Court, nor, so far as we are aware, any other has undertaken to delineate a precise line or set forth comprehensive criteria for distinguishing between crimes that require a mental element and crimes that do not. We attempt no closed definition, for the law on the subject is neither settled nor static.

See also, Hart, *The Aims of the Criminal Law*, 23 J. OF LAW & CONTEMP. PROB. 401, 431 (1938), on the role of personal guilt in punishment, as well as the Supreme Court's failure to address the Constitutional requirements for punishment; and Sayre, *Mens Rea*, 45 HARV. L. REV. 974 (1932), advocating a fluid mens rea concept like that reflected in the above passages.

59. Barnes v. United States, *supra* note 12.

60. Note, *Due Process Requirements for Use of Non-Statutory Inferences in Criminal Cases - Barnes v. United States*, 1973 WASH. U. L. Q. 897, 906 (1973).

61. The required relationship between a fact proven and one inferred therefrom to satisfy the due process clause is the subject of a line of cases considered in *Barnes*. These were United States v. Gainey, 380 U.S. 63 (1965) (there must be a rational relationship between the fact proven and that presumed); Leary v. United States 395 U.S. 6 (1969) (the presumed fact must be more likely than not to flow from the fact proven); Turner v. United States 396 U.S. 398 (1970) (question of which standard is correct reserved). *See also*, McCormick, at 831-832, for an analysis of these cases.