STATE OF MINNESOTA

COUNTY OF HENNEPIN

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BY JAH DEPUTY

HENN CO. DISTRICT COURT ADMINISTRATOR

DISTRICT COURT

FOURTH JUDICIAL DISTRICT

State of Minnesota,

Plaintiff,

vs.

Maurice NMN Wallace,
Defendant.

ORDER

District Court No. 06026564

The above-entitled matter came on for a hearing before Judge Kathryn L. Quaintance on August 18, 2006, at C-1957 Government Center, Minneapolis, Minnesota.

APPEARANCES:

Andrew Small, Assistant Hennepin County Attorney, was present.

John Ryan, Assistant Hennepin County Public Defender, appeared for and on behalf of Maurice Wallace.

Maurice Wallace was also present.

Upon the evidence adduced, the argument of counsel, and all the files, records and proceedings herein, the Court makes the following:

FINDINGS OF FACT

1. Counsel for Defendant moved this court to declare Minnesota Statutes section 343.31, subdivision 2 (2005) unconstitutional.

2. On March 23, 2006 Minneapolis Animal Control officers responded to a call from Defendant's wife, C.W., who resided with Defendant at 3400 Oakland Avenue South in Minneapolis, stating that she was concerned for the welfare of several dogs located at that address.

3. When the officers arrived, C.W. directed them to several kennels on the property, which held three pit bull terriers allegedly exhibiting various wounds. C.W. also brought the officers to a small room off the back door of the residence, where the

officers found items including a treadmill, syringes, bottles containing various supplements, and a three-ring binder containing a number of documents related to dog training and dog fighting.

4. Defendant has subsequently been charged with Animal Fights and Possession of Fighting Animals in violation of Minn. Stat. § 343.31, subd. 1(1), subd. 2 (2005).

5. The attached Memorandum of Law is incorporated herein.

IT IS HEREBY ORDERED

1. Subdivision 2 of Minn. Stat. § 343.31 (2005) is hereby declared UNCONSTITUTIONAL.

2. After subdivision 2 is severed, the remaining provisions of section 343.31 are left constitutionally intact. The State may proceed with the prosecution of Defendant under the remaining provisions of section 343.31 if it so chooses.

BY THE COURT:

Date: August 18, 2006

Kathryn L. Quaintance
Judge, Fourth Judicial District

MEMORANDUM OF LAW

I. Minn. Stat. § 343.31, subd. 2 (2005) is unconstitutional because it violates the Due Process Clause of the Fourteenth Amendment by undermining the factfinder's duty to find guilt beyond a reasonable doubt and by shifting the burdens of production and persuasion to the accused.

Minnesota Statutes section 343.31, subdivision 2 creates "a rebuttable presumption that a dog has been trained to fight if: (1) the dog exhibits fresh wounds, scarring, or other indications that the dog has been or will be used for fighting; and (2) the person possesses training apparatus, paraphernalia, or drugs known to be used to prepare dogs to fight." Minn. Stat. § 343.31, subd. 2 (2005). A defendant accused of training a dog to fight may rebut this presumption by a preponderance of the evidence. Id.

Counsel for Defendant argues that this subdivision violates the Due Process Clause of the Fourteenth Amendment, which "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." In re Winship, 397 U.S. 358, 364, 90 S.Ct. 1068, 1073 (1970). "This 'bedrock, 'axiomatic and elementary' [constitutional] principle,' prohibits the State from using evidentiary presumptions . . . that have the effect of relieving the State of its burden of persuasion beyond a reasonable doubt of every essential element of a crime." Francis v. Franklin, 471 U.S. 307, 313, 105 S.Ct. 1965, 1970 (1985) (citing Winship, 397 U.S. at 363, 90 S.Ct. at 1072).

A presumption is a rule of law by which the finding of one fact, the "basic" or "evidentiary" fact, gives rise to the existence of an element of the crime, the "presumed" or "ultimate" fact. County Court of Ulster County, New York v. Allen, (hereafter "Ulster County") 442 U.S. 140, 156, 99 S.Ct. 2213, 2224 (1979). The United States Supreme

Court has delineated three types of criminal presumptions: (1) permissive; (2) mandatory rebuttable; and (3) mandatory conclusive. McLean v. Moran, 963 F.2d 1306, 1308 (9th Cir. 1992) (citing Francis, 471 U.S. at 314 & n. 2, 105 S.Ct. at 1971 & n. 2 and Ulster County at 157 & n. 16, 2224 & n.16).

To be constitutional, a criminal presumption "must not undermine the factfinder's responsibility at trial, based on evidence adduced by the State, to find the ultimate facts beyond a reasonable doubt." Ulster County at 156, 2224. A permissive inference or presumption avoids constitutional infirmity because it "allows, but does not require, the trier of fact to infer the presumed or elemental fact from proof of the basic fact and does not shift the burden of production or persuasion to the defendant." McLean, 663 F.2d at 1308 (citing Ulster County at 157, 2224). "Mandatory presumptions, however, pose greater potential for constitutional problems because they affect not only the strength of the 'beyond a reasonable doubt' burden but also the placement of that burden. Id. A mandatory rebuttable presumption "tells the fact finder that he [or she] *must* find the presumed element upon proof of the basic fact, unless the defendant comes forward with some evidence to rebut the presumed connection between the two facts." Id. (emphasis in original). "Although the defendant may present evidence to rebut the presumption, if the defendant chooses not to do so, the factfinder must accept the presumption as true, even if it is the sole evidence of an element of the offense." Id.

This court finds that the presumption arising under subdivision 2 of Minn. Stat. § 343.31 is a mandatory rebuttable presumption consistent with the above-cited definition. To secure a conviction under the statute, the State need only show the predicate facts: specifically, that the dog exhibits fresh wounds, scarring, or other physical indicia of

fighting, and that the defendant possessed paraphernalia commonly used to train dogs to fight. Once the State has made this factual showing, the statute implies that the factfinder is not free to accept or reject guilt. Rather, should the defendant fail to offer sufficient evidence to the contrary, the factfinder is implicitly required to find the defendant guilty. Because the challenged subdivision undermines the factfinder's duty to find guilt beyond a reasonable doubt and because it effectively shifts both the burden of production and the burden of persuasion to the defendant, this court finds it unconstitutional.

II. The provisions of section 343.31 are severable; therefore Defendant can be prosecuted under the remaining valid provisions of the statute.

Minnesota Statutes section 645.20 (2005) provides:

> Unless there is a provision in the law that the provisions shall not be severable, the provisions of all laws shall be severable. If any provision of a law is found to be unconstitutional and void, the remaining provisions of the law shall remain valid, unless the court finds the valid provisions of the law are so essentially and inseparably connected with, and so dependent upon, the void provisions that the court cannot presume the legislature would have enacted the remaining valid provisions without the void one; or unless the court finds the remaining valid provisions, standing alone, are incomplete and are incapable of being executed in accordance with the legislative intent.

Section 343.31 does not contain any language stating that its provisions shall not be severable; thus, after finding subdivision 2 of that statutory section unconstitutional, this court is free to determine whether the law is severable. This court finds no indication that the remaining provisions of section 343.31 are so essentially and inseparably connected with subdivision 2 that the law cannot be severed. Further, this court finds that the remaining provisions, standing alone, are complete and capable of being executed in accordance with the legislature's intent to create a penalty for people who train dogs to fight. Therefore, this court finds that the remaining provisions of section 343.31 are valid

and unaffected. The State may proceed with the prosecution of this defendant under the remaining provisions of the law if it so chooses.

KLQ