

CRIMINAL COURT OF THE CITY OF NEW YORK
COUNTY OF QUEENS: PART AP-1

-----X
THE PEOPLE OF THE STATE OF NEW YORK,

against

Decision & Order
Docket No.:
2015QN008701

ISAAC SANSON,

Defendant.

-----X

MORRIS, G., J.

In an accusatory instrument filed on March 4, 2015 the defendant, Isaac Sanson, is charged with violating Administrative Code of the City of New York §19-190 (hereinafter “AC §19-190”), Right of Way law. The defendant now moves for dismissal of the accusatory instrument filed against him on the grounds that the statute is unconstitutional since it violates the Fifth and Fourteenth Amendments to the US Constitution and the protections afforded under the state constitution, and for other relief.

In determining the instant motion, this Court has considered the defendant’s moving papers dated March 29, 2016 and May 24, 2016, the People’s responses dated May 3, 2016 and June 20, 2016, the New York City (“NYC”) Office of the Corporation Counsel’s (“Corporation Counsel”) opposition papers dated June 7, 2016¹, an oral argument heard on June 20, 2016 in which attorneys from the Corporation Counsel’s

¹ Because the Defendant’s motion involves the constitutionality of a statute enacted by the New York City Council, Corporation Counsel, which represents NYC, was entitled to submit papers and participate in the oral arguments as a necessary party (*see e.g. People v Roselle*, 193 AD2d 56 [2d Dept 1993]). In a letter dated June 22, 2016, The New York State Attorney General declined to intervene in this matter pursuant to New York Executive Law § 71.

office, as well as the parties to the instant action participated, and papers on file with the Court.

The following is the decision and order of the Court.

I. Background

As part of a “Vision Zero” initiative instituted in NYC, several statutes were enacted which intended to impose civil and criminal penalties on motorists in an attempt to eliminate or reduce pedestrian injuries and fatalities (see Introduction to the Mayor’s Vision Zero Plan of Action [2014]). Within this legislative package was Local Law 29 of 2014, which was codified as AC §19-190, Right of Way, and signed into law on June 23, 2014 (opposition of Corporation Counsel at 2). As relevant to the instant case, the statute reads:

19-190(A) provides, in relevant part, “[A]ny driver of a motor vehicle who fails to yield to a pedestrian or person riding a bicycle when such pedestrian or person has the right of way shall be guilty of a traffic infraction, which shall be punishable by a fine of not more than fifty dollars or imprisonment for not more than fifteen days or both such fine and imprisonment.”

19-190(B) provides, in relevant part, “[A]ny driver of a motor vehicle who violates subdivision (a) of this section and whose motor vehicle causes contact with a pedestrian or person riding a bicycle and thereby causes physical injury, shall be guilty of a misdemeanor, which shall be punishable by a fine or not more than two hundred fifty dollars, or imprisonment for not more than thirty days or both such fine and imprisonment;

19-190(c) provides, in relevant part “It shall not be a violation of this section if the failure to yield and/or physical injury was not caused by the driver’s failure to exercise due care.”

AC §19-190.

On March 4, 2015, the defendant, Isaac Sanson was arraigned on a Desk Appearance Ticket, and charged with an unclassified misdemeanor equivalent to a “B” misdemeanor under AC §19-190. The complaint alleges that on or about December 19, 2014, the defendant violated AC §19-190, by striking a pedestrian in the crosswalk, thereby causing her to sustain physical injuries² (see Sanson complaint). On March 29, 2016, the defendant moved for dismissal of the accusatory instrument on the grounds that the statute is unconstitutionally vague, improperly shifts the burden to the defendant to prove that his conduct was innocent, and violates the defendant’s rights to due process.

On June 20, 2016, this Court heard oral arguments by the parties regarding their position on the Statute’s constitutionality. During this oral argument, the People and NYC represented that AC §19-190 was not intended to be a strict liability statute (see tr at 3, 11, 16). The NYC attorney further explained that it was the legislature’s intent to include as an essential element of the Right of Way law that the injuries were caused by a driver’s failure to exercise due care (see tr at 2-3, 6). During oral argument NYC confirmed that the legislatures intended to define “due care” as one that a reasonably prudent person would use under the same circumstances (see tr at 7). This is consistent with their definition of “due care” in the federal settlement with the Transport Workers Union, annexed hereto as Appendix A:

6. The phrase “due care” shall have the meaning ascribed to it by case law and common usage. “Due care” connotes a standard of reasonableness under the circumstances. “Due care” is that care which is exercised by reasonably prudent drivers.

² The complainant died on February 24, 2015. The People allege in the accusatory instrument that the injuries sustained as the result of the December 19, 2014 incident was the proximate cause of her death.

(*Stipulated Order of Settlement, Transport Workers Union of Greater New York, et al. v Bill De Blasio, et al.*, No. 15cv2225-BMC, at 3 [August 28, 2015]).

Moreover, during oral arguments, the People admitted the statute intended to criminalize ordinary negligence:

MS. BRODT: Again, your Honor, I am not disagreeing that it's ordinary negligence. ***I'm not saying that the definition isn't one of ordinary negligence. I am agreeing with the Court, that the core constitutional question is whether that can be grounds for criminal liability*** and we are arguing that the core of the argument, that the legislature is free to use strict liability, it could also use ordinary negligence as the grounds for what is a minimal criminal liability, equivalent to a B misdemeanor, and that's the issue.

(tr at 14)(emphasis supplied).

Accordingly, all the parties to this action agree that the statute was intended to apply a civil tort negligence standard in lieu of a culpable *mens rea* normally required in criminal cases under the state and federal constitution, and codified in PL §15.05.

II. AC §19-190 is Unconstitutional

In the instant action, the defendant argues that AC §19-190, Right of Way, is unconstitutional because it lacks the culpable *mens rea* required pursuant to PL §15.05 and is violative of his rights to due process under the state and federal constitutions. While facial constitutional challenges are strongly disfavored, the instant case involves a unique question of law, to wit, whether the civil tort liability standard of negligence may be applied instead of a culpable *mens rea* set forth in PL §15.05. In as much as the

determination of whether the statute is constitutional would apply to all defendants, a facial constitutional challenge is the only appropriate standard of review in this case (see e.g. *People v Nivar*, 30 Misc 3d 952 [Crim. Ct., BX County 2011] (applying facial constitutional challenge since the statute on its face infringes on a defendant's constitutional rights); *People v Aboaf*, 187 Misc 2d 173, 185 [Crim. Ct., NY County 2001] (conducting a facial constitutional challenge and not an as-applied constitutional standard appropriate since statute on its face infringed on First Amendment rights)).

It is well-settled law that legislative enactments carry a strong presumption of constitutionality (*People v Stuart*, 100 NY2d 412, 422 [2003]; *People v Scott*, 26 NY2d 286, 291 [1970]) Thus, a party seeking to find a statute unconstitutional bears a heavy burden and “must demonstrate, ‘beyond a reasonable doubt’, that the statute suffers from ‘wholesale constitutional impairment’” (*People v Davis*, 13 NY3d 17, 23 [2009], quoting *Matter of Moran Towing Corp v Urbach*, 99 NY2d 443, 448 [2003]). While this burden is high, facial constitutional challenges are permissible “in the presence of a constitutionally-protected right” (*Dickerson v Napolitano*, 604 F3d 732, 744 [2d Cir 2010][discussing *City of Chicago v Morales*, 527 US 41 [1999]).

Here, the defendant has met this high burden of proof. AC §19-190, Right of Way law, is unconstitutional on its face since it improperly utilizes a civil tort negligence standard in a criminal case in lieu of a culpable *mens rea*. Therefore, it cannot withstand constitutional scrutiny under both the state and federal constitutions. While this appears

to be a case of first impression³, the United States Supreme Court's decision in *Elonis v United States*, 575 US ___, 135 S Ct 2001 [2015], is instructive on this point. In *Elonis*, the Supreme Court reversed a defendant's conviction under 18 USC §875 (c) on the grounds that the jury was improperly charged utilizing a civil tort liability negligence standard instead of a standard that utilized a culpable *mens rea*. In reversing the conviction, the Supreme Court expressly held:

Elonis's conviction, however, was premised solely on his posts would be understood by a reasonable person. **Such a "reasonable person" standard is a familiar feature of civil liability in tort law, but is inconsistent with "the conventional requirement for criminal conduct - - awareness of some wrongdoing."** *Staples*, 511 U.S., at 606-607, 114 S.Ct. 1793, 128 L.Ed 608 (quoting *United States v. Dotterweich*, 320 U.S. 277, 281, 64 S.Ct 134, 88 L.Ed. 48 (1943); emphasis added). Having a liability turn on whether a "reasonable person" regards the communication as a threat—regardless of what the defendant thinks—"reduces culpability on the all-important element of the crime to negligence," *Jeffries*, 692 F.3d, at 484 (Sutton, J., *dubitante*), **and we "have long been reluctant to infer that a negligence standard was intended in criminal statutes,"** *Rogers v United States*, 422 U. S. 35, 47 (1975) (Marshall, J., concurring) (citing *Morissette*, 342 U. S. 246). See 1 C.Torcia, Wharton's Criminal Law §27, pp. 171–172 (15th ed. 1993); *Cochran v. United States*, 157 U. S. 286, 294 (1895) (defendant could face "liability in a civil action for negligence, but he could only be held criminally for an evil intent actually existing in his mind"). Under these principles, "what [Elonis] thinks" does matter. APP 286.

Elonis, 575 US ___ at ___, 135 S Ct at 2011 (emphasis supplied).

In *Elonis*, the Court further ruled that it was the defendant's culpable *mens rea*, and not a "reasonably prudent person," that was necessary to prove, beyond a

³ The Court is aware of three decisions involving AC §19-190. However, none of these decisions analyzed the constitutional arguments presented in this case, to wit, whether a civil tort negligence standard could be used in a criminal case (see *People v Hossain*, 50 Misc 3d 610 [Crim. Ct., NY County 2015]; *People v Gallagher*, 50 Misc 3d 317 [Crim. Ct., BX County 2015]; see also *People v Lillian Todd-Mack* (Crim. Ct., Kings County [2015], Walker, J., Docket 2015KN003485).

reasonable doubt, the defendant's guilt (*id.* at 16 [finding "[f]ederal criminal liability generally does not turn solely on the results of an act without considering the defendant's mental state. That understanding 'took deep and early root in American soil ...'"]). While the *Elonis* case involved improper jury instructions and not the use of a civil tort negligence standard in a criminal statute to establish *mens rea*, the rationale provided by the Supreme Court is applicable to the instant matter. The very fabric of our criminal justice system is that an accused person stands before a court innocent until proven guilty, and is entitled to significant constitutional protections separate and distinct from a civil case (*People v Nelson*, --- NY3d ---, 2016 NY Slip Op 02554 [April 5, 2016](Garcia, J. *concurring* "[t]he presumption of innocence, although not articulated in the Constitution, is a basic component of a fair trial under our system of criminal justice"). Here, as set forth above, the parties all agree that statute was intended to use a civil tort negligence liability standard (tr 7, 14). Such use of a civil tort liability standard of negligence in a criminal case violates a defendant's rights under the Fifth and Fourteenth Amendments of the federal constitution and state constitutional protections. Specifically, it violates a defendant's right to due process, to be presumed innocent, and a defendant's rights against self-incrimination. Thus, the defendant has met his burden of establishing, beyond a reasonable doubt, that the statute is unconstitutional.

Accordingly, AC §19-190, Right of Way law is unconstitutional on its face since it utilizes the civil tort liability standard of negligence instead of a criminal *mens rea* standard as required under both the state and federal constitutions and codified in PL §15.05. As such, the defendant's motion to dismiss is granted.

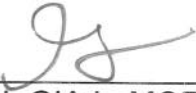
III. Defendant's Remaining Motions

The defendant's remaining motions are rendered moot in light of the Court's decision holding AC §19-190 unconstitutional.

This constitutes the Decision and Order of the Court.

Dated: June 24, 2016

SO ORDERED:



HON. GIA L. MORRIS
Judge of the Criminal Court

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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TRANSPORT WORKERS UNION OF GREATER NEW YORK, AFL-CIO, LOCAL 100, as the Representative of Bus Drivers Employed by the New York City Transit Authority, Manhattan and Bronx Surface Transit Operating System, and MTA Bus Company; and KATHRINE ANGOTTI, JENNINE GREGORY, WILLIAM GONZALEZ, ANGELO CRISPIN, RAYMOND VEGA, and CHRISTOPHER MAGWOOD,

15 CV 2225 (BMC)

Plaintiffs,

-against-

BILL DE BLASIO, as MAYOR OF THE CITY OF NEW YORK; and THE CITY OF NEW YORK,

Defendants.
----- x

STIPULATED ORDER OF SETTLEMENT, WITHDRAWAL AND DISCONTINUANCE

WHEREAS, on March 26, 2014, New York City Council Members Mark S. Weprin, Ydanis A. Rodriguez, and Mark Levine introduced Council Int. No. 238-2014 ("Council Int. No. 238") to amend Title 19, Chapter 1, Subchapter 3 of the New York City Administrative Code ("Administrative Code") by adding a new section 19-190 entitled "Right of Way";

WHEREAS, the bill proposed penalties for motorists who interfere with the right of way of pedestrians or bicyclists;

WHEREAS, on or about April 30, 2014, Council Int. No. 238 was amended and became Council Int. No. 238-A;

WHEREAS, on May 29, 2014, by a vote of 49 to 0, the New York City Council passed Council Int. No. 238-A;

WHEREAS, on June 23, 2014, Mayor Bill de Blasio signed Council Int. No. 238-A into law, whereupon it became Local Law 29 of 2014 ("Local Law 29");

WHEREAS, Local Law 29 became effective on August 23, 2014;

WHEREAS, Local Law 29 is codified at Section 19-190 of the Administrative Code;

WHEREAS, Section 19-190(a) of the Administrative Code provides, in relevant part, as follows: "[A]ny driver of a motor vehicle who fails to yield to a pedestrian or person riding a bicycle when such pedestrian or person has the right of way shall be guilty of a traffic infraction, which shall be punishable by a fine of not more than fifty dollars or imprisonment for not more than fifteen days or both such fine and imprisonment";

WHEREAS, Section 19-190(b) of the Administrative Code provides, in relevant part, as follows: "[A]ny driver of a motor vehicle who violates subdivision a of this section and whose motor vehicle causes contact with a pedestrian or person riding a bicycle and thereby causes physical injury, shall be guilty of a misdemeanor, which shall be punishable by a fine of not more than two hundred fifty dollars, or imprisonment for not more than thirty days or both such fine and imprisonment";

WHEREAS, Section 19-190(c) of the Administrative Code states as follows: "It shall not be a violation of this section if the failure to yield and/or physical injury was not caused by the driver's failure to exercise due care";

WHEREAS, plaintiffs commenced this action on or about April 20, 2015, seeking a declaratory judgment that Local Law 29 violates the Fifth and Fourteenth Amendments to the United States Constitution and a permanent injunction preventing defendants from enforcing Local Law 29;

WHEREAS, the parties now desire to settle this matter without discovery or motion practice; and

IT IS HEREBY STIPULATED AND AGREED by and between the undersigned as follows:

1. Plaintiffs withdraw all class action allegations contained in the Complaint, and the caption is amended as set forth above.
2. The remainder of this action is hereby dismissed with prejudice, each party to bear its own costs and attorneys' fees.
3. Plaintiffs agree not to file any other lawsuit alleging the facial invalidity of any section of Local Law 29.
4. Nothing contained in the above paragraph shall be construed to prevent Plaintiffs from filing a lawsuit alleging that the City of New York's enforcement of Local Law 29, as applied to them, violated their constitutional rights.
5. The failure of a driver of a motor vehicle to yield to a pedestrian or bicyclist when such pedestrian or bicyclist has the right of way shall not give rise to strict liability under either Administrative Code Section 19-190(a) or Administrative Code Section 19-190(b) because the "failure to exercise due care" language contained in Section 19-190(c) of the Administrative Code is a required element of both Section 19-190(a) of the Administrative Code and Section 19-190(b) of the Administrative Code.
6. The phrase "due care" shall have the meaning ascribed to it by case law and common usage. "Due care" connotes a standard of reasonableness under the circumstances. "Due care" is that care which is exercised by reasonably prudent drivers.

7. Within forty-five days of the date that this Stipulation is so Ordered, the New York City Police Department shall cause a Finest Message containing, in sum and substance, the information in paragraphs "5" and "6" above, to be distributed to all commands.

8. This agreement is not to be construed as an admission that Local Law 29 is unconstitutional or otherwise invalid or unenforceable for any reason or that the City of New York, Mayor Bill de Blasio, or any departments, officials, employees, representatives and agents of the City, past and present, in their individual or official capacities, violated Plaintiffs' constitutional rights, violated an applicable rule or regulation, or are in any way liable on Plaintiffs' claims or responsible for any alleged injuries.

9. This agreement, and the settlement it represents, shall not be used by any party, and shall not be admissible in any other proceeding, litigation or settlement negotiation except in an action or proceeding to enforce the terms of this agreement.

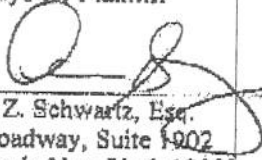
10. This Stipulation contains all the terms and conditions agreed upon by the parties, and no oral agreement entered into at any time nor any written agreement entered into prior to the execution of this Stipulation regarding the subject matter of the instant action shall be deemed to exist, or to bind the parties hereto, or to vary the terms and conditions contained herein.

11. The parties have reviewed and revised this Stipulation, and any rule of construction, by which any ambiguities are to be resolved against the drafting party, shall not be applied in the interpretation of this Stipulation.

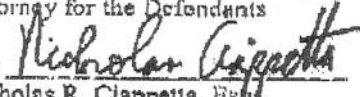
12. This Stipulation may be executed in counterparts, and facsimile execution of this Stipulation by the undersigned shall constitute original signatures for filing with the court.

Dated: New York, New York
August 28, 2015


ADVOCATES FOR JUSTICE,
CHARTERED ATTORNEYS
Attorneys for Plaintiff

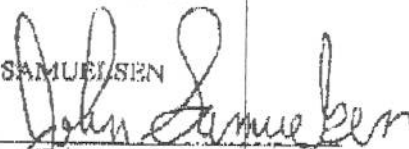
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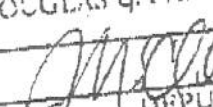
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JOHN SAMUELSEN
By: 
President, Transport Workers Union of Greater
New York, Local 100, AFL-CIO
195 Montague Street
Brooklyn, New York 11201

IT IS SO ORDERED 8/31/15

Digitally signed by Brian M. Cogan
The Honorable Brian M. Cogan

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A TRUE COPY
ATTEST
DATE 8/31 2015
DOUGLAS G. PALMER
BY:  CLERK
DEPUTY CLERK