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prove that the defendant's speed was unreasonable and improper under the circumstances. Because there is a basic speed limit, the driver's speed may be negligent even though he did not exceed the maximum or prima facie speed limit.[29]

Burden of Proof in Criminal Trials

If a driver is cited for violation of *the maximum speed limit,* then the only question is whether the driver did, in fact, exceed that limit.[30] In cases where the truck maximum speed limit has been violated there may be two questions of fact: *i.e.,* the speed, and whether the vehicle comes within the classification set up by the statute.[31]

When the *prima facie speed limit* is claimed to have been violated, the situation in a criminal action is not so simple as that of exceeding the maximum speed limit. In criminal trials, exceeding this limit is prima facie unlawful by statute.[32] This means that the prosecution need only prove that the driver did exceed a prima facie speed limit. Once this is proven, there is established a violation of the basic rule as to reasonable and prudent speed.[33]

The driver, to escape conviction, must prove that his exceeding of the prima facie speed limit did not constitute a violation of the basic speed law.[34] He must prove that his speed was reasonable and proper under the circumstances.

The speed of any vehicle, not in excess of the maximum speed limit or the applicable prima facie limit, is lawful unless it is clearly proved to be in violation of *the basic speed law.*[35] When a driver is cited for violation of the basic speed law, then the burden is upon the prosecution to prove that the speed of the vehicle was improper and unreasonable under the circumstances.

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[29] Graf. v. Garcia, 117 Cal. App. 2d 792, 256 P.2d 995 (1953); Grasso v. Cunial, 106 Cal. App. 2d 294, 235 P.2d 32 (1951).

[30] People v. Sciortino, 175 Cal. App. 2d Supp. 905, 345 P.2d 594 (App. Dept., Super. Ct., Fresno 1959).

[31] *Ibid.*

[32] CAL. VEH. CODE § 22351 (b).

[33] *In Re* Johnson, 6 Cal. App. 2d 654, 45 P.2d 241 (1935).

[34] CAL. VEH. CODE § 22351 (b).

[35] CAL. VEH. CODE § 22351 (a).

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THE EFFECT OF A PLEA OF GUILTY OR FORFEITURE OF BAIL IN TRAFFIC OFFENSES

When a motorist is issued a citation in California for a violation of the vehicle code, his rights may be altered in several unexpected ways. Signing of the citation as required of the driver in all moving violations is not an admission of guilt, but a promise to appear for judicial disposition of the alleged infraction.[1] If the motorist fails to appear as promised the court of jurisdiction is then required by statute to issue a warrant for his arrest within

[1] CAL. VEH. CODE § 40504.

20 days.[2] Of course, if the motorist chooses to appear and defend himself he may do so.[3]

By far the more common course, however, is for the motorist to submit to a small fine more or less in keeping with the gravity of the offense.[4] Submission to such a fine may be by way of a plea of guilty[5] or by forfeiture of bail.[6] The power of the magistrate with jurisdiction to fix bail, or to declare it forfeited, is not limited to any enumerated violations.[7] When a defendant who has posted bail does not appear within the time of his promise, the magistrate "may declare the bail forfeited and may in his discretion order that no further proceedings be had in the case."[8] Presumably, a magistrate will insist that an offender appear in court to answer any comparatively serious charge, but the vehicle code seems to permit complete discretion in allowing forfeiture rather than a plea.[9] The right to forfeit bail as satisfaction of the penalty is discretionary rather than absolute, so that a magistrate may order the defendant to appear even though he has posted and forfeited bail.[10] This discussion will be primarily concerned with the subsequent effects of pleas of guilty and forfeitures of bail, since minor violations are seldom defended.

Administrative Action

It is clear that a judgment or plea of guilty, or a forfeiture of bail, amounts to a conclusive adjudication so far as administrative action is concerned.[11] All of these procedures are termed "convictions" on a driver's record. The job of the Department of Motor Vehicles, apart from issuing the original license to drive, is to compile records on each driver in order to reappraise his fitness to drive.[12] Traffic courts are the main source of such records and a driver's record of compliance with the vehicle code, as manifested in these reports, is as relevant as a report on his eyesight or his driving ability. An operator's license confers no vested right but is revocable for reasons and in the manner provided by law.[13] Thus, for its purposes, the department is not required to distinguish a plea of guilty from a forfeiture of bail.

Criminal Proceedings

The effect of a plea of guilty or a forfeiture of bail on criminal proceedings is not so clearly defined. The problem usually arises in criminal proceedings under second offender statutes. Typical of this kind of statute is the one prohibiting the operation of a motor vehicle while under the influence of intoxicating liquor.[14] The purpose of the second offender clause is to make the

[2] CAL. VEH. CODE § 40515.
[3] CAL. VEH. CODE § 40513.
[4] WARREN, TRAFFIC COURTS 57, 62 (1942).
[5] CAL. VEH. CODE § 40513.
[6] CAL. VEH. CODE § 40512.
[7] CAL. VEH. CODE §§ 40511, 40512.
[8] CAL. VEH. CODE § 40512.
[9] *Ibid.*
[10] CAL. PEN. CODE §§ 1305, 1306, 1310.
[11] CAL. VEH. CODE § 13103.
[12] CAL. VEH. CODE §§ 12807, 12808, 12810.
[13] Sleeper v. Woodmansee, 1 Cal. App. 2d 595, 54 P.2d 519 (1936).
[14] CAL. VEH. CODE § 23102.

second punishment more severe. One who has entered a plea of guilty to a previous violation of the same statute is obviously a second offender. Is one who forfeited bail on a previous offense a second offender? For purposes of increased criminal punishment he is not.[15] The vehicle code does not enumerate any violation for which the magistrate may not fix bail and declare it forfeited as an end to proceedings. Thus, where a magistrate in his discretion permits forfeiture an accused offender may escape second offender punishment on a subsequent violation by forfeiting bail on the first. In practice, it is usually the Department of Motor Vehicles that compiles records of successive offenses and "punishes" the multiple offender by suspending or revoking his operator's license.[16]

Civil Actions

The greatest difference in the effect of a plea of guilty, as distinguished from a forfeiture of bail, occurs in cases where a civil action arises in connection with a given statute violation. A plea of guilty to a vehicle code violation is admissible in a civil action as an admission against interest.[17] While a defendant may offer an explanation of his prior plea of guilty, such as inability or unwillingness to defend such a minor charge,[18] the fact that he did plead guilty to a violation of statute remains in the civil record. An admission against interest does not have the weight of a judgment establishing the facts admitted, but its weight remains a matter for the jury to consider in the light of all the circumstances, including the defendant's explanation.[19] "It is well established that in the absence of a plea of guilty, neither the judgment in a criminal action nor the proceedings in connection therewith, such as arrest, is admissible in a civil proceeding."[20] This position seems sound as a matter of general law. The general rule is that a judgment in a contested criminal case is hearsay in a subsequent civil action.[21] A California statute providing that no record of conviction of any section of the vehicle code should be admissible in any civil action was repealed without comment in 1957.[22] Many cases so held without relying on the statute,[23] and repeal seems to have wrought no change in the law. A recent case, *Mooren* v. *King*,[24] continues the traditional position that any

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[15] People v. Rose, 63 Cal. App. 762, 219 Pac. 1043 (1923); *Ex Parte* Tung Fong, 59 Cal. App. 499, 211 Pac. 32 (1922); 7 CAL. OPS. ATT'Y GEN. 143 (1946).

[16] Comment, *California Traffic Law Administration*, 12 STAN. L. REV. 388, 425, 437 (1960).

[17] Manning v. Watson, 108 Cal. App. 2d 705, 239 P.2d 688 (1952); Burbank v. McIntyre, 135 Cal. App. 482, 27 P.2d 400 (1933).

[18] Odian v. Habernicht, 133 Cal. App. 2d 201, 283 P.2d 756 (1955).

[19] *Ibid.*

[20] Rednall v. Thompson, 108 Cal. App. 2d 662, 666, 239 P.2d 693, 695 (1952); *Accord,* Vaughn v. Jonas, 31 Cal. 2d 587, 191 P.2d 432 (1948); Manning v. Watson, 108 Cal. App. 2d 705, 239 P.2d 688 (1952).

[21] Rowe v. Such, 134 Cal. 573, 66 Pac. 862 (1901); Board of Education of the City of Long Beach v. King, 82 Cal. App. 2d 857, 187 P.2d 427 (1947); Burbank v. McIntyre, 135 Cal. App. 482, 27 P.2d 400 (1933); MCCORMICK, EVIDENCE § 295 (1954); WITKIN, CALIFORNIA EVIDENCE § 226 (1958).

[22] Cal. Stat. 1957 c. 1956 § 1, p. 3497.

[23] *E.g.*, note 20 *supra.*

[24] 182 Cal. App. 2d 546, 6 Cal. Rptr. 362 (1960).

record of a conviction or forfeiture of bail is not admissible in a civil action, but that a plea of guilty is admissible.

The influence of a plea of guilty to a vehicle code violation on a subsequent civil action can not be over-emphasized. California courts, subject to certain statutory exceptions,[25] have traditionally held an inexcusable violation of a statute proximately causing damage to be negligence as a matter of law.[26] This ruling by a trial court is held not to be conclusive but to create a presumption of negligence. The defendant may rebut this presumption; and, in fact, it is fatal to his case not to do so.[27] Consequently, a prior plea of guilty admitted as evidence in a civil action will, at the very least, lighten the plaintiff's burden of proof by creating or helping to create a presumption of negligence.

The California system allowing forfeiture of bail in satisfaction of penalties for vehicle code violations may at first glance seem arbitrary. It appears to encourage an easy payment of money with no consideration of the merits of the case. The offender may pay by mail, or through a friend.[28] Bail is usually set beforehand according to a schedule and may bear little relation to the circumstances of a specific violation. It may be either higher or lower than would be a fine actually levied by a magistrate.[29] Moreover, this system does little to punish the violator. "Almost all violations bureaus are run mechanically and tickets are paid for with the same attitude as a grocery purchase. The customary procedure of the police officer or clerk is to look at the ticket and say, 'Two Dollars,' issue a receipt and record the money."[30]

On the positive side it must be said that forfeiture of bail in traffic offenses has several advantages other than mere convenience. It affords the alleged violator benefits analogous to the plea of *nolo contendere.* He may submit for reasons of his own, such as guilt or convenience, to a penalty in the instant action only. Like a plea of *nolo contendere,*[31] a forfeiture is understood as making no damaging admission which could be used against the violator in a subsequent civil or criminal proceeding. A court may in its discretion refuse to regard either procedure as a sufficient response from a defendant in the criminal disposition of an offense.

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[25] CAL. VEH. CODE § 40831.

[26] Alarid v. Vanier, 50 Cal. 2d 617, 327 P.2d 897 (1958); Satterlee v. Orange Glenn School Dist., 29 Cal. 2d 581, 177 P.2d 279 (1947); Gruss v. Coast Transport, Inc., 154 Cal. App. 2d 85, 315 P.2d 339 (1957).

[27] Coyle v. Alland & Co., 158 Cal. App. 2d 664, 323 P.2d 102 (1958).

[28] WARREN, *op. cit. supra, note* 4 at 60, 64.

[29] *Ibid.* at 62.

[30] WARREN, *op. cit. supra,* note 4 at 59.

[31] This plea is not used in California practice, but after its entry in a federal court the California court was forced to consider its effect on California law in Caminetti v. Imperial Mut. L. Ins. Co., 59 Cal. App. 2d 476, 139 P.2d 908 (1943): "The existence in the law of the two pleas, i.e., guilty and *nolo contendere,* is indicative of the fact that there is some distinction or difference between them. Undoubtedly the plea of *nolo contendere* is often used as a substitute for a plea of guilty but it amounts only to a declaration by the defendant that he will not contend. It has been held not to be a confession of guilt. . . . It is uniformly held that such a plea cannot be used against the defendant as an admission in any civil suit for the same act."

The California position on admission of evidence of vehicle code violations into subsequent civil actions seems to reflect the majority view in the United States.[32] Short of an admission of guilt by a plea of guilty, no evidence of prior convictions is allowed. Two sharply conflicting minority views make an interesting contrast. The more sternly logical takes the position that a conviction in a criminal action has required a finding of the pertinent facts of a violation beyond a reasonable doubt, and should certainly be considered in a civil action requiring a mere preponderance of evidence.[33] However, the more realistic of these minority views is reflected by a Pennsylvania statute[34] which makes pleas of *nolo contendere,* and even pleas of guilty, inadmissible in any civil action. Such statutes proceed on the theory that a vigorous defense is so seldom offered in traffic misdemeanors that any conviction in such matters has little weight as to the defendant's absolute guilt.[35]

Conclusion

The contrast among these three general policies of admissibility is even more striking when viewed from the standpoint of actual litigants. The defendant may have entered a plea of guilty in the belief that its only consequence was a ten dollar fine. He is shocked to learn that it is the basis for a damaging admission in a civil action against him for many thousands of dollars. In certain cases it even appears that the defendant believed that the signing of the ticket at the scene of the accident was an admission of guilt, and that his later plea in traffic court was a mere formality. The expense for a vigorous defense may appear prohibitive in minor violations. Moreover, the criminal charge is nearly always disposed of before the defendant realizes that a civil action will be brought against him.

The plaintiff, on the other hand, is usually appalled when he learns that the defendant may violate a statute, be issued a citation, acknowledge guilt by forfeiting bail, and still exclude evidence of such a conviction from a civil action for damages. This discovery must be especially galling to a plaintiff in states where even a plea of guilty to vehicle code violations is not admissible in a civil action. The plaintiff is driven, after considerable lapse of time, to establish the violation by means independent of the citation and conviction.

Viewed in this context the California position appears to strike a good compromise. Since the summary punishments meted out by traffic courts are not considered reliable indices of guilt, they are excluded in a civil action against the offender unless he has himself explicitly admitted guilt by entering a plea of guilty.

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[32] Annot., 18 A.L.R.2d 1287 (1951).

[33] Greenwell's Adm'r. v. Burba, 298 Ky. 255, 182 S.W.2d 436 (1944); Smith v. Minissale, 190 Misc. 114, 75 N.Y.S.2d 645 (1947).

[34] PA. STAT. ANN. tit. 75 § 1211 (1959). See also Warren v. Marsh, 215 Minn. 615, 11 N.W.2d 528 (1943).

[35] UNIFORM RULES OF EVIDENCE rule 63 (20), comment; WITKIN, *op. cit. supra,* note 21, § 226.

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