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Note

Right to a Jury Trial
for Persons Accused of
an Ordinance Violation

The right to trial by jury for persons accused of violating a municipal ordinance has recently been re-examined by both the Minnesota Supreme Court and the Minnesota legislature. The author of this Note analyzes these cases and statutes to determine the exact scope of this right in Minnesota. He concludes that even though the jury trial places an added burden upon our judicial machinery, it is consistent with the needs of the accused ordinance violator.

INTRODUCTION

In a northern Minnesota community a county attorney briefed a J.P. on a pending case. The J.P. had just one question—"Do I have to listen to the defendant's side of the case?"1

This attitude is certainly inconsistent with one of the aims of the American judicial system—protecting the defendant in a judicial proceeding from injustice. Surrounding the defendant with "strict procedural safeguards is our main assurance that there will be equal justice under the law."2 The American judicial system may be described as one that gives priority to the defendant, as distinguished from a system that gives priority to the interest of society in having its police regulations enforced. Although criminal law must necessarily be concerned with the needs of society, this concern should not be allowed to subvert the needs and in-

1. Minneapolis Morning Tribune, April 9, 1962, p. 1, col. 3. This article also describes other examples of the lack of concern for the rights of a defendant shown by some courts:
   In an Iron Range town, a motorist told a J.P. he was not guilty of a traffic violation. The J.P. replied, "What you say may be true, but after all you did get a ticket. Guilty."
   A southwestern Minnesota Lawyer argued a case for his client until the J.P. stopped him impatiently. "Never mind," said the J.P. "We're here to fine him."
terests of the accused. Protecting the rights of the defendant with procedural safeguards is important not only when he is charged with the most heinous felony, but also when he is accused of violating only a municipal ordinance.

Municipal ordinances treat a multitude of subjects and circumscribe human conduct more than any other area of the law. Thus, the cities, rather than the federal or state governments, exert the greatest direct influence over the everyday life of the individual. The vast control that the municipality exerts over its citizens is especially emphasized today because of the rapid shift in the concentration of population from rural to urban areas. The extent to which individuals are subjected to municipal ordinances underscores the need to provide persons accused of violating these ordinances with adequate procedural safeguards.

One important procedural safeguard that has recently been re-examined by both the Minnesota Supreme Court and the Minnesota legislature is the right to trial by jury. By virtue of court decision and legislative mandate, the accused ordinance violator has been guaranteed the right to trial by jury either at the municipal court or justice of the peace level or upon appeal to the

4. Besides having power to regulate in such specific areas as crime prevention and liquor control, cities are usually granted the authority "to enact all ordinances, and to make such regulations, consistent with the laws and constitution of the state as they may deem necessary for the safety, order, and good government of the city, and the general welfare of the inhabitants." MICH. COMP. LAWS § 91.1 (1948). See also MINN. STAT. § 410.07 (1961).
5. Washington's decisions exert a vital force in directing our lives, but the cities actually enjoy the intimate day-to-day direction over one's conduct. Certainly the states are invested with police powers, but who exercises this power? It is the city that really exercises the police powers of the state, and to that it adds its own police power.
6. The rapid growth in our urban population from less than 10 percent in 1860 to over 50 percent in 1950 has increased the need for the regulation of crime, and this need has received little consideration on the state level but has been dealt with largely through an expansion of local regulation in the form of municipal ordinances.
8. MINN. STAT. § 484.63 (1961).
9. Hereinafter, references to a municipal court are directed to a justice of the peace court where no municipal court has been established. A justice of the peace court has jurisdiction to try offenses committed in a political subdivision in a county that does not have a municipal court. See MINN. STAT. §§ 488.04(5)(c), 633.01(4) (1961).
district court. These decisions and statutes have, however, given rise to some confusion as to the exact scope of this right. The purpose of this Note is to clarify existing Minnesota law regarding the right of a person accused of violating a municipal ordinance to a trial by jury.

I. NATURE OF A MUNICIPAL ORDINANCE VIOLATION

In determining the procedural safeguards to which a municipal ordinance violator is entitled, courts have generally deemed it necessary to ascertain whether proceedings under such an ordinance are of a "civil" or "criminal" nature. These determinations have not been consistent; however, a majority of the state courts have regarded such proceedings as civil actions. This attempt

10. See 9 MCQUILLIN, MUNICIPAL CORPORATIONS § 27.30 (3d ed. 1950); Note, 24 GEO. L.J. 440 (1936). The Minnesota court has recently expressed the more reasonable approach to such a distinction:

Instead of trying to distinguish such ordinances on the basis that they are civil, noncriminal, or quasi-criminal, it should be frankly recognized that they are criminal enactments which are historically sui generis. State v. Ketterer, 248 Minn. 173, 178, 79 N.W.2d 136, 140 (1956).


12. The justification for labeling municipal ordinance violation proceedings "civil" appears to be purely historical. According to the law of England as it stood at the time when we received thence our unwritten law, a municipal corporation could not make a by-law on which an indictment or a summary prosecution before a magistrate could be maintained; and neither imprisonment nor disenfranchisement could be provided for disobedience. Therefore the ancient by-laws used to provide, that, for a breach of a provision, the offender should forfeit a sum named . . . . [T]he method of recovering the penalty, mostly employed, was by an action of debt, or sometimes of assumpsit . . . .

BISHOP, STATUTORY CRIMES § 403 (1873). The same considerations that gave rise to the use of a civil proceeding for enforcement of a municipal ordinance violation do not seem to be applicable today because many municipal ordinances now provide for imprisonment. E.g., DULUTH, MINN., CITY CODE § 1-7 (1959); MINNEAPOLIS, MINN., CODE OF ORDINANCES § 1.120 (1960).

Another justification for prosecuting an ordinance violation as a "civil" action may be that the public will not consider the defendant a criminal.
to label such a proceeding as either civil or criminal is actually irrelevant to the issue of procedural safeguards because it focuses on the effect of the defendant's act upon the community rather than on the effect of the prosecution upon the defendant. 13

Whether such a proceeding is regarded as civil or criminal, a person accused of violating a municipal ordinance in Minnesota does not have a constitutional right to a jury trial in the municipal court. 14 If the proceeding is regarded as "civil," the defendant does not have a right to a jury trial under the Minnesota Constitution. While article 1, section 4, does provide that "the right of trial by jury shall remain inviolate, and shall extend to all cases at law," it has been construed as merely confirming and securing that right as it was understood at common law prior to the adoption of the state constitution. 15 Since the common law did not afford the right to jury trial to persons accused of violating a municipal ordinance, 16 a defendant cannot invoke this constitutional guarantee. Nor is the defendant entitled to a jury trial under the Minnesota Constitution if the proceeding is regarded as "criminal." Article 1, section 6, declares that "in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury. . . ." This provision has been applied only to "prosecutions for offenses essentially criminal under the general

This justification seems unsound, however, because without much education the public will not differentiate between names, when the effects of the procedures (financial loss and awarding of points toward loss of driver's license) are the same.

Conway, Is Criminal or Civil Procedure Proper for Enforcement of Traffic Laws?, 1959 Wis. L. Rev. 418, 444.


The Minnesota court in State ex rel. Erickson v. West, 42 Minn. 147, 152, 43 N.W. 845, 847 (1889), stated:

A municipal ordinance is as much a law for the protection of the public as is a criminal statute of the state, the only difference being that the one is designed for the protection of the municipality and the other for the protection of the whole state . . . . [H]ow can it make any difference, either in the intrinsic nature of the thing or in the consequences to the accused, whether the state does this [enforcing] itself, or delegates the power to pass the law to the municipal authorities?

14. Clearly he has no federal constitutional right because the seventh amendment of the federal constitution does not limit the powers of state governments with respect to state citizens. See Barron v. Mayor of Baltimore, 32 U.S. (7 Pet.) 243 (1833); 9 MCQUILLIN, MUNICIPAL CORPORATIONS §§ 27.33, .34 (3d ed. 1950). Furthermore, the exercise of summary jurisdiction in a municipal ordinance prosecution does not contravene the due process clause of the fourteenth amendment. See Walker v. Sauvinet, 92 U.S. 90 (1875); 9 MCQUILLIN, MUNICIPAL CORPORATIONS § 27.34 (3d ed. 1950).

15. City of Mankato v. Arnold, 36 Minn. 62, 30 N.W. 305 (1886).

16. See 1 DILLON, MUNICIPAL CORPORATIONS § 428 (3d ed. 1881).
The violation of a municipal ordinance is not regarded as a crime against the public law, but merely as a violation of a regulation made for the benefit of the inhabitants of a particular place. To deny the defendant a jury trial on the basis of such reasoning does not seem to be in accord with the desire to protect the defendant from injustice since he needs this protection whether the prosecuting authority is the state or a municipality.

II. THE HOBEN UNIFORMITY DOCTRINE

Although no constitutional right to trial by jury for violation of a municipal ordinance exists, in some states this right is expressly granted by statute. In Minnesota, however, the Municipal Court Act provides that persons charged with violation of a municipal ordinance shall be tried in municipal court without a jury. Notwithstanding this provision, the Minnesota Supreme Court, in State v. Hoben, held that a person charged with the violation of a municipal ordinance that prohibited driving while intoxicated was entitled to a jury trial in the municipal court. The court observed that the Highway Traffic Regulation Act also prohibited driving while intoxicated and further provided that “when any local ordinance regulating traffic covers the same subject for which a penalty is provided for in this chapter, then the penalty provided for violation of said local ordinance shall be identical with the penalty provided for in this chapter for the same offense.” The court reasoned that because the penalties prescribed by the local ordinance and state statute were to be identical, the procedures to be followed must also be identical. Thus,

17. City of Mankato v. Arnold, 36 Minn. 62, 64, 30 N.W. 305, 306 (1886). (Emphasis added.)
18. Id. at 64–65, 30 N.W. at 307.
20. E.g., ILL. REV. STAT. ch. 37, § 385 (1961), City of Chicago v. Harrington, 263 Ill. App. 47 (1931). See also City of Rochester v. Falk, 7 N.Y.S.2d 517 (Rochester City Ct. 1938), where the right to a jury trial was implied under a city charter providing that ordinance violations be tried as misdemeanors.
22. 256 Minn. 436, 98 N.W.2d 813 (1959).
23. MINN. STAT. § 169.03 (1961).
24. The court in Hoben noted that the penalties provided by the ordinance involved were not “identical” with those provided by the statute,
where a state statute requires that any municipal ordinance covering the same subject must provide for identical penalties and where a person violating the state statute is entitled to a jury trial, the rule for uniformity in the treatment of defendants applies to also give a person charged under such a municipal ordinance a right to a jury trial. 25

Whether, as a condition for the application of this uniformity doctrine, the state statute had to expressly declare that any local ordinance regulating the same subject should provide identical penalties was uncertain after the Hoben case. This confusion probably arose because City of Canon City v. Merris 26 was cited with approval in Hoben. In the Merris case, a Colorado criminal statute and a municipal ordinance prohibited the same conduct, but the state statute did not contain an express provision for uniform penalties. The court, nevertheless, held that defendants under both the municipal ordinance and the state statute should be entitled to uniform treatment. The right to procedural safeguards did not depend upon which level of the government chose to prosecute, 27 but rather upon the possible effects and consequences of the prosecution on the defendant. 28 In State ex rel. Sheahan v. Mulally, however, the Minnesota court stated that the Hoben

but concluded that it was unnecessary to discuss the issue as to whether the ordinance was so inconsistent with the state law as to be invalid.

25. Although the Hoben decision seems to emphasize that the subject of the prosecution must be related to a matter of statewide rather than local concern, this may mean only that the legislature must manifest in the statute the intent that the prosecution of such conduct is to be uniform throughout the state. In a later case the court pointed out that "unlike the Hoben case, the subject of the prosecution before us relates to a matter of local concern. Although § 615.17 punishes disorderly conduct, it does not prohibit, limit, or restrict a municipality from legislating on the same subject." State ex rel. Sheahan v. Mulally, 257 Minn. 27, 29, 99 N.W.2d 892, 894 (1959). (Emphasis added.) Thus, the fact that a state statute deals with a particular subject does not mean that the subject is of statewide concern; there must also be a provision for uniform treatment throughout the state.

27. Id. at 181, 323 P.2d at 620.
Whether driving while under the influence of intoxicating liquor is a local and municipal matter or of state-wide concern makes little difference . . . . Since there is a statute making such conduct a crime, its counterpart in the municipal laws . . . must be tried and punished as a crime.

28. The Colorado court was particularly concerned with the power of a court to imprison a person convicted of violation of a municipal ordinance.

Label the judicial process as one will, no resort to subtlety can refute the fact that the power to imprison is a criminal sanction. To view otherwise is self-delusion. Courts should not, ostrich-like, bury their heads in the sand.

Id. at 174, 323 P.2d at 617.
doctrine was "limited specifically to highway traffic regulations." The effect of this limitation is to make the technical requirement of an express provision in the state statute for uniform penalties an essential part of the uniformity doctrine. This requirement should be unnecessary. Uniformity of treatment may be considered an implied limitation upon all statutes and municipal ordinances because the legislature would not intend to make basic civil rights contingent upon an arbitrary choice of forum. As the court said in *Hoben*:

> It would be a strange anomaly for the legislature to define a crime, specify punishment therefor, provide that its application shall be uniform throughout the state, and then permit a municipality to prosecute that crime as a civil offense. Basic civil rights of the defendant would then depend upon the arbitrary choice of the prosecutive authorities as to the court in which action against him would be instituted.

It would seem to be equally anomalous for the legislature, even without expressly providing for uniformity, to define an offense with the intent that there should be non-uniform treatment throughout the state.

### III. RIGHT TO JURY TRIAL UPON APPEAL TO DISTRICT COURT

A person convicted of an ordinance violation in a municipal court presently has a right to appeal. The procedure for this

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29. 257 Minn. 27, 29, 99 N.W.2d 892, 894 (1959).
30. In the *Mulally* case the defendant was charged with disorderly conduct under a municipal ordinance. He tried to assert a right under the *Hoben* doctrine to a jury trial in the municipal court because MINN. STAT. § 615.17 also made disorderly conduct a crime. The court denied this right because the *Hoben* doctrine was limited to the area of traffic regulation. Whether the *Hoben* doctrine is so limited is questionable. If the court were faced with the assertion of the *Hoben* right where a statute did not deal with traffic regulations, but did provide that "its provisions be 'applicable and uniform throughout the state and in all political subdivisions and municipalities' and that the penalties contained in ordinances . . . be identical with those contained in the statute," it would undoubtedly grant a defendant charged with a violation of a municipal ordinance dealing with the same subject matter as the statute a right to a jury trial in the municipal court. 257 Minn. at 29, 99 N.W.2d at 893.
33. Any person convicted of a violation of a municipal ordinance in any
appeal from most municipal courts is governed by the Municipal Court Act; appeals from cities of the first class (Minneapolis, St. Paul, and Duluth), however, are governed by a separate municipal court act.\textsuperscript{34} The appeal does not, by itself, give rise to a right to a jury trial.\textsuperscript{35} In 1959, the Minnesota legislature enacted a statute providing that a person who appeals a conviction from the municipal court to the district court "shall have the right to a jury trial."\textsuperscript{36} At the same session in which the legislature enacted this statute, it enacted a separate statute providing that a defendant who appeals from the St. Paul Municipal Court to the district court "shall be entitled to a trial de novo therein, with or without a jury. . . ."\textsuperscript{37} The legislature did not enact a separate provision providing for a jury trial on appeals from either the Minneapolis or Duluth municipal courts. The fact that a separate statute was enacted to apply only to St. Paul created confusion over whether the 1959 statute applied to all cities of the first class; if it did not so apply, then persons convicted of violating a municipal ordinance in either Minneapolis or Duluth would not be entitled to a jury trial on appeal. However, *State ex rel. Mattheisen v. District Court*\textsuperscript{38} held that the 1959 statute did apply to cities of the first class because that section is unqualified and authorizes appeals to the district court from a conviction of an ordinance violation in court may appeal from the conviction to the district court in the same manner and with the same effect as provided by Minnesota Statutes, Chapter 633, except that the appellant shall have the right to a jury trial if he was not tried by jury in the municipal court. MINN. STAT. § 484.63 (1961).

34. The general municipal court rules are provided in MINN. STAT. ch. 488 (1961) and municipal court rules for cities of the first class (Minneapolis, St. Paul and Duluth) are provided in MINN. STAT. ch. 488A (1961). MINN. STAT. ch. 484 (1961) governs the procedure in the district courts.

35. State v. Ketterer, 248 Minn. 173, 79 N.W.2d 136 (1956); accord, City of Birmingham v. Williams, 26 Ala. App. 200, 155 So. 877 (1934). A few state courts have interpreted statutes without express provisions for a jury trial as giving the convicted ordinance violator a right to a jury trial upon appeal. See, e.g., State v. District Court, 74 Wyo. 48, 283 P.2d 1023 (1955), where the statute provided that on appeal to the district court the violation of an ordinance is considered to be the same as a crime and must be tried in the same manner. Under statutes providing that the appeal shall be in the nature of a criminal appeal, the courts usually allow the convicted ordinance violator a jury trial upon appeal. *Ex parte Hall*, 255 Ala. 98, 50 So. 2d 264 (1951); City of St. Louis v. Moore, 288 S.W.2d 383 (Mo. Ct. App. 1956); City of Clayton v. Nemours, 237 Mo. App. 167, 164 S.W.2d 935 (1942); State v. Hauser, 137 Neb. 138, 288 N.W. 518 (1939). Cf., Note, *De Novo Appeals from Municipal Courts to Common Pleas Courts in Ohio*, 17 U. CINC. L. REV. 159 (1948).


38. 113 N.W.2d 166 (Minn. 1962).
any court. The legislative history of the statute strongly supports the court's reasoning.\textsuperscript{39}

The fact that under the uniformity doctrine of the \textit{Hoben} case a person charged with violating a municipal ordinance was entitled to a jury trial in the municipal court and the fact that the 1959 statute guaranteed a jury trial if that defendant appealed to the district court created the possibility that such defendant could receive two jury trials. This issue was raised in \textit{State ex rel. Pidgeon v. Hall},\textsuperscript{40} where the defendant was charged with a violation of a municipal traffic regulation and was given a jury trial in the municipal court under the \textit{Hoben} uniformity rule. After being convicted the defendant appealed to the district court and

\textsuperscript{39} Legislative history indicates that this argument was properly rejected. When the bill to provide generally for a jury trial on appeals to the district court (originally enacted as Minn. Sess. Laws 1959, ch. 388, § 1) was pending in the legislature, it contained language specifically excluding cities of the first class (Minneapolis, St. Paul and Duluth). Also pending were two bills that, if passed, would provide jury trials in the district court in appeals from the municipal courts of Minneapolis and St. Paul. Subsequently, the language excluding cities of the first class was omitted from the general appeal provision. The bill governing appeals from the Minneapolis Municipal Court was then allowed to die; the bill governing appeals from the St. Paul Municipal Court, however, was enacted through oversight as MINN. STAT. § 488A.18(12) (1961). See generally the summary of legislative history in Brief for Relator, pp. 11–19, \textit{State ex rel. Mattheisen v. District Court}, 261 Minn. 422, 113 N.W.2d 166 (1962).

When the general appeal statute was amended in 1961, it was located in Minn. Sess. Laws 1959, ch. 683, under the following title: "An Act relating to municipal and justice of the peace courts except municipal courts in cities of the first class . . . ." The prosecution in \textit{State v. Friswold}, 116 N.W.2d 270 (Minn. 1962), argued that this title manifested a legislative intent that the general appeal statute of 1959 was not to apply to Minneapolis. The court rejected this argument. Since the \textit{Friswold} case involved the 1959 version of the statute, the court was not compelled to answer the question whether the 1961 amendment applies to cities of the first class. This statute would seem to fall within the constitutional limitation found in MINN. CONST. art. IV, § 27, which provides that "no law shall embrace more than one subject, which shall be expressed in its title." Since cities of the first class are expressly excepted from the title of the act, the argument could be made that Minneapolis, Duluth, and St. Paul are not within the appeal provision. However, since the original provision was clearly applicable to first class cities and the amendment was meant to remedy a particular problem raised by the \textit{Pidgeon} case (the problem of two jury trials discussed in note 41 \textit{infra} and accompanying text), the more reasonable position would seem to be that the provision was placed in the session laws under the restrictive title for more efficient publication, and thus the applicability of the statute to cities of the first class was not impaired by the amending sentence. Furthermore, it seems likely that the legislature did not consider § 7 to be a substantive part of Minn. Sess. Laws 1961, ch. 683, since § 6 of that chapter contains an almost identical provision. A duplication would not seem consistent with sound legislative procedure; thus § 7 should not be considered a substantive part of chapter 683 and should not be restricted by its title.

\textsuperscript{40} 111 N.W.2d 472 (Minn. 1961).
was denied a second jury trial. The Minnesota Supreme Court held that under “the statutory law in existence at the time the present case arose” the defendant was entitled to a second jury trial upon appeal to the district court. The court observed, however, that the relevant appeal provisions had been amended since the case arose, and thus “after July 1, 1961, a person charged with the violation of a municipal ordinance is entitled to but one jury trial.”

IV. CHOICE OF FORUM FOR JURY TRIAL

A related problem is whether a defendant entitled to a jury trial in a municipal court under the Hoben doctrine may waive that right and thereafter assert his statutory right to a trial by jury upon appeal to the district court. This question was recently answered by the Minnesota court in State v. Friswold. There the court concluded that the waiver did not affect the defendant’s statutory right to obtain a jury trial on appeal to a district court. The case arose under the appeal provision as it read in 1959, and under this provision, as interpreted in the Pidgeon case, the accused ordinance violator was entitled to two jury trials if his case was encompassed by the Hoben rule. Thus, the issue actually decided in Friswold was that an accused municipal ordinance violator may waive the first of the two jury trials to which he was entitled without affecting his right to obtain the second.

Under the present appeal provision, a person appealing from a conviction of an ordinance violation has a right to a jury trial in the district court only if “he was not tried by jury in the municipal court.” Whether under this provision the defendant may waive his right to a jury trial under the Hoben doctrine in the municipal court and subsequently assert his right to a jury trial on appeal is unclear. Dicta in the Pidgeon case suggests that under this statute, the availability of a jury trial in a municipal court may preclude a jury trial upon appeal. The court stated that “a person charged with the violation of a municipal ordinance is entitled to but one jury trial. If he has been afforded a jury trial in the municipal court and is convicted, he may appeal to the district court but his trial in that court will then be to the court

41. Id. at 474. Minn. Sess. Laws 1959, ch. 388, § 1, provided the ordinance violator with an absolute right to a jury trial on appeal to the district court.
42. Id. at 475. The court was taking notice of MINN. STAT. § 484.63 (1961).
43. 116 N.W.2d 270 (Minn. 1962).
44. MINN. STAT. § 484.63 (1961).
without a jury."\(^\text{45}\) A literal reading of the statute, however, indicates that the legislature intended that the defendant should have a choice between a jury trial in the municipal court and a jury trial upon appeal to the district court. The only qualification to obtaining a jury trial upon appeal seems to be that the appellant was not tried by jury in the municipal court.\(^\text{46}\) If the defendant has waived a jury trial in the municipal court he was not *in fact* tried by a jury in that court and would thus be able to claim such a right under this statute.\(^\text{47}\) Furthermore, the legislature by enacting the appeal provision, which gave the accused a right to a jury trial in the district court rather than in the municipal court, may have thought that only with a jury trial in the district court could the accused ordinance violator receive a fair determination of his guilt. The rights of a defendant in a municipal court may not be adequately protected if the municipal court judge or justice of the peace is either incompetent or fraudulent or if the proceedings are subject to local prejudice.\(^\text{48}\)

Allowing the defendant to waive a jury trial in municipal court and subsequently demand a jury trial upon appeal to the district court arguably may afford the defendant an unfair advantage. After hearing the prosecution's case in the municipal court, the defendant may rest his case without disclosing the nature of his defense.\(^\text{49}\) An ordinance prosecution is analogous to a criminal proceeding, because one of the parties is the state. Since "a criminal case is of necessity an unequal contest, because the parties are of unequal strength"\(^\text{50}\) and the state is the stronger party, the

\(^45\) 111 N.W.2d at 475. (Emphasis added.)

\(^46\) See MINN. STAT. § 484.63 (1961), which provides that "the appellant shall have the right to a jury trial if he was not tried by jury in the municipal court."

\(^47\) See City of St. Paul v. Ulmer, 261 Minn. 178, 111 N.W.2d 612 (1961), which suggests that a defendant must take some affirmative action in order to waive a jury trial under the *Hoben* doctrine. In this case the defendant, who was charged with driving while under the influence, refused to plead and stood mute throughout the trial. The court said this was not a waiver of a jury trial.


\(^49\) See Affidavit of Paul T. Aitken, p. 3, incorporated by reference into Brief for Relator, State v. Friswold, 116 N.W.2d 270 (Minn. 1962).

defendant's use of such a "discovery device" would not seem objectionable in an ordinance prosecution. Professor Louisell has observed that

viewing the matter simply as one of balancing the scales in an adversary system . . . it is hard to believe that in the generality of drunk driving cases, for example, discovery for defendant unduly handicaps the prosecution. To the contrary, the latter's increasing facilities for scientific aids seem to necessitate criminal discovery for a fair trial, particularly as to data pertaining to scientific tests.51

In any event, the cost of an appeal to the district court may deter a majority of defendants from waiving their right to a jury trial in municipal court in order to acquire knowledge of the prosecution's case.52

Granting the accused ordinance violator a jury trial in district court after he has waived his right to jury trial in municipal court has also been criticized because it affords this defendant greater procedural rights than are available to a person charged with a similar violation under a state statute.53 A defendant charged under a state statute has a right to a jury trial only in the court where he is originally charged, while the defendant charged under a municipal ordinance would be able to choose between the municipal court and the district court for his jury trial. Such a disparity does not contravene the "uniformity doctrine" of the Hoben case, however, since that doctrine is designed to provide municipal ordinance violators with minimal procedural safeguards and is not meant to deny them additional safeguards.

Ordinance and statute violations have historically been classified and treated separately, both by the legislature and by the courts. We do not perceive how the fact that an ordinance violator may receive two jury trials conflicts with the uniformity requirement of the Hoben case. This decision was made to insuire to traffic ordinance violators basic constitutional and statutory safeguards equivalent to those af-

51. Louisell, Criminal Discovery: Dilemma Real or Apparent?, 49 CALIF. L. REV. 56, 100 n.190 (1961). Professor Louisell's article provides an analysis of the problems and advantages of affording discovery procedures in a criminal action.

52. For example, in Minneapolis less than one per cent of all persons convicted of ordinance violations appeal to the district court. Interview with the clerk of the Minneapolis Municipal Court, March 16, 1962. See also 23 INT'L CITY MANAGERS' ASS'N, MUNICIPAL YEAR BOOK 465 (1956). In 50 non-metropolitan counties of Minnesota, the number of appeals from municipal ordinance violation convictions is so small that the effect on the district court calendar is negligible. As pointed out in the appendix to the defendant's brief in State v. Ketterer, 248 Minn. 173, 79 N.W.2d 136 (1956), only 62 such appeals were made between 1946 and 1956.

53. See Brief for Relator, p. 3, State v. Friswold, 116 N.W.2d 270 (Minn. 1962).
forded to traffic statute violators. It did not hold that such ordinance violators and such statute violators must be afforded identical treatment beyond these basic rights. The intent of the legislature in enacting § 169.03, as declared in the Hoben case, was to make uniform and equal procedures relating to these basic rights and not to require that the legislature treat each class equally or limit preferential treatment beyond these rights.5

If strict uniformity of treatment is desirable, the better solution would seem to be to accord the statute violator more rights than to accord the ordinance violator fewer rights.

V. EFFECT OF JURY TRIALS ON THE COURTS

The summary enforcement of municipal ordinances has enabled the courts to efficiently dispose of the great number of cases arising under such ordinances.55 To grant persons accused of an ordinance violation the right to a jury trial, instead of the more common summary proceedings, does add to the congestion in court calendars.56 For example, prior to Hoben the delay in the Minneapolis Municipal Court calendar was approximately three months, while after the Hoben case the delay was nearly two years.57 In order to relieve this congestion, lawyers, judges, and other officials responsible for the efficient administration of the courts, have directed their efforts toward obtaining additional

55. See generally 9 McQUILLIN, MUNICIPAL CORPORATIONS § 27.34 (3d ed. 1950); MAYERS, THE AMERICAN LEGAL SYSTEM 200 (1955); Frankfurter & Corcoran, Petty Federal Offenses and the Constitutional Guaranty of Trial by Jury, 39 HARV. L. REV. 917, 925 (1926); Note, 24 GEO. L.J. 440, 441 (1936). The court in City of Fort Scott v. Arbuckle, 165 Kan. 374, 388–89, 196 P.2d 217, 226 (1948), observed that "due to the complexity of city life there are many more acts, the doing of which constitute a violation of some city ordinance, than there are that constitute a violation of state statutes." See also 4 BLACKSTONE, COMMENTARIES *280–81.
56. See Healy, Emergency Stop-Gap Program to Relieve Congested Civil Calendar in Municipal Court Put into Effect, 29 HENN. LAW. 3 (1960); Edgerton, May Be Legal Way Out on Jury Ruling, Minneapolis Star, Sept. 25, 1959, p. 8A, cols. 6–7: "When cases are tried before a judge, one judge can handle more than 200 cases a day. But when jury trials are requested three judges can not dispose of more than nine cases in an entire week." Cf. the N.Y. CITY MUNICIPAL COURT ANNUAL REPORT 2–3 (1960), which indicates that in New York, from 1957 to 1960, the number of cases awaiting trial increased from 46,292 to 54,651—an increase of 18%. At the end of 1960 a delay of 7 to 19 months existed on the 4 central jury calendars of the court, while a delay of 4 to 6 months existed for a non-jury trial.
57. Healy, supra note 56.
judges and instituting more efficient modes of pleading and presentation of facts instead of eliminating the right of an ordinance violator to a jury trial.88

The use of summary proceedings rather than jury trials for the enforcement of municipal ordinances depends, in part, upon economics. The cost of a jury trial has been estimated to be three to eight times more than that of any other mode of trial.69 This added cost must be weighed against the needs of the defendant. If the interests of the individual defendant charged with an ordinance violation were insignificant, a jury trial would not be warranted. Each defendant's rights are significant, however, to the individual involved.

Each case concerns the liberty or property of some individual . . . . Each case, regardless of amount, can be as important to its parties as any in the history of jurisprudence . . . . Let us not forget that amount of money involved in a case is not always a true measure of its importance.60

The consequences to the defendant convicted in a municipal ordinance violation proceeding would seem to justify the added cost

58. The report of a special Bar Association Subcommittee established to analyze the congestion in the municipal court and to recommend certain remedies stated:

The basic premise approved by the Subcommittee recognized that the right of trial by jury in traffic and ordinance cases, though it delays the trial of civil cases, . . . is a sound and basic principle, that the basic remedy is the addition of enough Judges to insure the right of trial by jury to all.

This subcommittee recommended as a temporary relief measure an accelerated hearing procedure for any civil case now pending. See Healy, supra note 56, at 4. Another procedural technique that may alleviate the backlog is outlined in First Attack on Wiping Out Calendar Delay Made, 30 HENN. LAW. 61 (1962). The appointment of additional judges, of course, reduces the delay. Rodgers, Sirenuous Measures Must Be Taken to Up-Date Calendars, 30 HENN. LAW. 37 (1961).


60. Barker & Scallen, Reports Are Made by Referees Who Are Named to Assist in Stop-Gap Municipal Court Program, 29 HENN. LAW. 19, 20 (1960). Professor Pirsig has observed:

The notion of a layman, ignorant of the law, deciding the legal rights of parties in civil litigation and of defendants in criminal cases is wholly irreconcilable with the fundamental tenet of our government that justice shall be administered in accordance with established principles of law and not at the whim, or caprice or personal notions of justice held by some individual exercising the power of the state. The fact that the amount of litigation is small or that the crimes charged are minor ones does not in a democratic society alter the application of this fundamental philosophy.

of a jury trial. The penalties upon conviction may include a fine, imprisonment, and such other consequences as the loss of a license that may be essential to the defendant's livelihood.\textsuperscript{61} Even if a person is not convicted, he may need a jury trial to combat the collateral effects of being charged with the violation of a public law.

The accused, whether guilty or not, is in immediate trouble. . . . He may lose his job, or be suspended from it, pending trial. His reputation is under an immediate cloud. His family relationships may be irretrievably altered. If he happens to be in a profession where good reputation is peculiarly indispensible, he may suffer grievously, though completely innocent . . . . A defendant, in short, is in a bad spot, merely by virtue of being one, and needs every possible opportunity to establish his innocence, as soon, as publicly, and as decisively as possible.\textsuperscript{62}

Opponents of jury trials in municipal courts sometimes contend that the jury is likely to be too lenient with the offenders.\textsuperscript{63} Continued acquittals by juries would seem to imply lack of public disapproval of the defendant's act. Our system of justice seeks to punish those acts that contravene the purposes of society; apparent approval of the defendant's conduct would suggest that such conduct does not contravene the mores of our society and, therefore, should not be prosecuted.\textsuperscript{64}

\textsuperscript{61} See, e.g., \textit{Minneapolis, Minn., City Charter}, ch. 4, § 16 (1960): Any license issued by authority of the City Council may be revoked by the Mayor or City Council at any time, and upon conviction before the Municipal Court of the City of Minneapolis, or any person holding a license for a violation of the provisions of any ordinance relating to the exercise of any right granted by such license, the said court may, and upon second conviction shall, revoke such license in addition to the penalties provided by law or by ordinance for any such violation.

In the case of traffic ordinance convictions a defendant may have his driver's license suspended or revoked. \textit{Minn. Stat.} §§ 171.17, .18 (1961). Furthermore, his automobile insurance may be canceled or the cost of the premiums may become prohibitive.

\textsuperscript{62} \textit{Fellman, The Defendant's Rights} 2 (1958).

\textsuperscript{63} "Juries tend to feel excessive sympathy for a defendant." A judge, on the other hand, has heard all the excuses before . . . ." Forest E. Lowery, manager of the Greater Minneapolis Safety Council, responding to the \textit{Hoben} decision in Minneapolis Morning Tribune, Sept. 23, 1959, p. 1, col. 1.

\textsuperscript{64} See City of Rochester v. Falk, 7 N.Y.S.2d 517 (Rochester Crim. Ct. 1938). See generally Kalven, \textit{A Report On The Jury Project of the University of Chicago Law School}, 24 \textit{Ins. Counsel J.} 368 (1957). The records for the Minneapolis Municipal Court do indicate a greater percentage of acquittals since the \textit{Hoben} case for the offense of driving while intoxicated. For example, in 1958 there were only five findings of not guilty out of 1798 cases; in 1959 there were 20 findings of not guilty out of 1648 cases; in 1960 there were 27 findings of not guilty out of 1293.
A further argument against this use of the jury trial might be premised upon a lack of faith in the ability of a jury to determine the guilt or innocence of a defendant. An attack upon the competency of the jury system, though, should be directed to the legislature, not the courts. The legislature's answer to such an argument is expressed in the statute interpreted in *Hoben*, which affords a defendant the right to a jury trial in the municipal court, and in another statute that specifically grants that right upon appeal to the district court if the defendant did not receive a jury trial in the municipal court.

**CONCLUSION**

In Minnesota, the right of persons accused of violating a municipal ordinance to a jury trial in the municipal court is dependent upon three conditions: (1) a state statute must prohibit the same conduct as prohibited by the municipal ordinance; (2) the state statute must contain a provision requiring any municipal ordinance covering the same subject to provide for identical penalties as the statute; (3) a person charged with violating that statute must be entitled to a jury trial in the court where he is charged. If a person is convicted of violating any municipal ordinance, he is entitled to a jury trial upon appeal to the district court if he was not tried by a jury in the municipal court. This right is justified by the desire to protect the interests of the defendant from the arbitrary procedures that are often present in a summary proceeding. Although this use of the jury trial has greatly increased the congestion in municipal court calendars, the addition of more judges and the instigation of more efficient modes of pleading seem to be more reasonable solutions to the problem than the denial to the alleged ordinance violator of the right to trial by jury.

An interesting aspect of these statistics is that the total number of cases reaching municipal court involving the *Hoben* offense (driving while intoxicated) has decreased considerably since that decision. This may be attributable to the fact that police officers have been more cautious with their charges since defendants will be able to demand a jury trial in the municipal court. See 1958, 1959, 1960 Minneapolis Police Dep't Ann. Rep.

65. Sutherland, *op. cit. supra* note 59.