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CRIMINAL LAW COMMENT

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FEDERAL JURISDICTION OVER CRIMES COMMITTED ON THE GREAT LAKES

With increased activity of vessels on the Great Lakes, the extent to which federal courts may exercise criminal jurisdiction over these vessels and these waters becomes a necessary determination.

Federal jurisdiction over crimes committed on the Great Lakes was recently considered in the case of *Hoopengartner v. United States*.¹ Hoopengartner, while inebriated, negligently rammed his speedboat into a cabin cruiser. The cruiser sank and its passengers were forced into the water to await rescue. In the attempted rescue one of the passengers was accidentally struck and killed, apparently by a ship attempting to rescue the victims.

The accident occurred between a parallel set of buoys marking the channel of the Clinton River as it flows into Lake St. Clair. Lake St. Clair connects Lakes Huron and Erie and is partially within the territorial jurisdiction of the State of Michigan and partially within that of Canada. The accident was clearly within the sovereignty of Michigan.²

Although his craft was not the one which actually hit and killed the decedent, Hoopengartner was indicted by the State of Michigan for involuntary manslaughter. The trial resulted in a conviction of simple assault.³ Based on the same

facts and subsequent to the Michigan trial, Hoopengartner was indicted and convicted of involuntary manslaughter in a federal district court sitting in Michigan.⁴ The United States Court of Appeals for the Sixth Circuit affirmed the decision.⁵

The basis of federal criminal jurisdiction over maritime offenses⁶ is Congressional enactment.⁷ Federal courts have criminal jurisdiction when the vessel upon which the crime is committed or the

⁴ Federal prosecution on the same facts in a federal court after a state trial does not constitute double jeopardy under the fifth amendment to the United States Constitution. *United States v. Bartkus*, 359 U.S. 121 (1959). The district court appears not to have handed down a written decision. Letter received from the Clerk of the Court of Appeals for the Sixth Circuit, Cincinnati, Ohio.

⁵ *Hoopengartner v. United States*, *supra* note 1.

⁶ Federal admiralty and maritime jurisdiction stems from article III, section 2 of the United States Constitution, which provides, "The judicial power shall extend . . . to all cases of admiralty and maritime jurisdiction. . . ." Standing alone, this provision does not give federal courts jurisdiction over maritime crimes. If the federal court sat as an admiralty court, the trier of fact would be the judge. Juries are unknown in admiralty cases. 2 C.J.S. *Admiralty* §5 (1936). The federal constitution, however, guarantees a defendant the right to a jury trial in criminal cases. "In all criminal prosecutions, the accused shall enjoy the right to a . . . trial, by an impartial jury . . ." U.S. CONST. amend VI. To enable federal courts to hear criminal cases and to guarantee the accused's right to a jury trial, Congress enacted 18 U.S.C. §7 (1959).

⁷ 18 U.S.C. §7 (1959). Congress' authority to act is based on article I, section 8 of the Constitution: "The Congress shall have power . . . to define and punish piracies and felonies committed on the high seas . . ."

¹ 270 F. 2d 465 (6th Cir. 1959).

² The channel is within Michigan's boundary.

³ *Hoopengartner v. United States*, *supra* note 1, at 468.

waterway upon which it is traveling, is within the *special maritime and territorial jurisdiction of the United States*.⁸

The waterways and vessels included in the special maritime and territorial jurisdiction are set out in 18 U.S.C. §7:

"The term 'special maritime and territorial jurisdiction of the United States', as used in this title, includes:

(1)

The high seas,

any other waters within the admiralty and maritime jurisdiction of the United States and outside the jurisdiction of any particular State,

and any vessel belonging in whole or in part to the United States or any citizen thereof, or to any corporation created by or under the laws of the United States, or of any State, Territory, District, or possession thereof, when such vessel is within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular state.

(2)

Any vessel registered, licensed or enrolled under the laws of the United States, and being on a voyage upon the waters of any of the Great Lakes, or any of the waters connecting them, or upon the Saint Lawrence River where the same constitutes the International Boundary Line.⁹

This statute only confers jurisdiction; the accused will then be tried under the appropriate section of the federal criminal code.¹⁰

Under §7 federal courts can base their jurisdiction over crimes committed on the Great Lakes on the *status* of the defendant's vessel, i.e., whether it is registered, licensed, or enrolled under the laws of the United States,¹¹ or owned by a corpo-

⁸ 18 U.S.C. §7 (1959).

⁹ Prior to 18 U.S.C. §7 (1959), the federal district courts were permitted to punish certain enumerated crimes when these crimes were committed at certain places. The law of today is merely a refined codification thereof. An example is REV. STAT. §5346 which stated, "Every person, who, upon the high seas or any arm [thereof] within the admiralty jurisdiction of the United States and out of the jurisdiction of any particular state on board any vessel belonging . . . to the United States or any citizen thereof . . . , commits an assault shall be punished . . ."

¹⁰ For the federal criminal code see 18 U.S.C. §§1-403 (1959).

¹¹ Registration or enrollment of a vessel under federal law endows the vessel with national character, entitling

ration or a United States citizen, or on the *location* of the vessel at the time of the commission of the crime, i.e., whether it is on the high seas, the Great Lakes, and any other waters outside the jurisdiction of a state but within the admiralty and maritime jurisdiction of the United States.¹²

its owner to the protection of federal law and courts. The *Mohawk*, 70 U.S. (3 Wall.) 566 (1865). Generally, registration is not compulsory; it is a privilege or an advantage. *Gaston v. Warner*, 272 Fed. 56, 60 (1921), *aff'd*, 260 U.S. 201 (1922). When the vessel is employed in the transporting of people or merchandise for hire on navigable waters, it appears that the vessel *must* be enrolled or licensed. The Supreme Court has said that every vessel of the United States is bound to have a register or an enrollment from her home port, and without the right one with reference to the trade in which she is engaged, a vessel is entitled to no protection under United States law and is liable for seizure for violation of such law. *Badger v. Gutierrez*, 111 U.S. 734 (1883). See also *Braga v. Braga*, 314 Mass. 666, 51 N.E. 2d 429 (1943). *Registration* publishes the nationality of a vessel engaged in trade with *foreign* nations. 60 Stat. 1097 (1946), 46 U.S.C. §11 (1959) designates the vessels which are entitled to register under the laws of the United States. They are generally vessels built or rebuilt within the United States and belonging to citizens thereof or vessels which are subject to federal law. *Enrollment*, on the other hand, declares the nationality of a vessel engaged in *domestic* commerce along the navigable waters of the United States. To be enrolled a vessel must possess the same qualifications and comply with the same requirements necessary for registering, 46 U.S.C. §§251-260 (1950), the only difference between the two being the waterways which the vessel travels and the ports which it visits. Enrollment enables the vessel to procure a coasting license authorizing trading along the coast. Together, the enrollment and the license entitle the owner to the protection of the laws of the United States. Despite the jurisdiction of the federal courts, the federally enrolled vessel remains subject to the jurisdiction of state courts and is not immune from the operation of valid state laws. In *Smith v. Maryland*, 59 U.S. (18 How.) 71 (1855), Maryland enacted a statute making it unlawful to catch oysters in a scoop; the penalty was forfeiture of the ship. Plaintiff violated this statute and in a suit for return of the vessel claimed that he was not subject to the laws of Maryland since his vessel was enrolled under the laws of the United States. Held: the plaintiff was subject to a valid state law even if the vessel was licensed and enrolled. Where the state law is invalid, the state does not have any rights over the party. *Gibbons v. Ogden*, 22 U.S. (9 Wheat.) 1 (1824). In *Veazie v. Moor* 55 U.S. (14 How.) 568 (1852), the waterway, a river, was entirely within the state of Maine, having no outlet and only partially navigable. The state had granted exclusive navigation rights to a company. The Court held that another company's vessel was not entitled to navigate the waters even though it held a federal license to carry on a coasting trade, as the exclusive franchising was an internal matter for the state. Thus, the advantage of enrollment is not that the vessel is no longer under the control of a particular state, but rather, that the vessel is now under the jurisdiction of the federal government as well as the states.

¹² 18 U.S.C. §7(2) and the first and second clauses of §7(1) (1959).

The federal district court in the *Hoopengartner* case based its jurisdiction on both the *status* of the defendant's vessel, registered under United States' law and traveling upon a waterway connecting the Great Lakes, and the *location* of the vessels, held to have been on the high seas.

In basing its jurisdiction on the *status* of the vessel, the district court was in accord with prior decisions of the federal courts. When a vessel upon which a crime is committed is registered or enrolled under United States' law, federal criminal jurisdiction is clear. "A vessel registered as a vessel of the United States . . . is considered as a portion of its territory and persons on board are protected and governed by the laws of the country to which the vessel belongs."¹³ The significance of basing federal criminal jurisdiction on the *status* of the vessel is that the federal courts have jurisdiction regardless of where the crime is committed on the Great Lakes,¹⁴ as for example, in *Hoopengartner* where the collision of the vessels and the passenger's death occurred wholly within the sovereignty of Michigan.

In also basing its jurisdiction on the *location* of the vessel, the court held that it had jurisdiction over an offense committed on a vessel if at the time the crime was committed, the vessel was on the high seas.¹⁵ Historically, the federal courts had not considered the Great Lakes as part of the high seas.¹⁶ In *United States v. Rodgers*, the United

¹³ *St. Clair v. United States*, 154 U.S. 134 (1894). The defendant committed murder while on an American owned vessel on the high seas, within the admiralty and maritime jurisdiction of the United States and outside the jurisdiction of any state. The defendant claimed that the indictment did not sufficiently show the part of the high seas so as to give the federal courts jurisdiction. The Court, however, said that the objective in producing the registry of a ship was "to meet any question that might arise as to the jurisdiction of a court of the United States, to punish the particular offense charged." 154 U.S. 134, 152 (1894).

¹⁴ This was substantiated in *United States v. Gill* 204 F. 2d 740 (7th Cir. 1953), where the defendant was indicted and convicted for an assault committed on a vessel registered under the laws of the United States while the vessel was traveling on Lake Michigan. The assault conclusively occurred within Indiana's jurisdiction. Nevertheless, the Court of Appeals for the Seventh Circuit held that the federal court had jurisdiction over the crime, in that the vessel's registration brought the case under 18 U.S.C. §7(2) (1959).

¹⁵ The term high seas has been defined as a large body of water other than a river, which is open and unconfined and not under the exclusive control of one nation. RESTATEMENT, CONFLICTS OF LAWS §406(a) (1934).

¹⁶ *Ex parte Byers*, 32 Fed. 404 (E. D. Mich. 1887). The defendant was indicted for a crime committed on an American vessel which was traveling on the Ca-

States Supreme Court altered this position and held the Great Lakes to be a part of the high seas under a statute which was the predecessor of the present act.¹⁷ Mr. Justice Field, speaking for the majority, stated that in determining whether a body of water is part of the high seas, the criterion should be the practical navigability of the waterway for commercial purposes, and not the water's tides or its saline qualities. The Great Lakes are as commercially navigable as the oceans; thus, they should be considered high seas.

The district court in *Hoopengartner* held that the channel in which the decedent was killed was part of Lake St. Clair and, held that Lake St. Clair, although merely a connecting waterway and not one of the Great Lakes, still fell within the federal courts' criminal jurisdiction because its commercial navigability made it a part of the high seas.¹⁸

Although the district court held the Great Lakes and the waters connecting them to be a part of the high seas, it is arguable that neither the Great Lakes nor the waters connecting the Lakes are part of the high seas. The statute, 18 U.S.C. §7(2), states, "The special maritime and territorial jurisdiction of the United States shall include . . . any vessel, registered, licensed, or enrolled under the laws of the United States, and being on a voyage upon the waters of the Great Lakes or upon any of the waters connecting them. . . ."

It can be argued that Congress, by its enactment of §7(2), did not consider either the Great Lakes or the waters connecting them to be part of the

nadian side of the Detroit River. The court held that the federal courts had no jurisdiction in such waters because the Great Lakes were not considered part of the high seas. If the Great Lakes had been the high seas, the fact that the crime occurred in Canada would have had no effect on the jurisdictional question. See also *Miller's Case*, 17 Fed. Cases 300 (No. 9558) (6th Cir. 1867). The state view was to the same effect as the federal. *Tyler v. Michigan*, 8 Mich. 319 (1860).

¹⁷ 150 U.S. 249 (1893). On certificate of division in opinion from the district court, the decision was seven to two with Justices Gray and Brown dissenting. *Rodgers* was convicted in federal district court of having assaulted a fellow seaman while on a vessel traveling on the Canadian side of the Detroit River, a river connecting Lakes Huron and Erie. The court construed §5346, 35 Stat. 1142 (1909), which contained what is now 18 U.S.C. §7(1) (1959). The court did not decide the case on the predecessor of 18 U.S.C. §7(2) notwithstanding the fact that the sub-section was enacted before the trial and the vessel was registered. The possible reason is that the cause of action arose before the enactment of §7(2).

¹⁸ Brief for Appellant, p. 31a, *Hoopengartner v. United States*, *supra* note 1.

high seas. The content of §7(2) does not add anything to the existing law promulgated by §7(1) unless the Lakes and their connecting waterways are not part of the high seas. Thus, the court in *Hoopengartner* was in error in basing its jurisdiction on the fact that the offense occurred on the high seas of the waters connecting the Great Lakes.

This same criticism applies to the majority of the Supreme Court in their decision in the *Rodgers* case. The Court construed the term "high seas" exactly contrary to that of Congress; they held that the Great Lakes were to be considered part of the high seas. The majority, however, might be justified by the hiatus that would have resulted if the court had not taken jurisdiction. Since the offense occurred in Canada, no state court had jurisdiction, thus, the accused would not have been tried by any American court if the federal court lacked jurisdiction. This rationale does not apply, however, to the facts in the *Hoopengartner* case. The death occurred while the vessels were on a waterway within the jurisdiction of Michigan.¹⁹ The federal court did not have to take jurisdiction in order for the accused to be tried for his crime; Michigan had already prosecuted him.

If the vessel is not on the high seas, the federal courts may still have criminal jurisdiction, for Congress has provided that the federal courts shall have jurisdiction when the vessel is on "any other waters within the admiralty and maritime jurisdiction of the federal courts . . . [and] outside the jurisdiction of a particular state."²⁰

Note the difference when the court bases its criminal jurisdiction on the vessel being located

¹⁹ The court in *Ex parte O'Hare*, 179 Fed. 662 (2d Cir. 1910), stated that the fact that the assault in the *Rodgers* case occurred in Canada was significant. The court said at 666 that the implication in *Rodgers* is that "if the vessel on which the assault was committed had been so close to the Michigan shore as to be within the jurisdiction of that state, a different conclusion would have been reached." The implication to which the court was referring was the following statement by Mr. Justice Fields in the *Rodgers* case: "From the boundary line, near the center to the Canadian shore, it is out of the jurisdiction of the State of Michigan. The case presented is therefore directly within the provision." 150 U.S. 249 (1893). The court in the *O'Hare* case was reading a negative implication into Mr. Justice Fields' statement in the sense that he said the case in *Rodgers* is directly within the equivalent of the second clause of §7(1) ("any other waters") in that it occurred outside the jurisdiction of Michigan. Thus, if the accident had occurred within Michigan, the statute would not have applied, and the federal court would have lacked criminal jurisdiction.

²⁰ 18 U.S.C. §7(1) (2d cl.) (1959).

under the "any other waters" provision of §7(1) rather than the "high seas" provision of §7(1). The federal court has jurisdiction under the "any other waters" provision only when no state court has jurisdiction. This is not true when the court bases its jurisdiction of the "high seas" provision of §7(1).

In *United States v. Bevans*²¹ the United States Supreme Court said that "it is clear that Congress under the law has not given federal courts jurisdiction over any offenses committed on a river . . . out of the jurisdiction of any state."²²

The significance of the distinction was also made by the Court of Appeals of the Fifth Circuit in *Murray v. Hildreth*,²³ where the court said that the phrase, "river, haven, bay or basin" as used in older statutes has merely been rephrased by the clause "any other waters" used in the present statute. The court continued, "It [the phrase 'any other waters'] purports to do nothing more than to use general terms of description in place of the attempted enumeration . . . of all waters within the admiralty and maritime jurisdiction of the United States."²⁴

In the *Hildreth* case, the defendant committed murder while the vessel was on the Atlantic Ocean within two hundred feet of the Florida coast. The federal court, holding that it had jurisdiction, said, "From the beginning Congress has asserted jurisdiction of offenses committed on the high seas. . . . It was only when Congress came to legislate as to waters other than the high seas, such as rivers, havens, and bays, that it took jurisdiction of such waters only as were not within the jurisdiction of any particular state."²⁵

Thus, when the crime is committed on a vessel traveling on a waterway within the jurisdiction of a particular state, the issue is whether the waterway is part of the "high seas" under the first clause of §7(1), or part of "any other waters" under the second clause of §7(1).

Courts have given some indication as to what waterways are considered waters other than the high seas within the admiralty and maritime

²¹ 16 U.S. (3 Wheat.) 336 (1818). The offense was committed on a United States naval vessel, laying in the channel of Boston Harbor, completely within the jurisdiction of Massachusetts. The federal court had jurisdiction, however, because of the military status of the vessel notwithstanding the fact that the offense occurred within the jurisdiction of a state.

²² *Id.* at 386.

²³ 61 F. 2d 483 (5th Cir. 1932).

²⁴ *Id.* at 485.

²⁵ *Id.* at 485.