Journal of Criminal Law and Criminology

Volume 51
Issue 3 September-October

Fall 1960

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 Hoopengarner v. United States. Hoopengarner, 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.

Although his craft was not the one which actually hit and killed the decedent, Hoopengarner was indicted by the State of Michigan for involuntary manslaughter. The trial resulted in a conviction of simple assault. Based on the same facts and subsequent to the Michigan trial, Hoopengarner was indicted and convicted of involuntary manslaughter in a federal district court sitting in Michigan. The United States Court of Appeals for the Sixth Circuit affirmed the decision.

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

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.

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

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."

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

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, or owned by a corporation created by or under the laws of the United States. It is within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular state.


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. §3436 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..." (1855).

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 its owner to the protection of federal law and courts.

12 18 U.S.C. §7(2) and the first and second clauses of §7(1) (1959).
The federal district court in the Hoopengarner 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.” 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, as for example, in Hoopengarner 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. Historically, the federal courts had not considered the Great Lakes part of the high seas. In United States v. Rodgers, the United 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. 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 Hoopengarner 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.

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

{\textit{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 Hoopengarner 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 Hoopengarner case. The death occurred while the vessels were on a waterway within the jurisdiction of Michigan. 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." Note the difference when the court bases its criminal jurisdiction on the vessel being located 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 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." The significance of the distinction was also made by the Court of Appeals of the Fifth Circuit in Murray v. Hildreth, 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." 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 over any 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." 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