View metadata, citation and similar papers at core.ac.uk

brought to you by CORE

provided by University of Kentucky

Kentucky Law Journal

Volume 21 | Issue 4 Article 13

1933

Jurisdiction--Situs of Crime

Kirk B. Moberley
University of Kentucky

Follow this and additional works at: https://uknowledge.uky.edu/klj

Part of the Criminal Law Commons, and the Jurisdiction Commons

Right click to open a feedback form in a new tab to let us know how this document benefits you.

Recommended Citation

Moberley, Kirk B. (1933) "Jurisdiction--Situs of Crime," *Kentucky Law Journal*: Vol. 21 : Iss. 4 , Article 13.
Available at: https://uknowledge.uky.edu/klj/vol21/iss4/13

This Note is brought to you for free and open access by the Law Journals at UKnowledge. It has been accepted for inclusion in Kentucky Law Journal by an authorized editor of UKnowledge. For more information, please contact UKnowledge@lsv.uky.edu.

to make, alter, or ratify a contract at his own will and pleasure with the consent of the party contracting with him, or if he stands by and permits others to work for him, and accepts the work, the law implies a promise to pay its value; while an officer of a corporation has no power to make a contract except in the manner pointed out by the statute from which the power is derived." *Zottman* v. *San Francisco*, 20 Calif. 96 (1862).

This does not seem so harsh a rule against the party contracting with a municipal corporation when it is remembered that such a party is presumed to know the powers and limitations of the corporation to make contracts. The loser knowingly took the risk. "Persons contracting with a municipal corporation must, at their peril, inquire into the power of its officers to make contracts." *City of Bowling Green* v. *Gaines*, 123 Ky. 562, 96 S. W 852 (1906).

New York makes exception to the rule in cases where there has been an attempt in good faith to carry out the requirements of the statute. *N. River Elec. L. & P Co.* v. *New York*, 62 N. Y. S. 726 (1900). Also when a contract is made in an emergency when it is not practicable to follow the statutory requirements. *Sheehan* v. *New York*, 75 N. Y. S. 802 (1902).

The only argument offered in support of the minority line of decisions (represented by *Westbrook* v. *Middlecliff and Fargo Foundry* v. *Calloway*, *supra*), is that it is not justice, where a contract is entered into between a municipality and another, in good faith, and the corporation has received the benefits, to permit the corporation to retain the benefits without paying the reasonable value therefor, the same as a private corporation or an individual would have to do. This does not seem sufficiently to answer the argument that a city having a limited power to contract cannot be held liable beyond those limits.

Because of constitutional and statutory provisions in Kentucky (Ky. Const., secs. 157, 162, 164, Ky. St. 2741a-2, 2741m-1 and standard city charter provisions), all cases in this state fall in classification (b), and the principal case follows a long line of Kentucky decisions which have consistently followed the majority rule stated above.

No cases have arisen in Kentucky analogous to the exceptional cases decided in New York but in view of the uncompromising position of the Kentucky court on the subject, it seems safe to predict that no exceptions would be made.

BRUCE MORFORD.

JURISDICTION—SITUS OF CRIME.—A newspaper of recent date contained an account of a very peculiar murder. A, while standing in West Virginia, shot across the border and killed B, who was standing in Kentucky. A was brought to trial in West Virginia on a murder charge, but was released because the court held that it did not have jurisdiciton to try the offense since the murder occurred in Kentucky.

This case raises an interesting question, and an important one also, since upon this decision may rest the safety of a number of in-

dividuals. The decision will undoubtedly shock the sense of justice of the layman, who cannot perceive of an admitted murderer going unpunished because of peculiar technicalities in our legal structure, but it is only too often that our judges, hardened as they are to seeing such diabolical decisions rendered in self-styled "courts of justice" under the guise of adherence to rigid principles of the common law, are content to remain passive and let the law continue its course of unethical justice because of *stare decisis*. It is to be hoped that some fearless judge, operating under the broad principles of justice in its true sense, will have the courage to render a decision on this subject more in keeping with the substantive rights of mankind.

It is conceded that the case has the weight of authority behind it, there being hardly a case *contra*. However, if the case reaches a poor result, and the obstacles standing in the way of a better decision can be removed, there is no reason why courts should continue to reach this poor result.

Chancellor Kent (1 Comm. 477), very aptly stated that it would not do "to press too strongly the rule of *stare decisis*. Even a series of decisions are not always conclusive, and the revision of a decision often resolves itself into a mere question of expediency." His remark has received added force by the fact that the overruled decisions now number several thousand.

State v. *Hall*, 114 N. C. 909, 19 S. E. 602 (1844), is probably the leading case on this subject, reaching the same decision as the West Virginia court, and, since the West Virginia case has not been reported, it would perhaps be well to examine this case as a basis for discussion. It may be assumed that the West Virginia case went upon the same ground.

In *State* v. *Hall*, the accused, standing in North Carolina, shot across the border into Tennessee, where the bullet killed the victim. The North Carolina court released Hall upon the ground that "one state or sovereign cannot enforce the penal laws or criminal laws, or punish crimes of offenses committed in and against another state or sovereignty." The learned judge then stated as a matter of fact that "the impinging of the weapon is the criminal act, and whether the missile passes over a boundary in the act of striking is a matter of no consequence. The accused constructively followed the bullet into Tennessee." Thus, having accepted the constructive presence *fiction* as a fact, we are inevitably led to the conclusion that this is an offense wholly against another sovereignty, and since North Carolina has no power to punish this crime, the accused must be set free.

Before whole heartedly accepting the court's theory as to location of the crime, it is only reasonable that one should analyze the crime itself. The basic proposition of criminal law is that a crime consists of two elements, both of which are essential, and without which there can be no crime. These elements are the intent, or *mens rea*, and the overt act: *Gordor* v. *State*, 52 Ala. 308 (1875), *Com.* v. *Mixer*, 93 N. E. 249 (Mass. 1910), *State* v. *Asher*, 83 S. W 177 (Ark. 1888). The de-

cision of *Green* v. *State*, 66 Ala. 40 (1880), states that "the crime of murder consists in the inflicting of a fatal wound coupled with requisite contemporaneous intent or design, which legally renders it felonious."

If we apply these two elements to the facts of *State* v. *Hall*, we find that the *mens rea* must have been in the mind of the accused, which was certainly in North Carolina. The act consists of the physical movement of the actor in pulling the trigger and discharging the weapon plus the act of the bullet traveling through space until it strikes the victim. The act, then, occurs partly in North Carolina and partly in Tennessee. This analysis seems to indicate that one element, the intent, has as its locale North Carolina, and the manifestation in the external world occurs in both. Though it is impossible to categorically classify the relative value of these elements as requisites of the crime, it is difficult to ascertain why, since an essential ingredient resides in North Carolina, and since without it there could be no crime, North Carolina has not as much interest in this case as Tennessee. Especially is this true since both the accused and the deceased were residents and citizens of North Carolina, though this should have no bearing on the decision other than to strengthen it.

One might surmise that the learned judge realized the unfortunate position into which he was slipping, for his next proposition seems to be an attempt to bolster by fiction that which could not be bolstered by fact. This assertion is that the accused constructively accompanied the missile across the boundary until it struck the deceased. This statement is absolutely false in fact, and has no logical basis. Had the court no fixed notion in mind when he uttered this, he might have, and with as much reason, said that when the defendant leveled his gun and drew a bead upon his target, he constructively drew his target across the border into the same state as he himself stood.

It seems an enormous burden for fiction to bear when it must engage in this interstate commerce, but if it must act as a carrier, the question might aptly be raised, "Why did not fiction carry the deceased into North Carolina, rather than the defendant into Tennessee?" We can only assume that the court had a ready answer in mind, for it is nowhere to be found in the decision.

Finally, the rule that one sovereign cannot enforce the penal laws of another had its historical origin largely upon the fact that the jury must come from the vicinage where the crime was committed, and a jury of one place could not enquire into the facts occurring at another place. This rule at the time of its adoption had a very practical foundation, the limited means of transportation, but with the modern methods of travel and communication, the necessary jurymen and witnesses may be brought to the place of trial with little or no inconvenience, and the reason for the rule is obliterated.

Another reason for this rule was the lack of interest of the other sovereign. It seems that this reason had no place in this particular case, because the shot was fired from the sovereign state trying the

case, and the murderer resides within its boundaries. These facts should give it sufficient interest to try the case.

The final reason which may be advanced for this rule is that the punishment should be inflicted by the sovereign which has been injured. Such a notion is the ancient revenge theory of punishment and has no place in an enlightened civilization. The object of punishment should "represent a means calculated to effect the cessation of the criminal's harmfulness to society." Criminology by Garofalo, p. 406.

Mr. Moss in his work, Applications of Psychology, p. 293, states, "At the present time the most widely accepted motive underlying punishment is protection. A new attitude is developing toward the criminal. The keynote of this attitude is neither revenge nor protection of society, but the reformation and rehabilitation of the criminal." This modern trend overthrows this ancient barbaric conception of punishment, and does away with the last objection in this case.

Now that the technical obstacle in the way of giving North Carolina jurisdiction have been in some measure answered, we may look for cases which may seem to strengthen this position. Conceding that there are no cases bearing out this new view directly, there are cases which seem to be analogous to this set of facts.

The case of *U. S.* v. *Werral*, 2 Dall. 384 (Pa. 1798), was the trial of an indictment for an attempt to bribe a public officer. The court held that it is sufficient to sustain the indictment that the letter offering the bribe was mailed at a post office within the jurisdiction. The court said, "The opposite doctrine, indeed, would furnish absolute impunity to every offender of this kind whose crime was not commenced and consummated in the same district." This language assumes a peculiar significance when one sees the case of *State* v. *Hall*, 20 S. E. 729 (N. C. 1894), the interstate rendition proceedings growing out of the case under discussion. The court in that case held that one who has not actually been within the territorial limits of the state since the commission of the crime with which he is charged, though it was constructively committed therein, cannot "flee from justice, and be found in another state" within Const. U. S. Art. 4, Sec. 2, Ch. 2, providing that a person so doing shall be surrendered on demand of the state from which he fled, and the governor has no authority to surrender the accused under such circumstances.

It occurs to one that this decision affords a great opportunity for one to remove his enemies if he is only clever enough to entice them to the state line, and declares an open season on foreigners within rifle shot of the border. The Pennsylvania case, though an attempt case, is closely analogous, and the language quoted from the decision is certainly in point.

A line of decisions cited in Clark and Marshall on Crimes, Sec. 497, (3d Ed. 1927), and discussed in 3 Pa. L. J. 167, hold that where the waters of a stream in one county are polluted by a mill in an adjoin-

ing county, the offense is indictable in the latter county. These decisions are upon the same point, and the same principles should apply.

In view of the above contentions, it is submitted that the case reaches the improper result and since the technicalities can be worked out, the court should have reached an opposite decision.

Rather than defy the established rule on this point, however, the court risked the criticism offered in the old English case of *Scott* v. *Shepherd*, 96 Eng. Rep. 525, where it was said that "when with the help of the written law, one succeeds in fitting a given crime into a given legal paragraph, then one's own sense of justice is satisfied, and the responsibility of a possible injustice is then shouldered by the impersonal written law."

Mr. A. Levitt, 16 J. Crim. L. 316, at 324, most admirably stated the situation when he said "you cannot protect the modern world from the modern criminal by setting up arbitrary limits to places where he can be punished. On the contrary, the criminal is aided and encouraged in committing his offenses because he knows that in most instances he will not be punished for his offenses if he stays away from the place where he committed them. All he needs to do is to step over a boundary line and he can thumb his nose at those who pursue him."

KIRK B. MOBERLEY.