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Jurisdiction--Situs of Crime

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members of her family, as it is when the father owns the machine. *Wallace* v. *Hall*, 235 Ky 749, 32 S. W (2nd) 324 (1930), *Steele* v. *Age's Administratrix*, 233 Ky. 714, 26 S. W (2nd) 563 (1930).

From a comparison of the cases found, the conclusion is reached that the Kentucky courts have gone further in the development of the family purpose doctrine in general, and this phase of it in particular, than any of the other jurisdictions where the doctrine has been adopted. Very few cases were found in other states on the problem here discussed, but those found, were in general accord with the Kentucky decisions. It does not appear that this question has ever been raised in any of the Federal courts.

In the light of this discussion, the statement in *U. S. Fidelity and Guaranty Company* v. *Hall* that where an adult son inflicts injury while driving his mother's car with her permission, the family purpose doctrine does not apply, seems to be a correct statement of law when considered in connection with the facts there given. As a general statement, however, it is perhaps too broad, for a situation might arise where the doctrine would apply to a mother and her adult son.

D. L. THORNTON.

JURISDICTION—SITUS OF CRIME.—A news item of September 30, 1931, issue of the Courier-Journal carried the following news story: Huntington, West Virginia, September 30, 1931.

"A federal court here gave a directed verdict for the defendant, S. T. Lambert, for the fatal shooting of Prussey Lowe, of Pike County, Kentucky" The United States District Attorney said that West Virginia lacked jurisdiction, because the defendant stood in West Virginia and fired across the Tug River and killed the deceased, in Kentucky.

This is not an unusual occurrence, and the courts are frequently faced with this problem of jurisdiction. And if he is to be tried in either state, for what offenses can he be tried? Because of this perplexing problem, most of the states have enacted statutes to simplify this question, however, this will be treated as far as possible by the common law of the various states. And as far as possible, from the standpoint of State A, where the culpable person was standing at the time.

In the treatment of this crime, it is apparent that there is a lack of the elements which complete the crime; for here the defendant is standing in West Virginia with intent to do certain things which, if completed in that state, would be a felony; but instead, he releases a force sufficient to span the distance to his victim, who is in an adjoining state. Now let us follow this leaden messenger in its course across the boundary to the intended person. Here are other elements which constitute a crime, whereby the injured person receives a mortal blow from a force set in motion in a foreign state. To make this problem more complex, let the injured man be removed to a third

state, where his death occurs. Here three states are involved, and for any one state to take notice of the crime or murder, it must imply at least two or three elements necessary for a complete crime. In state A the defendant releases a deadly force toward the victim in state B. In state B the victim receives a mortal blow; and in state C a death occurs from a blow which was occasioned by a person in a different jurisdiction. Now, theoretically, neither state can take cognizance of the crime, because there are not the necessary elements for its completeness. In state A there is only the release of a deadly force which takes effect in state B.

In the absence of any statutes, these states are confronted with the problem of jurisdiction, provided, of course, that all the states have access to the culpable person. In an endeavor to arrive at a solution of this problem, it should be clarified by seeking the historical foundation of the common law and its interpretation by the various state courts. In the late 15th century the same question had doubtless confronted the English judiciary, for we find, prior to that date, in respect to the various counties of England that where a blow was given in one county and death occurred in a second, in order for any county to take notice of the crime the body would have to be returned to the county in which the blow was given, or else the criminal would have to go free. And here there is a split of authority as to the above condition in John Lange's Case Y. B. 6, Henry VII, p. 10 (1490). It says that the body was returned to the county in which the blow was given and the criminal tried there, while Lord Tremaillie, the following year, gave jurisdiction to the county in which the blow was given. Here, again, the writers differ as to the rule. Blackstone Comm. Book 3, p. 303, says that the county in which the blow was given had jurisdiction and that the criminal could be prosecuted for the complete crime; while Chitty I Criminal Law, p. 178, says that it is doubtful if either county could prosecute the guilty person from the facts above given. Because of this unsettled question of extra-territorial jurisdiction, statutes 2 and 3 of Edward VI were enacted in 1548; and it is evident that at this late date there was some apprehension about the criminal's being punished when the blow was given in one county and death occurred in another, for the opening sentences say that if a man inflicts a blow on another, who goes into a second county and dies, there is no law known where the jury of either county could take notice of the crime. These statutes gave jurisdiction to both the county in which the blow was received and the one in which the death occurred; and treating the respective states of this union as the English counties, I believe that the common law rule can be more easily explained by its comparison to these statutes.

And the influence of these English statutes is still discernible in our present day law, for in *State* v. *Hall*, 19 S. E. 602 (1894), in which the North Carolina courts deny lack of jurisdiction over a person who fired a shot from that state killing a person in Tennessee, in the

absence of statute, there was no provision for holding this man, because there was no offense against the sovereignty of North Carolina, and there are many state courts which uphold the decision of the North Carolina court and hold that, in the absence of statute, the state in which the blow was given has jurisdiction over the culpable person. In the case of *Riley* v. *State*, 9 Hump. 646 (Tennessee, 1849), the court held that statutes two and three of Edward VI were never a part of the common law of Tennessee, but that the place where the blow was given determines the jurisdiction of the crime. In *State* v. *Gessart*, 21 Minn. 369 (1875), it was held that where a fatal stabbing occurred in that state and death resulted in Wisconsin, Minnesota could punish the criminal, because the death was only the result of the act of the defendant; and here again is a person punished for a complete crime in a jurisdiction where some of the elements are missing.

In the case of *State* v. *Bowen*, 16 Kansas 475 (1876), the court says that the only act the defendant does is to give the fatal blow and that the subsequent wandering does not change the place of the offense but simply determines the crime in the blow given, or gives the act quality. *State* v. *Kelly*, 76 Maine 331 (1884), holds that the state where the blow is given has jurisdiction over the criminal.

Our own state lines up in this respect with the authorities already given, for in the case of *Jackson* v. *Commonwealth*, 100 Ky. 239 (1896), there is dictum that the court would have no jurisdiction over a person who gave a mortal blow in a foreign state and death occurred here; and this dictum is supported in the case of the *Commonwealth* v. *Apkins*, 148 Ky. 207 (1912). The facts are that the defendant poisoned his wife in Ohio, and she came into this state and died. The appellate court held that the crime was committed in Ohio, for the crime was committed there and the death was only the result of this act and, therefore, Kentucky had no jurisdiction. To support the argument that this state would take cognizance of a person who inflicts a deadly blow on another in this state and death occurs in a foreign state, in the case of *Commonwealth* v. *Ball*, 126 Ky. 542 (1907), the defendant inflicted a mortal blow on the deceased in this state; and he was quickly removed to Tennessee, where death resulted. The court held that the crime was committed in this state and that the removal of the deceased to a foreign state was no act of the defendant. The New Jersey court in *Hunter* v. *State*, 40 N. J. Law 514 (1878), held that when a blow was given in that state and death resulted in another, New Jersey had jurisdiction over the crime; and in this decision the court said that the Virginia case of *Commonwealth* v. *Linton*, 2 Virginia Case 205 (1820), was the only case which held contra. The facts here are that the defendant stabbed a person in Virginia who went into another state and died. The Virginia court held that it could only punish the criminal for the felonious stabbing of a person and not for murder.

In *Stout* v. *State*, 76 Md. 317 (1892), the defendant poisoned a

person in Maryland, who went into Pennsylvania and died. It held that the laws of Maryland were violated and that Maryland could punish; while in *Green* v. *State*, 66 Ala. 40 (1880), the defendant gave a fatal blow in Alabama, which resulted in death in another state. Here the common law had been abrogated by statute, but the court said that the defendant could be held, in the absence of statute, and that death was only consequential to the defendant's act; while the West Virginia court, in *ex parte McNeeley*, 14 S. E. 436 (1892), held that where a man was shot in Kentucky and death occurred in West Virginia they had no jurisdiction over the case. The same view is taken by the New Jersey court in *State* v. *Carter*, 3 Duch. 499 (1859), because to hold a person in that state there must be some offense against the sovereignty of that state and the coming into the state was the will of the deceased and no act of the defendant.

The law seems to be fairly well settled that when a person standing in one state releases a deadly force which finds its mark in another state, notwithstanding that death may occur in a third state, that the state in which the blow was given has jurisdiction over the crime; and if there is any variance in the respective state courts as to which shall punish the criminal, it is probably due to the statutes 2 and 3 of Edward VI, which were taken as part of the common law by some states and omitted by others. And in the absence of statute there seems to be no provision for holding the defendant in state A, for no crime has been committed in that state.

ROY L. FEATHERSTONE.

CRIMINAL JURISDICTION—SITUS OF THE CRIME.—D, standing in X state, shoots B in Y state. B is carried to a hospital in Z state, where he expires.

Which state, or states, have jurisdiction over D if they are able to capture him within their boundaries? Our immediate problem is to attempt to suggest a method by which D may legally be tried for the murder in Z, the state in which the deceased died.

A brief analysis of the case will show that necessary elements of the crime of murder are lacking in each of the three states. The shot and the intent exist in X, the blow takes effect in Y, and the death occurs in Z.

It is the overwhelming weight of authority that a person, who in one jurisdiction, does an act which takes effect and constitutes a crime in another, may be tried and punished in the latter, Clark and Marshall, 494, *Lindsay* v. *State*, 38 Ohio State 507 (1882). Upon attempting to find the line of reasoning of these cases, it seems that the principal point is that the act took effect in this state. In other words, the force started in X state, had it's consummation here, or to quote from the dissenting opinion of Campbell, J. in *Tyler* v. *People*, 8 Michigan 320 (1860) "There is but one guilty act, the death is the mere consequence." This seems to be the only reason generally