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Criminal Jurisdiction--Situs of the Crime

Kirk Moberly
University of Kentucky

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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 its 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

advanced to support this view, yet it is obvious that the blow is only one of the three important elements of the crime. The act, coupled with the intent, occurred in X, the victim died in Z. It is to be seen then, that this rule as to the place of jurisdiction is purely arbitrary.

Would it not be as convenient and legally justifiable to hold that Z state has jurisdiction?

The arguments against holding D in Z state are based upon the theory that no part of the criminal act was done at the place of death. To quote Campbell, J. further, *Tyler v. People*, 8 Michigan 320 (1860). "The languishing alone, which is not any part of the offense," is the only act in Z. Holding him here would be "making the guilt of the offender spring from the acts of others, and not from his own."

It may be seen however, that the force put in motion by D, had it's fruition here. It was in Z state that the crime reached it's natural end. This element, the actual death, should certainly be as essential as any of the others, for how else may murder be consummated except by death of the victim? The very essence of murder is the death; without it there could be no crime of murder. Yet the place of death has no jurisdiction because there is no part of D's act here.

As to the other part of the able arguments of Campbell J. that holding D. in Z "is making the guilt of the offender spring from the acts of others, and not from his own," it is suggested that it is the common legal doctrine that one is responsible for the natural and probable consequences of his act, Beale, "The Probable Consequences of an Act," 33 Harvard Law Review 633 (1869) Gray, J. in *Commonwealth v. Macloon*, 101 Mass. Reports 1 says in this respect, "But it is the nature and the right of every man to move about at his pleasure, except so far as restrained by law; and whoever gives him a mortal blow assumes the risk of this, and in view of the law, as in that of morals, takes his life wherever he happens to die of that wound. "

The historical view is that the place of death should be the place of jurisdiction, Statutes 2 & 3 Edward VI, c. 24 (1548), declared that the offense should be indictable and punishable in the county in which the death occurred. This statute came into being early enough to be a part of our common law. It would seem from this that legally Z has as much grounds for having jurisdiction as does Y.

The reason generally given in order that Y might have jurisdiction is that D, by shooting the bullet into Y state, constructively follows it into the state. "There may be a constructive presence in a state, distinct from any personal presence, by which the crime may be consummated in another state and so be punishable there." *Grayson v. U S.* 272 Federal Reporter 553, (1921), *In Re Pallister*, 136 U. S. 257 (1889).

This is purely a fiction of law, as the word "constructively" admits, yet it is one of the strongest reasons for holding that Y has jurisdiction. Is it not possible that this same fiction might be logically

extended so as to include Z? Since D has constructively followed the victim into Y state, it is only reasonable that he should constructively follow the victim until natural and probable consequences of his act have run their full course. The general principle is that one who does a criminal act in one state may be held liable for its continuous operation in another; *Commonwealth v. Blanding*, 3 Pick. 304 (1825). "Anyone who publishes a libel in another state, in a newspaper which circulates in this Commonwealth is liable to indictment here." There is no more reason against holding D criminally liable in the state where his victim dies from the continuous operation of this mortal blow than in those to which the circulation of the libel extends the injury to reputation.

In conclusion, let it be noted that we have attempted to point out the followings facts: (1) The offense of murder or manslaughter is consummated only by the death of the party assailed, therefore the place of death should be as important as the place of assault; (2) There is no legal reasoning for not holding it so; (3) The reasoning in this type of case must of necessity be largely fictional, (4) And there is no good reason why this fiction may not be applied to the place of death as well as to the place of the assault.

Fortunately, this problem is now largely covered by statutes, making the offense indictable in either of the places mentioned in this discussion, 30 Michigan Law Review 238.

KIRK MOBERLY.