Criminal Law--Extradition--Fugitive from Justice--Commission of Overt Act in Demanding State as Rendering One a Fugitive Subject to Extradition

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RECENT CASE COMMENTS

Criminal Law — Extradition — Fugitive from Justice — Commission of Overt Act in Demanding State as Rendering One a Fugitive Subject to Extradition. — G, a resident of West Virginia, went into Maryland, and while there falsely represented to X that he was the owner of cattle in West Virginia and proposed to sell them to X. X came into West Virginia and bought the cattle, paying for them on their delivery by G’s agent in Maryland. G was indicted in Maryland, charged with “false pretense,” and a fugitive warrant was issued by the Governor of West Virginia. G seeks release in habeas corpus proceeding from allegedly illegal restraint under this warrant, contending that he is not a fugitive from justice from Maryland within the meaning of section 2, article 4, of the Federal Constitution. Held, that G was subject to extradition. Getzendanner v. Hiltner.¹

The principal case follows the well-recognized rule of law that where one commits an overt act in furtherance of a crime in one state, and departs to another state before the consummation of the crime, he is a fugitive from justice from the former state upon the completion of the offense.² A complementary rule which is equally well established is that the mere constructive presence of the accused in the demanding state at the time of the commission of the offense is insufficient to render him a fugitive from justice within the meaning of the Federal Constitution.³ In the only previous West Virginia case dealing with the question, H, with his wife’s consent, left his home in Virginia and came into West Virginia. H sent money to his wife for several months, and then ceased to furnish support. He was indicted in Virginia, charged with desertion. The West Virginia court held that H was not subject to extradition, having committed in Virginia no overt act in furtherance of the crime with which he was charged.⁴ On an

¹ 185 S. E. 694 (W. Va. 1936).
² Strassheim v. Daily, 221 U. S. 280, 31 S. Ct. 558 (1910); State v. Doeppe, 97 W. Va. 203, 124 S. E. 667 (1924); In re Sultan, 115 N. C. 57, 20 S. E. 375 (1894), 28 L. R. A. 294 (1895); In re Cook, 49 Fed. 833 (1892); Ex parte Hofstot, 180 Fed. 240 (1910); State v. Gerber, 111 Minn. 122, 126 N. W. 482 (1910); Ex parte Finch, 106 Neb. 45, 182 N. W. 565 (1921); Ex parte Ellis, 9 S. W. (2d) 544 (Mo. 1928).
³ Hyatt v. Corkran, 188 U. S. 691, 23 S. Ct. 456 (1902); State v. Hall, 115 N. C. 811, 20 S. E. 729 (1894), 28 L. R. A. 289 (1895); People v. Meyering, 348 Ill. 17, 180 N. E. 560 (1932); Taft v. Lord, 92 Conn. 539, 103 Atl. 644, L. R. A. 1918E 545 (1918); In re Mohr, 73 Ala. 503, 49 Am. Rep. 63 (1883); Wilcox v. Nolze, 34 Ohio St. 520 (1878).
⁴ State v. Doeppe, 97 W. Va. 203, 124 S. E. 662 (1924).
identical set of facts the Minnesota court reached a result directly contra to that reached by the West Virginia court.\(^5\)

As these desertion cases show, the only controversial question involved is as to what constitutes an overt act, which, when committed in the demanding state, will render one subject to extradition. No court has as yet explicitly defined such act, but Justice Cardozo, in a New York case involving international extradition,\(^6\) seems to suggest that the phrase "overt act" should have the same meaning in extradition cases as in cases of criminal attempts.\(^7\) However, it is submitted that in the case of a criminal attempt the phrase "overt act" must necessarily be more strictly defined than in an extradition case, because, in the former the holding of the court will be decisive as to whether the accused will suffer a deprivation of liberty or property, while in the latter the sole issue is as to whether the accused will be turned over to the demanding state to stand a fair trial for his alleged misdeeds. In the principal case the mere offer by the accused to sell something to which he did not have title, unaccompanied by more, would probably not be held to be an overt act sufficient to render him guilty of a criminal attempt, yet it would be unjust to hold that although there has been a crime committed, the criminal is immune to condign punishment so long as he remains outside the boundaries of the state which was injured by his act.

The constructive presence doctrine is sociologically undesirable in that it affords to criminals a loophole whereby they may escape punishment for their malefactions. The rule followed in the principal case tends to modify the effect of the constructive presence doctrine, and should therefore be liberally applied. By making a liberal application of the rule, and holding in the principal case that the accused was a fugitive from justice, the West Virginia court reached a result which is eminently sound.

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**Evidence — Hearsay — Res Gestae Exception — Necessity That Declarant Have Knowledge — Qualifications of Ordinary Witness.** — Action to recover for personal injuries. Plain-