Florida Law Review

Volume 5 | Issue 4 Article 8

December 1952

Criminal Law: Personal Jurisdiction Obtained by Kidnaping

Paris G. Singer

trial, upon a showing that the jury has received evidence out of court or that any of the jurors have been guilty of misconduct.

In view of this practice of permitting jurors to read nonprejudicial publications, it would appear that Florida is aligned with decisions in other jurisdictions.[17] To obtain a reversal of conviction the defendant should prove (1) that he has been prejudiced by the publication, (2) that the jurors read the prejudicial newspapers, and (3) that the jurors could not render a fair and impartial verdict after having been exposed to the prejudicial matter. If the defendant is successful in establishing these points, a new trial is granted. It may be concluded, therefore, that reading of newspapers in the jury room by Florida jurors does not constitute reversible error unless thereby the defendant is denied his constitutional right of trial by a fair and impartial jury.[18]

G. ELIZABETH TAYLOR

CRIMINAL LAW: PERSONAL JURISDICTION OBTAINED BY KIDNAPING

Frisbie v. Collins, 342 U.S. 509 (1952)

Petitioner, convicted of murder in a Michigan state court, sought a writ of habeas corpus in the federal district court on the ground that his abduction in Illinois by Michigan law enforcement officers and forcible return to Michigan to stand trial violated the Federal Kidnaping Act[1] and his rights under the due process clause of the Fourteenth Amendment. The district court denied the writ on the ground that the manner of acquiring personal jurisdiction is immaterial, but the court of appeals reversed on the authority of the Federal Kidnaping Act.[2] On certiorari, HELD, neither the Federal Kidnaping Act nor the due process clause invalidates respondent's conviction. Judgment of the district court reinstated.

It is settled that an otherwise valid conviction of crime, even

[17]North v. State, ____So.2d____ (Fla. 1952); Shepherd v. State, 46 So.2d 880 (Fla. 1950).

[18]FLA. CONST. Decl. of Rights §11.

[1]18 U.S.C. §1201 (Supp. 1952).

[2]Collins v. Frisbie, 189 F.2d 464 (6th Cir. 1951).

though jurisdiction of the person is obtained by illegal means, is not thereby vitiated.[3] This principle, here applied by the Court, rests on two bases: first, the vital interest of a state in enforcing its criminal law, an interest far more important than the private interest of the criminal whose rights may be violated; and, second, the remedy afforded the accused in the form of a civil right of action against his abductors, regardless of conviction or acquittal.[4] From the due process standpoint, according to the principle followed in the instant case, observance of the customary procedural safeguards after jurisdiction of the person has been obtained furnishes adequate protection to the individual.

The court of appeals, in refusing to accept the reasoning of the prior decisions, held that the Federal Kidnaping Act invalidates a conviction based on jurisdiction obtained by abduction, arguing that to hold otherwise would encourage violation of criminal statutes by the very officers sworn to enforce them.[5] This particular statute has not been construed previously as to its application to law enforcement officers, but the words "or otherwise" in its clause reading "and held for ransom or reward or otherwise" has been construed in other circumstances to embrace any benefit whatsoever to the kidnaper.[6] Although the Supreme Court in reversing the judgment of the court of appeals has still not held that an abduction under the instant circumstances violates the kidnaping act, nevertheless the opinion does state, ". . . we assume, without intimating that it is so, that the Michigan officers would have violated it if the facts are as alleged."

The extradition clause of the Constitution[7] and its implementing legislation,[8] being unenforceable against a sovereign state,[9] are directory and not mandatory. This weakness leaves the offended state without vindication whenever rendition of the accused for trial is refused or speed in apprehending the fugitive becomes essential. Indeed, the

---

[3]Pettibone v. Nichols, 203 U.S. 192 (1906); *In re* Johnson, 167 U.S. 120 (1897); Mahon v. Justice, 127 U.S. 700 (1888); Ker v. Illinois, 119 U.S. 436 (1886).

[4]See note 3 *supra*.

[5]Collins v. Frisbie, 189 F.2d 464 (6th Cir. 1951); *see* United States v. Lee, 106 U.S. 196, 220 (1882).

[6]Gooch v. United States, 297 U.S. 124 (1936).

[7]U.S. CONST. Art. IV, §2.

[8]18 U.S.C. §3182 (Supp. 1952).

[9]Kentucky v. Dennison, 24 How. 66 (U.S. 1861). *But see* Drew v. Thaw, 235 U.S. 432, 439 (1914).

instant opinion fails to indicate that Michigan even asked for rendition.

Earlier judicial concern over the weakness of rendition and extradition procedures[10] led to the passage of the Fugitive Felon Act,[11] which authorizes federal agents to return fugitive criminals to the federal judicial district embracing the site of the state crime for federal prosecution as a fugitive[12] and thereby complements the extradition process.[13] Under the principles of comity the state and the United States can each prosecute for the separate crimes involved, the state as regards the original violation of its law and the federal court as regards the illegal flight across state lines.[14] Proper use of the extradition clause, the Fugitive Felon Act, or both, largely obviates any need for kidnaping.

No one can deny either the inherent justice of bringing criminals to trial or the importance of upholding the integrity of state prohibitions of criminal conduct, but to encourage law enforcement officers to violate the law themselves is hardly a sound means of effectuating these desirable ends.[15] The instant doctrine has history behind it but not logic.

On the one hand, if the state interest in convicting criminals is in reality paramount, then why cannot all evidence, however obtained, be used? If the evidence exists the accused has no more right to complain of an illegal seizure of it than he has to protest against illegal seizure of his person. In either event he should be convicted

---

[10]Pettibone v. Nichols, 203 U.S. 192 (1906); Mahon v. Justice, 127 U.S. 700 (1888); Dow's Case, 18 Pa. (6 Harris) 37 (1851).

[11]18 U.S.C. §1073 (Supp. 1952): "Whoever moves or travels in interstate or foreign commerce with intent either (1) to avoid prosecution . . . under the laws of the place from which he flees, for murder, kidnaping, burglary, robbery, mayhem, rape, assault with a dangerous weapon, or extortion accompanied by threats of violence, or attempt to commit any of the foregoing offenses as they are defined either at common law or by the laws of the place from which the fugitive flees . . . shall be fined . . . or imprisoned . . . ."

"Violations of this section may be prosecuted only in the Federal judicial district in which the original crime was alleged to have been committed . . . ."

For a brief summary of the legislative history see United States v. Brandenburg, 144 F.2d 656, 659 (3d Cir. 1944).

[12]United States v. Conley, 80 F. Supp. 700 (D. Mass. 1948).

[13]Middlemas v. District Court, 233 P.2d 1038 (Mont. 1951).

[14]United States v. Miller, 17 F. Supp. 65 (W.D. Ky. 1936).

[15]*See* McNabb v. United States, 318 U.S. 332, 340 (1943), for an enlightened view of minimum standards of federal criminal procedure.

if he committed the crime, according to the instant doctrine. Torture is, of course, in a class by itself;[16] from the standpoint of an accurate trial the objection in most instances is not to the pain suffered but rather to the falsity of the confession thereby produced.[17]

On the other hand, if the purported rationale of distinction is an inherent differentiation in importance between jurisdiction of the person and the other essential parts of the trial, then why is such differentiation not observed in civil trials? If the inducement to enter a state is fraudulently obtained by the plaintiff for the purpose of serving process, no jurisdiction of the person results even though entry of the defendant was voluntary and intentional.[18]

Finally, the advisability of stirring up inter-police hostilities is questionable. It is not unlikely that law enforcement officers in some states, taking their duties seriously, will use violence in defending their own jurisdiction. Most of the reported decisions, however, have dealt with persons accused of aggravated or heinous crimes who have been apprehended through the cooperation of the local and foreign police.

The Court here should have stated flatly that abductions such as occurred in this case are in themselves criminal violations of the Federal Kidnaping Act. This would create a desirable restriction on such acts which the Court seems to advocate yet is unwilling to effectuate. With no such inhibitory restriction what is to prevent judgment-proof law enforcement officers from roaming at will in search of minor violators, thereby breaching one's right to freedom from unlawful seizure?[19]

PARIS G. SINGER

---

[16]Ashcraft v. Tennessee, 322 U.S. 143 (1944); Chambers v. Florida, 309 U.S. 227 (1940); Brown v. Mississippi, 297 U.S. 278 (1936).

[17]Bram v. United States, 168 U.S. 532 (1897).

[18]Wyman v. Newhouse, 93 F.2d 313 (2d Cir. 1937).

[19]U.S. CONST. Amend. IV. See an excellent discussion of this point in Pettibone v. Nichols, 203 U.S. 192, 217 (1906).