

U.S.A. v. B.C-F.

Facts

The defendant met in Nogales (Mexico) one of the irregular migrants whose illegal entry in the United States he facilitated. The latter delivered to the defendant three passport-photographs and 80 USD. At a later date, the defendant handed over to the said migrant, while still in Mexico, a forged alien registration receipt card, which the migrant used to enter into the United States. The defendant further instructed the migrant to go to a specific coffee shop in Tucson (Arizona, United States), where he would find employment. Sometime after, the defendant visited the migrant to collect the balance of the price of the false card supplied. He also discussed the forged card of the other irregular migrant (brother of the migrant already in the United States) whose smuggling venture to the United States he also arranged for. The procedure followed was similar to the one explained, except that (i) this migrant paid 150 USD for the false alien registration card, (ii) the card was to be delivered in Tucson. When the time came, the defendant showed to the migrant a hole in the border fence through which he could cross into the United States. The latter, acting at the defendant's advice, also found employment at the same place as his brother. He received his fraudulent alien registration card in the United States.

The defendant was accused of (i) counterfeiting alien registration cards, and (ii) encouraging and inducing unlawful entry into the United States. He was convicted. An appeal followed.

Elements of success

- Establishment of jurisdiction
- Teleological and systemic legal interpretation

Challenges

- Determination *locus delicti commissi*
- Collection of evidence

Background

After a first indictment, the State requested the dismissal thereof because the irregular migrants – witnesses in the case - had returned to Mexico. When the migrants returned to the United States, the defendant was charged in a new indictment.

Key issues

- ❖ Jurisdiction

Investigation

Investigations relied much on testimonial evidence from the smuggled migrants. The Prosecution requested the dismissal of the first indictment precisely because, upon the migrants' return to Mexico, it appeared there would be no evidence available to prove the charges against the defendant.

Reasoning

On appeal, the Defence argued *inter alia* (i) breach of the double jeopardy maxim and (ii) violation of the principle of legality.

In respect of the charges of ‘counterfeiting alien registration cards’, the acts constituting the crime took place either in Arizona (United States) or Mexico. However, there was no available evidence to allow a jury to select one place over the other. With regard to the charges of ‘encouraging and inducing the unlawful entry’ into the United States of irregular migrants, the acts constituting the crime took place in Mexico. The encouragement to enter the United States was given in Mexico. Even though one false card was delivered in Tucson, the promise to deliver it was made in Mexico. It was this promise that constituted the encouragement to travel illegally to the United States. The crimes were complete before either migrant entered the United States. The critical matter was thus to ascertain whether crimes cognizable under the laws of the United States had been committed. According to previous Supreme Court jurisprudence, some crimes are of such nature “*that to limit their locus to the strictly territorial jurisdiction would be greatly to curtail the scope and usefulness of the statute and leave open a large immunity for frauds as easily committed by citizens on the high seas and in foreign countries as at home*”. It is to be inferred from the nature of the offences whether the *locus* includes the high seas or foreign countries.

Acts of inducing irregular migrants to enter the United States or of

counterfeiting migrants’ registration cards have no purpose unless they are intended to facilitate the unlawful entry of migrants or their continued illegal stay in the United States. The effect of such crimes (committed out of the United States) takes place in the United States. It is unimportant where the acts constituting the crime occur.

No breach of the double jeopardy maxim took place given that the first indictment was dismissed.

Verdict/Decision

Appeal partially granted. The charges relating to ‘counterfeiting alien registration cards’ were vacated and a new trial was ordered. The conviction for ‘encouraging and inducing the unlawful entry into the United States of irregular migrants’ was confirmed.

Opinion

This is an important landmark case whereby it was established that crimes committed out of the territory of the United States may still trigger the jurisdiction of American courts as long as said crimes and substantiating acts produce effect in, or extend to, the territory of the United States. In line with this approach, it is possible – though through different legal theories (e.g. vis-à-vis Italy or Spain) – to expand national jurisdiction beyond the territory, waters and air under the control of the State, e.g. acts practiced in international waters.