

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

UNPUBLISHED

Plaintiff-Appellee,

v

No. 193488

Ionia Circuit Court

STEPHEN ALLEN COOK,

LC No. 95-010405 FH

Defendant-Appellant.

Before: McDonald, P.J., and O’Connell and Smolenski, JJ.

O’CONNELL, J. (dissenting).

I respectfully dissent. Defendant worked for a Michigan company as a long-haul truck driver and had picked up in Nevada a load of produce to haul to Michigan. After commencing his return trip to Michigan, defendant, after going very few miles, concluded that he no longer wanted to be a truck driver, that the job was too stressful for him. He drove the truck to a truck stop, filled it with diesel fuel and fuel for the refrigeration unit, which he left running, and walked away. He failed to tell his employer. By the time the truck was discovered in Nevada and recovered, most of the produce was unsalvageable. Defendant was subsequently prosecuted in Michigan, and was convicted of malicious destruction of property (MDOP) over \$100. MCL 750.377a; MSA 28.609(1).

I conclude that the courts of Michigan lack jurisdiction over this offense. A state has jurisdiction, in general, only over those offenses committed within its physical borders. *People v Blume*, 443 Mich 476, 480; 505 NW2d 843 (1993). In the present case, all of the acts constituting the crime of which defendant was convicted took place in Nevada. Therefore, considering only the general rule, Michigan courts would have no jurisdiction over defendant’s conduct in Nevada.

The majority concludes that the present case falls within an exception to the rule that a state has jurisdiction only over acts committed within its bounds. The United States Supreme Court, in *Strassheim v Daily*, 221 US 280, 285; 31 S Ct 558; 55 L Ed 735 (1911), held that a state may exert extra-territorial jurisdiction over certain acts occurring outside the state itself, but which “are intended to have, and that actually do have, a detrimental effect within the state.” Our Supreme Court has accepted this doctrine. *Blume, supra*. The prosecution argues that because defendant’s actions were intended

to harm his Michigan employer and because those actions did cause financial harm to his employer, the courts of Michigan have jurisdiction over the offense.

I believe that the prosecution has construed the exception far too broadly. The exception that prosecution here attempts to utilize is of limited application, as where an individual in one state criminally defrauds the resident of another state, which fraud is consummated in the state of the defrauded party. See *Strassheim, supra*, pp 281-282. In contrast, the destruction of property, owned by a Michigan resident but located in another state, is not sufficient to satisfy the requirements that the acts be intended to cause, and actually cause, detrimental effects in this state. Further, contrary to the prosecution's contention, the fact that the produce in the present case was being transported to Michigan is of no consequence. Were the law as the prosecution suggests, one who vandalizes the automobile of a Michigan resident in another state, but while the Michigan resident is returning to Michigan, would be subject to prosecution in Michigan. Clearly, such a suggestion is ludicrous on its face, yet this hypothetical is virtually identical in substance to the instant case.

For this reason, the present offense does not fall within the exception to the general rule that the courts of a state have jurisdiction only over offenses committed within that state. Because the conduct presently in issue took place in Nevada and there is no justification for the courts of Michigan to exert extra-territorial jurisdiction, this state is without authority to bring defendant to trial. *People v Carpentier*, 446 Mich 19, 47; 521 NW2d 195 (1994). While defendant's employer may have civil remedies available in the courts of Michigan, any criminal prosecution of defendant may not be commenced in Michigan.

I would reverse.

/s/ Peter D. O'Connell