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Gambling Ships

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Case Note

GAMBLING SHIPS: A vessel sailing from the United States cannot legally open its casino until it reaches the high seas. *United States v. Diamond Casino Cruise, LLC*, 2013 WL 103563 (S.D. Ga. Jan. 4, 2013) (No. 4:12-CR-141).

INTRODUCTION

Under federal law, ships must sail beyond the three-mile limit before they can open their casinos. This is because

[t]he three-mile limit is the traditional line separating the territorial sea of the United States from the high seas. Established in 1793 by then-Secretary of State Thomas Jefferson, it is generally agreed that he set the distance at three miles because that was the range of contemporary cannons. . . . To be on the safe side, most ships sail slightly further than is actually required. For an interesting case which arose because a gambling ship failed to go far enough out to sea, see *People v. Stralla*, 96 P.2d 941, 1940 AMC 239 (Cal. 1939).¹

For many years, *Stralla* was the only reported case involving a gambling ship accused of opening its casino while still in state waters.² Now, however, it has a worthy companion.

FACTS

In 2005, Alvin H. Shuman, a 63-year-old Myrtle Beach, South Carolina businessman, began offering “cruises to nowhere” from Savannah, Georgia

¹Robert M. Jarvis, *Case Note*, 29 J. Mar. L. & Com. 449, 449 nn.1-2 (1998). For a further discussion of the three-mile limit, see Anthony N. Cabot & Keith C. Miller, *The Law of Gambling and Regulated Gaming: Cases and Materials* 438-48 (2011) (collecting sources).

²*Stralla* arose from the operations of the REX, a Los Angeles gambling ship owned by Anthony Cornero Stralla, a bootlegger whose nicknames included “The Admiral” and “Tony the Hat.” For a further look at the REX, see Ernest Marquez, *Noir Afloat: Tony Cornero and the Notorious Gambling Ships of Southern California* (2011), and Ed Cray, *High Rollers on the High Seas*, Cal. Law., Dec. 1982, at 48.

using the 160-foot MIDNIGHT GAMBLER II.³ In 2009, however, a dispute between the owner and the mortgagee of the MIDNIGHT GAMBLER II forced Shuman to look for another vessel.⁴

Shuman settled on the 184-foot SUNCRUZ VII, which he renamed the DIAMOND ROYALE.⁵ He also formed two new companies: Marine Charters LLC (“MC”) to own the ship and Diamond Casino Cruise LLC (“DCC”) to operate it.

Initially, the DIAMOND ROYALE kept its casino closed until it reached international waters. Accordingly, players could not gamble for the first and last hours of each trip. Soon, however, the DIAMOND ROYALE was allowing some gambling to take place while still en route to international waters.⁶

During each voyage, the DIAMOND ROYALE passed a U.S. Coast Guard station.⁷ Taking note of this fact, DCC decided to seek out counsel

³For a photograph of Shuman, see <http://www.northmyrtlebeachonline.com/modules/AMS/index.php?storytopic=0&start=715>. The MIDNIGHT GAMBLER II was built in 1998. For a photograph of the ship, see http://www.vesselarrest.com/vessel_case.php.

As has been explained elsewhere, Shuman had been eager to enter the industry for some time:

Shuman is a gambler himself. “Oh yeah, I love gambling,” he said. So much so, he wanted to start up his own casino boat. He looked at Myrtle Beach, Savannah and Florida. “Of all the areas, we think Savannah will support the best,” he told us.

Don Logana, *Another Casino Boat Coming to Chatham County*, WTOG-TV (Savannah-CBS-Ch. 11), May 17, 2005, available at <http://www.wtoc.com/Global/story.asp?s=3357540&clienttype=printable>.

Gambling ships began arriving in Savannah in 1993 (shortly after Congress legalized them) but each proved short-lived. See Brett Bell, *Casino Boat Gambles on River Street*, Savannah Morn. News, Jan. 14, 2004, available at http://savannahnow.com/stories/011404/LOC_casinoboot.shtml (reviewing the fates of the ATLANTIC STAR, QUEEN OF HEARTS, SAVANNAH LADY, and SOUTHERN ELEGANCE). After yet another vessel (the MILLIONAIRE’S CASINO) failed, Shuman took the plunge. See Brett Bell, *Midnight Gambler II Decides to Take Bet, Sail from Savannah*, Fla. Times-Union (Jacksonville), July 15, 2005, at A1.

⁴See *Lara Holdings, Inc. v. M/V Midnight Gambler II*, 2010 WL 1976623 (S.D. Ga. May 17, 2010) (No. 4:09-CV-64).

⁵The SUNCRUZ VII was built in 1985. Before being acquired by Shuman, it was part of Gus Boullis’s infamous Florida gambling boat empire. See Trevor Aaronson, *The Bad Bet*, Broward-Palm Beach New Times, Nov. 10, 2005, available at <http://www.browardpalmbeach.com/2005-11-10/news/the-bad-bet/full/> (“Lucrative gambling boats like the Sun Cruz VII afforded Boullis a lavish lifestyle, including his impressive Hallandale Beach home.”) For photographs of the DIAMOND ROYALE, see <http://www.shipspotting.com/gallery/photo.php?lid=1615040> and <http://www.flickr.com/photos/souloyster/4030890164/in/photostream/>.

⁶Telephone Interview with Julie M. Wade, Esq., lead criminal defense counsel for MC and DCC (Feb. 18, 2013).

⁷Known as Station Tybee, the facility is

located North of Tybee Island and East of Downtown Savannah. The station shares the property with Fort Pulaski National Monument as it guards the Savannah River Entrance. Station Tybee, assigned to Coast Guard Group Charleston, District 7 Miami, is small with 28 men and women assigned to perform missions of Search and Rescue (SAR), Enforcement of Federal Laws and Treaties, and Environmental Protection.

and ask if it could avoid the long trip to the high seas by docking near this facility. Remarkably, it was told that a definitive answer did not exist.⁸

Having not received a flat-out “no,” DCC decided to take a chance. And so, in July 2010, the DIAMOND ROYALE began conducting all of its gambling operations while remaining in state waters.⁹

For a time, everything went well.¹⁰ Indeed, on many nights the local police chief could be seen playing in the DIAMOND ROYALE’s casino.¹¹ But in

USCG - Station Tybee, WALB-TV (Albany, Ga.-ABC/NBC-Ch. 10), available at <http://www.walb.com/story/680273/www.walb.com>.

⁸Wade Telephone Interview, *supra* note 6. The identity of the lawyers who gave this advice has never been revealed, nor has their advice ever been described with any particularity. According to the prosecutors:

During the course of the government’s investigation, several witnesses interviewed suggested that one or more of the defendants consulted with an attorney regarding the legality of conducting casino gambling inside Georgia waters without transiting beyond the three mile limit. No witnesses indicated that any attorney advised defendants that operating a gambling casino inside the three mile limit was lawful, but since the government was not privy to any such discussion, it is not clear what [the] attorneys may have advised, if anything.

Government’s Motion In Limine to Exclude Defenses of Good Faith, Advice of Counsel and Public Authority, United States v. Diamond Casino Cruise, LLC (S.D. Ga.) (No. 4:12-CR-141) (CM/ECF Doc. 89, filed Dec. 7, 2012), at 5 (text and footnote combined). In replying to this motion, the defendants were equally opaque:

The Diamond Royale was docked at the Bull River Bridge and was readily apparent in the intracoastal water way and shipping channel to anyone traveling to Tybee Island. The Coast Guard Station is located in state waters near the Fort Pulaski area. Grand jury testimony revealed that the Diamond Royale frequently positioned itself directly in front of the United States Coast Guard Station, which the operators of the Vessel had determined was “federal waters” because of the federal jurisdiction there. . . . When defendants were questioned by authorities, they consistently stated their intent and belief that they allowed gambling aboard the Vessel only in “federal waters” that were subject to federal jurisdiction. Testimony exists that certain individuals may have sought legal advice about the practice of gambling in “federal waters” that were subject to federal jurisdiction.

Defendants’ Joint Response to the Government’s Motion In Limine to Exclude Defenses of Good Faith, Advice of Counsel and Public Authority, United States v. Diamond Casino Cruise, LLC (S.D. Ga.) (No. 4:12-CR-141) (CM/ECF Doc. 101, filed Dec. 20, 2012), at 2-4 [hereinafter *Joint Response*].

⁹See Indictment, United States v. Diamond Casino Cruise, LLC (S.D. Ga.) (No. 4:12-CR-141) (CM/ECF Doc. 3, filed July 11, 2012), at 3.

¹⁰In describing his visit to the DIAMOND ROYALE during this period, one passenger wrote:

- The boat did not rock back and forth which is a huge plus.
- Only one craps table.
- Enough blackjack tables to be able to find an empty seat.
- Not too smoky. The ventilation was decent.
- Not especially clean, but not dirty either.
- Poor drink choices. Only Bud/BL on draft for beers. Mostly house spirits, with only a few top shelf selections.
- Decent live music on the top deck.
- Friendly staff.
- Overall it was a good experience. It’s four hours from Atlanta and I would go back for sure.

<http://www.yelp.com/biz/diamond-casino-savannah> (posted July 31, 2011, by “Bryce O.”).

¹¹Wade Telephone Interview, *supra* note 6.

November 2011, the fun came to an abrupt end when officers from multiple agencies, led by the U.S. Department of Homeland Security (“DHS”), shut down the ship and seized nearly \$1 million.¹² Some believe the DHS acted due to a tip from a career criminal named Stacey Paul Waddell, who bore a grudge against the vessel.¹³ In July 2009, Waddell had been arrested for trying to extort \$60,500 from the DIAMOND ROYALE by claiming he had videotape proof it was cheating customers.¹⁴

In March 2012, the United States began civil forfeiture proceedings.¹⁵ Subsequently, in July 2012, a one-count criminal indictment was unsealed accusing MC and DCC, as well as Gregory L. Sicilia, 59 (the casino’s general manager), John H. Sternberg, 45, and Jeffrey M. Thompson, 38 (the ship’s two captains), of violating 18 U.S.C. § 1955 (which makes it a federal crime to run a large-scale gambling operation in violation of state law).¹⁶

In pertinent part, the indictment read as follows:

5. The laws of Georgia, that is, O.C.G.A. § 16-12-22, and South Carolina, that is, S.C.Code Ann. § 16-19-40 and 50, prohibited gambling of the type conducted aboard the Vessel, that is the casino operations consisting of slot machines, gaming tables for poker, craps, blackjack and other gambling games, and roulette wheels. The boundaries of Georgia and South Carolina extended three miles seaward of the ordinary low water mark of those portions of the coast and coastal islands in direct contact with the open sea.

6. On a regular and routine basis, Defendants unlawfully opened and operated the casino aboard the Vessel within the state waters of Georgia and South Carolina.¹⁷

¹²See *Multiple Agencies Raid Diamond Casino*, WTOC-TV (Savannah-CBS-Ch. 11), Nov. 14, 2011, available at <http://www.wtoc.com/story/16038996/multiple-agencies-raid-diamond-casino>. The actual amount recovered was \$986,047.87. See *Complaint*, United States v. \$986,047.87 in United States Currency (S.D. Ga.) (No. 4:12-CV-84) (CM/ECF Doc. 1, filed Mar. 28, 2012). This money came from the ship’s cage (\$189,255); a DCC employee named Kevin Gage (\$23,110); DCC’s office (\$500); and DCC’s bank accounts (\$773,182.87). See *Answer of Alvin Shuman*, United States v. \$986,047.87 in United States Currency (S.D. Ga.) (No. 4:12-CV-84) (CM/ECF Doc. 18, filed June 28, 2012).

¹³Wade Telephone Interview, *supra* note 6.

¹⁴See Bryan County Now, *Richmond Hill Man Arrested in Savannah*, Savannah Morn. News, Aug. 5, 2009, available at <http://m.savannahnow.com/bryan/2009-08-05/richmond-hill-man-arrested-savannah>. Following his arrest, Waddell’s federal supervised release (on charges stemming from a 2003 bank fraud case) was terminated and he was sent back to prison. See Joint Response, *supra* note 8, at 3-4.

Shortly after the raid on the DIAMOND ROYALE, Waddell crowed on the Facebook page of the Savannah Poker Blog: “To all my friends who thought I lost it . . . this says it all . . . Confused?? Just Google my name.” See http://www.facebook.com/permalink.php?story_fbid=175453585881744&id=287840661228348 (Dec. 27, 2011, at 5:38 p.m.).

¹⁵Shuman’s efforts to quash these proceedings ultimately proved unsuccessful. See *Diamond Casino Cruise, LLC v. Department of Homeland Security*, 2013 WL 150198 (S.D. Ga. Jan. 14, 2013) (No. 4:12-CV-98).

¹⁶See U.S. Attorney’s Office—Southern District of Georgia, *General Manager and Two Captains of Casino Cruise Ship Indicted for Operating Illegal Gambling Business*, July 24, 2012, available at http://www.justice.gov/usao/gas/press_releases/2012/20120724_diamond.html.

¹⁷Indictment, *supra* note 9, at 2-3.

Having set out its case against the defendants, the government demanded that they

forfeit to the United States of America . . . any property, including money, used in violation of the offense [including]:

- (1) Cash proceeds of the offense charged in Count One, in the amount of \$986,042.87 [sic], seized in [the] November 2011 [raid];
- (2) An additional sum of money in the amount of at least \$6,000,000, which constitutes gross proceeds of the offense charged in Count One; and
- (3) Motor Vessel (M/V) Diamond Royale, also known as M/V Sun Cruz VII, Official Number 686316.¹⁸

In October 2012, a superseding indictment was issued.¹⁹ In addition to dropping MC from the case,²⁰ it deleted the references to South Carolina's gambling laws because by now it was clear that the DIAMOND ROYALE had stayed in Georgia during the relevant period.²¹

PROCEEDINGS

From the outset, DCC, Sicilia, Sternberg, and Thompson proclaimed their innocence.²² But in December 2012, Thompson violated his bail terms and was put in jail.²³ Unwilling to remain incarcerated until the trial, he cut a deal with the government and agreed to testify that his co-defendants knew all

¹⁸Id. at 4.

¹⁹See *Superseding Indictment*, United States v. Diamond Casino Cruise, LLC (S.D. Ga.) (No. 4:12-CR-141) (CM/ECF Doc. 68, filed Oct. 10, 2012).

²⁰MC had argued, with some justification, that as the ship's owner it had no control over how DCC operated the casino. See *Motion to Dismiss Marine Charters*, United States v. Diamond Casino Cruise, LLC (S.D. Ga.) (No. 4:12-CR-141) (CM/ECF Doc. 55, filed Sept. 24, 2012).

²¹The indictment had assumed that the DIAMOND ROYALE had entered South Carolina waters because of Savannah's proximity to the states' shared maritime boundary. See generally *Georgia v. South Carolina*, 497 U.S. 376 (1990) (determining boundary line).

²²While DCC and Sicilia paid for their counsel, Sternberg and Thompson were given court-appointed attorneys. See *Docket Sheet*, United States v. Diamond Casino Cruise, LLC (S.D. Ga.) (No. 4:12-CR-141).

²³See *Petition for Action on Conditions of Pretrial Release*, United States v. Diamond Casino Cruise, LLC (S.D. Ga.) (No. 4:12-CR-141) (CM/ECF Doc. 96, filed Dec. 12, 2012), at 9 ("On December 7, 2012, the defendant was arrested by the Clarendon County (South Carolina) Sheriff's Office for unlawful possession of a firearm and unlawful carrying of a firearm.").

along that what they were doing was illegal.²⁴ As a result, DCC, Sicilia, and Sternberg were left with no choice but to plead guilty.²⁵

RULINGS

As Thompson was contemplating cooperating with the government, two pre-trial motions were decided that further doomed the defendants. On January 3, 2013, Magistrate Judge George R. Smith held that DCC could not yet invoke the Eighth Amendment:

Pursuant to 18 U.S.C. § 1915(d), the government seeks the “criminal forfeiture” of some \$7,000,000.00 that it believes represents the proceeds of the illegal gambling business. . . .

Diamond Casino contends that the proposed forfeiture would violate the Eighth Amendment prohibition against the imposition of “excessive fines.” . . . But Diamond Casino has yet to be found guilty of any offense; nor has the nature and extent of any criminality on its part been determined. Thus, the Court is not able to make the [necessary] proportionality assessment Other courts agree that a pretrial motion asserting the protections of the Excessive Fines Clause, prior to any criminal judgment or final forfeiture order, is simply premature [As such,] Diamond Casino’s motion to dismiss the indictment’s forfeiture allegation is not ripe for adjudication and must be reserved until such time as there is a conviction and the impending imposition of a criminal forfeiture.²⁶

On the following day, District Judge William T. Moore, Jr. delivered an even more fatal blow by agreeing with the government that the defendants were precluded from raising their three best defenses: good faith, advice of counsel, and public authority. In explaining why, he wrote:

²⁴Wade Telephone Interview, *supra* note 6. In a pre-sentencing motion asking that Thompson be shown leniency, the prosecutors advised:

The overall scope and quality of Thompson[’s] assistance to the government is considered “Very Significant,” given that the evidence he proffered was consistent with other evidence in the government’s possession, and, along with his offer to testify at trial, was deemed by the government to be a factor leading to the decision of at least one other defendant to enter a guilty plea.

Government’s 5K1.1 Motion with Respect to Cooperation of Defendant Jeffrey M. Thompson, United States v. Jeffrey M. Thompson (S.D. Ga.) (No. 4:12-CR-141-03) (CM/ECF Doc. 141, filed Apr. 29, 2013), at 2 (footnote omitted).

²⁵Wade Telephone Interview, *supra* note 6. As of this writing, none of the defendants has been sentenced (all are hoping for probation). *Id.* In the meantime, Shuman has decided to get out of the gambling ship business and is now trying to sell the DIAMOND ROYALE. *Id.* See also Stomar Inc., *Vessels for Sale—SunCruz VII*, at <http://stomarinc.com/vessels/SunCruzVII.html>.

²⁶United States v. Diamond Casino Cruise, LLC, 2013 WL 54001, at *1 (S.D. Ga. Jan. 3, 2013) (No. 4:12-CR-141), *report and recommendation adopted by* United States v. Diamond Casino Cruise, LLC, 2013 WL 220876 (S.D. Ga. Jan. 18, 2013) (No. 4:12-CR-141).

[First,] conviction under § 1955 does not require the Government to prove that Defendants intentionally violated Georgia criminal law, only that their actions fell within those prohibited by O.C.G.A. § 16-12-22. Because the Government need not prove any specific intent, any argument that Defendants acted in good faith is irrelevant to this case. . . .

[Second,] any argument that Defendants relied on the advice of counsel is inapplicable to this case because that defense only serves to negate proof of specific intent, which the Government is not required to establish when proving a violation of § 1955. . . .

[Third,] Defendants appear to misunderstand the public authority defense. It is insufficient to allege that the government knew of the illegal activity, but declined to intervene and enforce the law. Rather, Defendants must show that they relied on some communication from a public entity with the actual authority to permit the illegal activity. . . . In this case, Defendants have not established that they received any communication from a public authority permitting them to conduct their gambling operations within Georgia territorial waters. Furthermore, Defendants base their argument on the United States Coast Guard's ("USCG") inaction to their illegal activities. However, there is no indication that the USCG even had the actual authority to permit the illegal gambling activities alleged in this case.²⁷

CONCLUSION

Two days after the criminal indictment was unsealed, a Midway, Georgia resident named Michael Wilkerson brought a civil lawsuit against MC, DCC, and the DIAMOND ROYALE.²⁸ Relying on a Georgia statute that allows any member of the public to seek recovery of illegal gambling winnings,²⁹ Wilkerson alleged the same facts as the indictment. Recognizing that if the federal government was successful there would be nothing for

²⁷United States v. Diamond Casino Cruise, LLC, 2013 WL 103563, at *3-*4 (S.D. Ga. Jan. 4, 2013) (No. 4:12-CR-141).

²⁸See *Complaint*, Wilkerson v. Diamond Casino Cruise, LLC (S.D. Ga.) (No. 4:12-CV-202) (CM/ECF Doc. 1, filed July 26, 2012) [hereinafter Wilkerson Complaint]. See also Jan Skutch, *Midway Man Sues Savannah Gambling Ship for Losses*, Savannah Morn. News, Aug. 7, 2012, available at <http://savannahnow.com/news/2012-08-07/midway-man-sues-savannah-gambling-ship-losses#.UVKPVhyG2So>. Midway is approximately 30 miles south of Savannah.

²⁹See O.C.G.A. § 13-8-3(b), which provides:

Money paid or property delivered upon a gambling consideration may be recovered from the winner by the loser by institution of an action for the same within six months after the loss and, after the expiration of that time, by institution of an action by any person, at any time within four years, for the joint use of himself and the educational fund of the county.

To comply with this statute, Wilkerson's complaint stated, "[T]his action is brought by Plaintiff for the joint use of himself and the education fund of Chatham County, Georgia." See Wilkerson Complaint, *supra* note 28, at 7. Savannah is the county seat of Chatham County.

It should be pointed out that such statutes are relatively common and derive from the third-party recovery provision of the Statute of Anne:

Wilkerson to collect, the defendants allowed him to take a default judgment.³⁰

Robert M. Jarvis*

England's Statute of Anne, enacted in 1710, prohibited the enforcement of gambling debts and provided for a recovery action by the losing gambler, or any other person on the gambler's behalf, for gambling debts already paid. The most interesting portion of the statute lies in its recovery provisions. The statute permitted a bettor who lost ten pounds sterling or more to recover his loss and costs of litigation if he brought an action within three months. If the bettor failed to sue within three months, any other person could sue to recover the bettor's losses: however, any such recovery was split equally with the parish poor where the wager occurred. The independence of the United States rendered the Statute of Anne relevant, but not controlling. Therefore, each individual state was given the freedom to choose whether to apply the statute and its principles. Nevertheless, the Statute of Anne has become part of the law in a number of the states via case law or statute.

Joseph Kelly, *Caught in the Intersection Between Public Policy and Practicality: A Survey of the Legal Treatment of Gambling-Related Obligations in the United States*, 5 Chap. L. Rev. 87, 87-88 (2002) (footnotes omitted).

³⁰Wade Telephone Interview, *supra* note 6. As a result, a default judgment was entered against DCC in September 2012. See *Clerk's Entry of Default*, *Wilkerson v. Diamond Casino Cruise, LLC* (S.D. Ga.) (No. 4:12-CV-202) (CM/ECF Doc. 12, filed Sept. 7, 2012).

On the same day he sued the DIAMOND ROYALE, Wilkerson levied similar charges against the EMPRESS PRINCESS II, a gambling ship operating out of Brunswick, Georgia. See *Complaint*, *Wilkerson v. Golden Isles Cruise Lines, Inc.* (S.D. Ga.) (No. 2:12-CV-130) (CM/ECF Doc. 1, filed July 26, 2012). In November 2012, with the defendants vigorously contesting the case, Wilkerson voluntarily dismissed his lawsuit without prejudice. See *Order*, *Wilkerson v. Golden Isles Cruise Lines, Inc.* (S.D. Ga.) (No. 2:12-CV-130) (CM/ECF Doc. 28, filed Nov. 7, 2012).

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