

NOV 12 2004

For The Northern Mariana Islands
By [Signature]
(Deputy Clerk)

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN MARIANA ISLANDS

UNITED STATES OF AMERICA,

Plaintiff

v.

LIU, Shi Jun,

Defendant

Criminal No. 04-00033

ORDER DENYING MOTIONS
FOR DISCOVERY, A BILL OF
PARTICULARS, AND TO
DISMISS THE INDICTMENT

THIS MATTER came before the court on Wednesday, November 10, 2004, for hearing of defendant's pre-trial motions to dismiss the indictment, for a bill of particulars, and for discovery. Plaintiff appeared by and through its attorney, Assistant U.S. Attorney Jamie D. Bowers; defendant appeared personally and by and through his attorney, G. Anthony Long. Translator Norman Xing translated the proceedings for defendant.

1 THE COURT, having considered the written and oral arguments of counsel,
2 rules as follows:

3 Defendant advised the court that his motion for discovery had been rendered
4 largely moot by receipt from plaintiff of the information which had been requested.
5 The only outstanding request is for identity of any expert witnesses plaintiff intends to
6 call. Plaintiff represented to the court that at this time no decision had been made
7 about presenting expert testimony, and that defendant would be notified if expert
8 testimony is to be used. Accordingly, this motion is denied as moot, except for the
9 issue of expert witnesses, which has been satisfactorily addressed.
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13 Defendant's motion for a bill of particulars seeks a list of the flight attendants'
14 duties with which he interfered when he allegedly assaulted them. A court may direct
15 plaintiff to submit a bill of particulars to protect a defendant from double jeopardy, to
16 enable adequate preparation of a defense, and to avoid surprise at trial. United States
17 v. Giese, 597 F.2d 1170, 1180 (9th Cir. 1979).
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19 Title 49 U.S.C. § 46504 provides:

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21 An individual on an aircraft in the special aircraft jurisdiction of the
22 United States who, by assaulting or intimidating a flight crew member or
23 flight attendant of the aircraft, interferes with the performance of the
24 duties of the member or attendant or lessens the ability of the member
25 or attendant to perform those duties, or attempts or conspires to do
26 such an act, shall be fined under title 18, imprisoned for not more than
20 years, or both. However, if a dangerous weapon is used in assaulting
or intimidating the member or attendant, the individual shall be
imprisoned for any term of years or for life.

1 Accepting as true the allegations against defendant that he broke the nose of
2 one flight attendant, scratched and scraped a second flight attendant, and bruised a
3 third flight attendant, the court finds defendant's request for a bill of particulars not
4 well-taken. Under § 46504, the "interference" element can be either the prevention of
5 an attendant from conducting his or her duties, or the lessening of the ability of an
6 attendant to perform his or her duties, said duties relating to the safety and comfort of
7 all passengers. Plaintiff need not identify and prove any specific duty an attendant was
8 prevented or hindered from performing; rather, plaintiff need prove only that a flight
9 attendant's *ability to perform* his or her normal duties was prevented or lessened because
10 of the alleged assault by defendant. *See e.g. United States v. Hall*, 691 F.2d 48, 50 5th
11 Cir. 1982) (interference element occurs when crew is responding directly to
12 defendant's behavior, in derogation of their normal duties). Based upon the statute,
13 the cases interpreting it and the predecessor statute, the indictment, and the discovery
14 provided to date, the court, in an exercise of the discretion afforded to it by
15 Fed.R.Crim.P. 7(f), finds that defendant has sufficient information to enable him to
16 adequately prepare his defense, to be free from the fear of double jeopardy, and to
17 avoid surprise at trial. *See also e.g. Wong Tai v. United States*, 273 U.S. 77, 82, 47 S.Ct.
18 300 (1927).

19 Finally, defendant argues that 49 U.S.C. § 46504 is unconstitutionally vague as
20 applied to him because the statute fails to give a person of ordinary intelligence fair
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1 notice that his contemplated conduct is forbidden by the statute. *See eg United States*
2 *v. Harriss*, 347 U.S. 612, 618, 74 S.Ct. 808 (1954). Because this criminal action does
3 not involve an alleged violation of defendant's First Amendment rights, the "court
4 need only examine the vagueness challenge under the facts of the particular case and
5 decide whether, under a reasonable construction of the statute, the conduct in
6 question is prohibited." *United States v. Tabacca*, 924 F.2d 906, 912 (9th Cir. 1991)
7 (citation omitted).
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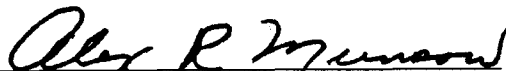
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10 Defendant does not argue that the statute is vague as to the alleged assault but,
11 rather, that he was unaware that the aircraft was traveling to the United States (and
12 thus was subject to the special aircraft jurisdiction of the United States) and that he
13 would be subject to United States criminal law. The "contemplated conduct
14 forbidden by the statute" is not being in an airplane within the special aircraft
15 jurisdiction of the United States; rather, the forbidden conduct is assaulting a crew
16 member or flight attendant with the result that the person's ability to conduct his or
17 her duties is prevented or lessened. Looking to the particular circumstances of this
18 case, the court finds that defendant's alleged actions come within a reasonable
19 construction of 49 U.S.C. § 46504. The court concludes that the "special aircraft
20 jurisdiction of the United States" is simply a jurisdictional element of this general
21 intent crime. *See United States v. Meeker*, 527 F.2d 12, 14 (1975) (construing
22 predecessor statute). As such, it must be proved, but plaintiff need not prove that
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1 defendant *knew* that he was within the special aircraft jurisdiction of the United
2 States. Accordingly, the court rejects defendant's "void for vagueness" argument and
3 finds that the statute is sufficient to put him on notice of the forbidden conduct.
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5 FOR THE FOREGOING REASONS, defendant's motions are denied.

6 IT IS SO ORDERED.

7 DATED this 12th day of November, 2004.
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13 ALEX R. MUNSON
14 Judge
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