

U.S. v. Kumar 750 F.3d 563 United States Court of Appeals for the Sixth Circuit (Decided April 22, 2014)

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INDIVIDUAL GUILTY OF REPORTING A FALSE DISTRESS CALL, IN VIOLATION OF 14 U.S.C. § 88(c), REQUIRED TO PAY ALL DIRECT AND INDIRECT COSTS INCURRED BY THE UNITED STATES COAST GUARD AND THE CANADIAN ARMED FORCES

U.S. v. Kumar
750 F.3d 563

United States Court of Appeals for the Sixth Circuit
(Decided April 22, 2014)

The Sixth Circuit Court of Appeals affirmed the District Court for the Northern District of Ohio’s decision, finding Kumar guilty of making a false report of a boat in distress by sentencing him to three months in prison and ordering him to pay restitution to the United States Coast Guard and the Canadian Armed Forces in the amount of \$489,007.70.

Danik Kumar was enrolled in his first year of Aviation Technology Program at Bowling Green State University, Ohio in March 2012.¹ While on a solo flight assignment on March 14, 2012, Kumar believed he observed a flare rising from a boat on Lake Erie.² Kumar reported the sighting to Cleveland Hopkins International Airport, which instructed Kumar to fly lower for a closer look.³ Upon further inspection, Kumar did not see a boat.⁴ However, Kumar reported that he saw additional flares from the boat, as he feared that recanting his story would hurt his chances of becoming a Coast Guard pilot.⁵ Kumar then described that the flares came from a 25-foot vessel with four people aboard, all wearing life jackets with strobe lights activated.⁶ The Coast Guard, with help from the Canadian Armed Forces, deployed a massive search and rescue mission.⁷ A month after the 21-hour search, Kumar admitted to the falsity of his report.⁸

Subsequently, Kumar was charged with making a false distress call, a class D felony per 14 U.S.C. § 88(c).⁹ Kumar pled guilty. The court sentenced Kumar to three months in prison with a three-year term of supervised release and ordered he pay restitution to the Coast Guard and the Canadian Armed Forces.¹⁰ Kumar appealed the decision.¹¹ The main crux of his appeal turned on whether the district court used proper discretion in ordering the amounts of restitution that Kumar had to respectively pay the Coast Guard and Canadian Armed Forces.¹²

Kumar contended that the approach taken by the Coast Guard in calculating its costs put too much emphasis on “all costs” while ignoring the “as result” limitation.¹³ Kumar argued he was only

¹ *U.S. v. Kumar*, 750 F.3d 563, 565 (6th Cir. 2014).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.* During the next twenty-one hours, four vessels and two aircrafts participated in the search. *Id.* Included in the search was: a 140-foot Coast Guard cutter with a crew of twenty, three smaller boats with a crew of four each, a 65-foot search and rescue helicopter with a crew of four, and the Canadian CC130 Hercules airplane with a crew of seven. *Id.*

⁸ *Id.*

⁹ *Id.* at 565-566; 14 U.S.C. § 88(c). One who knowingly and willfully makes a false distress call to the Coast Guard, is “liable for all costs the Coast Guard incurs as a result of the individual’s actions,” under 14 U.S.C. § 88(c).

¹⁰ *Id.* at 566.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* at 567. The calculations included direct costs (labor, employee benefits, fuel, maintenance), support costs, general and administrative costs, pension benefit adjustment, operating asset depreciation, and operating asset cost of capital. *Id.*

liable for costs directly attributable to his actions, not indirect costs.¹⁴ Kumar averred that restitution is not used to punish the wrongdoer but to restore the victim to actual losses proximately caused by the wrongdoing.¹⁵ The Sixth Circuit reconciled Kumar's argument by agreeing with the principle that the statute functions similarly to restitution.¹⁶ However, Section 88(c) does use the word "restitution." Rather, the court found, through the plain meaning of the language of the statute, that one who gives a false report is liable for "all costs," including indirect costs, incurred by the Coast Guard as a result of his actions.¹⁷ The court affirmed Kumar's liability for \$277,257.70 to the Coast Guard.

Secondly, Kumar argued that the amount of money ordered to pay to the Canadian Armed Forces pursuant to 18 U.S.C. § 3583(d) was incorrect as the district court had no authority to grant money to any agency, but the Coast Guard.¹⁸ The court determined that 14 U.S.C. § 88(c) did not apply to any party other than the Coast Guard.¹⁹ However, the court ordered restitution pursuant to 18 U.S.C. § 3583(d).²⁰ Section 3583(d) provides the sentencing court discretion to prescribe any condition that may be prescribed as a condition of probation under Section 3563(b), including restitution under 18 U.S.C. § 3556.²¹ Kumar contended that, under canons of interpretation, the more specific language of 14 U.S.C. § 88(c) preempted the more general language of 18 U.S.C. § 3583(d).²² The court found no conflict between the two statutes and, thus, no error in the district court's determination that it had authority to order restitution to the Canadian Armed Forces.²³

Finally, Kumar contended that the district court abused its discretion in awarding \$211,750 to the Canadian Armed Forces because the figures offered by the Canadian Armed Forces contained an inadequate record.²⁴ Kumar argued that the figures of the Canadian Armed Forces lacked "minimal indicia of reliability," which was required to meet due process.²⁵ The court found the Canadian cost-calculating methodology to be similar to that of the Coast Guard, classifying reimbursable rates as either "direct operating costs" or "full costs."²⁶ The court adopted an amount reflecting the costs directly related to the Canadian Armed Forces' employment of the CC130 Hercules aircraft for the incident because it appeared to be a reasonable and reliable approximation of the Canadian Armed Forces' actual loss directing from Kumar's false report.²⁷ Accordingly, Kumar's claims of error were denied, and his sentence was affirmed.²⁸

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¹⁴ *Id.* Kumar argued that under Section 88(c), the restitution remedy reads "as a result" language and operates to limit recovery to actual losses proximately caused by the false report. *Id.* According to Kumar's expert, Forensic Accountant Dennis S. Medica, Kumar was only liable to pay a total of \$118,216, which was calculated from the operation costs of the search. *Id.*

¹⁵ *Id.* (citing *Hughey v. United States*, 495 U.S. 411, 416 (1990); *United States v. Gamble*, 709 F.3d 541, 546 (6th Cir. 2013); *United States v. Evers*, 669 F.3d 645, 659 (6th Cir. 2012)).

¹⁶ *Id.* at 568.

¹⁷ *Id.*

¹⁸ *Id.* at 569.

¹⁹ *Id.* at 568-569.

²⁰ *Id.* at 569.

²¹ 18 U.S.C. § 3583(d).

²² *Kumar*, 750 F.3d at 569.

²³ *Id.*; *Hughey*, 495 U.S. at 415 ("In all cases involving statutory interpretation, [courts] look first to the language of the statute itself").

²⁴ *Id.* at 569-570.

²⁵ *Id.* at 570; *United States v. Elson*, 577 F.3d 713, 732 (6th Cir. 2009).

²⁶ *Id.* These reimbursable rates translate to \$211,750 versus \$372,583. *Id.* Faced with these figures, the court ordered Kumar to pay the lesser amount. *Id.*

²⁷ *Id.*

²⁸ *Id.* The court found no abuse of discretion in the district court's order of restitution and judgment of sentence. *Id.*