

Weaponized UAS and Creepy Airline Passengers v. FAA

Amundsen Davis Aerospace Alert
August 19, 2016

Two recent court decisions addressed the scope of the Federal Aviation Administration's (FAA) authority to enforce its regulations, and the FAA came out on top both times.

In one case, the FAA took an interest in two viral videos featuring imaginative aftermarket drone modifications. The first depicts an unmanned aircraft system (UAS) equipped with a handgun that fires. The second, dubbed "Roasting the Holiday Turkey," shows a flame-throwing UAS "spewing intense streams of fire to scorch a turkey carcass." The FAA linked both videos to Austin Haughwout, and issued administrative subpoenas to Haughwout and his father demanding documents and depositions.

The Haughwouts refused to comply with the subpoenas, saying the FAA lacked authority to investigate their activity. In *Huerta v. Haughwout*, a federal court in Connecticut disagreed. The court distinguished between the FAA's authority to *investigate* and its authority to *enforce*, and explained that the FAA's investigatory authority to regulate airspace to protect people and property is very broad. If the FAA has reasonable grounds to believe a person is violating federal aviation law or that an activity may give rise to questions of federal aviation law, a relevant administrative subpoena will generally be enforced. According to the court, the weaponized UAS in the videos gives rise to questions about danger to life or property.

The Haughwouts argued that the FAA was overreaching because its definition of "aircraft" was too broad. An aircraft is "any contrivance invented, used, or designed to navigate, or fly in, the air," a definition which the Haughwouts said would include "baseballs, pizza dough, and children's propeller-driven toys." The court appreciated their "creativity," but held that the FAA need not resolve hypothetical limits to the definition of "aircraft" before investigating. Indeed, the FAA may investigate to determine whether a particular device qualifies as an "aircraft." The question before the court was limited to the FAA's authority to investigate; nevertheless, the court discussed its doubts about whether the FAA would have the authority to actually prosecute the Haughwouts.

The second case, *Wallaesa v. FAA*, involved the FAA's administrative prosecution of an aggressively amorous airline passenger. Wallaesa struck up a conversation with Jaime, a female passenger in the boarding line, and, despite unequivocal

PROFESSIONALS

Michael McGrory
Partner

RELATED SERVICES

Aerospace

rejections, he persisted in trying to keep the conversation going aboard the airplane. Wallaesa switched seats to be near Jaime, asked if he could put his arm around her, and asked whether he could “hold something beautiful today.” Jaime then moved, and reported Wallaesa’s conduct to a flight attendant. The flight attendant explained to Wallaesa that his behavior made Jaime uncomfortable, which surprised Wallaesa because he loved Jaime and she was “the one.” Wallaesa’s obsessive behavior continued, and he defied the crew’s attempts to get him to remain seated. The crew enlisted an FBI agent passenger, who handcuffed Wallaesa while he yelled that he loved Jaime and blamed the crew for keeping him from her. Law enforcement met Wallaesa at the gate.

The FAA sought a \$5,500 penalty from Wallaesa for interfering with crewmember duties and other violations. After a hearing where Wallaesa unsuccessfully claimed that his behavior was caused by a medical emergency, the administrative law judge imposed a penalty of \$3,300.

Wallaesa appealed, arguing primarily that the FAA lacked the authority to prohibit non-violent passenger conduct. The D.C. Circuit Court rejected this argument, finding that the FAA’s Interference Rule is related to the FAA’s authority to make and enforce regulations related to flight safety. The court recounted a smattering of incidents of passenger misbehavior, including a passenger urinating on another, a passenger defecating on a food cart in response to being denied a glass of wine, a passenger grabbing a flight attendant’s neck after being told to put his cigarette out, a passenger attempting to enter the cockpit after being told he was whistling too loudly, a passenger disrobing and destroying the lavatory, and a passenger assaulting crewmembers after being refused a sandwich. Such disruptive behavior, the court said, is related to flight safety in that it “sows distraction and chaos in an environment where law and order is paramount.” Even non-violent behavior, according to the court, could interfere with and jeopardize flight safety.

Neither of these decisions is particularly surprising. The FAA’s authority over the skies is broad, and the petitioners in the arguments asserted in these two cases (that the FAA could not investigate a flame-throwing UAS and that the FAA could not fine an extremely disruptive airline passenger) probably never stood a chance. However, as the *Haughwout* court noted, the FAA’s authority has limits, and we expect to see further opposition to the FAA’s expanding jurisdiction.

Weaponized UAS and Creepy Airline Passengers v. FAA