Crimes--Disorderly Person--Requisites for Conviction (People of State of New York v. Erickson, 283 N.Y. 210 (1940))

St. John's Law Review

Follow this and additional works at: https://scholarship.law.stjohns.edu/lawreview

Recommended Citation
Available at: https://scholarship.law.stjohns.edu/lawreview/vol15/iss1/16

This Recent Development in New York Law is brought to you for free and open access by the Journals at St. John's Law Scholarship Repository. It has been accepted for inclusion in St. John's Law Review by an authorized editor of St. John's Law Scholarship Repository. For more information, please contact lasalar@stjohns.edu.
depending upon the validity of the president's use of the proceeds of
the check.

J. J. T.

CRIMES—DISORDERLY PERSON—REQUISITES FOR CONVICTION.—
The defendant had been found guilty under Section 899, subdivision 5,
of the Code of Criminal Procedure 4 which provides: "Persons who
have no visible profession or calling by which to maintain themselves
but who do so for the most part by gaming 2 are disorderly persons." 3
Defendant appealed on the ground that the state had failed to present
a prima facie case under a strict construction 4 of the statute. Defen-
dant also contended that he did not have to explain facts and circum-
stances nor controvert inferences of guilt which have arisen. He
admittedly failed to show any other "visible profession" besides gam-
ing, in which field he operated extensive gaming establishments, but
he had ample financial resources in the form of securities, from which
he had a $12,000 annual income with which to support himself and,
therefore, did not "for the most part" maintain himself by gaming.
Held, defendant not guilty. The defendant does not have to refute
state's evidence inferring guilt. The statute is to be given the con-
struction that to hold defendant guilty he must almost exclusively
maintain himself by gaming. People of State of New York v. Erick-
son, 283 N. Y. 210, 28 N. E. (2d) 381 (1940).

It has long been recognized that the failure by the defendant to
contradict or explain incriminating state's evidence may be considered
by the court in determining his guilt. 5 While it is the privilege of
the defendant to refrain from testifying, if he fails to explain incrimi-
nating facts and circumstances lying peculiarly within his knowledge,

3 See (1939) 14 St. John's L. Rev. 173.
4 Gaming and gambling are synonymous, People v. Cohen, 160 Misc. 10,
5 In People v. Meara, 79 Misc. 57, 140 N. Y. Supp. 575 (1913) and People
v. Townsend, 214 Mich. 267, 103 N. W. 177 (1921), it was shown that disorderly
persons are persons that are dangerous or hurtful to public peace and welfare
by reason of their misconduct or vicious habits and are therefore amenable to
police regulation.

Persons found to be disorderly persons under N. Y. CodE OF CRI.M. PROC.
§ 899 must put up $10,000 as security to insure their good behavior. N. Y.
CodE OF CRI.M. Proc. § 901 (2).

5 Italics ours.
he takes the chance of any reasonable or legitimate inference being
drawn by the jury which the evidence
warrants. At common law no
game was in itself
unlawful,7 but any practice which tends to injure
public morals is a common law offense.8 Many general practices or
courses of behavior indulged in by certain persons are prejudicial to
the public welfare and are likely to corrupt public morals.9 With this
in mind and in view of the other subdivisions under Section 899 of
the Code of Criminal Procedure, it seems that the legislative intent
was to suppress excessive gaming.10 The interpretation of the statute
by the Court of Appeals seems to indicate that mere possession of
outside wealth would exempt the defendant from the statutory pen-
alty. Thus, it might happen that the successful gambler would be
condoned, and the unsuccessful one condemned.11 It has been held
that the “visible means” of support, so dwelled on by the Court of
Appeals as a means of freeing the defendant, must be lawfully acquired
and be the result of honest toil.12 Here the defendant’s “business
and profession” is acknowledgedly gaming. It was the opinion of
the trial judge, in the instant case, that the words “by which to main-
tain themselves” as employed in the statute seem to have nothing to
do with financial return but to the pursuit of business. Emphasis is
to be placed on gaming as a vocation, not as an avocation.13

A. M.

CRIMINAL LAW—LARCENY—ABILITY OF WIFE TO COMPLAIN
OF LARCENY BY HUSBAND.—The complaining witness, defendant’s
wife, gave to the defendant a check payable to her order to be depos-
ited for collection and the proceeds thereof to be paid over to her.
Subsequently, the complaining witness demanded her money. The
defendant told her that he had spent the money for his own purposes,
and gave the complaining witness a note, which was renewed three
times. None of the notes or any part thereof has been paid. The
defendant was charged with violation of Section 1290 of the Penal

Graves v. United States, 150 U. S. 118, 14 Sup. Ct. 40 (1893); Donegan
v. United States, 296 Fed. 843 (C. C. A. 5th, 1924); Blanda v. People, 67 Colo.
541, 189 Pac. 249 (1920); People ex rel. Woronoff v. Mallon, 222 N. Y. 456,
119 N. E. 102 (1918); People v. Trombino, 262 N. Y. 689, 188 N. E. 127
(1933); People v. Smith, 114 App. Div. 513, 100 N. Y. Supp. 239 (1st Dept.
1906).

Thomson v. Hayes, 59 Misc. 425, 111 N. Y. Supp. 495 (1908); Sherbon


Ex parte McCue, 7 Cal. App. 765, 96 Pac. 110 (1908); Morgan v. Nolte,
37 Ohio St. 23 (1881).


(1939) 14 St. John's L. Rev. 173.
