

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. EMILIO SANTOS REYES ET AL., DEFENDANTS. EMILIO SANTOS REYES, APPELLANT.

G.R. No. 7260. August 21, 1912

Ponente: JOHNSON, J.

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JOHNSON, J.:

These defendants were charged with a violation of an Act, No. 1523, to prohibit the importation, sale, giving away, use and possession of lottery tickets and lottery advertising matter, alleged to have been committed as follows:

"That on or about June 13, 1911, in the city of Manila, Philippine Islands, the said Emilio Santos Reyes, Dominga Trinidad and Teodoro Fidel did willfully, unlawfully and criminally have in their possession, with the intention of selling, giving away or using, 79 lottery tickets of the Royal Lottery of Colombo, the drawing in which should take place on July 25, 1911; in violation of law."

After hearing the evidence, the Honorable A. S. Crossfield, judge, found each of the defendants guilty of the crime charged and sentenced the defendant, Emilio S. Reyes, to pay a fine of P500 and the costs of the action, with subsidiary imprisonment in case of insolvency, and the defendants, Dominga Trinidad and Teodoro Fidel, each to be imprisoned for a period of fifteen days and each to pay one-third part of the costs.

From that sentence the defendant, Emilio Santos Reyes, only appealed to this court, and made the following assignment of error:

"That the defendant-appellant had been convicted and sentenced for violation of Act No. 1523."

From an examination of the evidence certain facts are not only proved but admitted. They are:

First. That the defendant, Emilio S. Reyes, was by occupation a printer.

Second. That during the months of March, April, May, and June, 1911, he printed a large number of lottery tickets, alleged to be lottery tickets of the Royal Lottery of Colombo.

Third. That a number of said lottery tickets were found in his private residence and others in his place of business.

Fourth. That he delivered some of said tickets to the defendant, Dominga Trinidad, on or about the 12th of June, 1911, and received therefor a certain sum of money.

Fifth. That the tickets which the defendant Reyes had delivered to the defendant Dominga Trinidad were later found in the possession of the said Dominga Trinidad and the other codefendant, Teodoro Fidel.

The attorney for the appellant maintains in his brief that said Act No. 1523 did not provide a punishment for the possession of lottery tickets of the Philippine Islands or of lottery tickets made "in the Philippine Islands. He further argues that the tickets were printed by the defendant Reyes for one Miguel Soler and that he had nothing to do with said lottery tickets, except to print them under his contract with Soler. Soler was not called as a witness during the trial of the cause. The defendant Reyes admitted that he had printed the tickets; that he was in possession of the same; that a part of them were found hidden in his house and that he had given to his codefendant, Dominga Trinidad, a number of said tickets for a certain sum of money.

Section 3 of Act No. 1523 provides:

"It shall be unlawful for any person to sell, give away, use, or have possession of, with intent to sell, give away, or use, any lottery ticket or advertisement of any lottery, and possession of any such article shall be deemed presumptive evidence of intent to sell, give away, or use the same in the Philippine Islands, and said possession, unless satisfactorily explained, shall be deemed sufficient evidence to warrant conviction."

In view of the fact that the defendant, Emilio Santos Reyes, gave to his codefendant, Dominga Trinidad, certain of said lottery tickets, and in view of the fact that he had hidden away in his private residence certain of said lottery tickets, we are of the opinion that his possession of the same has not been satisfactorily explained, and that his possession of said lottery tickets is in violation of said section 3.

Therefore the sentence of the lower court is hereby affirmed, with costs.

Arellano, C. J., Mapa and Carson, JJ., concur.

DISSENTING:

TRENT, J.,

I dissent.

The complaint in this case charges the defendants with the possession of "79 lottery tickets of the Royal Lottery of Colombo, whose drawing should take place on the 25th day of July, 1911."

This court expressly finds: (1) That Emilio S. Reyes was a printer by occupation; (2) that during the months of March, April, May, and June, 1911, he printed a large number of lottery tickets including those in question; and (3) that the tickets thus printed purported to be lottery tickets of the Royal Lottery of Colombo. From these findings of fact, and taking into consideration that lotteries are expressly prohibited in this jurisdiction, the result is that the 79 lottery tickets mentioned in the complaint were spurious. They did not represent a lottery, and the sole purpose of the defendants in printing the same in Manila and disposing of them was to secure money by fraudulent representation. The inquiry now arises, does Act No. 1523 prohibit the possession or distribution of nongenuine or spurious alleged lottery tickets?

The title of Act No. 1523 reads:

"An Act to prohibit the importation, sale, giving away, use, and possession of lottery tickets, and lottery advertising matter."

The first section makes it unlawful to import into the Philippine Islands from any outside place or port any lottery ticket or any advertisement of any lottery. The second section makes it the duty of the postal authorities to seize such tickets or advertising matter when imported through the mails. The third section makes it a crime for any person to have in his possession with the intent to sell, give away, or use any lottery ticket or advertising matter. The remaining sections deal with exactly the same subject. The Act nowhere treats of or even mentions counterfeit lottery tickets. Had some such phraseology as "purporting or representing, or understood to be or to represent lottery tickets" been used by the Legislature, there would be no difficulty. Or had an additional section been inserted dealing with spurious and fraudulent lotteries and lottery tickets, the judgment appealed from would have a basis. But no such language was used by the lawmaking body. See Bates Ann. Ohio Stat. (4th ed.), sec. 6929; Cum. & Gil. Gen. Laws of N. Y., Vol. 2. title Lotteries; Wis. Stat., 1898, sees. 4523-4527, for illustrations of laws which provide for fraudulent or nongenuine lotteries and lottery tickets. Notwithstanding the fact that the legislature did not prohibit the possession or use of spurious lottery tickets, some such language must be read into the statute in order to convict the appellant of a violation of this Act.

Suppose that before the passage of Act No. 1523 it was lawful to sell lottery tickets in the Philippine Islands and that the appellant printed and sold the 79 spurious or fraudulent tickets: it is clear that the crime would have been estafa, as he would not have been dealing in genuine lottery tickets.

A conviction in a criminal case cannot be sustained unless all the essential elements of the crime are proved beyond a reasonable doubt. This rule is so well established that to cite authorities in its support would be to weaken it by the implied necessity for argument. It is admitted, as I have said, that the first requisite of the crime of which the appellant has been convicted was lacking: that is, he did not have in his possession nor did he dispose of lottery tickets.

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