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Criminal Law - Due Process - Public Policy as Valid Grounds for Denying Recovery of Proceeds of Illegal Act

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CRIMINAL LAW—DUE PROCESS—PUBLIC POLICY AS VALID GROUNDS FOR DENYING RECOVERY OF PROCEEDS OF ILLEGAL ACT—Plaintiff collected a $10 fee from a number of persons for the privilege of attending a farm outing and photographing female models, some of whom posed in the nude. The sheriff arrested all concerned. Plaintiff pleaded guilty to a charge of outraging public decency and was fined $50. The others were found guilty of disorderly conduct. Plaintiff brought a trover action against the sheriff who had kept the money ($149) which the plaintiff had collected, but the trial court dismissed the action. On appeal to the New York Court of Appeals, *held,* affirmed, one judge dissenting. Plaintiff could not invoke the aid of the courts to regain the proceeds of his illegal act. *Carr v. Hoy,* 2 N.Y. (2d) 185, 158 N.Y.S. (2d) 572 (1957).

The dissenting judge thought that since no statute provided for the forfeiture of such money, plaintiff was deprived of property without due process of law.[1] The majority denied recovery, not on the grounds that the sheriff was rightfully detaining the money, but because plaintiff should not be allowed to use the courts to regain the benefits of his own illegal acts. If plaintiff did not obtain title to or a right to possession of the money paid for admission to the farm, the case can be explained on a title theory. For instance, the New York courts have denied return to gamblers of their money seized and retained by police officers[2] because the New York statute denies gamblers any title to or right to possession of their winnings.[3] Pennsylvania has reached a contrary result[4] interpreting its statute to interfere with the gambler's title only where the money is an integral part of the gambling transaction.[5] Thus, if public decency was outraged not only by the exhibition of the nude models, but also by the selling of tickets and making a business of such exposure, the entire transaction appears illegal and plaintiff does not have the requisite title to maintain trover. It can be argued, however, that only the exhibition of the models was illegal and that title to the money did pass since the payment of ad-

1 N.Y. CONST., art. I, §6. "No person shall be deprived of life, liberty or property without due process of law." The same argument might be presented under the United States Constitution; since the sheriff acted under color of state authority in seizing and detaining plaintiff's money, state action is involved and a Fourteenth Amendment problem would be raised.

2 In Hofferman v. Simmons, 290 N.Y. 449, 49 N.E. (2d) 523 (1943), although there was no statutory provision for forfeiture, the gamblers were not allowed to recover on the grounds that such a result would offend public policy. See Dorrel v. Clark, 90 Mont. 585, 4 P. (2d) 712 (1931), where plaintiff-gambler was also denied recovery on similar grounds.

3 N.Y. Crim Code and Penal Law (Clevenger-Gilbert, 1956) §994.

4 Com. v. Colbert, 59 Pa. D. and C. 647 (1947); Com. v. Wener, 10 Pa. D. and C. 315 (1928). See also Curcio v. Weimer, 106 Pa. Super. 53, 161 A. 627 (1932), where gambler was denied recovery because the court could determine that lottery money was an integral part of gambling process and title had not passed to plaintiff; and dicta in Andrews v. Birmingham, 32 Ala. App. 10, 22 S. (2d) 41, cert. den. 246 Ala. 668, 22 S. (2d) 41 (1945), that money seized in lottery raid must be returned.

5 Pa. Stat. Ann. (Purdon, 1945) tit. 18, §1444.

mission was a separate legal act. Such a separation of innocent and illegal acts within one transaction has been made,[6] but this argument was not presented in the principal case. The court rested its holding squarely on the ground that public policy prevents the use of the courts to recover the proceeds of an illegal act, irrespective of title considerations.[7] This in effect means that, although the sheriff acting under color of state authority wrongfully retained plaintiff's money, public policy considerations estop him from successfully asserting his constitutional right not to be deprived of property without due process of law. Whether public policy is a valid basis for such an estoppel does not expressly appear in the cases. Somewhat similar considerations, however, operate to thrust waiver of a constitutional right upon a party where he has not presented it in a timely manner.[8] Laches also may preclude a party from asserting a constitutional right, even though asserted against a state instrumentality.[9] In such a case the estoppel is worked by the court and not by statute.[10] If waiver and laches are valid grounds for estopping a person from asserting his constitutional rights, a determination that public policy denies to one the use of the courts to gain benefit from his own illegal acts should be equally valid, absent any policy to the contrary. The court did not, however, consider certain factors which support a contrary holding in this case. The decision is certainly not calculated to assure honesty in law enforcement officers. Moreover, the temptation is now present to postpone raiding an illegal enterprise until the proceeds to be seized amount to a substantial sum. Finally, a self-help remedy with the possibility of ensuing violence certainly appears open to the plaintiff after this decision.[11]

[6] In United States v. Teed, (9th Cir. 1950) 185 F. (2d) 561, a doctor, who was convicted of illegally dispensing narcotics, had paid out money which he thought was a bribe to officers investigating the narcotics offense, but which was in fact extorted from him and never intended by the recipients as a bribe. He was allowed to recover the money from the clerk of the court. The court held that the money was involved only in the crime of extortion, in which the doctor committed no criminal act, and not in the narcotics offense.

[7] Where an illegal contract has been executed, the courts have denied relief to one of the parties against another on similar public policy grounds. St. Louis Ry. v. Terre Haute Ry., 145 U.S. 393 (1892). Another case carried this one step farther by denying to one who gave a bribe the right to recover this money from the clerk of the court with whom the money had been deposited. United States v. Sprinkles, (E.D. Ky. 1956) 138 F. Supp. 28.

[8] E.g., Vernon v. State, 240 Ala. 577, 200 S. 560 (1941), cert. den. sub nom. Vernon v. Wilson, 313 U.S. 559 (1941); Yakus v. United States, 321 U.S. 414 (1944); Michel v. Louisiana, 350 U.S. 91 (1955), reh. den. 350 U.S. 955 (1955).

[9] See Los Angeles Brick and Clay P. Co. v. Los Angeles, 60 Cal. App. (2d) 478, 141 P. (2d) 46 (1943), where the defense of laches was recognized but not upheld under the particular facts involved.

[10] The dissenting judge in the principal case argued that only the legislature could punish crime, but that the effect of the decision was to fine plaintiff $50 under the statute and another $149 by the court.

[11] The original seizure was undoubtedly valid as a means of obtaining evidence, and resistance against it would be unlawful. Continued detention after plaintiff was fined became illegal, however, and plaintiff would appear to have the same right

While these factors might not have dictated a contrary result, the court should, at least, have considered them before reaching its decision.

John Morrow, S.Ed.

to resort to self-help that any other person whose property was wrongfully detained by a private person would have. See, e.g., People v. Gallegos, 130 Col. 232, 274 P. (2d) 608 (1954) and 46 A.L.R. (2d) 1227 (1956), showing that where defendant has taken money or property from another by force with intent to collect or secure a debt or claim, good faith belief in the validity of his claim is a defense to prosecution for robbery.