

THE CASE OF THE CRIPPLED SLOT

BY TOM PERKINS, ESQ.

Judge Smart was hot. It was 10 a.m. on a Tuesday. We were at the Lander County Courthouse in Austin, Nevada, and there were 60 prospective jurors in the hallway, 59 of which had driven the 90 miles from Battle Mountain that morning. There was no sign of the two defendants, who had been charged with slot cheating. The judge paced, turned red and swore several times in quick succession. I had run out of excuses by 10:30, when finally a full-size Lincoln rolled down the highway from the Austin summit, lurched to a stop in front of the courthouse, and spilled out two bleary-eyed, beery, unshaven and tired defendants. On we went to trial.

The owners of the Owl Club in Battle Mountain had noticed some losses coming from one or two of their machines, so they had asked the Gaming Control Board to send up an investigator. As it happened, they were sitting in the coffee shop talking about the problem on a weekday morning when Curtis and his partner, whom we will call Larry, happened to make a stop at the casino.

Curtis had an aggressive style of play. He would slam the panel above or to the side of the reels with his left hand and jam the handle down with his right. He repeated this several times and hit a jackpot ... then another. Larry stood close to Curtis, on his right. They were big men and it was hard to see what they were doing.

In 1980, when this took place, slot machines had a combination of electric and mechanical operations. When something was slightly broken or worn, a skillful application of pressure to one or more of the panels



could cause the mechanism to short-circuit and allow a second play, or step up the wager. The slot machine was said to be “crippled.” It was hard for the owner to know this, because the machine functioned normally in the absence of manipulation. On this particular machine, it was also supposed that one could “freeze” the reels; that is, hold one or more of the reels in a position that allowed payment of a jackpot when they all lined up. The combination of free plays, stepped up wagers and frozen reels would allow the player to achieve a jackpot or series of jackpots in short order.

It must have been exciting for the gaming agent to see this happen – that is the only way to explain what happened next.

Without waiting for the players to leave he set up some cameras and waited for it to happen again. He did not set up a strict daily accounting on the machine. He did not advise the club to change it out or try to fix it. He did not get an arrest warrant or a search warrant. He did not follow the men to their car and follow them up to Elko. Instead he called the local sheriff, and they pounced on the defendants and made an arrest. In so doing, they set up the second-last jury trial in Austin, Nevada.

This was the second-last jury trial in Austin because the county seat had been moved to Battle Mountain. I was not privy to the politics, but I have been told it had to do with the defeat of a school bond for the children in Battle Mountain. The county hadn’t planned for the move and was still fixing up an old school in Battle Mountain for a courthouse. In the meantime, a series of the final three jury trials in Austin were tried.

The prosecution can have a tough time in a slot cheat case. Most people, even those who play the slots,

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believe the games are fixed for the house, so the charge that someone has tipped the odds is not as morally offensive as a typical case of larceny. Without its customary moral advantage, the prosecution may actually be held to the constitutional standard of proof beyond a reasonable doubt, which in practical terms means that the way in which the cheating is said to have occurred has to be shown to the jury, so they can see it for themselves. Finally, at the time, there was still a Nevada statute that called slots a game of skill, which allowed the defense to argue in good faith – and with a straight face – that manipulating the machine is in the nature of skill, as opposed to cheating.

Here was our defense: Curtis was playing the slot aggressively but still only playing, like the pinball wizard. Larry was just a bystander. The jury was unaware of both the oversized shocks on their car and the couple of thousand dollars in coins in their trunk, because the police, in their zeal, had seized the car and searched it without a warrant. Finally, co-counsel Rod McCormick and I had learned that some of the wires inside the crippled machine had been damaged during the trip to Lake Tahoe for evaluation by the state's expert; there was no way to demonstrate on the broken machine.

Now, the gaming control board's case agent was, like me, relatively new to the business. When he took the stand that afternoon, I waited my turn, and treated him with respect:

"Agent Johnson, can you show us how the defendant cheated the machine?"

"Well yes. He slammed his left hand on the panel and jammed the crank down."

"No, I mean, can you go up to the very same slot machine, right here in the courtroom, put a quarter in, and show us how he made it pay out?" At this point, I expected him to say no, that he couldn't do it, and then

have him agree that the machine was damaged and that he could not reproduce the alleged cheating.

Instead, he looked at me and testified, "I don't have a quarter." As Lyle Lovett would say, that was his first mistake. I flipped him a quarter. He very slowly and carefully walked up to the machine.

"It isn't plugged in." Second mistake. I plugged the slot machine in. He put the quarter in, pulled down on the crank and, of course, nothing happened because the machine was broken.

"The machine is broken, isn't it?"

"Yes."

"It was broken on the way to Lake Tahoe, wasn't it?"

"Yes."

"And it is still broken today?"

"Yes."

"You can't show this jury how to step up the wagers on this slot machine, can you?"

"No."

"You can't show them how to get free plays on it?"

"No."

"And you can't freeze the reels?"

"No."

"And you didn't actually see the defendant Curtis making any one of these things

happen, did you?"

"Well,"

"You saw him play the machine hard, and assumed that is what he was doing, isn't that true?"

"Yes."

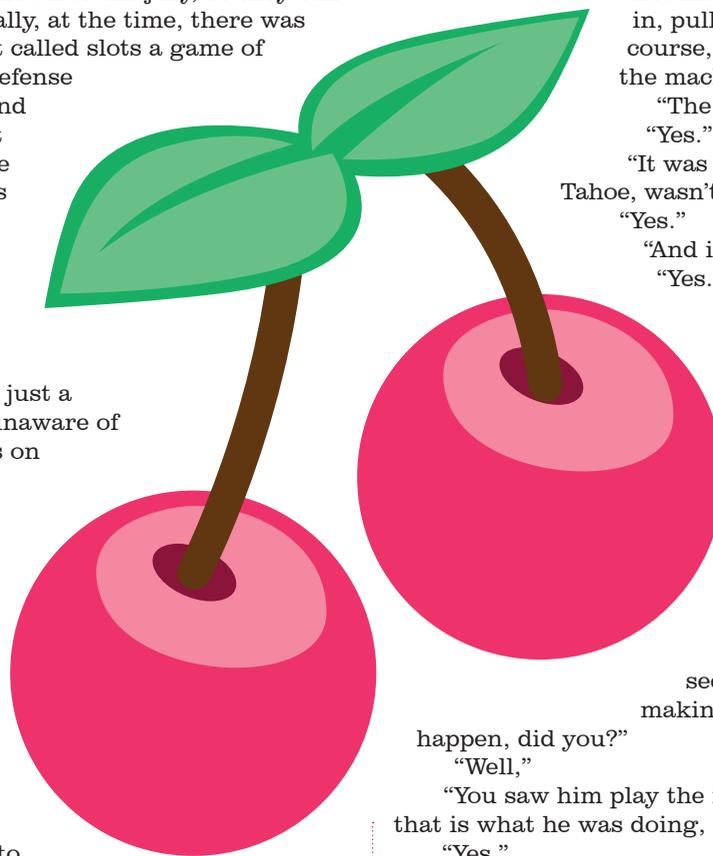
"But you didn't actually see it, did you?"

"No."

In the morning, we were able to persuade the judge to instruct the jury on the statutory definition of gaming, and to include the application of skill in that definition. The prosecution got a fair instruction on cheating: having to do with altering the outcome of the game.

In closing arguments, Hy Forgeron, the prosecutor, tried to show the violence of the defendants' conduct by pounding on the slot machine so hard that he sprained his hand and lacerated his palm. When I went up and copied him, my watch broke off my wrist and flew across the courtroom.

"Slot Case Pains Counsel" read the headlines in The Humboldt Sun. The jury had quietly found the



defendants not guilty and sent us home.

A couple of years later I was involved in what had the potential to become the seminal case on the issue of slot cheating and skill. We argued the case in the Nevada Supreme Court in March of 1984. Dave Sarnowski, the deputy attorney general on the other side, told me that the attorney general and the court were getting a lot of pressure from the resort association. In fact, there had been half a dozen well-dressed gaming lawyers in the Supreme Court chambers during the argument – not my typical audience. My client was a lonely old guy from Winnemucca who had actually shown the gaming control agents how he was getting the machine to pay, and the sentencing judge had given him a harsh 10-year sentence. In July, Dave called me with the sad news that my client had passed away in prison. Naturally, I was upset, even more so when I learned that he had died in January, nearly three months before the argument. The appeal was dismissed. Over a period of years, the well-dressed gaming lawyers were finally able to persuade the Legislature to change the law, but not before another case or two had made it to the Supreme Court. ■

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