

22.11 POSSESSING RUNDOWN SHEETS, ETC.

§ 849.09(1)(k), Fla. Stat.

To prove the crime of Possessing [Run Down Sheets] [Tally Sheets] [or] [Other Papers, Records, Instruments, or Paraphernalia], the State must prove the following two elements beyond a reasonable doubt:

1. (Defendant) had in [his] [her] possession [Run Down Sheets] [Tally Sheets] [or] [Other Papers, Records, Instruments, or Paraphernalia].
2. These articles were designed for use, directly or indirectly, in gambling or in the conduct of a lottery.

Definitions.

Gambling.

“Gambling” is a game of chance in which the participant risks money or property on the outcome with the expectation of gaining or losing as a result of the game.

Lottery.

Little River Theatre Corp. v. State, 185 So. 855 (Fla. 1939).

A “lottery” has three elements: (1) consideration — that is, a bet or thing ventured; (2) a prize; and (3) the award or winning of the prize by lot or chance.

A “bet” is when money or other property is risked, pledged, wagered, or staked by a participant on the outcome of a game, contest, or uncertain or contingent event, with the expectation of gaining or losing as a result.

A “thing ventured” is when something other than money or property is risked by a participant on the outcome of a game, contest, or uncertain or contingent event, with the expectation of gaining or losing as a result, which includes but is not limited to the time, inconvenience, and effort required to attend or participate, at the expense of foregone alternatives and other opportunities.

A “prize by lot or chance” is when the award or winning prize is determined by a chance or uncertain or contingent event, the outcome of which is not influenced or controlled by a participant’s skill, such as by drawing numbers, entries, cards, or by rolling dice.

Possession.

To prove (defendant) possessed [Run Down Sheets] [Tally Sheets] [or] [Other Papers, Records, Instruments, or Paraphernalia], the State must prove beyond a reasonable doubt that [he] [she] a) knew of the existence of the Run Down Sheets] [Tally Sheets] [or] [Other Papers, Records, Instruments, or Paraphernalia]; and b) intentionally exercised control over those [Run Down Sheets] [Tally Sheets] [or] [Other Papers, Records, Instruments, or Paraphernalia].

Give if applicable.

Control can be exercised over Run Down Sheets] [Tally Sheets] [or] [Other Papers, Records, Instruments, or Paraphernalia], whether they are carried on a person, near a person, or in a

completely separate location. Mere proximity to [Run Down Sheets] [Tally Sheets] [or] [Other Papers, Records, Instruments, or Paraphernalia], does not establish that the person intentionally exercised control over them in the absence of additional evidence. Control can be established by proof that (defendant) had direct personal power to control the [Run Down Sheets] [Tally Sheets] [or] [Other Papers, Records, Instruments, or Paraphernalia], or the present ability to direct their control by another.

Joint possession. Give if applicable.

Possession of [Run Down Sheets] [Tally Sheets] [or] [Other Papers, Records, Instruments, or Paraphernalia], may be sole or joint, that is, two or more persons may possess [Run Down Sheets] [Tally Sheets] [or] [Other Papers, Records, Instruments, or Paraphernalia].

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comments

See Blackburn v. Ippolito, 156 So. 2d 550, 553 (Fla. 2d DCA 1963) (“[T]hings other than money can constitute a sufficient consideration, moving from the participants in such scheme to the operators without any cash outlay being made.”) citing to *Dorman v. Publix-Saenger-Sparks Theatres*, 184 So. 886 (Fla. 1938) (“The consideration required to support a simple contract need not be money or anything having a monetary value, but any consist of either a benefit to the promisor or a detriment to the promisee.”) and *Little River Theatre Corp. v. State*, 185 So. 855 (Fla. 1939) (holding that increased attendance and receipts at a theater offering a “bank night” drawing satisfied the element of consideration, even though persons could participate in the drawing without purchasing a ticket).

A special instruction will be needed if an exception, such as §§ 849.09(1), 849.092, 849.0931, or 849.0935, Fla. Stats., might apply.

This instruction was adopted in 1981 and amended in 2015 [176 So. 3d 938] 2018 [259 So. 3d 765], and 2019.