

**IN THE COURT OF APPEALS OF IOWA**

No. 2-891 / 11-1896  
Filed December 12, 2012

**STATE OF IOWA,**  
Plaintiff-Appellee,

**vs.**

**STEPHANIE LEE MATZ,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Black Hawk County, Bradley J. Harris,  
Judge.

A defendant contends there was insufficient evidence to support the  
finding of guilt on the charge of unlawful possession of a gambling device.

**REVERSED AND REMANDED.**

Mark C. Smith, State Appellate Defender, and Martha J. Lucey, Assistant  
Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Martha E. Trout, Assistant Attorney  
General, Thomas J. Ferguson, County Attorney, and Brad Walz, Assistant  
County Attorney, for appellee.

Considered by Eisenhauer, C.J., and Vogel and Vaitheswaran, JJ.

**VAITHESWARAN, J.**

Stephanie Matz placed two game machines in a Waterloo bar that she owned and operated. Matz registered the machines as electrical and mechanical amusement devices. See Iowa Code ch. 99B (2009). When the registrations came up for renewal, she elected to let them lapse. The machines remained in the bar and remained plugged in.

After discovering that the machines were still “operational” and “functional,” the State charged Matz with unlawful possession of gambling devices in violation of Iowa Code section 725.9.<sup>1</sup> Following a bench trial, the district court found Matz guilty.

On appeal, Matz contends there was insufficient evidence to support the finding of guilt. Our review of the district court’s finding of guilt is for substantial evidence. *State v. Meyers*, 799 N.W.2d 132, 138 (Iowa 2011). Questions concerning the proper interpretation of a statute are questions of law. *State v. Hearn*, 797 N.W.2d 577, 580 (Iowa 2011).

Iowa Code section 725.9(3) states:

A person who, in any manner or for any purpose, except under a proceeding to destroy the device, has in possession or control a gambling device is guilty of a serious misdemeanor.

“Gambling device” is defined as

a device used or adapted or designed to be used for gambling and includes, but is not limited to, roulette wheels, klondike tables, punchboards, faro layouts, keno layouts, numbers tickets, slot machines, pachislo skill-stop machine or any other similar machine or device, push cards, jar tickets and pull-tabs.

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<sup>1</sup> Matz was also issued a citation for operating an amusement device with an expired registration. The district court directed a verdict in her favor on this count, and it is not a subject of this appeal.

Iowa Code § 725.9(2). The term

does not include an antique slot machine, or any device regularly manufactured and offered for sale and sold as a toy, except that any use of such a toy or antique slot machine for gambling purposes constitutes unlawful gambling.

*Id.*

An “amusement device,” in contrast, is “an electrical or mechanical device possessed and used in accordance with section 99B.10.” *Id.* § 99B.1(2). Subsections 99B.10(1)(f) and (1)(g), require registration of amusement devices, acquisition of registration tags, and display of those tags. An “amusement device” that is “possessed and used in accordance with” section 99B.10 is not considered “a game of skill or game of chance” and is not a “gambling device.” *Id.* § 99B.1(2).

Matz argues the machines she owned were “amusement devices,” not “gambling devices.” The State counters that when Matz allowed the registrations on her machines to lapse, the machines became “gambling devices” because they were no longer “used in accordance with section 99B.10.”<sup>2</sup> While appealing at first blush, this argument has a logical fallacy; it assumes that if something is not “x” it must be “y.”

Even if the amusement devices were not “used in accordance with section 99B.10,” nothing in section 725.9 automatically converted them to “gambling devices.” The State still had to show that each machine met the definition of a “gambling device”: “a device used or adapted or designed to be used for gambling.” *Id.* § 725.9(2); accord *H & Z Vending v. Iowa Dep’t of Inspections*

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<sup>2</sup> The State does not contend that the machines violated section 99B.10(1) in any other respect.

*& Appeals*, 511 N.W.2d 397, 398 (Iowa 1994) (“[T]he correct interpretation of section 725.9 as it applies to devices specifically designated therein is that such devices are prohibited only if they are used or adapted or designed to be used for gambling.”). The State did not make this showing. At best, the State witnesses established that the machines were “operational” and “functional” after the registration lapsed. There was no evidence that the machines, which previously satisfied the substantive definition of amusement devices, underwent design changes or adaptations to make them gambling devices or that they were used as gambling devices.

Our conclusion that the amusement devices did not spontaneously transform into gambling devices upon a lapse in registration is supported by a complete reading of the amusement device provision, section 99B.10. See *H & Z Vending*, 511 N.W.2d at 398 (stating courts “will construe a statute in conformity with its dominating general purpose and will read the text in light of overall context”). Subsections 99B.10(2) and (3) criminalize violations of the substantive requirements of subsection (1), including the registration requirements. If an unregistered amusement device were to lose its status as an “amusement device” upon a lapse in registration, no person could be prosecuted for failure to register the device and subsections (2) and (3) would essentially be meaningless. Such a reading is not reasonable.

We reverse Matz’s finding of guilt under section 725.9 and remand for entry of a judgment of acquittal.

**REVERSED AND REMANDED.**