

FILED
LORAIN COUNTY

2017 MAY 26 P 2:05
COURT OF COMMON PLEAS
TOM ORLANDO

IN THE COURT OF COMMON PLEAS
LORAIN COUNTY, OHIO

JOURNAL ENTRY

STATE OF OHIO	:	CASE NO. 13CR088493
Plaintiff,	:	JUDGE D. CHRIS COOK
vs.	:	<u>CHARGE & VERDICT</u>
ANTHONY C. NAPLES	:	(CRIMINAL BENCH TRIAL)
Defendant.	:	

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This matter proceeded to bench trial; the Court rules as follows:

CT. 1: Agg. Arson, RC 2909.02 – F2: NOT GUILTY

CT. 2: Illeg. Assem. or Poss. of Chem.

For Manuf. of Drugs,

RC 2925.041(A) – F3 GUILTY

CT. 3: Arson, RC 2909.03 – F4 NOT GUILTY

See Judgment Entry.

IT IS SO ORDERED.

DATE



JUDGE D. CHRIS COOK

cc: Griffin, APA
Stepanik, Esq.

IN THE COURT OF COMMON PLEAS
LORAIN COUNTY

LORAIN COUNTY, OHIO

MAY 26 12:05

STATE OF OHIO
TOM ORLANDO

Plaintiff,

vs.

ANTHONY C. NAPLES

Defendant.

CASE NO. 13CR088493

JUDGE D. CHRIS COOK

JUDGMENT ENTRY

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This matter proceeded to bench trial on May 17, 2017 and May 18, 2017. At the close of the State's case, the Defendant moved the Court for acquittal pursuant to Crim. R 29. The Court ruled as follows:

CT. 1: Aggravated Arson, RC 2909.02: F2 – DENIED

CT. 2: Ill. Asm. or Poss. of Chem. for Man. of Drugs, RC 2925.041(A): F3 – DENIED

CT. 3: Arson, RC 2909.03: F4 – DENIED

After disposition of the above, the Defendant rested without submitting any evidence, exhibits, or testimony.

THE COURT RULES AS FOLLOWS

STANDARD OF REVIEW

This Court must refuse absolutely to be moved, swayed, or influenced by considerations such as sympathy for or bias against either the State of Ohio or the Defendant.

As charged by and through the powers invested in me by the State of Ohio, I must decide this case based only upon the applicable law and evidence admitted at trial - including any stipulations by the parties, the testimony of the witnesses, and any properly admitted exhibits.

In conjunction with this mandate, I must weigh the credibility of the witnesses by considering the following:

- 1) Reasonableness
- 2) Accuracy of Memory
- 3) Frankness or Lack Thereto
- 4) Intelligence, and
- 5) Interest or bias, if any

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Together with all of the facts and direct and circumstantial evidence, I have assigned weight as I deem proper in applying the test of truthfulness, as the sole judge of these facts regarding this case.

In my best, honest, and most impartial judgment, I have determined what testimony is worthy of belief and what testimony is not worthy of belief or is to be discounted.

This standard of my review, as in all criminal cases, is that the Defendant is presumed innocent unless and until proven guilty by the State of Ohio beyond a reasonable doubt.

R.C. 2901.05 defines reasonable doubt as follows:

Reasonable doubt is present when, after you have carefully considered and compared all of the evidence, you cannot say that you are firmly convinced of the truth of the charge(s).

Reasonable doubt is a doubt based on reason and common sense. Reasonable doubt is not mere possible doubt, because everything relating to human affairs or depending on moral evidence, is open to some possible or imaginary doubt.

Proof beyond a reasonable doubt is proof of such character that an ordinary person would be willing to rely and act upon it in the most important of the person's own affairs.

This Court, after careful and deliberate review of all of the evidence, and in consideration of the applicable law, believes that there is a possibility or even a probability that some of the facts alleged in the Indictment may have occurred relative to Count One and Count Three. Nevertheless, the evidence presented does not rise to the mandated legal standard of proof of guilty beyond a reasonable doubt required to sustain a conviction of guilty as to Count One, Aggravated Arson, or Count Three, Arson.

Conversely, the Court does find that the State has proven, beyond a reasonable doubt, that the Defendant is guilty of Count Two, Illegal Assembly or Possession of Chemicals For Manufacture of Drugs, and finds him GUILTY of the following:

CT. 2: Illegal Assembly or Possession of Chemicals For Manufacture of Drugs, a violation of RC 2925.041(A) – F3

THE FACTS

Based upon the testimony, credibility of the witnesses, and exhibits, the evidence is overwhelming that on or about August 16, 2013, in the City of Amherst, County of Lorain, State of Ohio, the Defendant was at a residence located at 129 Lincoln Street ("The Premises") owned by Darrel McCarty. The Premises was leased to Brett Osborne ("Osborne").

The Defendant was at The Premises with his friend (and co-Defendant) Drew Ashton ("Ashton"). The Defendant and Ashton were in The Premises attached garage around 4:20 pm engaged in the process of making a substance known as Butane Honey Oil ("BHO"). BHO is, essentially, the "end-product" of a process whereby marijuana (in plant form) is stuffed into a device colloquially known as an "extractor;" butane is injected into the extractor; then a gooey,

waxy, resin-like substance drips out of the bottom of the extractor where it is collected. The butane gas evaporates (in this case, with the assistance of a hot-plate) and what is left is the BHO. The entire purpose of this criminal endeavor is to separate that part of the marijuana that induces a "high," Delta-9 Tetrahydrocannabinol ("THC"), from the marijuana plant material to obtain a "better, more potent form of marijuana."

The definition of marijuana includes "... all parts of a plant of the genus cannabis ... [and] the resin extracted from a part of a plant of that type ..." RC 3719.01(O), emphasis added.

THC is a Schedule I Controlled Substance defined in part as "Tetrahydrocannabinols (synthetic equivalents of the substances contained in the plant, or in the resinous extractives of Cannabis ...)" RC 3719.41(C)(27), emphasis added.

In the case at bar, the Defendant and Ashton were making BHO by engaging in the process described above. The Defendant and Ashton brought approximately 165.27 grams of marijuana to The Premises. They had dozens of metal canisters of butane, an extractor, a hot-plate, and an empty box of butane canisters.

At the date and time noted above, while in the garage at The Premises, the Defendant and Ashton stuffed marijuana into the extractor, inserted a tube from one of the cans of butane into the top of the extractor and discharged the butane into the extractor in order to manufacture BHO. While engaged in this process, a fire broke out in the garage and quickly spread throughout The Premises. The Defendant and Ashton bolted out of the garage into the house where Osborne was sleeping, awoke him, then the three of them ran outside. Police and firefighters arrived and ultimately extinguished the blaze. The Premises was completely destroyed.

The cause of the fire was the ignition of butane gas trapped in the enclosed garage that came in contact with the lit pilot light of a water heater that was operating in the garage. Neither the Defendant nor Ashton knew of the presence of the water heater (or pilot light) while they were manufacturing BHO.¹

THE GUILTY RULING AS TO COUNT TWO

Count Two of the indictment alleges that the Defendant violated RC 2925.041(A), Illegal Assembly or Possession of Chemicals for Manufacture of Drugs, a Felony of the 3rd Degree.

The statute reads "No person shall knowingly assemble or possess one or more chemicals that may be used to manufacture a controlled substance in schedule I or II with the intent to manufacture a controlled substance in schedule I or II in violation of section 2925.04 of the Revised Code." RC 2925.041(A).

The Revised Code defines "manufacture" as "... to plant, cultivate, harvest, process, make, prepare, or otherwise engage in any part of the production of a drug, by propagation, extraction, chemical synthesis, or compounding, or any combination of the same, and includes

¹ For this reason, the Court could not find beyond a reasonable doubt that the Defendant *knowingly* "cause[d] physical harm to any occupied structure ..." (Agg. Arson) or *knowingly* "cause[d], or create[d] a substantial risk of, physical harm to any property of another ..." (Arson).

packaging, repackaging, labeling, and other activities incident to production." RC 2925.01(J), emphasis added.

Finally, RC 2925.041(A) references section 2925.04, Illegal Manufacture of Drugs – Illegal Cultivation of Marijuana – Methamphetamine Offenses. This statute reads "No person shall knowingly cultivate marihuana or knowingly manufacture or otherwise engage in any part of the production of a controlled substance." (Emphasis added.)

DECISION

There is no question that on or about August 16, 2013, in the City of Amherst, County of Lorain, State of Ohio that the Defendant, Anthony C. Naples, engaged in the illegal assembly or possession of chemicals for manufacture of drugs for the purpose of producing a controlled substance.

The Defendant possessed over 165 grams of marijuana, a Schedule I Controlled substance; he possessed dozens of canisters of butane (a chemical); an extractor; and a hot plate – all for the purpose of engaging in the manufacture of BHO, a substance containing isolated THC *extracted* from the leafy plant material of the marijuana through the process of *chemical synthesis*, which resulted in a more potent, purified form of THC.

Accordingly, the Court does find that the State has proven beyond a reasonable doubt that the Defendant is guilty of:

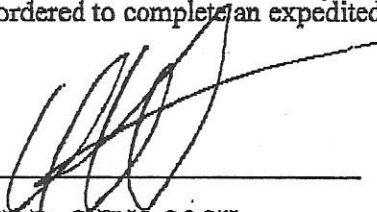
CT. 2: Illegal Assembly or Possession of Chemicals For Manufacture of Drugs, a violation of RC 2925.041(A) – F3

The Court shall hereafter proceed to sentence the Defendant on **Friday, June 2, 2017 @ 1:30 pm.**

The Lorain County Adult Probation Department is hereby ordered to complete an expedited Pre-Sentence Investigation. Bond is continued.

IT IS SO ORDERED.

DATE



JUDGE D. CHRIS COOK

ENTERED
M.O.



FILED
LORAIN COUNTY

2017 JUN 12 11 05 AM
COURT OF COMMON PLEAS
TOM O'RLANCO
LORAIN COUNTY, OHIO

JOURNAL ENTRY

STATE OF OHIO	:	CASE NO. 13CR088493
Plaintiff,	:	JUDGE D. CHRIS COOK
vs.	:	<u>ORDER</u>
ANTHONY C. NAPLES	:	
Defendant.	:	

This matter is before the Court on Defendant's Motion For Judgment of Acquittal After Verdict/Motion For Reconsideration, filed June 8, 2017. The State has not responded in opposition.

On May 26, 2017 the Court found the Defendant guilty of Count Two of the indictment, Illegal Assembly or Possession of Chemicals For Manufacture of Drugs, in violation of RC 2925.041(A), a felony of the third degree. Sentencing is set for June 9, 2017.

DEFENDANT'S STATUTORY ARGUMENT

The gravamen of Defendant's position is that RC 2925.041(A) references RC 2925.04, "Illegal Manufacture of Drugs – Illegal Cultivation of Marihuana – Methamphetamine Offenses" which must be read in *pari materia*. Defendant urges that because the drug at issue is marihuana, he cannot be convicted of Illegal Manufacture of Drugs, a felony of the third degree but only Illegal Cultivation of Marihuana, a misdemeanor of the fourth degree as he had less than 200 grams of marihuana. RC 2925.04(C)(5)(b).

This argument is inapposite. As the Court noted in its Entry of Conviction, the Defendant engaged in conduct "... all for the purpose of engaging in the manufacture of BHO, a substance containing isolated THC ..." (Emphasis added.) As such, the Court found the Defendant guilty of manufacturing Tetrahydrocannabinols ("THC") defined at RC 3719.41(C)(27), a Schedule I Controlled Substance in violation of RC 2925.041(A) and which also violated RC 2925.04(A), "No person shall knowingly cultivate marihuana or knowingly manufacture or otherwise engage in any part of the production of a controlled substance." (Emphasis added.)

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To that end, the Court found that the Defendant violated RC 2925.041(A) by knowingly possessing chemicals (butane) for manufacture of THC – not for manufacture (or cultivation) of marihuana, a substance different in nature and character than THC. (See: RC 3719.41(C)(19) – “Marihuana” vs. RC 3719.41(C)(27) – “THC”).

DEFENDANT’S SUFFICIENCY OF THE EVIDENCE ARGUMENT

In a recent Ninth District case, the court of appeals held, “Whether a conviction is supported by sufficient evidence is a question of law reviewed *de novo*; the court must examine the evidence admitted at trial to determine, if believed, would convince the average mind of the defendant’s guilt beyond a reasonable doubt – after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt.” *State v. Lockhart*, 2017 –Ohio- 914

The evidence in this case borders on almost “overwhelming.” There was substantial competent, credible evidence of the Defendant’s involvement in the Illegal Possession of Chemicals For Manufacture of Drugs. A review of the record, consideration of the testimony, and evaluation of the credibility of the witnesses and weight of the evidence would lead any rational trier of fact to find the essential elements of the crime proven beyond a reasonable doubt.


CONCLUSION

For the foregoing reasons, the Court finds Defendant’s Motion For Judgment of Acquittal After Verdict/Motion For Reconsideration not well-taken. The Motion is DENIED.

Case remains set for sentencing on June 9, 2017.

IT IS SO ORDERED. No Record.

DATE



JUDGE D. CHRIS COOK

cc: Griffin, APA
Stepanik, Esq.