

LAW COURT OPINIONS -- SERIOUS DRUG CASES

State v. Lucien WOO, 2007 ME 151, 938 A.2d 13

Court **AFFIRMED** conviction for trafficking in methamphetamine where Defendant possessed most of ingredients necessary for manufacture process and jury could infer purpose behind possession for to manufacture (prepare or process). Alexander & Silver, dissent that evidence not sufficient due to otherwise innocuous nature of items possessed and failure to prove successful manufacture.

State v. Aaron S. LOWDEN, 2014 ME 29

Court **VACATED** conviction for trafficking in methamphetamine b/c the evidence was not sufficient for a jury to rationally conclude, beyond a reasonable doubt, that the defendant completed the manufacture process. The chemicals found at the scene constituted some of the "key components sufficient for the manufacture of methamphetamine through the method described in the book. However, no methamphetamine was found, nor was there evidence that any of the syntheses necessary to manufacture methamphetamine had occurred. Furthermore, and as the trial court found in ruling on a post-judgment motion, Lowden did not have all of the ingredients necessary to complete the manufacture of methamphetamine.

Although the definition of "[m]anufacture" could appear to suggest that mere preparation or processing of chemicals may be sufficient . . . it is clear that preparation and processing, without more, is insufficient. Unlawful trafficking in scheduled drugs mandates not only that a person "traffics" in a drug, but that the drug "is in fact a scheduled drug." One cannot "prepare" or "process," and therefore traffic in, a drug that "is in fact a scheduled drug" without a scheduled drug ultimately being produced.

The Court distinguished Woo as there was "substantial circumstantial evidence that Woo successfully made methamphetamine," in which a rational jury could have found beyond a reasonable doubt that the defendant unlawfully trafficked in methamphetamine. Here, unlike in *Woo*, there is no evidence, either direct or circumstantial, from which the jury could infer that Lowden successfully created methamphetamine or that methamphetamine had been created on or brought to the premises. No methamphetamine was found, Lowden lacked some of the chemicals necessary to create it, and the State did not present evidence—direct or circumstantial—from which a jury could have rationally inferred that Lowden successfully manufactured or possessed methamphetamine.

Because Lowden could have been convicted of trafficking based on the jury's finding that he engaged in knowing, but not intentional, conduct, the crime of attempted trafficking (which demands proof of only intentional conduct) was not necessarily committed by the same conduct. Thus, **attempted trafficking is not a lesser included offense of the crime of trafficking**.

State v. Gary BARNARD, 2001 ME 80

Court AFFIRMED trafficking judgment despite the lack of lab analysis of the suspected drug, hydromorphone (Dilaudid). To convict for trafficking, the State is required to prove the essential element beyond a reasonable doubt -- that the drugs were in fact a scheduled drug. In the absence of a chemical analysis, other direct and circumstantial evidence can establish beyond a reasonable doubt the identity of drugs, which might include the testimony of a witness who has experience based on familiarity with the drugs through law enforcement, prior use, or trading. Here, the agents and the person who made the buy testified to the nature and the circumstances of the sale, and testified in some detail as to the appearance of Dilaudid and the appearance of the tablets. It was left to the jury to determine the weight to be given that testimony based on the knowledge, competence, training and experience of those witnesses. The evidence was sufficient to support the conclusion of the jury beyond a reasonable doubt that the tablets were Dilaudid.

The Court declined to adopt a bright line rule requiring a chemical analysis in order to prove in every criminal case that a substance is in fact a scheduled drug.

State v. Steven BARNARD, 2003 ME 79, 828 A.2d 216

Court AFFIRMED the conviction & sentence for Aggravated Trafficking (within 1000' of School).

Court reminded trial courts that a statutory presumptions presented as "prima facie" evidence are to be instructed as permissible inferences as used by 17-A M.R.S.A. § 1112(1) (Certificate of Drug Analysis prima facie evidence . . .)

Aggravating Trafficking element – within 1000' of a school – need not be proven with precision. Precise measurements unnecessary in cases where the spatial leeway is relatively great and the gap in the chain of proof is relatively small.... common sense, common knowledge, and rough indices of distance are sufficient. When the spatial leeway is modest, however, and personal liberty is at stake, courts must examine the government's proof with a more critical eye. See U.S. v. Soier, 275 F.3d 146, 155 (1st Cir. 2002). To convict, however, proof must establish beyond a reasonable doubt that the **distance from a school to the actual site of the transaction, not merely to the curtilage or exterior wall** of the structure in which the transaction takes place, is 1,000 feet or less....

Levy, J, & Saufley, CJ, dissented on issue of sufficiency of proof of occurrence within 1000' of school.

State v. John T. BUCHANAN Jr., 2007 ME 58, 921 A.2d 159

Court **VACATED** Judgments for Trafficking, Importation & Possession charges. Defendant entered US from Canada having pills in baggie. Trial Court ruled in limine that evidence of a Canadian prescription for the drugs was inadmissible on Possession charge so denied it admission as to all charges. Law Court found evidence of prescription relevant and admissible on intent element of Trafficking charge.

State v. Donald PIERCE, 2006 ME 75

Court **AFFIRMED** \$145,000 contested forfeiture.

Maine's criminal forfeiture statute states that "a person convicted of a violation of Title 17-A, chapter 45 forfeits to the State all rights . . . to property that is subject to forfeiture pursuant to section 5821." 15 M.R.S. § 5826(1). Section 5821, in turn, provides that property subject to forfeiture includes "all money . . . or other things of value furnished or intended to be furnished by any person in exchange for a scheduled drug in violation of Title 17-A, chapter 45; [and] all proceeds traceable to such an exchange." 15 M.R.S.A. § 5821(6) (Supp. 2001). Pierce interprets the statute to mean that the \$145,000 is subject to forfeiture only if it is traceable to the trafficking crime for which he was convicted. The State, on the other hand, contends that it is sufficient for the State to prove by a preponderance of the evidence that the \$145,000 is the result of illegal drug trafficking.

The plain language of the forfeiture statutes requires the State to prove by a preponderance of the evidence that the defendant has been convicted of a violation of chapter 45 of title 17-A, and that the money or other thing of value was furnished or intended to be furnished in exchange for a scheduled drug, or is traceable to such an exchange. **The plain language does not limit the subject of forfeiture to money that is traceable to the particular drug transaction that led to the conviction** or, as in this case, to the twenty or more pounds of marijuana possessed by Pierce that led to his conviction.

State v. Myron HARDY, 651 A.2d 322 (1994)

"A jury instruction on a lesser included offense does not have to be given unless the issue is supported by the evidence and a rational basis exists for the jury to find the defendant guilty of the lesser offense." . . . "[I]n order for one offense to be a lesser included offense of another, separate offense, the lesser included offense, *as legally defined*, must necessarily be committed when the greater offense, *as legally defined*, is committed . . . 17-A M.R.S.A. § 13-A(2) (1983). **Unlawful possession of scheduled**

drugs. . . is not a lesser included offense of unlawful trafficking in scheduled drugs . . . because one need not "possess" marijuana in order to "traffick" in marijuana.

State v. Bradley SARGENT, 2009 ME 125, 984 A.2d 831

Court **AFFIRMED** trial court suppression Order:

“Because we conclude that consent to search a vehicle does not in all cases extend to containers within it, and that under the objective circumstances of the consent in this case the trial court could conclude that the consent did not reasonably encompass the bag, we affirm the suppression judgment.”

State v. Joe GONZALES, 604 A.2d 904 (1992)

Court **VACATED** 15 year sentence imposed on Class A Aggravated Trafficking conviction:

“Although the offense was elevated from Class B to Class A by an aggravating factor of section 1105 (Sale within 1000’ of school), the sentencing justice attached no significance to that factor in the circumstances of this case. . . . Because **no school activity was involved**, the **nighttime sale of drugs in an apartment near a school** was not treated as requiring anything more than the 4-year minimum sentence provided by the statute. The **quantity of drugs involved is minimal**, even accepting the State's argument based on money found in the apartment. Gonzales sold **at most 17 grams of cocaine**, little more than ½ ounce. We conclude that the basic sentence should not approach the upper quadrant of the lower range for Class A crimes.”