



Roll Call Reporter

November
2015

LEGAL UPDATES FOR MARYLAND LAW ENFORCEMENT OFFICERS

QUESTION: Is the “manufacture” of a CDS such as methamphetamine for personal use a crime?

ANSWER: Yes. Under Maryland law, it is unlawful to produce or make methamphetamine, even if it is done by an individual for the individual’s own personal use.

CASE: *Dana Russell Stallard v. State Court of Special Appeals of Maryland*
Decided October 28, 2015

Execution of the Search Warrant and Items Recovered:

On November 14, 2013, at 9:56 a.m., police officers assigned to the Garrett County Narcotics Task Force executed a search and seizure warrant at the residence of Dana Russell Stallard in Friendsville, Maryland. Stallard, an unidentified woman, and a child were at the residence at the time. Before he entered the house, Maryland State Police Trooper Sid Bittinger asked Stallard if there was any methamphetamine cooking inside the residence. Stallard said that there was a bottle underneath

the kitchen table and told the Trooper to tighten the lid on it or it might blow up and catch the house on fire.

The search of the residence revealed a number of items, including two plastic bottles containing a white powdery substance; a pipe believed to be a marijuana smoking device; a pouch with various items (tweezers, a spoon, a “pen body,” a hypodermic syringe, and a “suboxone strip”) containing suspected methamphetamine; a Coleman fuel container; a Red Devil lye container; several aluminum foil homemade smoking pipes; a silver metal grinder which contained marijuana residue; “cold packs”; a silver metal grinder with marijuana residue; a red plastic grinder; a clear plastic bottle inside a plastic cup containing a liquid resembling separated oil and water; a clear plastic bottle with liquid inside, along with black lithium battery strips; a bottle with a “muriatic acid” label; and a bottle of Claritin brand pills.

Stallard’s Description of Manufacturing Methamphetamine:

After the search, Trooper Bittinger conversed with Stallard, who told him that he had learned to cook methamphetamine just two or three

weeks before. Stallard described the process, and said that he had purchased the necessary items (including fuel oil, lye, lithium batteries, and Claritin pills (which may contain pseudoephedrine-an ingredient used in the manufacture of methamphetamine). Stallard explained that he used the “cold cook method” to manufacture methamphetamine, which involved two cupfuls of lye, crushed Claritin pills, three-quarters of a cold pack containing nitrate, and some Coleman fuel in plastic bottles. Stallard continued describing the process in great detail, and said that at the stage where the bottle is shaken and swells, it was very easy for the bottle to blow up or catch on fire. The end result of the process was roughly six grams of methamphetamine. Stallard said that he injected and smoked methamphetamine.

The Charges, Trial, and Convictions:

Stallard was charged with manufacturing methamphetamine, possession of plastic bottles adapted for the production of methamphetamine, possession of methamphetamine, possession of marijuana, and possession of drug paraphernalia. He elected a bench trial. The State called Eileen Briley, a forensic examiner and chemist with the Maryland State Police, as an expert witness. She testified that she examined and tested some of the items recovered during the search, and found residue of methamphetamine on (or in) various objects. Marijuana and marijuana was also found on (or in) other items.

Maryland State Trooper Pennie Kyle, an expert in the identification of methamphetamine and its production and manufacture, testified that the evidence recovered from Stallard’s home indicated that Stallard was involved in a “one-pot or a shake-and-bake type method of cooking methamphetamine. Trooper Kyle identified the

necessary ingredients and explained the “cooking” process in some detail. He concluded that the items found in Stallard’s home were consistent with the manufacture of methamphetamine.

Stallard was convicted and sentenced to five years’ imprisonment.

The Appeal and Decision:

Stallard appealed, arguing that the evidence was insufficient to sustain his convictions for manufacturing methamphetamine and for possession of plastic bottles adapted for the production of methamphetamine. He urged that the evidence showed that he was “cooking” methamphetamine for his personal use and, under the statute (Section 5-603 of the Criminal Law Article), the “manufacture” of a controlled dangerous substance (“CDS”) for personal use is not a crime. The Court disagreed, noting that the “personal use exception” in the statute applies only when someone prepares (gets ready) or compounds (mixes) a CDS for his or her own use, but not when a person “manufactures” (meaning to produce, propagate, convert, or process) a CDS.

In this case, the evidence showed that Stallard was producing methamphetamine by manufacturing it, so the personal use exception did not apply. As a result, Stallard’s convictions were upheld.

NOTE: Stallard also contested his conviction for possession of plastic bottles adapted for the production of methamphetamine. The Court again disagreed, ruling that the adaptation of equipment or an instrument or a device, such as a plastic bottle, for use in making methamphetamine is a crime.



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