Article 205

Conviction for Possession of Materials to Produce Methamphetamine Reversed

Pacoima police received information that a shoe store there was selling narcotics. The police then put the store under surveillance. On February 2, 2009, police saw Carlos Garcia go into the store and leave with a large white box. Police then stopped Garcia and searched his backpack, which he was also carrying.

The backpack contained red phosphorous. The box did not contain shoes. It had a glass flask with red phosphorous residue at the bottom. Red phosphorous, when combined with iodine, is used in the manufacture of methamphetamine.

Police then searched the shoe store and found 21.78 grams of cocaine, as well as 33.61 grams of methamphetamine packaged in small baggies. The store also had a scale of the type commonly used for narcotics sales, empty baggies, a pay-owe sheet and currency.

Police later searched Garcia's home and found a red phosphorous, 1.5 grams of methamphetamine, $2,353 in cash, 43 clear plastic baggies containing 16.11 grams of methamphetamine, a digital scale and a "meth pipe." Police also found white Tylenol pills, which they mistakenly believed were pseudoephedrine tablets, which are used in the manufactured meth.

Police did not find any iodine in the home. They also did not find a cooking vessel or hydrogen chloride gas, which is also necessary to manufacture meth.

Defendant was convicted of possession of methamphetamine as well as possession of an essential chemical to manufacture meth (Health and Safety code § 11383.5 (e).

Defendant then appealed his conviction for possession of a chemical essential to manufacture meth, contending the evidence was insufficient to support his conviction because he did not possess iodine, an essential component (When combined with red phosphorus) of the hydriodic acid solution necessary to constitute a reducing agent within the meaning of Health and Safety Code Section 11383.5 (e).

The second Appellate District in *People v. Ruben Verduzco* (2012 DJDAR 15361), began its analysis by nothing that section 11383.5 (e) provides in relevant part that, "any person who possesses essential chemicals sufficient to manufacture hydriodic acid or a reducing agent, with the intent to manufacture methamphetamine, is guilty of a felony… "The appellate court then recognized that the big issue to determine was whether the word "sufficient" meant a quantity or both a quantity and capacity to make hydriodic acid.

The prosecution argued that "Sufficient" referral only to quantity. The appellate court, using principles of statutory interpretation, looked at the legislative history and found that the

legislature's focus was preventing the manufacture of hydriodic acid, the reducing agent. This agent "reduces" pseudoephedrine (i.e. from Sudafed) to methamphetamine by removing an oxygen molecule from pseudoephedrine.

Here, defendant did not have the iodine needed to mix with red phosphorus, so he could not create hydriodic acid. The legislative intent was to prevent the manufacture of hydriodic acid. Had the legislature intended to prohibit the possession of the element to produce hydriodic acid, the appellate court reasoned, it easily could have specified that it was illegal to possess either red phosphorous or iodine. As the legislature did not do this, it was not a crime to possess just red phosphorus.

Accordingly, the Second Appellate District reversed Defendant's conversation for violating Health and Safety Code § 11383.5.

This article was written by Greg Hill. He has defended manslaughter and negligent homicide matters in both state and federal court, as well as DUI's, domestic violence and drug offenses all over the state of California. He is an attorney in Torrance, California and a former Marine Officer. He is a U.S. Naval Academy graduate (B.S., 1987), Boston University graduate (M.B.A., 1994) and Loyola Law School graduate (J.D., 1998). Visit his firm's website at http://www.greghillassociates.com or his firm's Facebook page at http://www.facebook.com/pages/greg-hill-associates/198954460153651.