

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	Sheila G. Farmer, P.J.
Plaintiff-Appellee	:	John W. Wise, J.
	:	Julie A. Edwards, J.
-vs-	:	
	:	Case No. 2005CA00009
ANTHONY T. YOUNG	:	
	:	
Defendant-Appellant	:	<u>O P I N I O N</u>

CHARACTER OF PROCEEDING: Criminal Appeal From Stark County Court of Common Pleas Case 2004CR1687(B)

JUDGMENT: Reversed and Remanded

DATE OF JUDGMENT ENTRY: 7/25/2005

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

PATRICIA C. MELIA
JOHN D. FERRERO
Stark County Prosecutor's Office
110 Central Plaza South, Suite 510
Canton, OH 44702

SCOTT E. FELLMETH
Midtown Office Building
46 Federal Avenue
Massillon, OH 44647

Edwards, J.

{¶1} Defendant-appellant Anthony Young appeals his conviction and sentence from the Stark County Court of Common Pleas on one count of illegally manufacturing or processing explosives. Plaintiff-appellee is the State of Ohio.

STATEMENT OF THE FACTS AND CASE

{¶2} On October 22, 2004, the Stark County Grand Jury indicted appellant on two counts of illegally manufacturing or processing explosives in violation of R.C. 2923.17(B), felonies of the second degree, and one count of inducing panic in violation of R.C. 2917.31(A)(3), a misdemeanor of the first degree. The charges arose after appellant and his co-defendant, Jason Dommer, created a “bottle bomb” by putting foil and toilet cleaner into a plastic bottle, capping the bottle, then shaking the bottle and throwing the same at or near a school. The “bottle bomb” exploded. At his arraignment on November 12, 2004, appellant entered a plea of not guilty to the charges.

{¶3} Subsequently, on November 23, 2004, appellant filed a Motion to Dismiss, arguing that “the facts do not warrant an indictment under R.C. 2923.17(B)...” Appellant specifically contended that the “bottle bomb” was not an “explosive device” as defined by R.C. 2923.11(H). Appellant, in his motion, also referred the trial court to R.C. 2923.11(M).

{¶4} After the trial court denied his Motion to Dismiss, appellant, on December 6, 2004, entered a plea of no contest to one count of illegally manufacturing or processing explosives and one count of inducing panic. The remaining charge was dismissed. As memorialized in a Judgment Entry filed on December 13, 2004, appellant was sentenced to four years in prison.

{¶5} On December 20, 2004, appellant filed a motion asking the trial court to reconsider its decision denying appellant's Motion to Dismiss. Appellant, in his motion, argued that a "bottle bomb" is not an "explosive" as defined by R.C. 2923.11(M). Pursuant to a Judgment Entry filed the next day, the trial court denied such motion.

{¶6} Appellant now raises the following assignments of error on appeal:

{¶7} "I. THE TRIAL COURT ERRED IN DENYING YOUNG'S MOTION TO DISMISS HIS INDICTMENT UNDER R.C. 2923.17(B).

{¶8} "II. THE TRIAL COURT ERRED IN FINDING YOUNG GUILTY OF VIOLATING R.C. 2923.17(B)."

I, II

{¶9} Appellant, in his two assignments of error, argues that the trial court erred in denying his Motion to Dismiss and in finding appellant guilty of violating R.C. 2923.17(B). We agree.

{¶10} As is stated above, appellant was indicted on one count of illegally manufacturing or processing explosives in violation of R.C. 2923.17(B). Such section states as follows: "No person shall manufacture or process an explosive at any location in this state unless the person first has been issued a license, certificate of registration, or permit to do so from a fire official of a political subdivision of this state or from the office of the fire marshal." In turn, R.C. 2923.11(M) defines as "explosive" as "any chemical compound, mixture, or device, the primary or common purpose of which is to function by explosion. "Explosive" includes all materials that have been classified as class A, class B, or class C explosives by the United States department of transportation in its regulations and includes, but is not limited to, dynamite, black

powder, pellet powders, initiating explosives, blasting caps, electric blasting caps, safety fuses, fuse igniters, squibs, cordeau detonant fuses, instantaneous fuses, and igniter cords and igniters. "Explosive" does not include 'fireworks,' as defined in section 3743.01 of the Revised Code, or any explosive that is not subject to regulation under the rules of the fire marshal adopted pursuant to section 3737.82 of the Revised Code." (Emphasis added.)

{¶11} We concur with appellant that the "bottle bomb" does not fit within the definition of an "explosive" contained in R.C. 2923.11(M). As is stated above, R.C. 2923.11(M) states that, as used in R.C. 2923.17, the term "'Explosive" does not include "fireworks," as defined in section 3743.01 of the Revised Code, or any explosive that is not subject to regulation under the rules of the fire marshal..." Appellee does not dispute that none of the materials in this case that were used to make the bottle bomb, including toilet bowl cleaner containing hydrochloric acid, are subject to the rules and regulations of the fire marshal. Nor, as noted by appellant, are they classified as an "explosive" by the United States Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives. Rather, the materials used in the case sub judice were all common household items available at a grocery store.

{¶12} We further note that at least one court has held that a "bottle bomb" created by placing toilet bowl cleaner containing hydrochloric acid and aluminum foil into a bottle was a "dangerous ordnance" as defined by R.C. 2923.11(K)(2). See *In re Travis* (1996), 110 Ohio App.3d 684, 675 N.E.2d 36. In *Travis*, the appellant was charged with possession of a dangerous ordnance in violation of R.C. 2923.17(A). R.C. 2923.11(K)(2) defines a "dangerous ordnance" as including "[a]ny explosive device."

The appellant, in *Travis*, specifically argued that the “bottle bombs” were not “explosive devices” as defined by R.C. 2923.11(H). Such section defines an “explosive device” as: “Explosive device’ means any device designed or specially adapted to cause physical harm to persons or property by means of an explosion, and consisting of an explosive substance or agency and a means to detonate it. ‘Explosive device’ includes without limitation any bomb, any explosive demolition device, any blasting cap or detonator containing an explosive charge, and any pressure vessel that has been knowingly tampered with or arranged so as to explode.” In *Travis*, the court held that “bottle bomb” was an “explosive device” as defined above and thus a “dangerous ordnance”.

{¶13} As noted by appellant, under the Revised Code, an “explosive device” is not defined the same as an “explosive”, but rather both have separate and distinct definitions. We find that the “bottle bomb” in this case was not an “explosive” as defined by R.C. 2923.11(M).

{¶14} We find, therefore, that the trial court erred in denying appellant’s Motion to Dismiss.

{¶15} Appellant’s two assignments of error are, therefore, sustained.

{¶16} Accordingly, the judgment of the Stark County Court of Common Pleas is reversed and this matter is remanded to the trial court for further proceedings.

By: Edwards, J.

Farmer, P.J. and

Wise, J. concur

JUDGES

JAE/0509

