

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,
Appellant,
vs.
CHARLES J. MONACO,
Respondent.

No. 41355

FILED

OCT 13 2003

ORDER OF REMAND

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY J. Ruben
CHIEF DEPUTY CLERK

This is an appeal from an order of the district court granting a motion to dismiss an indictment. Respondent was charged with one count of manufacture of a controlled substance and/or attempt to manufacture a controlled substance, a violation of NRS 453.321.¹

Respondent moved to dismiss the indictment, arguing that this court's decision in Sheriff v. Burd² rendered the prosecution in this case unconstitutional. In Burd, this court held that NRS 453.322(1)(b) was facially vague because it prohibited the possession of various common household items without an intent element.³ Burd did not address the statute at issue in this appeal.

¹At the time, NRS 453.321 provided, in pertinent part:


Except as authorized by the provisions of NRS 453.011 to 453.552, inclusive, it is unlawful for a person to import, transport, manufacture, compound, sell exchange, barter, supply, prescribe, dispense, give away of administer a controlled or counterfeit substance or attempt to do any such act.


²118 Nev. ___, 59 P.3d 484 (2002).

³Id. at ___, 59 P.3d at 487-88.

Respondent's argument is that, because the State's theory of the case is that respondent is guilty of attempted manufacture of methamphetamine, as evidenced by his possession of various chemicals and laboratory equipment, the case is factually indistinguishable from Burdg. Although, like the defendants in Burdg, respondent was found to be in possession of various items used to manufacture methamphetamine, respondent was charged with the violation of a different statute. In order to obtain a conviction, the State will have to prove more than mere possession without any intent. The State must prove the actual manufacture or attempt to manufacture methamphetamine. We conclude that NRS 453.321 does not suffer from the same deficiency at NRS 453.322(1)(b). We therefore conclude that the district court erred by granting the motion to dismiss the indictment. Accordingly, we

REVERSE the order of the district court AND REMAND this matter to the district court for further proceedings.


_____, J.
Rose


_____, J.
Leavitt


_____, J.
Maupin

cc: Hon. Michael L. Douglas, District Judge
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Gabriel L. Grasso
Clark County Clerk