

IN THE COUNTY COURT OF LANCASTER COUNTY, NEBRASKA

THE STATE OF NEBRASKA,)	
)	Case No. CR08-7402
Plaintiff,)	
)	ORDER
vs.)	
)	
CHRISTIAN FIROZ,)	
)	
Defendant.)	

Defendant herein is charged with knowingly selling an intoxicating compound in violation of Nebraska Statutes; 28-419 and 28-420 to wit; Salvia Divinorum. 1/

He has filed a Motion to Quash the complaint 2/ contending that the two statutes are unconstitutionally vague in that they do not sufficiently define what may be a criminal act. He argues that ordinary people may be unwittingly ensnared by their ambiguity.

The case law from both the United States and Nebraska Supreme Courts clearly supports defendant's assertion that certain criminal statutes can be "void for vagueness". But the Nebraska Supreme Court has qualified who may assert such a claim --- who has "standing" to assert such a claim ---by repeatedly setting forth that a person who wishes to challenge a statute as "void for vagueness" must not engage in conduct clearly prohibited by the questioned statute.

While there may be others who potentially might be caught up in some confusing terminology contained in these two statutes, Mr. Christian Firoz does not appear to be one of them.

Sometime in early March of this year, before his arrest for selling Salvia, Mr. Firoz discussed both his personal use of Salvia Divinorum and his knowledge of it's general use by others. He readily admitted knowing that the Salvia Divinorum he was selling had "mind altering" effects on its users and that his customers were rushing to buy it before it was added in some fashion to the list(s) in the narcotics laws of our State ---- something that would not have prevented its use as a lawn fungicide or cleaning solvent. Clearly, by his own admission, Mr. Firoz knew precisely why his customers were buying Salvia Divinorum from him and what they intended to do with it.

At some point Mr. Firoz stated that he was a "part owner" of Exotica at 2441 N. 48th Street in Lincoln.

After his verbal admissions, undercover police officers bought a package of Salvia Divinorum at Exotica. The labeling on the package described the Salvia's strength as "high" and advised any user they would feel a "glow". This is again, indicative that the purchaser intended the substance to be ingested into the human body for that intoxicating effect. A subsequent search warrant revealed that Exotica had "instructions" intended to accompany the Salvia being sold. Those instructions "warned" against

selling “13x” Salvia to first time users. Further, that a “sitter” be present to monitor or take care of a user of Salvia and that people taking prescription drugs or those who had a history of mental instability not use Salvia. Once again, the seller knows that the Salvia being sold here is intended solely for human ingestion and intoxication.

After due consideration of the memorandum submitted and the factual assertions, this Judge is of the opinion that Mr. Christian Firoz knew precisely that the Salvia Divinorum he was selling was a “substance” his purchasers were buying intended for human ingestion for the sole purpose of achieving mind altering intoxication.

He has no standing to complain that he did not know what these two statutes declared criminal in nature.

Motion to Quash is overruled. The Court will enter a Not Guilty plea for defendant.

Matter reset to October 27, 2008 at 9:00a.m. #23 for Jury Trial.

DATED this _____ day of September, 2008.

GALE POKORNY
Lancaster County Judge

1./

Neb.Rev.Stat 28-419 provides:

No person shall breathe, inhale, or drink any compound, liquid, or chemical containing acetate, acetone, benzene, butyl alcohol, cyclohexanone, ethyl acetate, ethyl alcohol, ethylene dichloridem ethylene trichloride, hexane, isopropanol, isopropyl alcohol, methyl cellosolve acetate, methyl ethyl ketone, methyl isobutyl ketone, pentachlorophenol, petroleum ether, toleuen, toluol, trichloroathane, trichloroethylene, or any other substance for the purpose of inducing a condition of intoxication, stupefaction, depression, giddiness, paralysis, inebriation, excitement, or irrational behavior, or in any manner changing, distorting, or disturbing the auditory, visual, mental, or nervous processes. For the purposes of Sections 28-419 to 28-424, any such condition so induced shall be deemed an intoxication condition.

Neb. Rev. Stat 28-420 provides:

No person shall knowingly sell or offer for sale, deliver or give to any person any compound, liquid or chemical or any other substance which will induce an intoxicated condition as defined in section 28-419, when the seller, offerer or deliverer knows or has reason to know that such compound is intended for use to induce such condition.

For the purposes of determining the instant motion, this Judge believes the relevant portions of the two Statutes to be

Neb. Rev.Stat 28-419:

No person shall (ingest) . . . any . . . substance for the purpose of inducing a condition of intoxication, stupefaction, . . . inebriation, excitement, or irrational behavior, For the purposes of sections 28-419 to 28-424, any such condition so induced shall be deemed an intoxication condition.

Neb. Rev. Stat 28-420:

No person shall knowingly sell . . . to any person any substance which will induce an intoxicated condition as defined in section 28-419, when the seller , . . . knows or has reason to know that such compound is intended for use to induce such condition.

2/

After arraignment, defendant was given leave to withdraw his plea to allow him to file his motion.

There after the matter has been continued numerous times by counsel to submit memorandums and reply memorandums to the Court. When disagreement arose as to the factual basis, to be used to decide this motion, the matter was set for an evidentiary hearing, continued at counsel's request to workout a mutually agreed factual stipulation, reset for an evidentiary hearing and then, at an in chambers meeting on September 8th, counsel stipulated that the Court could accept the State's statement of facts for the purpose of ruling upon the Defendant's Motion to Quash and the September 9th evidentiary hearing became moot.

Defendant filed a “Notice of Disputed Facts and Additional Evidence regarding Motion to Quash”. Defendant attached a photocopy of the entire Lincoln Journal article/interview with Christian Firoz, “incorporating” it as part of defendant’s additional evidence. But no understanding or agreement was made in the chambers meeting of counsel regarding that filing or newspaper article and nothing contained therein was considered in the Court’s ruling on this Motion to Quash.