

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,) Case No. **07-1183**
Appellee,)
) On Appeal From Case No.
) 23507 In the Ninth District
) Court of Appeal and the
) Summit County Court of
) Common Pleas Case No.
Vs.) CR 2004 01 0135A
)
LANCE MATHIS,)
Appellant.)

MEMORANDUM IN SUPPORT OF JURISDICTION
OF APPELLANT

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SUPREME COURT OF OHIO

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III. ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW

A. Proposition of Law I: The appellate court erred in affirming the trial court decision to permit the State of Ohio to reopen its case after resting and before ruling on the Appellant's Rule 29 Motion to Acquit.

The general rule in Ohio is that the "question of opening up a case for the presentation of further testimony is with the sound discretion of the trial court, and the court's action in that regard will not be disturbed on appeal unless under the circumstances it amounted to an abuse of discretion." See *Columbus v. Grant* (1981), 1 Ohio App.3d 96. In *State v. Lowe* (1994), 69 Ohio St.3d 527, 532, the Supreme Court of Ohio indicated that "[T]he term "abuse of discretion" connotes more than an error of law or judgment, it implies that the court's attitude is unreasonable, arbitrary or unconscionable."

In *State v. Nerren*, 2006 Ohio 2885, the Ninth District Court of Appeals addressed the issue of a reopening of a case by the State of Ohio and stated the following:

This is not the case where the State was permitted to reopen its case after further opportunity to obtain the necessary evidence. Rather, it was a case of mere oversight by the State which had already obtained the necessary evidence through its prior investigation of the incident and preparation for trial.

In the matter at hand, Mr. Mathis was charged with trafficking marijuana and possession of marijuana, both felonies of the second degree. In order to prove either of these charges the State must prove that the marijuana at issue weighed in excess of 20,000 grams. See R.C. 2925.03 and 2925.11. At the close of the State's case Mr. Mathis moved the trial court to grant a Crim.R. 29, motion for acquittal based on the State's failure to prove the weight of the marijuana. The trial court recognized the issue and ordered a recess. It asked the parties to research the issue. After hearing additional argument, and reviewing portions of testimony the trial court concluded that the State had not introduced evidence that the contraband was weighed.

At this point, rather than granting Mr. Mathis' Crim.R. 29 motion for acquittal, the trial court allowed the State to reopen its case.

In the matter at hand, the failure to present sufficient testimony on weight of the marijuana in issue was not a simple oversight by the State of Ohio. The weight of the marijuana is an element in both charges and an obvious issue during the State's case in chief. The State called Akron Police Department Detective Donnie Williams, as an expert, to offer evidence on the weight of the marijuana. However, Williams did not weigh the marijuana himself and the weight was only listed as an approximate weight on his report. The trial court would not permit Mr. Williams to testify about the weight of the marijuana due to defense counsel's hearsay objection. Furthermore, the report was not admitted into evidence. Unlike the *Nerren* case, the issue of weight was in the forefront during the State's case in chief and the State had full and ample opportunity to offer evidence on the subject.

Under the circumstances presented above, the trial court abused its discretion by permitting the State to present further evidence regarding the weight of the marijuana. Mr. Mathis was absolutely prejudiced by the trial court's decision. Without permitting additional evidence, the State failed to prove an essential element of the offenses, in that there was no evidence that the marijuana weighed in excess of 20,000 grams. It was arbitrary and unreasonable to permit additional testimony regarding the weight of the marijuana; WHEREFORE, Mr. Mathis' convictions should be reversed.

B. Proposition of Law II - The appellate court erred in affirming the Appellant's conviction because the evidence was insufficient for a finding of guilt.

When reviewing a claim of insufficient evidence, the relevant inquiry is whether any rational fact finder, viewing the evidence in a light most favorable to the state, could have found the essential elements of the crime proven beyond a reasonable doubt. *Jackson v. Virginia*

(1979), 443 U.S. 307, 319, 99 S.Ct. 2781, 2789, 61 L.E.2d 560, 573; *State v. Jenks* (1991), 61 Ohio St.3d 259, 574 N.E.2d 492, paragraph two of the syllabus. The verdict will not be disturbed unless the reviewing court finds that reasonable minds could not reach the conclusion reached by the trier of fact. *Id.* at 273, 574 N.E.2d at 503.

Furthermore, with respect to sufficiency of the evidence, "sufficiency" is a term of art meaning that legal standard which is applied to determine whether the case may go to the jury or whether the evidence is legally sufficient to support the jury verdict as a matter of law." Black's Law Dictionary (6 Ed.1990) 1433. See, also, Crim.R. 29(A) (motion for judgment of acquittal can be granted by the trial court if the evidence is insufficient to sustain a conviction).

In essence, sufficiency is a test of adequacy; whether the evidence is legally sufficient to sustain a verdict is a question of law. *State v. Robinson* (1955), 162 Ohio St. 486, 55 Ohio Op. 388, 124 N.E.2d 148. In addition, a conviction based on legally insufficient evidence constitutes a denial of due process. *Tibbs v. Florida* (1982), 457 U.S. 31, 45, 102 {387} S. Ct. 2211, 2220, 72 L. Ed. 2d 652, 663, citing *Jackson v. Virginia* (1979), 443 U.S. 307, 99 S. Ct. 2781, 61 L. Ed. 2d 560.

Assuming arguendo that the trial court did not err in permitting the State of Ohio reopen its case, there was still insufficient evidence to establish the weight of the alleged drug in issue, marijuana. In order to prove either marijuana charge, the State was required to prove that the contraband was marijuana and that it weighed more than 20,000 grams. See R.C. 2925.03 and R.C. 2925.11. The State of Ohio failed to prove that the evidence tendered was more than 20,000 grams.

The State's expert, Detective Donnie Williams, testified that he never weighed the contraband that was alleged to be marijuana. The State failed to scientifically establish the

weight of the drug in issue. R.C. 2925.51(A) sets forth certain requirements for the admissibility of laboratory report as follows:

In any criminal prosecution for a violation of this chapter or Chapter 3719 of the Revised Code, a laboratory report from the bureau of criminal identification and investigation, a laboratory operated by another law enforcement agency, or a laboratory established by or under the authority of an institution of higher education that has its main campus in this state and that is accredited by the association of American universities or the north central association of colleges and secondary schools, primarily for the purpose of providing scientific services to stating that the substance that is the basis of the alleged offense has been weighed and analyzed and stating the findings as to the content, weight, and identity of the substance and that it contains any amount of a controlled substance and the number and weight or the existence and number of unit dosages of the substances. In any criminal prosecution for a violation of section 2925.041 of the Revised Code or a violation of this chapter or Chapter 3719, of the Revised Code that is based on the possession of chemicals sufficient to produce a compound, mixture, preparation or bureau or from any laboratory that is operated or established as described in this division that is signed by the person performing the analysis, stating that the substances that are the basis of the alleged offense have been weighed and analyzed and stating the findings as to the content, weight, and identity of each of the substances, is a prima-facia evidence of the content, identity, and weight of the substances.

As indicated previously, the report was not admitted into evidence in this case. There was testimony regarding the weight of the alleged illegal substance. However, pursuant to R.C. 2925.51(A), the testing conducted by the State of Ohio was insufficient. Without expert testimony regarding the weight of the substance, which must be performed under laboratory conditions, there was insufficient evidence as to the weight of the evidence.

After the State of Ohio was permitted to reopen its case, it recalled Sgt. Malick to testify that he weighed the alleged marijuana as part of the process of storing the evidence at the police department. Sgt. Malick testified that he weighed the evidence collected while it was packaged in tape or in plastic bag material and that there was no attempt to ascertain the weight of the packaging material used to package 101 bricks of alleged marijuana. The substance was weighed on a postal scale in the evidence room with no knowledge of when the scale had last

been calibrated. This method was completely unscientific and unreliable and therefore insufficient to establish the weight of the alleged marijuana.

The State of Ohio also failed to establish that the bulk of the substance found was marijuana, regardless of the weight. The bulk of the alleged marijuana was sealed in brown packaging tape in such a manner that one could not see what was in the inside of the 101 packages. Sgt. Malick assumed each brick contained marijuana but did not visually inspect each brick. As previously stated, Donnie Williams, the testifying expert, did not weigh the marijuana. Furthermore, Williams only opened one brick of alleged marijuana to obtain a sample for analysis and failed to visibly inspect the other 100 bricks to see if they contained marijuana as well. Williams testified that he did analysis on one brick and took samples from several plastic bags. No evidence was offered by the State of Ohio as to what was actually in the packaged bricks besides the one opened by the detective expert. There is insufficient evidence to show that any of the bricks, save one, contained marijuana as they were not subjected to any analysis, not even a visual inspection by the expert in this case. As a result, Mr. Mathis was greatly prejudiced and refused a fair trial. Mr. Mathis' conviction must be reversed.

C. Proposition of Law III – Finally, the appellate court erred in affirming the trial court decision which denied the Appellant's motion for an independent weight analysis of the drugs in issue.

R.C. 2925.51(F) creates a right for a person charged with drug offenses to demand an independent weight analysis and states the following:

In addition to the rights provided under division (E) of this section, any person who is accused of a violation of this chapter or of Chapter 3719 of the Revised Code that involves a bulk amount of a controlled substance, or any multiple thereof, or who is accused of a violation of section 2925.11 of the Revised Code, other than a minor misdemeanor violation, that involves marijuana, is entitled upon written request made to the prosecuting attorney, to have a laboratory analyst of the accused's choice, or, if the accused person is indigent, a qualified laboratory analyst appointed by the court present at a measurement or weighing of the substance that is the basis of the alleged violation. Also, the accused person is

entitled, upon further written request, to receive copies of all recorded scientific data that result from the measurement or weighing and that can be used by an analyst in arriving at conclusions, findings or opinions concerning the weight, volume or number or unit doses of the substance subject to the measurement or weighing.

The remedy for failing to allow independent testing is a dismissal of the charges. *State v. Riley* (1990) 69 Ohio App.3d 509.

Mr. Mathis acknowledges that no written request was made for an independent weight analysis prior to trial. However, the need to request such analysis did not arise until the trial court allowed the State of Ohio to reopen its case in chief in order to introduce new evidence as to the weight of the substance in issue. The alleged offense occurred January 9, 2004, and the indictment was filed on January 20, 2004. The State's expert did not analyze and prepare a report concerning the marijuana until August 28, 2006, just three weeks prior to trial. It was not until Williams' testimony that Mr. Mathis discovered that Williams did not weigh the alleged marijuana during his analysis.

The demand for an independent weight analysis was made when Mr. Mathis learned that the State of Ohio was going to rely on the "measurements" made by the arresting officers rather than measurements made by an independent or accredited laboratory. Before the cross examination of Sgt. Malick and after the case was reopened, Mr. Mathis requested independent analysis of the alleged marijuana. The trial court reserved ruling on the motion, ultimately denying the request at sidebar. The trial court's denial of the request was preserved on the record during the discussion of the admission of the evidence. The late discovery of how the State of Ohio conducted the weight analysis excuses any delay in making the request for independent analysis. The lack of independent analysis harmed Mr. Mathis because of the unscientific manner in which the measurements were taken. Furthermore, certainly calls actual weight into question. As a result of this violation of due process, Mr. Mathis' convictions should be reversed.

IV. CONCLUSION

Mr. Mathis was denied his right to due process because there was no scientifically established weight of the alleged marijuana of which he was convicted of possessing and trafficking. First, the trial court erred in permitting the State of Ohio to reopen their case in order to present further evidence regarding the weight of the alleged marijuana. Secondly, assuming arguendo that the trial court permissibly allowed the State of Ohio to reopen its case, there was still insufficient evidence presented during trial regarding the weight of the marijuana. Finally, per R.C. 2925.51(F) requires independent testing by the accused upon his/her request. Mr. Mathis was denied his right to have independent testing of the substance he was accused of trafficking and possessing.

WHEREFORE, based on the foregoing, Mr. Mathis moves this Court to accept jurisdiction of the case at hand and ultimately reverse his conviction.

Respectfully submitted,

Jana DeLoach (0071743)
Counsel for the Appellant
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330 328 2228

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing pleading was served on the Summit County Prosecutor's Office at 53 University Avenue, 7th Floor, Akron, Ohio 44308, by way of regular U.S. mail delivery on this 2nd day of July, 2007.

Jana DeLoach
Counsel for the Appellant

APPENDIX

STATE OF OHIO) COURT OF APPEALS
) DANIEL M. HORTON
) ss: IN THE COURT OF APPEALS
 COUNTY OF SUMMIT) 2007 MAY 16 AM 8:37 NINTH JUDICIAL DISTRICT

STATE OF OHIO) SUMMIT COUNTY No. 23507
) CLERK OF COURTS

Appellee

v.

LANCE K. MATHIS

Appellant

APPEAL FROM JUDGMENT
 ENTERED IN THE
 COURT OF COMMON PLEAS
 COUNTY OF SUMMIT, OHIO
 CASE No. CR 2004 01 0135 (A)

DECISION AND JOURNAL ENTRY

Dated: May 16, 2007

This cause was heard upon the record in the trial court. Each error assigned has been reviewed and the following disposition is made:

DICKINSON, Judge.

{¶1} Lance Mathis was convicted of one count of trafficking in marijuana and one count of possession of marijuana after police officers entered his house to investigate a domestic violence call and discovered clumps of marijuana on the floor in plain view. The officers obtained a search warrant and found packaged marijuana throughout the house and in a car in Mr. Mathis's garage. Following a bench trial, Mr. Mathis was found guilty and sentenced to a mandatory term of eight years on each count, to be served concurrently. He has appealed his conviction, arguing that the trial court abused its discretion in allowing the State to

reopen its case after Mr. Mathis's motion for acquittal, that the evidence was insufficient to sustain the conviction because the marijuana was identified based on random samplings and no signed laboratory report was presented as to the weight of the marijuana, and that the trial court erred in denying Mr. Mathis's motion to have the marijuana independently weighed. This Court affirms the trial court's judgment because it did not abuse its discretion in allowing the State to reopen its case, the random sampling was sufficient to identify the seized substance as marijuana, no laboratory report was required to establish the weight of the marijuana seized, and Mr. Mathis did not comply with the statutory requirements to obtain an independent measurement of the quantity of marijuana seized.

I.

{¶2} Mr. Mathis was arrested on January 9, 2004, after police officers discovered a large quantity of marijuana in his house and in a car in a detached garage on the property. He was indicted for violating Section 2925.03(A)(2) of the Ohio Revised Code by trafficking in marijuana and Section 2925.11(A) of the Ohio Revised Code by possessing marijuana. The trial court suppressed the evidence against him, and the State appealed to this Court, which reversed the trial court's ruling and remanded the case for trial. *State v. Mathis*, Summit App. Nos. 22039/22040, 2004-Ohio-6749. Mr. Mathis waived his right to a jury trial and was tried to the court. The trial court found him guilty on both counts. He was

sentenced to a mandatory term of eight years in prison on each count, to be served concurrently. He has raised three assignments of error on appeal.

II.

A.

{¶3} Mr. Mathis's first assignment of error is that the trial court incorrectly allowed the State to reopen its case. In order to obtain a second degree felony conviction under Section 2925.03 or Section 2925.11, the State had to prove that Mr. Mathis had possessed at least 20,000 grams of marijuana.

{¶4} Sergeant Jason Malick of the Akron Police Department testified that the police found 112 bricks of marijuana in the car in the garage. He identified 87 of these bricks and testified that they weighed about 454 grams each, or about one pound, plus 14 bricks that weighed about 238 grams each, or about one half pound. After the State presented its evidence, Mr. Mathis moved for a judgment of acquittal, arguing that the State had not proven how much the marijuana weighed. The State moved to reopen its case, and the trial court granted this motion, allowing the State to again call Sergeant Malick to the stand. When he testified the second time, Sergeant Malick described how the marijuana was weighed, testified that he had helped to weigh the marijuana, and specifically testified that the marijuana weighed well in excess of 20,000 grams.

{¶5} A trial court's decision to allow the State to reopen its case following a defendant's Rule 29 motion for acquittal will not be reversed absent

an abuse of discretion. *State v. Nerren*, Wayne App. No. 05CA0052, 2006-Ohio-2855 at ¶14. For this Court to conclude that a trial court abused its discretion, it must determine that the trial court's attitude was unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St. 3d 217, 219 (1983).

{¶6} In *State v. Nerren*, Wayne App. No. 05CA0052, 2006-Ohio-2855 at ¶14, this Court held that the trial court did not abuse its discretion in admitting additional testimony from the State after the defendant's Rule 29 motion:

This is not the case where the State was permitted to reopen its case after further opportunity to obtain the necessary evidence. Rather, it was a case of mere oversight by the State which had already obtained the necessary evidence through its prior investigation of the incident and preparation for trial. When the trial court allowed the State to reopen its case under these circumstances, it appropriately enabled the trier of fact to hear all available relevant evidence in the interest of justice.

Sergeant Malick initially identified 87 bricks of marijuana weighing about 454 grams each (although a police evidence report listed these bricks at 464 grams each) and 14 bricks weighing about 238 grams each. The total weight of this marijuana, not including the marijuana found in bags in the house and in the car, was 42,830 grams. The State, therefore, presented evidence that the marijuana found at the scene weighed more than 20,000 grams. After the State's case was reopened, Sergeant Malick testified that he had participated in weighing the marijuana, that all of the marijuana was weighed, and that the total weight was well in excess of 20,000 grams. His testimony at this point in the trial served two purposes. The first was to show that the evidence of the weight was based on

Sergeant Malick's own observations rather than hearsay. The second was to show that Sergeant Malick weighed all of the marijuana and that his prior approximations as to the weight of each brick were averages, based on dividing the total weight of the bricks by the number of bricks. They were not mere estimates based on weighing one or two bricks and approximating the weights of similarly sized bricks. When Sergeant Malick testified the second time, he testified to the contents of the evidence report:

Q. Now, approximately 464, why was that written?

A. Because that's - 464, if you take the total amount that we put on the scale and divide it by the amount of bricks that are there, which is the same size, that's how you tell that they are approximately 464.

{¶7} Testimony as to the weight of the marijuana was already present for the trier of fact to consider after Sergeant Malick testified the first time; the judge could simply multiply the weight stated for each brick by the number of bricks and arrive at a figure more than twice the 20,000 grams needed to convict Mr. Mathis. The subsequent testimony showed the basis for determining the weight of each brick, specifically, the average derived from the total weight of all the bricks, which Sergeant Malick found by weighing all of the bricks. The trial court did not abuse its discretion in allowing the State to reopen its case to offer this testimony. The first assignment of error is overruled.

B.

{¶8} Mr. Mathis's second assignment of error is that the state did not present sufficient evidence that all of the seized substance was marijuana and that the marijuana seized weighed at least 20,000 grams. "The test for 'insufficient evidence' requires the court to view the evidence in the light most favorable to the prosecution, and ask whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *State v. Leggett*, Summit App. No. 18303, 1997 WL 775688 at *2 (Oct. 29, 1997). This Court must determine, as a matter of law, whether the evidence was legally sufficient to support a conviction. *Id.* "In essence, sufficiency is a test of adequacy." *State v. Thompkins*, 78 Ohio St. 3d 380, 386 (1997).

{¶9} Mr. Mathis has argued that the state failed to establish that the marijuana had been weighed under controlled laboratory conditions. Section 2925.51(A) of the Ohio Revised Code provides that certain laboratory reports are prima facie evidence of the weight and identity of controlled substances:

In any criminal prosecution for a violation of this chapter . . . a laboratory report from the bureau of criminal identification and investigation, a laboratory operated by another law enforcement agency, or a laboratory established by or under the authority of an [accredited] institution of higher education that has its main campus in this state . . . primarily for the purpose of providing scientific services to law enforcement agencies and signed by the person performing the analysis, stating that the substance that is the basis of the alleged offense has been weighed and analyzed and stating the findings as to the content, weight, and identity of the substance and that it contains any amount of a controlled substance and the number and description of unit dosages, is prima-facie evidence of the

content, identity, and weight or the existence and number of unit dosages of the substance.

Although such a report is prima facie evidence of the weight of the substance, the statute does not provide that the only permissible way to establish that weight is by offering such reports. *In re Bennett*, 134 Ohio App. 3d 699, 702 (1999). In this case, Sergeant Malick testified that he had participated in weighing the marijuana seized from the scene and that the total weight was well in excess of 20,000 grams. His testimony was sufficient to establish the weight of the marijuana.

{¶10} Mr. Mathis has also argued that the marijuana was improperly weighed because the police officers did not remove it from the wrappers and bags before weighing it. According to him, without knowing the weight of the packaging materials, it was impossible to know the weight of the marijuana. Nevertheless, Sergeant Malick testified that, even if the wrappers had been removed from the marijuana, "it wouldn't even put a dent in the total amount of weight." He testified that 87 bricks of marijuana were found in the car weighing an average of 454 grams each, or approximately one pound, plus 14 bricks weighing 238 grams each, or approximately one half pound. The total weight of these bricks alone would be 42,830 grams, or more than twice the 20,000 grams needed to support a conviction, and this weight does not include the marijuana that had been packaged in bags instead of bricks. In order for the wrappers and bags to make any meaningful difference in the measurements, based on the quantity of marijuana found, the packaging materials would have had to weigh significantly

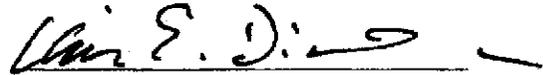
more than the marijuana itself. The marijuana bricks and the bags of marijuana were entered into evidence for the trier of fact to examine. Based on the physical evidence and Sergeant Malick's testimony, a reasonable trier of fact could have found that the marijuana weighed more than 20,000 grams. There was no need to weigh the packaging materials separately, as the trier of fact could have determined from Sergeant Malick's testimony and from examining the physical evidence that the packaging materials did not account for the large difference between the total weight of the packaged marijuana and the 20,000 grams required to convict Mr. Mathis.

{¶11} Mr. Mathis has next argued that there was insufficient evidence for the trier of fact to conclude that all of the substance found at the scene was marijuana. Detective Donnie Williams testified that he took samples from one brick of marijuana and from several of the bags of marijuana found at the scene, performed visual and chemical tests on those samples, and determined that they were marijuana. Mr. Mathis has argued that, because Detective Williams did not test the contents of the other bricks, there was no evidence that those bricks were marijuana.

{¶12} This Court has previously held that a scientific analysis of a random sampling of pills from a bulk quantity is sufficient to support an inference that all of the pills contain the same drug, if the defendant offers no rebuttal. *State v. Rush*, Lorain App. Nos. 3809/3818, 1985 WL 11030 at *4 (July 31, 1985). Other

Appeals at which time the period for review shall begin to run. App.R. 22(E).
The Clerk of the Court of Appeals is instructed to mail a notice of entry of this
judgment to the parties and to make a notation of the mailing in the docket,
pursuant to App.R. 30.

Costs taxed to appellant.


CLAIR E. DICKINSON
FOR THE COURT

CARR, P. J.
MOORE, J.
CONCUR

APPEARANCES:

MICHAEL K. BIGLOW, Attorney at Law, for appellant.

SHERRI BEVAN WALSH, Prosecuting Attorney, and PHILIP D. BOGDANOFF,
Assistant Prosecuting Attorney, for appellee.



IN THE COURT OF COMMON PLEAS
COUNTY OF SUMMIT

LANE MATHIS

OCT 31 PM 2:49

SEPTEMBER TERM 2006

THE STATE OF OHIO
CLERK OF COURTS
vs.

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Case No. CR 04 01 0135 (A)

LANCE K. MATHIS

JOURNAL ENTRY

THIS DAY, to-wit: The 23rd day of October, A.D., 2006, now comes the Prosecuting Attorney on behalf of the State of Ohio, the Defendant, LANCE K. MATHIS, being in Court with counsel, MICHAEL BIGLOW, for trial herein; the Defendant having, on October 18, 2006, voluntarily waived in open Court by written waiver and relinquished his rights to a trial by Jury and elected to be tried by the Court.

Whereupon, the trial commenced, and after having heard the evidence adduced by both parties hereto and the arguments of counsel, the Court hereby returns its verdict finding the Defendant, LANCE K. MATHIS, GUILTY of the charge of TRAFFICKING IN MARIJUANA, as contained in Count 1 of the Indictment; and POSSESSION OF MARIJUANA, as contained in Count 2 of the Indictment.

Thereupon, the Court inquired of the said Defendant if he had anything to say why judgment should not be pronounced against him; and having nothing but what he had already said, and showing no good and sufficient cause why judgment should not be pronounced:

IT IS THEREFORE ORDERED AND ADJUDGED BY THIS COURT that the Defendant, LANCE K. MATHIS, be committed to the OHIO DEPARTMENT OF REHABILITATION AND CORRECTION for a definite term of Eight (8) years, which is a mandatory term pursuant to O.R.C. 2929.13(F), 2929.14(D)(3), or 2925.01, for punishment of the crime of TRAFFICKING IN MARIJUANA, Ohio Revised Code Section 2925.03(A)(2), a felony of the second (2nd) degree; and for a definite term of Eight (8) years, which is a mandatory term pursuant to O.R.C. 2929.13(F), 2929.14(D)(3), or 2925.01, for punishment of the crime of POSSESSION OF MARIJUANA, Ohio Revised Code Section 2925.11(A), a felony of the second (2nd) degree, and that the said Defendant pay the costs of this prosecution for which

execution is hereby awarded; said monies to be paid to the Summit County Clerk of Courts, Courthouse, 205 S. High Street, Akron, Ohio 44308-1662.

IT IS FURTHER ORDERED, pursuant to the above sentence, that the Defendant be conveyed to the Lorain Correctional Institution at Grafton, Ohio, to commence the prison intake procedure.

IT IS FURTHER ORDERED that the sentences imposed in this case be served CONCURRENTLY and not consecutively with each other.

After release from prison, the Defendant is ordered to serve Three (3) years of post-release control. Defendant is ORDERED to pay all prosecutions costs, including any fees permitted pursuant to O.R.C. 2929.18(A)(4).

IT IS FURTHER ORDERED that credit for time served is to be calculated by the Summit County Adult Probation Department and will be forthcoming in a subsequent journal entry.

Thereupon, the Court informed the Defendant of his right to appeal pursuant to Rule 32A2, Criminal Rules of Procedure, Ohio Supreme Court, and further the Court appoints Michael Biglow as counsel to represent the said Defendant for purposes of appeal due to said Defendant's indigency.

APPROVED:
October 24, 2006
mh


BRENDA BURNHAM UNRUH, Judge
Court of Common Pleas
Summit County, Ohio

cc: Prosecutor Felicia Easter/Jeff Patterson
Criminal Assignment
Attorney Michael Biglow - #22
Adult Probation Department *Jail Credit*
Booking
Registrar's Office
Court Convey
Bureau of Sentence Computation **CERTIFIED**
Sgt. Ken Pullen
APD - Property Room