

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FIRST JUDICIAL DISTRICT AT KETCHIKAN

STATE OF ALASKA,)
Plaintiff,)
)
)
)
vs.)
)
)
MARIA AND MICHAEL LINEKER,)
Defendant.)

Case No. 1KE-S03-719,720CR

ORDER ON REMAND

Background

The defendants were living on Prince of Wales Island when the local power company discovered that they were unlawfully obtaining electricity. After investigation it was found that the defendants were stealing electricity in order to grow marijuana. They were charged with Misconduct Involving a Controlled Substance (MICS) in the Fourth Degree and Mr. Lineker was charged with theft of the electricity. Mr. Lineker pled to the theft charge and both the Linekers entered no contest pleas on the MICS charges.

The defendants claimed that the marijuana was grown to be used in their religion. Their explanation was that the plant was to be grown, converted into a liquid and then used as a fluid to bathe in and to be absorbed into the body. This court said at the original

Alaska Court System

Page 1

trial proceedings that given the circumstances of the case, there was no religious right for them to do that. They had the right to appeal those MICS convictions pursuant to Cooksey v. Alaska.¹

They appealed their conviction on the MICS charges. (There was no appeal of the conviction or sentence for theft.) The Alaska Court of Appeals remanded the case to this court for an evidentiary hearing to determine whether the defendants' use of marijuana was permitted by the Alaska Constitution as an exercise of religion.²

At the parties' request the court scheduled bifurcated evidentiary hearings on remand. The first hearing was to decide whether there was a religion and whether the criminal violations of law were allowed as a sincere belief in that religion. The second hearing is set for May in order to allow expert testimony on whether the State had a compelling interest to justify regulation.

Law

The Alaska Supreme Court set out a test to determine whether people are exempt from the criminal law if the exercise of their religion violates the criminal law.³ The first part of that test,

¹ 524 P.2d 1251 (Alaska 1973)

² Alaska Const. Art. I, §4.

³ Frank v. State, 604 P.2d 1068 (Alaska 1979).

the Frank test, says that a person who claims a religious exemption to a law that is neutral on its face must establish that there is a religion involved. The person claiming an exemption must prove that the conduct in question is religiously based, and that the claimant is sincere in his or her religious beliefs. Once the claimant establishes those things, the State has "[t]he burden of demonstrating a compelling state interest which justifies curtailing a religiously based practice... ." ⁴

Religious conduct may be forbidden only "where [it poses] some substantial threat to public safety, peace or order or where there are competing governmental interests of the highest order" that are not otherwise served.⁵ It is not sufficient for a court to conclude that there is a compelling state interest in enforcing the law in question. "The question is whether that interest, or any other, will suffer if an exemption is granted to accommodate the religious practice at issue."⁶

Discussion

⁴ Frank at p. 1074.

⁵ Swanner v. Anchorage Equal Rights Comm'n, 874 P.2d 274, 281-82 (Alaska 1994) (quoting Seward Chapel, Inc. v. City of Seward, 655 P.2d 1293, 1301 n.33 (Alaska 1982) (quoting Frank, 604 P.2d at 1070)) (internal quotations omitted).

⁶ Frank, 604 P.2d at 1073.

This first hearing was held on February 28th in Ketchikan. The defendants presented witnesses to the court at the hearing. The State did not.

The court had previously reviewed a large volume of material submitted at sentencing and heard the allocution of the parties pertaining to their practices. The parties agreed that any of the documents that were to be considered by the court on remand would be presented at the evidentiary hearing. Both the defendants and the State submitted documents that were admitted.

Mr. Lineker testified he had done much research in spiritual matters beginning with his youth as a Baptist. He studied Transcendental Meditation for three or four weeks in California in 1976 and graduated with a mantra. He was interested in Pan Buddhism and presented excerpts from texts of the Torah and the Bible and Urantia and the 9th and 10th Mandala from the Rik Veda and Hebrew-English dictionaries.

Mr. Lineker testified as to the requirements of his religion:

The religion he practices is named the same as he is named, he is the God to the marijuana plants. He uses a marijuana/olive oil mixture to anoint himself as a religious ritual. He testified that the process of anointing must be preceded by a strict regimen of dietary restriction, cleansing and water purging and accompanied at all stages with meditation. The dietary restrictions require abstinence from meat first and vegetables later and finally becomes a

diet of only fruit leading eventually to a "colotarian" state where one becomes saffron colored. Mr. Lineker has never gotten to that saffron stage. The dietary restrictions include abstinence from alcohol and drugs, including prescription drugs. The water purification was to include purging the body of all foreign matters (food) and required a fasting of one day for each year of one's life. Mr. Lineker said a thirty year old person would have to fast for 30 days. If one failed to get all the food out of the body and absorbed the marijuana/olive oil liquid one would die. The anointing process was to be done with a gallon of fluid. The fluid was derived by hand crushing marijuana buds into a green watery juice. That juice was then mixed 50/50 with olive oil with some herbs. The plants are grown hydroponically as growing them outdoors would allow insects on them and reduce their purity. There must be careful tending of the plants with on-going prayers and chanting over them, a selecting out of the weak and imperfect plants and the nourishment of the healthy ones by the playing of classical music, preferably Beethoven's 7th and 8th Symphonies. The anointing was to continue for three days, preferably out in the woods with nature. The anointed person was totally naked and rubbed the liquid over the body repeatedly until it was absorbed entirely. The anointing continued with prayer and constant meditation. He said aphorisms were repeated prior to the actual anointment to prepare one to enter God consciousness. God consciousness allows one to do impossible things. One must go into the place of anointment from the North and leave to the North. Mr. Lineker repeatedly testified that each step has to be done in it's prescribed order and done carefully to have the effect.

Findings

The court finds that the defendants' marijuana growing operation

was the result of an idiosyncratic belief system conjured up in order to allow them to experiment with the illegal drug. The credible evidence at the evidentiary hearing does not establish that the Linekers were practicing any institutional set of values or codification of ethics that involved methods of how to deal with the world. There is no credible recognition of some force or power beyond the personal that is themselves. Their God is themselves.

Mr. Lineker has a history of personal marijuana use and a prior federal marijuana conviction. His testimony at the evidentiary hearing was internally inconsistent and inconsistent with his practices. His speech and manner under oath left the court with a firm conviction that as he was testifying he was making it up as he went along.

On direct examination he was fluent in his recitation of the general requirements of the religion. On cross examination he was confused and confusing and not credible in his recitation of details.

Mr. Lineker testified that it took a gallon of liquid to do an anointment. He was hesitant at times as to whether he meant a gallon of marijuana liquid or a gallon of the mixture. He said that the liquid was to be mixed with herbs but on cross examination said he had never added herbs. Prior to sentencing in describing the process to the pre-sentence report writer he said it took 8 lbs of marijuana to

make a gallon of liquid. He denied that in this hearing. Eight pounds of marijuana had been seized at the time of arrest. Mr. Lineker said that he had to be out in the woods for three days when performing an anointing and that this was done while naked and praying and absorbing the liquid through the skin. Yet, on cross examination he said he had only done an anointing out-of-doors once and that was for one day in Thorne Bay. Mr. Lineker said that in other instances he had done it in his bathtub at home using a cup of liquid. He said that the ritual must be done by entering from the North and leaving the same way but admitted on cross examination that he couldn't do that in his bath. Mr. Lineker testified that one needed to be drug free when going through this regimen but the prosecutor brought out that in his allocution at sentencing he had said that the reason he was stealing electricity was because he was under the influence of prescription drugs. Mr. Lineker said that the purging required a fasting of one day for every year of one's life. The record reflects that Mr. Lineker is 61 years old. He did not testify that he had fasted for 61 days - or for any amount of time. He said that one needed a gallon to anoint but that he used the buds from only "the twenty best marijuana plants." He testified that anointment should happen three times a year but that he'd only done in once or two times for the three years before being arrested.

The theft of electricity to produce the marijuana is not a critical factor in the court's decision. It is not, however, a good way to start off a religious experience that is so dependent on purity. It is an indication of the non-religious nature of the Linekers' activity.

Mr. Lineker presented certifications at sentencing that he was an ordained minister of the Universal Life Church and the Hawaiian THC Church. He acknowledged at this hearing that those ordinations were received after he had been arrested in this case and before sentencing. He acknowledged at this hearing that those ordinations were not a part of any religious experience he was claiming in 2003 and they were presented to mislead the court. He testified at this hearing that the materials describing religious matters submitted at the sentencing hearing were basically verbatim from things he had obtained from the internet.

Mr. Lineker stated that as of 2007 his religious beliefs are much different than they had been in 2003 when he was sentenced. The court must make a determination as to the Linekers' beliefs and practices as of 2003.

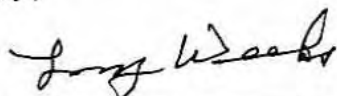
The Linekers now live in Hawaii and have attended the Hawaii Cannabis church. Mr. Lineker says he solicited members there for his religion but disavows the Hawaii church and found no one to join him

and may at some point have convinced himself. His wife testifies to her belief in their validity. He says he believes that there is a hole to the center of the earth and that the flying saucers congregate there and that you reach that hole from an entry at the North Pole. His wife agrees and says that the flying saucers are aliens and Nazis and you can tell the difference from insignia on the underside of the saucer. She says there is a hollow earth theory that she believes that finds a sun inside the earth as her husband has lectured.

While this may be evidence of his ability to convince himself and his wife of unusual things it does not mean that his current statements about his beliefs amount to a religion for him or her.

The court finds that there is no religion in the Lineker's professed belief system and that those beliefs are not sincere religious beliefs and a second hearing is not necessary.

Dated March 1, 2007



Larry Weeks
Superior Court Judge

I certify that I served Richard Svobodny, Kirstin Swanson and Samueal McQuerry the above pleading on this ____ day of March 2007 by putting it in the court box for Mr. Svobodny and Ms. Swanson and by mailing it to Mr. McQuerry.