

[Cite as *Salgado v. Montgomery Cty. Sheriff*, 2015-Ohio-3387.]

**IN THE COURT OF APPEALS OF OHIO  
SECOND APPELLATE DISTRICT  
MONTGOMERY COUNTY**

ANTHONY F. SALGADO

Plaintiff-Appellant

**V.**

MONTGOMERY COUNTY SHERIFF

Defendant-Appellee

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Appellate Case Nos. 26502  
26572

Trial Court Case No. 2014-CV-2959

(Civil Appeal from  
Common Pleas Court)

## OPINION

Rendered on the 21st day of August, 2015.

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FAIN, J.

{¶ 1} Anthony Salgado appeals from a judgment of the Montgomery County

Common Pleas Court affirming a decision of the Montgomery County Sheriff denying his application for a license to carry a concealed weapon. He contends that the denial of the license is contrary to law, because it is based on an erroneous interpretation of the statute that precludes licenses for those convicted of an offense involving a drug of abuse. Salgado also contends that the court erred in denying his motion for relief from judgment.

{¶ 2} We agree with the trial court that the offense of possession of drug paraphernalia necessarily involves the use or possession of a drug of abuse. However, we conclude that the trial court erred by finding that Salgado's ineligibility to obtain a concealed handgun license could be based on a prior conviction of an offense that was classified as a minor misdemeanor at the time of the license application. The statute prohibits granting a license to an applicant who was previously convicted of an offense involving the illegal use of a drug of abuse, as long as the offense is not classified as a minor misdemeanor. Ten years prior to his application for the handgun license, Salgado was convicted of Possession of Drug Paraphernalia in violation of R.C. 2925.14, based on his possession of drug paraphernalia used for smoking marijuana. At the time of the application, the conduct for which Salgado was convicted was no longer prohibited by R.C. 2925.14. However, the conduct was a violation of R.C. 2925.141(C), which prohibits a person from "knowingly us[ing], or possess[ing] with purpose to use, any drug paraphernalia that is equipment, a product, or material of any kind that is used by the person, intended by the person for use, or designed for use in storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body marihuana." The commission of that offense is a minor misdemeanor,

which shall not be considered in the application for a concealed handgun license.

{¶ 3} Therefore, the court abused its discretion by failing to apply R.C. 2923.125(D)(5), which dictates that Salgado's Possession of Drug Paraphernalia conviction, being a minor misdemeanor offense at the time of his application, is not to be considered in connection with that application. Accordingly, the judgment of the trial court is Reversed, and this cause is Remanded for further proceedings.

### **I. The Course of Proceedings**

{¶ 4} In 2004, Salgado was stopped for Speeding in Franklin, Ohio, and admitted to possession of marijuana and drug paraphernalia. He was cited for Speeding, in violation of Section 333.03 of the Franklin Municipal Code and charged with Drug Abuse, a minor misdemeanor, in violation of Section 513.03 of the Franklin Municipal Code, and Possession of Drug Paraphernalia, in violation of R.C. 2925.14, a misdemeanor of the fourth degree. The factual basis for the charges are found in the police report which states in pertinent part:

Upon approach to the vehicle, I could smell the aroma of green vegetation and that through training and experience lead me to believe that it was marijuana. I identified myself and asked the driver for his license and proof of insurance. He advised me that he did not have his license on him. I asked him if there was anything illegal in his vehicle and he looked around his vehicle and said, "not that I know of." I advised him that I could smell an aroma and asked him again if there was anything illegal in the car. Again he advised me that he didn't know of anything. I asked him for consent to

search and he advised me that he was not going to lie to me, that he had a baggie of weed in his door. I got the driver out, did an officer safety pat down and put him into the back seat of the cruiser. He advised me that there might be a pipe in the glove box. I located a baggie of green marijuana in the drivers door, a glass smoking pipe in the glove box along with two packs of rolling papers.

{¶ 5} The record does not reflect any disposition of the Speeding charge. The minor misdemeanor charge for Drug Abuse was dismissed, and Salgado pled no contest to, and was found guilty of, Possession of Drug Paraphernalia. At the time of the conviction, this offense was classified as a misdemeanor of the fourth degree, which carried a sentence of up to 30 days in jail. R.C. 2929.24(A)(4).

{¶ 6} On May 5, 2014, Salgado applied to the Montgomery County Sheriff for a License to Carry a Concealed Weapon. In processing the application for the license, the Montgomery County Sheriff ran a criminal records check on Salgado and found the Drug Paraphernalia conviction from the City of Franklin in 2004. On May 6, 2014, the Montgomery County Sheriff denied the application for a license to carry a concealed weapon “due to a 2004 Drug Paraphernalia conviction through Franklin Municipal Court.” On May 20, 2014, Salgado filed an administrative appeal of the license denial in the Montgomery County Common Pleas Court, alleging that the decision was not based on reliable, substantial and probative evidence, and was contrary to law. The trial court affirmed the administrative decision denying Salgado's application for a license, interpreting the statute to exclude licenses for applicants with a conviction for Possession of Drug Paraphernalia because that offense necessarily involves the use or

possession of drugs of abuse.

{¶ 7} Salgado moved for relief for judgment, pursuant to Civ. R. 60(B)(1), on the basis of “surprise,” because the trial court referred to an unreported common pleas decision as support for the court’s legal analysis of the licensing statute. We agreed to a limited remand, which allowed the trial court to rule on the 60(B) motion. The trial court overruled the 60(B) motion, explaining that the court’s statutory interpretation was made independently, without reliance on the unreported case. Salgado appeals from the judgment rendered against him affirming the denial of his application for a concealed carry license.

## **II. Standard of Review**

{¶ 8} Pursuant to R.C. 2923.125 (D)(2)(b), a decision of a county sheriff to deny an application for a concealed handgun license is appealable under R.C. 119.12 to the common pleas court. R.C. 119.12 provides the standard of review for the common pleas court:

The court may affirm the order of the agency complained of in the appeal if it finds, upon consideration of the entire record and any additional evidence the court has admitted, that the order is supported by reliable, probative, and substantial evidence and is in accordance with law. In the absence of this finding, it may reverse, vacate, or modify the order or make such other ruling as is supported by reliable, probative, and substantial evidence and is in accordance with law.

{¶ 9} As discussed by the Supreme Court of Ohio in *Bartchy v. State Bd. of Edn.*,

120 Ohio St.3d 205, 2008-Ohio-4826, 897 N.E.2d 1096, ¶37, a review by the common pleas court of an administrative agency decision requires a factual inquiry and a legal inquiry. Both the common pleas court and the appellate court must give deference to the agency's resolution of any evidentiary conflicts, and factual findings are presumed to be correct, absent an abuse of discretion. *Id.* However, questions of law must be reviewed de novo to determine whether the administrative order is in accordance with law. *Anguiano v. Ohio Dept. of Edn.*, 2d Dist. Darke No. 2014-CA-2, 2014-Ohio-2810, ¶ 6, *citing Bartchy, supra*. The case before us requires a determination whether the trial court properly interpreted and applied the statutory qualifications for obtaining a concealed handgun license. “The interpretation of a statute involves a purely legal question. Thus, we conduct a de novo review of a trial court's judgment interpreting a statute and afford no deference to the trial court's interpretation of a statute.” *Washington Cty. Home v. Ohio Dept. of Health*, 178 Ohio App.3d 78, 2008-Ohio-4342, 896 N.E.2d 1011, ¶ 27 (4th Dist.)

### **III. The Statutory Scheme for Obtaining a Concealed Carry License**

{¶ 10} The process of obtaining a concealed handgun license is outlined in R.C. 2923.125. Residents of Ohio can submit a completed application form to the sheriff of the county in which the applicant resides or an adjacent county. R.C. 2923.125(B). The sheriff must provide the application form, and a pamphlet created by the Ohio Attorney General. R.C. 2923.125 (A). The applicant must attach a color photo, competency certifications, and an application fee. R.C. 2923.125 (B). Upon receipt of a completed form, the sheriff is directed to complete a criminal background check, and if all

requirements are met, the sheriff must issue a license within 45 days. R.C. 2923.125(D). The applicant must be at least 21 years old, must not be a fugitive from justice, must not be under indictment or charged with any felony or certain other offenses, must not have been adjudicated as mentally incompetent, must not be the subject of a civil protection order, must not be an unlawful user of any controlled substances, must not have been dishonorably discharged from the armed services, must not have renounced U.S. citizenship, and must not have been adjudicated a delinquent child for committing specified offenses. *Id.* R.C. 2923.125 (D)(1)(e), the provision under review in this appeal, directs the sheriff to deny a license if the applicant does not meet this requirement:

Except as otherwise provided in division (D)(4) or (5) of this section, the applicant has not been convicted of or pleaded guilty to a felony or an offense under Chapter 2925., 3719., or 4729. of the Revised Code that involves the illegal possession, use, sale, administration, or distribution of or trafficking in a drug of abuse; \* \* \* any other offense that is not previously described in this division that is a misdemeanor punishable by imprisonment for a term exceeding one year.

{¶ 11} R.C. 2925.01 (B) provides that the term “drug of abuse” as used in Chapter 2925 shall have the same meaning as defined in R.C. 3719.011, which states, “ ‘Drug of abuse’ means any controlled substance as defined in section 3719.01 of the Revised Code, any harmful intoxicant as defined in section 2925.01 of the Revised Code, and any dangerous drug as defined in section 4729.01 of the Revised Code.” Marihuana is identified as a controlled substance by R.C. 3719.01(C) and

3719.41(C)(19). The record contains no reference to any other drugs connected to Salgado's conviction, other than marihuana. Based on his possession of marihuana, Salgado was originally charged with Drug Abuse, in addition to Possession of Drug Paraphernalia. At the time of the offense, Possession of Drug Paraphernalia was a violation of R.C. 2925.14. At the time of the license application, as a result of statutory amendments, Possession of Drug Paraphernalia was either a violation of R.C. 2925.14, a fourth-degree misdemeanor, or a violation of R.C. 2925.141, a minor misdemeanor. The classification of the offense depends on the type of drug that is intended to be used with the drug paraphernalia.

{¶ 12} R.C. 2925.14(C)(1) provides, "[s]ubject to division (D)(2) of this section, no person shall knowingly use or possess with purpose to use drug paraphernalia." By use of the words, "subject to division (D)(2) of this section," an exception is created within the definition of this offense for drug paraphernalia that is intended to be used with marihuana. R.C. 2925.14(D)(2) provides: "Division (C)(1) of this section does not apply to a person's use, or possession with purpose to use, any drug paraphernalia that is equipment, a product, or material of any kind that is used by the person, intended by the person for use, or designed for use in storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body marihuana." Instead, a separate section of Chapter 2925 now carves out a more specific offense, limited to the possession of marijuana drug paraphernalia. Specifically, R.C. 2925.141 (C) provides that, "no person shall knowingly use, or possess with purpose to use, any drug paraphernalia that is equipment, a product, or material of any kind that is used by the person, intended by the person for use, or designed for use in storing, containing,



concealing, injecting, ingesting, inhaling or otherwise introducing into the human body marihuana.” R.C. 2925.141(F) establishes that a violation of the marijuana drug paraphernalia statute is a minor misdemeanor. At the time of Salgado’s conviction, this separate marijuana exception to the drug paraphernalia statute did not exist.<sup>1</sup> In 2014, when he applied for the concealed handgun license, the applicable statutes had changed, so that the conduct for which Salgado was convicted became an offense classified as a minor misdemeanor, pursuant to R.C. 2925.141(F).

{¶ 13} R.C. 2923.125 (D)(5) regarding the effect of a minor misdemeanor offense provides:

If an applicant has been convicted of or pleaded guilty to a minor misdemeanor offense or has been adjudicated a delinquent child for committing an act or violation that is a minor misdemeanor offense, the sheriff with whom the application was submitted shall not consider the conviction, guilty plea, or adjudication in making a determination under division (D)(1) or (F) of this section or, in relation to an application for a concealed handgun license on a temporary basis submitted under section 2923.1213 of the Revised Code, in making a determination under division (B)(2) of that section.

#### **IV. The Court Erred in Interpreting the Licensing Statute**

{¶ 14} Salgado’s First Assignment of Error states as follows:

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<sup>1</sup> R.C. 2925.14 was amended and R.C. 2925.141 was enacted by the 129th General Assembly in SB 337, effective 9/28/12.

THE TRIAL COURT ERRED BY AFFIRMING THE MONTGOMERY  
COUNTY SHERIFF'S DECISION TO DENY SALGADO'S APPLICATION  
FOR A CONCEALED HANDGUN LICENSE.

{¶ 15} A court's paramount concern in construing a statute is legislative intent. *Ohio Neighborhood Fin., Inc. v. Scott*, 139 Ohio St. 3d 536, 2014-Ohio-2440, 13 N.E.3d 1115. In Ohio, the intention of the legislature in enacting a statute is primarily determined from the language of the statute. *In re Foreclosure of Liens for Delinquent Land Taxes v. Parcels of Land Encumbered with Delinquent Tax Liens*, 140 Ohio St. 3d 346, 2014-Ohio-3656, 18 N.E.3d 1151. As explained by the Sixth District Court of Appeals:

The entire enactment should be considered in determining the spirit or meaning, and intent must be gathered from the entire statute. 50 Ohio Jurisprudence (2d), 129, 140. Sections and acts *in pari materia*, that is, "in relation to the same matter, subject or object," should be construed together. Stated differently, it is the rule that statutes relating to the same or similar subject matter or subject of law should, where a case calling for the application of both is presented, be read together as if they were a single statute, and both should be reconciled, harmonized, and made to apply, and give meaning and effect, so as to render their contents operative and valid. Thus the various statutory provisions affecting a particular subject should be construed and applied so as to accomplish the manifest purpose of their enactment and give full force and effect to the legislative intent.

*Suez Co. v. Young*, 118 Ohio App. 415, 423, 195 N.E.2d 117 (6th Dist.1963).

{¶ 16} To interpret the intent of the legislature in enacting the limitations to the class of citizens eligible to obtain a license to carry a concealed weapon, it is necessary to look at the language and definitions in the licensing statute, R.C. 2923.125 together with the language and definitions provided throughout the three chapters identified in the licensing statute, Chapters 2925, 3719 and 4729 of the Revised Code. The language of the licensing statute, R.C. 2923.125(D)(1)(e), precludes licenses to those who have been convicted of any offense under Chapter 2925 “that involves the illegal possession, use, sale, administration, or distribution of or trafficking in a drug of abuse; \* \* \* [or] any other offense that is not previously described in this division that is a misdemeanor punishable by imprisonment for a term exceeding one year.”

{¶ 17} The elements of Possession of Drug Paraphernalia are succinctly described in OJI CR 541.14(C), which states that the jury can find the defendant guilty, if it finds beyond a reasonable doubt, that the defendant “knowingly (used) (possessed with purpose to use) drug paraphernalia.” One of the definitions of drug paraphernalia, pertinent to the case before us, is found in R.C. 2925.14(A)(13) which includes, “an object, instrument or device for ingesting, inhaling, or otherwise introducing into the human body, marihuana \* \* \* such as a metal, wooden, acrylic, glass, stone, plastic, or ceramic pipe \* \* \* ” used to hold smoking material. Both the drug paraphernalia statutes, R.C. 2925.14 and R.C. 2925.141, include a knowing standard requiring proof that the offender intended to use the drug paraphernalia with a controlled substance or drugs of abuse. Therefore, we conclude that a reasonable interpretation of the licensing statute includes its application to the offense of Possession of Drug Paraphernalia, because as that offense is defined, it necessarily involves the possession or use of drugs

of abuse.

{¶ 18} In the case before us, the trial court construed the term “involves” in the licensing statute to include the offense of Possession of Drug Paraphernalia because the element of intent to use the paraphernalia necessarily implies that the offender has already used drugs or intends to be involved in drugs. The trial court reasoned that a broad reading of the statute was necessary based on the intent of the legislature to prevent granting a concealed carry license to citizens whose past criminal activity is deemed to pose a higher risk to public safety. However, this interpretation is overly broad, and would encompass any conduct involving the potential for any drug related activity. The trial court did not consider that the legislature intended to exclude some drug related offenses because the language in R.C. 2923.125(D)(5) and R.C. 2925.11(D) clearly and unambiguously provides that offenses constituting minor misdemeanors, or some unlisted offenses punishable by a term of imprisonment of less than one year, shall not be considered by the sheriff in the process of issuing a concealed handgun license. We cannot give the licensing statute an interpretation that is broader than intended.

{¶ 19} Based on the language of the drug paraphernalia statutes in effect at the time Salgado applied for a license, the Possession of Drug Paraphernalia intended to be used for smoking marijuana was a minor misdemeanor. Based on the language of R.C. 2923.125(D)(5), it is the intent of the legislature that only convictions for a drug-related criminal offense greater than a minor misdemeanor be considered in the application process for a obtaining a license to carry a concealed weapon. We do not disagree with the trial court’s conclusion that use of the word “involves” implies a broader range of drug

offenses than just those identified in the definition of “drug abuse offenses,” found in Chapter 2925. In the case before us, we are not called upon to identify all possible drug abuse offenses that may be encompassed by the language of R.C. 2923.125(D). Our decision is confined to the facts before us, and is limited to whether the licensing law at the time of Salgado’s application allowed the Sheriff to deny the application for conduct that, at the time of the application, was classified as a minor misdemeanor. We conclude that the law did not allow the Sheriff to deny Salgado a license for an offense that at the time of the application violated the marijuana drug paraphernalia statute, R.C. 2925.141, classified as a minor misdemeanor. Accordingly, Salgado’s second assignment of error is sustained.

#### **V. Any Alleged Error Regarding Denial of Salgado’s 60(B) Motion is Moot**

**{¶ 20}** Salgado’s Second Assignment of Error alleges as follows:

THE TRIAL COURT ERRED WHEN IT DENIED SALGADO’S  
MOTION FOR RELIEF FROM JUDGMENT.

**{¶ 21}** In view of our disposition of Salgado’s First Assignment of Error, we conclude that his Second Assignment of Error is moot. Accordingly, the Second Assignment of Error is overruled as moot.

#### **VI. Conclusion**

**{¶ 22}** Salgado’s First Assignment of Error having been sustained, and his Second Assignment of Error having been overruled as moot, the judgment of the trial court is Reversed, and this cause is Remanded for further proceedings consistent with

this opinion.

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FROELICH, P.J., and WELBAUM, J., concur.

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