

Die formellen und sachlichen Anforderungen an einen Beweisantrag

I. Einleitung

Für alle Umstände, die die Schuld- und Straffrage betreffen, gilt der sogenannte Strengbeweis.¹ Das bedeutet dass der Beweis nur mit bestimmten, festgelegten Beweismitteln geführt werden kann. Hier handelt es sich um die Einlassung und das Geständnis des Angeklagten, den Zeugen- und Sachverständigenbeweis, die Augenscheinnahme und den Urkundenbeweis.²

Die Vorschriften zum Beweisantragsrecht äußern sich nicht dahingehend, wer wann und wie einen Beweisantrag stellen kann, sondern nur, unter welchen Voraussetzungen ein Beweisantrag abgelehnt werden muss, darf oder kann.³ Beweisanträge existieren somit jenseits rechtlicher Regelungen, wobei lediglich das Ablehnungsverfahren geregelt ist.

Der Umfang richterlicher Aufklärungspflicht hängt auch nicht davon ab, dass die Verfahrensbeteiligten entsprechende Beweisanträge stellen. Sofern sich dem Gericht über die bisher bekannten Umstände hinaus die Benutzung eines bestimmten Beweismittels zur weiteren Aufklärung aufdrängt, muss das Gericht dieses Beweismittel auch ohne Antrag von Amts wegen heranziehen.⁴ Von Amts wegen müssen alle Beweise erhoben werden, aus denen ableitbare Schlüsse gezogen werden können, die den Schuldvorwurf widerlegen, in relevanter Weise modifizieren, in Frage stellen oder auch stützen können.⁵ Geschieht dies nicht, verletzt das Gericht seine Aufklärungspflicht.

Werden von den Verfahrensbeteiligten Beweisanträge gestellt, gebietet die Aufklärungspflicht grundsätzlich, dass das Gericht diesen Anträgen nachkommt. § 244 Abs. 2 StPO. Die Ablehnung eines Beweisantrages bedarf gem. § 244 Abs. 6 StPO immer eines Gerichtsbeschlusses und darf auch nur aus den im Gesetz genannten Gründen, § 244 Abs. 3 – 5 StPO, erfolgen. Die unzulässige Ablehnung eines Beweisantrages zur Verteidigung führt zu einem Revisionsgrund gem. § 338 Abs. 8 StPO.⁶

Damit das Gericht überhaupt verpflichtet wird, einen Beweisantrag zu bescheiden, muss es sich auch tatsächlich um einen solchen handeln. Denn ein Beweisantrag hat bestimmte formale und sachliche Voraussetzungen, auf die im Rahmen dieser Kurzhausarbeit näher eingegangen wird. Zunächst werden jedoch in Abgrenzung zum Beweisantrag das Beweiserbieten, die Beweisanregung, der Beweisermittlungsantrag

¹ BGH NJW 2000, 1024.

² Meyer-Großner, Strafprozessordnung, Einl. Rn. 49 (46. Auflage).

³ Hamm/Hassener/Pauly, Beweisantragsrecht, Rn. 2.

⁴ BGHS 3, 169 (175); 10, 116; 23, 176 (187).

⁵ KK-Hendegen, § 244 Rn. 21.

⁶ vgl. hierzu Meyer-Großner aaO., § 338 Rn. 58.

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Beweisantrag

Didier Musso



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Beweisantragsrecht. Formelle und sachliche Anforderungen an einen Beweisantrag Alexander Haentjes, 2015-06-29
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