

# Load of pot goes for naught

A federal judge says the 1,400 pounds of marijuana found in a truckload of lettuce can't be used as evidence because the driver was improperly pulled over for excessive window-tinting.

By **LARRY HENDRICKS**

Sun Staff Reporter

The case of a Florida man caught transporting 1,400 pounds of marijuana through Flagstaff received a setback from a U.S. District Court judge last week.

The judge ruled that the seized pot was inadmissible at trial because the traffic stop that resulted in the seizure, conducted by an officer with the Arizona Department of Public Safety, was illegal.

Federal prosecutors have yet to determine if they're going to appeal the judge's ruling.

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Norman N. Gayle, 36, was traveling through Flagstaff at about 5:10 a.m. on May 26, 2003. He was driving a semi with a load of lettuce bound for New York.

About 3 miles east of Flagstaff on Interstate 40, a DPS officer with the canine unit picked out Gayle's semi because it fit the profile of an "owner/operator" commercial vehicle more likely to be hauling illegal drugs.

The officer said the semi had excessive window tinting and made a traffic stop. During the stop, the officer, noting inconsistencies in Gayle's log books and receipts, requested permission to search the semi. Gayle gave permission. The officer's drug-sniffing dog keyed on the trailer. The officer discovered the marijuana hidden among the lettuce.

According to a Jan. 24 order by Judge Earl Carroll, it would have been impossible for the officer to determine that the window tinting on the semi was in violation of federal and state law.

"There was not sufficient lighting at the time the truck passed (the officer) for him to have made any judgment about the extent of the window tinting of the truck," Carroll wrote in his order. "There was no credible evidence that he observed the level of window tint on the tractor windows before he stopped the vehicle."

As a result the stop was illegal and violated Gayle's right to be free of unreasonable searches and seizures, Carroll stated.

In reaching his conclusion, Carroll relied on the testimony of an expert witness called by the defense. The expert witness simulated the time of day, the distances of the officer from the highway and videotaped the experiments. The officer would have had less than a second to see the windows on a semi traveling at 65 mph in poor lighting.

The expert witness concluded that it would have been impossible for the officer to determine the window tinting

was illegal.

"It's very refreshing that a judge is willing to reject the testimony of a police officer when that testimony is clearly not believable," said Lee Phillips, Flagstaff-based attorney for Gayle. "So I was very pleased Judge Carroll rejected the officer's claims."

But DPS disputes Carroll's decision.

Sgt. Steve Shroufe of the DPS Flagstaff office said that the violation Gayle was stopped for was the violation the officer found on the semi — and it was a severe violation. According to tests conducted on the window tinting, only 14 percent of light transmitted through the tinting. State and federal law requires at least 70 percent of light to be able to transmit through tinting, Shroufe said.

"It was a clear violation of both state and federal regulations," Shroufe said.

Sandy Raynor, spokesperson for the U.S. Attorney's Office in Arizona, said the judge's decision speaks for itself. The office is reviewing the decision to determine if an appeal will be made.

"We hope that they do appeal it," Shroufe said. "We feel that it was a valid traffic stop with a valid search with 1,400 pounds of marijuana seized."

The officer who made the traffic stop stated that based on his experience and training, owner/operator semis are more likely to be hauling illegal drugs.

Carroll stated in his order, "This viewpoint does not constitute reasonable cause or reasonable suspicion to stop a truck."

According to information kept by the Metro anti-narcotics task force in Flagstaff, marijuana sells on the street in the city for \$20 to \$25 a quarter-ounce. That would make 1,400 pounds of marijuana worth between \$1.79 million and \$2.24 million.

In a calendar year, DPS officers in Flagstaff seize approximately 9,000 pounds of marijuana being transported to other parts of the country.

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