

Highway drug conviction tossed

LARRY HENDRICKS Assistant City Editor | Posted: Wednesday, April 7, 2010 5:00 am



FILE: On March 30, 2010, a state appeals court tossed out the drug transportation conviction of a Canadian man stopped in the outskirts Flagstaff in 2008. The court ruled that the officer didn't have reasonable suspicion to search the vehicle. In this file photo, a DPS drug-sniffing dog "alerts" on a vehicle during training. (Arizona Daily Sun, file)



The state appellate court has overturned the cocaine-transportation conviction of a Canadian man passing through Flagstaff after ruling the search of his vehicle was illegal.

The reason: The Arizona Department of Public Safety officer who stopped Alvin J. Sweeney, 53, didn't have reasonable suspicion to search his vehicle.

The court called it an "inchoate and unparticularized suspicion or hunch," citing a previous U.S. Supreme Court decision on illegal search and seizure.

"This is important because the court is putting the brakes on some of the tactics drug interdiction officers use on the highways every day," said Lee Phillips, Sweeney's Flagstaff-based attorney.

The case, Phillips added, illustrates the tension between law enforcement waging a war on drugs and the right of citizens not to have their liberty and freedoms restrained.

COCAINE IN A BLACK BAG

Sweeney was pulled over on the outskirts of Flagstaff on the morning of Jan. 8, 2008, according to court documents. After he received a warning for driving too closely to the vehicle in front of him, the officer asked him questions about drug trafficking. Once Sweeney declined to a consent search of his rental car, the officer requested backup and had a drug-sniffing dog make a pass at the vehicle.

The dog "alerted" on the vehicle, and officers subsequently found 5 kilograms of cocaine in a black bag in the trunk. Sweeney was jailed on charges of transportation and possession of narcotic drugs for sale.

Prior to Sweeney's trial, Phillips attempted to have the seized drugs suppressed as evidence, arguing that the search violated Sweeney's Fourth Amendment right against illegal search and seizure.

Superior Court Judge Mark Moran ruled that the search was constitutional and allowed the admission of the cocaine as evidence at trial.

Sweeney was subsequently convicted by a jury of transportation of narcotic drugs for sale. He was sentenced to five years in the Arizona Department of Corrections. He is scheduled for release in October 2012.

NO GROUNDS FOR DETENTION

Phillips filed an appeal on Fourth Amendment grounds. In a March 30 decision, the Arizona Court of Appeals reversed Sweeney's conviction.

"Reasonable suspicion is something short of probable cause, but it must be more than an 'inchoate and unparticularized suspicion or hunch,'" wrote the court.

The officer's indicators, which included inconsistent answers, nervousness and a strong smell of deodorizer in the rental car, did not reach the level of reasonable suspicion, the court determined.

"Considered in aggregate, these factors did not give rise to objective reasonable suspicion," the judges wrote. "At most, they gave rise to the 'inchoate and unparticularized suspicion or hunch' that the Supreme Court rejected as grounds for detention ..."

The court added that a reasonably prudent person's suspicions would not be raised with the indicators the officer listed present.

"A holding to the contrary would subject nearly everyone to a continued, intrusive detention following a routine traffic stop," the court wrote.

Additionally, the officer noticed the suspicious indicators during the initial traffic stop. Once the officer concluded the stop with the warning and telling Sweeney he was free to go, the officer should have developed reasonable suspicion for a search after the conclusion of the traffic stop.

If the officer had reasonable suspicion during the traffic stop, he should have requested the search at that time, the court determined.

And finally, the judges concluded that a person who declines a consent search of a vehicle doesn't give rise to reasonable suspicion either.

"If the mere refusal of consent itself constituted reasonable suspicion, nothing would prevent warrantless searches of random individuals, because either the grant or refusal of consent would eventually justify the searches," wrote the court. "We conclude that the Fourth Amendment would be rendered largely meaningless by placing every person in such a Catch-22."

NO DECISION YET ON APPEAL

Officials at the Arizona Department of Public Safety deferred comment to the Coconino County Attorney's Office.

"Respectfully, we disagree with the Court of Appeals decision in this case," said Coconino County Attorney David Rozema. "At this point, the Attorney General's Office is considering whether to appeal this decision to the Arizona Supreme Court."

Phillips said that if the AG's office petitions for review from the Supreme Court, Sweeney will remain in prison until the court decides whether to hear the case.

If the AG's office doesn't petition for review with the Supreme Court, the case is sent back to Coconino County Superior Court. At that time, it will be up to the Coconino County Attorney to refile charges against Sweeney, Phillips said.

But because the evidence has been ruled inadmissible, it cannot be presented at trial. When that happens, Phillips said that prosecutors tend to dismiss the charges at that time and Sweeney would then be released from custody.

Larry Hendricks can be reached at lhendricks@azdailysun.com or 556-2262.



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