

# Judge tosses \$1M pot seizure

A driver transporting nearly 900 pounds of marijuana goes free because of missing police dispatch tapes.

By **LARRY HENDRICKS**  
Sun Staff Reporter

The case against a Georgia trucker accused of transporting nearly 900 pounds of marijuana worth more than \$1 million through Flagstaff was dismissed June 7 by a county judge.

Highway patrol had destroyed dispatch tapes of the traffic stop that led to the drug seizure, prompting the judge to toss the case.

Daniel M. Palmer, 37, Ellenwood, Ga., was stopped at about 3:30 a.m., July 22, 2005, on Interstate 40 in Flagstaff by a drug interdiction officer with the Arizona Department of Public Safety.

The officer stated he stopped Palmer's semi for traveling 10 miles over the speed limit in a construction zone near the Butler Avenue exit. The officer, noting the air vents of the semi's trailer were covered and that Palmer and a passenger did not know each other's names, decided to search

See **POT**, A11

## POT

from Page A1

the trailer.

The officer found a hidden compartment in the trailer stuffed with 897 pounds of marijuana. Palmer was arrested on drug-transportation charges.

Palmer's Flagstaff-based attorney Lee Phillips requested a hearing in Coconino County Superior Court to have the evidence suppressed and the charges against Palmer dropped because DPS did not turn over dispatch tapes of the stop.

After the hearing, Judge Dan Slayton granted Phillips' request.

"In any highway traffic stop, the most important issue is whether or not police had a lawful basis to stop the vehicle," Phillips said.

He added the law is clear that radio dispatch tapes, which contain the verbatim communications between officers and dispatch, are critical to knowing why the stop occurred, when the stop occurred, who was stopped and any

other information the officers may have been discussing prior to or shortly after the stop is made.

David Rozema, chief deputy Coconino County attorney, said, "In court, unfortunately due to a miscommunication between our office and DPS, the dispatch tape was destroyed before we were able to provide a copy to the defense attorney. Our position was that this tape would not have assisted the defense anyway, but the court chose to dismiss the case."

Phillips said the primary reason he wanted the dispatch tape of Palmer's stop was because the drug interdiction officer who made the arrest, to Phillips' knowledge, worked primarily during daylight hours.

Palmer's stop was at 3:30 a.m.

"It was very unusual this officer would be waiting on the side of the highway in the middle of the night waiting for my client's vehicle," Phillips said.

Rozema said, "These major drug dealers are constantly looking for new ways to transport their drugs through Coconino County without getting caught. Recent intelligence indicated

that there was increased transport activity being conducted late at night when fewer officers are on patrol."

Another concern Phillips said he had about the stop was because Palmer is black.

"In a case involving African American motorists, one of the issues I'm always looking at is whether race played any role in a decision to stop a vehicle," Phillips said. "And those radio tapes often could include information from the officer prior to the stop, and could include references to the race of the motorist."

DPS has consistently maintained that officers do not make traffic stops based on race. And the organization has a policy in place that prohibits the practice.

In recent months, Phillips has been successful at getting drug-transportation charges dropped against two other clients. One case involved 50 pounds of cocaine found in a car being driven by two California women. The other involved a trucker caught transporting 1,400 pounds of marijuana.

In both cases, the presiding judges

determined that the DPS traffic stops were illegal.

"It continues to be a concern to me that there appears to be a pattern and a willingness on the part of DPS to stop, detain and search motorists in ways which the courts repeatedly have found to be illegal," Phillips said. "The bottom line is DPS is not above the law and the Constitution, which limits what the government can do when government agents stop, detain and search citizens in this country."

Rozema said that the cases are fact intensive, and the judges scrutinize the cases carefully to ensure constitutional safeguards have been met.

"If it's a close call, the judges will err on the side of the accused, which they should do," Rozema said.

He added that the vast majority of the drug seizure cases are upheld by the courts and result in guilty pleas or convictions with dozens of drug dealers being sent to prison every year.

"Our office is committed to ridding the community of illegal drugs while also upholding and honoring the legal rights of all citizens, including those ac-

cused of crimes," Rozema said. "In my 13 years' experience as a prosecutor, I have always known the DPS officers we work with to share those values. They have never taken an attitude that 'the ends justify the means' but rather have always demonstrated a commitment to doing things the right way while they rid our community of literally tons of illegal drugs every year."

As for Palmer's case, Rozema said DPS has made a policy change in the wake of the dismissal.

"New safeguards have been implemented to keep this from happening again," Rozema said. "DPS now keeps dispatch tapes for six months, and our office requires that copies of the dispatch tapes be submitted with each new case."

According to agents with the Metro anti-narcotics task force in Flagstaff, marijuana sells on the street for \$20 to \$25 a quarter-ounce. That would make 897 pounds worth between \$1.15 million and \$1.44 million.

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