

Pot purveyors lose appeals in state court

BY CORY FROLIK

Two marijuana smugglers' appeals with the Ohio Sixth District Court in Toledo went up in smoke this week.

The appellate court upheld the lower court's decision to convict Ohio residents John Nunley Jr. and Carlos Torres for possession of marijuana.

They were each sentenced to eight years in prison.

Arrested during the same September 2007 police operation, Nunley, 37, of Grafton, and Torres, 32, of Toledo, were charged with possessing about 160 pounds of marijuana.

The men helped move four wooden crates full of the illegal plant from Phoenix, Ariz., to a loading dock in Norwalk.

Something strange happened during Nunley's two-day trial.

Citing safety concerns involved in taking the marijuana evidence into a poorly-ventilated courtroom, authorities took Nunley and the jury to the unprotected, county-owned barn where it was being stored to view it.

Within 12-15 hours of the visit, someone broke into the barn.

About 113 pounds of the marijuana was stolen from the evidence locker. Police officials said they suspected members of Nunley's drug ring were behind the heist, but they couldn't prove it.

Authorities later admitted it was a mistake to keep the marijuana in an unsecured location. Its theft remains an open case.

The pinched pot made no difference in the trial, however. The jury deliberated for a few hours before convicting Nunley of possession of more than 20,000 grams of marijuana.

Nunley's appeal argued the fingerprint analyst who testified against him "was incapable of providing a foundation to support his conclusion and opinion testimony."

The analyst failed to prepare for court and left his notes at his lab.

Appellate judges dismissed Nunley's claim on the grounds it is up to a jury to decide the credibility of the people who take the stand.



Provided photo Four huge garbage bags full of marijuana are what authorities say they found in wooden boxes being shipped by Toledo resident John Nunley Jr. The 165 pounds of marijuana could sell on the street for as much as \$264,000. The marijuana later disappeared from a storage shed in Norwalk after it was shown to a jury in Nunley's trial, but a state appeals court said that was not sufficient to affect Nunley's conviction in Huron County Common Pleas Court.

Besides, the fingerprint was only one part of evidence in the case, Huron County prosecutor Russ Leffler said.

"We had so much evidence linking Nunley to the crime -- he had the measurements for the boxes that he built in his wallet," Leffler said.

Torres' two-day trial took place several months later and had the same outcome; a jury convicted him of possession of more than 20,000 grams of marijuana.

Torres appealed the decision partly based on the missing marijuana.

He claimed because so much of the pot was stolen, prosecution could not produce physical evidence proving he was ever in possession of more than 20,000 grams of the drug.

Torres also argued that he was "denied due process" because he was never provided an "effective" lawyer.

Torres claimed his lawyer never asked for an independent weighing of the marijuana, failed to object to the testimony of the forensic scientist who tested the weed even though the bulk of the evidence was gone, and didn't challenge the testimony of the fingerprint analyst.

Appellate judges rejected the first challenge on the basis that the marijuana was stolen after it had already been weighed and tested.

As for the others, judges ruled the attorney's performance was not so severely deficient that it betrayed the protections found in the Bill of Rights.

Attorneys for the men could not be located Friday.

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