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Former Mill Valley shopkeeper wins partial acquittal in narcotics case

By

By Gary Klien, Marin Independent Journal

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A former Mill Valley shopkeeper was partially acquitted of drug charges Tuesday after a judge cited "sloppy" police work by a narcotics task force.

David McDonald, who owned the now-defunct Pleasure Principle novelty shop, was cleared of selling phenylpropanolamine — a potential precursor to methamphetamine — so it could be used to make meth.

However, the judge convicted McDonald of one count of selling fake meth. McDonald, 72, could face a maximum sentence of three years in prison, although he could also receive some jail time or probation.

McDonald could have faced more than four years in prison if convicted of all the charges. He declined to comment after the verdict on the advice of his public defender, Michael Coffino, and will be sentenced by Judge Paul Haakenson on Sept. 26.

McDonald was targeted in early 2011 by the West Contra Costa Narcotic Enforcement Team, or Westnet, after a tip from a confidential informant in the East Bay. The informant said he knew a Mill Valley businessman who was selling large quantities of ephedrine, which can be used to make meth, out of his storefront, according to court testimony.

The task force identified McDonald as the suspect and sent an undercover detective to gain his trust through a couple of small buys. The detective, wearing a hidden wire, bought some bagged powders from McDonald on two occasions, and preliminary tests showed a positive match for methamphetamine and ephedrine.

The task force sent the powders to the state Department of Justice for confirmation. Meanwhile, based on their preliminary findings, detectives arranged a meeting with McDonald to buy what they thought were 8 pounds of ephedrine and a pound of meth. A bust was set for March 23, 2011, at McDonald's store and his home in Fairfax.

The raids resulted in the confiscation of \$29,000 in cash, two loaded guns and numerous pounds of white powder, authorities said. McDonald was arrested and charged with a pile of serious drug counts, but later authorities learned the initial tests on the powders had yielded false results for meth and ephedrine.

McDonald went to trial on reduced charges, and let Judge Haakenson decide the case instead of a jury.

His defense was that he was selling filler powder he thought cocaine dealers would mix with their product.

Haakenson, announcing the verdict Tuesday afternoon, said the evidence was insufficient to prove McDonald knew what he was selling would be used to make meth. The judge noted that some taped conversations between McDonald and the undercover detective were inaudible.

Haakenson also faulted the task force for failing to test all of the dozens of containers of powder that were found on March 23. Detectives were unable to confirm which powders McDonald had offered for sale and whether they had gone untested.

"The police work was sloppy," Haakenson said.

Prosecutor Sean Kensinger said the verdict was "a fair verdict given the evidence."

"I think the judge took issue with the fact that the officers couldn't identify which powders were offered to the detective as precursor, and some of the powders weren't tested," he said. "Given the testimony, there was a possibility that the specific powders presented for sale were those which were not tested."

During the trial, a former Westnet detective testified that the task force was pressed for time in the McDonald case, squeezing the bust in during a lull in a different case involving Mexican drug cartels.

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