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San Rafael meth suspect spared felony after judge tosses charge

By

By Gary Klien, Marin Independent Journal

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A San Rafael drug suspect was spared a potential prison sentence after his lawyer claimed vindictive prosecution.

"I'm happy," said James Edward Farr, 48. "I was upset at first, that they were going to make it even worse."

The incident occurred Feb. 19, when an undercover sheriff's investigator saw two cars pull into the parking lot of 777 Grand Ave. in San Rafael. One driver gave the other cash and received a metal tin in return, and both men drove off.

Police stopped one driver but not the other. The detained driver was identified as Farr, a San Francisco resident. He was carrying a tin with two small baggies of meth, and he had two other small baggies in the car.

The district attorney's office initially charged Farr with drug possession, which is a so-called "wobbler" because it can be reduced to a misdemeanor. Based on the small quantity of drugs, Farr planned to ask the judge to lower the case to a

misdemeanor and settle the case with a guilty plea, according to a filing by Farr's lawyer, Deputy Public Defender Michael Coffino.

Farr has a prior felony record, but Coffino said he had no felony convictions for 13 years.

Judge James Chou indicated he wanted to hear more evidence about the weight of the drugs before making a decision.

Test results on the drugs eventually showed that they weighed even less than initially alleged — a combined .57 grams, or a fraction of an ounce — Coffino said. After the test results were in, the prosecution amended the complaint to felony transportation of a controlled substance, which carries a potential prison sentence and cannot be reduced to a misdemeanor.

At the preliminary hearing Thursday, Coffino filed a motion to dismiss the felony charge, claiming it was a vindictive prosecution tactic to block Farr from getting a misdemeanor deal. Coffino noted that the investigator arrested Farr, the admitted meth buyer, while the dealer remained free.

Judge Chou said he found the switch in charges "somewhat troubling" and ruled he would not hold Farr to answer for the felony transportation count.

Farr then accepted a prosecution offer for a misdemeanor conviction.

District Attorney Ed Berberian, in an interview, denied the switch was vindictive and said prosecutors have the discretion to amend charges as they deem appropriate. He said the prosecution decided to put both theories before the judge, and that the purpose of the preliminary hearing is to allow a judge to consider the evidence.

"It definitely was not motivated by any vindictiveness on my part," he said.

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