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Smoke Signals shop in Dover to get seized pipes back from the state

DOVER — The state must return more than a hundred glass pipes, bubblers, and other smoking pipes to Smoke Signals, a downtown pipe and tobacco store that has been raided multiple times by police for allegedly selling drug paraphernalia, after the state Supreme Court ruled in the store's favor Wednesday.

However, the court disagreed with the store's claim that the state's drug paraphernalia law is unconstitutional.

Represented by Manchester-based Attorney Jonathan Cohen, the smoke shop had appealed a ruling denying their request to have approximately 177 smoking items seized during a 2004 raid returned to them after they were absolved of five related misdemeanor charges. Based on the Supreme Court's opinion, the items, totaling about \$1,500, were unjustly withheld by the state after the acquittal and must be returned.

"They didn't do anything wrong," said Cohen when reached Wednesday. "They were selling objects that were given back to them by the state. I think the court achieved a reasoned and just result. I don't think Smoke Signals should have been prosecuted for selling objects that were given back to them."

Issues between city police and Smoke Signals, located at 1 Main St., near where Washington Street curves around Cocheco Falls Millworks, have been longstanding, beginning with an initial raid in 2001 and related charges filed by the county attorney's office in 2002.

In 2004, the store struck a plea deal in that case and as a result some of the pipes deemed acceptable by the county attorney's office, including small glass pipes, carburetor pipes, bubblers, and other pipes referred to as "one-hitters," were returned to the business.

However, only two months later the store was raided again with many of the exact same pipes seized by police. In February of 2005, the store was acquitted of four sale of drug paraphernalia charges stemming from the raid. Strafford County Superior Court Judge Bruce Mohl ruled in the store's favor because the pipes were "identical" or "virtually indistinguishable" from pipes returned following the first prosecution.

Following the acquittal, Cohen filed a motion to have the items returned but it was denied by Mohl, who concluded the items were in fact drug paraphernalia under state law and therefore should not be returned. Cohen appealed the decision to the state Supreme Court and the case was heard last October. Mohl's decision was reversed this week.

Police Chief Anthony Colarusso said the department has been discussing the case with the county attorney's office to determine "what action, if any, needs to be taken," in terms of further prosecution. He said the ruling is not seen as a major loss for law enforcement since the state

drug paraphernalia law remains intact.

"We obviously stand by our actions and what we did," Colarusso said. "Our argument all along is that people who buy these items use them to ingest drugs way more often than they do to ingest a legal product."

Cohen's brief questioned the state law defining drug paraphernalia, calling it unconstitutionally vague. The issue is widely discussed nationwide as pipe shops often sell pipes associated with marijuana smoking but label them as tobacco pipes, thereby skirting drug paraphernalia laws.

Cohen, now of Bernstein Shur but formerly of Sisti Law Offices in Chichester, wrote in his brief: "The trial court's interpretation of the definition of drug paraphernalia could include every kind of pipe in the State of New Hampshire ... Thus, ordinary people would have to guess which pipes are legal and which pipes are illegal."

But the Supreme Court did not agree, stating the law "provides sufficient guidance to protect against arbitrary or discriminatory enforcement." However, the court ruled the property is not considered contraband because it could not be proved the pipes were used, or intended to be used, for illegal purposes. The state had argued the pipes are contraband because of their threat to society and should be forfeited.

"Obviously they did not strike down a section of the statute; however, they did give guidance on how to interpret the statute," Cohen said. "If you possess a pipe, you have to have a bad intent for it to be drug paraphernalia."

Smoke Signals did not want to comment on the ruling.
