

Police tactics in drug sting near school annoy judge

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By KIRK LOGGINS

Staff Writer

Undercover agents drove a suspect in a cocaine deal to an elementary school parking lot to discuss a transaction so they could then seek a stiffer sentence against him and his colleagues under a law designed to punish drug dealing near schools, according to court testimony.

Testimony about the police tactics prompted a General Sessions Court judge to say he was "very troubled" by what he considered a misuse of Tennessee's Drug-Free School Zone Act.

"All the problems we are having with our schools, we don't need the Police Department setting up (drug) buys on school property," Judge John Aaron Holt said at the end of an April 12 hearing for four men charged with conspiracy to distribute cocaine. "This is not a good thing to be doing."

Metro Drug Task Force Officer Jose Ramirez testified that securing "enhanced" sentences was the reason he drove suspect Bandelio Nieto to Paragon Mills Elementary School to meet another undercover officer. The second officer was carrying the \$13,500 that Ramirez had promised Nieto for a pound of cocaine.

Nieto and three other men were arrested when, Ramirez said, the cocaine was delivered in a shopping center parking lot on Nolensville Pike a short time later, on the night of March 29.

Nieto's lawyer, Mario Ramos, told Holt that police "manipulated" Nieto to bring him under the Drug-Free School Zone Act by driving him to a school before the deal went down somewhere else.

"It goes against the entire intent of the statute," Ramos said.

While Holt was critical of the tactics that police used, he sent the charges against all four defendants to the Davidson County grand jury for possible indictment.

Tennessee legislators voted in 1995 to raise the penalties for dealing in drugs within 1,000 feet of a school. Sponsors of the Drug-Free School Zone Act said they wanted to create "sanctuaries" that would protect children from drug-related activity.

The Tennessee statute, which can increase a defendant's sentence as much as fivefold, is similar to federal law and statutes on the books in many other states. State and federal appeals courts have said that the "sentence-enhancement" laws are constitutional, even if a defendant simply passed by a school at some point during a drug transaction.

Davidson County District Attorney General Torry Johnson said Friday that his office looks at cases involving drug activity near schools case by case before deciding whether to seek the longer sentences possible under the law.

"We've been wrestling with the equities of it," Johnson said. "I think law enforcement needs to be careful to not take advantage of the statute and undercut the very purpose that it is there for."

Assistant District Attorney John Zimmermann, who works with the Davidson County Drug Task Force, said Friday that undercover officers buy and sell drugs "in order to catch drug dealers."

But, Zimmermann said, "We have told the police that we don't want drug deals set up near schools when there is any chance of children or people associated with the school being present."

Metro Police spokesman Don Aaron noted that Ramirez and Nieto's rendezvous at Paragon Mills Elementary with another undercover officer occurred around 8 p.m., when the officers "knew that no one would be around."

Nashville lawyer and legal scholar David Raybin said Thursday that the Tennessee appellate courts have never ruled on a situation like Nieto's, in which undercover officers took a drug suspect to a school "for the mere purpose of jacking up the sentence."

He predicted that the courts would take a dim view of using the Drug-Free School Zone Act in that way.

The law "is not doing what it's intended to do when it's twisted around like this," Raybin said.

Anyone convicted under the statute is bumped into a higher sentencing range and has to serve 100% of the minimum sentence in the higher range.

For example, a drug conviction that would ordinarily require someone to serve 30% of an 8-to-12-year sentence before becoming eligible for parole can be "enhanced" to require that he serve 100% of a 15-year sentence.