

High court strikes down state police deal

By Tim Richard
staff writer

Six years ago, Luis Gallego went free after his 4th District Court pretrial exam on a drug charge. Last week the Michigan Supreme Court ruled only the Oakland County prosecutor — not the state police — had power to make the deal that set Gallego loose.

It was a major decision, and the story reads like a novel.

"We want to try him," chief assistant prosecutor Richard Thompson said the day after the high court ruling.

The county's Narcotics Enforcement Team (NET) reported Gallego is serving a federal prison sentence in Florida and is awaiting extradition to Michigan on other charges in Oakland County.

THE EVENTING OF Feb. 1, 1982, state trooper Terry Saldana met Gallego and Albert Bueno near Fox Hill Apartments in Bloomfield Township.

Saldana gave them \$33,000 cash for a pound of cocaine, then signaled a police surveillance crew to close in. Wrote Justice James Brickley: "After the police tackled Gallego as he attempted to climb a snowbank, they discovered he no longer had the \$33,000 in his posses-



Justice James Brickley police can't deal

Gallego revealed the location of the money, which was retrieved, and went free.

SEVERAL MONTHS later, Thompson said, a state narcotics officer came to an assistant prosecutor with a request for a warrant for Gallego's driver. The assistant asked why they weren't seeking a warrant for Gallego.

"They revealed the deal," said Thompson. "The issue was brought to my attention, and I said 'we are not bound by that deal.'"

District Judge Gus Cliffelli, however, dismissed the case at the close of the pretrial on the basis of Gallego's deal with state police.

Oakland Circuit Judge Frederick Ziem affirmed the dismissal.

The prosecutor's office went to the state Court of Appeals and won. Gal-

lego appealed to the Supreme Court, which last week ruled 5-2 against him.

BRICKLEY WROTE that it was proper to exclude the seized evidence and the written deal, which amounted to "an involuntary confession."

"(P)olice lack the authority to make a binding promise of immunity not to prosecute," said Brickley.

A decision for Gallego, he said, "would undermine the accountability built into the prosecutorial function. Unlike a Michigan State Police officer, the Oakland County prosecutor is an elected official and thus accountable to the county's electorate for his actions."

"Since the police possess neither the authority to withhold prosecution nor to grant immunity, no formal

system exists by which to check the potentially unbridled discretion the police would possess if allowed to make binding promises precluding prosecution. The potential for abuse seems obvious."

Brickley called it "a case of first impression." Thompson translated it to mean there is no other law on this issue up to this time.

BRICKLEY, a one-time chief assistant Wayne County prosecutor and U.S. attorney for eastern Michigan, was joined by Chief Justice Dorothy Comstock Riley and Justices

Patriela J. Boyle and Robert Griffin. Justice Charles Levin concurred in a separate opinion.

Justice Dennis Archer, newest member of the bench, agreed with Brickley on the point of law but said it should be applied to future cases because Gallego's lawyer had no precedent to guide him in making the deal.

Dissenting, Archer and Justice Michael Cavanagh said the court majority "rewards it (the state) for bad faith." They said, "This result damages the integrity of our criminal justice system."

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