

Professor Thompson was quoted in a Des Moines Register article about a lawsuit alleging that Iowa state agencies improperly used seized drugs in a "reverse sting" operation.

This article appeared in the Des Moines Register on October 1, 2009:

Lawsuit targets use of seized drugs

By JEFF ECKHOFF and GRANT SCHULTE • jeckhoff@dmreg.com • October 1, 2009

Iowa law enforcement agencies have handled illegal drugs without proper authority to do so and have failed to properly account for contraband that was supposed to be destroyed, according to a lawsuit filed this week by a man charged with buying some of those drugs from undercover investigators.

The lawsuit, filed in Polk County court by alleged dealer James Edward "Beep" Banks, contends that for the past two years, state agencies including the Mid-Iowa Narcotics Enforcement Task Force improperly used seized drugs in a "reverse sting" operation that ensnared Banks in March.

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Banks, 36, now faces a November trial, where a conviction could send him to federal prison for 20 years. And Iowa police agencies face a lawsuit that, if successful, could take away a rare tool in building cases against drug offenders.

Court papers say Banks was arrested March 13 after he allegedly bought 44 pounds of marijuana and 2 kilos of cocaine during a police operation at a Des Moines storage facility. According to Banks' lawsuit, those drugs came from evidence in other closed cases - evidence that Banks argues cannot legally be used for new police investigations under Iowa law.

"What's been going on is rather than destroying drugs, they're taking drugs out and distributing them to people," said defense attorney Dean Stowers. "There's a number of cases where very large amounts of drugs have been checked out and have not been accounted for."

The lawsuit cites 17 instances where various state agencies obtained court orders to remove drugs from evidence for investigation or training purposes - court orders, Stowers contends, that judges had no legal authority to sign.

Documents say the same police agencies also failed to file follow-up paperwork necessary to certify under oath, as the law requires, that checked-out drugs actually had been destroyed. As a result, "52 plants of marijuana, over eight pounds of methamphetamine and multiple kilos of cocaine are unaccounted for at this time."

Banks' lawsuit seeks an injunction banning police agencies from using seized drugs in reverse sting operations and a court order requiring that police agencies account for the whereabouts of any drugs that were checked out.

Assistant Iowa Attorney General Peter Zalek said state authorities are still researching the legal authority behind police actions and are not yet ready to discuss the legal justification for using real drugs in fake drug deals.

"At least as far as my involvement in representing the Iowa Department of Public Safety, this issue has never been raised before," said Zalek, who started his current job in January 2004. Stowers "makes some good legal arguments. I don't know yet whether they're the correct legal arguments."

Polk County Sheriff's Lt. Kevin Schneider, current head of the multidepartmental Mid-Iowa task force, could not be reached for comment.

Lawyers contacted Wednesday said it remained unclear whether any state court ruling against police use of the drugs ultimately would even help defendants such as Banks, who still will have to argue his criminal case in federal court.

Reverse sting operations are rare nationally, said University of Houston law professor Sandra Thompson, an expert in drug cases and forfeiture law.

Most cases, she said, involve undercover agents or informants who buy drugs from suspected dealers.

But for undercover work, "it would seem appropriate to allow police to do these stings as long as records are kept and the drugs are controlled - and as long as they don't lose them," she said.

Des Moines attorney Alfredo Parrish said reverse sting cases are also "rare in Iowa. It's not that I haven't seen them; I just haven't seen a lot of them."

A reverse sting was used in May 2005 in a botched methamphetamine deal at a south-side Des Moines hotel. The deal erupted in gunfire. Dennis "D.J." Schofield currently is serving a roughly 202-year prison sentence for the attempted murder of 10 law enforcement officers as they tried to arrest him following the attempted purchase from a sheriff's deputy of 2 pounds of methamphetamine. Schofield, a partner and three police officers were wounded in the ensuing gunbattle.

Stowers called it "extremely rare" that police would use real drugs in a reverse sting: "I've always seen the fake stuff."

Banks' lawsuit could nudge Iowa lawmakers into action regardless of whether it succeeds, said University of Minnesota law professor Stephen Simon, a former prosecutor and criminal defense attorney. "My guess is that you'll see a bill in your legislature next session to allow these types of operations," he said.

Simon, who has studied police seizure cases, said he was unaware of similar lawsuits elsewhere in the United States.

Court papers show Banks worked at Anderson Erickson Dairy in Des Moines before the March arrest. His history also includes drug possession and distribution charges in the 1990s. Des Moines police charged him with terrorism and gang participation for shooting at a car in 1995, but the charges were later dropped.

Prosecutors also filed papers to seize more than \$52,000 from Banks and a 2004 Cadillac. Agents allege that the car and money were part of his cocaine operation.