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MAN CAN'T BE RETRIED ON CHARGE, COURT RULES

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A federal appeals court has ruled that a Pee Dee fireworks dealer can't be retried on a state drug trafficking charge.

The U.S. 4th Circuit Court of Appeals in Richmond, Va., issued the ruling Monday that retrying Jimmy Carter would constitute double jeopardy because the same evidence previously convicted him of possession of marijuana.

A state grand jury was hung in December 1991 on a charge that Carter, a Marion fireworks dealer, trafficked in marijuana in Laurens, York, Chester, Marion and Lancaster counties. Carter, owner of Jimmy Carter's Fireworks in Marion, was convicted of the lesser charge of possession of marijuana on a second indictment, which alleged he cultivated and grew the drug.

A state wildlife officer found Carter with marijuana leaves on him in a Laurens County field in July 1991. His attorney, **Jack Swerling**, said Carter spotted the marijuana while scouting deer, and kept less than a gram of the drug. Officers confiscated 288 plants from the field and nearby plots.

When the state attorney general moved to retry Carter for drug trafficking, **Swerling** appealed to the U.S. District Court on the question of double jeopardy. The appeal was denied, but **Swerling** argued an appeal to the 4th Circuit in October.

The appeals court agreed that marijuana found in Laurens County had already been used as evidence to convict Carter of possession, and could not be used to retry him on trafficking.

The appeals court said that despite the state's allegation that Carter had trafficked in drugs since 1988, the hung jury "may have resulted from jurors heeding the indictment -- which they had in the jury room -- and their instructions to consider the cultivation and possession of the Laurens County marijuana under both counts."

State attorney general's spokeswoman Julie Horton said Tuesday there has not been a decision whether the ruling would be appealed to the U.S. Supreme Court.



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