

## Tang Nguyen Acquitted By Appeals Court Of Conviction For Avoiding \$129.73 In Federal Taxes On “Contraband” Viet- namese Cigarettes

A federal appeals court [has acquitted](#) 62-year-old Tang Nguyen of her 2012 conviction of knowingly receiving cigarettes mailed from Vietnam to Nebraska that were considered contraband because \$129.73 in federal cigarette taxes had not been paid on them.

Tang Nguyen, who is also known by her nickname Janny, is a Vietnamese immigrant living in Lincoln, Nebraska where her sister and other Vietnamese immigrants live.

In May 2011 an informant notified the Otoe County Sheriff’s Office that a Vietnamese immigrant was selling untaxed Vietnamese cigarettes in Nebraska City, about fifty miles east of Lincoln. The information was passed on to the U. S. Immigration and Customs Enforcement (ICE), which began an investigation. Between December 2011 and April 2012 ICE agents conducted searches of packages from Vietnam addressed to either the home of Nguyen or her sister Kim Nguyen who lived nearby. The searches discovered the packages contained Vietnamese manufactured cigarettes upon which neither the federal nor the Nebraska state cigarette tax had been paid. Consequently the cigarettes were considered illegal contraband. The ICE investigation identified six people allegedly involved in receiving or selling the untaxed cigarettes in Lincoln and Nebraska City. Those six people [were indicted](#) by a federal grand jury on May 22, 2012 of a variety of charges that included conspiracy, mail fraud, fraudulent importation of “contraband cigarettes,” and evasion of federal cigarette taxes.

Four of the defendants -- including Nguyen’s sister Kim -- pled guilty to reduced charges in exchange for testifying as prosecution witnesses against Nguyen and another defendant, Nhu Van Phan, who elected to go to trial.

The trial of Nguyen and Phan began in October 2012 in the U.S. District Court in Lincoln. During their trial the government introduced statements Nguyen made to ICE agents when her home was searched in April 2012. An ICE [agent testified](#) Nguyen acknowledged packages mailed by her

brother in Vietnam had come to her residence “and she knew that they contained cigarettes.” He also testified Nguyen said her sister Kim would pick up the unopened packages. Kim testified her sister wasn’t paid for receiving the packages, she didn’t sell any cigarettes, and money from sale of the cigarettes was sent to their brother in Vietnam. Kim also testified she didn’t discuss with her sister the Vietnamese cigarettes were not “were not taxed by the United States.”

Nguyen’s defense was she had no criminal intent because she didn’t know any U.S. laws were being violated by sale of the cigarettes.

After a five day trial the jury deliberated for two days before acquitting Phan of all charges on November 7, 2012, while Nguyen [was acquitted](#) of all charges except that she did “knowingly ship, transport, receive, possess, sell and distribute ‘contraband cigarettes’” in violation of 18 U.S.C. § 2342(a).

During Nguyen’s sentencing hearing on February 21, 2013 her federal prosecutor argued the U.S. Treasury had been defrauded of \$129.73 in federal cigarette taxes by importation of the Vietnamese cigarettes. The judge sentenced Nguyen to 1 day in custody of the federal Bureau of Prisons for processing by the United States Marshal’s Service; 3 years supervised release with special conditions; \$100 Special Assessment; Restitution of \$129.73 to be paid to the United States treasury, and restitution to be paid to the Nebraska Dept. of Revenue in the amount of \$5,921.88 for alleged lost state cigarette tax revenue. The restitution was ordered to be paid jointly and severally with her co-defendants who pled guilty. So if the five convicted defendants paid an equal share Nguyen owed \$25.95 in restitution to the United States for lost cigarette tax revenue. Nguyen’s sentence was stayed while she appealed.

Nguyen’s appeal argued the prosecution introduced insufficient evidence to prove beyond a reasonable doubt she “knowingly” violated § 2342(a).

On July 15, 2014 the U.S. 8<sup>th</sup> Circuit Court of Appeal vacated Nguyen’s conviction and ordered dismissal of the charge against her because the government introduced insufficient evidence of her guilt. Their ruling in *United States v. Tang Nguyen*, No. 13-1455 (8th Cir. 7-15-2014) [states in part](#):

(1) The packages arriving from Vietnam bore no outward sign that they con-

tained cigarettes. ... (2) There was no evidence Ms. Nguyen ever opened a package received at her home. ... (3) The warrant search of Ms. Nguyen’s home uncovered no evidence that any box was opened at her home. (4) There was no evidence

Ms. Nguyen ever sold or distributed the cigarettes, or profited from their distribution. She just delivered packages received at her home from Vietnam, unopened, to her sister. Our review of this evidence persuades us that the government simply failed to prove a knowing violation of § 2342(a).

... Thus, the verdict convicting Ms. Nguyen of Count VI must be overturned. In addition, as this was a failure of proof at a trial in which the government had fair opportunity “to offer whatever proof it could assemble,” the Double Jeopardy Clause requires entry of judgment of acquittal, rather than grant of a new trial.

Consequently, the four defendants who pled guilty, including Nguyen’s sister have to pay the \$129.73 restitution to the U.S. Treasury, and the restitution to the Nebraska Department of Revenue that the federal court acted as a bill collector for.

[Click here to read](#) *United States v. Tang Nguyen*, No. 13-1455 (8th Cir. 7-15-2014).

Source: [United States v. Tang](#), No. 13-1455 (8th Cir. 7-15-2014) (Vacating conviction on insufficient evidence.)

[Contraband cigarette conviction reversed](#), *Lincoln Journal Star* (Lincoln, Neb.), June 15, 2014.

[Jury: 2 not guilty of cigarette smuggling conspiracy](#), *Lincoln Journal Star* (Lincoln, Neb.), Nov. 7, 2012.

[6 indicted for alleged part in cigarette smuggling ring](#), *Lincoln Journal Star* (Lincoln, Neb.), June 15, 2012.

### Visit Justice Denied’s Wordpress Page

Justice Denied’s Wordpress page has the latest articles and information. See, [www.justicedenied.org/wordpress](http://www.justicedenied.org/wordpress)

