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ENDORSED
FILED
ALAMEDA COUNTY
MAY 12 1997
RONALD G. OVERHOLT, Exec. Off./Clerk
By Fil R. Cruz

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

vs.

DENNIS PERON, PETER VEILLEUX, ANTONIO MARTINEZ, JOHN HUDSON, ELIZABETH MOORE and ADAM PERRY,

Defendants.

No. 128473 A-F

ORDER ON MOTION TO DISMISS PURSUANT TO PENAL CODE § 995 AND MOTION TO DISMISS FOR SELECTIVE PROSECUTION

Defendants filed a Motion to Dismiss Pursuant to Penal Code § 995 on December 24, 1996. On January 16, 1997, Defendants filed an Augmentation of the Motion to Dismiss. On February 19, 1997, the People filed their opposition to the motion. On February 21, 1997, Defendants filed a Supplemental Memorandum in support of the motion. Also on February 21, 1997, the People filed their opposition to the supplemental memorandum. Defendant Peron filed a Reply to the opposition on March 28, 1997. On March 31, 1997, the People filed their Second Supplemental 995 Opposition. The motion was heard on April 14, 1997 in Department 7. Subsequent to the hearing, the Court received a letter from Defendants' counsel together with court documents from a Mariposa County Superior Court action.

Defendants also filed a Motion to Dismiss for Selective Prosecution on February 13, 1997. The People's Opposition to Discriminatory Prosecution Motion and Motion to Quash

Subpoenas were filed on February 21, 1997. Defendant Dennis Peron's Reply was filed on March 28, 1997. The People's Response to Defendant's Discriminatory Prosecution Reply was filed on March 31, 1997. Defendant Peter Veilleux filed a Reply to People's Opposition on April 3, 1997. The People's Response to Defendant Veilleux's Reply was filed on April 8, 1997. Defendant Antonio Martinez filed a Supplemental Argument and Exhibit in Support of the motion on April 11, 1997. The hearing on the motion was held on April 14, 1997.

PROCEDURAL HISTORY

The matter was presented to the Alameda County Grand Jury by the Attorney General of the State of California on October 1, 1996 and October 8, 1996. The Grand Jury issued its Indictment on October 8, 1996. The Indictment charges Defendants in Count I with conspiracy to violate the statutes prohibiting possession, cultivation, possession for sale, transportation, sale, and maintaining a place for unlawful sale of marijuana, possession of psilocyn, and contributing to the delinquency of a minor (Health and Safety Code §§ 11357(c), 11358, 11359, 11360(a), 11366, 11377(a); Penal Code § 272). The time period for the conspiracy is November 1994 through August 7, 1996. Forty-eight overt acts are alleged.

Defendants are charged in Count II with possession of marijuana for sale (Health and Safety Code § 11359) on or about July 11, 1996. Defendants are charged in Count III with sale or transportation of marijuana (Health and Safety

Code §11360(a)) on or about July 22, 1996.

Defendants entered not guilty pleas on October 29, 1996. The People's motion for a protective order to limit public comment on the case was denied on November 7, 1996. Defendants' conditional motion for change of venue was denied on December 17, 1996.

FACTS

As presented to the grand jury, the evidence tended to show the following. Defendants Peron and Moore served as directors, Veilleux and Martinez were suppliers and Hudson and Perry were doormen for the Cannabis Buyers Club (Club) located in San Francisco. According to Club literature and previous testimony by Defendant Peron in an unrelated case, the Club is dedicated to the sick and dying. Peron stated that the Club distributes marijuana to people who have letters of diagnosis - people with AIDS, cancer, multiple sclerosis and glaucoma. Club literature also included resolutions of the State Senate and local board of supervisors which recommended that marijuana be rescheduled and made available for medical purposes. It noted, however, that such resolutions did not have the force of law and warned that Club operators and members could be subject to arrest. Peron also testified in the unrelated case that Club members are not allowed to purchase marijuana for other people and are not allowed to divert their purchases.

Pursuant to a complaint about the Club, San Francisco

Police Department Sergeant Joseph Bannon borrowed a Club membership card and entered the Club at its Church Street location on November 16, 1994. He observed marijuana being purchased and smoked. Bannon testified that he became intoxicated from the second-hand smoke and was unable to drive when he left. (RT 25-26)

Bannon returned to the Club at least ten times before September 1995. He saw people who appeared to be under 18 or 21 probably 20 to 25 times. (RT 24) He also saw women bringing in infants and a man bringing in a couple of kids. (RT 25) He has seen "infants, minors, juveniles, and children ranging from the age of under one years [sic] old all the way -- including 15, 16, 17 up to 21 and older." (RT 28-29) Another officer, Kim Reynolds, went to the Club on November 29, 1994. At that time, she saw young teenagers inside - "definitely people under 18." (RT 255-256) A videotape of a boy smoking marijuana in front of Defendant Peron was shown to the grand jury. (RT 38) The boy appeared to Bannon to be about 14 years old. (RT 38)

Officer Browne also saw four juveniles in the Club on December 15, 1994. There were two four to five-year-olds sitting next to a couple who was smoking marijuana, a six-year-old boy walking around in a room which was filled with marijuana smoke and a sixteen-year-old boy waiting to make a purchase. (RT 238)

It was Club policy that a member could bring two guests,

whether they were sick or not. Once inside the Club, anyone could make purchases. (RT 43) For example, Officer Reynolds entered without a membership card on November 29, 1994 and purchased marijuana. (RT 254-255) Other officers likewise made purchases without having proper membership cards. (RT 21-22, 29-30; 211-214)

Sometimes officers would obtain membership cards using fictitious doctor's letters. On one occasion, an Officer Fowlie told Defendant Peron that he did not have a doctor's recommendation, but that he had a back-to-work slip that stated he had low back pain. Peron accepted the slip and authorized him for membership. (RT 241-243) Fowlie had typed the slip himself on a plain white piece of paper and had fabricated the doctor's name. (RT 242, Opposition to selective prosecution motion, Exh. 3) Later, Peron authorized memberships for Officers Bruneman and Browne who brought in fake notes reporting that they had colitis and insomnia and severe lower back pain and sciatica. (RT 215-219; 36-38; 233-234) The notes were typed on plain white paper with no letterhead. (RT 234; Opposition to selective prosecution motion, Exh. 4, 5) On January 4, 1995, Officer Reynolds obtained a membership by presenting a fictitious doctor's note stating that she had vaginitis. (RT 252) The note was handwritten on plain paper. (Opposition to selective prosecution motion, Exh. 6) Defendant Peron told her that she could authorize someone else to buy marijuana

for her in the event she became too sick. (RT 252)

In September 1995, the Club moved to larger facilities on Market Street. An average of 3500 people, or 500 people per hour, could enter the Club on its busiest days. (RT 46-47) When it was that busy, some people did not show their cards, they just piled in through the door. (RT 41) Memberships continued to be issued based on fictitious doctor's notes and guests of members were still permitted to enter at the new facility. (RT 263, 266, 275) On at least one occasion, there was a four-year-old child present. (RT 266-267) Marijuana smoke in the air was "somewhat overpowering" or thick at times. (RT 66)

On June 29, 1996, BNE Agent Kerrigan who had made a previous purchase, told a Club employee named Kevin that he wanted to purchase a larger quantity of marijuana. Kevin approached Peron and asked if that would be okay. Peron asked Kerrigan what he needed. Kerrigan told him that he had $1000.00. Peron told Kerrigan that he could have two ounces for $1000.00. Kerrigan actually had only $900.00 and he subsequently purchased 41.80 grams for $535.00. (RT 111-116)

On July 5, 1996, Kerrigan returned to the Club and told Kevin that he had about $3000.00 and wanted more marijuana than was sold on the third floor. Kevin escorted Kerrigan to the fifth floor where he met with Peron. Kerrigan said that he wanted Mexican marijuana - as much as he could get. Peron sold him one pound for $900.00. (RT 122-125)

On July 19, 1996, Kerrigan met again with Peron. He stated that he wanted to purchase two pounds of marijuana. Peron asked what he was going to do with it. Kerrigan stated that he was going to resell it to some guys at the Russian River. (RT 130) Peron asked him if it was for sick people. (RT 130) Kerrigan responded with something to the effect of "love and compassion." (RT 131) Kerrigan told Peron that he would be interested in getting a Cannabis Buyers Club started in the Russian River area. Kerrigan purchased two pounds for $1800.00. (RT 131-132)

On July 24, 1996, Kerrigan returned to the Club and struck up a conversation with a boy inside the Club. The boy told Kerrigan that he was a sophomore at Lincoln High School and that he was 15 years old. (RT 132)

On August 4, 1996, search warrants were executed at the Club and Defendants' residences. At Defendant Hudson's residence, police found pay-owe sheets with dollar amounts of $130,177, $220,000, and $230,000. (RT 193) At the Club itself, police located 35.6 pounds of marijuana, five bags of bundled cash totaling over $60,000, and a baggie of dried mushrooms containing psilocyn. (RT 168, 92, 227, 305)

As relevant to the motion to dismiss for selective prosecution, the Club was also headquarters for Bay Area proponents of Proposition 215 and the Defendants were vocal proponents of the measure. Campaign literature was safeguarded during the search of the Club.

DISCUSSION

Motion Pursuant to Penal Code section 995

Defendants moved to dismiss the Indictment on three grounds:

1.) California Health & Safety Code section 11362.5 is now law, and therefore Counts 1, 2, and 3 of the Indictment must be dismissed. Section 11362.5 constitutes a repeal of the prohibition against using marijuana for medical purposes.

2.) The enactment of Health & Safety Code section 11362.5 introduces a new defense to violation of the marijuana laws. This relevant law was not given to the grand jury, and therefore the indictment must be dismissed pursuant to Penal Code section 995.

3.) Exculpatory evidence was not provided to the grand jury.

By the augmentation of the motion on January 16, 1997, Defendants indicated that the basis for ground no. 3 was that the prosecution did not present the affirmative defense of medical necessity to the grand jury.

The Attorney General responded:

1.) Assuming section 11362.5 is retroactive, it is inapplicable to this case because the evidence showed that marijuana was routinely diverted to non-medical purposes. Additionally, the defense would not apply to possession for sale in any event.

2.) The prosecution could not instruct in the principles of Proposition 215 since it did not exist at the time the grand jury considered the case. Additionally, the evidence shows that there was no attempt to limit marijuana to medical purposes.

3.) The grand jury was told that the defendants claimed there was a medical purpose for their conduct. The defense of necessity is not available where the evidence shows the absence of an attempt to limit the illegality to that which is made necessary by the emergency.

An additional ground for the motion was raised in the supplemental memorandum filed February 21, 1997. Defendants noted that the San Francisco County Superior Court issued an order modifying an injunction against the operation of the Club after Proposition 215 was passed. They argue that the San Francisco court found that the operation of the Club comes within Proposition 215, and that this Court should dismiss the Indictment on that basis. The Attorney General replied that the San Francsiso Court made no finding as to the lawfulness of the conduct during the time period that the grand jury considered. In fact, the court only declared that Defendants would not be in violation of the injunction if they complied with section 11362.5. The Attorney General is correct and this issue requires no further discussion.

1.) Health and Safety Code section 11362.5

Defendants argue that they are entitled to dismissal of all counts by virtue of the enactment of Health and Safety Code section 11362.5. In their three-paragraph argument on this point, Defendants state that "each and every one of the undercover police officers who were provided marijuana by the Buyers Club claimed, at the very least, a physician's recommendation." Defendants argue simply that "[t]herefore, any charges cannot stand because any possession of marijuana, any sale or transportation of marijuana, and any conspiracy to provide marijuana were all for the purpose of providing now-legal medicine to undercover police officers who claimed

there was a medical value to it." (Defense brief filed 2/21/97 at 5:28-6:16)

For purposes of this motion, the People have not disputed the retroactive effect of section 11362.5. However, they argue that Defendants' operation was outside the initiative's scheme.

Health and Safety Code section 11362.5 provides in pertinent part:

> (b)(2) nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, nor to condone the diversion of marijuana for nonmedical purposes.
>
> ...
>
> (d) Section 11357, relating to the possession of marijuana, and Section 11358, relating to the cultivation of marijuana, shall not apply to a patient, or to a patient's primary caregiver, who possesses or cultivates marijuana for the personal medical purposes of the patient upon the written or oral recommendation or approval of a physician.
>
> (e) For the purposes of this section, "primary caregiver" means the individual designate by the person exempted under this section who has consistently assumed responsibility for the housing, health and safety of that person.

It is initially noted that Defendants' claim that each officer who purchased marijuana stated that it had been recommended by a physician is inaccurate. As conceded by Mr. Lichter at the hearing on the motion, Officer Kim Reynolds testified that she entered the Club on November 29, 1994, without a membership card - she simply followed another officer in. (RT 255) Reynolds did not obtain a membership card until her second visit to the Club which was on January

4, 1995. (RT 250) She stated that she made a purchase on November 29, 1994. (RT 255) While the purchase itself is not described, the evidence is sufficient to support a reasonable inference that she purchased marijuana.

Defendants have made almost no effort to show how their conduct falls within the parameters of section 11362.5. As best as can be determined, Defendants rely on their interpretation of the San Francisco County decision which they believe found them to qualify as "primary caregivers" under section 11362.5 and their belief that the evidence showed that each officer claimed to have a physician's recommendation. Their briefs do not set forth the language of the statute or describe how they meet the various elements of the defense beyond that described above.

Perhaps tellingly, it is the People's briefs which cite the statute and provide the ballot materials. The ballot materials state that marijuana will still be illegal for non-medical or recreational use, that Prop. 215 does not give kids the okay to use marijuana, and that it provides a defense only to those who can prove that they used marijuana with a doctor's approval.

Defendants' briefs fail to recognize and address the fact that the Indictment alleges conduct which by its nature and extent falls outside the reach of section 11362.5. This is critical to the decision as any conduct falling outside section 11362.5 will defeat Defendants' motion as to that

particular count since a motion pursuant to section 995 cannot be used to strike portions of a count. For instance, as to Count I, the presence of mushrooms containing psilocyn in violation of Health and Safety Code section 11377(a) and the evidence that defendants contributed to the delinquency of a minor in violation of Penal Code section 272 is conduct that cannot be said to come within section 11362.5. This alone mandates that the Court deny the motion as to Count I.

As to Counts II and III, Defendants have not addressed the fact that section 11362.5 expressly refers to possession and cultivation of marijuana. The fact that possession for sale and sale of marijuana are not included in the statute presents an obvious problem for the defense.

Other evidence that the operation of the Club did not come within the parameters of section 11362.5 is as follows: Defendants permitted sales without regard to any medical purpose given that guests who accompanied cardmembers were permitted to purchase marijuana (RT 43, 255); minors were permitted to sign up as members and to smoke marijuana (RT 37-38); children were exposed to second-hand marijuana smoke which had an intoxicating effect on an adult (RT 24-29, 238); large-scale sales were made (RT 113-125); on a number of occasions, there was no attempt made to verify false doctors slips (RT 32-33). Additionally, many of the customers appeared healthy. (RT 40-41) While this fact alone is entitled to little weight as a person's medical condition may

not be apparent to observers, it provides some support to the conclusion that marijuana was used for nonmedical purposes when considered in light of the other evidence presented. Based on the foregoing, the Court rejects Defendants' motion on the first ground stated.

2.) Relevant Law Not Provided to the Grand Jury

Defendants initially argued that they were denied a substantial right, requiring dismissal of the indictment, by virtue of the fact that the grand jury did not consider the effect of section 11362.5. At the hearing on the motion, Defendants requested that the matter simply be returned to the grand jury for it to reconsider the evidence in light of section 11362.5. The People argued that there is no authority for a remand to the grand jury. Defendants conceded that there is no established procedure, but argued that fundamental fairness concerns required the Court to fashion a remedy.

The Court will assume that Defendants are entitled to the benefit of section 11362.5. However, given that the law did not exist at the time that the grand jury was instructed, there is no authority for Defendants' claim that they were denied a substantial right when the grand jury was not instructed as to its terms. Therefore, there is no right to dismissal.

The proper solution would seem to be for the matter to be returned to the grand jury for it to consider the evidence

in light of section 11362.5. However, the Court does not have the authority to make such an order.

Therefore, in response to counsels' arguments, the Court on its own motion conducted an independent review of the record and applied the provisions of section 11362.5 to the evidence. Following this review, the Court finds that at least some of the conduct described by the evidence as to each count falls well outside the protection created by section 11362.5. Therefore, presentation of the medical marijuana defense and the actual provisions of section 11362.5 could not reasonably have had any effect on the decision whether to issue an indictment.

3.) Exculpatory evidence

Defendants claim that exculpatory evidence was not presented to the grand jury. They initially argued only that the grand jury should have been informed of the defense of medical necessity. Other claims were subsequently added, as discussed below in Section 3A. The People argue that the necessity defense is not available where the evidence shows an absence of a good faith attempt to limit the illegality to that which is made necessary for the emergency.

Defendants claim that because they could have presented a defense of medical necessity at a preliminary hearing, the People should have presented the defense to the grand jury. Defendants' authorities cited show the factors that a defendant must establish. None of the cases arose in the

context of a grand jury indictment.

By Defendants' own recitation of the law, the defense of necessity appears to require substantial preparation and supporting evidence including expert testimony and scientific literature. To the extent that the prosecution has a duty to bear the burden of presenting such evidence to a grand jury, the Court finds that it was not required in this case.

Initially, it is noted that information about the claimed medical purposes of the Club was presented to the grand jury. (See People's brief filed 2/19/97, page 5, footnote 3.) Included in the Club literature presented to the grand jury is a statement of the Club's purpose:

> This not-for-profit club is open to all people being treated by a physician for any condition that can benefit through the use of marijuana. It was founded in the wake of the AIDS epidemic, with the goal of alleviating suffering. Since our inception in 1991 we have helped thousands of afflicted people. We have also worked to change the laws which prevent people from using marijuana to help alleviate their symptoms. (Opposition to selective prosecution motion, Exh. 1)

The grand jury was able to evaluate the claimed purposes and policies against the actual conduct as described by the testimony. It could weigh the claim that Club members were not allowed to purchase marijuana for other people against the evidence that Kerrigan bought large quantities of marijuana on several occasions. Further, the purchases made on June 29, 1996 and July 5, 1996 do not appear to have been based on any claimed medical need given that the discussion about sick people at the Russian River did not take place

until the July 19, 1996 purchase. The grand jury could also weigh the claim that the marijuana was dispensed to those who were sick and dying against the evidence that marijuana was sold to members' guests and others without valid doctor's notes. Therefore, the evidence could not meet even the first step of the necessity defense - that is that the act be done to prevent a significant evil.

3A. Additional Claims of Exculpatory Evidence

In a reply brief filed March 28, 1997, Defendants raised additional claims of exculpatory evidence that was not presented to the grand jury. They note that evidence seized from the Club and their homes contained the following material:

> 1) Minutes of a May 20, 1996 Cub meeting where it was reported that the Club was taking all measures to stop the sale of marijuana by nonmedical patients who were gaining access surreptitiously, that it was taking measures to prevent nonmedical patients from gaining access to the Club, and that it was banning guests of members.
>
> 1.A.) A photo of Milton Marks sitting at the Club while the Club was in operation.
>
> 1.B.) A list of people who wanted to volunteer at the Club so that they could assist sick people.
>
> 2.) A resolution by the S.F. Board of Supervisors acknowledging Peron for providing medical marijuana to those in need.
>
> 3.) A proclamation from Milton Marks acknowledging Peron for providing medical marijuana to those in need.
>
> 4.) A list of people suffering from AIDS, documents indicating the Club was requiring documentation of illness and taking action to evict those who committed fraud in entering, and documents indicating the Club was actively looking for individuals with improperly

obtained cards.

5.) A poster board with 50 Polaroids photos of people who had been suspended by the Club.

6.) A doctor's letter marked "fake" and policies for keeping out scammers and those under 18.

The People do not object on procedural grounds to this new argument. They respond that the evidence that the Club was tightening up its operations is as inculpatory as exculpatory since there is an implied admission that they were operating without adequate controls during the period before May 20, 1996 and most of the dates charged precede that time.

As to the resolutions, the People argue that they are irrelevant. They note that the jury was informed of them in any event since they are included in the Club application form introduced in evidence. As to the list of AIDS patients, the jury was informed that Peron claimed that care of AIDS patients was his mission. Finally, fifty suspended members is insignificant in a club of thousands.

To the extent Defendants are entitled to raise this new argument in their reply brief, the Court finds that the omitted evidence did not reasonably tend to negate guilt in light of the evidence that the operation far exceeded the purpose of section 11362.5, and therefore, the People were not required to present it.

Motion to Dismiss for Selective Prosecution

Defendants claim that they were deliberately singled out

for prosecution from all other cannabis buyers clubs based on the fact that the Club was also headquarters for the Bay Area proponents of Proposition 215 and that the prosecution's real purpose was to defeat Prop. 215 by discrediting and silencing defendants prior to the election.

Defendants rely on the timing of the prosecution and the fact that the Attorney General sought a gag order against them. Defendants argue that the Attorney General's efforts against them got under way once it became clear, in May 1996, that Prop. 215 would qualify for the ballot. Additionally, they have presented evidence that certain BNE agents made contributions to the anti-Prop. 215 effort. They also point to the fact that the Attorney General's office issued press releases about the case; these press releases contained misrepresentations or overstatements of the facts. For example, a press release states that undercover videotape recorded at the Club revealed that marijuana was "often" sold to teenagers. However, Joseph Doane, Chief of the BNE, acknowledged in a deposition that he had only seen one such instance on videotape.

Defendants argue that this was part of a campaign of misrepresentations which also included the failure to inform the grand jury of the lengths to which law enforcement went to generate false doctor's notes - even dedicating telephone lines for the pseudo doctors and creating false DEA numbers. As noted above, the Attorney General did not inform the grand

jury that at the time they were hearing the case, the Club was trying to implement internal security measures. Also, the Attorney General did not tell the grand jury that the S.F. District Attorney and U.S. Attorney had declined to prosecute.

Relying on U.S. v. Armstrong (1996) 517 U.S. 1480, 134 L.Ed 2d 687, the Attorney General argued that Defendants did not meet their burden of showing that similarly situated persons were not prosecuted. In addition, a declaration from Senior Assistant Attorney General John A. Gordnier states that action was taken against the Club in order to bring San Francisco County into conformity with the other fifty-seven counties which did not permit large scale unlawful sales. (People's opposition filed 2/21/97, Attachment A)

Defendant Peron replied that "the attorney general was keenly aware of the existence of other identical marijuana clubs in other jurisdictions" and did not take any action against them. (Peron brief filed March 28, 1997) The Attorney General responded that contrary to Defendant's claim, there are no similarly situated defendants, i.e. there are no other clubs that operate on such a large scale (40 lbs. seized at one time), for profit (taking in up to $60,000 in a day), where children and non-medical patients had access, and where there was a break-down in local law enforcement.

The Attorney General claimed that S.F. District Attorney

Terence Hallinan disclosed significant information to Peron regarding the DEA/SFPD investigation. However, Hallinan has filed a declaration denying this claim. The Attorney General also notes that the situation had become well-publicized with interviews of Peron and Hallinan appearing on CBS' 48 Hours.

Defendant Veilleux then filed a reply that argues that Armstrong is not applicable to this case since it alleges discriminatory intent as opposed to discriminatory effect. Defendant relies on a passage in Armstrong where the Court observed that it was reserving the question of "whether a defendant must satisfy the similarly situated requirement in a case involving direct admissions by [prosecutors] of discriminatory purpose." Armstrong, 134 L.Ed 2d. at 701, n.3. Defendant apparently seeks to establish a direct admission of discriminatory purpose through his declaration where he states that he was arrested and interrogated on July 22, 1996 by S.F. Police Department Officer Bannon and BNE Special Agent Buehler. He states that he told the officers that he was delivering marijuana to the Club for medical use, and that he was released on the condition that he not go to the press about the incident.

The People's response to Veilleux's reply asserts that Armstrong did not distinguish between motions asserting discriminatory intent and effect. Additionally, Veilleux's declaration does nothing to establish a direct admission of discriminatory purpose. The Court agrees with the People.

To establish entitlement to discovery on a claim of selective prosecution, defendants must make "a credible showing of different treatment of similarly situated persons." U.S. v. Armstrong 134 L.Ed.2d at 702; see also Baluyut v. Superior Court (1996) 12 Cal.4th 826, 832. In order to establish a claim of selective prosecution, defendants must demonstrate that the prosecutorial policy had a discriminatory effect and it was motivated by a discriminatory purpose. Id. at 699. The Supreme Court noted that the standard is a demanding one and the showing necessary to obtain discovery should itself be a significant barrier to the litigation of insubstantial claims. Id. at 698. In order to dispel the presumption that a prosecutor has not violated equal protection, a criminal defendant must present clear evidence to the contrary. Ibid.

Defendants have not met their burden in this case because there is no evidence that any of the other cannabis buyers clubs in California are similarly situated. Therefore, the motion must be denied.

DISPOSITION

The motion to dismiss pursuant to Penal Code section 995 is denied. The motion to dismiss for selective prosecution is denied. The motion to quash subpoenas is granted.

Dated: _____

_____
Hon. Larry J. Goodman
Judge of the Superior Court

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

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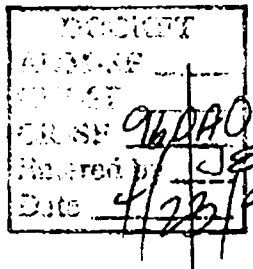

FILED
Court of Appeal - First App. Dist.
APR 22 1997
RON D. BARROW, CLERK
By _____ DEPUTY

THE PEOPLE,

Plaintiff and Respondent,

v.

SUDI PEBBLES TRIPPET,

Defendant and Appellant.

A073484

(Contra Costa County
Super. Ct. No. 950331-9)

BY THE COURT:

The court orders that no later than 30 days from the date of this order, the parties shall file with the Clerk of this Court simultaneous supplemental briefs not to exceed 25 pages addressed to the following issues:

1. Is the principle articulated by the Supreme Court in such cases as *In re Estrada* (1965) 63 Cal.2d 740, *People v. Rossi* (1976) 18 Cal.3d 295, and *People v. Babylon* (1985) 39 Cal.3d 719 applicable here, either in whole or in part, due to the enactment of Proposition 215?

2. If the *Estrada* principle is applicable to any extent, can and should this court rule on the impact of Proposition 215 on the basis of the present record in this case or, alternatively, should the case be remanded to the trial court and, if so, for what specific purposes?

3. If this court can and should rule on the impact of Proposition 215 on the basis of the present record, does the combination of that statute and this record provide appellant a whole or partial defense to the offenses charged? Why or why not?

DATED: APR 22 1997

KLINE, P. J., P. J.