IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT, DIVISION TWO

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent, v. SUDI PEBBLES TRIPPET, Defendant and Appellant.	A073484

Contra Costa County Superior Court No. 950331-9
The Honorable Richard Patsey, Judge

RESPONDENT'S SUPPLEMENTAL BRIEF

DANIEL E. LUNGREN
Attorney General

GEORGE WILLIAMSON
Chief Assistant Attorney General

RONALD A. BASS
Senior Assistant Attorney General

RONALD E. NIVER
Supervising Deputy Attorney General

CLIFFORD K. THOMPSON
Deputy Attorney General
State Bar No. 40016

50 Fremont St., Room 300
San Francisco, CA 94105
Telephone: (415) 356-6241

Attorneys for Respondent

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THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent, v. SUDI PEBBLES TRIPPET, Defendant and Appellant.	A073484

I.

RETROACTIVE APPLICATION OF PROPOSITION 215 TO PENDING APPEALS

Appellant was convicted on December 1, 1995, for possessing and transporting more than 28.5 grams of marijuana, in violation of Health and Safety Code, sections 11357, subdivision (c) and 11360, subdivision (a), respectively. CT 143, 149-150. On February 20, 1996, she was admitted to probation for three years. (CT 211-213.) At the November 5, 1996, general election the California electorate approved Proposition 215, enacting Health and Safety Code, section 11362.5:

> "(a) This section shall be known and may be cited as the Compassionate Use Act of 1996.
>
> "(b)(1) The people of the State of California hereby find and declare that the purposes of the Compassionate Use Act of 1996 are as follows:
>
> "(A) To ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where

that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief.

"(B) To ensure that patients and their primary caregivers who obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction.

"(C) To encourage the federal and state governments to implement a plan to provide for the safe and affordable distribution of marijuana to all patients in medical need of marijuana.

"(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.

"(c) Notwithstanding any other provision of law, no physician in this state shall be punished, or denied any right or privilege, for having recommended marijuana to a patient for medical 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 designated by the person exempted under this section who has consistently assumed responsibility for the housing, health, or safety of that person."

Although this initiative measure did not become operative until the day after that election (Cal. Const., art. II, § 10, subd. (a)), appellant seeks its retroactive application to her pending appeal.

Absent indicia of a contrary intent, the Legislature is presumed to have extended to defendants whose appeals are pending the benefit of intervening statutory amendments which decriminalize formerly illicit conduct (*People* v. *Rossi* (1976) 18 Cal.3d 295, 301), or reduce the punishment for acts which remain unlawful. (*People* v. *Nasalga* (1996) 12 Cal.4th 784, 792; *In re Estrada* (1965) 63 Cal.2d 740, 745, 748.) No different rule applies to an affirmative defense to the crime for which a defendant was convicted, which defense was enacted during the pendency of her appeal. (See *People* v. *Babylon* (1985) 39 Cal.3d 719, 722.) Since Proposition 215 contained no saving clause, it may operate retrospectively to defend against criminal liability, in whole or part, for some who are appealing convictions for possessing, cultivating and using marijuana.

Few convicted defendants will benefit from the retroactive application of Proposition 215, however. The *Estrada* principle forgives only those whose conduct, although prohibited in the recent past, would be permitted today. New Health and Safety Code section 11362.5, subdivision (d) permits the medical use of marijuana only "upon the written or oral recommendation or approval of a physician." Unlike appellant's proposed common law defense, the statutory affirmative defense entrusts the determination of medical necessity to the physician, not to the patient. Clearly, then, to invoke that defense the doctor's "recommendation or approval" must precede the patient's possession, cultivation, or use. One cannot claim the retroactive benefit of Proposition 215 without having satisfied the statute's requirement of an antecedent medical "recommendation or approval." Presumably, few anticipated this requirement before Proposition 215 was approved.

In general terms, the *Estrada* principle would extend the temporal application of Proposition 215 as follows. In a pending appeal of a case tried before Proposition 215 was approved, the judgment should be affirmed if no evidence of a Health and Safety Code section 11362.5 medical exemption was offered. This conclusion is consistent with the rule that error must appear from the appellate record, with the improbability of a statutory medical use defense, and with the probability that the electorate did not intend to jeopardize every marijuana conviction pending on appeal on November 5, 1996.

If evidence of a statutory defense was excluded at trial, or if related instructions were refused after such evidence was admitted, the appellant is entitled to a new trial if reasonable jurors, believing such evidence, could have acquitted the defendant under proper instructions. (See *People* v. *Flannel* (1979) 25 Cal.3d 668, 684.)

If the trial court refused appropriate instructions despite the admission of undisputed evidence of an affirmative defense based on medicinal possession, the appellant is entitled to no more than a new trial because, absent such instructions, the People had no incentive to present rebuttal evidence or to challenge the admitted evidence. (See *People* v. *Figueroa* (1993) 20 Cal.App.4th 65, 71.)

II.

APPLICATION OF *ESTRADA* PRINCIPLE AND PROPOSITION 215 TO APPELLANT'S CASE

At most, Proposition 215 would provide appellant a partial defense upon a retrial.

A. Partial Defense

Appellant claims that to her marijuana is both a medicine and a sacrament. She told the trial court:

> "On some occasion[s] I have medical purposes for using it. And on another occasion I have spiritual purposes for using it. And on other occasions I have both purposes." (Nov. 9, 1995 RT 5.)

By raising separate defenses of medical necessity and religious practice appellant may have thought she doubled her chances of avoiding any criminal liability. Instead, she has two chances to be held liable because unless both defenses prevail, neither can fully succeed. This necessarily follows from her admission that she possessed and transported marijuana intending to use some of it exclusively (and some jointly) for religious purposes. Thus, if her religion defense is rejected, as the People urge it must be, some of her marijuana is possessed and transported for no lawful or protected purpose. For that conduct she is criminally liable.

This is not to say that appellant's convictions must be wholly affirmed simply because her religion defense fails. She was found guilty of possessing more than 28.5 grams of marijuana, a misdemeanor punishable by not more than six months in jail and a fine (Health & Saf. Code, § 11357, subd. (c)); she was also found guilty of transporting more than 28.5 grams of marijuana, a felony. (Health & Saf. Code, § 11360, subd. (a).) Whether more than 28.5 grams of the nearly two pounds of marijuana found in appellant's vehicle was possessed for religious (illegal) purposes is a factual question that has yet to be determined by a jury. Should her religion defense fail, however, by her own in-court admission appellant is guilty at least of possessing and transporting not more than 28.5 grams of marijuana, acts punishable as

misdemeanors by $100 fines. (Health & Saf. Code, §§ 11357, subd. (b), 11360, subd. (b).)

B. Physician's "Recommendation or Approval"

Health and Safety Code section 11362.5, subdivision (d), added by Proposition 215, demands "the written or oral recommendation or approval of a physician." Since the statute places the responsibility for determining the medical necessity for marijuana upon the physician rather than the patient, a tacit approval will not suffice. The statute requires the doctor's affirmative act, reasonably understood by the patient to constitute a "recommendation" or "approval," as those terms are defined by law. Since the statute does not define "recommendation" or "approval," the courts must.

To "recommend" means "to present as worthy of acceptance or trial," "to endorse as fit, worthy, or competent." (Merriam-Webster's Collegiate Dictionary (10th ed. 1993) p. 976.) In the physician-patient context, a "recommendation" implies a physician's suggestion that the patient pursue a particular mode of treatment. At her Evidence Code section 402 foundational hearing, appellant elicited this testimony from her physician, Dr. Mikuriya:

> "Q. And have you ever recommended the medical use of natural marijuana instead of Marinol, the synthetic derivative?
> "A. I have not recommended, no." (Dec. 1, 1995 RT 83-84.)

In light of Dr. Mikuriya's uncontradicted denial, there is no prima facie showing that he gave appellant what a reasonable person would understand to be a "recommendation" to use marijuana to relieve her migraine symptoms.

The statutory term "approval" may connote a less definitive or formal action than a "recommendation," however. A physician's expressed opinion that marijuana is the medically, though not legally, preferred treatment for the patient's particular condition might be viewed as constituting the required "approval." The term "approval" "often implies no more than" a favorable opinion. (Merriam-Webster's Collegiate Dictionary, *supra*, pp. 57-58.) This Court might interpret "approval" to describe an act which a physician may lawfully perform, given on the one hand its obligation to accord state statutes constructions "'which will sustain rather than defeat them, - which will make them operative, if the language will permit, rather than render them without effect'" (*Fahey* v. *City Council* (1962) 208 Cal.App.2d 667, 673, quoting *Glassell Dev. Co.* v. *Citizens' Nat. Bank* (1923) 191 Cal. 375, 384), and, on the other hand, the federal government's currently expressed view that a physician is prohibited by federal law from making a "recommendation" that enables a patient to obtain marijuana for medical use. (See *Conant* v. *McCaffrey* (N.D. Cal. April 30, 1997) C-97-0139-FMS.)

Dr. Mikuriya testified at the section 402 hearing that marijuana was a "potentially" advisable form of treatment for appellant's migraine headaches in that it would provide quicker relief with fewer side effects and that he would, if legally able to do so, prescribe marijuana for her. (Dec. 1, 1995 RT 84, 90, 95, 98, 112.) The extent to which the doctor shared these views with appellant before October 17, 1994, when she was found in possession of almost two pounds of marijuana, is not entirely clear from the record.

Appellant did not offer proof at the foundational hearing that Dr. Mikuriya's "approval" antedated her charged possession. A fax sent

by Dr. Mikuriya to the trial court, apparently in connection with appellant's bail reduction motion, stated that appellant had been his patient since 1991. (CT 70, 80.) On October 5, 1996, while appellant was represented by counsel, she lodged (not filed) her sworn "Declaration Re Change of Plea," which stated that when arrested she explained that she possessed marijuana for medical purposes "on the advice of my physician." (CT 53, 82.) The prosecutor, of course, had no incentive to cross-examine Dr. Mikuriya as to precisely what he said to appellant and when he said it. Neither did the prosecutor have the opportunity to question appellant on these subjects at the section 402 hearing. Even if appellant's meager showing that she reasonably believed she had a physician's "approval" to use marijuana for medical purposes were sufficient to entitle her to a new trial under *Estrada*, it could hardly be said to constitute undisputed evidence of a material fact enabling a court to resolve that issue in her favor. (Cf. *In re Crumpton* (1973) 9 Cal.3d 463, 467; *People* v. *Mutch* (1971) 4 Cal.3d 389, 396.)

C. Transportation

By enacting subdivision (d) of Health and Safety Code section 11362.5, Proposition 215 specifically provides authorized medical users an affirmative defense against liability under Health and Safety Code section 11357, prohibiting simple possession of marijuana, and under section 11358, prohibiting cultivation of marijuana. Proposition 215 provides no such express defense from existing statutes penalizing transportation, sale, or possession for sale, of marijuana. "Under the familiar rule of construction, *expressio unius est exclusio alterius*, where

exceptions to a general rule are specified by statute, other exceptions are not to be implied or presumed. [Citation.] This rule, of course, is inapplicable where its operation would contradict a discernible and contrary legislative intent." (*Wildlife Alive* v. *Chickering* (1976) 18 Cal.3d 190, 195.) The question is whether defenses to statutes prohibiting, for example, transportation and sale, should be judicially inferred from the legislative purpose declared in section 11362.5, subdivision (b)(1)(A), "[t]o ensure . . . the right to obtain and use marijuana for medical purposes . . . ."

It is difficult to attribute the omission of an express medical necessity defense to existing laws punishing transportation and sale to inadvertence on the part of the initiative drafters. More likely, they preferred to force the courts, rather than the voters, to resolve those questions. In either event, because Proposition 215 is an initiative statute our concern is the voters' intent, not the drafters' intent, except to the extent that the drafters' purpose may be assigned to the voters by reason of Ballot Pamphlet analyses and arguments. (*Hill* v. *National Collegiate Athletic Assn.* (1994) 7 Cal.4th 1, 16.)

The Legislative Analyst told the voters that Proposition 215 "amends state law to allow persons to grow or possess marijuana for medical use when recommended by a physician" and "also allows caregivers to grow and possess marijuana for a person for whom marijuana is recommended." The measure "does not change other legal prohibitions on marijuana," the Legislative Analyst added. (Ballot Pamp., Gen. Elec. (Nov. 5, 1996) at p. 59.)

The Legislative Analyst did not indicate that anyone would be able to defend against laws forbidding the transportation or sale of marijuana on the basis of medicinal use. Instead, initiative proponents

told the voters that Proposition 215 "allows patients to cultivate their own marijuana simply because federal laws prevent the sale of marijuana, and a state initiative cannot overrule those laws." (*Id.*, at p. 60.) In his Ballot Pamphlet rebuttal to the argument against Proposition 215, the San Francisco District Attorney advised, "Police officers can still arrest anyone who grows too much, or tries to sell it." (*Id.*, at p. 61.) This assurance clearly implied a continuation of the state ban on sales by "anyone." Based on the Ballot Pamphlet material, voters could expect modest marijuana gardens to sprout up, but not cannabis buyers' clubs.

For these reasons, and because the new affirmative defense to cultivation charges enables patients and primary caregivers to "obtain" marijuana for medical use without purchasing it, the courts should not rewrite the initiative to lift the ban on marijuana sales. In other words, the patient's personal right to "obtain and use" marijuana is not absolute and does not imply another's right to sell it.

The difficult question is whether the patient's "right to obtain and use" marijuana implies the right to transport it. We think no exemption to the transportation prohibition exists under the particular circumstances of this case.

The plain language of Health and Safety Code section 11362.5, subdivision (b)(2), added by Proposition 215, subordinates individual patient needs to public safety:

> "Nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others . . . ."

An example of such existing public safety legislation is found in Vehicle Code section 23222. Subdivision (a) of this statute prohibits

driving while in possession of an opened container of an alcoholic beverage. Subdivision (b) of section 23222 provides:

> "Except as authorized by law, every person who possesses, while driving a motor vehicle upon a highway, not more than one avoirdupois ounce of marijuana . . . is guilty of a misdemeanor.

The evident purpose of this provision is to enhance highway safety by deterring conduct that too often leads to accidents - drivers falling under the influence while on the road.

At least to the extent that he or she drives a vehicle upon a highway with marijuana within reach, the medical user's conduct is not authorized by Proposition 215 and, therefore, remains punishable under either Vehicle Code section 23222 or Health and Safety Code section 11360 - depending on the amount transported - just as would the same conduct by any other person. Appellant, who was stopped while driving on a highway by a policeman who found 22 rolled marijuana cigarettes, almost two pounds of loose marijuana, and marijuana pipes in her truck cab, falls under section 11360. (RT 152-160, 174; see Veh. Code, § 360.) Should this Court disagree, it must then resolve the question whether Proposition 215 necessarily implies a medical use defense to the prohibition against transporting marijuana. If this Court concludes that an implied affirmative defense exists, it must then identify its parameters.

We think it inconceivable that the voters intended to allow authorized patients or caregivers to drive from Humboldt County to Los Angeles in trucks filled with lifetime supplies of marijuana. The "diversion of marijuana for nonmedical purposes," condemned by Health and Safety Code, section 11362.5, subd. (b)(2), is no less a danger when a patient possesses too much than when she "grows too

much." (Ballot Pamp., *supra*, p. 61.) However, we do not doubt that the voters intended to permit a wife, as a designated primary caregiver, to carry marijuana she has grown in her apartment three doors down to the hospice where her husband lies in bed suffering. The judicial task is to discover in a statute that expresses no quantitative limitations a principled basis for distinguishing these two situations.

Sometimes the transportation of marijuana will be incidental to its immediate medical use. For example, a cancer patient experiencing the nausea associated with chemotherapy may need to smoke a marijuana cigarette in order to eat a meal at a relative's house. So long as he does not drive himself, the patient's carrying the cigarette with him from his home to his relative's residence would appear to be permissible under state law, as amended by Proposition 215. On the other hand, appellant cannot justify carrying about enough marijuana to produce 500 to 900 joints on the ground that she might get a migraine before she gets home.

Consistent both with Proposition 215's declaration of purpose and with its omission of any explicit transportation exception, we think that any judicially recognized parameters may be no broader than this: a patient or "primary caregiver" may transport only so much marijuana as is reasonably calculated to satisfy the patient's imminent medical needs. (Cf. *People* v. *Lovercamp* (1974) 43 Cal.App.3d 823, 831 [necessity defense available only when harm threatened in "immediate future"].)

Ordinarily, the imminence of the feared harm and the reasonableness of the patient's provision for it would be determined by the jury in light of the totality of circumstances, including the patient's destination, the nature of the medical condition, and any dosage

suggested by the patient's physician. Because the scope of any implied statutory defense permitted by this Court will be defined by such determinations, however, imminence and reasonableness are mixed questions of fact and law. Therefore, in a given case the trial court may find that the defendant's proffered evidence establishes that, as a matter of law, the amount of marijuana transported exceeds that reasonably necessary to meet imminent medical needs. In that event, the court properly may refuse to instruct the jury on an implied transportation defense. The People submit that no reasonable fact finder would conclude that enough marijuana to make as many as 900 joints is reasonably necessary to provide relief from intermittent migraine headaches. (See Nov. 30, 1995 RT 16; Dec. 1, 1995 RT 108-110.) Since it presents a question of law on which the record is adequately developed, this Court may make that determination as well as the trial court. At the very least, the People are entitled to have a jury resolve this question as a matter of fact.

D. Possession

The conclusion that a patient or caregiver may transport only that amount of marijuana reasonably necessary to meet imminent medical needs implicates the express defenses enacted for possession and cultivation. The risk of diversion to nonmedical use arguably is greater when marijuana is moved from the premises of the patient or caregiver. Nevertheless, there exists a danger of unlawful distribution and use whenever an authorized patient possesses an amount of marijuana substantially exceeding that required to satisfy reasonably anticipated future medical requirements.

Proponents told voters Proposition 215 did not allow "anyone" to grow "too much" for personal use. (Ballot Pamp., *supra*, p. 61.) It logically follows that Proposition 215 does not authorize patients or caregivers to possess "too much" for personal use. A doctor's "recommendation or approval" does not entitle a patient to fill his or her garage with bags of marijuana.

The problem of excessive cultivation or possession may be addressed by jury instructions. The trial court might explain that to the extent the jury infers a nonmedical purpose from the amount possessed or cultivated, the statutory medical defense is unavailable. Alternatively, the trial court might instruct the jury that the medical defense is available only to the extent that the amount of marijuana possessed or cultivated is reasonably necessary to meet predictable future personal medical needs. These instructions retreat from the more stringent standard of imminence applicable to the implied transportation exemption because the danger of diversion to nonmedical use is greater when marijuana is transported and because the amount of marijuana a patient reasonably may possess or cultivate generally will be greater than the quantity that patient reasonably may transport.

Normally, the propriety of the amount possessed or grown or an inference of illicit purpose are matters for the jury. This is not inevitably so, however. The trial court properly could conclude that no rational jury would find that a basement full of marijuana bricks was reasonably necessary for the relief of migraine headaches. Whether, under the circumstances disclosed by the record, appellant's two pounds of marijuana is excessive as a matter of law is debatable. A jury, if not a judge, must resolve this question.

III.

DISPOSITION

Assuming the rejection of her religion defense, to derive *any* benefit from the retroactive application of Proposition 215 appellant must persuade the jury by preponderant evidence[1/] that she possessed

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1. Proposition 215 is silent as to the burden of proof when the statutory defense is raised. The initiative does not add an element to marijuana offenses, thereby requiring the prosecution to prove beyond reasonable doubt that every defendant accused of such an offense did not have a physician's recommendation for medical use. Clearly, the burden of presentation must be shouldered by the defendant, who knows whether he or she has the requisite approval. (See Evid. Code, § 550.)

The question is whether the defendant has the burden of persuasion to raise a reasonable doubt or to present preponderant evidence on this question and on the question of whether the quantity of marijuana possessed, cultivated, used, or transported exceeded that reasonably necessary for medical purposes. As is traditionally the case with affirmative defenses, we think the defendant must establish his medical defense by a preponderance of the evidence.

First, when other statutes are silent, Evidence Code section 115 speaks to the point:

> "Except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence."

Second, case law leads to this conclusion. *People* v. *Condley* (1977) 69 Cal.App.3d 1003, 1008-1010, holding that an escapee must prove by preponderant proof the prison conditions defense created by *People* v. *Lovercamp* (1974) 43 Cal.App.3d 823, relied on the California Supreme Court's opinion in *People* v. *Tewksbury* (1976) 15 Cal.3d 953, 963-964, which distinguished "a factual contention which, if established would tend to overcome or negate proof of any element of the crime [as to which] the accused need only raise a reasonable doubt" from "defenses . . . which . . . for reasons of public policy insulate the accused notwithstanding the question of his guilt," as to which the accused may be required to furnish preponderant proof.

Third, public policy considerations reinforce this conclusion. In *Condley*, the *Lovercamp* court imposed upon the accused a burden

no more than 28.5 grams of marijuana for religious purposes.

Like any defendant who asserts the Proposition 215 defense, appellant must also show by prima facie evidence to the court and by preponderant evidence to the jury (1) that before her arrest for possessing and transporting marijuana she had received a physician's "recommendation or approval" to use it for medical treatment, and (2) she neither possessed nor transported more marijuana than reasonably calculated to meet her imminent medical needs.

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of preponderant proof because it had created a defense that might be easily fabricated. (See *People* v. *Lovercamp, supra*, 43 Cal.App.3d at p. 831.) Due to the acceptability of a doctor's "oral . . . approval," a defendant may raise the Proposition 215 defense without written or testimonial corroboration by the alleged recommending physician, who may be unavailable to the prosecution. Raising an evidentiary bar lowers the danger of fabrication. Moreover, Proposition 215 expressly declares it does not condone the diversion of marijuana for nonmedical purposes. (Health & Saf. Code, § 11362.5(b)(2).) A preponderant proof barrier serves this public interest by restricting cultivation and possession of marijuana to cases of demonstrated medical need. (Cf. *State* v. *Tate* (N.J. 1986) 505 A.2d 941, 945 [medical necessity defense would stimulate illegal marijuana cultivation and commerce].) Appellant's failure of proof on the first question would moot the remaining questions that arise under Proposition 215. However, the amount of marijuana appellant intended to allocate to each of her different stated purposes appears to be a purely factual issue reserved for the jury.

Appellant's failure to establish by prima facie evidence that she had received a physician's timely "recommendation or approval," and that she possessed and transported no more marijuana than reasonably necessary to meet her imminent medical needs, would require affirmance of her convictions by this Court. Should this Court conclude that appellant has crossed this evidentiary threshold, she must then persuade a jury by a preponderance of the evidence that she satisfied both conditions requisite to establishing the affirmative defense. Only then is she entitled to the protection of Proposition 215.

CONCLUSION

The judgment of conviction should be affirmed. Alternatively, the judgment should be vacated and the matter remanded to the trial court to determine whether, as a matter of law, appellant has presented prima facie evidence of the conditions establishing the affirmative defense. The trial court should be directed to grant appellant a new trial if she makes the required preliminary evidentiary showing; otherwise, the judgment should be reinstated.

Dated: May 21, 1997.

Respectfully submitted,

DANIEL E. LUNGREN
Attorney General

GEORGE WILLIAMSON
Chief Assistant Attorney General

RONALD A. BASS
Senior Assistant Attorney General

RONALD E. NIVER
Supervising Deputy Attorney General

CLIFFORD K. THOMPSON
Deputy Attorney General

Attorneys for Respondent

CKT:cmb
SF96DA0796

DECLARATION OF SERVICE

Case Name: *People* v. *Sudi Pebbles Trippet* No.: A073484

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the Bar of this Court at which member's direction this service is made. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On June 13, 1997, I placed the attached

RESPONDENT'S SUPPLEMENTAL BRIEF

in the internal mail collection system at the Office of the Attorney General, 50 Fremont Street, Room 300, San Francisco, California 94105, for deposit in the United States Postal Service that same day in the ordinary course of business, in a sealed envelope, postage fully prepaid, addressed as follows:

SUDI PEBBLES TRIPPET (2 copies)
1800 Market Street, #213
San Francisco, CA 94102

FIRST DISTRICT APPELLATE PROJECT
730 Harrison Street, Suite 201
San Francisco, CA 94107

GARY T. YANCEY
DISTRICT ATTORNEY
P. O. Box 670
Martinez, CA 94553

CLERK OF THE SUPERIOR COURT
COUNTY OF CONTRA COSTA
P. O. Box 911
Martinez, CA 94553

I declare under penalty of perjury the foregoing is true and correct and that this declaration was executed on June 13, 1997, at San Francisco, California.

Carolyn Burr

Signature

A-21 SF Chron

THURSDAY, JULY 3, 1997 BAY AREA/CALIFORNIA

Sonoma County Details Policy for Medical Pot

By George Snyder
Chronicle North Bay Bureau

Bona fide medical marijuana users, and their designated caretakers, will be allowed to cultivate, possess and use the plant to relieve serious health maladies under new Proposition 215 guidelines extended yesterday by the Sonoma County district attorney's office.

However, unlike San Francisco, San Jose and Santa Clara County, Sonoma will not allow marijuana buyers' clubs.

"We're somewhere in the middle of the spectrum in terms of where we stand in our interpretations of the medical marijuana law," said Sonoma County District Attorney Mike Mullins.

"We believe that the statute must be implemented, but only for growing for personal use to alleviate a serious illness," Mullins said. "No money will change hands."

Mullins said the guidelines were developed after numerous meetings among members of the Sonoma Alliance for Medical Marijuana, Acting Sheriff Jim Piccini and his own office. Other jurisdictions within the county are still studying the guidelines, he said.

Both Mullins and community activist Mary Moore, a founder of the Sonoma Alliance for Medical Marijuana, said they worked amicably, along with the county sheriff's department, to come up with the policy.

"I'm very, very pleased with the results," said Moore, a Sebastopol clothing-store owner and community activist. "We had six months of meetings and we only finished up last Monday. I have to have to credit them with more movement on the issue on their part than ours. I think we are the first county to have worked it out this way."

Moore added, however, that finding doctors willing to recommend marijuana is still a hurdle for patients.

"Many of them (doctors) are still afraid. We are meeting next with the director of the county health department to work on that issue," she said.

Patients, according to the policy, must be state residents seriously ill with "cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraines and any other illness for which marijuana provides relief." They also must be examined by a doctor and have the physician recommend that their health would benefit from using the drug.

Caregivers, under the policy, must have personal knowledge of the physician's recommendation and cannot use the drug themselves or sell it.

Drug Dealer Retaliation Feared in Oakland Arson

SF Chron A-1 7/1/97

By Thaai Walker
Chronicle East Bay Bureau

A 52-year-old woman who said she thought she could make a difference in her East Oakland neighborhood is recovering from burns she suffered in an arson attack on her house that residents fear was the work of drug dealers.

Police and neighbors said it is the third such attack on the woman's house in three years and the second in two weeks. But fire investigators said that while Tuesday night's blaze on 50th Avenue was definitely arson, they have no proof that it was the work of dealers bent on retaliation.

"We had been talking about trying to clean up the neighborhood and stop these drug dealers," said the woman's next-door neighbor, Vincent Greene. "Maybe (the

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WORLD NEWS
Starts on Page C2

OFFICE OF THE DISTRICT ATTORNEY
County of Sonoma, Hall of Justice
600 Administration Drive, Room 212-J
Santa Rosa, California 95403
(707) 527-2311

J. Michael Mullins
District Attorney
Gregory J. Jacobs
Assistant District Attorney

Larry J. Scoufos
Chief Deputy
Kathleen D. DeLoe
Chief Deputy

July 1, 1997

Shelleen E. Denno, M.D.
Internal Medicine
555 Petaluma Avenue, Suite C
Sebastopol, CA 95472

Subject: People v. Valerie Cena DAR340209

Dear Mr. Denno:

Thank you for the information you have provided us concerning your patient Ms. Cena. I clearly understand that you are not "recommending or prescribing" the use of marijuana for the symptoms and conditions of your patient. However, in your letter of December 23, 1996 addressed to "Whom It May Concern" you do state "while I did not prescribe marijuana for her to use, I did feel that the therapeutic value that she obtained from it was probably better than the multiple medicines that were prescribed for her. I discussed my reservations of the dangers of obtaining this drug off the street. However, I do feel if she derives some relief from her various symptoms from the use of medical marijuana, it would be appropriate for her to use it in small quantities. She would then be able to eliminate some of her other medications."

The statute states that in order to qualify as a patient one must have a recommendation from a physician or the physician must approve the use of marijuana. In defining what we mean in the legal sense by "approved," I do not intend to broaden the term to mean a passive acquiescence by the physician to the use by a patient. I do intend to define it as a physician who is intimately familiar with the patient, who understands the patient's use of marijuana, and is of the opinion that the use has some value for the condition. "Approval" would then mean the physician takes an active role in the patient's progress and use of this particular substance. If you and I are in agreement as to that definition, I would simply appreciate you so stating. If you do then I would agree that Ms. Cena could grow and possess marijuana for personal use. The problem in this specific case is that I was of the belief that Mr. Gilligan was taking advantage of Ms. Cena and selling it on the side. Mr. Gilligan, I'm sure you're aware, is her long time companion.

Thank you for your cooperation and I look forward to your letter.

Sincerely,

J. Michael Mullins, District Attorney
County of Sonoma, State of California

jrh

cc: Kathy DeLoe
John Gordinier, AG
Larry Scoufos
Greg Jacobs

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