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7 SUPERIOR COURT OF CALIFORNIA

8 COUNTY OF SONOMA

9 THE PEOPLE OF THE STATE OF
CALIFORNIA

Case No. SCR- 499108

10 Plaintiff,

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
ORDER FOR DESTRUCTION OF
CONTROLLED SUBSTANCES**

11 v.

12 SHASHON JENKINS,

13 Defendant.

Date: April 10, 2007

Time: 1:30 p.m.

Location: Dept. 3

Judge: Hon. L. G. Antolini

14 _____/
15 THE CITY OF SANTA ROSA POLICE
DEPARTMENT, a Real Party in Interest,

16 _____/

17 **I.**

18 **Introduction**

19 On March 6, 2007, the court revoked its ruling ordering the return of defendant's
20 marijuana and a hearing was set to determine whether the marijuana should be destroyed.

21 Under the authority of *Health & Safety Code § 11473.5* and *People v. Chavez* (2004) 123
22 Cal. App. 4th, the court should order destruction of the marijuana.

23 **II.**

24 **Statement of Facts**

25 Defendant was arrested on October 16, 2006, and charged with two felony counts under
26 *Health & Safety Code* §§ 11358 and 11359, with misdemeanor child endangerment. At a
27

1 preliminary hearing on January 2, 2007, Officer Daniel Schacklett testified that he observed
2 about 100 drying marijuana plants in a child’s bedroom (8:8-13). Officer Jesse Cude testified
3 that the marijuana found in the residence amounted to about 19 pounds, with a conservative
4 value of \$60,000 (38:11-39:13). The defendant also testified, as did five witnesses on his behalf,
5 attempting to establish an affirmative defense under California’s Compassionate Use Act.

6 At the end of the hearing, the court made a finding that there was adequate evidence to
7 hold the defendant to answer on the two felony counts.

8 On January 17, 2007, the People moved to dismiss the action. Upon defendant’s request,
9 and no objection from the People, the court issued an order granting the return of items seized by
10 the police, including the marijuana. Unfortunately, there was no finding that the controlled
11 substance was lawfully possessed by the defendant. Nor could there be in light of the court’s
12 finding that there was adequate evidence to hold the defendant to answer on the felony counts.

13 On the Police Department’s motion to reconsider the order granting return, the court
14 revoked its order.

15 The Santa Rosa Police Department requests that the court order destruction of all of the
16 marijuana that was seized from the defendant. The CUA does not authorize the return of
17 confiscated marijuana. *People v. Chavez* is controlling and requires that the marijuana be
18 destroyed.

19 **III.**

20 **The Health & Safety Code Mandates Destruction**

21 *Section 11473.5(a) of the Health & Safety Code states,*

22 “All seizures of controlled substances... which are in possession of any city,
23 county or state official... as a result of a case in which no trial was had or which
24 has been disposed of by way of dismissal or otherwise than by way of conviction,
25 **shall be destroyed by order of the court,** unless the court finds that the
26 controlled substances... were lawfully possessed by the defendant.” (emphasis

1 added).

2 Here, the court has already found that defendant's possession was unlawful - when he
3 was held to answer.¹ And a further evidentiary hearing would only be redundant.

4 The CUA only provides a limited immunity against prosecution, and does not confer
5 complete immunity even to a qualified patient.² Under the Medical Marijuana Program, enacted
6 by the Legislature in 2003, a qualified patient/caregiver is limited to eight ounces for personal
7 medical use.³ Pursuant to § 11362.77(c), the Sonoma County Board of Supervisors enacted
8 medical marijuana guidelines increasing the limits to three pounds a year.⁴ However, these
9 guidelines were not effective until November 1, 2006, and did not apply at the time of
10 defendant's arrest.

11 The CUA is "narrowly drafted" statute.⁵ Section 11362.77 sets forth the **maximum**
12 **amounts** of marijuana that may be possessed.⁶ *People v. Chavez*⁷ controls. In that case, Chavez
13 filed a motion for the return of 5 pounds of marijuana. He testified that he suffered from a
14 progressive degenerative disease and provided the court with a letter and physician's statement
15 approving marijuana to relieve his pain. Chavez testified that the five pounds represented a one
16 year supply. The court also heard expert testimony. At the conclusion of the hearing, the trial
17 court stated that it believed the testimony of the witnesses.⁸ However, the judge found that

18 ¹ Preliminary Hearing Transcript, 1/2/07 (140:25-27).

19 ² *People v. Strasburg* (March 22, 2007) 2007 Cal. App. Lexis 407 (First Appellate
20 District); *People v. Mower* (2002) 28 Cal. 4th 457, 464, 468-475.

21 ³ Health & Safety Code §§ 11362.765 and 11362.77a.

22 ⁴ See Real Party in Interest's Request for Judicial Notice.

23 ⁵ *People v. Urziceanu* (2005) 132 Cal. App. 4th 747, 772.

24 ⁶ *People v. Frazier* (2005) 128 Cal. App. 4th 807, 827.

25 ⁷ (2004) 123 Cal. App. 4th 104.

26 ⁸ *Id.*, 107-108.

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1 amount possessed exceeded the statutory amount and that it would be improper to apportion any
2 part for medical use.⁹

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⁹ *Id.*, 108.

1 Chavez then petitioned for mandamus arguing that the trial court abused its discretion by
2 refusing to return “an amount of marijuana that is reasonable for medical purposes.”¹⁰ He
3 argued that he was entitled to lawfully possess and cultivate marijuana and therefore entitled to
4 an amount that he may lawfully possess.¹¹

5 The *Chavez* court concluded that 1) *Sections 11473.5 and 11475* required destruction of
6 the marijuana; 2) destruction did not violate the CUA; and 3) the court had no authority to return
7 contraband to the person from whom it was seized.¹² The court noted that the testimony at the
8 hearing confirmed that the amount of marijuana seized confirmed that Chavez was not in lawful
9 possession.¹³ Since the amount involved was in excess of the statute,

10 “...his possession and cultivation of marijuana cannot be deemed lawful and
11 *section 11473.5* requires its destruction.”¹⁴

12 The *Chavez* case is instructive. The defendant claimed that the trial court should have
13 ordered the return of a “reasonable amount” of marijuana. The appellate court essentially upheld
14 the lower court’s refusal to apportion between what was unlawfully possessed and what may
15 have been lawfully possessed. In other words, if the statutory amount is exceeded in any way,
16 the court must order destruction. Put yet another way, if any amount possessed is unlawful, the
17 entire amount is unlawful and must be destroyed under § *11473.5*.

18 IV.

19 **The CUA Does Not Permit the Return of Marijuana**

20 As noted in *Chavez*,

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22 ¹⁰ *Id.*, 108.

23 ¹¹ *Id.*, 110.

24 ¹² *Id.*, 108.

25 ¹³ *Id.*, 111.

26 ¹⁴ *Id.*

1 “The issue is not whether defendant has a right to use, possess or cultivate
2 marijuana. Rather, the issue is whether the trial court has authority to return a
3 controlled substance that was not lawfully possessed.”¹⁵

4 The *Chavez* court recognized that “noticeably absent” from the CUA is a provision
5 requiring or authorizing the court to return confiscated marijuana.¹⁶

6 “Because the Compassionate Use Act makes no provision for return of marijuana,
7 we are compelled to apply the existing statutes, specifically *section 11473.5*,
8 which requires destruction of Schedule I controlled substances. Accordingly, the
9 trial court did not abuse its discretion when it refused to return any portion of the
10 marijuana.”¹⁷

11 **V.**

12 **Burden of Proof is on the Defendant**

13 The defendant has the burden of proof as to the facts underlying the defense of the
14 CUA.¹⁸

15 **VI.**

16 **Conclusion**

17 Defendant was in possession of approximately 19 pounds of marijuana. If any amount
18 exceeded the statutory limitations, then the court must order destruction of the entire amount.
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20 Dated: April ____, 2007

21 _____
MICHAEL J. CASEY
Assistant City Attorney

22 ¹⁵ *Id.*, 111.

23 ¹⁶ *Id.*

24 ¹⁷ *Id.*

25 ¹⁸ *People v. Frazier* (2005) 128 Cal. App. 4th 807, 816; *People v. Mower* (2002) 28 Cal. 4th
26 457, 477.

Attorneys for Santa Rosa Police Department

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