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4 UNITED STATES DISTRICT COURT
5 EASTERN DISTRICT OF WASHINGTON

6 UNITED STATES OF AMERICA,)
7 Plaintiff,) NO. CR-12-0016-WFN
8 -vs-) ORDER
9 JERAD JOHN KYNASTON (1),)
10 SAMUEL MICHAEL DOYLE (2),)
11 BRICE CHRISTIAN DAVIS (5),)
12 JAYDE DILLON EVANS (6),)
13 TYLER SCOTT MCKINLEY (7),)
14 Defendants.)

15 A second pretrial conference and motion hearing was held May 31, 2012. The
16 Defendants were present and represented as set out in the table below:

Defendant	Custody	Counsel
Jerad John Kynaston (1)	√	Robert R. Fischer
Samuel Michael Doyle (2)	√	George P. Trejo, Jr.
Brice Christian Davis (5)	No	Mark C. Prothero for David M. Miller
Jayde Dillon Evans (6)	No	Nicolas V. Vieth
Tyler Scott McKinley (7)	No	Richard D. Wall

17 Assistant United States Attorney Russell Smoot represented the Government.

18 The Court addressed Defendants' Motion to Suppress Evidence (ECF No. 157) and
19 other pending pretrial motions. The Court heard argument on the Motion to Suppress from
20 Mr. Wall and Mr. Trejo on behalf of Defendants as well as Mr. Smoot on behalf of the
21 Government.
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1 ANALYSIS

2 In July of 2011, the Washington State Legislature amended the medical marijuana
3 statute converting what had been an affirmative defense to an exception to the general
4 controlled substances statute. The amendment decriminalizes the possession, use, and
5 manufacture of medical marijuana, so long as certain criteria are met. While the old statute
6 makes explicit reference to an affirmative defense, the new statute clearly states that, "[t]he
7 medical use of cannabis in accordance with the terms and conditions of this chapter does not
8 constitute a crime" WASH. REV. CODE § 69.51A.040 (2012). This statute provides an
9 exception to the general controlled substances statute which makes possession, use, and
10 manufacture of marijuana a crime. WASH. REV. CODE § 69.69.401 (2012). Thus to obtain
11 a warrant, officers must show probable cause that the criteria of the medical marijuana
12 exception have not been met. State officers cannot obtain a valid state search warrant where
13 there is not probable cause of a state crime. *United States v. \$186,416.00 in U.S. Currency*,
14 590 F.3d 942, 948 (9th Cir. 2010) (finding that because the evidence supporting the grow
15 did not show probable cause of a crime in California law, even though it was illegal federally
16 and was prosecuted federally, the search warrant had to be quashed).

17 Contrary to the Government's assertion, a state crime has not been committed simply
18 by possessing or manufacturing marijuana in Washington. If the person complies with the
19 medical marijuana statute, they have not committed a state crime. The Government's briefing
20 suggests that despite the clear language decriminalizing medical marijuana, law enforcement
21 officers may still arrest those possessing or manufacturing medical marijuana due to the
22 choice of the phrase "*may not* be arrested, prosecuted, or subject to other criminal sanctions"
23 rather than shall not (emphasis added). This tortured reading of the statute contradicts the
24 plain language of the statute making it internally inconsistent. Alternatively, the Government
25 argues that Washington's controlled substances provision should be viewed exclusively
26 without reference to the medical marijuana exception. Essentially, the Government proposes

1 treating the medical marijuana exception as a type of affirmative defense despite the drastic
2 rewriting of the law. The Court finds that the statute is clear on its face and that the medical
3 marijuana exception and the general controlled substance statute must be read together in a
4 manner that gives effect to both.

5 It is uncontested that while the affidavit supporting the warrant included evidence
6 of a marijuana grow, there was no mention of the medical marijuana statute or an
7 assertion that the grow violated the medical marijuana statute. This omission is fatal to
8 the warrant as the warrant then does not show probable cause of a crime. The good
9 faith exception cannot rescue the warrant as the three month old law was clear and
10 the officers should have been aware of its requirements. Thus, all fruits of the search
11 shall be suppressed. The parties agree this includes all physical evidence obtained
12 during the search as well as any statements that were derived as a fruit of the poisonous
13 tree.

14 The Court has reviewed the file and Motions and is fully informed. This Order is
15 entered to memorialize and supplement the oral rulings of the Court. Accordingly,

16 **IT IS ORDERED** that:

17 1. The Defendants' Motion to Suppress Evidence, filed May 7, 2012, **ECF No. 157**,
18 is **GRANTED**.

19 2. Defendants' Motion to Continue Pretrial and Trial, filed May 11, 2012, **ECF**
20 **No. 166**, is **DENIED with a right to renew**.

21 3. Defendants' Motion for Disclosure of 404 Evidence, filed May 11, 2012, **ECF**
22 **No. 170**, is **GRANTED**.

23 4. Defendants' Motion to File Additional Motions, filed May 11, 2012, **ECF No. 171**,
24 is **GRANTED**.

25 5. The jury trial date of **June 25, 2012 at 9:00 a.m., in Spokane**, Washington is
26 **CONFIRMED**.

1 The District Court Executive is directed to file this Order and provide copies to
2 counsel.

3 **DATED** this 31st day of May, 2012.

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s/ Wm. Fremming Nielsen

WM. FREMMING NIELSEN
SENIOR UNITED STATES DISTRICT JUDGE

6 05-31-12

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