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Remember 9/11/01; Support Our Troops

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THIS EDITION'S WORDS OF WISDOM:

"Life's tough. It's even tougher if you're stupid." (John Wayne)

IN THIS ISSUE:

Page:

Administrative Notes:

<i>People v. Diaz</i> ; Review Granted	1
Has <i>Viray</i> Been Overruled?	2

Case Law:

Detention of a Motor Vehicle Passenger	2
Prolonged Detentions	4
Entry of a Residence Pursuant to the Emergency Aid Doctrine	6
Parole Searches; Containers Belonging to Another	8
Medical Marijuana	9

ADMINISTRATIVE NOTES:

People v. Diaz (2008) 165 Cal.App.4th 732; *Review Granted*: The California Supreme Court granted review on October 28 in this "*search incident to arrest*" case. *Diaz* had held that when personal property "*immediately associated with the person*" (e.g., a cell phone in the defendant's pocket in this case) is not searched until after arriving at the police station, or anytime before the processing of the defendant is complete, it still qualifies as a "*search incident to arrest.*" While there are still other cases that hold the same thing, none are from a California appellate court, thus making this argument a bit more tenable until *Diaz* is finally decided in the Supreme Court.

Has Viray Been Overruled? In December, 2005, the Sixth District Court of Appeal (Monterey) decided the case of *People v. Viray* (2005) 134 Cal.App.4th 1186, holding that the filing of a complaint triggers the defendant's Sixth Amendment right to counsel. In June of this year, the United States Supreme Court decided the case of *Rothgery v. Gillespie* (2008) __ U.S. __ [171 L.Ed.2nd 366]. *Rothgery* held that the defendant's Sixth Amendment rights are triggered by the defendant's first court appearance "where he learns the charge against him and his liberty is subject to restriction," even if no charges have yet been filed and even if the prosecution is not yet aware of the case. Some legal experts are now telling you that *Rothgery* overrules *Viray*, at least by implication. I disagree. First, I didn't even brief *Rothgery* because it involves a post-arrest, pre-charging probable cause court hearing where the defendant is required to be present, involving a procedure used in Texas that we don't have in California. Second, *Rothgery* does not say that this court appearance is the *only* way to trigger a defendant's Sixth Amendment rights. In fact, the Supreme Court notes at one point that the issue of whether the Sixth Amendment right to counsel might be triggered at "a point earlier than formal judicial proceedings," is specifically not discussed in *Rothgery*. Earlier U.S. Supreme Court cases, however, *have* addressed this issue. For instance, *Patterson v. Illinois* (1988) 487 U.S. 285, involved a situation where the defendant's Sixth Amendment right to counsel was triggered by the filing of an indictment, before he ever went to court. *Viray*, being a California case where the bulk of our cases are initiated by the filing of a complaint rather than an indictment, is the California equivalent of *Patterson*. *Patterson*, still being good law, supports the continuing validity of *Viray*. At the very least, unless you want your investigation to be a test case on this issue, my suggestion is that until a court tells us that I'm wrong, I would still seek a waiver of a post-complaint, pre-arraignment defendant's Sixth Amendment right to counsel before attempting to question him. If you want an outline and/or a *Viray* article on how to handle the *Viray* issue, I can send it to you upon request.

CASE LAW:

Detention of a Motor Vehicle Passenger:

***People v. Hoyos* (Jul. 23, 2007) 41 Cal.4th 872**

Rule: The passenger in a lawfully stopped vehicle is detained merely by virtue of being in the car when it is stopped. That passenger may be lawfully ordered out of the car should the officer choose to do so. An officer may then continue to hold onto the passenger for "at least as long as reasonably necessary for the officer to complete the activity the (lawful ordering out of the car) contemplates."

Facts: In May of 1992, Daniel Magoon and his wife Mary were found shot to death in their home in the Jamul area of San Diego County. Mary also suffered blunt force trauma to her head that also would have killed her. The Magoon's three-year old son was

also shot in the head, but he survived. The Magoon's seven-year old son found them all when he woke up on the morning of May 27th. He went to a neighbor's house to seek help. At about 20 minutes after midnight on the 27th (before the discovery of the victims' bodies), El Cajon Police Officer William Pettus, while on routine patrol, stopped a Toyota Corolla for having a license plate light out. The car was being driven by co-defendant Alvarado (whose later motion for new trial was granted by the trial court) with defendant as the passenger. Alvarado was nervous, shaking, and sweating although the evening was cool. He gave Officer Pettus a California ID card in the name of "Ralph Varela." Despite being asked, defendant failed to produce a driver's license. Officer Pettus, therefore, decided to impound the car because neither defendant could produce a valid driver's license. After another patrol unit arrived to assist, the officers ordered Alvarado and defendant out of the car. As the other officer watched the two defendants, Officer Pettus conducted an inventory search of the car. A loaded gun (later determined to belong to the victim, Daniel Magoon) and several loaded magazines were recovered from the car. Twenty eight pounds of marijuana were recovered from the trunk of the car. Defendants were arrested. Some bullet casings and cartridges were found on Alvarado, along with a valid Mexican driver's license. Over one thousand dollars in currency was found on defendant. Evidence was later presented to the effect that Daniel Magoon ran a marijuana processing and sales operation out of his garage and that he had been expecting defendants to come over the evening of his murder (spelled, "*drug rip off*"). Charged with capital murder in state court, defendants filed a motion to suppress the evidence found during, and as a product of, the car search. The trial court denied their motion. Defendants were both convicted of two counts of first degree murder with special circumstances, along with other charges. Co-defendant Alvarado's motion for a new trial, however, was granted by the trial court. Defendant Hoyo's penalty phase trial resulted in a "life-without-parole" sentence for killing Daniel Magoon, and death for killing Mary Magoon. His appeal to the California Supreme Court was automatic.

Held: The California Supreme Court affirmed. Among the many issues litigated on appeal, defendant Hoyos challenged the legality of the search of the car and the recovery of the gun, magazines, ammunition, and marijuana. Defendant first argued that he and Alvarado were stopped because they are Mexican. However, no evidence was introduced at the motion to suppress to prove that the traffic stop was motivated by the defendants' ethnicity. To the contrary, defendant conceded that the license plate light of the car was out, a violation of V.C. § 24601. Such a violation is legal cause to make a traffic stop. Officer Pettus testified that he intended to impound the car because neither defendant had a valid driver's license. Discussing an issue that warranted no more than a footnote (p. 892, fn. 9), defendants argued that the officers should have first attempted to locate Alvarado's wife who lived nearby, asking her to come and get the car. The Court rejected this argument by merely commenting that there is no authority for such a requirement. Defendant further challenged Officer's Pettus' credibility by noting that co-defendant Alvarado did in fact have a valid Mexican driver's license. The Court, however, noted that there was no evidence presented to the effect that Alvarado had told Pettus this beforehand, and found it likely that Alvarado did not volunteer this information because he was attempting to pass himself off as someone else. Because no one showed a valid driver's license, Officer Pettus was justified in impounding the car

pursuant to V.C. § 22651(p). After noting that the case law clearly allows an officer to order a vehicle's passenger out of the car if the officer chooses to do so, the Court further held that briefly detaining defendant after he was out of the car was also lawful. Citing *Brendlin v. California* (2007) 551 U.S. ___ [168 L.Ed.2nd 132], the Court noted that the U.S. Supreme Court has held that a passenger in a vehicle stopped by the police is in fact detained because "there is a social expectation of unquestioned police command, which is at odds with any notion that the passenger would feel free to leave without advance permission." Defendant, therefore, was detained. The time period between when defendant was first ordered out of the car until when the gun and the ammunition were found in the car, giving rise to probable cause to arrest both defendant and Alvarado, was found to be probably less than a minute, but certainly no more than a minute or two. Finding that the Fourth Amendment allows a detention of the passenger for "at least as long as reasonably necessary for the officer to complete the activity the (lawful ordering out of the car) contemplates," the Court here held that defendant was not illegally detained. The evidence found in the defendants' car, therefore, was lawfully seized.

Note: Some people are citing this case as authority for the argument that the United States Supreme Court, in *Brendlin v. California* (2007) 551 U.S. ___ [168 L.Ed.2nd 132], intended to rule that a passenger in a stopped vehicle may be detained until the purposes of the traffic stop are completed (e.g., to write a ticket, etc.). I strongly disagree with this interpretation of *Brendlin*, and disagree with the California Supreme Court if this is what they meant to say in this case. *Brendlin* deals only with the right (i.e., the "standing") of the passenger to challenge the legality of the traffic stop. It does not tell us whether, as someone who is already detained by virtue of being a passenger in a lawfully stopped vehicle, may be further detained by the police for the duration of the traffic stop, should that passenger express an interest in walking away. Legally holding onto the passenger is not too tough to justify, however; e.g., when the passenger can be shown to be in "close association" with the illegal activity of someone else (e.g., the driver) who has been lawfully detained (*People v. Samples* (1996) 48 Cal.App.4th 1197.), or when to allow him to walk away creates a safety issue (*People v. Vibanco* (2007) 151 Cal.App.4th 1.). My suggestion would be, therefore, if you feel the need to hold onto a passenger who has expressed a desire to walk away, be ready to cite some valid reason why you felt it necessary to keep him from doing so. End of issue.

Prolonged Detentions:

***People v. Williams* (Nov. 7, 2007) 156 Cal.App.4th 949**

Rule: A person's presence in a remote area at an unusual time, along with his nervousness, implausible story, and possession of items connecting him to a marijuana grow, is sufficient cause to detain him. Detaining him for at least 4½ hours while officers diligently and reasonably seek further evidence connecting him to the marijuana grow was not an illegally prolonged detention.

Facts: Santa Barbara sheriff's deputies, using a helicopter, found a large "marijuana grow" in the hills. Shortly thereafter, during the early morning hours before sunrise and

while still dark (5:30 a.m.), a team of deputies arrived at a nearby campground some 45 minutes from the marijuana field, intending to drive into the area via a “winding . . . narrow . . . steep” dirt road and eradicate the grow. While making preparations, defendant drove up to them on his motorcycle. The deputies stopped him. Defendant was really nervous. He had no identification, but told the deputies that he was merely going for a two-hour motorcycle ride up into the hills before going to work. When asked what he had in his backpack, he told them that it was his lunch. When a deputy asked him why he needed a lunch at 5:30 a.m., defendant got a little “rattled” and corrected himself to say that it was his breakfast. Defendant gave the deputies permission to search his backpack. Inside the backpack was found clothing with a “growing marijuana odor,” an insect net, drip-line, fittings, and a pair of camouflage pants, camouflage shirt, gloves, and hat. Defendant was handcuffed at this point and told that if they found anything at the marijuana grow connecting him with it, he would be arrested; if not, he would be released. Deputies then drove up to the marijuana grow and found motorcycle tire tracks that matched the tires on defendant’s motorcycle. Also found were other items of clothing and netting matching those found in defendant’s backpack. It took the deputies some 4 to 5 hours to eradicate about 400 marijuana plants. Defendant was arrested at some time between 10:00 a.m. and noon, 4½ to 6½ hours after first being detained. He subsequently admitted to owning (with two other people) the marijuana plants found at the grow. He consented orally and in writing to a search of his house where another 90 marijuana plants and 3 to 4 pounds of processed marijuana were found. Charged in state court with various marijuana-related felonies, defendant filed a motion to suppress the evidence. He testified at the motion, basically denying everything that he’d told the deputies. The trial court denied defendant’s motion, commenting in the process on defendant’s lack of veracity. Defendant pled “no contest” and appealed.

Held: The Second District Court of Appeal (Div. 6) affirmed. Among the issues on appeal was the lawfulness of defendant’s initial detention. The Court here ruled that defendant was lawfully detained. A law enforcement expert testified that people who maintain marijuana grows in the wilderness will often seek access to them at night or in the early morning, in order to avoid detection. It is highly unlikely that a law-abiding recreational motorcycle rider would want to ride up that treacherous dirt road in the dark so early in the morning. Also, the deputies testified that they would have stopped defendant in any case. With a known marijuana grow at the end of the dirt road, where law enforcement was about to go, such situations sometimes turn violent. Marijuana growers will sometimes defend their product from others with firearms and booby traps. The deputies would not have allowed anyone to go into that area under those circumstances. Defendant next argued that holding onto him for over 4½ hours while they eradicated the marijuana was an unconstitutionally “*prolonged*” detention. The Court disagreed. In determining whether a detained suspect has been subjected to an illegally prolonged detention, the Court may “examine whether the police diligently pursued a means of investigation that was likely to confirm or dispel their suspicions quickly, during which time it was necessary to detain the defendant. A court making this assessment should take care to consider whether the police are acting in a swiftly developing situation, and in such cases the court should not indulge in unrealistic second-guessing.” In this case, the detention was not unduly prolonged. It took a while just to

reach the marijuana field and to search the area for evidence connecting defendant to it. The deputies were found to have acted “diligent(ly) and reasonab(ly)” in the time it took them. Aside from this, the Court found that the deputies could have arrested defendant at any point after they searched his backpack. With one expert deputy testifying that he recognized the odor of growing marijuana on the clothing found in the backpack, having been in marijuana gardens before, along with defendant’s nervousness and the suspicious, unbelievable explanation for being there at that time in the morning, the deputies had probable cause to arrest him at that point if they wanted to, thus making it irrelevant that he was held onto for another 4 to 6 hours before being formally arrested. But despite this, defendant further argued that the use of handcuffs elevated his intended detention into an arrest without probable cause. Aside from the fact that there was probable cause to support an arrest anyway, as already discussed, the Court found that being told that he would be released if they failed to find anything connecting him to the marijuana grow was sufficient to keep the contact at the detention level. Lastly, the defendant complained that his consent to search his house was involuntary because the deputies threatened to tear the place apart if they had to get a warrant. But because defendant had already blown his credibility, the Court didn’t believe him. The motion to suppress was properly denied by the trial court.

Note: There was also a lot of discussion in this case about the defendant’s perjury at the hearing on his motion to suppress, and the trial judge’s tirade about the defendant’s lack of honesty; comments made at the end of the hearing. As a result, the trial judge was removed from the case and a new judge appointed. What was interesting was the Appellate Court’s criticism of the trial judge for calling the defendant a liar and then commenting itself: “To say that (the defendant’s) testimony was ‘far-fetched’ would be an understatement. It could just as easily have been prefaced by the phrase, ‘once upon a time.’” What’s good for the goose, I guess, isn’t always good for the gander, at least in the court room. But we already know that, don’t we?

Entry of a Residence Pursuant to the Emergency Aid Doctrine:

United States v. Snipe (9th Cir. Jan. 28, 2008) 515 F.3rd 947

Rule: The warrantless entry of a residence under the “*Emergency Aid Doctrine*” is justified when officers have an objectively reasonable basis for concluding that there is an immediate need to protect someone in the house, and the scope and manner of the entry is reasonably calculated to meet that need.

Facts: At about 5:00 a.m., a “very hysterical sounding” male called the Fort Hall Police Department on their business line screaming something like; “Get the cops here now,” or “Get the cops now,” before the call was disconnected. The address was determined to be that of defendant’s father’s house. Two officers responded, one of whom happened to live just down the street. That officer noted a car he didn’t recognize parked in front of defendant’s house and an individual he didn’t recognize walk into the house. Defendant’s house was the only residence in the area with the lights on. The front door was found to be partially ajar. When the officers knocked and announced their presence,

the force of the knock opened the door further. Both officers stepped inside. Several people were observed sitting around the kitchen table, including defendant. Acting with surprise at the officers' presence, the occupants asked the them why they were there. The officers told them that they'd received a telephone call from a hysterical male asking for the police. During this conversation, both officers noticed "what looked like . . . a large amount of drugs" on the kitchen table. However, being more concerned with the welfare of whoever had called, they ignored the drugs. After denying that anyone was hurt, defendant told the officers that they could look around, which they did. Nothing unusual was found except for one locked door which, according to defendant, was his father's. Defendant gave the officers permission to kick that door in if they wished, but the officers decline. The officers left the residence and immediately obtained a search warrant based upon the drugs they'd seen. Executing the warrant, drugs, drug paraphernalia, and a firearm with an obliterated serial number was found. Defendant was indicted in federal court for possession of a firearm with an obliterated serial number (18 U.S.C. §§ 922(k) & 924(a)(1)(B)). After defendant's motion to suppress was denied by the trial court, defendant pled guilty and appealed.

Held: The Ninth Circuit Court of Appeal affirmed. Although a search warrant is generally required in order to enter a residence, there are exceptions. The exception applicable here is the need to protect or preserve life or avoid serious injury; i.e., the so-called "*Emergency Aid Doctrine*." In order for this exception to apply, the following factors must be considered: (1) Whether, considering the totality of the circumstances, law enforcement had an objectively reasonable basis for concluding that there was an immediate need to protect others or themselves from serious harm; and (2) whether the search's (or entry's) scope and manner were reasonable to meet the need. (See *Brigham City v. Stuart* (2006) 547 U.S. 398.) In this case, the officers knew that they were responding to "a hysterical male" telling the police to "get the police over here now." That call alone largely justified their response. Added to this was the early morning hour (i.e., 5:00 a.m.), the fact that the officers observed a person they don't recognize enter the house, a vehicle that they didn't recognize parked in front, the lights on, and the door ajar. It was objectively reasonable under these circumstances for the officers to believe that the caller did in fact have an emergency. The Court also held that it was not relevant that the call didn't come in on the police department's 911 telephone system because emergency calls "routinely" come in on the regular lines. Also, the Court rejected defendant's argument that the officers should have done something more to verify the caller's identity or the facts before making entry. Such a requirement "would dramatically slow emergency response time, and would therefore be at odds with the purpose of the emergency aid doctrine." Lastly, the manner of entry was reasonable, announcing their presence before going in and immediately telling the occupants of the purpose of their visit. Defendant's motion to suppress was properly denied.

Note: My interpretation of the Supreme Court's ruling in *Brigham City v. Stuart* is to simply use common sense and trust to your good judgment when determining whether an immediate, warrantless entry is justified whenever you have reason to believe someone inside is being hurt. The "Rule," as listed above, is lifted directly from *Brigham City* although maybe paraphrased a bit. The Ninth Circuit, with its proclivity towards

breaking everything down into a list of factors, does that again here, taking a three-factor test from their previous cases and reduced it down to two in light of *Brigham City*. But either way, they obviously reached the right result.

Parole Searches; Containers Belonging to Another:

People v. Baker (July, 15, 2008) 164 Cal.App.4th 1152

Rule: The search of a female's purse left in a vehicle, when that vehicle is searched pursuant to a male occupant's Fourth wavier parole condition, is illegal absent a reasonable suspicion to believe that the parolee had joint ownership, possession or control over the purse.

Facts: Defendant, a female, was the passenger in a car stopped by a police officer for speeding. When the male driver told the officer that he was on active parole, the officer decided to do a parole search of the car. He therefore asked the driver and defendant to step out of the car, which they did. Defendant, however, left her purse on the floor. The officer searched the entire car, finding nothing. When he searched defendant's purse, however, he found a folded tinfoil packet inside one of the outside pockets containing a small, but usable amount of methamphetamine. The purse, which defendant admitted was hers, also contained her ID. Defendant was arrested and charged in state court with possession of methamphetamine. After her motion to suppress the methamphetamine was denied, defendant pled "no contest" to the misdemeanor possession of a controlled substance, and appealed.

Held: The Fifth District Court of Appeal Reversed. In so doing, the Court listed the various legal justifications for searching containers (such as a passenger's purse) in a car; e.g., (1) when there is probable cause to believe there is contraband in the car (*Wyoming v. Houghton* (1999) 526 US. 295.), (2) during a search incident to arrest (*People v. Mitchell* (1995) 36 Cal.App.4th 672.), or (3) during a consent search (*People v. Woods* (1999) 21 Cal.4th 668.). In this case, none of these legal theories apply. The search here was a warrantless Fourth wavier search. Defendant was not the one on a parole; the driver was. When executing a parole or probation Fourth wavier search, the searching officer may look into closed containers only when the officer reasonably believes the containers are in the complete or joint control of the parolee or probationer. The search of defendant's purse is lawful only if there was, at the very least, "*reasonable suspicion*" to believe that the driver/parolee had joint ownership, possession, or control over it. Under the facts of this case, there was no such reasonable suspicion. The defendant was the sole female in the car. The purse, which the Court found to be "distinctively female," was found on the floor at her feet. "(T)here is nothing to overcome the obvious presumption that the purse belonged to the sole female occupant of the vehicle who was not subject to a parole-condition search." Also, the Court found that defendant did not "impliedly consent" to her purse being searched, or voluntarily abandon it, merely because she left it in the car. Having searched the purse illegally, the meth should have been suppressed.

Note: While the case law says that one who associates with a person on a Fourth waiver will necessarily have to allow their property to be subjected to warrantless searches on occasion, this is only when there is a “*reasonable suspicion*” to believe that the parolee or probationer has joint ownership, possession, or control over the item searched. The problem in his case is that there was no evidence to support that necessary reasonable suspicion. While the law is different, as indicated above, for searches incident to arrest and when there is probable cause to believe that there is contraband in the car, the justifications for such searches under those legal theories don’t extend to Fourth wavier searches.

Medical Marijuana:

People v. Windus (July 30, 2008) 165 Cal.App.4th 634

Rule: A physician’s recommendation for a patient to use medical marijuana does not expire even if the doctor’s recommendation includes a requirement that the patient return periodically for reevaluation. It is also not necessary that the physician’s recommendation include permission to possess more marijuana than the statutorily set limits when the doctor later testifies that the patient does in fact require more. A person who does no more than supply another with marijuana and occasionally visit him does not qualify as a “caregiver,” per H&S § 11352.5(e).

Facts: Redondo Beach police officers executed a search warrant on defendant’s room at the Palos Verdes Inn. The search resulted in the recovery of a total of 1.6 pounds (735.2 grams) of marijuana, almost all of which was in three separate plastic bags. Defendant told officers that he used the marijuana for medical purposes; i.e., chronic back pain. A narcotics expert, however, was of the opinion that defendant possessed the marijuana for purposes of sale, per H&S § 11359. Charged in state court with this offense, defendant proposed to present the testimony of a physician, Dr. William Eidleman, that he had in fact consulted with the doctor for back pain in 1999 and 2001, and that the doctor had authorized him to use marijuana to ease the discomfort of this ailment. However, the doctor did not recommend any specific amount of marijuana. Also, defendant was instructed to return annually for reevaluation. When defendant was arrested in this case in December, 2004, he hadn’t seen the doctor for over three years, although he revisited the doctor after his arrest in 2005. At that time, Dr. Eidleman opined that defendant’s condition was the same as it had been in 2004. Defendant further proposed to present evidence that he ate marijuana, instead of smoking it, and that eating marijuana requires four to eight times as much of the stuff to achieve the same results as smoking it. In Dr. Eidleman’s opinion, it would be reasonable for defendant to possess from three to six pounds at any one time. Defendant also proposed to present evidence that he qualified as the “caregiver” for another individual who used marijuana for neuropathy and AIDS. This individual, however, indicated that defendant was but one of five caregivers who assisted him. Defendant provided this individual with a pound of marijuana once a month, giving it to him for free, and occasionally gave him money. Defendant’s only job was to make sure this person had his medicine and to occasionally drive him to his aunt’s or his mother’s house. Defendant would provide these services to him whenever

defendant was in San Francisco, where the individual lived. This person thought defendant himself lived in either Oregon or Los Angeles. The trial court refused to allow defendant to present this evidence to a jury. Defendant therefore entered a plea of “no contest” and appealed.

Held: The Second District Court of Appeal (Div. 4) reversed, remanding the case back to the trial court to allow defendant to withdraw his plea. The “Compassionate Use Act” (CUA), H&S § 11362.5, enacted by popular vote in 1996 (Proposition 215), does not limit the amount of marijuana one may possess or cultivate in order to come within the statute. The later legislatively-enacted “Medical Marijuana Program” (MMP), passed in 2003, set a presumptive limit on the amount of marijuana a qualified patient or primary caregiver could possess; i.e., not more than eight ounces of dried marijuana or more than six mature or 12 immature marijuana plants. (H&S § 11362.77) However, the statute also provides that a person may possess more marijuana with a doctor’s recommendation if this quantity does not meet the patient’s medical needs. (H&S § 11362.77(a) & (b)). Defendant argued on appeal that there was no requirement that the doctor’s recommendation to use marijuana, as described in section 11362.5, include permission to possess more than eight ounces, and the fact that the doctor was ready to testify that defendant himself needed more was sufficient to allow defendant to present this defense to a jury. The Court agreed. The statutes only require that defendant have a physician’s recommendation to use marijuana for a specified ailment. It does not contain a requirement that the doctor also include a specific amount that may be possessed. With the doctor ready to testify that the amount of marijuana defendant possessed in this case was reasonable, the defendant should have been allowed to present this evidence to a jury. The trial court erred by not allowing him to do so. The Attorney General also argued that because defendant was supposed to see Dr. Eidleman once a year, but didn’t, the authorization had expired. The Court also rejected this argument, noting that nothing in the statutes requires a patient to periodically renew a doctor’s recommendation regarding the use of medical marijuana, or that such a recommendation ever “expires.” Defendant’s failure to be reevaluated once a year by Dr. Eidleman at the doctor’s suggestion does not serve to invalidate a prior recommendation for marijuana use. The Court did agree, however, that defendant did not qualify as a caregiver, as that term is defined in H&S § 11362.5(e); i.e., “(T)he individual designated by the person exempted under this section who has consistently assumed responsibility for the house, health, or safety of that person.” Merely providing a person with marijuana and occasionally visiting him does not meet this requirement.

Note: The Court notes that Dr. Eidleman’s license to practice medicine was suspended from May, 2002, to February, 2004, but doesn’t explain why. It would be interesting to know if it was related to his practice of recommending marijuana to his patients. I guess we’ll never know. But aside from that side non-issue, there’s not much of any surprise in this case. But then, nothing the courts rule on the medical marijuana statutes surprises me any more. With these statutes being so poorly written, the only surprise is that we don’t get more cases trying to make sense of them.