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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RHONDA FIRESTACK-HARVEY,
LARRY LESTER HARVEY,
MICHELLE LYNN GREGG,
ROLLAND MARK GREGG, and
JASON LEE ZUCKER,

Defendants.

CR-13-00024-FVS

MOTION IN LIMINE
REGARDING MEDICAL
MARIJUANA

The Plaintiff, United States of America, by and through Michael C. Ormsby,
United States Attorney for the Eastern District of Washington, and Earl A. Hicks,
Assistant United States Attorney for the Eastern District of Washington, hereby
moves *in limine* as follows:

FACTS:

1
2 On July 19, 2012, the Stevens County Sheriff's Office (SCSO) was
3 advised that the Civil Air Patrol observed what they believed was a possible marijuana
4 grow near the Colville Airport on July 11, 2012.

5 Sgt. Erdman of the SCSO reviewed photographs taken by the Civil Air Patrol
6 and saw approximately 70 large marijuana plants in the cleared area. Further
7 investigation revealed that the owner of the property was listed as Larry Harvey. Local
8 records also revealed that Rhonda Harvey lived at that address. Through records
9 checks the location was determined to be 939 Clugston- Onion Creek Road Colville,
10 WA.

11 On August 8, 2012, Sgt. Brad Manke of the SCSO, who is a certified marijuana
12 spotter, flew over the area. During the fly over he observed approximately 70 large
13 marijuana plants. SCSO obtained a state search warrant for the premises. On August
14 9, 2012, a State search warrant was served on the Harvey's residence. Law
15 enforcement first went to the residence and made contact with Rhonda Harvey who
16 advised law enforcement that they were manufacturing marijuana for medical
17 purposes. She provided paperwork for medicinal marijuana authorization for herself
18 and Larry Harvey, as well as Michelle Gregg, Rolland Gregg, and Jason Zucker.

19 The grow was located above the residence. A well-used road passed next to the
20 residence and led up to the grow area. Waterlines and an overhead power line were
21 installed up to the grow area. Law enforcement located a total of 74 marijuana plants
22 growing in the grow area. They were approximately 3 to 5 feet tall and DEA indicated
23 they would not be ready for harvest for at least 2 months. There were also several
24 large containers present for water, fertilizer mixes, other fertilizer and grow supplies, a
25 large container used as a reservoir for water and a water pump. Law enforcement
26 photographed the grow area and removed 29 marijuana plants.

27 MOTION IN LIMINE REGARDING MEDICAL MARIJUANA - 2

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1 The home and outbuildings were also searched. The search was photographed
2 and video was also taken. Throughout the house there were numerous containers of
3 processed marijuana. There was also marijuana paraphernalia used for smoking
4 marijuana. Throughout the house there were also multiple loaded firearms.

5 In the den, law enforcement located a large container of processed marijuana in
6 a blue plastic tub. Some of the marijuana was vacuum sealed and labeled in
7 one-pound bags and additional processed marijuana was in other large plastic bags. In
8 the den, in very close proximity to the blue plastic tub, two loaded firearms were
9 found. One of the firearms was a loaded 12 gauge shotgun, another one of the firearms
10 was a 7 mm mag rifle.

11 Also in the den, on a different table, law enforcement located paperwork related
12 to the growing of marijuana, financial documents, and records related to marijuana
13 plant types, expenses and sales. The records are dated in October and November of
14 2011. Also located on this table was a vacuum sealer, plastic baggies and a Digital
15 scale commonly used in the distribution of controlled substances.

16 A search of the shop indicated that it was being used to dry and harvest the
17 marijuana. Drying racks, with a marijuana plant type/names written on them were
18 present in the back area. A box of dried marijuana was located near the drying racks. 3
19 vacuum sealed bags of marijuana bud were located in a freezer. These were labeled as
20 being one-pound with the name/type printed on them. These names and types of
21 marijuana appear on sales records located in the house.

22 A search of a shed located across from the shop indicated it was used for
23 storage. Several hydroponic grow items, plastic containers and other paraphernalia
24 were observed in that location. This is consistent with there having been a prior indoor
25 grow.

1 On August 16, 2012, SA Sam Keiser and officers from the SCSO executed a
2 federal search warrant at the Harvey's property. The purpose of the search warrant
3 was to search for additional evidence and remove the marijuana plants and processed
4 marijuana that the State had left after the execution of the State search warrant on
5 August 9, 2012. During the search 44 large marijuana plants were found in the grow
6 and removed. (These were the same marijuana plants left by state law enforcement
7 after their search warrant.)

8 During the federal search of the residence an Acer CPU computer Model:
9 Aspire T180 was seized from the den. A federal search warrant was obtained to search
10 the content of the computer. This computer was analyzed by the Spokane County
11 Sheriff's Office. Numerous pictures dated in 2011 show a marijuana grow at the same
12 location. The pictures also show Rhonda Harvey, Larry Harvey, Rolland Gregg, and
13 Michelle Gregg in the marijuana grow.

14 The United States anticipates that the Defendants will all seek to present
15 evidence that they are medical marijuana users and the marijuana grow was legal
16 under state law.

17 ARGUMENT:

18 Fed. R. Evid. 401 defines "relevant evidence" as evidence having any tendency
19 to make the existence of any fact that is of consequence to the determination of the
20 action more probable or less probable than it would be without the evidence.
21 "Medical necessity is not a defense to manufacturing and distributing marijuana."
22 *United States v. Oakland Cannabis Buyers Corp*, 532 U.S. 483, 494 (2001); *United*
23 *States v. Halbert*, 2011 WL 892477 (9th Cir. Mar. 8, 2012) (unpublished)(district
24 court was correct in excluding evidence of defendant's proposed medical marijuana
25 defense).

1 Here, the government submits that any arguments concerning “medical
2 marijuana” and/or the defendants’ reasons, beliefs, or medical necessity justifications
3 for cultivating marijuana are not relevant and should be excluded from trial. “Despite
4 the opinion held in some medical and scientific circles that marijuana can be
5 effectively used for medicinal purposes, such a defense would directly contradict
6 congressional findings dating back to 1970 that marijuana, as a Schedule I drug, has
7 no medicinal use.” *United States v. Schafer*, 625 F.3d 629, 639 (9th Cir. 2010).
8 In *United States v. Rosenthal*, 454 F.3d 943 (2006), the Ninth Circuit addressed a
9 similar issue as the one presented here. In November 1996, Californians passed the
10 Compassionate Use Act which allowed patients to obtain marijuana for “personal
11 medical purposes . . . upon the written or oral recommendation or approval of a
12 physician.” *Id.* at 945. In response to the act, the Oakland City Council adopted an
13 ordinance to “ensure access to safe and affordable medical cannabis.” *Id.* Under the
14 Ordinance, the City Manager designated “one or more entities as a medical cannabis
15 provider association.” *Id.* That entity would then designate individuals to help
16 distribute medical cannabis to seriously ill persons. *Id.* The City of Oakland
17 designated the Oakland Cannabis Buyers’ Cooperative an official medical-cannabis-
18 provider association. *Id.* Rosenthal was designated to be an agent of the Oakland
19 Cannabis Buyers Cooperative and to cultivate marijuana plants for distribution to
20 authorized medical-cannabis users. *Id.* Rosenthal cultivated marijuana for
21 distribution from October 2001 until February 12, 2002, the day of his arrest. *Id.* at
22 946.

23 Rosenthal was charged with manufacturing and conspiracy to manufacture
24 marijuana in violation of 21 U.S.C. 841 and 846, and maintaining a place for the
25 manufacture of marijuana in violation of 21 U.S.C. 856. *United States v. Rosenthal*,

1 266 F. Supp. 1068, 1074 (2003). Prior to commencement of trial, the government
2 filed motions *in limine* to exclude evidence of a “medical marijuana” defense aimed at
3 jury nullification. *Id.* The government maintained that evidence of Rosenthal’s
4 motive or justification for the cultivation of marijuana could not be presented to the
5 jury. *Id.* The government relied on a fundamental rule of evidence, which requires
6 that only relevant evidence be considered by the jury and that irrelevant evidence be
7 excluded. *Id.* The government argued that since the elements of the criminal offenses
8 at issue involved only the knowing or intentional manufacturing of marijuana and not
9 the purpose for which the marijuana was grown, that evidence of medical purposes as
10 well as the defendant’s belief that he was lawfully engaged in this enterprise was
11 inadmissible. *Id.* The district court determined that it was required to determine
12 whether such evidence, i.e., testimony demonstrating Rosenthal’s desire to help
13 people who suffer from serious debilitating illnesses as well as evidence of his belief
14 that he was authorized by the government to engage in the activity was relevant to any
15 issue the jury had to determine in order to fairly adjudicate his guilt or innocence. *Id.*
16 The district court determined that such evidence was “simply not relevant to the
17 question of guilt or innocence.” *Id.* at 1076. Rosenthal was subsequently convicted of
18 violating the federal Controlled Substances Act. *Id.* at 1074.

19 On appeal, Rosenthal challenged the district court’s evidentiary rulings.
20 *Rosenthal*, 454 F.3d at 947. The Ninth Circuit stated “we agree with the district
21 court’s written and oral analysis of those issues and adopt its reasoning in whole.” *Id.*

22 Here, the government moves *in limine* to prohibit the defendants from eliciting
23 testimony concerning their motives, justifications, or beliefs as to why the marijuana
24 was being cultivated at the residence in question. Here, the elements of the charged
25 offense at issue involve only the knowing or intentional manufacturing of marijuana
26 and not the purpose for which the marijuana was grown. Therefore, any evidence of

1 medical purposes as well as the Defendants belief that they were lawfully engaged in
2 marijuana cultivation is inadmissible.

3 Respectfully submitted this 30th day of April 2014.

4
5 MICHAEL C. ORMSBY
6 United States Attorney

7 *s/ Earl A. Hicks*
8 Earl A. Hicks
9 Assistant U.S. Attorney

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11 I hereby certify that on April 30, 2014, I electronically filed the foregoing with
12 the clerk of the Court using the CM/ECF System which will send notification of such
13 filing to the following:

14 Jeffrey Scott Niesen, Attorney for Rhonda Lee Firestack-Harvey
15 Robert R. Fischer, Attorney for Larry Lester Harvey
16 Bevan Jerome Maxey, Attorney for Michelle Lynn Gregg
17 Douglas Dwight Phelps, Attorney for Rolland Mark Gregg
18 Frank Louis Cikutovich, Attorney for Jason Lee Zucker
19 J. Tony Serra, Attorney for Jason Lee Zucker

20 *s/ Earl A. Hicks*
21 Assistant United States Attorney