

Judge orders police to return Tacoma man's marijuana

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ADAM LYNN; STAFF WRITER

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In what might be a Pierce County precedent, a judge Thursday ordered police to give a Tacoma man back marijuana seized from him during a traffic stop last year.

Municipal Court Judge Jack Emery agreed with Joseph L. Robertson's arguments that police had no right to seize the less than 40 grams of pot because he is a designated provider of medical marijuana.

Robertson's attorney, Jay Berneburg, said outside court that it might be the first such ruling in Pierce County history. Almost a year ago, two owners of a medical-marijuana dispensary lost a bid in Pierce County Superior Court to get back pot police seized from them during a case later thrown out of court.

"As far as that goes, it's a big deal," said Berneburg, who is active in medical marijuana issues.

Robertson hoped to retrieve his marijuana from the police property room within the week.

"I feel great," he said outside court. "You've got to stand up for people's rights sometimes."

Police seized the pot in May 2012 after pulling Robertson over for speeding. The officer who made the stop reported smelling marijuana inside Robertson's car and later found a small amount, court records show.

Robertson was cited for driving without a valid license and misdemeanor marijuana possession and released.

City prosecutors in December dismissed the possession charge after the state's vote to legalize the possession of small amounts of marijuana. Robertson then asked for his pot back. The city refused, which set up Thursday's hearing before Emery.

City prosecutor Charles Lee stood by the city's opposition.

"Had this gone to trial it would have been an issue of fact as to whether or not the marijuana Mr. Robertson was possessing on that day was for personal consumption or for (a patient)," Lee said.

Lee also argued it hadn't been proven that Robertson is in fact a valid medical-marijuana provider or that the person he intended to supply is a qualified patient.

Berneburg countered that the law is clear when it comes to medical marijuana.

A qualifying patient is a person with a debilitating or terminal condition diagnosed by a medical professional who then prescribes marijuana as medicine, he said. A designated provider is someone over 18 who a qualifying patient has contracted with, in writing, to provide the pot, the attorney argued.

A designated provider can have up to 24 ounces (680 grams) of usable marijuana and 15 plants at any given time.

Berneburg provided as evidence copies of his client's contract to provide marijuana to a specific person and that person's "documentation of physical authorization to engage in the medical use of cannabis in Washington State."

It is not up to the state to determine whether someone is a qualifying patient, he said outside court. That decision is between a person and his or her doctor, he said.

"The law is very simple, and it is very boring," Berneburg told Emery. "If he is a lawfully appointed designated provider, he's lawfully in possession of that marijuana. Being lawfully in possession of that marijuana, he can not be forced to forfeit that, and the state, the government, the city can not seize it."

Emery agreed and ordered the city to relinquish Robertson's marijuana.

Lee told Emery the city had no plans to appeal.