

Tacoma

Judge again orders Tacoma police to return man's pot

SEAN ROBINSON

Last updated: April 26th, 2013 03:29 AM (PDT)

Give the man his marijuana. That was the gist of a simple order Tacoma Municipal Court Judge Jack Emery gave to Tacoma police two months ago.

Police refused.

Thursday, Emery repeated himself with emphasis: Police have seven days to comply with his Feb. 28 order and return the pot to Tacoma resident Joseph L. Robertson, or face a possible order of contempt.

“Appeal or comply,” Emery told assistant city attorney John Walker. “Or next week, show up, and I would advise you to bring counsel.”

The ruling was a small procedural victory for Robertson, but it could set the stage for a precedent-setting debate, and a collision between state and federal laws governing marijuana.

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.

Robertson was cited for driving without a valid license and misdemeanor marijuana possession and released. City prosecutors dismissed the possession charge in December after the state’s vote to legalize the possession of small amounts of marijuana.

Robertson then asked for his pot back, and provided proof of medical marijuana authorization. The city refused, which prompted Emery’s Feb. 28 order.

Thursday, Robertson and his attorney, Jay Berneburg, were back in court, complaining that the city hadn’t complied. Robertson, a big man with a pony tail, wore an old Oakland Raiders jersey and sunglasses. Berneburg, also pony-tailed, wore a suit.

“Contemptuous” was the word Emery used to describe the city’s response to his earlier order. He held up a thick stack of legal briefs from the city, delivered one day before

Thursday's hearing. The city had blown the deadline to make such arguments, even if they had merit, the judge said.

The next step is uncertain – the next hearing is set for May 2. The matter could be resolved by then, or it could bounce up another legal level.

Emery's order requires the city to fill out a release form and transmit it to the Pierce County Sheriff's Department, which operates the property room where seized evidence (including Robertson's pot) is stored.

The city could fill out the form and transmit it, leaving the onus of the decision on Pierce County. If the county refuses to return the pot, that could set up an appeal to Pierce County Superior Court.

Pierce County Sheriff's spokesman Ed Troyer said Tacoma police could collect the pot; but the sheriff's office won't hand it to Robertson.

"It's Tacoma's case," Troyer said. "If they want it, they can come and get it."

Emery was careful to point out the jurisdictional tangle as he gave his ruling Thursday; he has legal authority over the city, but not the county.

"I am going to order that you fill out the appropriate release and transmit it to the sheriff's department," Emery said, addressing Walker. "Then I'm going to set a hearing next week. I think there's contemptuous behavior here."

Emery added that the case was "a quagmire," due to the conflicting provisions of state and federal law.

After the hearing, Berneburg said that if the county refuses to return his client's pot, he would file an appeal.

"This isn't gonna end," Berneburg said. "This is not gonna end."

Sean Robinson: 253-597-8486
sean.robinson@thenewstribune.com

Read more here: <http://www.thenewstribune.com/2013/04/25/v-printerfriendly/2573492/judge-again-orders-tacoma-police.html#storylink=cpy>