

Recent Case Report

People v. Strasburg (2007) 148 Cal.App.4th 1052

ISSUE

If officers have probable cause to search a car for marijuana, is the search unlawful if they know the driver possesses a medical marijuana card?

FACTS

At 1:40 p.m., a Napa County sheriff's deputy stopped at a gas station in Calistoga to contact two men who were sitting in a parked car. As he walked up to the car, he smelled the odor of marijuana coming from the inside. Strasburg admitted he had been smoking it in the car but said he had "a medical marijuana card." He then handed the deputy a baggie containing about three-quarters of an ounce of marijuana. Looking inside the car, the deputy could see another bag of marijuana. This one appeared to contain just over two grams.

The deputy asked Strasburg if there was more marijuana in the car, and he said yes. So the deputy searched the vehicle and found almost 1½ pounds of it, plus a "full powered" scale. The deputy arrested Strasburg without asking to see his medical marijuana card.

When Strasburg's motion to suppress was denied, he pled guilty to misdemeanor possession of marijuana.

DISCUSSION

Strasburg urged the court to rule that officers may not search a car for marijuana if, (1) the driver possesses a medical marijuana card, and (2) the officer lacks probable causes to believe the driver possesses more than eight ounces of marijuana. The court declined.

Under California's Compassionate Use Act of 1996,¹ a person who has a state-issued medical marijuana card or a physician's prescription may legally possess up to eight ounces of dried marijuana. But this does not mean that qualified patients may not be searched, arrested, or prosecuted for possession. Instead, it only means they may raise their status as a basis for setting aside an indictment or information, or as an affirmative defense at trial.²

Consequently, the court in *Strasburg* ruled that officers are not required to immediately terminate a marijuana investigation whenever the suspect produces a

¹ ALSO SEE Health & Safety Code § 11362.7 et seq.

² (2002) 28 Cal.4th 457, 464, 468-75.

medical marijuana card. Instead, they retain the power to arrest or search the suspect if they have probable cause. And because the officer who arrested Strasburg had probable cause to believe there was marijuana inside his car, the search was lawful. Said the court, “An officer with probable cause to search is not prevented from doing so by someone presenting a medical marijuana card or marijuana prescription.”

COMMENT

The court’s ruling is consistent with the objective of the Compassionate Use Act. It is apparent that most people who have a legitimate medical need for marijuana will not be out smoking it in public with their buddies.³ Instead, as the court pointed out, they will more likely be at home, “nursing an illness with the medicinal effects of marijuana.” As the court aptly summed up the situation, Strasburg “was using the Act as a façade to conceal illegal activity.”

Still, officers should not ignore the Compassionate Use Act and its sound objectives. By exercising good judgment in situations such as these, officers should be able to effectively enforce the drug laws while carrying out the mandate of the Compassionate Use Act. [POV](#)

³ NOTE: Qualified patients may not use marijuana inside a motor vehicle. See Health & Safety Code § 11362.79(d).