

1 WILLIAM LOGAN #057641  
2 Attorney and Counselor  
3 Post Office Box 726  
4 Three Rivers, California 93271  
5 (209) 561-4695

Attorney for Defendant JEFFERY GIBSON

SEP 3 1997  
JOANNE M. ...

6  
7 IN THE SUPERIOR COURT  
8 MARIPOSA COUNTY, STATE OF CALIFORNIA

9  
10 PEOPLE OF THE STATE OF  
11 CALIFORNIA,  
12  
13 Plaintiff,  
14 vs.  
15 JEFFREY GIBSON, ET. AL.,  
16 Defendant

No. 1647  
MOTION TO DISMISS  
(Penal Code § 995)  
Hrg.: Sept. 3, 1997  
Time: 9:00 a.m.

17  
18 TO THE COURT AND DISTRICT ATTORNEY: Pursuant to notice heretofore  
19 given in open Court, COMES NOW THE DEFENDANT JEFFREY GIBSON, by and  
20 through his attorney WILLIAM LOGAN, and hereby moves the Court for an Order  
21 dismissing the information filed in this case.

22 This motion is made on the grounds that the information was filed without  
23 reasonable or probable cause, and that the Defendant was not legally committed. The  
24 specific grounds are that the Magistrate did not correctly apply the law regarding the  
25 applicability of Proposition 215 (Health & Safety §11362.5).

26 ////  
27 ////  
28

1 This motion is based on this pleading, and the Motion to Dismiss previously  
2 filed, and such other and further evidence, oral and documentary, as may be adduced at  
3 the hearing on the Motion.

4 Respectfully submitted,

5 August 11, 1997

6 (S)  
7 WILLIAM LOGAN, Attorney for  
8 JEFFREY GIBSON, Defendant

9  
10 **STATEMENT OF THE CASE**

11 The Court is respectfully directed to the statement of facts in the Points and  
12 Authorities on the previously filed Motion to Dismiss.

13 The Preliminary Hearing was augmented by testimony from Kathy Sarno which  
14 indicated that she had absolutely no information and no opinion regarding medical use  
15 of marijuana. Dr. Eugene Schoenfeld also testified, and clearly established that the  
16 Defendant DAVON ABERLE was an appropriate person for cannabis therapy, and was  
17 in fact receiving therapeutic benefit from her cannabis use at the time of her arrest.

18 JEFFREY GIBSON established that he was the primary caregiver of DAVON  
19 ABERLE, and was cultivating and possessing the marijuana for her medical use.

20 **POINTS AND AUTHORITIES**

21 The law requires that a defense be proven by the proponent, and the standard of  
22 proof is a preponderance of the evidence. Evidence Code § 500, 501, 115.

23 The Honorable Douglas Boyack, the Magistrate assigned to hear the  
24 augmentation of the Preliminary Hearing, while acknowledging that the issue was  
25 interesting ("there is at least a cognizant legal issue") he neglected to rule on whether  
26 the defense was well taken. (Reporter's Transcript, hereinafter RT, page 88, line 8-  
27 page 89, line 6). The Court simply found that there was probable cause to hold the  
28 Defendants to answer on the possession for sale charge. (RT, p. 88, l. 28- p. 89, l. 1)

1           The Court should have ruled that the defense was well taken, and dismissed the  
2 case against JEFF GIBSON and DAVON ABERLE. Simply applying the minimum  
3 standards for a holding order does not give the Defendants due process of the law. The  
4 law is clear that a defense may be presented at the Preliminary Hearing. Penal Code  
5 §866(a).

6           There appears to be an essential friction between the requirements for a bind  
7 over to Superior Court, and the plain dictates of Health & Safety §11362.5. The  
8 requirement of some slight evidence and the concomitant requirement that the  
9 reviewing Court accept the determination of the Magistrate as to the weight of the  
10 evidence which supports the information is in bald conflict with the mandate that  
11 medical marijuana users and their primary caregivers "are not subject to criminal  
12 prosecution or sanction". (H & S §11362.5, Williams v. Superior Court (1969) 71  
13 Cal. 2d 1144, 80 Cal. Rptr. 747, Rideout v. Superior Court (1967) 67 Cal.2d 471, 62  
14 Cal. Rptr. 581. People v. Harris (1975) 52 Cal. App. 3d 419, 125 Cal. Rptr. 40.

15           The failure of the Magistrate to even consider, much less rule on the  
16 applicability of the defense deprived the Defendants of due process of law. The  
17 Magistrate indicated that he felt the defense might succeed at trial, or at least could be  
18 raised at that time. (RT. p. 88, l. 16-18). This non-resolution of the issue of medical  
19 use should not be validated by rote application of the apparently conflicting standard  
20 for a holding order. The Magistrate, in his refusal to rule on the defense presented has  
21 held the Defendants to answer illegally. The evidence presented clearly established the  
22 appropriate and adequate basis for the application of the protections of H & S  
23 §11362.5.

24           IT IS THEREFORE RESPECTFULLY SUBMITTED that the information filed  
25 against the Defendants should be dismissed.

26 August 11, 1997

27 WJL  
28 WILLIAM LOGAN, Attorney for  
JEFFREY GIBSON, Defendant