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ROGER CUSICK CHRISTIE (01)

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,	)	C.A. No. 10-10355
	)	
Plaintiff-Appellee,	)	D.C. No. 1:10-cr-00384-SOM
	)	(District of Hawaii)
vs.	)	
	)	
ROGER CUSICK CHRISTIE (01),	)	DEFENDANT'S REPLY TO
	)	GOVERNMENT'S OPPOSITION
Defendant-Appellant.	)	TO HIS <b>FRAP 9(a) APPEAL</b> ;
	)	CERTIFICATE OF SERVICE
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**DEFENDANT’S REPLY  
TO GOVERNMENT’S OPPOSITION TO HIS FRAP 9(a) APPEAL**

1. The central question presented by this bail appeal is whether a set of conditions can be devised that will reasonably assure the safety of the community against further cannabis use, possession, and distribution by Mr. Christie. The government’s opposition (as did its opposition in the courts below) is largely devoted to reciting its evidence against Mr. Christie with regard to the charged offenses. The weight of the government’s evidence against the accused, however, is the least significant factor in the requisite analysis, given that the charged offenses do not involve any allegations of violence. United States v. Motamedi, 767 F.2d 1403, 1408 (9th Cir. 1985).

In any event, though, the government’s recitation of the evidence in support of the charges against Mr. Christie artificially inflates the true danger that recidivism poses to the community in this case. The charges in this case involve only cannabis, which many doctors urge be legalized because of its medicinal value. Gonzales v. Raich, 545 U.S. 1, 28 n. 37 (2005) (“acknowledg[ing] the evidence proffered by respondents in this case regarding the effective medicinal uses for marijuana”). This Court, moreover, recognizes that cannabis’s centrality to a religious practice provides a defense to criminal charges where the charged conduct is required by the defendant’s religion. United States v. Bauer, 84 F.3d 1549 (9th Cir. 1996). Research, moreover, is accumulating more and more evidence that cannabis is a safer drug than

many pharmaceutical drugs routinely prescribed; that no overdose deaths have been reliably attributed to cannabis use; and that it is not addictive. National Organization for Reform of Marijuana Laws (NORML) v. Bell, 488 F. Supp. 123, 129 & nn. 15 & 16 (D.C. D.C. 1980) (“[s]tudies have dispelled many of the myths about the drug: marijuana is not a narcotic, not addictive, and generally not a stepping-stone to other, more serious drugs[;] [f]urthermore, it causes neither aggressive behavior nor insanity”); United States v. Lepp, 2008 WL 3843283, at \*9 (N.D. Cal. Aug. 14, 2008) (unpublished opinion) (“more recent research disputes the characterization that marijuana is dangerous”); id. (crediting expert testimony that “cannabis is remarkably safe[,] ... less toxic than most of the conventional medicines it would replace if it were legally available[,] ... has never caused an overdose death[,]” and has become increasingly recognized “to many physicians” as having legitimate medicinal value); see also, e.g., Emerging Clinical Applications For Cannabis & Cannabinoids: A Review of the Recent Scientific Literature, 2000-2010, available at [http://norml.org/index.cfm?Group\\_ID=7002](http://norml.org/index.cfm?Group_ID=7002). Thus, the particular drug at issue in this case — the use, possession, and distribution of which predicates Mr. Christie remains detained — does not pose the type of serious danger to individuals or to the community that, say, heroin, crack, or methamphetamine do.

Despite the government’s attempts to portray Mr. Christie as someone who is as culpable as the most hardened drug pusher, there is no allegation in this case that

Mr. Christie or anyone at his behest has ever tried to get new users hooked on the marijuana. Rather, the allegations against Mr. Christie involve people coming to him for guidance and counseling, and to obtain marijuana as a religious sacrament. Pushers, on the other hand, actively solicit new users; Mr. Christie has not. He is hardly the poster child for the government's war on the illicit, violent drug trade, as the following portrait of Mr. Christie and his girlfriend, co-defendant Sherryanne St. Cyr, attests:



But even if taken at the inflated value that the government and the courts below assign it, the dangerousness recidivism poses does not provide a basis for concluding

that there is *no* set of conditions that could reasonably assure the safety of the community. The supposed dangerousness of recidivism is more than reasonably assuaged by conditions such as home detention, associational restrictions, electronic monitoring, random searches and home visits, and random drug testing. Nothing in the government's opposition explains why such conditions will fail, in Mr. Christie's case, to provide the reasonable assurance of community safety that they do for all of his codefendants, and, indeed, for numerous others accused of drug trafficking crimes (as well as of violent crimes) across the country. In United States v. James, 674 F.2d 886 (11th Cir. 1982), for example, bail was set (albeit spawning an excessive bail claim) for two defendants "indicted under the federal drug laws and the Racketeer Influenced and Corrupt Organization Act (RICO) for their involvement in a multi-million dollar marijuana smuggling enterprise which operated from 1977 to 1981" on charges carrying "potential life sentences without parole." Id. at 888. In Mecom v. United States, 434 U.S. 1340 (1977), bail was set for a defendant who was

involved in a large-scale smuggling enterprise, which imported marihuana into Texas from Mexico in loads of 200 to 700 pounds; the marihuana was then distributed to locations as far away as Indiana; [the defendant's] wife, a co-indictee, acted as his "connection" in Mexico and [was] currently a fugitive there; another associate in the enterprise [was] also a fugitive; and [the defendant] and his associates were frequently in possession of large amounts of cash.

Id. at 1342. There was even evidence that the defendant had “paid \$100,000 for the murder — unsuccessfully attempted — of an associate suspected of cooperating with the authorities. Id. If release on bail was found acceptable in such cases, how can release on bail *not* be acceptable in Mr. Christie’s case, which involves locally grown cannabis under the belief that doing so is constitutionally protected religious activity, in amounts of one or two pounds, and in which there is not so much as a hint of violence?

2. The district court and the government, however, reason that such conditions are not sufficient because they depend upon Mr. Christie’s good faith compliance to be effective. This “justification” for detaining Mr. Christie is nothing of the sort. Such reasoning is applicable to *any* pretrial releasee. If it provides a legitimate justification for pretrial detention, then there is little left of the Bail Reform Act, for *everyone* accused of a crime should be detained on the ground that conditions are inadequate to assure the safety of the community, since compliance (and, thus, the community’s safety) depends on naught but the accused’s good faith. The Bail Reform Act was not enacted simply to be inapplicable.

Such a reason for concluding that no set of conditions will be adequate in Mr. Christie’s case is also one that has also been arbitrarily applied in this matter. Conditions were found adequate to support the release of all the other codefendants,

despite the fact that they would only be effective in assuring the safety of the community if the defendants complied with them in good faith.

The Bail Reform Act requires reasonable assurances, not guarantees, that a set of conditions will be complied with and, therefore, will protect the community. Nothing in the evidence against Mr. Christie and the history of the government's investigation of him provides any reason to believe that Mr. Christie would not abide a court order mandating that he abide a set of conditions. There is no evidence that he has ever disobeyed a court order. There is no evidence that he has ever committed an act, much less an actual crime, of dishonesty. His advocacy of marijuana use for religious and healing purposes has been open, not clandestine. His advocacy for the legalization of marijuana has been equally open and equally long standing. These are indicia of honesty and integrity, not of dishonesty or untrustworthiness.

That he believes and advocates that the possession, use, and distribution of cannabis for religious purposes is constitutionally protected — and, therefore, provides a defense against otherwise applicable drug regulations prescribing its use, possession, and distribution — does not provide a reason to believe that he would not abide a court order directing him not to possess, use, or distribute cannabis. Nor does it necessarily evince, as the government seems to believe, that Mr. Christie's Ministry was a sham, especially in light of such things as the Religious Freedom Restoration

Act, and this Court's case law accepting that such religious beliefs provide precisely such a defense.

Mr. Christie's history and characteristics provide yet further indicia of his honesty and integrity, not indications that support concluding that he would fail to heed a court order setting conditions to his release. He has been a Hilo resident for a quarter of a century and been a politically active member of his community. Transcript of Proceedings Before the Honorable Alan C. Kay (Tr.) 7/16/10 at 8. He has run for mayor twice. Id. He has been involved in civil litigation to legalize marijuana. Id. And he has served honorably in the United States Army. Id.

The only thing that the government and the courts below rely upon to justify the conclusion that Mr. Christie would not abide a court order setting conditions on his release consists of the government's allegations regarding his conduct after searches in March resulted in law enforcement agents seizing marijuana and cash, but, paradoxically, not in Mr. Christie's arrest. The government asserts, and the courts below apparently agreed, that this incident should have provided a "wake up call" to Mr. Christie, one that any honest person inclined to follow a court's order setting conditions on his release would have seen as necessitating reformation of his or her conduct. Since Mr. Christie did not heed this wake up call, but instead was found in possession of marijuana again several months later, is something that the

government posits evinces the sort of dishonesty indicating Mr. Christie would not abide a court order setting release conditions.

As noted in his memorandum in support of his appeal, this reasoning is faulty on more than one level. There is, for example, no affinity between law enforcement's seizure of contraband and a court order setting conditions of release or between the ramifications for disregarding them. Moreover, Mr. Christie's codefendants (most notably Ms. St. Cyr) made the same choices Mr. Christie did following the March searches. Many of the wire-tapped phone calls that the government relates in its opposition, for instance, involve Ms. St. Cyr and occurred *after* the March searches. As such, that the post-March-search conduct rational does not serve to justify Ms. St. Cyr's detention reflects that it should not, absent arbitrary application, justify Mr. Christie's detention either. That Mr. Christie was not arrested in March simply does not, furthermore, send the cease-and-desist message that the government believes it did. Rather, given Mr. Christie's belief that his conduct with regard to cannabis is a constitutionally protected religious freedom, the failure to arrest him in March is just as likely, if not more likely, to be perceived as a grudgingly tacit recognition of that constitutional right.

3. The government also argues that Mr. Christie's assertion that he would continue to work, if released, at the Ministry provides a further reason to detain him. The government claims that the Ministry is nothing but a front that serves no purpose

beyond the illegal distribution of marijuana. This argument does not provide a justification for detention.

For one thing, Mr. Christie does much more than simply hand out marijuana to members of the Ministry. He provides religious counseling services, just as any other church leader or elder might. That he wishes to continue to counsel and help people with their problems does not evince that he would fail to abide by a court order setting conditions on his release. Moreover, the proffered set of conditions — most notably, associational restrictions and the ban on marijuana use, possession, and distribution — provide reasonable assurances that any such counseling services would not involve criminal activity. If such conditions are deemed inadequate (even though they aren't), a condition restricting his activities with the Ministry might be added to provide further assurances against recidivism in this regard.

In sum, the record in this matter does not support the conclusion that no set of conditions could reasonably assure the safety of the community. Rather, the record evinces that Mr. Christie, far from flaunting the law, is someone who is politically active, advocates the non-violent, religious use of cannabis, believes cannabis has religious significance as a sacrament, and believes that the law protects his religious beliefs and practices.

4. As a final matter, Mr. Christie notes that, at least to the extent that a bail appeal is akin to proceedings on a motion, handled by the motions division of this

Court, and involves the filing of memoranda in support, in “response,” and in reply, see Fed. R. App. P. 9, that the filings in this matter appear to be subject to Fed. R. App. 27(d)(2) (“a response to a motion must not exceed 20 pages”). The government’s response is 44 pages long. It should therefore be stricken, or, at the very least, the portion of it exceeding 20 pages should be disregarded, since the government provides no reason justifying the filing of a response bloated beyond twice its allowable size.

DATED: Honolulu, Hawaii, August 3, 2010.

/s/ Matthew C. Winter  
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ROGER CUSICK CHRISTIE (01)

### **CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on August 3, 2010.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/ Matthew C. Winter  
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