

Excerpts From Richard Flor's Sentencing Statement

(Via PACER, reprinted by TalkLeft.com)

Montana passed the first medical marijuana law in 2004. As noted in ¶17 (of the Presentence Report), this investigation began in 2006. In September of 2007 Agent Faycosh, an agent with the Montana Attorney General's Division of Criminal Investigation and who works with and reports directly to the United States Drug Enforcement Agency, visited the Flor's grow operation.

As can be seen in ¶ 22 (of the PSI) he went to the Flor residence and examined how many plants they had, how many caregiver permits they had, and examined the permits. He indicated to the Flors that their operation was legal and they needed to keep it that way in order not to have any legal problems.

The DEA further went on to contact the Montana Quality Assurance Division in Helena, Montana to make sure which caregivers were "following the law".

Following the election of president Obama and his appointment of Eric Holder as the United States Attorney General the number of medical marijuana patients grew astronomically.

In February of 2009 Eric Holder announced that what had been stated during the campaign would be the policy of the United States Attorney General's Office, that Medical Marijuana in compliance with state law would not be prosecuted. We have that speech as an exhibit. The President was elected in November 2008 and his inauguration was in February 2009. The statistics as reported from December 2008 to March 2009 (attached Exhibit A) show 1,577 card holders to 2,074 card holders. From then to June of 2011 it went to 30,038 card holders. Nothing in Montana law changed.

After the speech by Eric Holder in February 2009, the local DEA approached the United States Attorney offices in Montana and thereafter made a decision that the Flor case was legal under Montana law and the investigation would be closed. In a December 6, 2009 report it was stated as follows:

Based upon recent decisions and statements by the Attorney General of the United States, the type of operation being run by FLOR for all intents and purposes is legal in the United States, although it is direct violation of federal law. Based upon the Attorney General's decision not to enforcement federal laws directed at -marijuana growers operating under

the auspices of "medical marijuana", and the USAO reluctance to prosecute FLOR, this investigation will be closed.

At the same time a decision was made that their operation was legal and would not be targeted, some young kids broke into their operation in Miles city and attempted to steal some of the marijuana plants. This was on September 17, 2009. The Miles City Police Department, while carrying guns, investigated and arrested these individuals. These un-indicted co-conspirators used weapons in furtherance of this grow operation in order to protect and defend it from criminals.

The Flors also went through great efforts at the local level to get this business approved in town. They are in the midst of a residential district and were announcing they were desiring to grow marijuana in their back yard and wanted a legal permit. Meetings were held as reported in the local paper, Exhibit B attached hereto.

It was after these assurances by local, state and federal authorities that a decision was made to join a group of individuals who were trying to pool their money together to start a large grow operation in Helena that would have greater quality control, production and year-round growing capability. Richard Flor had the income from other sources to help finance these individuals.

.....As Exhibits we will submit DVD's of Holder and Obama advocating no targeting of medical marijuana and that it should be reclassified to Schedule II drug, which of course means it could be prescribed by a physician. Also we have the chart for the Department of Human Services showing the growth in Medical Marijuana in Montana according to the nuances of the Federal Governments decisions on how to handle this issue. (Exhibit A).

Stuck in the middle are those like Richard Flor who so firmly believe much of what they are doing is legal and accepted by the federal government. In October of 2007 the Federal government made a purchase of 189.9 grams of Marijuana without arrest. They report Richard Flor just wanted to remain legal. The DEA decides in December 2009 to close the case. Yet when the parties file papers with the Secretary of State for an LLC and try to make a central grow operation they bust them while the Montana legislature is voting on changing the Medical Marijuana laws. If the federal government doesn't know when to open or close cases for prosecution, how is Mr. Flor to know?

.....It was our intent in filing pre-trial motions, to strike down as unconstitutional the government's approach to these prosecutions. They violate due process of law, are outrageous government conduct and violate the defendant's fundamental

constitutional right to present a defense. We argued a jury should get to decide whether there has been governmental estoppel by directly letting these people know they will not be targeted under federal law. As argued above, DCI agent Faycosh works directly with the DEA and is therefore a federal agent. He inspected this grow operation and let them know they were in compliance with the law. Attorney General Holder announced as long as they were in compliance with the law they would not be targeted.

It is our argument for sentencing that the government is estopped from trying to apply the Sentencing Guidelines when they have given every indication the conduct was lawful or would not be targeted.

....One manifestation of this principle is the defense of reasonable reliance on misleading government conduct, frequently referred to as “entrapment-by-estoppel,” which is based on the recognition that it is fundamentally unfair to prosecute one who has been led by government conduct to believe that his actions are authorized.

To establish the defense of misleading government conduct, a defendant must show, *first*, reliance on false information or misleading conduct by a federal official or agent authorized to render advice on the subject. *Second*, the defendant must show that his reliance was reasonable, and that he need not have made additional inquiries, in light of his interaction with law enforcement, state officials and attorneys. The defense is an exception to the usual rule that a mistake of law is not a defense to a crime. It is ordinarily resolved by the jury based on the facts presented at trial...but it may provide grounds for dismissal before trial where the undisputed facts establish the defense as a matter of law.