

Canada

PROVINCE OF BRITISH COLUMBIA

In the Provincial Court of British Columbia

(BEFORE THE HONOURABLE JUDGE F.E. HOWARD)

Vancouver, B.C.

September 15, 1999

REGINA

v

ALAN RAY MONTGOMERY DAVIS

PROCEEDINGS AT

PLEA AND SENTENCE

APPEARANCES:

M. ERINA

for the Crown

J. CONROY

for the Defence

D. TOY

Court Recorder

B. LADD

Transcriber

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1 MR. ERINA: Your Honour, Mark Erina appearing this morning
2 on behalf of the federal Crown. I have conduct of
3 numbers 4 through 7, the matters of Janet and Alan
4 Davis.

5 MR. CONROY: John Conroy appearing on this matter, Your
6 Honour. I'm just waiting for my clients. If we could
7 stand it down.

8 THE COURT: Yes.

9 MR. ERINA: I believe it will be for disposition this
10 morning.

11 MR. CONROY: That's correct.

12
13 (OTHER MATTERS SPOKEN TO)

14
15 MR. ERINA: Yes, Your Honour, if I can recall the matter of
16 Janet and Alan Davis.

17 MR. CONROY: John Conroy appearing, Your Honour, on behalf
18 of both Mr. and Mrs. Davis. The matter is for
19 disposition by Mr. Davis in relation to Count 1.
20 We're prepared to waive the putting of the election to
21 him. He elects to be tried by a provincial court
22 judge.

23 THE COURT: I have two Informations, a D and a DC
24 Information.

25 MR. CONROY: I think it's the DC.

26 MR. ERINA: That would be correct.

27 THE COURT: All right. I'll return the D Information to
28 the clerk. All right, 20th of August, 1998,
29 production of a controlled substance, cannabis
30 marihuana, contrary to 7(1).

31 MR. CONROY: That's correct. We waive re-reading and Mr.
32 Davis enters a plea of guilty to that charge.

33 THE COURT: All right. The election and plea will be
34 recorded.

35 MR. ERINA: Thank you, Your Honour. With respect to Janet
36 Davis, the Crown directs a stay of proceedings with
37 respect to all counts.

38 THE COURT: All right, you are free to leave, madam, if you
39 wish.

40 MR. ERINA: The facts on this matter, Your Honour, it's a
41 marihuana grow operation in a residential home, for
42 which Crown alleges Mr. Davis was a tenant. Briefly,
43 the matter has its genesis in a Crime Stoppers tip
44 that the police received on February 17th of 1998.
45 The police did some follow-up and that culminated in a
46 search warrant being obtained and executed on August
47 the 20th of last year.

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1 The address was 6708 Cypress, which is an address
2 in the City of Vancouver. At that address, there's a
3 residential home briefly described as a single-storey
4 structure with a basement. The grow operation itself
5 was found in the basement. When the warrant was
6 executed, both Mr. Davis and Janet Davis were found in
7 the premises.

8 The grow operation was split between two rooms.
9 There was 102 plants in total. In one room, there
10 were 65 marihuana plants ranging in height between
11 eight to 12 inches and those plants were in the late
12 budding stage. They were grown from clones and there
13 was the usual high voltage lights, along with ballasts
14 and capacitors in order to provide the necessary
15 electricity to those lights in order to function.

16 The second room contained 23 plants in the
17 vegetative stage, two to six inches in height and 14
18 plants in the vegetative stage, four to eight inches
19 in height and those plants, or at least part of them
20 were under florescent lights.

21 Just if it assists Your Honour, there is a
22 booklet of photos. They're not numbered, but I've
23 taken the liberty to put two tabs to illustrate -- the
24 first tab would be the marihuana plants in the first
25 room that I've indicated and the second tab is the
26 second room. I'll just provide -- my friend has a
27 copy and I'll also show him where the tabs are. Just
28 to put it into a visual context.

29 The police officer who attended also did a crop
30 evaluation and estimated that the plants would yield
31 one-half ounce of marihuana per plant and that would
32 yield at the pound level, 3.81 pounds and that would
33 have the value of -- I believe it's -- total value at
34 the pound level of sale, \$9,562 or at the ounce level,
35 51 ounces at \$250 per ounce, and that would yield
36 \$12,750 or at the gram level, 1,453 grams at \$10 a
37 gram for \$14,535 in value. Oh yes, and also the value
38 of the equipment was estimated at \$3,000.

39 Also the police officers also estimated that a
40 heavy marihuana user apparently consuming an estimated
41 two grams of marihuana per day, there would be 363
42 days of usage at that rate for each of two people, so
43 there is a fairly substantial amount of marihuana
44 that's present. And finally that the plants were
45 grown from clones, so certainly it's not by any
46 stretch the most sophisticated marihuana grow
47 operation but it does have the usual components to add

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1 a little touch of automation, i.e., the timers --

2 THE COURT: They don't look very healthy.

3 MR. ERINA: That was my --

4 THE COURT: Or is that the light --

5 MR. ERINA: That was my first impression, Your Honour, but

6 I think that the plants in the first tab, I think a

7 lot of that is bud. I think, according to the police

8 description, these plants were in the late budding

9 stage and were essentially ready to be harvested. I

10 had the same impression when I looked at the plants,

11 but I think a lot of that is bud.

12 MR. CONROY: My understanding is that the officer or that

13 Mr. Davis asked the officer why the plants were so

14 small because he didn't understand himself.

15 MR. ERINA: Well, I think there's some light that can be

16 shed on that from the report that was provided to my

17 office by the officer that was going to give the

18 expert evidence in this matter. Apparently, this -- I

19 can read it, quote:

20

21 A grow operation set up in this manner

22 is capable of yielding at least six

23 crops per year. Plants are put into

24 the budding stage at an earlier time

25 than is usual, which will result in

26 smaller plants with less yield but more

27 crops can be grown and harvested in

28 this fashion.

29

30 So that may shed some light. So it seems like an

31 alternative, you get bigger plants, greater yield but

32 less in a given time frame, versus little plants,

33 smaller yield, more crops.

34 MR. CONROY: I can assure the court that Mr. Davis didn't

35 know that.

36 THE COURT: It sounds like more work that way.

37 MR. ERINA: Essentially those are the facts. Oh, and of

38 course, when the police executed the warrant, they

39 found a series of documents that, in my respectful

40 submission, and I'm sure my friend will make the

41 admission, Mr. Davis was the resident. Those are the

42 Crown's submissions on the facts. I don't know if my

43 friend has anything to say before I --

44 MR. CONROY: No, with respect to the facts, we agree --

45 well, I have some materials for the court and I'll

46 just hand those up quite quickly.

47 Essentially, Mr. Davis was doing this because of

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1 a medical condition and the name of that medical
2 condition is -- you've got two books, one says,
3 "Medical Background," Your Honour, and it's
4 polymyalgia rheumatica and he heard -- well, to give
5 you the complete history, he'd seen over the years,
6 he'd lived up at Whistler for many years and he'd seen
7 a number of people using marihuana at different times.
8 It's something that hadn't been within his experience
9 but he saw that it didn't seem to be causing them any
10 particular problem.

11 He then read in the papers and elsewhere about
12 people using it for medical purposes, so he got some
13 books and he basically did this himself, for himself.
14 He had no idea about shelf life and these sorts of
15 things. He thought that if he grew a reasonable
16 amount, he'd be able to store it up. He wouldn't have
17 to go to the black market and he'd be able to then use
18 it for, essentially to ease the pain of the medical
19 problem that he had.

20 And that's essentially what he was doing. He
21 didn't know what problems or why his plants were so
22 small, that's why he asked the officer that. So it
23 was surprising to us to read that there may be some
24 people who do this on a more regular basis --

25 THE COURT: On purpose.

26 MR. CONROY: -- who know that keeping them smaller at an
27 earlier stage results in more. But I think the photos
28 do show lots of yellow leaf and so on which would
29 indicate that it wasn't that sophisticated an
30 operation.

31 Now, perhaps before I go into the medical, let me
32 give you just some general background in terms of Mr.
33 Davis, if I can. He lives on Cypress Street here in
34 Vancouver. He's now 72 years old. Born May 26th,
35 1927 in Montreal, Quebec. Came to Vancouver in 1929,
36 lived up in the Whistler area from 1968 to 1988.

37 His wife, Janet, is here in court. They've been
38 married since August 2nd, 1988. She's a homemaker and
39 also runs the books for their own company, in effect,
40 Jinell (phonetic) Design Services Limited. He's
41 essentially self-employed as a scenic painter in the
42 film industry, has been doing that since 1970. Mrs.
43 Davis does the books and Mr. Davis does the scenic
44 painting and works his -- he doesn't make very much
45 money. He advises that now, with various guaranteed
46 income supplements and so on, he's making about \$1,100
47 per month and apparently that comprises his CPP and

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1 OAP, plus this supplement. So that apparently put him
2 \$40 over qualifying for legal assistance.

3 He has been trying to build up assets so he can
4 shift from having to still go and work from time to
5 time, doing scenic painting, so he can just do silk
6 screen painting and things of that kind from home.

7 Many years ago, he fractured his leg in 10 places
8 and it started acting up again in August of '98 and
9 this is when very suddenly he developed this
10 polymyalgia rheumatica and -- oh, I'm sorry, he
11 developed that in July of '94 and had this leg react
12 over the period of time until August of '98 when he
13 was doing the growing and he was being treated by a
14 Dr. Mildrum (phonetic) with something called
15 pregnazone, and I've set out at tab 5 of the medical
16 material what pregnazone is all about and I'm not
17 going to take you through that in detail, other than
18 to show you simply that at page 6, it shows a number
19 of adverse reactions to it and it just generally
20 describes what pregnazone does. One of the things is
21 that they start you with a large dose and then they're
22 supposed to wean you off it over a period of time.

23 Now, Dr. Mildrum had advised Mr. Davis in a
24 casual conversation that he did work for the RCMP from
25 time to time and so Mr. Davis was scared to ask him to
26 give him a prescription or to give him some sort of
27 letter and so he didn't disclose to Dr. Mildrum that
28 he was doing this. He later saw a Dr. Nixon and
29 again, I'm instructed that he, because he knew this
30 was unlawful, he wanted to keep it very quiet and
31 private to himself and he didn't think that he'd get a
32 good reaction from the doctor in doing it, so he had
33 read the other information about it and he was just
34 going to do it on his own, basically. So he hasn't
35 applied for a prescription, or he hasn't got a letter
36 from a doctor, nor has he sought an exemption from the
37 Minister under the **Regulations**.

38 Since being charged with this matter, he has
39 stopped doing it. It's caused him to fear being
40 involved in any illegal activity even more than
41 before, but fortunately, he's now come off the
42 pregnazone and the side effects that he was
43 experiencing, which had partly motivated him to do
44 this have stopped and he's on another drug. As he
45 says to me, he's 72 years old so he's not sure what
46 aspects of the stiffness and pain that he still
47 experiences is from old age and what is from this

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1 problem, but this new drug that the doctor is giving
2 him seems to be working so he's not continuing to do
3 this and hasn't been going, for example, to the
4 Compassion Club to get a supply or anything like that.
5 He's just taking the drug that the doctor's
6 prescribed.

7 He has a grade 12 education from Lord Byng. He
8 graduated from the Vancouver School of Art in the late
9 40s and has lots and lots of work experience. He
10 served in the Princess Patricia Light Infantry in the
11 Canadian Armed Forces in 1950 on and served in Korea
12 from August of 1950 to October, 1952. He was first a
13 private first class, then a lance corporal, then
14 private first class. He was awarded the Presidential
15 Unit Citation, which is a United States award.
16 Apparently, he's the only -- that unit is the only
17 Canadian unit to have that award.

18 He has children from a previous marriage and from
19 this marriage. There are a total of five children,
20 all living in British Columbia and all carrying out
21 various occupations throughout British Columbia. I
22 won't go into the detail.

23 His parents, his father was Henry Davis, lived
24 here in Vancouver. He was a physician. He was a
25 major in World War II and ran a hospital in the United
26 Kingdom for the Canadian Armed Forces. He died in
27 January of 1969. His mother died of cancer. She was
28 the president of the B.C. Potter's Guild in 1977.

29 There are a number of siblings and he's the
30 youngest of a line of six children. He has absolutely
31 no criminal record whatsoever and so this is his first
32 appearance before the courts of any kind.

33 Now, I didn't know that Your Honour would be
34 sitting on this matter this morning and I had included
35 in the case book a number of authorities, including
36 the **Kane** (phonetic) decision. For your information,
37 it's now to be argued in the Court of Appeal on
38 November 17th and 18th.

39 THE COURT: Okay.

40 MR. CONROY: The **Clay** (phonetic) matter, which is the
41 Ontario equivalent at tab 2 and it is to be heard in
42 the Ontario Court of Appeal October -- mid-October
43 sometime. And then jumping down to 6, 7 and 8, I
44 simply included the **Parker** case, which was, I think
45 Your Honour was familiar with that one, it was the
46 epilepsy case, and then the two **Wakeford** decisions.
47 The first one which, he was the AIDS patient who the

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1 court said that he had to apply for the s. 56
2 exemption and then it came back before the court
3 because the government didn't have any protocol to
4 deal with exemptions, and so the court granted him,
5 like Parker, a Constitutional exemption pending the
6 Minister granting an exemption and ultimately, I
7 understand, Mr. Wakeford does have now a permit under
8 s. 56 of the **Controlled Drugs and Substances Act**.
9 He's one of, I think, three people. I understand that
10 there's a large number of applications pending but
11 there haven't been any decisions on any of the other
12 ones.

13 So I won't, because the court's familiar with all
14 of that, I won't go into them. I'll just refer you to
15 -- **Sizlowsky** (phonetic) at tab 3, **Fallowfield** and
16 **Leyip**, all of which are conditional discharge cases,
17 and I'll come back to those in a minute.

18 If I can just quickly touch on the medical before
19 doing that. I won't belabour this because I know the
20 court again has heard a lot of evidence about this
21 sort of thing in that **Kane** case. So essentially what
22 I've done at tab 1 is just summarized the nature of
23 the illness that he had, this polymyalgia rheumatica.
24 How it's an immune system abnormality and this giant
25 cell arthritis, which sometimes comes along with it.
26 How it's unclear how this arises and I've set out at
27 the bottom of that first page the symptoms that one
28 experiences, and those were the kinds of things, going
29 over onto the next page, that Mr. Davis was
30 experiencing.

31 I've included a section on who is at risk and
32 it's mostly in older people. There's no known
33 prevention and I've essentially just gone into detail
34 for you in terms of the nature of it and the types of
35 treatment, and you'll see at the bottom of the page,
36 it says, "What are the treatments," the reference to
37 pregnazone as being essentially the usual or main drug
38 and on the next page, how one is supposed to be weaned
39 off it on a rapid basis.

40 Then also on that next page set out some of the
41 potential side effects, the types of side effects that
42 a lot of people get from it, and as I've said,
43 fortunately, Mr. Davis is finding that he's not
44 suffering from a lot of those things now, having
45 stopped the pregnazone, so it really is there to show
46 you what he was going through, which was part of what
47 motivated him to get involved in what he has.

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1 The next tab, tab 2, I've set out --
2 THE COURT: Can I ask you --
3 MR. CONROY: Sorry.
4 THE COURT: -- a question on the illness. I'm just looking
5 at the symptoms.
6 MR. CONROY: Yes.
7 THE COURT: Is there some kind of blood test that lets you
8 know that you have this? As I read the symptoms --
9 MR. CONROY: My understanding --
10 THE COURT: -- I'm sorry, I'm looking at the symptoms and
11 I'm thinking, gee, I have just about all of these.
12 MR. CONROY: If you look at the top of the next -- not the
13 next page but the page following, it says he has an
14 elevated arithrocyte red blood cell sedimentation
15 rate.
16 THE COURT: Okay.
17 MR. CONROY: So it's my understanding that that's one of
18 the things that they do to check for it. It's one of
19 the factors which gives an indication. But apparently
20 the doctors, it's difficult to know for sure if it's
21 that particular problem and so they have to do a
22 number of things to try and -- because my
23 understanding is there's a number of similar types of
24 rheumatic rheumatoid arthritis types of problems. So
25 that's my understanding, that that's one of the main
26 ways.
27 You'll see at tab 2, there's the medical
28 certificate. The writing is hard to make out but
29 that's Dr. Mildrum's indication that that's what he
30 had and at tab 3, there's a further one that can maybe
31 be read a little better. "Be advised that," I can't
32 read that one word but it says, "Has polymyalgia
33 rheumatica." So that confirms the diagnosis by Dr.
34 Mildrum.
35 At the next tab, we simply set out the pregnazone
36 that he was getting and then how it was reduced.
37 Actually, that first line starts in '94 and takes you
38 through to 1998 and then I've set out also this
39 glucasimine sulphate which is what he's getting now,
40 which seems to be working, as he says, with good
41 results.
42 At the next tab, I simply included again, it was
43 a copy of a prescription or diagnosis in terms of his
44 problem but then there's some records that he's kept
45 and these were kept in July of 1998 through into
46 August, which was just prior to the time when, of
47 course, he was caught and arrested and charged. I've

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1 then set out the material on pregnazone and I've
2 referred you to that and then at tab 6, and this is a
3 matter that's arisen since **Kane**, Your Honour. You may
4 recall, there was some scepticism about medical
5 marihuana, and so the president of the United States
6 said to the Royal Academy of Sciences, and in
7 particular, the Institute of Medicine, go check it
8 out, I think expecting that it would come back again
9 saying this is a hoax.

10 Well, they came back and they said no, it isn't a
11 hoax, and so I've just included the summary for you to
12 show you the history of that, and if you looked under
13 "Executive Summary", for example, the end of the third
14 paragraph, it says:

15
16 The study team found substantial
17 consensus among experts in the relevant
18 disciplines on the scientific evidence
19 about potential medical uses of
20 marihuana.

21 And if you go over to --

22 THE COURT: Sorry, where is that from?

23 MR. CONROY: It's the end of the third paragraph, the
24 paragraph starting, "Can marihuana relieve health
25 problems?" Under "Executive Summary."

26 So if you go to the next page, "Effects of
27 Isolated Cannibinoids," under "Cannibinoid Biology,"
28 you'll see towards the end of that first paragraph,
29 they say:
30

31
32 That all changed with the
33 identification and characterization of
34 cannabinoid receptors in the 1980s and
35 1990s.

36
37 You may recall Dr. Kallant (phonetic), I think, who
38 talked about this is in **Kane**, about the receptor sites
39 and the discovery of receptor sites. It then goes on,
40 and I only refer you to the next two points, which
41 talk about it having:

42
43 ... a natural role in pain modulation
44 and a natural role in immune systems
45 that is likely multi-faceted but
46 remains unclear.
47

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1 So it seems that this is what was helping Mr. Davis,
2 because of the nature of his type of illness, which
3 involves an immune system deficiency.

4 So at the top of the next page, there's the
5 conclusion about the cannabinoid receptors. There's a
6 section on the efficacy of cannabinoid drugs and
7 instead of reading that paragraph to you, but
8 particularly the second paragraph under "Efficacy"
9 talks about the different things that it helps and
10 particularly pain relief. But if you look at the
11 conclusion at the top of the next page, I think that
12 really summarizes it.

13
14 Scientific data indicate the potential
15 therapeutic value of cannabinoid drugs,
16 primarily THC for pain relief, control
17 of nausea and vomiting and appetite
18 stimulation. Smoked marijuana,
19 however, is a crude THC delivery system
20 that also delivers harmful substances.

21
22 So, I won't take you through all the rest of it.
23 I draw your attention to the "Gateway Drug" section
24 only because at the bottom, that last paragraph says:

25
26 The existing data is consistent with
27 the idea that this would not be a
28 problem if the medical use of marijuana
29 were as closely regulated as other
30 medications with abuse potential.

31
32 So essentially, the Institute of Medicine found that,
33 in fact this is indicated under the heading
34 "Physiological Risks," it says:

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36 However, except for the harms
37 associated with smoking, the adverse
38 effects of marijuana use are within the
39 range of effects tolerated for other
40 medication.

41
42 So they found it wasn't really a gateway drug and that
43 it did have beneficial medical aspects to it.

44 And finally, I included from Dr. Drinspoon's
45 (phonetic) book at tab 7, the portion dealing with
46 chronic pain and I won't go into it because I think
47 Your Honour is probably familiar with that as well.

1 He basically refers to a number of studies in 1975
2 including Canadian studies and then there is some
3 anecdotal evidence from different people who have been
4 suffering from different problems who have found that
5 this works for them. So that essentially is the
6 situation.

7 The defence is asking Your Honour then, in the
8 unique circumstances of this case, to consider giving
9 Mr. Davis a conditional discharge. I'll draw your
10 attention to the **Sizlowski** case at tab 3. That was
11 the decision of your sister Judge Godfrey. She was
12 referred to as His Honour in one of the documents, I
13 think I've fallen into that mistake.

14 The **Sizlowski** case was the case involving Mr.
15 Sizlowski who had wide-angle glaucoma. He was growing
16 marihuana for that in conjunction with all the
17 medications he was getting from his doctor. His
18 doctor knew that he was doing it. They did a little
19 test where he went off his other medication and they
20 found that he had to stay on his other medication, so
21 what the marihuana was doing was stimulating his
22 appetite, stopping the nausea and helping with the
23 side effects from the other drugs and he had to go
24 through quite a regime in order to do it.

25 So if you look at page 2, my submission there, I
26 think, I make a submission there with respect to
27 **Leyip**, which is the decision of Mr. Justice Toy and I
28 make a submission with respect to **Parker** and so on and
29 the unique circumstances, and the judgement starts at
30 page 4.

31 You see, he was 44, he had no criminal record.
32 It said a large quantity. My recollection is there
33 weren't as many plants in number, but they were larger
34 and you'll see the estimated value there was 35 to 50
35 thousand dollars. Here's it's 14,000 at the gram
36 level, 9,000 at the pound level. It was a guilty plea
37 and it explains then, his situation and all of the
38 material we put before the court and there's a
39 reference to **Parker** at the bottom of the page and what
40 happened there.

41 Now, the indication there was that **Parker** was
42 simple possession; I think that's an error. **Parker**
43 was possession for the purpose of trafficking and
44 simple possession, as I recall. The court also
45 considered **Leyip** and says it's similar circumstances,
46 absent the volume and the court granted Mr. Sizlowski
47 a one year conditional discharge with the sole

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1 condition that he keep the peace and be of good
2 behaviour and that was that.

3 Now, I've included **Fallowfield** at the next tab,
4 which is our Court of Appeal's decision on conditional
5 discharges. There's quite an extensive summary of
6 various cases starting at page 453. Then at page 454,
7 the court looks at the various factors in terms of the
8 exercise of discretion.

9 In my submission, all of those essentially apply
10 here to Mr. Davis' situation. In my submission, it
11 would clearly be in his best interests not to get a
12 criminal record and in my submission, when it's done
13 for this type of motivation, not for commercial
14 purposes, not for a commercial profit and in fact to
15 avoid the black market and to avoid having contact and
16 so on and doing it in order to help oneself in a
17 medical way, in my submission, a person like Mr.
18 Davis, of previous good character of many years,
19 clearly is not a person who fits in to the usual type
20 of case that comes before the court doing this kind of
21 thing.

22 So in my submission, this is a unique and
23 exceptional type of a situation and that a conditional
24 discharge should be considered.

25 I will quickly refer you to the **Leyip** case at tab
26 5. There a 37 year old received a conditional
27 discharge. It was upheld, I should say, in the Court
28 of Appeal. He pled guilty and he had actually two
29 charges, a cultivation and a simple possession. He
30 was given a conditional discharge and six months
31 probation on the first and an absolute discharge on
32 the second. He had 20 plants outside his home, one in
33 a greenhouse, 54 that were three feet high in his
34 basement along with the usual paraphernalia, and he
35 was using it to make oil to apply to his skin for a
36 severe affliction of psoriasis he had had since 1984.
37 I was unable, and I've searched trying to get the full
38 reasons for this case, but it's eluded me so you've
39 got two sort of summaries there, the second one being
40 from the internet, and it indicates 74 marihuana
41 plants with a weight of 23 pounds, so of course that's
42 more than here. The total weight here was 3.18 pounds
43 of bud, as I recall from my friend's submission and
44 from the materials.

45 So, given those circumstances and given his
46 financial circumstances, he certainly could pay a
47 fine, but it would have to be over a period of time,

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1 but in my submission, this is the kind of case where
2 Mr. Davis ought not to get a criminal record. If the
3 court was prepared to grant him a sanction similar to
4 that received by Mr. Sizlowski and of course, the
5 matter will remain as a record for three years until
6 -- if the court was to impose a one year conditional
7 discharge, then three years from the end of that year,
8 in other words, four years from now, then the police
9 computer and so on would be purged and he wouldn't
10 have a record. So he would have an actual record
11 there for the next four years. In my submission, that
12 would be an appropriate disposition in this case.
13 Those are my submissions.

14 MR. ERINA: I don't think there's a lot I can say, Your
15 Honour. My original position was a fine but I've
16 canvassed with my friend and I don't think that that's
17 feasible in this particular instance, given Mr. Davis'
18 financial circumstances. The Crown's position --

19 THE COURT: You don't have to fight everything, you know.

20 MR. ERINA: I'm not going to oppose a conditional discharge
21 in these circumstances.

22 THE COURT: All right.
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Sentence (Howard, F.E., P.C.J.)

1 THE COURT: Mr. Davis is before me having pled guilty to
2 one count of unlawful production of marihuana,
3 contrary to s. -- you can have a seat, sir. This may
4 take me a few minutes. Contrary to s. 7(1) of the
5 **Controlled Drugs and Substances Act.**

6 If I may deal briefly with the circumstances,
7 pursuant to a Crime Stoppers tip, a search warrant was
8 executed upon the accused's residence. The police
9 found what I will describe as a fairly minor grow
10 operation going on in the basement.

11 The total number of plants was 102. They were in
12 varying sizes, but none of them were particularly
13 large, the largest reaching about 10 inches, even
14 though it was in the late budding stage. Estimates of
15 production value range from 9,500 to \$14,000,
16 depending on whether one might want to sell the drugs
17 at the pound level or at the gram level. The total
18 weight was 3.81 pounds.

19 Just from looking at the photographs, the
20 operation does not appear to be a particularly
21 sophisticated one and based on some questions from the
22 accused to the police when the police searched the
23 residence, he himself did not appear to be
24 particularly knowledgeable about his operation or why
25 his plants were so small.

26 I have talked about the value of these plants on
27 a sale basis. The material before me and submissions
28 before me indicate that this particular operation did
29 not exist in order to produce marihuana for the
30 purpose of sale to other persons. It existed so that
31 Mr. Davis could use the product to self-medicate
32 himself for a particular illness for which he has been
33 diagnosed called polymyalgia rheumatica. This is
34 described in the materials before me as an auto-immune
35 syndrome. Its symptoms include hip pain and hip
36 stiffness, shoulder pain and stiffness, neck pain and
37 stiffness, muscle pain, fever, weight loss, anemia,
38 fatigue, general ill feeling, face pain and other
39 joint pain.

40 There's no question that Mr. Davis suffered from
41 this particular ailment. He was placed on the usual
42 medication, pregnazone. That is the medication which,
43 like many of its kind, is quite powerful and has
44 significant side effects that are particularly
45 unpleasant for those who consume the drug. I have
46 before me an article on pregnazone and at page 6 of
47 that article, there's a list of adverse reactions

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1 which are intimidating in the extreme. What I can
2 say, based on the material before me regarding the
3 medical uses of marijuana, it would appear that the
4 medication that was prescribed for this particular
5 individual was likely infinitely more toxic to him
6 than any marijuana that he might be consuming. Still,
7 the use of marijuana, in the absence of a specific
8 exemption, is illegal.

9 To conclude this aspect of my considerations, I
10 am satisfied that Mr. Davis suffered from a
11 significant medical ailment and that his use of
12 marijuana to alleviate his difficulties, while being
13 illegal was, based on the materials before me, not
14 entirely unreasonable. There is certainly support for
15 the idea that marijuana is of medical benefit in
16 certain circumstances. In particular, if I may refer
17 to the "Marijuana and Medicine, Assessing the Science
18 Basis" report from the National Academy of Press
19 Institute of Medicine at page ES.3, and I quote:

20
21 At this point, our knowledge about the
22 biology of marijuana and cannabinoids
23 allows us to make some general
24 conclusions. Cannabinoids likely have
25 a natural role in pain modulation,
26 control of eating and memory.

27
28 And later:

29
30 The natural role of cannabinoids in
31 immune systems is likely multi-faceted
32 and remains unclear.

33
34 I am satisfied, on the circumstances before me that
35 this gentleman had no interest whatsoever in selling
36 his product but was growing it only for purely medical
37 purposes.

38 If I may turn briefly to his life, he's 72 years
39 old. He's led an otherwise exemplary life. He has
40 five children himself. He's married and has been for
41 many years. He graduated from Lord Byng and the
42 Vancouver Art School many years ago. He worked
43 productively throughout his life. He has absolutely
44 no criminal record. His life experience includes a
45 stint with the Princess Pat Infantry and service in
46 Korea.

47 The question is, what is the appropriate penalty

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1 in these particular circumstances. I am satisfied
2 that the facts before me are unusual and unique. I'm
3 satisfied that this gentleman was not interested in
4 being a criminal or engaging in a criminal enterprise
5 or engaging in crime for the purpose of profit. He
6 was simply trying to cope with a debilitating medical
7 problem in the best way he knew how. By that, I mean
8 by using some form of medication that was not almost
9 as destructive as the illness itself.

10 He has recognized and acknowledges that what he
11 did was illegal. He has stopped doing it. He has
12 come off the pregnazone and he's now on less
13 disruptive medication. In my view there is next to no
14 prospect that he will be back before the courts with
15 any further charges of any kind. It would clearly be
16 in his best interest to receive a discharge. It would
17 not be contrary to the public interest in these
18 circumstances, given the unique purpose for which this
19 gentleman engaged in the cultivation operation.

20 Accordingly, I'm prepared to grant him a
21 conditional discharge. This charge arises from August
22 of 1998 which is more than a year ago. In the
23 circumstances and given the small quantity involved,
24 I'm going to place him on probation for a period of
25 six months. The terms of the probation order are as
26 follows, to keep the peace and be of good behaviour.
27 Abide by that term and at the end of the six months,
28 the discharge will become absolute and no criminal
29 record will be registered against your name.

30 You will have to attend at the registry to sign
31 the probation order before you leave the building.

32 MR. CONROY: Your Honour.

33 MR. ERINA: Just one last matter of housekeeping, Your
34 Honour. I asked Your Honour for forfeiture of the
35 grow related equipment.

36 MR. CONROY: We consent to that.

37 THE COURT: All right, there will be such an order of
38 forfeiture.

39 MR. ERINA: Thank you. Oh, Count 2, with respect to Alan
40 Davis, Crown directs a stay of proceedings. And of
41 course, also on the D, the original D Information, all
42 counts against Alan Davis.

43
44 (PROCEEDINGS CONCLUDED)
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