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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

MORGANA MCNELIS,

Defendant and Appellant.

B230425

(Los Angeles County
Super. Ct. No. LA063811)

APPEAL from a judgment of the Superior Court of Los Angeles County. Joseph A. Brandolino, Judge. Affirmed.

Margolin Law Office, Allison B. Margolin and J. Raza Lawrence for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Assistant Attorney General, Michael Johnsen and Taylor Nguyen, Deputy Attorneys General for Plaintiff and Respondent.

Defendant and appellant Morgana McNelis (defendant) appeals her conviction of maintaining an unlawful marijuana dispensary. Defendant challenges the validity of the search warrant that led to her arrest and conviction, arguing that it was issued without probable cause. Defendant contends that the supporting affidavit omitted material information that would have altered the magistrate's probable cause determination. We reject defendant's contentions, conclude that the warrant was issued upon probable cause, and affirm the judgment.

BACKGROUND

1. Procedural Background

Based upon evidence discovered as a result of a search conducted pursuant to a warrant, defendant was charged with maintaining a place for selling or using controlled substances, in violation of Health and Safety Code section 11366 (count 1).¹ Defendant was charged in count 2 with possession of marijuana for sale in violation of section 11359. Defendant moved to quash the search warrant and suppress the evidence collected. The trial court denied the motion. Later, defendant entered into a plea agreement whereby she pled guilty to count 1 and count 2 was dismissed. The trial court placed defendant on three years' of formal probation, conditioned upon serving two days in jail and other conditions. The court awarded defendant two days of presentence credits, and imposed mandatory fines and fees. Defendant obtained a certificate of probable cause and filed a timely notice of appeal.

2. Affidavit supporting the search warrant

In November 2009, a magistrate issued a warrant to search the premises of Green Mile Caregivers (GMC), as well as defendant's residence and person. Los Angeles County Police Officer Matthew Stuart executed the affidavit supporting the issuance of the warrant. In addition to information about his training, experience and expertise in the identification of controlled substances and their use and trafficking, Officer Stuart

¹ All further statutory references are to the Health and Safety Code, unless otherwise indicated.

described his familiarity with the medical marijuana laws and the extent of his training in the investigation of medical marijuana dispensaries.

Officer Stuart stated that on October 21, 2009, he received information from a citizen that GMC was selling marijuana illegally.² The citizen reported that individuals would enter GMC, purchase marijuana and then leave. The citizen further reported that GMC was near a high school and young males frequented the dispensary. Based on this information Officer Stuart formed the opinion that GMC was “just a money-making enterprise that sells marijuana.”

Officer Stuart described the investigation, relating that various officers conducted surveillance of GMC on two separate days during which they observed defendant as she locked up at the end of the business day, drove home, and opened GMC for business the next morning. Officer Stuart concluded that defendant was operating GMC.

A confidential informant (CI) was engaged to make a “controlled narcotics buy” at GMC. The CI had no health issues, was not under the care of any medical professional for any ailment or medical condition, did not need a caregiver for any medical condition, was not a member of any “marijuana cooperative or collective,” and had not designated GMC or any owner or employee of GMC as a primary caregiver. Also, the CI had never met anyone associated with GMC prior to the controlled buy and GMC had never assumed responsibility for the housing, safety, or health of the CI.

For the first controlled buy, the officers determined that the CI had no contraband in his possession and then the CI rang the doorbell and was admitted by a GMC employee and shown into a waiting room. After asking to buy \$40 worth of marijuana, the CI showed the employee a medical marijuana prescription, which was photocopied and returned to the CI. The employee then led the CI into the room where the marijuana was kept, selected three strains of marijuana plus a free sample, and packaged the

² The citizen was not identified. Officer Stuart stated that the citizen wished to remain anonymous due to fear of retaliation for making the complaint.

different strains of marijuana separately. The CI paid \$40 in cash, left the premises with the marijuana, and turned it over to the officers. The transaction took about 10 minutes.

One week later a second controlled buy that also lasted about 10 minutes was conducted. The CI was searched as before and went to GMC where he told an employee that he wanted to buy \$40 worth of marijuana. The employee took the CI first into a waiting room and then into the room where marijuana was kept, selected two different strains of marijuana and a one-gram free sample, and packaged them separately. The CI paid \$40 for the marijuana, left GMC with the marijuana, and turned it over to the officers.

According to Officer Stuart the CI never performed any duties at GMC and did not do so during the two controlled marijuana buys, nor was he asked to help run GMC, provide marijuana for GMC, or assist in cultivating marijuana for the benefit of GMC. “The CI simply went to [GMC], paid cash for marijuana, and left.”

Officer Stuart concluded from the controlled buys that GMC “does not ask their members/clients/patients/customers to assist in the distribution or the cultivation of marijuana for the collective, nor do they ask them to do any other duties to assist in the running of the collective as might be expected if it was a true collective.” Based on his investigation, training, and experience, it was Officer Stuart’s opinion that GMC was not acting as a caregiver for its members but was engaged in selling marijuana for profit.

3. Defendant’s motion

Prior to the preliminary hearing, defendant filed a motion to traverse the search warrant and to suppress evidence. Since the motion was not heard at the time of the preliminary hearing it was refiled after the information was filed. Exhibits were attached to the motion but no supporting declaration or affidavit was included.

The motion was made on the grounds that the magistrate who signed the warrant was misled by errors or omissions in the affidavit and issued the warrant without probable cause. Defendant argued that the following material and exculpatory facts were intentionally or recklessly omitted from the affidavit: GMC claimed to be a valid medical marijuana dispensary; it distributed marijuana only to qualified patients; all

members were required to join the collective and sign a written collective agreement; GMC had filed articles of incorporation as a nonprofit mutual benefit corporation, and had never made a profit; and GMC had obtained all relevant permits.³ At the hearing on defendant's motion, the parties stipulated that during one of the controlled buys, the CI signed an agreement provided by GMC, designating GMC as his caregiver and joining the collective as a member.

The trial court found that the warrant had been issued upon probable cause, that the allegedly omitted facts were not material, and that defendant had failed to meet her burden to show that the officer had any knowledge of such facts. The trial court denied the motion.

DISCUSSION

I. Relevant legal principles

The maintenance of any place for the purpose of unlawfully selling, giving away, or using marijuana is prohibited (§ 11366), and the possession of marijuana for sale is a felony (§ 11359). The Compassionate Use Act of 1996 (CUA) gives individuals the right to obtain and use marijuana when appropriate for medical purposes and recommended by a physician. (§ 11362.5, added by voter initiative, Prop. 215, Gen. Elec. (Nov. 5, 1996).) The CUA created partial immunity from criminal liability for the possession and cultivation of marijuana by qualified patients and their primary caregivers. (§ 11362.5, subd. (b)(1)(A); *People v. Mentch* (2008) 45 Cal.4th 274, 277 (*Mentch*).) Section 11362.5 does not provide immunity from arrest based upon probable cause. (*People v. Mower* (2002) 28 Cal.4th 457, 468-469.)

³ The motion was not supported by a declaration or affidavit. A copy of the articles of incorporation was attached to the motion, as was a blank copy of a GMC membership agreement. Also attached were copies of what appear to be business licenses and retail permits which were not authenticated. One is entitled, "City of Los Angeles Tax Registration Certificate"; another is a "Seller's Permit" issued by the Franchise Tax Board; and the final two are tobacco retailer's permits, one issued by the State Board of Equalization, and the other issued by the City of Los Angeles.

In 2003, the “Medical Marijuana Program” (MMP) was enacted to create a voluntary program for the issuance of medical marijuana identification cards to qualified persons. (§ 11362.7 et seq.) Patients and their primary caregivers are not subject to arrest for possession, transportation, delivery, or cultivation of medical marijuana so long as they are not in violation of the provisions of the MMP. (§ 11362.71, subd. (e).) Nothing in the CUA or MMP permits the cultivation or distribution of marijuana for profit. (§ 11362.765, subd. (a).)

A patient may not provide marijuana to another individual with the expectation of immunity from prosecution, unless he or she qualifies as the individual’s primary caregiver. (See *Mentch, supra*, 45 Cal.4th at pp. 280-287.) However, qualified patients and their designated primary caregivers may form medical marijuana cooperatives or collectives for such purposes. (§ 11362.775.) Lawfully organized cooperatives and collectives may be exempt from criminal liability under section 11366 only if they operate without profit and comply with the law. (§ 11362.765, subd. (a).) Further, any cooperative or collective that operates as a storefront or mobile retail outlet must comply with local ordinances regulating such operations. (See § 11362.768.) Cooperatives or collectives may provide marijuana only to persons who are “actual members.” (*People v. Hochanadel* (2009) 176 Cal.App.4th 997, 1018 (*Hochanadel*); see also *County of Los Angeles v. Hill* (2011) 192 Cal.App.4th 861, 869-870.)

There is no legal definition for a medical marijuana collective or cooperative, but indicia of a lawful operation include operating openly with formal, documented practices and procedures for membership and verification of eligibility of cooperative members, a system of membership fees or reimbursement for costs through donations, and volunteer efforts by members to work for the collective. (*Hochanadel, supra*, 176 Cal.App.4th at p. 1017; see *People v. Urziceanu* (2005) 132 Cal.App.4th 747, 785-786.)

In addition, the California Attorney General’s Guidelines for the Security and Non-diversion of Marijuana Grown for Medical Use (Aug. 2008) (http://ag.ca.gov/cms_attachments/press/pdfs/n1601_medicalmarijuanaguidelines.pdf [as of Feb. 23, 2012]) (hereafter Guidelines) are instructive. (*Hochanadel, supra*, 176

Cal.App.4th at pp. 1009-1010; see *Mentch*, *supra*, 45 Cal.4th at p. 285, fn. 6; Guidelines, § IV, pp. 8-11.)⁴ The Guidelines compare the terms to statutory cooperatives.

(Guidelines, § IV.B.1, p. 8.) For example, under the Corporations Code, a cooperative is a lawfully organized, democratically controlled, nonprofit businesses conducted for the mutual benefit of its members. (*Ibid.*; Corp. Code, §§ 12201, 12311, subd. (b).)

Agricultural cooperatives share similar requirements. (Food & Agr. Code, §§ 54001 et seq., 54033.) The Guidelines compare the term collective to the dictionary definition of “a business, farm, etc., jointly owned and operated by the members of a group.” [Citation.]” (Guidelines, § IV.A.2, p. 8.)

Applying such comparisons, the Attorney General concluded that cooperatives and collectives should not sell marijuana to nonmembers or purchase from nonmembers, but should only facilitate or coordinate the collaborative efforts of and transactions between patient and caregiver members, including the allocation of costs and revenues. (Guidelines, § IV.A.2, p. 8.)

The Guidelines outline the practices that should be followed by a lawful collective or cooperative, including filing articles of incorporation, obtaining the appropriate business licenses and permits, and allocating costs and expenses. The Guidelines also list various indicia of unlawful operation, including the sale of marijuana to nonmembers. (Guidelines, § IV.C.2, p. 11.) The Guidelines warn that storefront dispensaries that “merely require patients to complete a form summarily designating the business owner as their primary caregiver -- and then offering marijuana in exchange for cash ‘donations’ -- are likely unlawful.” (Guidelines, § IV.C.1, p. 11.)

II. Probable cause

Defendant contends that Officer Stuart’s affidavit was insufficient to support the issuance of a search warrant, and contends that the trial court erred in denying her

⁴ Section 11362.81, subdivision (d), mandated the Attorney General to “develop and adopt appropriate guidelines to ensure the security and nondiversion of marijuana grown for medical use by patients qualified under the Compassionate Use Act of 1996.”

motion. In particular, defendant argues that the affidavit contained no information that would lead to a reasonable suspicion that GMC was not lawfully operating as a medical marijuana collective or cooperative.

A. Standard of review

No warrant shall issue except on probable cause. (U.S. Const., 4th Amend.; Cal. Const., Art. 1, § 13.) Probable cause exists when the affidavit supporting the warrant states facts showing “a fair probability that contraband or evidence of a crime will be found in a particular place.” (*Illinois v. Gates* (1983) 462 U.S. 213, 238-239 (*Gates*).) Warrants are presumed valid and it is the defendant’s burden to show otherwise. (*People v. Amador* (2000) 24 Cal.4th 387, 393.) “A defendant claiming that the warrant or supporting affidavit is inaccurate or incomplete bears the burden of alleging and then proving the errors or omissions. [Citations.]” (*Ibid.*, citing *Franks v. Delaware* (1978) 438 U.S. 154, 171-172; see also *People v. Garcia* (2003) 111 Cal.App.4th 715, 720.)

“On review, we bring to bear the same standard which governed the trial court: the magistrate’s order issuing the warrant may be set aside only if the affidavit, as a matter of law, does not establish probable cause. [Citations.]” (*People v. Superior Court (Corona)* (1981) 30 Cal.3d 193, 203.) “[O]ur analysis is confined to the facts as described in the search warrant affidavit . . . and application of relevant law.” (*Hochanadel, supra*, 176 Cal.App.4th at p. 1018; see also *People v. Tuadles* (1992) 7 Cal.App.4th 1777, 1782-1783.)

“‘[A]ffidavits for search warrants must be tested and interpreted in a common sense and realistic, rather than a hypertechnical, manner.’ [Citation.]” (*People v. Amador, supra*, 24 Cal.4th at p. 393.) The sufficiency of the supporting affidavit is reviewed with great deference to the magistrate’s determination of probable cause. (*Gates, supra*, 462 U.S. at p. 236.) Doubtful or marginal cases should be resolved in favor of upholding the warrant. (*United States v. Ventresca* (1965) 380 U.S. 102, 109.)

B. Affidavit

Defendant contends that Officer Stuart’s affidavit contained no facts indicating that GMC was operating illegally. To demonstrate that all the facts in the affidavit were

completely consistent with the lawful operation of a medical marijuana collective, defendant quotes the Guidelines' list of indicia of an unlawful storefront operation, and contends that none was described in the affidavit. The indicia include "(a) excessive amounts of marijuana, (b) excessive amounts of cash, (c) failure to follow local and state laws applicable to similar businesses, such as maintenance of any required licenses and payment of any required taxes, including sales taxes, (d) weapons, (e) illicit drugs, (f) purchases from, or sales or distribution to, non-members, or (g) distribution outside of California." (Guidelines, § IV.C.2, p. 11.)

Defendant is mistaken suggesting that none of the indicia of an unlawful operation was described in the affidavit. Officer Stuart averred that he arranged two controlled buys by a CI who was not a member of GMC. A clear violation of the Guidelines. Nothing in the CUA, MMP, the Guidelines or other authority cited by defendant requires the presence of all the Attorney General's suggested indicia in order to establish probable cause.

Defendant argues that the affidavit was insufficient because it contained facts suggesting that GMC was *lawfully* operating as a medical marijuana collective or cooperative. We disagree. "In assessing the affidavit's facts it is possible to imagine '[s]ome innocent explanation But "[t]he possibility of an innocent explanation does not deprive the [magistrate] of the capacity to entertain a reasonable suspicion"' [Citation.]" (*People v. Tuadles, supra*, 7 Cal.App.4th at p. 1784.) Indeed, "innocent behavior frequently will provide the basis for a showing of probable cause; to require otherwise would be to sub silentio impose a drastically more rigorous definition of probable cause than the security of our citizens demands. . . . In making a determination of probable cause the relevant inquiry is not whether particular conduct is 'innocent' or 'guilty,' but the degree of suspicion that attaches to particular types of non-criminal acts." (*Gates, supra*, 462 U.S. at p. 245, fn. 13.)⁵

⁵ To support her argument, defendant relies on an unpublished federal district court decision, a copy of which was attached to her motion. (See *U.S. v. \$186,416.00 in U.S. Currency* (C.D.Cal., Aug. 16, 2006, CV05-6703 SVW (Shx).) Although unpublished

Collectives and cooperatives may not furnish marijuana to nonmembers. (*Hochanadel, supra*, 176 Cal.App.4th at p. 1018; *County of Los Angeles v. Hill, supra*, 192 Cal.App.4th at pp. 869-870; Guidelines, § IV.A.2, p. 8 & § IV.C.2, p. 11.) Officer Stuart was familiar with the medical marijuana laws and had been trained to investigate medical marijuana dispensaries. He investigated GMC over several days and conducted two controlled buys with a nonmember of the cooperative.

The fact that a purchaser was not an actual member of the cooperative or collective is “a strong indication of unlawful activity.” (*Hochanadel, supra*, 176 Cal.App.4th at p. 1018.) We conclude that this fact alone supported a reasonable suspicion that GMC was selling marijuana unlawfully from its premises. As defendant has failed to meet her burden to show otherwise, we uphold the magistrate’s decision to issue the warrant. (See *People v. Amador, supra*, 24 Cal.4th at p. 393.)

III. Omissions

Defendant contends that her motion to suppress evidence should have been granted because the affidavit omitted material and exculpatory information that would have altered the magistrate’s probable cause determination.

A. Standard of Review

Where a defendant establishes by a preponderance of the evidence that the affidavit contained a false statement made knowingly and intentionally, or with reckless

federal cases may be cited and found persuasive, they are not precedential authority. (*Halogowski v. Superior Court* (2011) 200 Cal.App.4th 983, 990, fn. 4.) Defendant also cites a superseded Ninth Circuit Court of Appeals opinion in the same case. (See *U.S. v. \$186,416.00 in U.S. Currency* (C.D.Cal 2009) 583 F.3d 1220, amended and superseded by *U.S. v. \$186,416.00 in U.S. Currency* (9th. Cir. 2010) 590 F.3d 942.) We decline to consider federal trial court authority or superseded appellate opinions to support an argument that conflicts with the reasoning of the United States Supreme Court. (See, e.g., *Gates, supra*, 462 U.S. at p. 245, fn. 13.) Moreover, the cases are too dissimilar to be helpful. In the cited federal case, unlike here, the affidavit was based upon facts obtained by officers who had no familiarity with California’s medical marijuana laws and who had conducted an illegal search to obtain the facts. (*U.S. v. \$186,416.00 in U.S. Currency, supra*, 590 F.3d at p. 951.)

disregard for the truth, and that without the false statement the affidavit was insufficient to establish probable cause, the search warrant must be voided and the fruits of the search excluded. (*Franks v. Delaware, supra*, 438 U.S. at pp. 155-156; *People v. Bradford* (1997) 15 Cal.4th 1229, 1291-1292.)

On the same basis, a defendant may “challenge a search warrant by showing that the affiant deliberately or recklessly omitted material facts that negate probable cause when added to the affidavit. [Citations.] ‘A defendant who challenges a search warrant based upon an affidavit containing omissions bears the burden of showing that the omissions were material to the determination of probable cause. [Citation.] “Pursuant to [California Constitution, article I,] section 28[, subdivision] (d), materiality is evaluated by the test of [*Gates, supra*,] 462 U.S. 213, which looks to the totality of the circumstances in determining whether a warrant affidavit establishes good cause for a search. [Citation.]” [Citation.]’ [Citation.]” (*People v. Eubanks* (2011) 53 Cal.4th 110, 136.)

“First, the reviewing court must determine whether any omissions asserted are material Because an affidavit with no material omissions is substantially accurate and truthful, it corresponds for most purposes to an affidavit with no misstatements. Once all the asserted omissions have been deemed immaterial, the primary question is whether the affidavit on its face supports probable cause. If it does, the warrant usually must stand. [Citations.] [¶] If an omission is found material, the reviewing court must next determine . . . whether it arose innocently or from culpable conduct.” (*People v. Kurland* (1980) 28 Cal.3d 376, 387.)

Omitted facts are material only when there is a “substantial possibility they would have altered a reasonable magistrate’s probable cause determination,” and their omission made the affidavit “substantially misleading.” (*People v. Kurland, supra*, 28 Cal.3d at p. 385; see also *People v. Eubanks, supra*, 53 Cal.4th at p. 136.) A defendant who challenges a search warrant due to omissions from a supporting affidavit bears the burden of showing that the omissions were material to the determination of probable cause.

(*People v. Bradford, supra*, 15 Cal.4th at p. 1297.) We review de novo the trial court’s determination of this issue. (*People v. Sandlin* (1991) 230 Cal.App.3d 1310, 1316.)

B No material omissions

The essence of defendant’s argument is that there can be no reasonable suspicion that an entity is illegally selling marijuana if the following facts are present: the entity has filed articles of incorporation describing itself as a nonprofit mutual benefit corporation; it has obtained the appropriate business licenses and permits; it requires buyers to present prescriptions or physician recommendations; and it requires buyers to sign an agreement stating that they are members of the entity.

Cooperatives or collectives must not only file articles of incorporation and obtain appropriate permits but also must comply with all laws. (See §§ 11362.765, subd. (a), 11362.768; Guidelines, § IV.C.2, p. 11.) Cooperatives or collectives may not lawfully provide marijuana to persons who are not “actual members.” (*Hochanadel, supra*, 176 Cal.App.4th at p. 1018; see also *County of Los Angeles v. Hill, supra*, 192 Cal.App.4th at pp. 869-870.) It follows that even a properly incorporated and licensed marijuana cooperative or collective may not provide marijuana to nonmembers for cash. Nor may persons who operate storefront dispensaries expect immunity from prosecution under section 11362.775 if they do not operate as true cooperatives or collectives. (See *Hochanadel, supra*, at pp. 1014, 1018.)

Thus, in the context of this case, GMC’s articles of incorporation and permits were not material facts, leaving the issue of the CI’s actual membership in a true collective or cooperative. Defendant contends that the written membership agreement was sufficient to establish actual membership in GMC, arguing that the contract was not simply a “‘piece of paper’” but “‘went to the heart of the act of ‘collectively associating.’” She argues that because the terms tracked those recommended in the Guidelines, the agreement would have negated probable cause if included in the warrant.

Respondent argues that a mere signature on a collective agreement form would not permit storefront businesses to sell marijuana to strangers regardless of whether they otherwise operated cooperatively or collectively. Respondent compares the issue to a

dispensary's claim of primary caregiver status based only upon the execution of an agreement. The courts have rejected such a basis for claiming immunity from prosecution. (E.g., *Mentch, supra*, 45 Cal.4th at p. 284 [such a practice would allow patients to buy from corner drug dealers by merely designating them seriatim on an ad hoc basis]; *Hochanadel, supra*, 176 Cal.App.4th at p. 1016 ["a storefront dispensary and its operators do not qualify as primary caregivers simply because a qualified medical marijuana patient has so designated them"].)

Defendant argues that the term in the collective agreement designating GMC as the member's caregiver was irrelevant because GMC did not intend to claim primary caretaker status as a defense. We agree with respondent, however, that if no more were required for membership than merely executing a form contract, the practice would "permit a radical transformation and expansion of the ability of retail outlets to distribute marijuana en masse for medical purposes." It was not the intent of the electorate in enacting the CUA to create loopholes for drug dealers. (*People v. Galambos* (2002) 104 Cal.App.4th 1147, 1168.) Further, as nothing in the MMP confers immunity from an arrest based upon probable cause (*People v. Strasburg* (2007) 148 Cal.App.4th 1052, 1058), it cannot have been the Legislature's intent to thwart the CUA by creating exceptions for storefront drug dealers by granting immunity from arrest for selling marijuana to any qualified patient who does no more than sign a form and pay money.

We conclude that if the fact of the CI's execution of the collective agreement form had been included in Officer Stuart's affidavit in the support of the warrant, that information would not have negated probable cause to believe that GMC was not operating as a true collective or cooperative, or that GMC treated the membership agreement as anything more than a "piece of paper" designed to give the appearance that it was not in the business of selling marijuana at a profit. Defendant has thus failed to show that the information was material to the determination of probable cause. (*People v. Bradford, supra*, 15 Cal.4th at p. 1297.)

C. No “culpable misconduct”

As we have previously concluded that the affidavit on its face supported probable cause and that Officer Stuart did not omit information material to the determination of probable cause, we need go no further. (*People v. Kurland, supra*, 28 Cal.3d at p. 387.) Nevertheless, we find nothing in the record suggesting that any omission arose from “culpable conduct.” (*Ibid.*)

Defendant once again relies on a comparison with the facts of *U.S. v. \$186,416.00 in U.S. Currency, supra*, 583 F.3d 1220, which was amended and superseded by *U.S. v. \$186,416.00 in U.S. Currency, supra*, 590 F.3d 942. Defendant acknowledges that the affidavit in that case was prepared by officers who had no familiarity with California’s medical marijuana laws. The officers in that case also conducted an illegal search to obtain the facts. (*Id.* at p. 951.) Regardless, defendant argues that Officer Stuart’s familiarity with the medical marijuana laws provides stronger evidence of an intentional or reckless omission of facts indicating that GMC might have been operating legally.

Contrary to defendant’s reasoning, Officer Stuart’s familiarity with the law supported a reasonable basis for his belief that a false caregiver designation provided probable cause. At the time the affidavit was signed, the Guidelines stated that probable cause for arrest may be based upon a storefront dispensary’s practice of requiring no more than the execution of a “form summarily designating the business owner as [the patient’s] primary caregiver -- and then offering marijuana in exchange for cash ‘donations’” (Guidelines, § IV.C.1, p. 11.) Such an “ad hoc” primary caregiver designation had already been rejected by the California Supreme Court. (*Mentch, supra*, 45 Cal.4th at p. 283.) Further, in an opinion filed three months before Officer Stuart signed the affidavit, an appellate court had found such a designation to provide probable cause to issue a search warrant. (*Hochanadel, supra*, 176 Cal.App.4th at pp. 1014-1017.)

The evidence established that Officer Stuart relied, at least in part, on an apparent claim by GMC to be the CI’s primary caregiver. The name, Green Mile Caregivers, implied as much, and Officer Stuart was in possession of the form contract that included a designation of GMC as the member’s primary caregiver.

Moreover, in addition to the primary caregiver designation, Officer Stuart based his belief in probable cause on the suspicion that GMC may not have been a true collective. He stated in the affidavit:

“Based on my investigation, training and experience, it is my expert opinion that marijuana is being sold for profit from [GMC]. . . . GMC is not acting as a caregiver for their members/clients/patients/customers. Additionally [GMC] does not ask their members/clients/patients/customers to assist in the distribution or the cultivation of marijuana for the collective . . . as might be expected if it was a true collective. . . .”

When the magistrate issued the warrant, the Guidelines stated that lawfully operated cooperatives should facilitate “the collaborative efforts” of its members. (Guidelines, § IV.A.2, p. 8; see also § IV.B.3, pp. 10-11.)⁶ No such efforts were required of the CI in this case. We conclude that Officer Stuart reasonably relied on the Guidelines, and that his conclusion of probable cause was not the product of misconduct.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.
CHAVEZ

We concur:

_____, Acting P. J. _____, J.
DOI TODD ASHMANN-GERST

⁶ Respondent argues that “collaborative efforts” require united action or participation by members, not simply a supplier-consumer relationship. A similar argument was very recently rejected in *People v. Colvin* (2012) 203 Cal.App.4th 1029, but the issue in that case was whether the defendant was entitled to a defense at trial under section 11362.775, not whether probable cause supported the issuance of a warrant. As that case was published long after the warrant was issued and executed in this case, it could have had no bearing on Officer Stuart’s opinion.