

## The Neverending Trial of James Benno and Sons

By R.V. Scheide

**O**n a sunny Saturday afternoon in an undisclosed Redding location, James Benno was choosing his words very carefully. Who can blame him? I'm asking him questions about concentrated cannabis, and just two days earlier, the Shasta County District Attorney's office had announced it intends to retry Benno and his adult sons, Jacob and Logan, on one felony count each of manufacturing concentrated cannabis.

That's worth a maximum seven years in the county jail, according to the prosecution.

The decision comes at the end of a seven-week trial in which two judges (the first had to recuse himself for a still-unknown reason) and a jury exonerated the Bennos of 17 of the 19 felony charges brought against them by Shasta County.

However, the jury hung on two charges, manufacturing concentrated cannabis and conspiracy to manufacture.

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— Joseph Tully  
Defense Attorney for  
James Benno



From left to right, James Benno, attorney Joseph Tully, Logan Benno and Jacob Benno

The DA dropped the conspiracy charge, but intends to pursue the manufacturing charge, which is by no means a slam-dunk case for either party.

The manufacturing charges stem from a batch of medicinal cannabis oil found on a kitchen stovetop three years ago during a Shasta County law enforcement raid on the 99-plant medical marijuana collective Benno and his sons operated in Happy Valley. As has been well-publicized, some of that oil was intended for a toddler with an inoperable brain tumor, who later died sans treatment.

Benno can't discuss specifics involving the cannabis oil found on his stove, other than to note that Everclear, 190-proof grain alcohol that some human beings actually drink for fun, was involved in the process. There's no alcohol left in the end product, just cannabis extract in oil form. Despite the prosecution's attempt to equivocate what Benno was making to butane honey oil in the first trial, Benno was not making BHO. If he was making anything—and he's not saying he was—it was medicine for patients, not dabs for juvenile delinquents.

Cannabis oil can be ingested—inserted in a feeding tube, for example—enabling patients with severe lung disease, end-stage cancer, neurological disorders

and other illnesses to consume a therapeutic dose. Benno was trying to think up some way he could talk about all this when he happened to recall one of the first patients he helped.

It was some years ago. The patient was a man with multiple sclerosis, bedridden and atrophied by illness. Family members had contacted Benno after hearing about the benefits of cannabis oil. The man was on his deathbed when he began treatment. Today's he's able to get about with a wheelchair. Benno talks about a half-dozen other patients, three with cancer, one with muscular dystrophy, another with Hepatitis C and the aforementioned toddler with the tumor.

He becomes quite animated when talking about the people he's helped, and even though he's become financially impoverished simply making the payments on his bail—originally set at \$500,000, an absurd amount generally reserved for heinous crimes—you get the feeling given everything he knows now he'd turn around and do the exact same thing given a second chance, so jazzed does he get helping people. He's a medical marijuana true-believer of the highest order.

One of the questions Benno can't answer at this time is



Head Shasta County District Attorney Stephanie Bridgett defended the decision to retry the Bennos.

whether or not he intends to sue Shasta County for financial and personal damages should he and his sons prevail in the second trial. Shasta County law enforcement confiscated 100 plants, pots – dirt and all – from the Bennos and destroyed it. In the past, he's estimated the value of the certified-organic dirt alone at several million dollars.

Last Saturday, all he could say was, "I want my dirt back. I want my life back."

#### PROSECUTION VERSUS THE DEFENSE

Judging from comments on local news websites and social media, I think it's safe to say I wasn't the only person surprised by Shasta County's decision to retry the Bennos on the single felony charge.

One over-arching theme of the comments was, “Why is the county spending money on another trial, when we have undermanned police and sheriff departments, a dire problem with transient crime, and a jail that’s so overcrowded there’s not enough room to lock up truly violent criminals?”

Another shared theme was the notion that Shasta County is pursuing a new trial because if it can’t make a least one charge stick to the Bennos, the county has laid itself wide-open for a multi-million dollar civil suit.

While senior deputy district attorney Ben Hanna has been leading the prosecution’s case, I figured the decision to retry must have come from the top, so I emailed newly-minted head District Attorney Stephanie Bridgett about the case. After first stating my well-known bias in favor of the Bennos, I asked the following questions:

Is Shasta County continuing to prosecute the Bennos because it fears that if the Bennos are exonerated, they will turn around and sue Shasta County for personal and property damages, including attorney fees?

The “manufacturing a controlled substance” law is weak, unclear and not likely to play well in front of a jury (again), considering the substance in question was allegedly being

manufactured for kids and adults with seizure disorders. How can Shasta County hope to prevail in this case?

Who was involved, besides yourself, in the decision to prosecute this case further?

Bridgett graciously provided an outline of the prosecution’s theory of the case that does a fair job of answering all three questions in one paragraph:

“Thanks for bringing your concerns to my attention. I’d like to assure you that the decision to prosecute any case is based upon the facts and the law. We do not consider civil liability. Under California law, manufacturing a controlled substance, is not protected conduct under medical marijuana laws including proposition 64. This is because manufacturing concentrated cannabis presents a serious risk of fire and/or explosion which puts our communities at risk. We respect the jurors decision as to the counts they decided, however, we believe the remaining manufacturing count can be proved beyond a reasonable doubt based upon the strength of the evidence. Prosecution of this remaining count will be a much shorter process and will not divert resources away from any other prosecutions.”

Naturally, James Benno’s defense attorney, Joseph Tully,

who’s battling a thousand when it comes to defending medical marijuana cases in Shasta County, begs to differ with Bridgett on a few key points, in particular the notion that the county brings cases strictly based on the facts and the law. In the Benno case, nowhere was the opposite more clear than the felony weapon charges brought because of the extended-round magazines found during the search of the collective. Many observers of the case thought these would be the toughest charges to beat. They turned out to be the easiest.

“When the law against high capacity magazines came out, it only punished the seller, importer, whoever brought the magazines to the table, but NOT the buyer, or the person who received the magazine,” Tully explained via email.

“To buy or receive only became illegal after January 1, 2014. It’s still not illegal to possess a high capacity magazine. That goes into effect in July of this year. The only evidence that the DA had in our case was that James received at least one magazine in 2011 or 2012 and that all the magazines were manufactured in 2011 or 2012. Nonetheless, without ANY evidence that James had broken the law, Hanna proceeded to trial on nine felony counts against James. When there was ZERO evidence produced at trial that James had purchased or

received any magazines after it became illegal, the judge had no choice but to dismiss those charges at trial. This is a VERY RARE occurrence.”

That’s exactly what James Benno told me about the magazines two years ago, when I first interviewed him, and as it turns out, Benno was correct. Of course, in court it helps to have a good lawyer doing the talking for you. Good lawyers don’t come cheap, and Tully, as well as the two attorneys defending Benno’s sons have been basically working pro bono, because they believed in their clients’ innocence. I asked Tully how big of a bill he’s rung up.

“Consider a reasonable salary of \$250 an hour for a trial attorney times 10 to 18 hrs a day, multiply that by 3 lawyers for 7 weeks at 3 days a week,” he explained. “The night before closing argument, I worked 22 nonstop hours. Add in meals and hotels. This is just for trial. Consider all the hours spent in trial preparation including all the motions that we filed as well as all the other court dates.”

Translation: That’s a lot of money, at least hundreds of thousands of dollars between the three defense attorneys, who have indicated they will remain on board for the retrial. An unknown amount has been spent by the prosecution—rumor has it that the local daily is

looking into the public cost of the first trial, and the results should prove interesting.

Like Benno, Tully refused to discuss the specifics of the manufacturing charge, but said he was confident the Bennos will prevail again.

“I have to be vague here for now, but we are going to attack it on many levels,” Tully said. “Know that none of the Bennos broke any laws in making cannabis oil for patients.”

While neither Bridgett nor Tully was willing to discuss a potential civil suit against Shasta County should the Bennos prevail a second time, there’s no question that’s the tension now underlying the case. I asked Tully if the Bennos have the makings of a successful civil suit and he declined to answer.

“You’d have to ask a civil attorney,” he said. “I don’t even see DAs or law enforcement ever feel bad when they’ve been proven wrong. How does [the Shasta County Sheriff’s deputy in charge of the raid on Benno] feel knowing that this bust very likely contributed to the early death of a child patient of James?”

The Bennos next appearance in court is April 28, when a new trial date will be set. ■