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COCCA's Wide Net

Colorado's racketeering law has been a powerful tool for prosecuting illegal marijuana 'enterprises' while vexing defendants

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Colorado's legalization of retail and medical cannabis by no means eliminated the marijuana black market in the state. But state law enforcement has stepped up efforts in recent years to break up illicit pot-trafficking schemes.

Proving useful in that effort is a state criminal racketeering statute, the Colorado Organized Crime Control Act, which was originally enacted as a weapon against mafia and gang activity and is now a powerful tool in prosecuting marijuana crimes, among other offenses. COCCA's broad language and stiff penalties — including a presumptive prison sentence of eight to 24 years — give the state leverage against marijuana criminal defendants who might be tied up in an "enterprise" of illegal activity.

Enacted in 1981, COCCA is Colorado's version of the Racketeer Influenced and Corrupt Organizations Act, or RICO. Colorado is one of 31 states with its own racketeering statute. COCCA can be used to prosecute financial fraud, identity theft, human trafficking and other crimes committed through an organized system.

COCCA charges tend to show up in indictments aimed at large-scale drug trafficking operations, like last year's "Operation Toker Poker" that was the largest marijuana trafficking bust since Colorado legalized recreational marijuana. In June 2017, the Colorado Attorney General's Office indicted 74 defendants in an alleged marijuana-trafficking ring that distributed thousands of pounds of marijuana over four years. In a black market scheme, defendants posed as caregivers to medical marijuana patients to grow marijuana en masse and ship it to neighboring states, according to the indictment. The state also claimed that the conspiracy ran through various business fronts, including marijuana consulting firms and grow supply stores.

While the indictments included vari-

ous charges such as forgery, tax evasion and marijuana law violations aimed at different defendants, each of the 74 indicted individuals and organizations were charged with a COCCA violation of participating in a racketeering enterprise.

A month later, the Attorney General's Office charged a group of 13 defendants for allegedly trafficking more than 200 pounds of marijuana through "free giveaway" schemes. According to the indictment, the owners and employees of Col-

orado Springs-based Hoppz' Cropz tried to circumvent marijuana laws by offering "free" marijuana with the purchase of a price-hiked item, like a lighter. Using this "ruse," defendants avoided paying excise taxes on the marijuana and having to obtain a recreational dispensary license, the state said.

While the Hoppz' Cropz defendants faced differing mixes of charges, they all

shared a COCCA "participation in an enterprise" charge.

Josh Amos, an associate with McDermott Stuart & Ward in Denver who has defended a large number of marijuana-related COCCA cases, said his firm has seen those types of indictments increase in Colorado in recent years. What's notable about the way state prosecutors often use COCCA, Amos said, is that they can easily ensnare "low-level participants" in an alleged black market scheme. Because

makes it unlawful for "any person employed by, or associated with, any enterprise to knowingly conduct or participate, directly or indirectly, in such enterprise through a pattern of racketeering activity or the collection of an unlawful debt."

"One of the key ways to defend these cases is parsing out what's an enterprise and what's a run-of-the-mill drug transaction case," Amos said.

But the broad phrasing — particularly the use of the word "enterprise" — allows COCCA to cast a wide net for offenders and their associates. Under COCCA, an enterprise could be any individual or group of individuals "associated in fact," and not necessarily a legal entity.

Amos said the COCCA cases he's worked on haven't involved a legal organization like an LLC, or even what could be deemed gang activity, and that defendants are often people who just happen to be informally associated through the marijuana black market. But those people could nonetheless be found to be part of the enterprise, statutorily speaking. The vagueness can make COCCA charges more difficult to defend against than drug felony charges, Amos said.

"It's not exactly clear if there's an enterprise and whether your client was aware of the enterprise or participating in it," he said. For that reason, it can be tricky to advise defense clients on whether a COCCA charge is likely to stick. That can complicate certain decisions defendants have to make, like whether they should make a proffer for a cooperation agreement, or instead risk the trial.

Amos said the broad application of COCCA in marijuana cases is the new normal, and he doesn't anticipate legislative changes to clarify its language anytime soon.

"I think it's the status quo for a while, until the illicit marijuana industry is put out of business." •

— Doug Chartier, DChartier@circuitmedia.com

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COCCA presents those defendants with stiffer penalties than they might otherwise face with drug offense charges, the state can use COCCA to more successfully pressure defendants to take a plea or roll on other defendants higher on the food chain, he added. "It gives a lot of leverage to the government."

COCCA charges are often brought under subsection 3 of the statute, which