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ALLSTON BRIGHTON

Shop reopens after raid, drug paraphernalia charge

Posted by Matt Rocheleau December 21, 2010 11:03 AM

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(Matt Rocheleau for Boston.com)

Green Side Up Gallery owner Matthew Yaffe (right) and his Allston-based attorney Joshua Krefetz signed a joint motion Monday allowing the shop to reopen after six months.

By Matt Rocheleau, Town Correspondent

An Allston shop, raided by police six months ago and shut ever since, reopened Tuesday after its owner agreed to not sell “bongs” and “one-hitters” for at least one year. Prosecutors said Tuesday the items, sold openly at some stores in the state, are considered drug paraphernalia under Massachusetts law and “are illegal to sell.”

The criminal case's defense lawyer, who argues the items by themselves are not illegal to sell under state law, said he may call for higher court clarification on what is considered drug paraphernalia in Massachusetts.

The [Green Side Up Gallery](#) at the corner of Commonwealth and Harvard avenues was one of [three Allston retailers](#) raided in the spring in a planned

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police crack-down effort on so-called head shops, or stores that sell glass pipes and rolling papers that can be used to smoke an array of substances, including marijuana.

Police entered the store in mid-June with a search warrant and arrested 32-year-old owner Matthew Yaffe, of Milford. Authorities packed the business' \$50,000 in merchandise into cardboard boxes, confiscating the contents as evidence.

Police said the merchandise was illegal because it was considered to be drug paraphernalia; Yaffe and his lawyer said the items were "functional art."

After around a half dozen court appearances, the defense and prosecution signed a joint motion Monday dismissing Yaffe's charge -- one count of possession of drug paraphernalia with intent to distribute -- if he successfully completes a one-year, pretrial probation period.

However, "Under the law, none of the items by themselves -- even the ones he's agreed not to sell -- are illegal," said Yaffe's lawyer Joshua Krefetz.

The agreement stipulates that Yaffe cannot sell "one-hitters," or "straight cylindrical pipes less than four inches in length and less than a half-inch in diameter," or bongs, defined as "pipes consisting of all of the following: a) a straight vertical tube with b) a carburetion device and c) a smaller offset tube ending in a bowl and d) a reservoir which holds one pint or more of liquid."

"The effort is geared toward establishing some consistency in what may have been a gray area," said Suffolk District Attorney spokesman Jake Wark on Monday.

When asked whether the motion indicates more broadly that the sale of bongs or one-hitters is illegal for other merchants, or even for Yaffe once his pretrial probation expires, Wark said Monday the motion "serves as a warning" for both Yaffe and other merchants.

On Tuesday, he clarified that "they are illegal to sell" for both Yaffe and other retailers alike, and that anyone who sells such items "would risk arrest."

"Massachusetts law forbids the sale of drug paraphernalia," he said Tuesday.

Krefetz said he may be attempt to bring the matter before higher courts to seek a definitive ruling on the interpretation of drug paraphernalia laws.

"I would like to see clarification from the Superior Court on whether or not these items are in fact illegal, and I would like that judgment to apply to all stores in Suffolk County equally," he said. "The law should be applied consistently and transparently."

Bill Downing, Director of the Massachusetts Cannabis Reform Coalition, a local branch of the National Organization for the Reform of Marijuana Laws, said: "Not a lot of people smoke anything beside marijuana from a bong."

But, he said, "Anyone who has looked at this issue with an objective eye knows these glass pipes can be used to smoke anything," so in and of themselves, they're not illegal.

Downing said that just because something can be used for illicit activity does not provide proof that it will be used in such a manner. He pointed out that spoons are often used to melt drugs, like crack or heroin, for injection.

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District 14 Captain James Hussey could not be reached for comment Monday or Tuesday. He [told the Globe in July](#) that detectives found no drugs in any of the stores, but he disputed Krefetz's interpretation of the law, noting that in one shop, detectives found a gas mask with a bong attached to it.

"I just don't understand what that would be used for other than inhaling drugs," he said.

"We're not looking to put anyone out of business [who is] running a legitimate business," he said in July. "These places were set up, it appears, just to sell drug paraphernalia."

Krefetz and the city's police department were not aware of any similar shop raids other than the three executed by District 14 officers in Allston last spring.

Officer James Kenneally, a spokesman for the city police department, said, "It's an ongoing exercise to make sure stores are following the law. I don't think that it's targeting any store in particular."

However, Krefetz and Downing said they believe the three Allston raids point to selective and inconsistent police enforcement.

The other two raided businesses, which are not expected to attempt reopening, were Wild Side Smoke Shop, a couple of blocks away from Yaffe's shop on Harvard Avenue, and The Joint, less than a half mile away near Packard's Corner.

Neither owner was charged criminally, according to the Suffolk District Attorney's office. An employee of Wild Side arrested during the springtime raid will have his criminal charge dismissed if he does not commit a crime during a one-year, pre-trial probation period that began in September.

"I'm still like 'what happened?' And, I don't know," Yaffe said Monday. "It's extremely frustrating. I haven't done anything wrong, but I've still been a victim. I still feel as though I've been treated differently but you've got to look at the big picture, we're open now and we'll be making moves."

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(Matt Rocheleau for Boston.com)

On Monday, the store still had labels posted in the glass display casing that said "not for sale" and "evidence." There was one large sign facing the entrance that said "D-14 Drug Paraphernalia Raid" and listed Yaffe's court case number.

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