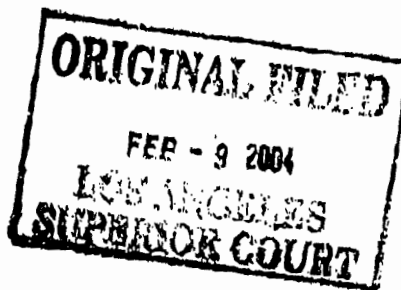


1 STEVE COOLEY  
District Attorney  
2 BRADLEY LIEBERMAN  
Deputy District Attorney  
3 San Fernando Courthouse  
900 Third Street  
4 San Fernando, CA 91340  
(818) 898-2720  
5 Attorney for the People  
6



7  
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF LOS ANGELES

10 PEOPLE OF THE STATE OF CALIFORNIA, ) CASE NO. PA044054  
11 )  
12 ) PEOPLE, )  
13 ) v. ) PEOPLE'S OPPOSITION TO  
14 ) SHAM BANDHU KAPIL, ) DEFENSE'S 995 AND NON-  
15 ) ) STATUTORY MOTIONS.  
16 ) DEFENDANT. ) DATE: FEBRUARY 19, 2004  
TIME: 8:30 AM  
DEPT: E

17 I.

18 STATEMENT OF FACTS

19 Police arrested a suspect for possessing machine gun parts.  
20 That suspect told the police he had observed a burglary which had  
21 occurred in the Conex containers at the Hercules Warehouse on Mason  
22 Street in Northridge the week prior. He also told the police he  
23 had overheard that the contents of the containers included machine  
24 guns, landmines, C-4 explosives, grenade launchers and other types  
25 of weapons. [PHT, V2, P7L25-28 to P8L1-8]

26 The police contacted one of the lessees of the storage  
27 containers, the defendant's father, Yag Kapil. [V2, P8L17-28 to  
28

1 P9L1-9] Detective Yadon explained to Yag Kapil that LAPD had  
2 recovered property which may have been taken from the burglary of  
3 Conax containers at the Mason Street address. Yag Kapil offered to  
4 meet detectives at the storage location. [V2, P9L24-28 to P10L1-  
5 20]

6 While at the location, Yag Kapil told the officers, "I have  
7 the keys and I'm here to--I basically look over these containers  
8 for my son." [V3, P29L8-9] Yag Kapil used keys in his possession  
9 to unlock and open an outer perimeter gate. [V2, P11L2-3]  
10 Detective Yadon requested permission from Yag Kapil to enter and  
11 examine the containers in an attempt to determine if the items  
12 inside were similar to those possessed by the suspect. [V2,  
13 P12L16-27] Yag Kapil then unlocked multiple locks on and around  
14 the containers with approximately 15 additional keys he possessed.  
15 He then gave Detective Yadon permission to enter and search the  
16 containers. Yag Kapil opened a container and Detective Yadon  
17 looked inside. Subsequently, Yag Kapil signed a Search Consent  
18 Form for the search of the storage containers. [V2, P17L8-28 to  
19 P19L1-2 and P19L28 and P21L17-28 to P22L1-12]

20 Detective Yadon searched the storage containers and found  
21 items similar to those found on the aforementioned suspect.  
22 Additionally, Yadon found numerous illegally possessed weapons.  
23 Specifically, Yadon observed thousands of assault weapon and  
24 machine gun component parts including high capacity magazines. He  
25 also found a grenade launcher. After locating the grenade  
26 launcher, Detective Yadon advised Yag Kapil that the search would  
27 take a long time and that Yadon had found an item that "shouldn't  
28

1 be in there". Yag Kapil's responded by telling the police that  
2 they could lock up the containers when they leave and give him the  
3 keys later. [V2, P61L13-28 to P62L1-3] Yag Kapil then left. [V2,  
4 P62L4-5] Yag Kapil testified that his actions with the police that  
5 night were voluntary. [V2, P100L3-5] Further, he stated the  
6 officers were very nice to him that night, stating, "(n)obody  
7 bother [sic] me". [V2, P102L16-28]

8 On March 22, 2003, the police checked records kept by the  
9 California Department of Justice Firearms Division. The defendant  
10 did not possess the license required to possess or sell high  
11 capacity magazines. [V4, P97L13-17]

12 The police then applied for a search warrant to search the  
13 four Conex containers at the Hercules storage facility located at  
14 9825 Mason Ave. and the private residence located at 17441  
15 Devonshire St. Judge Sandvig signed the warrant which was executed  
16 shortly thereafter. The conex containers contained hundreds of  
17 machine gun component parts for illegal weapons, three dozen  
18 grenade launchers, various unregistered assault weapons, component  
19 parts to construct assault weapons, and thousands of high capacity  
20 magazines. The search at 17441 Devonshire St. revealed additional  
21 machine gun component parts, assault weapon component parts,  
22 assault weapons and thousands of high capacity magazines. There  
23 were nine to eighteen thousand high capacity magazines located in  
24 both locations. [V4, P18L13-24]. A shiruken was also located.  
25 [V4, P18L25 through P20L11]

26 Defendant admitted the items located at both locations were  
27 for his retirement and that he intended to sell them. [V3, P78L2-  
28

1 | 20 and P80L13-14] When the police told him they had found assault  
2 | weapons, machine gun conversion kits, high capacity magazines, and  
3 | grenade launchers the defendant began to cry. [V3, P80L15-21]  
4 | Detective Yadon testified, in his opinion, the items (except for  
5 | the shiruken) were possessed for sales based upon the volume, the  
6 | prices depicted, the defendant's statement(s), and the apparent  
7 | inventory and valuation sheets located with the high capacity  
8 | magazines. [V4, P20L15 through P21L8]

9 | II.

10 | ARGUMENT

11 | A.

12 | YAG KAPIL HAD BOTH ACTUAL AND APPARENT  
13 | AUTHORITY TO GIVE THE POLICE CONSENT TO  
14 | SEARCH THE FOUR CONEX CONTAINERS ON MASON ST.

14 | Yag Kapil had both actual and apparent authority to give the  
15 | police consent to search the Conex containers. Prior to the police  
16 | entry, the police knew that Yag Kapil was a lessee of the storage  
17 | space where the conex containers were located. Yag Kapil also told  
18 | the police he was the defendant's father. He showed the police  
19 | keys he possessed on his person that opened the locks.  
20 | Additionally, he told the police the defendant had entrusted keys  
21 | to the containers to him for emergency purposes. Further, Yag  
22 | Kapil told the police that, after an attempted burglary, he helped  
23 | the defendant reinforce those locks and had helped with welding.  
24 | Moreover, Yag Kapil had allowed the defendant to place additional  
25 | storage containers on his property.

26 | Yag Kapil had actual authority to consent to the search. Not  
27 | only did he have the keys, but he was entrusted with them by the  
28 |

1 defendant for emergency purposes (which must, necessarily, include  
2 a burglary investigation which WAS being conducted). He also had  
3 care, custody, and control over more of the defendant's storage  
4 containers on his own property. Therefore, Yag Kapil had actual  
5 authority to consent to the initial warrantless search of the Conex  
6 containers at the Mason Street address.

7 Similarly, Yag Kapil had apparent authority to consent to the  
8 search. Under Illinois v. Rodriguez (1990) 497 U.S. 177, 179;  
9 People v. Hill (1978) 69 Cal.2d 550, 554-555), if police officers  
10 reasonably and in good faith believe that a third party has  
11 authority to consent to a search and seizure, such search and  
12 seizure is reasonable and lawful even if that party does not have  
13 actual authority.

14 Here, Yag Kapil had apparent authority because he had the  
15 keys, represented himself to be the defendant's father, and was  
16 aware of prior burglaries. Yag Kapil was obviously interested in  
17 helping the police prevent his son from losing any additional  
18 property. The police were reasonable in believing that Yag Kapil  
19 had a sufficient nexus to the defendant and the subject property  
20 based upon the above factors. Therefore, the police had a lawful  
21 basis to conclude Yag Kapil had at least apparent authority to  
22 consent to the search.

23 5.

24 THE POLICE'S PARTIAL DISCLOSURE OF THEIR  
25 PURPOSES FOR SEARCHING THE MASON STREET CONEX  
26 CONTAINERS WAS PERMISSIBLE AND DID NOT MAKE  
YAG KAPIL'S CONSENT TO SEARCH INVOLUNTARY

27 The defense's argument that the police engaged in a ruse  
28

1 making Yag Kapil's consent involuntary is unpersuasive. In People  
2 v. Avalos (1996) 47 Cal.App.4th 1569, the police detained the  
3 defendant while he was driving his truck. They did this on the  
4 basis of a credible informant's information that the defendant was  
5 using the truck to distribute methamphetamine. After the stop, the  
6 police told the defendant "he had been stopped as part of a  
7 burglary investigation and the police wanted permission to search  
8 the truck for stolen property 'in addition to some other  
9 contraband'". The defendant then reviewed and signed a consent to  
10 search form.

11 The Court held the consent given by the defendant was  
12 voluntarily made despite the "ruse" about the burglary  
13 investigation. The Court reasoned that the police

14 actually offered a dual purpose for searching defendant's  
15 truck. They said they wanted to look for stolen property,  
16 which was clearly not the case. But they also disclosed  
17 they were looking for 'other contraband,' which was  
18 entirely accurate and reasonably alerted defendant the  
19 object of the search would include narcotics. The offi-  
20 cers were also careful to ensure defendant's consent was  
21 voluntary.

22 Defendant was also given a...consent-to-search form,  
23 which he read and signed. He was not under arrest,  
24 physically restrained, or threatened in any manner.

25 Id. at 1578. The Court went on to reason that the police there  
26 properly identified themselves and merely made a

27 partial misrepresentation concerning the object of  
28 the search. The misrepresentation did not disguise  
either the fact the police wanted to search the truck  
or the scope of the proposed search. Whether the police  
were looking for stolen property or narcotics, they  
certainly would have discovered the five-pound package  
of methamphetamine behind the driver's seat in the truck.  
Thus, in view of the totality of the circumstances, it  
cannot be said the police materially misled defendant as  
to the privacy rights he was surrendering. Nor can it be

1 said the consent was involuntary.

2 Id. at 1579.

3 The facts of the instant case are extremely similar.

4 Here, the police WERE investigating a burglary and DID want to know  
5 whether the recovered items came from the Mason Street conex  
6 containers. There was nothing about that information relayed to  
7 Yag Kapil that was in any way false. The fact that they also  
8 wanted to investigate ANY ILLEGALITY ASSOCIATED WITH THOSE ARMS did  
9 NOT change "the scope of the proposed search". As in Avalos, the  
10 subjective intent of the officers doing the search in no way  
11 affected the privacy right relinquished by Yag Kapil.

12 In summary, the officers here did not lie to Yag Kapil as the  
13 officer(s) did to the defendant in Avalos, they were just  
14 incomplete in what they chose to reveal. The disclosure they did  
15 make was honest and less of a "ruse" than that in Avalos.  
16 Interestingly, the officers here, as in Avalos, obtained written  
17 consent without any coercion. The consent given by Yag Kapil  
18 was/is unambiguously valid.

19 C.

20 IF THE INITIAL SEARCH OF THE STORAGE  
21 CONTAINERS WAS LEGAL, THE DEFENDANT'S  
22 MOTION TO QUASH IS MOOT

23 Defense's motion to quash is based upon the premise that the  
24 initial search of the Conex containers at the Mason St. address was  
25 illegal. It has been argued in the defense motion, that if such a  
26 search were illegal, the subsequent searches based upon the warrant  
27 secured by this illegally obtained information would be illegal  
28 under People v. Machuga (1994) 7 Cal.4th 614. The People agree.

1 | what if the original search of the Conex containers was unlawful,  
2 | then the subsequent warranted search of the same location and the  
3 | others (based upon the fruits of what was found inside the Conex  
4 | containers) would similarly be unlawful. However, if the original  
5 | warrantless search of the Conex containers was lawful, there is no  
6 | basis under Machupa or otherwise to quash any of the subsequent  
7 | warrants.

8 | Further, the motion to quash is unpersuasive because the  
9 | initial search based upon consent yielded an illegal grenade  
10 | launcher. The mention in the affidavit of this illegally possessed  
11 | device supplied LAWFULLY DISCOVERED PROBABLE CAUSE. The defense  
12 | argument regarding the lack of Khan's veracity is thus irrelevant  
13 | as that information was not necessary for the issuance of the  
14 | warrant. Khan's statements were then irrelevant, the grenade  
15 | launcher was doing all of the talking.

16 | (Lastly, Khan's statements against penal interest and  
17 | corroborating possession of machine gun parts supplied his  
18 | credibility, if required.)

19 | D.

20 | ASSUMING THE INITIAL SEARCH WAS VALID, DEFENSE'S ONLY  
21 | RECOURSE IS A MOTION TO TRAVERSE, THE BURDEN OF WHICH  
22 | THE DEFENSE HAS NOT MET AND CANNOT MEET

23 | According to People v. Wilson (1986) 182 Cal.App.3d 742, the  
24 | preliminary showing required for the defense to obtain a Franks  
25 | hearing is extremely high. There the court stated

26 | (t)he Franks court specifically dealt with the question  
27 | whether a defendant is entitled to an evidentiary hearing  
28 | to prove affirmative misstatements in the warrant affidavit.  
The court held a defendant must (1) offer specific proof  
that the affiant made statements which were deliberately



1 false or in reckless disregard of the truth and (2) show  
2 that the affidavit is insufficient to justify a finding of  
3 probable cause without the allegedly false statements.  
4 The court explained: "To mandate an evidentiary hearing,  
5 the challenger's attack must be supported by more than a  
6 mere desire to cross-examine. There must be allegations of  
7 deliberate falsehood or of reckless disregard for the truth,  
8 and those allegations must be accompanied by an offer of  
9 proof. They should point out specifically the portion of  
10 the warrant affidavit that is claimed to be false; and they  
11 should be accompanied by a statement of supporting reasons.  
12 Affidavits of sworn or otherwise reliable statements of  
13 witnesses should be furnished, or their absence satisfactor-  
14 ily explained. Allegations of negligence or innocent mistakes  
15 are insufficient. The deliberate falsity or reckless  
16 disregard whose impeachment is permitted today is only that  
17 of the affiant, not of any non-governmental informant.  
18 Finally, if these requirements are met, and if, when material  
19 that is the subject of the alleged falsity or reckless  
20 disregard is set to one side, there remains sufficient content  
21 in the warrant affidavit to support a finding of probable  
22 cause, no hearing is required.

23 Id. at 747. (Emphasis added.)

24 Here, the defense has failed to meet its burden. In their  
25 first warrant affidavit, the police clearly explained the extent to  
26 which they verified that the defendant did not have a license to  
27 possess the weaponry. The police did their job and there were no  
28 intentional or reckless statements regarding any aspect of the  
grenade launcher.

If nothing else, the police then knew the defendant possessed  
a grenade launcher unlawfully. Thus, at a minimum, the police  
clearly provided the magistrate with probable cause to support the  
issuance of a search warrant. (The second warrant was based upon  
the first and would be similarly justified.) Thus, under the  
Franks test, even if defense claims are correct and the affidavit  
is edited accordingly, there would still be lawfully obtained  
probable cause remaining to issue all warrants.

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1 Specifically, the police's failure to mention whether Farooq  
2 Khan was a narcotics user had no bearing on the above and,  
3 therefore, even if included in the warrant could have had NO  
4 effect. Additionally, assuming the machine gun parts possessed by  
5 Farooq Khan were legal to possess, Khan obviously was not  
6 possessing them for motion picture prop purposes. Their  
7 possession, even if legal, was still inherently suspicious and  
8 admittedly kept without right: the property was not Khan's and had  
9 been stolen. Thus, the parts had evidentiary value and helped  
10 supply probable cause to search even if legal for the true owner to  
11 possess. Also, it was likely that the ILLEGAL parts could have  
12 been inside the Mason Street Conex containers. Further, weaponry  
13 of this type is not immediately recognizable as legal even if it  
14 is. The police must investigate items such as these.

15 Once again, since the affidavit was based upon the grenade  
16 launcher, the addition of Khan's background and the excision of  
17 Khan's machine gun parts would not have invalidated the subsequent  
18 warrants.

19 Lastly, the defense argument that the high capacity magazines  
20 were lawfully possessed, even if correct, could not have been  
21 quickly dispelled or confirmed by the police in light of the  
22 instant circumstances. Therefore, the police did NOT  
23 mischaracterize their illegal status in the warrant affidavit.  
24 Again, even if they did, the grenade launcher established probable  
25 cause for the warrants separate and apart from the magazines.

26 Thus, even if the defense were correct in any or all of its  
27 claims, the traversal attempt must necessarily be unsuccessful  
28

1 because of the remaining, unassailable, probable cause.

2 E.

3 THERE WAS SUFFICIENT EVIDENCE PRESENTED TO ESTABLISH  
4 THE DEFENDANT UNLAWFULLY KEPT ASSAULT WEAPONS FOR SALE.

5 The transcript clearly shows the defendant stated he planned  
6 to sell the items for his retirement. Additionally, there was  
7 evidence of price tagging, etc. Further, there were numerous  
8 assault weapons, none of which were registered to the defendant.

9 F.

10 THERE WAS SUFFICIENT EVIDENCE PRESENTED TO  
11 ESTABLISH THE DEFENDANT UNLAWFULLY KEPT LARGE  
12 CAPACITY MAGAZINES FOR SALE.

13 The transcript clearly shows the defendant possessed the items  
14 for sale. He stated he intended to sell them for his retirement.  
15 He had an inventory list with valuations of his stock. He also had  
16 prices on some of the items. Additionally, the sheer amount,  
17 between 9,000 and 18,000 large capacity magazines cannot be  
18 overlooked. No reasonable argument could be advanced that the  
19 defendant possessed those items for personal use.

20 Lastly, despite the defense arguments, there is no evidence  
21 that the defendant kept the items for sale "only to qualified  
22 California buyers or to buyers in states where these items may be  
23 lawfully purchased and possessed". The only support for that  
24 argument would be an inference based upon defendant's job duties.  
25 However, the evidence here clearly indicates the defendant kept  
26 those articles outside of his job duties. And, importantly, he did  
27 not possess the requisite Federal Firearms License and High  
28 Capacity Magazine Permit required to sell the items himself to any

1 person or licensed and permitted merchant (outside of California).

2 No evidence was adduced at the preliminary hearing that would  
3 support the defense argument. The defense argument that the  
4 defendant planned to legally sell those items is, therefore,  
5 completely unsubstantiated by ANY evidence; it is pure speculation  
6 made now with no supporting facts from which the necessary  
7 inferences must be made.

8 G.

9 PENAL CODE SECTION 12020(a)(2) IS NOT VOID FOR VAGUENESS.

10 Penal Code Section 12020(a)(2) is not void for vagueness. It  
11 reads:

12 (a)ny person in this state who does any of the following  
13 is punishable by imprisonment in a county jail not  
14 exceeding one year or in the state prison: (2)  
15 Commencing January 1, 2000, manufactures or causes to be  
16 manufactured, imports into the state, keeps for sale, or  
17 offers or exposes for sale, or who gives, or lends,  
18 any large-capacity magazine.

16 Subsection (25) adds a further definition:

17 (a)s used in this section, "large-capacity magazine" means  
18 any ammunition feeding device with the capacity to accept  
19 more than 10 rounds, but shall not be construed to include  
20 any of the following: (A) A feeding device that has been  
21 permanently altered so that it cannot accommodate more than  
22 10 rounds. (B) A .22 caliber tube ammunition feeding device.  
23 (C) A tubular magazine that is contained in a lever-action  
24 firearm.

21 Clearly, on its face, the statute proscribes anyone, beginning in  
22 the year 2000, from keeping for sale any ammunition feeding device  
23 with the capacity to accept more than 10 rounds. There is no  
24 ambiguity there. The precise language using the words "keeps for  
25 sale" could not be LESS ambiguous: one cannot even "KEEP" the  
26 magazine for sale.

1 According to the Ninth New Collegiate Webster's Dictionary, c.  
2 1988, the word "keep" is defined in many ways. To paraphrase a  
3 few: to confine or control; to hold; to manage; to maintain; to  
4 tend; to support; to cause to remain in a given place, situation or  
5 condition; to preserve in an unspoiled condition; to retain in  
6 one's possession or power.

7 It is clear that the concept of "keeping" something implies a  
8 FUTURE purpose, not an immediate one. The word defies the  
9 constraints of time. To "keep" is to maintain for later. To  
10 "keep" is to cause to remain in a situation or condition for a  
11 later event. To "keep" is to preserve in an unspoiled condition--  
12 such as in a forty-foot conex container. The choice of the word  
13 "keep" clearly evinces the legislative intent to prohibit the  
14 retention of large capacity magazines for a LATER, more  
15 advantageous opportunity to sell--such as upon one's retirement.

16 The rest of the language is similarly clear. One cannot offer  
17 for sale. One cannot expose for sale. One cannot give the  
18 magazine away. One cannot lend the magazine to another.  
19 Therefore, as written, the only lawful option available according  
20 to the statute is to possess solely for the purpose of personal  
21 USE. Here the defendant possessed at least 9,000 large capacity  
22 magazines (and, possibly, as many as 18,000). He cannot coherently  
23 argue that he possessed 9000 to 18,000 large capacity magazines for  
24 personal use. He could only possess that large quantity of items  
25 for sales.

26 Additionally, as applied to the defendant, even if he received  
27 and possessed the large capacity magazines prior to January 1,  
28

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TO 919098645243

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1 2000, he had nearly 27 months of notice that he could not "keep  
2 (them) for sale."

3 As written and as applied, the defendant's argument cannot  
4 succeed.

5 Lastly, the defense argument that an unsolicited sale would  
6 NOT violate the statute is unpersuasive. Any reading of the  
7 statute in that manner would be to contort its clear meaning.  
8 Further, if it only takes a moment to premeditate a murder, it takes  
9 the same time to premeditate a sale.

10 H.

11 THE COMMERCE CLAUSE AND SUPREMACY CLAUSE  
12 ARE NOT VIOLATED BY PC SECTION 12020(A)(2).

13 PC Section 12020(a)(2) is a lawful exercise of California's  
14 police powers under the Tenth Amendment. States have traditionally  
15 had the power to require licenses. By proscribing Californians  
16 from "keeping for sale" large capacity magazines, the state has  
17 created a system by which it can prevent the unregulated transfer  
18 of dangerous magazines without its knowledge. States retain their  
19 right to protect their citizens through the Tenth Amendment. The  
20 Commerce Clause is, therefore, not violated by PC Section  
21 12020(a)(2).

22 Concurrently, the defendant has failed to make ANY showing  
23 that he has standing to make the arguments propounded. There has  
24 been NO EVIDENCE that any monopoly has been created by PC Section  
25 12020(a)(2), or that the defendant has been prejudiced, would be  
26 prejudiced, or that any gun merchant in or outside of California  
27 has been or will ever be positively or negatively impacted by PC  
28

1 Section 12020(a)(2). The defense has merely offered a barren,  
2 unsupported intellectual argument. Without more it must fail.

3 Assuming, arguendo, that the defendant has made a sufficient  
4 showing of standing, he has not proven any of the above to a level  
5 sufficient to strike the statute as unconstitutional. (It is  
6 important to note that California citizens may obtain a Federal  
7 Firearms License and a High Capacity Magazine Permit to sell their  
8 high capacity magazines interstate. Thus, non-California gun  
9 merchants have another alternative to get at the allegedly swollen  
10 supply of California magazines: they can purchase from those  
11 Californians who are properly licensed and permitted. Certainly  
12 those Californians possessing the magazines in sufficient numbers  
13 could obtain the requisite license and permit and provide the rest  
14 of the nation with these allegedly valuable commodities.)  
15 Moreover, PC Section 12020(a)(2) merely LIMITS sales from within  
16 California to areas outside of California to be done by licensed  
17 parties. It is a regulation on WHO can do the SELLING, not WHAT  
18 can be SOLD or USED.

19 Lastly, the premise behind defense's argument that the  
20 Commerce Clause is violated (by allegedly unlawfully favoring  
21 California merchants over non-California merchants) fails to  
22 address the following conundrum: the very same law that gives the  
23 California gun merchants the alleged monopoly simultaneously takes  
24 away a good deal of its advantage. Due to the proscriptions  
25 delineated in PC 12020(a)(2), non-licensed and permitted  
26 Californians are disallowed from legally obtaining large capacity  
27 magazines after January 1, 2000. As a result, California gun  
28

1 merchants have a monopoly over sales to (virtually) no one in  
2 California. So, assuming they have a slice of a pie that non-  
3 California merchants cannot reach, California gun merchants can  
4 sell that pie to only a select few in their home state. In fact,  
5 presumably, they would have their own obstacles to overcome to sell  
6 large capacity magazines to citizens in other states who have  
7 enacted their own laws under the auspices of the 10th Amendment.  
8 PC Section 12020(a)(2) provides a limited monopoly indeed.

9 As no real advantage or disadvantage has been sufficiently  
10 supported, the defendant has not established standing or prejudice.  
11 Therefore, there can be no proof of any violation of the Commerce  
12 and Supremacy Clauses.

13 III.

14 CONCLUSION

15 For the foregoing reasons the People request this Court deny  
16 the defense motions.

17 Dated: February 9, 2004.

18 Respectively submitted,

19 STEVE COOLEY  
20 District Attorney

21 BY 

22 BRADLEY LIEBERMAN  
23 Deputy District Attorney  
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