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COURT OF APPEALS  
COWLITZ COUNTY  
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STATE OF WASHINGTON  
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DEPUTY

Court of Appeals No. 40491-5-II  
Cowlitz County No. 08-1-00662-7

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**STATE OF WASHINGTON,**

**Respondent,**

**vs.**

**MATTHEW COLT CHAPMAN**

**Appellant.**

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**BRIEF OF APPELLANT**

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**A. ASSIGNMENT OF ERROR**

**I. THE TRIAL COURT ERRED BY REFUSING TO ALLOW MR. CHAPMAN TO PRESENT HIS MEDICAL MARIJUANA DEFENSE.**

**B. ISSUES PERTAINING TO ASSIGNMENT OF ERROR**

**I. MR. CHAPMAN WAS DENIED DUE PROCESS OF LAW AND HIS RIGHT TO COMPULSORY PROCESS WHEN THE TRIAL COURT DENIED HIM THE RIGHT TO PRESENT THE AFFIRMATIVE DEFENSE THAT HIS POSSESSION OF MARIJUANA WAS PURSUANT TO HIS USE OF MARIJUANA FOR MEDICAL PURPOSES AS ALLOWED BY RCW 69.51A.040.**

**C. STATEMENT OF THE CASE**

Matthew Chapman suffers from a debilitating condition which he treats, on the advice of a cardiothoracic surgeon, with marijuana. CP 36-38. On December 30<sup>th</sup>, 2007, deputies from the Cowlitz County Sheriff's Office descended on his house to look for his son, Cody. RP Vol. 2, p. 231. The officers had probable cause to believe that Cody had committed a crime, possibly a felony. RP Vol. 1, p. 9. Mr. Chapman cooperated with the deputies and allowed them into his house to look for his son. RP 1, p. 14-15. While that occurred, other deputies were walking around Mr. Chapman's property, also looking for Cody. RP 1, p. 29-32, 52-55. During that time before Cody had been located, at least one deputy smelled the odor of unburnt marijuana emanating from a locked outbuilding on the property. RP 1, p. 55-57. The deputies perusing the

property relayed this information to the deputies who were in the house, and they told Mr. Chapman they believed he was growing marijuana. RP 2, p. 274. Mr. Chapman contacted Deputy Lisa Uhlich and, without being questioned, produced an expired authorization to use medical marijuana. RP Vol. 2, p. 255-56, 277. Mr. Chapman presented his authorization card. RP 1, p. 120. Exhibit 2.

Unfortunately, Mr. Chapman's authorization card had expired. Exhibit 1, CP 37. Mr. Chapman's authorization card commenced on April 27<sup>th</sup>, 2006 and expired one year later, on April 27<sup>th</sup>, 2007. CP 36-37. The parties stipulated that Dr. Orvald, the cardiothoracic surgeon who determined that Mr. Chapman was a qualified patient who would benefit from the use of medical marijuana, would have testified that Mr. Chapman continued to be a qualified patient who would benefit from medical marijuana up to the present date, and he would have reauthorized his use of marijuana. RP Vol. 2, p. 216, 218, CP 36-38, Exhibit 3. In fact, Mr. Chapman was evaluated by Dr. Orvald on January 10<sup>th</sup>, 2008, and obtained a new one-year authorization to use medical marijuana. RP Vol. 2, p. 232.

Mr. Chapman was charged with manufacturing marijuana because the deputies found growing marijuana in the outbuilding from which the odor was emanating. CP 34. The State moved, prior to trial, to prevent

Mr. Chapman from raising the affirmative defense that he lawfully possessed marijuana because he was a qualified patient who would benefit from the use of medical marijuana. RP Vol. 2, p. 214-217. The State argued that Mr. Chapman's status as a qualified patient was irrelevant because he presented an expired authorization card to law enforcement. RP Vol. 2, p. 122. Relying on *State v. Hanson*, 138 Wn.App. 322, 157 P.3d 438 (2007), the State argued that a qualified patient is required to present authorization when he or she is contacted by law enforcement, ignoring *Hanson's* explicit holding that a patient is only required to present his authorization to law enforcement *if asked*. RP Vol. 2, p. 221. The trial court agreed with the State and precluded Mr. Chapman from raising this defense. RP Vol. 2, p. 231-34.

As a result of the court's ruling, Mr. Chapman elected to waive his right to a jury trial and allow the court to determine his guilt based on stipulated facts. RP Vol. 2, 235-37. The trial court found Mr. Chapman guilty and he was given a standard range sentence. RP Vol. 2, p. 238, CP 76. This timely appeal followed. CP 83.

#### **D. ARGUMENT**

##### **I. MR. CHAPMAN WAS DENIED DUE PROCESS OF LAW AND HIS RIGHT TO COMPULSORY PROCESS WHEN THE TRIAL COURT DENIED HIM THE RIGHT TO PRESENT THE AFFIRMATIVE DEFENSE THAT HIS POSSESSION OF MARIJUANA WAS PURSUANT TO HIS**

**USE OF MARIJUANA FOR MEDICAL PURPOSES AS  
ALLOWED BY RCW 69.51A.040.**

Under the Fourteenth Amendment to the United States Constitution, a state may not “deprive any person of life, liberty, or property without due process of law...” U.S. Const. Amend. XIV. The due process clause (along with the Sixth Amendment right to compulsory process) guarantees criminal defendants a meaningful opportunity to present a complete defense. *Holmes v. South Carolina*, 547 U.S. 319, 324, 126 S.Ct. 1727 (2006). This includes the right to introduce evidence that is relevant and admissible. *State v. Lord*, 161 Wn.2d 276, 301, 165 P.3d 1251 (2007). Denial of this right requires reversal unless it can be established beyond a reasonable doubt that the error did not affect the verdict. *State v. Elliott*, 121 Wn.App. 404, 410, 88 P.3d 435 (2004).

In evaluating whether the evidence is sufficient to support an affirmative defense, the trial court must interpret the evidence most strongly in favor of the defendant. *State v. Ginn*, 128 Wn.App. 872, 879, 117 P.3d 1155 (2005). RCW 69.51A.040 creates an affirmative defense to crimes “relating to marijuana.” Under the statute, “any designated provider who assists a qualifying patient in the medical use of marijuana, will be deemed to have established an affirmative defense to such charges

by proof of his or her compliance with the requirements provided in this chapter.” RCW 69.51A.040 (2).

If requested by a law enforcement officer, a patient or designated provider must present his or her valid documentation regarding his or her medical use of marijuana. RCW 69.51A.040(3) (c). Valid documentation means “[a] statement signed by a qualifying patient's physician, or a copy of the qualifying patient's pertinent medical records, which states that, in the physician's professional opinion, the patient may benefit from the medical use of marijuana.” Former RCW 69.51A.010 (5) (a). A

“qualifying patient” under RCW 69.51A.010 (3) is:

“(a) Is a patient of a physician licensed under chapter 18.71 or 18.57 RCW;

“(b) Has been diagnosed by that physician as having a terminal or debilitating medical condition;

“(c) Is a resident of the state of Washington at the time of such diagnosis;

“(d) Has been advised by that physician about the risks and benefits of the medical use of marijuana; and

“(e) Has been advised by that physician that they may benefit from the medical use of marijuana.

RCW 69.51A.010 (3).

Dr. Orvald’s original authorization, coupled with his proposed testimony that Mr. Chapman continued to be a qualified patient up to and beyond the date he was contacted by law enforcement, qualified as valid

documentation under the statute. The meaning of a statute is a question of law reviewed *de novo*. *State Owned Forests v. Sutherland*, 124 Wn.App. 400, 409, 101 P.3d 880 (2004). The court’s inquiry “always begins with the plain language of the statute.” *State v. Christensen*, 153 Wn.2d 186, 194, 102 P.3d 789 (2004). If the statute’s meaning is plain on its face, then the court must give effect to that plain meaning as an expression of legislative intent. *Sutherland*, *supra*, at 409; see also *State v. Punsalan*, 156 Wn.2d 875, 879, 133 P.3d 934 (2006) (“Plain language does not require construction.”)

Here, Mr. Chapman should have been permitted to raise the medical marijuana defense even if Dr. Orvald’s authorization letter expired seven months prior. Mr. Chapman was a qualified patient who had been approved for the use of medical marijuana by a licensed physician prior to the date of his arrest. Dr. Orvald’s authorization letter, even if technically expired, clearly established a good faith basis for a medical marijuana defense. Further, he was able to present valid documentation to the court, and to any law enforcement official inclined to question him, within eleven days of his arrest.

*Dicta* from Division II of the Court of Appeals suggests a contrary result; however, that case should not control here. Division II has suggested that a person must possess “valid documentation” before the

police become involved. *State v. Butler*, 126 Wn.App. 741, 750-51, 109 P.3d 493 (2005). In *Butler*, however, the defendant could not present any evidence that he was even a qualified patient: “Butler made no attempt, either at the pretrial hearing or the trial, to offer any documentation from his physician concerning his medical condition or his medical necessity for marijuana.” *Butler* at 751. Without evidence establishing as a threshold matter that the defendant was a qualified patient, the absence of “valid documentation” was irrelevant. By contrast, Mr. Chapman was able to present valid documentation to the court prior to trial.

Division III has held that a person may become qualified as a patient even after police involvement. *State v. Hanson*, 138 Wn.App. 322, 157 P.3d 438 (2007). In *Hanson*, the defendant was not present when police served a search warrant on his hotel room. The next day, he went to his doctor and obtained written authorization to use marijuana, and then went to the police station. Division III held that he was able to satisfy the statute’s requirements:

[W]e find nothing in the statute that requires that the documentation be posted or that the qualifying patient obtain the documentation in advance, although that is no doubt a preferable practice...On this record, Mr. Hanson was questioned when he went to the police station the day after the raid. He went to the police voluntarily and provided valid documentation. That was the first day police “questioned” him regarding his medical marijuana use. He then satisfied the provisions of the Medical Marijuana Act.

Division III was not required to determine whether “valid documentation” must be immediately presented at the time of police questioning. Instead, it (implicitly) assumed the statute imposed such a requirement and held that the defendant met the requirement by submitting his “valid documentation” at the time he was questioned. Accordingly, the language in *Hanson* suggesting that presentation must occur immediately after police questioning in *dicta*, and should not control here.

*Dicta* from the Supreme Court supports the conclusion in *Hanson* that a person is not required to possess valid documentation prior to arrest. In *State v. Fry*, 168 Wn.2d 1, 9, 228 P.3d 1 (2010), the majority opinion stated: “The presentment requirement must be read in context. It is only triggered when someone is ‘charged with a violation.’”

Here, the record does not demonstrate that the deputies questioned Mr. Chapman about his use of marijuana before he volunteered to go get his authorization card. Should this Court hold that Mr. Chapman’s act of volunteering to retrieve his authorization defeats his ability to raise the medical marijuana defense, such a result would be absurd when compared to the result in *Hanson*, where the defendant was permitted (after remand) to raise the medical marijuana defense when he *hadn’t even obtained prior authorization* to use medical marijuana. Whereas a medical doctor had

determined Mr. Chapman was a qualified patient long before he was ever contacted by law enforcement, the defendant in *Hanson* had never been found to be a qualified patient prior to his arrest.

Mr. Chapman is not suggesting the controlling statute is ambiguous, or that this Court needs to look to principles of statutory construction. The State plainly does not require a qualified patient person to obtain documentation for the use of medical marijuana prior to his arrest, as Division III correctly held in *Hanson*, supra. This Court should follow the holding of *Hanson* and find that the trial court's refusal to allow Mr. Chapman to present the medical marijuana defense was error. Mr. Chapman's conviction should be reversed and he should be granted a new trial.

**E. CONCLUSION**

Mr. Chapman's conviction should be reversed and he should be granted a new trial.

RESPECTFULLY SUBMITTED this 27<sup>th</sup> day of December, 2010.

  
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ANNE M. CRUSER, WSBA #27944  
Attorney for Mr. Chapman

## APPENDIZ

### **69.51A.040. Failure to seize marijuana, qualifying patients' affirmative defense**

- (1) If a law enforcement officer determines that marijuana is being possessed lawfully under the medical marijuana law, the officer may document the amount of marijuana, take a representative sample that is large enough to test, but not seize the marijuana. A law enforcement officer or agency shall not be held civilly liable for failure to seize marijuana in this circumstance.
- (2) If charged with a violation of state law relating to marijuana, any qualifying patient who is engaged in the medical use of marijuana, or any designated provider who assists a qualifying patient in the medical use of marijuana, will be deemed to have established an affirmative defense to such charges by proof of his or her compliance with the requirements provided in this chapter. Any person meeting the requirements appropriate to his or her status under this chapter shall be considered to have engaged in activities permitted by this chapter and shall not be penalized in any manner, or denied any right or privilege, for such actions.
- (3) A qualifying patient, if eighteen years of age or older, or a designated provider shall:
  - (a) Meet all criteria for status as a qualifying patient or designated provider;
  - (b) Possess no more marijuana than is necessary for the patient's personal, medical use, not exceeding the amount necessary for a sixty-day supply; and
  - (c) Present his or her valid documentation to any law enforcement official who questions the patient or provider regarding his or her medical use of marijuana.
- (4) A qualifying patient, if under eighteen years of age at the time he or she is alleged to have committed the offense, shall demonstrate compliance with subsection (3)(a) and (c) of this section. However, any

possession under subsection (3)(b) of this section, as well as any production, acquisition, and decision as to dosage and frequency of use, shall be the responsibility of the parent or legal guardian of the qualifying patient.

**69.51A.050. Medical marijuana, lawful possession--State not liable**

(1) The lawful possession or manufacture of medical marijuana as authorized by this chapter shall not result in the forfeiture or seizure of any property.

(2) No person shall be prosecuted for constructive possession, conspiracy, or any other criminal offense solely for being in the presence or vicinity of medical marijuana or its use as authorized by this chapter.

(3) The state shall not be held liable for any deleterious outcomes from the medical use of marijuana by any qualifying patient.

**CERTIFICATE OF MAILING**

I, Anne M. Cruser, certify that on 12/27/10 I placed a copy of this document in the mails of the United States addressed to: (1) David C. Ponzoha, Clerk, Court of Appeals, Division II, 950 Broadway, Suite 300, Tacoma, WA 98402; (2) Susan Baur, Prosecuting Attorney, Cowlitz County Prosecutor's Office, 312 S.W. 1<sup>st</sup>, WA 98626; (3) Mr. Matthew Chapman, 128 Barba Road, Castle Rock, WA 98611.

REPORT  
STATE OF WASHINGTON  
01/06/11 10:10:10  
COURT OF APPEALS