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A. ASSIGNMENTS OF ERROR

The jury erred in rejecting Reed's medical marijuana defense.

Issue Pertaining to the Assignment of Error

Where Reed overcame the limitations of the statutory presumptive amount with proof of his individual medical necessity, was the evidence insufficient to convict Reed?

B. STATEMENT OF THE CASE

On January 14, 2008, the police served a search warrant at 860 East Jenson Road in Mason County. RP 278. Karen Mower and John Reed were present at the residence. RP 283. Inside the home, the police discovered 38 mature marijuana plants and 36 juvenile plants and 34.7 grams of dried marijuana. RP 610. They also found a medical marijuana authorization. Exhibit 64; RP 361, 581-82, 586-87. Reed also told officers that he had a medical marijuana authorization in a safety deposit box. RP 402. Ms. Mower told an officer that she had a medical marijuana authorization as well. RP 523, 590.

The defense called Dr. Dr. Carter, a medical professor from the University of Washington, testified for the defense. RP 652 -714. He has published two peer reviewed journal articles on medical marijuana specifically addressing the "dosing" of cannabis. 660-661. Dr. Carter

opined that, generally, a 60-day supply of marijuana for a patient, would require 99 plants. RP 664.

Dr. Carter saw Mr. Reed as a patient on February 5, 2009. RP 669. He reviewed Reed's medical records. RP 671. According to Dr. Carter, Mr. Reed has a history of "chronic active hepatitis C. chronic neuropathic pain, abdominal bloating and opiate intolerance." Dr. Carter testified that hepatitis C is a qualifying condition under Washington's Medical Marijuana Act. RP 671. Reed had been authorized to use medical marijuana since 2003. RP 672. Those authorizations had been provided by three different doctors. RP 671-72.

Dr. Carter also saw Karen Mower. RP 674. She suffered from hepatitis C and "grade 1 esophageal varices," which the doctor described as a "very bad condition" – like "having a hemorrhoid in esophagus." *Id.* The condition is caused by blood backing up in the liver. *Id.* This condition was life threatening and would be fatal in a year or two absent a liver transplant. RP 676. Ms. Mower had also been authorized to use medical marijuana since 2003. RP 683. Again, three different doctors had signed her authorizations. *Id.*

The state worked hard to impeach Dr. Carter. RP 689-747. At the close of the State's questioning of Dr. Carter. Mr. Reed sought the admission of documents related a legal opinion that Reed and Mower

sought from a member of the Washington State Bar Association. Reed and Mower had taken their documentation to him in 2004 and asked whether, in his opinion, their authorizations complied with Washington law. RP 750. The lawyer opined that the documentation was proper under Washington. RP 751. Reed argued that the documents were relevant to his intent to comply with the law. RP 752. The trial judge refused to admit the documents. RP 752.

Mr. Reed also testified in his own defense. He said that he was a mechanic by trade but could no longer work full time. RP 755-56. He testified to the severity of his health problems including the fact that his “immune system’s all gone to hell.” RP 762. He stated that all of his assets were in a trust managed by his father. RP 767-68. Reed said that he received his first medical marijuana authorization in 2003 and began growing marijuana. RP 763-64.

In regard to the marijuana seized in this case, Reed admitted that he had plants in two different rooms. RP 772. He described the various stages of growth and the processing of the actual usable marijuana. RP 773-781. He stated that he both smoked and ate the marijuana he grew. RP 785.

The jury convicted Reed of manufacturing marijuana but acquitted him of possession with the intent to deliver it. RP 995-96.

This timely appeal followed.

C. ARGUMENT

1. *Washington's Medical Marijuana Act.*

In Washington, the Medical Marijuana Act, provides that qualifying patients with terminal or debilitating illnesses who, in the judgment of their physicians, would benefit from the medical use of marijuana, shall not be found guilty of a crime under state law for their possession and limited use of marijuana. RCW 69.51A.005.

A “qualifying patient” is a person who:

- (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.
- (f)

RCW 69.51A.010(3). A “terminal or debilitating condition” includes:

Intractable pain, limited for the purpose of this chapter to mean pain unrelieved by standard medical treatments and medications.

RCW 69.51A.010(4)(b).

The Legislature defined “sixty-day supply” as “that amount of marijuana that qualifying patients would reasonably be expected to need over a period of sixty days for their personal medical use.” RCW 69.51A.080(2). The Legislature also directed the Department of Health to adopt a rule defining “the quantity of marijuana that could reasonably be presumed to be a sixty-day supply for qualifying patients” and specified that the presumptive definition “may be overcome with evidence of a qualifying patient’s necessary medical use.” RCW 69.51A.080(1).

The Department of Health adopted the following definition by rule:

(3) Presumptive sixty-day supply.

(a) A qualifying patient and a designated provider may possess a total of no more than twenty-four ounces of useable marijuana and no more than fifteen plants.

(b) Amounts listed in (a) of this subsection are total amounts of marijuana between both a qualifying patient and a designated provider.

(c) The presumption in this section may be overcome with evidence of a qualifying patient’s necessary medical use.

WAC 246-75-010 (effective November 2, 2008).

2. Because Reed overcame the limitations of the statutory presumptive amount with proof his individual medical necessity, the evidence was insufficient to convict Reed.

This Court must determine whether, viewing “the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *Jackson v. Virginia*, 443 U.S. 307, 319, reh’g denied, 444 U.S. 890 (1979) (emphasis in original).

Here, in order prove that Reed was guilty of manufacture of marijuana, the State had to demonstrate that Reed was not a qualified medical marijuana patient. Despite a lot of argument by the state, Reed suffered from a qualifying condition and had the proper authorization to manufacture, possess and use marijuana. The real issue in the case was whether Reed had demonstrated that he possessed no more than a 60 day supply of the drug. It is true that there was proof that he possessed more than the statutory presumptive amount. But Reed overcame the statutory presumption with his own testimony.

Reed testified that growing marijuana was hard work. He lost crops to leaf spot and spider mites. RP 763-64. He was growing two different strains of marijuana at the time of his arrest. RP 772. He noted that the growing plants did not produce useful medicine. RP 778. He also testified to various methods of reducing the marijuana to something edible. RP 779-81. These processes reduced the amount of the medicine by 75%. RP 782-83. He stated that he and Ms. Mower both smoked and

ate the medicine. RP 784-85. In Reed's opinion, he had only a 60 day supply of useable marijuana at the time of his arrest. The rest of the marijuana was not yet usable but would be when he used up his current 60 day supply.

Based upon that testimony, the State filed to prove any criminal action on the part of Reed.

D. CONCLUSION

This Court should reverse Reed's conviction.

Respectfully submitted this 11th day of July, 2011.



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