

FILED

JAN 27 2012

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

NO. 30076-5-III

COURT OF APPEALS

STATE OF WASHINGTON

DIVISION III

STATE OF WASHINGTON,

Plaintiff/Respondent,

V.

GABRIEL SAGE BECKLIN,

Defendant/Appellant.

APPELLANT'S BRIEF

Dennis W. Morgan WSBA #5286
Attorney for Appellant
120 West Main
Ritzville, Washington 99169
(509) 659-0600

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ASSIGNMENT OF ERROR

1. The trial court erroneously denied Gabriel Sage Becklin the opportunity to present an affirmative defense to the crime of manufacturing marijuana.

ISSUES RELATING TO ASSIGNMENT OF ERROR

1. Is Mr. Becklin entitled to present an affirmative defense to a jury based upon his medical marijuana documentation? (CP 22; CP 23; CP23).

2. Did the trial court deny Mr. Becklin his constitutional rights under the Sixth and Fourteenth Amendments to the United States Constitution and Const. art. I, §§ 3 and 22?

STATEMENT OF CASE

An Information was filed on August 24, 2010 charging Mr. Becklin with manufacturing marijuana and maintaining a drug house. The drug house offense was subsequently dismissed prior to a stipulated facts trial held on June 24, 2011. (CP 1; CP 85; RP 73 *et. seq.*).

Defense counsel and the State filed motions in limine pertaining to the affirmative defense provided by the Medical Use of Marijuana Act (Ch. 69.51A RCW -- MUMA). (CP 13; CP 70).

The trial court denied the defense motion and granted the State's. The court ruled that Mr. Becklin could not utilize the affirmative defense even though he had a valid medical marijuana certificate. (Appendix "A"). An Opinion Letter was issued in support of the ruling. (CP 50; CP 56; Appendix "B").

Mr. Becklin subsequently filed several Declarations and a Motion for Reconsideration. The trial court denied the Motion for Reconsideration on June 24, 2011 stating that there were "...just way too many plants to match up with the medical marijuana authorization." (CP 65; CP 72; CP 74; CP 76; RP 90, ll. 15-16).

The trial court found Mr. Becklin guilty. (CP 148; RP 100, ll. 5-8). Judgment and Sentence was entered on June 24, 2011. The trial court granted a stay.

Mr. Becklin filed his Notice of Appeal on July 18, 2011. (CP 161).

SUMMARY OF ARGUMENT

A criminal defendant has a constitutional right to present a defense. MUMA provides an affirmative defense to the offense of manufacturing marijuana.

The trial court's ruling that Mr. Becklin is not entitled to the defense is fact-based and not a matter of law. Factual issues are for a jury to decide.

Mr. Becklin presented valid proof of a medical marijuana certificate(s). His declarations create a factual issue as to the amount of marijuana he could possess.

ARGUMENT

This conviction rests upon stipulated facts and exhibits. The court considered no live testimony in concluding that Mr. [Becklin] was guilty. ...[R]eview is therefore de novo.

State v. Shepherd, 110 Wn. App. 544, 550, 41 P. 3d 1235 (2002).

Mr. Becklin contends that the trial court's denial of his opportunity to present an affirmative defense at trial adversely affected his right to a fair trial and a jury trial. Mr. Becklin elected to proceed with a stipulated facts trial due to the trial court's ruling.

In order to affirmatively defend a criminal prosecution for possessing or manufacturing marijuana, a defendant must show by a preponderance of evidence that he has met the requirements of the Act.

State v. Ginn, 128 Wn. App. 872, 878, 117 P. 3d 1155 (2005).

It is Mr. Becklin's position that he meets the requirements of the MUMA.

Ch. 69.51A RCW has undergone significant changes by the Legislature. Recent amendments have substantially clarified and expanded an individual's rights. *See*: Laws of 2011, ch. 181.

Mr. Becklin contends that he is entitled to the benefits of these recent amendments. He views the amendments as remedial in nature.

...[R]emedial statutes are generally enforced as soon as they are effective, even if they relate to transactions predating their enactment. *See: Miebach v. Colasurdo*, 102 Wn. 2d 170, 180-81, 685 P. 2d 1074 (1984). “A statute is remedial when it relates to practice, procedure, or remedies and does not affect a substantive or vested right.” *Id.* at 181 (citing *Johnston v. Beneficial Mgmt. Corp. of Am.*, 85 Wn. 2d 637, 641, 538 P. 2d 510 (1975)). Remedial statutes are an exception to the general rule that statutes operate prospectively. “[I]f a statute is remedial in nature and retroactive application would further its remedial purpose,” it will be enforced retroactively. *Maycumber v. Shafer*, 96 Wn. 2d 568, 570, 637 P.2d 645 (1981).

State v. Pillatos, 159 Wn. 459, 473, 150 P.3d 1130 (2007).

The 2011 amendments to Chapter 69.51A RCW are remedial in nature. They serve to expand, clarify and implement the requirements for presenting the affirmative defense relating to possession and/or manufacture of marijuana.

The trial court denied Mr. Becklin’s use of the affirmative defense on at least a three prong basis. The trial court’s reasoning included:

- (1) The amount of marijuana being grown;
- (2) The fact that Mr. Becklin had a medical marijuana certificate and was also a designated provider for Mr. Wheeler, who had a medical

marijuana certificate and had signed an authorization for Mr. Becklin to provide his marijuana; and

(3) The statutory language is limited to a single person.

(CP 58; CP 61; CP 62).

The trial court determined that sufficient evidence was presented to establish that Mr. Becklin was a qualifying patient. Mr. Becklin's medical marijuana certificate meets the criteria for "a qualifying patient" as defined in RCW 69.51A.010(4). A "qualifying patient" means a person who:

- (a) Is a patient of a health care professional;
- (b) Has been diagnosed by that health care professional 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 health care professional about the risks and benefits of the medical use of marijuana; and
- (e) Has been advised by that health care professional that they may benefit from the medical use of marijuana.

See also: State v. Ginn, supra, 882.

The trial court's denial of the affirmative defense because Mr. Becklin exceeded the authorized number of plants contained in the medical marijuana certificate is a fact issue subject to jury determination. *See: State v. Brown, slip opinion 40624-1-II (1/24/2012)* (A trial court may decide an issue of law; but may not weigh conflicting issues of fact which are jury questions.)

The number of plants is not one of the factors contained in RCW 69.51A.010(4).

As amended, RCW 69.51A.040 now provides the following criteria to be considered in connection with the affirmative defense:

The medical use of cannabis in accordance with the terms and conditions of this chapter does not constitute a crime and a qualifying patient or designated provider in compliance with the terms and conditions of this chapter may not be arrested, prosecuted, or subject to other criminal sanctions... for possession, manufacture, or delivery of, or for possession with intent to manufacture or deliver, cannabis under state law, ...if:

(1)(a) The qualifying patient or designated provider possesses no more than fifteen cannabis plants and:

(i) No more than twenty-four ounces of useable cannabis;

(ii) No more cannabis product than what could reasonably be produced with no more than twenty-four ounces of useable cannabis; or

(iii) A combination of useable cannabis and cannabis product that does not exceed a combined total representing possession and processing of no more than twenty-four ounces of useable cannabis.

(b) If a person is both a qualifying patient and a designated provider for another qualifying patient, the person may possess no more than twice the amounts described in (a) of this subsection, whether the plants, useable cannabis, and cannabis product are possessed individually or in combination between the qualifying patient and his or her designated provider... .

Mr. Becklin had one hundred sixteen (116) marijuana plants growing in different locations on his Rose Valley property. The officers seized one hundred and one (101) plants. They allowed Mr. Becklin to retain fifteen (15) plants. (CP 128 *et seq.*)

WAC 246-75-010 states, in part:

(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 the 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.

(Emphasis supplied.)

Portions of WAC 246-75-010 are now obsolete due to the enactment of RCW 69.51A.045 which provides, in part:

A qualifying patient or designated provider in possession of cannabis plants, useable cannabis, or cannabis product exceeding the limits set forth in RCW 69.51A.040(1) but otherwise in compliance with all other terms and conditions of this chapter may establish an affirmative defense to charges of violations of state law relating to cannabis **though proof at trial, by a preponderance of the evidence, that the qualifying patient's necessary medical use exceeds the amount set forth in RCW 69.51A.040(1).**

...

(Emphasis supplied.)

RCW 69.51A.045 essentially adopts the presumption set forth in WAC 246-75-010(3)(c). The Legislature recognizes that the affirmative defense is to be presented at trial. If the qualifying patient presents evidence, by a preponderance of the evidence, that the affirmative defense exists, then the trial court must provide jury instructions on that affirmative defense.

“In evaluating whether the evidence is sufficient to support such an instruction, the trial court must interpret the evidence most strongly in favor of the defendant.” *State v. Otis*, 151 Wn. App. 572, 578, 213 P. 3d 613 (2009).

The MUMA instructions are set forth at WPIC 52.10, 52.11; 52.12, 52.13, 52.14 and 52.15. (Appendixes “C”, “D”, “E”, “F”, “G”, “H”).

The COMMENT to WPIC 52.15 provides, in part:

Sixty-day supply- Overcoming the presumption. The statute states that the presumption “may be overcome by evidence of a qualifying patient’s necessary medical use.” RCW 69.51A.080(1) (repealed by Laws of 2011, Ch.181, § 1204). Presumptions are disfavored in the criminal law. ...Accordingly, **jurors are usually instructed with permissive inferences** rather than mandatory presumptions, **and they are told they are free to decide how much weight, if any, to give in inference. ...**

The presumptive definition in RCW 69.51A.080 [now RCW 69.51A.045], however, involves a different approach. Upon the presentation of contrary evidence by any party, the presumption ceases to have any effect. In such a case, this pattern instruc-

tion would not be used and the jury would be instructed solely with the general language about a sixty-day supply that is contained in the other medical marijuana instructions--WPIC 52.10, 52.11, 52.11.01. In some cases the judge may need to determine whether particular evidence constitutes "evidence of a qualifying patient's necessary medical use" such as to overcome the statutory presumption. ...

(Emphasis supplied.)

Mr. Becklin contends that he is entitled to the affirmative defense based upon the language of RCW 69.51A.045, WAC 276-75-010(3)(c) and the WPICs.

Mr. Becklin, in his declarations, provided sufficient evidence concerning the reasons why he had one hundred and sixteen (116) marijuana plants. Some of the plants were diseased. Packrats were eating the plants. Instead of smoking the marijuana he mixes it in his food. He uses approximately one plant per day. *See*: Declarations (CP 65; CP 72; CP 76).

"Defendants have the right present a defense, but they may not do so by introducing evidence that is irrelevant or otherwise inadmissible." *State v. Ginn, supra*, 879. The evidence Mr. Becklin sought to present to a jury is highly relevant. It is up to a jury to decide conflicting testimony.

Mr. Becklin has a constitutional right to present a defense.

The Fourteenth Amendment to the United States Constitution provides, in part:

...No state shall ...deprive any person of life, liberty, or property, without due process

of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Const. art. I, § 3 states: “No person shall be deprived of life, liberty, or property, without due process of law.”

In addition, the Sixth Amendment to the United States Constitution and Const. art. I, § 22 provide that a criminal defendant has the right to appear and defend in person, or by counsel; as well as a right to a fair trial.

“A defendant in a criminal case has a constitutional right to present a defense consisting of relevant evidence that is not otherwise inadmissible.” *State v. Rehak*, 67 Wn. App. 157, 162, 823 P.2d 651, *reviewed denied* 120 Wn. 2d 1022, 844 P.2d 1018, *certiorari denied*, 508 U.S. 953, 113 S. Ct. 2449, 124 L. ed. 2d 665 (1992).

Mr. Becklin was entitled to present the affirmative defense to a jury. The trial court, by denying his right to present the defense, precluded him from having a jury trial and unconstitutionally denied him his right to present a defense. “The jury, not the judge, must weigh the proof and evaluate a witness’s creditability.” *State v. Ginn, supra*, 879.

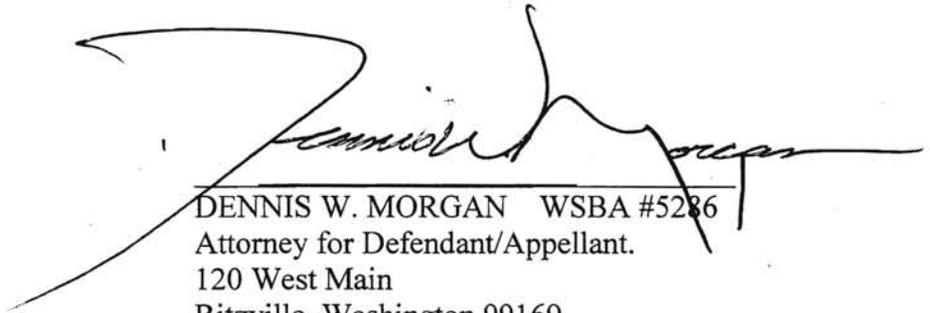
CONCLUSION

Mr. Becklin’s medical marijuana documentation entitles him to present an affirmative defense to a jury. The trial court’s ruling deprived Mr. Becklin of his constitutional due process rights.

Mr. Becklin carried his burden of proof as to the affirmative defense. The trial court's decision should be reversed and the case remanded for a jury trial.

DATED this 26th day of January, 2012.

Respectfully submitted,

A large, stylized handwritten signature in black ink, appearing to read "Dennis W. Morgan". The signature is written over a horizontal line that separates the signature from the printed name and contact information below.

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APPENDIX "A"

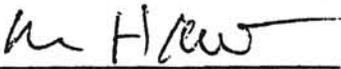
Documentation of Medical Authorization to Possess Marijuana
for Medical Purposes in Washington State

PATIENT NAME: Gabriel Becklin DATE OF BIRTH: 11/22/1981

I, Dr. Mohammad H. Said, am a physician licensed in the State of Washington and I am treating the above patient for a terminal illness or a debilitating condition as defined by RCW 69.51A.010.

I have advised the above named patient about the potential risks and benefits of the medical use of marijuana. I have assessed the above named patient's medical history and medical condition. It is my medical opinion that the potential benefits of the medical use of marijuana may outweigh the health risks for this patient.

Physician Name: Dr. Mohammad H. Said WA License Number: MD00018311

Physician Signature:  Date: 01/05/2010

This recommendation expires on: 01/05/2011

Risks and benefits of medical marijuana

Under Washington law, the use of medical marijuana is now permissible for some patients with terminal or debilitating illnesses. The law regulating this (RCW 69.51A) allows physicians to advise patients about the risks and benefits of the medical use of marijuana.

The medical and scientific evidence supporting the use of medical marijuana remains controversial in the medical community. Not all health care providers believe that medical marijuana is safe or effective and some providers feel that it is a dangerous drug.

According to the Washington State law the benefits of medical marijuana may include treating nausea and vomiting from chemotherapy, AIDS wasting syndrome, severe muscle spasms from multiple sclerosis or other spasticity disorders, glaucoma, and some types of intractable pain.

Some of the risks of medical marijuana may include possible long-term effects of the brain in the areas of memory, coordination and cognition; impairment of the ability to drive or operate heavy machinery; respiratory damage; possible lung cancer; and physical or psychological dependence.

Recommendation

As this patient's "60 Day Supply", as stipulated by RCW 69.51A.040 (3)(b) and WAC 246-75-010, this Qualifying Patient can reasonably expect to have in their Possession and Need a total of no more than 24 Ounces of "Useable Marijuana" and no more than 15 Plants.

CBR Medical, Inc.

Administrative Office

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Seattle: 206-774-6493 Fax: 206-418-6659

EMERGENCY OR LAW ENFORCEMENT ONLY

CALL 509-570-2886 OR 509-570-6943

Exh' B

APPENDIX "B"

Superior Court of the State of Washington
For Stevens, Pend Oreille and Ferry Counties
Stevens County Courthouse - Colville
Pend Oreille County Hall of Justice - Newport
Ferry County Courthouse - Republic

JAN 28 2011

9:10am
JEAN BOOHER

Rebecca M. Baker, Judge
Department 1

Allen C. Nielson, Judge
Department 2

Evelyn A. Bell
Court Administrator

January 25, 2011

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Mr. Lech Radzimsky
Ferry County Prosecuting Attorney's Office
350 E. Delaware, #11
Republic, WA 99166

Gentlemen:

Re: *State v. Gabriel Sage Becklin*
Ferry County Cause No. 10-1-00023-2

When the State's motion in limine to exclude evidence of the medical marijuana defense was heard and granted on January 14, 2010, Mr. Graham requested that I issue a more detailed decision more conducive to appellate review, and I agreed to issue this letter for that purpose.

I have now had a chance to put together my thoughts into this writing and hope this will serve as a more complete explanation of my ruling. You will note that this decision differs in places from my oral ruling. Of course, this written ruling is the final ruling.

First and foremost, the State moved in limine to exclude evidence of the medical marijuana affirmative defense. The defendant had also moved in limine to allow the medical marijuana defense. Both parties attached the same materials to their motions/memoranda. These were a report generated by Detective Talon Venturo, and three (3) medical marijuana "Documentations," one naming Mr. Becklin, one Tyson Wheeler, and the third Marlin Martinez. Mr. Becklin's argument is that he was a "qualifying patient" under the Medical Marijuana Act and that he was also the "designated provider" for Mr. Wheeler and Mr. Martinez. He thus seeks to submit his medical marijuana defense(s) to the jury at trial.

I indicated that it was my approach that, when such a motion in limine is filed, the party asking for the court to allow the evidence (in this case Mr. Becklin) is obligated to come forward with an offer of proof, in some form or other, which meets all of the qualifications for asserting the affirmative defense. *See, e.g., State v. Ginn*, 128 Wn.App. 872 (2005); *State v. Mullins*, 128 Wn.App. 633 (2006). The only evidence offered, then, is the report from Detective Talon Venturo and the three attached medical marijuana "Documentations" the Detective's report indicates he was shown by defendant when he and other officers were executing a search warrant at the residence. The defendant is entitled to the benefit of all inferences from the offer of proof, i.e., "must interpret the evidence most strongly in favor of the defendant." *Ginn, supra*, 128 Wn.App. at 879.

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Mr. Becklin as a "qualifying patient" himself.

The elements of the affirmative defense of being a "qualifying patient" under the Medical Marijuana Act are set forth in RCW 69.51A.040(3), as follows:

A qualifying patient . . . shall:

- (a) Meet all criteria for status as a qualifying patient . . . ;
- (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 this or her medical use of marijuana.

The Medical Marijuana Act, as amended effective in 2010, defines a qualifying patient as a person who:

- (a) Is a patient of a health care professional;
- (b) Has been diagnosed by that health care professional 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 health care professional about the risks and benefits of the medical use of marijuana; and
- (e) Has been advised by that health care professional that they may benefit from the medical use of marijuana.

RCW 69.51A.010(4).

The definition of a "health care professional," for purposes of Chapter 69.51A, is:

a physician licensed under chapter 18.71 RCW, a physician assistant licensed under chapter 18.71A RCW, an osteopathic physician licensed under chapter 18.57 RCW, an osteopathic physicians' assistant licensed under chapter 18.57A RCW, a naturopath licensed under chapter 18.36A RCW, or an advanced registered nurse practitioner licensed under chapter 18.79 RCW.

RCW 69.51A.010(2).

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Finally, the term “terminal or debilitating medical condition” is defined, also. It means one of seven (7) conditions defined in RCW 69.51A.010(6), including “(b) Intractable pain, limited for the purpose of this chapter to mean pain unrelieved by standard medical treatments and medications.”

I note first that Mr. Becklin provided no offer of proof by way of affidavit, and Mr. Graham argued he felt it inappropriate to “pin his client down” to an affidavit, pretrial. Thus, we have no contrary proof from him as to the quantity of marijuana that was present at the time of the service of the search warrant, other than what is set forth in his “Documentation” attachment. In other words, all that we have is what is in the Detective’s report and the exhibits attached to the State’s and defendant’s motions in limine and/or briefs, and that is that Mr. Becklin was in “need” of no more than 15 plants at any given time; that Mr. Wheeler, an individual for whom he claimed to be a “designated care provider” also was in need of no more than fifteen (15) plants at a time; and that Mr. Martinez was also an individual for whom he was a “designated care provider,” with an unspecified amount of marijuana needed. And, the uncontroverted proof, for purposes of the motions in limine, was that there were 116 plants in all.

I note, also, though, that Mr. Becklin had previously asked for the appointment of his own doctor, Dr. Said, as an expert, at public expense. I had declined to do so at a previous hearing, indicating that I was not inclined to appoint an individual’s own treating doctor as an “expert” under these circumstances, certainly not without additional authority. Thus, at the hearing on the motion in limine, we had no indication by affidavit from Dr. Said or any other treating professional of the need for medical marijuana in support of the affirmative defense. We are left with what was allegedly said and provided by way of documentation by defendant, according to the law enforcement report of Ferry County Sheriff’s Detective Venturo, at the time of the service of the search warrant.

On a procedural note, since the hearing on the motions, I have located further authority that Mr. Becklin would have to come forward with some evidence of the medical marijuana defense in order to submit it to the jury – and indeed to be allowed to have an expert considered for appointment at public expense -- and therefore it would not be outside the court’s discretion to deny his request for the appointment of Dr. Said as an “expert” in a case such as the one at bar. *See State v. Butler*, 126. Wn.App. 741, 750 (2005).

The Sheriff’s report indicates that Mr. Becklin justified the marijuana plants by providing three medical marijuana certificates – one of them for himself (an original) and one each for two other individuals (not originals). As stated above, one of the requirements for qualifying for the

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affirmative defense is that the defendant “[m]eet all the criteria for status as a qualifying patient. . . .” RCW 69.51A.040(3)(a). In turn, in order to meet all those criteria, the defendant must “[p]resent his or her valid documentation to any law enforcement official who questions the patient . . . regarding his or her medical use of marijuana.” RCW 69.51A.040(3)(d). The documentation provided, in regard to his own medical marijuana possession, was evidently the original of the first attachment to the Venturo report. This “Documentation” bears a date of 01/05/2010 and is purportedly signed by “Dr. Mohammad H. Said,” who asserted therein that he was then a “physician licensed in the State of Washington,” though he does not specify under what Chapter of the Revised Code of Washington. The form goes on to say:

Under Washington law, the use of medical marijuana is now permissible for some patients with terminal or debilitating illnesses. The law . . . allows physicians to advise patients about the risks and benefits of the medical use of marijuana.

The medical and scientific evidence supporting the use of medical marijuana remains controversial in the medical community. Not all health care providers believe that medical marijuana is safe or effective and some providers feel that it is a dangerous drug.

According to the Washington State law the benefits of medical marijuana may include treating nausea and vomiting from chemotherapy, AIDS wasting syndrome, severe muscle spasms from multiple sclerosis or other spasticity disorders, glaucoma, and some types of intractable pain.

Some of the risks of medical marijuana may include possible long-term effects of the brain in the areas of memory, coordination and cognition; impairment of the ability to drive or operate heavy machinery; respiratory damage; possible lung cancer; and physical or psychological dependence.

Recommendation

As this patient’s “60 Day Supply,” as stipulated by RCW 69.51A.040(3)(b) [the law in effect at the time of the issuance of the statement from Dr. Said] and WAC 246-75-010, this Qualifying Patient can reasonably expect to have in their Possession and [n]eed a total of no more than 24 Ounces of “useable Marijuana” and no more than 15 Plants.

Documentation of Medical Authorization to Possess Marijuana (hereinafter referred to as the “G. Becklin Documentation”).

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The statements in the signed "G. Becklin Documentation" that Dr. Said is a "physician licensed in the State of Washington" would probably lead to an inference that he was licensed under one of the Chapters referred to in the definition of a "health care professional" for purposes of Chapter 69.51A. See RCW 69.51A.010(2). And, interpreting the evidence "most strongly in favor of the defendant," *Butler, supra*, 128 Wn.App. at 879, the very fact that Dr. Said provided his "Recommendation" set forth above in the "G. Becklin Documentation" would perhaps arguably lead to an inference that defendant suffers from some sort of terminal or debilitating condition. RCW 69.51A.010(6).

The problem, though, is that the uncontroverted 116 plants discovered would not qualify for the medical marijuana affirmative defense for Mr. Becklin as a "qualifying patient" alone since his authorization was for only up to fifteen (15) plants.

Thus it is necessary to determine whether the additional marijuana found would qualify Mr. Becklin for the affirmative defense because he was a "designated provider" of medical marijuana for Mr. Wheeler and/or Mr. Martinez.

Mr. Becklin as a "designated provider" for two others.

In order to qualify for the affirmative defense, a defendant must meet essentially all of the same requirements as a "qualifying patient" under RCW 69.51A.040, quoted above with omissions to the "designated provider" language. But it is important to note the statutory definition of the term "designated provider":

"Designated provider" means a person who:

- (a) Is eighteen years of age or older;
- (b) Has been designated in writing by a patient to serve as a designated provider under this chapter;
- (c) Is prohibited from consuming marijuana obtained for the personal, medical use of the patient for whom the individual is acting as a designated provider; and
- (d) Is the designated provider to only one patient at any one time.

RCW 69.51A.010(1). It is to be noted, however, that RCW 69.51A.090 makes the provisions of RCW 69.51A.010(1) as to "valid documentation" applicable "prospectively only, not retroactively, and do not affect "valid documentation" obtained prior to June 10, 2010.

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The documentation provided by Mr. Becklin to Detective Venturo as to Tyson R. Wheeler was dated August 5, 2010. Thus, as to that documentation, the current law applies. The Marlin Martinez documentation is undated, however, so I will undertake an analysis assuming for the sake of argument that it predated the new law's effective date of June 10, 2010.

Wheeler Documentation.

As to Mr. Wheeler's post-June 10, 2010 Documentation, the current law requires "valid documentation" to be on "tamper-resistant" paper (RCW 69.51A.010(7)(a) and requires valid proof of identity RCW 69.51A.010(7)(b). Moreover, the law requires that the provider have a written designation by the qualifying patient to serve as a designated provider "under this chapter [69.51A]." Thus, while the hand-scrawled note purportedly signed by Tyson Wheeler saying "I Tyson Wheeler give Gabe Becklin the permission to be caretaker for me" might possibly survive a motion in limine as a proper "written designation," the documentation is not "valid" because a copy is obviously not "tamper-resistant," nor was there any proof of Mr. Wheeler's identity on hand at the time of the service of the search warrant as required under RCW 69.51A.040(c) for the affirmative defense.

Thus, Mr. Becklin did not possess "valid documentation" that he was the designated provider to Tyson Wheeler at the time of the service of the search warrant.

Martinez Documentation.

As to Marlin Martinez, the other individual for whom Mr. Becklin claimed to Detective Venturo he was a designated provider of medical marijuana, that documentation is devoid of any date. Even viewing the evidence in the light most favorable to Mr. Becklin, moreover, there is no evidence that this "documentation" was obtained prior to the effective date of the new definition of "valid documentation" in RCW 69.51A.010(7). It is Mr. Becklin's burden to come forward with at least some evidence that the Martinez documentation was obtained prior to the effective date of the "tamper-resistant" requirement in the current law. However, even under the former definition of "valid documentation," Mr. Becklin's evidence is lacking. That former subsection defined "valid documentation" as follows:

- (a) 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 potential benefits of the medical use of marijuana would likely outweigh the health risks for a particular qualifying patient; and
- (b) Proof of Identity such as a Washington state driver's license or identicard, as defined in RCW 46.20.035.

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Former RCW 69.51A.010(5); Laws 2007 c 2 §6 (Initiative Measure No. 692, approved November 3, 1998).

While the copy of the "Documentation of Medical Authorization" bearing the name of Marlin Martinez as the patient, shown to Detective Ventura by Mr. Becklin, does contain the "magic words" required by the former statute, there is no proof of identity of Mr. Martinez, either.

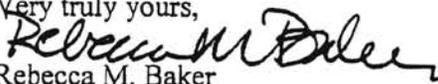
I would note, also, that Mr. Becklin's defense seems to ignore that Mr. Wheeler's purported documentation authorizes only fifteen (15) plants. And, while there is no quantity named on Mr. Martinez's, by definition a person cannot be a designated provider for more than one patient at any one time. RCW 69.51A.010(1)(d).

Finally, although under the above analysis I need not reach this issue because I have concluded that neither Mr. Wheeler's nor Mr. Martinez's documentation was "valid," the State's argument that a person cannot be both a "qualifying patient" and a "designated provider" all at the same time seems to have some merit as well; RCW 69.51A.010(1)(c) prohibits a "designated provider" from consuming his "patient's" marijuana. And Mr. Becklin has not come forward with any evidence, to defeat the motion in limine, that he somehow segregated the "crop" meant for Mr. Wheeler and/or Mr. Martinez.

The bottom line is that Mr. Becklin has failed to defeat the State's motion in limine and has failed to come forward with sufficient evidence on each of the key elements to qualify for submitting the affirmative defense under RCW 69.51A.040 to the jury. The medical marijuana affirmative defense is simply not available to him in this case because, lacking some evidence on all of the elements, it would only serve to confuse the issues and waste time.

The State's motion in limine to exclude evidence of the medical marijuana defense is granted; the defendant's motion in limine to allow it to be submitted to the jury is denied.

I am, by copy of this letter, directing the Clerk to file a copy of this letter ruling/decision in the court file.

Very truly yours,

Rebecca M. Baker

cc: Ferry County Clerk, for filing in court file
Mr. Deric Martin, former Deputy Prosecuting Attorney for Stevens County

APPENDIX "C"

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WPIC CHAPTER 52

SPECIAL DEFENSES—UNIFORM CONTROLLED SUBSTANCES ACT

WPIC 52.10

MEDICAL MARIJUANA—QUALIFYING PATIENT—DEFENSE *[Replaced]*

It is a defense to a charge of [possession] [or] [manufacture] of marijuana that:

- (1) the defendant is a qualifying patient; and
- (2) the defendant possessed no more marijuana than necessary for the defendant's personal, medical use for a sixty-day period; and
- (3) the defendant presented valid documentation to any law enforcement official who questioned the defendant regarding his or her medical use of marijuana.

The defendant has the burden of proving this defense by a preponderance of the evidence. Preponderance of the evidence means that you must be persuaded, considering all the evidence in the case, that it is more probably true than not true. If you find that the defendant has established this defense, it will be your duty to return a verdict of not guilty [as to this charge].

APPENDIX "D"

WPIC 52.11

DRUGS AND CONTROLLED SUBSTANCES

WPIC 52.11

**MEDICAL MARIJUANA—DESIGNATED
PROVIDER—DEFENSE [Replaced]**

It is a defense to a charge of [possession] [delivery] [or] [manufacture] of marijuana that:

- (1) the defendant is eighteen years of age or older; and
- (2) the defendant was designated as a designated provider to a qualifying patient prior to assisting the patient with the medical use of marijuana; and
- (3) the defendant possessed no more marijuana than necessary for the qualifying patient's personal, medical use for a sixty-day period; and
- (4) the defendant presented a copy of the qualifying patient's valid documentation to any law enforcement official who requested such information; and
- (5) the defendant did not consume any of the marijuana obtained for the personal, medical use of the qualifying patient for whom the defendant is acting as designated provider; and
- (6) the defendant was the designated provider to only one qualifying patient at any one time.

The defendant has the burden of proving this defense by a preponderance of the evidence. Preponderance of the evidence means that you must be persuaded, considering all the evidence in the case, that it is more probably true than not true. If you find that the defendant has established this defense, it will be your duty to return a verdict of not guilty [as to this charge].

APPENDIX "E"

SPECIAL DEFENSES

WPIC 52.12

WPIC 52.12

MEDICAL USE OF MARIJUANA
MARIJUANA—DEFINITION [Replaced]

Medical use of marijuana means the production, possession, or administration of marijuana for the exclusive benefit of a qualifying patient in the treatment of his or her terminal or debilitating medical condition.

APPENDIX "F"

WPIC 52.13

DRUGS AND CONTROLLED SUBSTANCES

WPIC 52.13

**MEDICAL MARIJUANA—QUALIFYING
PATIENT—DEFINITION *[Replaced]***

A qualifying patient is a person who

- (1) is a patient of a[n][osteopathic] physician licensed to practice in the State of Washington; and
- (2) has been diagnosed by that physician as having [(specify condition)] [a terminal or debilitating medical condition]; and
- (3) is a resident of the State of Washington at the time of such diagnosis; and
- (4) has been advised by that physician about the risks and benefits of the medical use of marijuana; and
- (5) has been advised by that physician that he or she may benefit from the medical use of marijuana.

APPENDIX "G"

WPIC 52.14

DRUGS AND CONTROLLED SUBSTANCES

WPIC 52.14

**MEDICAL MARIJUANA—TERMINAL OR
DEBILITATING MEDICAL
CONDITION—DEFINITION [Replaced]**

A "terminal or debilitating medical condition" means

[cancer]

[human immunodeficiency virus (HIV)]

[multiple sclerosis]

[epilepsy or other seizure disorder]

[spasticity disorders]

[pain unrelieved by standard medical treatments and medications]

[glaucoma, either acute or chronic, characterized by an increased intraocular pressure that is unrelieved by standard treatments and medications][or]

[Crohn's disease with debilitating symptoms unrelieved by standard treatments or medications]

[hepatitis C with debilitating nausea or intractable pain unrelieved by standard treatments or medications]

[diseases[, including anorexia,] that result in nausea, vomiting, wasting, appetite loss, cramping, seizures, muscle spasms, or spasticity, when these symptoms are unrelieved by standard treatments or medications] [or]

[(specify other medical condition approved by the Washington State Medical Quality Assurance Commission)].

APPENDIX "H"

WPIG 52.15

DRUGS AND CONTROLLED SUBSTANCES

WPIG 52.15

**MEDICAL MARIJUANA—SIXTY-DAY
SUPPLY—DEFINITION [New]**

"Sixty-day supply" means a total of no more than twenty-four ounces of useable marijuana, and no more than fifteen marijuana plants. ["Useable marijuana" means the dried leaves and flowers of marijuana, excluding stems, stalks, seeds, and roots.]