

No. 40491-5-II  
Cowlitz Co. Cause No. 08-1-00662-7

**COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON**

**STATE OF WASHINGTON,**

Respondent,

v.

**MATTHEW COLT CHAPMAN,**

Appellant.

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**BRIEF OF RESPONDENT**

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## **I. ANSWERS TO ASSIGNMENT OF ERROR**

The trial court correctly denied the appellant's request to use the medical marijuana affirmative defense at trial.

## **II. STATEMENT OF THE CASE**

The Respondent generally accepts the Appellant's recitation of the facts. One additional fact of note is that the authorization presented to Deputy Uhlich by Mr. Chapman was not only expired, but had been altered, showing that it expired on April 27<sup>th</sup>, 2008, instead of April 27<sup>th</sup>, 2007. RP 1, p.120. Exhibit 2.

## **III. ARGUMENT**

### **A. THE APPELLANT DID NOT QUALIFY FOR THE MEDICAL MARIJUANA AFFIRMATIVE DEFENSE**

The Appellant simply did not comply with the requirements of RCW 69.51A.040 and was not entitled to the medical marijuana affirmative defense. RCW 69.51A.040(3)(c) requires a qualifying patient to present "his or her valid documentation to any law enforcement official who questions the patient or provider regarding his or her medical marijuana use." The statute specifically requires "valid" documentation. He did not have an authorization at the time he presented Deputy Uhlich with his documentation, because it had expired. Thus, he did not have any valid documentation. He should not be allowed to use the medical marijuana affirmative defense.

The appellant had no “good faith basis” for a medical marijuana defense. The appellant contends that because he was a qualified patient before and after his arrest, it does not matter that his authorization had expired when considering the question of “valid documentation.” Despite diligent research, the State could find no definition of “valid” that would cover a document that had expired. It makes no sense to say that the documentation was valid, even though it had expired. The statute specifically requires “valid” documentation to be “dated.” RCW 69.51A.010 (7)(a). To suggest that the statute would require the doctor to go to the trouble of putting a date on the authorization, but then ignore that the doctor put an expiration on that authorization, would be a contradictory construction of the statute and an absurd result.

The court should not be put in a position to supplant the treating doctor’s judgment with its’ own. Dr. Orvald specifically put an expiration date on the authorization. The statute does not require an expiration date. If the court considers the authorization valid, in spite of the doctor’s judgment that the authorization would last only a year, the court assumes the role of determining the appropriateness of medical marijuana treatment. Car vehicle tabs that have expired are no longer valid. Driver’s licenses that have expired are no longer valid. To suggest that a doctor’s authorization that had expired was still “valid” for the purpose of the statute puts the court in the position of acting as the

appellant's doctor and substituting the judgment of the court for the judgment of the doctor.

The appellant would have the court rely on *State v. Hanson*, but that reliance would be misplaced. If anything, *Hanson* is favorable to the respondent's interpretation. In *Hanson*, the appellant had valid authorization at the time he presented it to the police. 138 Wn.App. 322, 157 P.3d 438 (2008). He went to the police the day after his grow operation was raided, and at the first police contact he personally had, presented his valid documentation. *Id.* at 327. He did not have valid documentation at the time of the raid. *Id.* The court ultimately allowed him to use the medical marijuana defense, finding that he satisfied the bare requirements of the statute. *Id.* This is almost the complete opposite of the situation presented here by the appellant. Unlike in *Hanson*, the appellant in this case was not authorized at the time he presented the documentation to the police.

The appellant then argues that valid documentation is not required prior to arrest and cites to *Fry*. *State v. Fry*, 168 Wn.2d 1, 228 P.3d 1 (2010). The appellant relies on a statement in *Fry* discussing the presentment requirement that indicates it must be read in "context." *Id.* at 9. That statement must in turn be read in context. The statement was made while discussing whether or not RCW 69.51 established lawful possession, which would in turn invalidate probable cause for a search or a seizure. *Id.* This, of course, has nothing to do with whether or not

“valid” documentation must be possessed pre- or post-arrest. But we do know from *Hanson*, the presentment is the key. Unfortunately, the appellant in this case presented documentation that was expired.

The court must give deference to the doctor’s limitation of the authorization to a one-year period. The court should not allow the medical marijuana affirmative defense to be used where the authorization was expired. To allow an interpretation of the statute that permits expired licenses to authorize the medical marijuana affirmative defense would lead to an absurd result. In this case, the documentation was expired by eight months. What if the document had been expired by eight years? Would the result simply be that one authorization was good forever, in spite of the doctor putting an express limitation on the authorization? This court should affirm the trial court’s refusal of the medical marijuana affirmative defense.

**B. THE DOCUMENTATION PRESENTED BY THE APPELLANT WAS PER SE INVALID BECAUSE IT WAS ALTERED**

The appellant provided Deputy Uhlich with medical marijuana authorization that had the date altered to show an “8” instead of a “7.” Not only was the documentation invalid because the actual authorization had expired, the authorization provided to the police had been altered as well. Documentation that was altered by someone other than the doctor can not be considered valid.

#### IV. CONCLUSION

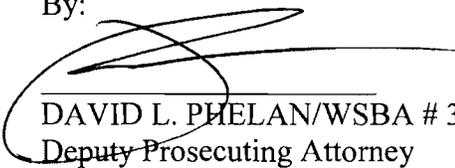
Dr. Orvald wrote an authorization for Matthew Chapman to use medical marijuana, pursuant to RCW 69.51A, and put an expiration date on that authorization. When the appellant presented that authorization to police, the authorization was eight months past its expiration date. That authorization was no longer valid. It makes no difference whether or not the appellant was or continues to be a qualifying patient. The issue is not his status as a qualifying patient. The authorization presented to the police was invalid and he did not qualify under the statute for the affirmative defense. Moreover, status as a qualifying patient aside, the documentation presented to the police had been altered. Even considering the appellant's argument regarding qualifying patient status, he did not comply with the statute when he presented altered documentation.

The Respondent respectfully requests that this court affirm the trial court's decision to deny the medical marijuana affirmative defense.

Respectfully submitted this 8th day of April, 2011.

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