

NO. 42119-4-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

STATE OF WASHINGTON,

Respondent,

v.

BUDDY DUANE JENKINS,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR COWLITZ COUNTY

The Honorable Stephen Warning, Judge

BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

1. Evidence seized during an unlawful search of appellant's vehicle should have been suppressed.

2. The court erred in ruling appellant failed to establish a medical marijuana affirmative defense.

Issues pertaining to assignments of error

1. Appellant was arrested for possession of marijuana. He was handcuffed and secured away from his vehicle while the arresting officer searched his car. Where appellant posed no risk to officer safety and could not have concealed or destroyed evidence of the crime of arrest at the time of the search, did the search violate article I, section 7 of the Washington Constitution?

2. Appellant suffers from debilitating conditions which he treats with marijuana under the advice of his physicians. Where appellant met the criteria of a qualifying patient, had no more than a 60-day supply of marijuana in his possession, and possessed valid documentation authorizing his medical use of marijuana but did not have the documentation on his person when he was arrested, did the court err in concluding he failed to establish a medical marijuana affirmative defense?

B. STATEMENT OF THE CASE

1. Procedural History

On November 13, 2008, the Cowlitz County Prosecuting Attorney charged appellant Buddy Jenkins with possession of methamphetamine, use of drug paraphernalia, and possession of marijuana with intent to deliver. CP 1-3. After Jenkins's motion to suppress evidence seized in a search of his vehicle was denied, the State filed an amended information charging Jenkins with possession of over 40 grams of marijuana (RCW 69.50.4013(1)), and the case proceeded to a stipulated facts trial before the Honorable Stephen Warning. CP 4-41, 57-58, 92-94. The court entered a verdict of guilty and imposed a standard range sentence, and Jenkins filed this timely appeal. CP 76-79, 85, 95.

2. Substantive Facts

Buddy Jenkins suffers from diabetes mellitus type 2 and neuropathy in his legs and feet. Under the advice of his physician, he has treated these debilitating conditions with marijuana since 2005. CP 60.

On November 7, 2008, Longview Police Officer Kevin Sawyer contacted Jenkins based on an anonymous report that someone appeared to be selling marijuana from a car. RP¹ 4. Sawyer located the car in a

¹ The Verbatim Report of Proceedings from the hearings on 8/6/09, 5/27/10, 3/22/11, and 4/11/11 is contained in a single volume, designated RP.

parking lot, parked in a nearby stall, and approached the car on foot. RP 5, 15. The driver's window was down, and as Sawyer spoke to Jenkins, he smelled marijuana. RP 5. Sawyer had Jenkins step out of the car and placed him under arrest. RP 8. After he was advised of his rights, Jenkins told Sawyer he had some marijuana in his pocket, and he pulled out a baggie containing 5.1 grams. RP 10-11. Jenkins said he had a medical marijuana card, but he could not find it on his person and said it was probably at home. RP 10, 17.

Sawyer handcuffed Jenkins, and when a cover patrol car arrived, the cover officer stood with Jenkins by the patrol car while Sawyer searched Jenkins's vehicle. RP 11, 17-18. Jenkins was cooperative throughout the encounter, and the officers had no safety concerns. RP 18. During the search, Sawyer found a glass pipe with residue, baggies containing 6.2 grams, 32.6 grams and 22.4 grams of marijuana, and a scale with green residue. RP 12. He did not find Jenkins's medical marijuana documentation. RP 17.

Jenkins moved to suppress the evidence seized from his car without a warrant. He argued that the search of his car incident to his arrest was not justified because at the time of the search there was no danger he could access the car to obtain a weapon or destroy evidence. CP 20-41; RP 31-32. The trial court denied the motion, ruling that

because there was probable cause to arrest and a rational basis to believe that evidence of the crime of arrest would be found in the vehicle, the police were entitled to search the car. RP 37; CP 93-94.

After the court's ruling, the State filed an amended information charging Jenkins with possession of over 40 grams of marijuana. CP 57-58. The parties stipulated that Jenkins was in possession of marijuana as discovered by Sawyer. CP 60. They also stipulated that Jenkins's physician had issued him medical marijuana authorizations on July 5, 2005, July 6, 2006, and October 2, 2007. Each of these authorizations had expiration dates of one year after issue. CP 60. In addition, on December 6, 2008, Jenkins was again issued a medical marijuana authorization, with an expiration date of February 6, 2009. CP 60.

The parties further stipulated that both Jenkins's treating physicians stated that Jenkins continually suffered from diabetes mellitus type 2 and neuropathy in his legs and feet, both debilitating conditions, from the time he was first examined in July 2005 until the present time. Both doctors stated that medical marijuana is appropriate for Jenkins as palliative care and that the specific dosing is left to the discretion of the patient. CP 61.

Based on these stipulated facts, Jenkins asserted an affirmative defense that he was a qualified patient who possessed the marijuana for

medicinal use. RP 49-50. The State argued that Jenkins was precluded from asserting the defense because he did not provide valid documentation when questioned by the police officer and because his authorization had expired at the time of his arrest. RP 47-48.

The court was not willing to rule that Jenkins's failure to have documentation in his possession at the time of his arrest vitiated the defense. RP 51. It concluded, however, that because Jenkins's medical marijuana authorization had expired when he was contacted by police, the affirmative defense was not established. RP 51. The court found Jenkins guilty. RP 51; CP 78.

C. ARGUMENT

1. THE WARRANTLESS SEARCH OF JENKINS'S VEHICLE VIOLATED ARTICLE I, SECTION 7 OF THE WASHINGTON CONSTITUTION, AND EVIDENCE SEIZED AS A RESULT OF THE UNLAWFUL SEARCH SHOULD HAVE BEEN SUPPRESSED.

Both the state and federal constitutions protect individuals against unreasonable searches and seizures. Const. art. 1 § 7; U.S. Const., amend.

4. A warrantless search is presumed unreasonable, and exceptions to the warrant requirement are limited and carefully drawn. State v. Hendrickson, 129 Wn.2d 61, 70, 917 P.2d 563 (1996) (quoting Arkansas v. Sanders, 442 U.S. 753, 759, 61 L. Ed. 2d 235, 99 S. Ct. 2586 (1979)).

The State has the burden of proving that an exception to the warrant

requirement applies. State v. Parker, 139 Wn.2d 486, 496, 987 P.2d 73 (1999).

One recognized exception to the warrant requirement is a search incident to a lawful arrest. Hendrickson, 129 Wn.2d at 71. This exception serves to safeguard arresting officers and preserve evidence of the offense of arrest that the arrestee might conceal or destroy. Arizona v. Gant, 556 U.S. 332, 129 S.Ct. 1710, 1716, 173 L.Ed.2d 485 (2009) (citing Chimel v. California, 395 U.S. 752, 763, 89 S.Ct. 2034, 23 L.Ed.2d 685 (1969)). Thus, a search incident to arrest may only include the arrestee's person and the area within his immediate control. Gant, 129 S.Ct. at 1716. "If there is no possibility that an arrestee could reach into the area that law enforcement officers seek to search, both justifications for the search-incident-to-arrest exception are absent and the rule does not apply." Gant, 129 S.Ct. at 1716.

In Gant, police officers conducted a records check on Gant and learned that his driver's license had been suspended. When they saw him driving later that evening, the officers arrested him, placed him in handcuffs, and locked him in the back of a patrol car. The officers then searched Gant's car and found a bag of cocaine in a jacket in the backseat. Gant, 129 S.Ct. at 1715.

Gant was charged with possession of a narcotic for sale and possession of drug paraphernalia. He moved to suppress the evidence found in his car, arguing that the search was not authorized because he posed no threat to the officers once he was handcuffed in the patrol car and because no evidence of the traffic offense for which he was arrested could be found in the car. The trial court denied the motion, and Gant was convicted. Id.

After protracted state court proceedings, the Arizona Supreme Court held that the search of Gant's car violated the Fourth Amendment. Arizona v. Gant, 216 Ariz. 1, 3-4, 162 P.3d 640 (2007). The United States Supreme Court granted certiorari to clarify the scope of the search incident to arrest exception in the automobile context, following its earlier decision in New York v. Belton, 453 U.S. 454, 101 S.Ct. 2860, 69 L.Ed.2d 768 (1981). Gant, 129 S.Ct. at 1716..

In Belton, a lone police officer removed four occupants from a vehicle after he smelled burnt marijuana and observed evidence in the car associated with marijuana. The officer arrested the occupants and left them separated but unsecured on the side of the road while he looked in the car. Belton, 453 U.S. at 456. The Supreme Court held that when an officer lawfully arrests the occupant of an automobile, the officer may search the passenger compartment and any containers therein. Belton, 453

U.S. at 460. The Belton Court noted, however, that its decision did not alter the fundamental principles justifying searches incident to arrest as set forth in Chimel. Belton, 453 U.S. at 460, n.3.

Nonetheless, Belton has been widely understood to permit a vehicle search any time the arrestee has been a recent occupant of the vehicle, regardless of whether the arrestee could gain access to the vehicle at the time of the search. Gant, 129 S.Ct. at 1718. The Supreme Court in Gant rejected that reading of Belton, holding that officers are authorized to search a vehicle incident to the occupant's arrest "only when the arrestee is unsecured and within reaching distance of the passenger compartment at the time of the search." Gant, 129 S.Ct. at 1719. In addition, a search incident to arrest is permitted under the Fourth Amendment "when it is 'reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle.'" Gant, 129 S.Ct. at 1719 (quoting Thornton v. United States, 541 U.S. 615, 632, 124 S.Ct. 2127, 158 L.Ed.2d 905 (2004) (SCALIA, J., concurring in judgment)).

Applying this rule, the Gant Court held that the search in that case was unreasonable. Gant was handcuffed and secured in a patrol car before the officers began searching his car. He clearly was not within reaching distance of the car at the time of the search. Nor was there an evidentiary basis for the search. Gant was arrested for driving with a suspended

license. The officers could not expect to find evidence of that offense in the passenger compartment of his car. “Because police could not reasonably have believed either that Gant could have accessed his car at the time of the search or that evidence of the offense for which he was arrested might have been found therein, the search in this case was unreasonable.” Gant, 129 S.Ct. at 1719.

The Washington Supreme Court has long recognized that article I, section 7 of the Washington Constitution is more protective of individual privacy rights than the Fourth Amendment. State v. Valdez, 167 Wn.2d 761, 772, 224 P.3d 751 (2009); York v. Wahkiakum Sch. Dist. No. 200, 163 Wn.2d 297, 305-06, 178 P.3d 995 (2008). Where the Fourth Amendment precludes only “unreasonable” searches and seizures without a warrant, article I, section 7 prohibits any disturbance of an individual's private affairs “without authority of law.”

In Valdez, the Washington Supreme Court noted that a warrantless automobile search incident to arrest may be justified by necessity, where there is a risk that the arrestee may secure a weapon or destroy evidence of the crime of arrest. Valdez, 167 Wn.2d at 773.

However, after an arrestee is secured and removed from the automobile, he or she poses no risk of obtaining a weapon or concealing or destroying evidence of the crime of arrest located in the automobile, and thus the arrestee's presence does not justify a warrantless search under the search incident to arrest exception.

Valdez, 167 Wn.2d at 777. The Court explained that when an arrest is made, the normal course of obtaining a warrant to conduct a search is not possible if there is a risk to officer safety or that evidence of the crime of arrest will be destroyed. Thus, “a warrantless search of an automobile is permissible under the search incident to arrest exception when that search is necessary to preserve officer safety or prevent destruction or concealment of evidence of the crime of arrest.” Valdez, 167 Wn.2d at 777. The court held, however, that when a search can be delayed to obtain a warrant without placing the officer or evidence of the crime at risk, a warrant must be obtained. Valdez, 167 Wn.2d at 777.

In Valdez, the arrestee was handcuffed and secured in the backseat of the patrol car at the time of the search. Because he no longer had access to any portion of the vehicle, there was no risk to officer safety or of possible destruction of evidence, and the search could have been delayed to obtain a warrant. The warrantless search therefore violated article I, section 7. Valdez, 167 Wn.2d at 778. The search was also unconstitutional under the Fourth Amendment, because there was no reason to believe evidence of the crime of arrest would be found in the vehicle. Valdez, 167 Wn.2d at 778.

The Washington Supreme Court similarly focused on necessity as the justification for a vehicle search incident to arrest in State v. Patton, 167 Wn.2d 379, 219 P.3d 651 (2009). The Court noted that the automobile search incident to arrest exception to the warrant requirement is limited by the need to ensure officer safety and prevent the destruction of evidence of the crime of arrest. Patton, 167 Wn.2d at 386. This exception to the warrant requirement “is narrow and should be applied only in circumstances anchored to the justifications for its existence.” Patton, 167 Wn.2d at 389. Recognizing that the automobile search incident to arrest exception had been distorted beyond its original justification, the Court stated:

Today we hold that the search of a vehicle incident to the arrest of a recent occupant is unlawful absent a reasonable basis to believe that the arrestee poses a safety risk or that the vehicle contains evidence of the crime of arrest that could be concealed or destroyed, and that these concerns exist at the time of the search.

Patton, 167 Wn.2d at 394-95. The court further acknowledged that previous cases had upheld searches incident to arrest which were conducted after the arrestee had been secured and the risks had passed, stating, “Today, we expressly disapprove of this expansive application of the narrow search incident to arrest exception.” Patton, 167 Wn.2d at 395.

In Patton, a police officer was watching Patton’s residence, hoping to locate Patton and arrest him on an outstanding warrant. When the

officer noticed someone fitting Patton's description moving inside Patton's car in the driveway, he activated the lights on his patrol car and announced to Patton that he was under arrest. Patton ran inside his residence, where he was later apprehended. He was handcuffed and placed in the patrol car, and his car was searched incident to his arrest. Patton, 167 Wn.2d at 384-85.

The Washington Supreme Court held that these facts simply did not involve a search incident to arrest. Patton was not a driver or recent occupant of the vehicle searched, and there was no connection between Patton, the reason for his arrest warrant, and the vehicle. Thus, there was no basis to believe evidence relating to Patton's arrest would have been found in the car. Nor were there any safety concerns arising from his proximity to the car. The only connection between the arrest and the car was that Patton happened to be standing next to it when the officer executed the arrest warrant. Patton 167 Wn.2d at 395. The Court determined that the search incident to arrest exception could not be stretched to apply to Patton's circumstances. Patton, 167 Wn.2d at 396.

In this case, as in Valdez and Patton, Jenkins was handcuffed and secured out of reach of his vehicle at the time his car was searched. Thus, he could not have accessed any weapon or evidence which might have been in the car. Moreover, Officer Sawyer testified that he had no safety

concerns and Jenkins was cooperative throughout the encounter. RP 18. Because there was no reason to believe at the time of the search that Jenkins posed a safety risk or that he could have concealed or destroyed evidence of the crime of arrest, the warrantless search violated article I, section 7 of the state constitution. See Valdez, 167 Wn.2d at 777; Patton, 167 Wn.2d at 394-95.

The court below nonetheless denied Jenkins's motion to suppress, relying on State v. Wright, 155 Wn. App. 537, 230 P.3d 1063, review granted, 169 Wn.2d 1026 (2010). In Wright, Division One found no violation of the Fourth Amendment because the arresting officer had a reasonable belief that evidence of the crime of arrest would be found in car. Wright, 155 Wn. App. at 549. The Wright court also said that there was no violation of article I, section 7, because the officer had probable cause to arrest Wright and there was a nexus between Wright, the crime, and the search of the vehicle. Wright, 155 Wn. App. at 549. Wright is wrong.

The existence of probable cause, standing alone, does not justify a warrantless search. Probable cause is not a recognized exception to the warrant requirement, but rather the necessary basis for obtaining a warrant. State v. Tibbles, 169 Wn.2d 364, 370, 236 P.3d 885 (2010). Even where probable cause to search exists, a warrant must be obtained

unless excused under one of a narrow set of exceptions to the warrant requirement. State v. Ringer, 100 Wn.2d 686, 701, 674 P.2d 1240 (1983) (citing State v. Smith, 88 Wn.2d 127, 135, 559 P.2d 970 (1977)), overruled on other grounds by State v. Stroud, 106 Wn.2d 144, 720 P.2d 436 (1986). The Washington Supreme Court has recognized exceptions for consent, exigent circumstances, searches incident to valid arrest, inventory searches, plain view, and Terry investigative stops. Tibbles, 169 Wn.2d at 369. Thus, where no other exceptions to the warrant requirement apply, probable cause to arrest does not justify a warrantless automobile search unless the requirements for a lawful search incident to arrest are met.

The Washington Supreme Court has defined the standard for a warrantless automobile search incident to arrest:

[T]he search of a vehicle incident to the arrest of a recent occupant is unlawful absent a reasonable basis to believe that the arrestee poses a safety risk or that the vehicle contains evidence of the crime of arrest that could be concealed or destroyed, and that these concerns exist at the time of the search.

Patton, 167 Wn.2d at 395-94. The Patton court summarized this standard, saying “the search incident to arrest exception requires a nexus between the arrestee, the vehicle, and the crime of arrest, implicating safety concerns or concern for the destruction of evidence of the crime of arrest.” Patton, 167 Wn.2d at 384.

The Wright Court, and the court below, upheld the search based solely on the nexus between the arrestee, the vehicle, and the crime, without considering whether concerns for officer safety or the destruction of evidence of the crime of arrest were implicated. Wright, 155 Wn. App. at 556²; RP 37; CP 94. Unless safety or evidentiary concerns exist, however, the nexus shows no more than a reasonable belief that evidence of the crime of arrest will be found in the vehicle. While this is sufficient under the Fourth Amendment, article I, section 7 requires more. Valdez, 167 Wn.2d at 771-72 (there is a reduced expectation of privacy in an automobile under the Fourth Amendment, but the privacy protections under article I, section 7 are more extensive).

Here, although there was reason to believe that evidence of the crime of arrest would be found in Jenkins's car, at the time of the search there were no concerns for officer safety or the destruction of evidence. It is this final requirement, ignored by the Wright Court and the court below, that is the essence of the search incident to arrest exception. As the Washington Supreme Court has held, the requirement for obtaining a warrant is excused only if necessary to ensure officer safety or prevent the destruction of evidence. Valdez, 167 Wn.2d at 777.

² See also State v. Barnes, 158 Wn. App. 602, 243 P.3d 165 (2010) (overturning suppression based on nexus and because evidence was in open view)

Because the search incident to arrest exception does not justify the search in this case, the evidence obtained during the search must be suppressed. See Wong Sun v. United States, 371 U.S. 471, 484, 83 S.Ct. 9 L.Ed.2d 441 (1963); State v. Duncan, 146 Wn.2d 166, 176, 43 P.3d 513 (2002). Without evidence seized during the unlawful search, the State could not prove the charges in either the original or amended information. Jenkins's conviction must therefore be reversed and the charge dismissed.

2. JENKINS ESTABLISHED A MEDICAL MARIJUANA AFFIRMATIVE DEFENSE TO THE POSSESSION CHARGE, AND HIS CONVICTION MUST BE REVERSED.

The Washington Medical Use of Marijuana Act provides an affirmative defense for qualifying patients against Washington laws relating to marijuana. RCW 69.51A.040; State v. Otis, 151 Wn. App. 572, 577-78, 213 P.3d 613 (2009). Under the statute in effect at the time of Jenkins's arrest, a person over the age of 18 established the affirmative defense by (a) meeting all the criteria for a qualifying patient; (b) possessing no more than a 60-day supply of marijuana; and (c) presenting valid documentation to any law enforcement official who questioned the patient regarding his or her medical use of marijuana. Former RCW 69.51A.040(3).

The stipulated evidence below establishes the first requirement for the affirmative defense, because Jenkins meets all the criteria for a qualifying patient. The statute in effect in November 2008 defined a qualifying patient as 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.

Former RCW 69.51A.010(3). The parties stipulated that Jenkins was under the care of a licensed physician; he was diagnosed with the debilitating conditions of diabetes mellitus type 2 and neuropathy in his legs and feet; he was a resident of Washington; he had been advised of the risks and benefits of the medical use of marijuana; and he had been advised by his physician that he would benefit from the use of marijuana. CP 60. This is all the statute requires. The statute does not require a person to have written authorization to use marijuana in order to be a qualified patient. State v. Hanson, 138 Wn. App. 322, 326, 157 P.3d 438

(2007) (defendant was qualified patient under terms of statute even though he did not obtain written authorization until the day after police seized marijuana from his motel room).

Next, the parties stipulated that when he was contacted by Officer Sawyer, Jenkins possessed 66.3 grams of marijuana. CP 60. The parties stipulated that Jenkins's physicians left the specific dosage for marijuana as palliative care to Jenkins's discretion, and the State did not contend that this amount exceeds a 60-day supply.³ CP 61.

Finally, the affirmative defense requires presentation of valid documentation to a law enforcement official who questions the patient regarding his medical use of marijuana. Under the statute in effect in 2008, valid documentation was defined as "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).

Jenkins's medical records show that marijuana was prescribed as treatment for his debilitating conditions. CP 64-65, 70. Although at the time of his arrest the most recent statement by his physician had expired,

³ The statute has been amended, restricting the affirmative defense to patients or providers who possess no more than 15 plants and 24 ounces of usable cannabis. RCW 69.51A.040(1)(a). The amount Jenkins possessed was well within that limit.

nothing in the statute requires annual renewal of a patient's medical marijuana authorization. The definition of "valid documentation" in effect at the time of Jenkins's arrest did not even require the physician's statement to be dated. Thus, Jenkins's medical records, indicating his physician's opinion that Jenkins may benefit from the medical use of marijuana, meet the statutory definition of valid documentation.

Moreover, the parties stipulated that Jenkins's debilitating conditions and need for marijuana persisted at time of his arrest and beyond, and Jenkins obtained and was able to present a renewed physician's statement regarding his medical use of marijuana within a month of his arrest. CP 60-61. The fact that the previous physician's statement had technically expired when Jenkins was arrested should not preclude his reliance on the statutory affirmative defense. See Hanson, 138 Wn. App. at 325 (defendant could assert affirmative defense even though he did not obtain a formal written authorization for medical marijuana until the day after police raided his motel room).

In any event, it is clear that if Jenkins had had his medical records with him and shown them to Officer Sawyer, the affirmative defense would be established. The issue in this case comes down to whether Jenkins's failure to have valid documentation in his possession at the time

the police officer seized his marijuana precludes him from asserting a medical marijuana affirmative defense.

A similar situation was addressed in State v. Adams, 148 Wn. App. 231, 198 P.3d 1057 (2009). There, police searched the defendant's home and garage while he was at work and found 40 marijuana plants. Adams was arrested away from home and, although he told police he had a medical marijuana permit, he was not given an opportunity to retrieve his documentation. Adams, 148 Wn. App. at 233. Adams was charged with maintaining a dwelling for controlled substances, and he moved to assert a primary caregiver affirmative defense. In support of his motion, Adams presented documentation that he was designated as a medical marijuana caregiver by a qualified patient, as well as a physician's statement authorizing the patient's use of marijuana. Adams, 148 Wn. App. at 233-34.

The trial court denied Adams's motion, ruling that Adams had the duty to present valid documentation at the time he was arrested, and the documents he later presented in court were inadmissible to establish the statutory defense. Adams, 148 Wn. App. at 234-35. The Court of Appeals reversed. It noted that Adams had obtained the proper documentation in advance on his contact with law enforcement, but he was arrested away from home and was never given the chance to produce

the documentation. Adams, 148 Wn. App. at 237. It held that the statute does not require patients and caregivers to carry valid documentation at all times in order to assert a medical marijuana defense. Adams, 148 Wn. App. at 237-38.

Here, as in Adams, Jenkins was arrested away from home. He told the officer he had medical marijuana authorization which was probably at home, but he was not given a chance to retrieve it. RP 17. His failure to have the documentation in his possession at the time of his arrest should not preclude him from establishing an affirmative defense. See Adams, 148 Wn. App. at 237-38.

As the Court of Appeals recognized in Adams, nothing in the Act indicates the legislature intended to require qualifying patients and caregivers to carry valid documentation at all times. Such an interpretation would be contrary to the stated purpose of the Act, as set forth in Former RCW 69.51A.005:

The people of Washington state find that some patients with terminal or debilitating illnesses, under their physician's care, may benefit from the medical use of marijuana. ...

The people find that humanitarian compassion necessitates that the decision to authorize the medical use of marijuana by patients with terminal or debilitating illnesses is a personal, individual decision, based upon their physician's professional medical judgment and discretion.

Therefore, the people of the state of Washington intend that:

Qualifying patients with terminal or debilitating illnesses who, in the judgment of their physicians, may 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;

...

Courts must interpret a statute consistently with its stated goals; this is a fundamental rule of statutory interpretation. Otis, 151 Wn. App. at 582 (holding that physician's statement does not have to be in exact language of statute to constitute valid documentation). The Act's stated goal is to prevent qualified patients from being convicted for their possession and limited use of marijuana. Precluding a qualified patient who, under the care of a licensed physician, possesses marijuana for medical use from establishing a medical marijuana defense simply because he did not have documentation in his possession when questioned by the police runs contrary to the statutory goal.⁴

⁴ The legislature has since clarified its intent regarding the necessity of presenting of valid documentation:

A qualifying patient or designated provider who ... does not present his or her valid documentation to a peace officer who questions the patient or provider regarding his or her medical use of cannabis but is 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 through proof at trial, by a preponderance of the evidence, that he or she was a validly authorized qualifying patient or designated provider at the time of the officer's questioning....

RCW 69.51A.0005.

Because Jenkins established by stipulated facts all the requirements for an affirmative defense under Former RCW 69.51A.040(3), his conviction must be reversed.

D. CONCLUSION

The search of Jenkins's car incident to his arrest violated the Washington Constitution, and all evidence seized during the search must be suppressed. Without that evidence, the State cannot prove the charged offense, and it must be dismissed. In addition, the stipulated facts establish an affirmative medical marijuana defense, and Jenkins's conviction must be reversed.

DATED this 23rd day of September, 2011.

Respectfully submitted,



CATHERINE E. GLINSKI
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Certification of Service

Today I forwarded via U.S. Mail a copy of the Brief of Appellant
in *State v. Buddy Duane Jenkins*, Cause No. 42119-4-II to:

Buddy Jenkins
106 Union Way
Kelso, WA 98626-4455

I certify under penalty of perjury of the laws of the State of Washington
that the foregoing is true and correct.



Catherine E. Glinski
Done in Port Orchard, WA
September 23, 2011

GLINSKI LAW OFFICE

September 23, 2011 - 1:25 PM

Transmittal Letter

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■ Brief: Appellant's

Statement of Additional Authorities

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Objection to Cost Bill

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