

No. 28878-1-III

IN THE COURT OF APPEALS, DIVISION III  
OF THE STATE OF WASHINGTON

---

THE STATE OF WASHINGTON

Respondent

v.

DAVID HENDERSHOT,

Appellant

---

BRIEF OF RESPONDENT

---

Mr. Tim Rasmussen  
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Stevens County

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I.

APPELLANT'S ASSIGNMENT OF ERROR

1. Excluding evidence of the Appellant's status as a qualifying patient violated his right to present a defense.

II.

ISSUES PRESENTED

- A. WHETHER THE TRIAL COURT ABUSED ITS DISCRETION IN DENYING THE APPELLANT'S MOTION IN LIMINE.

III.

STATEMENT OF THE CASE

For the purposes of this appeal the State accepts the Appellant's Statement of the Case.

IV.

ARGUMENT

- A. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN GRANTING THE STATE'S MOTION IN LIMINE AND THEREFORE REFUSING TO ALLOW THE APPELLANT TO ADMIT EVIDENCE AS A QUALIFYING PATIENT UNDER THE MEDICAL MARIJUANA ACT.

The Appellant assigns error to the trial courts order granting the State's motion in limine. The motion in limine prohibited the Appellant from disclosing evidence regarding any authorization to possess marijuana under the Medical Marijuana Act.

“A motion in limine is a procedural mechanism to limit in advance testimony or evidence in a particular area.” *State v. O'Connor*, 155 Wash. App. 282, 290, 229 P.3d 880 (2010). The appellate court reviews such a decision under the abuse of discretion standard. *State v. O'Connor*, 155 Wash. App. at 290; *State v. Finch*, 137 Wash. 2d 792, 810, 975 P.2d 967 (1999).

“An abuse of discretion occurs only when the decision or order of the court is manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons. *State v. Enstone*, 137 Wn.2d 675, 679-80, 974 P.2d 828 (1999).

Under the Medical Marijuana Act “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.” RCW 69.51A.005.

Under Washington State law, a person falls within the statutory protection of the Medical Marijuana law and therefore can present it as an affirmative defense if he/she (1) meets all the criteria for status as a

qualifying patient, (2) possesses “no more marijuana than is necessary for the patient’s personal, medical use, not exceeding the amount for a sixty-day supply” and (3) “**presents his or her valid documentation to any law enforcement official who questions the patient or provider regarding his or her medical use of marijuana.**” RCW 69.51A.040(3) (emphasis added)

In this case, it is clear from the record that the trial judge granted the motion in limine that prohibited the Appellant from raising the affirmative defense because statutorily Mr. Hendershot did not fall within the legal boundaries of RCW 69.51A.040.

Specifically, in the Findings of Fact and Conclusions of Law, the trial judge found that on “August 13, 2008 when Law Enforcement contacted David Hendershot at his residence where he was growing marijuana, **he did not possess, or show valid documentation of a medical marijuana authorization either as a designated provider or as a qualified patient.**” (CP 61; Finding of Fact 8) (emphasis added). The court further found that Mr. Hendershot admitted he was responsible for growing the **181 marijuana plants that were seized from his residence.**” (CP 61; Finding of Fact 7) This clearly exceeds the amount of a sixty-day supply mandated under the Medical Marijuana Act. See RCW 69.51A.040(3). Furthermore, “drug paraphernalia, plastic baggies, and a scale were found in David Hendershot’s bedroom.” (CP 61; Finding of Fact 6)

Based upon these Findings of Fact, the trial judge did not abuse his discretion in concluding that the “defendant did not have a valid prescription for his own marijuana use, nor was he qualified as a provider for any third person at the time.” (CP 62, Conclusion of Law 4; RCW 69.51A.040(3)) Therefore, the affirmative defense was denied. (CP 62; Conclusion of Law 4)

Furthermore, this case can be distinguished from *State v. Hanson*, in several important factors. *See State v. Hanson*, 138 Wash. App. 322, 157 P.2d 438 (2007). In *Hanson*, the Defendant had not been present the day of the drug raid, and Mr. Hanson went to the police station the day after the raid and presented the police with valid authorization. *Hanson*, 138 Wash. App. at 327. That is not the case here.

In *Hanson*, the court also further elaborated that if “Mr. Hanson had been present on the day of this raid and had he been asked to present valid documentation, he would not have been able to do so and would not, then, have satisfied the requirements of the statute” and therefore the Medical Marijuana Act would not have been an appropriate affirmative defense. *Hanson*, 138 Wash. App. at 327.

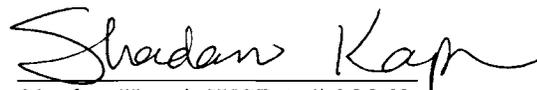
Here, Mr. Hendershot was contacted by law enforcement on the day of the raid and he could not provide the proper authorization as required under statute, and he had a supply of drugs that exceeded the 60-day supply allowed under RCW 69.51A.040(3). (CP 60 - 62)

V.

CONCLUSION

For the reasons stated, the conviction of the Appellant should be affirmed. Dated this 15<sup>th</sup> day of November, 2010.

Mr. Tim Rasmussen  
Stevens County Prosecuting Attorney



Shadan Kapri, WSBA # 39962  
Stevens County Deputy Prosecuting  
Attorney, Attorney for Respondent

**Affidavit of Certification**

I certify under penalty of perjury under the laws of the State of Washington, that I mailed a true and correct copy of the foregoing Brief of Respondent to the Court of Appeals, Division III, 500 N. Cedar Street, Spokane, WA 99201, and to Ms. Janet Gemberling, GEMBERLING & DOORIS, P.S., 3030 S. Grand Blvd. #132, Spokane, WA 99203 and to Mr. David Hendershot, 5130 Gennett Road - D, Springdale, WA 99173 on November 15, 2010.

A handwritten signature in cursive script that reads "Shadan Kapri". The signature is written in black ink and has a long, sweeping horizontal line extending to the right.

Shadan Kapri,  
Deputy Prosecuting Attorney