

No. 30979-7-III

**FILED**  
**Jan 21, 2014**  
Court of Appeals  
Division III  
State of Washington

COURT OF APPEALS, DIVISION III  
OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON, Respondent

v.

ANDRE STRATTON, Appellant

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BRIEF OF APPELLANT

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## I. ASSIGNMENT OF ERROR

The court erred by determining Andre Stratton could not use the medical marijuana defense in RCW 69.51A.047.

### *Issue Pertaining to Assignment of Error*

Did the court err by not allowing Mr. Stratton to pose the medical marijuana defense in RCW 69.51A.047?

## II. STATEMENT OF THE CASE

After a stipulated facts bench trial, Mr. Stratton was convicted of unlawful possession of marijuana over 40 grams. (CP 30). The parties agreed to these stipulated facts:

(1) On February 3, 2012, defendant possessed in his residence in Franklin County, Washington, a controlled substance, to-wit: in excess of 40 grams of marijuana (cannabis). Defendant knew the substance was in his possess[ion] and knew it was over 40 grams of marijuana (cannabis) and a controlled substance.

(2) The substance was seized during a search of defendant's residence on February 3, 2012. The substance was subsequently tested by David Renzelman of the Pasco Police Department and was determined to be in excess of 40 grams of marijuana (cannabis). Mr. Renzelman is qualified by training and experience to administer such tests.

(3) Defendant was present at his residence at the time it was searched by police on February 3, 2012. When questioned by police on that date regarding

his use and possession of marijuana (cannabis), defendant showed the officer a document from a physician authorizing his medical use of cannabis with an expiration date of December 17, 2011.

(4) Defendant was placed under arrest. After being released on bail, defendant obtained a new authorization from a physician for the medical use of cannabis. It was issued on February 9, 2012, and carried an expiration date of February 9, 2013. (CP 33-34).

The court had granted the State's motion in limine precluding the medical marijuana defense. (CP 35). The court made the following finding of fact:

(1) For purposes of this hearing, the parties accepted the statement of facts in the State's motion dated May 31, 2012. That statement is incorporated herein by reference. In response to court's inquiries, the parties further stipulated that defendant was arrested on February 3, 2012, and that the medical marijuana (cannabis) documentation that defendant possessed and showed to the police on that date carried an expiration date of December 17, 2011. (CP 35).

The court made these conclusions of law:

(1) Defendant was legally required by RCW 69.51A.043(1)(a) to present the investigating officer with valid documentation regarding his medical use of cannabis. Since the document presented by defendant was expired, it did not satisfy this requirement.

(2) Since defendant was present at the time

his residence was searched and was questioned by police on that date regarding his medical use of cannabis, it is not sufficient that he obtained a new authorization from a physician at a later date.

(3) Defendant cannot avail himself of the provisions of RCW 69.51A.047 since he was not a validly authorized qualifying patient at the time of the officer's questioning. An expired authorization from a physician is insufficient to make a person a validly authorized qualifying patient. (CP 36).

The court thus entered an order granting the State's motion in limine and Mr. Stratton was "prohibited from making any reference at trial to medical marijuana (cannabis)." (CP 36).

After the stipulated facts bench trial, the court made these findings of fact:

(1) On February 3, 2012, defendant possessed in his residence in Franklin County, Washington, a controlled substance, to-wit: in excess of 40 grams of marijuana (cannabis). Defendant knew the substance was in his possess[ion] and knew it was over 40 grams of marijuana (cannabis) and a controlled substance.

(2) The substance was seized during a search of defendant's residence on February 3, 2012. The substance was subsequently tested by David Renzelman of the Pasco Police Department and was determined to be in excess of 40 grams of marijuana (cannabis). Mr. Renzelman is qualified by training and experience to administer such

tests.

(3) Defendant was present at his residence at the time it was searched by police on February 3, 2012. When questioned by police on that date regarding his use and possession of marijuana (cannabis), defendant showed the officer a document from a physician authorizing his medical use of cannabis with an expiration date of December 17, 2011.

(4) Defendant was placed under arrest. After being released on bail, defendant obtained a new authorization from a physician for the medical use of cannabis. It was issued on February 9, 2012, and carried an expiration date of February 9, 2013.

Based on those findings, the court made the following

conclusion of law:

Defendant is guilty of the crime of Unlawful Possession of a Controlled Substance, to-wit: Marijuana (Cannabis) in excess of 40 grams. (CP 29-30).

Mr. Stratton appealed.

### III. ARGUMENT

A. The court erred by not allowing Mr. Stratton to pose the medical marijuana defense in RCW 69.51A.047.

RCW 69.51A.047 provides in relevant part:

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. . .

On February 3, 2012, the day of the search, Mr. Stratton showed the police officer a document from a physician authorizing his medical use of marijuana with an expiration date of December 17, 2011. (CP 34). He later obtained a new authorization from a physician for the medical use of marijuana that was issued on February 9, 2012, with an expiration date of February 9, 2013. (*Id.*).

There is no dispute that Mr. Stratton was a "qualifying patient" under RCW 69.51A.010(4). Indeed, to be a "qualifying patient," the Medical Marijuana Act does not require an authorization form. *State v. Hanson*, 138 Wn. App. 322, 326, 157 P.3d 438 (2007). Rather, the court found he was required to present the officer with "valid documentation" regarding the medical use of marijuana on February 3, 2012. (CP 36). Because the document was expired, however, it determined he did not satisfy this requirement. (*Id.*). The court erred.

RCW 69.51A.010(7) defines “valid documentation:”

(a) A statement signed and dated by a qualifying patient’s health care professional written on tamper-resistant paper, which states that, in the health care professional’s professional opinion, the patient may benefit from the medical use of marijuana; and

(b) proof of identity . . .

Because the court found Mr. Stratton did not present “valid documentation” at the time of questioning, RCW 69.51A.047 applies by its very terms. The issue then is whether he was a “validly authorized qualifying patient” under the statute. Since it is undisputed he is a “qualifying patient,” the inquiry focuses on whether he was “validly authorized.” *Id.*

The Medical Marijuana Act does not define “validly authorized.” Therefore, it should be given its ordinary meaning unless a contrary legislative intent is indicated. *Ravenscroft v. Wash. Water Power Co.*, 136 Wn.2d 911, 920-21, 969 P.2d 75 (1998). The Act does define “valid documentation” and thus gives at least some hint of the legislature’s intent as to what “validly authorized” means. Of particular significance is that the definition of “valid documentation” has no requirement for any effective/expiration date in the physician statement. RCW

69.51A.010(7). Mr. Stratton made a prima facie case that he had “valid documentation” as defined in the Act since there is no requirement for an expiration date. See *Hanson*, 138 Wn. App. 326-28. So viewed, he was also a “validly authorized” qualifying patient under RCW 69.51A.047.

The trial court improperly added an effective/expiration date requirement, which is not mandated by RCW 69.51A.010(7). *Hanson*, 138 Wn. App. at 327. Review of the court’s interpretation of statutes is de novo. *Id.* at 328. The statute defining “valid documentation” is ambiguous as it is subject to differing interpretations. *Walla Walla v. Topel*, 104 Wn. App. 816, 820, 17 P.3d 1244 (2001). Because of the ambiguity, the rule of lenity dictates that the term “valid documentation” be interpreted most favorably to the defendant. *State v. Walls*, 106 Wn. App. 792, 795, 25 P.3d 1052 (2001). So interpreted, Mr. Stratton had such documentation and should have been allowed to present the affirmative defense.

Of greater significance is that RCW 69.51A.047 permits Mr. Stratton to raise the affirmative defense even if he did not have

“valid documentation.” Except for the expiration date on the physician’s document authorizing use of medical marijuana, Mr. Stratton was otherwise “in compliance with all other terms and conditions of this chapter.” He was a “validly authorized qualifying patient.”

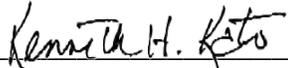
The statute itself presupposes the failure to “present his or her valid documentation.” RCW 69.51A.047. The State argued that phrase meant Mr. Stratton had to have “valid documentation” when questioned and he just failed to present it to the officer for some reason. (RP 46-47). That is not what the statute says. He failed to present his valid documentation and the affirmative defense applies because he was otherwise in compliance. The court erred by preventing Mr. Stratton from presenting that defense.

In any event, if RCW 69.51A.047 is susceptible to differing interpretations, the rule of lenity again applies and the statute must be interpreted in favor of Mr. Stratton. *Walls, supra*. He can avail himself of this statutory affirmative defense. Moreover, he may also present on remand a common law medical necessity defense. *State v. Kurtz*, 178 Wn.2d 466, 309 P.3d 472 (2013).

IV. CONCLUSION

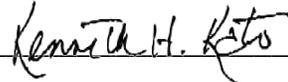
Based on the foregoing facts and authorities, Mr. Stratton respectfully urges this Court to reverse his conviction and remand for new trial.

DATED this 21<sup>st</sup> day of January, 2014.

  
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CERTIFICATE OF SERVICE

I certify that on January 21, 2014, I served the brief of appellant by email, as agreed by counsel, on Frank Jenny at [airacheta@co.franklin.wa.us](mailto:airacheta@co.franklin.wa.us) and by first class mail, postage prepaid, on Andre Stratton, 1911 W. Jay St., Apt. C, Pasco, WA 99301.

  
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