

No. 24778-3-III

Brown, J. (dissenting)—While compassionate to persons possibly benefiting from the medical use of marijuana, I would hold the trial court did not err in ruling Loren Hanson's after acquired medical authorization was legally insufficient to support the affirmative defense to this controlled substance manufacturing prosecution. The facts do not show Mr. Hanson was necessarily a "qualifying patient" as defined by RCW 69.51A.010(3) during the admitted material time, summer 2004 to August 24, 2004.

Mr. Hanson offered Exhibit 1, dated August 25, 2004, in an attempt to establish the affirmative defense. We need not decide if Exhibit 1 is "valid documentation" under RCW 69.51A.010(5), because it was produced after the fact. We do not know at what point, if any, during the material time his doctor may have assembled the pertinent medical records satisfying the requirements of RCW 69.51A.010(5)(a). Stipulations aside, considering his admitted use and the 34 plants found, this record is insufficient to show Mr. Hanson possessed no more marijuana than necessary for his personal medical use in any 60-day period during his manufacturing, as required in RCW 69.51A.040(2).

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Even if Exhibit 1 was germane to when the admitted manufacturing took place, I respectfully disagree with dismissing this case. The remedy would be to remand to allow a hearing after reversal, because the evidence is sufficient to support guilt before considering the affirmative defense. Accordingly, I dissent.

Brown, J.