

SUPREME COURT OF THE STATE OF WASHINGTON

State v. Kurtz, 176 Wn. 2d 466

293 P.3d 1133 (2013) · No. 87078-1 · Decided September 19, 2013

SUMMARY

The Washington Supreme Court held that the common-law medical necessity defense remains available in marijuana prosecutions and was not abrogated by the Washington State Medical Use of Marijuana Act or by marijuana's classification as a Schedule I controlled substance. The court reversed and remanded for the trial court to determine whether William Kurtz presented sufficient evidence to support the defense, including whether compliance with the Act was a viable legal alternative. A dissent argued that the statutory medical-marijuana scheme eliminated the prerequisite lack of a legal alternative.

CASE DETAILS

COURT	Supreme Court of the State of Washington
WRITING FOR THE COURT	Madsen, C.J.
JURISDICTION	Washington
DECIDED	September 19, 2013
DOCKET	87078-1
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Kurtz petitioned for review of a Court of Appeals decision affirming the trial court's refusal to allow him to present common law and statutory medical marijuana defenses. The Supreme Court granted review and considered whether the common law medical necessity defense remained available after enactment of Washington's Medical Use of Marijuana Act.
STANDARD OF REVIEW	The trial court's determination concerning availability of the defense is a question of law reviewed de novo.
PRECEDENTIAL VALUE	Published, precedential Washington Supreme Court en banc opinion
PARTIES	William Andrew Kurtz v. State of Washington

TOPICS

criminal procedure

statutory interpretation

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether Washington's common law medical necessity defense remains available in a prosecution involving marijuana after enactment of the Medical Use of Marijuana Act.
2. Whether the legislature's classification of marijuana as a schedule I controlled substance, and the Washington Supreme Court's decision in *Seeley v. State*, abrogated the common law medical necessity defense.
3. Whether the Medical Use of Marijuana Act superseded or abrogated the common law medical necessity defense.
4. Whether the existence of the statutory medical marijuana scheme constitutes a legal alternative relevant to, but dispositive of, the common law necessity defense.

HOLDINGS

1. The common law medical necessity defense remains available in marijuana prosecutions after enactment of the Washington State Medical Use of Marijuana Act, provided there is evidence supporting the defense.
2. Neither the legislature's classification of marijuana as a schedule I substance nor the court's decision in *Seeley* abrogated the common law medical necessity defense.
3. The mere existence of the Medical Use of Marijuana Act does not foreclose the common law medical necessity defense, but compliance with the Act may be considered in determining whether the defendant had a viable legal alternative.

KEY QUOTATIONS

“Thus, implicit in the marijuana necessity defense is whether an individual has a viable legal alternative to the illegal use of marijuana. In other words, the mere existence of the Act does not foreclose a medical necessity defense, but it can be a factor in weighing whether there was a viable legal alternative to a violation of the controlled substances law.” (at 13)

“Where, as here, there was no statement in the statute expressing such intent, and no inconsistencies between the two, we hold that the common law defense of medical necessity continues to be an available defense if there is evidence to support it.” (at 15)

“We hold that the common law medical necessity defense for marijuana remains available following the Medical Use of Marijuana Act.” (at 15)

FACTUAL BACKGROUND

In 2010, police executed a search warrant at Kurtz's home and found marijuana and marijuana plants. Kurtz was charged with manufacturing and possession of marijuana. At trial, he sought to introduce medical authorizations

and raise both a common law medical necessity defense and a statutory medical marijuana defense, but the trial court excluded both defenses and the jury convicted him.

PROCEDURAL HISTORY

Police searched Kurtz's home pursuant to a warrant and found marijuana and marijuana plants. The trial court denied his request to present common law medical necessity and statutory medical marijuana defenses, and a jury convicted him of possession and manufacturing marijuana. The Court of Appeals affirmed the ruling concerning the defenses but remanded on a separate offender-score issue. The Supreme Court reversed and remanded for the trial court to determine whether Kurtz presented sufficient evidence to support the common law defense.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The trial court must determine whether Kurtz presented sufficient evidence to support a medical necessity defense under Diana, including whether compliance with the Medical Use of Marijuana Act was a viable legal alternative. If the evidence supports the defense, Kurtz is entitled to a new trial.

CASES CITED

- State v. Fry, 168 Wn. 2d 1, 11, 228 P.3d 1 (2010)
- State v. Diana, 24 Wn. App. 908, 604 P.2d 1312 (1979)
- State v. Pittman, 88 Wn. App. 188, 196, 943 P.2d 713 (1997)
- State v. Cole, 74 Wn. App. 571, 578, 580, 874 P.2d 878 (1994), review denied, 125 Wn. 2d 1012, 889 P.2d 499 (1994)
- State v. Williams, 93 Wn. App. 340, 347, 968 P.2d 26 (1998), review denied, 138 Wn. 2d 1002, 984 P.2d 1034 (1999)
- Seeley v. State, 132 Wn. 2d 776, 940 P.2d 604 (1997)
- State v. Butler, 126 Wn. App. 741, 747, 750, 109 P.3d 493 (2005)
- State v. Hanson, 138 Wn. App. 322, 330-31, 157 P.3d 438 (2007)
- Potter v. Washington State Patrol, 165 Wn. 2d 67, 76-77, 196 P.3d 691 (2008)
- State ex rel. Madden v. Public Utility District No. 1 of Douglas County, 83 Wn. 2d 219, 222, 517 P.2d 585 (1973)
- Washington Water Power Co. v. Graybar Electric Co., 112 Wn. 2d 847, 853-55, 774 P.2d 1199, 779 P.2d 697 (1989)
- City of Milwaukee v. Illinois, 451 U.S. 304, 312-17, 101 S. Ct. 1784, 68 L. Ed. 2d 114 (1981)
- Mobil Oil Corp. v. Higginbotham, 436 U.S. 618, 625-26, 98 S. Ct. 2010, 56 L. Ed. 2d 581 (1978)
- United States v. Bailey, 444 U.S. 394, 410, 100 S. Ct. 624, 62 L. Ed. 2d 575 (1980)

- Spokane County Health District v. Brockett, 120 Wn. 2d 140, 153, 839 P.2d 324 (1992)
- Wilmot v. Kaiser Aluminum & Chemical Corp., 118 Wn. 2d 46, 63-64, 821 P.2d 18 (1991)
- In re Estate of Tyler, 140 Wash. 679, 689, 250 P. 456 (1926)
- Erie Railroad Co. v. Tompkins, 304 U.S. 64, 78, 58 S. Ct. 817, 82 L. Ed. 1188 (1938)

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