

Medical Marijuana in Iowa Is Long Overdue

Written by Kathleen McCarthy
Wednesday, 09 July 2014 08:30

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On Monday, July 7, before the jury was brought in for his trial, Benton Mackenzie collapsed in the courtroom and was taken to Trinity Medical Center in Bettendorf. On Tuesday, however, the Long Grove, Iowa, resident accused of manufacturing marijuana had reportedly been released from the hospital and testified in his own defense.

For those new to this matter before the Seventh Judicial Court District in Scott County – presided over by Judge Henry Latham (appointed by Governor Terry Branstad in March 2013) – Benton and his wife Loretta were arrested a year ago and charged with growing marijuana, while their son Cody was arrested and charged with possession of less than a gram of marijuana because ... well, just because.

Benton stated, in media reports last year, that he was growing marijuana for the singular purpose of extracting the cannabidiol oil contained in the marijuana plant to treat his angiosarcoma cancer, purportedly in a terminal phase. According to Benton, nothing else but the cannabidiol oil relieves the extreme suffering he is experiencing from horrific lesions that manifest on his posterior. Unfortunately, cannabidiol is extremely expensive. It can be purchased on Amazon.com, among many places, for medicinal purposes because it does not contain THC, and therefore it is not illegal in the U.S. For most people, however, the cost is prohibitive, especially as an ongoing treatment.

So painful and prolific are his symptoms that he was released from the Scott County jail days after his initial incarceration, allegedly because the county did not want the responsibility for or expense of his health care, nor was the facility equipped to handle his extreme case.

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The office of County Attorney Mike Walton, however, has aggressively expended tax dollars in prosecuting this invalid, his family, and his friends, but only if Benton is not allowed the common-law defense of growing marijuana for medical purposes. The prosecution submitted a motion in limine that was approved by Judge Latham to disallow any mention of his production or use of marijuana for medical purposes.

Benton's family has posted comments on social-media sites stating they fear that if Benton even mentions his medical condition or cancer, he will be held in contempt and jailed for up to six months, during which time they believe he will die.

Judge Latham's pre-trial ruling on May 28 in response to the prosecutor's motion states: "The legislature has passed recent legislation to allow the possession of cannabidiol oil with specific restrictions on such possession. Currently this is pending legislation awaiting the governor's signature approving the same. Therefore, the court has no option at this time but to grant the state's motion in limine as it relates to the defendant's ability to make an argument of medical necessity in the use of marijuana" (RCReader.com/y/benton1).

Only two days later, Branstad did sign said Senate File 2360, the Medical Cannabidiol Act, into law; it applies only to people with "intractable epilepsy" and requires that the medicine be obtained from outside Iowa. Carl Olsen, a longtime advocate and grassroots activist for medical marijuana in Iowa, on June 29 filed a petition for judicial review with Latham pointing out the law-signing to the court. Unfortunately, despite Latham's own words that the court had no option *sans* the governor's signature, the petition for review has gone unanswered, even though it could have had a critical impact on Benton's ability to legitimately defend himself.

Clearly the court fears the jury would be persuaded to a not-guilty verdict if it heard this truthful defense, regardless of archaic-albeit-evolving laws that still disallow growing marijuana to produce cannabidiol for medical purposes other than epilepsy.

The prosecution appears even more inhumane considering all the available peer-reviewed scientific research evidencing the efficacy of cannabidiol, as well as marijuana itself, in relieving acute and chronic cancer symptoms, certain neurological disorders, and pain. The establishment's resistance, both liberal and conservative, to legalizing medical marijuana is stunning considering such overwhelming evidence to support its use.

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No less stunning is the relentless prosecution of this severely afflicted individual and the criminal prosecution of family and friends – whose involvement with marijuana production is presumably associated with Benton’s disease and easing his suffering. It defies the sensibilities.

Terms such as “purportedly” and “presumably” are used within this commentary about the details of Benton’s medical condition and his production and use of marijuana because the pertinent facts and details about him and his usage will not be heard by the jury. Such an inane miscarriage of justice has resulted in a Scott County resident suffering unimaginable physical discomfort and ongoing challenges to survive, as he and his family contend with the equally unimaginable stress and expense of defending themselves in what can only be described as cruel and unusual prosecution.

It is not enough that Benton Mackenzie is suffering immensely more without the cannabidiol oil. His lesions are worsening, and his cancer is spreading. Benton’s wife has posted a picture of his purported lesions and tumors online that has been reproduced on social-media and mainstream-news sites (RCReader.com/y/benton2). The image is extremely graphic and horrific. If the defense were allowed to present this visual evidence and if the prosecution failed to disprove its veracity, the jury would surely be aghast with profound sympathy and vote for acquittal.

As things stand, Benton is facing certain death, most likely in jail – leaving his wife and son without resources to help him or themselves. Adding to this family’s nightmare is that his parents were the ones caught with the 71 marijuana plants on their property; therefore they are also facing prosecution, financial ruin, and jail time for trying to help their critically ill son.

Most of us are all for prosecuting crime. In fact, there is far too much crime that goes entirely un-prosecuted – crimes that are far more egregious than growing medicinal plants on one’s own property for the alleviation of one’s own suffering. That is why this prosecution is doubly distasteful; it is focused on no greater good that can be discerned.

The prosecutors in Scott County use discretion every day to cut deals and plea bargains for nonviolent offenders. An enlightened (I daresay progressive) justice system would have moved forward with this trial but encouraged the medical-necessity defense, anticipating that a common-sense jury with all the facts would deliver a “not guilty” verdict – effectively nullifying

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the law. This would allow for a precedent to be set, simultaneously putting Iowa on a solid path to modernity, where the medical benefits of cannabidiol can be fully explored and documented. This is true justice.

Instead, the judge attempted (and failed) to censor the local media from even taking notes during jury selection last week. Jurors are instructed to base a verdict on “the evidence and the law” – and if Benton is technically in violation, the judge could admonish the jury that he must be found guilty. Never mind that a new Iowa law acknowledging the valid medicinal use of cannabidiol oil was enacted prior to the trial. The court’s actions discourage a jury of peers from thinking for themselves, especially after utterly suppressing the common-law defense that would inform the jury about any relevant medical circumstances surrounding the marijuana production in this case. (Jury deliberations began on Tuesday, but no verdict had been announced at press time.)

A guilty verdict for Benton will not move the dial on the War on Drugs one millimeter in Scott County. Furthermore, no harm has been done to anyone except the Mackenzies, and most of that occurred and is occurring after the arrests – not before. So who does this prosecution benefit? Certainly not the taxpayers who are paying for everything. Residents are no safer. The drug trade is not diminished. I suppose that if the Mackenzies are fined, the court will get some revenue.

The reason for such myopic behavior by the court is self-preservation. If marijuana cases can be dismissed by juries, then the milking parlor that is the county courthouse will have less churn, resulting in less revenue. Just three years ago, inside the Scott County courthouse, a soon-to-be-retired judge candidly acknowledged that the War on Drugs was a failure, and that the court system was worse off because of it. It’s time for those claiming to administer justice to acknowledge the harm that such arbitrary and capricious prosecutions are causing not only to Benton Mackenzie, but to all the people of Scott County who could otherwise benefit from medical applications of marijuana.

For more updates visit FreeBenton.org .