

IN THE SUPREME COURT

APPEAL FROM THE OAKLAND COUNTY CIRCUIT COURT

PEOPLE OF THE STATE
OF MICHIGAN,

Plaintiff/Appellee,

v

RICHARD LEE HARTWICK,

Defendant/Appellant.

SC: 148444
COA: 312308
Oakland CC: 2012-240981-FH

JESSICA R. COOPER (P23242)
Prosecuting Attorney
1200 N. Telegraph Road
Pontiac, MI 48341
(248) 858-0656

FREDERICK J. MILLER (P41207)
NANCY E. MILLER (P47860)
Attorney for Defendant/Appellant
837 S. Lapeer Road, Suite 102
Oxford, MI 48371
(248) 628-0180

APPELLANT'S APPENDIX



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Case Number 2012-240981-FH PEOPLE vs. HARTWICK,RICHARD LEE,
Judge Name COLLEEN A. O'BRIEN
Case Filed 04/10/2012
Case Disposed 07/18/2012
Case E-filed NO

Date	Code	Description
04/10/2012	N	NOTICE FROM COURT ADMINISTRATOR FILED
04/10/2012	A	PROSECUTORS ORDER 11-86181
04/10/2012		ARRESTING AGENCY: OAKLAND COUNTY SHERIFF'S DEPT.
04/10/2012		50 DISTRICT COURT 1161091FY
04/10/2012	CTN	CENTRAL TRACT 63-11-086181-01
04/10/2012	SID	STATE ID NOT AVAILABLE
04/10/2012	DOF	DATE OF OFFENSE 09/27/11
04/10/2012	CCA	ARRAIGNMENT - WED, 04252012 AT 0130PM
04/10/2012	DCX	EXAM FOR 04/10/12 HAD
04/10/2012	DOB	BIRTH YEAR - 75
04/10/2012	CHG	333.74012D11 DEL/MAN 5-45 KILOS OF MARIJ
04/10/2012		BOUND OVER AS CHARGED
04/10/2012	CHG	333.74012D3 DELIVERY/MANUFACTURE MARJ.
04/10/2012		BOUND OVER AS CHARGED
04/10/2012	COB	CONDITIONS ON BOND
04/10/2012	BON	BOND POSTED BY: STRANGE, TERRENCE.,
04/10/2012		ADDRESS: UNKNOWN
04/10/2012		CITY UNKNOWN ?? ?????
04/10/2012		TYPE: 10% BOND
04/10/2012		AMOUNT: \$25,000
04/10/2012	APR	DATE SET FOR ARRAIGNMEN ON 04252012 01 30 PM Y
04/11/2012	N	NTC CT ADMN FILED
04/12/2012	O	REQUEST FOR ATTORNEY/REIMBURSEMENT FILED
04/13/2012	NSE	NOTICE SEEK SENTENCE ENHANCEMENT FILED 4TH OR SUB
04/17/2012	DCR	DISTRICT COURT RETURN FILED
04/16/2012	GIF	GEN INFO FILED
04/17/2012	NOH	NOTICE OF HEARING FILED
04/17/2012	POS	AFFIDAVIT/PROOF OF SERVICE FILED
04/17/2012	MTN	MOTION FILED COMPEL DISCOVERY
04/18/2012	MPR	MOTION PRAECIPE FILED FOR 04252012 JUDGE 01
04/18/2012	BRC	BOND REC/POSTED BY: TERRENCE STRANGE \$2,500 10% 50DC
04/20/2012	POS	AFFIDAVIT/PROOF OF SERVICE FILED
04/20/2012	POS	AFFIDAVIT/PROOF OF SERVICE FILED
04/25/2012	ARR	ARRAIGNMENT IN COURT
04/26/2012	APR	DATE SET FOR PRETRIAL ON 05292012 08 30 AM Y
04/26/2012	APR	DATE SET FOR TRIAL ON 06112012 08 30 AM Y 01
04/30/2012	ORD	ORDER FILED FINAL PRETRIAL
05/04/2012	TRN	TRANSCRIPT FILED PRELIM 04/10/12
05/11/2012	POS	AFFIDAVIT/PROOF OF SERVICE FILED
05/11/2012	OTH	DEMAND FOR DISCOVERY/PEOPLE FILED
05/16/2012	MTN	MOTION FILED COMPEL DISCOVERY/HIRE EXPERT/OBJ
05/16/2012	NOH	NOTICE OF HEARING FILED
05/16/2012	POS	AFFIDAVIT/PROOF OF SERVICE FILED
05/16/2012	MPR	MOTION PRAECIPE FILED FOR 05232012 JUDGE 01
05/18/2012	POS	AFFIDAVIT/PROOF OF SERVICE FILED
05/23/2012	DM	DEFENSE MOTION TO COMPEL DISC., ETC. -DENIED-
05/23/2012	MPR	MOTION PRAECIPE FILED FOR 05302012 JUDGE 01
05/24/2012	MTN	MOTION FILED TO PRECLUDE AFFIRMATIVE DEFENSE
05/24/2012	BRF	BRIEF FILED SUPPT MTN TO PRECLUDE DEFENSE
05/24/2012	POS	AFFIDAVIT/PROOF OF SERVICE FILED
05/25/2012	ORD	ORDER FILED DENY MTN COMPEL DISCOVERY
05/29/2012	PTH	PRE-TRIAL HELD
05/29/2012	AID	ADJOURN FOR INVESTIGATION/DISCOVERY
05/29/2012	APC	ADJ-COUNSEL 06112012 TO 08022012 BY ORDER
05/29/2012	APR	DATE SET FOR TRIAL ON 08022012 08 30 AM Y 01
05/30/2012	APR	DATE SET FOR PRETRIAL ON 06252012 08 30 AM Y
05/30/2012	MPR	MOTION PRAECIPE FILED FOR 06062012 JUDGE 01
05/31/2012	POS	AFFIDAVIT/PROOF OF SERVICE FILED
05/31/2012	RES	RESPONSE FILED TO MTN TO PRECLUDE DEFENSE
06/06/2012	APR	DATE SET FOR EVIDNT HRG ON 07182012 01 30 PM Y 01
06/19/2012	APR	DATE SET FOR PRETRIAL ON 07182012 08 30 AM Y
06/19/2012	JNA	JUDGE NOT AVAILABLE
06/19/2012	APJ	ADJ-JUDGE 06252012 TO 07182012
06/19/2012	APR	DATE SET FOR PRETRIAL ON 07182012 08 30 AM Y
06/29/2012	MPR	MOTION PRAECIPE FILED FOR 07112012 JUDGE 01

Oakland County Circuit Court Register of Actions

06/28/2012	MTN	MOTION FILED TO SUPPRESS EVIDENCE
06/28/2012	NOH	NOTICE OF HEARING FILED
06/28/2012	POS	AFFIDAVIT/PROOF OF SERVICE FILED
07/03/2012	PRF	PEOPLES RESP FILED MTN SUPPRESS EVIDENCE
07/03/2012	POS	AFFIDAVIT/PROOF OF SERVICE FILED
07/03/2012	BRF	BRIEF FILED SUPPT MTN COMPEL DISCOVERY
07/10/2012	REP	REPLY FILED RESP TO MTN TO SUPPRESS EVIDENCE
07/11/2012	M	MOTION RE PHONE PRODUCTION -G-
07/17/2012	ORD	ORDER FILED RE PHONE PRODUCTION
07/18/2012	H	HEARING HELD D.50 (EVIDENTIARY)
07/18/2012	M	MOTION PRECLUDE AFFIRM DEF -GRANTED-
07/18/2012	FD	FINAL DISPOSITION
07/18/2012	SY	STAY PENDING INTERLOC APPEAL
07/19/2012	APR	DATE SET FOR PRETRIAL ON 09042012 08 30 AM Y
07/19/2012	OTH	LIST OF TRIAL WITNESSES/EXHIBITS FILED
07/19/2012	MEM	MEMORANDUM FILED EVID HRG
08/29/2012	ORD	ORDER FILED GRANT MTN TO STAY PROCEEDINGS
09/04/2012	PTH	PRE-TRIAL HELD
09/04/2012	APR	DATE SET FOR STAT CONF ON 12042012 08 30 AM Y 01
09/04/2012	TRN	TRANSCRIPT FILED EVID HRG 7/18/12
09/04/2012	NTC	NOTICE FILED OF FILING TRN/POS
09/07/2012	CA	CLAIM OF APPEAL FILED /DFT
09/07/2012	POS	AFFIDAVIT/PROOF OF SERVICE FILED
09/14/2012	TRN	TRANSCRIPT FILED EVID HRG 7/18/12
09/14/2012	LET	LETTER FILED TO COA
09/14/2012	POS	AFFIDAVIT/PROOF OF SERVICE FILED
09/19/2012	CAA	ORDER COURT APPOINTED ATTORNEY FILED
09/20/2012	POS	AFFIDAVIT/PROOF OF SERVICE FILED
10/15/2012	ORD	ORDER FILED COA
10/23/2012	APR	DATE SET FOR PRETRIAL ON 11132012 08 30 AM Y
10/30/2012	CA	CLAIM OF APPEAL FILED /DFT
10/30/2012	MTN	MOTION FILED WAIVE FILING FEE/DFT
10/30/2012	NOH	NOTICE OF HEARING FILED
10/30/2012	NOH	NOTICE OF HEARING FILED
10/30/2012	POS	AFFIDAVIT/PROOF OF SERVICE FILED
11/09/2012	NTC	NOTICE FILED SUPREME COURT
11/13/2012	SEN	SENT TO SUP CT/ON CD/USPS/MF
11/13/2012	PTH	PRE-TRIAL HELD
11/13/2012	SY	STAY PENDING APPEAL
11/13/2012	APR	DATE SET FOR REVIEW HRG ON 02052013 08 30 AM Y 01
11/29/2012	NTC	NOTICE FILED SUPREME COURT
12/04/2012	SEN	SENT TO SUP CT/ON CD/USPS/MF
12/04/2012	ORD	ORDER FILED GRANT MTN TO STAY
02/05/2013	AID	ADJOURN FOR INVESTIGATION/DISCOVERY
02/05/2013	APC	ADJ-COUNSEL 02052013 TO 05052013 BY ORDER
02/05/2013	APR	DATE SET FOR REVIEW HRG ON 05052013 08 30 AM Y 01
02/05/2013	ADJ	ORDER OF ADJOURNMENT FILED PRETRIAL
02/07/2013	SE	SCHEDULING ERROR
02/07/2013	APJ	ADJ-JUDGE 05052013 TO 05062013
02/07/2013	APR	DATE SET FOR PRETRIAL ON 05062013 08 30 AM Y
02/08/2013	GIF	GEN INFO FILED 2ND AMD
03/12/2013	POS	AFFIDAVIT/PROOF OF SERVICE FILED
04/11/2013	NTC	NOTICE FILED LETTER OF TRANS COA
04/12/2013	SEN	SENT TO COA/FTP/MF
04/23/2013	BRF	BRIEF FILED ON APPEAL
05/07/2013	ADJ	ORDER OF ADJOURNMENT FILED PRETRIAL
07/22/2013	CPL	CONTINUED PENDING OTHER LITIGATION
07/22/2013	APC	ADJ-COUNSEL 05062013 TO 08062013
07/22/2013	APR	DATE SET FOR PRETRIAL ON 08062013 08 30 AM Y
08/01/2013	CPL	CONTINUED PENDING OTHER LITIGATION
08/01/2013	APC	ADJ-COUNSEL 08062013 TO 08232013
08/01/2013	APR	DATE SET FOR PRETRIAL ON 08232013 08 30 AM Y
08/21/2013	CPL	CONTINUED PENDING OTHER LITIGATION
08/21/2013	APC	ADJ-COUNSEL 08232013 TO 10012013
08/21/2013	APR	DATE SET FOR PRETRIAL ON 10012013 08 30 AM Y
10/01/2013	CPL	CONTINUED PENDING OTHER LITIGATION
10/01/2013	APC	ADJ-COUNSEL 10012013 TO 11052013 BY NOTICE
10/01/2013	APR	DATE SET FOR PRETRIAL ON 11052013 08 30 AM Y 01
11/04/2013	CPL	CONTINUED PENDING OTHER LITIGATION WAITING ON SUP. CT
11/04/2013	APC	ADJ-COUNSEL 11052013 TO 11222013
11/04/2013	APR	DATE SET FOR PRETRIAL ON 11222013 08 30 AM Y
11/19/2013	CPL	CONTINUED PENDING OTHER LITIGATION
11/19/2013	APC	ADJ-COUNSEL 11222013 TO 12172013
11/19/2013	APR	DATE SET FOR PRETRIAL ON 12172013 08 30 AM Y
11/21/2013	CPL	CONTINUED PENDING OTHER LITIGATION
11/21/2013	APC	ADJ-COUNSEL 12172013 TO 11262013
11/21/2013	APR	DATE SET FOR PRETRIAL ON 11262013 08 30 AM Y
11/21/2013	OPN	OPINION FILED COA
11/26/2013	PTH	PRE-TRIAL HELD
11/26/2013	OTH	STAY CONT. PENDING FURTHER APPEAL
11/25/2013	ORD	ORDER FILED COA
11/26/2013	APR	DATE SET FOR PRETRIAL ON 01212014 08 30 AM Y 01
01/17/2014	CPL	CONTINUED PENDING OTHER LITIGATION
01/17/2014	APC	ADJ-COUNSEL 01212014 TO 02252014
01/17/2014	APR	DATE SET FOR PRETRIAL ON 02252014 08 30 AM Y
02/19/2014	CPL	CONTINUED PENDING OTHER LITIGATION
02/19/2014	APC	ADJ-COUNSEL 02252014 TO 03252014
02/19/2014	APR	DATE SET FOR PRETRIAL ON 03252014 08 30 AM Y

Oakland County Circuit Court Register of Actions

02/25/2014	JNA	JUDGE NOT AVAILABLE
02/25/2014	APJ	ADJ-JUDGE 03252014 TO 03282014
02/25/2014	APR	DATE SET FOR PRETRIAL ON 03282014 08 30 AM Y
03/28/2014	CPL	CONTINUED PENDING OTHER LITIGATION
03/28/2014	APC	ADJ-COUNSEL 03282014 TO 04222014 BY NOTICE
03/28/2014	APR	DATE SET FOR PRETRIAL ON 04222014 08 30 AM Y 01
04/21/2014	CPL	CONTINUED PENDING OTHER LITIGATION CASE IN HIGHER CT
04/21/2014	APC	ADJ-COUNSEL 04222014 TO 05272014
04/21/2014	APR	DATE SET FOR PRETRIAL ON 05272014 08 30 AM Y
05/23/2014	CPL	CONTINUED PENDING OTHER LITIGATION
05/23/2014	APC	ADJ-COUNSEL 05272014 TO 06242014
05/23/2014	APR	DATE SET FOR PRETRIAL ON 06242014 08 30 AM Y
06/19/2014	CPL	CONTINUED PENDING OTHER LITIGATION
06/19/2014	APC	ADJ-COUNSEL 06242014 TO 09232014
06/19/2014	APR	DATE SET FOR PRETRIAL ON 09232014 08 30 AM Y

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Home Cases, Opinions & Orders

Case Search

Case Docket Number Search Results - 312308

Appellate Docket Sheet

COA Case Number: 312308

MSC Case Number: 148444

PEOPLE OF MI V RICHARD LEE HARTWICK

1	PEOPLE OF MI	PL-AE	PRS	(41929) BARNES KATHRYN G PROSECUTOR-APPELLATE DIVISION 1200 N TELEGRAPH ROAD PONTIAC MI 48341 (248) 858-0656
2	HARTWICK RICHARD LEE	DF-AT	APP	(41207) MILLER FREDERICK J 837 S LAPEER RD SUITE 102 OXFORD MI 48371-4924 (248) 628-0180

COA Status: Case Concluded; File Open **MSC Status:** Pending on Application

Case Flags: Criminal Interlocutory; Electronic Record

Submit With Cases:

312364 PEOPLE OF MI V ROBERT TUTTLE (Case Concluded; File Open)

- 09/06/2012 1 Delayed App for Leave - Criminal
Proof of Service Date: 09/06/2012
Answer Due: 09/27/2012
Attorney: 41207 - MILLER FREDERICK J
- 07/18/2012 2 Order Appealed From
From: OAKLAND CIRCUIT COURT
Case Number: 2012-240981-FH
Trial Court Judge: 33095 O'BRIEN COLLEEN A
Nature of Case:
Criminal Miscellaneous
Comments: MMA Immunity/Defense Denied.
- 07/25/2012 5 Steno Certificate - Tr Request Received
Date: 07/20/2012
Reporter: 7118 - TRASKOS SANDRA J
Hearings:
07/18/2012
- 09/04/2012 6 Notice of Filing Transcript
Date: 08/31/2012
Reporter: 7118 - TRASKOS SANDRA J
Hearings:
07/18/2012
- 09/06/2012 3 Motion: Waive Fees
Proof of Service Date: 09/06/2012

Court of Appeals Docket Sheet

Filed By Attorney: 41207 - MILLER FREDERICK J
For Party: 2 HARTWICK RICHARD LEE DF-AT
Fee Code: I
Answer Due: 09/13/2012

- 09/14/2012 7 Transcript Filed By Party
Date: 09/14/2012
Reporter: 7118 - TRASKOS SANDRA J
Filed By Attorney: 41207 - MILLER FREDERICK J
Hearings:
07/18/2012
- 09/14/2012 8 Other
For Party: 2 HARTWICK RICHARD LEE DF-AT
Attorney: 41207 - MILLER FREDERICK J
Comments: Request for appointed counsel.
- 09/18/2012 9 Telephone Contact
For Party: 2 HARTWICK RICHARD LEE DF-AT
Attorney: 41207 - MILLER FREDERICK J
Comments: Need order appointing counsel, document filed is request for counsel. Need order.
- 09/20/2012 10 LCt Order - Appoint AT Atty
Date: 09/18/2012
For Party: 2 HARTWICK RICHARD LEE DF-AT
Attorney: 41207 - MILLER FREDERICK J
- 09/27/2012 12 Answer - Application
Proof of Service Date: 09/27/2012
Event No: 1 Delayed App for Leave - Criminal
For Party: 1 PEOPLE OF MI PL-AE
Filed By Attorney: 41929 - BARNES KATHRYN G
- 10/09/2012 13 Submitted On Motion Docket
Event: 1 Delayed App for Leave - Criminal
Event: 3 Waive Fees
District: T
Item #: 3
- 10/11/2012 15 Order: Application - Deny - Delayed App for Leave
View document in PDF format
Event: 1 Delayed App for Leave - Criminal
Event: 3 Waive Fees
Panel: PMD,KJ,DAS
Attorney: 41207 - MILLER FREDERICK J
Comments: The motion to waive fees is granted.
- 10/31/2012 16 SCt: Application for Leave to SCt
Supreme Court No: 146089
Notice Date: 11/27/2012
Fee: Indigent Person
For Party: 2
Attorney: 41207 - MILLER FREDERICK J
- 11/26/2012 17 SCt: Trial Court Record Received
2 files
- 11/29/2012 18 Supreme Court - File Sent To
File Location: Z
- 12/03/2012 19 SCt: COA File - Received
- 04/01/2013 20 SCt Order: Remand as Leave Granted

Court of Appeals Docket Sheet

View document in PDF format

04/02/2013 21 Supreme Court - File Ret'd By - Re-Open as on Leave Granted

04/04/2013 23 Correspondence Sent
For Party: 2 HARTWICK RICHARD LEE DF-AT
Attorney: 41207 - MILLER FREDERICK J
Comments: Chf Clk Advise COA File Reopened; AT Brief Due 4/29/2013; Address Issues In MSC Order

04/05/2013 26 Record Request

04/05/2013 27 Email Contact
Comments: Requested records from Oakland County

04/11/2013 29 Electronic Record Filed
Comments: Record(s) are superseded by event 30

04/15/2013 30 Electronic Record Filed

04/23/2013 31 Brief: Appellant
Proof of Service Date: 04/22/2013
Oral Argument Requested: Y
Timely Filed: Y
Filed By Attorney: 41207 - MILLER FREDERICK J
For Party: 2 HARTWICK RICHARD LEE DF-AT

05/01/2013 32 Stips: Extend Time - AE Brief
Extend Until: 06/24/2013
Filed By Attorney: 39288 - GRDEN THOMAS R
For Party: 1 PEOPLE OF MI PL-AE

06/21/2013 33 Brief: Appellee
Proof of Service Date: 06/21/2013
Oral Argument Requested: Y
Timely Filed: Y
Filed By Attorney: 41929 - BARNES KATHRYN G
For Party: 1 PEOPLE OF MI PL-AE

06/24/2013 34 Noticed
Record: FILED

10/08/2013 41 Submitted on Case Call
District: D
Item #: 10
Panel: HWS,DHS,KJ

11/19/2013 44 Opinion - Authored - Published
View document in PDF format
View document in PDF format
Pages: 13
Panel: HWS,DHS,KJ
Author: HWS
Result: L/Ct Judgment/Order Affirmed

11/19/2013 45 Opinion - Concurring
View document in PDF format
View document in PDF format
Pages: 1
Author: KJ

11/22/2013 47 Order: Amend Prior Opinion
View document in PDF format
Panel: HWS,DHS,KJ
Comments: The concurring opinion is amended to include the signature line. Clerical error only.

01/07/2014 48 SCT: Application for Leave to SCT

Court of Appeals Docket Sheet

Supreme Court No: 148444

Notice Date: 01/28/2014

Fee: Indigent Person

For Party: 2

Attorney: 41207 - MILLER FREDERICK J

01/28/2014 49 Supreme Court - File Sent To

File Location: Z

Comments: sc#148444 *e-record

01/28/2014 50 SCt: COA and TCt Received

1 files

03/14/2014 51 Michigan Appeals Reports Publication

303 Mich App 247

06/11/2014 52 SCt Order: Application - Grant

View document in PDF format

Case Listing Complete

Defendant's Motion to Compel Discovery, Limit
People's Case, Allow Defendant to Hire an Expert
With Regard to Medical Marijuana, and Objection
To People's Expert

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

THE PEOPLE OF THE STATE
OF MICHIGAN,

Plaintiff,

v

RICHARD LEE HARTWICK,

Defendant.

12-240981-FH



JUDGE COLLEEN A. O'BRIEN
PEOPLE v HARTWICK,RICH

JESSICA COOPER (P23242)
PROSECUTING ATTORNEY
Attorney for Plaintiff
County Service Center Bldg., #14 East
1200 N. Telegraph Road
Pontiac, MI 48341
248-858-0656

FREDERICK J. MILLER (P41207)
Attorney for Defendant
837 S. Lapeer, Suite 102
Oxford, MI 48371
248 628 0180
248 628 0217 (Facsimile)

**MOTION TO COMPEL DISCOVERY, LIMIT PEOPLE'S CASE, ALLOW
DEFENDANT TO HIRE AN EXPERT WITH REGARD TO MEDICAL MARIJUANA,
AND OBJECTION TO PEOPLE'S EXPERT**

NOW COMES Defendant, RICHARD LEE HARTWICK, by and through his attorney, FREDERICK J. MILLER, and moves this Honorable Court to enter its Order compelling discovery, to limit People's case, to allow Defendant to hire an expert with regard to medical marijuana for the reasons stated below and, further, Defendant objects to People's Expert for the reasons stated below:

Defendant's Motion to Compel Discovery, Limit
People's Case, Allow Defendant to Hire an Expert
With Regard to Medical Marijuana, and Objection
To People's Expert

Defendant brought a Motion on April 25, 2012 regarding pictures taken by the police

and to be returned and Defendant's cell phone.

2. The prosecutor indicated that within twenty-one (21) days she would provide all that information or an explanation with regard to what happened to that information.

3. As of the date of filing this motion there has been no information given with regard to photos and information on the cell phone.

4. The information is extremely exculpatory and as a result of the People's failure to provide the information Defendant is requesting the following:

A. The case be dismissed;

B. That Defendant's cell phone be returned

so that Defendant can properly prepare for Trial;

C. In the event that the case is not dismissed, that an instruction be given with regard to the bumbling effect of the Peoples police department and the prejudicial effect received has upon the Defendant; and

D. Any other instructions the court deems appropriate to remedy this matter.

5. Further, People have indicated that they have an expert with regard to narcotic related sales.

6. Defendant in this case has claimed that he is legally operating a facility.

7. As a result of the People's desire to continue with this case and hire an expert with regard to sales and delivery, Defendant would hereby request that Defendant be allowed to retain an expert regarding legal medical marijuana facilities in the State of Michigan.

People's Case, Allow Defendant to Hire an Expert
With Regard to Medical Marijuana, and Objection
To People's Expert

WHEREFORE, Defendant prays as follows:

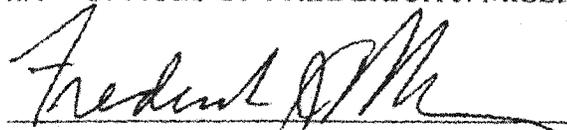
1) That this Court enter its Order dismissing this case or require People to return Defendant's cell phone and/or enter an Order prohibiting the People from using the photos in the event this case is not dismissed:

2) That an instruction be given with regard to the bumbling effect of the People's Police Department and the prejudicial effect it has upon the Defendant, along with any other instructions the court deems appropriate to remedy this matter.

2) That this Court enter its Order allowing Defendant to find an hire an individual who is trained in medical marijuana facilities and allow that individual to testify.

Respectfully submitted,

LAW OFFICES OF FREDERICK J. MILLER



FREDERICK J. MILLER P-41207

Attorney for Defendant

Dated: May 15, 2012

Order Denying Defendant's Motion

COUNTY OF OAKLAND <input type="checkbox"/> CIRCUIT <input type="checkbox"/> PROBATE <input checked="" type="checkbox"/> General <input type="checkbox"/> Family	ORDER/ RE: MOTION	CASE NO. 12-240981-F14
---	-------------------	---------------------------

1200 North Telegraph Road, Dept. 404, Pontiac, MI 48341-0404
ORI -

(248) 858-0369

Plaintiff
 People

v

Defendant
 Richard Hartwick

In the matter of:

Attorney
 Cindy Brown for Shannon O'Brien
 Prosecuting Attorney
 (248) 858-0656

Attorney
 Frederick Miller
 837 S. Lapeer, Suite 102
 Oxbord, MI 48371
 (248) 628-0190

Motion title: Defendant's Motion to Compel Discovery, Limit People's Case
Allow Defendant to Hire an Expert and Objection to People's Expert

IT IS FURTHER ORDERED: The above named motion is

granted.
 granted in part, denied in part.
 denied.

IT IS FURTHER ORDERED:

For the reasons stated on the record

Plaintiff

Defendant

For True Copy Stamp Only
A TRUE COPY
BILL BULLARD JR.
 Oakland County Clerk - Register of Deeds
 By PF
 Deputy

MAY 23 2012
 DATE
Colleen A. O'Brien
 HON. COLLEEN A. O'BRIEN, P33095
 1 OF 1 PAGES.

MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

v

CR 2012-240981-FH
HON. COLLEEN O'BRIEN

RICHARD LEE HARTWICK,

Defendant.

JESSICA R. COOPER (P23242)
OAKLAND COUNTY PROSECUTING ATTORNEY
1200 NORTH TELEGRAPH
PONTIAC, MI 48341

FREDERICK J. MILLER
837 S. LAPEER ROAD, SUITE 102
OXFORD, MI 48371
ATTORNEY FOR DEFENDANT

NOTICE OF HEARING

PLEASE TAKE NOTICE that the following motion will be brought on for hearing on Wednesday, May 30, 2012, at 8:30 AM before the Honorable Colleen A. O'Brien in the 6th Judicial Circuit for the County of Oakland, 1200 N. Telegraph, Pontiac, Michigan, or as soon thereafter as counsel may be heard.

**PEOPLE'S MOTION TO PRECLUDE THE AFFIRMATIVE DEFENSE UNDER THE
MICHIGAN MEDICAL MARIHUANA ACT AT TRIAL**

NOW COMES JESSICA R. COOPER, Prosecuting Attorney in and for the County of Oakland, by Shannon E. O'Brien, Assistant Prosecuting Attorney, and in support of the People's Motion states as follows:

1. That the Defendant is charged with Manufacturing Between 20 and 200 Marijuana Plants, and Possession With Intent to Deliver Marijuana.
2. That these charges arose from a consent search of the Defendant's home at 240 West Yale in the city of Pontiac on September 27, 2011.

People's Motion to Preclude the Affirmative Defense
Under the Michigan Medical Marihuana Act at Trial
And Brief in Support of Motion

3. That pursuant to the consent search, officers located a total of seventy-eight marijuana plants and about one hundred seventy grams of marijuana.
4. The marijuana plants were not kept in a bedroom with a door that was opened and unlocked when police arrived.
5. That during the course of the investigation, the Defendant made reference to his status as a caregiver under the Michigan Medical Marijuana Act (MMMA).
6. That the Defendant provided police with MMMA paperwork relative to three purported patients, but did not provide caregiver cards or proof that the documents had been sent to the State of Michigan to be processed.
7. That this case is set for trial on June 11, 2012.
8. That the Defendant has failed to bring forth a motion before this Honorable Court, asserting any right under the Act.
9. That the MMMA states that assertion of the defense shall be brought by motion before the court and an evidentiary hearing shall be held. MCL 333.26428(B).
10. That having failed to bring any such motion, the Defendant is precluded from raising the MMMA affirmative defense before a jury trial.
11. That the statute clearly indicates the existence of the affirmative defense is a legal question for the Court to decide via motion and hearing.
12. That the only purpose for raising the issue before the jury would be to garner sympathy.
13. That additionally, the Defendant was not in compliance with the Act, and therefore, is precluded from asserting the defense and would not be entitled to an evidentiary hearing.
14. That the Defendant did not comply with the provisions of the MMMA as he was in possession of more marijuana plants than allowed for under the MMMA and he did not

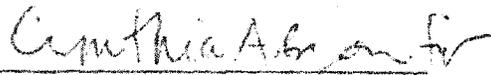
People's Motion to Preclude the Affirmative Defense
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maintain his plants in an enclosed, lock facility. *People v Bylsma*, _____ Mich App _____
(Docket No. 302762) (Released for Publication September 27, 2011), *People v Anderson*, _____
Mich App _____ (Docket No. 300641) (Released for publication June 7, 2011); *People v King*,
_____ Mich App _____ No. 294682 (2011).

WHEREFORE, the People respectfully request that this Honorable Court grant their
Motion in Limine to Precluding the Medical Marijuana Defense at Trial.

Respectfully submitted,

JESSICA R. COOPER
PROSECUTING ATTORNEY

By: 
Shannon E. O'Brien
Assistant Prosecuting Attorney

DATED: MAY 24, 2012

People's Motion to Preclude the Affirmative Defense
Under the Michigan Medical Marihuana Act at Trial
And Brief in Support of Motion

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

v

CR 2012-240981-FH
HON. COLLEEN O'BRIEN

RICHARD LEE HARTWICK,

Defendant.

JESSICA R. COOPER (P23242)
OAKLAND COUNTY PROSECUTING ATTORNEY
1200 NORTH TELEGRAPH
PONTIAC, MI 48341

FREDERICK J. MILLER
837 S. LAPEER RD. SUITE 102
OXFORD, MI 48371
ATTORNEY FOR DEFENDANT

**BRIEF IN SUPPORT OF PEOPLE'S MOTION TO PRECLUDE THE AFFIRMATIVE
DEFENSE UNDER THE MICHIGAN MEDICAL MARIHUANA ACT AT TRIAL**

STATEMENT OF FACTS

A preliminary examination was conducted in this matter before the Honorable Cynthia Thomas Walker on April 10, 2012. The testimony elicited at the preliminary examination is as follows.

Detective Marc Ferguson is currently employed by the Oakland County Sheriff's Office and has been a police officer for about twenty-five-and-a-half years. Ferguson is currently assigned as a detective with the Narcotics Enforcement Team (NET) and has been so assigned for about three years. During the course of his law enforcement career, he has investigated over ten thousand drug crimes, with about twenty percent of those being marijuana. (Preliminary

Examination Transcript – hereinafter PET – pages 5-6.)

On September 22, 2011, Ferguson received a tip regarding a male subject distributing marijuana from 240 West Yale in the city of Pontiac (PET, pages 6-7). The tipster further explained that there were in excess of 150 marijuana plants being grown at that location (PET, page 17). On September 27, 2011, Ferguson and Detective Doty went to the single family home to further investigate. Upon arriving there, they encountered a male and female standing in the driveway. (PET, page 7.) Ferguson approached the Defendant, who was the male standing in the driveway. The Defendant told Ferguson that he was the owner of the residence and that he was growing marijuana inside the house. Ferguson and the Defendant discussed the restrictions of the Medical Marihuana Act (MMA). The Defendant claimed that he was in compliance with the Act and readily provided officers with consent to go inside the home to ensure same. (PET, page 8.) After a ten-minute conversation, the Defendant escorted Ferguson and Doty into his home and through the living room to a back bedroom that was converted into a grow room for marijuana (PET, page 9). The Defendant's elderly father was present when officers searched the residence. He was sitting in the living room and told officers that he, too, lived at that location. (PET, pages 12-13.)

Although the grow room had a door, the door was not locked (PET, pages 9, 21). Upon entering the grow room, Ferguson observed many marijuana plants (ranging in size from one to three feet in height) and grow lights (PET, pages 9-10). Aside from the marijuana plants and grow lights, Ferguson observed a board on the wall that depicted the various stages of growth for the marijuana plants and a schedule for the maintenance and care of those plants (PET, page 10).

Ferguson asked the Defendant if that was all of the marijuana inside the home. The Defendant stated that it was and provided officers with consent to further search the residence. Upon doing so, officers located marijuana plants hanging to dry inside a bedroom closet. Those

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plants weighed about 53 grams. Additionally, Ferguson located six mason jars full of marijuana in the Defendant's bedroom. That marijuana weighed about 118 grams. (PET, pages 11-12.) Officers found more marijuana in a shoebox inside the freezer and a small amount of marijuana from the entertainment center in the living room. Aside from the marijuana, Ferguson located a triple beam scale in the room where the marijuana was hanging to dry and a digital scale in the entertainment center. (PET, page 12.)

Ferguson had further discussions with the Defendant about the distribution of marijuana from that location. Although the Defendant denied distribution, he acknowledged that he had 77 marijuana plants at that location¹. A final count of the marijuana plants revealed that the Defendant in fact had 78 marijuana plants inside his home. (PET, page 13.)

The Defendant provided Ferguson with documentation in an attempt to support his claim that he was a caregiver to three patients (PET, page 13). That documentation did not include actual cards, just paperwork (PET, page 22). The paperwork the Defendant provided did not have any certification from the State of Michigan demonstrating that the paperwork had been sent to the State of Michigan to be processed. Moreover, the Defendant did not provide Ferguson with copies of canceled checks. (PET, pages 22-23.) Although the Defendant claimed that he had one more patient, he did not provide Ferguson with documentation to support that claim (PET, page 19). Moreover, the Defendant did not provide Ferguson with any additional documentation indicating that he was a patient under the MMA (PET, pages 13-14). No additional documentation was recovered nor has the Defendant provided more paperwork since the search of his residence (PET, page 14).

Ferguson took photographs while at the Defendant's residence, but had not located them (PET, pages 19-20). In addition to the marijuana and scales, Ferguson seized the Defendant's

¹The Defendant stipulated to the admission of the laboratory report reflecting that the plants and additional plant material tested as marijuana (PET, page 14).

cell phone (PET, page 22).

HISTORY

Based upon the facts of this case, the prosecution inquired at a preliminary examination conference date as to whether the Defendant intended to assert the affirmative defense under the MMMA. The prosecution noted that if this was Defendant's intent, the People were seeking any documentation relative to a medical marijuana defense in the Defendant's possession beyond that which was seized at the time of the search of the Defendant's home. No additional documentation was provided until May 23, 2012, at which point the Defendant tendered photocopies of the front and back of five cards that show the Defendant to be a caregiver. By that time, the Defendant had been served with the prosecution's formal demand for discovery. Other than copies of medical marijuana registry documents and the five caregiver cards, the Defendant has failed to comply with that discovery demand.

Since bind over, the Defendant has filed two motions demanding return of his cell phone that was seized as evidence in this case. Each time, the Defendant has insisted that the contents of that phone are exculpatory and necessary to his defense. Yet, on May 23, 2012, forensic examiner Carol Liposky reported that the Defendant's cell phone is password protected. She indicated that if she received the password on May 23, she would have the forensic analysis of the phone completed that day. The Defendant at all times knew that information, yet failed to be forthcoming with his password in order that the phone could be expeditiously searched and the contents provided to him as he demanded, and as required under the court rules. Following the Defendant's second motion demanding return of his phone, heard May 23, 2012, defense counsel represented that he would provide the Defendant's password later that afternoon in order to expedite procurement of the information in the phone. The Defendant now claims that his phone is "fingerprint protected," a claim that examiner Liposky states cannot be so. She further reports

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that the phone requests a password be entered; the same would be solely in the Defendant's possession. Due to the Defendant's lack of cooperation, the contents of the cell phone cannot be provided.

LAW AND ARGUMENT

The prosecution expects, from statements made in the course of pretrial communication as well as the documentation seized at the scene, that the Defendant intends to assert the affirmative defense provided under Section 8 of the Michigan Medical Marihuana Act (MMMA) at trial. Notwithstanding these indications, as of this writing, the Defendant has failed to submit any motion to the Court requesting either dismissal under Section 4 of the MMMA, or an opportunity to demonstrate an ability to meet his burden to assert the affirmative defense under Section 8 of that Act. Even had he done so, the Defendant is not immune from prosecution under Section 4 of the Act. He is not entitled to such an affirmative defense due to his failure to comply with Section 4 of the MMMA in two ways. First, the Defendant failed to maintain his marijuana plants in an enclosed, locked facility accessible only to him as required under MCL 333.26423(c). Next, as a caregiver with three patients, assuming proper registration, the Defendant is only entitled to possess 36 marijuana plants². By his own admission, the Defendant believed he possessed 77 plants, and indeed 78 were counted by police.

Assuming the Defendant was allowed to possess plants, he would have had to maintain them in an enclosed, locked facility accessible only by him, pursuant to MCL 333.26423(c). The undisputed facts at preliminary examination clearly demonstrate that the Defendant failed to maintain the marijuana plants in an enclosed, locked facility. Detective Ferguson testified that the door to the room containing the marijuana plants was open and unlocked. He stated that another older male (whom he believed to be the Defendant's father) was in the home. Pursuant to

²Even if the Defendant had five patients (as demonstrated by the copies of caregiver cards provided on May 23, 2012), he would only be entitled to possess 60 plants, not 78 as was recovered from his house.

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People v Larry Steven King, Michigan COA No. 294682, decided and published on February 3, 2011, the Defendant may not assert the affirmative defense in Section 8 of the Act due to his violation of the storage requirement. In discussing the interpretation and application of the phrase "enclosed, locked facility", the *King* court stated as follows.

... We further observe that the examples given in the statutory definition are followed by the additional requirement that the closet, room or other enclosed area be equipped with locks or other security devices that permit access only by the registered caregiver or qualifying patient. In context, the clear purpose of specifying that the marijuana be kept within a secure facility to ensure that it is inaccessible to anyone other than a license grower or a qualifying patient, as defined in the MMA for the limited purpose set forth in the MMA. Moreover, these provisions are obviously meant to prevent access by the general public and, especially, juveniles. This reading of the MMA is consistent with its limited protections for a narrowly defined group of medical users of a controlled substance, the general cultivation and use of which remains illegal under both state and federal law. Reading the statute broadly as the trial court did to permit marijuana to be kept in the type of space used by defendant would, quite simply, undermine the plain language and purpose of the statutory provisions.

In *King, supra*, some of the defendant's plants were kept inside a closet in the defendant's home. The *King* court went on to state that the statute explicitly states that the enclosed area itself must have a lock or other security device to prevent access by anyone other than the person licensed to grow marijuana under the MMA.

... An unlocked closet would permit access by anyone else within the home and it appears that the home itself was not secured by locks on all of the doors. The trial court's conclusion that defendant acted as a "security device" for the marijuana growing inside his home is pure sophistry and belied by defense counsel's unsurprising admission at oral argument that, at times, defendant left the property, thus leaving the marijuana without a "security device" and accessible to someone other than defendant as the registered patient.

Because defendant failed to comply with the strict requirements in the MMA that he keep the marijuana in an "enclosed, locked facility," he is subject to prosecution under MCL 333.7401(2)(d)(iii), and the trial court abused its discretion by dismissing the charges against defendant.

The court further stated that if a defendant fails to comply with Section 4, then he is not entitled to assert the affirmative defense in Section 8. *King, supra*, at page 4.

In the matter of *People v Anderson*, _____ Mich App _____; NW2d _____ (2011), the trial court found that the defendant failed to present pre-trial evidence of each of the elements of the affirmative defense under the MMA, and then precluded assertion of the affirmative defense at the defendant's jury trial. The Court of Appeals affirmed the trial court's decision (though for a different reason) and adopted as its holding the detailed reasoning of Judge Kelley in his concurring opinion, stating:

It is, however, well-settled that the defendant has the burden to establish a prima facie case for his or her affirmative defense by presenting some evidence on all of the elements of that defense. *People v Lemons*, 454 Mich 234, 248; 562 NW2d 447 (1997); see also *People v Dempster*, 396 Mich 700, 713-714; 242 NW2d 381 (1976) (noting that a defendant normally bears the burden of showing by competent evidence that an exemption to a criminal statute applies to the facts of his or her case).

The court went on to say:

The MMA provides an affirmative defense to prosecution for any marijuana defense, but that defense is quite limited. Because of those limitations, there may be situations where a defendant simply cannot establish the right to assert a section 8 defense. In such situations, a trial court might be warranted in barring a defendant from presenting evidence or arguing at trial that he or she is entitled to the defense stated under section 8(a). Therefore, I conclude that a trial court may bar a defendant from presenting evidence and arguing a section 8 defense at trial where, given the undisputed evidence, no reasonable jury could find that the elements in section 8 had been met.

In *Anderson, supra*, the Court of Appeals confirmed that a trial court is within its discretion when precluding the Section 8 defense at trial when a defendant fails to demonstrate his ability to present a prima facie case. In the instant case, this Court set a motion filing cut-off date for May 28, 2012. As of this writing, the Defendant has not filed a motion to dismiss and/or request for evidentiary hearing under Section 8 of the Act. Absent a hearing, there will be no demonstration by the Defendant of his ability to meet his burden of production and put forth some evidence of each of the elements of the affirmative defense. To allow the Defendant to proceed directly to trial and to assert the Section 8 defense with no indication of any ability to

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Under the Michigan Medical Marihuana Act at Trial
And Brief in Support of Motion

establish a prima facie case, would be to subject the prosecution's case to unreasonable and irreparable risk of jury nullification and/or prejudice via sympathy for the Defendant.

Should the Court rule that the Defendant is not entitled to the affirmative defense provided for in MCL 333.26428, the existence of the MMMA becomes irrelevant to this case, and therefore inadmissible under MRE 402. The jury will receive no law relative to medical marijuana. The jury will only hear the law and elements as required to be proven under MCL 333.7401(2)(d)(ii) and (iii). The possession and manufacture of marijuana remain illegal in the state of Michigan. To allow the defense to argue or use the term "medical marijuana", or to allow reference to a medical purpose for marijuana use, or to the irrelevant medical conditions of any person, would simply be asking the jury to disregard the law and decide the case based on sympathy. The prosecution must support its burden to demonstrate to the jury that the Defendant manufactured marijuana plants and possessed marijuana with an intent to deliver it. At this trial, the existence of the narrowly carved-out exceptions of the MMMA in MCL 333.26421 through MCL 333.26429, determined to be inapplicable to this Defendant, must not be permitted to be effectively enjoyed in any way by the careless or intentional use of related terminology during the trial. The Defendant had the opportunity to conduct himself within the confines of the Act and failed to do so. He should not be permitted to nonetheless benefit from its protections by being allowed to refer to the existence of the Act, to the alleged medical conditions of himself or others, or to the use or manufacture of marijuana for any claimed medical purpose, as his defense at trial. To require the prosecution to address such references at trial would result in irreparable prejudice to the People's case, would provide no probative value to the issues for trial, and would effectively render all of the pretrial proceedings in this regard a nullity.

To allow the Defendant to introduce evidence concerning the MMMA would also allow unduly prejudicial evidence under MRE 403, geared solely for the purpose of jury nullification.

People's Motion to Preclude the Affirmative Defense
Under the Michigan Medical Marihuana Act at Trial
And Brief in Support of Motion

As has been stated by the Michigan Court of Appeals, “[a] trial court may exclude from the jury testimony concerning a defense that has not been recognized by the Legislature as a defense to the charged crime.” *People v Demers*, 195 Mich App 205, 206; 489 NW2d 173 (1992). “Because the Legislature does not recognize jury nullification as a defense to the charges at issue, defendant has no right to establish a jury nullification defense. Thus, the trial court did not err by precluding evidence which would be aimed at prompting jury nullification.” *Demers, supra*.

Though a criminal defendant has a state and federal constitutional right to present a defense, it is not an absolute right. See: *People v Hayes*, 421 Mich 271, 278, 279; 364 NW2d 635 (1984) (holding neither the Sixth Amendment Confrontation Clause, nor due process, confers on a defendant an unlimited right to present a defense, admit all relevant evidence or cross-examine on any subject.) The Defendant still must comply with “established rules of procedure and evidence designed to assure both fairness and reliability in the ascertainment of guilt and innocence.” *Id.*, citing *Chambers v Mississippi*, 410 US 284, 302; 93 S Ct 1038; 35 L Ed 2d 297 (1973). Thus, a defendant “does not have an unfettered right to offer testimony that is incompetent, privileged, or otherwise inadmissible under standard rules of evidence.” *Taylor v Illinois*, 484 US 400, 410; 108 S Ct 646; 98 L Ed 2d 798 (1988). In this case, when the evidence would solely be directed at jury nullification, the court is within its discretion to preclude this evidence.

This Court need not conduct an evidentiary hearing in order to rule on this motion. As the Court of Appeals noted in *People v Gary and Eric Watkins* _____ Mich App _____ (Docket No. 301771 and 301772) June 21, 2011:

Section 8(b), MCL 333.26428(b), provides that “[a] person may assert the medical purpose for using marijuana in a motion to dismiss, and *the charges shall be dismissed following an evidentiary hearing where the person shows the elements listed in subsection (a).*” (Emphasis added.) Nothing in this provision grants a defendant an automatic right to an evidentiary hearing once he files a motion to dismiss on the basis of the MMMA defenses. This section merely requires a dismissal of marijuana charges

People's Motion to Preclude the Affirmative Defense
Under the Michigan Medical Marihuana Act at Trial
And Brief in Support of Motion

where the defendant succeeds in establishing the elements of the section 8 defense at an evidentiary hearing. In general, the decision on a motion for an evidentiary hearing is within the discretion of the trial court, *Unger*, 278 Mich App at 216-217, and we decline to extend *Talley*, 410 Mich 378, which pertains to motions to suppress. Given the preliminary examination testimony clearly indicating that Gary could not establish his compliance with the "enclosed, locked facility" requirement, and his failure to explain why an evidentiary hearing was required on this particular question, the trial court did not abuse its discretion when it denied Gary's request for an evidentiary hearing and denied his motion to dismiss pursuant to the MMMA.

In the instant case, the evidence deduced at the preliminary examination clearly establishes that the Defendant did not keep the 78 marijuana plants he was growing at his home in an enclosed, locked facility. Pursuant to *King, supra*, the Defendant is therefore prohibited from asserting a defense under the MMA. Moreover, the Defendant was in possession of 78 plants, far in excess of the 36 or 50 he attempts to claim he could lawfully have. Pursuant to *Anderson, supra*, the Defendant is unable to assert a defense on that basis as well. For at least those two reasons, the Defendant should be precluded from asserting a defense under the MMA at trial.

WHEREFORE, the People respectfully request that this Court grant their Motion to Preclude the Affirmative Defense Under the Michigan Medical Marihuana Act at Trial.

Respectfully submitted,

JESSICA R. COOPER
PROSECUTING ATTORNEY

By: 
Shannon E. O'Brien
Assistant Prosecuting Attorney

DATED: MAY 24, 2012

Defendant's Response to People's Motion to Preclude
The Affirmative Defense under the MMMA at
Trial and Defendant's Motion in Limine, or
Alternatively, for an Evidentiary Hearing

CHIGAN
OAKLAND COUNTY CIRCUIT COURT

PEOPLE OF THE STATE
OF MICHIGAN,

Plaintiff,

Case No. 2012-240981-FH

v

HON. COLLEEN A. O'BRIEN

RICHARD LEE HARTWICK,

Defendant.

JESSICA R. COOPER (P23242)
Prosecuting Attorney
1200 N. Telegraph Road
Pontiac, MI 48341
(248) 858-0656

FREDERICK J. MILLER (41207)
Attorney for Defendant
837 S. Lapeer Road, Suite 102
Oxford, MI 48371
(248) 628-0180

**DEFENDANT'S RESPONSE TO PEOPLE'S
MOTION TO PRECLUDE THE AFFIRMATIVE
DEFENSE UNDER THE MICHIGAN MEDICAL
MARIHUANA ACT AT TRIAL**

AND

**DEFENDANT'S MOTION IN LIMINE,
OR, ALTERNATIVELY, FOR AN
EVIDENTIARY HEARING**

Response to Motion

Defendant, by his attorney, states:

Defendant's Response to People's Motion to Dismiss
The Affirmative Defense under the MMMA at
Trial and Defendant's Motion in Limine, or
Alternatively, for an Evidentiary Hearing

1. Defendant admits he is charged with controlled substance – delivery/manufacture 5-45 kilograms of marijuana and controlled substance delivery/manufacture marijuana, in violation of MCL 333.7401(2)(d)(ii) and (iii), respectively.

2. Defendant admits that a search of his home was conducted on September 27, 2011 and that he fully cooperated with the deputies.

3. Defendant denies that the deputies confiscated 78 marijuana plants and about 170 grams of marijuana; the deputies included pots where the marijuana had already been harvested and did not contain live plants. Further, Defendant denies that 170 grams of marijuana were confiscated.

4. Denied: the plants were in a locked room.

5. Admitted that Defendant advised the deputies that he was a caregiver under the Michigan Medical Marihuana Act (“MMMA”).

6. Denied that Defendant failed to produce evidence to support his assertion that he is a caregiver under the MMMA. Both Defendant and a witness will testify that he provided deputies with documentation that he was a caregiver for six (6) patients, one of which was himself.

7. Admitted.

8. Admitted that Defendant has not filed a motion regarding his affirmative defense; however, Defendant was not required to do so. The statute on which the People rely, MCL 333.26428(B) does not require any such motion. It reads: “A person *may* assert the medical purpose for *using* marihuana in a motion to dismiss” MCL 333.26428(B) (emphasis added). Defendant is not charged with using marijuana, but with manufacturing and delivering it. Further, the People were on notice of the defense prior to Defendant being charged.

Defendant's response to People's motion to proceed
The Affirmative Defense under the MMMA at
Trial and Defendant's Motion in Limine, or
Alternatively, for an Evidentiary Hearing

9. Denied. See response 8.

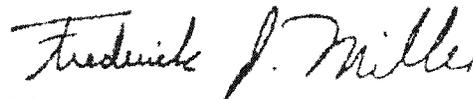
10. Denied. See response 8.

11. Denied. See response 8.

12. Denied as untrue.

13. Denied that Defendant was not in compliance with the MMMA. He provided the deputies with proof that he was a caregiver under the act and was in full compliance with the MMMA. The MMMA allows a primary caregiver to cultivate 12 marihuana plants per patient in an enclosed, locked facility. Seeds, stalks and unusable roots are not to be included in that amount. MCL 333.26424(a). A caregiver may also possess 2.5 ounces of usable marihuana for each qualifying patient to whom he is connected. MCL 333.26424(b)(1). Defendant provided the deputies with proof that he was a primary caregiver for six (6) patients, which allowed him to cultivate 72 plants and hold up to 15 grams of usable marijuana. The deputies counted pots that had already been cultivated and did not contain live plants. Furthermore, the room in which the plants were kept was closed and locked.

WHEREFORE, Defendant requests this Honorable Court deny the People's motion and allow him to use the medical marihuana defense at trial.



FREDERICK J. MILLER (P41207)
Attorney for Defendant

Dated: May 22, 2012

Defendant's Response to People's Motion to Preclude
The Affirmative Defense under the MMMA at
Trial and Defendant's Motion in Limine, or
Alternatively, for an Evidentiary Hearing

Motion

Defendant, by his attorney, states:

1. Defendant is charged with controlled substance – delivery/manufacture 5-45 kilograms of marijuana and controlled substance delivery/manufacture marijuana, in violation of MCL 333.7401(2)(d)(ii) and (iii), respectively.
2. The People allege that 78 marijuana plants and 76 grams of marijuana were confiscated from Defendant's home.
3. At the preliminary examination, there was testimony as follows:
 - a. There was approximately 118 grams of marijuana found in the home as well as 78 plants. PE p. 112-13.
 - b. That Defendant produced documentation that he was the primary caregiver for three (3) patients under the MMMA. PE p. 13, 14.
 - c. That photographs had been taken by an officer, but he was not sure where the photographs were. PE p. 19.
 - d. That an officer confiscated Defendant's cell phone. PE p. 22.
4. A request was made by the defense for copies of the photographs and access to the cell phone at the preliminary examination, at the pretrial, and in a request for discovery.
5. The People agreed to provide the defense with the photographs and access to the cell phone, but to date, they have not been produced; the People have admitted that they lost the photographs.

WHEREFORE, Defendant requests:

- A. That the People be precluded from introducing any photographs or the cell phone at trial; or alternatively,

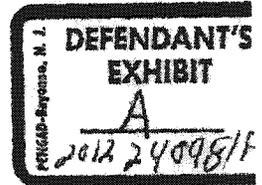
Defendant's Response to People's Motion to Preclude
The Affirmative Defense under the MMMA at
Trial and Defendant's Motion in Limine, or
Alternatively, for an Evidentiary Hearing

B. The Court order an evidentiary hearing be held regarding the missing photographs
and cell phone.



FREDERICK J. MILLER (P41207)
Attorney for Defendant

Dated: May 30, 2012



**MEDICAL MARIHUANA PROGRAM
CAREGIVER ID CARD**

PATIENT INFORMATION

Registry Number: **P254776-120901**
Name: **CHERRI A HARTWICK**
Issued: **08/23/2011**
Expires: **09/01/2012**

**MEDICAL MARIHUANA PROGRAM
CAREGIVER ID CARD**

PATIENT INFORMATION

Registry Number: **P114158-120901**
Name: **TERRENCE J STRANGE**
Issued: **03/08/2010**
Expires: **09/01/2012**

**MEDICAL MARIHUANA PROGRAM
CAREGIVER ID CARD**

PATIENT INFORMATION

Registry Number: **P254778-120901**
Name: **RALPH M PECK**
Issued: **08/23/2011**
Expires: **09/01/2012**

**MEDICAL MARIHUANA PROGRAM
CAREGIVER ID CARD**

PATIENT INFORMATION

Registry Number: **P240791-120701**
Name: **REBECCA L BOGGS**
Issued: **06/16/2011**
Expires: **07/01/2012**

**MEDICAL MARIHUANA PROGRAM
CAREGIVER ID CARD**

PATIENT INFORMATION

Registry Number: **P214465-120401**
Name: **DAVID E KLINGLER**
Issued: **03/30/2011**
Expires: **04/01/2012**

**DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN MEDICAL MARIHUANA PROGRAM**

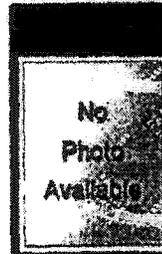
Marihuana Registry
Caregiver ID Card



Registry Number: C114159-254776
Name: RICHARD L HARTWICK
Address: 240 W YALE AVE
PONTIAC, MI 483401866
DOB: 05/09/1975
Issued: 08/23/2011
Expires: 09/01/2012
Authorized to Possess Plants: YES



[Redacted]



Registry Number: C114159-114158
Name: RICHARD L HARTWICK
Address: 240 W YALE AVE
PONTIAC, MI 48340
DOB: 05/09/1975
Issued: 03/08/2010
Expires: 09/01/2012



Authorized to Possess Plants: YES



LICENSING A



Registry Number: C114159-254778
Name: RICHARD L HARTWICK
Address: 240 W YALE AVE
PONTIAC, MI 483401866
DOB: 05/09/1975
Issued: 08/23/2011
Expires: 09/01/2012



Authorized to Possess Plants: YES



**DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN MEDICAL MARIHUANA PROGRAM**

Marihuana Registry
Caregiver ID Card

No Photo Available

Registry Number: C114159-240791
Name: RICHARD L HARTWICK
Address: 240 W YALE AVE
PONTIAC, MI 483401866
DOB: 05/09/1975
Issued: 06/16/2011
Expires: 07/01/2012
Authorized to Possess Plants: YES

LARA logo

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**MICHIGAN DEPARTMENT OF COMMUNITY HEALTH
MEDICAL MARIHUANA PROGRAM**

Marihuana Registry
Caregiver ID Card

No Photo Available

Registry Number: C114159-214465
Name: RICHARD L HARTWICK
Address: 240 W YALE AVE
PONTIAC, MI 483401866
DOB: 05/09/1975
Issued: 03/30/2011
Expires: 04/01/2012
Authorized to Possess Plants: YES

MICHM logo

C 07040304

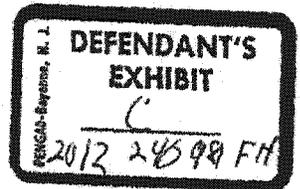
PHYSICIAN'S STATEMENT

certification of Medicinal Need for use of Marijuana:

certify that: Richard L. Hartwick was evaluated by me, Joanne Wesley MD, for one or more medical conditions in reference to his/her need for medicinal marihuana (cannabis) qualifying with valid diagnosis or use under Michigan Law. The patient's medical record and history were reviewed. Objective test results from medical testing facilities and specialists were reviewed. It is my professional medical opinion that the above named patient may benefit from the use of medicinal marihuana, I approve his/her use of marijuana for medicinal purposes as defined by State of Michigan law. I will continue to monitor his/her medical condition(s) and to provide advice on his/her progress at least annually. I have discussed the potential risks and contradictions of marihuana (cannabis) with the patient. I have informed my patient not to use marijuana with alcohol and certain medications. I have ordered this patient not to drive motor vehicles, operate watercraft, aircraft, and heavy machinery or engage in any activity that requires alertness while using the medicinal marijuana.

This is a medicinal certification of need for medical marijuana and is not a formal prescription for marijuana. It is a statement of my professional medical opinion. This opinion is rendered as a consultant with expertise in General Medicine and not in the capacity of his/her primary care provider. I repeat that this recommendation is in no way to be interpreted as a prescription as defined under Federal Law. It is a recommendation that adopts the legal provisions of Michigan Health and Safety Code and is only meant to used or applied under the Michigan Law. Under Federal Law cannabis is a scheduled drug and under Federal Law the sale, possession and cultivation of marihuana is illegal.

Time period covered: 12 months



Signed: Joanne Wesley M.D.

License # 4301093540

Date of Statement: 2 4 11

I have read and understand the above physician's statement. I have been informed of the privacy laws (HIPPA) and of the penalties under Michigan law for misrepresentation or fraudulence in presenting myself and my medical record for the examining physician. I have been advised on safe and prudent use of medicinal marijuana (cannabis).

Patient signature: Richard L. Hartwick Date 2 4 11

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

v

CR 2012-240981-FH
HON. COLLEEN A. O'BRIEN

RICHARD LEE HARTWICK,

Defendant.

JESSICA R. COOPER (P23242)
OAKLAND COUNTY PROSECUTING ATTORNEY
1200 NORTH TELEGRAPH
PONTIAC, MI 48341

FREDERICK J. MILLER (P41207)
837 S. LAPEER RD. SUITE 102
OXFORD, MI 48371
ATTORNEY FOR DEFENDANT

ORDER

At a session of said Court held in the Courthouse,
City of Pontiac, County of Oakland, State of Michigan,
on this 18th day of July, 2012 .

PRESENT: HONORABLE COLLEEN A. O'BRIEN
CIRCUIT COURT JUDGE

This matter having come on for argument in open Court upon the motion of Defendant, the Court having heard the arguments of counsel; having presided over the evidentiary hearing conducted this date; having heard the testimony of Defendant's sole

who was the Defendant himself; and the Court being otherwise fully advised in the premises;

IT IS THEREFORE ORDERED:

That the Defendant has failed to demonstrate by competent evidence at the evidentiary hearing that he is entitled to immunity from prosecution under section 4 of the Michigan Medical Marijuana Act; and,

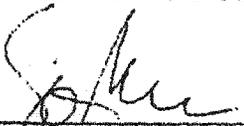
That the Defendant has failed to meet his burden under section 8 of the Michigan Medical Marijuana Act, and his motion to dismiss is DENIED; further, Defendant is precluded from asserting the section 8 affirmative defense at his jury trial because he has failed to produce prima facie evidence of all of the elements of the section 8 affirmative defense at the evidentiary hearing conducted July 18, 2012; and,

That the Defendant's motion to stay the proceedings to file an application for leave to appeal this Court's ruling is hereby GRANTED.

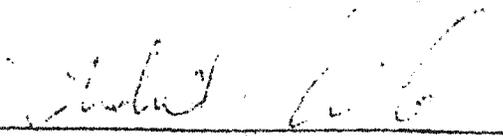
COLLEEN A. O'BRIEN

HON. COLLEEN A. O'BRIEN
CIRCUIT COURT JUDGE

APPROVED AS TO FORM:



Shannon O'Brien (P 53067)
Assistant Prosecuting Attorney



Frederick J. Miller (P 41207)
Attorney for Defendant

COPIED COPY
J.R.
Register of Deeds
Deputy

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

PEOPLE OF THE STATE OF MICHIGAN,

v No. 12-240981-FH

RICHARD LEE HARTWICK,

Defendant./

EVIDENTIARY HEARING

BEFORE THE HONORABLE COLLEEN A. O'BRIEN

Pontiac, Michigan - Wednesday, July 18, 2012

APPEARANCES:

For the People: SHANNON E. O'BRIEN (P53067)
Assistant Prosecuting Attorney
for Oakland County
1200 North Telegraph Road
Pontiac, MI 48341
(248) 858-0656

For the Defendant: FREDERICK J. MILLER (P41207)
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RICHARD LEE HARTWICK

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EXHIBITS RECEIVED

DX A photocopies of five registry cards	9
DX C physician's statement (not formally admitted)	-

1 Pontiac, Michigan
 2 Wednesday, July 18, 2012, at 1:46 p.m.
 3 *****
 4 THE CLERK: All rise.
 5 Your Honor, the court calls the matter of the
 6 People of the State of Michigan versus Richard
 7 Hartwick, case number 2012-240981-FH.
 8 MS. O'BRIEN: Shannon O'Brien for the People,
 9 your Honor.
 10 MR. MILLER: Frederick Miller on behalf of
 11 defendant, your Honor.
 12 THE COURT: Okay. All right, this is the
 13 date and time scheduled for an evidentiary hearing in
 14 regard to the defendant's request to use the
 15 affirmative defense of medical marijuana--
 16 MR. MILLER: It's our request to dismiss,
 17 first of all. I believe if it's clearly no question, I
 18 believe you do have the authority to dismiss it.
 19 THE COURT: Okay. All right.
 20 I received defendant's memorandum.
 21 Did you receive that, also?
 22 MS. O'BRIEN: He just handed it to me now,
 23 Judge.
 24 MR. MILLER: And I just handed it to you
 25 before lunch, your Honor. I--

- 3 -

1 THE COURT: Okay.
 2 MR. MILLER: --didn't want to leave it at the
 3 front desk, 'cause I wasn't sure you'd get it in time.
 4 THE COURT: All right. Do you want to make
 5 any statement before we start?
 6 MR. MILLER: Yes, Judge, I would.
 7 MR. MILLER'S OPENING STATEMENT
 8 MR. MILLER: There are some issues that
 9 basically are a little difficult to prove. But I would
 10 indicate that if you look at the preliminary exam
 11 transcript, page 11 and 12, the amount of marijuana
 12 claimed and weighed by the officer is 171 grams. That
 13 is equal to 6.03 ounces.
 14 Now, my client has--is a caregiver for five
 15 individuals and himself. The worst-case scenario,
 16 anything over 15 ounces is a problem. At this point
 17 he's got six, and that's not even useable marijuana.
 18 Now, the police report indicates there's
 19 another 23 grams that's in the freezer. Even if I add
 20 that in, that still does not come close to the amount
 21 necessary.
 22 My client has five valid (indiscernible) and
 23 his doctor's statement. And I believe based upon that
 24 evidence, that's all he's basically going to need and
 25 you should dismiss this matter.

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1 MS. O'BRIEN: Judge, may I?
 2 THE COURT: Yes.
 3 MS. O'BRIEN'S OPENING STATEMENT
 4 MS. O'BRIEN: We're supposed to be here for a
 5 Section 8 hearing. I'm reading defendant's evidentiary
 6 hearing memorandum. I apologize, Judge, I haven't had
 7 a chance to read the entirety of the document 'cause
 8 I've just been handed to it. But the first thing I see
 9 in the analysis is defendant's not required to prove
 10 compliance with Section 4 when his defense is under
 11 Section 8 of the act.
 12 So if he is asserting his defense is under
 13 Section 8 of the act, I guess I'm confused about he's
 14 now claiming immunity under Section 4 with regard to
 15 weight of some loose marijuana. I mean, the entirety
 16 of the circumstances under Section 4 would include
 17 growing plants and storage conditions.
 18 THE COURT: Okay. Is it your position you're
 19 entitled to the affirmative defense under Section 4
 20 or 8? Or both? What is your position?
 21 MR. MILLER: Under Section 8 and actually
 22 under Section 4. But I believe Section 8 is the one
 23 that gives us the affirmative defense.
 24 THE COURT: All right, we'll go forward with
 25 the hearing.

- 5 -

1 MR. MILLER: All right. Your Honor, I would
 2 call Mr. Hartwick to the stand.
 3 You need to come around here.
 4 THE CLERK: Please remain standing and raise
 5 your right hand.
 6 Do you swear or affirm under penalty of
 7 perjury that the testimony you're about to give is the
 8 truth, the whole truth, and nothing but the truth?
 9 MR. HARTWICK: Yes, I do.
 10 THE CLERK: Thank you.
 11 THE COURT: You may be seated.
 12 RICHARD HARTWICK
 13 called by the defendant at 1:50 p.m., sworn by the
 14 clerk, testified:
 15 DIRECT EXAMINATION
 16 BY MR. MILLER:
 17 Q Would you state your name and spell your last name for
 18 the Court?
 19 A Richard Hartwick, H-a-r-t-w-i-c-k.
 20 Q And sir, you are a medical marijuana provider?
 21 A Yes.
 22 Q Okay. Caregiver, correct?
 23 A Yes.
 24 Q And you were on September 22nd of 2011; is that
 25 correct?

- 6 -

1 A Yes.
 2 Q Did there come a time--or point in time when an officer
 3 arrived at your house on September 23rd?
 4 A Yes.
 5 Q What, if anything, did you--or 22nd, excuse me--What,
 6 if anything, did you do?
 7 MS. O'BRIEN: Judge, I'm sorry to interrupt
 8 counsel; but before we keep going forward, can I ask
 9 who the other person is that's sitting in the
 10 courtroom? If that's a witness--
 11 MR. MILLER: It's possible. (Indiscernible)
 12 MS. O'BRIEN: In this case, I'd ask that the
 13 person--
 14 MR. MILLER: You're going to have to wait
 15 (indiscernible).
 16 MS. O'BRIEN: --be sequestered.
 17 MR. MILLER: He's not a witness for this
 18 hearing, your Honor. He's not a witness for this
 19 hearing.
 20 MS. O'BRIEN: Regardless, this case may be at
 21 trial.
 22 UNIDENTIFIED SPEAKER: Do you want me
 23 outside?
 24 MR. MILLER: Yep.
 25 UNIDENTIFIED SPEAKER: Okay.

1 THE COURT: Thank you.
 2 MR. MILLER: It's not a problem.
 3 BY MR. MILLER:
 4 Q So back on September 22nd of 2011, did a police officer
 5 arrive?
 6 A Yes.
 7 Q What, if anything, occurred?
 8 A I was outside and he pulled up and got out and asked--
 9 started questioning me and asked me if I grew marijuana
 10 in my house. And I told him yes.
 11 Q Did there come a point in time when he asked to see
 12 some cards?
 13 A He didn't--Well,--Well, he had my--he took my wallet.
 14 And when he asked me did I have cards, I told him
 15 they're in my wallet. And he got them out himself. I
 16 didn't do it for him. But yeah, he asked me if I had
 17 them.
 18 Q Are these, in fact--
 19 A Yes.
 20 Q --the cards that he provided you--or you provide--or he
 21 took out of your wallet?
 22 A Yes.
 23 Q And these are copies of those cards?
 24 A Yes.
 25 Q I'll leave that there.

1 Now, as part of the ordinary course of your
 2 business--or I mean of being a medical marijuana
 3 caregiver, you received those cards, correct?
 4 A Yeah.
 5 Q Where do those cards come from?
 6 A The state of Michigan.
 7 Q And you're required to keep those with your facility,
 8 correct?
 9 A Yeah.
 10 Q And that's part of the ordinary course of the business?
 11 A Yeah.
 12 Q And those cards were all valid on the date and time
 13 that the officer arrived?
 14 A Yes.
 15 MR. MILLER: I'd move for the admission of
 16 what would be defense exhibit A.
 17 THE COURT: Which is the cards?
 18 MR. MILLER: It actually is a copy of the
 19 cards, 'cause he has to keep the cards there.
 20 THE COURT: Any objection?
 21 MS. O'BRIEN: No objection, Judge.
 22 THE COURT: Admitted.
 23 (At 1:53 p.m., DX A admitted)
 24 BY MR. MILLER:
 25 Q With regard to yourself, you are also a medical

1 marijuana provider--or a person who uses medical
 2 marijuana, correct?
 3 A Yes.
 4 Q Do you recognize what I have labeled as defendant's
 5 exhibit C?
 6 A Yeah. Yes.
 7 Q What is that?
 8 A This the--It's the physician's statement where my
 9 doctor gives her approval of, you know, my--my--my
 10 condition.
 11 Q All right. So you, as well, were a patient, correct?
 12 A Yeah.
 13 Q And you were your own caregiver, correct?
 14 A (Inaudible)
 15 Q All right. And to the best of your knowledge, was--
 16 were you validly in possession of--or are you validly a
 17 patient with the state of Michigan for medical
 18 marijuana?
 19 A Yeah. Yes.
 20 Q With regard to that, what is your debilitating
 21 condition?
 22 A I have a--They're--I don't know the actual doctor term.
 23 I have a deteriorated--deteriorated disks in my lower
 24 back. I have--I'm not sure how to--the medical term.
 25 But there's a thing in the middle of my back that's

1 messed up. I'm not sure of the word of it. They use
 2 those big words and I'm not 100 percent on it.
 3 Q With regard to the officer, you cooperated with him,
 4 correct?
 5 A Yes.
 6 Q What, if anything, occurred after he saw the cards?
 7 A He told me that he already knew, and he was there to
 8 search my house.
 9 Q What did you do?
 10 A I let him in.
 11 Q You showed him where the marijuana was?
 12 A Yes.
 13 Q Where was it?
 14 A It was in the--off the back of my house in a sunroom.
 15 Q And was that room separated from the rest of the house?
 16 A Yeah, it's behind two doors.
 17 Q Was that room locked?
 18 A (Inaudible)
 19 Q You had to provide the key to get into that room.
 20 correct?
 21 A Yes. The key is right there.
 22 Q Do you know how much useable medical marijuana was in
 23 that house?
 24 A Useable, I would say--
 25 MS. O'BRIEN: Judge, I guess I'm going to

- 11 -

1 object to this question. It calls for a legal
 2 conclusion. "Useable" is defined by the Michigan
 3 Medical Marijuana Act. It's not for the defendant to
 4 determine whether or not the quantity of marijuana he
 5 had meets that definition or not.
 6 MR. MILLER: Your Honor, he's giving an
 7 opinion based upon his ability as a caregiver.
 8 THE COURT: I'll allow it for the purposes of
 9 this hearing.
 10 THE WITNESS: Well, it's hard to determine
 11 because the--some of it was dry. So I would
 12 guesstimate five ounces.
 13 MS. O'BRIEN: Objection. That calls for
 14 speculation, then, Judge.
 15 MR. MILLER: It does, but he gave the answer.
 16 I mean--
 17 THE COURT: I'll allow it for purposes of
 18 this hearing.
 19 MR. MILLER: For purposes of this hearing.
 20 yeah.
 21 BY MR. MILLER:
 22 Q You fully cooperated with the officer?
 23 A (Inaudible)
 24 Q You had a variety of plants in that room, correct?
 25 A I'm sorry, I didn't--

- 12 -

1 Q Plants in that room.
 2 A Yes.
 3 Q Many of them were in small Styrofoam cups, correct?
 4 A Yes.
 5 Q Why were they in small Styrofoam cups?
 6 A Because that's how they start off. You put the seed in
 7 the dirt in a little cup; and then when it gets bigger,
 8 you transplant into a bigger bucket.
 9 Q How many of those small, little Styrofoam cups did you
 10 have?
 11 A Styrofoam cups, I had 71.
 12 Q Seventy-one Styrofoam cups.
 13 Of those, how many plants would actually grow
 14 marijuana?
 15 A Less than--Less than 60 percent.
 16 Q The other plants, why wouldn't they grow marijuana?
 17 MS. O'BRIEN: Excuse me. Can I object? I
 18 don't know what the question means. Can I have counsel
 19 rephrase?
 20 MR. MILLER: Very well.
 21 MS. O'BRIEN: What a plant--How a plant would
 22 grow marijuana. I don't what that means.
 23 THE WITNESS: Because they're going to turn
 24 out male.
 25 MS. O'BRIEN: That--That--

- 13 -

1 MR. MILLER: (Indiscernible)
 2 MS. O'BRIEN: --question is for the Court and
 3 for counsel, Judge.
 4 MR. MILLER: Let me rephrase.
 5 BY MR. MILLER:
 6 Q You had 71 small, little Styrofoam cups in there.
 7 correct?
 8 A Yes.
 9 Q What were you growing in them?
 10 A I was growing seeds.
 11 Q What happens to those seeds?
 12 A Well, most of them usually show up and turn into males.
 13 You have to--You have to grow it to see if it's going
 14 to be a TAC-producing plant before it becomes, you
 15 know--Once it grows up, it's either a male or a female;
 16 and you have to weed out the males and throw them away.
 17 Q Why do you throw them away?
 18 A Because they don't produce TAC. All they do is
 19 pollinate your--They pollinate your crop and all you
 20 get is seeds out of it. You don't get no TAC.
 21 Q All right. So you have six other patients--or five
 22 other patients that you serve, correct?
 23 A Yes.
 24 Q And how much marijuana do you provide for them each
 25 week?

- 14 -

1 A It's on a month thing. As their--As their plants come
 2 off and dry, they get them. You know, it doesn't--
 3 Like, there's no set amount. It's just what their
 4 plant produces.
 5 Q And to the best of your knowledge, were you in full
 6 compliance with the statute?
 7 A Yes.
 8 MR. MILLER: Judge, I have two other
 9 exhibits. One is a conversion from grams to ounces.
 10 He didn't prepare it. I did. It indicates, and you
 11 can run it on your own, that 171 grams, which is what
 12 the officer testified to at the preliminary exam,
 13 is 6.03184 ounces.
 14 MS. O'BRIEN: Judge, I don't think that
 15 exhibit's necessary. The Court can take judicial
 16 notice of conversion of weights and measures.
 17 MR. MILLER: That's fine.
 18 THE COURT: Yes, that's fine.
 19 MR. MILLER: And Judge, the only lab report I
 20 have provided by the People. And it indicates an
 21 amount of 104.6 grams.
 22 MS. O'BRIEN: I'll stipulate to the results
 23 of the lab report, Judge.
 24 THE COURT: Okay.
 25 MR. MILLER: And based on that, I have

- 15 -

1 nothing further.
 2 MS. O'BRIEN: Judge, I want to point out for
 3 counsel he didn't move for admission of the exhibit
 4 that's sitting--
 5 MR. MILLER: I would--
 6 MS. O'BRIEN: --in front of Mr. Hartwick
 7 right now.
 8 MR. MILLER: I would for move the admission
 9 of exhibit C.
 10 MS. O'BRIEN: And the People object to that
 11 exhibit, Judge, because it's hearsay, a statement from
 12 a physician.
 13 MR. MILLER: Judge, it is the document
 14 provided by the physician. It's the only document he
 15 has. He also provides it to the state of Michigan.
 16 That's what he's required to have. And it's not
 17 necessary to have the card to be valid to have medical
 18 marijuana. The court already--Or the Supreme Court
 19 already said that. All he has to do is have the
 20 doctor's notes. The only way I can prove that is to
 21 bring the doctor in. And I don't have the original
 22 because the People have it.
 23 MS. O'BRIEN: We're here talking about
 24 Section 4, Judge, so it is necessary that he had the
 25 card or the documents that are set forth in the statute

- 16 -

1 that supplies under Section 9. That is not one of
 2 those documents. The court--Or the state doesn't
 3 require a statement from a physician. Nonetheless, the
 4 document is just a copy. That's all the People have is
 5 a copy. It can't be authenticated. It is just what it
 6 is on its face. It's a copy of a piece of paper
 7 purported to be signed by a person who claims to be a
 8 physician. That person isn't here for cross-
 9 examination. It's hearsay and it's inadmissible.
 10 MR. MILLER: The original is with the People,
 11 and they provided that document to me.
 12 THE COURT: Isn't it hearsay, though?
 13 MR. MILLER: Technically, it is.
 14 MS. O'BRIEN: Even if it were, it would be.
 15 Judge.
 16 MR. MILLER: And my client has testified that
 17 he's got a valid--or that he's valid with it anyway.
 18 MS. O'BRIEN: Judge, I don't dispute that the
 19 defendant had a card, so--
 20 MR. MILLER: Okay. At that point, I'll
 21 withdraw it. It--
 22 MS. O'BRIEN: --so I don't know--
 23 MR. MILLER: --doesn't matter.
 24 MS. O'BRIEN: --what is the value of that
 25 document.

- 17 -

1 THE COURT: Okay. All right. So you're
 2 withdrawing your request?
 3 MR. MILLER: I'll withdraw it. She's
 4 stipulated to it, so it's not a problem.
 5 THE COURT: All right. All right.
 6 MS. O'BRIEN: Judge, the People stipulate
 7 that the defendant has a card, not to anything that's
 8 on that document.
 9 MR. MILLER: Yes.
 10 MS. O'BRIEN: Just to be clear.
 11 MR. MILLER: Yes, and there's no . . .
 12 CROSS-EXAMINATION
 13 BY MS. O'BRIEN:
 14 Q Mr. Hartwick, can I ask you some questions about the
 15 things that your attorney just asked you about. First
 16 with regard to the number of plants. He said you had
 17 about 71 plants?
 18 A Yes.
 19 Q Now, is that the exact number you had?
 20 A In Styrofoam cups, yes.
 21 Q How many other plants did you have?
 22 A Useable?
 23 Q No, just how many plants?
 24 A That's 71.
 25 Q Okay. Just in the Styrofoam cups, you had exactly 71

- 18 -

1 plants total in your house; is that correct?
 2 A Yes.
 3 Q So then when--Do you remember talking to Detective
 4 Ferguson at the scene?
 5 A Yes.
 6 Q Okay. And when--do you remember telling him you had
 7 around 77 plants?
 8 A That wasn't the conversation, but yes.
 9 Q So when Detective Ferguson writes that in his report,
 10 Detective Ferguson's lying?
 11 A I guess it's--it's opinion. He counted six plants that
 12 I had just cut down and there was still the stalk
 13 there. He counted those as plants.
 14 Q My question for you, sir, is when you--when Detective
 15 Ferguson writes that you said you had 77 plants in the
 16 house, around 77 plants, is that true or untrue? Did
 17 you say that or not say that?
 18 A Did I say 77?
 19 Q Yes.
 20 A Never.
 21 Q You never said that. So when Detective Ferguson writes
 22 that in his report that you said around 77, your
 23 position is that he's lying when he writes that in his
 24 report?
 25 A I'm saying his opinion is different.

- 19 -

1 Q His claim is that you said that.
 2 A You know, his claim is that I said that. His claim is
 3 that he counted what he counted.
 4 MS. O'BRIEN: Judge, may I approach?
 5 THE COURT: Yes.
 6 MS. O'BRIEN: I'm handing him the police
 7 report, Fred.
 8 MR. MILLER: Yeah. I know what it says.
 9 BY MS. O'BRIEN:
 10 Q (Indiscernible) a police report that's prepared for
 11 this case. And I'll refer you to about the middle of
 12 the questions and answers. You can take the report,
 13 sir. Right about where my thumb is. Can you read what
 14 that question is?
 15 MR. MILLER: To yourself.
 16 BY MS. O'BRIEN:
 17 Q Did you read the question that was put to you?
 18 A Yeah. Oh, I've read this, yes.
 19 Q Okay.
 20 A I know what it says.
 21 Q Can you read what your answer was?
 22 A Well, that's--that's your--that's a technical because--
 23 Q Did you read what your answer was? What Detective
 24 Ferguson claims your answer was?
 25 A Yeah, oh, I see what it says.

- 20 -

1 Q Did you read that?
 2 A Yes.
 3 Q Do you see the number?
 4 A Yes.
 5 Q What was the number?
 6 A Seventy-seven.
 7 Q Is that an opinion or is that the number he writes with
 8 your answer?
 9 A That's an opinion.
 10 MS. O'BRIEN: Judge, I'll move on.
 11 BY MS. O'BRIEN:
 12 Q Sir, when Detective Ferguson testified at the
 13 preliminary exam that the room that you maintained your
 14 plants in was unlocked, was that a lie?
 15 A No.
 16 Q When he testified that it was locked. I correct
 17 myself. When he testified it was locked, was that a
 18 lie?
 19 A That he testified that it was locked?
 20 Q Yes.
 21 A No, it's not a lie. It was locked.
 22 Q Pardon me?
 23 A It was locked.
 24 Q The room was locked?
 25 A (Inaudible)

- 21 -

1 Q Okay. And if he had testified when they came there it
 2 was unlocked, would that be a lie?
 3 A If he would have?
 4 Q Yes.
 5 A I don't know. You're asking me if?
 6 Q Yeah, did--
 7 A I don't know.
 8 Q You were present at the exam, right?
 9 A If he would have testified to that--
 10 Q Did you--You were present at the exam, correct?
 11 A Yes.
 12 Q Did you hear him testify that that room was unlocked--
 13 A No.
 14 Q --when I asked him questions?
 15 A It's a possibility that he said that. I don't know.
 16 There's two doors to get into the room.
 17 Q Two doors to that room?
 18 A There's two--No, there's one door--It's hard to
 19 explain. There's one door to access all the rooms, but
 20 each room has its own door. The room--The door to get
 21 into the actual room--It's hard to explain if you don't
 22 know what it looks like. There's a door that you got
 23 to walk in and then there's a hallway and there's
 24 another door and then there's three or four--three
 25 doors in front of you. Those doors were locked. But

- 22 -

1 the door to get into that room wasn't. But the actual
 2 door to get into the room with the plants was locked.
 3 Yes.
 4 Q Mr. Hartwick, who's the name of the physician that
 5 signed your certification for medical marijuana use?
 6 A (Indiscernible)
 7 Q Dr. Wesley?
 8 A (Inaudible)
 9 Q How many times did you see her?
 10 A You talking about over a lifetime?
 11 Q Yes.
 12 A Five or six.
 13 Q When's the first time you saw her?
 14 A When I got insurance in--
 15 MR. MILLER: I guess, your Honor, I'm going
 16 to object as to relevance. They've already stipulated
 17 that he had a valid card. So why are we--do we need to
 18 go into it?
 19 MS. O'BRIEN: Judge, because this is--the
 20 claim is for immunity under Section 4. The claim of
 21 immunity under Section 4 can be rebutted by evidence
 22 that the defendant's conduct was other than for the
 23 purpose of alleviating a patient or his patients'
 24 debilitating medical condition. So if there was no
 25 diagnosis of debilitating medical condition, then that

1 release for those medical records from Dr. Wesley so
 2 that we could have those medical records here today and
 3 answer the questions that I'm asking you now?
 4 A I'm not sure what you're asking me.
 5 Q Did you ever sign a release for your medical records so
 6 you could bring them here today, so you could prove
 7 that you suffer from the debilitating medical condition
 8 that's required by the state?
 9 A No.
 10 Q I know that counsel already asked you this on direct,
 11 but what is the name of the medical condition that you
 12 suffer from that requires or benefits from use of
 13 medical marijuana?
 14 A I don't know the actual medical name. It's just
 15 deteriorated disks and a--I can't--The other one it's--
 16 there's those--those things that make up your spine.
 17 one of mine is off.
 18 Q Which one?
 19 A I--
 20 Q Which disks are deteriorated?
 21 A Oh, my--
 22 Q Where are they located?
 23 A The very bottom. The thick one's like this, one of
 24 mine's like this. I don't know the numbers or the
 25 names. I don't know. I can only--

1 will successfully rebut any presumption that the
 2 defendant's entitled to immunity under Section 4, and
 3 then we can proceed to Section 8.
 4 MR. MILLER: And your Honor, the state
 5 already issued the card, so the state's already made
 6 the determination.
 7 MS. O'BRIEN: Well.--
 8 THE COURT: I'll overrule the objection.
 9 MS. O'BRIEN: There's no evidence of that,
 10 Judge. Okay.
 11 BY MS. O'BRIEN:
 12 Q You saw her five or six times?
 13 A (Indiscernible) I don't have a hard number, so I--I'll
 14 just say five or six.
 15 Q When was the first time? When did you first see her?
 16 A It had to be two thousand five or six or--probably
 17 five.
 18 Q What'd you see her for?
 19 A For my back.
 20 Q What test did she conduct?
 21 A I don't know the names of them. I mean, I had x-rays
 22 and, you know, whatever those--whatever they're called.
 23 I don't--I don't know the names of tests, if you're
 24 looking for specifics. I just know. . .
 25 Q Mr. Hartwick, before this hearing, did you ever sign a

1 Q Did Dr. Wesley ever tell you what those were?
 2 A In medical terms.
 3 Q Well, it's a number and a letter. Did she ever tell
 4 you a number and a letter?
 5 A Oh, I'm sure.
 6 Q She told you?
 7 A I'm sure. She had to of. It's not like we didn't
 8 discuss it.
 9 Q But you don't know what they are?
 10 A I just know it's my--it's deteriorated. That's--You
 11 know, I didn't, you know, make it a point to remember
 12 the name or what they called it.
 13 Q Who is Ralph Peck?
 14 A What do you mean?
 15 Q Who is he to you?
 16 A A patient.
 17 Q Okay. Is he related to you in any way?
 18 A No.
 19 Q Is he married to anybody that's related to you in any
 20 way?
 21 A No.
 22 Q What is his debilitating medical condition?
 23 A He has. . . I'm not sure what he has. I'm not--I
 24 don't know. . .
 25 Q What are the names of your other patients? Sherry--Is

1 her last name Hartwick?
 2 A Yes.
 3 Q How is she related to you?
 4 A She's my mother.
 5 Q What is her debilitating medical condition?
 6 A She has... I don't know. She's got a--something in
 7 her shoulder, something in her back. She's got--Funny
 8 as it sounds, emphysema. And they still accepted her
 9 to smoke.
 10 Q Who's the physician for Ralph Peck and Sherry Hartwick?
 11 A I don't know.
 12 Q You don't know? Who certified them for medical
 13 marijuana use, you don't know the answer to that?
 14 A No.
 15 Q Who are your other patients?
 16 A Terrence Strange.
 17 Q What is Terrence Strange's debilitating medical
 18 condition?
 19 A He's got arthritis, Crohn's disease.
 20 Q Who diagnosed Terrence Strange with arthritis and
 21 Crohn's disease?
 22 A Oh, I don't know.
 23 Q How do you know he has it?
 24 A What do you mean?
 25 Q How do you know he has those?

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1 Michigan?
 2 A How do I know he didn't?
 3 Q Yeah.
 4 A Well, I don't.
 5 Q Pardon me?
 6 A I don't.
 7 Q You don't know. Did you ever see the document that the
 8 doctor signed?
 9 MR. MILLER: And that would be for Mr.
 10 Strange. I assume?
 11 THE WITNESS: What do--You mean--
 12 BY MS. O'BRIEN:
 13 Q Did you ever see that the document was--that--The
 14 document the doctor signed saying that Terrence Strange
 15 has a debilitating medical condition, did you ever see
 16 that document, the one that was sent to the state of
 17 Michigan?
 18 A Maybe not this time, but last time more than likely. I
 19 think the first time--
 20 Q Do you know? Yes or no? Did you see the document?
 21 A Well, I mean, you're getting--I don't know.
 22 Q You don't know if you saw it?
 23 A (Inaudible)
 24 Q Who's his doctor?
 25 A I don't know.

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1 A Because the doctor said--I guess the doctor said it.
 2 Q What doctor?
 3 A I don't know.
 4 Q Then how do you know the doctor said it?
 5 A Because the doctor signed his application and said he
 6 had it.
 7 Q What doctor?
 8 A I--Doctors write crazy. I don't--It's not--I don't,
 9 like, research names.
 10 Q How do you know Terrence Strange didn't forge a
 11 doctor's name on the document and send it to the
 12 state--
 13 MR. MILLER: Judge, at this point I'm going
 14 to object. The card was issued by the state of
 15 Michigan. I don't believe my client has an obligation
 16 to go pass that.
 17 MS. O'BRIEN: He does have an obligation to
 18 you, Judge. This is his burden to prove that he's
 19 immune from prosecution here.
 20 THE COURT: I'll overrule the objection.
 21 THE WITNESS: Well, I don't--What was the
 22 question?
 23 BY MS. O'BRIEN:
 24 Q How do you know that Terrence Strange didn't forge a
 25 doctor's name on a document and send it to the state of

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1 Q Who's your other patient?
 2 A Becky--Rebecca.
 3 Q Rebecca who?
 4 A Boggs.
 5 Q Boggs?
 6 A Yeah.
 7 Q What's Rebecca Boggs' debilitating medical condition?
 8 A She has... I know she's got arthritis and she has
 9 something stemming from a motorcycle accident. I'm not
 10 sure the--the actual--
 11 Q (Indiscernible)
 12 A --or her--Yeah.
 13 Q How do you know she has those things?
 14 A 'Cause she had proof from a doctor, too.
 15 Q Did you see that?
 16 A Her proof?
 17 Q Yes.
 18 A I think I did. Yes, I seen hers, 'cause I had to fill
 19 out--She got the doctor's signature before I signed my
 20 part.
 21 Q Okay. What was her doctor's name?
 22 A I have no clue.
 23 Q Mr. Hartwick, how much marijuana did Dr. Wesley tell
 24 you you need to smoke for the thing in your back?
 25 A She just said that it was, like, a--it was a--a

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1 judgment call, I--I guess.
 2 Q Whose judgment?
 3 A Mine.
 4 Q Did she ever assign any amount to you that she stated
 5 was reasonable for you to use?
 6 A No.
 7 Q Did she ever tell you how to use it, whether to eat it,
 8 put it into edibles, smoke it, whatever? Did she ever
 9 talk to you about that?
 10 A She gave me her advice, yes.
 11 Q What was her advice?
 12 A Her advice was to make it into something, not smoke it,
 13 make it into something else.
 14 Q How'd she tell you to do that?
 15 A She didn't really give me a pinpoint way to do it. She
 16 just said that there's so many different ways that...
 17 Q She left that up to you?
 18 A (Inaudible)
 19 Q Okay, how about Ralph Peck's doctor, how much marijuana
 20 did Ralph Peck's doctor tell him--
 21 A Nobody's--
 22 Q --is reasonable to use for whatever his condition is
 23 that we don't know?
 24 A Nobody's doctor said anything like that.
 25 Q For any of your patients?

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1 Q Okay, so there's somebody besides Strange, Boggs, Peck,
 2 and Hartwick?
 3 A Klinger.
 4 Q What's Klinger's first name?
 5 A David.
 6 Q David?
 7 A Yes.
 8 Q What's his debilitating medical condition?
 9 A He's got a lot of things going on. I don't know what
 10 the doctor signed for him for.
 11 Q And same thing, have no idea what amount of marijuana
 12 any doctor ever told him was reasonable? You said that
 13 was the same for all your patients, correct?
 14 A Correct.
 15 Q Okay. And Klinger sometimes comes and picks up his
 16 marijuana?
 17 A (Inaudible)
 18 Q One time did?
 19 A One time.
 20 Q Okay. And when he came and picked up his marijuana,
 21 did he pay you money for it?
 22 A No.
 23 Q Mr. Hartwick, do you work?
 24 A Yes.
 25 Q Where do you work?

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1 A Not to me.
 2 Q When you said that they come over and get their
 3 marijuana when it dries, is it--did I hear you
 4 correctly?
 5 A No, I never said that.
 6 Q They come over and get it--
 7 A I never said that.
 8 Q --when it dries?
 9 What did you say? How do you make sure your
 10 patients get their medical marijuana?
 11 A Well, it's either they come get it or I take it to
 12 them.
 13 Q And when they come get it, do they pay you money for
 14 it?
 15 A Nobody's really came and got it.
 16 Q Nobody ever came to get it?
 17 A No, not really, nobody's not--The only person--I mean,
 18 my--my father lives in the house with me. He's about
 19 the only person that...
 20 Q So when you say they either come to get it or you take
 21 it to them, that's something that never happened?
 22 A I--I mean, they've--like, the Klinger, he came
 23 --he used to come get it.
 24 Q I'm just talking about your five patients right now.
 25 A Klinger is my patient still.

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1 A I do landscaping.
 2 Q How many hours a week?
 3 A The regular, you know. A little less because I don't
 4 really--
 5 Q Little less than what?
 6 A Little less than 40.
 7 Q What's the name of the company you work for?
 8 A Fine Line Landscaping.
 9 Q Who owns Fine Line Landscaping?
 10 A I do.
 11 Q Do you have any employees?
 12 A No. Well, yes, I do.
 13 Q Have you registered to do business as Fine Line
 14 Landscaping in Oakland county?
 15 A Yes.
 16 Q Do you have any documentation with you today
 17 demonstrating that you operate a business, Fine Line
 18 Landscaping?
 19 A No.
 20 Q Did you bring any paperwork?
 21 A (Inaudible)
 22 Q How much money do you make, let's say a month.
 23 operating Fine Line Landscaping?
 24 A Right now I think I only made--because of the way the
 25 weather is, I've only made around five--about--between

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1 550 [REDACTED]
 2 Q From when to when?
 3 A That would be probably the last 30 days.
 4 Q Do you own your house?
 5 A No.
 6 Q Do you rent it?
 7 A No.
 8 Q Who owns it?
 9 A My father.
 10 Q Do you pay rent to live there?
 11 A Yeah. Yes.
 12 Q How much?
 13 A I just pay the bills. It varies.
 14 Q Pay all the utilities?
 15 A Yes.
 16 Q Do you have a car?
 17 A (Inaudible)
 18 Q Do you have a car payment?
 19 A No.
 20 Q Do you have equipment for Fine Line Landscaping?
 21 A Yes.
 22 Q Do you owe any money on the equipment?
 23 A No.
 24 Q Do you have insurance?
 25 A (Inaudible)

1 Q For your car?
 2 A Yes.
 3 Q How much is your insurance?
 4 A Like, 117 a month.
 5 Q Do you have insurance on your equipment for your
 6 landscaping company?
 7 A You mean like a business insurance? Is that what you
 8 mean?
 9 Q Well, I'm--Do you have lawn mowers, things like that?
 10 A Yes.
 11 Q Do you pull it with your car or--
 12 A With a truck.
 13 Q --or something else?
 14 A With a truck.
 15 Q Okay. That's the one you pay 117 a month for the
 16 insurance?
 17 A That's just on the truck.
 18 Q Okay. And then what about your equipment? Do you have
 19 liability insurance for any of your--
 20 A Yes.
 21 Q Okay. What do you pay for the insurance on that?
 22 A I think it's like 400 a year.
 23 MS. O'BRIEN: Judge, can I have one moment?
 24 THE COURT: Yes.
 25 (Pause in proceedings)

1 MS. O'BRIEN: Okay, Judge, I don't have any
 2 further questions for Mr. Hartwick.
 3 THE COURT: Anything else?
 4 MR. MILLER: No, your Honor.
 5 THE COURT: Okay, you can step down.
 6 (At 2:24 p.m., witness excused)
 7 MR. MILLER: That's all I have. Your Honor,
 8 I have no additional witnesses.
 9 THE COURT: Okay. Anything from the
 10 prosecutor?
 11 MS. O'BRIEN: Judge, just argument. But--
 12 THE COURT: Go ahead, Mr. Miller.
 13 MS. O'BRIEN: (Indiscernible)
 14 MR. MILLER: Thank you, your Honor.
 15 MR. MILLER'S CLOSING ARGUMENT
 16 MR. MILLER: Your Honor, based upon the
 17 statements, my client is clearly a caregiver. He has
 18 five other clients and himself. Based on that, the
 19 amount of marijuana that they have--the best amount of
 20 marijuana they can establish is a little over six
 21 ounces. That's not useable marijuana. That's just
 22 marijuana.
 23 Now, my client's indicated that he stays
 24 there with his father, who has a medical marijuana
 25 card. My client has a medical marijuana card. And

1 he's dealing with four other individuals.
 2 The amount of marijuana in that house is way
 3 less than necessary. And based on that, I would move
 4 to dismiss.
 5 MS. O'BRIEN'S CLOSING ARGUMENT
 6 MS. O'BRIEN: Judge, the defendant's entitled
 7 to immunity under Section 4 in two places. One is a
 8 patient under Section 4.a. The second as a caregiver
 9 under Section 4.b. And then there's also an immunity
 10 under Section (I). All of the immunity provisions can
 11 be rebutted with evidence that his conduct was not for
 12 the purpose of alleviating (indiscernible) patients'
 13 debilitating medical condition or symptoms associated
 14 with his debilitating medical condition.
 15 The defendant does not know the debilitating
 16 medical condition of any of his patients or himself.
 17 Medical conditions that he describes do not do not meet
 18 the statutory definition of a debilitating medical
 19 condition. That is under Section 3.(a): cancer,
 20 glaucoma, positive status--
 21 Does the Court want me to read this into the
 22 record?
 23 THE COURT: Go ahead.
 24 MS. O'BRIEN: Positive status for human
 25 immunodeficiency virus, acquired immune deficiency

1 syndrome, hepatitis C, amyotrophic lateral sclerosis,
 2 Crohn's disease.
 3 Judge, as an aside. I'll stop and say that he
 4 did say that Terrence Strange reports to suffer from
 5 Crohn's disease. But he's not sure who that physician
 6 is that diagnosed him with that or whether or not he
 7 ever saw any documentation that bore a physician's
 8 signature nor whether or not that physician's signature
 9 was verifiable.
 10 And I go on: agitation of Alzheimer's
 11 disease, nail patella, or the treatment of those
 12 conditions.
 13 In 2 it states that it means a chronic or
 14 debilitating disease or medical condition or its
 15 treatment that produces one or more of the following:
 16 cachexia or wasting syndrome; severe and chronic pain,
 17 severe nausea; seizures not including but not limited
 18 to those characteristic of epilepsy; or severe and
 19 persistent muscle spasm, including but not limited to
 20 those characteristic of multiple sclerosis.
 21 Judge, none of the medical conditions that he
 22 did describe meet that definition. At least for Ralph
 23 Peck and Sherry Hartwick, he was not sure what their
 24 medical conditions might be. I believe that was true
 25 with David Klinger, other than to say that he has a lot

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1 of things going on. None of those conditions meets the
 2 definition of "debilitating medical condition"; and,
 3 therefore, under Section (d)(2) the People assert that
 4 his presumption of immunity under Section 4 is
 5 successfully rebutted by conduct associated with the
 6 marijuana that has been seized in the course of this
 7 investigation.
 8 The defendant's not entitled to Section 4
 9 protection. He may be able to provide evidence that he
 10 can assert an affirmative defense under Section 8, but
 11 that remains his burden.
 12 Judge, you know what? And let me add this.
 13 too: Other conduct related to--It's the People's
 14 assertion that other conduct related to the defendant's
 15 marijuana may have been available for this Court today,
 16 had we had the benefit of being able to search the
 17 defendant's home.
 18 The Court will recall the last time we were
 19 here, the Court stated it would enter an order ordering
 20 the defendant to provide the PIN number for his
 21 telephone or to respond to the sheriff's department to
 22 participate in a finger swipe of that phone so the
 23 phone could be searched.
 24 I had advised the Court it was our desire to
 25 have that phone search conducted before this hearing

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1 because it's the People's position that the--that phone
 2 likely contains evidence that would corroborate the
 3 evidence we put forth to the Court today, rebutting his
 4 presumption under Section 4 and also rebutting any
 5 claim he made under the third prong of the Section 8,
 6 affirmative defense, that what he was doing was in
 7 accordance with the act.
 8 In addition, the defendant has made two
 9 discovery demands stating that there is exculpatory
 10 information in that phone, the People would be
 11 obligated to provide him with that.
 12 For both of those reasons, we desire to have
 13 that phone search conducted.
 14 I mailed a copy of the order to counsel,
 15 faxed it to him, sought his concurrence in the order.
 16 I wasn't able to get his signature. I brought it for
 17 the Court's signature. And the People are still
 18 without the contents of that phone and without any date
 19 for the defendant to report to the sheriff's department
 20 to conduct that finger swipe. So I would like the
 21 Court to take into consideration that the People have
 22 been prohibited from presenting any evidence from
 23 within that phone, so has the defendant, for that
 24 matter, because the defendant has not been compliant
 25 with the Court's order in that regard.

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1 But I'll wait with my prayer for relief as to
 2 that request. Judge, until the Court makes its decision
 3 about the defendant's claim under Section 4.
 4 MR. MILLER: Your Honor, under Section 8, I
 5 believe we're entitled to dismissal.
 6 With regard to the phone, my client will
 7 testify, if you want, there is no code, there is no
 8 PIN. It is a finger touch. He'll go over and do that.
 9 But I told the prosecutor, and I indicated to you on
 10 the record the last time, there's no code. He doesn't
 11 know anything about a code and he can't give you a
 12 code.
 13 THE COURT: I thought we had decided he was
 14 going to go over and do the finger swipe.
 15 MR. MILLER: He can go over and do the
 16 finger--He'll do it today or whenever you want him
 17 there. We'll do that. I don't have a problem with
 18 that. But I can't sign an order that says he's going
 19 to give a code that he doesn't have.
 20 MS. O'BRIEN: Judge, the order provided the
 21 alternatives. And I also asked for defendant to give
 22 me a date that he could come there before today's date.
 23 And I just simply never heard from him.
 24 As for the argument under Section 8, we're
 25 still under Section 4. Dismissal would be the remedy.

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1 Judge, that remains true, because immunity from
 2 prosecution is the protection of Section 4.
 3 THE COURT: All right. I'm going to take a
 4 break. Okay?
 5 THE CLERK: All rise.
 6 (At 2:31 p.m., recess)
 7 (At 3:15 p.m., court in session)
 8 THE CLERK: All rise.
 9 THE CLERK: Your Honor, the court calls the
 10 matter of the People of the State of Michigan versus
 11 Richard Hartwick, case 2012-240981-FH.
 12 MS. O'BRIEN: Shannon O'Brien for the People,
 13 your Honor.
 14 MR. MILLER: Frederick Miller on behalf of
 15 defendant.
 16 COURT'S RULING
 17 THE COURT: All right. I just want to
 18 clarify this for the record: Mr. Miller, you're
 19 first asking the Court to dismiss this matter under
 20 Section 4, correct?
 21 MR. MILLER: Under Section 8, actually, your
 22 Honor.
 23 THE COURT: You're not claiming--
 24 MR. MILLER: And Section 4, as well.
 25 THE COURT: Well, what is your basis for a

1 marijuana was not conducted in accordance with the act
 2 and because he needs to have been providing that for a
 3 genuine medical need for people who meet the definition
 4 of "qualifying patient." Those are people who have
 5 been diagnosed with a debilitating medical condition.
 6 By his own testimony he could not have been doing so,
 7 he doesn't know if anybody had a debilitating medical
 8 condition, what that is, what they require to use it.
 9 There's no way that it's possible for him to have been
 10 acting in accordance with the act.
 11 So with respect to Section 4, the People's
 12 position is he exceeded the quantity requirement, he is
 13 outside of his storage requirements. But even if the
 14 Court does not find those things, we have rebutted that
 15 presumption by evidence that he was not acting in
 16 accordance with the Act, as defined under Section
 17 (d)(2).
 18 THE COURT: All right. I would agree with
 19 the prosecutor that the defendant's not entitled to
 20 have his case dismissed under Section 4.
 21 MS. O'BRIEN: Where we're left, then--
 22 May I, Judge?
 23 THE COURT: Yes.
 24 MS. O'BRIEN: --then is with Section 8, which
 25 this was the time set aside for defendant to meet his

1 dismissal--
 2 MR. MILLER: My basis--
 3 THE COURT: --under Section 4?
 4 MR. MILLER: Under Section 4, he had under
 5 the limit, it was locked, and he was in compliance.
 6 THE COURT: And how do you respond to that
 7 regarding Section 4?
 8 MS. O'BRIEN: That he was over the limit by
 9 his own admission, that he had 71 plants plus six
 10 plants that he claims don't count because he cut them
 11 down. He states it's a difference of opinion between
 12 him and Detective Ferguson, when Detective Ferguson
 13 states there was 77 plants. What constitutes a plant
 14 or not. And that's where that number 77 comes from.
 15 There's a stipulation to the admission of the
 16 chemist's report that states that 76 plants were
 17 admitted. Seventy-two plants would be the quantity
 18 that he's required to have. He claims that the plants
 19 were locked up, Judge. He acknowledges there may have
 20 been some testimony at the exam that the plants were
 21 not locked by the officer. But the People see those
 22 things as sort of material sort of form--sort of
 23 issues. The main issue here that the People tried to
 24 emphasize is that all of this can be rebutted by
 25 evidence that the defendant's actions with the

1 burden as to Section 8(2). With the testimony from the
 2 defendant, I tried to take additional testimony that
 3 would demonstrate to the Court that defendant's not
 4 going to be able to meet his burden under Section 8,
 5 anyway, particularly with regard to quantity. He
 6 doesn't have any idea what quantity of marijuana is a
 7 sufficient amount to alleviate or treat any of those
 8 people's debilitating medical conditions.
 9 Nevertheless, King Kolanek seems to say that
 10 the People are entitled to make an effort to meet their
 11 burden under Section 8 before they're precluded from
 12 asserting an affirmative defense at trial. This is why
 13 I'll leave that open for defendant to do that. We've
 14 had multiple discussions before this Court about what
 15 it's going to take to meet that burden. And we had
 16 ought to be able to do that today.
 17 MR. MILLER: Your Honor, I believe we have
 18 done that today. He has six cards, five and his own.
 19 The amount of marijuana that they have, even that they
 20 have, is under six grams--or under six ounces, excuse
 21 me. And I believe that that is a reasonable amount of
 22 marijuana that he can have. And I--as such it should
 23 be dismissed.
 24 THE COURT: Well, I've already the case isn't
 25 going to be dismissed. Now we're on Section 8--

1 MR. MILLER: Right.
 2 THE COURT: --which the issue is whether or
 3 not your client's entitled to raise the affirmative
 4 defense of medical marijuana at the time of the trial.
 5 MR. MILLER: Right. But if there's no
 6 question that the amount's reasonable, I believe you
 7 can dismiss.
 8 THE COURT: I've already ruled that it's not
 9 going to be dismissed. So now on we're on Section 8.
 10 MR. MILLER: And then I believe we have met
 11 the burden. He's got the cards. That's all he needs
 12 to establish the fact that these people were authorized
 13 by the state of Michigan and approved. They got--They
 14 were sent to him. I think under that, it's clear he
 15 has the ability to use Section 8.
 16 MS. O'BRIEN: Judge, may I? That's not at
 17 all true. Section 8 requires three specific elements
 18 of an affirmative defense be met. In fact, somebody
 19 who doesn't have a card at all is entitled to try to
 20 meet that burden under Section 8. So what the
 21 defendant did for the state, which does not require a
 22 bona fide physician-patient relationship, it doesn't
 23 require that a document reflect a diagnosis of a
 24 debilitating or serious medical condition, just a box
 25 to be checked of a symptom. And, in fact, that is what

1 is the case of the physician state--statements that
 2 were sent in for at least Mr. Hartwick, Ms. Peck and--
 3 Mr. Peck and Ms. Hartwick, just the "severe and chronic
 4 pain" box is checked. There's nothing in there about
 5 what their diagnosis is. There's nothing about whether
 6 or not there's a bona fide relationship, whether or not
 7 there's a complete review of the def--the patient's
 8 medical history, a complete review of their existing
 9 medical conditions. He has just--provide prima facie
 10 evidence that he wasn't in possession of an amount of
 11 marijuana that was more than reasonably necessary to
 12 treat those specific patients' debilitating or serious
 13 medical conditions, that--the amount under Section 4
 14 has nothing to do with what you're required to prove
 15 under Section 8. If he possessed one gram of
 16 marijuana, it's still his burden to prove by some prima
 17 facie evidence that that's no more than reasonably
 18 necessary.
 19 And then last, he has to demonstrate that his
 20 possession of all of that marijuana was done for a
 21 genuine medical purpose. I mean, I'm paraphrasing
 22 under the third prong. But it's his burden to prove
 23 all of those things.
 24 The possession of a card is irrelevant in
 25 Section 8. And actually, that's a benefit to the

1 accused, that you might not have a card but you still
 2 might have an ability to assert the affirmative
 3 defense, you can do that.
 4 THE COURT: All right. Pursuant to the case
 5 --Supreme Court case of People versus--People of the
 6 State of Michigan versus Kolanek and King, which was
 7 filed May 31st of 2012, the defendant is entitled to
 8 dismissal of criminal charges under 8, if at the time
 9 of the hearing the defendant establishes all the
 10 elements of the affirmative defense, which are:
 11 One, the physician has stated in the
 12 physician's professional opinion, after having
 13 completed a full assessment of the plaintiff's medical
 14 history and current medical condition made in the
 15 course of a bona fide physician-patient relationship,
 16 the patient's likely to receive therapeutic or
 17 palliative benefit from the medical use of marijuana.
 18 The Court did not hear any testimony of a
 19 bona fide physician-patient relationship or a
 20 likelihood of receiving therapeutic or palliative
 21 benefit from the medical use of marijuana.
 22 The second prong is the defendant did not
 23 possess an amount of marijuana that was more than
 24 reasonably necessary for this purpose. The Court did
 25 not hear any testimony on that issue.

1 And third, the defendant's use was to treat
 2 or alleviate the patient's serious or debilitating
 3 medical condition or symptoms.
 4 As long as the defendant can establish these
 5 elements, no question of fact exists regarding these
 6 elements. And if none of the circumstances in Section
 7 (7)(b) exists, then the defendant's entitled to
 8 dismissal of criminal charges.
 9 Well, the Court does not find that those
 10 three elements were met.
 11 If the defendant moves for a dismissal of the
 12 charges under Section 8, and at the evidentiary hearing
 13 it is established prima facie evidence of all of the
 14 elements that I just stated, but a material question of
 15 fact exists, then dismissal of the charges is not
 16 appropriate, and the defense must be submitted to the
 17 jury.
 18 Well, the problem here is the Court did not
 19 hear evidence of--any prima facie evidence on all of
 20 those elements. So I don't believe there's been any
 21 proof here that the defendant's even entitled to raise
 22 the Section 8 defense at the time of trial.
 23 MS. O'BRIEN: Judge, will the Court enter an
 24 order to that effect?
 25 MR. MILLER: Your Honor, I'm going to have to

1 ask for leave to file an interlocutory appeal. I
 2 believe the cases I have (indiscernible). So I would
 3 request that.
 4 MS. O'BRIEN: King Kolanek does seem to say
 5 that that's the defense recourse, Judge.
 6 THE COURT: Okay. We'll stay it. But I
 7 would like the defendant to go over today--
 8 MR. MILLER: He's prepared to do that today.
 9 THE COURT: --to the sheriff's department in
 10 accordance with my order entered regarding the cell
 11 phone.
 12 MR. MILLER: Very well. Yep.
 13 MS. O'BRIEN: Judge, can I say this?
 14 Detective Wiltowski (ph sp) is prepared to search that
 15 phone. I've had her on standby since 1:30 but she
 16 leaves at four o'clock. We need to go over there now.
 17 THE COURT: Right now.
 18 MS. O'BRIEN: Will counsel accompany his
 19 defendant over there?
 20 MR. MILLER: Where--Where is it at?
 21 MS. O'BRIEN: Sheriff's department.
 22 MR. MILLER: Well, that leaves a lot of
 23 possibilities.
 24 THE COURT: You'll go with him? Or you can
 25 follow each other or something?

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1 MS. O'BRIEN: Yeah, can we go do that,
 2 Judge;--
 3 MR. MILLER: Yes.
 4 THE COURT: First.
 5 MS. O'BRIEN: --and then I'll submit an
 6 order?
 7 THE COURT: Yep. Absolutely.
 8 MS. O'BRIEN: I appreciate that.
 9 Thank you, Judge.
 10 THE CLERK: All rise.
 11 (At 3:26 p.m., proceedings concluded)
 12 * * * * *
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1 MS. O'BRIEN: I'll take my own vehicle.
 2 THE COURT: Yeah.
 3 MS. O'BRIEN: It's the main office of the
 4 sheriff's department. It's right off--on Civic--you
 5 know, on the County Center Drive right off the north
 6 entrance--
 7 MR. MILLER: North entrance? Okay.
 8 MS. O'BRIEN: --to the county--
 9 MR. MILLER: I will make sure that he gets
 10 there.
 11 MS. O'BRIEN: And then, Judge, I'd ask that
 12 the defendant remain there until Detective Wiltowski
 13 (ph sp) tells him that she's accomplished everything
 14 she needs to--in order to search the phone.
 15 THE COURT: So--
 16 MS. O'BRIEN: She tells me that there might
 17 be one swipe; and if doesn't go through, she might have
 18 to ask him to do it again. So she just wants to make
 19 sure she accomplishes what needs to be done all in one
 20 day without him having to come back.
 21 THE COURT: Okay. So why don't you go take
 22 care of that, and then if you could draft an order.
 23 MR. MILLER: Yeah, we can get that. But I
 24 will take him over there right now.
 25 THE COURT: Okay.

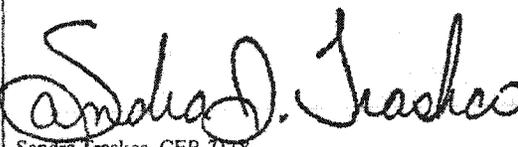
- 52 -

STATE OF MICHIGAN)ss
 COUNTY OF OAKLAND)

I certify that this transcript is a true and accurate transcription, to the best of my ability, of the proceeding in this case before the Honorable Colleen A. O'Brien, as recorded by the clerk.

Proceedings were recorded and provided to this transcriptionist by the Circuit Court and this certified reporter accepts no responsibility for any events that occurred during the above proceedings, for any inaudible and/or indiscernible responses by any person or party involved in the proceeding, or for the content of the recording provided.

Dated: August 28, 2012


 Sandra Traskos, CER 7118

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Court of Appeals, State of Michigan

ORDER

People of MI v Richard Lee Hartwick

Docket No. 312308

LC No. 2012-240981-FH

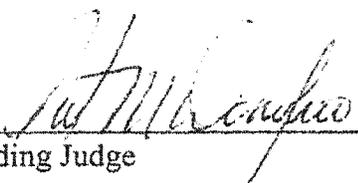
Pat M. Donofrio
Presiding Judge

Kathleen Jansen

Deborah A. Servitto
Judges

The Court orders that the delayed application for leave to appeal is DENIED for failure to persuade the Court of the need for immediate appellate review.

The motion to waive fees is GRANTED.



Presiding Judge



A true copy entered and certified by Larry S. Royster, Chief Clerk, on

OCT 11 2012
Date



Chief Clerk

Order

Michigan Supreme Court
Lansing, Michigan

April 1, 2013

Robert P. Young, Jr.,
Chief Justice

146089

Michael F. Cavanagh
Stephen J. Markman
Mary Beth Kelly
Brian K. Zahra
Bridget M. McCormack
David F. Viviano,
Justices

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

SC: 146089
COA: 312308
Oakland CC: 2012-240981-FH

RICHARD LEE HARTWICK,
Defendant-Appellant.

On order of the Court, the application for leave to appeal the October 11, 2012 order of the Court of Appeals is considered and, pursuant to MCR 7.302(H)(1), in lieu of granting leave to appeal, we REMAND this case to the Court of Appeals for consideration, as on leave granted, of (1) whether the defendant was entitled to dismissal of the marijuana-related charges under the immunity provision in § 4 of the Michigan Medical Marihuana Act (MMMA), MCL 333.26424; (2) whether the defendant was entitled to dismissal of the charges under the affirmative defense in § 8(a) of the MMMA, MCL 333.26428(a); and (3) if the defendant was not entitled to dismissal, whether he is permitted to raise the § 8 affirmative defense at trial.



I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

April 1, 2013

Corbin R. Davis

Clerk

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RICHARD LEE HARTWICK,

Defendant-Appellant.

FOR PUBLICATION

November 19, 2013

9:00 a.m.

No. 312308

Oakland Circuit Court

LC No. 2012-240981-FH

Advance Sheets Version

Before: SAAD, P.J., and SAWYER and JANSEN, JJ.

SAAD, P.J.

Defendant appeals the trial court's order that (1) held that he was not entitled to immunity under § 4 of the Michigan Medical Marihuana Act (MMMA), MCL 333.26424, and (2) denied defendant's requests for dismissal under § 8 of the MMMA, MCL 333.26428, and to present a § 8 defense at trial. For the reasons set forth in this opinion, we affirm.

I. NATURE OF THE CASE

Defendant, who was arrested for illegally growing and possessing marijuana,¹ holds a registry identification card under the MMMA, MCL 333.26421 *et seq.* He claims that mere possession of the card entitles him to (1) immunity from prosecution under § 4 of the MMMA and, in the alternative, (2) an affirmative defense under § 8 of the MMMA. The trial court rejected defendant's theory and instead held that defendant was not entitled to immunity under § 4 and that he had not presented the requisite evidence to make an affirmative defense under § 8.

We uphold the trial court and fully explore defendant's specific arguments that his possession of a registry identification card automatically immunizes him from prosecution under § 4 and grants him a complete defense under § 8. We reject these arguments because they ignore the primary purpose and plain language of the MMMA, which is to ensure that any marijuana production and use permitted by the statute is medical in nature and only for treating a patient's

¹ The MMMA uses the variant "marihuana." Throughout this opinion, we use the more common spelling "marijuana" unless quoting from the MMMA or cases that use the variant spelling.

debilitating medical condition. See *People v Kolanek*, 491 Mich 382, 394; 817 NW2d 528 (2012) (“the MMMA’s protections are limited to individuals suffering from serious or debilitating medical conditions or symptoms”). To adopt defendant’s argument would also put the MMMA at risk of abuse and undermine the act’s stated aim of helping a select group of people with serious medical conditions that may be alleviated if treated in compliance with the MMMA. We therefore reject defendant’s claim and hold that the trial court did not abuse its discretion when it (1) ruled that defendant was not entitled to immunity from criminal prosecution under § 4 and (2) denied defendant’s request for dismissal under § 8 and held that he could not present the § 8 defense at trial.

II. FACTS AND PROCEDURAL HISTORY

Detective Mark Ferguson, a member of the Oakland County Sheriff’s Office, received a tip that someone was distributing marijuana at a single-family home in Pontiac. On September 27, 2011, Detective Ferguson visited the house in question and met defendant outside. Detective Ferguson asked defendant if there was marijuana in the house. Defendant replied that there was and that he was growing marijuana in compliance with the MMMA. Ferguson asked if he could see the marijuana, and defendant led him inside the house.

Defendant and Detective Ferguson went into a back bedroom that served as a grow room for the marijuana. The grow room door was unlocked and the room housed many marijuana plants. Detective Ferguson then asked if he could search the house; defendant agreed. Throughout the home, Detective Ferguson found additional marijuana plants, a shoebox of dried marijuana in the freezer, mason jars filled with marijuana in defendant’s bedroom, and amounts of the drug that were not in containers near an entertainment stand in the living room.

Detective Ferguson then asked defendant if he sold marijuana. Defendant replied that he did not. He told Detective Ferguson that he acted as a caregiver for patients who used marijuana.

The prosecuting attorney subsequently charged defendant with manufacturing marijuana and possessing it with the intent to deliver it. After the prosecutor presented his proofs at the preliminary examination, defendant moved to dismiss the charges under the MMMA’s § 4 grant of immunity and the § 8 defense provision. In the alternative, defendant sought to assert a § 8 defense at trial.

THE EVIDENTIARY HEARING

Defendant was the only testifying witness at the evidentiary hearing. He claimed that (1) he was a medical marijuana patient and his own caregiver, and (2) he also served as a caregiver for five additional medical marijuana patients. Defendant possessed registry identification cards for himself and his five patients, and submitted the cards as evidence. The prosecution stipulated the validity of defendant’s own registry identification card. Further, the cards demonstrate that defendant served as caregiver for the five additional patients in September 2011, when the police

recovered marijuana from his home.² Yet defendant was unfamiliar with the health background of his patients and could not identify the maladies or “debilitating conditions” suffered by two of his patients. He was not aware of how much marijuana any of his patients were supposed to use to treat their respective conditions or for how long his patients were supposed to use “medical marijuana.” And he could not name each patient’s certifying physician.

Defendant also testified that he had 71 plants in small Styrofoam cups. On cross-examination, the prosecutor asked defendant about this number, because Detective Ferguson’s report had indicated that there were 77 plants. Defendant responded that the detective had included “six plants that I had just cut down and there was still the stalk there.” The prosecutor pressed this point in closing arguments, noting that defendant was not entitled to dismissal under § 4 because he had more plants than permitted by that section.³

But the prosecutor stressed that the number of plants was not the ultimate issue in the case. Instead, the prosecutor stated that he had rebutted defendant’s § 4(d) presumption of immunity by showing defendant’s failure to comply with the underlying purpose of the MMMA: the use and manufacture of marijuana for *medical* purposes. The prosecutor noted that “by [defendant’s] own testimony he could not have been [providing marijuana to people diagnosed with a debilitating medical condition because] he doesn’t know if anybody had a debilitating medical condition, what that is, what they require to use it. There’s no way that it’s possible for him to have been acting in accordance with the act.”

The trial court agreed with the prosecutor’s reasoning and held that defendant was not entitled to dismissal under § 4. It said it agreed with the prosecutor but provided no other reasoning on the record.

With respect to § 8, the prosecutor referred to the fact that defendant did not know the amount of marijuana necessary to treat his patients’ debilitating medical conditions—meaning that defendant could not meet the evidentiary requirements of the § 8 affirmative defense. Defense counsel replied that defendant’s possession of patient and caregiver identification cards absolved defendant of this failure and that the cards were all defendant needed “to establish the fact that these people were authorized by the state of Michigan and approved.”

The trial court rejected defendant’s argument, relied on the plain language of the statute, and held that defendant failed to produce testimony to support the defense under § 8. The court stressed that it heard no testimony regarding a “bona fide physician-patient relationship or a likelihood of receiving therapeutic or palliative benefit from the medical use of marijuana,” or any testimony on whether defendant possessed no more marijuana than reasonably necessary for medical use. Accordingly, the trial court held that defendant failed to show that he was entitled

² Actually, his father’s home—defendant explained that his father owns the property.

³ The parties stipulated the admission of an Oakland County Sheriff’s Office forensic laboratory report, which indicates that 104.6 grams (roughly 3.69 ounces) of “plant material” were recovered from defendant’s house.

to dismissal under § 8. In addition, because defendant did not present evidence to support all the elements of a § 8 affirmative defense, the court held that defendant could not raise that affirmative defense at trial.

Defendant filed a delayed application for leave to appeal in this Court in September 2012 and the application was denied.⁴ Defendant then sought leave to appeal in the Michigan Supreme Court, which, in lieu of granting leave to appeal, entered an April 1, 2013, order remanding this case to the Court of Appeals for consideration as on leave granted.⁵

III. STANDARD OF REVIEW

A trial court's decision on a motion to dismiss is reviewed for an abuse of discretion. *People v Bylsma*, 493 Mich 17, 26; 825 NW2d 543 (2012). "A trial court's findings of fact may not be set aside unless they are clearly erroneous." *Id.* A finding is "clearly erroneous" if the reviewing court is left with a definite and firm conviction that the trial court made a mistake." *Id.*, quoting *People v Armstrong*, 490 Mich 281, 289; 806 NW2d 676 (2011). Questions of statutory interpretation, including interpretation of the MMMA, are reviewed de novo. See *Kolanek*, 491 Mich at 393.

IV. ANALYSIS

A. THE MMMA

The MMMA originated as a citizen's initiative petition and was approved by the people of Michigan in November 2008. *Kolanek*, 491 Mich at 393. Its expressed purpose is to allow a "limited class of individuals the medical use of marijuana . . ." *Id.* The statute emphatically "does *not* create a general right for individuals to use and possess marijuana in Michigan." *Id.* at 394. Nonmedical-related possession, manufacture, and delivery of the drug (and medical-related possession, manufacture, and delivery not in compliance with the MMMA) "remain punishable offenses under Michigan law." *Id.* and n 24 (citing the specific state laws that criminalize the possession, manufacture, and delivery of marijuana). The MMMA is best viewed as an "exception to the Public Health Code's prohibition on the use of controlled substances [that permits] the medical use of marijuana when carried out in accordance with the MMMA's provisions." *Bylsma*, 493 Mich at 27. The statute's protections are "limited to individuals suffering from serious or debilitating medical conditions or symptoms, to the extent that the individuals' marijuana use 'is carried out in accordance with the provisions of [the MMMA].'" *Kolanek*, 491 Mich at 394, quoting MCL 333.26427(a).

Accordingly, proper analysis of the MMMA must focus on its overriding medical purpose. The ballot initiative approved by the people specifically referred to "physician approved use of marijuana by registered patients with debilitating medical conditions including

⁴ *People v Hartwick*, unpublished order of the Court of Appeals, entered October 11, 2012 (Docket No. 312308).

⁵ *People v Hartwick*, 493 Mich 950 (2013).

cancer, glaucoma, HIV, AIDS, hepatitis C, MS and other conditions as may be approved by the Department of Community Health.” Michigan Proposal 08-1 (November 2008); see *Kolanek*, 491 Mich at 393 n 22. The MMMA explicitly states in its title the law’s medical intentions (“[a]n initiation of Legislation to allow under state law the medical use of marihuana . . .”),⁶ and the MMMA makes explicit reference to its palliative, treatment-based goals throughout (“[m]odern medical research . . . has discovered beneficial uses for marihuana in treating or alleviating the pain, nausea, and other symptoms associated with a variety of debilitating medical conditions”).⁷

With these medical aims in mind, we turn to the specific requirements of the statute’s immunity provisions (§ 4)⁸ and its § 8⁹ defenses.¹⁰

B. SECTION 4 IMMUNITY

Section 4 contains multiple parts, only some of which are relevant to this case. “Sections 4(a) and 4(b) contain parallel immunity provisions that apply, respectively, to registered qualifying patients and to registered primary caregivers.” *Bylsma*, 493 Mich at 28. With some conditions, § 4(a) provides “qualifying patient[s]”¹¹ who hold “registry identification card[s]”¹² immunity from criminal prosecution and other penalties. *Kolanek*, 491 Mich at 394. In the relevant part, it states:

A qualifying patient who has been issued and possesses a registry identification card shall not be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including but not limited to civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau, for the medical use of marihuana in accordance with this act, provided that the qualifying patient possesses an amount of marihuana that does not exceed 2.5 ounces of usable marihuana, and, if the qualifying patient has not

⁶ 2008 PA, Initiated Law 1, title.

⁷ MCL 333.26422(a).

⁸ MCL 333.26424.

⁹ MCL 333.26428.

¹⁰ We note that our Supreme Court has held that “[b]ecause ‘the plain language of § 8 does not require compliance with the requirements of § 4,’ a defendant who is unable to satisfy the requirements of § 4 may nevertheless assert the § 8 affirmative defense.” *Bylsma*, 493 Mich at 28. As such, “we . . . examine these provisions independently.” *Id.*

¹¹ MCL 333.26423(i) defines “qualifying patient” or “patient” as: “a person who has been diagnosed by a physician as having a debilitating medical condition.”

¹² MCL 333.26423(j) defines “registry identification card” as: “a document issued by the department that identifies a person as a registered qualifying patient or registered primary caregiver.”

specified that a primary caregiver will be allowed under state law to cultivate marijuana for the qualifying patient, 12 marijuana plants kept in an enclosed, locked facility. Any incidental amount of seeds, stalks, and unusable roots shall also be allowed under state law and shall not be included in this amount. [MCL 333.26424(a).]

Section 4(b) provides similar rights to a “primary caregiver,”¹³ who, among other things: (1) grows marijuana for patients “to whom he or she is connected through the department’s registration process”; (2) has been “issued and possesses a registry identification card”; and (3) complies with certain volume and security requirements. MCL 333.26424(b)(1) to (3).¹⁴

Section 4(d) creates a presumption that if the patient or primary caregiver (1) is “in possession of a registry identification card” and (2) “is in possession of an amount of marijuana that does not exceed the amount allowed under this act,” he is engaged in the medical use of marijuana in accordance with the MMMA. MCL 333.26424(d)(1) and (2). The prosecution may rebut this presumption with “evidence that conduct related to marijuana was not for the purpose of alleviating the qualifying patient’s debilitating medical condition or symptoms associated with the debilitating medical condition” MCL 333.26424(d)(2).

Here, defendant relies on § 4(b), but ignores § 4(d). Defendant asserts that the number of plants he allegedly possessed places his conduct within the number of marijuana plants permissible under § 4(b). He then claims that mere possession of a valid, state-issued registry identification card prevents the prosecution from rebutting the presumption that he was “engaged in the medical use of marijuana in accordance with this act” under § 4(d).

Neither argument is convincing. The first, related to the number of plants possessed by defendant, is moot. The trial court acts as the fact-finder to determine whether § 4 immunity applies. *People v. Jones*, 301 Mich App 566, 576–577; 837 NW2d 7 (2013). Here, the trial court clearly agreed with the prosecution’s count of defendant’s marijuana plants: 77, not the 71 claimed by defendant. Accordingly, defendant possessed 77 plants—five more than permitted to him by § 4(b)(2).¹⁵

¹³ MCL 333.26423(h) defines “primary caregiver” or “caregiver” as: “a person who is at least 21 years old and who has agreed to assist with a patient’s medical use of marijuana and who has not been convicted of any felony within the past 10 years and has never been convicted of a felony involving illegal drugs or a felony that is an assaultive crime”

¹⁴ Specifically, like patients (as specified in § 4(a)), primary caregivers cannot possess more than 2.5 ounces of usable marijuana for each qualifying patient and 12 marijuana plants kept in an “enclosed, locked facility”

¹⁵ Under § 4(b)(2), defendant could possess up to 72 plants and, subject to certain volume limitations, remain in compliance with the MMMA. The statute allows him to possess 12 plants for himself, plus 12 plants for every patient for whom he is a primary caregiver (6 x 12 = 72).

Yet, were we to accept defendant's numerical assessment, defendant would nonetheless not qualify for § 4 immunity. His interpretation of the MMMA ignores the underlying medical purposes of the statute, explicitly referred to in § 4(d). Mere possession of a state-issued card—even one backed by a state investigation—does not guarantee that the cardholder's *subsequent* use and production of marijuana was “for the purpose of alleviating the qualifying patient's debilitating medical condition or symptoms associated with the debilitating medical condition” MCL 333.26424(d)(2). Indeed, defendant's testimony provided ample evidence that he was not holding true to the medical purposes of the statute. He failed to introduce evidence of (1) some of his patients' medical conditions, (2) the amount of marijuana they reasonably required for treatment and how long the treatment should continue, and (3) the identity of their physicians.

Accordingly, we hold that defendant failed to produce sufficient evidence at the evidentiary hearing to qualify for the § 4(d) presumption of immunity and that he is not entitled to immunity under § 4 of the MMMA.

C. SECTION 8(a) DEFENSE

The § 8(a) defense specifies three elements that an MMMA defendant must demonstrate before he can assert this defense. This burden is premised on the medical reasons that underlie the statute, and the specified elements are inclusive: § 8(a) requires evidence of every element for the defense to be presumed valid. MCL 333.26428(a).¹⁶

Before we address each subdivision of § 8(a), it is important to consider the mandate of the section as a whole. Because the MMMA creates a limited statutory exception to the general federal and state prohibition of marijuana, the MMMA provides a comprehensive statutory scheme that must be followed if caregivers and patients wish to comply with the law. Section 8 outlines the possible defenses a defendant can raise when charged with violating the act. In so doing, the section weaves together the obligations of each individual involved in the prescription, use, and production of marijuana for medical purposes. Under the act, doctors must have an ongoing relationship with their patients, where the doctor continuously reviews the patient's

¹⁶ The Michigan Supreme Court recently outlined very specific steps and procedural outcomes for MMMA defendants who assert the § 8(a) affirmative defense. If the defendant establishes the three § 8(a) elements during a pretrial evidentiary hearing, and there are no material questions of fact, the defendant is entitled to dismissal of the charges. *Kolanek*, 491 Mich at 412. If a defendant establishes evidence of each element, but there are still material questions of fact, then the § 8(a) affirmative defense must be submitted to a jury. *Id.* Finally, if no reasonable juror could conclude that the defendant has satisfied the elements of the § 8(a) affirmative defense, then the defense fails as a matter of law and the defendant is precluded from asserting it at trial. *Id.* at 412–413.

Here, the trial court held that no reasonable juror could conclude that defendant had satisfied the elements of the § 8(a) affirmative defense. Accordingly, it ruled that the defense failed as a matter of law and that defendant was precluded from asserting it at trial.

condition and revises his marijuana prescription accordingly.¹⁷ Further, patients must provide certain basic information regarding their marijuana use to their caregivers. And caregivers, to be protected under the MMMA, must ask for this basic information—specifically, information that details, as any pharmaceutical prescription would, how much marijuana the patient is supposed to use and how long that use is supposed to continue. Though patients and caregivers are ordinary citizens, not trained medical professionals, the MMMA’s essential mandate is that marijuana be used for medical purposes. Accordingly, for their own protection from criminal prosecution, patients and caregivers must comply with this medical purpose—patients by supplying the necessary documentation to their caregivers, and caregivers by only supplying patients who provide the statutorily mandated information.

Possession of a registry identification card, without more, does nothing to address these § 8 medical requirements. It offers no proof of the existence of an ongoing relationship between patient and physician, as mandated by § 8(a)(1). Nor does it prove that the caregiver is aware of how much marijuana the patient is prescribed or for how long the patient is supposed to use the drug, as mandated by § 8(a)(2). And it does not ensure that the marijuana provided by the caregiver is actually being used by the patient for medical reasons, as mandated by § 8(a)(3).

In sum: a registry identification card is necessary, but not sufficient, to comply with the MMMA but clearly does not satisfy the § 8 requirements for a total defense to a charge of violation of this act.

1. SECTION 8(a)(1): THE BONA FIDE PHYSICIAN-PATIENT RELATIONSHIP

The first element of the affirmative defense of § 8(a) requires a defendant to present evidence that

[a] physician has stated that, in the physician’s professional opinion, after having completed a full assessment of the patient’s medical history and current medical condition made in the course of a bona fide physician-patient relationship, the patient is likely to receive therapeutic or palliative benefit from the medical use of

¹⁷ The importance of a legitimate, ongoing relationship between the marijuana-prescribing doctor and the marijuana-using patient is stressed throughout the MMMA. Section 4(f), which provides a qualified immunity for physicians, mandates that the immunity only applies to physicians that prescribe marijuana “in the course of a bona fide physician-patient relationship . . .” MCL 333.26424(f). It further implies that this relationship must be ongoing by stressing that “nothing shall prevent a professional licensing board from sanctioning a physician for . . . otherwise violating the standard of care for evaluating medical conditions.” This standard of care presumably includes follow-up visits with the patient. And § 6—as noted, the section that governs the issuance of registry identification cards—also implies its expectation of an ongoing physician-patient relationship. It states that “[i]f a . . . patient’s certifying physician notifies the department in writing that the patient has ceased to suffer from a debilitating medical condition, the card shall become null and void upon notification by the department to the patient.” MCL 333.26426(f).

marihuana to treat or alleviate the patient's serious or debilitating medical condition or symptoms of the patient's serious or debilitating medical condition[.] [MCL 333.26428(a)(1).]

Here, the crux of defendant's § 8(a) defense lies within this first element. Again, defendant asserts, incorrectly, that his possession of state-issued medical marijuana patient and caregiver identification cards is enough to satisfy the physician's statement and "bona fide physician-patient relationship" required by the statute.¹⁸ Certainly, possession of a card does not demonstrate an ongoing relationship with a physician envisioned by the MMMA, where a doctor can prescribe a certain amount of marijuana for use over a specified period.¹⁹

When the people enacted the MMMA, the statute did not define "bona fide physician patient relationship." see *People v Redden*, 290 Mich App 65, 86; 799 NW2d 184 (2010), but the MMMA has since been amended to include in MCL 333.26423(a) such a definition. See 2012 PA 512. But, the amendment became effective April 1, 2013, and therefore, the new definition may not be applicable to cases, like this one, that arose before April 1, 2013. See *GMAC LLC v Dep't of Treasury*, 286 Mich App 365, 377; 781 NW2d 310 (2009) ("[t]he general rule is that an amended statute is given prospective application unless the Legislature expressly or impliedly identifies its intention to give the statute retrospective effect"). If the MMMA had been originally enacted by the Legislature, the amendment could be considered evidence of what the Legislature intended "bona fide physician-patient relationship" to mean when it enacted the MMMA. See *Bush v Shabahang*, 484 Mich 156, 167; 772 NW2d 272 (2009). But the people of Michigan—not the Legislature—enacted the MMMA through a voter initiative.²⁰ Courts thus

¹⁸ We note that another panel of this Court held in an unpublished opinion per curiam that an individual's state registration as a user of medical marijuana is "prima facie evidence of the first and third elements" of the affirmative defense. *People v Kiel*, issued July 17, 2012 (Docket No. 301427), p 6. The panel did not explain its reasoning beyond this statement. We do not agree with this interpretation of the MMMA. In addition, defendant did not cite *Kiel* in his brief, nor is *Kiel* binding precedent, because it is unpublished. MCR 7.215(C)(1).

¹⁹ In effect, defendant seeks to link the first element of the § 8(a) defense to another part of the MMMA: section 6. Section 6 explains the procedure, documentation, and certification required to obtain a patient's or caregiver's card. MCL 333.26426. One of the requirements is a "written certification" from a physician, regarding the patient's condition. This certification, however, does not require the certifying physician to attest to an ongoing relationship with the patient, nor does it require him to detail how much marijuana the patient needs, and for how long the patient should use the drug. MCL 333.26423(m). If authentic, the written certification merely constitutes evidence that a physician did the following: (1) stated he completed a full assessment of the patient's medical history; (2) conducted an in-person medical evaluation; (3) observed a debilitating medical condition; and (4) concluded that the patient is likely to benefit from the medical use of marijuana. These actions do not satisfy the mandates of § 8(a)(1).

²⁰ The Legislature clearly has the power to subsequently amend statutes that enact voter initiatives. Const 1963, art 2, § 9; *Advisory Opinion on Constitutionality of 1982 PA 47*, 418 Mich 49, 64; 340 NW2d 817 (1983). It is unclear, however, if such a subsequent legislative

must “ascertain and give effect to the intent of the electorate, rather than the Legislature, as reflected in the language of the law itself.” *Kolanek*, 491 Mich at 397. Accordingly, we must construe the MMMA’s language with the words’ “ordinary and plain meaning as would have been understood by the electorate.” *Id.*²¹

Other cases provide definitions of “bona fide” in § (8)(a)(1)’s preamendment context. In *Redden*, another panel of this Court used a dictionary definition of “bona fide.” *Redden*, 290 Mich App at 86. *Random House Webster’s College Dictionary* (2d ed, 1997) defines “bona fide” as “1. made, done, etc., in good faith; without deception or fraud. 2. authentic; genuine; real.” For further guidance, the Michigan Supreme Court indicated its approval of a definition of “bona fide physician-patient relationship” from a joint statement issued by the Michigan Board of Medicine and the Michigan Board of Osteopathic Medicine and Surgery: “a pre-existing and ongoing relationship with the patient as a treating physician.” *Kolanek*, 491 Mich at 396 n 30 (citation omitted).

In light of these straightforward, common-sense definitions, defendant’s argument becomes untenable. A registry identification card—even one verified by the state pursuant to the requirements of § 6—cannot demonstrate a “pre-existing” relationship between a physician and a patient, much less show “ongoing” contact between the two. Accordingly, mere possession of a patient’s or caregiver’s identification card does not satisfy the requirements of the first element of a § 8(a) defense. That the statute requires this outcome is in keeping with its medical purpose and protects the patients it is designed to serve. By requiring a bona fide physician-patient relationship for the § 8 defense, the MMMA prevents doctors who merely write prescriptions—such as the one featured in *Redden*²²—from seeing a patient once, issuing a medical marijuana prescription, and never checking on whether that prescription actually treated the patient or served as a palliative.

amendment can serve as evidence of the peoples’ intent at the time they passed the initiative. Here, we follow the preamendment holdings of our Supreme Court quoted above, which tell us to consider the plain meaning of the MMMA’s terms to discern the peoples’ intent.

²¹ However, upon close examination, it would appear that the definition adopted by the Legislature may be virtually the same as the definition understood by the electorate when they approved the initiative.

Defendant’s claim would still fail under the added definition of “bona fide physician-patient relationship” now found at MCL 333.26423(a). He presented no evidence demonstrating that his patients’ physicians had “a reasonable expectation that [the physician] will provide follow-up care to the patient to monitor the efficacy for the use of medical marihuana as a treatment of the patient’s debilitating medical condition.” MCL 333.26423(a)(3).

²² The *Redden* physician practiced medicine in six states, spent 30 minutes with each of the *Redden* defendants, and seemingly examined the patients with the express purpose of helping them qualify to receive marijuana for medical purposes. See *Redden*, 290 Mich App at 70–71.

Here, defendant presented evidence of a bona fide physician-patient relationship between him and his doctor. But he presented no evidence that his patients have bona fide physician-patient relationships with their certifying physicians. None of his patients testified. Nor was defendant able to provide the names of his patients' certifying physicians. While it is true that the MMMA does not explicitly impose a duty on patients to provide such basic medical information to their primary caregivers, the plain language of § 8 obviously requires such information for a patient or caregiver to effectively assert the § 8 defense in a court of law.

Accordingly, we hold that mere possession of a patient's or caregiver's identification card does not satisfy the first element of § 8(a)'s affirmative defense. Therefore, the trial court was correct to rule that defendant did not present valid evidence with respect to the first element of the § 8 affirmative defense.

2. SECTION 8(a)(2): NO MORE MARIJUANA THAN "REASONABLY NECESSARY"

The second element of the § 8 affirmative defense requires a defendant to present evidence that

[t]he patient and the patient's primary caregiver, if any, were collectively in possession of a quantity of marihuana that was not more than was reasonably necessary to ensure the uninterrupted availability of marihuana for the purpose of treating or alleviating the patient's serious or debilitating medical condition or symptoms of the patient's serious or debilitating medical condition[.] [MCL 333.26428(a)(2).]

This element thus involves two components: (1) possession, and (2) knowledge of what amount of marijuana is "reasonably necessary" for the patient's treatment.

Here, defendant argues that the volume limitations listed in § 4(b) should apply to § 8: namely, if a patient or caregiver possesses less than the amounts specified in § 4(b), that patient or caregiver possesses no more than a "reasonably necessary" amount of marijuana for medical treatment pursuant to § 8(a)(2).

This approach misstates the law and ignores the medical purposes of the MMMA. This Court has explicitly held that the amounts permitted under § 4 do not define what is "reasonably necessary" to establish the § 8 defense: "Indeed, if the intent of the statute were to have the amount in § 4 apply to § 8, the § 4 amount would have been reinserted into § 8(a)(2), instead of the language concerning an amount reasonably necessary to ensure . . . uninterrupted availability . . ." *Redden*, 290 Mich App at 87, quoting MCL 333.26428(a)(2) (quotation marks omitted). In addition, our Supreme Court recently stressed that § 4 and § 8 are separate sections, intended to address different situations with different standards. *Kolanek*, 491 Mich at 397-399.²³ Further, importing § 4(b)'s volume limitations to § 8(a)(2) ignores the treatment-oriented nature of the act and § 8(a)'s specific medical requirements. Those requirements are intended for

²³ See also *Bylsma*, 493 Mich at 28, and n 10 of this opinion.

a patient or caregiver that is intimately aware of exactly how much marijuana is required to treat a patient's condition, which he learns from a doctor with whom the patient has an ongoing relationship.

Here, defendant lacks the requisite knowledge of how much marijuana is required to treat his patients' conditions—and even his own condition. He presented no evidence regarding how much marijuana he required to treat his pain and how often it should be treated. And he testified that he did not know how much marijuana his patients required to treat their conditions. Defendant thus failed to satisfy the second element of the § 8 affirmative defense. Accordingly, again the trial court properly held that defendant did not create a question of fact on this issue.

3. SECTION 8(a)(3): ACTUAL MEDICAL USE OF MARIJUANA

The third element of the § 8 affirmative defense requires a defendant to present evidence that

[t]he patient and the patient's primary caregiver, if any, were engaged in the acquisition, possession, cultivation, manufacture, use, delivery, transfer, or transportation of marijuana or paraphernalia relating to the use of marijuana to treat or alleviate the patient's serious or debilitating medical condition or symptoms of the patient's serious or debilitating medical condition. [MCL 333.26428(a)(3).]

The trial court observed at the evidentiary hearing that defendant needed to satisfy § 8 (a)(3), but did not make a finding regarding whether he did so. Therefore, we need not address whether defendant satisfied this element through his testimony.²⁴

Were the trial court to address this element of § 8, it appears that a letter from a patient's physician to the caregiver, which details: (1) a bona fide physician-patient relationship, (2) the patient's medical condition, (3) how much marijuana is needed to alleviate the condition, and (4) for how long the patient should take the drug, could serve as evidence that the marijuana supplied by the caregiver is actually used for medical purposes under § 8(a)(3).

Defendant's argument concerning § 8(a)(3) does not end with his testimony, however. Once again, defendant unconvincingly suggests that mere possession of state-issued registry identification cards is sufficient evidence to establish this element. Possession of a registry identification card indicates that the holder has gone through the requisite steps in § 6 required to obtain a card. It does not indicate that any marijuana possessed or manufactured by an individual is *actually* being used to treat or alleviate a debilitating medical condition or its symptoms. In other words, prior state issuance of a registry identification card does not guarantee that the holder's subsequent behavior will comply with the MMMA. Defendant's

²⁴ In any event, even if defendant had satisfied the requirements of § 8(a)(3), the case would not be dismissed under § 8, nor would he be allowed to present the defense at trial—he failed to present a question of fact with regard to § 8(a)(1) and (2).

theory is akin to stating that possession of a Michigan driver's license establishes that the holder of the license always obeys state traffic laws.

V. CONCLUSION

Because (1) defendant possessed more marijuana than permitted under § 4(b), and (2) the prosecution presented evidence to rebut the medical-use presumption under § 4(d), defendant is not entitled to immunity from prosecution under § 4 of the MMMA. Further, because defendant did not present evidence demonstrating the first two elements of the § 8 defense, he was not entitled to have the case dismissed under that section, nor was he entitled to present the § 8 defense at trial. We therefore hold that the trial court did not abuse its discretion.

Affirmed.

/s/ Henry William Saad
/s/ David H. Sawyer

Order

Michigan Supreme Court
Lansing, Michigan

June 11, 2014

Robert P. Young, Jr.,
Chief Justice

148444

Michael F. Cavanagh
Stephen J. Markman
Mary Beth Kelly
Brian K. Zahra
Bridget M. McCormack
David F. Viviano,
Justice

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

SC: 148444
COA: 312308
Oakland CC: 2012-240981-FH

RICHARD LEE HARTWICK,
Defendant-Appellant.

On order of the Court, the application for leave to appeal the November 19, 2013 judgment of the Court of Appeals is considered, and it is GRANTED. The parties shall include among the issues to be briefed: (1) whether a defendant's entitlement to immunity under § 4 of the Michigan Medical Marihuana Act (MMA), MCL 333.26421 *et seq.*, is a question of law for the trial court to decide; (2) whether factual disputes regarding § 4 immunity are to be resolved by the trial court; (3) if so, whether the trial court's finding of fact becomes an established fact that cannot be appealed; (4) whether a defendant's possession of a valid registry identification card establishes any presumption for purposes of § 4 or § 8; (5) if not, what is a defendant's evidentiary burden to establish immunity under § 4 or an affirmative defense under § 8; (6) what role, if any, do the verification and confidentiality provisions in § 6 of the act play in establishing entitlement to immunity under § 4 or an affirmative defense under § 8; and (7) whether the Court of Appeals erred in characterizing a qualifying patient's physician as issuing a prescription for, or prescribing, marijuana.

We direct the Clerk to schedule the oral argument in this case for the same future session of this Court when it will hear oral argument in *People v Tuttle* (Docket No. 148971).

Persons or groups interested in the determination of the issues presented in this case may move the Court for permission to file briefs amicus curiae.



p0604

I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

June 11, 2014

Clerk



Michigan Medical Marijuana Program
Application Instructions and Checklist
(517)373-0395 | www.michigan.gov/mmp

Instructions for applying to the Michigan Medical Marijuana Program

Instructions

1. Mail only **one** complete application and **all** required documentation (see below) in **one** envelope to:

Michigan Medical Marijuana Program
PO Box 30083
Lansing, MI 48909

2. **Make checks or money orders payable to: State of Michigan-MMMP**
3. This application is for a person who is 18 years of age or older and a resident of Michigan.
4. Please type or print legibly when completing the application.
5. The original signed Application Form and Physician Certification Form must be submitted to the MMMP. Make sure to keep a copy of the completed Application and Physician Certification Form for your records.

Checklist

Application Form for Registry Identification Card

- Any use of white-out on or alterations to the Application Form will result in the denial of your application.
- **If you are acting as either the legal guardian or Medical Durable Power of Attorney (MDPOA) for the applicant**, you must submit a copy of proof of legal guardianship or MDPOA with signatory authority with the application. The MDPOA or legal guardian must also submit a copy of their valid photo ID (see copy of valid photo ID below).

Application Fee: \$100

- A patient who currently receives **full Medicaid benefits or Supplemental Security Income (SSI)** and **submits the appropriate supporting documentation** is eligible for a reduced registration fee. The reduced registration fee is \$25.00. Examples of acceptable supporting documentation are available on our website at: www.michigan.gov/mmp.

Copy of Valid Photo ID (Michigan Driver's license, Michigan ID card, or other acceptable form of ID)

- The copy of the photo ID must be clear and legible.
- If you submit a copy of a photo ID that is not a Michigan driver's license or Michigan ID card, you must also submit a copy of your Michigan voter's registration card as proof of residency.

Physician Certification Form

- A complete Physician Certification Form must be completed and signed by a Medical Doctor or Doctor of Osteopathic Medicine and Surgery who is fully licensed by the State of Michigan.
- Any use of white-out on or alterations to the Physician Certification Form will result in the denial of your application.



www.michigan.gov/mmp
(517)373-0395

For Official Use Only

MMP 3501 (Rev. 12/13)

Michigan Medical Marijuana Program
Application Form for Registry Identification Card

Section A: Patient Information (REQUIRED)			
1. Legal First Name	2. Middle Initial	3a. Legal Last Name	3b. Suffix (Jr., Sr., III, etc.)
4. Patient Registry ID Card Number (For Renewals Only) P	5. MI Driver's License# or MI ID Card #	6. Date of Birth (MM/DD/YYYY)	
7a. Mailing Address		7b. Apartment/Suite/Lot #	
8. City	9. State MI	10. Zip Code	
11. Email Address (If provided, you agree to receive email correspondence from MMMP)		12. Telephone Number	
Section B: Person Allowed to Possess Patient's Marijuana Plants: (REQUIRED)			
13. Plant possession: You must select one box. Failure to do so will result in the denial of your application.			
SELECT ONLY ONE: <input type="checkbox"/> I will possess the plants			
<input type="checkbox"/> My caregiver will possess the plants			
Section C: Caregiver Information (If the patient is designating a caregiver)			
14. Legal First Name	15. Middle Initial	16a. Legal Last Name	16b. Suffix (Jr., Sr., III, etc.)
17. Caregiver Registry Card ID Number (For Renewals Only) C	18. MI Driver's License# or MI ID Card #	19. Date of Birth (MM/DD/YYYY)	
20a. Mailing Address		20b. Apartment/Suite/Lot #	
21. City	22. State MI	23. Zip Code	
24. Email Address (If provided, you agree to receive email correspondence from MMMP)		25. Telephone Number	
26. Other Names Used by Caregiver (Nick names, maiden names etc. Use a separate piece of paper if you need space for additional names)			
Section D: Patient Signature & Date (Required)			
By signing below, I attest that the information entered on this application is true and accurate. I am aware that a false or dishonest answer may be grounds for the denial or nullification of my registration and such misrepresentation is punishable by law. I attest that I have designated the person listed in Section C to serve as my caregiver (if a person is listed). I understand that I am required to know and comply with the requirements of the Michigan Medical Marijuana Act, Administrative Rules, and all amendments.			
Signature of Applicant/Patient: X			Date: _____
Section E: Caregiver Attestation: (Required if the patient is designating a caregiver)			
By signing below, I attest that the information entered on this application is true and accurate. I am aware that a false or dishonest answer may be grounds for the denial or nullification of my registration and such misrepresentation is punishable by law. I understand that I am required to know and comply with the Michigan Medical Marijuana Act, Administrative Rules, and all amendments. I authorize this agency to use the information I have provided to obtain a criminal conviction history file search from the Central Records Division of the Michigan Department of State Police or other law enforcement or judicial recordkeeping organization to determine if I have been convicted of any of the felony offenses that would make me ineligible to be a caregiver. I declare that I am willing and able to serve as the caregiver for the patient listed in Section A.			
Signature of Caregiver: X			Date: _____

