

**STATE OF MICHIGAN
IN THE SUPREME COURT**

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

vs.

CYNTHIA ANN MAZUR,

Defendant.

Supreme Court Case No.
2014-9290

Court of Appeals Case No.
2013-317447

Lower Court Case No.
2012-243299-FH
Hon. Colleen O'Brien

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**DEFENDANT-APPELLANT'S SUPPLEMENTAL BRIEF PURSUANT TO THE
COURT'S OCTOBER 23, 2014 ORDER REGARDING IMMUNITY
PURSUANT TO MCL §333.26424(g) and/or MCL §333.26424(i)**

NOW COMES Defendant-Appellant, Cynthia Ann Mazur, by and through her attorney, David Adam Rudoil, and hereby submits her Supplemental Brief Pursuant To The Court's October 23, 2014 Order Regarding Immunity Pursuant To MCL §333.26424(g) And/Or MCL §333.26424(i), as follows:



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NOW COMES Defendant-Appellant, Cynthia Ann Mazur, by and through her attorney, David Adam Rudoil, and hereby submits her Supplemental Brief Pursuant To The Court's October 23, 2014 Order Regarding Immunity Pursuant To MCL §333.26424(g) And/Or MCL §333.26424(i), as follows:

INTRODUCTION

The Court has directed the parties to submit supplemental briefs on the sole issue of whether Defendant-Appellant Cynthia Mazur ("Cynthia") is entitled to immunity under §4 of the Michigan Medical Marihuana Act, specifically §MCL 333.26424(g) and/or MCL §333.26424(i), where her spouse was a registered qualifying patient and primary caregiver under the Michigan Medical Marihuana Act ("the Act"), but his marijuana-related activities inside the family home were not in full compliance with the Act. Accordingly, although Cynthia continues to assert that her husband's marijuana activities were in full compliance with the Act, the following argument assumes, *arguendo*, that full compliance was lacking.¹ For the following reasons, Cynthia respectfully submits that she is entitled to immunity under both MCL §333.26424(g) and §MCL 333.26424(i).

RELEVANT FACTS

Cynthia is the wife of David Mazur ("David"), and the couple reside in their longtime home where the unannounced police raid of David's marijuana growing operation occurred. The record reflects that Cynthia vehemently objected when David proposed to engage in marijuana activities at their home, and only acceded after consultation with counsel, who assured her that said

¹ The record does not reflect that Cynthia herself was ever in the presence of any marihuana activities that did not comply with the Act.

activities were safe and legal, and that she would not get into any legal trouble as a result of them. TRANSCRIPT CITE GOES HERE.

Thereafter, Cynthia's total undisputed alleged involvement regarding David's marijuana activities consisted of providing him with "sticky notes" upon which she wrote the dates of harvest of some of his marijuana plants. She had no other involvement whatsoever regarding David's marijuana activities at their home. TRANSCRIPT CITE.

On the day of the police raid of their home, the Mazurs were hastily and unexpectedly called to the home of David's elderly father, who was suffering from a critical medical condition. In their haste to assist David's father, they allegedly inadvertently left the usually locked door to the basement (where the marijuana growing operation resided) unlocked.² Furthermore, although the parties dispute whether the garage door was unlocked, some marijuana plants were drying below a vehicle in the home's garage. TRANSCRIPT.³

For the following reasons despite the above (disputed) minor violations of the Act, Cynthia respectfully submits that she should be granted immunity pursuant to MCL §333.26424(g) and/or MCL §333.26424(i).

² The issue of whether the basement door was locked is similarly disputed. TRANSCRIPT.

³ Cynthia asserts that the police used a battering ram to gain entry to the garage door, which was locked. The People assert that the door was unlocked. TRANSCRIPT.

ARGUMENT

1. **MCL §333.26424(i) Immunity.**

MCL §333.26424(i) provides:

A person 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, **solely for being in the presence or vicinity of the medical use⁴ of marihuana in accordance with this act,⁵ or for assisting a registered qualifying patient with using or administering marihuana.** *Id.* (emphasis added).

§333.26424(i) thus features two types of immunity: (a) “mere presence” or “vicinity” immunity, and (b) “assisting” use” or “administration of marihuana” immunity.⁶ The Court of Appeals holding does not account for the sequential deployment of §§(g) and (i) immunity, as in the instant case.

⁴ Cynthia argues in her Application papers that she is not only a medical marihuana “caregiver,” but also a “user” of medical marihuana under MCL §333.26423(f), discussed, *infra*.

⁵ The Court of Appeals’ ruling that Cynthia could not enjoy this type of immunity due to her husband’s convictions (Court of Appeals Opinion & Order, Page 4), fails to consider that said husband’s medical marihuana activities could be in conformity with **§333.26428** of the Act, as opposed to §§4(i). Since Cynthia was deprived of her §8 hearing, no evidence that her husband’s medical marihuana activities were in conformity with §8 was taken. Accordingly, at minimum, this Honorable Court should remand the matter to the trial Court with instructions to conduct the §8 hearing.

⁶ As with MCL §333.26424(g), the second prong of §333.26424(i) (“assisting use” immunity) does not require medical marijuana use in conformity with the Act.

Although Cynthia asserts both types of §(i) immunity (“mere presence” immunity and “assisting use” immunity),⁷ this Court’s directive to the parties regarding supplemental briefs appears to specifically request argument regarding the “mere presence” prong of MCL §333.26424(i).

1.1. MCL §333.26424(i) “Mere Presence” Immunity.

Cynthia respectfully submits that family members of medical marijuana caregivers or users should not be subjected to prosecution for trivial or minor violations of the Act by the registered caregiver or user, as here. She asserts that perfect, “full” compliance with the Act by another person (in the case at bar, that person is her husband, with whom she lives) is impossibly beyond the control of a spouse and, absent divorce or separation, a spouse is exposed and fatally subjected to whatever minor violations may be present.

Moreover, a spouse is totally powerless to legally intervene and take steps to ensure that his or her spouse’s growing operation is in compliance with MCL §333.26424(a) and MCL §333.26424(b) because in order to do so, he or she would need to have access to the plants. If the spouse were permitted access to inspect the growing operation, he or she would be directly violating the “locked and enclosed facility” provisions of MCL §333.26424(a)⁸

⁷ The Court of Appeals erroneously mentioned that Cynthia singularly asserted “mere presence” immunity. People v Mazur, 2014 Mich. App. LEXIS 595, 2014 WL 1321014 (Mich. Ct. App. Apr. 1, 2014).

⁸ MCL §333.26424(a) provides:

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 specified that a primary caregiver will be allowed under state law to cultivate marihuana for the qualifying patient, 12 marihuana 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. The privilege from arrest under this subsection applies only if the qualifying patient presents both his or her registry identification card and a valid driver license or government-issued identification card that bears a photographic image of the qualifying patient. Id.

and MCL §333.26424(b)⁹ based on the definition of locked and enclosed facility contained in MCL §333.26423(d).¹⁰

⁹ MCL §333.26424(b) provides:

A primary caregiver 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 assisting a qualifying patient to whom he or she is connected through the department's registration process with the medical use of marihuana** in accordance with this act. The privilege from arrest under this subsection applies only if the primary caregiver presents both his or her registry identification card and a valid driver license or government-issued identification card that bears a photographic image of the primary caregiver. This subsection applies only if the primary caregiver possesses an amount of marihuana that does not exceed:

- (1) 2.5 ounces of usable marihuana for each qualifying patient to whom he or she is connected through the department's registration process; and
- (2) for each registered qualifying patient who has specified that the primary caregiver will be allowed under state law to cultivate marihuana for the qualifying patient, 12 marihuana plants kept in an enclosed, locked facility; and
- (3) any incidental amount of seeds, stalks, and unusable roots. Id.

¹⁰ MCL §333.26423(d) provides, in relevant part, as follows:

"Enclosed, locked facility" means a closet, room, or other comparable, stationary, and fully enclosed area equipped with **secured locks or other functioning security devices that permit access only by a registered primary caregiver or registered qualifying patient....** Id. (emphasis added).

Concurrently, a spouse who, like Cynthia, did not take steps to inspect and ensure that her husband's medical marijuana growing operation was fully compliant with the Act, is at risk (and, in the case of Cynthia, has realized that risk) of criminal prosecution for simply being around a medical marijuana growing operation that, unbeknownst to her, was not fully compliant with the Act. Such a "Hobson's Choice" or "entrapment by estoppel" situation was not envisioned by the voters of the State of Michigan and, pursuant to the rules of statutory construction set forth herein, Cynthia urges this Honorable Court to simply apply the presumption of "medical use" set forth in MCL §333.26424(d), discussed, *infra*.

The same reasoning applies equally as well to the resident children of such caregivers or users.¹¹

Although the parties dispute whether the Mazur's basement door was locked, the record reflects that it is irrefutable that the said door at least featured a latching mechanism. TRANSCRIPT. Pursuant to the statutory construction rule of *ejusdem generis*, which provides that "the scope of a broad general term following a series of items is construed as including 'things of the same kind, class, character, or nature as those specifically enumerated . . .'" (see, e.g., People v Thomas, 263 Mich App 70, 76; 687 N.W.2d 598 (2004), quoting Weakland v Toledo Engineering Co, Inc., 467 Mich 344, 349; 656 N.W.2d 175 (2003), and Huggett v Dep't of Natural Resources, 464 Mich 711, 718-719; 629 N.W.2d 915 (2001), such a latch is an "other functioning security device[s]" and thus possesses the same legal quality as a "secured lock[.]"

¹¹ This case is easily distinguishable from People v Watkins, 2011 Mich. App. LEXIS 1471 (August 11, 2011, Decided, No. 302558, No. 302559), where the adult son of the Defendant was also a registered medical marijuana user. In

Watkins, the undisputed evidence regarding the number of plants and their storage led the Court to conclude that no reasonable jury could find that either defendant had established the elements of the immunity defense under §4 or the affirmative defense under §8. Accordingly, the Court upheld the trial court's grant of the Prosecutor's motion *in limine* to preclude defendants from presenting a defense under §4 or §8 of the Act. Id. In particular, the facts regarding plant storage in Watkins are diametrically opposite those present in the case at bar.

As set forth in Watkins, the arresting officer:

....saw one marijuana plant and three "starter clones" under a grow light in the home's sun room, which was directly behind the dining room. He found four or five more plants under grow lights in the family room and three or four hanging plants that were drying in a room by the kitchen. In a closet with no door that was across from Eric Watkins' [the son's] bedroom, [the arresting officer] saw four more plants and some grow lights. Another four or five plants and grow lights were in a room that contained two large safes. [The arresting officer's] search also revealed eight marijuana plants in a plastic zipper-style greenhouse in the back yard. In total, officers recovered 21 marijuana plants. None of the plants were locked up.

[The arresting officer] discovered approximately thirty-one guns, including shot guns, assault rifles, long bolt action rifles, and semi-automatic and revolver pistols in the safes. Ammunition cans containing approximately four to five thousands rounds were along the wall in the same room as the safes. [The arresting officer] recalled that he smelled marijuana throughout the house.

Inside Eric Watkins' bedroom, [the arresting officer] located a plastic baggy containing approximately one ounce of marijuana within one or two feet of two loaded semi-automatic pistols. [The arresting officer] also found an unloaded shotgun, approximately \$2,100 in cash, bail bonds credentials with Eric's picture and name, and cell phone bills establishing Eric's residency at the home. [The arresting officer] additionally discovered a burnt roach in a black Mazda, which was parked outside the house and registered to Eric. Id. at 2-3.

Even assuming, *arguendo*, that the basement door to the Mazur's home (where the growing operation was conducted) was unlocked on the date and time in question (the raid) due to the unexpected medical emergency, the basement satisfied the definition of "enclosed, locked facility" set forth in MCL §333.26423(d). The Mazur's basement is in complete contradistinction to the dog kennel that was found **not** to be an "enclosed locked facility" in People v King.¹²

1.2 MCL §333.26424(i) "Assisting Use" Immunity.

Cynthia asserts that her alleged activities regarding the "sticky notes" comprise "assisting [her husband David's] use" of medical marihuana. Cynthia asserts that her alleged provision of "sticky notes" to David constitutes the "medical use" of marijuana pursuant to MCL §333.26423(f), which provides:

"Medical use" means "the acquisition, possession, **cultivation, manufacture,** use, internal possession, delivery, transfer, or

¹² In People v King, 291 Mich App 503, 511-12; 804 N.W.2d 911 (2011), *reversed and remanded by People v Kolanek*, 491 Mich 382, 817 N.W.2d 528 (2012), the Court observed:

As noted, the phrase "enclosed, locked facility" is defined by the MMA to mean "a closet, room, or other enclosed area equipped with locks or other security devices" MCL 333.26423(c). As described earlier, defendant grew several marijuana plants in his backyard, within a chain-link dog kennel that was only partially covered on the sides with black plastic. The kennel had a lock on the chain-link door, but had no fencing or other material over the top, and it could be lifted off the ground. Id.

transportation of marihuana or paraphernalia relating to the administration of marihuana to treat or alleviate a registered qualifying patient's debilitating medical condition or symptoms associated with the debilitating medical condition." Id. (emphasis added).

Accordingly, Cynthia's husband David's medical marihuana cultivation is also a medical marihuana "use" and, therefore, so is Cynthia's alleged provision of "sticky notes" to him for that purpose. As such, the provision of "sticky notes" constitutes protected activity under MCL §333.26424(g).

Presumably, MCL §333.26424(g) was enacted to protect "head shops" that sell rolling papers, bongs and the like to customers who use medical marihuana after leaving the shop. Such businesses obviously have no control over whether the resulting use is "in conformity" with the Act. Accordingly, Defendant-Appellant Cynthia Mazur respectfully asserts that she should enjoy at least the same amount of immunity as such businesses, inasmuch as she could not assert control over her husband's medical marihuana activities without violating the Act. Since there is nothing in the record to suggest that she actually participated in the affixation of the "sticky notes" to any marihuana plants or otherwise participated in their cultivation, the analogy to the shop owner is appropriate.

2. MCL §333.26424(g) Immunity.

MCL §333.26424(g) provides:

A person shall not be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including but not

spouses and other family members of noncompliant qualifying patients and/or registered caregivers.

CONCLUSION

For the foregoing reasons, Defendant-Appellant Cynthia Ann Mazur respectfully requests that this Honorable Court determine that the spouses and/or other family members of registered qualifying patients and/or primary caregivers under the Michigan Medical Marihuana Act have immunity pursuant to MCL §333.26424(i) and/or MCL §333.26424(g) where the patient's or caregiver's marijuana-related activities inside the family home were not in full compliance with the Act.

Respectfully submitted,



David Adam Rudoi
Attorney for Defendant-Appellant
Cynthia Ann Mazur

DATED: November 20, 2014

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PROOF OF SERVICE

STATE OF MICHIGAN)

))ss

COUNTY OF OAKLAND)

I, Jeffrey S. Newton, declare, under penalty of perjury:

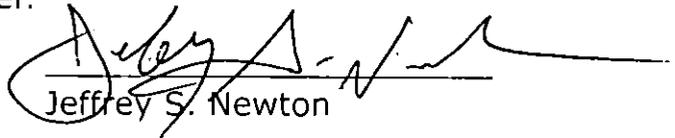
1. I am a legally competent adult over the age of eighteen (18) years of age. I am not a party to this Action. Unless stated as being based upon information and belief, all the facts herein are known to me personally and if called upon as a witness, I could and would competently testify thereto under oath.

2. On Thursday, November 20, 2014, I served the **Supplemental Brief** and **Proof of Service** relative thereto upon Shannon E. O'Brien, Esq. by depositing a copy of same into a sealed envelope with U.S. postage fully prepaid into the U.S. mail receptacle at the U.S. Post Office in Lansing, Michigan addressed to her at 1200 North Telegraph Road, Pontiac, MI 48341.

FURTHER DEPENDENT SAYETH NOT.

I declare, under penalty of perjury, that the foregoing is true to the best of my information, knowledge and belief.

DATED: November 20, 2014


Jeffrey S. Newton