



MICHIGAN COURTS NEWS RELEASE

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FOR IMMEDIATE RELEASE

Whether governmental employees are required to join a union or pay union dues; whether employees in the state defined pension system are required to contribute 4 percent to that plan or switch to a defined contribution plan are questions before Michigan Supreme Court in oral arguments next week

LANSING, MI, January 6, 2015 – The question in the first case on January 13, frequently called the “right to work” law, is whether public employers can require governmental employees to join a union or pay union dues or fees as a condition of obtaining or continuing public employment.

The question in the second case is whether employees in the state defined benefit pension plan must contribute 4 percent of their income to that plan or switch to the defined 401(k) contribution plan.

Additional cases scheduled for January 13 and 15 include questions about suppression of statements to police; plea discussions; right to a speedy trial; presentation of perjured testimony during trial; growing, possessing, and selling marijuana; sentencing guidelines; and jury awards in a complex contract action.

The Court will hear the oral argument in its courtroom on the sixth floor of the Michigan Hall of Justice on **January 13 and 15**, starting at **9:30 a.m.** each day. The Court’s oral arguments are open to the public.

The Michigan Supreme Court broadcasts its oral arguments and other hearings [live](#) on the Internet via streaming video technology. Watch the stream live only while the Court is in session and on the bench. Streaming will begin shortly before the hearing starts; audio will be muted until the Court takes the bench.

Summaries of the cases follow and are also available at this [link](#).

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MICHIGAN SUPREME COURT

Office of Public Information

Michigan Supreme Court Oral Arguments Tuesday, January 13, 2015

These brief accounts may not reflect the way that some or all of the Court's seven justices view the cases. The attorneys may also disagree about the facts, issues, procedural history, and significance of these cases. For further details about the cases, please contact the attorneys.

Morning Session

Docket No 147700

International Union, et al,

Andrew Nickelhoff

Plaintiffs-Appellants,

vs (Original Action from Ct of Appeals)

Nino Erwin Green, et al,

Ann M. Sherman

Defendants-Appellees.

Cases to the Court of Appeals and Supreme Court are typically appeals of orders issued by lower courts. However, in this case, the Legislature placed in the Court of Appeals exclusive original jurisdiction over challenges to 2012 PA 349 (PA 349), colloquially called a "right to work" law.

PA 349 amends the Public Employment Relations Act (PERA), and states that public employers—that is, the government—cannot require governmental employees to join a union or pay union dues, fees, or other expenses "as a *condition of obtaining or continuing public employment . . .*" The plaintiff unions challenge the Legislature's constitutional authority to pass PA 349 with respect to classified state civil service employees. Plaintiffs argue that, under Const 1963, art 11, § 5, the Civil Service Commission (CSC) has the exclusive authority to regulate "all conditions of employment" for this group of governmental employees. They also argue that the CSC has the authority to collect agency fees from union-eligible employees who opt out of union membership. PA 349, which prohibits the collection of such fees, intrudes on the Civil Service Commission's sphere of authority, plaintiffs argue. Defendants responded that the Legislature has the constitutional authority under art 4, § 49 to enact laws applicable to all employees, public and private.

In a split published opinion, the Court of Appeals held that PA 349 applies to employees in the classified state civil service, and that the Legislature has the authority to enact legislation with regard to agency fees.

Plaintiffs appealed. On January 29, 2014, the Supreme Court granted the application for leave to appeal.

Docket No 147758

Michigan Coalition of State
Employee Unions, et al,
Plaintiffs-Appellees,
vs (Appeal from Ct of Appeals)
(Ingham – Draganchuk, J.)
State of Michigan, State Employees’
Retirement System, et al,
Defendants-Appellants.

Patrick M. Fitzgerald

William A. Wertheimer

2011 PA 264 amended the State Employees’ Retirement Act (SERA). Plaintiffs challenged changes that required employees hired before April 1, 1997, who had maintained membership in the state pension system (the “defined benefit pension plan”) to choose either to contribute 4 percent of their income to that plan or to switch to the 401(k) plan (the “defined contribution plan,” applicable for state employees hired on or after April 1, 1997) without a required contribution. They also challenged the change in the way overtime is applied to the calculation of “final average compensation.” The trial court ruled that PA 264 was unconstitutional because it violates Const 1963, art 11, § 5.

Defendants appealed. In a published opinion, the Court of Appeals affirmed the trial court’s determination that the challenged portions of PA 264 are unconstitutional because they are incompatible with Const 1963, art 11, § 5. However, the Court reversed the trial court’s determination that PA 264 is void in its entirety and remanded the case to the trial court for a determination regarding the severability of the remaining portions of PA 264. On remand, the trial court was to determine whether any additional portions of the act must be deleted in light of the Court of Appeals opinion, and if so, whether PA 264 could be permitted to stand as redacted.

Defendants appealed. In an order dated January 29, 2014, the Supreme Court granted leave and ordered the parties to include among the issues to be briefed whether 2011 PA 264 is unconstitutional, in whole or in part, in violation of Const 1963, art 11, § 5.

Docket # 149040

People of the State of Michigan,
Plaintiff-Appellant,
vs (Appeal from Ct of Appeals)
(Genesee – Yuille, R.)
Mantrease Datrell Smart,
Defendant-Appellee.

Vikki Bayeh Haley

Daniel D. Bremer

Defendant Mantrease Datrell Smart was charged with multiple crimes in connection with the robbery and shooting death of Megan Kreuzer on May 31, 2010. Smart supplied a gun to two other men who planned the robbery. Smart also witnessed the robbery, during which one of the other men shot and killed Kreuzer.

Before trial, Smart asked the trial court to suppress statements that he had made about the Kreuzer murder during two meetings with police. The meetings concerned an unrelated carjacking incident, but Smart offered information about the Kreuzer murder in an effort to

obtain a favorable plea deal. At the first meeting, the police officer agreed that the information Smart provided would not be used against him; no such promise was made at the second meeting. The trial court conducted an evidentiary hearing and then ruled that both statements were inadmissible. The prosecution appealed suppression of the statement made at the second meeting.

In a split published opinion, the Court of Appeals affirmed the trial court and ruled that Smart's second statement was inadmissible under Michigan Rule of Evidence (MRE) 410(4), which excludes from evidence statements made by a defendant "in the course of plea discussions with an attorney for the prosecuting authority which do not result in a plea of guilty"

The prosecution appealed. In an order dated September 17, 2014, the Supreme Court granted the application for leave to appeal. The Court directed the parties to address whether Smart's statement to the police should be suppressed under MRE 410. In briefing this issue, the parties were directed to address whether, pursuant to MRE 410, "plea discussions" must directly involve a prosecuting attorney or whether a prosecuting attorney's agent may act on behalf of the prosecuting authority and, if so, under what circumstances the agent's discussions constitute "plea discussions." The parties were also directed to address whether the Supreme Court's analysis for determining if a statement was made "in connection with" a plea offer, established in *People v Dunn*, should continue to guide the application of MRE 410, and if not, what test should be applied in its stead.

Afternoon Session

Docket No 148305

People of the State of Michigan,

Plaintiff-Appellee,

vs (Appeal from Ct of Appeals)

(Genesee – Farah, J.)

Feronda Montre Smith,

Defendant-Appellant.

Vikki Bayeh Haley

Valerie R. Newman

Defendant Feronda Montre Smith was convicted by a jury of armed robbery and first-degree felony murder. The jury acquitted him of carrying a concealed weapon, felon in possession of a firearm and possession of a firearm during the commission of a felony. The trial court sentenced Smith as an habitual offender, fourth offense to the mandatory term of life imprisonment for murder and to 250 months' to 35 years' imprisonment for armed robbery.

Smith appealed to the Court of Appeals. On appeal, Smith argued that he was deprived of his right to a fair trial because the prosecutor knowingly presented perjured testimony. A defendant's due process rights are violated if a conviction is based on the knowing use of perjured testimony, and prosecutors are obligated to correct any such perjury. Smith also argued that he was denied his constitutional right to a speedy trial where there was a 41-month delay between his arrest and the beginning of trial. The Court of Appeals rejected these claims, and affirmed Smith's convictions in an unpublished opinion.

Smith appealed. In an order dated June 20, 2014, the Supreme Court granted leave to appeal the October 29, 2013 judgment of the Court of Appeals, limited to the issues: (1) whether Smith was deprived of his constitutional right to a speedy trial; and (2) whether Smith was deprived of his due process right to a fair trial through the presentation of perjured testimony.

[Docket No. 149270](#)

John Krusac, Personal Representative
of the Estate of Dorothy Krusac,
Plaintiff-Appellee,
vs (Appeal from Ct of Appeals)
(Saginaw – Borchard, F.)
Covenant Medical Center, Inc.,
d/b/a Covenant Medical Center-Harrison,
d/b/a Covenant Healthcare,
Defendant-Appellant.

Mark Granzotto
Carlene J. Reynolds

Thomas R. Hall

Records, data, and knowledge collected by a hospital for the purpose of review by a peer review committee is confidential and protected from discovery pursuant to MCL 333.20175 and MCL 333.21515; this is known as the peer review privilege. In *Harrison v Munson Healthcare, Inc.*, the Court of Appeals held that the factual background portion of a peer review report is not subject to the statutory peer review privilege. In this case, relying on *Harrison*, the trial court ordered the defendant hospital to produce the first page of its internal improvement report to the plaintiff for use in the medical malpractice lawsuit.

The defendant hospital filed an application for leave to appeal to the Court of Appeals, which was denied. The defendant then filed an application in the Supreme Court, which was granted. The Supreme Court directed the parties to address (1) whether *Harrison v Munson Healthcare, Inc.* erred in its analysis of the scope of the peer review privilege; and (2) whether the trial court erred when it ordered the defendant to produce the first page of the improvement report based on its conclusion that “objective facts gathered contemporaneously with an event do not fall within the definition of peer review privilege.”



MICHIGAN SUPREME COURT

Office of Public Information

Michigan Supreme Court Oral Arguments Thursday, January 15, 2015

These brief accounts may not reflect the way that some or all of the Court's seven justices view the cases. The attorneys may also disagree about the facts, issues, procedural history, and significance of these cases. For further details about the cases, please contact the attorneys.

Morning Session

Docket No 148444

People of the State of Michigan,
Plaintiff-Appellee,
vs (Appeal from Ct of Appeals)
(Oakland – O'Brien, C.)
Richard Lee Hartwick,
Defendant-Appellant.

Jeffrey M. Kaelin

Nancy E. Miller

Defendant, who was arrested for illegally growing and possessing marijuana, holds a registry identification card under the Michigan Medical Marihuana Act (MMMA). He claimed that mere possession of the card entitled 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. Defendant appealed. In a published opinion, the Court of Appeals upheld the trial court's ruling. Defendant appealed.

In an order dated June 11, 2014, the Supreme Court granted leave to appeal the November 19, 2013 judgment of the Court of Appeals. The parties were directed to brief the following issues: (1) whether a defendant's entitlement to immunity under § 4 of the MMA Act (MMMA) 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.

Docket No 148971

People of the State of Michigan,
Plaintiff-Appellee,
vs (Appeal from Ct of Appeals)
(Oakland – Warren, M.)
Robert Tuttle,
Defendant-Appellant.

Tanya L. Nava

Daniel J. M. Schouman

Defendant was arrested for selling marijuana to a confidential informant of the Oakland County Sheriff's Office. He was subsequently charged with the sale and production of marijuana and possession of a firearm during the commission of a felony (felony-firearm). Defendant holds a valid registry identification card under the MMMA. He claimed that possession of the card entitles him to (1) immunity from prosecution under § 4 of the MMMA for the charges not relating to the sale of marijuana, and (2) an affirmative defense under § 8 of the MMMA for all the charges. In addition, defendant argued that the testimony of his medical marijuana patients allows him to assert the § 8 affirmative defense. The trial court rejected both arguments and 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.

Defendant appealed. In a published opinion, the Court of Appeals rejected defendant's arguments and held 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, (2) denied defendant's request for dismissal under § 8, and (3) held that defendant could not present the § 8 defense at trial. Defendant appealed.

In an order dated June 11, 2014, the Supreme Court granted the application for leave to appeal the January 30, 2014 judgment of the Court of Appeals. The parties were directed to include the issues to be briefed: (1) whether a registered qualifying patient under the Michigan Medical Marihuana Act (MMMA), who makes unlawful sales of marijuana to another patient to whom he is not connected through the registration process, taints all aspects of his marijuana-related conduct, even that which is otherwise permitted under the act; (2) whether a defendant's possession of a valid registry identification card establishes any presumption for purposes of § 4 or § 8; (3) if not, what is a defendant's evidentiary burden to establish immunity under § 4 or an affirmative defense under § 8; and (4) 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.

Docket No 149290

People of the State of Michigan,
Plaintiff-Appellee,
vs (Appeal from Ct of Appeals)
(Oakland – O’Brien, C.)
Cynthia Ann Mazur,
Defendant-Appellant.

Kathryn G. Barnes

David Adam Rudoi

The police arrested defendant and her husband after discovering marijuana growing in their basement. At the time, defendant’s husband was a registered and qualifying patient and was the primary caregiver for two other patients under the Michigan Medical Marihuana Act (MMMA). Defendant was charged with one count of possession with intent to deliver less than five kilograms or fewer than 20 plants of marihuana, MCL 333.7401(2)(d)(iii), and one count of manufacturing less than five kilograms or fewer than 20 plants of marihuana, MCL 333.7401(2)(d)(iii). Her husband pled guilty to similar charges. But defendant moved to dismiss the charges, arguing that she was entitled to immunity under § 4(g) of the MMMA [providing “marihuana paraphernalia” to a registered qualifying patient or registered primary caregiver for purposes of the “medical use of marihuana”] or § 4(i) [merely being in the presence or vicinity of “the medical use of marihuana” in accordance with the act]. Defendant also sought leave to assert an affirmative defense under § 8.

The trial court denied defendant’s motions. Defendant appealed. The Court of Appeals in an unpublished opinion affirmed the trial court’s ruling defendant was not immune from prosecution under the MMMA and that defendant was not entitled to assert a § 8 affirmative defense. Defendant appealed. In an order dated October 23, 2014, the Supreme Court granted the application for leave to appeal the April 1, 2014 judgment of the Court of Appeals. The Court directed the Clerk to schedule oral argument on whether to grant the application or take other action and directed the parties to submit briefs addressing whether the defendant is entitled to immunity under § 4 of the Michigan Medical Marihuana Act (MMMA) where her spouse was a registered qualifying patient and primary caregiver under the act, but his marijuana-related activities inside the family home were not in full compliance with the act.

Afternoon Session

Docket No 149073

People of the State of Michigan,
Plaintiff-Appellee,
vs (Appeal from Ct of Appeals)
(Oakland – Grant, N.)
Rahim Omarkhan Lockridge,
Defendant-Appellant.

Danielle Walton

Brett DeGroff

Defendant was sentenced to 8 to 15 years’ imprisonment for his jury-based conviction of involuntary manslaughter. Defendant appealed, arguing that the trial court abused its discretion by imposing a 10-month upward departure from the sentencing guidelines. Defendant also argued that the sentencing guidelines were scored using factors not admitted or proven to the

jury beyond a reasonable doubt, in violation of the United States Supreme Court's recent opinion, *Alleyne v United States* 570 US __ (2013).

The Court of Appeals in a published opinion affirmed defendant's sentence but remanded the case to the trial court for the ministerial task of correcting the presentence investigation report (PSIR). With regard to defendant's *Alleyne* argument, the Court of Appeals noted that it was bound by *People v Herron*, 303 Mich App 392 (2013), in which the Court of Appeals held that *Alleyne* did not apply to Michigan's sentencing guidelines. Defendant appealed.

In an order dated June 11, 2014, the Supreme Court, granted leave to appeal the February 13, 2014 judgment of the Court of Appeals and directed the parties to address: (1) whether a judge's determination of the appropriate sentencing guidelines range establishes a "mandatory minimum sentence," such that the facts used to score the offense variables must be admitted by the defendant or established beyond a reasonable doubt to the trier of fact; and (2) whether the fact that a judge may depart downward from the sentencing guidelines range for "substantial and compelling" reasons, prevents the sentencing guidelines from being a "mandatory minimum" under *Alleyne*, see *United States v Booker*.

Docket No 148931-33

Fraser Trebilcock Davis & Dunlap,
Plaintiff-Appellee/Cross-Appellant,
vs (Appeal from Ct of Appeals)
(Midland -- Lauderbach J.)
Boyce Trust 2350, Boyce Trust 3649,
and Boyce Trust 3650,
Defendants-Appellants/Cross-Appellees.

Michael H. Perry

W. Jay Brown

The plaintiff law firm's attorneys represented the defendant trusts in a complicated contract action. In this lawsuit, the plaintiff law firm successfully sued the defendants for unpaid attorney fees. The law firm did not retain outside counsel; it was represented by its own shareholders and associates. The jury awarded the law firm \$70,000 in damages. The law firm then sought case evaluation sanctions, including reasonable attorney fees, under MCR 2.403(O)(6)(b). The circuit judge agreed that the law firm was entitled to attorney fees even though it was represented by its own attorney-employees; it then granted the law firm's motion. Defendants appealed to the Court of Appeals, which affirmed this part of the trial court's ruling in a published opinion. Defendants appealed.

In an order dated October 1, 2014, the Supreme Court granted leave to appeal the February 6, 2014 judgment of the Court of Appeals and directed the Clerk to schedule oral argument on whether to grant the application or take other action.