

**STATE OF MICHIGAN  
IN THE SUPREME COURT**

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff, - *Appellee*

vs.

CYNTHIA ANN MAZUR,

Defendant. - *Appellant*

Supreme Court Case No.  
2014 \_\_\_\_\_

Court of Appeals  
Case No. ~~2013~~-317447

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

*OPM*

*4-1-14*

*dk*

*Oakland*

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**DEFENDANT-APPELLANT'S**

**APPLICATION FOR LEAVE TO APPEAL**

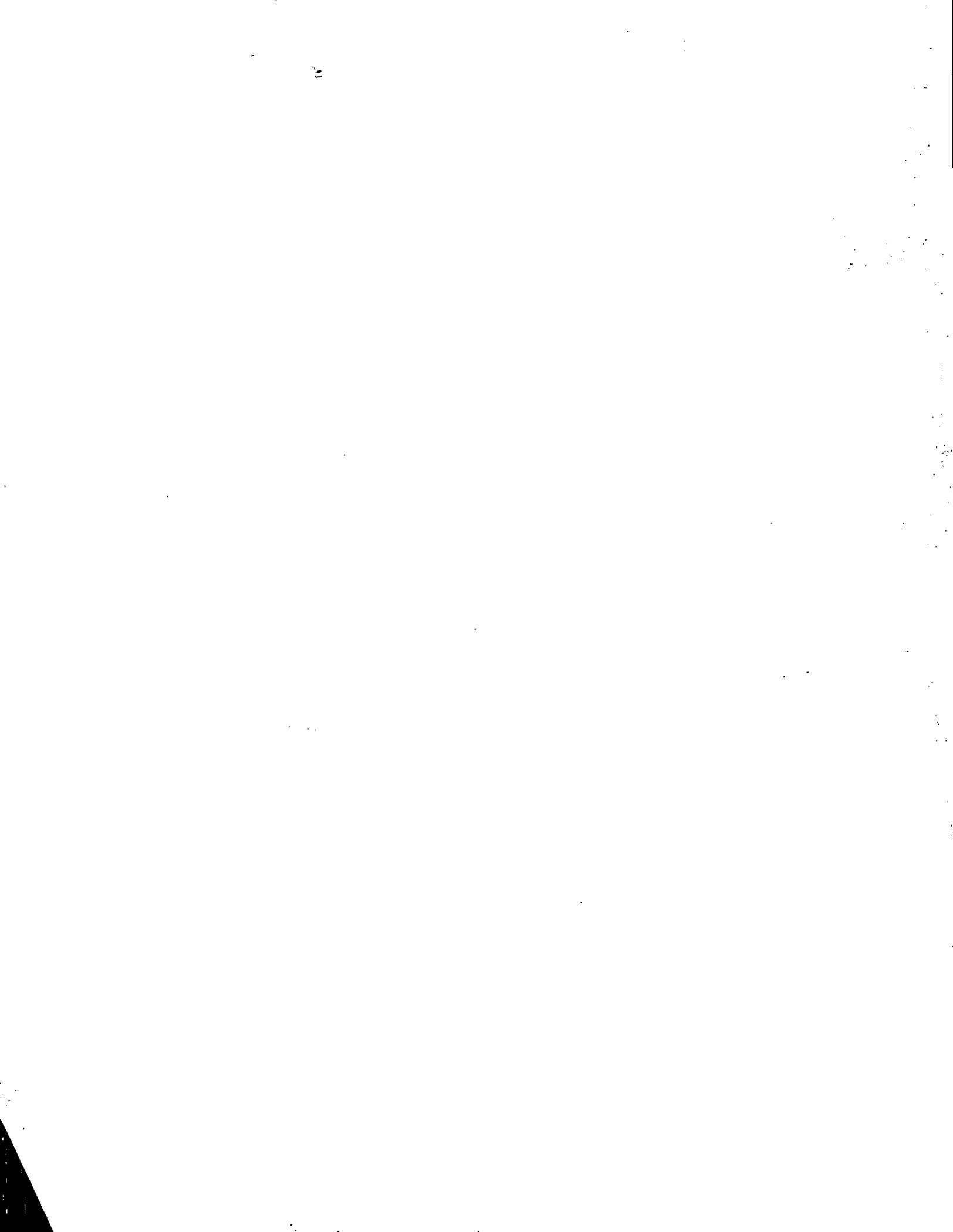
**NOW COMES** Defendant-Appellant, Cynthia Ann Mazur, by and  
through her attorney, David Alan Rudoil, and hereby submits her Application  
For Leave to Appeal, as follows:

*1419290*  
*AMC*  
*6/3*  
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**FILED**

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**STATEMENT OF BASIS OF JURISDICTION**  
**DATES AND NATURE OF ORDERS APPEALED FROM**  
**REQUESTED RELIEF**

The Supreme Court has jurisdiction to consider this appeal pursuant to MCR 7.302(B). The Circuit Court Order that denied Defendant-Appellant's Motion for Immunity and/or Affirmative Defenses was entered on June 13, 2013, and the Circuit Court Order denying reconsideration of same was entered on July 9, 2013. The Court of Appeals Order that affirmed the Circuit Court's Order and remanded the case back to the Trial Court was entered on April 1, 2014.

This Application for Leave to Appeal is being filed in a timely manner pursuant to MCR 7.302(C)(2) and (4).

Defendant-Appellant respectfully requests that this Honorable Court reverse the rulings of the Oakland County Circuit Court and the Michigan Court of Appeals, dismiss all charges pursuant to Section 4, or, in the alternative, grant her an evidentiary hearing pursuant to Section 8 of the Michigan Medical Marihuana Act.

## STATEMENT OF QUESTIONS PRESENTED

1. Did the Trial and Appeals Courts commit error when they ruled that Defendant-Appellant was not entitled to immunity from prosecution pursuant to MCL §333.26424(g)?

Defendant-Appellant:	Yes
Plaintiff-Appellee:	No
Trial and Appellate Court:	No

2. Did the Trial and Appeals Courts commit error when they ruled that Defendant-Appellant was not entitled to immunity from prosecution pursuant to MCL §333.26424(i)?

Defendant-Appellant:	Yes
Plaintiff-Appellee:	No
Trial and Appellate Court:	No

3. Did the Trial and Appeals Courts commit error when they ruled that Defendant-Appellant was not entitled to an affirmative defense evidentiary hearing pursuant to MCL §333.26428?

Defendant-Appellant:	Yes
Plaintiff-Appellee:	No
Trial and Appellate Court:	No

4. Did the Trial and Appeals Courts commit error when they ruled that certain "sticky notes" did not constitute marihuana paraphernalia?

Defendant-Appellant:	Yes
Plaintiff-Appellee:	No
Trial and Appellate Court:	No

## **STATEMENT PURSUANT TO MCR 7.302(B)**

Pursuant to MCR 7.302(B)(3) the issues in the case at bar involve legal principles of major significance to the state's jurisprudence. If the Court of Appeals decision is upheld, innocent spouses of registered medical marihuana caregivers statewide will be at risk for prosecution for behavior that most such persons would consider to be innocent, thereby causing tremendous upheaval to the Michigan Medical Marihuana Act, which was passed by voter initiative, thereby thwarting the will of the People of the State of Michigan.

Pursuant to MCR 7.302(B)(5), the decision of the Court of Appeals is clearly erroneous in at least the following respects. First, it erroneously imports the definition of "drug paraphernalia" from the Michigan Public Health Code into the Michigan Medical Marihuana Act. Second, the decision erroneously resulted in a procedural default upon Defendant-Appellant's right to a hearing under MCL §333.26428 without any waiver by Defendant-Appellant or her legal counsel. Both of these decisions will work a material injustice upon Defendant-Appellant if upheld.

The decision of the Court of Appeals is in conflict with the definition of Gauthier v Alpena County Prosecutor, 267 Mich App 167, 703 N.W.2d 818 (2005) regarding the definition of "marijuana paraphernalia."

## STATEMENT OF FACTS

Defendant-Appellant Cynthia Ann Mazur ("Mrs. Mazur" or "Defendant-Appellant Mazur") was charged by the Oakland County Prosecutor with Possession With Intent To Deliver Marijuana and Manufacturing Marijuana, both felonies, despite a complete lack of evidence to support such charges.

In 2011, Mrs. Mazur's husband, David Michael Mazur ("Mr. Mazur") received registered qualifying patient and caregiver status from the State of Michigan to grow medical marijuana in the couple's longtime home in Holly, Michigan. Mrs. Mazur vehemently objected to this course of action, and demanded that her husband consult with an attorney prior to his application, in order to ensure that neither she nor the couple's children would be subject to prosecution. April 10, 2013 Evidentiary Hearing Transcript, Page 39, Lines 15 Through 25 and Page 40, Lines 1 Through 9. After the attorney assured the Mazurs that they and their children would be safe from prosecution, she reluctantly agreed to permit her husband to commence the growing operation, which he did. Mrs. Mazur testified at the evidentiary hearing on this issue, as follows:

BY MR. RUDOI: Q All right, Cindy, just want to start from the beginning here. At some point, your husband told you that he wanted to become a medical marijuana patient, is that true? A That's true. Q Okay, and how did you react to that? A I wasn't very happy about it. I didn't think it was a good idea to have it in my home with my children. Q Okay. Were you aware at any point prior to that that he was growing marijuana somewhere else? A Yes. Q Okay. Did you have objections to it at the very beginning or just once he wanted to bring it into your home?

A When he wanted to bring it into my house. 2 Q And what did he tell you when you, when you were a little off put by that? A He basically just showed me the paperwork and told me here it is, this is what it says I can do, I can possess these plants. I read over that paperwork that the government had sent us and I made him call an attorney. Q Okay, and after he called the attorney, then what did he tell you? A He said it was -- that we couldn't get in any trouble. Q Okay. So at that point, and at some point, you allowed him to bring marijuana into your house, is that correct, to grow marijuana in your house? A That's true, yes. Q Okay, and where, and where was he allowed -- where, where was he growing marijuana? A It was in our basement. Q Okay, and did he tell you that you're allowed to go down there and help, help or do anything down there? A No, I did -- I did not go in the basement. Q Okay, and, and did you -- were you aware that you're not allowed to go down into that basement? A Yeah. Q Okay, and why did you think you're not allowed to go in 25 that basement? A Because he had said that if I -- that I wasn't allowed down there, that it was -- nobody else was allowed down there other than a registered patient. Q Okay. April 10, 2013 Evidentiary Hearing Transcript, Page 39, Lines 14 Through 25, Page 40, Lines 1 Through 25 and Page 41, Lines 1 Through 4.

After Mrs. Mazur reluctantly agreed and after legal consultation, Mr. Mazur commenced his growing operation after full and duly authorized registration with the State of Michigan, both as a registered patient and a registered qualifying caregiver. Although he accomplished a statutorily compliant growing operation in the basement of the couple's longtime Holly, Michigan home and had two qualifying patients, he never actually dispensed any medical marijuana, as none of his plants were ever ready for harvest before they were destroyed in a police raid on the home. April 10, 2013 Evidentiary Hearing Transcript, Page 19, Line 1 and Page 20, Lines 1 Through 4.

On March 7, 2012, the Mazurs abruptly left their Holly home in a hurry to get to his parent's house where Mr. Mazur's father was close to death, after being alerted of this fact by his mother. Accordingly, the usual padlock on the basement door to the growing facility was temporarily replaced by a bolt. Mr. Mazur testified as to these unusual circumstances, as follows:

Q Okay. Now, was there a way to prevent people from going into your medical marijuana facility? A Yeah, there was numerous -- are you talking about the day that -- the, the day in question? Q In general. There -- was there -- what -- where was it, can you explain to me where your medical marijuana facility was a little bit and how access could be gained to it? A It was in the basement. It was wrapped in panda paper, the plants and lights themselves were wrapped in panda paper. There was a door leading into my basement that I screwed a, a latch onto, a hasp lock they called it, and that lock would then attach to the jamb of the door and then to the door. You'd flip the latch over and you would turn, turn the lock so that it was locked and secured, and the majority of the time there was a padlock on that lock, so there was no access to the basement. Q Okay, but on the day in question, there was a bolt on there. A Correct. My mother called me and said my dad was in trouble, eyes were sinking in. They lived about seven miles from my house, so as everybody got into the car, I was securing the facility. I didn't see the keys for the padlock. I didn't want to just lock the keys in the basement. I was a little frantic 'cuz he was in trouble.

I had a bolt and lo -- had a bolt and a nut, and I tried to screw the nut on it fell, and at that point, I really didn't care, I just set the, the bolt in there, the kids and Cindy were in the car, I made sure the windows were locked, the back door was locked, the front door was locked, and I was the only one with the key to the front door. Q And so, let me just back up a little bit here. So, on, on March 7th, the day in question, before you left the house, you made sure that Cindy and the kids were out of the house, correct? A Correct. Q And then you were the last person to leave the house and you locked all the doors. A Correct. Q Okay, and what was your plan for when you came back? A That I would enter the, the house and secure the marijuana, and then

they would come in the house. It was Q Okay. April 10, 2013 Evidentiary Hearing Transcript, Page 17, Lines 1 Through 25 and Page 18, Lines 1 Through 20.

After visiting Mr. Mazur's father, the Mazurs returned to their home, remarkably to find said home being raided by the police. Evidentiary Hearing Transcript ("Transcript"), Pages 75 and 84. During this unannounced raid, the Holly Police broke into the Mazur's locked garage<sup>1</sup> and breached the bolted and locked basement door (where the marijuana growing and harvesting activities occurred) which, in addition to being properly sequestered pursuant to the Act, was festooned with Mr. Mazur's official registration documentation from the State of Michigan Department of Licensing and Regulatory Affairs ("LARA").<sup>2</sup> Also furtherance of compliance with the Act, the harvest date of the marijuana plants was written on paraphernalia in the form of small pieces of paper folded and stapled to the stems of the plants. April 10, 2013 Evidentiary Hearing Transcript, Pages 22, Lines 7 Through 25 and Page 23, Lines 1 Through 15. Although there is no forensic evidence that Mrs. Mazur wrote harvest dates on said paraphernalia, the Prosecution alleges that her purported

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<sup>1</sup> For reasons that are presently unclear, some marijuana plants in a "wet state" were found under an automobile in the garage. April 10, 2013 Evidentiary Hearing Transcript, Pages 72-74.

<sup>2</sup> April 10, 2013 Evidentiary Hearing Transcript, Page 79, Lines 3 Through 25. Apparently, the police were unaware that the growing operation was a medical marijuana operation until reading this documentation. Id., Line 6.

writing was in derogation of compliance with the Act, which is completely nonsensical.<sup>3</sup>

Mrs. Mazur was interviewed by Holly Police Chief Michael Story during the unannounced raid on her home. It is noteworthy that neither Chief Story nor any other of the attending officers ever Mirandized Mrs. Mazur, although it is irrefutable that she was in custodial interrogation during the raid and the questioning. Nevertheless, the police utilized her obviously frightened, brief statements to them as somehow constituting admissions to the charged offenses. The police attached feigned significance to Mrs. Mazur's colloquial use of the pronoun "we" to describe activities in her home that she of course shared with her husband, even though Mrs. Mazur made it crystal clear that she did not help her husband grow, transfer, deliver, feed or otherwise care for or deal with the medical marijuana plants. April 10, 2013 Evidentiary Hearing Transcript, Page 50, Lines 1 Through 25, Page 51, Lines 1 Through 25, Page 53, Lines 1 Through 25 and Page 54, Lines 1 Through 5. Since there is no real evidence to pin her to the said operation, the People unfortunately resorted to a dubious semantic device of zero import (Mrs. Mazur's use of the pronoun "we") to vicariously assign liability

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<sup>3</sup> Assuming, *arguendo*, that Mrs. Mazur did, in fact, write harvest dates on pieces of paper with glue on one edge of them, (1) said papers qualify as "rolling papers" for marijuana cigarettes and are thus paraphernalia under the Act, and (2) said writing would be in furtherance of *compliance* with the Act, not violation of it, inasmuch as same would help accomplish weight and amount compliance.

to her for Mr. Mazur's purported violations of the Act.

Ultimately, the Prosecution also advanced a wholly unsupported argument in opposition to Mrs. Mazur's request for immunity that her husband's guilty plea to the same offenses on December 4, 2012,<sup>4</sup> somehow vitiates Mrs. Mazur's contention and right of immunity.<sup>5</sup>

For the following reasons, Defendant-Appellant, Cynthia Ann Mazur, respectfully requests that this Honorable Court reverse the decision and opinion of the Oakland County Circuit Court, the Honorable Colleen O'Brien, and grant her immunity from prosecution pursuant to either Section (4)g or (4) (i) of the Act, or, in the alternative, grant her an affirmative defense hearing pursuant to Section 8 of the Act.<sup>6</sup>

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<sup>4</sup> Mr. Mazur was faced with a veritable "Hobson's Choice," inasmuch as he was charged with two counts of felony firearm due to the unrelated presence of two handguns in the Mazur's home on the date of the surprise police raid. Transcript, Page 79. Interestingly, Mrs. Mazur was not similarly charged. Rather than face four years in prison, Mr. Mazur adopted the only sensible course of action in the face of such draconian punishment, and is presently on probation.

<sup>5</sup> Although Mr. Mazur pleaded guilty to violations of the Act, no actual proof that he in fact committed any violations was ever introduced into evidence.

<sup>6</sup> Mr. Mazur also had previously stored some medical marijuana plants at a storage facility in Livingston County in a basement in another part of a commercial strip mall where he ran a sandwich shop. Due to credit reasons, the strip mall manager refused to lease to Mr. Mazur, so Mrs. Mazur signed the lease. Other than that, she had no involvement with the store. In fact, the Prosecution appeared to be fishing for potential evidence for another case during its examination of Mr. Mazur. See, e.g., April 24, 2013 Evidentiary Hearing Transcript, Pages 10-20.

## **ARGUMENT**

### **I. Standard Of Review.**

The Court of Appeals reviews questions of law, such as statutory interpretation, de novo. People v Jones, 2013 Mich. App. LEXIS 1205 No. 312065), 2013 WL 344978 (decided July 9, 2013). The Court of Appeals reviews a trial court's findings of fact under the clearly erroneous standard. MCR 2.613(C). A ruling is clearly erroneous if the reviewing court is left with a definite and firm conviction that the trial court made a mistake. People v McQueen, 493 Mich 135 (2012).

### **II. The Michigan Medical Marihuana Act And The Michigan Drug Law Are Not In Pari Materia:**

The Court of Appeals erroneously determined that the "sticky notes" that Defendant-Appellant Mazur allegedly provided her husband were not "marihuana paraphernalia" and, therefore, that she did not qualify for immunity under §333.26424 of the Michigan Medical Marihuana Act. For the following reasons, Defendant-Appellant Mazur urges the Court to accept her Application for Leave to Appeal.

#### **A. The Michigan Medical Marihuana Act.**

The Michigan Medical Marihuana Act ("the 3M Act"), a 2008 law initiated by the people of the State of Michigan through a ballot proposal, is entitled:

AN INITIATION of Legislation to allow under state law the medical use of marihuana; to provide protections for the medical

use of marihuana; to provide for a system of registry identification cards for qualifying patients and primary caregivers; to impose a fee for registry application and renewal; to provide for the promulgation of rules; to provide for the administration of this act; to provide for enforcement of this act; to provide for affirmative defenses; and to provide for penalties for violations of this act.<sup>7</sup>

Accordingly, the purpose of the 3M Act is to allow the medical, healing properties of marihuana to be realized by the People of the State of Michigan pursuant to their collective will in a controlled manner. As such, **it is not a penal statute**. Moreover, it is not a part of the public health code.

§333.26424 of the 3M Act is entitled:

Qualifying patient or primary caregiver; **arrest, prosecution, or penalty prohibited**; conditions; **privilege from arrests**; presumption; compensation; physician subject to arrest, prosecution, or penalty prohibited; **marihuana paraphernalia**; **person in presence or vicinity of medical use of marihuana**; registry identification issued outside of department; sale of marihuana as felony; penalty. *Id.* (emphasis added).

Subsection 4 of §MCL 333.26424 is entitled "**Protections** for the **Medical Use** of Marihuana." *Id.* (emphasis added). It 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, **for providing a registered qualifying patient or a registered primary caregiver with marihuana paraphernalia for purposes of a qualifying patient's medical use of marihuana**. *Id.* (emphasis added).

Accordingly, the purpose of MCL §333.26424(4) is to grant broad immunity

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<sup>7</sup> History: 2008, Initiated Law 1, Eff. Dec. 4, 2008. "Initiated" means that the law originated from a ballot initiative.

from prosecution to persons assisting either registered qualifying patients or registered primary caregivers with such a patient's medical use of marihuana.

**1. Subsections (g) And (i) Of §333.26424(4) Are Not Mutually Exclusive.**

The Court of Appeals held that (g) of §333.26424(4) only protects the isolated act of providing paraphernalia to a medical marihuana patient, stating:

If a person provides a patient or caregiver with paraphernalia, it is only that isolated act of providing paraphernalia that cannot be penalized under MCL 333.26424(g), and not, as defendant by implication urges this Court to hold, all of the person's marihuana-related activity. April 1, 2014 Court of Appeals Opinion, Page 3.

Defendant-Appellant Mazur asserts that the two immunity provisions of the 3MA at issue here, §333.26424(g) and §333.26424(i), are not mutually exclusive and can be enjoyed *in seriatim*. §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 limited to civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau, **for providing a registered qualifying patient or a registered primary caregiver with marihuana paraphernalia for purposes of a qualifying patient's medical use of marihuana.** *Id.* (emphasis added).

§333.26424(g) thus provides immunity from prosecution to "[a] person," not merely to a caregiver, for the act of providing marihuana paraphernalia to either a registered qualifying patient *or* a registered primary caregiver. Defendant-Appellant Mazur asserts that she is entitled to this type of

immunity, due to her alleged writing of dates on "sticky notes." The Court of Appeals holding that such immunity excuses only marihuana paraphernalia provision

Meanwhile, §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 use<sup>8</sup> of marihuana in accordance with this act,<sup>9</sup> or for assisting a**

<sup>8</sup> The Court of Appeals ruling repeatedly features the term "marihuana use" in the colloquial manner or as defined in the Public Health Code, as opposed to the manner described in the 3M Act at §333.26423(f):

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

Since Defendant-Appellant Mazur is charged with manufacturing marihuana, and since manufacture is a component of the definition of "medical use," she is, by definition, "using marihuana," in addition to being a caregiver, as discussed in her §8 arguments, *infra*. Moreover, the alleged provision of "sticky notes" with harvest dates on them constitutes cultivation, which is also "medical use" under §333.26423(f).

<sup>9</sup> The Court of Appeals held that Defendant-Appellant Mazur could not enjoy this type of immunity due to her husband's convictions (Court of Appeals Opinion, Page 4), but said ruling fails to consider that said husband's medical marihuana activities could be in conformity with §333.26428 of the 3M Act, as opposed to §§4(i). Since Defendant-Appellant Mazur was deprived of her §8 hearing, no evidence that her husband's medical marihuana activities were in conformity with §8 was taken.

Query: if person "A" has a medical marihuana card that has expired by one day, would Person "B" lose §4(i) immunity for being in the vicinity of Person "A" while Person "A" uses marijuana, especially if Person "A" is nevertheless §8 compliant and Person "B" has no knowledge of Person "A"'s failure to renew? The People of the State of Michigan would not have intended such an absurd result.

**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” the use or administration of marihuana immunity. The Court of Appeals holding does not account for the sequential deployment of §§(g) and (i) immunity, as here.<sup>10</sup>

**B. The Michigan Public Health Code.**

In contrast, the Michigan Public Health Code, Act 368 of 1978, is a 1978 legislative act that has broad application to a wide ranging of public health issues. Its Preamble states, in relevant part, as follows:<sup>11</sup>

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<sup>10</sup> By analogy, batteries can be wired “parallel” or “in series.” While the providing of marihuana paraphernalia cannot theoretically occur in simultaneity with merely (only) being in the vicinity of the medical use of marihuana, it is likely that the usual practice features the former followed by the latter.

<sup>11</sup> The entire Preamble states:

AN ACT to protect and promote the public health; to codify, revise, consolidate, classify, and add to the laws relating to public health; to provide for the prevention and control of diseases and disabilities; to provide for the classification, administration, regulation, financing, and maintenance of personal, environmental, and other health services and activities; to create or continue, and prescribe the powers and duties of, departments, boards, commissions, councils, committees, task forces, and other agencies; to prescribe the powers and duties of governmental entities and officials; to regulate occupations, facilities, and agencies affecting the public health; to regulate health maintenance organizations and certain third party administrators and insurers; to provide for the imposition of a regulatory fee; to provide for the levy of taxes against certain health facilities or agencies; to promote the efficient and economical delivery of health care services, to provide for the appropriate utilization of health care facilities and services, and to provide for the closure of hospitals or consolidation of hospitals or services; to provide for the collection and use of data and information; to provide for the transfer of property; to provide certain immunity from liability; to regulate and prohibit the sale and offering

AN ACT... to regulate and prohibit **the sale and offering for sale** of drug paraphernalia under certain circumstances[]... Id. (emphasis added).

Accordingly, the clear purpose of the Public Health Code concerning drug paraphernalia deals exclusively with the **sale** of such items, which is unrelated to the issues in the case at bar. Therefore, the Court of Appeals Opinion is clearly erroneous and, as such, will cause a material injustice to Defendant-Appellant Mazur.

MCL §333.7451 of the Public Health Code defines a nonexclusive list of items of "drug paraphernalia." The Court of Appeals Opinion notes that these items are all "specifically designed" for use, in one way or another, with drugs. The obvious reason for this designation is to prohibit or regulate the sale of only those items that have no purpose other than their use involving the proscribed drugs. Furthermore, there is no corresponding provision in the Public Health Code regarding the provision of such items to drug users. Likewise, and for obvious reasons, there is no corresponding provision regarding "caregivers."

The Michigan Court of Appeals in Gauthier v Alpena County Prosecutor, 267 Mich App 167, 703 N.W.2d 818 (2005) specifically determined that several items commonly used to ingest marijuana, specifically, pipes, bongs

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for sale of drug paraphernalia under certain circumstances; to provide for the implementation of federal law; to provide for penalties and remedies; to provide for sanctions for violations of this act and local ordinances; to provide for an appropriation and supplements; to repeal certain acts and parts of acts; to repeal certain parts of this act; and to repeal certain parts of this act on specific dates. Id.

and dugouts, do not constitute "drug paraphernalia"<sup>12</sup> under the Michigan Public Health Code.<sup>13</sup> The Gauthier Court specifically held that under the plain language of MCL §333.7457(d), pipes, bongs, and dug-outs offered for

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<sup>12</sup> MCL §333.7451 defines "drug paraphernalia" as:

...any equipment, product, material, or combination of equipment, products, or materials, which is specifically designed for use in planting; propagating; cultivating; growing; harvesting; manufacturing; compounding; converting; producing; processing; preparing; testing; analyzing; packaging; repackaging; storing; containing; concealing; injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance; including, but not limited to, all of the following:

\* \* \*

(c) A weight scale or balance specifically designed for use in weighing or measuring a controlled substance.

\* \* \*

(f) An object specifically designed for use in ingesting, inhaling, or otherwise introducing marihuana, cocaine, hashish, or hashish oil into the human body.

\* \* \*

(i) A device, commonly known as a cocaine kit, that is specifically designed for use in ingesting, inhaling, or otherwise introducing controlled substances into the human body, and which consists of at least a razor blade and a mirror.

(j) A device, commonly known as a bullet, that is specifically designed to deliver a measured amount of controlled substances to the user.

(k) A device, commonly known as a snorter, that is specifically designed to carry a small amount of controlled substances to the user's nose.

\* \* \*

(m) A spoon, with or without a chain attached, that has a small diameter bowl and that is specifically designed for use in ingesting, inhaling, or otherwise introducing controlled substances into the human body. Id.

<sup>13</sup> MCL §333.7453 prohibits the sale of "drug paraphernalia." A person who is convicted of selling "drug paraphernalia" under §333.7453 is guilty of a misdemeanor. See MCL §333.7455.

sale at a business are exempt from the definition of "drug paraphernalia."<sup>14</sup> It is important that this holding was related to the sale of the objects before use. If a pipe had already been used to smoke marijuana it would undoubtedly be considered marijuana paraphernalia for the charge of possession of drug paraphernalia. Applying this idea to the case at bar, the sticky notes may not have been paraphernalia when sitting on the table but became paraphernalia once used for the cultivation or manufacture of marijuana.

Accordingly, arguably the items most commonly employed in the use of medical marijuana – pipes and bongs – are outside of the definition (due to exemption) of "drug paraphernalia" found in the Michigan Public Health Code. Therefore, whether or not the "sticky notes" allegedly utilized by Defendant-Appellant Mazur in the case at bar constitute "drug paraphernalia" under the Michigan Public Health Code<sup>15</sup> is irrelevant. Moreover, the Court of Appeals' Opinion in the case at bar conflicts with Gauthier, because under Gauthier, (a) even "rolling papers"<sup>16</sup> (e.g., "Zig Zags," which are the quintessential "marijuana paraphernalia"), which are

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<sup>14</sup> MCL §333.7457(d) provides that "[e]quipment, a product, or material which may be used in the preparation or smoking of tobacco or smoking herbs other than a controlled substance" is exempt from the definition of "drug paraphernalia." Id. (emphasis added.)

<sup>15</sup> Regardless of whether the reason is exemption or possible or likely alternative, non-drug (e.g., tobacco) use. See Gauthier, *supra*, at 171-75.

<sup>16</sup> The "sticky notes" at issue in the case at bar are essentially "rolling papers" and can be used as such.

considered exempt due to their dual purpose (they can be used to smoke marihuana or tobacco) yet would not assist a person to qualify for MCL §333.26424(g) immunity, which is absurd. If a "rolling paper" is not "marihuana paraphernalia," then what is? Moreover, given Gauthier's explicit holding that bongos and pipes<sup>17</sup> are **not** "drug paraphernalia" under the Public Health Code [at MCL 333.7457(d)], *there is essentially no such thing as "marijuana paraphernalia"* under the Court of Appeals opinion, thereby nullifying §MCL 333.26424(g) and rendering it completely meaningless. The Supreme Court should accept Defendant-Appellant Mazur's Application and reverse the Court of Appeals on this basis alone.

As fully demonstrated above, the Michigan Medical Marihuana Act and the Michigan Public Health Code relate to different subjects<sup>18</sup> and have

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<sup>17</sup> Gauthier held:

Historical uses dictate that such items as a bong, a dugout, and a cocaine bullet are "specifically designed" to introduce a controlled substance into the human body. Notwithstanding the fact that the pipes, bongos, and dugouts are "specifically designed" to introduce a controlled substance into the human body, however, we note that such items "may be used in the preparation or smoking of tobacco or smoking herbs other than a controlled substance," and therefore are exempt from the definition of "drug paraphernalia" under MCL 333.7457(d). Id. at 171-172.

<sup>18</sup> The subjects of the Michigan Public Health Code are many different aspects of public health, including, but not limited to, the prevention and control of diseases and disabilities, the regulation of health maintenance organizations, the promotion of the efficient and economical delivery of health care services, and the regulation and prohibition of the sale and offering for sale of drug paraphernalia. As applied to illegal drugs, it is a penal statute and is subject to the rules for the construction and interpretation of penal statutes. In contrast, the subjects of the Michigan Medical Marihuana Act are the medical use of marihuana and the people who function as caregivers to medical patients under the Act.

different purposes.<sup>19</sup> Accordingly, the Court of Appeals Opinion holding that these two very different statutes are *in pari materia*<sup>20</sup> is clearly erroneous and will cause a material injustice to Defendant-Appellant Mazur if upheld.

### C. Statutory Interpretation is Unnecessary.

The Court of Appeals Opinion relies on People v Shakur, 280 Mich.

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Shakur further provides:

Statutes relate to the same **subject** if they relate to the **same person or thing** or the same class of persons or things. The object of the *in pari materia* rule is to **give effect to the legislative intent** expressed in **harmonious statutes**. If statutes lend themselves to a construction that avoids conflict, that construction should control. Shakur, supra, at 209-210 (emphasis added).

With respect to the Michigan Medical Marihuana Act, it originated as a ballot initiative and, as such, expresses the will of the People of the State of Michigan. Accordingly, the *in pari materia* rule cannot logically apply to such an Act. Moreover, the two Acts in questions relate to two different things (broad ranging public health issues versus limited medical marihuana issues) and two different classes of persons (everybody versus medical marihuana patients and caregivers).

<sup>19</sup> The purpose of the Michigan Public Health Code is "to protect and promote public health," as stated in its Preamble. In contrast, the purpose of the Medical Marihuana Act is to realize the will of the People of the State of Michigan, to decriminalize the medical use of Marihuana, and to offer protections to the people who function as caregivers to medical patients under the Act.

<sup>20</sup> The Court of Appeals, *quoting* People v Shakur, 280 Mich App 203, 209; 760 N.W.2d 272 (2008) (internal citation and quotation marks omitted), held that "[s]tatutes that relate to the same subject or that share a common purpose are *in pari materia* and must be read together as one law, even if they contain no reference to one another and were enacted on different dates." Defendant-Appellant Mazur respectfully submits that the Court of Appeals holding suffers from the faulty major premise the two Acts at issue share the same subject or a common purpose and, as such, is clearly erroneous. Defendant-Appellant Mazur further submits that the Court of Appeals Opinion will work a manifest injustice upon her if upheld, because she is not and has never been involved in the sale or offering for sale of drug paraphernalia, and should not be punished for doing so.

App. 203, 760 N.W.2d 272 (2008),<sup>21</sup> for its invocation of the doctrine of *in pari material*. In doing so, the Court of Appeals decided to *read material into a statute that was not there* (by importing the definition of “drug paraphernalia” set forth and found in the Michigan Public Health Code into the Michigan Medical Marihuana Act). However, **Shakur** itself deems this practice impermissible:

When interpreting a statute, we rely on its plain language and are **precluded from “read[ing] into a statute language that was not placed there by the Legislature.”** *Id.* at 210 (emphasis added).

Another principle of statutory construction is to avoid conflict, which is impossible if the definition of “drug paraphernalia” from the Michigan Public Health Code is imported into the Michigan Medical Marihuana Act.<sup>22</sup>

### **III. The Court of Appeals Erroneously Determined that Defendant Procedurally Defaulted or Waived Her Right to an Evidentiary Hearing on Her Affirmative Defenses Under Section 8 of the Act.**

The Court of Appeals committed reversible error by determining that Defendant-Appellant Mazur procedurally defaulted, or waived, her right to an evidentiary hearing on her affirmative defenses under MCL §333.26428.<sup>23</sup>

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<sup>21</sup> *Shakur* (August 14, 2008) ever so slightly predates the implementation of the Michigan Medical Marihuana Act (December 4, 2008). Accordingly, *Shakur* did not comprehend the 3M Act’s definition of “medical use” of marihuana.

<sup>22</sup> *Shakur* held: “[i]f statutes lend themselves to a construction that avoids conflict, that construction should control.” *Id.* at 209-210.

<sup>23</sup> MCL §333.26428 provides:

8. Affirmative Defense and Dismissal for Medical Marihuana.

In a colloquy with counsel, the Circuit Court transcript reveals that the

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Sec. 8. (a) Except as provided in section 7(b), a patient **and a patient's primary caregiver**, if any, may assert the medical purpose for using marihuana as a defense to any prosecution involving marihuana, and this defense shall be presumed valid where the evidence shows that:

(1) 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 marihuana to treat or alleviate the patient's serious or debilitating medical condition or symptoms of the patient's serious or debilitating medical condition;

(2) The 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; and

(3) The patient **and the patient's primary caregiver**, if any, were engaged in the acquisition, possession, cultivation, manufacture, use, delivery, transfer, or transportation of marihuana or paraphernalia relating to the use of marihuana to treat or alleviate the patient's serious or debilitating medical condition or symptoms of the patient's serious or debilitating medical condition.

(b) A person may assert the medical purpose for using marihuana 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).

(c) If a patient **or a patient's primary caregiver** demonstrates the patient's medical purpose for using marihuana pursuant to this section, the patient **and the patient's primary caregiver** shall not be subject to the following for the patient's medical use of marihuana:

(1) disciplinary action by a business or occupational or professional licensing board or bureau; or

(2) forfeiture of any interest in or right to property. *Id.* (emphasis added).

prosecutor was unsure how to proceed with both a Section 4 immunity hearing (MCL §333.26424) and a Section 8 affirmative defense hearing (MCL §333.26428), stating to the Court that she had never conducted the former type of hearing. Because of the complexity of such a hearing, defense counsel agreed that it would be conducted first, and that, if successful (*i.e.*, if immunity were found), the Section 8 hearing (for affirmative defenses, after liability was found) would be moot. The following colloquy took place:

MS. O'BRIEN: Judge, today's the date for our hearing under section four of the Michigan Medical Marijuana Act. The Court will recall that Defendant had filed some motions under section four, a separate one under section eight, and then a separate one with regard to suppression of some evidence. The Court's already ruled on the evidence suppression motion, and denied that, so, following that court order, counsel and I spoke and agreed we'd go forward under the Defendant's claim that she's immune from prosecution under section four, and that the Court would hold Defendant's motion regarding section eight in abeyance because the results of this hearing might be dispositive on that motion. Did I say that right?

MR. RUDOI: I would -- yes, I agree.

MS. O'BRIEN: And then Mr. Rudoi and I had also discussed the advisability of maybe a brief opening statement being made to the Court just so the Court can have a framework. We've never had a section four hearing before. I haven't. A lot of section eight hearings, many of them before this Court, but section four hearing kind of a new thing to me, so I had asked that, and he agreed.

THE COURT: All right, okay, you can proceed. April 10, 2013 Evidentiary Hearing Transcript, Page 3, Lines 16 Through 25 and Page 4, Lines 1 Through 13.

The first part of the exchange merely reveals that defense counsel agree to hold the Section 8 hearing *in abeyance*. *Id.* "Abeyance" means

"the condition of being **temporarily** set aside; suspension." The Free Dictionary.com (emphasis added). There are several reasons why defense counsel's agreement to hold the Section 8 hearing in abeyance did not constitute a waiver of Defendant-Appellant's right to have that hearing. First, the statement by defense counsel is not phrased as a waiver. Second, the word "waiver" is absent from the statement. Third, the Court did not rule that the evidence taken in the Section 4 hearing would apply to the Section 8 hearing. Fourth, the Court did not rule that the Section 4 and Section 8 hearings would be combined. Fifth, in the immediate aftermath of the Section 4 hearing, the Court entertained the introduction of evidence and the presentation of argument concerning matters associated with the Section 4 hearing (immunity), rather than those associated with the Section 8 hearing (affirmative defenses). This Court has applied a similar analysis with respect to counsel's failure to object to the use of video equipment, finding a waiver of the right to object. People v Buie, 491 Mich 294, 817 N.W.2d 33 (2012). Application of the Buie analysis to the facts presented in the case at bar yields the conclusion that defense counsel only agreed to **temporarily** set aside the right to conduct a Section 8 hearing, not the permanent waiver of that right. A common sense reading of the statement of defense counsel yields the same result – that the right was only temporarily relinquished and could be reclaimed if the Defendant lost (as was the case) the Section 4 hearing. Accordingly, Defendant-Appellant did

not waive her right to an affirmative defense hearing under Section 8 or commit self-inflicted error through procedural default.

The second part of the above exchange – the part omitted by the Court of Appeals – makes clear that both counsels agreed **that there would be two separate hearings, not that they would be combined or that evidence taking during the first of them would prohibit evidence taking during the second of them.**<sup>24</sup> The Court of Appeals ruled that this constituted a waiver, or “procedural default” by Defendant-Appellant Mazur

<sup>24</sup> The required proofs for §8 and §4 are completely different. As the Court in People v Kolanek, 491 Mich 382, 817 N.W.2d 528 (2012) held:

Under the Court of Appeals' construction, which the prosecution urges that we adopt, the phrase "in accordance with the provisions of this act" in §7(a) requires a defendant to satisfy all the requirements of §4 in order to establish the §8 affirmative defense. Principles of statutory construction, however, do not support this conclusion. Nowhere does §8 state that a defendant must also establish the requirements of §4 in order to present a valid affirmative defense under §8. Precisely because such a requirement is lacking, assertion of the §8 defense without establishment of the §4 requirements is "in accordance with the provisions of [the MMMA]."

The textual distinctions among §§4, 7(a), and 8 provide further support for our interpretation that the plain language of §8 does not require compliance with the requirements of §4. **Sections 4 and 8 provide separate and distinct protections and require different showings**, while §7(a), by its plain terms, does not incorporate §4 into §8. Both §§4 and 7(a) refer to the "medical use" of marijuana, which the MMMA specifically defines as the use of marijuana "to treat or alleviate a *registered qualifying patient's* debilitating medical condition or symptoms associated with the debilitating medical condition." Comparatively, §8 refers primarily to the "medical purpose" of marijuana and refers only to "patients," not "registered qualifying patient[s]." Thus, §§4 and 7(a) have no bearing on the requirements of §8, **and the requirements of §4 cannot logically be imported into the requirements of §8** by means of §7(a).

Id. at 400-402 (emphasis added).

of her right to a Section 8 affirmative defense evidentiary hearing. The Court of Appeals held:

**This exchange placed defendant on notice that the trial court's ruling on her motions under both MCL 333.26424 and MCL 333.26428 would rely on the evidence introduced at the initial hearing, and defense counsel agreed with the procedure.**<sup>25</sup> See *People v Griffin*, 235 Mich App 27, 46; 597 NW2d 176 (1999), overruled in part on other grounds by *People v Thompson*, 477 Mich 146; 730 NW2d 708 (2007) (discussing waiver).<sup>26</sup> Defendant was afforded an adequate opportunity to introduce evidence concerning her motions to dismiss under the immunity and affirmative-defense sections of the MMA, and the trial court did not err in finding that she was not immune from prosecution or entitled to use the affirmative defense. April 1, 2014 Court of Appeals Opinion and Order, Page 7(emphasis added).

The Court of Appeals thus effectively determined that Defendant-Appellant Mazur had, through counsel, procedurally waived (or "defaulted") her right to a Section 8 evidentiary hearing.<sup>27</sup> In so doing, the Court of Appeals misconstrued defense counsel's professional courtesy that he agreed that the **results** of the Section 4 hearing might be dispositive of the Section 8 hearing. Nevertheless, it is palpable that defense counsel merely

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<sup>25</sup> There is nothing in the record to suggest either that Defendant-Appellant was placed on such notice or that defense counsel agreed with such a procedure, only that a successful Section 4 hearing would moot a Section 8 hearing.

<sup>26</sup> *Griffin* stands for the proposition that self-induced error is not preserved for appellate review. The *Griffin* Court stated:

Because error requiring reversal cannot be error to which the aggrieved party contributed by plan or negligence, defendant has waived appellate review of this issue. *Griffin, supra*, at 45-46.

<sup>27</sup> Or alternatively, that the two hearings were combined for evidence taking purposes.

acknowledged the legal and logical truism that a successful Section 4 hearing would moot a Section 8 hearing, inasmuch as the latter concerns an affirmative defense, which is applicable only after a finding of culpability and is irrelevant absent same. Defendant-Appellant Mazur and her counsel adamantly deny that any waiver or procedural default occurred. The Court of Appeals finding to the contrary is clearly erroneous and will cause a material injustice to Defendant-Appellant Mazur, who will be forced to go to trial and suffer the expense and trauma attendant therewith, when a simple evidentiary hearing might well be dispositive, at a significant cost savings to both Defendant-Appellant and the People of the State of Michigan.

**IV. Adoption by the Circuit Court of the Prosecution's Misleading or Mischaracterized Version of the Facts Elicited at the Evidentiary Hearing Constitutes Reversible Error.**

Because there was no actual evidence to associate Mrs. Mazur to any criminal activity, the Prosecution attempted to "bootstrap" key testimony from the evidentiary hearing regarding her husband's medical marijuana activities. Unfortunately, this key testimony was distorted by the Prosecution and ultimately adopted by the Circuit Court in its Findings of Fact in its June 13, 2013 Opinion and Order. These erroneous Findings of Fact include, but are not limited to, the following matters, described in the following subsections by reference to the actual transcripts and the Prosecution's incorrect version of the actual facts.

**A. The Door To The Basement Growing Facility Was Locked.**

The Circuit Court erred in its Finding of Fact regarding the lock on the basement door that secured the growing facility. As noted *supra*, Mr. Mazur hurriedly bolted the basement door on the way to an emergency visit to his dying father. Cf. People's Brief, Page 3 ("[t]he basement was entered by removing a pin from a bolt and entering the door..."), with April 10, 2013 Evidentiary Hearing Transcript ("4-10-13 Transcript"), Page 69, Lines 18 Through 22: ("Oh, it was, it was closed and it had a latch on the top that was a, a -- it's kind of hard to describe. It folds over and then there's a mechanism that you turn and it has a hole in it, and then a **bolt<sup>28</sup> was pushed down into that mechanism...**)(emphasis added).

The Evidentiary Hearing Transcript proves that, despite dreadful circumstances (his father's near death), Mr. Mazur had the presence of mind and careful attention to statutory compliance to lock the basement door to the growing facility. Accordingly, the Circuit Court erred by finding otherwise.

**B. The Pedestrian Garage Door Was Locked But Battered Down By the Police During Their Unannounced Raid.**

The Circuit Court erroneously found that the pedestrian door to the

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<sup>28</sup> The Court erroneously adopted the Prosecution's characterization of the basement door locking mechanism as lacking a bolt or not being bolted, which is untrue, according to the actual testimony. The Court stated in its Opinion and Order: "Detective Bensus (sic) testified there was a door in the kitchen which led to the basement. It was closed and had some kind of latch on the top. There was a latch, **but it was not bolted**". *Id.*, Page 10 (emphasis added). Cf. 4-10-13 Transcript, Page 69, Lines 18 Through 22, *supra*. This erroneous adoption by the Circuit Court of the Prosecution's version of the testimony is **diametrically opposed** to the actual hearing testimony and constitutes reversible error.

garage to the Mazur's home was unlocked. In fact, the police battered down the said door, which was, in fact, locked, during their raid. Nevertheless, the Circuit Court found:

Detective Bemus explained that there was a door between the house and the attached garage. Other officers had entered the garage before her. She testified it couldn't have been a locked door because her officers were able to gain entry without breaking the door. She didn't exactly notice what kind of lock on the door. She doesn't recall seeing any additional locking apparatus on the door besides what might have been around a handle. Opinion and Order, Pages 8 Through 9.<sup>29</sup>

This finding is diametrically opposed to the actual facts – that the police officers used a battering ram to obliterate the door knob and locking mechanism.

**C. The Weight Of The Medical Marijuana In The Garage Was Overstated.**

The Circuit Court also erred by finding that the weight of the medical marijuana that was found in the garage was 6.99 pounds. The said marijuana was not officially weighed and was in a wet state with stems and stalks still attached (adopting characterization in People's Brief, Page 3, Opinion and Order, Page 9). While not dispositive, this overstatement constitutes reversible error.

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<sup>29</sup> Cf. People's Brief, Page 3 ("[t]he attached garage area was reached through an unlocked door") with 4-10-13 Transcript, Page 18, Lines 20 Through 25 and Page 19, Lines 1 Through 3: ("Q Okay. Also, was there marijuana somewhere else in the house on the day in question? A In my garage. Q Okay. A There was marijuana drying. Q And you -- so you had marijuana drying in the garage. Was the garage locked? A I believe so. **They used a battering ram to knock the, you know, the knob off the door[]**") (emphasis added).

**D. Mrs. Mazur's Colloquial Use Of The Pronoun "We" To Describe Her Husband's Medical Marijuana Activities Was Innocent, Rather Than Illustrative Of Aiding And Abetting Her Husband In Criminal Activity.**

The primary reason that the Circuit Court denied Mrs. Mazur immunity appears to be its erroneous Finding of Fact regarding her conjunctive use of the pronoun "we"<sup>30</sup> and ascribing criminal meaning<sup>31</sup> to a common domestic

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<sup>30</sup> Mrs. Mazur **vehemently** denied any statement that involved herself regarding Mr. Mazur's growing operation or its end-user patients. She testified:

Q And how did you respond? A And I had told him that we weren't doing anything wrong here, didn't you get the paperwork, because there was paperwork in the door jamb of the basement. And the only reason I say that is because I hated that envelope. 4-10-13 Transcript, Page 50, Lines 4 Through 8.

Mrs. Mazur continued:

Q Okay. Are you sure that's exactly what you said? A I do. Q Okay, so I, I just would like you to repeat that one time for the Court, exactly what you believe that you said when, when Sergeant Story asked were you -- or do you know why we're here or something like that. A That's what he said, do you know why we're here. I said we weren't doing anything wrong, didn't you get the paperwork? Id., Lines 15 Through 22.

It is especially noteworthy that Mrs. Mazur did **not** refer to the "paperwork" as "our" paperwork. It should also be remembered that this lady was probably scared out of her wits, just having returned from visiting a sick relative to encounter a police raid on her longtime home that featured **the officers actually drawing their firearms on her and her family.** Opinion and Order, Page 7.

Her testimony on this point concluded with a resounding assurance that she did **not** have anything to do with Mr. Mazur's medical marijuana operation, and that she did **not** say that she was dispensing any marijuana to patients:

Okay. I just want to make this clear. At no time did you state we were dispensing medicine to our patients, is that correct, to your -- to the best of your knowledge. A Absolutely. I didn't -- we weren't -- I wasn't dispensing or had any pa -- I didn't have any patients and I didn't have any -- I didn't dispense anything. Q So you wouldn't

reference<sup>32</sup> stated in support of *following* the law, and not in the pursuit of *breaking it*. The Circuit Court specifically found:

Chief Story testified that he asked Defendant if she was aware as to what was happening. Chief Story recalls that Defendant stated "We were following the law by providing medication to people who need it." He specifically recalls that she used the word "we" more than once in their conversation including "we were providing it" and "we were dispensing medication to people that needed it." Opinion and Order, Pages 10 Through 11.

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have said that because it's, it's not true. 12 A No. Id., Page 52, Lines 5 Through 13.

However, the Circuit Court, in its Opinion and Order, stated:

Recall that Defendant testified that she and her husband referred to the medical marijuana as "medicine." The evidence also shows that Defendant made statements that "we" [Defendant and her husband] were providing medication to people who needed it and dispensing medication to people that needed it. Id., Page 13.

Accordingly, the Circuit Court erroneously adopted the Prosecution's distorted slant on Mrs. Mazur's testimony on this critical issue, which appears to be dispositive as to the Circuit Court's denial of immunity. Accordingly, this error alone is sufficient for reversal on appeal.

<sup>31</sup> ***Even if*** Mrs. Mazur made the alleged statements using the word "we" and actually meant that she was actively involved in Mr. Mazur's medical marijuana activities, those alleged statements (which she vehemently denies making) demonstrate ***compliance*** with the Act rather than violation of it, regardless of Mr. Mazur's plea and regardless of whether the provision was to Mr. Mazur, who was, at all times relevant hereto, a registered qualifying patient. When viewed in this context, the word "we" means that the Mazurs were "assisting a registered qualifying patient [Mr. Mazur] with using or administering marijuana," which, by definition, is a "person that needs it." Query: is it not possible that a registered caregiver ***or*** a qualifying patient might use medical marijuana, or administer it to themselves? If so, then cannot another person assist such a person, thereby gaining immunity pursuant to Section 4(i)? This is the position in which Mrs. Mazur finds herself.

<sup>32</sup> Longtime married couples, such as the Mazurs, frequently refer to each one of them collectively and not singularly. So common is this usage that a current Pandora radio ad makes fun of it, featuring one chameleon "spouse" objecting to the other's use of "we" to describe their changing paint color preference.

Cf. People's Brief, Page 3 ("She used the word "we" multiple times to refer to responsibility for the marijuana operation ... and that a suspect's use of the word "we" **when referring to suspected criminal activity** was significant, and that such a word choice was something that [Chief Story] attended to specifically when interviewing the Defendant") (emphasis added) with 4-10-13 Transcript, Page 86, Lines 6 Through 8 ("basically, what she told me was that they -- we were following the law in providing medication to people that needed it") and Lines 11 Through 13: ("[t]here, there were other references made, you know. For a direct quote or anything like that, you know, I, I don't recall directly, just what we talked about was very short and every time we, we spoke of -- Ms. Mazur and I...") (testimony of Chief Story);<sup>33</sup>

The Circuit Court's error regarding this crucial testimony is, in and of itself, grounds for reversal by this Court.

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<sup>33</sup> The Circuit Court, in its Opinion and Order, stated:

Chief Story recalls that Defendant stated "We were following the law by providing medication to people who need it." **He specifically recalls that she used the word "we" more than once in their conversation** including **"we were providing it"** and **"we were dispensing medication to people that needed it."** Although he did not take notes during the interview, he dictated his police report when he arrived back at the station two hours later. Id., Pages 10 Through 11.

Once again, the Circuit Court adopted the Prosecution's distorted version of the actual testimony, thus requiring reversal on appeal. Nevertheless, The Court of Appeals ruling that Mrs. Mazur is not a caregiver or user under the 3M Act is mutually exclusive of a finding that she aided and abetted her husband.

**E. The Circuit Court Made Multiple Erroneous Findings Of Fact Regarding An Unrelated Sandwich Shop Lease For A Restaurant Operated By Mr. Mazur.**

During the evidentiary hearing, the Prosecutor appeared to be on a "fishing expedition," attempting to dredge up evidence for an additional prosecution regarding a strip mall sandwich shop owned and operated by Mr. Mazur. The actual testimony disclosed that Mrs. Mazur's sole involvement in her husband's sandwich shop activities regarded the signing of the lease for the premises. Apparently, the shopping center landlord did not want to lease the premises to Mr. Mazur for financial or credit reasons. Mr. Mazur apparently stored some medical marijuana in the basement of another part of the strip mall, to which Mrs. Mazur did not have access.

For example, *compare* People's Brief, Page 5 ("David Mazur further admitted growing marijuana on the premises of a commercial building in Oakland County, in which the Defendant had signed a lease for him to run a sandwich shop") with April 10, 2013 Transcript, Page 34, Lines 8 Through 19 (testimony of Mr. Mazur):

Okay, and would you agree you did not sign the lease. A Correct, he<sup>34</sup> wanted my wife to sign it. Q Okay, and do you recall growing marijuana in the basement of that address as well? A No. There -- no. Q Did you maintain marijuana in that basement of that address? A There was no basement to that address. Q Did you maintain marijuana at that address at all? A When you say address, if you -- are you talking about the four walls that we leased as our sandwich shop, 'cuz there was no access to a basement.

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<sup>34</sup> "He" refers to the premises' landlord or commercial leasing agent.

Additionally, compare People's Brief, Page 5 ("She admitted signing a lease for David Mazur to open a sandwich shop in a commercial strip mall, and that she knew David Mazur was using space in that building for his "marijuana-related activities" during the time of that lease") with April 10, 2013 Transcript, Pages 44, Lines 4 Through 8 (testimony of Mrs. Mazur):

Did you have a ownership stake in that business? A None. Q Okay, and did you sign that lease just so your husband could, could secure a space for that business? A Yeah"), Id., Lines 14 Through 18 ("Okay, was -- to your knowledge, was marijuana ever -- any marijuana ever contained inside of that business that you leased? A Not inside the store, not -- there was no marijuana ever in the place where our sandwich shop was"), Id., Page 45, Lines 22 Through 25 and Page 46, Lines 1 Through 20 ("That was a deal, I think, I believe that Dave cut with the landlord that he could use that space for storage of his things. But it's, it's nowhere expressly in the lease that you're allowed to access that basement. A No. Q And nowhere in the leased premises that you signed a lease for was there access to that basement. A No, I didn't even get a key for that basement. Q Okay. A The only key I got was the key to the unit that we rented that had the sandwich shop in it. Q Okay, and when you worked at that sandwich shop was Dave using that storage facility for any marijuana-related activities at any point that you worked there? A I think he was. Q You think he was, okay. Did you ever help out with any of those activities? A No. Q Did you ever enter that basement A No. Q Did you ever do anything at that address in -- with any relation to medical marijuana? A No, I didn't -- no") and Id., Lines 24 Through 25 and Page 47, Lines 1 Through 9 ("You never had any marijuana, to your knowledge, in that sandwich shop, is that correct? No. Q Okay. And, and just to be clear, I don't, I don't remember if I asked this, but you had absolutely no ownership stake in that shop, is that correct? A That business was his own business. My name was not on that business. Q Okay, so really you were just doing a husband a favor in securing the lease for him. A I did").

Clearly, the "side deal" that Mr. Mazur apparently made with the

shopping center landlord was wholly unrelated to the sandwich shop lease, inasmuch as Mr. Mazur was *not* a tenant of the premises (regarding either the sandwich shop or the basement storage facility).

**F. Mrs. Mazur's Alleged Writing Of Dates On Sticky Notes Constitutes Neither The Commission Of A Crime Nor The Aiding And Abetting Of One.**

In addition to her inadvertent use of the pronoun "we" to describe her husband's medical marijuana growing operation (as more fully set forth, *supra*), Mrs. Mazur's alleged writing down of plant harvest dates on small, square pieces of paper with glue on one edge ("sticky notes")<sup>35</sup> appears to be the main reason that the Circuit Court denied her immunity.

The evidentiary hearing testimony clearly shows that Mr. Mazur requested (due to sticky hands) that Mrs. Mazur write down two dates on small pieces of paper so that he could *comply* with the statute (regarding the amount of medical marijuana that he could possess). Unfortunately, the Prosecution viewed this activity as somehow being created by Mrs. Mazur herself and in furtherance of *criminal activity*. Mr. Mazur testified on this issue at the evidentiary hearing, as follows:

Okay. Did Cindy ever help you do anything in relation to the marijuana, did she help you move marijuana, did you ever ask her to do that for 'ya? A No. I do recall her writing on some sticky notes for me because my hands were sticky. I was chopping some plants down. Q Well, let's go, let's go into that

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<sup>35</sup> The small pieces of paper were the approximate size and shape of "rolling papers" (e.g., "Zig Zag" brand) and could be rolled with medical marijuana to make a "joint." Accordingly, they constitute paraphernalia.

a little more. Let me know exactly what happened in relation to those sticky notes. A I came up from the basement. My hands -- I had cut down a medical marijuana plant. My hands were sticky. Cindy was sitting at the kitchen table. I asked her how I could date these things because marijuana, under the statute, if it was unusable, you were allowed more of it. As it became usable you'd required (sic) less. It was my understanding that once if it was cut down and it wasn't dried, it wasn't considered usable, so I wanted to document that, the date that it was cut down, what patient it was for, and, and when it would be usable, **so I asked her to write that on some sticky notes.** April 10, 2013 Evidentiary Hearing Transcript, Page 16, Lines 1 Through 20 (emphasis added).

It is irrefutable that Mr. Mazur told his wife what to write on the "sticky notes," and that she was "merely a scrivener," rather than the "mastermind" behind the dating scheme, as advanced by the Prosecution:

**"Okay, so did you tell her what to write on the notes? A Yes. Q What did you tell her to write? A I told her to write the date of harvest -- Q Okay")** Id., Page 23, Lines 3 Through 7 (emphasis added).<sup>36</sup>

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<sup>36</sup> Mr. Mazur was further question by the Prosecutor on cross examination on this point:

MS. O'BRIEN: Okay, and the sticky notes that you were talkin' about -- Judge, may I approach the witness?

THE COURT: Yes.

BY MS. O'BRIEN: Q Sir, I wanna' show you a picture and ask if this is the note that you were talkin' about or one of the kinds of notes you were talkin' about that Cindy had to write for you? A Yes. Q And that's a note that just says, "DOH," and a date on there, March 7, 2012, right? A Correct. Q And then it has the word, "useable on 4/14/12," does that sound right? A Uh-hmm. Q And then, also, written out, "date of harvest 3/7/12." A Correct. Q Is that right, that -- that's the note? Okay, and you had stated on direct she wrote those on sticky notes for you because your hands were messy, right? A Correct. Q And you had testified that you needed her to write that in -- information on notes so that you would know when the marijuana had been harvested, is that correct? A Correct. **Q Okay, so did you tell her what to write on the notes? A Yes. Q What did you tell her**

Unfortunately, this testimony was distorted in the People's Brief, Page 5 ("[s]he admitted that on or about the date of the offense, she was asked by her husband to assist with **devising a method to monitor the harvesting** of the marijuana plants. **She admitted that she came up with an idea whereby the date of harvest would be written on a piece of paper and stapled around the stem.** She admitted writing the date of the harvest for the plants on the "day before the [police] came") Id. (emphasis added).

Ultimately, the Circuit Court adopted the Prosecution's slanted version of the facts regarding the small, glue strip notes, finding that "[h]e asked Defendant **how** he could date 'these things' because under the statute if the marijuana was unusable you were allowed more of it[,] (Opinion and Order, Page 4) (emphasis added) and "Defendant recalls that on one occasion **her husband asked her if she had any ideas** how he could label the plants to keep track of their age. **She suggested writing down the date** they were cut on a sticky note." Id., Page 6 (emphasis added). Since this issue was apparently dispositive for the Circuit Court, reversal is required due to the

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**to write? A I told her to write the date of harvest** -- Q Okay. A -- of 3/7, and that it would be useable -- and, again, I'm no expert. It was the first time I was growing marijuana. I was told that it takes about six weeks for the, for the product to dry, so I went out approximately five or six weeks and, **and had her write that date.** Q Okay, so she wrote those notes for you to post on here so you could keep track of your harvest day. A Correct. Q Okay. 4-10-13 Evidentiary Hearing Transcript, Page 22, Lines 2 Through 25 (emphasis added).

Circuit Court's adoption of the Prosecution's inaccurate characterization of Mr. Mazur's testimony.

By adopting the Prosecution's mischaracterization of this key testimony in its Opinion and Order, the Circuit Court transformed an innocent, bystander spouse into an active participant, assisting a person with *breaking* the law, when, in fact, anything that Mrs. Mazur *might have done*<sup>37</sup> regarding her husband was in furtherance of *compliance* with the Act. When taken as a collectively, the Circuit Court's wholesale adoption of the Prosecution's voluminous mischaracterizations of the actual facts are reason enough for this Honorable Court to reverse the Circuit Court, and instead grant Mrs. Mazur the immunity from prosecution that she so justifiably deserves. However, the Circuit Court unfortunately also adopted the Prosecution's multiple misstatements of the applicable law.

**V. The Circuit Court Erred By Adopting The Prosecution's Misstatement Of The Applicable Law.**

The Circuit Court also adopted the Prosecution's incorrect statements of the applicable law, as follows.

**A. Erroneous Shifting Of The Burden Of Proof To The Defense.**

In a criminal case, the burden of proof is upon the prosecution to prove each and every element, or *prima facies*, of the offense at issue beyond a reasonable doubt. Where defendant produces enough evidence to

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<sup>37</sup> A handwriting expert has not verified that any writing on any relevant "sticky notes" was, in fact, accomplished in Mrs. Mazur's hand.

put an affirmative defense<sup>38</sup> into controversy, the prosecution bears the burden of disproving the affirmative defense beyond a reasonable doubt.<sup>39</sup>

**B. Erroneous Conclusion of Law That Mr. Mazur's Alleged Noncompliance With The Act Somehow Vitiates Mrs. Mazur's Immunity Pursuant to Sections 4(i) or (g) of the Act.**

Mrs. Mazur seeks immunity pursuant to Section 4(i)<sup>40</sup> (dealing with persons physically located in the "presence" or "vicinity" of persons who are

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<sup>38</sup> The Act features its affirmative defense in section 8. However, Section 8 is inapplicable to an assertion of immunity pursuant to Section 4. Accordingly, the burden is on the People to show that the defendant was not in compliance with section 4(i) of section 4(g) of the act.

<sup>39</sup> Compare People v Garbutt, 17 Mich 9 (1868) (insanity), People v Coughlin, 65 Mich 704; 32 NW 905 (1887) (self-defense), and People v MacPherson, 323 Mich 438; 35 NW2d 376 (1949) (alibi). Shifting of the burden of proof in a criminal case goes to the very heart of the judicial process, and a shift in the burden of proof may not be inferred absent express statutory language to that effect. People v Rios, 386 Mich 172, 174-175; 191 NW2d 297 (1971). The Act does not feature such language.

<sup>40</sup> Section 4 (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 use of marihuana** in accordance with this act, or for **assisting a registered qualifying patient with using or administering marihuana**. Id. (emphasis added).

"Use" is defined as "to employ for some purpose; put into service. "Administer" is defined in the medicinal context as to give or apply; to administer medicine. The terms "using" and "administering" are limited to conduct involving the actual ingestion of marijuana. Thus, by its plain language, Section 4(i) permits, for example, the spouse of a registered qualifying patient to assist the patient in

using medical marijuana in accordance with the Act) or pursuant to Section 4(g)<sup>41</sup> (dealing with the provision of paraphernalia to either a registered qualifying patient or registered primary caregiver). A defendant is entitled to dismissal of any marijuana-related charges if he or she qualifies for Section 4 immunity under the Act. People v Jones, 2013 Mich. App. LEXIS 1205 No. 312065), 2013 WL 344978 (decided July 9, 2013).

### 1. Section 4(i) Immunity.

The first prong of Section 4(i) ("presence" or "vicinity") is roughly analogous to the immunity routinely given concertgoers to a Rolling Stones show, and serves the same purpose: not everybody at a Stones concert smokes marijuana, and not everybody in the vicinity of a medical marijuana

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ingesting marijuana, regardless of the spouse's status. State v McQueen, 493 Mich. 135 (2013). The term "use" also includes sales.

Section 3(e) of the Act, MCL Section 333.26423(e), defines "medical use" broadly to include the "transfer" of marijuana to treat or alleviate a registered qualifying patient's debilitating medical condition or symptoms associated with the debilitating medical condition. Because a transfer is any mode of disposing of or parting with an asset or an interest in an asset, including the payment of money, the word "transfer," as part of the statutory definition of "medical use," also includes sales. State v McQueen, 493 Mich 135 (2012).

<sup>41</sup> Section 4(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 limited to civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau, for providing a registered qualifying patient **or** a registered primary caregiver with marihuana paraphernalia for purposes of a qualifying patient's medical use of marihuana. Id. (emphasis added).

caregiver is involved in the caregiver's activities.<sup>42</sup> The second prong of the section is inapplicable to the case at bar.

Section 4(g) immunity applies when a person supplies paraphernalia to **either** a patient **or** a caregiver for purposes of a patient's use<sup>43</sup> of medical marijuana. The "sticky notes" allegedly supplied by Mrs. Mazur to Mr. Mazur constitute paraphernalia, inasmuch as they can be used not only for harvesting medical marijuana (ultimately leading to actual "use"), **but also** as "rolling papers," since they have glue and the paper that they are made out of can be rolled to hold marijuana and burned.

In its Brief in Opposition to Mrs. Mazur's Motion for Immunity, the Prosecution completely misinterpreted the above statutory sections. Unfortunately, the Circuit Court ultimately adopted these incorrect interpretations of the law. On Page 8 of the said People's Brief, the Prosecutor asserted:

By his guilty plea, David Mazur admitted that he was not functioning legitimately under the MMMA on or about the same date the defendant helped him with the tags and harvest monitoring concept. **Therefore, the defendant's assistance**

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<sup>42</sup> Diminishing the effectiveness of the first prong of Section 4(i) would work an extremely chilling effect on the purpose of the Act, inasmuch as many would-be caregivers will be scared away in fear that their significant others will be subject to prosecution.

<sup>43</sup> The Act defines "medical use" to mean the acquisition, possession, cultivation, manufacture, use, internal possession, delivery, transfer, or 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. MCL 333.26423(e); People v Kolanek, 491 Mich 382 (2012).

**to him functions as aiding and abetting his criminal actions** of manufacturing marijuana on or about the date of the offense. Further, the defendant must have proved that **any provision of paraphernalia by her was to a "registered qualifying patient."** There is no proof that David Mazur met the definition of "qualifying patient" on this record. Id. (emphasis added).<sup>44</sup>

The Circuit Court unfortunately adopted<sup>45</sup> this absurd, blatant and disingenuous misstatement of the law and fact.<sup>46</sup> Mrs. Mazur will address these erroneous Conclusions of Law and Findings of Fact *in seriatim*.

It is incontrovertible that Mrs. Mazur's **alleged** handwriting<sup>47</sup> on the "sticky notes" was in furtherance of **compliance** with the Act, as more fully set forth, *supra*. The Prosecution's inartful attempt to migrate this activity into *aiding and abetting criminal activity*<sup>48</sup> strains credulity and, for lack of a

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<sup>44</sup> At all times relevant, Mr. Mazur was a duly registered qualifying medical marijuana patient, as well as a duly registered caregiver.

<sup>45</sup> For example, the Circuit Court, in its Opinion and Order, stated:

**He asked Defendant how he could date "these things"** because under the statute if the marijuana was unusable you were allowed more of it. It was his understanding that if it was cut down and not dried, it was considered unusable. He wanted to document the date that it was cut down, what patient it was for, and when it would be usable. Therefore, he asked his wife to write the information on the sticky notes. Defendant then wrote the notes for him to post so he could keep track of the harvest day. Opinion and Order, Page 4 (emphasis added).

<sup>46</sup> The Prosecution also impermissibly shifted the burden of proof onto Mrs. Mazur in its Section 4(g) argument, *supra* (... "the [d]efendant must have proved that any provision of paraphernalia...").

<sup>47</sup> No forensic analysis of the handwriting on the "sticky notes" has been undertaken.

<sup>48</sup> The Prosecution's citation of People v Moore, 470 Mich 56 (2004) actually

more judicial term, is ridiculous. By analogy, under the Prosecution's logic, anyone who states to a potential murderer "don't shoot" would be guilty of a crime. Moreover, there is no evidence in the record that the alleged "sticky notes" were used in furtherance of any violations of the Act.

## 2. Section 4(g) Immunity.

The Circuit Court also erroneously determined that Mrs. Mazur did not qualify for Section 4(g) immunity. Section 4(g) explicitly lists "registered primary caregiver(s) as qualifying recipients of paraphernalia for immunity purposes pursuant to the section. It is uncontroverted that Mrs. Mazur's provision of "sticky notes," if same actually occurred, was to Mr. Mazur. It is also uncontroverted that Mr. Mazur was, at all times relevant,<sup>49</sup> a "registered

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proves Ms. Mazur's argument (that the "sticky notes," if any, were furnished in furtherance of compliance with the Act). Moore lists the elements of aiding and abetting as:

- (1) the crime charged was committed by the defendant or some other person; (2) the defendant performed acts or gave encouragement that **assisted the commission of the crime**; and (3) the defendant **intended** the commission of the crime or **had knowledge** that the principal intended its commission at the time [the defendant] gave aid and encouragement. Id. At 67-68 (emphasis added). None of these elements are present in the case at bar (there is no evidence of the commission of any crime by Mr. Mazur except for the felony firearm charge that was the motivation for his guilty plea).

Culpable satisfaction of Moore prong (2) is impossible, inasmuch as the alleged sticky note handwriting was in furtherance of compliance with the Act. The record is wholly devoid of any Moore prong (3) evidence regarding Mrs. Mazur's intent. Moreover, the record supports Mr. Mazur's intent to comply with the Act by documenting the dates of the harvest.

<sup>49</sup> Mr. Mazur's registration with LARA as a patient was originated on April 1, 2011 and renewed on April 18, 2012. His LARA registration as a caregiver was originated

primary caregiver” as defined in the Act and as licensed by the Michigan Department of Licensing and Regulatory Affairs (“LARA”), notwithstanding the Prosecution’s challenge to his status as a “registered qualifying patient.”<sup>50</sup> The Circuit Court, in its Opinion and Order, erroneously stated:

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on February 1, 2012.

<sup>50</sup> This Court, in its Opinion and Order, erroneously stated:

Moreover, in order to claim protection under Section 4(i), the use of the marijuana must have been in “accordance with this act.” Here, the record is devoid of evidence that would establish that Defendant’s husband, Mr. Mazur, was indeed a qualifying patient. Id., Page 13.

The Circuit Court erred by apparently refusing to acknowledge the very mechanism of LARA. The Circuit Court erroneously adopted the Prosecution’s challenge the Affidavit of Celeste Clarkson of LARA (arguing that it does not prove qualifying patient status), which challenge also denied the State of Michigan itself its fundamental role in government. This bogus and surreptitious challenge was absurdly based upon the singular fact that the Affidavit states that LARA does not verify the medical information included on a submitted physician certification. People’s Brief, Page 7. Whether or not the Prosecutor thinks that LARA should verify such information as part of its regulatory function is not an issue that was before the Circuit Court. Pursuant to the Act, LARA enjoys plenary authority over the regulation scheme and its implementation. See, e.g., MCL Section 333.26423(c) (“Department” means the department of licensing and regulatory affairs”); MCL Section 333.425(b) (“...the department shall promulgate rules pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, **that govern the manner in which it shall consider applications for and renewals of registry identification cards for qualifying patients and primary caregivers**”); see also MCL Section 333.26426 (establishment of registry identification cards). Id. (emphasis added). It was not the province of the Prosecutor to legislate from its office. If it does not approve of the manner in which LARA grants caregiver or patient applications, then its proper recourse is to petition the relevant authority for relief.

The July 25, 2011 Approval Letter of Melissa M. Peters, Medical Marijuana Program Coordinator, LARA, together with Mr. Mazur’s Registration Card’s (showing his Patient ID #P216928-120401) were, in fact, introduced into evidence. If these official documents do not prove registered qualifying

Finally, even assuming that Defendant's providing of sticking notes to her husband to mark the grow dates for the marijuana could be considered "paraphernalia" under the Act, **Defendant would still not be entitled to immunity because there is no evidence that she provided the same to a registered qualifying patient or registered caregiver**. Accordingly, Defendant is not entitled to immunity under Section 4(g) of the Act. *Id.*, Page 12 (emphasis added).

Again, Mrs. Mazur respectfully submits that the alleged "sticky notes" **are** paraphernalia (*discussed, supra*). Her testimony, together with LARA's certification of Mr. Mazur, constituted **more** than sufficient evidence that Mrs. Mazur **did** provide the "sticky notes" (if at all) to a **registered caregiver** pursuant to the Act, which is all that is required for immunity.<sup>51</sup> Accordingly, the Circuit Court committed reversible error and its finding of lack of Section 4(g) immunity should be reversed on appeal.

### **3. Statutory Interpretation of Voter Ballot Initiative.**

The Act was passed by Michigan voters via a ballot initiative. Ballot initiatives, such as the Michigan Medical Marijuana Act, should be "**liberally construed** to effectuate their purposes" and to "facilitate rather than hamper the exercise of reserved rights by the people."

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patient status, what does? LARA obviously does not have the financial resources to "flyspeck" each and every application for qualifying patient status, nor should it be required to. Doctors wrote those certifications after diagnosing their patients with debilitating medical conditions. The Prosecution's assertion of this argument was disingenuous in the extreme, and should have been completely ignored by the Circuit Court. The Circuit Court's adoption of it constitutes reversible error.

<sup>51</sup> At all times relevant hereto, Mr. Mazur was also a registered patient.

Welch Foods v Attorney General, 213 Mich App at 461 (emphasis added). The intent of the electors governs the interpretation of voter-initiated statutes, just as the intent of the legislature governs the interpretation of legislatively enacted statutes. The first step in interpreting a statute is to examine the statute's plain language, which provides the most reliable evidence of intent. If the statutory language is unambiguous, no further judicial construction is required or permitted because the court must conclude that the electors intended the meaning clearly expressed. People v McQueen, 493 Mich App 135 (2012).

To the extent that the initiative contains any ambiguity, it must be constructed in light of the purpose of the initiative." Welch Foods, supra, at 462. Provisions not included in a statute should not be included by the courts. Mich Basic Prop Ins Ass'n v Office of Financial & Ins Regulation, 288 Mich App 552, 560; 808 N.W.2d 456 (2010). Further, the use of different terms in a statute suggests different meanings. US Fidelity Ins & Guaranty Co v Mich Catastrophic Claims Ass'n (On Rehearing), 484 Mich 1, 14; 773 NW2d 243 (2009). Although only an aid to interpretation, the maxim "*expressio unius est exclusio alterius*" (the expression of one thing suggests the exclusion of all others) means that the express mention of one thing in a statutory provision implies the exclusion of similar things. Johnson v Recca, 492 Mich 169, 176 n 4; 821 N.W.2d 520 (2012).<sup>52</sup>

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<sup>52</sup> Accordingly, the "sticky notes" should be considered as "paraphernalia" under the

To uphold the Prosecution's interpretation of Section 4(i) and Section 4(g) would hamper rather than facilitate the exercise of reserved rights by the people and therefore, and this Court should reverse the opinion and decision of the Oakland County Circuit Court, since it embraced the Prosecution's interpretation of the Act rather than Mrs. Mazur's.

A Court may depart from a literal interpretation of unambiguous statutory language that produces an absurd and unjust result that is inconsistent with the purpose and policies of the statute. People v Bewersdorf, 438 Mich 55, 68 (1991). At the evidentiary hearing, the Prosecutor asked the trial Court to engage in a literal interpretation of the Act in order to produce an absurd and unjust result as there would be no possible way for Mrs. Mazur to be in compliance with section 4(i) and section 4(g) while making sure her husband was in compliance with section 4(a) and section 4(b). Accordingly, Mrs. Mazur respectfully submits that the trial Court committed reversible error and an abuse of discretion in its interpretation of the Act .

**VI. The Circuit Court Committed Reversible Error By Denying Mrs. Mazur A Section 8 Affirmative Defense Evidentiary Hearing, Even Assuming She Is Not A Registered Qualifying Patient Or A Registered Primary Caregiver.**

This Circuit Court also committed reversible error by denying Mrs.

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Act.

Mazur's request for a Section 8<sup>53</sup> Evidentiary Hearing, stating:

The MMMA provides a defense to criminal prosecution under Section 8. MCL 333.26428(a). However, this affirmative

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<sup>53</sup> Section 8 provides, in relevant part, as follows:

Sec. 8. (a) Except as provided in section 7(b), **a patient and a patient's primary caregiver**, if any, may assert the medical purpose for using marihuana as a defense to any prosecution involving marihuana, and this defense shall be presumed valid where the evidence shows that:

(1) 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 marihuana to treat or alleviate the patient's serious or debilitating medical condition or symptoms of the patient's serious or debilitating medical condition;

(2) The 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; and

(3) The patient and the patient's primary caregiver, if any, were engaged in the acquisition, possession, cultivation, manufacture, use, delivery, transfer, or transportation of marihuana or paraphernalia relating to the use of marihuana to treat or alleviate the patient's serious or debilitating medical condition or symptoms of the patient's serious or debilitating medical condition.

(b) A person may assert the medical purpose for using marihuana 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). Id. (emphasis added).

If Mrs. Mazur is not granted immunity on appeal, at trial, if she is found to have participated in any medical marihuana transfers (there is no evidence of use by her), she will provide sufficient evidence at the evidentiary hearing to show that all of the recipients of any and all alleged transfers were strictly registered qualifying patients who had received physician recommendations in the course of a bona fide physician-patient relationship prior to any alleged transfers of medical marihuana and after the enactment of the Act.

defense is available to "a patient" or a "patient's primary caregiver." **Here, there is no evidence that Defendant is either a patient or primary caregiver. To the contrary, Defendant testified that her husband was the only person acting as either a patient or caregiver for the purposes of the marijuana kept in her home.** Accordingly, the Court denies Defendant's request for a hearing under Section 8. Id. (emphasis added).

The above statement fully illustrates the Circuit Court's legal and logical inconsistency regarding its ruling denying Mrs. Mazur both Section 4 immunity **and** a Section 8 affirmative defense. As noted, *supra*, the Circuit Court erroneously adopted the Prosecution's **multiple versions** of Mrs. Mazur's inadvertent and innocent use of the word "we" to describe her lack of involvement with Mr. Mazur's medical marijuana activities<sup>54</sup> and,

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<sup>54</sup> The Prosecution misrepresented Mrs. Mazur's testimony on this issue on multiple occasions, stating:

...that she used the word "we" multiple times **to refer to responsibility for the marijuana operation.** People's Brief, Page 3.

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The testimony of Chief Michael Story and the Defendant's own testimony demonstrated use of the word "we" by the **Defendant to refer to action by both her and her husband with regard to the marijuana that was seized from [their] home.** Id. (emphasis added).

The Circuit Court adopted the above misrepresentation, stating:

Recall that Defendant testified that she and her husband referred to the medical marijuana as "medicine." The evidence also shows that Defendant made statements that **"we" [Defendant and her husband] were providing medication to people who needed it** and dispensing medication to people that needed it. **Moreover, the evidence shows that Defendant provided a method to her husband to mark the grow dates for the marijuana.** Opinion and

accordingly, determined that Mrs. Mazur **was** involved in her husband's medical marijuana activities as a caregiver.<sup>55</sup>

It is axiomatic that Mrs. Mazur cannot be both a person uninvolved in Mr. Mazur's medical marijuana activities but not entitled to Section 4(g) or (i) immunity (as the Circuit Court determined), *and also* a person involved in such activities but not entitled to assert a Section 8 affirmative defense.<sup>56</sup>

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Order, Page 13 (emphasis added).

The Circuit Court's errors regarding Mrs. Mazur's casual use of the "we" pronoun

<sup>55</sup> MCL Section 333.26423(h) states:

"Primary caregiver" or "caregiver" means 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 as defined in section 9a of chapter X of the code of criminal procedure, 1927 PA 175, MCL 770.9a. *Id.*

There is no requirement in MCL Section 333.26423(h) that the caregiver in question be registered.

<sup>56</sup> Section 8 protects both registered and unregistered patients, whether or not they satisfy the requirements for immunity under Section 4. The Michigan Supreme Court in *People v Kolanek*, 491 Mich 382, 403, 817 N.W.2d 528 (2012) stated that "given the plain language of the statute, we hold that a defendant asserting the §8 affirmative defense is not required to establish the requirements of § 4, MCL 333.26424, which pertains to broader immunity granted by the act." *King* reasoned that "[n]owhere does §8 state that a defendant must also establish the requirements of §4 in order to present a valid affirmative defense under §8. Precisely because such a requirement is lacking, assertion of the §8 defense without establishment of the § 4 requirements is 'in accordance with the provisions of [the MMMA]'.*" Id.* at \*17. Furthermore, "[t]he textual distinctions of §§4,7(a), and 8 provide further support for [the court's] interpretation that the plain language of § 8 does not require compliance with the requirements of §4. Sections 4 and 8 provide separate and distinct protections and require different showings, while § 7(a), by its plain terms does not incorporate §4 into § 8. *Id.*

Importantly, it is not necessary to satisfy the requirements of Section 4 immunity in order to assert a Section 8 defense. *People v. Bylsma*, 493 Mich. 17 (2012).

Given the Court's ruling that Mrs. Mazur was, in fact, involved in Mr. Mazur's medical marijuana activities, she is entitled to advance a Section 8 affirmative defense. Accordingly, this Court should reverse the Circuit Court's ruling and grant her an evidentiary hearing. In the alternative, the matter should be remanded to the Circuit Court with instructions to permit Mrs. Mazur to put this issue before the jury at trial.

## **VII. Conclusion.**

The Oakland County Circuit Court, the Honorable Colleen O'Brien, committed reversible error by failing to grant Defendant, Cynthia Ann Mazur, immunity pursuant to either Sections 4(g) or (i) of the Michigan Medical Marijuana Act. The Circuit Court also committed reversible error by

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The *King* court made it very clear that according to §8, "a defendant need not establish the elements of §4. Any defendant, regardless of registration status, who possesses more than 2.5 ounces of usable marijuana or 12 plants not kept in an enclosed, locked facility may satisfy the affirmative defense under §8. As long as the defendant can establish the elements of the §8 defense and none of the circumstances in §7(b) exists, that defendant is entitled to the dismissal of criminal charges."

Notably, the *King* court ruled that the §8 affirmative defense (1) protects both registered and unregistered patients and caregivers, meaning §8 defendants do not have to comply with the §4 registry requirement (*Id.* at \* 15); and (2) the §8 affirmative defense does not require patients and caregivers to comply with the §4 requirement of keeping medical marijuana plants in a locked and enclosed facility (*Id.* at \* 18).

failing to grant Mrs. Mazur an affirmative defense hearing pursuant to Section 8 of the Act. The Michigan Supreme Court has instructed that the requirements of §4 are intended to encourage patients to register with the state and comply with the act in order to avoid arrest and the initiation of charges and obtain protection for other rights and privileges. Subjecting Mrs. Mazur to criminal prosecution would work a chilling effect on the willingness of citizens to register and comply with the Act. People v Jones, 2013 Mich. App. LEXIS 1205 No. 312065), 2013 WL 344978 (decided July 9, 2013).

**VIII. Prayer For Relief.**

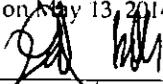
**WHEREFORE**, the Defendant-Appellant respectfully requests that this Honorable Court reverse the rulings of the Oakland County Circuit Court and the Michigan Court of Appeals, dismiss all charges pursuant to Section 4, or, in the alternative, grant her an evidentiary hearing pursuant to Section 8 of the Michigan Medical Marihuana Act.

Respectfully submitted,



David Adam Rudoi  
Attorney for Defendant-Appellant

DATED: May 13, 2014

**PROOF OF SERVICE**  
The undersigned certifies that the foregoing instrument was served via certified mail counsel for all parties to the above cause and to each of the attorneys of record herein at their respective addresses disclosed on the pleadings on May 13, 2014.  
  
David Rudoi