

STATE OF MICHIGAN

IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

-vs-

CYNTHIA ANN MAZUR,

Defendant-Appellant.

Supreme Court
No. 149290

Court of Appeals
No. 317447

Oakland Circuit Court
No. 2012-243299 FH

APPELLEE'S BRIEF IN OPPOSITION TO
APPLICATION FOR LEAVE TO APPEAL

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COUNTER-STATEMENT OF QUESTION PRESENTED

1. Is Defendant entitled to §4 immunity under the Michigan Medical Marijuana Act where the marijuana-related activities in her home were not in compliance with that Act but her husband was a registered patient and caregiver under the Act?

The Court of Appeals answered “No”.

Defendant contends the answer should be, “Yes”.

The People contend the answer is, “No”.

COUNTER-STATEMENT OF FACTS

Defendant Cynthia Mazur currently stands charged with one count of possession with intent to deliver marijuana and one count of manufacturing marijuana, MCL 333.7401(2)(d)(iii). By opinion and Order dated June 13, 2013, the trial court denied Defendant's request for immunity or to assert a defense under the Michigan Medical Marijuana Act ["MMMA"], MCL 333.26421 *et seq.* Defendant took an interlocutory appeal to the Court of Appeals, and, following that Court's affirmance of the trial court, *People v Mazur*, unpublished opinion per curiam of the Court of Appeals, issued April 1, 2014 (Docket No. 317447), now seeks interlocutory leave to appeal in this Court.

Defendant filed a pretrial motion in the trial court asserting immunity under Section 4 of the MMMA (copy of statute attached to this answer).¹ The filing of this motion prompted an evidentiary hearing.

Evidence at the hearing revealed that Defendant played an active role in the marijuana grow operation in her home. Specifically, the testimony revealed the following.

Holly Police Detective Julie Bemus testified that the police executed a search warrant at Defendant's home on March 7, 2012 (4/10/13 Tr, 64). No one was at home at the time (4/10/13 Tr, 65). The police forced entry (4/10/13 Tr, 88, 93). In the kitchen, the police found two handguns, a folder of medical marijuana paperwork stuck in the door jamb around the door leading to the basement, a jar containing 3 grams of marijuana in

¹ Defendant also requested permission to assert a Section 8 defense.

the pantry, and two marijuana pipes with residue on the counter (4/10/13 Tr, 67, 72). In the first-floor bathroom three buds of marijuana² were sitting atop an overturned bucket in front of a heat vent (4/10/13 Tr, 67). A door in the kitchen led to the attached garage (4/10/13 Tr, 68). That door was unlocked (4/10/13 Tr, 68-69). Fresh cut marijuana was lying on a tarp under a car in the garage (4/10/13 Tr, 69). That marijuana was weighed at the time of its seizure, and weighed 6.99 pounds (4/10/13 Tr, 69). Contrary to Defendant's assertions on appeal, there was no evidence that the marijuana in the garage was "wet" – the undisputed testimony was that it was freshly cut and green.

Det. Bemus testified that there was a loose bolt placed through a hasp lock on the door to the basement (4/10/13 Tr, 69). The bolt was unattached and could easily be pulled out (4/10/13 Tr, 69). In the basement, Det. Bemus found six freshly cut marijuana plants hanging with notes on them stating that the date of harvest was March 7th and the usable date was April 14th (4/10/13 Tr, 70, 73-74; Exhibit 1). Eleven live marijuana plants 4-5 feet tall, and a mason jar almost full of marijuana buds were also found in the basement grow room (4/10/13 Tr, 70).

As the search concluded, Defendant and her family came home (4/10/13 Tr, 75). Police Chief Michael Story spoke to Defendant inside the house (4/10/13 Tr, 84-85).

Chief Story testified that Defendant told him "we" were following the law and

² A bud is the flowering top of a female cannabis plant. These have the highest concentration of THC, followed by the leaves. Stems and seeds have a much lower THC content. University of Washington, *Learn About Marijuana* <<http://adai.uw.edu/marijuana/factsheets/potency.htm>> (accessed November 18, 2014).

providing medication to people that needed it (4/10/13 Tr, 86). As they spoke, every time Defendant mentioned the marijuana she used the pronoun “we” (4/10/13 Tr, 86).

Defendant’s husband David Mazur testified at the hearing that he was a caregiver for two patients, and was himself a patient (4/10/13 Tr, 12-13). Mr. Mazur seemingly had registry cards as both a caregiver and a patient (4/10/13 Tr, 9-10). He testified that he started to grow marijuana in the basement of the home he shared with Defendant in January of 2012 (4/10/13 Tr, 12, 15, 22). He installed a hasp latch on the door to the basement, and a padlock was placed through the hasp “the majority of the time” (4/10/13 Tr, 17). But on the day of the police raid, Mr. Mazur did not have the padlock through the hasp because he had misplaced the key for the lock (4/10/13 Tr, 17); he just slid an unsecured bolt through the hasp (4/10/13 Tr, 18). When the family had left the house that day, Mr. Mazur locked the front and back doors of the house behind them (4/10/13 Tr, 18). Mr. Mazur testified that he also had some marijuana in the garage that was in the process of drying (4/10/13 Tr, 18). Defendant was aware of that marijuana, but Mr. Mazur claimed at the hearing that he told Defendant not to go in the garage (4/10/13 Tr, 19).

At the hearing Defendant’s husband denied that Defendant participated in the grow operation, and claimed that Defendant never went in the basement and had never met any of his patients (4/10/13 Tr, 15). But Mr. Mazur then testified that Defendant did log some dates regarding harvesting (4/10/13 Tr, 16). One day Mr. Mazur was harvesting some marijuana, and he wanted to document when each plant was cut down, which patient it was for, and when it would be dry/usable (4/10/13 Tr, 16). He testified that his

hands were sticky, so he asked Defendant to write that information for him on some Post-it notes (4/10/13). Defendant did so, as she sat at the kitchen table (4/10/13 Tr, 16, 22-23).

On December 4, 2012, David Mazur was convicted by guilty plea as charged of two counts of possession/manufacturing marijuana arising out of this home grow operation (4/10/13 Tr, 94; see 4/13/24 Tr, 42).³ Mr. Mazur has not appealed his convictions.

Defendant testified at the hearing that she only let her husband bring the plants into their house after being led to believe that it was legal (4/10/13 Tr, 39-40). Her husband told her she was not allowed to go into the basement or the garage (when he was drying marijuana there) (4/10/13 Tr, 40-41). Defendant denied doing anything to help her husband with the marijuana plants (4/10/13 Tr, 41). But she admitted that she had written information on Post-it notes for the plants (4/10/13 Tr, 41-42). Her husband came up from the basement and said he was trying to figure out a way to label the plants he was cutting down (4/10/13 Tr, 42). Defendant, who was sitting in the kitchen, suggested that he write information on little pieces of paper and staple them to the stems (4/10/13 Tr, 42). Her husband told her what to write on the notes, and she wrote out two notes (4/10/13 Tr, 42). At the hearing Defendant claimed that she played no role in the grow operation, and had never been in the basement grow room (4/10/13 Tr, 54-55). But she said that she may have moved a jar of marijuana to an area out of her children's reach, on

³ David Mazur was sentenced to one year of probation.

a pantry shelf (4/10/13 Tr, 61).

At the hearing, Defendant denied saying to the police after the raid that “we were legally dispensing medicine to our patients” (4/10/13 Tr, 51, 52). She also denied that she smoked marijuana (4/10/13 Tr, 56, 57-58).

In an Opinion and Order dated June 13, 2013, Judge Colleen O’Brien denied Defendant’s request to dismiss based on a theory of immunity under Section 4 of the Michigan Medical Marijuana Act [“MMMA”]. The trial court found that Defendant was not just assisting her husband, but was herself a participant in the operation, as evidenced by her use of the pronoun “we” (Opinion & Order, p 12). The trial court thus found Defendant’s self-serving testimony unpersuasive.

Defendant then sought reconsideration, which the trial court denied on July 9, 2013.

Defendant appealed to the Court of Appeals by leave granted September 10, 2013. The Court of Appeals affirmed the trial court. *People v Mazur*, unpublished opinion per curiam of the Court of Appeals, issued April 1, 2014 (Docket No. 317447).

Defendant now seeks leave to appeal in this Court. By order dated October 23, 2014, this Court directed that oral argument be held on whether to grant the application or take other action. The order directed the parties to file briefs addressing,

whether the defendant is entitled to immunity under §4 of the Michigan Medical Marihuana Act (MMMA), MCL 333.26421 *et seq.*, specifically MCL 333.26424(g) and/or MCL 333.26424(i), where her spouse was a registered qualifying patient and primary caregiver under the act, but his marihuana-related activities inside the family home were not in full compliance with the act.

ARGUMENT

I. Defendant is not entitled to §4 immunity under the Michigan Medical Marijuana Act where the marijuana grow operation she and her husband ran in their home was not in compliance with that Act and Defendant did not meet the statutory requirements for immunity, regardless of whether her husband was a registered patient and caregiver under the Act.

Standard of Review

A trial court's decision on a motion to dismiss is reviewed for an abuse of discretion. *People v Bylsma*, 493 Mich 17, 26; 825 NW2d 523 (2012); *People v Campbell*, 289 Mich App 533, 535; 798 NW2d 514 (2010). A trial court abuses its discretion only when its decision falls outside the principled range of outcomes. *People v Blackston*, 481 Mich 451, 460; 751 NW2d 408 (2008). Any underlying questions regarding the interpretation of the MMMA, are reviewed de novo. *Bylsma*, 493 Mich at 26.

Issue preservation

Defendant argued below that she was entitled to immunity under section 4 of the MMMA.

Analysis

Defendant did not make the showing necessary to gain immunity under §4 of the MMMA. Therefore, the trial court did not abuse its discretion in denying her motion to dismiss the charges against her.

It is illegal for a person to possess, use, manufacture, create, or deliver marijuana under the Public Health Code. *People v Kolanek*, 491 Mich 382, 394; 817 NW2d 528 (2012); *People v McQueen*, 293 Mich App 644, 658; 811 NW2d 513 (2011); see also MCL 333.7401(2)(d); MCL 333.7403(2)(d); MCL 333.7404(2)(d). The MMMA permits the medical use of marijuana “to the extent that it is carried out in accordance with the provisions” of the MMMA. MCL 333.26427(a). The MMMA “sets forth very limited circumstances under which those involved with the use of marijuana may avoid criminal liability” – it did not repeal any drug laws. *Bylsma*, 493 Mich at 27; see also *TerBeek v Wyoming*, 495 Mich 1, 24; 846 NW2d 531 (2014)(MMMA does not create an absolute right to grow and distribute marijuana).

As a background matter, the grow operation in this case was not in compliance with the MMMA, as evidenced by Defendant’s husband’s plea-based convictions, and testimony that the operation at issue here included the unsecured storage of almost seven pounds of marijuana, cf. MCL 333.26423(d) and MCL 333.26424(a) and (b) (marijuana must be kept in an enclosed, locked facility). This Court’s order granting leave to appeal poses the question to be addressed as premised on the grow operation being “not in full compliance with the act”.

In this case, defendant moved for dismissal of her marijuana charges based on the immunity provided in § 4(g) & (i) of the MMMA. Those subsections provide:

(g) 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.

* * *

(i) 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.

MCL 333.26424 (g) and (i) (copy of statute attached to this answer).

The statute lists several other circumstances in which an arrestee may claim immunity, but those immunity provisions may only be invoked by a qualifying patient, registered caregiver, or physician. There is no dispute in this case that Defendant is neither a qualifying patient, a registered caregiver, nor a physician. Subsections (g) and (i) however, apply simply to "person[s]". So, those subsections are the subsections at issue here.

Defendant may not claim immunity under either of these provisions.

- a. Defendant may not claim immunity under subsection (g) because she did not merely provide paraphernalia to a qualified patient or registered caregiver. The Post-it notes on which she wrote harvest and use dates are not "paraphernalia", and there was evidence that Defendant's participation went beyond merely writing the notes.**

Under subsection (g), a person is immune from arrest, prosecution, or penalty if she is merely providing paraphernalia to a qualifying patient or caregiver. Defendant argues that the Post-it notes on which she recorded harvest and use information should be treated as paraphernalia. The argument lacks merit for several reasons.

First, the notes cannot reasonably be characterized as "paraphernalia".

The MMMA does not define paraphernalia. However, MCL 333.7451 in the Public Health Code includes a definition of paraphernalia:

As used in sections 7453 to 7461 and section 7521, “drug paraphernalia” means 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 [⁴]

(copy of statute attached to this answer)

This statute states that it applies to certain sections of the Public Health Code not directly at issue in this case.⁵ But under principles of statutory construction it should also be applied to section 26421 of the MMMA.

Statutes on the same topic should be read as parts of one harmonious system. *IBM v Dep't of Treasury*, 496 Mich 642, 652-653; 852 NW2d 865 (2014). Such *in pari materia* statutes should be construed together to give force and effect to each. *Id.* This principle was recently summarized by this Court in *IBM*, 496 Mich at 652-653 (quoting *Rathbun v Michigan*, 284 Mich 521, 543-544; 280 NW 85 (1938)),

It is a well-established rule that in the construction of a particular statute, or in the interpretation of its provisions, all statutes relating to the same subject, or having the same general purpose, should be read in connection with it, as together constituting one law, although they were enacted at different times, and contain no reference to one another. The endeavor should be made, by tracing the

⁴ The statute goes on to list a non-exhaustive list of items that are paraphernalia.

⁵ The most recent amendment of MCL 333.7451 was in 1988, 1988 PA 139 – 20 years before the MMMA was enacted.

history of legislation on the subject, to ascertain the uniform and consistent purpose of the legislature, or to discover how the policy of the legislature with reference to the subject-matter has been changed or modified from time to time. In other words, in determining the meaning of a particular statute, resort may be had to the established policy of the legislature as disclosed by a general course of legislation. With this purpose in view therefore it is proper to consider, not only acts passed at the same session of the legislature, but also acts passed at prior and subsequent sessions.

The MMMA, MCL 333.26421 *et seq.*, and the definition provision of MCL 333.7451 are both contained in the Public Health Code, MCL 333.1101 *et seq.* And they share a common topic and purpose.

The preamble to the health code, 2003 PA 234, states the code's purpose,

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 economic 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 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.

Article 7 of the public health code. MCL 333.7101 *et seq.*, focuses on controlled substances. Legal prohibitions on the possession, manufacture, delivery, and use of controlled substances are set forth in that article. The charges brought against Defendant in this case are brought under MCL 333.7401, which is contained in that article of the public health code. The prohibition on the sale or offer to sell paraphernalia and the definition of paraphernalia are contained in the same article, MCL 333.7451 and 333.7457.

The title to the MMMA voter initiative, 2008 Initiated Law 1, describes the purposes of the initiative, which include protecting medical marijuana users from penalties otherwise provided by law and creating an affirmative defense to marijuana-related criminal charges for qualifying patients and caregivers,

AN INITIATION of Legislation to allow under state law the medical use of marijuana; to provide protections for the medical use of marijuana; to provide for a system of regulatory 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

The voters' declaration at the beginning of the MMMA states the act's purpose to ensure, in the interest of the health and welfare of state citizens, that those who have medical need for marijuana not be penalized for their use or cultivation of marijuana. MCL 333.26422.

Thus, the MMMA echoes the general purpose of promoting public health and welfare that applies to the larger act under which it falls, namely the public health code.

Moreover, the MMMA is designed to provide immunity against and a defense to charges brought under Article 7 of the public health code. As such, the laws address the same topics and, in fact, are inextricably intertwined.

Therefore, they should be treated as *in pari materia*. The definition of paraphernalia stated in section 7451 should be applied to give meaning to use of that same term in section 26424(g).

Defendant has argued that the statutes should not be treated as *in pari materia*. In support of that position, Defendant relies on the Court of Appeals opinion in *Gauthier v Alpena Prosecutor*, 267 Mich App 167; 703 NW2d 818 (2005). In *Gauthier* the panel addressed the exemption from prosecution for sale of paraphernalia under section 7451 and 7453 where the item(s) could also be used for ingestion of tobacco, see former MCL 333.7457. In *Gauthier* the panel held that because bong, pipes, dugouts, and cocaine bullets could be used with tobacco, their sale was not prohibited by section 7451. Defendant argues that if such a restrictive reading of what constitutes paraphernalia were applied to the MMMA immunity provided by section 26424(g), the effect would render nugatory the immunity provision. Defendant asserts that application of the 7451 definition here would lead to the “absurd result” that items like bong and pipes – understood in common parlance to be paraphernalia – could not be treated as paraphernalia under 333.26424(g). Thus, in Defendant’s view, the definition in section 7451 (as interpreted in *Gauthier*) cannot harmoniously be applied to section 26424(g).

But Defendant's reliance on *Gauthier* is misplaced. In 2006, in response to *Gauthier*, the tobacco exemption was eliminated by the Legislature. 2006 PA 458. So the result in *Gauthier* that the sale of bong, pipes, dugouts, and cocaine bullets are not subject to prosecution under 333.7451, is no longer valid. Moreover, Defendant misreads the holding in that case. In *Gauthier*, the Court of Appeals did not hold that the bong, etc. were not paraphernalia as defined by MCL 333.7451. Rather, the Court held that, despite their being paraphernalia under that section, Defendant was exempt from prosecution for selling the items under the exemption formerly stated in Section 7457. *Gauthier*, 267 Mich App at 171-172.

Thus, Defendant's argument that the two statutes are not *in pari materia* lacks merit. The two can (and should) harmoniously be read together, as discussed above.⁶

Because the statutes are *in pari materia*, the definition of paraphernalia stated in section 7451 should be used when assessing an immunity claim under section 26424(g). Once again, the definition is as follows.

⁶ Defendant does not propose any other definition of paraphernalia.

A broader, generic definition of paraphernalia is found in *Random House Webster's College Dictionary, Second Edition* (1997), which defines paraphernalia as "equipment, apparatus, or furnishings used in or necessary for a particular activity". But this definition is not limited to paraphernalia relating to controlled substances. And, by including any item used in an activity, sweeps too wide. The Post-it notes in this case were used by Defendant in the grow operation. But if that were enough to bring them under the paraphernalia tent, Defendant could be prosecuted for delivery of paraphernalia if she sold some of her Post-it notes at a garage sale, or the pen with which she wrote on the notes, see MCL 333.7453. In fact, carried to its logical conclusion, soil, water, pots, and household electric wiring could be characterized as paraphernalia under Webster's generic definition. This result seems untenable. It would create an exception that swallows the rule. The definition of paraphernalia found in MCL 333.7451 relating to controlled substances is the more reasonable guide for understanding the meaning of the term in the MMMA.

“drug paraphernalia” means 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 [7]

MCL 333.7451

Post-it notes do not fall within this definition of paraphernalia. They are not “specifically designed for use” in grow operations or the use of marijuana (or any other controlled substance). And it may safely be assumed that the vast majority of Post-it notes are not used for that purpose.⁸ The fact that a *de minimus* number may be used by a creative marijuana grower does not transform the items into drug paraphernalia.

The second reason that Defendant is not entitled to immunity under subsection (g) is because, even if the harvest notes could be viewed as paraphernalia and Defendant’s husband were treated as a qualifying patient and caregiver⁹, Defendant did far more than simply supply the notes. Defendant did not just supply the harvest notes to her husband, she conceived of the idea of creating them and otherwise participated in the grow

⁷ See footnote 4, *supra*.

⁸ Post-it notes are ubiquitous in offices and homes. Fifty billion Post-it notes are made each year. CNN Tech, *The “Hallelujah Moment” behind the Invention of the Post-it Note* <<http://www.cnn.com/2013/04/04/tech/post-it-note-history/>> (accessed November 18, 2014).

⁹ The MMMA defines a qualified patient as “a person who has been diagnosed by a physician as having a debilitating medical condition”, MCL 333.26423(i). A primary 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, MCL 333.26423(h).

operation. The evidence at the hearing revealed that Defendant's role went far beyond supplying the notes. As she admitted to Chief Story, "we" [Defendant and her husband] were conducting the operation to supply patients. As she spoke to the police, every time Defendant mentioned the marijuana she used the pronoun "we" (4/10/13 Tr, 86). In its opinion, the trial court found that that terminology was used by Defendant, implicitly rejecting Defendant's denial. The marijuana was known to and readily accessible to Defendant. Neither the basement nor the attached garage were locked so as to preclude Defendant from entering those areas.¹⁰

In this context, the trial court did not abuse its discretion in rejecting Defendant's claim of immunity under subsection (g).

- b. Defendant may not claim immunity under subsection (i) because she was not merely present during anyone's use of marijuana nor was she merely assisting anyone in using marijuana. There was evidence that she played an active role in the grow operation, and the act of manufacturing or supplying marijuana does not assist in its "use" under subsection (i).**

Under MCL 333.26424(i), a person is immune from arrest, prosecution, or penalty if she is merely "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

¹⁰ This case has not yet gone to trial, and the final determination of Defendant's culpability in connection with the grow operation is a question for the trier of fact. The key point here is that there is, at the very least, a fact question regarding whether Defendant was an active participant in the operation, rather than a mere bystander. A grant of immunity, however, would preclude the case from ever being presented to a factfinder as a matter of law.

Further, regardless of the MMMA, if and when this case goes to trial, Defendant is free to raise a defense of mere presence. That defense predated the MMMA, and remains a legitimate defense. See M Crim JI 8.5.

administering marihuana”. The two clauses of this subsection provide alternative grounds for immunity: mere presence in the vicinity of marijuana use, and providing assistance with use or administering marijuana. Neither clause applies in this case.

Both clauses require that there be use (or administration) of marijuana. But in this case the charges do not arise from anyone’s use of marijuana. On the contrary, the charges arise from the manufacture and possession with intent to deliver marijuana.

Immunity under the first clause of subsection (i) is only available to those who face a penalty “solely for being in the presence or vicinity of the medical use of marihuana in accordance with this act”, MCL 333.26424(i). The charges in this case do not arise from anyone’s use of marijuana. A defendant who has a different or more extensive role than mere presence during use does not qualify for immunity under this provision. *People v McQueen*, 493 Mich 135, 157; 811 NW2d 513 (2013). Defendant faces charges not because she was simply present when marijuana was being used. On the contrary, Defendant faces charges for her active role in a marijuana grow operation, summarized above.

Additionally, under the first clause of subsection (i) the marijuana activity during which the defendant is present must be “in accordance with [the MMMA]”. As noted at the outset of this argument, the marijuana operation in this case was not conducted in accordance with the MMMA, and Defendant’s husband was convicted as a result.

The second clause of subsection (i) is expressly limited to one who “assist[s] a registered qualifying patient with using or administering marihuana”, MCL 333.26424(i). The scope of the “use” and administer[.]” referenced in subsection (i) were discussed by

this Court in *McQueen*, 493 Mich at 157-158. Using and administering marijuana under this immunity provision are limited to conduct involving the actual ingestion of marijuana. *McQueen*, 493 Mich at 158. More attenuated links to use or administration are not included in this immunity provision. The charges in this case do not involve Defendant assisting someone to ingest marijuana.

While, in a strict but-for sense, a qualifying patient cannot use marijuana unless someone has manufactured that marijuana, that does not mean that someone who manufactures or supplies marijuana is assisting in its use or administration under this immunity provision. As this Court held in *McQueen*, 493 Mich at 157, one who supplies/transfers marijuana is “not assisting anyone with using or administering marijuana”. A more direct connection to use is required.¹¹ For example, one who directly assists her qualified-patient spouse to ingest marijuana may claim immunity under the second clause of subsection (i). *McQueen*, 493 Mich at 158. But individuals who play a more attenuated role in the use of marijuana may not claim this immunity. *McQueen*, 493 Mich at 157 (operator of marijuana dispensary may not claim immunity under subsection (i) because his role of transferor does not directly assist ingestion of marijuana). In the instant case Defendant’s conduct did not directly assist her husband or anyone else to

¹¹ The point is further demonstrated by examination of its converse. If subsection (i) were applied to suppliers/transferors, it would also logically apply to provide immunity to a non-medical marijuana dealer if he happened to sell to a qualified medical user. Carried to the extreme, a marijuana kingpin from Columbia could claim immunity under subsection (i) if one out of many end users of his product happened to be a qualifying patient under the MMMA. As these hypotheticals demonstrate, the production of marijuana is simply too attenuated from its use to be characterized as providing assistance to use under subsection (i).

ingest marijuana. Therefore, the second clause of subsection (i) does not apply.

Conclusion

Defendant did not meet the requirements for immunity under MCL 333.26424(g) or (i). Therefore, the trial court did not abuse its discretion in rejecting Defendant's assertion of immunity.

RELIEF

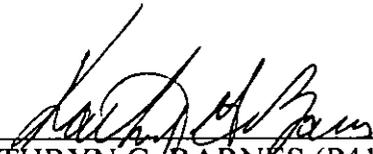
WHEREFORE, Jessica R. Cooper, Prosecuting Attorney in and for the County of Oakland, by Kathryn G. Barnes, Assistant Prosecuting Attorney, respectfully requests that this Honorable Court deny Defendant's application for leave to appeal or affirm the lower courts.

Respectfully submitted,

JESSICA R. COOPER
PROSECUTING ATTORNEY
OAKLAND COUNTY

THOMAS R. GRDEN
CHIEF, APPELLATE DIVISION

BY:


KATHRYN G. BARNES (P41929)
Assistant Prosecuting Attorney

DATED: November 19, 2014

MICHIGAN MEDICAL MARIHUANA ACT (EXCERPT)
Initiated Law 1 of 2008

333.26424 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.

4. Protections for the Medical Use of Marihuana.

Sec. 4. (a) A qualifying patient who has been issued and possesses a registry identification card shall not be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including but not limited to civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau, for the medical use of marihuana in accordance with this act, provided that the qualifying patient possesses an amount of marihuana that does not exceed 2.5 ounces of usable marihuana, and, if the qualifying patient has not specified that a primary caregiver will be allowed under state law to cultivate marihuana for the qualifying patient, 12 marihuana plants kept in an enclosed, locked facility. Any incidental amount of seeds, stalks, and unusable roots shall also be allowed under state law and shall not be included in this amount. The privilege from arrest under this subsection applies only if the qualifying patient presents both his or her registry identification card and a valid driver license or government-issued identification card that bears a photographic image of the qualifying patient.

(b) A primary caregiver who has been issued and possesses a registry identification card shall not be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including but not limited to civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau, for assisting a qualifying patient to whom he or she is connected through the department's registration process with the medical use of marihuana in accordance with this act. The privilege from arrest under this subsection applies only if the primary caregiver presents both his or her registry identification card and a valid driver license or government-issued identification card that bears a photographic image of the primary caregiver. This subsection applies only if the primary caregiver possesses an amount of marihuana that does not exceed:

(1) 2.5 ounces of usable marihuana for each qualifying patient to whom he or she is connected through the department's registration process; and

(2) for each registered qualifying patient who has specified that the primary caregiver will be allowed under state law to cultivate marihuana for the qualifying patient, 12 marihuana plants kept in an enclosed, locked facility; and

(3) any incidental amount of seeds, stalks, and unusable roots.

(c) A person shall not be denied custody or visitation of a minor for acting in accordance with this act, unless the person's behavior is such that it creates an unreasonable danger to the minor that can be clearly articulated and substantiated.

(d) There shall be a presumption that a qualifying patient or primary caregiver is engaged in the medical use of marihuana in accordance with this act if the qualifying patient or primary caregiver:

(1) is in possession of a registry identification card; and

(2) is in possession of an amount of marihuana that does not exceed the amount allowed under this act. The presumption may be rebutted by evidence that conduct related to marihuana was not for the purpose of alleviating the qualifying patient's debilitating medical condition or symptoms associated with the debilitating medical condition, in accordance with this act.

(e) A registered primary caregiver may receive compensation for costs associated with assisting a registered qualifying patient in the medical use of marihuana. Any such compensation shall not constitute the sale of controlled substances.

(f) A physician 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 the Michigan board of medicine, the Michigan board of osteopathic medicine and surgery, or any other business or occupational or professional licensing board or bureau, solely for providing written certifications, in the course of a bona fide physician-patient relationship and after the physician has completed a full assessment of the qualifying patient's medical history, or for otherwise stating that, in the physician's professional opinion, a 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 associated with the serious or debilitating medical condition, provided that nothing shall prevent a professional licensing board from sanctioning a physician for failing to properly evaluate a patient's medical condition or otherwise violating the standard of

care for evaluating medical conditions.

(g) 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.

(h) Any marihuana, marihuana paraphernalia, or licit property that is possessed, owned, or used in connection with the medical use of marihuana, as allowed under this act, or acts incidental to such use, shall not be seized or forfeited.

(i) 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.

(j) A registry identification card, or its equivalent, that is issued under the laws of another state, district, territory, commonwealth, or insular possession of the United States that allows the medical use of marihuana by a visiting qualifying patient, or to allow a person to assist with a visiting qualifying patient's medical use of marihuana, shall have the same force and effect as a registry identification card issued by the department.

(k) Any registered qualifying patient or registered primary caregiver who sells marihuana to someone who is not allowed to use marihuana for medical purposes under this act shall have his or her registry identification card revoked and is guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not more than \$2,000.00, or both, in addition to any other penalties for the distribution of marihuana.

History: 2008, Initiated Law 1, Eff. Dec. 4, 2008;—Am. 2012, Act 512, Eff. Apr. 1, 2013.

Compiler's note: MCL 333.26430 of Initiated Law 1 of 2008 provides:

10. Severability.

Sec. 10. Any section of this act being held invalid as to any person or circumstances shall not affect the application of any other section of this act that can be given full effect without the invalid section or application.

PUBLIC HEALTH CODE (EXCERPT)
Act 368 of 1978

333.7451 "Drug paraphernalia" defined.

Sec. 7451. As used in sections 7453 to 7461 and section 7521, "drug paraphernalia" means 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:

(a) An isomerization device specifically designed for use in increasing the potency of any species of plant which plant is a controlled substance.

(b) Testing equipment specifically designed for use in identifying or in analyzing the strength, effectiveness, or purity of a controlled substance.

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

(d) A diluent or adulterant, including, but not limited to, quinine hydrochloride, mannitol, mannite, dextrose, and lactose, specifically designed for use with a controlled substance.

(e) A separation gin or sifter specifically designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, marihuana.

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

(g) A kit specifically designed for use in planting, propagating, cultivating, growing, or harvesting any species of plant which is a controlled substance or from which a controlled substance can be derived.

(h) A kit specifically designed for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances.

(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.

(l) A device, commonly known as an automotive safe, that is specifically designed to carry and conceal a controlled substance in an automobile, including, but not limited to, a can used for brake fluid, oil, or carburetor cleaner which contains a compartment for carrying and concealing controlled substances.

(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.

History: Add. 1988, Act 139, Imd. Eff. June 3, 1988.

Popular name: Act 368

STATE OF MICHIGAN
IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

Supreme Court
No. 149290

Court of Appeals
No. 317447

-vs-

Oakland Circuit Court
No. 2012-243299 FH

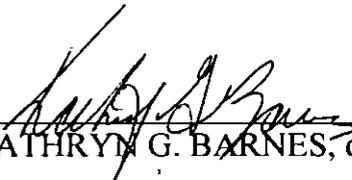
CYNTHIA ANN MAZUR,
Defendant-Appellant.

STATE OF MICHIGAN)
SS)
COUNTY OF OAKLAND)

PROOF OF SERVICE

Kathryn G. Barnes, being duly sworn, deposes and says that on the 19th day of November, 2014, she served a copy of Appellee's Brief in Opposition to Application for Leave to Appeals upon David Rudoi, at 104 W 4th St Ste 300, Royal Oak, MI 48067, by depositing same in an envelope with the Oakland County mailing pick-up service.

Further deponent saith not.



KATHRYN G. BARNES, deponent

Subscribed and sworn before me,
This 19th day of November, 2014.



MICHELLE RENEE LEISMER, Notary Public
Oakland County, Michigan
Acting in the County of: Oakland
My Commission Expires: 3/29/17