

STATE OF MICHIGAN

IN THE 31st CIRCUIT COURT FOR THE COUNTY OF ST. CLAIR

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

-vs-

Case Nos. L-13-000168-FH

L-13-000169-FH

L-13-000170-FH

L-13-000171-FH

L-12-003149-FH

L-12-003150-FH

DEBRA AMSDILL,
DOUG AMSDILL,
JAMES AMSDILL,
AMANDA AMSDILL,
MARK SOCHACKI,
TERRA SOCHACKI,

Defendants.

**OPINION, DECISION AND ORDER RE:
DEFENDANTS' MOTION TO DISMISS**

At a session of the Circuit Court, held in
the City of Port Huron, County of St. Clair,
State of Michigan, on July 30, 2013.

PRESENT: HON. CYNTHIA A. LANE

BACKGROUND AND PROCEDURAL HISTORY

This case involves a multi-count complaint against defendants Debra Amsdill, Doug Amsdill, James Amsdill, Amanda Amsdill, Mark Sochacki, and Terra Sochacki involving the Michigan Medical Marihuana Act ("MMMA"). The charges are premised on the defendants' alleged involvement in and activity at the Blue Water Compassion Center in Kimball Township, MI, as well as compassion centers located in Sanilac County and Tuscola County. The Office of the Attorney General is prosecuting the case on behalf of the People of the State of Michigan.

Defendant Debra Amsdill is charged with Count I: Criminal Enterprise; Count II: Conspiracy to Deliver Marihuana; Count III: Controlled Substance,

Deliver/Manufacture Marihuana; and Habitual Offender, 2nd Offense. Defendant Doug Amsdill is charged with one count of Criminal Enterprises. Defendant James Amsdill is charged with Count I: Criminal Enterprises; Count II: Conspiracy; and Habitual Offender, 4th Offense. Defendant Amanda Amsdill is charged with one count of Criminal Enterprise. Defendants Mark and Terra Sochacki are each charged with one count of Delivery of Marihuana.

Defendants Doug, Debra, and Amanda Amsdill are alleged to have been the operators of the three compassion centers, including the one in St. Clair County. Defendant James Amsdill, who was incarcerated in the Michigan Department of Corrections during the course of the investigation, is nevertheless alleged to have been actively involved in the operation of the compassion centers. They are charged with conspiring to operate and operating a marihuana dispensary and keeping marihuana plants in an enclosed locked facility in violation of the Public Health Code and MMMA.

The Sochacki defendants were employees at the Blue Water Compassion Center in Kimball Township. During the course of an investigation led by the Michigan State Police in late 2011, an undercover Michigan State Police officer visited the Kimball Township Compassion Center on December 5, 2011 and acquired marihuana from Defendants Mark and Terra Sochacki. Money changed hands in the transaction.

On June 10, 2013, defense counsel for defendants Debra and Amanda Amsdill filed a Motion to Dismiss, claiming insufficient notice and ex post facto prosecution, arguing that, at the time of the alleged unlawful conduct, caregiver-to-patient transfers of marihuana for a price were protected by the plain language of MCL 333.26424(e). On February 8, 2013 the Michigan Supreme Court, in *People v McQueen*, 493 Mich. 135 (2013), held that individuals who sell, transfer, or deliver marihuana to another person without being connected through the State registry (pursuant to MCL 333.26424(b)) are not entitled to the immunities set forth in that sub-section, and are therefore in violation of the Public Health Code, MCL 333.7104. (McQueen involved a nuisance claim). It further held that the registry requirements of subsection (b) also apply to caregiver-to-patient transfers of marihuana covered by MCL 333.26424(e). *McQueen* was decided *after* these Defendants were bound over to Circuit Court for trial.

The remaining defendants have joined defendant Debra and Amanda Amsdill's Motion to Dismiss. The Attorney General filed its Response to this Motion on June 28, 2013. The Court heard oral arguments on July 12, 2013 and took the matter under advisement.

THE PARTIES' POSITIONS

Defendants argue that because *McQueen's* interpretation of the MMMA

made the sale of marihuana between a caregiver and an unconnected patient unprotected activity for the first time, it should not be applied retroactively. Applying *McQueen's* interpretation of the Act retroactively makes what was previously legal conduct illegal. Such retroactive application operates as an *ex post facto* law, in violation of the Defendants' rights to due process. In support of their argument, defendants rely on *People v Dempster*, 396 Mich 700, 715 (1976), where the Court held that "a criminal statute must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties." Defendants further argue that, the language contained in Section 4 of the MMMA was at best ambiguous and that any ambiguity should be construed in defendants' favor. *People v Gilbert*, 414 Mich 190, 210 (1982).

The Attorney General responds that ignorance or a mistake of the law is not a defense. *People v Motor City Hosp & Surgical Supply, Inc*, 277 Mich App 209, 215 (1997). In response to Defendants' *ex post facto* argument, the Attorney General argues that Defendants have not met the elements necessary to sustain their burden because they are being prosecuted under the Public Health Code, not the MMMA. Since the Public Health Code is very clear in its prohibition against the delivery of marihuana and has been in place for decades, defendants' assertion that they did not have notice of the illegality of their actions must fail.

OPINION AND DECISION

All of the Defendants are qualifying patients and/or registered primary caregivers under the MMMA. They are alleged to have conspired to aid and/or to have made possible the transfer of marihuana to qualifying patients with whom they were not connected through the State registry pursuant to MCL 333.26424(b), as required by *McQueen*. For the reasons stated in this Opinion and Decision, the Court finds that applying *McQueen's* interpretation of the MMMA retroactively to these defendants and subjecting them to criminal liability because they did not meet that requirements of MCL 333.26224(b), operates as an *ex post facto* law, in violation due process under the Constitution of the State of Michigan and of the United States.

It is well recognized that the Ex Post Facto Clause of the United States Constitution does not apply directly to the judiciary. However, *ex post facto* principles apply to the judiciary by analogy through the Due Process Clauses of the Fifth and Fourteenth Amendments. The Michigan Supreme Court acknowledged this in *People v Dempster*, *supra* at 714-718 and in *People v Stevenson*, 416 Mich. 383, 395 (1982). Therefore, retroactive application of a judicial decision violates due process when it acts as an *ex post facto* law. An *ex post facto* law has been defined by the United States Supreme Court as one 'that makes an action done before the passing of the law, and which was *innocent* when done, criminal; and punishes such action,' or 'that *aggravates a crime*, or makes it *greater* than it was, when committed.'" *People v Doyle*, 451 Mich 93, 99-100 (1996).

As a general rule, judicial decisions are to be given complete retroactive effect. *Id* at 104. However, if a judicial decision is “unexpected” and “indefensible” in light of the law existing at the time of the conduct, retroactive application of such a decision is problematic. “As a result, it has been stated that an unforeseeable judicial enlargement of a criminal statute, applied retroactively, operates precisely like an *ex post facto* law.” *Id* at 100. “The retroactive application of an *unforeseeable* interpretation of a criminal statute, if detrimental to a defendant, generally violates the Due Process Clause.” *Id*.

Here, the critical question is whether Defendants, at the time they committed the alleged acts in 2011, were placed on notice that those actions were illegal and would be subject to criminal prosecution. In the judgment of this Court, they were not. Although the MMMA does not impose criminal sanctions, failure to meet its requirements may, and likely will, result in the filing of criminal charges against non-complying persons. Because of this, the reasoning set forth in *Doyle, supra*, applies here.

Having reviewed the MMMA, the Court concludes that a person of ordinary intelligence would *not* have concluded, prior to *McQueen*, that the MMMA required *a* registered qualifying patient and *a* registered primary caregiver (as they are referenced under MCL 333.26424(e)) to be connected through the State’s registration process, in order for the caregiver to assist the patient and receive compensation. A person of ordinary intelligence could reasonably assume that, had the Legislature intended the registry requirements of MCL 333.26424(b) to apply to subsection (e), this would have been stated more clearly than it was.

Defendants could not have been on notice that the Michigan Supreme Court would interpret the MMMA as it did. Its holding was not foreseeable. Applying the Court’s interpretation of the Act to these defendants, making the conduct in which they were allegedly involved illegal, operates as an *ex post facto* law in violation of their due process rights.

Accordingly, Defendants’ Motion to Dismiss the charges filed against them is GRANTED.

IT IS SO ORDERED.



CYNTHIA A. LANE
Circuit Court Judge