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Court: Weight of marijuana-laced food can't be counted in possession law

Chad Livengood

Detroit News Lansing Bureau

Lansing— The weight of brownies and other edibles laced with a marijuana extract cannot be counted toward total weight limits of cannabis possession under Michigan's medical marijuana law, according to a state Court of Appeals ruling released Friday.

In the first ruling of its kind, a three-judge panel concluded edibles containing THC extracts from marijuana resin is not "usable marijuana" as defined by the 2008 voter-approved act because it cannot be weighed like dry buds from the plant.

But in determining THC-laced brownies were an unusable marijuana product, the appellate court also ruled an individual is not immune from prosecution for possessing traces of the drug outside of the narrow legal boundaries of the law.

"By possessing edibles that were not 'usable marihuana' under the (law), but that indisputably were 'marihuana,' (the defendant) failed to meet the requirements for section 4 immunity," Court of Appeals judges Mark T. Boonstra, Michael J. Kelly and Christopher M. Murray wrote in the ruling.

Patients could seek immunity under another section of the law, but advocates said the ruling is a setback for the rapidly developing use of marijuana for foods, creams, oils and candies used to treat debilitating diseases and chronic pain.

"This opinion effectively denies the possession of medical marijuana by a delivery system other than smoking," said Michael Kormon, a Southfield attorney who specializes in defending medical marijuana patients. "It takes nothing into consideration about how people use marijuana medically. ... This is a terrible decision."

The ruling involves a case in Oakland County against a registered medical marijuana patient and caregiver, Earl Cantrell Carruthers. Carruthers was convicted of possession with intent to deliver the drug, stemming from a Jan. 27, 2011 traffic stop in which he was transporting individually wrapped brownies and dry marijuana.

Under the Michigan Medical Marihuana Act, registered caregivers who grow marijuana for medical purposes can possess up to 2.5 ounces of marijuana for a total of five registered patients or 12.5 ounces.

Oakland County based its charges against Carruthers on the aggregate weight of the brownies — 54.9 ounces — and 9.1 ounces of marijuana found in his vehicle, according to court records.

A lower court counted the weight of the brownies as a marijuana mixture and ruled Carruthers could not use his medical marijuana caregiver status as a defense at trial.

The Court of Appeals sent the case back to Oakland County Circuit Court to let Carruthers seek dismissal of the charges and get an evidentiary hearing to argue he had a right to possess the cannabis for himself and his patients.

Based on the ruling, Carruthers and other patients arrested in possession of marijuana edibles will likely face an “uphill battle” to get immunity under the medical marijuana law, said Paul Walton, chief assistant prosecutor in Oakland County.

“I was kind of surprised they went that far, actually,” Walton said of the appeals ruling.

Patients may need a physician to testify about their need to have high concentrations of THC for medical purposes laced in edible foods to gain immunity from prosecution, Walton said. “It’s always going to be dependent upon the facts of the case,” he said.

In February 2012, Oakland County Judge Michael Warren sentenced Carruthers to 33 days time served in jail, three years probation and ordered him to submit to blood and DNA tests, forfeit his state medical marijuana ID card and write two 500-word essays about “the importance of respecting the rule of law” and the “destructive impact of drugs on self and society.”

Carruthers’ attorney, Elton Mosley, on Friday said he believes his client has “a fair chance” of getting the conviction overturned asserting a legitimate medical use.

“If someone like Earl can’t prevail under section 8, then (the law) will be so diminished as to be of no use to anyone,” he said.

Staff Writer Mike Martindale contributed.

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