

MICHIGAN COURT OF APPEALS DECISIONS - PUBLISHED CASES

People v. Brown, 297 Mich App 670; 825 NW2d 91 (2012):

Issue: Whether there was sufficient probable cause in the search warrant to have it issued by the magistrate?

The Court held in pertinent part, that “We conclude that to establish probable cause, a search-warrant affidavit need not provide facts from which a magistrate could conclude that a suspect’s marijuana-related activities are specifically not legal under the MMMA.”

“Probable cause exists if there is a substantial basis for inferring a fair probability that contraband or evidence of a crime exists in the stated place. *Kazmierczak*, 461 Mich 417-418. Defendant has presented no authority indicating that for probable cause to exist, there must be a substantial basis for inferring that defenses do not apply.”

The Court did note, however, “While we decline, in light of the pertinent case law, to impose an affirmative duty on the police to obtain information pertaining to a person’s noncompliance with the MMMA before seeking a search warrant for marijuana, if the police do have clear and uncontroverted evidence that a person is in full compliance with the MMMA, this evidence must be included as part of the affidavit because such a situation would not justify the issuance of a warrant. This scheme will reduce any potential (however unlikely) for police overreach in attempting to obtain search warrants.”