

MICHIGAN COURT OF APPEALS DECISIONS - UNPUBLISHED CASES

People v. Dehko, No. 305041, March 21, 2013 (Michigan Court of Appeals)

Defendant was granted an evidentiary hearing and provided with numerous opportunities to present evidence on the elements of the MMMA's affirmative defense, up to the eve of trial. Defendant declined to do so. Instead, the defendant maintained that he would continue to rely on his physician's certification and evaluation and a proposed marihuana cultivation expert.

Issue: Whether the defendant met the requirements under Section 8 of the MMMA?

Holding: The Court ruled held that **“Given defendant’s chosen evidence, there is no question of fact regarding whether defendant satisfied the second element under § 8(a)(2).”**

“Here, even if the physician certification raised an inference of a bona fide patient physician relationship, because defendant failed to present any evidence regarding whether the amount of marihuana he possessed was reasonable, it is not necessary to determine whether he also established a question of fact with respect to the other elements of a § 8 defense, including whether he had a bona fide physician-patient relationship with his respective certifying physician.”

The Court reasoned as follows:

“Although afforded the opportunity to do so, defendant did not present any evidence that he possessed only the amount of marihuana reasonably necessary to ensure him an uninterrupted supply for the treatment or alleviation of his alleged serious or debilitating medical condition or symptoms of that condition.

Defendant did not testify and did not present any medical records, or medically-based evidence or testimony from Dr. May or another knowledgeable doctor regarding how much marihuana he was instructed to use or needed to use at a time to address his condition, and how often and how long he needed to use it.

The mere certification does not provide any information regarding how much marihuana defendant should use for treatment. Further, defendant did not explain below how a marihuana cultivation expert possessed the medical knowledge or information to address defendant's medical condition and the amount of marihuana defendant needed for his allegedly serious or debilitating health condition. Because defendant failed to establish a question of fact with respect to this element of the § 8 defense, he was not entitled to assert the § 8 defense at trial.”