

## MICHIGAN COURT OF APPEALS DECISIONS - PUBLISHED CASES

### **People v Hartwick, 303 Mich App 247; 842 NW2d 545 (2013):**

**Issue:** Whether mere possession of the registry identification card entitled the defendant to immunity from prosecution under Section 4 of the Michigan Medical Marihuana Act (MMMA)?

**Holding: NO.**

**Issue:** Whether mere possession of the registry identification card entitled the defendant to an affirmative defense under Section 8 of the MMMA?

**Holding: NO.**

The defendant was the only testifying witness at the evidentiary hearing. He claimed that he was a medical marihuana patient and his own caregiver; and he also served as a caregiver for five additional medical marihuana patients. Defendant possessed registry identification cards for himself and his five patients, and submitted the cards as evidence.

The prosecution stipulated to the validity of defendant's own registry identification card. However, the record showed that the defendant was unfamiliar with the health background of his patients, and could not identify the "debilitating conditions" suffered by two of his patients. Nor was he aware of how much marihuana any of his patients were supposed to use to treat their respective conditions, or for how long his patients were supposed to use "medical marihuana." And he could not name each patient's certifying physician.

The defendant's first argument is that mere possession of the registry identification card entitled him to immunity from prosecution under Section 4 of the Michigan Medical Marihuana Act (MMMA). The Court rejected the defendant's argument. The Court noted that the defendant possessed 77 plants-five more than permitted to him by Section 4(b)(2).

However, the Court went one step further on this issue and stated as follows:

"Yet, were we to accept defendant's numerical assessment, defendant would nonetheless not qualify for § 4 immunity. His interpretation of the MMMA ignores the underlying medical purposes of the statute, explicitly referenced in § 4(d). Mere possession of a state-issued card—even one backed by a state investigation—does not guarantee that the cardholder's *subsequent* use and production of marihuana was "for the purpose of alleviating the qualifying patient's debilitating medical condition or symptoms associated with the debilitating medical condition." MCL 333.26424(d)(2). Indeed, defendant's testimony provided ample evidence that he was not holding true to the medical purposes of the statute.

He failed to introduce evidence of:

- (1) some of his patients' medical conditions;
- (2) the amount of marijuana they reasonably required for treatment and how long the treatment should continue; and
- (3) the identity of their physicians."

The defendant's second argument is that mere possession of the card entitled him to an affirmative defense under Section 8 of the MMMA. The Court rejected the defendant's argument.

The Court stated as follows as to why the defendant failed to meet the first element under Section 8: "A registry card—even one verified by the state, pursuant to the requirements of § 6—cannot demonstrate a "pre-existing" relationship between physician and patient, much less show "ongoing" contact between the two.

Accordingly, mere possession of a patient and/or caregiver's card does not satisfy the requirements of the first element of §8(a)'s defense. That the statute requires this outcome is in keeping with its medical purpose and protects the patients it is designed to serve.

By requiring a bona fide physician-patient relationship for § 8's defense, the MMMA prevents doctors who merely write prescriptions—such as the one featured in *Redden*—from seeing a patient once, issuing a medical marijuana prescription, and never checking on whether that prescription actually treated the patient or served as a palliative."

In this case, as to the first element the Court noted that "Here, defendant presented evidence of a bona fide physician-patient relationship between him and his doctor. But he presented no evidence that his patients have bona fide physician patient relationships with their certifying physicians. None of his patients testified. Nor was defendant able to provide the names of his patients' certifying physicians.

While it is true that the MMMA does not explicitly impose a duty on patients to provide such basic medical information to their primary caregivers, the plain language of § 8 obviously requires such information for a patient or caregiver to effectively assert the § 8 defense in a court of law."

The Court stated as follows as to why the defendant failed to meet the second element under Section 8: "Here, defendant lacks the requisite knowledge of how much marijuana is required to treat his patients' conditions—and even his own condition. He presented no evidence regarding how often and how much marijuana he required to treat his pain. And he testified that he did not know how much marijuana his patients required to treat their conditions. Defendant thus failed to satisfy the second element of the §8 affirmative defense."

The Court stated as follows as to why the defendant failed to meet the third element

under Section 8:

“Once again, defendant unconvincingly suggests that mere possession of state-issued registry cards is sufficient evidence to establish this element. Possession of a registry card indicates that the holder has gone through the requisite steps in § 6 required to obtain a registry card. It does not indicate that any marihuana possessed or manufactured by an individual is *actually* being used to treat or alleviate a debilitating medical condition or its symptoms. In other words, prior state issuance of a registry card does not guarantee that the holder’s subsequent behavior will comply with the MMMA.

Defendant’s theory is akin to stating that possession of a Michigan driver’s license ensures the holder of the license always obeys state traffic laws.”

Lastly, Footnote 18 is very important:

“We note that another panel of this Court held in an unpublished, per curiam opinion that an individual’s state registration as a medical marihuana user is “prima facie evidence of the first and third elements of the affirmative defense.

” *People v Kiel*, entered July 17, 2012 (Docket No. 301427).

The panel did not explain its reasoning beyond this statement. We do not agree with this interpretation of the MMMA. In addition, defendant did not cite *Kiel* in his brief, nor is *Kiel* binding precedent, because it is unpublished. MCR 7.215(C)(1)