

MICHIGAN COURT OF APPEALS DECISIONS - UNPUBLISHED CASES

People v. Hinzman, No. 309351, February 5, 2013 (Michigan Court of Appeals)

The Defendant was charged with perjury, MCL 750.422.

Defendant appealed by leave granted the circuit court's order denying Defendant's motion to exclude evidence.

On appeal, Defendant argued that the circuit court erred in denying her motion.

The Defendant and her husband were originally charged as coDefendants with illegally delivering/manufacturing marihuana. During an evidentiary hearing in that matter, Defendant testified that on May 25, 2010, she was a registered medical marihuana caregiver to three patients. Subsequently, in order to verify this testimony, the prosecutor obtained a subpoena from the trial court, directed to the Department of Licensing and Regulatory Affairs (DLRA), for the production of documents pertaining to Defendant's asserted status as a registered medical marihuana caregiver.

In response to the subpoena, Celeste Clarkston, the Compliance Section Manager of the Health Regulatory Division in the DLRA, gathered and provided the following information: three Caregiver Attestations (dated May 10, May 14, and July 20, 2010); three Change Forms (dated May 10, May 14, and July 20, 2010); a photocopy of a check for \$10 made out to "State of Michigan –MMMP"; a photocopy of a money order for \$10 made out to "Michigan Department of Community Health"; three photocopies of a Physician's Statement (dated March 27, 2010); photocopies of three driver's licenses; and a letter from Clarkston summarizing the information contained in the records and certifying that the documents are true copies of those contained in the master file.

During trial in the illegal delivery/manufacture case, the prosecutor marked as Exhibit 19 all of the documents obtained by subpoena from the DLRA, and sought their admission into evidence.

Defendant challenged the admission of this evidence, arguing that the information produced under subpoena was illegally produced and, alternatively, that the information produced was beyond the scope of information permitted to be disclosed by MCL 333.26423(i).

Issue: Whether the trial court properly denied the motion to exclude this evidence? Defendant first argued that the information contained in Exhibit 19 was obtained in violation of MCL 333.26426 and Mich Admin Code, R 333.121 (Rule 333.121) and that as a result, the exhibit should be suppressed.

The Court of Appeals disagreed.

Defendant claimed, without citation to any authority, that a LEIN inquiry is the sole

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method by which law enforcement can verify the validity of MMMA registry cards.

The Court of Appeals rejected this argument as without merit.

The Court noted that “LEIN is not mentioned in the statute at all, let alone established as the only permissible way of verifying the validity of registry cards.

Defendant next argued that the information provided exceeded what was permissible under statute and rule. The Court noted that “Both MCL 333.26426(h)(3) and Rule 333.121(3) provide that information *shall* be provided to law enforcement upon request and that the disclosure should not contain “more information than is reasonably necessary to verify the authenticity of the registry identification card.”

Holding: The Court held that “Exhibit 19 does not disclose more information than necessary to determine the authenticity of Defendant’s registry card and caregiver status as of May 25, 2010. The only identifying information disclosed in the records are Defendant’s name, date of birth, home address and telephone number, social security number, and driver’s license number. All the information pertaining to her patients is redacted. Each document is necessary to determine whether Defendant was, in fact, a registered caregiver for three patients on May 25, 2010.

Therefore, the trial court properly concluded that information contained in Exhibit 19 complied with the requirement in both the statute and the administrative rule to avoid disclosure of more information than reasonably necessary.”