

## MICHIGAN COURT OF APPEALS DECISIONS - PUBLISHED CASES

**People v Johnson et al, \_\_\_ Mich App \_\_\_; \_\_\_ NW2d \_\_\_ (2013):**

**Issue:** Is the rule of lenity applicable when construing the MMMA?

**Holding: NO.**

**Issue:** Should the Court of Appeals' and Supreme Court's decisions in *State v McQueen*, be retroactively applied?

**Holding: YES.**

These consolidated cases arose from the operation of a marijuana dispensary. After indicating that due process ramifications exist in criminal cases, the trial court held that the rule of lenity should be applied under the circumstances of this case. The trial court granted defendants' joint motion to dismiss all charges pursuant to the Michigan Medical Marijuana Act (MMMA).

The prosecutor first argued that the trial court erroneously dismissed the charges against all seven defendants without requiring defendants to first demonstrate that they were entitled to the protections afforded under the MMMA.

The Michigan Court of Appeals agreed.

The Court noted that "None of the defendants argued or attempted to establish that any one of them was entitled to the protection afforded under MCL 333.26428(a) as either "a patient" or "a patient's primary caregiver. In other words, in their joint motion for dismissal, defendants did not argue or attempt to establish that they had the legal right to seek the protections from arrest, prosecution, or penalty afforded under the MMMA for their marijuana-related activities. And they did not challenge as ambiguous any specific term as relates to their alleged right to seek the protections afforded under the MMMA.

Defendants' brief on appeal likewise fails to assert any such arguments. Again, on appeal, defendants merely appear to argue that the entirety of the MMMA is ambiguous. In light of all of these considerations, we conclude that the trial court abused its discretion when it dismissed the charges against all seven defendants without determining whether any of the defendants were specifically entitled to the protections afforded under either MCL 333.26424 or MCL 333.26428."

Next, the prosecutor argued trial court erroneously held that the rule of lenity applied under the circumstances of this case. The defendants argued in the trial court, and argued in the Court of Appeals, that the rule of lenity should be applied under the circumstances of this case because they were denied "due process and advanced notice of the conduct being prohibited," i.e., they lacked "fair warning."

The Michigan Court of Appeals agreed with the prosecutor.

The 'rule of lenity' provides that courts should mitigate punishment when the punishment in a criminal statute is unclear." *People v Denio*, 454 Mich 691, 699; 564 NW2d 13 (1997).

**The Court held that "Accordingly, the retroactive application of this Court's decision in *McQueen*, although rendered after defendants' arrests, does not present a due process concern because this decision does not operate as an ex post facto law.**

**Here, none of the defendants are deprived of "due process of law in the sense of fair warning that his contemplated conduct constitutes a *crime*." *Bouie*, 378 US at 353 (emphasis supplied).**

**Neither our holding in *McQueen*, nor our Supreme Court's subsequent holding in *McQueen*, 493 Mich at 135, had the effect of criminalizing previously innocent conduct. This is not a case in which marijuana dispensaries were authorized by statute and then, by judicial interpretation, deemed illegal."**

Therefore, the Michigan Court of Appeals reversed and remanded for reinstatement of the charges against the defendants.