

MICHIGAN COURT OF APPEALS DECISIONS - PUBLISHED CASES

People v. King, 291 Mich App 503; 804 NW2d 911 (2011) [abrogated in part by 491 Mich 382; 817 NW2d 528 (2012)]:

Much of *King's* holding regarding the MMMA has been abrogated by the Supreme Court's decision in *King & Kolanek*, that a defendant's failure to follow the requirements in §4 do not preclude him from attempting to avail of the affirmative defense listed in §8. However, (though the definition of enclosed locked facility has now been changed by statute, MCL 333.26423(d)) for pre-April 1, 2013 cases, *King's* definition of enclosed locked facility is pertinent.

Issue: What is an "enclosed locked facility"?

Holding: The enclosed area itself must have a lock or other security device to prevent access by anyone other than the person licensed to grow marihuana.

The facts of the case are that on May 13, 2009, the Michigan State Police received an anonymous tip that someone was growing marihuana in the backyard of a house. The officers saw a chain-link dog kennel behind the house. Although the sides of the kennel were covered with black plastic, some areas of the kennel were uncovered and, using binoculars. The officer could see marihuana plants growing inside.

The Defendant, who was at home at the time, showed the officers medical marihuana card that was issued on April 20, 2009. The officers asked him to show them the marihuana plants and he unlocked a chain lock on the kennel. The kennel was six feet tall, but had an open top and was not anchored to the ground. Defendant disclosed that he had more marihuana plants inside the house. After they obtained a search warrant, the officers found marihuana plants growing inside Defendant's unlocked living room closet.

Defendant was charged with two counts of manufacturing marihuana.

The Defendant argued that he was entitled to the limited protections of the MMA because he complied with its statutory provisions including meeting the definition of "Enclosed, locked facility."

The trial court agreed.

The court held that the trial court incorrectly interpreted and applied the phrase "Enclosed, locked facility." The court further held that, although the plants inside Defendant's home were kept in a closet, which is the type of enclosure specifically mentioned in the statute, there was no lock on the closet door. The statute explicitly states

that the enclosed area itself must have a lock or other security device to prevent access by anyone other than the person licensed to grow marihuana under the MMA.

Lastly, the court noted that the “Trial court’s conclusion that Defendant acted as a “security device” for the marihuana growing inside his home is pure sophistry and belied by defense counsel’s unsurprising admission at oral argument that, at times, Defendant left the property, thus leaving the marihuana without a “security device” and accessible to someone other than Defendant as the registered patient.”