

MICHIGAN COURT OF APPEALS DECISIONS - UNPUBLISHED CASES

People v. Malik, Case No. 293397, August 10, 2010 (Michigan Court of Appeals)

Issue: Can a Defendant be criminalized for the operation of a motor vehicle while having any amount of a schedule 1 controlled substance in his or her body, regardless of whether that individual has exhibited signs of impairment? Is the Medical Marihuana Act retroactive?

Holding: Yes, the court held that while evidence of a positive test for 11-Carboxy-THC is inadmissible, evidence of the presence of tetrahydrocannabinol (THC) in a Defendant's system is still relevant in determining whether the Defendant was operating the vehicle while intoxicated. The Court rejected the application of the Medical Marihuana Act retroactively.

The prosecution presented only one issue on appeal, arguing that the trial court erroneously invalidated MCL 257.625(8) on due process grounds in contravention of the Supreme Court's decision in *People v Derror*, 475 Mich 316; 715 NW2d 822 (2006).

On October 17, 2008, Defendant's automobile collided with the victim's motorcycle.

Defendant's blood test revealed four nanograms of parent tetrahydrocannabinol (THC), and 15 nanograms of 11- carboxy-THC. Defendant was charged, as an habitual offender, second offense, MCL 769.10, with operating a vehicle while intoxicated and causing death, MCL 257.625(4)(a), operating a vehicle with a suspended or revoked license and causing death, MCL 257.904(4), and negligent homicide, MCL 750.324.

In order to secure a conviction for violation of MCL 257.625(4)(a), the prosecution sought to prove that Defendant violated MCL 257.625(8). MCL 257.625(8), which criminalizes the operation of a motor vehicle by an individual who has any amount of a schedule I controlled substance in his or her body, regardless of whether that individual has exhibited signs of impairment.

It should be noted that MCL 333.7211 provides a general definition of schedule 1 controlled substances, while MCL 333.7212 designates specific substances as schedule 1 controlled substances. THC is one such schedule 1 controlled substance.

Defendant filed a number of pretrial motions, including a challenge to the constitutionality of MCL 257.625(4). The Barry County Circuit Court ruled that "MCL 257.625(8) is fundamentally unfair, does nothing to promote public safety, and bears no rational relationship to any legitimate governmental interest," and it invalidated MCL 257.625(8) on due process grounds.

In an unpublished opinion, the Court of Appeals reversed and remanded. The Court ruled as follows:

"Defendant has not alleged that it is unconstitutional to criminalize operating a motor

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vehicle while under the influence of THC. Consequently, we hold that the trial court's ruling regarding the constitutionality of MCL 333.7212 must be reversed and this matter is remanded for trial.

At trial, the evidence of the positive test for 11-carboxy-THC is inadmissible as it is now irrelevant. However, the evidence of the presence of THC in Defendant's system is still relevant in determining whether he was operating his motor vehicle while intoxicated."

Lastly, the Court rejected the argument about the Michigan Medical Marihuana Act being applicable and retroactive under *People v Conyer*, 281 Mich App 526 (2008).