

MICHIGAN COURT OF APPEALS DECISIONS - UNPUBLISHED CASES

People v Mazur, No. 317447, April 1, 2014 (Michigan Court of Appeals)

Issue: Whether the defendant was entitled to have her drug charges dismissed based on the immunity provision of the MMMA because office "sticky notes" should be considered "drug paraphernalia" under the PHC.

The defendant argued that she was entitled to immunity under the MCL 333.26424(g) for her marihuana manufacturing and possession with intent to deliver charges. Under the MMMA, a person may not be prosecuted for "providing a registered qualifying patient or a registered primary caregiver with marihuana paraphernalia for purposes of a qualifying patient's medical use of marihuana."

The defendant claimed that the two "sticky notes" containing marijuana "harvest dates" that she gave to her husband constituted "marihuana paraphernalia." She claimed that "these acts were 'all that is required for immunity.'"

However, that a "defendant was completely isolated from the possibility of prosecution, arrest, or other penalty for all of her alleged marihuana-related activity by virtue of having written harvest dates on two sticky notes is contrary to the principle of statutory interpretation that statutes must be construed to prevent absurd results." If a person "provides a patient or caregiver with paraphernalia, it is only that isolated act of providing paraphernalia that cannot be penalized under MCL 333.26424(g), and not, as defendant by implication" urged the court to hold, "all of the person's marihuana-related activity."

Holding: The court held that the MMMA and the controlled-substances article of the PHC are *in pari materia* and that it was "appropriate to adopt the definition of 'drug paraphernalia' found in" the PHC when addressing the defendant's assertion of immunity under the MMMA. Under the PHC, "the notes were not paraphernalia."

The court determined that "the Legislature intended to grant immunity to a person who provides a registered qualifying patient or caregiver with 'marihuana paraphernalia for purposes of a qualifying patient's medical use of marihuana,' MCL 333.26424(g), that is, items *specifically* designed to facilitate the use of marihuana. Objects that serve as ordinary household and office supplies, such as sticky notes, are outside the ambit of what the Legislature contemplated when it created the paraphernalia-immunity provision."

Further, the evidence failed to show that the growing operation was in accordance with the MMMA. Marihuana was found growing in several unlocked places. Thus, the defendant was not entitled to immunity under MCL 333.2624(i). The trial court also did not err by denying her a second, discrete evidentiary hearing so she could assert the affirmative defense under MCL 333.26428 because she did not show that she was either a "patient" or a "primary caregiver" as defined by the MMMA.

Affirmed.