

## MICHIGAN COURT OF APPEALS DECISIONS - PUBLISHED CASES

**People v. Redden, 290 Mich App 65; 799 NW2d 184 (2010):**

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**Issue:** Can Defendants use the affirmative defense contained in §8 of the Michigan Medical Marihuana Act (MMMA), MCL 333.26428, if their registry identification card was acquired after the offense?

**Holding:** Yes, the court held that registered patients under §4 and unregistered patients under §8 would be able to assert medical use of marihuana as a defense even though the defendant does not satisfy the registry identification card requirement of §4.

**Issue:** What constitutes a physician-patient relationship?

**Holding:** The doctor's recommendations have to result from assessments made in the course of bona fide physician-patient relationships and the Defendants have to see the physician for good-faith medical treatment not in order to obtain marihuana under false pretenses.

[The Legislature has now passed a definitional statute: MCL 333.26423(a)]

Defendant Robert Lee Redden and Defendant Torey Alison Clark appealed by leave granted from a December 10, 2009, circuit court order reversing for each Defendant the district court's dismissal of a single count of manufacturing 20 or more but less than 200 marihuana plants.

This case arose from the execution of a search warrant on March 30, 2009, at Defendants' residence, which resulted in the discovery of approximately one and one-half ounces of marihuana and 21 marihuana plants. Defendants were in the residence at the time of the search. The officers found 3 bags of marihuana in a bedroom and 21 marihuana plants on the floor of the closet in the same bedroom.

It should be noted that although the MMMA went into effect on December 4, 2008, the State of Michigan did not begin issuing registry identification cards until April 4, 2009. The Michigan Department of Community Health issued medical marihuana registry identification cards to each Defendant on April 20, 2009.

As part of the preliminary examination, Defendants asserted the affirmative defense contained in § 8 of the MMMA, MCL 333.26428. In support of the defense, Defendants presented testimony from Dr. Eric Eisenbud, M.D., licensed to practice in the State of Michigan. Dr. Eisenbud testified that Defendants were his patients and he examined each of them on March 3, 2009, when both were seeking to be permitted to use medical marihuana under the MMMA.

Dr. Eisenbud testified that he signed the authorization for each Defendant in his professional capacity because each qualified under the MMMA and each would benefit

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from using medical marihuana. He opined that his relationship with each Defendant was a bona fide physician-patient relationship because he interviewed Defendants, examined them, and looked at their medical records in order to gain a full understanding of their medical problems.

The prosecution has argued throughout each stage of the judicial process that Defendants were not entitled to assert the affirmative defense from § 8 of the MMMA because they did not each have a registry identification card at the time of the offense as required by §4(a) of the MMMA, MCL 333.26424(a).

On the other hand, the Defendants argued that they each met the requirements of § 8 because they each had a signed authorization from a licensed physician with whom they had a bona fide physician-patient relationship and who concluded that they each had conditions covered under the MMMA. Defendants also argued that the amount of marihuana was reasonably necessary.

The Court noted that "Individuals may either register and obtain a registry identification card under § 4 or remain unregistered and, if facing criminal prosecution, be forced to assert the affirmative defense in § 8. The Court stated "That adherence to § 4 provides protection that differs from that of § 8. Because of the differing levels of protection in sections 4 and 8, the plain language of the statute establishes that § 8 is applicable for a patient who does not satisfy § 4."

The Court also mentioned the ballot proposal language, specifically, the following language:

- Permit registered and unregistered patients and primary caregivers to assert medical reasons for using marihuana as a defense to any prosecution involving marihuana. Based on this language, the Court ruled that "The language supports the view that registered patients under § 4 and unregistered patients under § 8 would be able to assert medical use of marihuana as a defense."

Therefore, the Court held that the district court did not err by permitting Defendants to raise the affirmative defense even though neither satisfied the registry-identification-card requirement of § 4.

The next issue is whether there was a bona fide physician-patient relationship. The Court stated that "We find that there was evidence in this particular case that the doctor's recommendations did not result from assessments made in the course of bona fide physician-patient relationships. The Court ruled that "The facts at least raise an inference that Defendants saw Dr. Eisenbud not for good-faith medical treatment but in order to obtain marihuana under false pretenses."

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The circuit court's decision to reverse the district court's bind over was affirmed.