

MICHIGAN COURT OF APPEALS DECISIONS - PUBLISHED CASES

People v Tuttle, Mich App ; ___NW2d___ (2014):

Issue: Whether the defendant is entitled to the immunity provisions of Section 4 of the Michigan Medical Marihuana Act (MMMA) or entitled to dismissal of the case pursuant to Section 8 of the MMMA?

Holding: NO

The defendant was a registered patient and a registered caregiver for two other registered patients. He sold marijuana on three occasions to a confidential informant who was a registered patient, but not tied to him as a caretaker. The police searched his house and found 33 plants and 1.34 ounces of marijuana, plus weapons. He was charged with three counts of delivery, one count of possession for the marijuana in his home, and felony firearm.

Judges Saad and Sawyer noted that he was entitled to a rebuttable presumption of immunity under section 4 of the MMMA because he possessed less than the 36 plants and 7.5 ounces allowed for the defendant and his two registered patients. They held, however, that his illegal sale to the CI indicated that his possession of the marijuana was not done in accordance with the MMMA, and therefore rebutted his presumption of immunity.

In regard to his claimed section 8 defense, they held that he failed to present sufficient evidence on any of the three requirements. They first noted that the defendant had to establish each requirement for himself, his two registered patients, and the CI. A failure of proof on any claimed patient, on any prong, would defeat the defense.

In regard to the first prong, they held that possession of a registration card by the defendant, his registered patients and the CI, did not establish that a physician, as part of a bona fide relationship, had conducted a full in-person examination and determined that they had a debilitating condition that would benefit from marijuana. They further noted that defendant did not present any other proof that the CI, who testified that he obtained his physician certificate over the phone, had a bona fide physician relationship. He also failed to present any evidence that he had a bona fide relationship, and the testimony from his two registered patients was also insufficient.

He presented no proof that he knew how much marijuana the CI needed for treatment. He provided no testimony regarding how much he needed, and his two registered patients provided no testimony that the defendant knew how much marijuana was necessary for their treatment; so he failed on the second prong. Finally, they held that possession of a registry card alone does not prove that the marijuana is being used to treat or alleviate a debilitating medical condition. Because he presented no proof that he or the CI were currently using the marijuana

to treat or alleviate a debilitating medical condition, he failed on the third prong. Judge Jansen concurred in the result only.

Affirmed.