

MICHIGAN LOWER COURT DECISIONS - CIRCUIT COURT DECISIONS

People v. Ferretti, 2011-798-AR, September 27, 2011 (Macomb County)

In this case, in pertinent part, the People argued that the lower court erred in quashing the search warrant, suppressing the fruits of the searches, and dismissing the charges.

According to the People, the search warrant affidavit set forth probable cause and the new information did not materially change or cast doubt on the existence of probable cause.

Specifically, the People asserted the fact that defendants produced medical marijuana cards is not material to the decision of probable cause and does not alter the alleged crime, or scope or nature of the resulting search.

Further, the People maintained possession of a medical marijuana card is only an affirmative defense with no legal bearing on the decision to issue a search warrant or probable cause that a violation of the Public Health Code occurred.

In response, defendants claimed the lower court properly quashed the search warrant because the police officers failed to update the issuing district court with highly relevant, newly discovered evidence before executing the warrant.

Defendants asserted the new information regarding defendants' possession of medical marijuana cards was a material fact that cast doubt on the decision of probable cause. Defendants maintained it is presumed that medical marijuana card holders are conforming to the act and this alters the information provided in the search warrant affidavit.

Issue: Whether the lower court erred in quashing the search warrant, suppressing the fruits of the searches, and dismissing the charges.

Holding: The Court held that “In this matter, the new information would not affect the finding of probable cause. The only new information to be added to the affidavit is that defendants possess medical marijuana cards.”

The new information did not affect the veracity of the statements made in the affidavit including the confidential informant's statements regarding a large grow operation and the selling of marijuana; information from DTE Energy that the residence had two energy meters and a very large increase in energy/electricity had been used on both meters as compared to the last two years for the same period of time; evidence from a non-intrusive thermal imaging search that there were detectable heat anomalies consistent with indoor marijuana manufacturing; and, based on surveillance of the residence, the roof of the living portion of the residence was not snow-covered even though the garage and other residences in the area had snow-covered roofs.

Further, the new information does not alter the alleged crime, or the scope or nature of

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the resulting search. Even with the supplemental information, the affidavit clearly establishes, by a fair probability, that evidence of a large marihuana grow operation would be discovered at the 28 Mile Road address.