

## MICHIGAN LOWER COURT DECISIONS - CIRCUIT COURT DECISIONS

People v. Prell, Case No. 2010-233008-FH, March 4, 2011 (Oakland County):

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**Issue:** Can a Defendant assert an MMMA defense when the Defendant's expert witness is not qualified under *Daubert* MRE 702?

**Holding:** The Court found that Defendant was precluded from asserting MMMA defense. Essentially, Defendant had failed to demonstrate the necessary predicate for the testimony of her expert; namely, that her expert was qualified to render an opinion.

A circuit court opinion denied Defendant's motion to dismiss because her doctor was not qualified under *Daubert*/MRE 702.

More specifically, the Court found that Defendant was precluded from asserting MMMA defense.

Essentially, Defendant had failed to demonstrate the necessary predicate for the testimony of her expert; namely, that her expert was qualified to render an opinion concerning Defendant use of marijuana for her medical condition.

The Defendant relied on the testimony of Dr. Moscovic for his professional opinion concerning the medical use of marijuana by the Defendant. On the other hand, the People argued that the Defendant had failed to establish the expertise of the physician pursuant to MRE 702.

The Defendant contended that Dr. Moscovic is a "pain specialist" and had "extensive expertise in pain management."

The Court noted that there is no evidence to support these assertions.

The Court stated that there was no evidence of any formal training or certification regarding Dr. Moscovic's expertise as a pain specialist or that he had extensive expertise in pain management.

Therefore, the Court found that the Defendant had not met her burden in demonstrating that her expert was qualified to render an opinion in this matter. The Court also noted the opinion rendered by the doctor was not derived from reliable data.