

DISTRICT COURT DECISIONS

People v. Barber, Case No. 14-00098-SM, March 4, 2014 (Ingham County)

Issue: Whether the Michigan Medical Marihuana Act is a defense against Marihuana being a schedule 1 controlled substance.

Holding: The Court held *Kazmierczak, supra*, was still governing and that the act didn't remove marihuana from the realm of contraband. In addition, the Court held that the act created affirmative protections as opposed to legalizing anything and that the Deputy had no obligation to inquire about card status, rather a card holder had an obligation to advise the Deputy of their cardholder status.

The case involved a traffic stop for speeding. As the Deputy approached the vehicle he detected the odor of burnt/burning marihuana coming from inside the vehicle. He asked the driver (defendant) and the female passenger about the smell and they both denied any MJ, instead claiming the odor to be tobacco. The Deputy, who was previously attached to SWET and has narcotics enforcement training, did a PC/automobile exception search on the vehicle and found a small quantity of MJ in the ashtray.

The defense attorney filed a motion to dismiss claiming that the odor of marihuana was no longer, in light of MMMA, PC for a search. His argument was that since it was now 'legal' for some people to possess marihuana that MJ is no longer clearly contraband and therefore cannot be used to form PC for the search.

It is interesting to note that the Defendant is not a card holder nor has he claimed section 8. The attorney argued that the Deputy had an obligation to specifically ask if any of the occupants have a MMMA card before conducting a warrantless search.

Prosecutor argued that the act didn't legalize marihuana, that it was still a schedule 1 drug, and that the act didn't provide any support for the defendant's argument.

Prosecutor also noted that *People v. Kazmierczak*, 461 Mich. 411 (2000) was still good law and the defense attorney acknowledged as much. The Court denied the motion to dismiss. The Court held *Kazmierczak, supra*, was still governing and that the act didn't remove marihuana from the realm of contraband. In addition, the Court held that the act created affirmative protections as opposed to legalizing anything and that the Deputy had no obligation to inquire about card status, rather a card holder had an obligation to advise the Deputy of their cardholder status.