

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

MICHAEL SCOTT DANTO,

Defendant-Appellee.

FOR PUBLICATION
November 8, 2011

No. 302986
Oakland Circuit Court
LC No. 2010-234121-FH

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

ANDREW BENJAMIN NATER,

Defendant-Appellee.

No. 302991
Oakland Circuit Court
LC No. 2010-234120-FH

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANDREW BENJAMIN NATER,

Defendant-Appellant.

No. 303064
Oakland Circuit Court
LC No. 2010-234120-FH

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL SCOTT DANTO,

Defendant-Appellant.

No. 303525

Oakland Circuit Court

LC No. 2010-234121-FH

Before: MARKEY, P.J., and SAAD and GLEICHER, JJ.

GLEICHER, J. (*concurring in part and dissenting in part*).

I agree with the majority that the trial court abused its discretion in precluding the prosecution's presentation of "other acts" evidence under MRE 404(b).¹ I also agree that defendants failed to adequately support their proffered defense under the Medical Marihuana Act (MMA), requiring the exclusion of that affirmative defense. However, I respectfully disagree with the majority's conclusion that "trial court's order precluding assertion of the MMA affirmative defense and references to the MMA at trial was not erroneous."

The trial court granted the prosecution's motion to preclude defendants from asserting an affirmative defense under the MMA. The trial court's order further provides, "neither the Defendants nor their attorneys may make any reference in the presence of the jury to the Medical Marihuana Act or the use of the term medical marijuana in conjunction with, or in reference to, the marijuana in the present case." At oral argument, the prosecuting attorney conceded that if this Court held the MRE 404(b) evidence admissible, a blanket order prohibiting mention of the MMA or "the term medical marijuana" would qualify as overbroad. The prosecutor specifically acknowledged that mention of medical marihuana would be necessary to explain the "res gestae" of the crime and the other acts evidence. Consequently, I am mystified that the majority nevertheless holds that the prosecution may introduce evidence invoking the term medical marihuana, but the defense may not.² Defendants aptly note that their ability to cross-examine these witnesses will be limited to the point of absurdity if the trial court's order remains in place—the prosecution will be able to elicit testimony regarding the officers' undercover

¹ At oral argument, defense counsel readily conceded that controlling Michigan law construing MRE 404(b) compelled the introduction of the prosecution's other acts evidence.

² According to the prosecuting attorney's oral argument, the prosecution intends to present evidence that the police found medical marihuana cards when they executed a search warrant at defendants' homes. The police acquired the MRE 404(b) evidence by using fake medical marihuana cards to enter a medical marihuana dispensary, and the prosecutor admitted that these facts would be presented to the jury in the prosecution's case.

personas as medical marihuana purchasers, but defendants will be precluded from repeating those terms in cross-examination.

In light of our reversal of the trial court's 404(b) ruling, the challenged order now impermissibly limits defendants' ability to cross-examine the witnesses on matters likely to be brought out on direct examination, and on matters that are potentially relevant to bias and credibility. While a court may impose reasonable limits on cross-examination to protect against confusion of the issues or the introduction of only marginally relevant evidence, a comprehensive limitation of otherwise relevant cross-examination violates the Confrontation Clause. *Delaware v Van Arsdall*, 475 US 673, 679; 106 S Ct 1431; 89 L Ed2d 674 (1986). To prevent prejudice to defendants, I would reverse that portion of the trial court's March 8 one-sided order precluding defendants' reference to the MMA or "medical marijuana" at trial.

/s/ Elizabeth L. Gleicher