

People v. Kiel, No. 301427, July 17, 2012 (Michigan Court of Appeals):

Issue: Whether the Defendant was entitled to present an affirmative defense as to all of the marihuana plants on his property?

Holding: The Court held that In light of the most recent Michigan Supreme Court decision of *People v. Kolanek*, No. 142695, decided May 31, 2012, which was decided after Kiel's conviction, the *Kiel* Court of Appeals held that "While this instruction matches the requirements under § 4, the trial court erred in giving this instruction to the jury because, as discussed, *supra*, defendant was entitled to assert a § 8 affirmative defense at trial. As clarified by our Supreme Court, § 4 applies only to *registered* qualifying patients, while § 8 provides an affirmative defense to "patients" generally. *Kolanek*, ___ Mich at ___ (slip op at 19). Because the jury was not properly instructed concerning the applicable affirmative defense, defendant is entitled to a new trial."