Court of Appeals, State of Michigan

ORDER

People v Johnnie Vernon Randall

Docket No. 318740

LC No. 12-012613-FH

Pat M. Donofrio
Presiding Judge

Stephen L. Borrello

Cynthia Diane Stephens
Judges

The Court orders that the prosecution's motion to amend its motion for reconsideration is GRANTED. The Court orders that the amended motion for reconsideration is DENIED.

The prosecution's reliance on *People v Carruthers*, 301 Mich App 590; 837 NW2d 16 (2013), is misplaced. While the *Carruthers* Court did state that a defendant who possesses *any* marijuana that was not "usable marijuana" was precluded from invoking a Section 4 defense under the MMMA, *id.* at 610-611, this statement was made in the context of a defendant possessing edible products containing THC extract, which the Court noted *was not* an "authorized" use under the MMMA, *id.* at 607. Thus, its pronouncements regarding the possession of marijuana that was not "usable" was not in relation to authorized plants.

Here, even though the seized marijuana plant material at issue was not "usable marijuana" because it was not dry yet, the marijuana nonetheless *was* authorized under the MMMA. MCL 333.26423(f)'s definition of "medical use" expressly includes "cultivation," and the cultivation of marijuana necessarily must include the act of cutting and drying of plant material, especially since "usable marijuana" only consists of "the *dried* leaves and flowers of the marihuana plant." MCL 333.26423(k); *Carruthers*, 301 Mich App at 601 (emphasis added). Additionally, Section 4 authorizes a caregiver to possess and cultivate up to 12 plants for each patient. MCL 333.26424(b)(2); see also MCL 333.26423(f), (h). Further, subsection (h) of Section 4 provides that "[a]ny marijuana . . . that is possessed, owned, or used in connection with the medical use of marijuana, as allowed under this act shall not be seized or forfeited." MCL 333.26424(h).

Therefore, the drying plant material was in connection with the medical use or cultivation of marijuana and should not preclude a Section 4 defense. To hold otherwise would result in no caregiver from practically ever being able to claim a Section 4 defense because, given the long times needed to dry plant materials, there likely always would be materials from various plants in drying

states. A defense that would allow a caregiver to possess plants but not cultivate them would serve no purpose. See *Moore v Fennville Pub Schs Bd of Ed*, 223 Mich App 196, 201; 566 NW2d 31 (1997) ("It is the duty of the courts to interpret statutes so as to render no provision meaningless.").

A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

MAR 06 2015

Date

Chief Clerk