SUPREME COURT OF THE STATE OF MICHIGAN

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RODNEY KOON,

Defendant-Appellant.

Court of Appeals No. 301443

Lower Court No. 10-028194-AR

Mary Chartier (P65327)
Natalie Alane (P65584)
Attorneys for Defendant-Appellant
ALANE & CHARTIER, P.L.C.
403 Seymour Avenue
Lansing, MI 48933
517.482.2000/517.482.2070 FAX
mary@alanechartier.com

Thomas Loeb (P25913)
Attorney for Defendant-Appellant
32000 Northwestern Hwy, Suite 170
Farmington Hills, MI 48334
248.851.2020

Matthew Newburg (P71692)
Eric Misterovich (P73422)
Appellate Attorneys for Defendant-Appellant
Newburg Law, PLLC
4112 W. St. Joe Hwy., Suite C
Lansing, MI 48917
517.505.2323

Jennifer Tang-Anderson (P54337)
Attorney for Plaintiff-Appellee
324 Court Street
Traverse City, MI 49684
231.922.4600

DEFENDANT-APPELLANT'S APPLICATION FOR LEAVE TO APPEAL

Statement of Judgment and Order Appealed from and Relief Sought

Rodney Koon appeals from an April 17, 2012 opinion of the Court of Appeals that the "any amount" provision of the Michigan Vehicle Code still applies to a registered qualifying patient under the Michigan Medical Marihuana Act. (Exh. A.) This decision reversed a November 16, 2010 decision by the circuit court that held that the Michigan Medical Marihuana Act expressly provides for a different standard for medical marijuana patients. (Exh. B.) Mr. Koon seeks a grant of his application for leave to appeal and a reversal of the Court of Appeals opinion or, in the alternative, peremptory reversal of the Court of Appeals opinion.

Question Presented

I. The Michigan Medical Marihuana Act (MMA) protects qualifying patients who are engaged in the medial use of marijuana. This protection allows a qualifying patient to operate a motor vehicle while internally possessing medical marijuana as long as the qualifying patient is not under the influence of marijuana. However, the Court of Appeals held that operating under the influence of marijuana means that a qualifying patient cannot operate a motor vehicle with any amount of marijuana in his system. This is in direct contravention of the language of the MMA, and prior law regarding what operating under the influence means. Did the Court of Appeals err in finding that operating "under the influence" of medical marijuana means the same as the "any amount" prohibition in the Michigan Vehicle Code?

Mr. Koon answers "yes."
The Court of Appeals would answer "no."
The circuit court would answer "yes."
The Grant Traverse County Prosecutor's Office would answer "no."

Table of Contents

Table of Authorities

State of Michigan Cases

Statutory Provisions

Court Rules

Introduction

In November 2008, an overwhelming number of citizens voted for medical marijuana to be protected in the State of Michigan. Since that time, the Michigan Medical Marihuana Act (MMA), MCL 333.26421 *et seq.*, has generated criticism, scrutiny, and a visceral reaction from opponents that has resulted in an all-out legal assault in our courts. One of the most recent opinions from the Court of Appeals has the practical effect of denying qualifying patients – patients who have been explicitly approved to use medical marijuana by the State of Michigan – the opportunity to drive a motor vehicle.

The Court of Appeals held that the Michigan Vehicle Code's provision against operating a motor vehicle with any amount of a controlled substance in a person's system still applies to a qualifying patient under the MMA. (Exh. A, 1.) Yet the court's position is not grounded in the plain language of the MMA. Such a drastic departure from the well-established principles of statutory interpretation evidences the court's legislating from the bench. Under the guise of legal reasoning, the Court of Appeals engaged in judicial activism and issued an opinion invalidating protections embodied in a law passed by 63% of Michigan voters.

Because of this activism, thousands of qualifying patients are left without the ability to drive a motor vehicle for fear of being prosecuted for using their legal medicine. This result does not comport with the statutory language, and the Court of Appeals has now deemed conduct illegal without a statutory basis upon which to ground its opinion. The unsurprising upheaval that has occurred cannot be countenanced by this Court, and the unprecedented effect of denying driving privileges to qualifying patients cries out for review.

Statement of Facts

This case began with a traffic stop that occurred at approximately 6:30 p.m. on February 3, 2010. (Exh. B, 2.) Rodney Koon was stopped for allegedly speeding while driving his vehicle. *Id.* Mr. Koon "consented to a pat down of his person, voluntarily removed a pipe, and explained that he had a medical marijuana registry card and had last smoked marijuana five to six hours previously." (Exh. A, 1.) A blood test showed that Mr. Koon had active tetrahydrocannabinol (THC) in his system. *Id.* Although Mr. Koon had a valid registry identification card issued by the State of Michigan, he was charged with operating a motor vehicle with a Schedule I controlled substance in his body for having any amount of THC in his system. *Id.*

A hearing was held in district court regarding the applicable jury instructions. (Exh. C.) The Honorable Thomas J. Phillips of the 86th District Court for Grand Traverse County held that the MMA allows a person to drive after he has used medical marijuana pursuant to the MMA. *Id.* at 29. The court said that this does not mean that a person can use marijuana and then drive while intoxicated or impaired. *Id.* In sum, a prosecutor must prove that a registered, qualifying patient drove while impaired due to his consumption of medical marijuana. *Id.*

The prosecutor appealed to the circuit court, and the circuit court affirmed the district court's ruling. (Exh. B.) In a thorough and well-reasoned opinion, the circuit court held that the "prohibition in MCL § 257.625(8) on driving with any amount of TCH [sic] in one's body is inconsistent with qualifying patients being allowed to consume marijuana, but prohibited from driving under its influence." *Id.* at 9. "The People, therefore, must provide evidence that consumption of marijuana impaired the Defendant's ability to operate a vehicle the same as would an ordinary, careful, and prudent driver." *Id.* Thus, "evidence of impairment is a

necessary requirement." *Id.* at 10. Notably, the prosecutor did not allege that Mr. Koon's driving was impaired by the presence of THC in his body, nor did the prosecutor indicate a visible or substantial impairment in Mr. Koon's driving. *Id.*

The prosecutor appealed yet again, and this time the Court of Appeals reversed the circuit court's decision. (Exh. A, 5.) Despite the MMA, the court held that the "any amount" provision of the Michigan Vehicle Code (MVC) still applies to qualifying patients, such as Mr. Koon, who possess a registry identification card under the MMA. *Id.* at 1. The court held that the phrase "under the influence of marijuana" means having any amount of marijuana in a person's system. *Id.* at 3. Thus, the Court of Appeals reversed the circuit court's order and stated that Mr. Koon was properly charged under the "any amount" provision of the MVC. *Id.* at 4. Mr. Koon now files this application for leave to appeal.

Grounds for Granting Mr. Koon's Application for Leave to Appeal under MCR 7.302(B)

The errors in the Court of Appeals opinion are so significant that this Court must intercede because the jurisprudence of the state has been affected in an unprecedented manner that is seriously detrimental to the citizens of Michigan. With the stroke of a pen, the Court of Appeals opinion has had the practical effect of stripping an explicit protection of the MMA from qualifying patients.

It is a legal and logical fallacy for the Court of Appeals to claim that the phrase "under the influence" of marijuana means the same as operating with any amount of marijuana in a person's system. Yet this is the basis for the Court of Appeals opinion that ignores the statutory protections provided to qualifying patients under the MMA. The most critical point about this case is that the Court of Appeals now prevents qualifying patients – patients who have been authorized *and protected* by the State of Michigan to use medical marijuana for a valid medical

purpose – from operating a motor vehicle for fear that marijuana that no longer has any effect on their ability to drive will be found and they will be prosecuted for a violation of the law. Instead of declaring what the statute already provides, that patients are protected from internally possessing medical marijuana and may operate a motor vehicle as long as medical marijuana is not influencing their ability to drive, the Court of Appeals has opted to ignore the statutory language and imposed its own value judgment on qualifying patients who are protected by the MMA.

The voters of Michigan have spoken and medical marijuana is legal in the State of Michigan. However, the Court of Appeals has violated the most basic and fundamental tenet of the law and inserted its own bias into its opinion. Despite the clear will of the people, prosecutors and courts are imposing their own viewpoints on what should be occurring in our state. These efforts are in direct contravention of the law and affect the jurisprudence of our state in a manner that is unprecedented. Without redress from this Court, qualifying patients are left with a law that allows them to operate a motor vehicle as long as the use of their legal medicine does not influence their ability to drive, but a court that tells them they are criminals if they comply with this law.

Applicable Statutory Provisions

The Michigan Medical Marihuana Act

- Qualifying patients, as well as caregivers, are protected when they engage in the "medical use" of marijuana. MCL 333.26424(a)-(b). Regarding qualifying patients, the MMA states the following:

  > A qualifying patient who has been issued and possesses a registry identification card shall not be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including but not limited to civil penalty or disciplinary action by a business or occupational or professional licensing board

or bureau, *for the medical use of marihuana* in accordance with this act, provided that the qualifying patient possesses an amount of marihuana that does not exceed 2.5 ounces of usable marihuana, and, if the qualifying patient has not specified that a primary caregiver will be allowed under state law to cultivate marihuana for the qualifying patient, 12 marihuana plants kept in an enclosed, locked facility. Any incidental amount of seeds, stalks, and unusable roots shall also be allowed under state law and shall not be included in this amount. [*Id.*, emphasis added.]

- "Medical use" is defined as:

> the acquisition, possession, cultivation, manufacture, use, internal possession, delivery, transfer, or transportation of marihuana or paraphernalia relating to the administration of marihuana to treat or alleviate a registered qualifying patient's debilitating medical condition or symptoms associated with the debilitating medical condition. [MCL 333.26423(e).]

- Section 7 of the MMA refers to acts that no person is allowed to commit, such as operating a motor vehicle while under the influence of marijuana. MCL 333.26427. Section 7 is entitled "Scope of Act" and provides the following:

(a) The medical use of marihuana is allowed under state law to the extent that it is carried out in accordance with the provisions of this act.

(b) This act shall not permit any person to do any of the following:

(1) Undertake any task under the influence of marihuana, when doing so would constitute negligence or professional malpractice.

(2) Possess marihuana, or otherwise engage in the medical use of marihuana:

(A) in a school bus;

(B) on the grounds of any preschool or primary or secondary school; or

(C) in any correctional facility.

(3) Smoke marihuana:

(A) on any form of public transportation; or

(B) in any public place.

(4) Operate, navigate, or be in actual physical control of any motor vehicle, aircraft, or motorboat while under the influence of marihuana.

(5) Use marihuana if that person does not have a serious or debilitating medical condition.

(c) Nothing in this act shall be construed to require:

(1) A government medical assistance program or commercial or non-profit health insurer to reimburse a person for costs associated with the medical use of marihuana.

(2) An employer to accommodate the ingestion of marihuana in any workplace or any employee working while under the influence of marihuana.

(d) Fraudulent representation to a law enforcement official of any fact or circumstance relating to the medical use of marihuana to avoid arrest or prosecution shall be punishable by a fine of $500.00, which shall be in addition to any other penalties that may apply for making a false statement or for the use of marihuana other than use undertaken pursuant to this act.

(e) All other acts and parts of acts inconsistent with this act do not apply to the medical use of marihuana as provided for by this act. [Emphasis added.]

The Michigan Vehicle Code

- MCL 257.625(8) of the Michigan Vehicle Code provides the following:

A person, whether licensed or not, shall not operate a vehicle upon a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, within this state if the person has in his or her body any amount of a controlled substance listed in schedule 1 under section 7212 of the public health code, 1978 PA 368, MCL 333.7212, or a rule promulgated under that section, or of a controlled substance described in section 7214(a)(iv) of the public health code, 1978 PA 368, MCL 333.7214.

Standard of Review

This Court reviews issues of statutory interpretation de novo. *People v Nyx*, 479 Mich 112, 116; 734 NW2d 548 (2007). A trial court's factual findings are reviewed for clear error. *People v Miller*, 482 Mich 540, 544; 759 NW2d 850 (2008). Clear error exists if the reviewing court is left with a definite and firm conviction that a mistake has been made by the trial court. *Id.*

Analysis

I. The MMA protects patients from arrest, penalty, or prosecution unless the qualifying patient is operating a motor vehicle while under the influence of marijuana; the "any amount" section of the MVC is inapplicable to patients who are protected by the MMA.

In November 2008, citizens throughout the State of Michigan overwhelmingly voted to enact the MMA for the health and welfare of our citizens. MCL 333.26422(c). The law was designed to help "the vast majority of seriously ill people who have a medical need to use marihuana." *Id.* at (b). Memorialized in the statute, the people of the State of Michigan declared, "Modern medical research, including as found by the National Academy of Sciences' Institute of Medicine in a March 1999 report, has discovered beneficial uses for marihuana in treating or alleviating the pain, nausea, and other symptoms associated with a variety of debilitating medical conditions." *Id.* at (a). Michigan joined the efforts of other states to no longer "penalize the medical use and cultivation of marihuana." *Id.* at (c). Despite the will of the people and despite clear language allowing for the "medical use" of marijuana by qualifying patients, courts throughout the state have sought to impose their own will on our citizens. This usurpation of our laws has resulted in widespread hardship on qualifying patients who have been unlawfully deprived of the protections provided by the law. These patients now look to this Court for relief.

A. When reviewing an initiative – just like with any statute – a court must look first at the language used and determine what the law is and not what it believes the law should be.

When interpreting a statute, judicial restraint is imperative. It is a long-standing tenet that courts must not concern themselves with the motives of those who write the law, and a court must not let its own viewpoint about what is good or bad law influence a case's outcome. *Kuhn v Dep't of Treasury*, 384 Mich 378, 383-384; 183 NW2d 796 (1971). A court's interpretation is

ultimately drawn from the words of the initiative and a court's understanding of the purpose the voters sought by the law's passage. *Schmidt v Department of Education*, 441 Mich 236, 241-242; 490 NW2d 584 (1992); *People v King*, ___ Mich ___; ___ NW2d ___ (2012). In determining the meaning of the statute as a whole, a court must focus on the language selected. *People v Gilbert*, 414 Mich 191, 199; 324 NW2d 834 (1982). To construe the terms of a statute, a court must use the plain and ordinary meaning of the terms. *People v Yamat*, 475 Mich 49, 53; 714 NW2d 335 (2006). Any ambiguity in a statute must be resolved in favor of lenity, which simply means that the ambiguity is resolved in favor of the defendant. *Gilbert*, 414 Mich at 210. Further, a court should avoid interpreting a statute in such a manner that renders any of its words surplusage or nugatory. *Wickens v Oakwood Healthcare Sys,* 465 Mich 53, 60; 631 NW2d 686 (2001).

This Court's standards for reviewing statutes provide the necessary guidance for reviewing the MMA and the MVC. When reviewing statutes enacted by the legislature, this Court has been clear: "It is the legislators who establish the statutory law because the legislative power is exclusively theirs. We [the judiciary] cannot revise, amend, deconstruct, or ignore their product and still be true to our responsibilities . . . ." *Cameron v Auto Club Ins Ass'n*, 476 Mich 55, 65; 718 NW2d 784 (2006), overruled on other grounds *Regents of the Univ of Michigan v Titan Ins Co*, 487 Mich 289, 293; 791 NW2d 897 (2010). Thus, the words that comprise the MMA cannot be ignored. The individuals charged with upholding and enforcing the law cannot, and should not, willfully fail to uphold or enforce the law simply because it does not comport with their personal beliefs. Simply put, the judiciary is to "declare what the law is, not what it ought to be." *Id.*

B. The mere presence of THC in Mr. Koon's blood is an insufficient basis for a conviction because Mr. Koon possesses a registry identification card under the MMA and, thus, is afforded its protections.

Being "under the influence" of marijuana – the standard articulated in the MMA – is not the same as having "any amount" of marijuana in a person's system, which is the standard in the MVC. The Court of Appeals erred in holding that these two different standards are the same by equating using medical marijuana with being "under the influence" of medical marijuana. (Exh. A, 2-3.) If the drafters of the MMA wanted to forbid a person from operating a motor vehicle after using medical marijuana or with any amount of marijuana in his system, they could have easily done so by using these phrases. But the drafters specifically stated that a qualifying patient receives the protections of the MMA for internally possessing marijuana as long as he does not choose to operate a motor vehicle while *under the influence* of medical marijuana. See MCL 333.26424(a); MCL 333.26427.

Mr. Koon does not argue that he has blanket protections because of the MMA for all types of use of medical marijuana. He fully understands and agrees that he is restricted from operating a motor vehicle while under the influence of marijuana, which is a different standard than being prohibited from operating a motor vehicle with any amount of marijuana in a person's system. He merely asks that this Court do what the Court of Appeals failed to do – give him the stated protections of the MMA as they are derived from the clear language of the MMA. Instead of following the fundamental principles of statutory construction and interpretation, the Court of Appeals yet again attempted to advance its own agenda and has stripped another patient of the protections that he is afforded by law.

C. Any conflict between the MMA and the MVC must be resolved by the clear language of the MMA.

The MMA explicitly addresses the issue of a conflict, and the MMA supersedes and preempts those sections of the MVC that conflict with it. MCL 333.26427(e) provides "all other acts and parts of acts inconsistent with this act do not apply to the medical use of marihuana as provided for by this act." The "medical use" of marijuana includes the internal possession of medical marijuana. MCL 333.26423(e). The MMA is indeed in conflict with the MVC because, under the applicable facts of this case, Mr. Koon is allowed to internally possess medical marijuana as long as he does not operate a motor vehicle while under the influence of marijuana. If he does so, then Mr. Koon loses the protections of the MMA.

Finding that the MMA controls over the MVC for this limited purpose does not mean that the MVC is being repealed by implication. Repeal by implication is not even material when reading the MMA and MVC in congruence. "The guiding principal is to be sure, that we are obligated to determine the will of the Legislature, but where the intent of the Legislature is claimed unclear, it is our duty to proceed on the assumption that the Legislature desired both statutes to continue in effect unless it manifestly appears that such a view is impossible." *Wayne Co Prosecutor v Dep't of Corrections*, 451 Mich 569, 577; 548 NW2d 900 (1996). The MMA and MVC can be read harmoniously because the MMA protects only qualifying patients, while the MVC applies to all others.

The Court of Appeals erred in holding that there was no conflict between the MMA and the MVC. This interpretation ignores that the MVC is indeed regulating the "medical use" of marijuana by not allowing a qualifying patient to operate a vehicle with any amount of medical marijuana in his system. This is in contrast to the MMA, which allows a qualifying patient to operate a vehicle unless the qualifying patient is "under the influence" of medical marijuana.

Moreover, the MVC prohibits any individual from operating a motor vehicle with any amount of marijuana in his system while the MMA expressly permits and protects the internal possession of marijuana. There could be no clearer conflict. What one statute prohibits, the other permits.

The protections provided to a qualifying patient by the MMA are logical and do not affect public safety. A person who is using marijuana for a non-medical purpose has no protections under the law because there is no valid reason for the person to be using marijuana. Even if the person's driving is not affected, a conviction is warranted under the law if the prosecutor can prove beyond a reasonable doubt that there is any amount of THC in the person's system. In contrast, the MMA recognizes that there are legitimate medical reasons to use medical marijuana and affords protections to those who qualify.

A court cannot dismiss the language chosen by the drafters and assume that the drafters meant something other than what was stated in the statute. *People v Monaco*, 474 Mich 48, 58; 710 NW2d 46 (2006). A court must presume that the drafters knew about the MVC when the MMA was enacted. See *Pittsfield Charter Twp v Washtenaw Co*, 468 Mich 702, 713; 664 NW2d 193 (2003). A court cannot assume that the legislature inadvertently omitted language that it included in another statute. *Monaco*, 474 Mich at 57-58, yet this is exactly what the Court of Appeals did.

If the drafters of the MMA did not want to protect qualifying patients – who are both permitted to use marijuana for medicinal purposes and drive – then they would have used the same language found in the MVC. If the drafters did not want to provide protections for qualifying patients greater than those found in the MVC, there was no need for the "under the influence" language found in Section 7. The drafters could have merely omitted any mention of operating a motor vehicle and the MVC would be applicable. But the drafters did want to protect

qualifying patients, and they specifically chose to use different language than that found in the MVC. The meaning of the language chosen is significant because of the protections that it provides, yet this language was ignored by the Court of Appeals.

D. The rules of statutory construction further provide support for the protections afforded to qualifying patients under the MMA.

Not only does the MMA's specific language addressing conflicting provisions of statutes mandate that courts follow the MMA, but the rules of statutory construction do as well. Statutes must be read *in pari materia*, which means that statutes that relate to the same subject or same general purpose must be read together even if they do not specifically refer to each other. *People v Harper*, 479 Mich 599, 621; 739 NW2d 523 (2007). No word may be treated as surplusage or negated if at all possible. *Wickens*, 465 Mich at 60. Thus, the MMA and MVC must be read together because both provide different standards – for different classifications of people – for operating a motor vehicle after having used marijuana.

In addition, where there is a purported conflict between statutory provisions, the more specific provision controls over the more general provision. *DeFrain v State Farm Mutual Automobile Ins*, ___ Mich ___; ___ NW2d ___ (2012). Thus, the specific provision in the MMA protecting a qualifying patient unless that patient is operating a motor vehicle while under the influence of marijuana controls over the general statutory provision that applies to all other people who are not qualifying patients. Moreover, the doctrine of last enactment controls, which means that the legislature is presumed to be aware of the existence of the law in effect at the time it enacts or amends a statute. *Pittsfield*, 468 Mich at 713. In sum, if two statutes conflict, then the later enacted statute controls over the earlier enacted one. *Id.* Thus, the MMA – which contains a provision specifically stating that it controls over inconsistent statutory provisions and is the more specific statute and is the later enacted statute – controls over the MVC.

While the MMA conflicts with portions of the MVC, the MMA and MVC can certainly be read in harmony just as the MMA and PHC are read in harmony. As the Honorable Chief Justice Robert P. Young, Jr. stated in his concurrence in *People v Feezel*, 486 Mich 184, 224; 783 NW2d 67 (2010), "It is clear that the [MMA] operates in harmony with existing controlled substances laws, not in place of them." *Id.* The MMA brings parity for qualifying patients using medical marijuana. Under the MMA, it is not illegal to use medical marijuana and operate a motor vehicle; it is only illegal to do so if the patient is under the influence of marijuana. Under the "operating while intoxicated" statute as it relates to alcohol and prescription medications, it is likewise not illegal to drink alcohol or take a prescription medication and operate a motor vehicle; it is only illegal to do so if the person is under the influence of alcohol or prescription medication. The language in MCL 257.625(1)(a) provides in relevant part:

> A person, whether licensed or not, shall not operate a vehicle upon a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, within this state if the person is operating while intoxicated. *As used in this section, "operating while intoxicated" means . . . [t]he person is under the influence of alcoholic liquor, a controlled substance, or a combination of alcoholic liquor and a controlled substance.* [Emphasis added.]

The MMA allows a patient to use medical marijuana and be treated the same as any other person who has been prescribed medication by his doctor. If the drafters wanted medical marijuana patients to be treated the same as people who are using marijuana for non-medical purposes, then the drafters would have used the same language that exists in the MVC for non-qualifying patients. Because the different language is intentional and provides protections to qualifying patients, the Court of Appeals decision to ignore this language was in error.

E. The use of the phrase "under the influence" means that the drafters intended to provide protections to qualifying patients that are greater than those for people who are not protected by the MMA.

The phrase "under the influence" does not mean having any amount of medical marijuana in a person's system. The MVC does not use this phrasing, and the Court of Appeals rationale that "under the influence" essentially means the same as having "any amount" in a person's system is not supported by law or logic. The Revised Judicature Act provides a definition of what it means to be "under the influence" of alcohol or a controlled substance. The statute provides in relevant part the following:

> "Impaired ability to function due to the influence of intoxicating liquor or a controlled substance" means that, as a result of an individual drinking, ingesting, smoking, or otherwise consuming intoxicating liquor or a controlled substance, the individual's senses are impaired to the point that the ability to react is diminished from what it would be had the individual not consumed liquor or a controlled substance. [MCL 600.2955a(2)(b).]

Likewise, this Court has provided guidance regarding the meaning of operating while "under the influence" of an intoxicating substance. In *People v Lambert*, 395 Mich 296, 305; 235 NW2d 338 (1975), the Court held that to prove that a defendant was operating "while under the influence," the prosecutor must prove that the defendant's ability to drive was "substantially and materially" affected by the consumption of the substance at issue. *Id.*

The drafters of the MMA clearly chose to use language that is different than what is found in the MVC. To purport that these clearly different phrases actually possess the same meaning is to engage in legal contortionism that has no place in our courts. Simply, the MMA does not use the same language as that in the MVC; thus, the MMA is intended to have a different meaning than that in the MVC. The fact that the MMA uses the same language as that defined by this Court further indicates that this Court's prior definition should be followed. See *People v Tyler*, 7 Mich 161, 220-222 (1859). The drafters are presumed to know the law at the

time the MMA was drafted, and they knew that their words had meaning. Thus, it is the court's role to follow this meaning when issuing its decision and not ignore the language in favor of a holding that comports with its own personal preferences.

To hold that the MMA is applicable to qualifying patients does not mean that the MVC is repealed by implication. There is a reasonable construction that allows both statutes to remain in effect. The MVC applies to people who are not qualifying patients under the MMA, and the MMA applies to people who are qualifying patients. The MMA did not repeal by implication the PHC provisions that make marijuana use and possession a crime. The PHC and the MMA still operate in congruence with one another, just as the MMA and MVC can operate in harmony with one another. Because the Court of Appeals decision is not based on the language of the MMA, this Court must intervene and provide redress to Michigan citizens.

Conclusion

The Court of Appeals decision ignored the protections put in place by the MMA in favor of a policy position that is unsupported by the language of the statute. This ruling fails to take into account that the MMA specifically addressed the issue of a registered qualifying patient's ability to operate a motor vehicle under the MMA, as well as any conflict between the MMA and the MVC. Because of the Court of Appeals ruling, the practical effect on qualifying patients is that they are left with having to choose between using their medicine and driving. The ruling of the Court of Appeals is in direct contravention of the law and cries out for redress from this Court. Accordingly, Mr. Koon respectfully requests that this Court grant his application for leave to appeal or, in the alternative, peremptorily reverse the opinion of the Court of Appeals.

Dated: 6/12/12

/s/
Mary Chartier

Dated: 6/12/12

/s/
Matt Newburg

Dated: 6/12/12

/s/
Eric Misterovich

Exhibit List

Exhibit A	Opinion of the Court of Appeals, 04/17/12
Exhibit B	Decision and Order Affirming Trial Court Ruling, Honorable Philip E. Rodgers, Jr., 11/16/10
Exhibit C	Hearing Regarding Jury Instruction, Honorable Thomas J. Phillips, 09/02/10