

STATE OF MICHIGAN

IN THE 72ND DISTRICT COURT FOR THE COUNTY OF ST. CLAIR

STATE OF MICHIGAN,

Plaintiff,

Vs.

Case Nos. 14P08003FY
14P08005FY

DALE THOMAS SHATTUCK and
ANNETTE MARIE SHATTUCK,

Defendants.

OPINION AND ORDER

At the outset, it should be noted that we have a record. The court has made rulings on the admissibility of evidence and will not entertain any further argument concerning that. Therefore, whether admitted statements were voluntary or not, or whether anything else that is in the record is proper or not will not be considered here. All of those issues are subject to appellate review, if necessary. The only issues for the court to decide are as to each charged crime, for each defendant, whether this record discloses the commission of a crime and whether this record discloses probable cause to believe the commission of the offense by the accused. It should also be here noted that the court is constrained to view the evidence in a light most favorable to the prosecution. When the court makes findings herein, the record should indicate that such findings are based on a probable cause to believe standard.

From the evidence in this record, the court finds that Dale and Annette Shattuck were engaged in a business venture located at 5287 Lapeer Road, Kimball Township, St. Clair County, Michigan called the DNA Wellness Center. Defendants Shattuck were residents of the home located at 4412 Canterbury Drive, Port Huron Township, St. Clair County,

Michigan. Each of the Defendants Shattuck had marijuana grow operations at the 5159 Lapeer Road address, which is in St. Clair County, Michigan.

There was a search conducted pursuant to a search warrant by the Drug Task Force of the St. Clair County Sheriff's Department of the DNA Wellness Center on July 28, 2014; Dale Shattuck and Annette Shattuck were then present at that location. The court finds that amounts of marijuana that were on premises at the time of the search, specifically that which was contained in the jars and other containers in the so-called stalls, were possessed by Dale and Annette Shattuck. Dale and Annette Shattuck each told officers that sales of marijuana were regularly made at the DNA Wellness Center to persons who had Michigan Medical Marijuana, (MMMA), patient cards, but who were not assigned to either Dale or Annette as caregivers. At the time of the search, the officers noted that there were two "stalls" that contained different marked containers, each with different types or strains of marijuana in them; there was a list of those types with prices for each. During the time the officers were present during the search, five persons arrived at the location, (at different times), and without any direction or coaching by law enforcement officers, showed their MMMA patient cards and made a purchase of marijuana from Agent George. None of these purchases were MMMA patients of either Dale or Annette Shattuck.

While none of those purchases is attributable to either Dale or Annette Shattuck, the spontaneity with which they occurred may be used to corroborate illegal sales of marijuana being made from that location; sales that can be attributed to the owners, Dale and Annette Shattuck. As a consequence, the court finds that as to the crime charged in Count 1 in the charges against Dale Shattuck and the charges against Annette Shattuck, commission of the charged crime has been shown; there is probable cause to believe each committed the offense and each is bound over.

The court finds that as to Count 2 of the charges against Dale Shattuck and of the charges against Annette Shattuck, there is insufficient evidence of conspiracy. Conduct that is mutually observed, mutually allowed or suffered to happen is not in and of itself proof of conspiracy. There must be a showing that whatever occurred could not have occurred without actual, not tacit, agreement. What was shown here could have been

directed by one and simply acquiesced in by the other. That is not conspiracy.

There was intimation by the defense that the sales made to non-patients were not illegal. Were that true, a person could obtain a caregiver card and have no patients assigned to him or her, set up a store and sell indiscriminately to as many persons with patient care cards as come in. Furthermore, all of the other rules of limitation of amounts of marijuana in possession based on assigned patients, limitations of the number of plants growing based on assigned patients, and indeed, the requirement of having patients assigned to caregivers would be meaningless and surplusage. The court is of the opinion that the legislature intended to limit caregivers to supplying medical marijuana to those patients assigned to him or her and to no one else, regardless of their status under MMMA.

Count 3: The evidence on this record indicates that Dale Shattuck had access to both his own grow operation at 5159 Lapeer Road and by key, access to that of his wife Annette's at that same location. That is a violation of the MMMA because he therefore had potential control of all of the marijuana there grown, because the amount there exceeded any allowable amounts that he could legally possess under the MMMA, exceeded any legal amounts for personal use, and therefore constituted a seller's amount of marijuana that exceeded that allowable under MMMA, thereby constituting a violation of that statute.

The amounts of all marijuana plants at that location were shown to be mutually possessed by Dale Shattuck and Annette Shattuck, and exceeded the amounts either could legally manufacture for purposes of distribution and personal use under MMMA. The amounts are such as to be sufficient to support commission of the offense in Count 3 as to both Dale Shattuck and Annette Shattuck. Thus there is a finding of the charged offense being committed and probable cause to believe each committed the offense.

Count 4: The court finds insufficient evidence to support the charge. No evidence was adduced indicating how Dale Shattuck came into possession of the key to Annette's grow operation and there is insufficient evidence of agreement between the two regarding how much marijuana was grown, kept or processed at each location to show conspiracy to do so.

Consequently, the court dismisses Count 4 as to each defendant.

Count 5: There is clear evidence as to all three locations, (the two on Lapeer Road and one on Canterbury Drive), that the locations were used to illegally keep controlled substances, and as to the DNA Wellness Center, to illegally sell controlled substances. Therefore, as to both Dale Shattuck and Annette Shattuck, the crime charged has been shown to have occurred and there is probable cause to cause to believe each committed the offense.

Count 6: For the reasons discussed in this document regarding what this court believes is required to show conspiracy, the court finds insufficient evidence to determine the crime was committed. The count is dismissed.

As to the charges of Possession with Intent to Deliver by Ginnifer Lyn Hency, there is sufficient evidence to believe that she intended to deliver the six ounces of marijuana she had in her backpack when she arrived at the 5287 Lapeer Road address in exchange for a like amount to be delivered to her by Dale Shattuck. There is no evidence that would be admissible against Dale Shattuck that he knew of Hency's intentions or that he participated in any plan to make such a swap. The court is of the opinion that the violation is *de minimus*. The sequence would be as follows: Two people each have legal possession of six ounces of marijuana. They trade those amounts so that each now possesses six ounces of marijuana, an amount that would be legally held based on caregiver cards each held and the patient cards assigned to each of them. While arguably the act of exchanging the amounts held would constitute a delivery, the court is of the opinion that under these conditions the mutual delivery was not a change in position such as there would be in an exchange of an amount of marijuana for money or any other tangible asset.

The court is aware of the potential argument that the delivery would have been in each direction to a person not in an MMMA card relationship with the other. The court is also cognizant of the potential argument that since the object of the exchange was to obtain a different strain of marijuana by each, there would be a resultant change of position. However, without further evidence the latter two arguments do not overcome the *de minimus* result of the exchange. There charge is, therefore, dismissed.

Count 2 as to Ginnifer Lyn Hency: there is no evidence admissible against any other defendant indicating that any of them knew of Hency's intention. The count is, therefore, dismissed.

There was some argument that Dale Shattuck and Austin Ray conspired to violate the law. We have a very general statement of Dale Shattuck from time to time buying marijuana from others to sell at the DNA Wellness Center. Nothing connects those intentions or practices sufficient to establish a conspiracy between Shattuck and Ray - at least on this record.

The last issue the court wishes to address is that of immunity under §4 of MMMA. Any argument that the statute sets up some sort of blanket immunity to all who possess a valid caregiver's card and/or patient card is nonsense. The very clear intent of the law is to give immunity to those who act strictly within the parameters of the law itself. There simply is no immunity for anyone, regardless of registration status under MMMA, who acts in any way of possessing, processing, growing, selling or distributing that is in violation of the limits and allowances of the act. Therefore, it is the opinion of this court that as to each of the charges bound over by this opinion and order, there is no immunity.

SUMMARY

Dale Thomas Shattuck:

- Count 1 - Bound over
- Count 2 - Dismissed
- Count 3 - Bound over
- Count 4 - Dismissed
- Count 5 - Bound over
- Count 6 - Dismissed

Annette Marie Shattuck:

- Count 1 - Bound over
- Count 2 - Dismissed
- Count 3 - Bound over
- Count 4 - Dismissed
- Count 5 - Bound over
- Count 6 - Dismissed

Ginnifer Lyn Hency

- Count 1 - Dismissed
- Count 2 - Dismissed

May ¹⁸ 14, 2015


DAVID C. NICHOLSON, District Judge