

STATE OF MICHIGAN 31ST CIRCUIT COURT ST CLAIR COUNTY	NOTIFICATION	C/C31/S CASE NO. 15-001155-FH
--	--------------	----------------------------------

Court address 201 MCMORRAN BLVD
PORT HURON, MI 48060

Court telephone no.
(810) 985-2031

Judge: DANIEL KELLY

Date: 2/18/2016

TO:

MICHAEL A. KOMORN
24901 NORTHWESTERN HWY
STE 750
SOUTHFIELD MI 48075-2203

Plaintiff/Petitioner

THE PEOPLE OF THE STATE OF MICHIGAN

v

Defendant/Respondent

DALE THOMAS SHATTUCK

Comments: ENCLOSED PLEASE FIND: OPINION ON DEFENDANTS' MOTIONS TO DISMISS

This notice has also been sent to:

MICHAEL A. KOMORN

P 47970 Attorney for DEF 1

MICHAEL D. WENDLING

CIRCUIT COURT FOR THE 31ST JUDICIAL CIRCUIT OF MICHIGAN

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF ST. CLAIR

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

-vs-

Case No. 15-001155- FH
15-001156-FH

DALE SHATTUCK and
ANNETTE SHATTUCK

Defendants.

OPINION ON DEFENDANTS' MOTIONS TO DISMISS

Defendants filed joint motions to dismiss on the grounds of three different types of entrapment: entrapment by estoppel, entrapment by reprehensible police conduct, and entrapment by enticement. For the reasons given below, the Court finds that Defendants' motion to dismiss on the grounds of entrapment by estoppel is appropriate. As a result of this finding, it is not necessary to address the other two theories of entrapment in this case.

Relevant Facts

In March 2014, Defendants obtained licenses and permits from Kimball Township to open a medical marihuana dispensary called DNA Alternative Wellness Center. On March 6, 2014, Defendants attended an open meeting of the Kimball Township Planning Commission to apply for a special exception to open DNA Alternative Wellness Center. Copies of Defendants' lease stating that the owner of the building was fine with this use and layouts of the building were provided for the Commission as well as proposed hours of operation and signage examples. Defendants were advised by the Commission that in order for

Defendants to run the business and maintain their license certain requirements must be met. Security measures at DNA Wellness were discussed as well as various operating procedures. The Commission also talked with Defendants about having the ordinance enforcer do inspections to ensure that the business stayed in compliance with the Kimball Township Ordinances.

At the close of the public meeting, the special exception was voted on and approved. Chairman Orr then thanked Defendants for following the ordinance and taking the necessary steps to open the business within Kimball Township in the manner required. The special exception requirements were agreed upon by the Defendants and the Commission, and the Special Exception Permit for DNA Alternative Wellness Center LLC was granted by the Commission on March 10, 2014.

On March 18, 2014, the Kimball Township Building Inspector/Ordinance Enforcer, Neil Erickson, conducted a final inspection for the Defendants' Building Permit and marked it approved. On May 2, 2014, Erickson conducted a final inspection for Defendants' Sign Permit and also marked it approved.

Defendants also state that sometime before July 28, 2014, Defendant Annette Shattuck called the St. Clair County Drug Task Force (DTF) and spoke to a detective. Defendants state that Annette gave the detective her name and address as well as the name and address of DNA Alternative Wellness Center and asked for DTF to perform an inspection of DNA Wellness in order to verify Defendants' compliance with the law. The People confirm that Annette spoke with DTF, stating that upon their information and belief, Defendants both discussed their business venture with DTF and Annette in particular spoke with DTF at length about the process Defendants engaged in to open their business.

On July 28, 2014, DTF performed a search of DNA Alternative Wellness Center and a simultaneous administrative search of Defendants' home. Defendants were arrested and each charged with: Possession with Intent to Deliver Marijuana, contrary to MCL 333.7401(2)(d)(iii); Possession with Intent to Manufacture Marijuana, contrary to MCL 333.7401(2)(d)(iii); and Maintaining a Drug House, contrary to MCL 333.7405(1)(d) and MCL 333.7406.

Defendants now both move for dismissal on the grounds of entrapment by estoppel.

Applicable Law and Analysis

In *People v Woods*, 241 Mich App 545, 548-49; 616 NW2d 211 (2000), the first case where Michigan appellate courts applied the doctrine of entrapment by estoppel, the Michigan Court of Appeals stated:

We recognize that entrapment by estoppel . . . may, in certain limited circumstances, preclude prosecution. When a citizen reasonably and in good faith relies on a government agent's representation that the conduct in question is legal, under circumstances where there is nothing to alert a reasonable citizen that the agent's statement is erroneous, basic principles of due process should preclude prosecution. However, when a citizen who should know better unreasonably relies on the agent's erroneous statement, or when the "statement" is not truly erroneous, but just vague or contradictory, the defense is not applicable.

Kimball Township Ordinance 20.233 defines "compassion center" to mean, "any retail store, store front, office building, or other structures or any type of mobile unit or entity that dispenses, facilitates, sells, or provides, in any manner, marihuana or cannabis or any other product containing marihuana or cannabis, as regulated by Section 20.409. Following that, Kimball Township Ordinance 20.409 provides definitions, conditions, and standards of operation. Specifically, under Kimball Township Ordinance 20.409(2)(f), it is stated that "Medical Marihuana Compassion Centers shall be operated in compliance with the provisions of the Department of Community Health."

The permits and meeting minutes provided by the People show that Defendants were licensed by the Kimball Township Planning Commission to open their Medical Marihuana Compassion Center and that their compassion center had been inspected by the Kimball Township Building Official/Ordinance Enforcer to make sure Defendants were complying with the Kimball Township

Ordinance. Also, at a public meeting of the Kimball Township Planning Commission, the Chairman of the Commission went so far as to thank Defendants for following the ordinance and taking the necessary steps to open the business within Kimball Township in the manner required.

Based on this information, it is clear that Kimball Township Planning Commission, a government agent, represented to Defendants that the DNA Alternative Wellness Center, Defendants' Medical Marihuana Compassion Center, was legal and that Defendants relied upon this representation when conducting day to day business. And under these circumstances, there is nothing that would alert a reasonable citizen that Kimball Township's representation was erroneous. Further, it stands to reason that Defendants would not have called DTF and invited law enforcement to their compassion center for an inspection unless Defendants believed in good faith that DNA Alternative Wellness Center was properly licensed and operating within the law. Therefore, because Defendants were reasonably and in good faith relying on a government agent's representation that the conduct in question was legal, basic principles of due process preclude prosecution in this case.

For the foregoing reasons, Defendants' Motion to Dismiss on the Grounds of Entrapment by Estoppel is GRANTED.

An Order consistent with this Opinion may be presented for entry as provided by Michigan Court Rule.

Dated: 2-18-16



HON. DANIEL J. KELLY
Circuit Court Judge