STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED March 21, 2013
v	No. 309076 St. Joseph Circuit Court
JAYDEN WAYNE CHRISTNER, Defendant-Appellant.	LC No. 11-017216-FH

Before: STEPHENS, P.J., and HOEKSTRA and RONAYNE KRAUSE, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial conviction of two counts of delivery of marijuana, MCL 333.7401(2)(d)(*iii*). Defendant was sentenced to eight months' jail for each conviction. Because we conclude that defendant was not denied his constitutional right to present a defense, we affirm.

Defendant's convictions stem from two controlled marijuana buys. In September 2010, Elizabeth Brennan voluntarily spoke with Officers Jeremy Marsh and Heather Johnston. After they spoke, the officers decided to target defendant, and Brennan agreed to execute a controlled buy. On the evening of September 7, 2010, Brennan met with Johnston, Marsh, and Sergeant Richard Pazder. The officers provided her with prerecorded funds, and Brennan drove her own vehicle to defendant's residence. Brennan was let inside by defendant, gave him the prerecorded funds, and received 2.45 grams of marijuana in a plastic bag. Brennan returned to the officers' location and gave them the marijuana.

Sometime later, Brennan informed Johnston that she had received a text message from defendant indicating that he would sell her additional marijuana at defendant's store, Smoke-Cessories in downtown Three Rivers. On September 20, 2010, Marsh drove Brennan to the store, and waited in the car while Brennan went into the establishment; another officer observed Brennan and defendant through the store's front windows. Brennan purchased 2.30 grams of marijuana in a paper bag, then returned to Marsh's location and gave it to him.

On September 29, 2010, Marsh, Johnston, and other police officers executed search warrants at defendant's home and store, but did not recover any of the prerecorded funds. They found some marijuana plants, growing materials, digital scales, and plastic bags at defendant's home, but defendant was a registered Michigan Medical Marihuana Act (MMMA), MCL 333.26421 *et seq*., patient at the time. Defendant testified in the narrative at trial. He denied

transferring any marijuana to Brennan and claimed that she merely discussed the MMMA act with him.

Before trial, defendant brought a motion in limine to introduce evidence showing that any transfer of marijuana to Brennan was gratuitous, that he believed she was a qualified MMMA patient at the time, and that as a result he lacked the intent necessary to establish guilt. The trial court denied defendant's motion, finding that the proffered evidence was irrelevant because Brennan was not a qualified patient.

On appeal, defendant claims that he was denied his constitutional right to present a defense by the trial court's denial of his motion. Because defendant did not argue at trial that the denial of his motion violated his constitutional right to present a defense, his claim is unpreserved. See *People v Danto*, 294 Mich App 596, 605; 822 NW2d 600 (2011); *People v Metamora Water Serv, Inc*, 276 Mich App 376, 387-388; 741 NW2d 61 (2007). We review an unpreserved claim of error for plain error affecting a defendant's substantial rights. *People v Knox*, 469 Mich 502, 508; 674 NW2d 366 (2004); *People v Carines*, 460 Mich 750, 765-766; 597 NW2d 130 (1999). A defendant is not entitled to relief under this test "unless he can establish (1) that the error occurred, (2) that the error was 'plain,' (3) that the error affected substantial rights, and (4) that the error either resulted in the conviction of an actually innocent defendant or seriously affected the fairness, integrity, or public reputation of judicial proceedings." *People v Vaughn*, 491 Mich 642, 654; 821 NW2d 288 (2012) (citations omitted).

"[T]he Sixth Amendment guarantees defendants 'a meaningful opportunity to present a complete defense.'" *People v Orlewicz*, 293 Mich App 96, 101; 809 NW2d 194 (2011), quoting *Holmes v South Carolina*, 547 US 319, 324; 126 S Ct 1727; 164 L Ed 2d 503 (2006). However, "[t]he right to present a defense is not absolute or unfettered." *Id.* While defendants are entitled to present witnesses in their defense, exercise of that right "requires a showing that the witness' testimony would be both material and favorable to the defense.'" *Id.* at 101-102, quoting *People v McFall*, 224 Mich App 403, 408; 569 NW2d 828 (1997).

Defendant maintains that he should have been permitted to present evidence to prove that he believed Brennan was a qualified medical marijuana patient, and that he gave her marijuana free of charge. Thus, defendant argues, he lacked the mens rea to commit the charged offenses because, according to defendant, the gratuitous transfer of marijuana between qualified patients falls under the immunity granted by the MMMA.

MCL 333.26424(a), the section of the MMMA granting immunity to qualified medical marijuana patients, provides in relevant part that "[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 . . . for the medical use of marihuana in accordance with this act . . . ." In *Michigan v McQueen*, __ Mich __; __ NW2d __ (Docket No 143824, February 8, 2013), slip op at 15-22, our Supreme Court interpreted the scope of the immunity provided by § 4. The Court specifically held that § 4 immunity "does not extend to a registered qualifying patient who transfers marijuana to another registered qualifying patient for the transferee's use because the transferor is not engaging in conduct related to marijuana for the purpose of relieving *the transferor's own* condition or symptoms." *Id.*, slip op at 18 (emphasis in original). The Court further made clear that this interpretation "does not turn on the fact that the patient-to-patient

transfers occurred for a price." *Id.*, slip op at 18 n 59. The Court explained that § 4(d) "acts as a limitation on what sort of 'medical use' is allowed under the MMMA," and because transfers from one patient to another are not undertaken for the purpose of relieving the transferor's own condition or symptoms, no transfer between patients constitutes a permissible medical use. *Id.* Thus, immunity under § 4 does not apply to transfers of marijuana because immunity is only available if the qualified patient is engaged in the medical use of marijuana. *Id.* at 18.

Application of our Supreme Court's holding in *McQueen* eviscerates defendant's claim in this case because even if defendant would have been able to convince the jury to accept his version of the facts, he would not be entitled to § 4(a) immunity from prosecution. Consequently, the trial court's denial of defendant's motion to present evidence of his belief that Brennan was a qualified patient and the fact that he allegedly made a gratuitous transfer to her did not constitute plain error affecting his substantial rights. Thus, defendant was not denied the right to present a defense.[1]

Affirmed.

/s/ Cynthia Diane Stephens
/s/ Joel P. Hoekstra
/s/ Amy Ronayne Krause

[1] We note that while the Supreme Court had not yet issued its *McQueen* opinion at the time of defendant's motion in limine and the trial court relied on different reasoning in denying defendant's motion, we may affirm a trial court that reaches the right result for the wrong reason. *People v Lyon*, 227 Mich App 599, 612-613; 577 NW2d 124 (1998).