STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED February 5, 2013
v	No. 309351 Oakland Circuit Court
REBECCA MARIE HINZMAN, Defendant-Appellant.	LC No. 2011-239687-FH

Before: WILDER, P.J., and METER and GLEICHER, JJ.

PER CURIAM.

In this criminal action, defendant is charged with perjury, MCL 750.422. Defendant appeals by leave granted[1] the circuit court's order denying defendant's motion to exclude evidence. On appeal, defendant argues that the circuit court erred in denying her motion. We affirm.

This case originates from testimony defendant gave at a June 15, 2011, evidentiary hearing in another criminal case in which she and her husband were charged as codefendants with illegally delivering/manufacturing marijuana in violation of MCL 333.7401(2)(d)(ii). During the evidentiary hearing in that matter, defendant testified, *inter alia*, that on May 25, 2010, she was a registered medical marijuana caregiver to three patients. Subsequently, in order to verify this testimony, the prosecutor obtained a subpoena from the trial court, directed to the Department of Licensing and Regulatory Affairs (DLRA), for the production of documents pertaining to defendant's asserted status as a registered medical marijuana caregiver. In response to the subpoena, Celeste Clarkston, the Compliance Section Manager of the Health Regulatory Division in the DLRA, gathered and provided the following information: three Caregiver Attestations (dated May 10, May 14, and July 20, 2010); three Change Forms (dated May 10, May 14, and July 20, 2010); a photocopy of a check for $10 made out to "State of Michigan – MMMP"; a photocopy of a money order for $10 made out to "Michigan Department of Community Health"; three photocopies of a Physician's Statement (dated March 27, 2010); photocopies of three driver's licenses; and a letter from Clarkston summarizing the information

[1] *People v Hinzman*, unpublished order of the Court of Appeals, entered June 23, 2012 (Docket No. 309351).

contained in the records and certifying that the documents are true copies of those contained in the master file.

During trial in the illegal delivery/manufacture case, the prosecutor marked as Exhibit 19 all of the documents obtained by subpoena from the DLRA, and sought their admission into evidence. Defendant challenged the admission of this evidence, arguing that the information produced under subpoena was illegally produced and, alternatively, that the information produced was beyond the scope of information permitted to be disclosed by MCL 333.26423(i). The trial court denied the motion to exclude this evidence, and this Court affirmed on appeal. *People v Hinzman*, unpublished opinion per curiam of the Court of Appeals, issued July 24, 2012 (Docket No. 308910).

As a result of the information obtained and identified as "Exhibit 19" in the prior case, the prosecutor charged defendant with one count of perjury in the instant case. Prior to trial, defendant filed a motion to exclude People's Exhibit 19 from introduction into evidence at trial.[2] Defendant's motion argued that the evidence was obtained by unlawful means and that admission of Clarkston's letter into evidence would be a Confrontation Clause, US Const, Am VI, violation. At oral argument on the motion, defendant also argued in addition that the documents in Exhibit 19 disclosed more than was permitted by MCL 333.26423(i), and that the exclusionary rule required the suppression of the improperly obtained information.

The trial court denied the motion to exclude, and this appeal ensued.

In reviewing a trial court's decision on a motion to suppress, this Court reviews the court's findings of fact for clear error and its ultimate ruling on the motion de novo. *People v Brown*, 279 Mich App 116, 127; 755 NW2d 664 (2008). A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake was made. *People v Malone*, 287 Mich App 648, 663; 792 NW2d 7 (2010). Issues of statutory interpretation and the application of constitutional standards to uncontested facts are questions of law subject to de novo review. *People v Stevens (After Remand)*, 460 Mich 626, 631; 597 NW2d 53 (1999) (constitutional standards); *People v Reed*, 294 Mich App 78, 81; 819 NW2d 3 (2011) (statutory interpretation).

Defendant first argues that the information contained in Exhibit 19 was obtained in violation of MCL 333.26426 and Mich Admin Code, R 333.121 (Rule 333.121) and that as a result, the exhibit should be suppressed. We disagree.

The statutory provision provides:

(h) The following confidentiality rules shall apply:

[2] Two other motions filed at the trial court are not at issue on appeal.

(1) Applications and supporting information submitted by qualifying patients, including information regarding their primary caregivers and physicians, are confidential.

(2) The department shall maintain a confidential list of the persons to whom the department has issued registry identification cards. Individual names and other identifying information on the list is confidential and is exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(3) The department shall verify to law enforcement personnel whether a registry identification card is valid, without disclosing more information than is reasonably necessary to verify the authenticity of the registry identification card.

(4) A person, including an employee or official of the department or another state agency or local unit of government, who discloses confidential information in violation of this act is guilty of a misdemeanor, punishable by imprisonment for not more than 6 months, or a fine of not more than $1,000.00, or both. Notwithstanding this provision, department employees may notify law enforcement about falsified or fraudulent information submitted to the department. [MCL 333.26426(h).]

Rule 333.121 mirrors the statutory language:

(1) Except as provided in subrules (2) and (3) of this rule, Michigan medical marihuana program information shall be confidential and not subject to disclosure in any form or manner. Program information includes, but is not limited to, all of the following:

(a) Applications and supporting information submitted by qualifying patients.

(b) Information related to a qualifying patient's primary caregiver.

(c) Names and other identifying information of registry identification cardholders.

(d) Names and other identifying information of pending applicants and their primary caregivers.

* * *

(3) The department shall verify upon a request by law enforcement personnel whether a registry identification card is valid, without disclosing more information than is reasonably necessary to verify the authenticity of the registry identification card.

* * *

(5) Violation of these confidentiality rules may subject an individual to the penalties provided for under section 6(h)(4) of the act.

The Michigan Medical Marihuana Act (MMMA), MCL 333.26421 *et seq.*, defines "registry identification card" as "a document issued by the department that identifies a person as a registered qualifying patient or *registered primary caregiver*." MCL 333.26423(3)(i) (emphasis added).

Defendant claims, without citation to any authority, that a LEIN[3] inquiry is the sole method by which law enforcement can verify the validity of MMMA registry cards. We reject this argument as without merit. LEIN is not mentioned in the statute at all, let alone established as the only permissible way of verifying the validity of registry cards. See MCL 333.26426.

Defendant next argues that the information provided exceeded what was permissible under statute and rule. Both MCL 333.26426(h)(3) and Rule 333.121(3) provide that information *shall* be provided to law enforcement upon request and that the disclosure should not contain "more information than is reasonably necessary to verify the authenticity of the registry identification card."

Here, Exhibit 19 does not disclose more information than necessary to determine the authenticity of defendant's registry card and caregiver status as of May 25, 2010. The only identifying information disclosed in the records are defendant's name, date of birth, home address and telephone number, social security number, and driver's license number. All the information pertaining to her patients is redacted. Each document is necessary to determine whether defendant was, in fact, a registered caregiver for three patients on May 25, 2010. Therefore, the trial court properly concluded that information contained in Exhibit 19 complied with the requirement in both the statute and the administrative rule to avoid disclosure of more information than reasonably necessary.

Moreover, even if we assume that Exhibit 19 disclosed more information than was reasonably necessary, we further reject defendant's contention that any such excessive disclosure requires exclusion of the evidence by automatic application of the exclusionary rule. In cases involving evidence obtained in violation of a statute, "application of the exclusionary rule is inappropriate unless the plain language of the statute indicates a legislative intent that the rule be applied." *People v Hawkins*, 468 Mich 488, 507; 668 NW2d 602 (2003).

Though the MMMA does not contain a provision requiring the exclusion of evidence obtained in violation of the act, see MCL 333.26421 *et seq.*, defendant nevertheless argues that MCL 333.26426(h)(4) and Rule 333.121(4) demonstrate a legislative intent to exclude from criminal prosecutions evidence obtained in violation of the act. We disagree. MCL 333.26426(h)(4) and Rule 333.121(4) each state: "A person, including an employee or official of the department or another state agency or local unit of government, who discloses confidential information in violation of this act is guilty of a misdemeanor, punishable by imprisonment for

[3] Law Enforcement Information Network

not more than 6 months, or a fine of not more than $1,000.00, or both." This subsection, the purpose of which is to deter violations of the act, clearly does not state that the exclusionary rule would be applied to violations of the act. It is a basic principle of statutory construction that the express mention of one thing implies the exclusion of other similar things. *People v Oswald*, 208 Mich App 444, 446; 528 NW2d 782 (1995). Had the Legislature intended the exclusionary rule to apply as a deterrent to violations of the MMMA, it easily could have expressed that intention in the provision it actually adopted as a deterrent to violations of the act.

The conclusion we reach here finds support in *Hawkins*, where the Supreme Court addressed whether the exclusionary rule applied to violations of a statute governing warrant procurement and execution, MCL 780.653. *Hawkins*, 468 Mich at 500-501. The Court noted that the Legislature specifically provided for criminal sanctions in the form of fines and imprisonment of less than one year in instances of misconduct in the execution or procurement of a search warrant. *Id.* at 524 n 23, citing MCL § 780.657 and MCL 780.658. The Court concluded, "That the Legislature has elected to deter police misconduct in the manner indicated by [MCL] 780.657 and [MCL] 780.658 further evidences the lack of any legislative intent that the exclusionary rule be applied under the circumstances of this case." *Id*. Thus, assuming the disclosure of the records violated MCL 333.26426, the exclusionary rule does not bar its admission into evidence in defendant's criminal prosecution because there is no indication the Legislature intended for the rule to apply to violations of the MMMA.

Defendant also argues that admission of the letter from Clarkston would be a violation of her Sixth Amendment right to confrontation because it is testimonial in nature under *Crawford v Washington*, 541 US 36; 124 S Ct 1354; 158 L Ed 2d 177 (2004). But because this argument is premature, we decline to address it. A defendant's right to confrontation "bars testimonial statements by a witness who does not appear at trial, unless the witness is unavailable and the defendant had a prior opportunity to cross-examine the witness." *People v Yost*, 278 Mich App 341, 370; 749 NW2d 753 (2008), citing *Crawford*, 541 US at 53-54. But defendant's perjury trial has not occurred yet. Thus, even assuming arguendo that some portions of Exhibit 19 are testimonial, whether the declarant of any testimonial statements will testify at trial is unable to be determined at this time. We further note that Clarkston, the person who responded to the subpoena and assembled Exhibit 19, is listed as a potential witness on the prosecution's witness list.

For the foregoing reasons, the trial court properly denied defendant's motion to exclude. Affirmed.

/s/ Kurtis T. Wilder
/s/ Patrick M. Meter
/s/ Elizabeth L. Gleicher