

STATE OF MICHIGAN

IN THE FOURTH JUDICIAL DISTRICT COURT

PEOPLE OF THE STATE OF MICHIGAN

CASE NO. 09-008600-FH

Plaintiff,

v.

SYLVESTER WILSON VANDERBUTTS,

Defendant.

HON. STACEY A. RENTFROW

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DEFENDANT'S BRIEF IN SUPPORT OF ASSERTION OF MICHIGAN MEDICAL MARIHUANA ACT (MMMA) MEDICAL PURPOSE AFFIRMATIVE DEFENSE AND MOTIONS TO DISMISS

The Defendant has asserted an Affirmative Defense, and has the burden of establishing the elements of that defense by the preponderance of the evidence. People v. Pierce, 272 MichApp 394 (2006) If the elements are shown, the Court must dismiss the case MCL§333.26428.

The Defendant has been virtually issued a Michigan Medical Marihuana Registry Patient ID Card by the State of Michigan as it is “deemed granted” by operation of law under statute MCL§333.26429(b). By issuing the card to Mr. Vanderbutts, the Michigan Department of Community Health deems that Defendant is a qualifying patient under the Michigan Medical Marihuana Act, MCL§333.26423(h): “Qualifying patient” means a person who has been diagnosed by a physician as having a debilitating medical condition. The next definition clarifies this further: “Registry identification card” means a document issued by the department that identifies a person as a registered

qualifying patient or primary caregiver.” MCL§333.26423(i). **Not all qualifying patients have cards, but everyone with a card is a qualifying patient.**

In order to defeat Defendant's assertion of the affirmative defense, the People need to bring forward evidence sufficient to defeat Defendant's prima facie showing of the Affirmative Defense.

Opinions affirming Defendant's theories and dismissing cases in three different circuit courts in this state are appended hereto: People v. Keith James Campbell, Tuscola Circuit Court Case No. 08-10705-FH (Michigan Court of Appeals Number 291345 – pending oral argument), People v. James Howard Peterson, Alger County Circuit Court Case No. 09-1854-FH, and People v. Larry Steven King, Shiawassee County Circuit Court Case No. 09-8600-FH. The Campbell case is being appealed by the prosecutor, and is awaiting oral argument in the Court of Appeals. The assigned case number is #291345.

The Michigan Medical Marihuana Act was enacted by approval of a 63% majority of the voting citizens of the State of Michigan, acting in a legislative capacity exercising of their constitutionally guaranteed initiative power. The Michigan Medical Marihuana Act is a comprehensive set of legal protections that systematically exempts an entire class of persons (medical purpose users, their providers, assistants, and innocent bystanders) from the application of state law prohibitions against marihuana use, possession, and cultivation. The Act establishes a “Registry ID Card” program and a “medical purpose” affirmative defense at law. The “Registry ID Card” offers prophylactic immunization from arrest and seizure of persons covered by the formal program, while a “medical purpose” affirmative defense acts as a safety net for others not *formally* certified or otherwise acting outside the strict parameters of the Registry program. Taken together, the distinct provisions Michigan Medical Marihuana Act aim to ameliorate the prosecutorial harm associated with the medicinal use of marihuana and taken together are at the same time remedial, restorative, and remissive.

The case at bar should *feel* obvious to a typical citizen who possesses a common sense of justice who would have voted yes on Proposition 1. A person who voted to enact the Michigan Medical Marihuana Act would say: “The law has changed, so why would the state punish those persons it can help when *We the People* have just overwhelmingly voted to exonerate medical marihuana users.”

After all *We the People* changed the law in order to exalt compassion for medical marihuana users over strict prohibition laws. To reach the proper result in this case requires the court to appreciate the distinct underpinnings, functions, and goals of common law versus positive law; of traditional legislation versus direct initiative legislation; of the process for establishing guilt/liability versus the damages/sentencing; of civil contract law versus criminal law; and, finally, of acts that are *malum prohibitum* versus acts that are *malum in se*. It also requires a healthy respect for the will of the voters and a compassionate sense of grace.

The people, acting as the legislature, exonerated medical marihuana users by their grace in passing the Michigan Medical Marihuana Act, which provides two tracks of protection for patients.

One track of protection is the Registry Identification Card Program, which creates a registry of “primary caregivers” and “qualifying patients” who are formally certified by a doctor as having a “debilitating medical condition”. The “qualifying patients” and their designated “primary caregivers” are then immune from arrest, seizure, or other legal consequence (under state law) so long as they apply for the card, pay the government fee, are issued a Registry ID Card, have the card in their possession, and their medical use is within strict program parameters. The Registry ID Program sets its own program which is *not applicable* to the affirmative defense.

The Registry ID Program is separate and distinct from the medical purpose defense section. The Registry ID Program is orderly and prophylactic whereas the medical purpose defense allows discretionary fact finding, and is reactive and remedial. The Registry ID Program has distinct quantity limits, whereas the medical purpose defense has its own distinct quantity element at MCL 333.26428(3)(b), “a quantity of marihuana that was *not more than was reasonably necessary to ensure the uninterrupted availability* of marihuana for the purpose of treating or alleviating the patient's serious or debilitating medical condition or symptoms of the patient's serious or debilitating medical condition.” The Registry ID Program has a distinct narrow set of listed and described medical conditions (*debilitating* medical conditions). The affirmative defense applies to a broader range of

medical conditions (any serious or debilitating medical condition). Since the legal protections afforded under the Registry ID Program depend on the actual possession of a Registry ID card, the *Registry ID Program is made prospective by the express language of the statute*. The affirmative defense, on the other hand, does not depend on possession of a Registry ID card.

The affirmative defense section conspicuously mentions a lone exception to its application, “Except as provided in section 7...” Examination of section 7 reveals a plethora of exceptions and disqualifications for application of the medical purpose defense, which are extensive. If the efficacy of the medical purpose defense were intended to be prospective only, and not to apply to “any” prosecution commenced or pending after the effective date of the act, then surely an indication of a limitation to prospective application would be found in this section. There is, however, no reference whatsoever to prospective application, nor is there a savings clause, nor any other indication that the medical purpose defense was not effective in court on and after December 4, 2008, the effective date of the Act, to defeat “any prosecution that involves marihuana”.

The exceptions and disqualifications are clearly laid out by the statute, and do not include language regarding the garden being in an “enclosed, locked facility”. By its plain language, the medical purpose defense may be asserted anytime after the Act’s effective date to “any prosecution involving marihuana”, so long as the prosecution is still pending.

Defendant respectfully requests that this matter be dismissed.

Respectfully Submitted,

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Dated: _____