

Court of Appeals, State of Michigan

ORDER

People of the State of Michigan v Earl Cantrell Carruthers

Docket No. 309987

LC No. 2011-237303-FH

Michael J. Kelly
Presiding Judge

Christopher M. Murray

Mark T. Boonstra
Judges

Pursuant to the opinion issued concurrently with this order, this case is REMANDED for further proceedings consistent with the opinion of this Court. We retain jurisdiction.

Proceedings on remand in this matter shall commence within 56 days of the Clerk's certification of this order, and they shall be given priority on remand until after they are concluded. As stated in the accompanying opinion, we remand this case to the trial court to allow defendant to file a motion to dismiss the charges against him pursuant to MCL 333.26428, and for an evidentiary hearing to be held on that issue. Should defendant make out a prima facie case of all of the elements of an affirmative defense under Section 8 of the Michigan Medical Marihuana Act, his conviction shall be vacated and the charges against him dismissed. Should defendant not meet this burden, his conviction stands. If the defendant establishes evidence of each element listed in § 8 but there are still material questions of fact, then he is entitled to a new trial and the submission of this defense to the jury.

The parties shall promptly file with this Court a copy of all papers filed on remand. Within seven days after entry, appellant shall file with this Court copies of all orders entered on remand.

The transcript of all proceedings on remand shall be prepared and filed within 21 days after completion of the proceedings. Upon remand, this Court will enter an order either affirming defendant's conviction, vacating defendant's conviction, or granting defendant a new trial.



A true copy entered and certified by Angela P. DiSessa, Acting Chief Clerk, on

JUL 11 2013

Date

Angela P. DiSessa
Acting Chief Clerk