

Court of Appeals, State of Michigan

ORDER

People of MI v James Everett Rose Jr.

Docket No. 326206

LC No. 2014-015852-FH

William B. Murphy
Presiding Judge

Douglas B. Shapiro

Mark T. Boonstra
Judges

The Court orders that the April 10, 2015 order of this Court holding the application for leave to appeal in abeyance and staying proceedings in the trial court is VACATED. Pursuant to MCR 7.205(E)(2), in lieu of granting the application for leave to appeal, the Court VACATES the February 9, 2015 order of the Berrien Circuit Court. Defendant presented sufficient evidence to create a question for the jury with regard to whether Dr. Prince possesses a reasonable expectation that he will provide follow-up care to the patient to monitor the efficacy of the use of medical marijuana as a treatment modality. MCL 333.26423(1)(a)(3); *People v Kolanek*, 491 Mich 382, 398-399; 817 NW2d 528 (2012). Moreover, the trial court applied an incorrect evidentiary standard to sustain its determination that defendant failed to satisfy the second element of the § 8 affirmative defense, MCL 333.26428(a)(2). Defendant was not required to present evidence of a medical determination as to the proper amount of marijuana to be used by defendant and the four certified patients to whom he supplies marijuana in order to satisfy § 8(a)(2). *People v Hartwick*, ___ Mich ___; ___ NW2d ___ (2015). This matter is REMANDED to the trial court to reopen proofs as pertain to § 8(a)(2), if requested by either party, and to reconsider its ruling regarding § 8(a)(2), only.

The Court further orders that the motion to amend bond is DENIED.

This order has immediate effect. MCR 7.215(F)(2). The Court does not retain jurisdiction.

Shapiro, J., would grant the motion to amend bond.



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

AUG 04 2015

Date

Chief Clerk