

Court of Appeals, State of Michigan

ORDER

People of MI v Jeffrey L Kasprzak

Docket No. 310927

LC No. 11-010915-FH

Patrick M. Meter
Presiding Judge

Stephen L. Borrello

Amy Ronayne Krause
Judges

The Court orders that the application for leave to appeal is DENIED for failure to persuade the Court of the need for immediate appellate review.

Ronayne Krause, J., concurs with the majority's denial of defendant's application for leave to appeal. However, she writes separately because she is concerned by the trial court's expressed view that defendant's immunity to prosecution under Section 4 of the Michigan Medical Marihuana Act (MMMA), MCL 333.26421 et seq, presents a jury question. Clearly, there is a question of fact to be resolved. Pursuant to MCL 333.26424(a), defendant is permitted to possess 2.5 ounces of "usable marihuana." Defendant possessed 39 grams (approximately 1.376 ounces) in a mason jar. The question of fact is whether the 20 ounces of drying marijuana found in defendant's shed consisted of more than approximately 1.124 ounces of "usable marihuana" as the MMMA means that term. Our Supreme Court has held that a question of fact relevant to the affirmative defense available pursuant to Section 8 of the MMMA requires the defense to be considered by the jury. *People v Kolanek*, 491 Mich 382, 410-413; 817 NW2d 528 (2012). However, Section 4 is a grant of absolute immunity even to prosecution. See *id.* at 401-404. Logically, immunity to prosecution would preclude the matter from being presented to the jury, so the question of whether a defendant has complied with the Section 4 requirements must be a threshold question to be decided by the court as a matter of law. While there is no case law expressly on point, the courts in Michigan have tended to treat whether a person enjoys immunity in any given matter as a question of law. See, e.g., *People v Patterson*, 58 Mich App 727; 228 NW2d 804 (1975). See also, *Bullock v Automobile Club of Michigan*, 432 Mich 472, 507 n 34; 444 NW2d 114 (1989), noting that "immunity for members of Congress" was one of several areas of law in which "judges consider facts to resolve questions of law." On remand, the trial court should determine whether defendant is entitled to immunity under Section 4, not the jury.



A true copy entered and certified by Larry S. Royster, Chief Clerk, on

OCT - 3 2012

Date


Chief Clerk