

## COA Opinion: Unregistered patients may assert affirmative defense under the Michigan Medical Marihuana Act

17. September 2010 By Julie Lam

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Approximately one and one-half ounces of marijuana and 21 marijuana plants were found at defendants' residence during the execution of a search warrant. The district court dismissed for each of the two defendants the single count of manufacturing 20 or more but less than 200 marijuana plants because defendants asserted the affirmative defense contained in § 8 of the Michigan Medical Marihuana Act (MMMA), MCL 333.26421 *et seq.*, which went into effect on December 4, 2008. The circuit court ruled that the district court abused its discretion by not binding defendants over for trial, improperly acting as a trier of fact, and reinstated the charges against defendants. In the consolidated cases of *People v. Redden* and *People v. Clark*, Nos. 295809 and 295810, the Court of Appeals affirmed the circuit court's decision to reverse the district court's bindover ruling, and remanded the case for further proceedings.

The prosecution argued that defendants could not invoke the affirmative defense under § 8 of the MMMA because they did not have valid registry identification cards as required by § 4 of the MMMA. The Court of Appeals determined that the MMMA provides two ways to show the legal use of marijuana for medicinal purposes: either register with the Michigan Department of Community Health and obtain medical marijuana registry identification cards under the requirements of § 4 or remain unregistered and assert the affirmative defense under § 8 if faced with criminal prosecution. The Court of Appeals held that the district court did not err by allowing defendants to raise the affirmative defense even though they did not have registry identification cards. However, the Court of Appeals found that there were colorable issues for the trier of fact, including: whether a bona fide physician-patient relationship existed; whether the amount of marijuana defendants possessed was reasonable under the statute; whether the marijuana in question was being used for medical purposes; and whether defendants suffered from serious or debilitating medical conditions. Judge O'Connell wrote a comprehensive [concurring](#) opinion. While agreeing with the majority's decision, Judge O'Connell interprets the statutory defenses more narrowly, and invites the Legislature to clarify the MMMA.