COA Opinion: Under the Michigan Medical Marihuana Act, "other enclosed area" is limited to areas of the same kind or character as a closet or room and does not include a dog kennel wrapped with black plastic and secured by a lock

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In *People v King*, the Court of Appeals held that a registered qualifying patient under the Michigan Medical Marihuana Act (MMMA) may only avoid prosecution for cultivating marihuana under § 8 of the Act if he has complied with other applicable sections of the MMMA. Section 4 of the act allows a registered qualifying patient "to cultivate marihuana . . . in an enclosed, locked facility." Defendant was growing marihuana in a dog kennel that was six feet tall, but had an open top and was not anchored to the ground. The sides of the kennel were covered with black plastic and the entrance to the kennel was secured by a lock. The Court of Appeals ruled that defendant failed to comply with § 4, determining that an "open, moveable, chain-link kennel" does not qualify as an "other enclosed area" under the act.

Defendant was charged with the manufacture of a controlled substance – marihuana, M.C.L. § 333.7401(2)(d)(iii). The trial court dismissed the charge ruling that because defendant had a medical marihuana registry identification card and kept "a legal quantity" of marijuana in an "enclosed, locked facility," he was entitled to assert an affirmative defense under the MMMA. The Court of Appeals reversed with Judge Fitzgerald dissenting.

The MMMA was designed to protect qualifying patients and caregivers from "arrest, prosecution, or penalty in any manner" for the possession and cultivation of marihuana. M.C.L. § 333.26424(a). Section 8 provides an affirmative defense to any prosecution involving marihuana "[e]xcept as provided in section 7." Section 7 provides "the medical use of marihuana is allowed under state law to the extent that it is carried out in accordance with the provisions of this act." M.C.L. § 333.26427(a). The Court of Appeals interpreted section 7 to mean that defendant had to comply with the growing provision in § 4 to be entitled to assert a § 8 affirmative defense.

Section 4 requires that the cultivation of marihuana take place in an "enclosed, locked facility." The Act defines "Enclosed, locked facility" as "a closet, room, or other enclosed area equipped with locks or other security devices that permit access only by a registered primary caregiver or registered qualifying patient." M.C.L. § 333.26423(c). The Court of Appeals reasoned that the kennel could only qualify as an "enclosed, locked facility" if it was considered an "other enclosed area." The Court applied the statutory doctrine *ejusdem generis*, which provides "the scope of a broad general term following a series of items is construed as including things of the same kind, class, character, or nature as those specifically enumerated" and reasoned that meaning of "other enclosed area" should be "limited to things of the same kind or character as a closet or room." It determined that "[a]n open moveable, chain-link kennel is not of the same kind or character as a closet or room."

In dissent, Judge Fitzgerald reasoned that since the act was designed to "have the practical effect of protecting from arrest the vast majority of seriously ill people who have a medical need to use marihuana," "other enclosed area" should not have a rigid definition. Rather he would have considered whether access to the marijuana in the dog kennel and the house was permitted "only by a primary care giver or registered qualifying patient" in determining whether defendant's dog kennel was "enclosed, locked facilities" for purposes of the MMMA.