

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

DOUG AMSDILL,

Defendant-Appellee.

UNPUBLISHED
December 2, 2014

No. 317875
St. Clair Circuit Court
LC No. 13-000169-FH

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

AMANDA AMSDILL,

Defendant-Appellee.

No. 317910
St. Clair Circuit Court
LC No. 13-000171-FH

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

DEBRA AMSDILL,

Defendant-Appellee.

No. 317911
St. Clair Circuit Court
LC No. 13-000168-FH

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

JAMES AMSDILL,

Defendant-Appellee.

No. 317912
St. Clair Circuit Court
LC No. 13-000170-FH

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

TERRA SOCHACKI,

Defendant-Appellee.

No. 317913
St. Clair Circuit Court
LC No. 12-003150-FH

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

MARK SOCHACKI,

Defendant-Appellee.

No. 317914
St. Clair Circuit Court
LC No. 12-003149-FH

Before: RIORDAN, P.J., and SAAD and TALBOT, JJ.

PER CURIAM.

In these consolidated cases, the prosecution appeals as of right the trial court order granting defendants' motion to dismiss based on the Michigan Medical Marihuana Act (MMMA), MCL 333.26421 *et seq.*¹ We reverse.

¹ Only defendants Terra and Mark Sochacki presented a brief on appeal.

I. DISMISSAL

A. STANDARD OF REVIEW

On appeal, the prosecution contends that the trial court erred in dismissing the charges against all defendants. “We review for an abuse of discretion a circuit court’s ruling on a motion to dismiss but review *de novo* the circuit court’s rulings on underlying questions regarding the interpretation of the MMMA[.]” *People v Bylsma*, 493 Mich 17, 26; 825 NW2d 543 (2012). “An abuse of discretion occurs when the court chooses an outcome that falls outside the range of reasonable and principled outcomes.” *People v Unger*, 278 Mich App 210, 217; 749 NW2d 272 (2008). “The retroactivity of a court’s ruling presents an issue of law that” we review *de novo*. *People v Maxson*, 482 Mich 385, 387; 759 NW2d 817 (2008).

B. BACKGROUND

An analysis of this issue begins with the Michigan Supreme Court’s decision in *State v McQueen*, 493 Mich 135, 142; 828 NW2d 644 (2013), which involved “a members-only medical marijuana dispensary[.]” This Court had held that the “medical use” of marijuana did not permit patient-to-patient sales, and that “the MMMA does not authorize marijuana dispensaries.” *State v McQueen*, 293 Mich App 644, 663; 811 NW2d 513 (2011). Affirming on different grounds, the Michigan Supreme Court held that while “the sale of marijuana constitutes medical use as the term is defined in MCL 333.26423(c), § 4 of the MMMA, MCL 333.26424 does not permit a registered qualifying patient to transfer marijuana for another registered qualifying patient’s medical use” nor does immunity extend to “a registered primary caregiver who transfers marijuana for any purpose other than to alleviate the condition or symptoms of a specific patient *with whom the caregiver is connected through the MDCH’s registration process.*” 493 Mich at 160, 156 (emphasis in original; quotations omitted); see also *People v Green*, 494 Mich 865; 831 NW2d 460 (2013).

Subsequently, in *People v Johnson*, 302 Mich App 450; 838 NW2d 889 (2013), this Court applied the *McQueen* cases in the criminal context. *Johnson* involved “seven defendants [who] owned, operated, or were employed by . . . a marijuana dispensary” that “provided marijuana to patients who possessed medical-marijuana cards.” *Id.* at 454. The defendants sought dismissal of the charges, arguing that the *McQueen* cases should not be applied retroactively, the MMMA was ambiguous, and due process required advance notice of the law. *Id.*

On appeal, this Court held that the trial court erred in dismissing the charges without first determining whether the defendants were entitled to the protections afforded in the MMMA, MCL 333.26424 and MCL 333.26428. *Id.* at 460. This Court further held that applying the *McQueen* cases retroactively was not a due process violation, as it did not have “the effect of criminalizing previously innocent conduct” because it was not as if “marijuana dispensaries were authorized by statute and then, by judicial interpretation, deemed illegal.” *Id.* at 465. Thus, this

Court held that the *McQueen* decisions were entitled to full retroactive application. *Id.* at 465-466.²

II. APPLICATION IN THIS CASE

Based on *Johnson*, we conclude that the trial court erred in dismissing the charges against defendants. The trial court's ruling was premised solely on its erroneous finding that *McQueen* should not be applied retroactively. The trial court ruled defendants were not "placed on notice" that their actions would be subject to criminal prosecution and "that a person of ordinary intelligence would *not* have concluded, prior to *McQueen*, that the MMMA required a registered qualifying patient and a registered primary caregiver . . . to be connected through the State's registration process[.]" (Emphasis in original). The trial court's ruling contravenes *Johnson*.

In *Johnson*, we held that "defendants were never led to believe by a judicial decision of this Court or our Supreme Court that operating a marijuana dispensary was permitted under the MMMA" and that because the *McQueen* decisions did not overrule clear and uncontradicted caselaw, they warrant "retroactive application." 302 Mich App at 465-466. We also declined to apply the rule of lenity because: "The MMMA did not, and still does not, include any provision that states that marijuana dispensaries are or were legal business entities." 302 Mich App at 463; see also *People v Vansickle*, 303 Mich App 111, 119-120; 842 NW2d 289 (2013) ("the retroactive application of our decision in *McQueen* did not present due process concerns because it did not operate as an ex post facto law.").

Defendants, however, contend that *Johnson* is not controlling. Defendants argue that in this case, unlike *Johnson*, they are asserting that provisions of the MMMA are ambiguous and that they are entitled to immunity under § 4 and § 8 of the MMMA.³ However, this ignores that such arguments were not the basis for the trial court's ruling. Rather, the trial court found that, while defendants were qualifying patients and/or registered primary caregivers under the MMMA, "[t]hey are alleged to have conspired to aid and/or to have made possible the transfer of marijuana to qualifying patients with whom they were not connected through the State registry pursuant to MCL 333.26424(b), as required by *McQueen*." The trial court's subsequent analysis was based solely on its retroactivity finding, not a finding of ambiguity or that defendants qualified for immunity under the MMMA.

Therefore, just like in *Johnson*, the trial court erred in summarily dismissing the charges without first finding that "defendants were specifically entitled to the protections afforded under either MCL 333.26424 or MCL 333.26428." *Johnson*, 302 Mich App at 461. The court further erred in declining to apply the *McQueen* cases retroactively. *Johnson*, 302 Mich App at 465-466.

² The Michigan Supreme Court denied leave to appeal in *Johnson*. See *People v Johnson*, 496 Mich 853; 846 NW2d 920 (2014).

³ MCL 333.26424 and MCL 333.26428, respectively.

III. CONCLUSION

The trial court dismissed the charges against all defendants based on an erroneous ruling of the retroactivity of *McQueen*. We reverse and remand for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Michael J. Riordan
/s/ Henry William Saad
/s/ Michael J. Talbot