STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED August 11, 2011
v ERIC AUGUST WATKINS, Defendant-Appellant.	No. 302558 Oakland Circuit Court LC No. 2010-233511-FH

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	
v GARY JEROME WATKINS, Defendant-Appellant.	No. 302559 Oakland Circuit Court LC No. 2010-233514-FH

Before: M. J. KELLY, P.J., and O'CONNELL and SERVITTO, JJ.

PER CURIAM.

In these consolidated appeals, defendants Eric August Watkins and Gary Jerome Watkins appeal by leave granted the trial court's order granting the prosecution's motion in limine to preclude defendants from referring to Michigan's Medical Marihuana Act (MMA), MCL 333.26241 *et seq*., at their forthcoming trial.[1] Defendants argue on appeal that the trial court could not properly foreclose them from presenting defenses premised on the MMA. In addition, Eric Watkins maintains that the trial court's order improperly bars him from presenting evidence that he thought that his father, Gary Watkins, was legally growing marijuana because he was a registered patient under the MMA. Because we conclude that the trial court did not err in

[1] The Legislature used the spelling "marihuana" in the MMA; however, by convention, this Court uses the more common spelling "marijuana" in its opinions.

precluding defendants from asserting a defense arising under the MMA, and the order, as worded, does not preclude mention of the MMA for purposes other than as a defense, we affirm.

I. BASIC FACTS AND PROCEDURAL HISTORY

At defendants' preliminary examination, Jeff Brown testified that he was a Novi police officer and that, in June 2010, he assisted in executing a search warrant at defendants' home. During the search, Brown saw one plant and three "starter clones" under a grow light in the home's sun room, which was directly behind the dining room. He found four or five more plants under grow lights in the family room and three or four hanging plants that were drying in a room by the kitchen. In a closet with no door that was across from Eric Watkins' bedroom, Brown saw four more plants and some grow lights. Another four or five plants and grow lights were in a room that contained two large safes. Brown's search also revealed eight marijuana plants in a plastic zipper-style greenhouse in the back yard. In total, officers recovered 21 marijuana plants. None of the plants were locked up.

Brown discovered approximately thirty-one guns, including shot guns, assault rifles, long bolt action rifles, and semi-automatic and revolver pistols in the safes. Ammunition cans containing approximately four to five thousands rounds were along the wall in the same room as the safes. Brown recalled that he smelled marijuana throughout the house.

Inside Eric Watkins' bedroom, Brown located a plastic baggy containing approximately one ounce of marijuana within one or two feet of two loaded semi-automatic pistols. Brown also found an unloaded shotgun, approximately $2,100 in cash, bail bonds credentials with Eric's picture and name, and cell phone bills establishing Eric's residency at the home. Brown additionally discovered a burnt roach in a black Mazda, which was parked outside the house and registered to Eric.

Brown discovered a loaded semi-automatic pistol in a nightstand drawer in Gary Watkins' bedroom. He also found loose marijuana packaged in a bag next to empty glass jars, several grams of marijuana seeds, two ecstasy pills in the dresser, and other marijuana paraphernalia. Brown similarly found documents establishing Gary Watkins' residency at that address.

During the search, Brown learned that Gary Watkins had a medical marijuana card. Brown asked Eric Watkins to call his father, and Eric gave Brown his phone to make the call. Brown related that a person identifying himself as Gary Watkins explained that he had glaucoma and provided a medical marijuana card number. Brown said that the number came back as valid.

The prosecutor charged Gary Watkins with possession of methamphetamine, MCL 333.7403(2)(b)(i), manufacturing 20 to 200 plants of marijuana, MCL 333.7401(2)(d)(ii), possession of marijuana, MCL 333.7403(2)(d), and two counts of possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. The prosecutor charged Eric Watkins with manufacturing 20 to 200 plants of marijuana, possession of marijuana, and felony-firearm. Following a preliminary examination, both defendants were bound over as charged.

Eric Watkins moved to quash the charges on the ground that he was merely present and did not possess the marijuana. He also moved to suppress the evidence from the search and to dismiss, arguing that Brown did not have permission or a warrant to enter defendants' property to look through the fence, that under the MMA it is not proper to presume that the possession of marijuana is illegal, and that it was objectively unreasonable for Brown to continue with the search upon learning that Gary had a valid medical marijuana card. Similarly, Gary Watkins moved to suppress the evidence and to dismiss the charges based on the allegedly unconstitutional entry into defendants' home. He also moved for dismissal under the MMA.

The trial court denied all defendants' motions. As to the claim that they were entitled to an evidentiary hearing under section 8 of the MMA, see MCL 333.26428(b), the trial court determined that it did not need to conduct a hearing. It explained that, because the testimony at the preliminary examination showed that defendants had multiple plants in the home that were not in an enclosed locked facility as required under the MMA, they could not establish a section 8 defense. Defendants then appealed the trial court's denial of their motions to this Court. See *People v Watkins*, unpublished opinion per curiam of the Court of Appeals, issued June 21, 2011 (Docket Nos. 301771 and 301772). This Court ultimately determined that defendants were entitled to a hearing on their motions to suppress the evidence seized during the search, but concluded that the trial court properly denied Gary Watkins' motion to dismiss under section 8 of the MMA—without holding an evidentiary hearing—on the basis of the testimony at the preliminary examination. *Id.*

In the meantime, the prosecutor moved in limine to preclude defendants from referring to the MMA as a defense on the basis of the trial court's rulings on the defense motions. The trial court granted the prosecution's motion. Because it had previously determined that the marijuana was not kept in a closed, locked facility as required by the MMA, the court determined that Gary Watkins could not raise the MMA as a defense at trial. Moreover, because Gary Watkins could not properly raise such a defense, Eric Watkins could not raise the defense that he was merely in his father's presence as a qualified user under the MMA. Specifically, the trial court stated that it was precluding "both defendants from referencing the [MMA] as a defense."

These appeals followed.

II. PRECLUDING DEFENSES UNDER THE MMA

A. STANDARD OF REVIEW

Defendants both argue that the trial court could not properly deny them the right to present a defense under the MMA at their trials. This Court reviews a trial court's decision to grant a motion to limit evidence for an abuse of discretion. *People v Yost*, 278 Mich App 341, 353; 749 NW2d 753 (2008). However, this Court reviews the proper interpretation and application of statutes de novo. *People v Bemer*, 286 Mich App 26, 31; 777 NW2d 464 (2009).

B. ANALYSIS

A defendant generally has a constitutional right to present a defense. *Yost*, 278 Mich at 379. However, this right is not absolute—the defendant must still comply with established rules of procedure and evidence designed to ensure fairness at trial. *Id.*

As this Court has repeatedly noted, the manufacture, possession and use of marijuana remains illegal in Michigan. See *People v Redden*, 290 Mich App 65, 92; ___ NW2d ___ (2010) (opinion by O'CONNELL, P.J.); *People v King*, ___ Mich App ___, slip op at 2-3; ___ NW2d ___ (2011) (Docket No. 294682, issued February 3, 2011); *People v Anderson*, ___ Mich App ___, slip op at 5; ___ NW2d ___ (2011) (Docket No. 300641, issued June 7, 2011)(opinion by M. J. KELLY, J.). Nevertheless, with the MMA's enactment, the Legislature provided persons involved with the medical use of marijuana certain protections: it provided immunity from prosecution for the medical use or assisting the medical use of marijuana under § 4 and provided a defense to criminal prosecution under § 8. See MCL 333.26424 and MCL 333.26428(a). However, the immunity and defense provisions are matters of legislative grace; and persons can only assert them if they have complied with the MMA's requirements. See *Anderson*, ___ Mich App, slip op at 14 (holding that the defendant was not entitled to present a § 8 defense under the MMA because the defendant possessed more marijuana plants than permitted under the MMA and did not have them in an enclosed, locked facility as required under the MMA); see also *People v Carpenter*, 464 Mich 223, 231; 627 NW2d 276 (2001) (noting that a defendant must comply with the Legislature's procedural requirements before being able to present an insanity defense).

Under § 4 of the MMA, the Legislature limited the immunity to those patients and caregivers who have been issued a registration card and who do not have more than 2.5 ounces of useable marijuana or more than 12 marijuana plants. See MCL 333.26424(a) and (b). In addition, for those persons that have marijuana plants, the plants must be kept in an enclosed locked facility. MCL 333.26424(a); MCL 333.26424(b)(2). Although the defense stated under § 8 does not directly impose similar limitations, this Court has interpreted § 8 to have incorporated the limitations provided under § 4. See *King*, ___ Mich App, slip op at 3; *Anderson*, ___ Mich App, slip op at 10 (opinion by M. J. KELLY, J). As such, a person may not assert the defense provided under § 8 if he or she has not complied with the limitations stated under § 4. *Id.*

Here, as the trial court correctly observed, the testimony from the preliminary examination established that the marijuana plants at issue were not in an enclosed, locked facility. From this, the trial court determined that defendants would not be able to establish a defense under the MMA and, on that basis, refused to grant a hearing under § 8 of the MMA and eventually precluded defendants from asserting the MMA as a defense. Another panel of this Court concluded that the trial court, on the basis of preliminary examination testimony alone, properly refused to grant a hearing under § 8. See *People v Watkins*, unpublished opinion per curiam of the Court of Appeals, issued June 21, 2011 (Docket Nos. 301771 and 301772). Given the preliminary examination testimony,[2] neither defendant can establish that he would be entitled

[2] The purpose of a preliminary examination is to determine whether there is probable cause for charging a defendant with a felony. *People v Plunkett*, 485 Mich 50, 57; 780 NW2d 280 (2010). And the burden of proof at a preliminary examination is quite minimal: the prosecutor need only present evidence from which a person of ordinary prudence might entertain a reasonable belief of the accused's guilt. See *People v Yost*, 468 Mich 122, 126; 659 NW2d 604 (2003). As such, there is little incentive for a defendant to develop his or her defense at the preliminary examination or otherwise vigorously challenge the prosecutor's proofs. For that reason, we

to immunity under § 4 and neither can establish a defense under § 8. Moreover, this Court has held that a trial court might properly exclude a defendant from presenting evidence in support of a defense under § 8 where, given the evidence adduced prior to trial, no reasonable jury could find that the elements of the defense had been established. *Anderson*, ___ Mich App, slip op at 14. Given the undisputed evidence concerning the number of plants and their storage, no reasonable jury could find that either defendant had established immunity under § 4 or the defense provided under § 8. As such, the trial court properly granted the prosecutor's motion in limine to preclude defendants from presenting a defense under § 4 or § 8 of the MMA. *Id.* ("[A] trial court may bar a defendant from presenting evidence and arguing a § 8 defense at trial where, given the undisputed evidence, no reasonable jury could find that the elements of the § 8 defense had been met.").[3]

And, the fact that Eric might have acted under a mistaken belief as to the legality of his actions is no defense under Michigan law because ignorance or mistake of law cannot normally serve as a defense to a criminal prosecution. See *People v Motor City Hosp Supply*, 227 Mich App 209, 215; 575 NW2d 95 (1997). As such, Eric Watkins might properly be excluded from admitting evidence concerning the MMA in an effort to show that, although he otherwise possessed or manufactured the marijuana at issue, his acts should be excused because he reasonably—albeit mistakenly—believed that what he was doing was lawful under the MMA.

Notwithstanding that, Eric Watkins contends that the trial court erred because its order is excessively broad. He argues that, even though he cannot present evidence regarding his father's status in support of a defense under the MMA, he might still properly present the evidence to rebut the prosecutor's proofs. It is well-settled that evidence that is inadmissible for one purpose might nevertheless be admissible for a different purpose. *Yost*, 278 Mich App at 355 (stating that, although the diminished capacity defense had been abolished, the defendant could present evidence of her limited intellectual capabilities, "if offered for a relevant purpose other than to negate the specific intent element of the charged crimes."). As such, the fact that Eric Watkins cannot present evidence concerning his father's status under the MMA to establish a *defense* under that act does not automatically render this evidence inadmissible for *all* purposes.

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question the validity of drawing conclusions as to a defendant's ability to establish a defense under the MMA premised solely on the proofs adduced at a preliminary examination. Rather, we believe that the better practice is to permit the defendant a hearing under § 8 in order to give the defendant a full and fair opportunity to demonstrate that there is a question of fact as to whether he or she has complied with the requirements for immunity or a defense under the MMA. Nevertheless, we are bound by the previous panel's decision and will proceed on the assumption that defendants cannot establish a question of fact as to whether the plants were properly secured. See *Grievance Administrator v Lopatin*, 462 Mich 235, 259-260; 612 NW2d 120 (2000).

[3] The trial court did not err to the extent that it precluded Eric Watkins from presenting an immunity defense under MCL 333.26424(i) because any medical use of the marijuana was plainly not in accordance with the act. Likewise, there is no evidence that he was merely assisting the use or administration of marijuana.

The order at issue provides:

> IT IS HEREBY ORDERED that the People's Motion in Limine to preclude Reference to MMMA as Defense Based on the Court's Prior Ruling and the Statute is hereby granted:
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> ***
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> b) As to Defendant Eric Watkins because since the court ruled that Defendant Gary Watkins cannot properly raise the MMMA defense, it necessarily follows that Defendant Eric Watkins cannot raise the defense that he was in the mere presence of [] Gary Watkins as a qualified user under the act.

As written, the order only specifically precludes use of the challenged evidence as a defense. A "defense" is a "defendant's stated reason why the prosecutor has no valid case." Black's Law Dictionary, 7th Ed. It remains, however, that "it is essential that prosecutors and defendants be able to give the jury an intelligible presentation of the full context in which disputed events took place." *People v Sholl*, 453 Mich 730, 741; 556 NW2d 851 (1996).

It is undisputed that Eric's father was a registered patient under the MMA, though not in compliance with the same. This evidence could be relevant to Eric's state of mind and as background evidence to explain why he was living in a home where marijuana was plainly being grown—namely, because he believed that there was nothing illegal going on in the home. While not a defense under the MMA, the context of the event is not complete without this pertinent fact being disclosed to the jury. And, the jury is free to believe Eric's participation or lack thereof in the growing of the marijuana, just as they would be if his co-defendant were not a registered patient under the MMA. The evidence and burden of proof remain the same. Given the language employed in the order, the order cannot be understood to provide a blanket prohibition against the admission of such evidence for any purpose other than to establish immunity or a defense under the MMA.

Finally, we do not agree that defendants' trial lawyers will be rendered constitutionally ineffective by the trial court's order. A lawyer's decision to abide by a trial court's orders—after appropriate objections—does not fall below an objective standard of reasonableness under prevailing professional norms. See *Yost*, 278 Mich App at 387.

III. CONCLUSION

The trial court did not err when it granted the prosecution's motion in limine to the extent that it precluded both defendants from asserting or presenting evidence in support of the immunity stated under § 4 or the defense provided under § 8 of the MMA. The order does not, however, preclude Eric Watkins from presenting evidence that his father was a registered, but non-compliant, patient under the MMA for purposes other than establishing a defense under the MMA.

Affirmed.

/s/ Michael J. Kelly
/s/ Peter D. O'Connell
/s/ Deborah A. Servitto