

STATE OF MICHIGAN
36TH DISTRICT COURT DETROIT
3RD JUDICIAL CIRCUIT

THE PEOPLE OF THE STATE OF MICHIGAN,

vs.

CASE NO: [REDACTED]

HON. [REDACTED]

[REDACTED],
Defendant.

The Prosecution

[REDACTED]
[REDACTED]
[REDACTED]
Attorneys for Defendant,
[REDACTED]
[REDACTED]
[REDACTED]

MOTION TO DISMISS

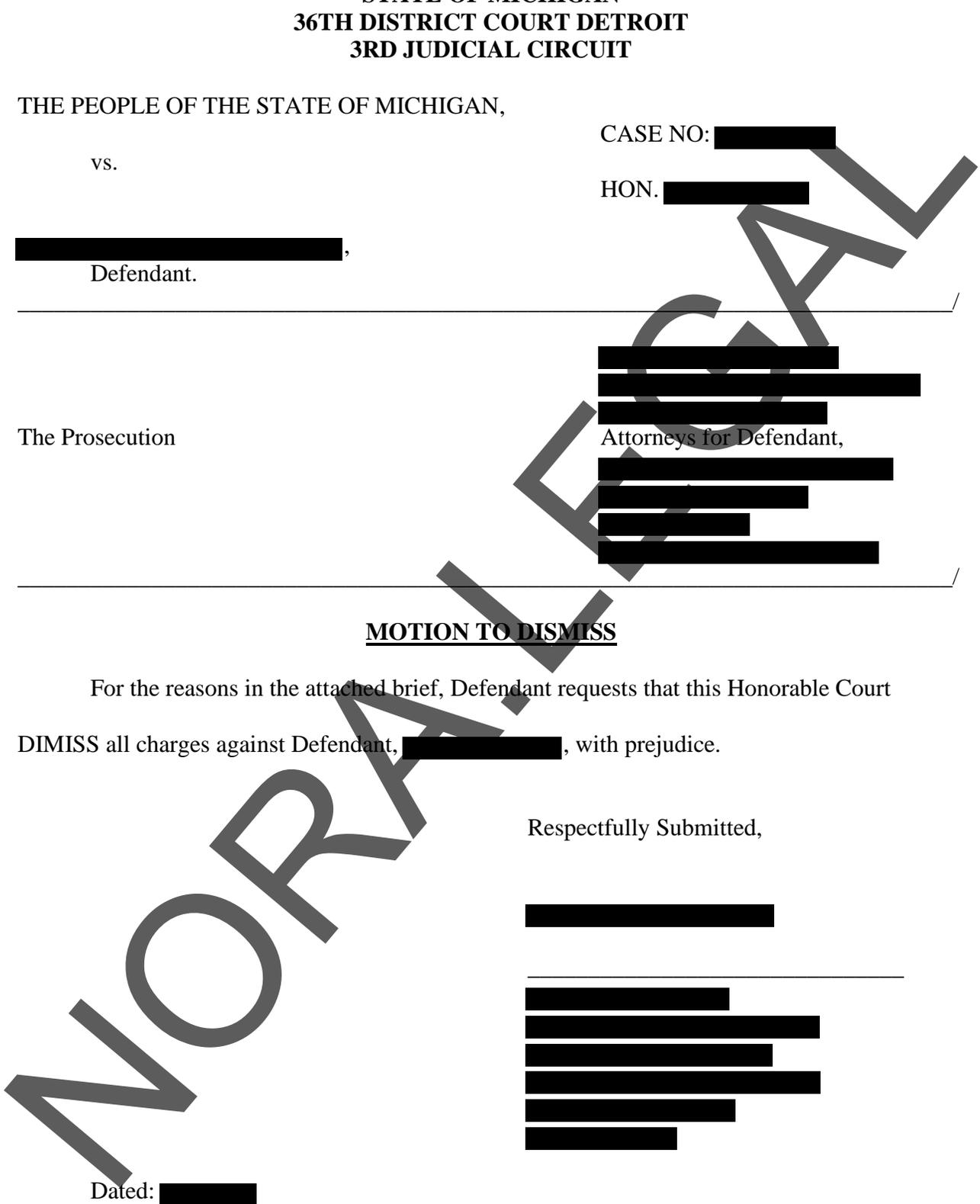
For the reasons in the attached brief, Defendant requests that this Honorable Court
DIMISS all charges against Defendant, [REDACTED], with prejudice.

Respectfully Submitted,

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Dated: [REDACTED]



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[REDACTED]
[REDACTED])
Attorneys for Defendant,
[REDACTED]
[REDACTED]
[REDACTED]

**BRIEF IN SUPPORT OF DEFENDANT'S
MOTION TO DISMISS**

NOW COMES Defendant [REDACTED], by and through his attorneys [REDACTED]
and [REDACTED] of [REDACTED], and for his Brief in Support of
Defendant's Motion to Dismiss, states as follows:

STATEMENT OF FACTS

A. Background

[REDACTED] ("Defendant") is a licensed medical marijuana caregiver for three patients. At
around 12:50 p.m., on [REDACTED], crew code [REDACTED] of the Detroit Police Department
arrived at Defendant's [REDACTED] ([REDACTED]) for execution of a search warrant.
(Detroit Police Department's Investigator's Report, [REDACTED] After announcing its presence
and purpose, crew made a forced entry into the location. (Id.). Upon entry, police officer [REDACTED]

found Defendant in the living room standing beside the TV stand with marijuana. (Id.). Though Defendant informed the crew that his dogs were not dangerous and pleaded with the officers not to kill his dogs, police officer [REDACTED] shot Defendant's two dogs. (Id.).

After killing the dogs, the crew went to [REDACTED] ([REDACTED]) and after announcing their presence and purpose made an unforced entry through the front door. (Id.). Police officer [REDACTED] did not find any person inside the upper flat, but officer [REDACTED] recovered 26 mature marijuana plants from the front room of the upstairs. (Id.).

During a search of the lower flat, police officer [REDACTED] recovered 3 K/B's of marijuana from the television stand in the living room. (Id.). Additionally, police officer [REDACTED] recovered [REDACTED] in U.S. currency from inside the oven. (Id.). No other arrests or confiscations were made by the crew from the upper or lower flats. (Id.).

B. Procedural history

On [REDACTED], a complaint with two counts related to marijuana was filed against Defendant. (Information Felony, [REDACTED] Defendant, as stated above, is a licensed medical marijuana caregiver for three patients. Accordingly, Defendant being a primary caregiver is entitled to possess up to 36 marijuana plants. Therefore, Defendant now moves this court to dismiss all charges against him in their entirety.

ARGUMENT

I. Defendant's Motion to Dismiss should be granted.

A. Standard of Review

Generally, "when an individual stands to be convicted of a crime, the prosecution must be prepared to prove each and every element of the offense charged beyond a reasonable doubt."

People v De Clerk, 58 Mich App 528, 532; 228 NW2d 447, 449 (1975) *aff'd sub nom. People v DeClerk*, 400 Mich 10; 252 NW2d 782 (1977). Further,

a trial court, in considering a motion to dismiss or direct a verdict, must first decide if the evidence introduced at the time the motion was made, viewed in the light most favorable to the prosecution, is insufficient to justify a reasonable man in concluding that all the elements of the crime were established beyond a reasonable doubt.

People v Wright, 99 Mich App 801, 818; 298 NW2d 857, 863-64 (1980) (citing *People v Scott*, 72 Mich App 16, 248 NW2d 693 (1976)). "The prosecution must establish the essential elements of a crime beyond a reasonable doubt. If the prosecution does not do so, a directed verdict of acquittal or a motion to dismiss must be granted." *People v Huntten*, 115 Mich App 167, 171; 320 NW2d 68, 69-70 (1982) (citing *People v Hampton*, 407 Mich 354, 285 NW2d 284 (1979)). Hence, "[f]ailure to do so must result, upon proper motion, in a directed verdict or dismissal." *De Clerk*, 58 Mich App at 532; 228 NW2d at 449.

B. Defendant is entitled to the dismissal of any marijuana-related charges under MCL 333.26424(b).

Under the Michigan Medical Marijuana Act (MMMA), MCL 333.26424, "primary caregivers who have been issued and possess a registry identification card 'shall not be subject to arrest, prosecution, or penalty in any manner.'" *People v Jones*, 301 Mich App 566, 577; 837 NW2d 7, 13-14 (2013) (quoting MCL 333.26424(b)). "In order to receive immunity under § 4, a registered primary caregiver may not possess more than 12 marijuana plants for each qualifying patient to whom he is connected through the state's registration process." *People v Bylsma*, 493 Mich 17, 21; 825 NW2d 543, 545 (2012). Further, "a primary caregiver seeking to assert the protections of § 4 must prove four elements by a preponderance of the evidence:

- that, at the time of the charged offense, he or she
- (1) possessed a valid registry identification card;
 - (2) possessed no more marijuana than allowed under § 4(b);

- (3) stored any marijuana plants in an enclosed, locked facility; and
- (4) was assisting connected qualifying patients with the medical use of marijuana.

People v Hartwick, 498 Mich 192, 221; 870 NW2d 37, 53 (2015).

Under MMMA, "[t]he requirements necessary to establish the presumption of medical use mirror the first two elements required to establish immunity." *Id.* at 220-21. Therefore, "[i]f the primary caregiver establishes the first and second elements, then a presumption exists that the primary caregiver was engaged in the medical use of marijuana, thereby establishing the fourth element." *Id.* at 221. It is settled that, "a defendant is entitled to dismissal of any marijuana-related charges if he or she proves that he or she qualifies for § 4 immunity under the MMMA." *Jones*, 301 Mich App at 576 (citing *People v Tuttle*, 493 Mich 950, 828 NW2d 375 (2013)).

In the present case, Defendant is a registered primary caregiver for three qualifying patient's. Accordingly, Defendant may legally possess 12 marijuana plants for each of the three patients with whom he is connected through the MDCH's registration process, a total of 36 marijuana plants in this case. Here, it is evident that Defendant possessed only 26 marijuana plants in his upper flat. (Detroit Police Department's Investigator's Report, [REDACTED] This shows that Defendant possessed no more marijuana than the amount allowed under § 4(b).

Defendant, as the primary caregiver, has established the first and second elements, required to assert the protections of § 4. This shows that there existed a presumption that the Defendant was engaged in the medical use of marijuana, thereby establishing the fourth element. Finally, Defendant kept the marijuana plants in an upstairs flat that he had the ability to lock and exclude others from entering. Accordingly, Defendant is entitled to § 4 immunity because he possessed less than the 36 plants that he is allowed to possess under the MMMA and maintained them in a way and for a purpose permitted by statute.

Therefore, Defendant is entitled to dismissal of any marijuana-related charges against him under MCL 333.26424(b).

C. Defendant, being a primary caregiver, is entitled to an affirmative defense under MCL 333.26428.

Under MMMA § 8, “[a] primary caregiver . . . 'may assert the medical purpose for using marihuana as a defense to any prosecution involving marihuana.' ” *People v Carruthers*, 301 Mich App 590, 612-13; 837 NW2d 16, 28-29 (2013) (quoting MCL 333.26428(a)). “The affirmative defense of § 8 is available regardless of the amount of marijuana possessed. That is, § 8 (unlike § 4) specifies no particular quantity limit, but instead requires that the amount possessed be ‘not more than was reasonably necessary’ for the statutorily recognized purposes. ” *Id.* at 612-13 (quoting MCL 333.26428(2)). “[A]n essential element of a § 8 affirmative defense is the requirement in § 4 that the marijuana be kept in an enclosed, locked facility.” *People v Danto*, 294 Mich App 596, 612-13; 822 NW2d 600, 609 (2011).

The facts show that Defendant possessed only 26 marijuana plants of marijuana, which is ‘not more than was reasonably necessary’ for the statutorily recognized purposes. Further, Defendant possessed all the 26 marijuana plants in the upper flat, which is secured with a lock or other security device that prevented access by anyone other than Defendant as required under the MMMA. Although the officers at the time were able to enter the upstairs without force, the upstairs flat does have a lock and Defendant typically locks the door to prevent outsiders from entering the upstairs. Here, Defendant has complied with the requirement that he keep the marijuana in an enclosed, locked facility. Therefore, Defendant is entitled to assert the medical purpose for using marijuana as an affirmative defense under MCL 333.26428.

Thus, Defendant requests this court to grant Defendant’s motion to dismiss the complaint.

CONCLUSION

WHEREFORE, Defendant prays that this Honorable Court dismiss all charges in its entirety and award costs and attorney fees to Defendant.

Respectfully Submitted,

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Dated: ██████████

NORRÄ.LL.GAL

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[REDACTED]
Attorneys for Defendant,
[REDACTED]
[REDACTED]
[REDACTED]

CERTIFICATE OF SERVICE

On [REDACTED], I served a copy of the foregoing Defendant's Motion to dismiss and brief in support, in the above captioned matter by First Class Mail by enclosing the same in an envelope with sufficient postage to:

The Prosecuting Attorney,

[REDACTED]

