

# Order

Michigan Supreme Court  
Lansing, Michigan

October 17, 2019

Bridget M. McCormack,  
Chief Justice

159223

David F. Viviano,  
Chief Justice Pro Tem

PEOPLE OF THE STATE OF MICHIGAN,  
Plaintiff-Appellee,

Stephen J. Markman  
Brian K. Zahra  
Richard H. Bernstein  
Elizabeth T. Clement  
Megan K. Cavanagh,  
Justices

v

SC: 159223  
COA: 342998  
Oakland CC: 2017-262223-FH

DAVID CLARENCE BRYAN,  
Defendant-Appellant.

On order of the Court, the application for leave to appeal the October 2, 2018 judgment of the Court of Appeals is considered and, pursuant to MCR 7.305(H)(1), in lieu of granting leave to appeal, we REVERSE the judgment of the Court of Appeals in part, VACATE the judgment of the Court of Appeals in part, and REMAND this case to the Oakland Circuit Court for further proceedings not inconsistent with this order. The Court of Appeals erred in holding that the defendant failed to demonstrate the existence of questions of fact regarding the second and third elements of a § 8 affirmative defense, MCL 333.26428, under the Michigan Medical Marihuana Act (MMMA), MCL 333.26421 *et seq.*, on the basis of the officer's testimony of two text messages suggesting that the defendant was selling marijuana and on the basis of the defendant's testimony that he had on occasion shared marijuana strains with a neighbor. With respect to the second element, we believe it was premature for the Court of Appeals to conclude that factual disputes do not exist concerning whether the amount of marijuana the defendant possessed was reasonably necessary to ensure uninterrupted availability for treating his serious or debilitating medical condition. MCL 333.26428(a)(2). The trial court made no findings regarding that element, and we therefore remand to the circuit court for further proceedings on that issue. With respect to the third element, the prosecution does not dispute that the defendant grew and smoked marijuana to treat his debilitating medical condition, among other reasons. This was sufficient prima facie evidence to create a question of fact as to the third element. See *People v Kolanek*, 491 Mich 382, 416 (2012).

The stay of trial court proceedings, ordered by this Court on May 30, 2018, is DISSOLVED.



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I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

October 17, 2019

Clerk