Michigan Supreme Court Gives Protection to Medical Marijuana Users Charged with DUI: Rules Against "Zero Tolerance" and now Requires Prosecutors to Prove Medical Marijuana Drivers "Under the Influence"

The conflict between Michigan's Medical Marijuana Act (MMMA)[1] and the OWI statute has now been settled. On Tuesday the Michigan Supreme Court announced that the MMMA trumps the OWI statute[2] thus allowing medical marijuana patients to legally operate a motor vehicle unless the prosecution can prove they are "under the influence" of marijuana. This is similar to the standard for when a driver is taking prescription medication in which he cannot be guilty of drunk driving unless the medication "substantially interferes with his ability to safely operate a motor vehicle." Furthermore, the Supreme Court noted that the state legislatures should more specifically define "under the influence" in the MMMA.

The case is *People v Rodney Koon* and has been a hotly discussed and debated topic in DUI circles ever since it began. Mr. Koon was stopped for speeding around Traverse City when police seized a marijuana pipe. Koon stated he was a medical marijuana patient and thus believed he was entitled to drive his car with marijuana in his system. A blood test revealed he had 10 nanograms per milliliter (10 ng/ml) of THC in his system.

Under the OWI statute, driving with any amount of marijuana in your system is against the law. However, the MMMA states a medical marijuana patient can operate a motor vehicle unless "under the influence of marijuana." Unfortunately, the drafters of the act didn't elaborate any further on what they meant by "under the influence." The prosecution's argument was that the two statutes, when read together, clearly reveal what the legislators meant; they intended any amount of marijuana in someone's system to be considered "under the influence." The defense's argument was that the legislators clearly did not intend that as that would effectively make it legally impossible for a medical marijuana patient to ever drive a car, especially since it stays in the system for up to a month. They argued that the prosecution should have to show that the marijuana "substantially effected the driver's ability to safely operate the motor vehicle." After all, why would the legislators allow people to use medical marijuana only to prohibit them from ever driving? Both the district and circuit courts agreed with the defense's argument. The Court of Appeals, however, did not.

That is when the charge began from medical marijuana patients that they would never be allowed to legally drive since at least some amount of marijuana will be present in their system, even if only used semi-regularly. While the argument sounds compelling at the onset, I found it to be rather theoretical and less realistic when examined more closely. Marijuana or THC will not register on a

1 MCL 333.26421
2 MCL 257.625(8)

breath test which is the most frequently used chemical test to determine intoxication. It would show up in a blood test, but unless the officer has some reason to suspect the driver of using drugs, they don't have someone qualified to use the DataMaster, or it hasn't been calibrated, then it's not likely the officer would do a blood draw. From my experience, officers generally only insist on a blood draw if they believe drugs are involved or when the driver has been in an accident and they perform a blood draw out of convenience. Nonetheless their point couldn't completely be ignored. The real question was what was the legislative intent and if there is an apparent conflict between the two statutes, who fills the gaps-- the Court or the legislators?

I don't believe that the legislature intended for medical marijuana users to never drive again. However, they created their own dilemma by not being more precise and more clearly articulating their intentions in the MMMA. This entire problem could have been avoided by merely adding one sentence ("by 'under the influence' we mean..."). Surely it's not as if they couldn't see this becoming an issue? Or maybe it was a matter of them foreseeing that the courts would eventually bail them out, thus alleviating the need to be more specific. It's happened before after all.

Just a couple of years ago the issue arose of whether a homeless person had to comply with the Sex Offender Registry's requirement of "updating his residence." The issue was how do you comply with such a directive when you're literally homeless and don't have a traditional residence or address? Michigan's SORA had no apparent provisions to deal with this issue although many other states did. Once again the Supreme Court stepped in and instead of leaving the issue to the legislators to fix, they held that a homeless person can register a residence-- he can put down his address as 123 Homeless.[3]

Essentially, the court has done the same thing here. Without any quantifiers to fill the gap, I think the more specific language of the OWI statute trumps the vagueness of the MMMA. The legislators can (and should) easily fix the problem by attaching a measuring unit (arbitrary number?) for the amount of THC that can be allowed in a medical marijuana user's system while driving just like they've done with the .08 blood alcohol threshold. Washington has recently resolved a similar conflict by allowing up to 5 ng/ml of THC in a driver's system to lawfully operate a car.[4] Unfortunately for Mr. Koon, even if Michigan had adopted this standard, he would have still been twice the legal limit. If anything, this ruling gives a much wider degree of latitude to medical marijuana patients because prosecutors don't have to show that alcohol impaired or substantially effected a driver's ability to safely operate a car. They just have to show his BAC at the magic number of .08.

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3 *Peo v Dowdy,* 489 Mich 373 (2011)

4 Wash Rev Code 46.61.502(1)(b)

In any event, the conflict between the two acts is now resolved. The bottom line: if you are a medical marijuana user and you're charged with OWI, now the prosecutor has to prove you were “under the influence.” Whatever that means. Is a “legal limit” forthcoming for marijuana like the BAC for alcohol? Let's see if the legislators clean up their mess.