Order

Michigan Supreme Court
Lansing, Michigan

July 11, 2025

167834

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

SC: 167834
COA: 370138
Berrien CC: 2022-015939-FH

JULIA KATHLEEN SOTO,
Defendant-Appellant.
_____/

By order of March 14, 2025, the plaintiff was directed to answer the application for leave to appeal the October 7, 2024 judgment of the Court of Appeals. On order of the Court, the answer having been received, the application for leave to appeal is again considered, and it is DENIED, because we are not persuaded that the question presented should be reviewed by this Court.

BOLDEN, J. (*dissenting*).

I respectfully dissent from the decision to deny leave. This case presents an important issue that affects whether defendants who possess large amounts of marijuana may be bound over for trial and convicted of offenses with misdemeanor or felony penalties. More specifically, this case illustrates how Michigan's dual statutory framework for regulating marijuana—comprising the Michigan Regulation and Taxation of Marihuana Act (MRTMA), MCL 333.27951 *et seq*., and the Public Health Code (PHC), MCL 333.1101 *et seq*.—creates confusion that may yield harsh criminal consequences for nonviolent conduct that falls outside the MRTMA's safe harbor. The published Court of Appeals decision in this case appears to have created a split with another published Court of Appeals opinion, which will likely create confusion among the criminal bench and bar and public at large. The incongruity between the two decisions is not unreasonable because of the difficulty in interpreting the statutory directive that "[a]ll other laws inconsistent with this act do not apply to conduct that is permitted by this act." MCL 333.27954(5). This Court has yet to interpret this language, and I would grant leave to appeal to provide necessary clarity.

However, I write separately to point out that the source of confusion may be statutory and to urge the Legislature to modernize Michigan's marijuana laws to bring clarity, coherence, and fairness to an area of law that remains plagued by contradiction. Under the current statutory framework, defendant's outstanding charge under the PHC, however inequitable, may not be legally erroneous. Yet the confusion created by the intersection of the PHC and the MRTMA, and the possibly disparate interpretations reached by two published Court of Appeals opinions, suggests that this Court should grant leave. Alternatively, if the Legislature believes that the confusion is a product of the

statutory language itself, the Legislature may wish to amend the statutory scheme to provide clarity about when certain conduct may be penalized by either misdemeanor or felony charges.

I. FACTUAL BACKGROUND

On October 26, 2022, a Michigan State Police detective received information that the Illinois State Police had intercepted approximately 85 pounds of marijuana that was being transported in a rental vehicle headed for southwest Michigan. The driver of the vehicle agreed to cooperate with the Illinois State Police and deliver the marijuana according to the driver's original plan. The driver then brought the marijuana to defendant's residence in Niles, Michigan, where defendant exited her residence after police officers surrounded her home and called for her to exit. After obtaining a search warrant, officers seized approximately 20 pounds of marijuana from the residence. Following the preliminary examination, defendant was bound over for trial on charges of (1) possession with intent to deliver five kilograms or more, but less than 45 kilograms, of marijuana, MCL 333.7401(2)(d)(*ii*), second or subsequent offense, MCL 333.7413, and (2) maintaining a drug house, MCL 333.7405(1)(d), second or subsequent offense, MCL 333.7413.

Defendant moved to suppress the evidence and dismiss the charges, arguing that the evidence was seized pursuant to an unconstitutional search and that without the evidence, the charges could not be prosecuted. The circuit court denied this motion, and the Court of Appeals subsequently denied defendant's application for leave to appeal. *People v Soto*, unpublished order of the Court of Appeals, entered September 11, 2023 (Docket No. 365822) (*Soto I*). Back in the circuit court, defendant filed a supplemental brief in support of her earlier motion to suppress and dismiss, raising the new argument that the MRTMA prohibited the prosecution of her possession-with-intent-to-deliver-marijuana charge as a felony. In response, the prosecution argued that the matter was not addressed by the MRTMA and instead fell under Article 7 of the Public Health Code. The circuit court agreed with the prosecution and denied defendant's motion to dismiss. Defendant appealed and the Court of Appeals affirmed. *People v Soto*, ___ Mich App ___ (October 7, 2024) (Docket No. 370138) (*Soto II*). Defendant then applied for leave to appeal to this Court.

II. LEGAL BACKGROUND

Michigan's history with marijuana regulation has been fraught with tension between evolving public attitudes and an entrenched punitive legacy. For decades, the PHC classified marijuana as a Schedule 1 controlled substance, subject to severe penalties. This approach persisted until the enactment of the Michigan Medical Marihuana Act (MMMA), MCL 333.26421 *et seq*., in 2008, which carved out narrow protections for registered patients and caregivers.

Ten years later, the MRTMA was enacted as the result of a ballot initiative through which the people of Michigan voted to legalize recreational marijuana possession and cultivation for adults aged 21 and older in most instances. The MRTMA significantly curtailed criminal penalties for marijuana-related conduct. It decriminalized the use and possession of marijuana within specified limits, rendered certain conduct civil infractions, and limited law enforcement authority to arrest or prosecute based solely on marijuana activity compliant with the Act. See generally MCL 333.27952; MCL 333.27955; MCL 333.27965.

However, the MRTMA did not expressly repeal or amend the PHC's felony provisions for intent-to-deliver charges. Instead, it provided that "[a]ll other laws inconsistent with this act do not apply to conduct that is permitted by this act." MCL 333.27954(5). This language was effective in shielding MRTMA-compliant conduct from felony prosecution but left a critical question unanswered: how should the state treat nonviolent marijuana conduct not expressly authorized by the Act? As a result, individuals charged with possession with intent to deliver between 5 and 45 kilograms of marijuana under the PHC would potentially face a felony conviction, up to 14 years' imprisonment, and a fine of up to $1,000,000, or both—even when their conduct involves no commercial activity and poses no risk to public safety. MCL 333.7401(2)(d)(*ii*); MCL 333.7413(1).

The statute under which defendant stands charged with illegally possessing with intent to deliver between 5 and 45 kilograms of marijuana, MCL 333.7401, provides in relevant part:

> (1) Except as authorized by this article, a person shall not manufacture, create, deliver, *or possess with intent to manufacture, create, or deliver* a controlled substance, a prescription form, or a counterfeit prescription form . . . .
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> (2) A person who violates this section as to:
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> (d) Marijuana . . . is guilty of a felony punishable as follows:
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> (*i*) If the amount is . . . *200 plants or more*, by imprisonment for not more than 15 years or a fine of not more than $10,000,000.00, or both.
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> (*ii*) If the amount is *5 kilograms or more but less than 45 kilograms*, or 20 plants or more but fewer than 200 plants, by imprisonment for not more than 7 years or a fine of not more than $500,000.00, or both. [Emphasis added.]

Conversely, Section 5 of the MRTMA provides that the possession and cultivation of a small number of marijuana plants is not an act for which one may be criminally charged. Specifically, MCL 333.27955 states, in relevant part:

> (1) Notwithstanding any other law or provision of this act, and except as otherwise provided in section 4 of this act, the following acts by a person 21 years of age or older are not unlawful, are not an offense, are not grounds for seizing or forfeiting property, are not grounds for arrest, prosecution, or penalty in any manner, are not grounds for search or inspection, and are not grounds to deny any other right or privilege:
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> * * *
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> (b) within the person's residence, possessing, storing, and processing not more than 10 ounces of marihuana and any marihuana produced by marihuana plants cultivated on the premises and cultivating not more than 12 marihuana plants for personal use, provided that no more than 12 marihuana plants are possessed, cultivated, or processed on the premises at once[.]
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> * * *
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> (2) Notwithstanding any other law or provision of this act, except as otherwise provided in section 4 of this act, the use, manufacture, possession, and purchase of marihuana accessories by a person 21 years of age or older and the distribution or sale of marihuana accessories to a person 21 years of age or older is authorized, is not unlawful, is not an offense, is not grounds for seizing or forfeiting property, is not grounds for arrest, prosecution, or penalty in any manner, and is not grounds to deny any other right or privilege.

However, § 15 of the MRTMA provides for exclusive penalties for "[a] person who commits any of the following acts, and is not otherwise authorized by this act to conduct such activities, . . . unless the person consents to another disposition authorized by law[.]" MCL 333.27965. Those acts include:

> (1) . . . [A] person who possesses not more than the amount of marihuana allowed by section 5, *cultivates not more than the amount of marihuana allowed by section 5*, delivers without receiving any remuneration to a person who is at least 21 years of age not more than the amount of marihuana allowed by section 5, or *possesses with intent to deliver not more than the amount of marihuana allowed by section 5, is responsible for a civil infraction and may be punished by a fine of not more than $100 and forfeiture of the marihuana*.
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> * * *

> (4) Except for a person who engaged in conduct described in section 4, a person who possesses more than twice the amount of marihuana allowed by section 5, *cultivates more than twice the amount of marihuana allowed by section 5*, or delivers without receiving any remuneration to a person who is at least 21 years of age more than twice the amount of marihuana allowed by section 5, *shall be responsible for a misdemeanor, but shall not be subject to imprisonment unless the violation was habitual, willful, and for a commercial purpose or the violation involved violence*. [Emphasis added.]

Thus, if defendant were to be prosecuted under § 15 of the MRTMA for cultivating more than twice the amount of marijuana permitted by § 5, she would be subject to misdemeanor penalties and would further be subjected to prison time only if the violation was "habitual, willful, and for a commercial purpose," or if the conduct "involved violence." MCL 333.27965(4). While the MRTMA expressly imposes misdemeanor penalties for cultivation operations that exceed the permissible amounts identified by the Act, the MRTMA does not expressly repeal or amend the PHC's felony provisions for intent-to-deliver charges. Instead, it provides that "[a]ll other laws inconsistent with this act do not apply to conduct that is permitted by this act." MCL 333.27954(5). This language is effective in shielding MRTMA-compliant conduct from felony prosecution but also creates a dual scheme in which prosecutors may elect whether to charge a defendant with felonies under the PHC or misdemeanors under the MRTMA for conduct that could fall under either scheme.

III. ANALYSIS

The Court of Appeals' decision in this matter stands in tension with its earlier holding in *People v Kejbou*, 348 Mich App 467 (2023), lv den 513 Mich 1062 (2024), even though the underlying conduct in both cases is similar. In *Kejbou*, where the defendant was charged with manufacturing 200 or more marijuana plants, MCL 333.7401(2)(d)(*i*), the Court of Appeals acknowledged that the MRTMA had "supplanted" portions of Article 7 of the PHC with respect to the prosecution of certain marijuana offenses, particularly those involving unlicensed marijuana cultivation operations. *Id*. at 478. The panel reasoned that because the MRTMA

> broadly decriminalizes the use, possession, and cultivation of marijuana, while the Public Health Code expressly criminalizes the same activities[,] . . . we need not—and indeed, cannot—harmonize the two provisions. . . .
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> . . . Nevertheless, given the language and intent of the MRTMA, we are led to conclude that when it comes to commercial grow operations like the one at issue in this case, Article 7 has been effectively repealed, moderated, or otherwise supplanted by the MRTMA. [*Id*. at 477-478.]

In contrast, the *Soto II* decision permits felony prosecution under Article 7 for conduct that, under the reasoning of *Kejbou*, would appear to fall within the misdemeanor penalty framework of the MRTMA. See *Soto II*, ___ Mich App at ___; slip op at 6. The only salient difference between the two cases is the statute under which each defendant was charged: the defendant in *Kejbou* was charged with manufacturing 200 or more marijuana plants, while defendant in this case was charged with possession with intent to deliver between 5 and 45 kilograms of marijuana. Yet both individuals cultivated more than 200 plants in their homes. The distinction, then, lies not in what the defendants did, but in how the prosecutor chose to characterize the offense.

This divergence raises serious concerns about the equal application of the law. If the MRTMA protects a defendant from felony prosecution for cultivating more than 200 marijuana plants in an unlicensed setting, see generally, *Kejbou*, 348 Mich App 467, because the cultivation implicates the MRTMA's penalty framework, then it is difficult to reconcile why defendant's cultivation of a similarly large quantity of marijuana in this case is not afforded the same protection simply because she was charged with a different, but functionally overlapping, felony. The practical result is that prosecutorial discretion, not legislative or electoral intent, determines whether a person is subject to civil fines, misdemeanors, or felonies for the same conduct.

This disjunction is not trivial. It creates a dual scheme in which nonviolent marijuana conduct explicitly protected by the MRTMA can lead to life-altering criminal penalties if the conduct is characterized as an offense under the PHC. This disjunction also undermines a core principle in *Kejbou*: that the MRTMA was "intended to cover unauthorized commercial, and therefore nonpersonal, cultivation of marijuana." *Kejbou*, 348 Mich App at 482. The *Kejbou* panel recognized that the MRTMA's enactment significantly limited the reach of Article 7 with respect to marijuana-related conduct and declined to permit a felony prosecution under MCL 333.7401(2)(d)(*i*) because the conduct was already addressed by MCL 333.27965(4) of the MRTMA as a misdemeanor.

In contrast, the *Soto II* panel attempted to distinguish *Kejbou* by noting that the MRTMA's penalty provisions in MCL 333.27965(4) omit any reference to "possession with intent to deliver" when more than twice the amount of marijuana permitted by § 5 is involved:

> Plain from the statutory text of MCL 333.27965, the inclusion of the "possession with intent to deliver" language in Subsections (1) and (2) indicates the electorate's awareness of that conduct and demonstrates the intent to penalize possession with intent to deliver lesser quantities of marijuana with the lesser penalty of a civil infraction. However, the omission of the same language in the list of conduct subject to misdemeanor penalties in Subsection (4) demonstrates the electorate's deliberate exclusion of possession with intent to deliver larger quantities of marijuana from the scope

> of the MRTMA. See [*People v Peltola*, 489 Mich 174, 185 (2011)]. Instead, the conduct underlying defendant's possession-with-intent-to-deliver-marijuana charge expressly implicates Article 7 of the [PHC], which, as relevant to this appeal, penalizes possession with the intent to deliver between 5 and 45 kilograms of marijuana as a felony. MCL 333.7401(2)(d)(*ii*). Consequently, we conclude that the MRTMA does not supersede Article 7 of the [PHC] with regard to the felony prosecution of persons who possess with the intent to deliver more than twice the amount of marijuana allowed by MCL 333.27955. [*Soto II*, ___ Mich App at ___; slip op at 5.]

While the panel inferred from this omission that the electorate intended to exclude such conduct from the MRTMA's reach and to allow felony prosecution under Article 7, this narrow textual reading fails to account for the MRTMA's overarching directive that a person who commits any of the acts enumerated in MCL 333.27965(1) through (4), and is not otherwise authorized by the MRTMA to conduct such activities, "may be punished only as provided in this section and is not subject to any other form of punishment or disqualification, unless the person consents to another disposition authorized by law[.]" MCL 333.27965.

Moreover, the *Soto II* opinion ignores the MRTMA's expressly stated purpose: to prevent arrest and penalty for personal possession and cultivation of marijuana by adults 21 years of age or older, MCL 333.27952, which the *Kejbou* panel interpreted to mean that the MRTMA was enacted to prevent a felony conviction for an unlicensed marijuana grow operation, *Kejbou*, 348 Mich App at 476. Additionally, *Soto II* suggests that large-scale cultivation coupled with intent to deliver is inherently "commercial" and thus outside the MRTMA's protections. But *Kejbou* directly addressed the circumstances of a case involving a large-scale commercial grow operation and still held that the MRTMA applied. The key, as *Kejbou* recognized, is not whether the conduct is commercial, but whether the MRTMA provides a penalty for it. If it does, Article 7 cannot override it. *Kejbou*, 348 Mich App at 476, 478, 482.

This Court's denial of defendant's application for leave to appeal allows the Court of Appeals' decision in this matter to stand. In light of *Kejbou*, *Soto II* generates even more confusion about how the possession of significant amounts of marijuana may be prosecuted. If lower courts apply *Soto II*, it may enable prosecutors to bypass the MRTMA

entirely simply by making a charging decision to prosecute under the PHC, which is at odds with the holding in *Kejbou*.

IV. CONCLUSION

The inconsistency between *Kejbou* and *Soto II* thus creates a jurisprudential imbalance that turns on the prosecutor's charging decision rather than the statute's actual meaning or the conduct involved. If the MRTMA protects a defendant from felony prosecution for cultivating over 200 marijuana plants, it is unclear how defendant's conduct wouldn't also be subject to the same protection against felony prosecution.

Although we are not hearing the case, the Legislature has the tools and mandate to fix this problem. It can and should amend the MRTMA and the PHC to reconcile their provisions to clarify when, if ever, nonviolent marijuana possession can result in a felony prosecution. The Legislature might also consider codifying safe-harbor thresholds that allow for proportional penalties and prevent the recriminalization of nonviolent marijuana-related conduct that exceeds the MRTMA's limits in good faith. This means, for example, that a defendant found guilty of nonviolent marijuana-related conduct that implies illicit dealing for profit or a contribution to the illicit market should face misdemeanor charges without the imposition of jail time.

As this Court has previously acknowledged in other regulatory contexts, ambiguity in statutory design invites inconsistent enforcement and erodes public trust. In this case, the conflicting frameworks of the MRTMA and the PHC create precisely that kind of ambiguity. They send mixed signals about what unlawful conduct is punishable by misdemeanor or felony penalties and how far Michigan has truly come in its transition from prohibition to regulation. Until the Legislature resolves this tension, our courts will continue to wrestle with difficult cases like this one, where technical noncompliance with the MRTMA can trigger outdated and severe felony penalties under a separate statute. Until the Legislature amends the statute or we decide to take up this issue, these important questions will remain unresolved.

I respectfully disagree that this Court should deny leave in this matter. I also urge the Legislature to revisit this issue, to harmonize Michigan's marijuana laws, and to ensure that no individual is subject to felony prosecution for conduct that the people of this state have sought to decriminalize.