

STATE OF MICHIGAN

IN THE 31ST CIRCUIT COURT FOR THE COUNTY OF ST. CLAIR

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff,

v.

Hon. Daniel Kelly

Dale Shattuck, and
Annette Shattuck,
Defendants.

Case No. 15-001155-FH
15-001156-FH

AMY STOVER (P69136)
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NOTICE OF HEARING

PLEASE TAKE NOTICE that the following motion will be brought on for hearing on February 1, 2015 at 1:00 PM before the Honorable Daniel Kelly of the St. Clair County Circuit Court, 201 McMorran Blvd, Port Huron, MI 48060, or as soon thereafter as counsel may be heard.

**MOTION TO DISMISS ON THE GROUNDS OF ENTRAPMENT BY ESTOPPEL/
REQUEST FOR EVIDENTIARY HEARING**

NOW COME Defendants, by and through their attorney, Michael Komorn, and hereby move, following an evidentiary hearing, for this Honorable Court to dismiss all charges due to entrapment by estoppel. Defendant's Brief, which follows, contains the basis for this Motion.

Dated: January 14, 2016

Respectfully submitted,

Michael A. Komorn (P47970)

PROOF OF SERVICE

I, Chad T. Carr, hereby certify that on the date below I sent the foregoing document by US mail to the above-captioned parties.

Dated: January 14, 2016

Chad T. Carr

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**BRIEF IN SUPPORT OF MOTION TO DISMISS ON THE GROUNDS OF
ENTRAPMENT BY ESTOPPEL/ REQUEST FOR EVIDENTIARY HEARING**

NOW COME Defendants, by and through their attorney, MICHAEL KOMORN, and for their Brief in Support of Defendant's Motion to Dismiss for Entrapment by Estoppel and Request for an Evidentiary Hearing, and additionally relies upon additional pleadings (Motion to Dismiss on the Grounds of Entrapment Due to Reprehensible Police Conduct) and further states as follows:

STATEMENT OF MATERIAL FACTS

On July 28, 2014, the St. Clair County Sheriff's Drug Task Force (DTF) executed a SWAT style raid on a medical marijuana provisioning center, DNA Alternative Wellness Center in Kimball, Michigan and simultaneously on the home of the owners, Dale and Annette Shattuck.

The Shattucks had months earlier completed an extensive licensing process in Kimball Township. The township attorney approved the licensing, as did the building inspector and planning commission. During a special exemptions meeting held on their behalf, the Kimball Township board declared the DNA Wellness business model compliant. The DTF leader, Jim Spadafore, serves on two Kimball Township boards.

To further ensure their compliance with The Act, after receiving their licensing from the Township, Annette Shattuck called the St. Clair County Drug Task Force and spoke to Detective Jason Sklba. She gave him her name and address, the name and address of DNA Wellness, and asked for their assistance. Because she believed The Act would protect her family from police encounters, she asked for an inspection of her facility from the DTF, so they could also verify her compliance. Det. Sklba told her she had nothing to worry about, they were not on their “radar,” and said, “I will let ‘The Weed Guy’ know what’s going on and he will get in touch with you.”

The Weed Guy, aka Detective John Maxey, didn’t return her call. Instead, Maxey, who says “all I do is medical marijuana,” contacted the county prosecutor and was told *not* to do an inspection but to continue a criminal investigation. The Shattucks were left with the belief that the operations of the center were authorized.

The “investigation” that the Weed Guy was running is a reprehensible example of police conduct. The DTF sent CIs with patient cards into the center to seek medical help. It was these CIs that Maxey relied upon to establish probable cause to raid the wellness center. For reasons discussed below, this was egregious and unconstitutional behavior.

Upon entering DNA Wellness, the DTF handcuffed the Shattucks and a recently arrived caregiver, Gin Hency, whose case was recently dismissed by the District Court. Then astonishingly, Agent George began to attend to customers who were beginning to arrive at the

store. It is believed that Agent George is a federal agent acting outside of the scope of his authority and engaging in these sales without the permission of his supervisor.

This conduct pales in comparison to what happened during the simultaneous raid (an “administrative records search” according to Maxey) on the Shattucks’ home where five children under the age of nine were playing when DTF busted in the door that morning, a no-knock, battering ram entry: the Shattuck’s four children, plus one cousin were being cared for under the watchful eye of their grandmother Lori Lee.

In April 2011, after Annette gave birth to the Shattuck’s third child, the couple took in another newborn addicted to heroin and crack. They brought him home from the hospital and nursed him through detox, while he screamed night after night as the drugs left his body. The adoption was complete in December of 2013.

During the dynamic entry, armed DTF officers wearing ski masks separated the children from their grandmother at gunpoint, shouting at her to get the dog under control or they would shoot it. The deputies kept the children lined up on the couch at gunpoint, refusing even to remove their masks to help calm the kids, including two three-year-old toddlers. Finally, a family member picked them up. DTF officers did not allow the family member to put the children in their car seats, forcing her to drive illegally with the children unsecured in the vehicle.

As the grandmother said: *There were several of them surrounding me. They were all in black and had ski masks on and had big AK 15's. I was terrified for my grandchildren these guys with the black masks they were just yelling and yelling about the dog and all I'm able to say is, "where are my grandchildren? Where are my grandchildren??"*

Lori was arrested and taken to jail. When she and Annette and Dean returned home they found the house in a state of destruction

They had Annette's lingerie strewn everywhere. From the ceiling fan. They had her personal vibrator out in the open. Boxes and bags of food had been pulled from the cabinets and stepped on with their big boots. Sex lube was squeezed all over the counter.

They ripped the medicine cabinets right out of the wall, left big holes in the drywall. Someone had defecated in the toilet and left it there. They emptied everything from the bathroom in the bathtub. In Dale's room and Annette's room every drawer was emptied.

Even the kid's rooms were torn up. The kitchen, every spice bottle was everywhere. They had to throw so much away because we didn't know what they had done to it. All the food in the pantry was thrown on the floor and stomped on.

Curtains were off the walls, the garage was destroyed; I have never seen such a horrible destruction of everything. We threw out so much stuff. They stole the kids birthday money, took it out of a birthday card that was in her bedroom. In the laundry room, every file they had in the house was emptied and mixed up and stepped on. They took everything, the birth certificates, the adoption papers. There was nothing that they didn't destroy, they ripped off facings of the cabinets, every picture was off the wall.

This sexually depraved harassment in the provision of a public service is actionable. The DTF seized money and vehicles. More importantly, it seized the Shattucks' personal papers, title documents, social security cards, driver's licenses and bank accounts, making it impossible for them to receive the stipend for their adopted child. None of this behavior was legal. Moreover, in complete violation of the law and due process, the DTF seized claimants' state- issued patient and caregiver cards. As this court is aware, the DTF uses these stolen cards to entrap other registered caregivers. The District Court was aware of only a portion of this misconduct when he called it "inhumane."

This entire episode is reprehensible and a shame on this county. The Shattucks are earnest, law-abiding citizens who attempted in good faith to comply with the law by consulting and receiving authorization from the appropriate government officials, and were then sandbagged and assaulted by the Sheriff's Drug Task Force. These are circumstances where prosecution would be so unfair as to violate the citizen's right to due process. The prosecutor's bringing of these charges, given what we all learned at the preliminary hearing, is a badge of this county's shame. For the reasons discussed below, all charges must be dismissed.

Entrapment by Estoppel

Entrapment by estoppel considers whether an individual engaged in conduct based on that individual's reasonable reliance on a government official's statement that the conduct was not unlawful. *People v Woods* (Robert, Jr.), 241 Mich App 545, 554 (2000) (a "sophisticated" public official facing reelection unlawfully acted as an election assistant and claimed that the township clerk's failure to advise the defendant of the illegality relieved the defendant of culpability). Citing *Raley v Ohio*, 360 US 423 (1959), for the origins of the legal concept, the *Woods* Court summarized the defense of entrapment by estoppel.

The due process principle underlying the doctrine of entrapment by estoppel is fairness to a well-intentioned citizen who unwittingly breaks the law while relying on government agents' statements under circumstances where reliance is reasonable. *Woods*, supra at 557.

Relying primarily on federal appellate decisions in the Third and Sixth Circuit Courts of Appeal, the *Woods* Court crafted the elements of Michigan's test for entrapment by estoppel.

To succeed with a defense of entrapment by estoppel, a defendant must establish all of the following by a preponderance of the evidence:

- a government official told the defendant that certain illegal/ criminal conduct was legal/not criminal;

- the defendant actually relied on the government official's information;
- the defendant's reliance on the information was in good faith and reasonable in light of the circumstances (the government official's identity, the specific point of law at issue, and the substance of the official's statement); and
- prosecution would be unfair given the defendant's reliance on the government official's statement. *Woods*, supra at 558-560, citing *United States v West Indies Transport, Inc*, 127 F3d 299, 313 (CA 3, 1997), and *United States v Levin*, 973 F2d 463, 488 (CA 6, 1992).

The *Woods* Court cautioned against the indiscriminate use of this entrapment defense:

[T]he defense should be utilized only where an earnest, law-abiding citizen attempts in good faith to comply with the law by consulting an appropriate government official, but unfortunately receives misinformation. These are circumstances where prosecution would be so unfair as to violate the citizen's right to due process. However, when the citizen knows or should know better, but attempts to seek immunity by claiming reliance on misinformation obtained from a government employee, prosecution is not unfair and estoppel by entrapment should have no application. *Woods*, supra at 560 (internal citations omitted)

The *Woods* Court also noted its agreement with *United States v Abcasis*, 45 F3d 39, 43 (CA 2, 1995), and *United States v Nichols*, 21 F3d 1016, 1018 (CA 10, 1994).

'The entrapment by estoppel defense applies where the defendant establishes by a preponderance of the evidence that (1) a government official (2) told the defendant that certain criminal conduct was legal, (3) the defendant actually relied on the government official's statements, (4) and the defendant's reliance was in good faith and reasonable in light of the identity of the government official, the point of law presented, and the substance of the official's statement.' *Woods(Robert)*, 241 Mich App at 558, quoting *United States v West Indies Transport, Inc*, 127 F3d 299, 313 (CA 3, 1997).

The State is estopped from charging defendants.

As discussed above, the Shattucks received authorization from the appropriate authorities to establish the wellness center. Defendants asked the DTF to inspect and were told to keep oper-

ating even as the prosecutor told Maxey to continue the bogus investigation. This constitutes entrapment by estoppel and requires that all charges be dismissed.

10.12 Entrapment by Estoppel (From the Michigan controlled Substances Benchbook 10.12)

Entrapment by estoppel considers whether an individual engaged in conduct based on that individual's reasonable reliance on a government official's statement that the conduct was not unlawful.

People v Woods (Robert, Jr.), 241 Mich App 545, 554 (2000) Citing *Raley v Ohio*, 360 US 423 (1959), for the origins of the legal concept, the *Woods* Court summarized the defense of entrapment by estoppel: "*The due process principle underlying the doctrine of entrapment by estoppel is fairness to a well-intentioned citizen who unwittingly breaks the law while relying on government agents' statements under circumstances where reliance is reasonable.*" *Woods*, supra at 557. Relying primarily on federal appellate decisions in the Third and Sixth Circuit Courts of Appeal, the *Woods* Court crafted the elements of Michigan's test for entrapment by estoppel.

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"[T]he defense should be utilized only where an earnest, law-abiding citizen attempts in good faith to comply with the law by consulting an appropriate government official, but unfortunately receives misinformation. These are circumstances where prosecution would be so unfair as to violate the citizen's right to due process

"Entrapment by estoppel applies when an official tells a defendant that certain conduct is legal and the defendant believes that official

to his detriment.”[United States v. Triana, 468 F.3d 308, 316 \(6th Cir.2006\)](#). The defense of estoppel by entrapment stems from the idea that “[o]rdinarily, citizens may not be punished for actions undertaken in good faith reliance upon authoritative assurance that punishment will not attach.” [United States v. Levin, 973 F.2d 463, 467 \(6th Cir.1992\)](#) (quoting [Raley v. Ohio, 360 U.S. 423, 487, 79 S.Ct. 1257, 3 L.Ed.2d 1344 \(1959\)](#)). The defense “is based upon fundamental notions of fairness embodied in the Due Process Clause of the Constitution.” [United States v. Ormsby 252 F.3d 844, 851 \(6th Cir.2001\)](#). It focuses on the conduct of the government officials rather than on a defendant's state of mind. [United States v. Blood, 435 F.3d 612, 626 \(6th Cir.2006\)](#).

The Shattucks, law abiding citizens, have been brutally punished for their actions taken in good faith reliance on the authorities in St. Clair County. They were sand-bagged by the DTF and the prosecutor after having been told to keep operating as they were, that they were “not on our radar” even as the DTF was sending people undercover with valid cards pretending to be suffering patients in an illegal attempt to manufacture criminal behavior. Due process demands that all charges be dropped. When an accused claims entrapment, the trial court must conduct a separate evidentiary hearing to resolve the issue. [People v. Juillet, 439 Mich. 34, 61, 475 N.W.2d 786 \(1991\)](#)

The Facts of this Case Are Distinguishable from VanSickle (303 Mich App 111, 117 (2013))

In *People v Vansickle*, the Michigan Court of Appeals held: ““An official may employ deceptive methods to obtain evidence of a crime as long as the activity does not result in the manufacturing of criminal behavior.”” *People v Vansickle*, 303 Mich App 111, 117 (2013), quoting *Jamieson (Stephen)*, 436 Mich at 82 (opinion by Brickley, J.). In *Vansickle*, 303 Mich App at 113-114, 117, the trial court properly denied the defendant’s motion to dismiss based on entrapment where “[the d]efendant, a registered qualifying patient under the Michigan Medical Marihuana Act (MMA), [MCL 333.26421 et seq.](#),” sold marijuana to undercover police officers “pos[ing] as legitimate patients[.]” at a medical marijuana dispensary. “[The] defendant wasn’t a

target of the undercover investigation of the marijuana dispensary[,] . . . the officers were not familiar with [the]defendant[,]” and “the officers did not appeal to [the] defendant’s sympathy, offer him any unusually attractive inducements or excessive consideration, or use any other means to pressure [him] to sell them marijuana[;]” rather, they “merely provided [him] with an opportunity to commit the crime, which is insufficient to establish entrapment.” *Vansickle*, 303 Mich App at 116-117.

The fact that undercover officers engaged in “friendly banter” with a defendant “does not establish ‘impermissible conduct that would induce an otherwise law-abiding person to commit a crime in similar circumstances.’” *Vansickle*, 303 Mich App at 116, quoting *Fyda*, 288 Mich App at 456.

In this case the Defendants had obtained full authorization from the Township of Kimball, the City Attorney, the Zoning Board, of whom Detective Spadafore, was a member and was notified of the authorization of the Township, to allow the facility to open. These facts are not the facts of *Vansickle*.

Additionally, as reflected in the transcripts from the preliminary examination and as referenced above, the Defendants called the DTF, for the purposes of relying upon them as to the legality of specific behavior. The DTF agency, that later raided, arrested, and confiscated property indicated that the behavior was not criminal and that they did not have to worry about criminal liability. They were not told to shut down, they were not told their behavior was a nuisance, or criminal in any way. Based upon the representations of both:

1. The local Kimball Township government, of whom Detective Spadafore was a member.
2. The DTF response to the request for inspection, whether to shut down, or if the facility was violating the laws of the state of Michigan.

Additionally, the facts of this case, unlike Vansickle, involve the police not impersonating patients, but actually selling cannabis to the patients, and then arresting them. The police behavior of the Vansickle case focused upon the illegality of the sale to the undercover police officer pretending to be a patient. The police in this matter, actually were acting as caregivers to entrap the defendants for crimes that they did not intend to nor would they have participated in, but for the police conduct. Vansickle was a case about the police officers acting as patients, acquiring cannabis from the accused. The matter before the Court is about the police acting on behalf of the Defendants as caregivers, and engaging in activity for the purposes of committing a crime, that the defendants did not commit, or would not have committed. This is entrapment, and the PWID count, charged in this matter, is a result of the exclusive behavior of the DTF, and legally can't be attributable to the Defendants. For that reasons and the reasons stated herein and the accompanying pleadings, the charges must be dismissed.

The Defendant has an Absolute Right to an Evidentiary Hearing on the Issues Raised Herein (Entrapment, Entrapment by Estoppel, Entrapment by Reprehensible Police Conduct)

The defendant is not required to admit to the offense before raising an entrapment defense. A defendant may raise the entrapment defense before or during trial. *People v D'Angelo*, 401 Mich 167, 178 (1977). The Defendant may even raise the defense after trial; however, an entrapment defense is waived if not raised before a defendant's sentencing. *People v Bailey*, 439 Mich 897 (1991).

Entrapment is a question of law to be decided by the trial court outside the jury's presence. *D'Angelo*, supra at 177; *People v Sexton*, 250 Mich App 211, 217 (2002). To determine the question of entrapment whenever a defendant raises the defense, the trial court **must** conduct an evidentiary hearing similar to the hearing held when a defendant objects to the

admission at trial of his or her confession on the grounds that the confession was not voluntary

Burden of Proof and Standard of Review

A preponderance of the evidence is required to establish entrapment, and the defendant has the burden of proof. *People v Pegenau*, 447 Mich 278, 294 (1994).

REQUEST FOR RELIEF

WHEREFORE, for all of the reasons discussed above, Defendant respectfully requests that this Honorable Court grant Defendants motion or in the alternative conduct an evidentiary hearing (as required by law), and after said hearing, dismiss the case at bar on the basis of entrapment due to reprehensible police conduct.

Dated: January 14, 2016

Respectfully submitted,

Michael A. Komorn (P47970)

PROOF OF SERVICE

I, Chad T. Carr, hereby certify that on the date below I sent the foregoing document by US mail to the above-captioned parties.

Dated: January 14, 2016

Chad T. Carr