



# Chris Boyle Consulting

Committed to Excellence in Law Enforcement



## Medical Marijuana and Law Enforcement in Pennsylvania

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# Lunch & Learn

**In this one hour “Lunch & Learn” Chris will cover the Medical Marijuana Act in Pennsylvania, and its practical effect on street-level law enforcement. Starting with the Pennsylvania Supreme Court cases of Gary, Alexander and Barr and moving into some of the dozen or more Superior and Common Pleas court decisions of the last two years, Chris will take a case law approach and “Boyle it down” to its bottom line(s) for sharing with the troops.**

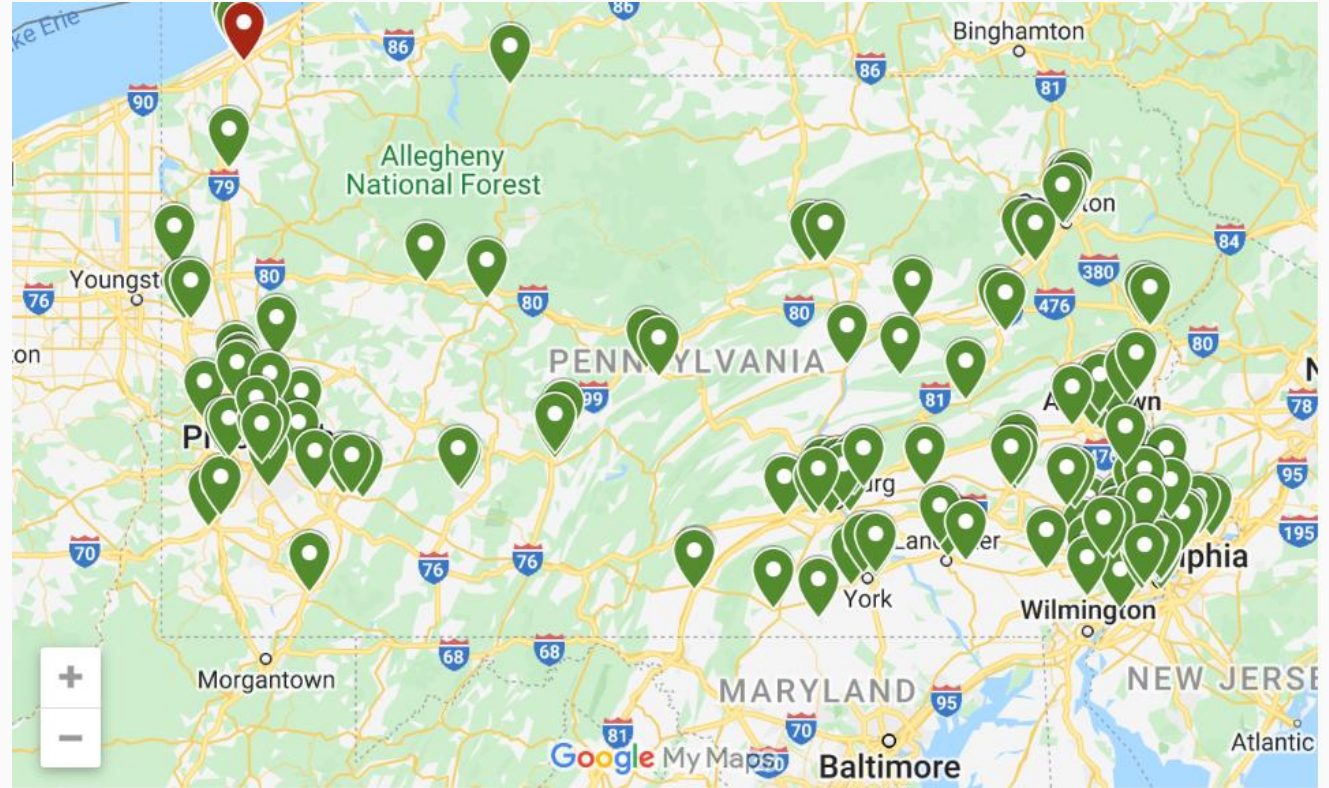


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# THE NUMBERS

As of May 15, 2020,  
there were 297,317  
Patients, and 29,040  
Caregivers in the  
Program

# NEED SOME WEED?



SO, THE  
COMMONWEALTH  
HAS EASY-TO-FIND  
GUIDANCE FOR  
LEO'S RIGHT???

## Information for:

[Patients and Caregivers](#)

[Schools](#)

[Growers and Processors](#)

[Dispensaries](#)

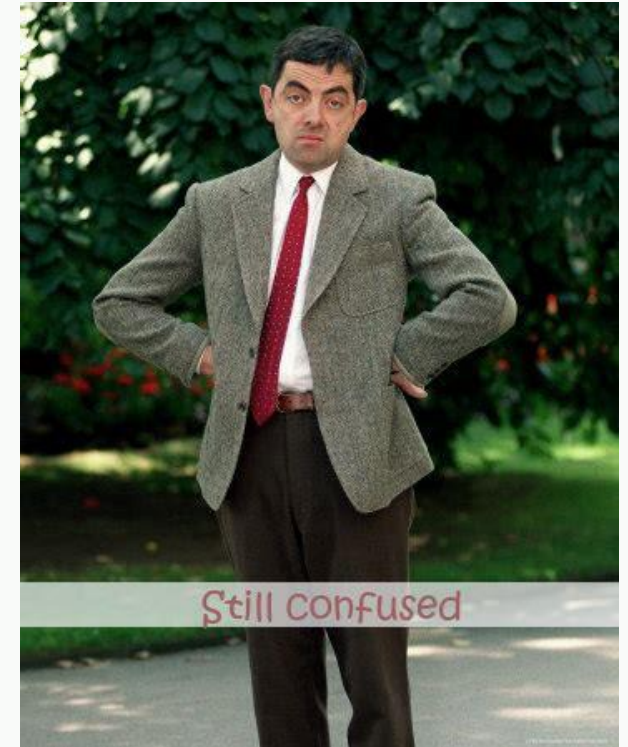
[Physicians](#)

[Laboratories](#)

[Clinical Research](#) (Chapter 20)

[Medical Marijuana Advisory Board](#)

[Medical Marijuana Assistance  
Program](#)



# Policy

**The General Assembly finds and declares as follows:**

**(1) Scientific evidence suggests that medical marijuana is one potential therapy that may mitigate suffering in some patients and also enhance quality of life.,,**

**(4) It is the further intention of the General Assembly that any Commonwealth-based program to provide access to medical marijuana serve as a temporary measure, pending Federal approval of and access to medical marijuana through traditional medical and pharmaceutical avenues.**

# Covered illnesses

Amyotrophic lateral sclerosis	• Anxiety disorders	• Autism	• Cancer, including remission therapy	• Crohn's disease
• Damage to the nervous tissue of the central	nervous system (brain-spinal cord) with objective	neurological indication of intractable spasticity,	and other associated neuropathies	• Dyskinetic and spastic movement disorders
	• Epilepsy	• Glaucoma	• HIV/AIDS	

# Covered illnesses

- Huntington's disease

- Inflammatory bowel disease

- Intractable seizures

- Multiple sclerosis

- Neurodegenerative diseases

- Neuropathies

- Opioid use disorder for which conventional

therapeutic interventions are contraindicated or

ineffective, or for which adjunctive therapy is

indicated in combination with primary therapeutic

interventions



# Covered illnesses

- Parkinson's disease

- Post-traumatic stress disorder

- Severe chronic or intractable pain of neuropathic

- origin or severe chronic or intractable pain

- Sickle cell anemia

- Terminal illness

- Tourette syndrome

# 35 P.S. § 10231.303

**(b) Requirements. The lawful use of medical marijuana is subject to the following:**

**(1) Medical marijuana may only be dispensed to:**

**(i) a patient who receives a certification from a practitioner and is in possession of a valid identification card issued by the department; and**

**(ii) a caregiver who is in possession of a valid identification card issued by the department.**

## Acceptable forms of medical marijuana

- Pills, oil, topical forms such as patches or ointments.
- Forms medically appropriate for administration by vaporization or nebulization, **including** dry leaf or plant form for administration by vaporization.
- Tinctures and liquids

## § 10231.303. Lawful use of medical marijuana

(6) Medical marijuana that has not been used by the patient shall be kept in the original package in which it was dispensed.

(7) A patient or caregiver shall possess an identification card whenever the patient or caregiver is in possession of medical marijuana.

# Offenses Related to Medical Marijuana

- § 10231.1301. Criminal diversion of medical marijuana by practitioners
- § 10231.1302. Criminal diversion of medical marijuana
- § 10231.1303. Criminal retention of medical marijuana
- § 10231.1304. Criminal diversion of medical marijuana by patient or caregiver
- § 10231.1305. Falsification of identification cards
- § 10231.1306. Adulteration of medical marijuana
- § 10231.1307. Disclosure of information prohibited
- § 10231.1308. Additional penalties
- § 10231.1309. Other restrictions

# Caregiver Requirements

**Be at least 21 years old (If you are under 21 years of age but would like to be considered as a caregiver for a patient, email the Department of Health at RA-DHMedMarijuana@pa.gov. In the email, please provide information about your relationship to the patient and why you should be allowed to serve as their caregiver.**

**Be a Pennsylvania resident.**

**Have a valid Pennsylvania driver's license or a state-issued ID card (with current address).**

**Complete a criminal history background check.**

**Not have been convicted of a criminal offense relating to the sale or possession of drugs, narcotics, or a controlled substance in the last five years.**

**Register and obtain an ID card that will allow you to pick up medical marijuana at a Pennsylvania dispensary.**

**(a) General rule. — Except as provided in section 303, section 704, Chapter 19 or Chapter 20, the use of medical marijuana is unlawful and shall, in addition to any other penalty provided by law, be deemed a violation of the act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act.**

## **§ 10231.304. Unlawful use of medical marijuana**

**(b) Unlawful use described. — It is unlawful to:**

**(1) Smoke medical marijuana.**

**(2) Except as provided under subsection (c), incorporate medical marijuana into edible form.**

**(3) Grow medical marijuana unless the grower/processor has received a permit from the department under this act.**

**(4) Grow or dispense medical marijuana unless authorized as a health care medical marijuana organization under Chapter 19.**

**(5) Dispense medical marijuana unless the dispensary has received a permit from the department under this act.**

## **§ 10231.304. Unlawful use of medical marijuana**



**(c) Edible medical marijuana. — Nothing in this act shall be construed to preclude the incorporation of medical marijuana into edible form by a patient or a caregiver in order to aid ingestion of the medical marijuana by the patient.**

## **§ 10231.304. Unlawful use of medical marijuana**

# § 10231.606. Application and issuance

...

**(a) Duty to report. — An applicant to be a grower/processor or to operate a dispensary is under a continuing duty to:**

...

**(2) Report to law enforcement, within 24 hours, any loss or theft of medical marijuana.**

## § 10231.508. Contents of identification card

An identification card shall contain the following:

...

(6) Any other requirements determined by the department, except the department may not require that an identification card disclose the patient's serious medical condition.

**“AND LAW ENFORCEMENT HAS NO REASON TO ASK WHAT THE UNDERLYING MEDICAL CONDITION IS” – Chris Boyle, 2022**

# § 10231.510. Prohibitions

The following prohibitions shall apply:

(1) A patient may not operate or be in physical control of any of the following while under the influence with a blood content of more than 10 nanograms of active tetrahydrocannabinis per milliliter of blood in serum:

(i) Chemicals which require a permit issued by the Federal Government or a state government or an agency of the Federal Government or a state government.

(ii) High-voltage electricity or any other public utility.

(2) A patient may not perform any employment duties at heights or in confined spaces, including, but not limited to, mining while under the influence of medical marijuana.

# § 10231.510. Prohibitions

**(3) A patient may be prohibited by an employer from performing any task which the employer deems life-threatening, to either the employee or any of the employees of the employer, while under the influence of medical marijuana. The prohibition shall not be deemed an adverse employment decision even if the prohibition results in financial harm for the patient.**

**(4) A patient may be prohibited by an employer from performing any duty which could result in a public health or safety risk while under the influence of medical marijuana. The prohibition shall not be deemed an adverse employment decision even if the prohibition results in financial harm for the patient.**



## **§ 10231.803. Posting**

**A dispensary shall post a copy of its permit in a location within its facility in a manner that is easily observable by patients, caregivers, law enforcement officers and agents of the department.**



## **§ 10231.1103. Law enforcement notification**

**Notwithstanding any provision of this act or any other law to the contrary, the department may notify any appropriate law enforcement agency of information relating to any violation or suspected violation of this act. In addition, the department shall verify to law enforcement personnel in an appropriate case whether a certification, permit, registration or an identification card is valid, including release of the name of the patient.**

**(b) Employment. —**

**(1) No employer may discharge, threaten, refuse to hire or otherwise discriminate or retaliate against an employee regarding an employee's compensation, terms, conditions, location or privileges solely on the basis of such employee's status as an individual who is certified to use medical marijuana.**

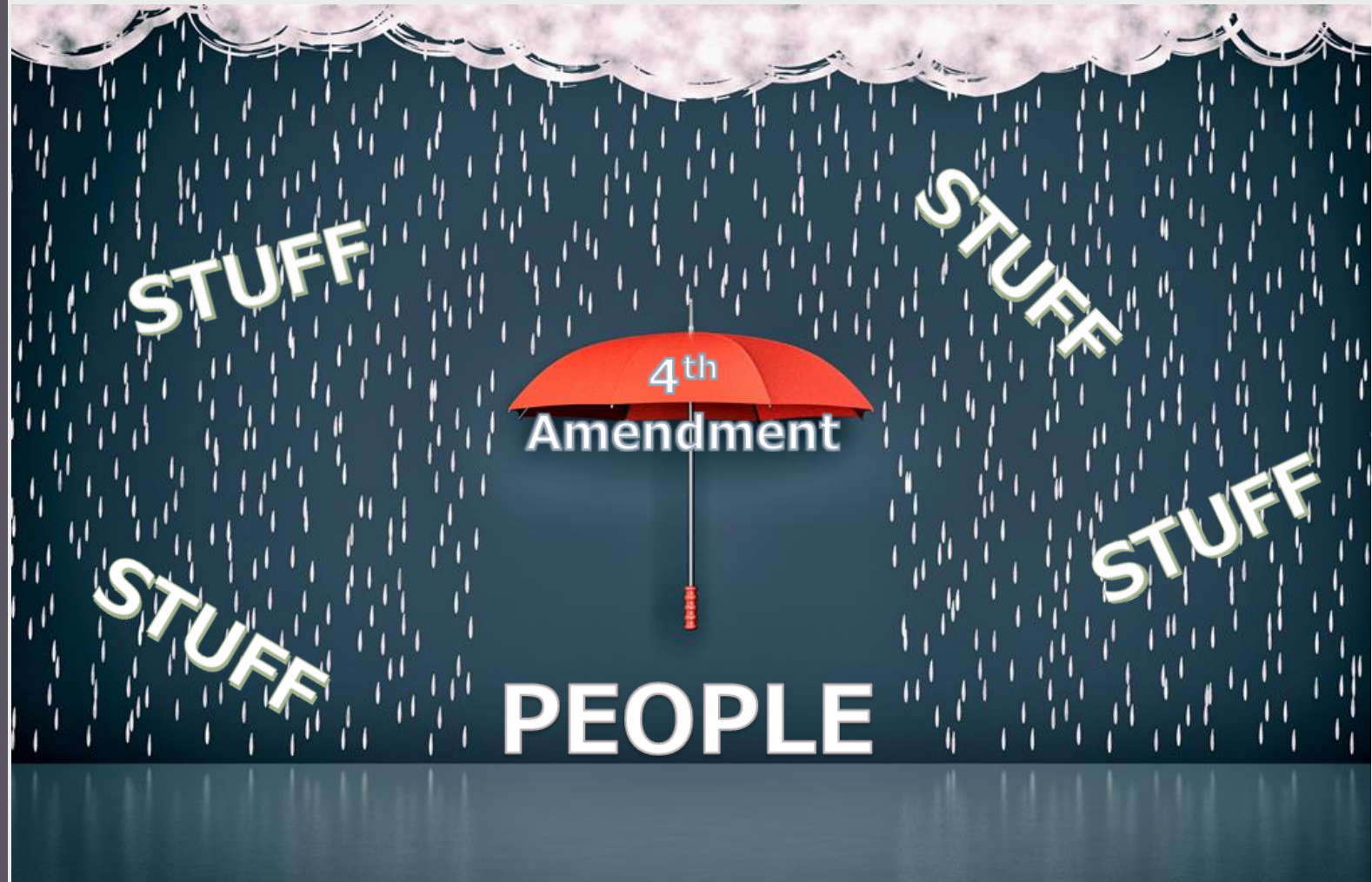
**(2) Nothing in this act shall require an employer to make any accommodation of the use of medical marijuana on the property or premises of any place of employment. This act shall in no way limit an employer's ability to discipline an employee for being under the influence of medical marijuana in the workplace or for working while under the influence of medical marijuana when the employee's conduct falls below the standard of care normally accepted for that position.**

**(3) Nothing in this act shall require an employer to commit any act that would put the employer or any person acting on its behalf in violation of Federal law.**

## **§ 10231.2103. Protections for patients and caregivers**



**The 4th  
Amendment  
protects  
PEOPLE (not  
STUFF)**



# THE RODRIGUEZ MOMENT

“an officer may ‘conduct certain unrelated checks,’ but not ‘in a way that prolongs the stop.’ *Rodriguez*, 135 S. Ct. at 1615.

*United States v. Green*, 897 F.3d 173,  
181, 2018 U.S. App. LEXIS 20655, \*18,  
2018 WL 3559216



CASELAW

# COMMONWEALTH V. GARY

SUPREME COURT OF  
PENNSYLVANIA

MARCH 5, 2013, ARGUED; APRIL  
29, 2014, DECIDED



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With respect to a warrantless search of a motor vehicle that was supported by probable cause, Pa. Const. art. I, § 8 afforded no greater protection than the Fourth Amendment to the United States Constitution, and thus, the Pennsylvania Supreme Court adopted the federal automobile exception to the warrant requirement, which allowed police officers to search a motor vehicle when there was probable cause to do so and did not require any exigency beyond the inherent mobility of a motor vehicle. **NO LONGER THE LAW IN PA!**

## Boyle's Bottom Line

*COMMONWEALTH V. ALEXANDER*

SUPREME COURT OF  
PENNSYLVANIA  
DECEMBER 22, 2020



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**The Court held that Pa. Const. art. I, § 8 afforded greater protection to Commonwealth citizens than the Fourth Amendment, U.S. Const. amend. IV, and reaffirmed that the Pennsylvania Constitution requires both a showing of probable cause and exigent circumstances to justify a warrantless search of an automobile;**

## **Boyle's Bottom Line**

*COMMONWEALTH V. BARR*

SUPREME COURT OF  
PENNSYLVANIA

DECEMBER 29, 2021, DECIDED



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The trial court order granting defendant's motion to suppress, under U.S. Const. art. IV and Pa. Const. art. I, § 8, was reinstated because **the smell of marijuana may be a factor, but not a stand-alone one**, in determining whether the totality of the circumstances established probable cause to permit a police officer to conduct a warrantless search of a vehicle. The troopers simply stopped the vehicle for a minor traffic violation and then smelled marijuana upon approaching the vehicle, **it was of no moment whether the area in which the stop occurred was known as a high crime area.**

## Boyle's Bottom Line

# COMMONWEALTH V. YEAGER

SUPERIOR COURT OF  
PENNSYLVANIA

NOVEMBER 19, 2020, DECIDED;  
*NON-PRECEDENTIAL DECISION*



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**The resulting temporary regulation defines "medical marijuana" as "[m]arijuana for certified medical use, limited to the following forms ... [a] form medically appropriate for administration by vaporization or nebulization, including dry leaf or plant form for administration by vaporization." 28 Pa. Code § 1141.21**

## **Boyle's Bottom Line**

*COMMONWEALTH V. FOY*

SUPERIOR COURT OF  
PENNSYLVANIA

JANUARY 15, 2021, DECIDED; :  
*NON-PRECEDENTIAL DECISION*



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**An investigative detention "subjects a suspect to a stop and a period of detention, but does not involve such coercive conditions as to constitute the functional equivalent of an arrest."**

## **Boyle's Bottom Line**

**The MMA "create[d] a temporary program for qualified persons to access medical marijuana, for the safe and effective delivery of medical marijuana, and for research into the effectiveness and utility of medical marijuana."**

## **Boyle's Bottom Line**

**Since the possession of marijuana is still illegal in Pennsylvania unless the MMA applies, Officer Pierce's suspicion of criminal activity being afoot was reasonable. He did not need to have absolute proof that the possession of marijuana was illegal. Indeed, no evidence at the suppression hearing suggested that Foy's possession of marijuana was lawful under the MMA and that the police officers ought to have known.**

## **Boyle's Bottom Line**

# COMMONWEALTH V. GROOMS

SUPERIOR COURT OF  
PENNSYLVANIA

FEBRUARY 24, 2021, DECIDED;  
FEBRUARY 24, 2021, FILED



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The court held that consistent with Barr, the enactment of the Medical Marijuana Act (MMA), 35 Pa. Stat. Ann. § 10231.101 et seq., and the rationale set forth in Hicks, **the odor of marijuana alone does not always establish probable cause; rather, it is a factor that may contribute to a finding of probable cause when assessed under the totality-of-the-circumstances test;**

## Boyle's Bottom Line

*COMMONWEALTH V. LOMAX*

SUPERIOR COURT OF  
PENNSYLVANIA

FEBRUARY 14, 2022, DECIDED; :  
*NON-PRECEDENTIAL DECISION*



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**An individual who presents a Medical  
Marijuana card may still be subject to  
investigation and/or arrest for Driving  
Under the Influence of a Controlled  
Substance.**

**Boyle's Bottom Line**

# COMMONWEALTH V. BATISTA

SUPERIOR COURT OF  
PENNSYLVANIA

JULY 29, 2019, SUBMITTED;  
SEPTEMBER 27, 2019, DECIDED;



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**The enactment of the Medical Marijuana Act (MMA) did not abrogate precedents holding that the aroma of marijuana contributed to the finding of probable cause because the Department of Health issued an extremely limited number of grower permits under the MMA, ...**

## **Boyle's Bottom Line**

*COMMONWEALTH V. WAGNER*

SUPERIOR COURT OF  
PENNSYLVANIA

APRIL 5, 2022, DECIDED;  
*NON-PRECEDENTIAL DECISION*



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**After careful review, and under existing legal authority at this writing, we conclude the MMA does not create an affirmative defense to DUI. Accordingly, we reverse.**

**Boyle's Bottom Line**

# COMMONWEALTH V. LUTZ

SUPERIOR COURT OF  
PENNSYLVANIA

FEBRUARY 14, 2022, DECIDED;  
FEBRUARY 14, 2022, FILED



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**The marijuana found in a glasses case found in the search incident to arrest should have been suppressed because the search was not related to defendant's person whatsoever, since she was in handcuffs. There was no risk that she would obtain a weapon from her vehicle or destroy evidence indicating that she was intoxicated.**

## **Boyle's Bottom Line**



SOME MORE STUFF  
IN THE VERY  
UNLIKELY EVENT IT  
IS NOT 12:00 YET

**Commonwealth v. Moore, 263 A.3d 1193, 2021 Pa. Super. LEXIS 627, 2021 PA Super 202 (October 12, 2021)**

**As there was indicia that the marijuana was not consumed in accordance with the MMA, the officers here were in possession of the kind of "other circumstances" absent in Barr that "suppl[ied] more individualized suspicion that the activity is criminal" and contributed to a finding of probable cause that the vehicle contained contraband. 240 A.3d at 1287;**

**Commonwealth v. Brown, 2020 Pa. Super. Unpub. LEXIS 3844,  
\*14-15, 245 A.3d 1064, 2020 WL 7334386**

**Rather, we leave for another day the issue as to whether an officer's observation of a legal form of medical marijuana (such as dry leaf in the instant case) in a clear baggie in plain view during a legal traffic stop per se establishes probable cause to conduct a warrantless search of that vehicle.**

**Commonwealth v. Handley, 213 A.3d 1030, 1037, 2019 Pa. Super. LEXIS 638, \*11, 2019 PA Super 201, 2019 WL 2701389 (quoting Waddell)**

**“Regardless of whether there are accepted medical uses for marijuana in the United States, marijuana remains a Schedule I substance under the Drug Act.” Id. at 207 (emphasis added). This Court rejected Waddell's due process argument because it rested on a faulty interpretation of the CSA. Id.**

**Commonwealth v. Cordob, 2021 Pa. Super. Unpub. LEXIS 3101,  
\*5-6, 2021 WL 5412403**

**"Section 3802(d)(2) does not require that any amount or specific quantity of the drug be proven in order to successfully prosecute."  
...Rather, Section 3802(d)(2) requires the Commonwealth prove the defendant was "under the influence of a drug to a degree that impairs his or her ability to safely drive[] or operate a vehicle."  
...The Pennsylvania Supreme Court has "determined that expert testimony is not necessary to establish impairment under subsection 3802(d)(2) where there exists other independent evidence of impairment."**

# THANK YOU



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