

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

COMMONWEALTH OF
PENNSYLVANIA,

CRIMINAL DIVISION

v.

CC: 201912414

BETH REPP,

Defendant.

OMNIBUS PRE-TRIAL MOTION

AND NOW, comes the Defendant, Beth Repp, by and through his attorney, Patrick K. Nightingale, Esquire, who brings the within Omnibus Pre-Trial Motion and in support thereof sets forth the following:

1. Defendant, Beth Repp, (hereafter Defendant) has been charged with DUI relative to the above captioned docket number.

COUNT 1 – MOTION TO SUPPRESS BLOOD DRAW

2. Paragraph 1 is incorporated at length herein.
3. Defendant suffered from an epileptic seizure and had a motor vehicle accident.
4. Law enforcement suspected a heroin or opioid overdose and administered Narcan, which had no effect.
5. Narcan was administered at the ER, again with no effect.
6. When Defendant became lucid she denied any opiate use but admitted being a medical cannabis patient.
7. A blood draw was requested to which Defendant consented.

8. Law enforcement, knowing Defendant suffered a seizure and did not overdose on opioids, had no probable cause or reasonable suspicion to believe Defendant was operating a motor vehicle with controlled substances in her blood.

9. Defendant's admission to being a medical cannabis patient does not compel the conclusion that Defendant had THC or THC metabolites in her blood as there was no evidence of impairment, no field sobriety tests, no "drug recognition expert" observations or any reasons whatsoever to suspect Defendant was operating a motor vehicle with THC in her blood.

WHEREFORE, Defendant respectfully requests that the Honorable Court enter an Order suppressing the blood draw.

COUNT 2 - FORMAL REQUEST FOR DISCOVERY

10. Paragraphs 1 – 9 are incorporated as though set forth at length herein.

11. Defendant believes and, therefore, avers that the Commonwealth will call a toxicologist in this matter.

12. Pursuant to Pa.R.Crim. 573(B)(1)(e) Defendant is entitled to "any results or reports of scientific tests, expert opinions, and written or recorded reports of polygraph examinations or other physical or mental examinations of the defendant that are within the possession or control of the attorney for the Commonwealth."

WHEREFORE, Defendant respectfully requests that the Honorable Court enter an Order granting the discovery request set forth herein.

COUNT 3 – 75 Pa.C.S.A. §3802(d)(1)(i) IS UNCONSTITUTIONAL

13. Paragraphs 1 – 12 are incorporated as though set forth at length herein.

14. Defendant is a Pennsylvania medical cannabis patient lawfully permitted to use medical cannabis by the Pennsylvania Legislature.

15. 261,000 Pennsylvanians have registered as medical cannabis patients according to the Pennsylvania Medical Marijuana Advisory Board report from Secretary of Health Dr. Rachael Levine submitted on February 13, 2020.

16. Section 3802(d)(1)(i) renders Pennsylvania's medical cannabis patient community unable to operate a motor vehicle. Section 3802(d)(1)(i) thus deprives said patient population of equal protection as patients using Schedule II prescription opiates are permitted to operate a motor vehicle provided they are not "impaired."

17. Pennsylvania's "zero tolerance" relative to non-psychoactive THC metabolites as being sufficient to sustain a conviction for DUI is not rationally related to a legitimate governmental interest as it criminalizes behavior that has nothing to do with impairment as THC's non-psychoactive metabolite can be detected for days, weeks and in some cases months after cessation of cannabis use.

18. Appellate Courts in Michigan and Arizona have rejected THC metabolites as sufficient to sustain a DUI conviction for medical cannabis patients in those states.

WHEREFORE, Defendant Beth Repp respectfully requests that this Honorable Court find 75 Pa.C.S.A. §3802(d)(1) to be unconstitutional.

COUNT 4 - MARIJUANA'S SCHEDULE I CLASSIFICATION IS

UNCONSTITUTIONAL

19. Paragraphs 1 – 18 are incorporated as though set forth at length herein.

20. 35 Pa.C.S.A. §780-104(1)(iv) defines Marijuana as a Schedule I controlled substance. Section 1 defines a Schedule I controlled substance as a substance with "a high potential for abuse, no currently accepted medical use in the United States, and a lack of accepted safety for use under medical supervision."

23. Pennsylvania has enacted Act 16, a medical cannabis law that will provide for the regulated distribution of medical cannabis products to patients with any of 23 qualifying conditions including chronic pain, seizure disorder, PTSD, glaucoma, cancer, HIV/AIDS, opioid use disorder, Tourettes' Syndrome, Huntington's Disease and autism.

24. The Department of Health has issued 25 grower/processor licenses and 50 dispensary licenses (which provide for 3 retail locations per license). Presently 15 grower processors are shipping products to 71 operational dispensaries. Allegheny County has multiple dispensaries - Cresco Yeltrah (Strip District), Solevo Wellness (Squirrel Hill), The Healing Center (Monroeville), Maitri Medicinals (Shadyside/East Liberty) and Keystone Integrated Care (Lawrenceville).

25. Pennsylvania's medical cannabis program has 261,000 registered patients and 26,000 registered caregivers according to the February 13, 2020, Advisory Board report. According to Dr. Rachael Levine, Secretary of the Board of Health, there have been 3.4 million dispensary visits since the program became operational on February 15, 2018. Licensed dispensaries have sold \$423 million in products to registered patients during that time,

26. In addition to the licenses referred to in Paragraph 24 the Department of Health has approved 7 of 8 "clinical research" licenses. Each clinical research license allows a license holder to partner with a research hospital or university, operate a "vertically integrated" program with a grow/processing facility coupled with up to six dispensary licenses for the stated purpose of capturing patient data.

27. With West Virginia recently joining the ranks of medical cannabis states the United States now has 34 states with some kind of medical cannabis program.

28. The United States owns patent # US6630507 recognizing cannabis as a neuroprotectant and anti-oxidant. It has also provided 9 ounces of marijuana monthly to Florida stockbroker Irv Rosenfeld and has done so since 1980. The marijuana is grown by the United States at the University of Mississippi.

29. Marijuana's Schedule I classification is unconstitutional in that marijuana clearly has medical efficacy. Its Schedule I classification is not rationally related to a legitimate governmental interest. Pennsylvania patients and recreational consumers are denied equal protection of law where one statute claims no medical efficacy and another creates a medical cannabis production and distribution program estimated to benefit over 261,000 Pennsylvanians.

WHEREFORE, Defendant Beth Repp respectfully requests this Honorable Court enter an Order declaring 35 Pa.C.S.A. §780-104(1)(iv) unconstitutional.

REQUEST FOR HEARING

33. Paragraphs 1 – 32 are incorporated as though set forth at length herein.
34. Defendant respectfully requests a hearing relative to the issues raised herein.

Respectfully Submitted,

Patrick K. Nightingale, Esquire
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2340 Gulf Tower
Pittsburgh, PA 15219
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 28th day of February, 2020, he filed the within Motion with the Clerk of Courts and has caused to be delivered via hand delivery a true and correct copy of the within Motion to the following:

Court Administration
114 Allegheny County Courthouse
436 Grant Street
Pittsburgh, PA 15219

Office of the District Attorney
401 Courthouse
436 Grant Street
Pittsburgh, PA 15219

Patrick K. Nightingale, Esquire

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BETH REPP,

Defendant.

ORDER OF COURT

AND NOW, to-wit, on this _____ day of _____, 2020, upon consideration of Defendant's Motion to Suppress Blood Draw, it is hereby ORDERED, ADJUDGED and DECREED that Defendant's Motion is GRANTED.

BY THE COURT:

_____, J.

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v.

CC: 201912414

BETH REPP,

Defendant.

ORDER OF COURT

AND NOW, to-wit, on this _____ day of _____, 2020, upon consideration of Defendant's Formal Motion for Discovery, it is hereby ORDERED, ADJUDGED and DECREED that Defendant's Motion is GRANTED.

BY THE COURT:

_____, J.

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v.

CC: 201912414

BETH REPP,

Defendant.

ORDER OF COURT

AND NOW, to-wit, on this _____ day of _____, 2020, upon consideration of Defendant's Motion to Declare 75 Pa.C.S.A. §3802(d)(1)(i) Unconstitutional, it is hereby ORDERED, ADJUDGED and DECREED that Defendant's Motion is GRANTED.

BY THE COURT:

_____, J.

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COMMONWEALTH OF
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v.

CC: 201912414

BETH REPP,

Defendant.

ORDER OF COURT

AND NOW, to-wit, on this _____ day of _____, 2020, upon consideration of Defendant's Motion to Declare Marijuana's Schedule I Classification Unconstitutional, it is hereby ORDERED, ADJUDGED and DECREED that Defendant's Motion is GRANTED.

BY THE COURT:

_____, J.