

STATE OF MICHIGAN  
IN THE 58<sup>TH</sup> DISTRICT COURT FOR THE COUNTY OF OTTAWA

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THE PEOPLE OF THE STATE OF MICHIGAN,

V

File No. GH-15-40313-FY

MAXWELL LORINCZ,

Defendant.

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PRELIMINARY EXAMINATION

BEFORE THE HONORABLE CRAIG E. BUNCE, DISTRICT JUDGE

Grand Haven, Michigan - Wednesday, April 15, 2015

APPEARANCES:

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EXHIBITS

	IDENTIFIED	ADMITTED
PX#1 - CURRICULUM VITAE	44	NOT ADMITTED
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1 Grand Haven, Michigan  
2 Wednesday, April 15, 2015  
3 Court, counsel and all parties present for  
4 Preliminary Examination  
5 THE COURT: This is file 15-40313, the People  
6 versus Maxwell Lorincz. The time and place scheduled for a  
7 preliminary examination in this matter. I notice there is  
8 a video camera in the courtroom; may I ask what that's in  
9 regard to?  
10 VIDEO RECORDER: They said they sent the  
11 paperwork in.  
12 THE COURT: Who - - who's that?  
13 VIDEO RECORDER: My assignment editor, they sent  
14 the paperwork in.  
15 THE COURT: Okay, for what - - for what agency,  
16 what - -  
17 VIDEO RECORDER: Fox 17.  
18 THE COURT: Okay. I don't see anything in our  
19 file but if you would make sure that they get me that  
20 appropriate form.  
21 VIDEO RECORDER: I'll call him right now.  
22 THE COURT: All right. Ms. Miedema are you  
23 prepared to proceed?  
24 MS. MIEDEMA: Yes, Your Honor.  
25 THE COURT: And Mr. Kormon, are you prepared?

1 MR. KOMORN: Komorn, pretty close yes, yes we are  
2 ready to proceed, Your Honor.

3 THE COURT: All right. Ms. Miedema, you may call  
4 your first witness?

5 MS. MIEDEMA: We call Deputy Gedeon to the stand.

6 MR. KOMORN: Judge, I would just move to  
7 sequester, I think there's a second witness but - -

8 THE COURT: Do you have any witnesses that you'll  
9 be calling that are in the courtroom, Ms. Miedema?

10 MS. MIEDEMA: The lab agent is here so we have no  
11 objection if he's sequestered, that's fine. We would ask  
12 that any defense or potential defense witnesses also be  
13 sequestered then.

14 THE COURT: Any other defense witnesses present?

15 MR. KOMORN: That's fine.

16 THE COURT: Sir, if you'd just have a seat out in  
17 the lobby. Thank you.

18 Before you have a seat if you'd raise your right  
19 hand? Do you swear to tell the truth, the whole truth and  
20 nothing but the truth so help you God?

21 DEPUTY GEDEON: I do.

22 THE COURT: If you'd have a seat and state your  
23 full name and spell your last name?

24 THE WITNESS: Deputy Patrick GEdeon, G-e-d-e-o-n.

25 THE COURT: Ms. Miedema.

1 PATRICK GEDEON

2 Called as a witness at 2:35 p.m., testified as follows:

3 DIRECT EXAMINATION

4 BY MS. MIEDEMA:

5 Q What's your occupation?

6 A I'm a police officer with the Ottawa County Sheriff's  
7 Office.

8 Q How long have you been doing that?

9 A Approximately three years in total.

10 Q All right. Were you working on September 24 of 2014?

11 A Yes I was.

12 Q Were you working at approximately 6:30 in the evening?

13 A Yes I was.

14 Q At that time were you dispatched to an address in Crockery  
15 Township in Ottawa County?

16 A Yes I was.

17 Q And was that at 15940 144<sup>th</sup>?

18 A Yes.

19 Q And what was the call in reference to?

20 A The call was in reference in a drug overdose, a medical  
21 call to assist there.

22 Q That was the dispatch information?

23 A Yes, it was a drug overdose.

24 Q Okay and did you - - were you the first to respond?

25 A I was the first police officer to respond. Medical also

1           responded with me.

2   Q       Pardon?

3   A       Medical services out of Crockery Township Fire also

4           responded with me.

5   Q       Okay. And what did you do when you arrived at the 144<sup>th</sup>

6           Street address?

7   A       I made contact with the defendant and began questioning

8           what - - what the nature of the medical situation was and

9           began asking questions regarding the medical patient.

10   Q       What did you observe when you first arrived at 15940 144<sup>th</sup>?

11   A       When I first - - first arrived, I made contact with the

12           defendant and I also observed that there was a female

13           patient on the floor of the kitchen which is just inside

14           the entryway of the residence. She was unconscious;

15           unresponsive.

16   Q       All right. And where was the person that you referred to

17           as the defendant?

18   A       The defendant was at the door when I arrived and we spoke

19           just inside the residence after we entered to provide

20           medical treatment for the patient.

21   Q       Was the kitchen almost as soon as you walk into the house?

22   A       Correct, there's a small entryway and then the kitchen is

23           within plain sight with an open view of that entryway.

24   Q       Okay. And the person that you referred to as the defendant

25           can you point him out if you see him in the courtroom?

1 A Seated right there.

2 Q What is he wearing today?

3 A He's wearing a blue button up shirt.

4 MS. MIEDEMA: Could the record indicate the  
5 witness has identified the defendant.

6 THE COURT: It may.

7 BY MS. MIEDEMA:

8 Q So you saw the defendant then first at the front door and  
9 then you moved into the kitchen, is that how it worked?

10 A That's correct, yes.

11 Q All right. And then you notice a female on the floor?

12 A Yes, that's correct.

13 Q Did you determine her identity after a time?

14 A Yes I did.

15 Q And who was that?

16 A Her name was Erica Jo Chittenden.

17 Q And what did you notice about her?

18 A She was not responsive in any way shape or form until we  
19 could provide an airway for her. It's believed that she  
20 was possibly suffering from positional asphyxia when we  
21 arrived on scene. So once we opened a proper airway, she  
22 did regain some consciousness but was not alert to our  
23 presence, did not answer any questions.

24 Q Did you ask her questions and she wasn't able to respond?

25 A That's correct.

1 Q And then was the defendant, Maxwell Lorincz, present  
2 during that time?

3 A Yes he was.

4 Q And did you have any conversation with Maxwell Lorincz?

5 A I did, yes I did.

6 Q What was that?

7 A I asked him what - - what the nature of her - - what she  
8 had taken and he initially told me that it was Klonopin  
9 that the patient had taken and consumed which had caused -  
10 - likely caused the overdose symptoms.

11 Q Okay. And did you have a discussion about anything else?

12 A We did later after - - after the medical situation was  
13 resolved.

14 Q Your first attention was to the female victim?

15 A Yes, that's correct.

16 Q All right. And then once that female victim was  
17 stabilized, or was she taken away by ambulance then?

18 A Yes she was.

19 Q What else happened then at that residence?

20 A After the patient was properly cared for by fire services  
21 and North Ottawa ambulance, I did check the area in plain  
22 view. Looked around the area for any sort of narcotic  
23 activity which would give me an idea of what had been  
24 consumed, and on the kitchen counter which is right in the  
25 same area as the patient I did see within plain sight a



1 small round container which based on my prior experience I  
2 determined to be butane hash oil, BHO.

3 Q What is your past experience?

4 A I've had prior experiences with that particular narcotic  
5 both in Holland, I was a Holland area car; I had  
6 experiences with that as well as in Spring Lake Township  
7 I've encountered as well in the past. The substance had  
8 been verified by members of our drug task force, WEMET, to  
9 me and informed me of that and what to look for.

10 Q In other instances you're talking about?

11 A That's correct, yes.

12 Q WEMET didn't come out to this residence.

13 A That's correct.

14 Q So in other occasions when you dealt with the same looking  
15 substance it was determined to be this BHO which is butane  
16 hash oil?

17 A That's correct, yes.

18 Q And then is it usually packaged in the same way that you  
19 saw at this time as well?

20 A Yea, it's usually in a - -

21 MR. KOMORN: Judge, I'm going to object, I mean I  
22 don't know if there's a foundation for him to answer that  
23 question. I'd object to foundation.

24 MS. MIEDEMA: It's based on - -

25 THE COURT: SUSTAINED.

1 MS. MIEDEMA: It's based on his own observations  
2 when he's dealt with this type of similar substance how is  
3 it packaged so I think he can talk about his observation.

4 THE COURT: If you - - if you lay that  
5 foundation.

6 BY MS. MIEDEMA:

7 Q All right. And so you testified that in other occasions  
8 the substance was confirmed by WEMET?

9 A Correct.

10 Q And how many times did that happen?

11 A Definitely once and in Spring Lake Township I encountered  
12 it there. I've encountered it in Holland a couple times in  
13 full time - - I couldn't put a number on it; it's been  
14 sometime since I've been in Holland.

15 Q All right. Well, where did the WEMET confirm it for you;  
16 was that in Holland or in Spring Lake Township?

17 A Spring Lake Township was when I had contact with them most  
18 recently.

19 Q All right. And what was the substance in Spring Lake  
20 Township packaged like or - -

21 A It was in a similar small plastic container round in  
22 nature and it was also in a syringe without a needle.

23 Q On this occasion on September 24 of '14 when you saw that  
24 BHO on the counter was that in a clear type of vial or was  
25 it - - was there a color to the vial?

1 A It was a small clear plastic vial.

2 Q Okay. So you could see through the vial?

3 A Yes.

4 Q And what did the substance inside the vial look like?

5 A It's a - - inside the container I saw there was a residue  
6 inside of some material and it was black or brown tar-ish  
7 in nature which is consistent with my prior experiences.

8 Q Did you talk to the defendant about that particular  
9 substance?

10 A Yes I did. I did ask him some questions about it.

11 Q What happened?

12 A I asked him if he could identify it for me and he  
13 confirmed my suspicion that it was butane hash oil or BHO.  
14 He confirmed that he and also the medical patient, Erica,  
15 had purchased it from Muskegon dispensaries.

16 Q All right. Did he say when they had bought that?

17 A I don't recall if I had asked him when he purchased the  
18 BHO.

19 Q How did he refer to it; did he refer to it as BHO or  
20 butane hash oil or what did he say that was?

21 A He referred to it as both BHO and butane hash oil. We had  
22 a lengthy discussion regarding it.

23 Q Okay. So, both the BHO, the abbreviation and the butane  
24 hash oil were used by him, by the defendant?

25 A Correct.

1 MR. KOMORN: I'm going to make an objection  
2 regarding whatever statements my client made. I don't know  
3 if the Court wants me to voir dire on it or when I go to  
4 cross-examination but I'd like to have an opportunity to  
5 address some of that in terms of the questioning and also  
6 the - - some of the other issues regarding that but - -

7 THE COURT: I think to assist in the presentation  
8 of evidence I'll allow the testimony at this time. You may  
9 certainly cross-examine. I'll hold any weight that I give  
10 it until you have the opportunity to cross-examine.

11 MR. KOMORN: Thank you, Your Honor.

12 BY MS. MIEDEMA:

13 Q Other than identifying the place as Muskegon where he and  
14 the female friend had bought this, did he say the name of  
15 the dispensary?

16 A Yes, if I may take a moment to read my report to just  
17 verify that I have the correct name.

18 Q Okay.

19 MR. KOMORN: What was the question, I'm sorry?

20 MS MIEDEMA: If he referred to any specific  
21 dispensaries in Muskegon.

22 MR. KOMORN: Objection relevance.

23 THE COURT: Overruled.

24 THE WITNESS: The dispensaries he indicated were  
25 Deuces Wild and the Muskegon Medical Marihuana Clinic.

1 BY MS. MIEDEMA:

2 Q And then after talking to - - to the defendant, Maxwell  
3 Lorincz, did you take that container into evidence?

4 A I did yes.

5 Q And what did you do with it after you had took it into  
6 your own possession?

7 A After I seized the evidence, I did transport it  
8 immediately to the Spring Lake Township Branch which is  
9 nearby and I logged it into evidence.

10 Q You have evidence lockers there at the Spring Lake Branch?

11 A That's correct. They're secure from anyone else that would  
12 have access to it other than our supervisors.

13 Q And then you received the lab report back from MSP Lab  
14 sometime later?

15 A That's correct, yes.

16 MRS. MIEDEMA: All right. I don't have any  
17 questions.

18 THE COURT: Counsel.

19 MR. KOMORN: Can I go to the podium?

20 THE COURT: Yes, you may. And if you want to use  
21 the smaller portable podium, you certainly go, too. If you  
22 can move that one about wherever you'd like to be.

23 MR. KOMORN: Just slide it.

24 THE COURT: That one moves heavy.

25 MR. KOMORN: It will - - I just don't want to be

1 up on top of everybody.

2 THE COURT: Just make sure we don't pull the cord  
3 out is all.

4 CROSS-EXAMINATION

5 BY MR. KOMORN:

6 Q Good afternoon, detective.

7 A Deputy.

8 Q Deputy, very well. You indicated you had been working for  
9 three years, is that in a capacity as a deputy?

10 A That's correct, yes.

11 Q In the Sheriff's Department?

12 A That's correct.

13 Q Were you involved with any other law enforcement agencies  
14 prior to this one that you speak of?

15 A Not prior, contemporaneously with Spring Lake/Ferrysburg  
16 Police Department when they were an agency.

17 Q Okay. So your total career in law enforcement has been  
18 three years is that what I understand?

19 A That's correct.

20 Q And you haven't had any special training as a deputy  
21 regarding marihuana per se, is that correct?

22 A I'm sorry can you repeat your question.

23 Q Have you had any special training as a deputy outside of  
24 the police academy regarding marihuana?

25 A We've had presentations by our prosecutor's office and

1 there have been speakers at those presentations from our  
2 drug task force which have presented information regarding  
3 narcotic activity, specifically marihuana, in the past?  
4 Q Okay. How about regarding medical marihuana?  
5 A We've also had training regarding medical marihuana and  
6 the legalities and various aspects concerning that.  
7 Q Give a specific recollection of when you say we've had  
8 training, what you mean by that, was there actual - - what  
9 do you mean by that?  
10 A It was an in-service training so there's a presentation.  
11 We had the prosecutor discuss with us the legal aspect of  
12 marihuana, excuse me, medical marihuana in the State of  
13 Michigan.  
14 Q Okay. You were - - and I'm assuming that there was some  
15 presentation of what the law was, I mean what the Michigan  
16 Medical Marihuana said and what it protects and what it  
17 doesn't protect, is that fair?  
18 A That's correct, yes.  
19 Q Okay. Do you have a recollection from those training  
20 sessions?  
21 A I have, yea, recollection from that, yes.  
22 Q Do you feel like you've got a relatively decent grasp on  
23 the Michigan Medical Marihuana Act and how it is supposed  
24 to be applied?  
25 A I have a working knowledge to apply to the road.

1 Q Okay. Do you agree with the idea that if an individual has  
2 a card from the State of Michigan that they're allowed to  
3 engage in the medical use of marihuana, do you agree with  
4 that statement? Or would that be something that would  
5 conform with the training that you've undertaken?

6 A Yes, so long as they have a medical marihuana card and  
7 they are within the law regarding the particular item that  
8 they had in their possession, the quantity of that then  
9 yes they'd be within the acceptable practices of the  
10 possession of that.

11 Q Okay. And the law that we're talking about, and correct me  
12 if I'm wrong, in that you would have been trained this way  
13 at this event, but in addition to the card there's a  
14 quantity of an amount that an individual would be allowed  
15 to possess, is that fair to say?

16 A That is correct, yes.

17 Q And associated with the card would be no more than 2.5  
18 ounces of usable material, is that a fair statement?

19 A Yea, if it applied to this particular circumstance.

20 Q Well, no, I mean the law - - the law is the law, right I  
21 mean; the law that we're speaking of is the law that you  
22 were trained and educated by the prosecutor's office?

23 A For possession of plant material.

24 Q Did - - did they say plant material?

25 A Yes, that is the working definition of medical marihuana.



1 Q It is, well, I was asking you about what you were taught  
2 and I want to just focus on that because I thought I heard  
3 you say that you had been taught about the Michigan  
4 Medical Marihuana Act itself. Was I mistaken when - -  
5 when - -

6 A No.

7 Q And when you were taught about that you were taught that  
8 there's some aspects of the act that make an individual  
9 whose engaging in medical use of marihuana immune from  
10 being arrested or prosecuted if they're in conformity with  
11 the section that outlines the statutory requirements, do  
12 you agree with that?

13 A I agree with that, yea.

14 Q In those statutory requirements we've already established  
15 there's a card that would be required, correct?

16 A Uh huh.

17 Q Is that a yes?

18 A Yes.

19 Q And there would also be a quantity of marihuana that did  
20 not exceed 2.5 ounces of usable material; do we agree  
21 about that?

22 A Yes.

23 Q Okay. And do you agree that the law says that if the  
24 individual possesses those two things there's no other  
25 facts, there's no plant issue, or transferring issue just

1 the possession of the card and the quantity you'll agree  
2 that they are - - the law says that they are immune from  
3 being arrested; the act itself I should say, the Michigan  
4 Medical Marihuana says they're immune from arrest; would  
5 you agree with that?

6 MS. MIEDEMA: I'm going to object to this line of  
7 questioning. He's basically putting the officer through a  
8 test of Michigan Medical Marihuana Act and we're not here  
9 for marihuana and we're also not here to test this  
10 officer's specific knowledge of what the law is; that's  
11 for the Court to apply.

12 MR. KOMORN: Well, we are here for marihuana  
13 because he said that the defendant said something to him  
14 about BOH from marihuana, etcetera, so clearly there's  
15 some referencing to marihuana and he made references to  
16 dispensaries, etcetera. I mean I don't know I think - -

17 THE COURT: You would agree that it's the Court's  
18 determination whether there was an improper arrest or  
19 whether the charge is improper and shouldn't go forward?

20 MR. KOMORN: I know that it's ultimately the  
21 Court's decision, however, I think the Court can and  
22 should consider because - - cause I would argue that what  
23 is immunity if you got to ask for it in Court. So, do you  
24 see my point, Judge, the immunity is supposed to take  
25 place with the police interaction. So I want to know and I

1 think the Court should want to cause it's going to  
2 evaluate and I'm going to argue for, you know, Section 4  
3 applies at the end of this.

4 THE COURT: Doesn't that go to any potential  
5 civil liability as opposed to any criminal matter at this  
6 point in time?

7 MR. KOMORN: No, the - - the card itself, the  
8 quantity that we speak of would make someone immune from  
9 arrest. The prosecutor - -

10 THE COURT: I understand. I understand what the  
11 law is. I understand what the arguments are and those are  
12 arguments that you can make and you can lay the factual  
13 foundation for your arguments through this witness. I  
14 don't know that this witness' clear understanding of the  
15 Medical Marihuana Act has relevance at this point in the  
16 proceeding.

17 MR. KOMORN: I want to know why he did what he  
18 did. Not so much what, you know, I mean I - -

19 THE COURT: Then you may ask why he did what he  
20 did.

21 MR. KOMORN: Okay, all right.

22 BY MR. KOMORN:

23 Q So we've established what you understand the act to say or  
24 what you were taught at training, right, what we - - what  
25 we previously discussed; you'll agree with that?

1 A I'll agree with that, yea.

2 Q And this quantity that existed here was not more than 2.5  
3 ounces of a usable material, was it?

4 MS. MIEDEMA: I'm going to object to again as  
5 well the lab report will show that this witness does not  
6 have knowledge as far as the weight or the actual  
7 analysis.

8 THE COURT: The witness can answer the question.

9 MR. KOMORN: I'm sorry.

10 THE COURT: You may proceed. The witness may  
11 answer the question.

12 MR. KOMORN: Okay.

13 THE WITNESS: Just to clarify your - - can you  
14 repeat your question just to clarify?

15 BY MR. KOMORN:

16 Q You have a general idea of weights and measures what 2.5  
17 ounces may look like versus more or less?

18 A That's correct.

19 Q This was with container even an amount that was less than  
20 2.5 ounces in total weight; you'd agree with that, right?

21 A The container and the substance, yes, was less than.

22 Q Okay. You also agree that there was a medical marijuana  
23 card that was provided to you by my client at that time,  
24 right?

25 A A physical card was not present when I was at the scene.

1           However, there was paperwork to indicate that the  
2           defendant was in the process or had obtained lawful  
3           permission to possess marihuana.

4   Q       Okay. So you don't doubt that; like we - - we can agree on  
5           that he would be allowed to or you saw very - - strike  
6           that - - we could agree that you saw paperwork that would  
7           seem to validate his state authorization to possess  
8           marihuana?

9   A       That's correct.

10   Q       Backing up a little bit, the - - you're on road patrol  
11           this night you're doing your sheriff duties generally  
12           speaking is that a fair statement?

13   A       Uh huh.

14   Q       Verbally?

15   A       Yes.

16   Q       That mean you're out patrolling the roads as well as  
17           responding to dispatch calls of situations, shots fired,  
18           or issues at home, domestic violence calls, things to that  
19           effect?

20   A       That's correct.

21   Q       And you get a 911 call, you hear it over - - how does it  
22           go, the dispatcher announces to units in the area we've  
23           got a 911 call, a person seemingly overdosed?

24   A       I was specifically dispatched to it. It's my patrol area.  
25           I'm the only county funded patrol officer in that area so

1 I was specifically dispatched to it.

2 Q Okay. Were you a sheriff at the time?

3 A Sheriff Deputy yes.

4 Q Explain that just a little bit to me, you're the only  
5 sheriff that is assigned to that region or that area of  
6 the total area that the - - the other sheriffs in your  
7 department patrol?

8 A That's correct, that is my patrol area.

9 Q Twenty-four/seven or is there another - - someone cover  
10 you?

11 A They cover when I'm - - when I'm not - - I have other  
12 deputies that cover the area when I'm not patrolling.

13 Q Okay. And you've done this before, you've responded to  
14 these types of calls?

15 A That's correct, yes.

16 Q And the nature of the calls are to and the direction of  
17 the calls are to attend to the emergency that the call was  
18 made for, is that right?

19 A That's correct.

20 Q In other words, you're - - you had no reason to go to that  
21 house and go into the home but for that there was an  
22 emergency call that had been made, correct?

23 A For a narcotic overdose, yes, that's correct.

24 Q Okay. And when you arrived there, there was already the  
25 EMS inside, is that true?

1 A I arrived to the scene with Spring Lake Township Fire  
2 Department who are certified medical practitioners if you  
3 will.

4 Q Okay.

5 A Emergency responders. We arrived at roughly the same time.  
6 We both exited our vehicles at the same time. I made  
7 contact with Maxwell, the defendant, initially while  
8 Spring Lake Township Fire entered to perform medical  
9 treatment so we - - we arrived roughly the same time. We  
10 just split duties so.

11 Q So to understand things, you arrived at the same time,  
12 approximately the same time, you get out of the cars -  
13 various cars, you're alone, and how many EMS or Fire EMS  
14 persons were there?

15 A Initially on scene it was myself and another member of the  
16 Spring Lake Township, or excuse me, Crockery Township Fire  
17 Department. I don't have his name or information.

18 Q Was there something unusual that was going on with your -  
19 - that township's normal fire department or do they  
20 rotate?

21 A No, that's - - that's the - - I misspoke earlier when I  
22 said Spring Lake; it's Crockery Township Fire Department.

23 Q Okay, I see.

24 A It's right on the county, or right on the township border.

25 Q You don't know the people's names there but have you

1 inter- - have you worked with them - - are they the people  
2 that you've happened to interacted with or worked with in  
3 the past going to a 911 call at a house?

4 A Yea, when they're required to respond, yes.

5 Q So essentially both of you get out of the car - - so  
6 there's one person did you say, or two?

7 A Initially on scene it's myself and another member of - -  
8 and one member of the Spring - - Crockery Township Fire  
9 Department.

10 Q Who - - who arrived next, would it be someone from the law  
11 enforcement or the fire department side?

12 A Typically additional people from the Crockery Township  
13 Fire Department would show up along with when they could  
14 paramedics from an ambulance company. In this case it was  
15 North Ottawa Community Hospital ambulance.

16 Q Were any other police officers or deputies called, do you  
17 know?

18 A No, no other police officers or deputies responded.

19 Q All right. So you're the only police officer, law  
20 enforcement personnel that arrived and stays and leaves,  
21 correct, you're the only - - only one?

22 A Yes, that's correct.

23 Q Everyone else is of the fire department or EMS type of  
24 employment?

25 A Correct.



1 Q If I understood things, when you both get to the door your  
2 tasks turned to Maxwell Lorincz, correct?

3 A Uh huh, that's correct.

4 Q And the other fire department from Crockery person goes  
5 into the house to attend to a person who the calls was  
6 about, correct?

7 A That's correct.

8 Q All right. And if - - and if I understood what you were  
9 saying you were trying to extrapolate some information  
10 from the homeowner in an investigative nature about why  
11 there may have been an overdose?

12 A I was asking patient information primarily, medical  
13 history of Maxwell and - -

14 Q Of him specifically?

15 A Of - - of the patient, Erica Chittenden.

16 Q Okay.

17 A I was asking the defendant questions regarding Erica  
18 Chittenden, her patient information, her medical history,  
19 anything pertaining that could assist us with properly  
20 treating her and caring for her medical situation.

21 Q Do you have any medical training?

22 A I have a limited amount of medical training to include  
23 CPR.

24 Q Are you certified in CPR?

25 A That's correct, yea.

1 Q But anything beyond that?

2 A AED which is a automatic electric defibrillator; it's  
3 something we carry in our patrol car for heart conditions  
4 primarily.

5 Q But beyond that you don't made diagnoses for example?

6 A No diagnosis, no.

7 Q And you don't have any specific knowledge of toxicology of  
8 pharmaceutical medications?

9 A No.

10 Q All right. But you asked questions, you get some  
11 information and this I understood was taking place what  
12 just inside the door of the home?

13 A That's correct, yes.

14 Q And from that area and I don't have a sense of the size of  
15 the area we're speaking about, but from that area  
16 approximately how far is the distance that the patient  
17 that's being attended to what is that distance from where  
18 you stand and speak with my client?

19 A Your client was moving around. There was a small child  
20 inside the home and so he was moving from the living room  
21 which if you're facing the entryway, the living room would  
22 be to the left and that is where the child was, to the  
23 right would be the kitchen where the patient was. Your  
24 client was moving kind of back and forth between those  
25 areas, trying to keep the child obviously out of sight to

1 the patient and kind of tend to the child and make sure  
2 that they weren't distressed. So he's moving back and  
3 forth between those areas and I was having conversations  
4 with him as this was ongoing.

5 Q Okay. And pretty much keeping it still to try to gather  
6 information about the patient, is that right?

7 A That's correct.

8 Q At some point in time did you turn your attention to the  
9 patient or did you - - was your - - you know, did you  
10 remain away from the activity by the other individual that  
11 was there who was working on the patient?

12 A I - - I was in very close proximity to the patient. I  
13 would say probably within less than ten feet. When we were  
14 moving kind of back and forth and I was getting that  
15 information regarding what had possibly been consumed that  
16 could have caused this medical situation. So we were - -  
17 we were kind of right in the area, same area and so I was  
18 nearby the patient.

19 Q Okay. And - - and you had indicated that my client had  
20 mentioned in response to those questions about what she  
21 may have taken, he explained and he mentioned a couple of  
22 drugs; one was Kolonop - - Klonopin - -

23 A Klonopin.

24 Q - - and the other one was - -

25 A Was later informed during an interview while speaking to

1           them after the fact that it possibly could have been  
2           Dilaudid - - Dilaudid as well.

3   Q       Okay. And you confirmed that there was prescriptions for  
4           those by my client, right?

5   A       There were prescription containers of Dilaudid for your  
6           client, yes, that's correct.

7   Q       In other words, what I'm asking and I don't want to - -  
8           the things that he said were about the possible narcotics  
9           that she may have taken that brought about this episode  
10          were as far as you know prescription medications that he  
11          would have been authorized to possess?

12   A       At that - - at the time of my arrival of the scene and  
13          speaking to the defendant and trying to learn this  
14          information, it wasn't a hundred percent clear what had  
15          been consumed. It was possibly identified as Klonopin. It  
16          was later possibly identified as Dilaudid. I have received  
17          no confirmation or concrete proof to indicate that it was  
18          that.

19   Q       Okay.

20   A       So it was unknown specifically if that was, in fact, what  
21          had been consumed if it was prescription medication or if  
22          it was possibly other narcotics that had caused the - -

23   Q       All right. But if it - - but for example, so when he  
24          mentions or says to you that these are possible things  
25          that she may have taken, does that change your attention

1 or your focus to possible narcotics investigation?

2 A The prescription pill bottles were brought up after the  
3 fact so during subsequent interviews with Maxwell and the  
4 patient after she had been released from the hospital and  
5 had been treated. The prescription pill bottles were  
6 brought up after the fact.

7 Q Okay. But when this was spoken of in the context of trying  
8 to figure out what had happened, you said that my client  
9 had mentioned to you that there was these narcotics that  
10 she may have taken. I understand that you can't confirm  
11 that one way or the other. You weren't able to immediately  
12 and you didn't. My question is did you change your inquiry  
13 at that time to an investigation about drugs and drug  
14 possession?

15 A I began checking or yes, I began looking for narcotic  
16 paraphernalia, anything to indicate what had been consumed  
17 or used by the patient.

18 Q Okay. Now so and when you started to do and begin to look  
19 around for those things, you were looking for the  
20 reference type of drugs that would have been pill type of  
21 drugs, is that a fair statement?

22 A I was looking for any type of narcotic which could have- -

23 Q Okay, all right.

24 A - - which could have caused a drug overdose with the  
25 patient so anything in the area.

1 Q All right. But at this point in time no one has mentioned  
2 marihuana, right, at this point I mean - -

3 A That's correct.

4 Q And the only thing that had been mentioned were what I  
5 would describe as pills or prescription pills,  
6 medications, right?

7 A That's correct.

8 Q So I understand looking for anything but, you know, of the  
9 things that you would have been looking for there was a  
10 reference to pills?

11 A Yes, that's correct.

12 Q So do you then begin to look around the house?

13 A I didn't look around the house; I just checked the  
14 immediate area within my plain view.

15 Q Okay. And this is a distance away from - - cause I know  
16 you said the patient was in the kitchen?

17 A That's correct.

18 Q Laying on the ground; could you describe what exact area  
19 that would be in the kitchen, I mean - -

20 A The kitchen is L-shaped, excuse me, the kitchen cabinets  
21 are L-shaped so when you enter from the doorway you'll  
22 move to your right through a small hallway, not much more  
23 than a couple feet with walls and you open up into the  
24 kitchen. Cabinets are in an L-shape, immediately to your  
25 right the patient was lying near that L-shape area of the

1 kitchen on kind of the corner so further to the right in  
2 the kitchen.

3 Q Is there only one entrance into the kitchen or is there  
4 like a - -

5 A There were other doorways off of the - - off of the  
6 kitchen. I believe there may have been a bathroom or there  
7 were other door - - doorways.

8 Q All right. So you say that you look over and you see a  
9 container that's on top of a counter, is that right?

10 A Kitchen counter, that's correct.

11 Q The - - and it's a container, right it's not - - it's a  
12 plastic container; it's got a top that comes off and it  
13 fits back onto the bottom piece, is that a fair statement?

14 A Typically yes that container would have a - - would have a  
15 top that could enclose it.

16 Q Okay. Was there no top here?

17 A As far as I recall, no, there was no top. It was open and  
18 exposed. There was no top.

19 Q Did you keep that item in evidence, you tagged it and - -

20 A The container, yes.

21 Q Okay. Did you take any photographs of it?

22 A No, no photographs were taken.

23 Q Do you have a specific recollection of whether there was a  
24 top that went along with it or not?

25 A There was no top that I - - that I seized. It was strictly

1 the open container.

2 Q And you're saying that - - and from your vantage point  
3 your visual of this particular item was the container  
4 itself; that's what you saw on the counter, is that true?

5 A It was a clear plastic container and yes I could see the  
6 container.

7 Q But you're not suggesting that from your vantage point  
8 you're able to see inside the container, right?

9 A I could see through the - - through the edges of the  
10 container and I could see - - when I - - when I saw the  
11 container itself, I was in a standing position so I was  
12 looking down and I could see inside the container.

13 Q Okay.

14 A It's a small - -

15 Q Was it - - it's a plastic container?

16 A Yea, small clear plastic container.

17 Q Not of a rubbery nature?

18 A No.

19 Q Okay. Like a plastic cup, like you've got a red cup,  
20 you've got like a plastic cup that's see-through; is it  
21 something closer to that, not that size, but that's the  
22 type of material that it resembled?

23 A It was a hard plastic container.

24 Q Okay. All right. And there was - - there was what you  
25 described as residue, is that right; didn't you describe



1           it as residue in your report?

2   A       Yes, there was - - there was some product, there was some  
3           substance inside.

4   Q       All right. But there was not a quantity that you could  
5           immediately take out, handle and remove and put into a  
6           separate container, tag, and take to the office for  
7           processing, is that true?

8   A       That's correct.

9   Q       Your actually gathering of this was the container itself,  
10          correct?

11   A       That's correct.

12   Q       And then the remaining material that was for all intents  
13          and purposes stuck to the sides of the plastic see-through  
14          container, is that right?

15   A       That's correct.

16   Q       You recognize this as being something associated with  
17          butane hash oil, is that what you had testified to?

18   A       That's correct.

19   Q       And you draw those based upon you said at least two other  
20          instances that you're aware of that involved butane hash  
21          oil that was confirmed you said by the other narcotics  
22          task force officers, is that right?

23   A       That's correct.

24   Q       And if I understood things, you were not involved in those  
25          cases or were you?

1 A I guess I don't understand your - -

2 Q You made reference to two cases, one was in Spring Lake I  
3 think you said?

4 A Yes.

5 Q And then there was another one that was in Holland, I  
6 think?

7 A During my time in Holland, yes.

8 Q So these are - - these are cases that involve butane hash  
9 oil that you became aware of, or were you one of the  
10 officers that was involved in the investigation?

11 A I was involved in the - - I was involved in the  
12 investigation.

13 Q In - - as a deputy?

14 A Correct.

15 Q Okay. But was it something that was handled by the Sheriff  
16 Department or something handled by the drug task force?

17 A The call in Spring Lake Township was handled by me; it was  
18 an investigation and the butane hash oil was located at  
19 the scene and a member of the narcotics task force was  
20 present and he positively identified that substance as  
21 butane hash oil.

22 Q Okay. And - - and I understand that it is that person's  
23 words that were stated to you that gives you the  
24 confidence to say that you recognized it as what happened  
25 before when you're with the drug task force officer in

1 Springfield, Spring Lake, is that - - that's what you're  
2 basing it on?

3 A And a prior experience in Holland as well.

4 Q But what I'm saying is like there was no - - you didn't  
5 speak to the maker of it, for example, who may have made  
6 that substance in these other two cases?

7 A That's correct.

8 Q Okay. You - - did you have an opportunity to review the  
9 lab reports that were involved with the processing of  
10 those materials?

11 A In the case in Holland, yes; in the case in Spring Lake,  
12 no.

13 Q Okay. And is it true also that you learned that the butane  
14 hash oil is made from the marihuana plant?

15 A It is derived from the marihuana plant, that's correct.

16 Q Okay. Derived from; the origin therefore of the butane  
17 hash oil is as far as you know and were taught, or told,  
18 from the plant marihuana or cannabis plant?

19 A Through a process, yes, that's correct.

20 Q Which involves butane?

21 A That's correct.

22 Q And further my client had discussed that with you; that  
23 confirmed the things that you believed by observation, is  
24 that true?

25 A That's correct.

1 Q And you have no reason to believe otherwise that it was,  
2 in fact, material that had been extracted from a marihuana  
3 plant with the use of butane, correct?

4 A I'm sorry, can you - -

5 Q You have no reason to disbelieve based on what you  
6 previously testified to of your knowledge in the other  
7 cases that when my client told you yes that's butane hash  
8 oil that it was, in fact, butane hash oil?

9 A I had no, that's correct, I had no other reason to believe  
10 that he was informing me falsely.

11 Q And likewise you had no reason to believe that this  
12 whatever was the residue that was within the container  
13 origin would have come from a marihuana plant?

14 MS. MIEDEMA: I'm going to object as far as his  
15 ability to answer that type of question. It would be  
16 speculative.

17 MR. KOMORN: If he knows.

18 THE COURT: It will go to the weight more than  
19 its admissibility. I'll allow it at this time.

20 THE WITNESS: I'm sorry, can you repeat.

21 BY MR. KOMORN:

22 Q I was just asking I mean this, you know, you get these - -  
23 the other two cases you figure out, you learn what you  
24 believe to be butane hash oil, you think you see butane  
25 hash oil in this case, my client tells you that it is, in

1 fact, butane hash oil; you say he made a statement in that  
2 regard, you don't have any reason to believe that it's  
3 not; that's what I'm asking?

4 A That's correct.

5 Q And you have no reason to believe that the origin of this  
6 was a marihuana plant - -

7 MS. MIEDEMA: I'm going to object to - - I'm  
8 going to object to that type of question as calling for  
9 speculation.

10 BY MR. KOMORN:

11 Q If you know, do you have any reason to disbelieve that  
12 this was any different than the explanation that you were  
13 given of the other butane hash investigations you were  
14 involved in?

15 A No, I have no reason to believe that it's different.

16 Q Is there a - - did you do a - - any field testing on the  
17 substance?

18 A No.

19 Q Was there not enough sub - - not enough material to do a  
20 field test?

21 A We don't have field tests available to the individual  
22 patrol officers; that's why there's no custodial arrest.  
23 It was why I took no direct initial arrest action. That's  
24 why I waited testing to confirm.

25 Q Okay. Are you trained in the field testing, narcotics

1 field - - you know, drug field testing?

2 A I had a brief explanation when I worked for Spring  
3 Lake/Ferrysburg Police Department.

4 Q If you would have had a testing kit with you, you would  
5 have probably preferred to have preliminarily tested it?

6 A If there's a testing kit that's available for it, yes but  
7 we don't have testing kits available for that so.

8 Q Well, you have testing kits to test narcotics, I mean  
9 you're saying you don't; your department, right?

10 A Correct.

11 Q Okay. All right. But you've used them in the past the  
12 Duquenois-Levine tests or the reagent testing?

13 A I've been present for a field test for marihuana before. I  
14 didn't personally complete the test but I had been present  
15 for it and then instructed on how to use a field test in  
16 the beginning of my career.

17 Q The date of the incident was in what September, is that  
18 right?

19 A That's correct.

20 Q And were you the - - you were the officer in charge of  
21 tagging it and having it stored at the Sheriff Department?

22 A That's correct.

23 Q And then you were also the officer in charge of sending it  
24 to the lab for testing?

25 A I wasn't responsible for sending the actual narcotic

1 material to the lab. I simply submitted the paperwork in  
2 order for it to be - - we have someone that we employ that  
3 does that.

4 Q So you requested it and then someone takes it there or do  
5 they come and pick it up, if you know?

6 A I'm not aware of how exactly that process works.

7 MR. KOMORN: Can I have one second, Judge?

8 THE COURT: Yes.

9 MR. KOMORN: All right. Judge, no - - no further  
10 questions. Thank you.

11 REDIRECT EXAMINATION

12 BY MS. MIEDEMA:

13 Q Just one question, did he present, Maxwell Lorincz present  
14 a card to you, a Medical Marihuana Act card or did he  
15 present an application to you?

16 A He presented some paperwork. He did not have a physical  
17 card that had been issued by the State.

18 MS. MIEDEMA: I don't have any other questions.

19 THE COURT: You may step down.

20 MS. MIEDEMA: May this witness be excused?

21 THE COURT: He may.

22 (AT 3:21 P.M. WITNESS EXCUSED)

23 THE COURT: Ms. Miedema, your next witness will  
24 be the lab agent?

25 MS. MIEDEMA: Yes, then we do have a couple other

1 matters that are set.

2 THE COURT: The Court is going to take a brief  
3 recess. Mr. Komorn, I have a short conference set up  
4 between Ms. Miedema and Mr. VanTubergen about a jury  
5 trial. I'd like to deal with that in chambers and then  
6 I'll be back out here, okay?

7 MR. KOMORN: Sure, thank you, Judge.

8 (AT 3:22 P.M. COURT RECESSED)

9 (AT 3:35 P.M. COURT RECONVENED)

10 THE COURT: Mr. Komorn, are you prepared to  
11 proceed with your client?

12 MR. KOMORN: We are ready, Judge. Thank you.

13 THE COURT: All right. Thank you. Ms. Miedema you  
14 may call your next witness.

15 MS. MIEDEMA: The next witness is William Ruhf.

16 THE COURT: Step right over here please and  
17 before you have a seat if you'd raise your right hand. Do  
18 you swear to tell the truth, the whole truth and nothing  
19 but the truth, so help you God?

20 MR. RUHF: I do.

21 THE COURT: If you'd please have a seat and state  
22 your full name and spell your last name for the record?

23 THE WITNESS: My name is William A. Ruhf, the  
24 last name is spelled R-u-h-f as in Frank pronounced roof  
25 like the top of a house.



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THE COURT: Ms. Miedema.

WILLIAM RUHF

Called as a witness at 3:36 p.m. testified as follows:

DIRECT EXAMINATION

BY MS. MIEDEMA:

Q What's your occupation?

A I'm a forensic scientist currently working in the controlled substance or drug and narcotic's unit in the State Police Forensic Laboratory in Grand Rapids.

Q And how long have you been doing that?

A I have been - - completed 25 years with the State Police this past December. I am currently in my 26<sup>th</sup> year.

Q Are you assigned to a specific duty there?

A Yes ma'am I am.

Q And what is that?

A I currently analyze materials, powders, capsules, controlled substance related issue type materials on behalf of the State Police and related matters before the court. The Grand Rapids Laboratory serves a geographical area roughly from Ludington all the way down to the Michigan/Indiana border and then three counties deep such as one might consider Ottawa County, Kent County and Ionia County.

Q And have you worked elsewhere in forensic science field?

A Yes ma'am I have.

1 Q Where was that?

2 A I worked for the City of Toledo for approximately two and  
3 a half years doing forensic drug analysis as I now do for  
4 the State. Prior to that, I worked for a private forensic  
5 laboratory in Lansing, Michigan for approximately two and  
6 a half years, and prior to that I worked for the Bureau of  
7 Forensic Science in the forensic laboratory located in  
8 Roanoke, Virginia approximately two and a half years there  
9 also.

10 Q So how many years total do you have then in the forensic  
11 science field?

12 A I'm - - I have approximately 32 years of work within the  
13 forensic science field.

14 Q And what's your formal education?

15 A I have a Bachelor of Science Degree in biomedical  
16 chemistry from Oral Roberts University in Tulsa, Oklahoma  
17 and I have my Master's Degree in forensic science from the  
18 University of Pittsburgh in Pittsburgh, Pennsylvania.

19 Q And have you had specific training for drug and narcotics  
20 analysis?

21 A Yes ma'am. While I was taking my course work at the  
22 University of Pittsburgh, I had two courses directly and  
23 germanely with professors there on the identification,  
24 isolation of controlled substances and once I had  
25 graduated worked in the field I also had familiarization

1 of techniques, currently state of the art type of thing.  
2 Since being employed with the State of Michigan, I have  
3 yearly training courses that are required by our  
4 accreditation that I attend. Those are held for all the  
5 forensic scientists, drug and narcotic chemists in the  
6 spring, and I also am a member of the Clandestine  
7 Laboratory Investigating Chemists Association. Attend  
8 their yearly meeting which also deals in some respects in  
9 training and identification, isolation of controlled  
10 substances.

11 Q Is some of that training mandatory or is this voluntary  
12 training that you undergo?

13 A This is volunteer training. The only thing that's quote  
14 unquote mandatory is the yearly training sponsored by the  
15 State Police in the spring.

16 Q Have you testified of - -

17 MR. KOMORN: Excuse me, could I get copy of his  
18 resume. I know I saw him hand one - - I was never provided  
19 with a copy of one. He's reading from it and I see the  
20 prosecutor has a copy.

21 MS. MIEDEMA: I have one.

22 MR. KOMORN: Yea, it's probably good idea. Thank  
23 you. Appreciate that.

24 BY MS. MIEDEMA:

25 Q And how many times have you testified as an expert?

1 A I've testified in Michigan, Ohio and Virginia in Federal  
2 Court, Circuit Court, District Courts. Here in Michigan  
3 some place in between 100 and 150 times coming to be  
4 employed with the State.

5 Q And that's always in the field of forensic drug analysis?

6 A That is correct.

7 Q And you've testified in Ottawa County as an expert witness  
8 before?

9 A Yes ma'am I have.

10 Q In the Circuit Court?

11 A Yes ma'am.

12 Q And you do have your curriculum vitae which is about two  
13 and a half pages that you gave me today?

14 A That is correct.

15 MS. MIEDEMA: Mark that as an exhibit and move  
16 for its admission. I have given a copy of that to the  
17 defense attorney.

18 THE COURT: Any objection the Court receiving  
19 that CV?

20 MR. KOMORN: I don't know it's necessary. I mean  
21 he testified. I'd object it's irrelevant.

22 THE COURT: It's certainly relevant but is it  
23 hearsay that you wish to object to or - -

24 MR. KOMORN: Yea, I mean there's testimony; you  
25 could base it on that, you know.

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THE COURT: Sustained.

BY MS. MIEDEMA:

Q So you've testified in - - about 150 times as an expert witness?

A That is correct.

Q And the counties Circuit Courts in Michigan include Allegan, Barry, Calhoun, Ionia, Iosco, Kalamazoo, Kent, Lake, Macomb, Mecosta, Muskegon, Newaygo, Ottawa and VanBuren?

A That is correct.

Q And you've also testified in several District Courts?

A That is correct.

Q And the Federal Courts that you've already identified?

A Yes ma'am.

Q You testified in Toledo, Ohio and in Cleveland, Ohio?

A That is correct.

Q And in Grand Rapids?

A Correct.

Q Kalamazoo and Detroit for the Federal Courts?

A Yes ma'am.

Q And how many examinations have you conducted of controlled substances?

A We literally do some place around 750 - -

MR. KOMORN: Judge, could he respond - - I think the question was to him, like how many you do so it seems

1 to be non-responsive.

2 THE COURT: Re-ask the question, Ms. Miedema.

3 BY MS. MIEDEMA:

4 Q All right. How many do you participate in yourself or have  
5 you participated in?

6 A I believe the number that I have done is over 10,000  
7 literal examinations of controlled substances.

8 Q All right. And they're all related to the work areas that  
9 you've already identified?

10 A That is correct.

11 MS. MIEDEMA: I would move to have Mr. Ruhf  
12 qualified as an expert witness in the area of - - in the  
13 field of forensic drug analysis.

14 THE COURT: Any objection?

15 MR. KOMORN: For purpose of the exam, no.

16 THE COURT: He will be acknowledged.

17 BY MS. MIEDEMA:

18 Q In regard to this particular case were you working in  
19 October of 2013?

20 A Yes ma'am I was.

21 Q I'm sorry in 2014?

22 A Yes ma'am I was.

23 Q All right. And did you become involved in regard to an  
24 investigation done by Patrick Gedeon with a suspects - -  
25 suspect of Maxwell Lorincz?

1 A Yes ma'am I did.

2 Q And did you receive an item in your lab on October 13 of  
3 2014?

4 A Yes ma'am we did.

5 Q What did you partic - - yourself do with that?

6 A The evidence was received from our front desk by the  
7 evidence tech courier on behalf of Ottawa County Sheriff's  
8 Department Officer Vugdeveen. Standard protocol the  
9 evidence tech at our front desk assigns it a forensic  
10 laboratory number. Then the evidence is placed in a sealed  
11 evidence locker at the front of the laboratory and then  
12 it's transported either by myself or our evidence tech  
13 back to the forensic laboratory controlled substance unit.  
14 I have a specific locker back there that the evidence is  
15 usually placed into. Should I not be available to open  
16 that then it's put in our general storage vault which I  
17 believe was the case in this particular instance. At a  
18 later date then I transferred it to my specific evidence  
19 locker and then on December 29<sup>th</sup> of 2014 I removed it from  
20 the evidence locker for examination.

21 Q All right. And what did you do - - did you do something  
22 then on the 29<sup>th</sup>?

23 A Yes ma'am.

24 Q What did that consist of?

25 A I opened the evidence in question. I inventoried it, in

1 other words, I just examined the contents to see what was  
2 there, what needed to be examined.

3 Q And what - - what were you looking at?

4 A I received what I described as a tape sealed or clasp  
5 closed manila envelope. Inside of the envelope was a  
6 glove. Inside of the glove was a small plastic vial  
7 containing what I've described as a brown residue.

8 Q And what did you do with that residue?

9 A The residue I took and analyzed a very small portion of it  
10 by our standard operating procedures which requires a  
11 selective test to be done of which there are a couple of  
12 opportunities within the forensic laboratory to do and  
13 then also ran a identification technique of which we have  
14 two choices within the laboratory. In this particular case  
15 the selective test that I ran was a gas chromatographic  
16 drug analysis drug screen and to give a general indication  
17 of what may or may not be present in the sample. And then  
18 a gas chromatographic mass spectrometric analysis was also  
19 completed to give an identification of any and all  
20 substances present.

21 Q Are those two, you call them devices, are those two tests  
22 done at the same time?

23 A In this particular instance they were done. We have a  
24 instrument set up to run them concurrently. We do have  
25 stand-alone instruments where they can be run separately.



1 Q And are these two units then confirming of each other?

2 A That is correct.

3 Q And what did you specifically do in order to run the test?

4 A I took a small amount of the residue. I dissolved it in  
5 laboratory solvent commonly called methanol which has an  
6 internal standard in it. In our particular laboratory we  
7 use caffeine. The liquid was placed in a small vial. The  
8 vial was placed in the auto sampler of the instrument. It  
9 was set up in the queue with respect to do the analysis  
10 and at the end of the analysis I reviewed the data that  
11 was present for what may or may not have been present in  
12 the sample in question. This particular case I got data  
13 that was consistent both on the gas chromo - - gas  
14 chromatographic side and the mass spectrometer side that  
15 identified delta-1 tetrahydrocannabinol or commonly  
16 referred to as THC.

17 Q Okay. And that was - - what was identified then is a  
18 delta-1 tetrahydrocannabinol?

19 A That is correct.

20 Q And do you have read outs as well on that; are you  
21 checking things as it goes along or?

22 A That is correct. We as I mentioned have the internal  
23 standard within our methanol to verify the instrument's  
24 correct functioning on that particular run and also prior  
25 to the run part of the standard protocol a blank is

1 performed with the methanol caffeine internal standard  
2 solution just to verify that the instrument is clean from  
3 any carry-over of previous samples, things of that nature  
4 and that it's working properly.

5 Q And did your examination of that data show that the  
6 instruments were working correctly?

7 A That is correct.

8 Q For both instruments?

9 A That is - - yes.

10 Q All right. And the substance that you tested or the part  
11 that you took out to test was that then used up during the  
12 test process?

13 A It was dissolved in methanol and placed in a vial and then  
14 the vial essentially is destroyed.

15 Q And so whenever somebody, you or another lab person would  
16 do that sort of testing, that part of it would be taken up  
17 by the testing?

18 A That is correct.

19 MR. KOMORN: I'm sorry, what was the question,  
20 I'm sorry, I didn't hear the question?

21 THE COURT: If you'd repeat it, please.

22 BY MS. MIEDEMA:

23 Q If you or another lab agent take part of that sample then  
24 and do the testing, that part of the sample is used up or  
25 destroyed in the testing process?

1 A Correct.

2 Q And the delta-1 tetrahydrocannabinol is that a Schedule 1  
3 drug?

4 A Yes it is.

5 Q And when you say residue, you weighted this out as a  
6 residue on your report, correct?

7 A Correct, I described it as a residue, yes.

8 Q And what does that mean?

9 A To me that's a quantity of material so small that it  
10 doesn't lend itself to being weighed on a balance, things  
11 of that nature and is treated as such..

12 Q Did you yourself make any sort of other examinations by  
13 microscope or any other way?

14 A The material was examined and there were no other  
15 material, it was - - no other materials present. It was  
16 found to be a homogeneous mixture and then it was examined  
17 instrumentally as I have described.

18 Q And when you say you examined it to make sure it was - -  
19 everything was the same in the mixture, you didn't find  
20 any foreign substances or different substances in the  
21 mixture, correct?

22 A Correct.

23 Q And you were doing that by way of microscope?

24 A We have our choice of stereo microscopes or a magnifier,  
25 things of that nature. I don't have reflected in my notes

1 in front of me which one I used at this particular time  
2 but.

3 Q But it would be some way of magnifying it to look at?

4 A That is correct, yes.

5 Q And you also put - - you reported that the origin is  
6 unknown of the delta-1 tetrahydrocannabinol, is that  
7 correct?

8 A That is correct.

9 Q And what does that mean?

10 A That means that the THC that I identified I do not know  
11 where it originated from. As a chemical compound it is  
12 possible to manufacture that scientifically, if you will,  
13 taking the raw materials, putting it through reactive  
14 devices within a known laboratory facility and ultimately  
15 ending up with a product i.e. tetrahydrocannabinol. It is  
16 a natural product of the marihuana plant and as such could  
17 essentially be extracted from the plant and in this  
18 particular case I am not able to tell which pathway led to  
19 the THC that I identified.

20 Q Okay. And when you say THC you're talking about the  
21 substance you identified as delta-1 tetrahydrocannabinol?

22 A That is correct.

23 Q And is there any additional test that you could do to  
24 determine the origin?

25 A No ma'am.

1 Q Why not?

2 A There is nothing to my knowledge scientifically that can  
3 be done to demonstrate a simple molecule of tetrahydro-  
4 cannabinal whether it originated from a plant or from the  
5 manufacture of a synthetic route synthesis, if you will,  
6 within a laboratory. It all looks the same chemically with  
7 respect to the instruments and how it's analyzed.

8 Q So this is something that could be produced in a lab?

9 A That is correct.

10 Q Or as a result of processing a plant of marihuana?

11 A That is correct.

12 Q But it would have to be some processing of the marihuana?

13 A Correct.

14 Q And when you hear the word THC what does that mean to you?

15 A THC is just a shortened acronym for tetrahydrocannabinol  
16 or more specifically chemically speaking delta-1  
17 tetrahydrocannabinol or depending on what nomenclature  
18 system you want to use, you can also refer to it as delta-  
19 9 tetrahydrocannabinol.

20 Q Okay. Was there anything that looked like a plant or leaf  
21 material when you were analyzing the substance?

22 A No ma'am, this was just brown residue; did not observe  
23 plant leaves, stems, or other products of what I would  
24 consider plant.

25 Q All right. And when you use the word resin, what is that

1           referring to?

2   A       I beg your pardon.

3   Q       When you use the word resin; what is that referring to?

4                       MR. KOMORN: What's the foundation of the resin;  
5       I didn't understand, was that stated?

6   BY MS. MIEDEMA:

7   Q       Did you use the word resin earlier?

8   A       I don't believe I did, I might have said residue.

9   Q       Have you heard sometimes as marihuana resin?

10   A      I've heard of that, yes.

11   Q      And in your work do you know what that means?

12   A      I know what it means to me in my work, yes.

13   Q      What does it mean to you?

14   A      On the marihuana plant, especially on the flowering  
15       portions, there's certain glandular hairs is what they're  
16       technically called. They produce resin which is a kind of  
17       a sticky gooey droplet so to speak at the end of these  
18       hairs which has a highly concentrated amount of THC  
19       compared to a similar leaf material, if you will.

20   Q      Okay. And is that something that's visible to the naked  
21       eye?

22   A      I beg your pardon.

23   Q      Is that something that's visible to the naked eye?

24   A      It would be visible to the naked trained eye.

25   Q      And you used the word extracted, correct?

1 A Correct.

2 Q What does that mean?

3 A That means that some sort of chemical process has occurred  
4 to the parent substrate in an attempt to isolate,  
5 concentrate and obtain a substance in the original.

6 Q And did your substance that you identified; did you  
7 consider that an extract?

8 A It could be loosely thought of as an extract insomuch that  
9 I took the residue, put it in the methanol and essentially  
10 the methanol extracted from whatever was in the residue  
11 into itself.

12 Q Is there - - when you handle these substances which is a  
13 Schedule 1 do you need a particular certificate or  
14 authorization to handle that?

15 A That is correct.

16 Q What does that consist of?

17 A The DEA, the Drug Enforcement Agency for the United States  
18 requires that any facility that handles controlled  
19 substances including Schedule 1 controlled substances  
20 requires them to have a license from them and also has to  
21 have a similar certificate on file with the Michigan  
22 Department of Public Health for the State of Michigan.

23 Q And is the lab at the Department of State Police where you  
24 work accredited?

25 A Yes ma'am we are.

1 Q And how is that done?

2 A We have a major inspection once every seven years. We have  
3 an interim rating inspection I believe it's every three  
4 years. And then we also undergo internally just our own  
5 self a review and inspection every year.

6 Q And has it been accredited and was it accredited back in  
7 October of 2014?

8 A Yes ma'am it was.

9 Q I'm showing you what's been marked as People's Proposed  
10 Exhibit Number 2, can you identify that please?

11 A Yes ma'am I can.

12 Q What is it?

13 A This is a laboratory report bearing my signature and the  
14 results of my analysis in pertain - - pertaining to the  
15 matter before the court under our laboratory number GR 14-  
16 6092.

17 Q And this is the lab - - the lab that you've been  
18 testifying about?

19 A That is correct.

20 MS. MIEDEMA: I'm offering it to the Court. I  
21 don't believe there's an objection from the defense  
22 attorney.

23 THE COURT: Any objection?

24 MR. KOMORN: None for exam purposes.

25 THE COURT: People's 2 - -



1 MR. KOMORN: Is it marked?

2 THE COURT: As People's 2, People's 2 is admitted  
3 for preliminary examination purposes only.

4 BY MS. MIEDEMA:

5 Q And are you familiar with the Carruthers case?

6 A I have read portions of it, yes ma'am.

7 Q And are you aware of the definitions in the Michigan  
8 Medical Marihuana Act as far as marihuana and then usable  
9 marihuana?

10 A Correct.

11 Q And is there a difference between those two?

12 A As far as we in the forensic laboratory would view that,  
13 yes. The usable marihuana based on that particular  
14 decision as I understand it deals specifically and only  
15 with pieces of plant, or plant material, stems, leaves,  
16 etcetera; does not deal with other aspects of the  
17 marihuana plant i.e. extracts of resin or things of that  
18 nature.

19 MS. MIEDEMA: I don't have any other questions.

20 THE COURT: Mr. Komorn.

21 MR. KOMORN: Thank you.

22 CROSS EXAMINATION

23 BY MR. KOMORN:

24 Q Good afternoon.

25 A Good afternoon, sir.

1 Q SO I understand you working like a long time with the  
2 State Crime Lab?  
3 A That is correct.  
4 Q Primarily in the - - exclusively in the testing of  
5 narcotics it seems like, is that right?  
6 A Correct.  
7 Q There's been a couple of - - and you've worked in that  
8 capacity as a title of forensic scientist, is that right?  
9 A That is correct.  
10 Q It's true that the other persons at your - - maybe not as  
11 many years in the department but those other persons  
12 working on the machines that you spoke about they too all  
13 carry the title of forensic scientists, right?  
14 A Yes sir.  
15 Q And you achieve that forensic scientist title from your  
16 employer, the Michigan State Lab, isn't that true?  
17 A I wouldn't say that we achieve it from our employer. It's  
18 something that, if you will, accredited to us via our  
19 accreditation with the ASCLD Laboratory Accreditation  
20 System or Service and also it's a title that has been used  
21 here in court when I've been testifying and how I refer  
22 to, or how I am referred to.  
23 Q Okay. But you didn't take an examination that qualified you  
24 to become a forensic scientist?  
25 A That is correct.

1 Q You achieved that title after you began working for the  
2 Michigan State Police Lab, right?

3 A That is correct.

4 Q And the work that you did to achieve that was to train by  
5 the Michigan State Police Lab, correct?

6 A Correct.

7 Q They taught you how they wanted you to proceed in  
8 analyzing controlled substances, correct?

9 A Correct.

10 Q And you followed that what you were told to do, correct?

11 A Correct.

12 Q And, therefore, you received the title because it's an  
13 accredited lab and the other isn't that you said but  
14 primarily forensic scientist because you followed what the  
15 State Lab told you to do?

16 A I don't know if I would use the word primarily but for  
17 this point in time I'll say yes, correct.

18 Q Thank you. You'll agree with me that science that we're  
19 speaking about, forensic science is a - - it's a term of  
20 art, I mean you know it's not something that - - it has  
21 meaning, I mean you're a forensic scientist. There's a  
22 meaningful definition of what that means to you, is that  
23 true?

24 A Correct.

25 Q It would include things such as the principles of

1 accuracy?

2 A Correct.

3 Q Precision?

4 A Correct.

5 Q Error rates?

6 A With respect to a global definition of forensic science,  
7 yes.

8 Q Okay. And those are concepts that are consistent that go  
9 along with the basic principle of science, in other words,  
10 it doesn't change?

11 A Correct.

12 Q Once it's determined as such, whatever the result is that  
13 the scientist has been able to produce, they would be able  
14 to reproduce it over and over and over and over again?

15 A Yes.

16 Q Within a certain range of error?

17 A Again, in a global concept, correct.

18 Q Cause what the Michigan State Police Lab does not and  
19 cannot identify an error rate, is that right?

20 A The concept of error rate within the forensic science  
21 community and the way that I view it is as follows; the  
22 science that we undergo or produce within the controlled  
23 substance unit does not contain an error rate as you might  
24 think of an error. We either identify something and it's  
25 an absolute identification or if there is no

1 identification, then it's stated that simply no controlled  
2 substances or similar on a report. That's 100 percent.  
3 There is not an error in how it's reported. Other fields  
4 of forensic science, if you will, for instance the trace  
5 evidence field when they're looking at hairs, for  
6 instance, would if they had a hair from a piece of  
7 clothing and examined it, they would state something to  
8 the effect that the hair in question could have come from  
9 a person of interest or a suspect or something like that.  
10 That would not at least in my understanding be a 100  
11 percent identification because it's not an exclusive  
12 single only identification. And having worked in the field  
13 of trace evidence, I can understand that. Something  
14 different at least in my opinion in how I see my results  
15 as a controlled substance analyst.

16 Q In other words, there's a great - - there's a lot more  
17 opinion from the scientists themselves in the  
18 identification and there's no other mechanism than the  
19 personal scientist - - scientist's perception to challenge  
20 the accuracy as opposed to, for example, blood? You know  
21 you run it through the machine. It's going to tell you  
22 certain levels of whatever you're looking for to examine  
23 and you should be able to produce that same result over  
24 and over and over and over again within a certain  
25 percentage of error; that's a testing procedure that you

1 can formulate a percentage of error with; would you agree  
2 with that?

3 A I think so as far as if I'm understanding what you're  
4 saying.

5 Q Okay.

6 A That there is variability within a particular sample but  
7 each time I draw a testing amount from a particular sample  
8 that I should get the same results of analysis from that.

9 Q Okay. That's - - right - - well I was saying that  
10 regarding blood but would that be true for the narcotics  
11 identification or drug identification?

12 A Yes that - -

13 Q Okay.

14 A - - when we test a particular powder or whatever and  
15 identify cocaine, it doesn't - - if I'm understanding how  
16 you're - - you're thinking here, the cocaine that we  
17 identified out of that powder would be the same throughout  
18 the power and it would be the same as any other quote  
19 unquote powder that we have analyzed previously and  
20 identified cocaine or that we would identify cocaine after  
21 that particular case.

22 Q Okay. Well in such of those cases just to understand the  
23 way you're drawing conclusions of the scientific tests  
24 that you're doing, the - - is it true that like when  
25 there's a testing for or trying to identify certain

1 substance that may or may not exist, controlled substance,  
2 I mean you're testing for a narcotic in a sample of  
3 something or you're trying to determine what the substance  
4 is of whatever you're testing; that's something that you  
5 do?

6 A That is correct.

7 Q When - - when that is taking place, the - - is there a  
8 range of some kind, a scientific range that if there's a  
9 certain measurement of something that tells you  
10 scientifically that that in fact is THC or that in fact is  
11 cocaine or that it is some other narcotic; do you  
12 understand - - do you understand the question? Is there -  
13 - is there a threshold, for example, of an amount that  
14 gives you a result of detecting yes for this substance or  
15 detecting no for the substance?

16 A As far as when you say a threshold, are you like referring  
17 to a weight of a material or just the results of an  
18 analysis?

19 Q Yes, the presence of, like you know, like if there's - -

20 A Then the answer would be yes there is threshold.

21 Q Okay. And so that means that - - I'm just trying to create  
22 the situation where you're - - you've analyzed it and it's  
23 on the cusp so to speak of whether it does have that  
24 substance in it or not; that is a scenario that you come  
25 across as a forensic scientist, right?

1 A That is correct.

2 Q Okay. Is it true that the State Lab's procedures in that  
3 instance when the forensic scientist is in that situation  
4 that they ask the supervisor, is that the protocol?

5 A I don't know if I would say that that's the protocol. It's  
6 typically done.

7 Q Okay. In other words, we're not certain whether or not it  
8 is, it's over the threshold to call it out as the  
9 substance that we've identified it or not, but we will  
10 then seek guidance from the supervisor in some capacity  
11 and they will instruct us accordingly?

12 A That scenario could exist, yes sir.

13 Q Okay. Is that science; is that a protocol of science that  
14 demands accuracy and precision?

15 A The scientific community would request that there be  
16 scientific scrutiny applied to it even if that's the  
17 consultation of other scientific minds who know how to do  
18 the analysis in question.

19 Q Okay.

20 A An accepted procedure within the community.

21 Q Very good. And even from a scientific perspective within  
22 the community nobody would accept that as a validation,  
23 the supervisor of the lab testing taking place offering  
24 their opinion as a protocol acceptable in the scientific  
25 community?



1 A That is correct. It's ultimately up to the forensic  
2 scientist who signs the report and puts the analysis down  
3 there. He or she has to feel absolutely convinced in  
4 themselves that they have the credible scientific data  
5 from whatever test that they ran to draw the conclusions  
6 that they have placed on paper and signed their name to.

7 Q Would you agree with me that that protocol that we just  
8 described seeking guidance from the supervisor happens at  
9 the state police?

10 A On rare occasions, yes.

11 Q And when it happens, the guidance that may be given by the  
12 supervisor results - - is reflected in the results of the  
13 testing?

14 A Not necessarily.

15 Q But it does sometimes?

16 A It could, yes.

17 Q You'll agree with me that that is not the way the  
18 scientific community as a whole would recognize the  
19 principles of accuracy and precision associated with  
20 science?

21 A Correct.

22 Q Now you've been in the department for a long time, you  
23 know and are familiar - - and you're familiar with the way  
24 in which the lab probably many of your fellow forensic  
25 scientists that you work with have been analyzing

1 controlled substances and specifically marihuana and  
2 marihuana related products?

3 A Correct.

4 Q Okay. And the idea of some non-plant material being tested  
5 by the State Lab meaning non marihuana plant material  
6 being tested by the State Lab is not a new thing that's  
7 taking place, you'll agree with that?

8 A Correct, we've - - I know speaking for myself I've tested  
9 plant materials that have been submitted to the laboratory  
10 that were not marihuana.

11 Q Okay. And likewise pre medical marihuana you were working  
12 at the lab, pre 2008?

13 A Correct.

14 Q And it was - - it may have been more uncommon but there  
15 may have been a time that you received a brownie, test  
16 this, if it's got test it for you know see if it's got  
17 drugs in it or narcotics of some kind?

18 A Correct.

19 Q Or hash?

20 A Correct.

21 Q Or butane oil or whatever?

22 A The butane extracted process as it would be applied to  
23 marihuana I would say would be extremely rare at least in  
24 my opinion before 2008 but - -

25 Q Okay. All right. But you - - but you don't discount or you

1 don't dispute the idea that other non-plant material types  
2 of items have been sent that you've tested prior to the  
3 Michigan Medical Marihuana Act and drew conclusions from  
4 whether or not they contained THC or not?

5 A Correct.

6 Q Happens regularly?

7 A Yes.

8 Q And even since the Act happened maybe there's been an  
9 influx of it, maybe not, but testing those non plant  
10 material submitted evidence items looking for whether or  
11 not they contained THC?

12 A Correct.

13 Q And it's true that up until the point in time of maybe  
14 2013 the State Lab consistently and regularly reported on  
15 the analysis of these types of analysis of these submitted  
16 items non-plant material I'm referring to in a way that's  
17 similar to the way you reported it but a little bit  
18 different; they would - - they would report it as being  
19 either delta-1 or delta-9 tetrahydrocannabinol?

20 A Yes.

21 Q And listed as a Schedule 1?

22 A Correct.

23 Q And that's the way it has been reported probably before  
24 the Michigan Medical Marihuana Act. Since the Michigan  
25 Medical Marihuana Act for all items that are related to,

1 for all items that are non-plant material tested for THC?  
2 A Correct.  
3 Q It's true that after the Carruthers case and I know you  
4 talked about having some brief, and I'm going to ask you  
5 about that in a second, there was a specific decision made  
6 by the lab to report non-plant material items differently,  
7 is that true?  
8 A That is correct.  
9 Q Okay. So there was a conscientious meeting of the minds of  
10 somebody in the lab of an administrative or authoritative  
11 position, is that correct?  
12 A That is correct.  
13 Q Who was it that made this decision?  
14 A It would be done at the division level.  
15 Q Okay.  
16 A Specifically at the meeting I do not know. I can - - I can  
17 list all of our administrators and say, you know, those  
18 are all our administrative people who would be employed at  
19 that point in time but which one or how it actually came  
20 about, I would not hazard a - - a specific individual's  
21 name.  
22 Q And the administrators that we're speaking of are both  
23 scientists and law enforcement personnel, is that true?  
24 A All of the administrators that we have in the forensic  
25 science division are forensic scientists in some field of

1 forensic science within the laboratory. They've risen by  
2 promotion, etcetera, we do not have strictly enlisted  
3 cross transfer, if you will, i.e. uniform people that come  
4 out of field services and are placed in our  
5 administration. That's not done.

6 Q But even though we don't know who it was specifically  
7 amongst only scientists in the administrative, a decision  
8 was made to report on these things differently?

9 A That is correct.

10 Q Is there a - - was there something in writing that was  
11 produced, did you see something in writing, in other  
12 words?

13 A I don't know if I received something in writing  
14 specifically. Sometimes I have a hard time remembering  
15 what I did yesterday, but nevertheless back in 2013 or so  
16 I would presume that there's some sort of change to our  
17 standard protocol that now requires us to make the added  
18 statement on our reports when identifying THC in non-plant  
19 material type cases that we say origin unknown or  
20 something to that effect.

21 Q So you would agree with me that for all of the time that  
22 you have been working 25 years well it would be - - from  
23 the State Lab mark it back to 2013 so it would have been  
24 23 years, whenever tasked with this, you know, analysis of  
25 a controlled substance you would report on it the same for

1 23 years?

2 A Correct.

3 Q And then in 2013 because of a case that came out the  
4 laboratory decided to change the way it was reporting an  
5 analysis?

6 A To be fair and consistent with the law at the time and how  
7 it was going to be applied, the change was made. To my  
8 knowledge that's kind of the back - - background of the  
9 situation, yes.

10 Q And you'll agree with me that that - - the idea that the  
11 law changed the science is not something that's readily  
12 acceptable in the scientific community?

13 A I don't know that the law changed the science whatsoever.

14 Q Well - -

15 A The law changed the addition of a statement on a  
16 laboratory report but it did not change the science that  
17 went into the identification of a substance or anything  
18 alluded to specifically on a laboratory report.

19 Q Well, isn't it - - I mean is that a - - is that a - - did  
20 you - - is that your personal belief or is that something  
21 that came with the reading or the memo or the training of  
22 this new policy? You know what I mean like, do you  
23 understand the question?

24 A I think I do if you're referring that my - - my statement  
25 that I just made - -

1 Q Yes.

2 A - - was founded on quote unquote written policy or whether  
3 it was just something from me personally.

4 Q Yea, are those like talking points or is that what your -  
5 - your personal scientific view of - -

6 A That's my personal scientific opinion.

7 Q Okay. All right. And - - and essentially what you're  
8 saying is that you don't see a distinction in the way it's  
9 being reported scientifically that's significant, is that-  
10 - is that what you're saying; is it - - is it - - let me  
11 ask do you think the significance of reporting something  
12 as being origin unknown is if - - let me back up a second  
13 - - let me back up - - the change that we're talking about  
14 after 23 years is that now you've been instructed by way  
15 of policy to report those non-plant material items as  
16 original unknown, is that fair?

17 A When we do an identification of delta-1 THC, that is  
18 correct.

19 Q And the reason why this was added to it was because of a  
20 case, correct, and - - and how the lab was going to deal  
21 with it, correct?

22 A To my knowledge, again, I was not involved at the meeting  
23 but I believe it's logical to assume that it was because  
24 of the case that the policy changed, correct.

25 Q But the conclusion in the way you reported that is no

1 origin unknown is different than how you would have  
2 reported it prior to; you would have never put those words  
3 in there origin unknown, correct?

4 A I suppose we could have but we just - -

5 Q Didn't.

6 A - - didn't, correct.

7 Q For 23 years?

8 A Correct.

9 Q Until you were told to identify it that way, correct?

10 A Correct.

11 Q Is it fair to say that prior to that when you submitted a  
12 report that it - - that it was scientifically reasonable  
13 to conclude that it had come from marihuana plants?

14 A No sir.

15 Q Okay. So my question is were you reporting it incorrectly  
16 for 23 years or, you know in the past and you've corrected  
17 yourself, or is this wrong in terms of how you're  
18 reporting it in the past 23 years was the better way to  
19 report it?

20 A The addition of origin unknown again is not a reflectance  
21 upon the science or precision of what we did within the  
22 laboratory in our identification. It is just a  
23 clarification of a point apparently that the  
24 administrators saw with respect to a point in the law but  
25 it has nothing to do with what we identified or how it was



1           being identified, anything of that nature.

2   Q       Well, you will agree with me that based on your reading of  
3           the case that by stating that in the origin being unknown  
4           it may have an impact on whether it's marihuana or not,  
5           right?

6   A       That has that potential, yes.

7   Q       Right. And are you privy of that being the reason why it  
8           is being reported that way to prevent people from being  
9           able to say that it's marihuana?

10   A       I do not have any information to that regard.

11   Q       All right. But, let me - - let me - - let me ask - - ask  
12           you this question, the - - the running of the tests on the  
13           two machines that you spoke about they - - they - - it's  
14           essentially you're placing a piece of the evidence into a  
15           place that it enters and it runs through the machine and  
16           data and output is provided for you, correct?

17   A       In a simplified way yes, very good.

18   Q       Thank you. And there's not like while it's going on you  
19           are examining various things that are going on; at the end  
20           of the test and running through the machine it tells you  
21           essentially what the conclusion is, is that right?

22   A       It doesn't tell us what the conclusion is. It gives us a  
23           set of data, if you will, from which we draw our  
24           conclusions based on standards and other things that have  
25           been prior or previously run on the instruments.

1 Q Okay. Which means that you've received as was referred to  
2 on direct samples from the federal government to have a  
3 baseline to compare in the gas spectrometer machine when  
4 compared to the subject sample so you can line it up and  
5 make a determination if it looks alike or the machine does  
6 that, is that right?

7 A We can print out, if you will, a comparison of the specter  
8 produced from the gas chromatographic mass spectrometer  
9 and compare that to a known standard and see as you said  
10 if it looks right.

11 Q Well, that's essentially what you're doing cause I mean  
12 your - - you're not looking at this sample and saying it  
13 is that, it is THC, you are - - it's being compared with a  
14 something else that you - - is a known, is a truth?

15 A That is correct.

16 Q Okay. And from that comparison the conclusion is drawn?

17 A Correct.

18 Q From the data that's produced?

19 A Yes.

20 Q Okay. Now the - - the - - does the machine tell you if it  
21 is a Schedule 1, Schedule 2 or Schedule 3?

22 A No sir.

23 Q Okay. You draw that conclusion from your own knowledge?

24 A Correct.

25 Q You have a reasonable, I mean I imagine it is part of your

1 training especially your Master's Degree in terms of  
2 knowing and you're toxicology, too, right, that was the -  
3 A No I - -  
4 Q Pharmacology, Pharmacology, is that right?  
5 A My degree is in forensic science.  
6 Q Did you - - is your Master's in?  
7 A Forensic science.  
8 Q Okay. Do you have any training in pharmacology  
9 specifically?  
10 A Specifically, no sir.  
11 Q Toxicology?  
12 A Insomuch toxicology with respect to like bio-organic  
13 chemistry and things of that nature. Not toxicology with  
14 respect to - -  
15 Q Interactions with - -  
16 A Yea, correct.  
17 Q - - not that stuff but identifying?  
18 A The materials that a quote unquote toxicologist in our  
19 Lansing laboratory might identify from blood or that type  
20 of thing those same chemicals we identify as drug chemists  
21 just from different substrates. They have procedures on  
22 how to extract it from blood and urine and things of that  
23 nature and that's not part of what we do and so we're not  
24 expertise in the extraction process with respect to those  
25 substrate materials.

1 Q Have you had any other training as a scientist in  
2 analyzing the marihuana plant other than the two machines  
3 that you spoke of at the State Lab?

4 A With respect to - -

5 Q Marihuana only.

6 A - - the plant marihuana - -

7 Q Yes.

8 A - - no sir.

9 Q Okay. The - - are you familiar with other - - the other  
10 profiler or components that make up or are found in  
11 marihuana other than just THC?

12 A Yes sir.

13 Q Okay. Will you agree there's a CBD is one of them, or you  
14 tell me, which ones are you aware of?

15 A There's a whole host of them. I'll just say the most  
16 common two are something known as cannabinal and  
17 cannabidiol.

18 Q Okay. But there are aspects of the marihuana plant that  
19 are identifiable in - - that are unique to the marihuana  
20 plant that would give an indication of any substances  
21 being tested come from the marihuana plant, do you agree  
22 with that?

23 A If you tested and again - - if you tested a part of a  
24 sample and for instance found again not the focus of how  
25 we test it, but if you found something such as cell walls

1 or cell membranes, things of that nature on a cellular  
2 level, that would be indicative of having a plant  
3 substrate.

4 Q Okay. But it may not be marihuana?

5 A Correct.

6 Q I'm asking more specifically there's unique things about  
7 marihuana such as I mean you - - you were speaking of THC  
8 but there's other chemical components that make it up,  
9 other aspects of the profile that make up marihuana,  
10 there's T - - THA, there's CBD which may be the  
11 cannabidiol you're talking about; there's CBG I think is  
12 another one, there's THC3 and 4 and 6 I think, right? I  
13 mean these are not - - I'm not making this stuff up but  
14 these are things that you acknowledge are, what do you  
15 call them, part of the profile of a marihuana plant?

16 A Correct.

17 Q Okay. And it's true that the gas spectrometer - - gas - -  
18 what's it called?

19 A Gas chromatographic mass spectrometer.

20 Q Yes, that in fact can identify the components that are  
21 within the marihuana plant and any substance?

22 A Correct. For instance, if - - if I understand your  
23 question - -

24 Q Yes.

25 A - - if somebody took standards that were produced from a

1 laboratory and had a standard of and I'll just use three  
2 just to keep things simple, a standard of THC, a standard  
3 of cannabidiol and a standard of cannabitol; took some of  
4 each of those, put it in a solution and put the solution  
5 so to speak on dried maple leaves out in somebody's yard,  
6 crunched it all up, sent it to us and asked us to analyze  
7 it because they were smoking it. Would we identify it as  
8 marihuana? In that particular case the answer would be no  
9 even though they contained the three components of the  
10 marihuana plant, there are other specific taxa -  
11 taxonomical features that we look for in order to identify  
12 something as marihuana as opposed to just containing  
13 components of marihuana.

14 Q I understand but what I'm getting at is the conclusion  
15 that's drawn here that you cannot identify the origin is  
16 because you did not look beyond for THC, is that true?

17 A The fact that I would have looked beyond for THC and found  
18 let's say four of the components commonly found in THC or  
19 found in the marihuana plant - -

20 Q Yes.

21 A - - all right, the fact that they're not delineated in a  
22 report or something of that nature whether I find them or  
23 not would not lead me scientifically to conclude that I  
24 had marihuana whatsoever. I would be again at the basis of  
25 having to know the origin unknown simply because I could

1 not tell whether or not those chemicals were placed into  
2 the sample or whether they came from an extract of a known  
3 marihuana plant. Chemically speaking our instruments do  
4 not give us that type of data.

5 Q They can be said for that, for example, like terpenes, are  
6 you familiar with what those are?

7 A Yes sir.

8 Q And do those grow organically I mean you can find them in  
9 - - they're living - -

10 A Coniferous type wood and things of that nature, correct.

11 Q So that would be a situation if you were searching for  
12 terpenes and you found that in here, you couldn't draw a  
13 conclusion that it was marihuana only is what you'd say,  
14 right?

15 A If I found terpenes I would probably conclude that the  
16 material in question was not marihuana because I would be  
17 looking for the cannabinoids and not for - -

18 Q Well I'm saying - -

19 A - - trying to understand why terpenes are there in the  
20 presence of the sample.

21 Q Well I'm saying if there was - - I mean terpenes are a - -  
22 do you acknowledge that terpenes that are something that  
23 are found in marihuana plants?

24 A I don't have knowledge of that particular thing. I'm  
25 familiar with terpenes from another angle.

1 Q I understand. That was my fault, I - - you wouldn't know  
2 if they are part of it or not a part of it?

3 A Correct.

4 Q And there may be many other things that are part of the  
5 marihuana plant that you don't know of either?

6 A That is correct.

7 Q You know to - - and your skill and testing is really in  
8 the art of the analysis of the data that looks for  
9 tetrahydrocannabinol?

10 A And - - and the components to make sure - -

11 Q What other component?

12 A The skill that we have to have is to number one, make sure  
13 that we're confident in the process by which the sample is  
14 treated that we have indeed extracted and got a good  
15 representative sample of whatever the substrate was. In  
16 this particular case before the Court a brown residue. It  
17 could be an oil, it could be a maple leaf with some sort  
18 of liquid appearance on the type of thing. You know we  
19 have to as you have mentioned make sure that what we're  
20 doing is scientifically credible and that the - - that the  
21 examinations and the procedures, the testing that the  
22 instrument actually does, the parameters that operate the  
23 instrument, would indeed find those other components if  
24 they were present. And understandably a lot of the, if you  
25 will, profile of marihuana are extremely small components.



1 The cannabinol and cannabidiol are not; THC is the  
2 prominent component of marihuana. The cannabidiol and  
3 cannabinol are lesser components. The other ones, the  
4 cannabichromene, for example, a much lesser component. You  
5 would have to do two things, number one, make sure that  
6 you had an extremely thorough extraction of the material  
7 in question if you were going to look for just that  
8 particular component and you'd have to make sure that your  
9 instrument was indeed calibrated to look for parts in the  
10 per billions I would say to make sure you get enough data  
11 to make an accurate conclusion.

12 Q So the - - the conclusion that, and if I understood you  
13 correctly, that the origin is unknown is under your roof  
14 at the Michigan State Police with the limited resources  
15 that you're working with, you cannot draw a conclusion of  
16 its origin?

17 A Correct.

18 Q However, it can be done scientifically; it's more  
19 challenging, you need to have a different protocol, the  
20 machine has to - - you have to have different samples that  
21 can be compared to but it can be done?

22 A Again, it's in the scientific community the presence or  
23 lack thereof, but the presence because we're treating in  
24 positive things of all the components, if you will, let's  
25 say there's 25 components. To find all 25 components in a

1 sample would not be scientifically sound to conclude that  
2 that sample came from a marihuana plant. It would be  
3 scientifically sound to - - scientifically sound to only  
4 conclude that those 25 components existed in the substrate  
5 that you tested. Whether or not those 25 specific  
6 components came from standards supplied by whomever and  
7 were placed into the substrate or were indeed out of a  
8 marihuana plant cannot be determined.

9 Q Let me ask you this; do you know can you say with any  
10 scientific certainty that there is a molecule, a profile  
11 of the marihuana plant that's unique to marihuana?

12 A I'm not familiar with one.

13 Q Okay. Well, let's - - I mean and if you were, if that was  
14 true, then we would be able to confirm that a substance  
15 either came from it or didn't come from it, correct?

16 A Correct.

17 Q But the lab doesn't have that information?

18 A I'm not familiar with one.

19 Q Okay.

20 A Within the lab or within the scientific community in the  
21 journals that I read and things of that nature, nobody has  
22 ever proffered that this is the quote unquote profile of  
23 chemicals that must be observed in order to conclude that  
24 this came from a marihuana plant.

25 Q All right. Are you - - are you saying that your expert

1 opinion as a forensic scientist and all you know, are you  
2 basing this that you just said on as an expert. I mean are  
3 you saying as an expert, let me say it this way, you're  
4 saying as an expert that there exists no specific chemical  
5 or a profile of the marihuana plant that's unique to the  
6 marihuana plant period; are you saying that?

7 A I would - - I wouldn't say that there is not a profile  
8 that would not be unique to the marihuana plant, I'm just  
9 not aware that that's been established in the scientific  
10 community or anything of that nature.

11 Q Okay. And the scientific community that you're speaking of  
12 would be the essentially the law enforcement testing labs  
13 around the country, right?

14 A In the United States and through the members of the, as I  
15 mentioned, the ASCLD Association; they're abroad from  
16 Australia to Europe, etcetera.

17 Q Have you ever seen any of the testing results from any of  
18 the medical marihuana testing facilities, for example?

19 A No sir I have not.

20 Q All right. So you - - so moving on you have some  
21 familiarity - - familiarity with the scheduling of drugs  
22 or narcotics both at the federal level and the state  
23 level, is that true?

24 A That is correct.

25 Q And Schedule 1 by definition means what?

1 A Is a controlled substance that has no quote unquote  
2 medical use. The other Schedules 2, 3, 4 and 5 all have  
3 compounds within them regardless of side effects and  
4 things of that nature that at one point in time had some  
5 sort of medical use.

6 Q You'll agree with me that, as you said, you're aware that  
7 the Michigan voters in 2008, 63 percent voted for a  
8 Michigan Medical Marihuana Act?

9 A That is correct.

10 Q You'll agree with me that by virtue of that vote in  
11 Michigan Marihuana is no longer a Schedule 1; I mean you  
12 may be reported otherwise but you'll agree with me that  
13 that is the state of things?

14 A The law attempted at that point to state that it had a  
15 medicinal purpose.

16 Q Okay.

17 A Yes.

18 Q And by scientific definition that it would take it out of  
19 a Schedule 1 classification, you would agree with that?

20 A For the plant marihuana, correct.

21 Q Okay. Well, let's talk about the extracts of it, or the -  
22 - the synthetics of it, you're familiar with a  
23 prescription or a narcotic known as dronabinol or marinol?

24 A Correct.

25 Q You'll agree with me that that is a pharmaceutically made

1 drug?

2 A Right.

3 Q It has passed FDA approval?

4 A Correct.

5 Q It is made of THC?

6 A It contains THC; it's not made of period just only THC but  
7 it does contain THC, correct.

8 Q It is THC and it is - - do you know where - - where its  
9 origin is?

10 A No sir I do not.

11 Q Okay. And that is a Schedule 3 drug, is that correct?

12 A That is - - that is correct.

13 Q And the components of - - I mean the - - what else are you  
14 aware of that makes up marinol other than THC, I'm sorry,  
15 I know I didn't ask that right. I know that it's - - THC  
16 is what, I don't know how you're saying it, but - -

17 A The active ingredient.

18 Q - - the active ingredient in marinol is THC; you suggest  
19 was there - - are there other ingredients in there that  
20 you're aware of?

21 A There's just the compounds that the pharmaceutical company  
22 uses to put it together and package it essentially.

23 Q Okay, I see.

24 A The long chain fatty acids, hexadecanoic acid, things of  
25 that nature, just typical preparation ingredients.

1 Q Probably out for the delivery as well like they may  
2 involve with the delivery system?

3 A Yea.

4 Q And that would be things, for example, that would be  
5 unique to marinol that one could examine to - - would they  
6 be unique - - like if you had a marinol pill, somebody  
7 came in please examine this, and you get it under your  
8 thing and the methanol and it's a liquid and then you - -  
9 it comes back as a delta-1 tetrahydrocannabinol which is  
10 would or delta-9, one of the two depending on the - -

11 A Nomenclature, correct.

12 Q - - and then you would normally say it's a Schedule 1,  
13 boom, right, I mean that's what it would be but are there  
14 things that you could look for or your machines test for  
15 that make it unique to be able to call it marinol?

16 A We would look for a pharmaceutical presentation of it  
17 correct i.e. our testing would indeed identify out of a  
18 tablet hexadecanoic acid and octadecanoic acid which would  
19 be consistent with a pharmaceutical preparation. Those two  
20 long chain acids if you will are not found in the  
21 marihuana plant to the best of my knowledge and that would  
22 lend itself to being a pharmaceutical product. There is,  
23 for instance, another compound that we deal with, it's a  
24 Schedule 3 compound as a pharmaceutical product which is -  
25 - goes under the name in the law of dihydrocodeinone but

1 when it's no longer a pharmaceutical packaged product then  
2 it gets referred to as hydrocodone which is a Schedule 2  
3 controlled substance so - -

4 Q What is the distinction it does from a 1 to a 2 based on  
5 what?

6 A From a - - from a 3 to a 2 based upon whether or not it's  
7 a pharmaceutical packaged product at that point in time.

8 Q Versus synthetically made like Roguely or - -

9 A Versus whether or not it's let's say a crushed tablet - -

10 Q I see - -

11 A - - it's now a white powder we can't identify it as a  
12 pharmaceutical product even though the components are  
13 there. It could have been adulterated and cut with  
14 something else or even included in some other known  
15 controlled substance. They could have mixed it in with  
16 cocaine for instance or methamphetamine.

17 Q Returning to the marinol discussion, you indicated there  
18 are things that are unique to marinol visually may be  
19 identifiable because of the way it comes in, but in terms  
20 of the data that's produced, do you get a print out that  
21 says those identifying molecules that are unique to, I  
22 mean it wouldn't say like this, but that are unique to  
23 marinol do not exist within this sample for this  
24 particular case.

25 A No, no sir, we would not.

1 Q So you can't rule out marinol as being the source or  
2 origin, is that right?

3 A In this particular case?

4 Q In this particular case.

5 A Correct.

6 Q Okay. So your conclusion that it's a Schedule 1 may not  
7 actually be accurate, is that true, I mean I know you were  
8 told to report that from your lab supervisors, but you  
9 can't say with any - - with giving that answer you just  
10 gave you can't say with any scientific certainty that this  
11 is Schedule 1 versus Schedule 3.

12 A Other than the fact that the distinction within the  
13 forensic science laboratory system as a pharmaceutical  
14 product which is what places it in schedules that there is  
15 to my knowledge and understanding not a pharmaceutical  
16 product that's quote unquote sold in a drug store, if you  
17 will, that's a brown residue. I'm not even familiar with  
18 the preparations as mentioned that they would even be  
19 brown in color. So in which case scientifically I would  
20 have to conclude that it could not fall into Schedule 3,  
21 therefore, it must go to what other schedule would be  
22 available which would only be Schedule 1.

23 Q Is it really scientific though?

24 A In my opinion yes sir it is.

25 Q I mean I could come up with a bunch of different scenarios



1 that would, you know, that it could be brown and it could  
2 have come from marinol and something could have happened  
3 to it, you could have gotten it, and it could have just  
4 been pure marinol with some dirt or whatever it is and it  
5 may not have been visually identifiable, but the science  
6 is in the testing in the data and in testing this material  
7 and the science and the data of the machine and analyzing  
8 the data, forget the visual, you can't say that this is  
9 not, or did not come from marinol based on the data, can  
10 you?

11 A Um - -

12 Q Or was not a - - the origin was not marinol or a Schedule  
13 3, that's my question?

14 A In this particular instance in reviewing the case before I  
15 came over here, I did not see or find any, for instance,  
16 hexadecanoic or octadecanoic acid which would lead me to  
17 conclude it's a pharmaceutical product.

18 Q But you're saying like - - so you're saying that there  
19 would be some - - the general test that's run on this that  
20 you described - -

21 A The general - - the general procedure that we analyze  
22 things through if, for instance, when we do tablets, we  
23 typically will see those type of compounds even in - - in  
24 an extracted prepared sample that's placed into the  
25 instrument for analysis. We will still see small little

1 peaks that would indicate those two compounds would be  
2 present and those were not present in this particular  
3 sample.

4 Q What - - what - - I mean how much of the - - how much  
5 peaking was going on in the sample, you know, you're  
6 saying that there's certain peaks that give indications of  
7 other materials that are within the - - I mean was this a  
8 pure THC sample?

9 A Not as I recall.

10 Q Okay. What - - what else was in there?

11 A I don't remember all the components as far as that goes. I  
12 know the major component that was there was the THC and  
13 also my caffeine internal standard. It met the criteria  
14 for analysis and for conclusions that the data on each  
15 test performed the gas chromatographic analysis, the drug  
16 screen if you will, and the mass spectrometer analysis  
17 were both consistent with each other and, therefore, lead  
18 to that conclusion. The other compounds, if you will, are  
19 not controlled substances but hexadecanoic and  
20 octadecanoic acid those aren't controlled substances. I'm  
21 not certain what of the quote unquote profile of marihuana  
22 unquote that we referred to earlier may all be controlled  
23 substances, things of that nature as far as what's  
24 identified and not identified.

25 Q Are those things that you mentioned the marinol they're

1 not controlled substances; they're delivery - - are you  
2 saying that in this sample in Max Lorincz's case you  
3 examined the sample for those items and found none, and if  
4 we look at the data that's been produced it will be  
5 reflected in there?

6 A That is correct.

7 THE COURT: Mr. Komorn, before you go on any  
8 further questioning, I'm going to take a brief recess and  
9 handle another matter and then we'll continue. You may  
10 step down from the chair, Mr. Ruhf.

11 (AT 4:46 P.M. COURT RECESSED)

12 (AT 4:54 P.M. COURT RECONVENED)

13 THE COURT: Mr. Komorn, do you have an  
14 anticipation about how much further inquiry you have of  
15 the lab agent? Are we looking - -

16 MR. KOMORN: I know I realize the time - - I  
17 don't know what the Court's intentions were I - - couple  
18 of areas I was going to go to but I'm pretty close to the  
19 end.

20 THE COURT: You thinking ten minutes will do it?

21 MR. KOMORN: I'll give it a try I mean I know - -  
22 yea, I mean I don't think it's going to be longer than  
23 that.

24 THE COURT: Are you looking at potentially re-  
25 direct, any extensive re-direct?

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MS. MIEDEMA: No.

THE COURT: All right. We'll continue to try to push through it. Mr. Ruhf, if you'd take the stand. You're still under oath.

THE WITNESS: Yes sir.

CROSS EXAMINATION CONTINUED

BY MR. KOMORN:

Q I know you just testified that the marinol has some unique characteristics that would have been able, that would be able to be identifiable in the machines that are used to test samples, correct?

A Correct.

Q You don't know of, or aren't aware of any unique characteristics from the marihuana plant beyond, I mean it's not even, you don't know of one essentially that would be unique only to the marihuana plant, is that fair to say?

A Compared to other plants or compared to what?

Q I'm saying that - - I'm saying that like you told me that you can tell and test regularly for examining marinol and you're able to tell from the sample that's given that there are unique things from that sample that are unique to marinol and that you can then draw a conclusion that it's a Schedule 3 or that it came from - - that's it, you know, a sample of marinol; did I misunderstand you?

A No, that is correct.

2 Q And I'm asking you, you don 't know of today and the lab  
3 certainly hasn 't trained you about if it exists, a  
4 specific or unique characteristic in the marihuana plant  
5 that if found in a sample would unequivocally tell you  
6 that it came from a marihuana plant; that doesn 't exist as  
7 far as you know?

8 A Leaves, stems, seeds, things of that nature if it was in  
9 the sample would tell me that it came from a marihuana  
10 plant.

11 Q I'm asking about a chemical or a identifiable molecule or  
12 something in the chemical make-up of the plant that 's  
13 unique only to the marihuana plant?

14 A The uniqueness of chemicals per se is the  
15 tetrahydrocannabinol and the cannabinoids; that - - those  
16 compounds as far as a plant goes are unique under that.  
17 I'm not familiar of another plant that produces  
18 tetrahydrocannabinol.

19 Q Okay. And amongst the other cannabidiols and delta-1's and  
20 the various numbers that are contributed to them, I mean  
21 those may be unique to the marihuana plant and no other  
22 plants and no other substance, would you agree with that?

23 A That's a possibility, yes sir.

24 Q But you can't rule that in or out?

25 A Correct.

1 Q And you certainly don 't test for those things on the  
2 current methodology?

3 A We don't - -

4 Q You don't seek to identify those other profiles of the  
5 marihuana plant?

6 A Correct; we do not do that with respect to our analysis.  
7 Our point is to analyze for controlled substances, not for  
8 other plant steroids and things of that nature that may or  
9 may not be present.

10 Q Right. That 's what it is, there are some other chemicals  
11 that make-up the marihuana plant that may not be on the  
12 controlled substance list?

13 A Correct.

14 Q And you're not going to test for them?

15 A Correct.

16 Q But they would clearly be unique to the marihuana plant?

17 A That potential exists, yes sir.

18 Q Okay. Now do you feel that that is a scientific conclusion  
19 when, you know, I mean to say that we can't determine the  
20 origin isn't that really like we don't know, you figure it  
21 out; I mean is that - - is that science; I mean is that a  
22 scientific conclusion? I'll stop asking that, go ahead.

23 A It's a scientific conclusion insomuch that it is an  
24 absolute because the conclusion that we 're drawing even  
25 though it's undefined still is a conclusion. It's just not

known.

2 Q But isn't a conclusion in science supposed to be based on  
3 accuracy and precision, in other words, you can reproduce  
4 it over and over again; it's not the unable to prove it  
5 within a certain percentage of error, it's being able to  
6 prove it over and over and over within a certain  
7 percentage of error isn't this conclusion is just the  
8 opposite of science in that way?

9 A I suppose if that was the perspective you wished to argue,  
10 you could. I guess from perspective I would argue just the  
11 opposite; it's still just as valid.

12 Q Okay. But

13 A But it is something you could conclude.

14 Q All right. You 're not - - you personally are not prepared  
15 to go there?

16 A Correct I am not.

17 Q All right. You 'll agree with me though that forget the law  
18 enforcement scientific testing community that tests for  
19 illegal controlled substances, from a scientific  
20 perspective when one scientist concludes with another we  
21 don't know; that is not a readily accepted scientific  
22 conclusion that has value in use, would you agree with  
23 that?

24 A Well, there 's two aspects of your question, if you will,  
25 the first one I would disagree with; the second one I

could understand. I think for one scientist looking at the data in question and reaching the same conclusion that the origin is unknown is indeed a precise and accurate scientifically sound conclusion. Whether or not you feel that the origin unknown, the aspect of the word unknown being scientific or not would be open I guess to debate.

2  
3  
4  
5  
6  
7 Q Well, wouldn't you - - I mean from a scientist's perspective you can't say today that it 's possible that there is a molecule or chemical within the plant that is unique to marihuana, correct?

8  
9  
10  
11 A I don 't know all the chemicals, correct, of marihuana so there may be something in that outside of the cannabinoids which is essentially what we 're arguing about here that would be unique to it. I'm just not familiar with it.

12  
13  
14  
15 Q But when Galileo came up with gravity, did he work on gravity, yea, it wasn't like yea but as far as the testing that we're doing right now, you know, that 's what we came up with but there could be other stuff . There's no truths in science that exists like that . It's one it is declared as such; there 's no debate thereafter.

16  
17  
18  
19  
20  
21 MS. MIEDEMA : I'm going to object . I don't know if that 's a question or a closing argument so I'm going to object to that line of non-question.

22  
23  
24 THE COURT : If you'd form a - - if you'd like to form it - - form of a question.



BY MR. KOMORN:

2 Q I'm going to move on, just final other topics, this  
3 material has THC, correct?

4 A That is correct.

5 Q You can't say that it's got greater or less than .03  
6 percent of THC, is that right?

7 A That is correct.

8 Q You 're aware of the definition of hemp in the Federal  
9 Controlled Substance Act, correct?

10 A I'm aware of it. I don't recall it off the top of my head.

11 Q You know that hemp is not a Schedule 1 substance, in fact,  
12 it's not a controlled substance at all?

13 A Correct.

14 Q And you can't say that this substance wasn't made from  
15 hemp, can you?

16 A That is correct.

17 Q In other words this arguably could not be a Schedule 1  
18 controlled substance, right?

19 A Correct.

20 Q That's not scientifically, that's not a scientific  
21 conclusion; that wasn't - - correct?

22 A The - - the analysis and identification of a substance as  
23 hemp, if you will, would have been carried out differently  
24 than what I did per se identifying something as a hemp as  
25 opposed to a chemical.

1 Q Okay. You concluded in this analysis that it was a  
2 Schedule 1 drug, right?

3 A Yes.

4 Q You did not determine the amount of THC that existed in  
5 this, correct?

6 A Correct, a quantitation was not performed.

7 Q Okay. And had that been done which is something that the  
8 lab can do, is that right?

9 A We have done it in the past; it is not part of our current  
10 protocol; again, an administrative policy decision.

11 Q Okay. And because you don 't do it decidedly so, you cannot  
12 say with any scientific certainty that this is a substance  
13 that came from hemp or from a hemp seed?

14 A If - - if there exists a definition of the quantity of THC  
15 that is only found in quote unquote hemp and - -

16 Q Well, you're aware that the definition of, or are you not,  
17 of the controlled substance act's defi - - the Federal  
18 Controlled Substance Act 's definition of hemp?

19 A I know that one exists. I'm not recalling it right here on  
20 the stand right now, sorry.

21 Q And I don't mean to put you on the spot. Let 's assume for  
22 argument's sake it's .03 percent to 1.1 percent.

23 A Very good. And in this particular case a quantitation was  
24 not done and therefore I could not conclude whether or not  
25 it was hemp, you're correct.

1 Q Or assuming that what I suggested is the federal  
2 definition that it is not - - that it is - - you would not  
3 be able to say that it's a Schedule 1 if what I'm telling  
4 you is true about how they scheduled .03 percent to 1.1  
5 percent of THC?

6 A The quantitation of a particular chemical does not bear in  
7 its qualitative analysis i.e. its specific identification,  
8 its uniqueness. On this particular case while a  
9 quantitation was not done; the qualitative analysis was  
10 done and scientifically sound methodology was performed  
11 and I did indeed identify delta-1 tetrahydrocannabinol  
12 which is by law a Schedule 1 controlled substance. I don't  
13 have the ability to take THC and move it some place.

14 Q All right. But they sell at whole foods hemp milk and hemp  
15 seeds and hemp food and hemp soap; are you familiar with  
16 all that?

17 A I am not, sorry.

18 Q I mean

19 A I know the products of hemp exist, yes, besides rope.

20 Q Okay. All right. And if somebody was to take it and  
21 analyze it, it's going to have the presence of THC, you  
22 don 't doubt that, right?

23 A Not being familiar with the basis of the analysis and the  
24 procedure used to obtain the results or data to make the  
25 analysis; I would have to reply I do not know.

1 Q Okay. In light of that assuming what I'm saying is true,  
2 does that bring a doubt to your conclusion in the - - your  
3 report as to whether it's a Schedule 1 controlled  
4 substance or not?

5 A No sir it does not.

6 Q Okay. How can you say that if there is lawful THC non  
7 controlled substance THC that does not exist on the  
8 federal controlled list?

9 A I beg your pardon; could you please repeat the question?

10 Q Yes; you are not able to do a quantitative THC  
11 measurement, well you're not able to make a - - you cannot  
12 determine the concentration or the amount of THC present,  
13 right?

14 A Again, a quantitative analysis was not performed.

15 Q Okay. And assuming that the definition that I offered is  
16 in fact true at the federal level and the state level and  
17 - - and - - and those materials that are below that .03  
18 percent, .03 percent or lower or to 1.1 do not - - are  
19 categorized as cannabis sativa plant or material that is  
20 not a controlled substance, assuming that to be true.

21 A Okay.

22 Q Would that change your conclusion that this substance that  
23 was tested was a Schedule 1 - - was a Schedule 1 drug?

24 A No sir, because the fact that I would look at the  
25 substrate and it would have to be - - there would be other

2 things within those products that you mentioned or even if  
3 it were just pure hemp that would be indicative at least  
4 in my opinion in visually examining something that would  
5 say you know what, I can't make that conclusion  
6 scientifically because there's fibers, for instance, in  
7 this particular sample, or there's - -

8 Q What if somebody butane extracted a hemp plant?

9 A Well, a hemp plant is marihuana so.

10 Q Okay. But if .03 percent or less for this example, so  
11 someone butane extracts the crop from a marihuana plant  
12 with 27 percent of THC and someone does a butane  
13 extraction from a hemp plant that's .03 percent THC, and  
14 both of those items are, you know, prepped and whatever  
15 and they 're brought in and given to you and you were going  
16 to put them through your machines, do your preparations,  
17 your methanol, get your - - and put them through the  
18 machine. You - - you would not be able to delineate one as  
19 being a Schedule 1 and one as being not on the schedule at  
20 all, is that true?

21 A We would see and identify both of the components be it one  
22 that had 27 percent and one that had I think you used .3  
23 percent - -

24 Q .03 or less.

25 A .03, okay, if indeed we found data to support the  
scientific conclusion of THC then we would report both of

them as Schedule 1 origin unknown.

2 Q When in fact they could very well be from a hemp plant, a  
3 potency level that falls in a lawful level for the federal  
4 government and not - - it would not be on the controlled  
5 substance list?

6 A That is correct. That 's why we add the statement origin  
7 unknown.

8 MR. KOMORN: How much time do I go? Am I past my-

9 THE COURT: You have.

10 MR. KOMORN: I want to ask a couple more, I don 't  
11 want to - - I don 't want to not hold up to my commitment.

12 THE COURT: Five minutes.

13 MR. KOMORN: Five minutes, okay, very good. I can  
14 do that then.

15 BY MR. KOMORN:

16 Q All right. You mentioned Carruthers, the Carruthers case;  
17 you were not part of that case?

18 A That is correct.

19 Q But you're familiar with what the lab went through and  
20 some of the questions for testing that had arisen out of  
21 that case?

22 A Not - - not - - not for all the specifics, no sir, I'm  
23 not.

24 Q Okay. Are you familiar within the Carruthers case there  
25 was brownies that were at issue or food edible type of - -

1 A I understand, yes, it dealt around food edibles, yes.

2 Q And from what you know, would you agree that the issue for  
3 the lab was that the lab did not have a protocol at the  
4 time that was able to identify the amount of THC that was  
5 within the brownies, is that what you recall the issue  
6 being?

7 A Again, I don't - - I'm not that familiar with it so I  
8 would say I don't know.

9 Q All right. Are you familiar with the definition of the  
10 usable material?

11 A That comes out of essentially the appeal of the Carruthers  
12 case, correct.

13 Q Well, the definition is in the law but then there's some  
14 analysis by the Court afterwards; you'll agree with me in  
15 the Carruthers case the issue was of the mixture, they  
16 discussed the mixture, would you agree with that?

17 A Correct.

18 Q The mixture being that there had been - - and I don't want  
19 to put words in your mouth and stop me if I'm saying  
20 things that you don't fully recall or I'm misstating them  
21 as you remember them, but it was - - it was brownie or  
22 food products and there was the mixture of the extracted  
23 THC with the brownie cake mix and what not, would you  
24 agree that those were - -

25 A As far as I understand those were the samples that were in

question, correct.

2 Q Okay. And the challenge for the lab was that they could  
3 not give a weight as to the amount of THC that was in the  
4 brownies and therefore the entirety of the brownie was  
5 what ultimately was weighed?

6 A That would be the way that we would do that, correct, and  
7 that 's what from my understanding was done.

8 Q Okay.

9 A The brownie was totally weighed.

10 Q And I thought you said earlier that there was a way that  
11 you can, in fact, do a quantitative testing of THC for a  
12 particular substance but you generally don't, is that  
13 right?

14 A There is methodology. We do not do that as by policy in  
15 the state police.

16 Q Okay. Now the - - does this - - does this substance appear  
17 to be a mixture, if you know, versus a preparation?

18 A Now are we still on the Carruthers case or - -

19 Q Yes no, I'm talking about this particular, not the  
20 this particular case, in this case and that substance  
21 appear to you to be a mixture of something or - - or let  
22 me leave it at that, does it appear to be a mixture?

23 A As I recall the brown residue looked homogeneous in  
24 nature, didn't appear to be quote unquote a mixture of  
25 pieces or parts or anything, correct.



Q Did it look like the resin of the plant?

2 A I would not personally classify it as quote unquote the  
3 strict resin of the plant.

4 Q Okay. The - - the resin of the plant but this is the - -  
5 this is a processing of the resin of the plant?

6 A That is a possibility. I can't conclude that for certain.

7 Q Right. I see because you don't if it came from - - okay -  
8 - let me ask this, can you think of another substance in  
9 the world that may have produced this that you've  
10 identified in the past?

11 A With respect to the THC?

12 Q With respect to this - - the subject that you are here  
13 testifying about; can you say, can you pick out off the  
14 menu another type of substance that would have - - that  
15 would have been the origin of - - can you think of any  
16 other substance in the world that would have been the  
17 origin of this substance that we 're here talking about  
18 today other than marihuana?

19 A I would presume that in the realm of, if you will, the  
20 infinity or infinite that you gave me to conclude from  
21 that there would be a substance that would be brown in  
22 nature, that substance would not necessarily have to have  
23 produced the THC from wherever it came from, but that  
24 somebody could have indeed have added THC from a standard  
25 or something of that nature that they have and put it in a

2 quote unquote vial and had it there and it was submitted  
to us for analysis.

3 Q But you can't think of like a particular plant, a  
4 particular method of taking, you know, other plants and  
5 mixing them together that would produce this this  
6 substance like - - there's nothing that comes to mind when  
7 I ask that question?

8 A That is correct.

9 Q Nothing identifiable, you know, on second year of my  
10 Master 's that we read a chapter about blah blah blah;  
11 that 's not a thing that you can refer back to?

12 A That is correct, there's no tease or things of that nature  
13 that we've studied, etcetera, that would - - would do  
14 that.

15 Q So personally the origin unknown as it's reported you  
16 really would say we think it's marihuana but we just can't  
17 say so because we can't even think of another material it  
18 would have come from?

19 A It is not in our opinion as a community of forensic  
20 scientists sound to make that conclusion.

21 THE COURT: Counsel, time is up.

22 MR. KOMORN: Okay, all right.

23 THE COURT: Any redirect?

24 MS. MIEDEMA: No, I'm too tired.

25 THE COURT: You may step down.

THE WITNESS: May I be excused, sir?  
2 THE COURT: You may be excused.  
3 THE WITNESS: Thank you.  
4 (AT 5:17 P.M. WITNESS EXCUSED)  
5 THE COURT: Do the People anticipate any other  
6 witnesses for the preliminary examination purpose?  
7 MS. MIEDEMA: No, Your Honor.  
8 THE COURT: Mr. Komorn, do you anticipate any  
9 witnesses for your preliminary examination presentation?  
10 MR. KOMORN: I wasn 't going to. I did want to  
11 move to admit the patient card of my client that 's showing  
12 that it was valid on the day of the incident.  
13 THE COURT: Is there any objection?  
14 MS. MIEDEMA: Yes, I'm objecting to that. The  
15 officer said he didn 't see a card. He saw paperwork and  
16 application.  
17 MR. KOMORN: I mean I - - I don 't know that  
18 that' s a proper objection to admissibility. It's a state  
19 document; it's equivalent of a driver 's license. This is a  
20 preliminary exam. He has an absolute right to assert his  
21 immunity both at the time of the arrest, at the time of  
22 the prosecution. We 're doing that now.  
23 THE COURT: Would you like to lay the foundation  
24 of that admission with your client 's testimony?  
25 MR. KOMORN: Respectfully if I have to but I

2 don't believe that it's necessary in that it is a state  
3 produced document. The Court can give it whatever value it  
4 wants. I mean I don't think it goes to admissibility. I  
5 mean it may go to weight or what not but, you know, if the  
6 Court wants to make a finding that it's fraudulent or  
7 false, it can. But I, you know I would argue that - -

8 THE COURT: Do you have a photocopy of it or do  
9 you want me to actually take the identification card?

10 MR. KOMORN: I would like the - - I have no  
11 problem if the Court is willing to admit it, we can make a  
12 copy of it and I can leave that or, you know, you can - -  
13 cause he's going to want to at least possess it I think.  
14 Yea, he doesn't mind if you

15 THE COURT: You may have it marked.

16 MR. KOMORN: I got it marked as Defense Exhibit  
17 1. I would move to admit it.

18 THE COURT: Did you get a chance to look at this  
19 at all, Ms. Miedema?

20 MS. MIEDEMA: No.

21 THE COURT: Would you like a chance?

22 MS. MIEDEMA: Sure. Thanks. I'm going to place an  
23 objection on it because in 2009 which is a year after it  
24 was - - the law was passed I think they were still only  
25 doing them for one year and that says 2009 to 2015. I know  
at some point it changed to a couple years but in 2009 it

surely wasn't issued for six years which that's showing.

2 MR. KOMORN: I can - - I can explain that Judge.

3 THE COURT: I will note the objection. I will  
4 admit the exhibit at this time. Do you have any motion?

5 MS. MIEDEMA: Yes, I would ask the Court to bind  
6 the defendant over on the charge that was made based on  
7 the testimony of the officer as well as the lab forensic  
8 scientist as far as the lab sheet itself that says it is a  
9 Schedule 1. This is not usable marihuana as described in  
10 the Carruthers case and it's not the plant material of  
11 marihuana. It was described as a brown residue, somewhat  
12 gooey. I think somebody used the work tar-like or sticky  
13 substance; was not described as a plant at all or any  
14 plant material. We would ask the Court to bind over as  
15 charged.

16 THE COURT: Mr. Komorn.

17 MR. KOMORN: Yes. The lab report indicates the  
18 origin is unknown and I would imagine that that somehow  
19 would, or the theory of the prosecutor is that because  
20 they don't know what it is, we can't say that it's  
21 marihuana then we can't assert a medical marihuana  
22 defense. It seems to me that we heard testimony that this  
23 is almost like a fabricated strategy by the State Police  
24 that they intentionally changed the way they 'rereporting  
25 things so certain people could not assert or claim what

had always been recognized as associated with marihuana.

2 You heard the lab technician specialized as a forensic  
3 scientist or qualified as an expert say that he doesn't  
4 know of, can't think of any other plant, there might be,  
5 but he can't think of one that comes to mind. There's all  
6 kinds of possibilities and I get that that's how they  
7 report it but this is in fact clearly and I would also say  
8 from the testimony of the officer, taking a statement from  
9 my client that it's, you know, butane hash that came from  
10 the marihuana plant, or he recognized it to be something  
11 that's made from the marihuana plant. The DTF, the Drug  
12 Task Force individuals on those other cases had told him  
13 the same. I mean the testimony on this record before this  
14 Court is that the police believed it to be butane  
15 extraction hash from the marihuana plant; that that was  
16 confirmed by other persons in - - that's what they  
17 believed it to be. And when he identified it in plain view  
18 his mind went to, oh, that's the butane hash that is made  
19 from a marihuana plant and I don't doubt it. Nobody doubts  
20 it and that's we think it is. That's what we're going in  
21 for. Now the issue of whether the substance is allowed to  
22 be possessed we 're really talking about the Michigan  
23 Medical Marihuana Act. ■ don't think there's any doubt  
24 that an individual who has a card and I hope the Court is  
25 not, you know, I don't think that this is - - there's even

2 a question of fact if he - - if he has his paperwork at  
3 the time and the check has been cashed by the State of  
4 Michigan after 20 days, he is valid. In fact, the reason  
5 why the card is - - shows a issuance date of 2009 is  
6 because when he became a patient originally in 2009 they  
7 had the one year period of licensing. Prior to his  
8 licensing expired, he renewed. He got his card before, you  
9 know, without any break in the issuance date, and in the  
10 next year the same thing. So at the point in time when he  
11 had the paperwork was there is because he was getting  
12 close to the end of his expired, kind of may have been  
13 past the time that his original card from the year before  
14 had come up for expiration, he went back to his doctor  
15 prior to the expiration, got all the paperwork signed,  
16 sent it to the State, some 20 days had gone by which is  
17 within the rules of the Michigan Medical Marihuana Act.  
18 The application with verification that the State has  
19 cashed the check after 20 days is equivalent of a card.  
20 He's presented a card to the Court that shows that he was  
21 a valid medical marihuana patient on the day of the  
22 incident. There should be no dispute about that. So with  
23 the card, he is entitled to and it is an entitlement. It  
24 is a government entitlement that is given to him that  
25 makes him immune from being arrested, prosecuted or any  
penalty. He's here being prosecuted. What is the basis of

it? Okay. The People mention a case; People versus Carruthers; well how does - - I don 't know how Carruthers has anything to do with this case. Carruthers was about addressing the issue of the mixture. There 's clearly a situation in Carruthers where a cannabutter extraction had gone on with the plant, it was made into brownies and food products. The Carruthers case had a very difficult time. A simple reading of the case will tell you we had all these brownies, nine pounds, that 's more than the 2.5 ounces of usable material cause we - - the State Lab even though we heard today that they can do it, testified under oath in the Carruthers case that they don't do it, can't do it. They can't determine the amount of THC, therefore, the entirety of the brownie package is what is going to be the weight that they're dealing with. That is not this case. They could weigh the material. They could know exactly how much it is but there 's barely enough to get a sample of let alone weight it. So the basic principle of the Carruthers case of not being able to weigh the amount is not at issue. Carruthers, the analysis, and I can point to the Court on page - - this is from the - - I don't have the - - on page four of my printed version of the Carruthers in paragraph four of the mixture issue as presented. The Court recognizes that it's a first issue of first impression and they deal with and address the issue



of the definition in the law of usable material. That  
2 definition is "the dried leaves and flowers of the  
3 marihuana plant and any mixture, or preparation thereof."  
4 The Carruthers case, I want to be clear, deals only with  
5 the mixture aspect of the definition of usable material.  
6 This is not a mixture. You heard that from the forensic  
7 scientist. He identified this other than a mixture. So  
8 when you refer to Carruthers that's a case that set a  
9 precedent about the mixture issue and the mixture  
10 definition. That is not what's going on here. This, in  
11 fact, is even if you take the officer at his word. We have  
12 no reason to think otherwise in terms of what he knows or  
13 what he heard my client say. A butane hash extraction is  
14 directly from the plant which is exactly what Carruthers  
15 says. It came straight from the plant. It is the  
16 extraction of the - - and preparation of the resin of the  
17 plant which is something that is identified as a natural  
18 producing substance of the plant. That resin is something  
19 that someone could get on their hands by touching a plant  
20 or touching the material; that it is - - and the use of  
21 it, the preparation of it is not something that's  
22 identifiable as being something you can't possess. There's  
23 nothing that says that this material is unlawful. The  
24 if we 're going to look at Carruthers and try to draw  
25 something from Carruthers it would be that that case deals

2 with the cannabutter and a two-step process; not this one-  
3 step process. You know in footnote 7 in the Carruthers  
4 opinion the Court says, "The phrase usable marihuana in  
5 MMMA thus refers to marihuana to which the law has granted  
6 a qualifying patient the power, right, or privilege to  
7 use, rather than merely making reference to marihuana that  
8 is able to be ingested, smoked, or otherwise consumed in  
9 order to produce a narcotic effect." So in the opinion in  
10 the footnote they recognize what would be a right of an  
11 individual, an entitlement, a right to be able to use  
12 marihuana. They don't say smoked only. They say able to be  
13 ingested, smoked, or otherwise consumed in order to get a  
14 narcotic effect. That means that they clearly acknowledge  
15 that there is some non-plant material that is ingestible.  
16 What is not - - I mean that is - - that is protected under  
17 Section four where an individual receive immunity. That  
18 then does not fall from that category would be the  
19 brownies and items that fall outside of the weight and  
20 that are a mixture that did not come directly from the  
21 plant which was the brownies. This extraction process as  
22 understood by the officer as told what it was by my client  
23 came directly from the plant. That is the limitation that  
24 Carruthers places that had it not come directly from the  
25 plant as this was, but instead it was mixed into brownies  
with egg and brownie mix; that is what Carruthers

addresses. And finally, I mean Judge the final paragraph  
2 is the court indicates the brownies were not a mixture or  
3 preparation of the dried leaves and flower of the  
4 marihuana plant. And that same cannot be - - and that 's  
5 why they conclude Section four does not provide immunity  
6 or protection to Carruthers. The same can't be said about  
7 this material. And Judge, I mean, the other side of it is;  
8 what are we talking about here? Seriously like there 's a  
9 criminal investigation that takes place of a medical  
10 marihuana patient on a thing they call a residue when he  
11 was calling the police for the purposes of helping his  
12 wife who was having medical issues. I know that 's not a  
13 legal argument but the Court can - -

14 THE COURT: They assisted his wife; did they not?

15 MR. KOMORN: They did but - - but - - and he  
16 invited them in for that purpose but not - - not to be  
17 debating whether Carruthers is a preparation or a mixture  
18 or that that was even a thing that would be considered  
19 contraband at all. I mean, you know, he 's entitled to  
20 consume cannabis; he 's entitled to possess - -

21 THE COURT: I just don't - - I don't think you're  
22 - - it sounds as though you're insinuating the police were  
23 there for the purpose to bring your client in under the  
24 law and from the testimony that I heard here today I think  
25 it was far from that and I don 't really care to hear that

insinuation but.

2                   MR. KOMORN: I'm saying look they didn't - - I  
3 don't know why he would have made this into a criminal  
4 investigation. I means he has his own reasoning but I'm  
5 saying like yea up until that point they - - everyone was  
6 doing their job and I'm not complaining about it, but I  
7 mean, you know, I don't know - - I don't know that it's  
8 that clear cut. I mean the idea that he sees that and sees  
9 it as illegal. Where did that come from? There is no - -  
10 it's not that clear and I don't think - - and if it's not  
11 that clear, Judge, in the sense that this is clearly a  
12 crime then it's not fair to the defendant. That's my  
13 point. But we should have absolutes on that. I will say,  
14 yes, we know that brownies weighing more than 2.5 ounces  
15 of brownies would be problematic, but someone who has 2.5  
16 ounces of brownies or less not so much. Here, different  
17 product; different end result. Not clearly identified.  
18 Something that I would argue is, I mean I believe I'm on  
19 the right side of this but objectively ambiguous,  
20 certainly not clear. But we don't - - but that's not fair  
21 to defendants. If they can't say it and the government  
22 doesn't have a place that they can rely, point to where  
23 the criminality is then a defendant shouldn 't be brought  
24 into court expecting to know that and expecting to have  
25 acted differently and expected to, you know, be a

2 defendant in the case. There should be at least that for  
3 everyone to have notice of before you're going to be  
4 called in and say you're not allowed to possess that  
5 specific thing cause none of the law says that. Nothing  
6 says that. So I'm going to ask respectfully, and Judge,  
7 and Judge the other thing is this; this is not a marihuana  
8 charge, it's an analog that's 1, excuse, 1, 2, or 3 or 4  
9 or 5. I don't know that they even articulated which one it  
10 would be because they can't say - - first of all, he  
11 acknowledged that marihuana seemingly would not be a  
12 Schedule 1 because it's being used medically which goes  
13 against the grain of what a Schedule 1 narcotic would be.  
14 Secondly, he didn 't test for whether this was origin of  
15 marinol or not. He said he could of; that there's some  
16 identifying factor. This could be a 3; could be a 1,  
17 according to THC but what - - but the point being that  
18 that's not the way the criminal justice system is supposed  
19 to work. It's not supposed to be - - it's supposed to be  
20 look it we can say that it's a 1 or we can say it's a 3  
21 but this is just like we don't know, can't say where it  
22 came from and it's a Schedule 1. That is not proof even at  
23 a probable cause hearing and respectfully I would ask the  
24 Court to dismiss the charges. Thank you, Judge.

25 MS. MIEDEMA: One sentence; I would ask the Court  
to read the Carruthers case. It is very specific about the

1 marihuana definition versus usable marihuana. This was not  
2 usable marihuana and therefore the defendant should be  
3 bound over.

4 THE COURT: The Court has heard extensive  
5 testimony here today both from the deputy and the lab  
6 agent that I want to ponder a bit before I render any  
7 decision and I will take some time to do that and I will  
8 render a written opinion to send out to the parties. I  
9 should note though Mr. Komorn you filed a motion for  
10 independent testing. I trust should I bind this case over  
11 you'll renew that motion at the Circuit level or are you  
12 asking for my opinion on ruling on that motion here at the  
13 District Court level.

14 MR. KOMORN: Well

15 THE COURT: We 've concluded the preliminary  
16 examination based upon what's been presented here. I don't  
17 know that, unless you're asking to reopen your  
18 presentation if you were allowed to test the substance.

19 MR. KOMORN: And my point was what if. we were  
20 able to prove that there, you know, we had a testing  
21 protocol that could and you could weigh the evidence, I'm  
22 answering this question to try to help answer the question  
23 you asked me. In other words, if we were able to establish  
24 that the origin was marihuana, is that a difference in the  
25 case. You don't have to answer that right now but I'm

2 saying that 's where I would go. I don't know if the issue  
3 has been framed exactly like that. If it has and it was  
4 going to make a difference for you, then I would ask you  
5 to allow me to do that. If you're not going there and  
6 that 's not and your focus is something completely  
7 different, you know, then it would - - it would not be of  
8 consequence at this level. But if you - - you know, and I  
9 would - - my argument would be that if we can show that it  
10 is and it came from here then it's not an issue and just  
11 cause the lab doesn't test it that way, doesn't mean that  
12 it can't be done and if we want to pay for it and prove it  
13 and that 's the legal issue that the Court is potentially  
14 struggling with, yes I would like that opportunity.

14 THE COURT: Thank you.

15 MR. KOMORN: Do you want briefs on this; that 's  
16 what I was going to say. I know you - - does that help or  
17 have you heard enough?

18 THE COURT: You 've made good arguments. I think  
19 it basis around several different cases that I want to  
20 take a look at and based on the testimony given here, I  
21 think I can issue an opinion.

22 MR. KOMORN: May I just - - there 's another case  
23 that is recent it's an unpublished; it's People versus  
24 Randall, it's the first - - it talks a little bit about  
25 usable and unusable, I don't think it gets directly into

2 this but it 's - - and I can give you a cite for that but  
3 thank you , Judge. Thank you for your time.

4 MS . MIEDEMA: Thank you.

5 (AT 5:37 P.M. PROCEEDINGS CONCLUDED)

6 COUNTY OF OTTAWA

7  
8 STATE OF MICHIGAN

9  
10  
11  
12 I certify that this transcript , consisting of 120  
13 pages , is a complete , true, and correct record of the  
14 proceedings and testimony taken in this case on Wednesday ,  
15 April 15, 2015 .

16  
17  
18  
19 DATE: April 27, 2015



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