

STATE OF MICHIGAN

20<sup>th</sup> JUDICIAL CIRCUIT COURT FOR THE COUNTY OF OTTAWA

THE PEOPLE OF THE STATE OF MICHIGAN,

v

File No. 15-39262-FH  
Honorable Edward R. Post

MAXWELL LORINCZ,

Defendant.

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DEFENDANT MOTION FOR INDEPENDENT TESTING

BEFORE THE HONORABLE EDWARD R. POST, CIRCUIT JUDGE

Grand Haven, Michigan - Thursday, July 2, 2015

APPEARANCES:

For the People:

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For the Defendant:

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WITNESSES:

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None

EXHIBITS:

Identified

Admitted

None

1 Grand Haven, Michigan

2 Thursday, July 2, 2015 - 10:02 a.m.

3 THE COURT: Thank you. You may be seated. All  
4 right. You may proceed with your motion.

5 MR. KOMORN: Thank you, your Honor. Good morning,  
6 Michael Komorn, on behalf of Max Lorincz, who, after speaking  
7 with brother counsel, I think we are both prepared to waive  
8 his presence for today's hearing and hearing alone. He will  
9 be at all other matters. He is out on a personal bond.

10 THE COURT: All right.

11 MR. KOMORN: Judge, as the Court can see, this is my  
12 motion for independent testing. There was a preliminary  
13 examination held at the district court level. The -- the  
14 charge in this case, of course, is a violation of the  
15 Controlled Substances Act, that possession of an analogue,  
16 delta-1-tetrahydrocannabinol, a schedule one substance, a two-  
17 year felony.

18 The evidence offered at the preliminary exam was,  
19 like, two witnesses, both a police -- a sheriff as well as the  
20 Michigan State Police Forensic Lab Scientist, Mr. Ruhf. Also  
21 admitted at the exam was the -- I'm -- my client's medical  
22 marihuana patient card as well as Mr. Ruhf's lab report from  
23 the Michigan State Police Laboratory. The conclusions of that  
24 report are that it is a schedule one substance, but the origin  
25 of it is unknown, that on this lab report there is a unique

1 and new reporting that the Michigan State Police has  
2 undertaken, recently, and that is to indicate when they are  
3 testing the substance that is not plant material, such as a  
4 brownie or hash or what's known as, like, marihuana oil, or  
5 wax, some of the extractions. They have begun for the first  
6 time, only the last two years, reporting the origin "unknown,"  
7 specifically, including on the lab report "origin unknown."  
8 Mr. Ruhf testified, as a 25-year lab -- laboratory scientist,  
9 that he had always reported those same testing of those  
10 procedures prior without that language, and the presumption  
11 was that the origin was marihuana.

12 Now, the -- so our position is, in short, that the  
13 substance that is at issue is marihuana, that the origin of it  
14 was marihuana, and that we have a laboratory that is ISO  
15 certified with the State of Michigan, a nationally certified,  
16 accredited laboratory in Lansing, that is prepared to, at our  
17 expense, test the substance. And there is -- there is  
18 something that is unique about this laboratory that's  
19 different than the Michigan State Police in that, as reflected  
20 in the testimony of Mr. Ruhf, they are trained in their  
21 protocol and materials that they test for are from a limited  
22 list of materials that are on the Controlled Substances Act.  
23 So they are really only looking for illegal substances that --  
24 or those that are controlled on the federal government and the  
25 Michigan's Controlled Substance Act list.

1           The marihuana plant has several other unique,  
2           identifiable characteristics from the plant that are not on  
3           that list, and the state lab -- because it is not on the  
4           illegal controlled subs list, the state lab doesn't have  
5           samples that they could even compare from their -- the -- the  
6           sample that they're testing with an identifiable, other  
7           substance that's in the marihuana plant; that's not something  
8           that's in their repertoire of testing; it just doesn't -- not  
9           something that they do. However, the lab that we are going to  
10          reach out to does, in fact, test for multiple properties and  
11          elements and chemicals that are found within the marihuana  
12          plant that are unique to the marihuana plant, that we believe  
13          that when they test this substance that's at issue here, it  
14          will be an indication of that.

15                 Now, this is my offer of proof to the Court: I've  
16          submitted the name of the laboratory, and I can be more  
17          specific if the Court was going to present an order in -- in  
18          that regard. I -- there shouldn't be concerns of chain of  
19          custody; I think with that, that's something we can work out.  
20          I -- you know, I'm not going to claim -- I'm not going to --  
21          I'll waive my issue in terms of chain -- chain of custody if  
22          that happens. I just want to have the opportunity to test it  
23          otherwise.

24                 The law in this, Judge, is, I think, pretty clear.  
25          The Michigan Court Rules, even in the discovery demand -- of

1 the mandated discovery that lists all of the things one can  
2 ask for -- lab reports and police reports that have to be  
3 given without question just in the letter of demand -- says in  
4 that rule, 6.201, that upon a showing of good cause -- on good  
5 cause shown, the court may order the party be given an  
6 opportunity to test without destruction of any tangible  
7 physical evidence.

8 So my standard that I would represent to the Court  
9 is -- is for good cause. My position is that the limitations  
10 of the state lab's ability to test this material and their  
11 conclusion that the origin is unknown is not, I would argue,  
12 good enough, because we -- I -- I believe it can be tested,  
13 and we can find its origin. It's going to be an issue, I  
14 think, for the motions that the Court will hear later on that  
15 we filed dealing with section four and certainly section  
16 eight, and I also -- if -- if -- if, before the jury as well.

17 The difference of him being a medical marihuana  
18 patient asserting a defense, assuming we establish what's  
19 necessary for that, and the question before the jury of where  
20 -- what's the origin of it being some other, like, you know,  
21 non-marihuana plant origination may prejudice my client in  
22 some way, and we should at least have that opportunity just in  
23 the -- in -- in the general due process of a right to present  
24 a defense. My -- my -- I think my argument that the lab's  
25 limitations, whether you're going to blame them for that or

1 not, is of -- of no moment. It's that it can be tested  
2 otherwise. We can do that. I'm asking the Court to allow us  
3 to do that. And the People will have the same opportunity to  
4 cross-examine and -- and address that issue for its -- on its  
5 merits. Also, it's not uncommon in -- in all kinds of  
6 criminal prosecutions, oftentimes the courts will order  
7 independent testing. It happens for blood and urine testing  
8 all of the time.

9 Further, part of our theory of the case being an  
10 additional motion prior to trial that I would file with the  
11 Court, according to the court rules, allows the attorney for  
12 the defendant to file a theory of the case, pursuant to MCR  
13 2.512(A)(2). And our theory of the case is that this  
14 substance was marihuana, and we should be able to at least  
15 make that case and support it by laboratory analysis; that  
16 would be my position.

17 And -- and I -- we have some other ancillary  
18 issues that I think we -- we would need to discuss. But -- I  
19 -- you know, and finally, Judge, I just, you know, I -- when I  
20 was finding the -- my -- my path to get to the Court, I  
21 noticed that the mission statement of the Court is, "To  
22 administer justice and restore wholeness in a manner that  
23 inspires public trust." I don't think there could ever be a  
24 public trust issue if the defendant doesn't have an  
25 opportunity to independently test. I mean, it's -- it would

1 just be fair. You know, it would -- it would connote that,  
2 "Okay. The lab has their results, and the defendant had his  
3 results." There -- there is an inherent distrust if only the  
4 prosecution and their theory of the case is the only one that  
5 has access to the material and are offering a theory based in  
6 science, which we disagree with. So for those reasons, your  
7 Honor, I'd ask you to consider entering an order allowing us  
8 to independently test. Thank you.

9 THE COURT: All right. Mr. Babbitt?

10 MR. BABBITT: Thank you, your Honor. The -- the  
11 biggest dilemma that I see in their request is is that we're  
12 not talking about a blood sample, we're not talking about a  
13 piece of dirt, or something; we're talking about a controlled  
14 substance. It's illegal to possess controlled substances,  
15 except under certain limited circumstances. And in this case,  
16 the substance is controlled by the state crime lab because  
17 they are powered by the department of a drug enforcement  
18 agency and the State to handle those kind of substances.

19 The lab that I see that they are requesting, and Mr.  
20 Cox, who they are saying they want to send it to, is a dentist  
21 by trade, is not certified to handle controlled substances.  
22 It would be illegal for us to give it to somebody who is not  
23 certified by the DEA in a state to handle these kind of  
24 substances. So that's my main concern is that we can't do  
25 that. And there -- there is no provision around and of any

1 law that I'm aware of that says, "Well, if you want to, go  
2 ahead and go and do this. We're not supposed to," that kind of  
3 stuff.

4 The second thing is is that -- I'm -- I'm not sure.  
5 They want to claim it's marihuana. They -- they claim their  
6 client has a medical marihuana card. There are two sections,  
7 as the Court knows, under medical marihuana: There's section  
8 four and there's section eight. Section four is the defense  
9 that I have a usable amount of marihuana, as defined by the  
10 Act, and this Court, or any other court for that matter, could  
11 make that determination. If that's indeed true that it's  
12 usable marihuana, it's within the parameters of section four,  
13 then the Court dismisses; that's for the Court to decide.  
14 The problem in this case is it's not usable marihuana, as  
15 defined, so they can't utilize section four.

16 Section eight is the second section that you can  
17 use, and that is a section that talks about having marihuana,  
18 which is not usable marihuana unless it's acknowledged, and  
19 marihuana, earlier, has been defined, essentially even the  
20 extracts and resins and so forth, though this probably,  
21 honestly is marihuana under section eight. But section eight  
22 can't be decided by the jury, but you have to present evidence  
23 for this Court's satisfaction ahead of time to find that there  
24 is a section eight. If they want to do that, they can do  
25 that. And I don't believe we can contend on my part that this

1 is not marihuana under section eight, so there's no need for  
2 -- if they're trying to show it's marihuana under section  
3 eight, I'll concede that because it is.

4 THE COURT: Is -- is it the People's contention that  
5 this analogue was the byproduct of marihuana?

6 MR. BABBITT: No, we don't know where it came from.

7 THE COURT: Okay.

8 MR. BABBITT: Mr. Ruhf testified to that in his  
9 cross-exam, extensively, and that's why he puts that down  
10 there, and I did talk to him personally before he testified.

11 THE COURT: So --

12 MR. BABBITT: He can't tell you.

13 THE COURT: But as I understand, the defense wants  
14 to prove that this residue -- or that this material was the  
15 byproduct of marihuana.

16 MR. BABBITT: And Mr. Ruhf, I believe, -- I don't  
17 know how they can do that. They haven't presented any  
18 evidence that I could --

19 THE COURT: What they're saying -- what they're  
20 saying is that, "We have this lab that tests for a broader  
21 spectrum of -- of chemicals present -- substances, molecules,  
22 whatever -- and so in -- in -- in doing so, we -- if -- if we  
23 find the presence of certain chemicals, we can draw the  
24 inference or the conclusion that this product came from the  
25 use of marihuana," was their --

1 MR. BABBITT: But that's -- that's -- it -- they --  
2 they asked Ruhf about it, and he said, "You can't do that."

3 THE COURT: Well, then -- well, they asked Mr. Ruhf,  
4 but now they've got their own guy who says he can.

5 MR. BABBITT: I -- I -- we haven't cross-examined  
6 that fellow; I don't know if that's accurate or true.

7 THE COURT: Let's just assume that they -- let's  
8 assume they have a guy, a chemist, that can subject this  
9 material to a broader spectrum of tests, and based on the  
10 results of those tests can say confidently that this is the  
11 byproduct of marihuana; that's where they want to go with  
12 this.

13 MR. BABBITT: It still doesn't help them with  
14 section four.

15 THE COURT: Okay. So my question is --

16 MR. BABBITT: And - and if - and if I acknowledge  
17 that it's marihuana, section eight, then why do they need a  
18 test?

19 THE COURT: So -- so that's exactly my point: If  
20 the People say, "Look, okay, fine. This" --

21 MR. BABBITT: Then I -- I --

22 THE COURT: -- "this came from the use of  
23 marihuana," --

24 MR. BABBITT: Right.

25 THE COURT: -- "We're satisfied. We -- we agree."

1 MR. BABBITT: It -- it -- and I'm saying that. It  
2 -- it -- if we didn't have the *Carruthers* case, they probably  
3 wouldn't put the "origin unknown," okay? And -- and I think  
4 Mr. Ruhf, in his testimony, said that. When that case came  
5 out, we had to add that. I think that was administrative  
6 precision to add that. But before that time, there's an old  
7 '76 case that says marihuana liquid, if -- I'll use that term,  
8 or oil, is marihuana, so under the possession of marihuana  
9 act, you were charging marihuana.

10 THE COURT: So do you stip -- are you willing to  
11 stipulate that this material is marihuana?

12 MR. BABBITT: Under section eight, but not on  
13 section four --

14 MR. KOMORN: Well, --

15 THE COURT: All right. Okay. We'll get to you in a  
16 second.

17 MR. BABBITT: -- because it -- it's got to be usable  
18 marihuana under section four. It is not, and so that's your  
19 call whether or not it's usable marihuana; I understand that.

20 THE COURT: Right.

21 MR. BABBITT: But for section eight, if he shows  
22 that he had a bona fide relationship and all those kind of  
23 things, then that can be brought to the jury; I understand  
24 that. We haven't seen that yet either; that's their burden at  
25 this point in time, to go forward. But I would agree under

1 section eight, this is -- could be called marihuana.

2 THE COURT: And -- and would -- would you also agree  
3 -- I mean, because it -- it would take away this whole issue,  
4 is that the origin of this material was the -- it's a  
5 byproduct of marihuana?

6 MR. BABBITT: No, I don't know that.

7 THE COURT: Okay. That's what they want to prove --

8 MR. BABBITT: And -- and it's because Mr. Ruhf won't  
9 --

10 THE COURT: -- and you're not willing to stipulate,  
11 and they want to prove it.

12 MR. BABBITT: But why do they need to prove it?  
13 Based on -- unless you saw -- you know, unless you say this is  
14 usable marihuana, --

15 THE COURT: Right. Okay.

16 MR. BABBITT: -- they don't need to prove it then.

17 THE COURT: I -- I hear you; I hear what you're  
18 saying.

19 MR. BABBITT: I -- I -- I -- but my bigger problem  
20 is -- is that they're asking us to violate the law.

21 THE COURT: Right.

22 MR. BABBITT: And -- and we can't do that, and I  
23 don't think the Court can either. No matter what they say we  
24 can't send this to somebody who's not DEA qualified and  
25 certified by that -- that last certify.

1 THE COURT: I could make them pay -- I could make  
2 them pay to have a police officer deliver it and stand by  
3 while it's tested.

4 MR. BABBITT: Yeah, but once we give it to somebody  
5 who is not certified, --

6 THE COURT: Well, -- but you --

7 MR. BABBITT: -- they are in possession of it, and  
8 they're violating the law.

9 THE COURT: Okay. But you pass marihuana through a  
10 jury, you're going to charge each one of those jurors with  
11 possession of marihuana because they held the bag as they  
12 passed it down?

13 MR. BABBITT: Of course not.

14 THE COURT: Well, of course not, and you're not  
15 going to do that to a lab agent with a police officer standing  
16 by while he conducts a test.

17 MR. BABBITT: Probably not in that respect, as long  
18 as it's in control of a police officer.

19 THE COURT: Right. So I -- that's what I'm thinking  
20 would be the workaround there, but -- but -- but I -- but I  
21 understand your point about section four and section eight.  
22 And for section eight purposes, you're willing to stipulate  
23 it's marihuana. For section four purposes --

24 MR. BABBITT: I'll stipulate to that. I already  
25 told counsel that I believe it is section -- for section

1 eight.

2 THE COURT: And for section four purposes, you're  
3 saying it's not usable marihuana, so what's the point?

4 MR. BABBITT: Right.

5 THE COURT: Okay. I get you; I hear you.

6 MR. BABBITT: Okay.

7 THE COURT: Response?

8 MR. KOMORN: Well, first, on the issue of it can't  
9 -- it can't be done, I -- I believe, and I would of course  
10 want to confirm this, that the laboratory is authorized to  
11 some degree to possess these substances, otherwise they  
12 wouldn't be able to test for THC, as they do, of the  
13 marihuana; do you -- do you understand what I'm saying? Like,  
14 they -- they -- first of all, the lab that I'm proposing is  
15 ISO, which is the -- the national recognition, the -- they're  
16 -- they're certified in that regard, so. And -- and with that  
17 comes a certain authority to possess some controlled  
18 substances that -- in samples that they get from, I think, the  
19 federal government even, that they compare. But assuming that  
20 I'm right on that, then I don't think that that will be an  
21 issue, but if it is, I will, you know, -- my -- we'll pay for  
22 -- to whatever it's -- yeah, we'll pay for the chain of  
23 custody issue and the supervision, if -- if that's the only  
24 other alternative.

25 I -- I realize that -- and I appreciate brother

1 counsel at least conceding it for the section eight, that  
2 that's not going to be an issue. And I -- and -- and I know  
3 he means that it's then going be our burden to establish the  
4 three prongs of section eight, and the courts would rule on  
5 either a dismissal, the ability to present it to the jury, or  
6 -- or neither of those. But I don't know -- you know, I don't  
7 know now that, you know, the -- the -- the usable material  
8 argument is independent of the origin -- I mean, independent  
9 of the origin argument, and it's actually inconsistent with  
10 his concession, and I don't want him to take that back, but --  
11 his concession about section eight, if it -- if we know that  
12 the origin's marihuana, for example, in -- for our section  
13 four arguments, that is of no issue. The issue that he's  
14 arguing about is, is this substance's origin is marihuana  
15 usable under the current case law or not? You know, does it  
16 fall within the definition of usable material? That's where  
17 that section four argument, I think, is going to fall.

18 And I don't know -- and I was just -- I -- I think  
19 -- I'm -- it's just a suggestion, I think, and -- and if he  
20 agrees, we may be able to avoid that entire process. I -- I  
21 mean, I would even suggest, what's the relevance at this point  
22 of the lab report -- at this point? I mean, obviously, they  
23 would need it to establish the schedule one aspect of the, you  
24 know, controlled substance aspect, but the whole issue is on  
25 this "origin unknown." I find it to be --

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THE COURT: I --

MR. KOMORN: -- there's a prejudicial effect, as its read. I'm sorry, Judge, I don't want to interrupt you.

THE COURT: No, I -- I thought you were at a breaking point, but when you get to one, then I have a question for you.

MR. KOMORN: Okay. Well, I mean, brother counsel suggests that -- and I found this to be troubling. I -- I don't know if the Court will feel the same way, but there is always a way in which they had reported these things. Always. There was never the added "origin unknown" with any case that was decided by the Court of Appeals. And then the way that they were reporting this science changed. That seems very unscientific to me. You know, like -- in other words, you know -- you know, there is truths in science. There is precision, accuracy, reproduction, over and over again within a certain error rate. It -- it's -- it's not determined by a case that comes out or any policy decision or an administrative decision. It just -- you know, I asked him, "Do you realize the impact that this might have on the medical marihuana patients?" Client said, "Yes, I do," and -- and there was no other reason for them to -- to do that. The -- but I think ultimately, Judge, -- and here's my -- I'll -- I'll break after this. When I asked Mr. Ruhf, I said, "Well, you don't know what the origin is; could you propose any other

1 plant or origin that would exist in the world other than  
2 marihuana?" And he said no, he can't. I mean, that -- that's  
3 the -- the exchange of the questions. So this origin unknown  
4 is -- is seemingly just done because it has the impact to  
5 exclude people from being able to argue its -- its origin is  
6 marihuana. I mean, you know, he --

7 THE COURT: Let's take a look at this a minute.  
8 With respect to section four, is it your allegation that this  
9 material that was recovered by the police is usable marihuana?

10 MR. KOMORN: Yes.

11 THE COURT: It is usable marihuana?

12 MR. KOMORN: Yes.

13 THE COURT: The -- the residue itself, the --

14 MR. KOMORN: Correct.

15 THE COURT: -- the analogue itself, --

16 MR. KOMORN: I can --

17 THE COURT: -- wasn't that a legal question? I  
18 mean, we -- whether it came from marihuana or not is  
19 irrelevant; the question is whether or not this substance that  
20 was recovered is usable marihuana.

21 MR. KOMORN: Under the Michigan Medical Marihuana --  
22 yes, I would -- yes, whatever you said, that it's a legal --  
23 it's a factual, legal question for -- you know, currently.

24 THE COURT: Where it came from doesn't make any  
25 difference.

1 MR. KOMORN: I agree. And the -- but I -- you know,  
2 currently, under this current state of the law today as we  
3 speak, that issue of section four is a question of fact and  
4 law for the Court to decide.

5 THE COURT: All right. And --

6 MR. KOMORN: However, you know, there are two -- two  
7 remaining cases before the Michigan Supreme Court, *Hartwick*  
8 *and Tuttle*. They have to rule on them by the end of July.  
9 And amongst the issues they're going to address, which include  
10 section eight's bona fide doctor-patient relationship and  
11 amount reasonably necessary, they do reference in the issues  
12 that were briefed, and I've -- I filed an amicus brief in the  
13 case, specifically, what is the standard for section four? So  
14 I know the Court's kind of -- we're kind of going down there  
15 about the usable, and I could almost launch into my arguments  
16 about why *Carruthers*, and it doesn't apply and point you to  
17 some other cases, and I think I -- I -- I don't know. I -- I  
18 filed some other motions, but I mentioned that because before  
19 we get into that, there is some other law that may assist us  
20 on -- on drawing those conclusions.

21 THE COURT: All right. But here -- here is the  
22 point, and maybe I'm missing it, and if so, bring me -- bring  
23 me around. But we all agree that the substance that the  
24 police obtained, and upon which this prosecution is based, is  
25 delta-1-tetrahydrocannabinol, an analogue. We --

1 MR. KOMORN: Well, --

2 THE COURT: There's no -- there's no -- you agree  
3 with that, right?

4 MR. KOMORN: I mean, I don't want to give up the  
5 defense that, -- you know, I mean, I don't want to -- I don't  
6 want to limit myself. I mean, if there's a -- there's a  
7 number of different scenarios that can play out, and I don't  
8 want to --

9 THE COURT: Well, you said in your argument, and  
10 maybe you're changing it now, but --

11 MR. KOMORN: Well, --

12 THE COURT: -- you said in your argument, "Look, we  
13 -- this is -- this is delta-1-tetrahydrocannabinol, which we  
14 say came from marihuana."

15 MR. KOMORN: Right.

16 THE COURT: And -- and so if -- if that's the case,  
17 then if we agree that this material was delta-1-  
18 tetrahydrocannabinol, then the question is, is that usable  
19 marihuana under section four? That's a question of law for  
20 the Court to decide.

21 MR. KOMORN: Right.

22 THE COURT: Under section eight, the prosecution is  
23 willing to admit that it's marihuana, so I don't understand  
24 what the purpose of any testing would be.

25 MR. KOMORN: Well, because right now I'm imagining

1 that in their -- their -- if we were go to trial and we were  
2 able to have a section eight defense and -- and argue that  
3 it's marihuana, --

4 THE COURT: Right.

5 MR. KOMORN: -- there still remains on this form, on  
6 the -- on the lab sheet that would be submitted to the jury  
7 and the testimony that they don't know where it came from.  
8 And I guess I can cross-examine on it, and -- you know, but --  
9 but it's -- it's like I'm trying to prove this negative, which  
10 I think is unfair. I was just --

11 THE COURT: Well, the -- the prosecution is willing  
12 to admit that its marihuana.

13 MR. KOMORN: Then -- okay. Then we should -- we --  
14 I mean, listen it could be curatively straight from the lab  
15 reports. Really, that's -- that would be -- because that was  
16 the whole thing; I had never seen that before. That raises --  
17 and in -- as long as their position is we -- as long as their  
18 position is, "We cannot argue medical marihuana because we  
19 don't know if it came from marihuana," as long as we strike  
20 that off the list of objections that I would have to, you  
21 know, encounter, I -- and maybe strike the "origin unknown"  
22 from the lab report, we're back to any -- you know, and -- and  
23 then we just fight it under section four, section eight, and  
24 -- and everything else.

25 THE COURT: Willing to go along with that?

1 MR. BABBITT: I -- you know, to me it doesn't mean a  
2 whole lot of difference when it says "origin unknown." I  
3 don't care if that's on there or not, personally. It -- I --  
4 it's --

5 THE COURT: Okay. Let's strike it and be done with  
6 it.

7 MR. BABBITT: We strike and be done with it.

8 THE COURT: Okay.

9 MR. BABBITT: The -- the Court's going to have to  
10 give definitions and instructions to the jury.

11 THE COURT: Right.

12 MR. BABBITT: That's what -- and you know, it's  
13 going to have to give a definition of usable marihuana.  
14 Section four is a legal defense. If he -- if -- if -- he  
15 can't raise a section four in front of the jury and raise a  
16 section eight.

17 THE COURT: Right. Right.

18 MR. BABBITT: So we don't have to worry about usable  
19 marihuana to the jury in any form or shape. At this point in  
20 time --

21 THE COURT: Right.

22 MR. KOMORN: I don't --

23 MR. BABBITT: -- it's up to the Court to make that  
24 call.

25 THE COURT: Yeah.

1 MR. KOMORN: I don't want to give up, though, my  
2 ability to cross-examine the -- the lab person, you know,  
3 like, on his conclusion, which I -- I realize may be happening  
4 now.

5 MR. BABBITT: I --

6 MR. KOMORN: Do -- do --

7 MR. BABBITT: I'm not limiting his cross-  
8 examination. The question is whether or not it becomes  
9 relevant, and that'll have to -- this is actually Miss  
10 Miedema's case, not mine; I'm arguing for her. But the point  
11 is, depending on what happens at the trial, she may argue it's  
12 not relevant, and it's not -- you know, I don't know what the  
13 Court will do, and I don't know what -- what's going to  
14 happen. But on -- I'm acknowledging that as I understand the  
15 case law, the case law said this kind of stuff, under the  
16 simple marihuana act, being possession of marihuana, is  
17 marihuana. So under section eight, that's what the definition  
18 is, just regular marihuana; that's what section eight is.

19 THE COURT: All right. Okay. Then on the basis of  
20 the prosecution's position, which it has announced, the Court  
21 is going to deny the motion for independent testing because it  
22 is of no consequence to the section four defense, and to the  
23 section eight defense, the prosecution acknowledges this is  
24 marihuana, and therefore, there is no purpose or point of --  
25 of further testing.

1 MR. KOMORN: But would the Court enter an order,  
2 like it -- on -- on -- like, a oral motion in limine to  
3 preclude the argument that the origin is unknown or that --  
4 that -- that it came from some other place than the marihuana  
5 plant, something that --

6 THE COURT: Yes. Yeah, that's fine. You -- you  
7 wouldn't argue that it comes from some place other than  
8 marihuana?

9 MR. BABBITT: No, I'm just going to argue what it  
10 is. I don't care where it came from.

11 THE COURT: Okay.

12 MR. BABBITT: I mean if they want to argue it came  
13 from marihuana, that's fine; we don't care. But it -- that's  
14 not the issue.

15 THE COURT: All right.

16 MR. BABBITT: The issue is whether or not --

17 THE COURT: But -- but if you claim that it came  
18 from something other than marihuana, you have to tell the  
19 defense where -- where you think it came from.

20 MR. BABBITT: Oh, I'm not -- I don't have any claim  
21 where it came from, your Honor.

22 THE COURT: Okay.

23 MR. BABBITT: Mr. Ruhf cannot tell me where it came  
24 from.

25 THE COURT: All right. Then -- then the prosecution

1 has acknowledged that it will not assert that this came from  
2 any source other than marihuana.

3 MR. KOMORN: Very good.

4 THE COURT: That's -- is that being --

5 MR. KOMORN: That solves it.

6 THE COURT: Well, let's get to the nub of this, and  
7 the question is whether or not he had the right to possess it  
8 or not, and --

9 MR. BABBITT: Right.

10 THE COURT: -- we can strain at gnats all day long,  
11 but. Okay. Thank you.

12 MR. KOMORN: Okay. Thank you very much, your Honor.  
13 Did you want me to do it -- does the Court --

14 THE COURT: Yes, please prepare an order.

15 MR. KOMORN: For both of those?

16 THE COURT: Yes.

17 MR. KOMORN: All right. I will.

18 MR. BABBITT: Right. And you can send it to me, of  
19 course, since Karen is --

20 MR. KOMORN: I will. We had some issues on the  
21 trial -- upcoming trial. We have a trial date, I believe,  
22 July 6<sup>th</sup>.

23 MR. BABBITT: July 8<sup>th</sup>, I believe.

24 MR. KOMORN: July 8<sup>th</sup>. And I -- we adjourned some of  
25 the other motions, the section four and the section eights.

1 THE COURT: Do you have a high degree of confidence  
2 that these Supreme Court opinions are going to come out in  
3 July?

4 MR. KOMORN: Yes, the term ends in July; they have  
5 to. They -- they break, I understand, at the end of July, and  
6 that would be it. So the --

7 THE COURT: And -- and so your proposal is that we  
8 adjourn these until we have a clearer picture on the law on  
9 these two critical issues?

10 MR. KOMORN: Yes.

11 THE COURT: Do you have any objection to that?

12 MR. BABBITT: Of course not. If -- I don't know  
13 exactly what the issues are on those two cases, your Honor. I  
14 thought it was just a section eight thing. If he's saying  
15 it's more than that and it might have a direct bearing on  
16 this, then wait.

17 THE COURT: All right.

18 MR. BABBITT: I mean, what's wrong with that?

19 THE COURT: So we will adjourn the trial.

20 MR. KOMORN: Your Honor, of the motions that are  
21 scheduled for, I think, the 24<sup>th</sup> or 26<sup>th</sup> -- I don't -- whatever  
22 the adjourned date was, one of them is a motion to stay  
23 pending the outcome. And in that motion and brief, I do  
24 outline the various, you know, issues that the Supreme -- that  
25 -- you know, from their order, I think I even include that,

1 like, "These are the issues," to be brief, but would the Court  
2 rather do that? I -- I mean, just to not have your -- the age  
3 of the case progress against, you know, I don't know if -- I  
4 know some of the courts --

5 THE COURT: Right.

6 MR. KOMORN: -- are concerned about that, but if you  
7 -- if you're under a stay, I don't think it goes against the  
8 age of the case.

9 MR. BABBITT: I don't think you need to stay  
10 anything. You'd just adjourn it and reschedule it.

11 THE COURT: Yeah, they -- I --

12 MR. KOMORN: That's fine.

13 THE COURT: I'm just going to adjourn it.

14 MR. KOMORN: That's fine. I just -- just -- I --

15 THE COURT: Well, thank you for the option, but I  
16 think if we adjourn this to mid-August --

17 MR. KOMORN: That's fine; that will be good.

18 MR. BABBITT: That -- that probably will work.

19 MR. KOMORN: Yes.

20 THE COURT: All right. I'll have the staff reset  
21 this sometime in mid-August if -- and go from there.

22 MR. KOMORN: Thank you very much, your Honor.

23 THE COURT: All right. Thank you.

24 MR. BABBITT: Thank you, your Honor.

25 (At 10:32 a.m., proceedings concluded)

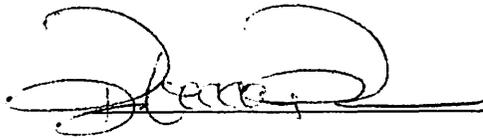
STATE OF MICHIGAN )

)

COUNTY OF OTTAWA )

I certify that this transcript, consisting of 28 pages, is a complete, true, and correct record of the videotape and testimony taken in this case as recorded on Thursday, July 2, 2015.

Date: 7/30/15



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