
*State of Michigan
In the Supreme Court*

APPEAL FROM THE MICHIGAN COURT OF APPEALS
Saad, P.J., Sawyer and Jansen, JJ.

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

Supreme Court
Docket No. 148971

ROBERT TUTTLE,

Defendant-Appellant.

Court of Appeals No. 312364
Oakland Circuit Court No. 2012-241272-FH

APPELLEE'S APPENDIX

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TABLE OF CONTENTS

Transcript of Preliminary Examination on March 21, 2012 1b-4b

Transcript of Preliminary Examination on March 21, 2012 – Witness Dwayne LaLonde ... 5b-24b

Transcript of Preliminary Examination on March 21, 2012 – Witness Michael Pankey 25b-73b

Transcript of Preliminary Examination on March 21, 2012 74b-75b

Transcript of Hearing on Motion to Dismiss on July 11, 2012 76b-99b

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
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STATE OF MICHIGAN

51ST JUDICIAL DISTRICT COURT - OAKLAND COUNTY

PEOPLE OF THE STATE OF MICHIGAN,

v.

CASE NO. 120406FY
CR#

ROBERT EDWARD TUTTLE,

Defendant.

PRELIMINARY EXAMINATION

BEFORE THE HONORABLE JODINE R. DEBBRECHT, DISTRICT JUDGE,

Waterford, Michigan - Wednesday, March 21, 2012

APPEARANCES:

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PRELIMINARY EXAMINATION

TABLE OF CONTENTS

1			
2	<u>WITNESSES: PEOPLE</u>		<u>PAGE</u>
3	DWAYNE LALONDE		
4	Direct Examination by Ms. O'Brien		5
5	Cross-Examination by Mr. Schouman		21
6	Redirect Examination by Ms. O'Brien		24
7	Detective Michael Pankey		
8	Direct Examination by Ms. O'Brien		24
9	Cross-Examination by Mr. Schouman		55
10	Redirect Examination by Ms. O'Brien		66
11	Redirect Examination by Ms. O'Brien		72
12	<u>WITNESSES: DEFENDANT</u>		<u>PAGE</u>
13	None		
14			
15			
16			
17			
18			
19	<u>EXHIBITS</u>	<u>MARKED</u>	<u>ADMITTED</u>
20	None		
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22			
23			
24			
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1 Waterford, Michigan

2 Wednesday, March 21, 2012 - 2:00 p.m.

3 THE COURT: People v. Tuttle, 12FY0406

4 MS. O'BRIEN: Good afternoon, Judge. Shannon
5 O'Brien for the People.

6 MR. SCHOUMAN: Daniel Schouman appearing on
7 behalf of Mr. Tuttle.

8 MS. O'BRIEN: Judge--

9 THE COURT: All right. I believe we're set
10 for exam on this matter today.

11 MS. O'BRIEN: We are. Mr. Tuttle would like
12 to have that exam conducted. So would the People and
13 we're ready to proceed.

14 THE COURT: All right. Very good. Do you
15 want to call your first witness?

16 MS. O'BRIEN: Judge, the People call Dwayne
17 Lalonde. Judge and they're in the conference room.

18 THE COURT: Do you want a sequestration--

19 MS. O'BRIEN: May I step out?

20 THE COURT: Do we need a sequestration order
21 of any kind?

22 MS. O'BRIEN: We may. Would the Court
23 inquire--I'm assuming that Mr. Tuttle has brought his
24 wife to accompany him to Court today. She is a res
25 gestae witness and was present. So, I would ask that she

PRELIMINARY EXAMINATION

1 be, Judge.

2 THE COURT: All right. Very good. Mr.
3 Schouman?

4 MR. SCHOUMAN: Very good.

5 THE COURT: All right. Court will issue the
6 order of the sequestration.

7 MS. O'BRIEN: Mr. Lalonde, if you would
8 approach the Court's Officer there and stand to be sworn
9 by the Judge.

10 THE BAILIFF: If you'll raise your right
11 hand, please. Do you solemnly swear to tell the truth,
12 the whole truth, and nothing but the truth, so help you
13 God?

14 MR. LALONDE: I do.

15 THE BAILIFF: Have a seat, please.

16 MS. O'BRIEN: Judge, before we proceed, I'd
17 like to address the witness' apparel to the Court because
18 we mean no disrespect to the Court. The witness works in
19 the construction industry. We brought him off a job to
20 testify here today and he has to return today. So, we
21 apologize for his appearance.

22 THE COURT: Very good. Thank you, Counsel.
23 You may proceed.

24 DWAYNE LALONDE

25 (At 2:01 sworn as a witness, testified as

1 follows)

2 DIRECT EXAMINATION

3 BY MS. O'BRIEN:

4 Q Sir, would you state your full name? Spell your first
5 name and your last name, so the recording shows.

6 A Dwayne Allen (phonetic) Junior Lalonde. D-w-a-y-n-e.
7 Lalonde, L-a-l-o-n-d-e.

8 MS. O'BRIEN: Judge, are the microphones
9 sensitive enough at counsel table to pick me up or does
10 the Court prefer me to stand at the podium?

11 THE COURT: Absolutely not. You may move
12 around the courtroom.

13 MS. O'BRIEN: Okay, thank you.

14 BY MS. O'BRIEN:

15 Q Mr. Lalonde, is that how you pronounce your name?
16 Lalonde?

17 A Lalonde.

18 Q Lalonde. Do you know this person I'm pointing to? To my
19 right, right here?

20 A Yes, I do.

21 Q How do you know him?

22 A Detective Pankey.

23 Q And have you met him before?

24 A Yes.

25 Q And what--how do you know him?

1 A I actually had some charges before and we got--we're
2 under the understanding to work a deal together. So,
3 that's how we've met each other.

4 Q And when you refer to that deal is--was that an
5 arrangement for you to assist Detective Pankey with
6 investigating narcotics crimes?

7 A Yes.

8 Q Okay and generally speaking, did you assist him with some
9 suspected marijuana sales that were supposed to be
10 happening in Waterford Township in January of this year?

11 A Yes, I did.

12 Q And if I understand you correctly, you stated to the
13 Court that you had your own charges and you have an
14 arrangement with Detective Pankey to work with him, is
15 that correct--

16 A Yes.

17 Q --or did I misstate it?

18 A That's it. Correct.

19 Q Okay and what did Detective Pankey tell you he would do
20 with regard to those charges if you assisted him?

21 MR. SCHOUMAN: Objection. Hearsay.

22 THE COURT: Sustained.

23 MS. O'BRIEN: Okay. That's fine.

24 BY MS. O'BRIEN:

25 Q Mr. Lalonde, I'd like to direct your attention to the

1 date of January 18th. Is that one of the dates you
2 worked with Detective Pankey?

3 A Yes, it is.

4 Q And on that date, was there an arrangement made to
5 purchase drugs in the Township of Waterford?

6 A Yes, it is.

7 Q Who made that arrangement?

8 A I did.

9 Q How did you make that arrangement?

10 A By a phone call.

11 Q Where was Detective Pankey when you made that
12 arrangement?

13 A Well, I spoke with him on the phone prior to the
14 arrangement and then I met him prior to the arrangement.

15 Q And when you say him, are you talking about the person
16 that you purchased marijuana from?

17 A No, I'm sorry. I spoke with Detective Pankey prior to
18 the arrangement and then I met Detective Pankey.

19 Q Okay and the person that you made the arrangement to
20 purchase marijuana from, had you spoken that person
21 before?

22 A Yes.

23 Q Had you purchased marijuana from him before?

24 A Yes.

25 Q Did you make the arrangement for a particular kind of

1 drug?

2 A Yes.

3 Q What was that kind of drug?

4 A Marijuana.

5 Q Did you make the arrangement for a particular amount?

6 A Yes.

7 Q What was that amount?

8 A On the January 18th?

9 Q Yes.

10 A I believe it was almost two ounces, 53 grams.

11 Q And was the price negotiated?

12 A Yes.

13 Q And what was that price?

14 A \$250.00.

15 Q At some point, did you meet with Detective Pankey?

16 A Yes.

17 Q Okay and did Detective Pankey engage in any efforts to

18 make sure you didn't already have drugs or money on you?

19 A Yes, he did.

20 Q What did he do?

21 A Searched myself and he searched the vehicle.

22 Q When you say, "The vehicle," whose vehicle?

23 A My vehicle.

24 Q And when you went to meet Detective Pankey, what vehicle

25 were you driving?

- 1 A 97--
- 2 Q That vehicle?
- 3 A Chevy Astro van.
- 4 Q Your own vehicle?
- 5 A Yes, that vehicle.
- 6 Q Okay. When you made the arrangement to purchase the
7 marijuana, did you make an arrangement to meet at a
8 particular place to do that?
- 9 A Yes, we did.
- 10 Q What was the place?
- 11 A Meijer's. Pontiac Lake Road in Waterford.
- 12 Q Did you go to that Meijer's?
- 13 A Yes.
- 14 Q How did you get there?
- 15 A By my vehicle.
- 16 Q You drove it?
- 17 A Yes.
- 18 Q Was anybody in that vehicle with you?
- 19 A No.
- 20 Q Did you go there immediately after meeting with Detective
21 Pankey--
- 22 A Yes.
- 23 Q --or did you go somewhere else first?
- 24 A No, straight there.
- 25 Q The \$250.00 that you were going to pay for the marijuana,

1 where'd you get that \$250.00?

2 A From Detective Pankey.

3 Q When you went to the Meijer's in Waterford, were you
4 meeting inside the Meijer's, in the parking lot,
5 something different?

6 A In the parking lot.

7 Q How did you know where to go?

8 A Just by contacting--verbal contact between us both.

9 Q Verbal contact with the seller?

10 A Yes.

11 Q Were you to go to a particular area of the parking lot?

12 A Yes.

13 Q Did you go there?

14 A Yes.

15 Q Okay and did you see the person that was supposed to sell
16 you the marijuana arrive?

17 A Yes.

18 Q And did that person arrive on foot, in a vehicle,
19 something different?

20 A Vehicle.

21 Q Do you remember what kind of vehicle?

22 A I believe it to be a black Malibu.

23 Q Okay and that black Malibu, did it--did it park near you,
24 park away from you, how did you--

25 A Next to me.

- 1 Q --make contact?
- 2 A Next to me.
- 3 Q Right next to you?
- 4 A Yeah.
- 5 Q At some point, did you have contact with the person in
6 the Malibu?
- 7 A Yes.
- 8 Q Did the person in the Malibu get out of the car or did
9 you get out of your car? How'd that happen?
- 10 A I got out of my car.
- 11 Q And did you get into that car? Did you meet at the
12 window? Something different?
- 13 A In the car.
- 14 Q Got into the black Malibu?
- 15 A Yes.
- 16 Q How many people were in the black Malibu?
- 17 A Just one.
- 18 Q Just one besides you?
- 19 A Yes.
- 20 Q The person that was in the black Malibu, that was the
21 driver?
- 22 A Yes.
- 23 Q Do you see that person in the courtroom now?
- 24 A Yes, I do.
- 25 Q Would you indicate where that person is sitting and

1 something that person's wearing? So the record will
2 reflect.

3 A The black suit, white shirt with a tie.

4 MS. O'BRIEN: Judge, may the record reflect
5 the identification of the Defendant by Mr. Lalonde?

6 THE COURT: Any objections?

7 MR. SCHOUMAN: No, your Honor.

8 THE COURT: The record will reflect.

9 BY MS. O'BRIEN:

10 Q When you got in the black Malibu, did an exchange take
11 place?

12 A Yes.

13 Q And what happened?

14 A I was handed the marijuana and checked it over and handed
15 him the money.

16 Q And you were handed the marijuana by the Defendant?

17 A Yes.

18 Q Okay and you handed the money to?

19 A The Defendant.

20 Q Was the marijuana packaged in any way? Do you remember?

21 A Yes.

22 Q And how was that?

23 A On--in that time, I believe it was in two different
24 packages. In baggies.

25 Q Baggies?

- 1 A Yes.
- 2 Q About what period of time did you spend in the vehicle?
- 3 Do you recall?
- 4 A Five minutes at most.
- 5 Q And what'd you do when you got out?
- 6 A Went back to my own vehicle. Drove back across the
- 7 street.
- 8 Q And who, if anyone, did you meet with there?
- 9 A Straight to meet Detective Pankey.
- 10 Q Stop anywhere in between?
- 11 A No, I did not.
- 12 Q What'd you do with the marijuana you'd been given?
- 13 A Handed it off to Detective Pankey.
- 14 Q What, if anything, did Detective Pankey do to make sure
- 15 you didn't keep some of the marijuana, keep some of the
- 16 money he gave you?
- 17 A Searched me also and looked around the vehicle also
- 18 again.
- 19 Q Okay. Was there a second time--well, was there another
- 20 time that you purchased marijuana from the Defendant?
- 21 A Yes.
- 22 Q One of those dates be on or about January the 21st?
- 23 A Yes.
- 24 Q How did the arrangement get made?
- 25 A Same thing. By between text messages and verbal.

- 1 Q Who made the contact?
- 2 A I did.
- 3 Q And who'd you make the contact with?
- 4 A With the Defendant.
- 5 Q Did you arrange to purchase some drugs?
- 6 A Yes, I did.
- 7 Q What kind of drugs?
- 8 A Marijuana.
- 9 Q Did you arrange to purchase a certain quantity?
- 10 A Yes, I did.
- 11 Q How much?
- 12 A I believe that time was two ounces.
- 13 Q Was a price negotiated?
- 14 A Yes.
- 15 Q What was the price?
- 16 A \$500.00.
- 17 Q Was a meeting spot arranged?
- 18 A Yes.
- 19 Q Where was the meeting spot?
- 20 A Also again at the Meijer's.
- 21 Q Same Meijer?
- 22 A Yes.
- 23 Q Approximately the same spot?
- 24 A Yes.
- 25 Q Did you meet with Detective Pankey prior to meeting with

1 the Defendant?

2 A Yes.

3 Q And what, if anything, did Detective Pankey do that time
4 to make sure that you didn't bring marijuana with you to
5 the deal?

6 A Also patted me down and looked through the vehicle.

7 Q This your vehicle?

8 A Yes.

9 Q Then, did you go to the Meijer?

10 A Yes.

11 Q Did you go straight there?

12 A Yes.

13 Q Stop anyplace in between?

14 A No, I did not.

15 Q Okay and did you meet with the Defendant?

16 A Yes, I did.

17 Q And when you met with the Defendant on January 21st, how
18 did the Defendant arrive there, if you know?

19 A By vehicle. Parked right next to me again.

20 Q Same black Malibu?

21 A Yes.

22 Q Did an exchange take place?

23 A Yes, it did.

24 Q Where did the exchange take place?

25 A In his vehicle.

1 Q You got in his vehicle?

2 A Yes.

3 Q Was there anybody else in there with him that time?

4 A No, there was not.

5 Q Describe for the Judge how the exchange took place that
6 time.

7 A Same thing. We had spoke, passed on a few words, and I
8 was handed the marijuana and I handed the cash and
9 stepped out of the vehicle.

10 Q And the cash that you handed him, where did you get that
11 cash from if I didn't ask you this already?

12 A I got it from Detective Pankey.

13 Q Remember how that marijuana was packaged?

14 A I believe also in two bags.

15 Q When you got out of the Malibu, then what did you do?

16 A Got back to my vehicle and drove back across the street.

17 Q And did you meet with anybody across the street?

18 A Yes, Detective Pankey.

19 Q Stop anywhere in between?

20 A No, I did not.

21 Q What did you do with the marijuana you'd been handed?

22 A Handed it over to Detective Pankey.

23 Q And how, if at all, did Detective Pankey make sure you
24 didn't keep some of the marijuana or keep some of the
25 money he had given you?

- 1 A He also searched me again and looked around the vehicle.
- 2 Q Okay. Did you purchase marijuana from the Defendant
- 3 again at a date after January 21st?
- 4 A Yes, I did.
- 5 Q Would it be on or about January 23rd?
- 6 A Yes, that sounds right.
- 7 Q Who made the arrangement? Who made the first contact to
- 8 purchase that marijuana?
- 9 A I did.
- 10 Q How'd you do it this time?
- 11 A By phone.
- 12 Q And was the arrangement for a certain quantity?
- 13 A Yes.
- 14 Q Do you recall what that was?
- 15 A I believe it to be three ounces.
- 16 Q About three ounces?
- 17 A Yes.
- 18 Q Was the price negotiated?
- 19 A Yes.
- 20 Q And what was that price?
- 21 A \$750.00.
- 22 Q Was a place negotiated to meet?
- 23 A Yes.
- 24 Q Where was that?
- 25 A The same place. At the Meijer's in Waterford.

- 1 Q Okay. Did you meet with Detective Pankey first?
- 2 A Yes, I did.
- 3 Q What did Detective Pankey do this time to make sure that
- 4 you weren't bringing your own marijuana to the deal?
- 5 A Also searched me again and looked through the vehicle.
- 6 Q Any of these times that Detective Pankey searched you
- 7 either on the 18th, the 21st, the 23rd, did he find any
- 8 other drugs on you?
- 9 A No, he did not.
- 10 Q Find any other money on you?
- 11 A No, he did not.
- 12 Q Find any other money or drugs in your car?
- 13 A No, he did not.
- 14 Q After he searched you and the car, what did you do?
- 15 A Got back in my vehicle and drove back across the street.
- 16 Oh, I'm sorry. Is this after that I just met him? I'm
- 17 sorry.
- 18 Q You had met with Detective Pankey, searched you and your
- 19 vehicle as I recall you saying?
- 20 A Yes and then I got in my vehicle and left.
- 21 Q Okay and where'd you go?
- 22 A This was after I'd already met?
- 23 Q This is prior--
- 24 A Prior? Sorry--
- 25 Q This was prior to the purchase--

- 1 A Back across the street to Meijer's.
- 2 Q --we hadn't gotten that far yet, yup.
- 3 A Sorry. Back across the street to Meijer's.
- 4 Q Okay. Stop anywhere in between?
- 5 A No, I did not.
- 6 Q The \$750.00 you were going to pay for the marijuana;
- 7 where did that come from?
- 8 A Detective Pankey.
- 9 Q Did you meet with the Defendant?
- 10 A Yes, I did.
- 11 Q Did you arrive with anybody else or alone?
- 12 A No, alone.
- 13 Q In a car, on foot, something different?
- 14 A In a car.
- 15 Q Same car?
- 16 A Yes.
- 17 Q Tell the Judge how that exchange took place.
- 18 A Also pretty much the same way. Passed on a few words,
- 19 grabbed--got the marijuana, looked at it, handed him the
- 20 cash, stepped out of the vehicle and back into my vehicle
- 21 and left.
- 22 Q Where were you when the exchange took place?
- 23 A In his vehicle.
- 24 Q And he handed you the marijuana?
- 25 A Yes.

- 1 Q Was it--did it look to you to be approximately three
2 ounces?
- 3 A Yes.
- 4 Q Have you bought marijuana before?
- 5 A Yes.
- 6 Q You know about what an ounce of marijuana looks like?
- 7 A Yes, I do.
- 8 Q Okay and the \$750.00 you handed directly to him?
- 9 A Yes, I did.
- 10 Q About how long was the meeting?
- 11 A Approximately five minutes.
- 12 Q I'm sorry, did you say you got in your vehicle and left?
- 13 A Yes, I did.
- 14 Q And where'd you go?
- 15 A Back across the street to meet Detective Pankey.
- 16 Q Okay and what did Detective Pankey do to make sure--what
17 did you do with the marijuana?
- 18 A Handed it over to Detective Pankey.
- 19 Q And did he do anything to make sure you didn't have
20 additional marijuana you kept on your person?
- 21 A Yes, he looked--searched me and looked through vehicle
22 again.
- 23 Q Same question with regard to you keeping any of the
24 money.
- 25 A Same thing.

1 Q Searched you?

2 A Yes, ma'am.

3 Q Did he find any marijuana or money on you or in your
4 vehicle?

5 A No, he did not.

6 MS. O'BRIEN: Judge, may I have one moment?

7 THE COURT: Sure.

8 MS. O'BRIEN: Judge, I have nothing further
9 for this witness. Pass to Mr. Schouman.

10 THE COURT: Cross-examination Mr. Schouman?

11 MR. SCHOUMAN: Thank you.

12 CROSS-EXAMINATION

13 BY MR. SCHOUMAN:

14 Q Who'd you meet first, Detective Pankey or Mr. Tuttle?

15 A Detective Pankey. I'm sorry. In regards in overall or
16 the first of the any of the histories?

17 Q The first time you ever met. Who'd you meet first?

18 A I met Mr. Tuttle first.

19 Q How long before you met Detective Pankey?

20 A Approximately, I would say, a couple months.

21 Q Okay. So, you knew Mr. Tuttle and something happened in
22 between the time you met Mr. Tuttle and that introduced
23 you to Detective Pankey, correct?

24 A Yes. Correct.

25 Q What was that?

- 1 A I also--I got--my house got raided and I got--with intent
2 to deliver.
- 3 Q Raided for what?
- 4 A Marijuana.
- 5 Q So, you had marijuana in your house?
- 6 A Yes.
- 7 Q How much marijuana did you have in your house?
- 8 A I was actually currently growing with my medical card and
9 I had some loose marijuana. I'm not sure of the amounts.
- 10 Q So, you had--when you say medical card, are you talking
11 about the card approved by the State of Michigan to grow
12 marijuana legally?
- 13 A Yes, correct.
- 14 Q Okay. Well, then, why did you get in trouble?
- 15 A Because I had some loose marijuana.
- 16 Q I--
- 17 A Over the amount, sorry.
- 18 Q All right. So, how much were you allowed to have?
- 19 A Allowed to have two and a half ounces.
- 20 Q Okay and you had more than two and a half ounces?
- 21 A Yes, I believe.
- 22 Q Okay. So, you were a medical marijuana patient?
- 23 A Yes.
- 24 Q Did Mr. Tuttle know that you were a medical marijuana
25 patient?

1 A Yes.

2 Q Okay. Did you know that Mr. Tuttle was a medical
3 marijuana caregiver?

4 A Not proven, but yes. By talking about it.

5 Q Okay. So, you had a conversation with my client that's--
6 went something to the effect of, "I'm a patient and your
7 a caregiver." Fair statement?

8 A Yes.

9 Q Okay. I believe you testified that you had some text
10 messages from my client that would pertain to these dates
11 that you've been talking about with the Prosecutor?

12 A Yes.

13 Q Do you still have those messages?

14 A No, I do not.

15 Q What happened to those messages?

16 A They've been erased in between the times of maybe a
17 broken phone also.

18 Q Did you ever show these messages to anybody?

19 A No.

20 Q Never showed them to Detective Pankey?

21 A No.

22 Q Nobody asked you to preserve these messages in any way,
23 shape or form?

24 A No, sir.

25 MR. SCHOUMAN: Thank you. No further

1 questions, your Honor.

2 THE COURT: Any redirect?

3 MS. O'BRIEN: Yes. Just one question, Judge.

4 REDIRECT EXAMINATION

5 BY MS. O'BRIEN:

6 Q Mr. Lalonde, is Mr. Tuttle listed with the medical
7 marijuana registration office in the State of Michigan as
8 your caregiver as a medical marijuana patient?

9 A No, he isn't.

10 MS. O'BRIEN: Nothing further, Judge.

11 THE COURT: All right. Thank you. You may
12 be excused. Your next witness?

13 (At 2:18 p.m., witness excused)

14 MS. O'BRIEN: Judge, the People call Detective
15 Mike Pankey.

16 THE BAILIFF: Detective, if you'll raise your
17 right hand. Do you solemnly swear to tell the truth, the
18 whole truth, and nothing but the truth, so help you God?

19 DETECTIVE PANKEY: I do. Your honor, once
20 again, I apologize about my attire. I'm working today.

21 THE COURT: Okay. Thank you.

22 DETECTIVE MICHAEL PANKEY

23 (At 2:19 p.m., sworn as a witness, testified
24 as follows)

25 DIRECT EXAMINATION

1 BY MS. O'BRIEN:

2 Q Sir, would you state your full name. Spell your first
3 and last name for the Court Reporter?

4 A Michael Pankey. M-i-c-h-a-e-l P-a-n-k-e-y.

5 Q Where do you work?

6 A I'm a Detective with the Oakland County Sheriff's office.

7 Q How long have you served in law enforcement?

8 A Graduated with the academy in '92. Hired on full-time
9 '94. Roughly coming up on 18 years, I guess.

10 Q What's your current assignment?

11 A I'm a Detective with NET, Narcotics Enforcement Teams.

12 Q What's your primary task as a NET detective?

13 A To investigate all low to mid-level street narcotics.

14 Q How long have you been assigned to NET?

15 A July will be six years.

16 Q Detective Pankey, are you the Officer In Charge of
17 suspected marijuana sales that were alleged to have
18 occurred in the Township of Waterford in the beginning of
19 January of this year?

20 A I am.

21 Q And did you engage in the investigation that reported
22 suspected sales?

23 A I did.

24 Q Okay and did you utilize an informant to do that?

25 A I did.

1 Q The Court's already heard the testimony of your informant
2 and what the informant states his activities were on the
3 dates of January 18th, January 1st (sic), and January
4 23rd. But if I could, I'd like to ask you for some
5 testimony for the Court's sake and for the Defense's sake
6 to supply what's the police activity during those same
7 three incidents if I could.

8 A Okay.

9 Q On January 18th, 2012, did you meet with the informant?

10 A I did.

11 Q And what is your practice or your routine to make sure
12 that an informant does not bring his own drugs or money,
13 weapons, things of that sort to a planned transaction?

14 A Well, it's not just my practice, it's the practice of
15 NET, which means it's my practice. We're required to
16 pat-down an informant before and after a deal. This is
17 just--if he's without a vehicle, if I say drive in my
18 vehicle, I pat solely the informant down. If it was him
19 or her driving a vehicle, I'm required to pat not only
20 the person, but the vehicle they're driving down for
21 narcotics, weapons, or contraband.

22 Q Did you do that with Mr. Lalonde on January 18th?

23 A I did.

24 Q Detective Pankey, are you familiar with the appearance
25 and size of two ounces of marijuana?

1 A I am.

2 Q Packaged in two baggies roughly?

3 A I am.

4 Q Have you ever patted down a person before who was found
5 later to have ounces of--more than one ounce of marijuana
6 on them?

7 A More times than I can count.

8 Q Okay and the pat-down that you conducted of Mr. Lalonde,
9 will you describe for the Court how it was thorough
10 enough that you may have detected or may have missed any
11 marijuana in a quantity of two ounce that he might have
12 concealed on his person?

13 A The pat-down is just a little bit more intrusive than the
14 "Terry Pat-Down (phonetic)." Turn the pockets inside
15 out, squeeze the pockets, squeeze areas that I believe
16 that could be of contraband. Males, I check by their
17 groin. That's the most common place that I find it or in
18 the back of their pants. It's not a strip search. It's
19 not a cavity search, but after that pat-down, I've done
20 everywhere I possibly can on the person where I think
21 they could conceal it. Mostly pockets, squeezing
22 pockets, turning pockets out and touch of their person.

23 Q Okay. Mr. Lalonde said on each of these occasions he
24 drove his vehicle to the planned meet spot with the
25 Defendant. Did you also search his vehicle?

1 A I did.

2 Q And what'd you do?

3 A Once again, without dismantling the vehicle on the side
4 of the road, I searched basic areas I believe it could
5 be. Looked under the seats, looked in the glove box,
6 looked behind the seats, looked through the vehicle to
7 see if I could discover marijuana. Once again, I didn't
8 dismantle the vehicle in the time frame I had, but I
9 searched anywhere in his immediate control that he could
10 get to.

11 Q On January 18th, when Mr. Lalonde left after you
12 conducting this search of him and have you provided him
13 the money that he stated was provided as well?

14 A That's correct.

15 Q Okay. When he left, was he observed in any way?

16 A I surveilled him. It was my responsibility because he's
17 my CI. I surveilled him directly from my immediate
18 location where I patted him down and provided him his
19 U.S. currency to the Meijer's parking lot. I kept eyes
20 on him the whole time.

21 Q How did you do that?

22 A I'm in my vehicle and I followed him--his vehicle. I
23 leave a gap. I'm not right on his bumper, but I leave a
24 gap so that he's always in my line of sight and then
25 surveillance is established on him in the parking lot.

1 Q Okay. Did you ever lose sight of him from the time you
2 searched him in the beginning to the time you searched
3 him at the end of the transaction?

4 A Between myself and the other detectives, no. Sight was
5 not taken off of him.

6 Q Okay and when--he states at some point he entered the
7 vehicle of the Defendant. Were you able to see inside
8 the vehicle?

9 A No. The windows on the suspect vehicle are dark.

10 Q Is it fair to say that at the time then, the witness was
11 inside the vehicle, you would not have been able to see
12 him then?

13 A That's correct.

14 Q Okay. When you met again with Mr. Lalonde after the
15 transaction, did you conduct the same search?

16 A That's correct. He was surveilled from--this time from
17 the Meijer's parking lot back to the meet location, which
18 was across the street.

19 Q Okay.

20 A I met up with him. I immediately walked up. He provided
21 me with the marijuana. I put the marijuana on my person
22 and then I once again--I searched the vehicle and I
23 searched him looking for money and to make sure--to be
24 honest with you to make sure he's not stealing my money--
25 if he get caught with less money. I check for money and

- 1 I checked for additional narcotics in case he removed
2 some--the narcotics from the purchased amount; none was
3 discovered.
- 4 Q The marijuana that was provided to you, was a field test
5 conducted of that marijuana?
- 6 A I field test it using a Duquenois-Levine (phonetic) Field
7 Test.
- 8 Q And what was the result?
- 9 A Tested positive for the presence of marijuana.
- 10 Q Do you recall the approximate weight?
- 11 A Without looking at my report, I believe it was 53 grams
12 the first time.
- 13 Q Okay. The next date, same questions for you without
14 belaboring the record to go through each. Was the same
15 procedure followed?
- 16 A That's correct.
- 17 Q Okay. Same procedure followed afterward?
- 18 A That's correct.
- 19 Q Did--same procedure with regard to the surveillance?
- 20 A That's correct.
- 21 Q Was--were eyes kept on the witness the entire time--
- 22 A That's--
- 23 Q --to and from the transaction.
- 24 A That's correct.
- 25 Q Were you unable to see inside the vehicle during the

1 second transaction?

2 A That's correct.

3 Q Okay.

4 A The only difference on this was the amount of money we
5 provided. This time it was \$500.00 that was provided
6 instead of the 250 previously.

7 Q Was it still for two ounces?

8 A That's correct.

9 Q What happened to the marijuana when you met again?

10 A It was handed back to me and once again searched the
11 vehicle, searched the--my CI's person. I field tested
12 the marijuana using the Duquenois-Levine (phonetic) Field
13 Test. I am trained in that field test and then I
14 conducted it--hundreds upon hundreds of times.

15 Q Do you recall the approximate weight that time?

16 A Not without my report, I do not.

17 Q Would that refresh your recollection?

18 A It would if I look at it real quick. Just for a--

19 MS. O'BRIEN: Judge, may I approach Detective
20 Pankey?

21 THE WITNESS: --just for the weight.

22 THE COURT: You may.

23 THE WITNESS: It was in two baggies and they
24 were labeled.

25 (At 2:26 p.m., Prosecutor gives witness

1 document)

2 MS. O'BRIEN: You take a look at that. Let me
3 know if it refreshes your recollection.

4 THE WITNESS: Sure--I--just all I need to do
5 is that the weight--the--65.8 grams total. There was two
6 separate baggies.

7 (At 2:26 p.m., witness returns document to
8 Prosecutor)

9 THE WITNESS: And in this weight that I am
10 receiving, it's in its packaging. Being the plastic
11 baggies. It's not dumped out.

12 BY MS. O'BRIEN:

13 Q Okay. So, it's a gross weight and that weight might be
14 something actually less?

15 A That's correct.

16 Q Date of January 23rd that Mr. Lalonde describes, same
17 procedure followed?

18 A Yes.

19 Q Searched before and after?

20 A That's correct.

21 Q Person and car?

22 A That's correct.

23 Q Surveillance to and from?

24 A That's correct.

25 Q Lose sight of the witness only at the time that he's in

1 the Malibu with the Defendant?

2 A That's correct. The only thing different on this one is
3 instead of providing the \$500.00 like I testified on the
4 last one, this time there were \$750.00. We were--were
5 scheduled to purchase three ounces of marijuana.

6 Q At some point, did the witness hand you some marijuana?

7 A He did.

8 Q Do you recall the approximate weight of that marijuana?

9 A I believe it was 90--90 some grams.

10 Q Was it--it was about three ounces then?

11 A That's correct and I field--once again, I field tested
12 that marijuana again using the Duquenois-Levine
13 (phonetic) Field Test.

14 Q Do you recall how that was packaged?

15 A It was in three separate baggies.

16 Q Detective Pankey, as the Officer In Charge of the case,
17 did you arrange for the surveillance of the Defendant as
18 well to and from the meet spots?

19 A That's correct.

20 Q Did you do that or did another officer?

21 A Another officer did that.

22 Q Based on information that was gathered, was a search
23 warrant obtained for a certain address?

24 A It was.

25 Q Do you recall what that address was?

1 A I'm sorry. Without my report it was on Grandview
2 Boulevard in the Township of Waterford. I need the
3 numbers that I--my report will show me.

4 Q If I told you that your report said 1629 Grandview, would
5 you dispute that?

6 A No, I wouldn't.

7 Q When the search warrant was--was that search warrant
8 executed?

9 A It was.

10 Q Was it executed--how close in time after that January
11 23rd transaction?

12 A After the transaction, the suspect at that time was--we
13 had set up with a uniformed officer from Waterford Police
14 station, fully marked car, fully marked uniform and that
15 detectives to stop the suspect down the road. After that
16 suspect was stopped and taken into custody, the vehicle
17 taken a hold of and also anything on this person
18 discovered, then we executed the search warrant after
19 that. So, it would be approximate, if a guess, for 30
20 minutes 40 minutes maybe.

21 Q Okay. Did you participate in the execution of a search
22 warrant at that Grandview address?

23 A I did.

24 Q What--tell the Judge, what's at that address. Commercial
25 building, apartments?

1 A It's a residential--it's a residential house. A nice
2 little house. Residential with the backyard, a fence.
3 We responded to that address. Knocked on the--we're in a
4 raid--a raid outfits, a black vests says police all over
5 it, all 360 degrees on us.

6 Q Were you alone or were you with other officers?

7 A No, I was with my officers as well as a Waterford police
8 marked unit.

9 Q Could you tell if the house was occupied.

10 A It was occupied.

11 Q How did you know that?

12 A Lights were on in the house and then I saw a female in
13 the house.

14 Q Adult female or child.

15 A Adult female. As well as another male, young male looked
16 to be about 18/19 years old.

17 Q Okay. Did they answer the door?

18 A No, they did not.

19 Q From what you could observe, was there any question about
20 whether they knew police were at the door or somebody's
21 at the door?

22 A No, there's no--with how we were dressed and what we were
23 wearing, there was--there's no questioning it. Plus the
24 uniformed car outside and the--and the uniformed police
25 officer and plus in the Waterford police uniform and then

1 all of us in our outfits that say police or sheriff 360
2 degrees on our person plus our verbal commands yelling,
3 "Police, Sheriff open doors. Sheriff's Department open
4 the door," several times.

5 Q Were you able to enter?

6 A Eventually.

7 Q How'd you enter?

8 A We had--we were forced. There was a dog in the house. I
9 believe there was a Doberman pinscher. We did not want
10 to shoot the dog if we did not have to. We yelled at
11 least 10 times, "Open the door, Police." The female and
12 the male would not open the door or they stood away from
13 the door. They looked confused. Didn't know what they
14 wanted to do. Eventually we broke the window, not on the
15 door, but on the house. Broke the window and yelled for
16 the person to get the dog, you know, or we're going to
17 have to shoot it.

18 Q Did they do that?

19 A They eventually got the dog. They still didn't open the
20 door. So, we were forced to use our "Ram" breaching
21 (phonetic) tool to get into the house.

22 Q Okay.

23 A Then once in the house, back to your question if they
24 knew there were police, there was no way they could not.
25 They have a very nice surveillance system showing the

1 front of the house and the door and they could see right
2 on the camera where we were.

3 Q Where was the camera?

4 A I don't know where the camera was. I was looking at the
5 monitor. It was facing the front of the house. You
6 could see the house.

7 Q Okay. Did you participate in the actual search of the
8 house?

9 A I did.

10 Q Did other officers as well?

11 A They did.

12 Q What's your task there as the Officer In Charge at the
13 scene?

14 A I'm the Officer In Charge of the scene since it's my case
15 where I put on--we do not stay in the one room. I go
16 from room to room. When officers discover something or
17 about to discover something, I'm there to assist them.
18 Once they put eyes on where they discovered it, they
19 collect it, and then later turn it over to me.

20 Q Okay and a report is eventually prepared?

21 A That's correct.

22 Q Is that your task as the Officer In Charge?

23 A It is my task, yes.

24 Q When officers draw your attention to what's found in the
25 room, are they to have touched it or moved it in any way?

1 A At that time, no. They show it to me and then it is
2 photographed and then once I know about it they retrieve
3 it or obtain it.

4 Q Okay. Where photographs taken at the scene at this--

5 A They were.

6 Q --search warrant execution? I don't know if I have those
7 Detective Pankey. So, I'll just make a record if I
8 don't, I need to get those from you and I need to provide
9 him for--to Mr. Schouman.

10 MS. O'BRIEN: I didn't give you those did I?

11 MR. SCHOUMAN: No, I don't have any.

12 MS. O'BRIEN: Okay.

13 BY MS. O'BRIEN:

14 Q If we could go through the house search and what, if
15 anything, was found in each of the rooms of the house.
16 Was there a bedroom in the house?

17 A There was.

18 Q Was there any bedroom that appeared to be a master
19 bedroom?

20 A There was.

21 Q And by what determination did somebody decide that's a
22 master bedroom?

23 A Larger room. Male and female clothes. The resident--the
24 female resident of the house stated that was her bedroom.
25 As well as, you know, where they said their bedroom.

1 Her--

2 MR. SCHOUMAN: I'm going to object. It's
3 hearsay, your Honor.

4 BY MS. O'BRIEN:

5 Q Okay. In staying away from what anybody might've told
6 us, were you still able to make that determination?

7 A I was.

8 Q Adult male and female clothing you stated were in the
9 same bedroom?

10 A Correct.

11 Q Was there a bed in the room?

12 A Yes.

13 Q Single twin bed?

14 A I don't remember the size. It wasn't a twin.

15 Q Okay.

16 A It could have been a full or queen or better. I don't
17 recall the size.

18 Q Okay. What, if anything, was found in that bedroom that
19 would be of significance to your investigation?

20 A There was a safe in the room in the closet. That safe
21 was forced open because we didn't have the combination.
22 The safe was forced open. A couple handguns were found
23 in that safe. I believe an "H" and "K" would be Heckler
24 and Koch (phonetic)--I believe that one was a .45 and
25 then the 9 millimeter. I want to say it was his Glock,

1 but it's was a 9 millimeter. And then in the same closet
2 was a survival vest with rifle magazines--loaded rifle
3 magazines in it. Canteen (phonetic) belt holster for a
4 pistol hanging in the closet that the safe was found in.
5 Medical marijuana paperwork in the safe which in the
6 name of the Defendant. I believe his wife, and her
7 birth--I believe that's it for that room at the top of my
8 head.

9 Q Do you recall by heart everything that was found in the
10 safe?

11 A Off the top of my head, no. Just what I saw when they
12 opened it up. The guns and the medical marijuana
13 paperwork.

14 Q If you are able to look at your report, would that
15 refresh your recollection?

16 A Yes.

17 MS. O'BRIEN: You stated essentially, but--
18 Judge, may I approach?

19 THE COURT: You may.

20 (At 2:33 p.m., Prosecutor hands witness
21 document)

22 THE WITNESS: Just like I stated minus the
23 \$350.00.

24 (At 2:34 p.m., witness returns document to
25 Prosecutor)

1 MS. O'BRIEN: Okay.

2 THE WITNESS: That I found in there and
3 according to my report, two extra magazines. One extra
4 magazine for each of the weapons.

5 MS. O'BRIEN:

6 Q Do you know if those guns were loaded?

7 A They were.

8 Q Was there a basement in the house?

9 A There was.

10 Q Did you go in the basement?

11 A I did.

12 Q Was there anything in the basement found of significance
13 to your investigation?

14 A Yes.

15 Q What's that?

16 A There were two large gun safes. Very nice gun safes.
17 Large, at the bottom of the stairs. It's--the basement
18 was cramped. There was lots of articles of possessions
19 and what not unrelated to the case. Just a typical
20 basement that's filled up with have (phonetic). It had
21 two very large safes at the bottom of the stairs when you
22 enter. Like across the room there's two--it's a very
23 small area. Two safes. We didn't have the combinations
24 of those. So, we had a call Waterford police to get
25 the--I used to call them the "Jaws of Life," you know, to

1 open them up because they were very heavy-duty safes.

2 Q Okay. Where was the Defendant when the search was taking
3 place?

4 A He was in custody in the Oakland County jail at that
5 time.

6 Q Okay. Was anything found in the safes that was of
7 significance to you as an investigator?

8 A Yes.

9 Q What's that?

10 A Several weapons.

11 Q Do you recall by heart everything that was found in those
12 safes or would it help you to refer to your report?

13 A I could--I could get the report back, I could tell you
14 primarily the amount of weapons?

15 Q Okay.

16 A Two--I believe two 53's. One was a Colt, I think one was
17 a Bushmaster, an AK-47, a Benelli (phonetic) a shotgun;
18 those were loaded. A Ruger 1022 carbine--I own that gun
19 as well, that's why I know that one. Another shotgun, I
20 believe it was an Italian shotgun. 30-30 I believe. It
21 was either a 30-30 or a 35. I think it was a 30-30. I
22 believe 90 plus magazines for these weapons and handguns.
23 Well over--I have listed 1000 rounds. I obviously did
24 not count every round, but I--to be well in the thousands
25 of rounds. There's going to be well over a thousand.

1 Q Okay.

2 A Thousands. Gun parts--I believe that's it.

3 Q Essentially, it?

4 A Essentially.

5 Q Okay.

6 A A lot--lots of gun stuff and guns.

7 Q Did the house have a garage?

8 A It did.

9 Q Did you go in the garage?

10 A I did.

11 Q Was anything found in the garage of significance to your
12 investigation?

13 A Yes. The garage was secured, locked. I believe it had a
14 Hasp (phonetic) lock with a padlock over the door was
15 locked. I don't recall which lock, but it was secured.

16 Q And is that the main garage door you're talking about? A
17 side door or something else?

18 A That would be--well, it's got--to be entered from the
19 back.

20 Q Is the garage attached or unattached?

21 A It's attached.

22 Q Attached?

23 A And we went through the back. Forced to enter the door--
24 was secured. In there was a--I'm going to refer to it as
25 a grow-tent basically. Cause it looks like a canvas ice

1 shanty, but not canvas, but a ice shanty and it was used
2 to grow marijuana plants.

3 Q Used to grow marijuana plants. Did you find anything
4 else in the garage of significance to you as an
5 investigator?

6 A Yeah. There was an under workbench. The counter in
7 there--there was a digital scales, packaging, a bowl, you
8 know, to put the marijuana with residue, to weigh the
9 marijuana. Packaging like Ziploc baggies. I think off
10 the top of my head of anything else. I believe that's
11 it. It's a--suspected subzilla (phonetic) mushrooms. I
12 got the tox (phonetic) report back. They weren't
13 subzilla (phonetic) mushrooms.

14 Q Okay. Would it help--

15 A Loose marijuana. Like eight grams of loose marijuana, I
16 believe.

17 Q Okay.

18 A 8.3 I think it was.

19 Q Do you remember how many marijuana plants were there?

20 A I believe 19 in the garage. 19 or 14, one or the other.
21 One had a room of 19 and one at 14, I believe.

22 Q Were there other marijuana plants found?

23 A Yes.

24 Q Where were those found?

25 A On the shed on the property.

1 Q Okay. Did you go in that shed?

2 A I did. I was there when the entry was forced into that.

3 Q Was the shed locked?

4 A It was.

5 Q Okay. What did you find in the shed, if anything?

6 A Medical marijuana paperwork posted up in there was given.
7 to me. Grow lights. A hydration system meant for
8 watering marijuana plants. Dry racks for marijuana buds
9 to be dried in. Marijuana plants being grown.

10 Q Do you recall how many marijuana plants were there?

11 A Without looking at my report, I'm not--I believe I'm
12 confusing the two rooms between saying 19 and the 14 that
13 I don't want to do that.

14 MS. O'BRIEN: Judge, may I approach?

15 THE COURT: You may.

16 (At 2:38 p.m., Prosecutor hands witness
17 document)

18 MR. SCHOUMAN: And your Honor, I have no
19 objections certainly for the detective to review his
20 report, but when he's done reviewing it, I'd ask that he
21 put it down. So, he doesn't read right off of it.

22 THE COURT: I think that's appropriate.

23 THE WITNESS: No problem. The garage--okay,
24 the garage was 19. The garage was 19 and the shed was
25 14. I didn't want to mix the two numbers up.

1 (At 2:38 p.m., witness returns document to
2 Prosecutor)

3 BY MS. O'BRIEN:

4 Q Total 33 plants?

5 A Correct, 19 and 14.

6 Q Were there marijuana plants found anywhere else the
7 house?

8 A There was some loose marijuana found in the shed as well.
9 I believe 30 grams of loose.

10 Q Okay. Anything else found in the shed?

11 A Not that I can recall, no.

12 Q In the shed and the garage, if you haven't said already,
13 that you said these marijuana plants were growing or had
14 they been pulled out?

15 A No, they were growing. They were actual plants. When I
16 refer to a plant, I don't mean a plant that's--cause then
17 it's not a plant. Something that's cut and harvested and
18 drying, that's not a plant. That's drying weight. A
19 plant that's actually alive with leaves and a root
20 system, that's a plant. So, I--

21 Q Do you recall the approximate height of these plants?

22 A I do not. Various stages of growth I can say.

23 Q Various stages?

24 A Correct.

25 Q Was there any equipment in either the garage or the shed

1 associated with growing those plants?

2 A Yes, like I testified. In the shed, hydration system,
3 you know, a water system. When I say grow lights, lights
4 hanging above them to facilitate the heat to grow the
5 plants. In the shed, they had two nice--I guess you'd
6 call them heaters. They look like humidifiers, but
7 they're actually heaters. Those are very nice. The grow
8 rack. They used that to--grow rack to dry the marijuana
9 once it's harvested--put it in there. In the garage, a
10 grow light. Those were in buckets, grow light. Just
11 articles to grow marijuana.

12 Q Okay. Detective Pankey, you said you forced entry into
13 the safes and into the locked garage and locked shed, is
14 that correct?

15 A That's correct.

16 Q Without talking about what she said, did you try and
17 access keys or combinations through the adult female/male
18 that was at the house?

19 A Yes, we did.

20 Q And what was the relationship, if you know, of the adult
21 female to the Defendant?

22 A I was informed it was the Defendant's wife and the
23 Defendant's stepson.

24 Q Were you able to access that information through the
25 occupants of the house--combinations or keys?

1 A No.

2 Q Okay. Detective Pankey, I'd like the Court to hear
3 something about your expertise in the field of narcotics
4 trafficking investigations if I could.

5 A Okay.

6 Q You've stated you've been in NET about six years?

7 A That's--July will be six years, yes.

8 Q Can you approximate for the Court the number of
9 controlled substance investigations you've investigated
10 yourself in your law enforcement career?

11 A Upper hundreds. High hundreds if not more.

12 Q Is there a certain percentage of them that you could
13 estimate involve the controlled substance marijuana?

14 A Probably, at this time probably, 60 percent. 55/60
15 percent.

16 Q Do you have any training in the police academy that
17 pertains to drug investigations?

18 A I did.

19 Q Have you had additional training beyond the police
20 academy?

21 A I have.

22 Q Could you approximate for the Court the number of hours
23 of additional training you participated in?

24 A It would be a guess. I can just tell you the schools I
25 went to. I've been to Michigan State Police basic and

1 advanced narcotics schools. I've been to advanced
2 marijuana outdoor and inter-cultivation (phonetic). Put
3 on the Michigan State Police and the DEA, Drug
4 Enforcement Agency--

5 THE COURT: Counsel, the Court is very aware
6 of Mr. Pankey's qualifications--

7 MS. O'BRIEN: I'm sorry, Judge. Has he been
8 qualified before?

9 THE COURT: So, unless it's necessary or
10 either of you--

11 MS. O'BRIEN: I should have asked.

12 THE COURT: Hold on.

13 MR. SCHOUMAN: Not from the Defense, your
14 Honor.

15 THE COURT: All right. Very good. If you
16 could just move on.

17 MS. O'BRIEN: Okay.

18 BY MS. O'BRIEN:

19 Q Detective Pankey, specific to marijuana, you're familiar
20 with its appearance?

21 A I am.

22 Q Familiar with certain varieties of marijuana?

23 A Yes.

24 Q Are you able to recognize by looking at harvested
25 marijuana, whether it's grown hydroponically or in soil?

- 1 A Predominately, yes. Well, no. To just by looking at it,
2 no. Soil and hydroponics, they're both the strain of the
3 same thing. Well, if they're grown differently, but you
4 can produce the same plant.
- 5 Q Okay. How about values associated with marijuana as it's
6 trafficked on the streets? Are you familiar with its
7 value on the street?
- 8 A I am.
- 9 Q How about methods of packaging marijuana for sale, are
10 you familiar with those different methods of packaging?
- 11 A I am.
- 12 Q What are some of those? Can you tell the Court?
- 13 A It ranges anywhere--distributing marijuana can be
14 anywhere from a marijuana pipe passing it to a marijuana
15 joint or a cigarette and rolling papers. All the way up
16 to garbage bags, pounds, pickup truck loads, Ziploc
17 baggies, coffee cans--well, I've purchased it all these
18 ways that I'm talking about.
- 19 Q How about typical quantities bought and sold on the
20 streets?
- 21 A The most typical quantity purchased is an ounce or a half
22 ounce.
- 23 Q Okay. On the streets, ounces and a half ounces?
- 24 A That's correct. That is the most typical purchase and
25 quarter ounce. Quarter ounces, half--eights, quarters,

1 half ounce and ounces are the most typical sales of
2 marijuana purchases.

3 Q You described some of the equipment that you stated was
4 being utilized to grow the marijuana at this Grandview
5 house, are you familiar with that equipment from your
6 experience and training as well?

7 A I am.

8 Q Seen grow operations before?

9 A Many.

10 Q Okay. Both as an investigator and as a part of your
11 training?

12 A That's correct.

13 Q Familiar with how marijuana is typically ingested?

14 A I am.

15 Q How is it most commonly ingested?

16 A It's most commonly smoked. However, it's ingested many
17 different ways.

18 Q How about paraphernalia utilized to ingest marijuana?
19 Are you familiar with that--what that is?

20 A I am.

21 Q Are you familiar with the risks associated with narcotics
22 trafficking?

23 A I am.

24 Q Are you also familiar as an investigator through your
25 experience and training with the steps that drug

- 1 traffickers take to protect themselves from those risks?
- 2 A I am.
- 3 Q Have you bought drugs yourself in an undercover capacity?
- 4 A More times than I can count.
- 5 Q Have you bought marijuana?
- 6 A I have.
- 7 Q Have you had the opportunity in your role as an
8 investigator to interview marijuana sellers about their
9 practices trafficking marijuana?
- 10 A I have.
- 11 Q How about users? Have you interviewed people who use
12 marijuana--of who've been candid with you about their
13 practices?
- 14 A I have.
- 15 Q Judge Debbrecht stated that she is familiar with your
16 training. So, it may be and I don't know that you've
17 been qualified as an expert in this court before, but
18 have you generally been qualified as an expert in the
19 field of street level narcotics trafficking in court
20 before?
- 21 A I have.
- 22 Q How many times?
- 23 A Multiple times I've been qualified as an expert in just
24 about every District Court in Oakland County as well as
25 Oakland County Circuit Court multiple times as well as a

1 Genesee--I'm sorry, Lapeer Circuit County Circuit Court
2 and District Court. I'm sorry, I said Lapeer. I
3 apologize; I mean Genesee County Circuit Court and
4 District Court multiple times.

5 MS. O'BRIEN: Judge, at this point, I make my
6 motion to ask the Court to qualify Detective Pankey as an
7 expert pursuant to rule 702.

8 THE COURT: Any objections?

9 MR. SCHOUMAN: Your Honor, for purposes of
10 exam only, I'm not going to object.

11 THE COURT: I will qualify him. He's more
12 than qualified. We'll limit it based upon that condition
13 to this examination only.

14 MS. O'BRIEN: Okay, thank you.

15 BY MS. O'BRIEN:

16 Q Detective Pankey, how common in your experience in
17 training and as an expert that the Court's now
18 recognized, is it for drug traffickers to possess
19 firearms?

20 A Very common.

21 Q You spoke a minute ago about your familiarity with the
22 risks associated with trafficking narcotics. What are
23 some of those risks?

24 A There's several risks. One risk outside of being
25 apprehended or arrested by the police. There's several

1 risks of one, being robbed for your product; being
2 whatever narcotic you're selling. Being shot for your
3 protection. Being robbed of your money and not only your
4 product. People come into your hut (phonetic) if you're
5 growing a product or storing a product at your house.
6 Your house being broken into. You need to protect your
7 product. It's not a very safe business.

8 MS. O'BRIEN: Judge, I don't think I have any
9 further questions for--oh, yes I do have one question.

10 BY MS. O'BRIEN:

11 Q The marijuana that was seized from the Grandview address,
12 the loose marijuana and the marijuana plants, were they
13 field tested?

14 A They were.

15 Q By who?

16 A By myself.

17 Q And what were the results of the field test of the
18 plants?

19 A They tested positive as marijuana using a Duquenois-
20 Levine (phonetic) Field Test and then they were sent to
21 the Oakland County crime lab on top of that.

22 Q And how about for the loose marijuana?

23 A We had, yes--those tested positive for marijuana.

24 Q Okay and did you test every single plant or just a
25 representative sample?

1 A No, a representative sample of the plants.

2 Q Did you send all the plants to the lab?

3 A I did.

4 Q And Judge, for the record, just today we have received a
5 copy of the crime lab report and I'll provide that to Mr.
6 Schouman as soon as I can make copies.

7 THE COURT: Very good. Thank you.

8 MS. O'BRIEN: Pass to Mr. Schouman.

9 THE COURT: All right. You're finished with
10 the Detective on direct?

11 MS. O'BRIEN: I am.

12 THE COURT: All right. One moment, Mr.
13 Schouman. If you would Detective, would you please spell
14 the field test for me?

15 THE WITNESS: Sure. D--I think--all right.
16 D-e-q-u-e-n-o-i-s hyphen l-u-v-i-n-e.

17 THE COURT: Thank you. For the Court
18 Recorder so--

19 THE WITNESS: D-u-q-u-e--Duquenois-Levine
20 (phonetic).

21 THE COURT: Mr. Schouman?

22 MR. SCHOUMAN: Thank you, your Honor.

23 CROSS-EXAMINATION

24 BY MR. SCHOUMAN:

25 Q Good afternoon, Detective. Nice to see you.

1 A Good afternoon. If I'm stuffy, I apologize. It's
2 allergies going on.

3 Q No problem. I want to take you back to--you've testified
4 that Mr. Lalonde was surveilled to a Meijer's store
5 apparently on three different occasions, fair statement?

6 A He was surveilled more than that, but we only--I believe
7 we only charged three.

8 Q Okay. I want to focus on those three occasions.

9 A Okay.

10 Q Okay. I believe you testified that between or among you
11 and others, Mr. Lalonde was constantly surveilled, is
12 that a fair statement?

13 A That is correct. Once he reached the parking lot from
14 point, "A" to point "B" that eye (phonetic) was mine. I
15 followed him directly to that parking lot. Once we got
16 in the parking lot, obviously, I can't park next to him
17 and I already had NET detectives in that lot watching not
18 only Mr. Lalonde, but watching me for my safety. My job
19 is to watch him; their job is to watch him and me and we
20 go in. If I lose my eye to turn around, they have the
21 constant eye on him and somebody's got an eye on me.

22 Q Okay. These three dates that we've discussed in January,
23 was there any time that you personally did not observe
24 Mr. Lalonde's car?

25 A There was. Like I testified. Once we--once I took Mr.

1 Lalonde to the Meijer's parking lot and he'd parked,
2 there were moments where I had to leave that spot to get
3 a better eye on the spot. So, my eye would've come off
4 at some points for five seconds here, fifteen seconds
5 there, while other NET detectives maintained an eye on
6 him while I did that.

7 Q Okay. About how far away were you from Mr. Lalonde's
8 vehicle when it was parked in the Meijer parking lot.

9 A It varied on all three times. I believe the first time,
10 I was approximately--that the parking lot--

11 Q Sure.

12 A --is, you know, Meijer's parking lot with the parking
13 rows (indicating). The first time, I believe, I was
14 approximately four rows away, maybe five. He had parked
15 more toward the Pontiac Lake side of Meijer's in the
16 parking lot there in the front lot. I was more toward, I
17 guess you'd say the center of Meijer's in between the two
18 power doors (indicating).

19 Q Were you aligned--okay, so you weren't--you were about
20 four rows away--

21 A Approximately.

22 Q --and you--were you at about the same position in the
23 parking lot or were you closer to the Meijer or closer to
24 Pontiac Lake?

25 A You know, I don't recall. I believe I was about halfway

1 through the lot. I couldn't tell you if I was closer to
2 Meijer or--well, I'd be closer to, well--Meijer sits on
3 the one side. The parking lot, you know, obviously runs
4 between M-59 and Pontiac Lake Road. I was in between
5 Pontiac Lake Road and I'm sorry, between M-59 and Pontiac
6 Lake Road in the lot about approximately halfway through.

7 Q And about four rows away from--

8 A Approximately, four rows.

9 Q Okay. Now, on January 23rd, you arrested--or my client
10 was arrested, fair statement?

11 A That's correct. That was the final purchase and
12 apprehension, yes.

13 Q Okay and when he was apprehended, did he have any weapons
14 on him to the best of your knowledge?

15 A No, he did not. He only had a speedloader or revolver in
16 the car, but that wasn't seized.

17 Q What's a speedloader?

18 A It's a--well, it's a automatic. It's a re-loader
19 (phonetic) for a revolver. It's a round circle that
20 holds five or six bullets (indicating). No bullets were
21 in it. You put bullets in it, put it in the gun, turn
22 it, throw it or speed load, but I carry it the same
23 thing.

24 Q Okay.

25 A It's not on my today, I have a badge (phonetic) on.

1 Q Just so I can be clear. There was no guns in the car
2 whatsoever?

3 A That is correct.

4 Q And it was--apparently too, there was no ammunition in
5 the car even?

6 A No, I don't believe there was no ammunition in the car.

7 Q Okay and then I believe, you went to an address in
8 Waterford to effectuate your search warrant?

9 A That's correct, sir.

10 Q Okay and at that address, you testified that there was
11 marijuana in a garage, fair statement?

12 A Yes.

13 Q Okay. Now, in that garage, was that garage--you stated
14 it was locked, correct?

15 A That's correct.

16 Q Okay and was it completely enclosed, the garage?

17 A Yes. On the garage--one, the front side, which I didn't
18 enter through that way, I actually went out that way.
19 The front side was a garage door.

20 Q Okay.

21 A The blue garage door closed; locked. The back was a
22 garage door. I mean, an entry door to get in there.

23 Q It's a fair statement that it was locked and enclosed?

24 A That's correct.

25 Q Okay and was there any way to get in there without

1 breaking down without breaking into the facility?

2 A By key. If you had a key to get in. That'd be the only
3 other way I can imagine.

4 Q Okay, but for you that day there wasn't an open door or
5 an unlocked door? It was locked down. You had to break
6 in, fair statement?

7 A That's correct, yes.

8 Q Okay. I'd like to ask you about the shed as well. Was
9 the shed also enclosed and locked?

10 MS. O'BRIEN: And Judge, if it would help Mr.
11 Schouman, People would stipulate that these facilities
12 met the definition of an enclosed locked facility for
13 purposes of the Medical Marijuana Act.

14 MR. SCHOUMAN: So stipulated? I'm--

15 THE COURT: All right. Very good.

16 MR. SCHOUMAN: --happy with that response.

17 THE COURT: The Court will accept the
18 stipulation, yes.

19 BY MR. SCHOUMAN:

20 Q Okay. So, we have these two buildings, the shed and the
21 garage, Okay? That are locked and enclosed. Did you
22 find any marijuana outside of the shed or the garage?

23 A No.

24 Q So, fair statement then to say there was no marijuana in
25 the house?

1 A No.

2 Q Okay. I'd like to ask you this next question. Did you
3 find any weapons in the garage or the shed?

4 A No, I did not.

5 Q Okay. Did you find any weapons in the house that weren't
6 locked in a safe?

7 A No. Everything was secured.

8 Q Everything was secured and these weapons that you spoke
9 about, I remember you said that you had a least one of
10 these guns yourself.

11 A Correct.

12 Q Anything illegal about the guns he had?

13 A To my knowledge, no. They all appeared to be legal.

14 Q Everything in the house as far as the guns go was legal,
15 fair statement?

16 A Appeared to be, yes.

17 Q Okay and getting into the safes was difficult? You had
18 to have the "Jaws of Life" at least with respect to the
19 basement safes?

20 A For me. Without having the combination. That's correct.

21 Q Okay and you also testified, I believe, that the basement
22 was cluttered? Is that a good word? Well, you didn't
23 use the word cluttered, but was this a cluttered
24 basement?

25 A It was--well, there was--yes, it was cluttered. Once you

- 1 come down the stairs, there was open area approximately
2 the size of where I'm sitting to that table (indicating).
3 Very small area. And the safes were where the Prosecutor
4 is sitting. Approximately that distance. Outside of
5 that area, that was very cluttered. There was a workout
6 room on one end; that was the only part that wasn't
7 cluttered. The rest of it was very cluttered. Christmas
8 decorations, trees, clothes, boxes that type thing.
9 Typical basement articles you would find.
- 10 Q Fair statement to say, it made it a little bit difficult
11 to get around?
- 12 A Except to get to the safes, that's correct. Easy access
13 to the safes I could testify, but besides that,
14 everything else was very cluttered.
- 15 Q Okay and this was down in a basement?
- 16 A That's correct.
- 17 Q Now, inside these safes you found medical marijuana
18 cards?
- 19 A The safe in the bedroom. Not the safe downstairs.
- 20 Q Okay.
- 21 A Two safes downstairs, a safe in the bedroom. The safe in
22 the bedroom, there was--I believe a passport, some
23 medical marijuana cards, expired and current--I believe
24 expired ones in that safe.
- 25 Q And current or just expired?

1 A It would be a guess. I don't recall at this time. I
2 believe they were expired, but I'm not sure. It might've
3 been current.

4 Q And did I hear your testimony right, that you found
5 medical marijuana cards somewhere else as well?

6 A Paperwork. Medical marijuana paperwork in the shed.

7 Q Okay. At any time during this investigation up to the
8 search, were you aware that Mr. Tuttle was a medical
9 marijuana caregiver?

10 A No, not at that time.

11 Q Never heard that from your Confidential Informant?

12 A The Confidential Informant informed me that he thought he
13 might've been, but he never seen the card because--

14 MS. O'BRIEN: Excuse me, Detective Pankey.
15 Judge, I think at this point, I'm going to object to the
16 relevance of what Detective Pankey thought about the
17 Defendant's status for purposes of the preliminary exam.

18 MR. SCHOUMAN: I'll ask a different question.

19 THE COURT: All right. Very good.

20 BY MR. SCHOUMAN:

21 Q At any time, did your Confidential Informant tell you
22 anything about my client being a medical marijuana
23 caregiver?

24 MS. O'BRIEN: I guess I'll make the same
25 objection. Might accept a yes/no answer because of

1 potential hearsay, but I still object to the relevance.

2 THE COURT: Well, it would be hearsay. So,
3 you know, unless you can ask it another way, I'm going--

4 MR. SCHOUMAN: Okay.

5 THE COURT: --to sustain the objection.

6 BY MR. SCHOUMAN:

7 Q I'll just simply ask then, are you aware that my client
8 was a medical marijuana caregiver on the dates in
9 question? Are you aware?

10 A At the time, no.

11 MS. O'BRIEN: If he was. If--

12 THE COURT: Well, hold on, Counsel. This is
13 his cross-examination. You'll have your opportunity to--

14 MS. O'BRIEN: Okay.

15 THE COURT: --redirect.

16 BY MR. SCHOUMAN:

17 Q Now, after the arrest you did a police report, correct?

18 A Correct.

19 Q In the police report, did you indicate that my clients
20 said anything about being a medical marijuana caregiver?

21 A Your client--then, I did not speak your client. He--when
22 he was stopped by the--stopped by us and the police, my
23 boss, Sergeant Miles, on scene began to ask him basic
24 questions because we're executing a search warrant. He
25 asked--stated that, "We have a search warrant for your

1 residence we're going to execute it or any persons in the
2 residence." We wanted him to know this so we don't go in
3 blind ourselves, but put anybody at risk. Your client
4 did answer that. Said his wife was there and I believe
5 he said his stepson. And we asked about if there were
6 any weapons in the house. At that time, he immediately
7 stated that he requested an attorney and that was the end
8 of the conversation.

9 Q Okay. So, you had that knowledge before you executed the
10 search warrant, fair statement?

11 A That there were persons in the house and possibly a dog,
12 a Doberman and that was it. That's the only knowledge we
13 had upon execution.

14 Q Okay. Fair statement to say that the only marijuana that
15 was actually ready to smoke, based on your experience,
16 was the eight grams in the garage and the thirty grams in
17 the shed?

18 A As far as--unless you want to smoke wet marijuana, which
19 can be done, but unless you don't want to, yes, that's
20 the only dry stuff.

21 Q Were there any--were all the plants we're talking about
22 ready to grow marijuana? Did they have marijuana buds on
23 them?

24 A I don't recall if they were budded or not, but just
25 because--as you know, Counsel, you smoke more than just

1 the buds. You can smoke the leaves and grind them up and
2 put them in hash and put them in edibles and do all kinds
3 of stuff with them. So, I don't recall if there was just
4 buds there or not at this time. I can just testify to
5 the plants. I don't remember without seeing my pictures
6 if there were buds on or not.

7 MR. SCHOUMAN: Thank you, detective. No
8 further questions at this time, your Honor.

9 THE COURT: Redirect, Counsel?

10 REDIRECT EXAMINATION

11 BY MS. O'BRIEN:

12 Q Detective Pankey, you said there was a passport in the
13 safe in the bedroom?

14 A That's correct.

15 Q Do you recall who's passport was?

16 A Mr. Tuttle's.

17 MS. O'BRIEN: Judge, I don't think I have
18 anything further for Detective Pankey.

19 THE COURT: Thank you, detective.

20 THE WITNESS: All right. Thank you.

21 (At 2:58 p.m., witness excused)

22 THE COURT: Any other witnesses?

23 MS. O'BRIEN: No further witnesses.

24 THE COURT: You rest?

25 MS. O'BRIEN: I do.

1 THE COURT: Mr. Schouman?

2 MR. SCHOUMAN: No witnesses, your Honor.

3 THE COURT: All right. Argument?

4 MS. O'BRIEN: Judge, at this time, the People
5 would make our motion to bind the Defendant over as
6 charged. Counts one, two and three are all delivery of
7 the controlled substance marijuana. Count four,
8 possession with intent to deliver the controlled
9 substance marijuana on the People and count five, the
10 felony firearm count that goes along with count four.
11 People would also seek to add charges count six of
12 manufacturing marijuana for the 33 marijuana plants that
13 were found in the Grandview house and a second count of
14 felony firearm to attach to that felony. The People
15 believe that the testimony of Mr. Lalonde and Detective
16 Pankey supports by at least a probable cause standard
17 that each of the elements of those crimes and the added
18 crimes have been met. Reserve further argument for
19 rebuttal.

20 THE COURT: Mr. Schouman?

21 MR. SCHOUMAN: Your Honor, as far as the
22 three counts that we're talking about with respect to the
23 delivery manufacture marijuana that I'm presuming
24 happened by the dates of the complaint at the Meijer's
25 store. I don't believe that the Prosecutor has actually

1 proven and two of those three counts that this was
2 marijuana. I believe the officer did testify that he did
3 the Ducane (phonetic) test. He certainly said on the
4 first one it tested positive for marijuana and that would
5 be the date of January 18th, but he never testified nor
6 was he asked whether the test came out positive on dates
7 January 23rd and January 21st as far as at the Meijer.
8 So, I think as a matter of law, they haven't proved their
9 case with respect to counts--which I would call counts
10 number two and counts number three. As far as adding an
11 additional count because we have two buildings on the
12 same property, I don't believe that that makes a case for
13 that as well. But most importantly, your Honor, I don't
14 believe that they've established the felony firearm in
15 this case. What we've seen is that we've had two locked
16 structures that are not inside of a house. That you have
17 to use locks to get into those structures. Then, from
18 there, you have to go into the house and open up a safe.
19 Okay, so your Honor, I don't even see where they've got
20 enough evidence for a constructive possession under this.
21 You've got the alleged crime being locked down and then
22 you've got a gun which is inside the house. Where
23 everything else was outside the house that was illegal;
24 it was established in a locked safe. No guns were in the
25 garage. No guns were in the shed. No gun was on him

1 when he was allegedly stopped. Based on that, your
2 Honor, I don't even see how you get constructive
3 possession of a firearm during the commission of a
4 felony. They weren't in the garage. They weren't in the
5 shed. They were in the house. So, I ask that you don't
6 bind it over on that count.

7 MS. O'BRIEN: Judge, I have a pretty detailed
8 legal response to that. I wonder if the Court would
9 rather that these arguments with regard to the felony
10 firearm be submitted on briefs, but I leave it to the
11 Court.

12 THE COURT: I think that would probably be
13 appropriate in this case. I'm assuming you're both going
14 to need a transcript so we can go back. I think Mr.
15 Schouman does make a curious point as to whether or not
16 counts two and three--as to whether or not it was tested.
17 I was taking fairly detailed notes. I don't have that
18 included within my notes. I think--

19 MS. O'BRIEN: Judge, it--

20 THE COURT: --it would be important to do.

21 MS. O'BRIEN: I will with regard to the
22 felony firearm. As far as the field test of those, I
23 believe I asked one question of Detective Pankey about
24 did he field test the--

25 THE COURT: And that was right at the end,

1 correct?

2 MS. O'BRIEN: --marijuana. Each of those
3 exchange--

4 THE COURT: You did.

5 MS. O'BRIEN: --and he testified--if not, I
6 could reopen my proofs if the Court would allow and
7 Counsel would allow, just because it avoids me recharging
8 Mr. Tuttle with those two counts on a separate complaint
9 and warrant; which we would. It was done.

10 MR. SCHOUMAN: I would certainly object, your
11 Honor to reopening the proofs. She's rested.

12 THE COURT: Well, but you would agree that if
13 the Court dismisses the matter summarily, than they're
14 just going to recharge him and we're going to have to
15 start this whole process all over again.

16 MR. SCHOUMAN: I would, your Honor, but I'd
17 rather have my clients full due process rights.

18 THE COURT: All right. You know what? I
19 think that if the Court's recollection is correct, I
20 believe that that information did come in at the very end
21 and that I, in fact, asked him to spell it for the record
22 as to the testing. So--

23 MS. O'BRIEN: --I know what you think.

24 THE COURT: --given the fact that I'm going
25 to allow you all to brief this issue--

1 MS. O'BRIEN: --and we'll get the transcript.

2 THE COURT: --and brief the issue as to the
3 felony firearm--you know, as any other matters with
4 regard to the bind over. You know, that certainly can be
5 addressed. I'm assuming you're going to request
6 transcripts in the matter.

7 MS. O'BRIEN: We will. Will the Court just
8 hold its ruling then on that--

9 THE COURT: I will.

10 MS. O'BRIEN: --until we can get the
11 transcript--and find out?

12 THE COURT: Yes.

13 MR. SCHOUMAN: Your Honor, if I may and from
14 what I believe I heard, he was only talking at that time
15 about the marijuana found in the house which would've
16 been for counts four and their requested count five. It
17 wasn't referring to the marijuana that was seized that
18 they've charged under counts two and three.

19 MS. O'BRIEN: I understand that that's his
20 belief.

21 MR. SCHOUMAN: That's fine.

22 MS. O'BRIEN: We'll get the transcript and
23 find out.

24 MR. SCHOUMAN: That's my position. He was
25 only referring to.

1 THE COURT: All right. Very good. The
2 Court's going to withhold ruling on any of them. If we
3 have to perfect the record, I'm going to tell you right
4 now, I'll go ahead and reopen the proofs for the limited
5 purpose of allowing admission. That--we can do that now,
6 we can do that later, recognizing your objection, Mr.
7 Schouman. However, I just think for judicial economy, I
8 don't see a reason to start the process all over again
9 if, in fact, that was missed on the record. You want to
10 do it now or you want to do it--

11 MS. O'BRIEN: Probably, most simple--

12 THE COURT: I think so, too.

13 MS. O'BRIEN: --because we may not be
14 reconvening, can I recall Detective Pankey?

15 THE COURT: Briefly. As to that matter
16 alone.

17 MS. O'BRIEN: Right.

18 THE COURT: Okay. Go ahead. Recall
19 Detective Pankey. Again, Mr. Schouman's objections
20 should be noted on the record.

21 MR. SCHOUMAN: Thank you, Judge.

22 DETECTIVE MICHAEL PANKEY

23 (At 3:03 p.m. recalled as a witness,
24 testified as follows)

25 REDIRECT EXAMINATION

1 BY MS. O'BRIEN:

2 Q And Detective Pankey, reminding you that you're still
3 sworn. You heard the statements of Counsel that there's
4 some question about the marijuana that was handed to you
5 by Mr. Lalonde and you correct me if I'm wrong, Mr.
6 Schouman, on January 18th and January 21st, was that
7 field tested or tested in any way?

8 A That's correct. I field tested all the marijuana on
9 January 18th, 21st, and 23rd as well as a sample of the
10 marijuana plants at--in the house as well as the
11 marijuana found in the shed. I field tested all of the
12 marijuana using the Duquenois-Levine (phonetic) field
13 test. I did, in fact, get indication with a presence of
14 marijuana, which is a positive test using that test.

15 MS. O'BRIEN: Thank you. Nothing further,
16 Judge. I don't know if there's cross.

17 THE COURT: Any cross?

18 MR. SCHOUMAN: No, your Honor.

19 THE COURT: Thank you, detective.

20 (At 3:04 p.m. witness excused)

21 All right. Very good. With that, were going
22 to go into recess. Your briefs need to be submitted
23 within a week. Is that enough time?

24 MR. SCHOUMAN: Will we have a transcript,
25 your Honor, within a week?

PRELIMINARY EXAMINATION

1 THE COURT: Ms. Bly, how quickly do you
2 know--can they get those to them?

3 THE COURT RECORDER: I'll get a hold of Grace
4 today.

5 THE COURT: You know what? She's not
6 authorized as a CER right now. She's a new Court
7 Recorder, so my old assistant is doing that. Why don't
8 we do this, once the transcripts are released, you have a
9 week from there. Obviously, the Court will get a copy of
10 the transcript as well. So, we'll have to--why don't we
11 say everything--let's come back in three weeks. That
12 should be more than enough time.

13 MS. O'BRIEN: Okay.

14 THE COURT: That should be more than enough
15 time.

16 MS. O'BRIEN: And we'll just be in touch
17 about the transcript.

18 THE COURT: Yes.

19 MS. O'BRIEN: I'll order those.

20 MR. SCHOUMAN: Your Honor, if I may. I have
21 a trip planned for Florida for two weeks in April. Could
22 we just have 30 days?

23 THE COURT: Absolutely.

24 MR. SCHOUMAN: Thank you, Judge.

25 THE COURT: Yes, if you'll just schedule it

STATE OF MICHIGAN

6TH JUDICIAL CIRCUIT COURT FOR THE COUNTY OF OAKLAND

PEOPLE OF THE STATE OF MICHIGAN,

v

File No. 2012-241272-FH

ROBERT EDWARD TUTTLE,

Defendant.

OAKLAND COUNTY 12-241272-FH
JUDGE MICHAEL WARREN
PEOPLE v TUTTLE, ROBERT

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MOTION TO DISMISS

BEFORE THE HONORABLE MICHAEL WARREN, CIRCUIT COURT JUDGE

Pontiac, Michigan - Wednesday, July 11, 2012

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TABLE OF CONTENTS

WITNESSES: PEOPLE

PAGE

None

WITNESSES: DEFENDANT

None

OTHER MATERIAL IN TRANSCRIPT:

Judge's Ruling

17

EXHIBITS:

INTRODUCED

ADMITTED

None

1 Pontiac, Michigan

2 Wednesday, July 11, 2012 - 09:52:44 a.m.

3 MR. SCHOUMAN: -- fall down to a Section Eight of
4 the acts, affirmative defenses.

5 My motion today, since you've already granted
6 the part about the adventure (ph) hearing goes with respect
7 to Section Four defenses. Count Four of the complaint
8 involves my client allegedly in possession of 38 grams of
9 Marijuana; a little over an ounce of Marijuana. And as the
10 prosecutor points out in her brief, Count Six also talks
11 about the plants where, I believe, there's a concession
12 that my client was able procedurally under the statute to
13 possess 36 plants and he only had 33. So procedurally with
14 respect to Count Four and Count Six, my client is in accord
15 with Section Four of the act, and that's why we're here, to
16 ask for those counts to be dismissed.

17 Where, I believe, the prosecutor disagrees with
18 me is part of Section Four is a rebuttable presumption. The
19 presumption is that my client was using this for medical
20 purposes or had this for medical purposes and the
21 prosecutor is making an argument that I shouldn't get this
22 dismissed under Section Four because she can rebut the
23 presumption under the statute because my client delivered
24 Marijuana in Counts One, Two, and Three to a confidential
25 informant. Your Honor, I would agree with the prosecutor on

1 that point but for the fact that the confidential informant
2 involved was a medical Marijuana patient and the act talks
3 about the presumption that -- the presumption may be
4 rebutted by evidence, that the conduct related to Marijuana
5 was not for the purpose of alleviating the qualifying
6 patient's debilitating medical condition. So the
7 presumption and the rebuttable presumption is all about an
8 individual who is allowed to use Marijuana.

9 Now if he just delivered to a guy on the street
10 who didn't have a registration card, I would think she's
11 100 percent correct. But he delivered it to somebody that
12 the state has approved for needing Marijuana for palliative
13 purposes.

14 As such, and in light of the Kolanek decision
15 from our Supreme Court, saying that this is a broad
16 immunity, I don't think it matters that my client delivered
17 to another patient that wasn't his in Counts One, Two, and
18 Three Marijuana, with respect to the fact that he's growing
19 Marijuana while legally under the statute and he's
20 possessing a very small amount of Marijuana.

21 So I guess the bottom-line question I have for
22 you and what I'm looking for in the ruling today is simply,
23 does the fact that he delivered Marijuana in their first
24 three counts to another patient that's not his
25 automatically rebut the presumption that's set forth in

1 Section Four, and that's really the only ruling I'm looking
2 for.

3 THE COURT: Is it an automatic -- is -- wouldn't
4 that be a jury issue?

5 MR. SCHOUMAN: Well --

6 THE COURT: Or is that a matter of law?

7 MR. SCHOUMAN: The way I read the statute is,
8 he cannot be charged or brought to trial if he's complying
9 with Section Four.

10 THE COURT: Right. But my question is, he --
11 can't I find that it's appropriate for the jury to
12 determine whether or not the People have rebutted the
13 presumption, or is it a matter of law for the Court. Or is
14 there an evidentiary hearing; how procedurally is that
15 addressed?

16 MR. SCHOUMAN: I would venture a guess, Judge,
17 that if you determine that delivering -- that what he did
18 in these allegations, delivering it to a non-patient,
19 raises to a level of a rebuttal yourself, then it would go
20 to a jury to decide, cause there's a question of fact. But
21 I also feel that you have to make that determination first
22 as the gatekeeper here to all of this. That if you decide
23 that you believe that this is enough to potentially rebut
24 the presumption, then let's let a jury decide that issue,
25 because now it becomes a question of fact.

1 But I believe in reading the statute that it's
2 not supposed to be here at all unless she to you, when I
3 bring this motion forward, can state, because he delivered
4 this to a patient, it, therefore, is a rebuttable
5 presumption.

6 THE COURT: Is there any case law dealing with
7 my procedural question?

8 MR. SCHOUMAN: Not that I'm aware of.

9 THE COURT: Oh, good.

10 MS. O'BRIEN: Judge, may I?

11 THE COURT: People?

12 MS. O'BRIEN: Yeah. With regard to the Court's
13 question about how to resolve this, I think it can be --
14 a determination does need to be made whether or not the
15 defendant is being properly prosecuted whatsoever under
16 Section Four or whether he's entitled to protection from
17 prosecution because he was compliant with the requirements
18 of Section Four. The new King and Kolanek case separates
19 Section Four from Section Eight. No longer is the defendant
20 required to meet the bright-line test of Section Four in
21 order to prove to the Court at a Section Eight hearing that
22 he's entitled to that affirmative defense at trial.
23 Nevertheless, Section Four still stands by itself and the
24 defendant needs to present to the Court that he was within
25 the confines of that act -- or of that portion of that act

1 in order to prevail on his request that he not be
2 prosecuted with regard to here, specific counts. It was
3 originally Count Four, now I hear it's Count Four and Count
4 Five, the manufacture of Marijuana. By -- defendant doesn't
5 argue this in his motion, that the -- he was delivering to
6 a patient and that's why he's protected under Section Four.
7 What he argues is that as to Count Four, because the
8 quantity was a certain amount and that because it's below
9 two and a half ounces, he's protected because he's within
10 the quantity requirements as to that loose Marijuana. I
11 didn't know why he didn't make that argument as to the
12 Marijuana in the house; he does now.

13 But the -- now the argument that I'm hearing,
14 which is not the basis of his brief, makes me wonder why
15 he's not making that argument with regard to all of the
16 counts, because if it's his position that he is permitted
17 under the law to deliver to a patient, then those three
18 deliveries to somebody he believed to be a patient -- and
19 by the way, Judge, let me make clear, there -- all I would
20 agree to is that the defendant and the informant had a
21 conversation about whether or not the informant was a
22 patient. I don't concede that there was ever any proof of
23 the defendant's -- or of the informant's registered status.
24 Most importantly, that he fits the definition of a
25 qualifying patient as required under Section Four.

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1 So I believe that we have sufficiently rebutted
2 the presumption under People versus McQueen, you cannot
3 sell Marijuana to a person to whom you are not registered -
4 - or, connected to through the patient registry. You can't
5 sell to just any patient, you can only sell to a patient to
6 whom you are connected to through the registry. The McQueen
7 case is before the supreme court, but there is no
8 expectation of a decision on that until, the prediction is
9 next July. The state of the law is now under the court of
10 appeals decision under McQueen, you can't sell to somebody
11 to whom you are not registered under the -- and the
12 defendant doesn't claim to do that. So I believe that the
13 Court can make a ruling with regard to that part of
14 defendant's motion, that he's entitled to a dismissal of
15 Count Four and then now Count Five; the other two counts
16 are felony firearm counts that go along with that, that he
17 does not enjoy the protection of Section Four.

18 He is properly prosecuted because the People
19 have successfully rebutted that presumption because he sold
20 to somebody to whom he's not registered to under the act.
21 On one of those occasions, he sells more than two and a
22 half ounces. On at least one -- on the final occasion and
23 you can't parce out that -- one of those sales took place
24 on the same day that we conduct the search warrant on the
25 house. The defendant was surveilled to and from his house

1 prior to these buys, Judge. He can't parce out this portion
2 of Marijuana as protected under Section Four, my activity
3 with regard to other Marijuana that I'm selling on the same
4 day, presumably from the same place and the same stockpile.
5 That one I have to make a proof to the Court under Section
6 Eight and support my burden of proof.

7 This is a totality of circumstances where the
8 defendant sells Marijuana out of his house and he sells
9 it to people to whom he's not registered, connected to,
10 through the patient registry. He has an opportunity through
11 Section Eight to prove that he's doing that for medical
12 purpose. We've already stipulated to him having a hearing
13 and I think that's a -- that hearing is already set and he
14 can --

15 THE COURT: Is it your contention that the --
16 that the Court as a matter of law should find that you have
17 rebutted the presumption, or is that a jury issue?

18 MS. O'BRIEN: It is not a jury issue. It is my
19 contention that the Court can -- can and should make that
20 finding. However, as an alternative, I think the Court
21 could also require the People to present -- I don't think
22 that that's necessary, but some additional information
23 that the defendant is not register -- connected to the
24 confidential informant through the patient registry, but
25 defendant concedes that and the McQueen case states that

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1 those patient-to-patient sales are prohibited. They're not
2 permissible under the Medical Marijuana Act, so it doesn't
3 really matter whether the informant was a patient or
4 whether the defendant thought he was doing the right thing,
5 you know, ignorance of the law. There's a specific case on
6 that with regard even to the medical Marijuana law. You
7 can't sell to patients you're not registered to. Otherwise
8 there'd be no reason to have a registry/care giver
9 connection; you can just sell to anybody.

10 THE COURT: Well, let's play this -- I'm just
11 trying to think of analogies and maybe it's so different
12 than everything else, the analogies don't work. But in a
13 typical criminal prosecution, you have to prove all the
14 elements of the offense.

15 MS. O'BRIEN: Right.

16 THE COURT: If somebody asserts a defense of --
17 an affirmative defense, for example, self defense to a
18 homicide, don't you have to prove beyond a reasonable doubt
19 that the defendant's assertion of the defense is
20 inappropriate, for a better term; that he didn't act in
21 self defense?

22 MS. O'BRIEN: I don't think I'm in a good
23 position with regard to the self defense to help with those
24 analogies. You know, I would have to research that to see
25 if there is a difference between this and that one. For

1 this one, to make the affirmative defense, as with any
2 affirmative defense, it is the defendant's burden and
3 there's a specific burden set forth by the Court that they
4 demonstrate to the Court at a pre-trial hearing, this comes
5 out of the King and Kolanek. I mean, it always has been,
6 you know, presumed to be the case but it used to be that,
7 you know, if you didn't meet some bright-line test of
8 Section Four, then we could ask to preclude the defense
9 whatsoever. Most times my own practice was to allow the
10 defendant to have the Section Eight hearing anyway, because
11 I think it was a sort of belt-and-suspenders approach to
12 demonstrating that this was not a genuine medical needs
13 circumstance. I don't believe this was and I don't believe
14 it was in the other cases where we've allowed the defendant
15 that opportunity.

16 Nevertheless, the law is now, you get that
17 chance to prove that and your burden of proof is to provide
18 prima facie evidence to the Court that you can support your
19 burden at a trial of each of the three prongs of the
20 affirmative defense. If you fail as to any of those three
21 prongs, then you're not entitled to assert the affirmative
22 defense at trial whatsoever. The issue then becomes, what
23 is allowed -- what is allowed at trial and then did
24 defendant mention it at all and then, is the jury just not
25 instructed on the affirmative offense. It's always been the

1 People's position that allowing the defendant mention those
2 things is more prejudicial than probative to the People's
3 case and we usually ask the Court to prohibit any reference
4 to that where you have not met your burden at that hearing.

5 MR. SCHOUMAN: If I may briefly respond to what
6 she said, Judge.

7 THE COURT: Yes.

8 MR. SCHOUMAN: With respect to Section Four and
9 what the confidential informant said, and I don't think the
10 prosecution would object. At the preliminary exam, he
11 testified, under oath, that he was a patient. Then the
12 prosecutor on redirect said, you're a patient but you
13 weren't affiliated with him. So I don't think there's any
14 real debate that he is a medical Marijuana patient.

15 Now the prosecutor has brought a seven-count
16 complaint, yet she argues that this is all one big
17 umbrella. Well, this is seven different chances that she
18 has, or five cause of the two felony firearms, to send my
19 client to jail or prison; okay. It's not just one big
20 umbrella, she could have charged one count. She didn't
21 charge one count, so we have to look at each individual
22 count and what the allegations of that count is. And my
23 client -- if any of these counts he can prove beyond a --
24 or, she does not prove beyond a reasonable doubt, my client
25 is not convicted. So we can't look at this as to all of the

1 activity as one thing, because she didn't charge it that
2 way; she charged it individually.

3 So I look at Count Four. Count Four says, 38
4 grams of Marijuana; okay, and -- a little over an ounce of
5 Marijuana. Well, he's got himself as a patient, he's got
6 two other people that he's the care giver of, which allows
7 2.5 ounces per person. He can have seven and a half ounces
8 under Section Four; he has 38 -- he has 38 grams.

9 Then we're talking about the plants that are in
10 there. There's no correlation because he delivered to a
11 patient in Count One that he's automatically guilty of
12 Count Six, growing plants. You can't draw that analogy. So
13 I have a presumption that the supreme court has said is an
14 extremely strong presumption that my client cannot be
15 charged. She can try to rebut that presumption and the only
16 evidence she's brought forward to rebut that presumption is
17 the fact that he delivered to another patient that wasn't
18 his patient. Well my question is, what does that have to do
19 with Count Four where it's just 30 grams with possession
20 with intent to deliver. Okay, well who is he intending to
21 deliver to; it was just an intent. So they would have to
22 establish that, but as far as this goes today, that has not
23 been presented. The only evidence that's been presented is,
24 well, he doesn't get Section Four because our first three
25 counts doesn't apply to Section Four, he only gets that

1 potentially through Section Eight in our hearing. Well, I'm
2 not talking about those, I'm talking about the fact she
3 charged a Count Four and a Count Six and the elements of
4 that, my client falls right into Section Four and I don't
5 believe the fact that she's established, and the only thing
6 established, that he delivered to another patient is enough
7 to rebut, as a matter of law, the strong presumption that's
8 come down through the decision of our supreme court.

9 MS. O'BRIEN: Judge, that law comes from the
10 decision in People versus McQueen. It -- it's illegal for
11 him to do that, to sell that Marijuana to a patient to whom
12 he's not registered to.

13 Further, even if he knows -- even if he knows
14 that that person is a patient, and let's put McQueen aside
15 for a minute, the conduct that rebuts the evidence is
16 conduct that's related to the Marijuana that shows that
17 your conduct is not for the purpose of alleviating --
18 alleviating a qualifying patient's medical condition. The
19 definition of a qualifying patient is somebody who has been
20 diagnosed by a physician with a debilitating medical
21 condition. There is no information that the defendant was
22 delivering that Marijuana for the purpose of alleviating a
23 condition that had been diagnosed by a physician of a
24 confidential informant of the police; that's silly.

25 THE COURT: Let me ask you a more mundane

1 question. People say that your argument today is different
2 than the argument presented in your brief; is that true?

3 MR. SCHOUMAN: I'm going to answer this as best I
4 can with it. I asked for Count Four alone, not Count Six,
5 to be dismissed, so that is accurate. Since they point out
6 in their brief, which they do, that, well, he's arguing
7 Count Four, but he's not arguing Count Six so, therefore, I
8 must be conceding something, I'm pointing out to the Court
9 that I'm not conceding anything. And, frankly, based on
10 their concession, I should have argued in my brief Count
11 Six as well.

12 But they -- but you can't separate the two; it
13 doesn't make any difference. I'm arguing that Count Four
14 falls under this and I didn't say anything about Count Six,
15 that's 100 percent correct. But, Judge, if Count Four goes,
16 Count Six goes, as a matter -- well, they should, they go -
17 - they line up right together. So it's not like it's any
18 major different legal argument I'm making, the argument's
19 the same. I'm just saying it also includes Count Six based
20 upon what was pointed out to me by the prosecution in her
21 brief.

22 MS. O'BRIEN: Judge, if the different major legal
23 argument is the claim that you're permitted under Section
24 Four to sell to any patient; that's not briefed in here.

25 THE COURT: I think you need to brief,

1 Counselors. In fact, was there -- is there a first-amended
2 complaint?

3 MR. SCHOUMAN: There's a first-amended
4 Information.

5 THE COURT: Or Information?

6 MS. O'BRIEN: Uh --

7 MR. SCHOUMAN: Yes.

8 THE COURT: Cause I don't -- I don't even have
9 a --

10 MR. SCHOUMAN: It's attached as Exhibit B.

11 THE COURT: -- count -- I don't even have a Count
12 Six.

13 MR. SCHOUMAN: Or --

14 THE COURT: In --

15 MS. O'BRIEN: If there is, it probably -- is that
16 the one where we added the count?

17 MR. SCHOUMAN: You added Counts Six and Seven.

18 THE COURT: I don't have that information.

19 MR. SCHOUMAN: And I have attached it, Judge,
20 and I know this may not be official, but I did attach it --

21 MS. O'BRIEN: I have one.

22 MR. SCHOUMAN: -- to my motion.

23 THE COURT: Has it been filed --

24 MS. O'BRIEN: Judge, may I approach?

25 THE COURT: -- do you know?

1 MS. O'BRIEN: It's been filed.

2 THE COURT: Okay.

3 MR. SCHOUMAN: She served with me with it.

4 MS. O'BRIEN: Yeah.

5 MR. SCHOUMAN: I can represent that.

6 THE COURT: Yes.

7 MR. SCHOUMAN: Via mail.

8 THE COURT: All right. I didn't know anything
9 about these counts, cause I didn't even know they existed.

10 MS. O'BRIEN: Judge, I apologize. They were
11 added at exam and then there was a -- a mix-up with the
12 bind over and they weren't added to the Information at
13 exam.

14 THE COURT: All right. I'm gonna deny the motion
15 without prejudice. I think you need to brief, now that I
16 know that there's Count Six and Seven for real, and now
17 that there's been an argument about it that wasn't in the
18 motion. I would -- it may be mostly re-arguing what you've
19 already submitted, but I don't want to have some kind of
20 appeal based on a decision made because something wasn't
21 presented in an appropriate fashion. Give People the time
22 to respond. I'm gonna dispense with oral argument, I'll
23 make a ruling on the briefs now that I've heard the oral
24 argument. But I -- I do want it appropriately briefed.

25 MS. O'BRIEN: Okay. Given the -- when's our

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1 evidentiary hearing again?

2 MR. SCHOUMAN: I believe it's August 6th?

3 THE COURT: Right. August 6th is the hearing, but
4 this -- would this affect the hearing?

5 MS. O'BRIEN: When do you want this by? Well, it
6 might -- yeah, I guess it would, Judge, because it's gonna
7 get -- it would effectively get rid of some of the counts
8 on the complaint and it would -- if you make a decision on
9 it as a matter of law, it would -- it'll determine whether
10 or not we have to make any kind of proofs as to Count Four
11 at the time of the hearing; it would affect it a little
12 bit.

13 MR. SCHOUMAN: I would tend to agree. If you rule
14 against me, that I would have to present evidence at the
15 evidentiary hearing with respect to Counts Four and Six.

16 MS. O'BRIEN: No. It -- but it should be the same
17 -- it should be the same evidence.

18 MR. SCHOUMAN: I can send this out by Friday,
19 your Honor, in a couple days, cause I'm going on vacation,
20 so I'll make sure it's done by Friday. And since there's no
21 oral argument --

22 MS. O'BRIEN: Okay.

23 MR. SCHOUMAN: -- I'm sure you can have --

24 MS. O'BRIEN: And I can -- then I can respond by
25 the first half of next week, Judge.

1 THE COURT: Okay. Why don't we get an order that
2 denies it without prejudice subject to the filing of an
3 amended or, I don't know how you do it, but it -- it's
4 really a renewed motion which also addresses Count Six,
5 that'd be filed by Friday and then a response would be done
6 by Wednesday and that there will be no oral argument unless
7 -- I mean there's a chance I'll make you do the argument on
8 the 6th if I think I still haven't made a -- if I still
9 haven't made a decision.

10 MS. O'BRIEN: Okay.

11 MR. SCHOUMAN: And one other issue, if I may,
12 regarding the evidentiary hearing that you've granted. I'm
13 going to need Detective Pankey (ph) and the confidential
14 informant, which I don't have an address for the
15 confidential informant, obviously. Will Miss O'Brien be
16 able to get the witnesses here for the exam; they're her
17 witnesses?

18 MS. O'BRIEN: Yeah. I -- I'll bring them. I guess
19 I'd ask what's the need for the informant to be produced?

20 MR. SCHOUMAN: Well, there's this whole issue
21 about whether or not he -- if I'm arguing Section Eight, it
22 has to be for a medical purpose, so if I come in here
23 without him and there's these three delivery counts, she's
24 -- obviously you're gonna argue that, well, he didn't
25 establish his burden that it was for a medical purpose,

1 cause he just gave it so some guy. So I'm gonna need to put
2 him on the stand and I'm gonna need to ask him, what's his
3 medical condition, why he had the card, and why were you
4 asking my client to do -- to tender Marijuana to you. So I
5 don't know how I could do it without Mr. Leland (ph), the
6 confidential informant.

7 MS. O'BRIEN: Okay.

8 MR. SCHOUMAN: Unless there's a stipulation that
9 it was delivered to him for medical purposes.

10 MS. O'BRIEN: Well, no; that's the crux of the
11 whole case that it wasn't --

12 MR. SCHOUMAN: Then I'm gonna need him, Judge.

13 MS. O'BRIEN: Okay.

14 MR. SCHOUMAN: And then my final issue, your
15 Honor --

16 THE COURT: Put that in the order, too, so
17 there's no issue.

18 MR. SCHOUMAN: You got it. And then my final
19 issue, your Honor, we have submitted certified records
20 which, obviously, I believe -- I checked the court rule,
21 but I believe that makes them self authenticating because
22 they're certified by the Secretary of State, and in those
23 records, obviously, are statements from the doctor. And the
24 statements in my review are very similar to the
25 requirements of Section Eight, that it's -- that he's --

1 this is a patient of his, that he's reviewed the medical
2 records, etcetera, etcetera.

3 For judicial economy purposes, based on the fact
4 that I have certified records, do I need to bring these
5 doctors in and take their time and the Court's time to put
6 all three of these doctors on the stand and go through
7 that, or can we take judicial notice of the fact that
8 they've signed these documents and submitted them to the
9 state and, therefore, I'm meeting burden number one with
10 respect to, these people were patients?

11 MS. O'BRIEN: Judge, may I respond to that?
12 That's not at all a simple question; that's a very
13 complicated question. The defendant is essentially asking
14 the Court to make a legal finding that submitting some
15 certified records from the state that are required to get
16 medical Marijuana registry I-D card satisfies his burden
17 under Section Eight. If the defendant wants to brief that,
18 then I can address it as well. We've had this issue come up
19 in another case in another court before. It's certainly the
20 People's position that they're nowhere remotely close.

21 THE COURT: My understanding of judicial notice
22 is that it isn't (ph) something that is an undisputed fact.
23 Like --

24 MS. O'BRIEN: What time is it?

25 THE COURT: -- July 11th, 2012 was Wednesday.

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1 MR. SCHOUMAN: Sure.

2 THE COURT: I can -- you could admit a certified
3 record if it's self authenticating and it appears on its
4 face that it is -- that is what it is, but I think you had
5 -- it would be up to me to determine whether or not that,
6 whatever those statements are, then have sufficient weight
7 to carry the burden. It's not, well, some doctor -- someone
8 who purports to be a doctor purportedly made this opinion.

9 MR. SCHOUMAN: Right.

10 THE COURT: I think that the People certainly
11 could delve behind that and say, you know what, this person
12 actually isn't a doctor, or this doctor's opinion is done
13 as a stamp and he does -- processes thousands of these a
14 day and how could he possibly be qualified. It's -- I mean,
15 I -- so weight and credibility is different than
16 admissibility.

17 MR. SCHOUMAN: Certainly.

18 THE COURT: And so certification means it's
19 admissible, it doesn't mean that I will necessarily accept
20 it on its face, so it will be up to you two to figure out
21 how you want to try your hearing, I'm just telling you
22 what the rules of evidence are.

23 MR. SCHOUMAN: I gotcha and I appreciate that.
24 You've led me in the direction I needed to go.

25 THE COURT: All right.

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MS. O'BRIEN: Thank you, Judge.

MR. SCHOUMAN: Thank you, your Honor.

THE COURT: You're welcome. Get me that order so
that we can make sure this stays on track.

MR. SCHOUMAN: You got it.

(at 10:16:56 a.m., hearing concluded)

CERTIFICATION

This is to certify that the attached electronically recorded proceeding, consisting of twenty-four (24) pages, before the 6th Judicial Circuit Court, Oakland County in the matter of:

People of the State of Michigan

v

Robert Edward Tuttle

Location: Circuit Court - Oakland County

Date: July 11, 2012

was held as herein appeared and that this is testimony from the original transcript of the electronic recording thereof, to the best of my ability.

I further state that I assume no responsibility for any events that occurred during the above proceedings or any inaudible responses by any party or parties that are not discernible on the electronic recording of the proceedings.

/s/ Deborah Zerman
Deborah Zerman, CER 8535
Certified Electronic Recorder

Dated: September 11, 2012

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