

January 30, 2018

Dear Peter:

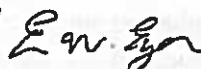
I read your editorial in the Detroit News paper the other day, then I checked out your website. You are a true American hero! Finally, someone in authority has seen the light. I have been railing against our nation's drug war for decades. Asset Forfeiture, cops planting "evidence," the Taint Doctrine (if \$1.00 of drug money is mixed in with the rest no matter the amount, it is all tainted and subject to forfeiture), innocent children being brutally injured during drug/SWAT team raids, mass incarceration, I could go on and on. The Asset Forfeiture scam must stop now. The drug war is a catastrophic failure and must end now.

I support you with all my heart. This country needs more courageous law makers like you. There are so many entrenched vested interests with the drug war. Dick Cheney owns stock and has invested millions in private prison companies. Making money off of other people's misery. Making draconian laws that destroy a young person's life. Busted with pot...mandatory minimum and a felon for life. Is this part of a larger conspiracy? The drug war started with President Nixon in 1970. I am certain it wasn't so much the drugs as his hatred of the people that were using or that he thought were using. Mass incarceration is a great way to control a certain population isn't it?

I have enclosed a copy of a letter that I sent to the Chief of Police in Billings, Montana. Several years ago the SWAT team did a raid on a home there and threw a flash/bang grenade into a bedroom of the house. It was the bedroom of a little girl who was sleeping and she was severely burned when that dreadful thing went off. I was working at one of the refineries there and read all about it in the paper. Of course, there was the usual finger pointing and I am not sure if anything was ever done to prevent this from happening again. I have never been able to get this out of my mind. It wasn't just her, there are numerous innocent children nationwide who have been severely injured during SWAT raids. How can this be justified?

Keep up the pressure and don't give up!

Respectfully,



Eric W. Engen
214 Sycamore Square
Midland, Michigan
48642

CHIEF OF POLICE BILLINGS, MONTANA

January 30, 2018

Dear Chief St. John:

I was born in Billings in 1958. When I was around a year old my parents and I moved to Great Falls and that is where I was raised. My father's sister Ruby was married to William Fox. My sisters and I always looked forward to our trips to Billings to visit them. I remember when Bill ran for Alderman in 1972 and won and also when he was a multi-term mayor of Billings. A more decent, honest man of integrity one would be hard pressed to find. He taught me so much and I have tried to be like him.

I recently finished reading several books: "Chasing the Scream," and "Rise of the Warrior Cop." I was in Billings working at one of the refineries when a police drug task force lobbed a flash/bang grenade into a room where a young girl was sleeping. This was part of a drug raid and, by extension, part of our nation's never ending war on drugs. The young girl was severely burned. I can't imagine the PTSD that young innocent CHILD has gone through and is probably still going through. This incident was referenced in the book "Rise of the Warrior Cop." Although this happened awhile ago, I still can't understand how anyone could possibly justify what happened to that precious child. How would you feel if a SWAT team threw a grenade into your daughter's bedroom without warning and severely burned her? Does the end justify the means?

My mother taught me and my sisters that we could always go to a police officer for help and that we could trust them. That may have been true in her idyllic town of Cowley, Wyoming in the 1950's, but that is no longer true.

I am growing numb from reading about the horrific police misconduct taking place all over this country. The murder of Philando Castile; Ferguson, Missouri (leaving that young man's body laying in the street in the heat for hours); the woman shot in the stomach by a police officer when he was startled by a loud bang; the horrific video of a young man in Las Vegas on his knees begging for his life and being shot to death with five rounds from an AR-15; the police officer that shot that black man running away and trying to cover it up. How many innocent people have had their vehicles confiscated under Asset Forfeiture after an officer planted narcotics in or on the vehicle? One of my pipefitter brothers got pulled over for no reason and the cop searched his wallet and vehicle. No contraband of any kind was found during this unlawful search. My friend had been cashing his checks and saving his money and the cop confiscated \$14,000 in cash. My friend had to go to court with his check stubs to prove that it wasn't drug money. He eventually got most of it back. A lot of people would have given up but he didn't. Why has it come to that in this country? Is it an automatic crime to carry cash? Union pipefitter/welders are well paid. Like it or not, we are well paid for what we do. (I am an American Welding Society Certified Welding Inspector/Certified Radiographic Interpreter. ASNT NDT Level III Test Examiner in 5 methods. OSHA 30, IRRSP qualified. Radiation Safety Officer etc.). I could go on and on. Very rarely are police held accountable for their actions.

Has anyone been held accountable for what happened to that young girl? I hate the misuse of any chemical substance as much as the most hardened drug warrior but is this really what should be happening in this country? How can you or anyone justify this? The answer is it cannot be justified in this life or the next when you and I and everyone will stand before God and be judged for what we have done during our limited time on this planet.

When I was stationed on a submarine repair ship in Guam, a US Navy SEAL Team came and

gave us some anti-terrorist training. I have nothing but respect for the SEALs. They are totally professional and their fire control discipline is second to none. They will never fire on or knowingly harm anyone except the bad guys. Their rules of engagement are very strict and they will be and are held accountable for their actions. I also worked with the SEAL team that was onboard the USS John C. Stennis CVN-74 when we were in the North Arabian Sea as part of Operation Enduring Freedom. One thing I learned from them is that in any given situation there is always more than one way to get what you want. Was throwing a grenade through a child's window, severely burning her and harming her physically, emotionally and mentally for life the only way to get the mission accomplished? I realize this happened some time ago, but raids like this go on every day all over the country and something has to be done to stop this.

Do you really feel that the community that you and your officers are sworn to serve and protect is being served by such actions? I realize that police do good things every day and many are truly unsung heroes (I can't imagine what the first responders at Sandy Hook elementary school went through and are going through with what they had to deal with) and that police are human and make mistakes. Mistakes made with grenades and using deadly force cannot be undone. When I was in the Navy, I qualified Expert Rifleman on the M-16. I am well aware of what that weapon is capable of doing.

I stood Officer of the Deck in port onboard a submarine repair ship and I, along with the Command Duty Officer, were primarily responsible for the protection of the ship and to alert the quick response team in case of an incident that required an armed response. I, along with the Petty Officer of the Watch, carried a loaded .45 semi-automatic Model 1911 pistol. We had to go through intense training on the proper and LAWFUL use of deadly force. It was impressed on us that if we used deadly force and we were justified, the Navy would back us up, but God help us if deadly force was not justified. We or I would end up in Fort Leavenworth.

Do police get intense training in the proper and lawful use of deadly force? Does your drug task force bother to come up with alternate ways of accomplishing the mission without using grenades that could injure for life innocent people? Obviously not. There is always a better way to get what you want. From what I am seeing nationwide it appears that police training is woefully lacking. Maybe the problem is in the initial hiring. There is a very good reason Navy SEAL training is so incredibly tough - it gets rid of the losers, the people that really don't belong on a SEAL team, and the wanna be Rambos. Maybe most of the good police have retired or quit and all that is left are the wanna be Rambos. Maybe these wannabe's know deep inside they could never make it in the Army or Marines or the SEALs but they still want to blow things up and kill people and they take the easy way out. I don't know but I do know that I have taught my sons and daughters to do everything they can to avoid any interaction whatsoever with the police. It pains me to say this but the sad reality is that the police can no longer be trusted.

Philando Castile lived 7 seconds after he was pulled over. He was shot to death in front of his child and girlfriend. Fortunately, there is a higher court where some slick ass lawyer won't be able to get the murdering cop off. We will all stand before God. Everyone sooner or later will be held accountable. Revelations 21:8 and 22:15 applies to everyone. I remember a cop that lied under oath in court in Fort Benton and got away with it; my sister caught a cop in a lie in court in Topeka, Kansas and asked the cop and the judge point blank: "How am I supposed to teach my children to honor the law and to trust the police when THIS OFFICER LIED UNDER OATH in court and I just proved it?" Nothing happened to the cop.

I scrupulously drive at or under the speed limit; if I see a cop, I avoid doing anything to draw

attention to myself and I get away as soon as possible; I don't drink, smoke, use any illegal substances and I avoid driving around at night unless necessary. I never go to bars even though I have lived alone on the road ever since I got back from Operation Enduring Freedom where we were killing Taliban and terrorists in Afghanistan. (I am a retired US Navy Chief Petty Officer.) I told my children to make sure they record everything if they have any interaction with the police. Cops routinely lie under oath in court. I make sure all my lights work on all of my vehicles. I never ever let my guard down when I am outside my home. I am not paranoid but there are simply too many obviously mentally unstable cops out there with a badge and a gun and I have no way of knowing which ones are trustworthy. YouTube is full of horrific police brutality videos like the one where the cop bashed a young girl's head into a concrete shelf in a jail cell. Immediately there was a pool of blood under her head and then he arranged her shoes! Others in the jail came to help her but nothing was done to the cop. This has to stop! I know of no other way to protect myself other than this and to write letters to persons in authority, and write letters to the editor, like the one I just wrote and sent to the Lovell Chronicle in which I describe how much my cousin who was murdered there on January 4, 2018 by her exhusband meant to me and to so many others. In that letter I also praised the professionalism of the police and how quickly he was taken into custody.

One thing these books taught me is that our nation's drug war is a catastrophic failure and has done more to destroy our freedoms and liberty than everything else. What would happen to me if I refused to allow a police officer to search my vehicle? Would I be shot to death? Beaten? Tazed? Pepper sprayed? It happens everyday. I was taught that the 4th Amendment was the law of the land... not anymore with the drug war. Asset Forfeiture, the Taint doctrine, mandatory minimums, mass incarceration, etc., and what has it got us? President Nixon started the drug war in 1970 and there is no end in sight, we are the largest prison country in the world, and honest law-abiding citizens have to live in fear that they will be pulled over and searched and God knows what will or could happen to them.

William Fox would be horrified to learn of what happened to that innocent child when a grenade was lobbed into her bedroom. He was a Peleliu and Okinawa WWII Marine combat veteran. In the summer of 1973 when I was with him at his beautiful cabin on the Stillwater River south of Columbus, I asked him what it was like. He spent the next two hours telling me in graphic detail what it was like during those horrendous battles. He told me stories of what the Japanese did to our Marines in horrifying detail. He stepped on a Japanese Bouncing Betty landmine and spent two years in a VA hospital. He went through hell in the Pacific War and so did the rest of the Marines and US Navy sailors. He threw plenty of hand grenades and killed a lot of the enemy. He would be absolutely ashamed, disgusted and would probably ask for your resignation, and everyone else's who was responsible for what happened to that little girl. He would never approve of what was done and he would have never approved the acquisition of a \$350,000 armored personnel carrier for the Billings police department. I have seen him rise up in righteous indignation when he knew something was wrong or someone was out of line. He was never afraid to speak up because he knew, as I do, that he who is silent gives consent.

I am not sure what, if anything, was done for that precious child. All I can do is pray for her and for our nation that we will come to our senses and realize that the drug war is a complete, total failure and there has to be a better way.

The Vietnam War was irrevocably lost when Walter Cronkite stated the obvious on national television that the war was lost. The drug war was lost when the 4th Amendment was destroyed,

no-knock raids became the norm, and innocent men, women and children were killed or otherwise harmed. Those two books I mentioned at the beginning of this spell it all out.

Respectfully, *Eric W. Engen*

Eric W. Engen
214 Sycamore Square
Midland, Michigan
48642

**STATE OF MICHIGAN
IN THE ISABELLA COUNTY TRIAL COURT**

ISABELLA COUNTY PROSECUTING
ATTORNEY Ex Rel Bay Area Narcotics
Enforcement Team,

Plaintiff,

Case No.
16-13188-CZ

v

Hon. Paul H. Chamberlain

ONE 1987 BUICK GRAND NATIONAL, Et
[sic] al.,

Defendant.

Robert A. Holmes, Jr. (P44097)
Attorney for Plaintiff

Michael A. Komorn (P47970)
Attorney for Claimants

FILED

JUL 26 2017

COUNTY CLERK
ISABELLA COUNTY
MT. PLEASANT, MICH.

**OPINION AND ORDER
ON THE PEOPLE'S MOTION FOR JUDICIAL DISQUALIFICATION**

I. FACTS

This civil drug forfeiture matter was filed on May 26, 2016, and was based on alleged criminal drug activity pertaining to Steven and Leslie Fisher. Criminal charges were filed against both Steven and Leslie Fisher. The property seized from the claimants that is the subject of this forfeiture action includes a 1987 Buick Grand National, a Cadillac Eldorado, a 2009 Chevrolet Pickup Truck, an Enclosed Pace Trailer, a 1995 Polaris Indy Snowmobile, \$3,918.00 in US Currency, three pieces of gold, one piece of silver, a laptop computer, a Dell XPS computer tower, two iPhones, six firearms, and various hoses, lights and drying racks.

On December 8, 2016, this court issued an opinion dismissing the charges against Leslie Fisher in case number 16-802-FH. On January 31, 2017, this court issued an opinion dismissing the charges against Steven Fisher in case number 16-801-FH, finding that Mr. Fisher had established a § 8 defense under the Michigan Medical Marijuana Act. The People have filed an appeal of the court's order dismissing the criminal case against Steven Fisher. The People requested this court to stay this drug forfeiture matter pending a ruling by the Court of Appeals in Mr. Fisher's criminal case. At a hearing held on April 28, 2017, this court denied the People's

motion to stay proceedings. The People filed a motion for reconsideration of this court's decision denying the motion to stay proceedings, which this court denied in an opinion and order dated July 19, 2017.

The claimants filed a motion for summary disposition pursuant to MCR 2.116(C)(10), arguing that because it has been found that Mr. Fisher has not engaged in criminal activity, this court should dismiss this drug forfeiture matter. The People admit that they are unable to go forward unless the Court of Appeals reverses this court's ruling. However, in the response to claimants' motion for summary disposition, the People also suggest that it would be appropriate for this judge to disqualify himself. On July 20, 2017, the People filed a motion for judicial disqualification pursuant to MCR 2.003. This court denies the People's motion.

II. ANALYSIS

All motions for disqualification must be filed within 14 days of the discovery of the grounds for disqualification. MCR 2.003(D)(1)(a). Untimely motions may be granted for good cause shown. MCR 2.003(D)(1)(d). If a motion is not timely filed, untimeliness is a factor in deciding whether the motion should be granted. MCR 2.003(D)(1)(d).

Under MCR 2.003(C), disqualification of a judge is warranted for reasons that include, but are not limited to, the following:

- (a) The judge is biased or prejudiced for or against a party or attorney.
- (b) The judge, based on objective and reasonable perceptions, has either (i) a serious risk of actual bias impacting the due process rights of a party as enunciated in *Caperton v Massey*, 556 US 868; 129 S Ct 2252; 173 L Ed 2d 1208 (2009), or (ii) has failed to adhere to the appearance of impropriety standard set forth in Canon 2 of the Michigan Code of Judicial Conduct.

The People first argue that this judge is biased in drug forfeiture matters based upon a statement allegedly made by this judge during the drug forfeiture proceedings of *People of the State of Michigan v Residential Real Estate*, 1997-10052-CZ. The People allege that this judge "stated in the presence of the Counsel for BAYANET" that this judge "did not like drug forfeitures as they penalize people twice for the same conduct." No context is provided for this statement, nor is it identified whether the statement was made on the record or whether it was made off the record. After a review of the register of actions of this 1997 case, it does not appear that any hearing throughout the proceedings was ever transcribed, and the recordings were destroyed several years ago in accordance with the Records Retention and Disposal Schedule for Michigan Trial Courts. This judge does not have any memory of what he said 20 years ago in the cited case.

First, a motion for disqualification on the basis of comments made 20 years ago is certainly not timely under MCR 2.003(D)(1)(a). This judge has handled numerous drug forfeiture cases in the 20 years since the 1997 case cited by the People. Not once has anyone from the prosecutor's office ever requested this judge's disqualification in a drug forfeiture matter. To suddenly raise this issue now, after 20 years of having no concerns about this judge

presiding over this type of case, makes it appear that the prosecutor is simply attempting to judge shop because he disagrees with the last few rulings issued in this case and the Fisher criminal case.

Even if a motion on this basis had been timely filed, the statement allegedly made in this 1997 drug forfeiture case is not a legitimate basis for disqualification. This judge, like all judges, has personal opinions on many subjects. Sometimes these opinions may be stated, either on the record or during conferences with counsel. However, this judge, in accordance with the Code of Judicial Conduct, does not let these personal opinions rise to the level of bias. If any personal opinion ever did rise to such a level as to make this judge unable to impartially discharge its duties, this judge would be the first to raise the issue of disqualification. Despite the fact that there is a legitimate academic dispute regarding whether forfeiture is a double jeopardy violation, under prevailing law it is not. It is this judge's duty to uphold the law, and this duty will be discharged faithfully without influence from personal opinion. It appears that Isabella County's prosecutors are aware of this fact because not a single prosecutor has raised this issue in the 20 years since the 1997 drug forfeiture case cited by counsel. This court denies the motion for judicial disqualification on the basis of this judge's alleged statement in the 1997 case.

The People next argue that this judge's involvement in Mr. and Ms. Fisher's criminal cases should lead to disqualification in this drug forfeiture case. This issue arose after this court denied the People's motion for a stay of proceedings and subsequently denied the People's motion for reconsideration on July 19, 2017. The People had requested this court to stay proceedings in this drug forfeiture matter until the Court of Appeals reached a decision in the Fisher criminal matter. Had the motion for a stay been granted, there would have been no need to raise the issue of disqualification. Therefore, the time to bring a disqualification motion based on this issue would begin to run at the time the motion for reconsideration was denied. Accordingly, a motion on this basis is timely pursuant to MCR 2.003(D)(1)(a).

In support of the motion, the People cite the *Crampton v Dep't of State* standard for addressing disqualification. *Crampton v Dep't of State*, 395 Mich 347; 235 NW2d 352 (1975). The *Crampton* Court stated:

The United States Supreme Court has disqualified judges and decisionmakers without a showing of actual bias in situations where 'experience teaches that the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable.' Among the situations identified by the Court as presenting that risk are where the judge or decisionmaker:

- (1) has a pecuniary interest in the outcome;
- (2) has been the target of personal abuse or criticism from the party before him;
- (3) is enmeshed in [other] matters involving petitioner...; or
- (4) might have prejudged the case because of prior participation as an accuser, investigator, fact finder or initial decisionmaker. *Crampton v Dep't of State*, 395 Mich 347, 351; 235 NW2d 352 (1975).

The People argue that in this case the court is "enmeshed in [other] matters involving petitioner" because the court has previously ruled in the Fisher criminal matters. However, this is

a misunderstanding of the meaning of “enmeshed.” In *Crampton*, the Court provided an example of a situation in which a judge became “enmeshed in other matters” involving a litigant. A judge was so “enmeshed” when the judge was recently a losing party in a civil rights suit brought by the person who was now the defendant in a criminal contempt proceeding. *Id.* In such a situation, it would not be appropriate for the judge to adjudicate the contempt charges. Such a situation is clearly distinguishable from the situation currently before this court. This judge has certainly not been a party to any case involving either the People or Mr. and Ms. Fisher. The fact that this judge has ruled in a previous case involving these parties, without more, is not sufficient to make a finding that this judge has become “enmeshed.” *Id.*

The People next argue that this judge “might have prejudiced the case because of prior participation as an accuser, investigator, fact finder or initial decisionmaker.” It is true that this judge was the fact finder in the Fisher criminal matter and is now presiding over this drug forfeiture case. However, the People have not set forth any reason why this is prejudicial. The Michigan Court of Appeals has declined to adopt a rule of automatic disqualification “solely because a judge has sat as a factfinder in a prior trial.” *People v Upshaw*, 172 Mich App 386, 389; 431 NW2d 520 (1988). The Court of Appeals held that “unless there are special circumstances which increase the risk of unfairness” disqualification is not required solely because a judge sat as fact finder in a prior matter. *Id.* The People have not set forth any special circumstances which would increase the risk of unfairness in this case, and this judge does not perceive any such circumstances.

Finally, the People argue that there is an appearance of impropriety contrary to Canon 2 of the Michigan Code of Judicial Conduct. The People argue that, because this judge has denied the People’s motion for a stay, there is an appearance that the claimants are being given an unfair advantage or that this is some kind of reprisal by the court toward the People for having appealed this court’s decision in the criminal case. This is not a credible argument, particularly because this judge clearly set forth the basis for the decision not to grant a stay in this case. As the court stated in its decision to deny the People’s requested stay and in its opinion and order denying the People’s motion for reconsideration, the People have failed to provide legal authority supporting the necessity of a stay in these circumstances. Additionally, continuing to keep the claimants’ property from them for more than a year, particularly when they have been found not to have engaged in criminal activity, could have due process ramifications. There is no appearance of impropriety simply because this court ruled that Mr. Fisher did not engage in criminal activity and then later denied the People’s request for a stay based on due process ramifications and the People’s failure to cite any significant supporting legal authority. Contrary to the People’s argument, a reasonable person would not observe these cases and come to the conclusion that this court is giving the claimants an unfair advantage or acting in reprisal toward the People for having appealed this court’s previous decision when the court has so clearly set forth the legal reasoning for its decisions. Instead, it appears that the prosecutor is attempting to judge shop because he disagrees with the last few rulings made by this court. Accordingly, this court denies the People’s motion for judicial disqualification.

THEREFORE IT IS ORDERED that the People’s motion for judicial disqualification is denied.

IT IS FURTHER ORDERED that, if the People want this motion referred to the state court administrator for assignment to another judge for de novo review pursuant to MCR 2.003(D)(3)(a)(ii), the request must be made within 7 days of the date of this opinion and order.

This order does not resolve the last pending claim or close the case.

Date: July 26, 2017

A handwritten signature in black ink, appearing to read "Paul H. Chamberlain", with a long horizontal flourish extending to the right.

Hon. Paul H. Chamberlain (P31682)

Chief Judge

Isabella County Trial Court

**STATE OF MICHIGAN
IN THE ISABELLA COUNTY TRIAL COURT**

ISABELLA COUNTY PROSECUTING
ATTORNEY Ex Rel Bay Area Narcotics
Enforcement Team,

Case No.
16-13188-CZ

Plaintiff,

Hon. Paul H. Chamberlain

v

ONE 1987 BUICK GRAND NATIONAL, Et
[sic] al.,

Defendant.


PROOF OF SERVICE

Anne M. Szczubelek, an employee of the Isabella County Trial Court, certifies that on July 26, 2017, she served a copy of the OPINION AND ORDER ON THE PEOPLE'S MOTION FOR JUDICIAL DISQUALIFICATION, on the following individual by placing the same in an envelope and placing it in his attorney box:

Robert A. Holmes, Jr.
Isabella County Prosecutor's Office
200 North Main Street
Mt. Pleasant, MI 48858.

I also served the OPINION AND ORDER ON THE PEOPLE'S MOTION FOR DISQUALIFICATION, on the following individual by placing the same in an envelope addressed to the following individual, placing proper postage on it, and placing it into the United States Mail:

Michael A. Komorn
30903 Northwestern Highway, Ste 240
Farmington Hills, MI 48334



Anne M. Szczubelek
Law Clerk
Isabella County Trial Court

FILED

JUL 26 2017

COUNTY CLERK
ISABELLA COUNTY
MT. PLEASANT, MICH.

**STATE OF MICHIGAN
IN THE ISABELLA COUNTY TRIAL COURT**

ISABELLA COUNTY PROSECUTING
ATTORNEY Ex Rel Bay Area Narcotics
Enforcement Team,

Plaintiff,

Case No.
16-13188-CZ

v

Hon. Paul H. Chamberlain

ONE 1987 BUICK GRAND NATIONAL, Et
[sic] al.,

Defendant.

FILED

NOV 30 2017

Robert A. Holmes, Jr. (P44097)
Attorney for Plaintiff

**ISABELLA COUNTY CLERK
MT. PLEASANT, MICH.**

Michael A. Komorn (P47970)
Attorney for Claimants

**OPINION AND ORDER
ON CLAIMANTS' MOTION FOR SUMMARY DISPOSITION**

I. FACTS

This civil drug forfeiture matter was filed on May 26, 2016, and was based on alleged criminal drug activity pertaining to Steven and Leslie Fisher. Criminal charges were filed against both Steven and Leslie Fisher. The property seized from the claimants that is the subject of this forfeiture action includes a 1987 Buick Grand National, a Cadillac Eldorado, a 2009 Chevrolet Pickup Truck, an Enclosed Pace Trailer, a 1995 Polaris Indy Snowmobile, \$3,918.00 in US Currency, three pieces of gold, one piece of silver, a laptop computer, a Dell XPS computer tower, two iPhones, six firearms, and various hoses, lights and drying racks.

On December 8, 2016, this court issued an opinion dismissing the charges against Leslie Fisher in case number 16-802-FH. On January 31, 2017, this court issued an opinion dismissing the charges against Steven Fisher in case number 16-801-FH, finding that Mr. Fisher had established a § 8 defense under the Michigan Medical Marijuana Act (MMMA). The People have filed an appeal of the court's order dismissing the criminal case against Steven Fisher. The People requested this court to stay this drug forfeiture matter pending a ruling by the Court of Appeals in Mr. Fisher's criminal case. At a hearing held on April 28, 2017, this court denied the

People's motion to stay proceedings. The People filed a motion for reconsideration of this court's decision denying the motion to stay proceedings, which this court denied in an opinion and order dated July 19, 2017.

The claimants filed a motion for summary disposition pursuant to MCR 2.116(C)(10), arguing that because it has been found that Mr. Fisher has not engaged in criminal activity, this court should dismiss this drug forfeiture matter. The People admit that they are unable to go forward unless the Court of Appeals reverses this court's ruling.

On July 20, 2017, the People filed a motion for judicial disqualification pursuant to MCR 2.003. This court denied the motion for judicial disqualification. The People sought de novo review of this court's decision, and Judge Hill-Kennedy was appointed by the State Court Administrative Office. On October 2, 2017, Judge Hill-Kennedy denied the motion for judicial disqualification.

The claimant's motion for summary disposition was re-noticed for hearing on October 20, 2017. On that date, this court heard oral arguments and took the matter under advisement. This court grants the claimants' motion for summary disposition.

II. ANALYSIS

Claimants filed a motion for summary disposition pursuant to MCR 2.116(C)(10), which permits summary disposition when, except for the amount of damages, there is no genuine issue concerning any material fact and the moving party is entitled to judgment as a matter of law. *Thomas v Stubbs*, 218 Mich App 46, 49; 553 NW2d 634 (1996). The court reviewing the motion must consider pleadings, affidavits, depositions, admissions, and any other evidence in favor of the opposing party and grant the benefit of any reasonable doubt to the opposing party. *Id.* The party responding to a motion for summary disposition must present evidentiary proofs creating a genuine issue of material fact for trial; otherwise, summary disposition is properly granted. *Smith v Globe Life Ins Co*, 460 Mich 446, 455; 597 NW2d 28 (1999). Finally, the test for an existence of a genuine issue of material fact is whether the record, when looked at in the light most favorable to the non-moving party, leaves open an issue upon which reasonable minds might differ. *West v General Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003).

The claimants argue that summary disposition should be granted in their favor in this civil forfeiture action because this court has dismissed the criminal case against Leslie Fisher and has found that Steven Fisher successfully presented a Section 8 defense under the MMMA. The People are in the process of appealing this court's ruling in the criminal case. Absent a reversal by the Court of Appeals, the People agree that there can be no drug forfeiture proceedings as the drug forfeiture proceedings must be linked to illegal criminal activity. *In re Forfeiture of \$5,264*, 432 Mich 242, 244-45 (1989). However, the People again request this court to reconsider its denial of the People's request to stay this civil forfeiture matter pending the appeal in the related criminal matter.

At the hearing on October 20, 2017, the People cited a case that had not been previously cited, *Bank of Com v Hulett*, 82 Mich App 442; 266 NW2d 841 (1978). In *Hulett*, the Court of Appeals decided to follow the rule set forth in 1 Am Jur 2d, Actions, Section 92-94, which provides in part: "Where the rights of parties to the second action cannot be properly determined until the questions raised in the first action are settled the second action should be stayed." *Id.* at 445. The People argue that the issues in this civil forfeiture matter cannot be properly determined

until the Court of Appeals makes its ruling in the related criminal matter, and so the People request this court to follow the rule set forth in *Hulett*. However, *Hulett* is not a civil forfeiture matter, and so the Court of Appeals did not consider in its ruling the particular concerns presented by civil forfeiture. As this court stated in its aforementioned July 19, 2017 opinion and order denying the People's motion for reconsideration, continuing to keep the claimants' property from them for more than a year when the claimants have been found not to have engaged in criminal activity could have serious due process ramifications. The property seized includes three motor vehicles, a snowmobile, currency, firearms, computers and smart phones. The property, particularly the motor vehicles, will deteriorate with time. A lengthy delay in the return of the claimants' property, especially when this delay diminishes the value of the property, does not comply with due process. The claimants have already been without their property for a significant amount of time. To allow for further and possibly significant delay pending the decision of the Court of Appeals would be patently unfair to the claimants and would deprive them of their due process rights. Therefore, this court again declines to reconsider its decision denying a stay in this matter and grants claimants' motion for summary disposition. The People shall return the seized items to the claimants.

The claimants further request this court to order sanctions in this case. Claimants argue that the People frivolously filed the motion for judicial disqualification in order to prolong these proceedings. However, the issue of sanctions was already raised with Judge Hill-Kennedy, who found that the motion was not frivolous and sanctions were not warranted. As this issue has already been decided by Judge Hill-Kennedy, this court denies claimants' request for sanctions.

THEREFORE IT IS ORDERED that claimants' motion for summary disposition is granted and the People shall return the claimants' seized property.

IT IS FURTHER ORDERED that the claimants' request for sanctions is denied.

This order resolves the last pending claim and closes this case.

Date: November 29, 2017



Hon. Paul H. Chamberlain (P31682)
Chief Judge
Isabella County Trial Court

Proof of Service

☒ mail ☒ atty box ☐ personal

Date: 11-30-17 Signature: S

**STATE OF MICHIGAN
IN THE ISABELLA COUNTY TRIAL COURT**

THE PEOPLE OF THE STATE OF
MICHIGAN,

Plaintiff,

Case No.
16-802-FH

v

Hon. Paul H. Chamberlain

LESLIE FISHER,

Defendant.

Robert A. Holmes, Jr. (P44097)
Attorney for Plaintiff

David Rudoi (P75169)
Attorney for Defendant

**OPINION AND ORDER
ON DEFENDANT LESLIE FISHER'S MOTION TO QUASH BINDOVER AND
DISMISS ALL CHARGES**

I. FACTS

On April 12, 2016, law enforcement executed a search warrant at the residence of Steven and Leslie Fisher, 316 N 3rd Street, Shepherd, Michigan, and at Steven Fisher's workshop, 432 N 4th Street, Shepherd, Michigan. At the time of the execution of the search warrant at the residence, Leslie Fisher was found in the upstairs bedroom and Steven Fisher was found on the main floor. (Preliminary Examination Transcript Volume II, July 22, 2016, pages 41-42, 126). Less than 2.5 ounces of usable marijuana and no marijuana plants were found in the residence itself. *Id.* at 40-41, 128. Law enforcement also found two firearms in the residence. One firearm was found on the main floor of the residence approximately 20 feet from where law enforcement initially found Mr. Fisher. (Preliminary Examination Transcript Volume I, June 23, 2016, page 23). The other firearm was found in the upstairs bedroom approximately 6 feet from Ms. Fisher. *Id.*

FILED

DEC 08 2016

COUNTY CLERK
ISABELLA COUNTY
MT. PLEASANT, MICH.

After searching the residence, law enforcement searched a locked, unattached garage next to the residence. (Preliminary Examination Transcript Volume II, page 55). In the garage, law enforcement found and seized 28 marijuana plants and over 28 pounds of processed marijuana. *Id.* at 57. Subsequently, the warrant was executed at Mr. Fisher's workshop. *Id.* at 66. Detective Trooper Randall Jordan testified at the preliminary examination that law enforcement found a THC extraction lab at the workshop. *Id.* at 77.

Both Steven and Leslie Fisher have valid medical marijuana cards. Defendant alleges that Steven Fisher was acting as her medical marijuana caregiver, but does not deny that Steven Fisher was not registered as her caregiver under the Michigan Medical Marijuana Act (MMMA). At the preliminary examination, Detective Jordan testified that Leslie Fisher told law enforcement that she did not know how many marijuana plants or how much marijuana her husband had inside the garage and that she "left that to her husband." (Preliminary Examination Transcript Volume I, page 46). Detective Jordan further testified that there was no evidence that Leslie Fisher had ever entered the garage. (Preliminary Examination Transcript Volume II, page 131, 134). Additionally, he testified that the garage was locked and there was no evidence that Leslie Fisher had a key to the garage. *Id.* at 131.

Defendant Leslie Fisher is charged with Possession with Intent to Deliver 5 to 45 Kilograms of Marijuana, Possession with Intent to Deliver 20 or more Marijuana Plants, Felony Firearm, and Maintaining a Drug House. A preliminary examination was held in the 76th District Court, and Ms. Fisher was bound over to the 21st Circuit Court on all charges on September 29, 2016. Defense counsel for Leslie Fisher alleges that there was not probable cause to bind Ms. Fisher over on any of the charged offenses. Defense counsel requests the court to quash the bindover of Ms. Fisher and dismiss all charges. On December 1, 2016, this court heard oral argument on defendant's motion to quash bindover and dismiss all charges. The court took the motion under advisement and now issues this written opinion granting defendant's motion.

II. ANALYSIS

At a preliminary examination, the People have the burden of proof and are required to show that a crime has been committed and that there is probable cause to believe the defendant committed it. *People v Duncan*, 388 Mich 489, 499; 201 NW2d 629 (1972). If, after considering the evidence, the court determines that probable cause exists to believe both that an offense not cognizable by the district court has been committed and that the defendant committed it, the court must bind the defendant over for trial. MCR 6.110(E). However, absent the required showing of probable cause by the prosecution, there cannot be a proper bindover. *People v Hunt*, 442 Mich 359, 362; 501 NW2d 151 (1993).

The probable cause standard of proof is less than proof beyond a reasonable doubt. *People v Carter*, 250 Mich App 510, 521; 655 NW2d 236 (2002). Probable cause exists when "there is a reasonable ground of suspicion supported by circumstances sufficiently strong to warrant a cautious person to believe that the accused is guilty of the offense charged." *Carter*, 250 Mich App at 521. A reviewing court should not reverse a finding of probable cause unless a clear abuse of discretion is demonstrated. *People v Doss*, 406 Mich 90, 101; 276 NW2d 9 (1979). An abuse of discretion occurs when a court chooses an outcome falling outside the range of reasonable and principled outcomes. *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003).

Defense counsel argues that there is not sufficient probable cause that Ms. Fisher committed any of the offenses with which she is charged. At the preliminary examination, Detective Jordan testified that there was no evidence that Ms. Fisher had access to or had been inside the garage where the majority of the marijuana and all of the marijuana plants were found. (Preliminary Examination Transcript Volume II, page 131, 134). Detective Jordan testified that Ms. Fisher told law enforcement that she only used marijuana and for the most part left everything else to her husband. (Preliminary Examination Transcript Volume I, page 46). Additionally, Detective Thomas Brown was unable to point to any specific piece of evidence linking Ms. Fisher personally to the growing of or manufacture of marijuana in any way. (Preliminary Examination Transcript Volume II, page 226).

Ms. Fisher does not deny that she had her husband grow marijuana for her use even though Mr. Fisher was not her registered caregiver. However, pursuant to MCL 333.26428, if certain requirements are met, Mr. Fisher could assert the MMMA's Section 8 defense to any prosecution involving marijuana. Accordingly, if Section 8's requirements were followed by Mr. Fisher, he could provide his wife with marijuana even though he was not her registered primary caregiver because Section 8 does not require that a primary caregiver be "registered." MCL 333.26428(a).

In order to claim the Section 8 defense, Steven Fisher would have to meet all three of the following requirements:

(1) A physician has stated that, in the physician's professional opinion, after having completed a full assessment of the patient's medical history and current medical condition made in the course of a bona fide physician-patient relationship, the patient is likely to receive therapeutic or palliative benefit from the medical use of marihuana to treat or alleviate the patient's serious or debilitating medical condition or symptoms of the patient's serious or debilitating medical condition;

(2) The patient and the patient's primary caregiver, if any, were collectively in possession of a quantity of marihuana that was not more than was reasonably necessary to ensure the uninterrupted availability of marihuana for the purpose of treating or alleviating the patient's serious or debilitating medical condition or symptoms of the patient's serious or debilitating medical condition; and

(3) The patient and the patient's primary caregiver, if any, were engaged in the acquisition, possession, cultivation, manufacture, use, delivery, transfer, or transportation of marihuana or paraphernalia relating to the use of marihuana to treat or alleviate the patient's serious or debilitating medical condition or symptoms of the patient's serious or debilitating medical condition. MCL 333.26428(a).

The People argue that it is impossible for Mr. Fisher to meet the third Section 8 requirement because he allegedly told law enforcement that he had been attempting to sell his excess marijuana. (Preliminary Examination Transcript Volume I, pages 41-42). If Mr. Fisher

was engaged in the sale or attempted sale of marijuana, he would be unable to show that his possession and cultivation of marijuana was solely relating to the medical use of marijuana, as required by MCL 333.26428(a)(3). Additionally, law enforcement found a large quantity of marijuana in the locked garage at the Fisher residence. It would likely be difficult to show that 28 pounds of marijuana was not more than reasonably necessary to ensure the uninterrupted availability of marijuana for the purpose of treating Mr. and Ms. Fisher's medical conditions, as required by MCL 333.26428(a)(2).

The People argue that, despite Ms. Fisher's assertions to law enforcement that she was unaware of what her husband was doing in the garage, she aided and abetted her husband in his illegal marijuana growing activities. Even though Steven Fisher was not Leslie Fisher's registered caregiver under the Michigan Medical Marijuana Act, she had him grow marijuana for her and she was aware that he was growing that marijuana in the garage. Therefore, the People argue that Ms. Fisher was aiding and abetting Mr. Fisher's activities. The People assert in their response to defendant's motion that Ms. Fisher is being prosecuted based only on this aiding and abetting theory.

In order to be found guilty of aiding and abetting, the prosecutor must prove beyond a reasonable doubt that: (1) a crime was committed; (2) before or during the crime, the defendant did something to assist in the commission of the crime; and (3) at that time the defendant must have intended the commission of the crime alleged or must have known that the other person intended its commission or that the crime alleged was a natural and probable consequence of the commission of the crime intended. M Crim JI 8.1.

Review of the district court's bindover decision is limited to the preliminary examination transcript. *People v Waters*, 118 Mich App 176, 183; 324 NW2d 564 (1982). There was evidence presented at the preliminary examination that Ms. Fisher had a valid medical marijuana card and that her husband provided her with marijuana. (Preliminary Examination Transcript Volume II, page 127). When the search warrant was executed, Ms. Fisher was in possession of less than 2.5 ounces of marijuana, which is an allowable amount under the MMMA. *Id.* at 129; MCL 333.26424(a). There was no evidence presented that Ms. Fisher was ever in possession of more than the allowable amount. Further, there was no evidence presented that Ms. Fisher knew how much marijuana or how many marijuana plants her husband had in the garage or that she had anything to do with growing or selling marijuana. The garage was kept locked and there was no evidence presented that Ms. Fisher ever entered the garage. There was additionally no evidence presented that Ms. Fisher knew her husband was attempting to sell marijuana. Accordingly, even though there was evidence that Ms. Fisher had her husband grow marijuana for her, there was no evidence presented at the preliminary examination that would indicate that Ms. Fisher knew her husband might not be able to take advantage of the MMMA's Section 8 defense.

Count 1 charges Ms. Fisher with Possession with Intent to Deliver 5 to 45 Kilograms of Marijuana. The People allege that Ms. Fisher aided and abetted Mr. Fisher in the commission of this offense. The elements of this offense are:

1. That the defendant knowingly possessed a controlled substance.
2. That the defendant intended to deliver this substance to someone else.
3. That the substance was marijuana and the defendant knew it was marijuana.
4. That the controlled substance that the defendant intended to deliver weighed 5 kilograms or more, but less than 45 kilograms. M Crim JI 12.3.

Count 2 charges Ms. Fisher with Possession with Intent to Deliver 20 or more Marijuana Plants. The People allege that Ms. Fisher aided and abetted Mr. Fisher in the commission of this offense. The elements of this offense are:

1. That the defendant knowingly possessed a controlled substance.
2. That the defendant intended to deliver this substance to someone else.
3. That the substance was marijuana and the defendant knew it was marijuana.
4. That the controlled substance that the defendant intended to deliver was 20 marijuana plants or more, but less than 200 plants. M Crim JI 12.3.

Count 4 charges Ms. Fisher with Maintaining a Drug House. The People again allege that Ms. Fisher aided and abetted Mr. Fisher in the commission of this offense. The elements of this offense are:

1. That the defendant knowingly kept or maintained a building.
2. That this building was used for illegally keeping and/or selling of controlled substances.
3. That the defendant knew that the building was frequented or used for such illegal purposes. M Crim JI 12.8.

The only evidence presented at the preliminary examination regarding Ms. Fisher indicates that she possessed an allowable amount of marijuana with a valid medical marijuana card and that she was receiving marijuana from her husband, who also had a valid medical marijuana card. There was no evidence presented that Ms. Fisher knew her husband's marijuana related activities were not in compliance with the MMMA. If Mr. Fisher had complied with all the requirements of Section 8 of the MMMA, he could have taken advantage of the section 8 defense for any prosecution related to providing his wife with marijuana. While Leslie Fisher knew her husband was providing her with marijuana, there was no evidence presented that she was aware of him providing marijuana to anyone else or undertaking any marijuana related activities not protected by the MMMA. The People failed to present any evidence that Ms. Fisher knew her husband could not take advantage of the Section 8 defense. Additionally, there was no evidence presented that Ms. Fisher actively assisted her husband with his marijuana cultivation or aided and abetted the commission of the charged offenses in any other way. Therefore, the People failed to make a showing of probable cause that Ms. Fisher intended the commission of Counts 1, 2, and 4, or that she knew these offenses were the natural and probable consequences of Mr. Fisher's actions. Because there was no evidence presented regarding Ms. Fisher's alleged aiding and abetting, it was an abuse of discretion to bind defendant over on these counts. Defendant's motion to quash bindover is granted, and Counts 1, 2, and 4 are dismissed.

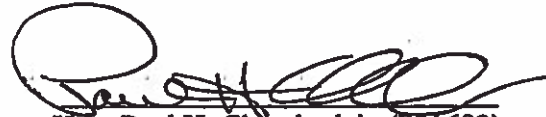
Additionally, Count 3 charges defendant with Felony Firearm. In order to be convicted of Felony Firearm, defendant must carry or have in her possession a firearm when she commits or attempts to commit a felony. MCL 750.227b(1). While Ms. Fisher was allegedly found 6 feet away from a firearm when the search warrant on defendant's residence was executed, there is no evidence that she was committing or attempting to commit a felony at that time. Further, because the dismissal of Counts 1, 2, and 4 mean that there is no underlying felony, there remains no

probable cause that defendant committed the offense of Felony Firearm. Accordingly, defendant's motion to quash bindover and dismiss is also granted as to Count 3.

THEREFORE IT IS ORDERED that defendant's motion to quash bindover and to dismiss all charges is granted.

This order resolves the last pending claim and closes the case.

Date: December 8, 2016



Hon. Paul H. Chamberlain (P31682)
Chief Judge
Isabella County Trial Court

Court of Appeals, State of Michigan

ORDER

In re Forfeiture of One 1987 Buick Grand National

Amy Ronayne Krause
Presiding Judge

Docket No. 340536

Patrick M. Meter

LC No. 2016-013188-CZ

Brock A. Swartzle
Judges

The Court orders that the motion for immediate consideration is GRANTED.

The Court orders that the motion for stay is DENIED.

The Court orders that the delayed application for leave to appeal is DENIED for lack of merit in the grounds presented.

Ronayne Krause, J., dissents and states: I concur with my colleagues to grant the motion for immediate consideration. I however dissent from the rest of my colleagues order. I would grant the motion for stay and hold the delayed application for leave in abeyance and retain jurisdiction for the following reasons: If this Court affirms the dismissal of the underlying criminal charges in docket no. 336902, then the status quo will be maintained. In that circumstance, plaintiff believes it cannot maintain the civil forfeiture action. However, if this Court reverses and the criminal charges are reinstated on the underlying criminal charges, then this civil forfeiture would not be barred by MCL 333.26428(c)(2). Waiting for the result of the appeal in the criminal charges underlying this forfeiture would not be an undue delay. This stay is necessary so that justice occurs.



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

OCT 19 2017

Date

Chief Clerk

4-12-10

Date

BAY AREA NARCOTICS ENFORCEMENT TEAM
(BAYANET)
DETAIL OF SEIZED PROPERTY

Reviewed By

INCIDENT #: BNT- 100-116 ADDRESS: 432 N. 4th PAGE # 1 of 2

ITEM FOUND:(location) Pear Shed (1)

FOUND BY: Brown SEIZED BY: Tafelet TIME: 4:30p

DESCRIPTION OF ITEM: 11 Magnum XXXL Reflector light

WEIGHT: STOLEN: YES * NO FORFEITURE: YES * NO

RECEIPT # BIN: TEMP. STORAGE * GARAGE SAFE: TOWING

ITEM FOUND:(location) Removed from oven (2)

FOUND BY: Brown SEIZED BY: Tafelet TIME: 4:30p

DESCRIPTION OF ITEM: One Pizza box w/ M.S. Wax

WEIGHT: STOLEN: YES * NO FORFEITURE: YES * ~~NO~~

RECEIPT # BIN: TEMP. STORAGE * GARAGE SAFE: TOWING

ITEM FOUND:(location) Main Building (3)

FOUND BY: Brown SEIZED BY: Tafelet TIME: 4:30p

DESCRIPTION OF ITEM: Marijuana Leaves

WEIGHT: STOLEN: YES * NO FORFEITURE: YES * ~~NO~~

RECEIPT # BIN: TEMP. STORAGE * GARAGE SAFE: TOWING

ITEM FOUND:(location) Main Building - Fridge

FOUND BY: Brown SEIZED BY: Tafelet TIME: 4:30pm

DESCRIPTION OF ITEM: 5 white Pizza Boxes w/ Marijuana wax

WEIGHT: STOLEN: YES * NO FORFEITURE: YES * NO

RECEIPT # BIN: TEMP. STORAGE * GARAGE SAFE: TOWING

4-12-16

Date

BAY AREA NARCOTICS ENFORCEMENT TEAM
(BAYANET)
DETAIL OF SEIZED PROPERTY

Reviewed By

INCIDENT #: BNT- 100-16 ADDRESS: 432 N. 4th PAGE # 2 of 2

ITEM FOUND:(location) Main Bldg on Bench 6

FOUND BY: Brown SEIZED BY: Traflet TIME: 4:30pm

DESCRIPTION OF ITEM: ACross International Vacuum Oven w/Vac. Pump
Model: Accr Temp-19K Ser.# 201411596

WEIGHT: STOLEN: YES * NO FORFEITURE: YES * NO

RECEIPT # BIN: TEMP. STORAGE * GARAGE SAFE: TOWING

ITEM FOUND:(location) Main Bldg on Bench 6

FOUND BY: Brown SEIZED BY: Traflet TIME: 4:30pm

DESCRIPTION OF ITEM: Stainless Steel Tubing, Valves, Stainless Hose
One digital Scale, One Puddy Knife w/ Marijuana wax

WEIGHT: STOLEN: YES * NO FORFEITURE: YES * NO

RECEIPT # BIN: TEMP. STORAGE * GARAGE SAFE: TOWING

ITEM FOUND:(location) Main Bldg on Bench 7

FOUND BY: Brown SEIZED BY: Traflet TIME:

DESCRIPTION OF ITEM: One Stainless Pressure Tank w/ Gorgoes

WEIGHT: STOLEN: YES * NO FORFEITURE: YES * NO

RECEIPT # BIN: TEMP. STORAGE * GARAGE SAFE: TOWING

ITEM FOUND:(location) Main Bldg 8

FOUND BY: Brown SEIZED BY: Traflet TIME:

DESCRIPTION OF ITEM: Two ProSet Refrigerant Recovery Systems
Model TRS 21 / TR 21

WEIGHT: STOLEN: YES * NO FORFEITURE: YES * NO

RECEIPT # BIN: TEMP. STORAGE * GARAGE SAFE: TOWING

4-12-16
Date

BAY AREA NARCOTICS ENFORCEMENT TEAM
(BAYANET)
DETAIL OF SEIZED PROPERTY

Reviewed By _____

INCIDENT #: BNT- 100-116 ADDRESS: 432 N. 4th PAGE # 3 of

ITEM FOUND:(location) Main Blding - in Enclosed Trailer

FOUND BY: Brown SEIZED BY: Traflet TIME: 4:30p

DESCRIPTION OF ITEM: one Polaris Indy Special XLT
Model #0956706 MI/Reg. MX5077 758 miles

WEIGHT: _____ STOLEN: YES * NO FORFEITURE: YES * NO

RECEIPT # _____ BIN: TEMP. STORAGE * GARAGE SAFE: _____ TOWING _____

ITEM FOUND:(location) Main Blding - driveway

FOUND BY: Brown SEIZED BY: Traflet TIME: 4:30p

DESCRIPTION OF ITEM: one BIK Enclosed Trailer 7'x14"
Pace American MI/Reg. C589446

WEIGHT: _____ STOLEN: YES * NO FORFEITURE: YES * NO

RECEIPT # _____ BIN: TEMP. STORAGE * GARAGE SAFE: _____ TOWING _____

ITEM FOUND:(location) Rear Shed

FOUND BY: Brown SEIZED BY: Traflet TIME: 4:30p

DESCRIPTION OF ITEM: 83 Buick Grand National, BIK
VIN: [REDACTED]

WEIGHT: _____ STOLEN: YES * NO FORFEITURE: YES * NO

RECEIPT # _____ BIN: TEMP. STORAGE * GARAGE SAFE: _____ TOWING _____

ITEM FOUND:(location) _____

FOUND BY: _____ SEIZED BY: _____ TIME: _____

DESCRIPTION OF ITEM: _____

WEIGHT: _____ STOLEN: YES * NO FORFEITURE: YES * NO

RECEIPT # _____ BIN: TEMP. STORAGE * GARAGE SAFE: _____ TOWING _____

4-12-16

Date

BAY AREA NARCOTICS ENFORCEMENT TEAM
(BAYANET)
DETAIL OF SEIZED PROPERTY

Reviewed By

INCIDENT #: BNT- 100-16 ADDRESS: 316 N. 3rd

PAGE # 1 of 1

ITEM FOUND:(location) Upstairs bedroom in Fridge (1)

FOUND BY: Powell SEIZED BY: Trefeler TIME: 1142hrs

DESCRIPTION OF ITEM: Envelope w/ suspected wax

WEIGHT: STOLEN: YES * NO FORFEITURE: YES * (NO)

RECEIPT # BIN: TEMP. STORAGE * GARAGE SAFE: TOWING

ITEM FOUND:(location) Upstairs bedroom / North Night Stand (2)

FOUND BY: Powell SEIZED BY: Trefeler TIME: 1142hrs

DESCRIPTION OF ITEM: One Beretta 9mm, Model 1934, Serial # F62583
w/ mag. w/ 7 rounds

WEIGHT: STOLEN: YES * NO FORFEITURE: (YES) * NO

RECEIPT # BIN: TEMP. STORAGE * GARAGE SAFE: TOWING

ITEM FOUND:(location) Upstairs bedroom, South Night Stand (3)

FOUND BY: Olson SEIZED BY: Trefeler TIME: 1142hrs

DESCRIPTION OF ITEM: Marijuana Bud

WEIGHT: STOLEN: YES * NO FORFEITURE: YES * NO

RECEIPT # BIN: TEMP. STORAGE * GARAGE SAFE: TOWING

ITEM FOUND:(location) Upstairs bedroom in Fridge (4)

FOUND BY: Powell SEIZED BY: Trefeler TIME: 1142hrs

DESCRIPTION OF ITEM: Marijuana Leaves

WEIGHT: STOLEN: YES * NO FORFEITURE: YES * (NO)

RECEIPT # BIN: TEMP. STORAGE * GARAGE SAFE: TOWING

4-12-16

Date

BAY AREA NARCOTICS ENFORCEMENT TEAM
(BAYANET)
DETAIL OF SEIZED PROPERTY

Reviewed By

INCIDENT #: BNT- 100-16 ADDRESS: 316 N. 3rd

PAGE # 2 of 2

ITEM FOUND:(location) Upstairs, North night stand (5)

FOUND BY: Powell SEIZED BY: Traflet TIME: 1142hrs

DESCRIPTION OF ITEM: One checkbook for First Bank checking Acc*
64096 To Leslie Fischer

WEIGHT: STOLEN: YES * NO FORFEITURE: YES * (NO)

RECEIPT # BIN: TEMP. STORAGE * GARAGE SAFE: TOWING

ITEM FOUND:(location) Main Floor - Rm #1 - Desk drawer (6)

FOUND BY: Traflet SEIZED BY: Traflet TIME: 1142hrs

DESCRIPTION OF ITEM: One checkbook for Gratiot Comm C.U. Acc #18003
To Steve & Leslie Fischer

WEIGHT: STOLEN: YES * NO FORFEITURE: YES * (NO)

RECEIPT # BIN: TEMP. STORAGE * GARAGE SAFE: TOWING

ITEM FOUND:(location) Main Floor Rm #1 - Desk (7)

FOUND BY: Powell SEIZED BY: Traflet TIME: 1142hrs

DESCRIPTION OF ITEM: One Yellow Paper w/ Names/Personal info

WEIGHT: STOLEN: YES * NO FORFEITURE: YES * (NO)

RECEIPT # BIN: TEMP. STORAGE * GARAGE SAFE: TOWING

ITEM FOUND:(location) Main Floor - Rm #1 - Desk (8)

FOUND BY: Powell SEIZED BY: Traflet TIME: 1142hrs

DESCRIPTION OF ITEM: Unknown Metal - 3 pieces

WEIGHT: STOLEN: YES * NO FORFEITURE: YES * (NO)

RECEIPT # BIN: TEMP. STORAGE * GARAGE SAFE: TOWING

4-12-16
Date

BAY AREA NARCOTICS ENFORCEMENT TEAM
(BAYANET)
DETAIL OF SEIZED PROPERTY

Reviewed By _____

INCIDENT #: BNT- _____ ADDRESS: 316 N. 3rd PAGE # 3 of 3

ITEM FOUND: (location) Main Floor - Bedroom #1 Desk drawer (9)

FOUND BY: Traflet SEIZED BY: Traflet TIME: 1142hrs

DESCRIPTION OF ITEM: Three Thousand Six Hundred, Five dollars
1x\$5, 6x\$10, 62x\$20, 23x\$100 Total = \$3605.00

WEIGHT: _____ STOLEN: YES * NO FORFEITURE: YES * NO

RECEIPT # _____ BIN: TEMP. STORAGE * GARAGE SAFE: _____ TOWING _____

ITEM FOUND: (location) Main floor - Rm #1 on desk (10)

FOUND BY: Powell SEIZED BY: Traflet TIME: 1142hrs

DESCRIPTION OF ITEM: One Glock 17, Serial # DAC 789 w/ Two Magazines
One Holster, One mag. Loader, 11 Rounds Ammo

WEIGHT: _____ STOLEN: YES * NO FORFEITURE: (YES) NO

RECEIPT # _____ BIN: TEMP. STORAGE * GARAGE SAFE: _____ TOWING _____

ITEM FOUND: (location) Main Floor - Rm #1 - Desk area (11)

FOUND BY: Powell SEIZED BY: Traflet TIME: 1142hrs

DESCRIPTION OF ITEM: Evidence bag w/ suspected Marijuana Seeds

WEIGHT: _____ STOLEN: YES * NO FORFEITURE: YES * (NO)

RECEIPT # _____ BIN: TEMP. STORAGE * GARAGE SAFE: _____ TOWING _____

ITEM FOUND: (location) Main floor Rm #3 on Bed (12)

FOUND BY: Olson SEIZED BY: Traflet TIME: 1142hrs

DESCRIPTION OF ITEM: One Apple i-Phone, BIK w/ Case

WEIGHT: _____ STOLEN: YES * NO FORFEITURE: (YES) * NO

RECEIPT # _____ BIN: TEMP. STORAGE * GARAGE SAFE: _____ TOWING _____

4-12-16

Date

RAY AREA NARCOTICS ENFORCEMENT TEAM
(BAYANET)
DETAIL OF SEIZED PROPERTY

Reviewed By

INCIDENT #: BNT- 100-16 ADDRESS: 316 N. 3rd PAGE # 4 of

ITEM FOUND:(location) Upstairs bedroom South Night Stand (13)
FOUND BY: Olson SEIZED BY: Trafelet TIME: 1142hrs
DESCRIPTION OF ITEM: One white I-Phone 6 w/ otter box

WEIGHT: STOLEN: YES * NO FORFEITURE: YES * NO
RECEIPT # BIN: TEMP. STORAGE * GARAGE SAFE: TOWING

ITEM FOUND:(location) Main Floor - Dining Room Table (14)
FOUND BY: Trafelet SEIZED BY: Trafelet TIME: 1142hrs
DESCRIPTION OF ITEM: Business Card, Bank Account Cards

WEIGHT: STOLEN: YES * NO FORFEITURE: YES * NO
RECEIPT # BIN: TEMP. STORAGE * GARAGE SAFE: TOWING

ITEM FOUND:(location) Main Floor - Dining Rm Table (15)
FOUND BY: Powell SEIZED BY: Trafelet TIME: 1142hrs
DESCRIPTION OF ITEM: One Hundred Eighty Five
5x\$1, 2x\$5, 1x\$10, 3x\$20, 1x\$100.

WEIGHT: STOLEN: YES * NO FORFEITURE: YES * NO
RECEIPT # BIN: TEMP. STORAGE * GARAGE SAFE: TOWING

ITEM FOUND:(location) Main Floor - Dining Rm Table (16)
FOUND BY: Powell SEIZED BY: Trafelet TIME: 1142hrs
DESCRIPTION OF ITEM: One Hundred Twenty Eight
8x\$1, 2x\$5, 2x\$10 2x\$20, 1x\$50

WEIGHT: STOLEN: YES * NO FORFEITURE: YES * NO
RECEIPT # BIN: TEMP. STORAGE * GARAGE SAFE: TOWING

4-12-16
Date

BAY AREA NARCOTICS ENFORCEMENT TEAM
(BAYANET)
DETAIL OF SEIZED PROPERTY

Reviewed By _____

INCIDENT #: BNT- 100-16 ADDRESS: 316 N. 3rd

PAGE # 5 of 5

ITEM FOUND: (location) Main Floor Rm #1, closet (17)

FOUND BY: Powell SEIZED BY: Treflet TIME: 1142hrs

DESCRIPTION OF ITEM: One Winchester, Model 1400, 12GA, Semi Auto Shotgun
Ser. # N1110645

WEIGHT: _____ STOLEN: YES * NO FORFEITURE: (YES) * NO
RECEIPT # _____ BIN: TEMP. STORAGE * GARAGE SAFE: _____ TOWING _____

ITEM FOUND: (location) Main Floor, Rm #1, Closet (18)

FOUND BY: Powell SEIZED BY: Treflet TIME: 1142hrs

DESCRIPTION OF ITEM: One Ithaca, 12GA, Model 37, Pump Shotgun
Ser. # 729674-2

WEIGHT: _____ STOLEN: YES * NO FORFEITURE: (YES) * NO
RECEIPT # _____ BIN: TEMP. STORAGE * GARAGE SAFE: _____ TOWING _____

ITEM FOUND: (location) Main Floor, Rm #1 (19)

FOUND BY: Powell SEIZED BY: Treflet TIME: 1142hrs

DESCRIPTION OF ITEM: 11 Mag. For. 223, Ammo Cans (2), Mis. Ammo

WEIGHT: _____ STOLEN: YES * NO FORFEITURE: (YES) * NO
RECEIPT # _____ BIN: TEMP. STORAGE * GARAGE SAFE: _____ TOWING _____

ITEM FOUND: (location) Main Floor, Rm #1 (20)

FOUND BY: Powell SEIZED BY: Treflet TIME: 1142hrs

DESCRIPTION OF ITEM: One EA Co, Cal, 223, Model: J-15 Serial # EA 31382
Assault Rifle w/ sling, Nylon Case & 4 mag. w/ Ammo

WEIGHT: _____ STOLEN: YES * NO FORFEITURE: YES * NO
RECEIPT # _____ BIN: TEMP. STORAGE * GARAGE SAFE: _____ TOWING _____

4-12-16

Date

BAY AREA NARCOTICS ENFORCEMENT TEAM
(BAYANET)
DETAIL OF SEIZED PROPERTY

Reviewed By

INCIDENT #: BNT- 100-116 ADDRESS: 316 N. 3rd

PAGE # 6 of 6

ITEM FOUND: (location) Main floor, Rm #1, Closet

FOUND BY: Powell SEIZED BY: Traflet TIME: 1142hrs

DESCRIPTION OF ITEM: One Browning Arms, 1.22 Long Rifle w/ Scope
Ser. # 213MY03098 w/ BIK Nylon Case, 5 mags, cleaning kit

WEIGHT: STOLEN: YES * NO FORFEITURE: YES * NO

RECEIPT # BIN: TEMP. STORAGE * GARAGE SAFE: TOWING

ITEM FOUND: (location) Main floor, Rm #1 closet

FOUND BY: Powell SEIZED BY: Traflet TIME: 1142hrs

DESCRIPTION OF ITEM: One Safariland Body Armor

WEIGHT: STOLEN: YES * NO FORFEITURE: YES * NO

RECEIPT # BIN: TEMP. STORAGE * GARAGE SAFE: TOWING

ITEM FOUND: (location) Main floor Rm #1 - Floor

FOUND BY: Powell SEIZED BY: Traflet TIME: 1142hrs

DESCRIPTION OF ITEM: One Asus Laptop, Mod: K52F, Ser. # AAN0AST0563.54
w/ Carrying Case, Mouse & Charge Cords

WEIGHT: STOLEN: YES * NO FORFEITURE: YES * NO

RECEIPT # BIN: TEMP. STORAGE * GARAGE SAFE: TOWING

ITEM FOUND: (location) Main floor Rm #1 - desk

FOUND BY: Powell SEIZED BY: Traflet TIME: 1142hrs

DESCRIPTION OF ITEM: One white/black, Studio XPS Computer Tower - Dell
PN# 4DM94A00

WEIGHT: STOLEN: YES * NO FORFEITURE: YES * NO

RECEIPT # BIN: TEMP. STORAGE * GARAGE SAFE: TOWING

4-12-16

Date

BAY AREA NARCOTICS ENFORCEMENT TEAM
(B A N E T)
DETAIL OF SEIZED PROPERTY

Reviewed By

INCIDENT #: BNT- 100-16 ADDRESS: 316 N. 3rd

PAGE # 7 of 7

ITEM FOUND:(location) Main Floor, Rm #1

FOUND BY: Powell SEIZED BY: Traflet TIME: 1142hrs

DESCRIPTION OF ITEM: 8 memory S.D cards, Two Thumb drives

WEIGHT: STOLEN: YES * NO FORFEITURE: YES * NO
RECEIPT # BIN: TEMP. STORAGE * GARAGE SAFE: TOWING

ITEM FOUND:(location) Main Floor - Dining Room

FOUND BY: Powell SEIZED BY: Traflet TIME: 1142hrs

DESCRIPTION OF ITEM: Tax Return, Financial Documents

WEIGHT: STOLEN: YES * NO FORFEITURE: YES * NO
RECEIPT # BIN: TEMP. STORAGE * GARAGE SAFE: TOWING

ITEM FOUND:(location) Dry Backs - Garage

FOUND BY: Jordan SEIZED BY: Traflet TIME: 1142hrs

DESCRIPTION OF ITEM: Loose Marijuana Buds / Shake

WEIGHT: STOLEN: YES * NO FORFEITURE: YES * ~~NO~~
RECEIPT # BIN: TEMP. STORAGE * GARAGE SAFE: TOWING

ITEM FOUND:(location) Garage - E. Bay

FOUND BY: Jordan SEIZED BY: Traflet TIME: 1142hrs

DESCRIPTION OF ITEM: started Marijuana Plants - Red Suki Lys

WEIGHT: STOLEN: YES * NO FORFEITURE: YES * ~~NO~~
RECEIPT # BIN: TEMP. STORAGE * GARAGE SAFE: TOWING

4-12-16
Date

BAY AREA NARCOTICS ENFORCEMENT TEAM
(BAYANET)
DETAIL OF SEIZED PROPERTY

Reviewed By _____

INCIDENT #: BNT- 100-16 ADDRESS: 316 N. 3rd PAGE # 8 of

ITEM FOUND:(location) Garage E. Bay (89)

FOUND BY: Jordan SEIZED BY: Traflet TIME: 1142hrs

DESCRIPTION OF ITEM: 27 Marijuana plants

WEIGHT: _____ STOLEN: YES * NO FORFEITURE: YES * NO

RECEIPT # _____ BIN: TEMP. STORAGE * GARAGE SAFE: _____ TOWING _____

ITEM FOUND:(location) Garage - E. Bay (89)

FOUND BY: Jordan SEIZED BY: Traflet TIME: 1142hrs

DESCRIPTION OF ITEM: Marijuana removed from 168 Mason Jars

WEIGHT: _____ STOLEN: YES * NO FORFEITURE: YES * NO

RECEIPT # _____ BIN: TEMP. STORAGE * GARAGE SAFE: _____ TOWING _____

ITEM FOUND:(location) Garage - E. Bay (81)

FOUND BY: Jordan SEIZED BY: Traflet TIME: 1142hrs

DESCRIPTION OF ITEM: PPE 12 Vac. Sealed Marijuana

WEIGHT: _____ STOLEN: YES * NO FORFEITURE: YES * NO

RECEIPT # _____ BIN: TEMP. STORAGE * GARAGE SAFE: _____ TOWING _____

ITEM FOUND:(location) Garage - E. Bay - Drying Rm (82)

FOUND BY: Jordan SEIZED BY: Traflet TIME: 1142hrs

DESCRIPTION OF ITEM: Marijuana Sorter, 5 Drying Racks

WEIGHT: _____ STOLEN: YES * NO FORFEITURE: YES * NO

RECEIPT # _____ BIN: TEMP. STORAGE * GARAGE SAFE: _____ TOWING _____

4-12-16

Date

BAY AREA NARCOTICS ENFORCEMENT TEAM
(BAYANET)
DETAIL OF SEIZED PROPERTY

Reviewed By

INCIDENT #: BNT- 100-16 ADDRESS: 316 N. 3RD PAGE # 9 of

ITEM FOUND:(location) Driveway (33)

FOUND BY: Jordan SEIZED BY: Traflet TIME: 1142hrs

DESCRIPTION OF ITEM: One Cadillac Eldorado, 2-2 6.1V. Mileage: 152642
VIN: 1G6EL12Y3VU 136233 MI/Reg: CFS 8862

WEIGHT: STOLEN: YES * NO FORFEITURE: (YES) * NO

RECEIPT # BIN: TEMP. STORAGE * GARAGE SAFE: TOWING

ITEM FOUND:(location) Driveway (34)

FOUND BY: Jordan SEIZED BY: Traflet TIME: 1142hrs

DESCRIPTION OF ITEM: One '09 Chev. P.U. D K Blv., VIN: 16CEK29T.59Z 153425
Mileage: 2116092 MI/Reg: DKN 5601

WEIGHT: STOLEN: YES * NO FORFEITURE: YES * NO

RECEIPT # BIN: TEMP. STORAGE * GARAGE SAFE: TOWING

ITEM FOUND:(location) Garage (35)

FOUND BY: Jordan SEIZED BY: Traflet TIME: 1142hrs

DESCRIPTION OF ITEM: Grow Lights - 12 Total

WEIGHT: STOLEN: YES * NO FORFEITURE: YES * NO

RECEIPT # BIN: TEMP. STORAGE * GARAGE SAFE: TOWING

ITEM FOUND:(location) Garage (36)

FOUND BY: Jordan SEIZED BY: Traflet TIME: 1142hrs

DESCRIPTION OF ITEM: One Dewalt 20V. max w/ charger & Two Batteries
One Dewalt Table Saw

WEIGHT: STOLEN: YES * NO FORFEITURE: YES * NO

RECEIPT # BIN: TEMP. STORAGE * GARAGE SAFE: TOWING

4-12-16

Date

BAY AREA NARCOTICS ENFORCEMENT TEAM
(BAYANET)
DETAIL OF SEIZED PROPERTY

Reviewed By

INCIDENT #: BNT- 100-116 ADDRESS: 316 N. 3rd PAGE # 10 of 10

ITEM FOUND:(location) Garage (37)

FOUND BY: Jordan SEIZED BY: Trefelt TIME: 1142hrs

DESCRIPTION OF ITEM: Galaxy Grow Amp Mod. # 902220 10 Total
One Digital Scale

WEIGHT: STOLEN: YES * NO FORFEITURE: YES * NO

RECEIPT # BIN: TEMP. STORAGE * GARAGE SAFE: TOWING

ITEM FOUND:(location) Garage

FOUND BY: Jordan SEIZED BY: Trefelt TIME: 1142hrs

DESCRIPTION OF ITEM: Grow Light Bulbs (19 Total)
Two Can Filters, (3) Titan Heating/Lighting Controls

WEIGHT: STOLEN: YES * NO FORFEITURE: YES * NO

RECEIPT # BIN: TEMP. STORAGE * GARAGE SAFE: TOWING

ITEM FOUND:(location) Garage

FOUND BY: Jordan SEIZED BY: Trefelt TIME: 1142hrs

DESCRIPTION OF ITEM: One Honeywell Humidifier
model mm 14CHCS

WEIGHT: STOLEN: YES * NO FORFEITURE: YES * NO

RECEIPT # BIN: TEMP. STORAGE * GARAGE SAFE: TOWING

ITEM FOUND:(location) Nothing To Follow

FOUND BY: SEIZED BY: TIME:

DESCRIPTION OF ITEM:

WEIGHT: STOLEN: YES * NO FORFEITURE: YES * NO

RECEIPT # BIN: TEMP. STORAGE * GARAGE SAFE: TOWING

**STATE OF MICHIGAN
IN THE ISABELLA COUNTY TRIAL COURT**

THE PEOPLE OF THE STATE OF
MICHIGAN,

Plaintiff,

v

STEVEN FISHER,

Defendant.

Case No.
16-801-FH

Hon. Paul H. Chamberlain

FILED

JAN 31 2017

ISABELLA COUNTY CLERK
MT. PLEASANT, MICH.

Robert A. Holmes, Jr. (P44097)
Attorney for Plaintiff

Michael A. Komorn (P47970)
Attorney for Defendant

**OPINION AND ORDER
ON DEFENDANT'S MOTION FOR §8 DEFENSE**

I. FACTS

Defendant Steven Fisher is charged with Possession with Intent to Deliver 5 to 45 Kilograms of Marijuana, Possession with Intent to Deliver 20 or more Marijuana Plants, Manufacture and/or Creation of Marijuana Oil, Felony Firearm, and two counts of Maintaining a Drug House. Defendant is registered as a patient under the Michigan Medical Marijuana¹ Act (MMMA). He provided marijuana to his wife Leslie Fisher as a caregiver, but he was not registered as Ms. Fisher's caregiver under the Act. Ms. Fisher is also registered as a patient under the MMMA. Defendant seeks dismissal of the charges against him pursuant to the MMMA's §8 defense.

On January 19, 24, and 25, the court held a §8 hearing. Two witnesses testified for the defense: Leslie Fisher and defendant Steven Fisher. Additionally, the prosecutor called Lieutenant Matthew Rice of the Michigan State Police.

The first witness to testify was Leslie Fisher, defendant's wife. Ms. Fisher testified that she began working at the Soaring Eagle Casino in 1993 as a slot attendant, and as a part of her duties she had to carry bags of coins to the slot machines. As a result, Ms. Fisher testified that

¹ The legislature uses the spelling "marihuana" in the MMMA. However, this court will be using the more common spelling "marijuana" throughout this opinion.

Proof of Service

✓ mail ✓ atty box _____ personal

Date: 1/31/17 Signature: S

she sustained a back injury when a golf ball sized muscle came out from her right shoulder. After taking some time off work, Ms. Fisher returned to work despite her injury, and she testified that she has had problems with her neck and shoulders ever since. To treat the injury and its resulting pain, Ms. Fisher testified that she did some physical therapy but mostly used massage therapy and over-the-counter pain patches and pain reliever rubs. She testified that she had bad reactions to medications and pills. Ms. Fisher testified that she would use pain reliever rubs at work on breaks and would have to have the rubs with her all the time. Additionally, she testified that a car accident in 2010 or 2011 caused her to develop more back pain.

Ms. Fisher also testified that she had a lot of "pelvic problems" primarily caused by a dermoid cyst on one of her ovaries that resulted in pain. Ms. Fisher eventually had to have an ovary removed. To regulate these issues, Ms. Fisher testified that she was put on the birth control pill; however, she had a bad reaction to the pill. Ms. Fisher testified that she wanted to become a medical marijuana patient to deal with her pain and because of her bad reactions to pills and medications.

In April 2014, Ms. Fisher testified that she went to see Dr. Robert Townsend at Denali Healthcare in Mt. Pleasant. She testified that she brought her medical records to the appointment, that Dr. Townsend reviewed and kept the medical records, that she had a 40 minute consultation with Dr. Townsend about her medical history and pain, and that Dr. Townsend did a physical examination of her. Dr. Townsend ultimately recommended that Ms. Fisher was likely to receive therapeutic or palliative benefit from the medical use of marijuana to treat her pain and muscle spasms. The certification signed by Dr. Townsend on April 16, 2014 was admitted as Exhibit 1. The signed certification also attested that Dr. Townsend was in compliance with the MMMA and all amendments. Ms. Fisher's medical records, produced by Denali Healthcare, were admitted as Exhibit 2.

After Dr. Townsend signed the certification form, Ms. Fisher testified that her husband sent the document to the State of Michigan, and she subsequently received a medical marijuana patient card. Ms. Fisher testified that she was aware follow-up care was recommended by Dr. Townsend. She stated that she and her husband returned to Denali Healthcare in June 2015. At that time, Ms. Fisher testified that the staff informed her that she could do follow-up online. In October 2015, Ms. Fisher testified that her husband helped her complete a follow-up form online. In June 2016, Ms. Fisher testified that she had an in-person follow-up visit at Denali Healthcare. This visit was not with Dr. Townsend, but was with another physician at Denali Healthcare, Dr. Aperocho.

Ms. Fisher testified that her husband acted as her medical marijuana caregiver by providing her with marijuana. She testified that, after receiving her patient card, she would try different strains of marijuana and different methods of ingesting it. She stated that she would talk to her husband about how effective the different strains and different methods were at treating her symptoms.

Ms. Fisher testified that her husband initially produced mainly marijuana flower, but eventually began producing oil, wax and lotion. Ms. Fisher stated that she had intended to move towards vaporizing with marijuana wax more than smoking the marijuana flower because vaping was healthier since it did not involve inhaling smoke.

Ms. Fisher testified that, on an average day, she would medicate first thing in the morning, either by smoking a joint or vaping. She stated that a joint contained about 2 grams of marijuana. Then, Ms. Fisher would usually drink tea with 2 or 3 grams of coconut oil containing

marijuana in it. After work, Ms. Fisher testified that she would use lotion containing cannabis, have another cup of tea, and either smoke a joint or vape. In a vaporizing session, Ms. Fisher testified she would use approximately 1 gram of marijuana wax. Ms. Fisher also testified that, on days she did not have to work, she would usually use more marijuana.

Ms. Fisher testified that she used marijuana only to treat her debilitating medical conditions, and that the marijuana she possessed was for her own use only. Ms. Fisher testified that medical marijuana was effective as a sleep aid, helped with the nausea she often experienced after work, and helped with her pain and headaches.

Next, defendant Steven Fisher testified. Mr. Fisher stated that he entered the Army in 1985. During his time in the Army, he testified that he injured his knee when he slid on wet asphalt while running. He later learned that he had torn his ACL, but he did not seek medical treatment at the time of the injury because he did not understand what he had done to his knee. Mr. Fisher testified that he later totally ruptured his ACL while snowmobiling and had to have surgery. He testified that he continues to have pain in both knees. Additionally, Mr. Fisher testified that he hurt his back while working in physically demanding jobs. While he worked at Bandit Industries, he testified that he frequently would pick up a hydraulic pump with a twisting motion, which resulted in a back injury. Mr. Fisher was sent to a chiropractor by his employer, but testified that it did not help much. Mr. Fisher later found out he had a herniated disc in his back. Mr. Fisher's physician was going to prescribe Vicodin for his back pain, but Mr. Fisher testified that he cannot take Vicodin because it hurts his stomach. Mr. Fisher also testified that he was ultimately forced to sell his landscaping business due to severe pain in his heels caused by a shortening of the Achilles tendon. Mr. Fisher also has IBS, which makes it difficult to take pills and medication without adverse effects. Mr. Fisher wanted to try medical marijuana to treat his pain and because he wanted to be "done with pills."

In April 2014, Mr. Fisher testified that he went to see Dr. Robert Townsend at Denali Healthcare in Mt. Pleasant. He testified that he brought his medical records to the appointment, that Dr. Townsend reviewed and kept the medical records, and that he had a 30 minute consultation with Dr. Townsend about his medical history and pain. He testified that Dr. Townsend performed a physical examination, including an examination of his back. Dr. Townsend ultimately recommended that Mr. Fisher was likely to receive therapeutic or palliative benefit from the medical use of marijuana to treat his pain and muscle spasms. The certification signed by Dr. Townsend on April 9, 2014 was admitted as Exhibit 1. The signed certification also attested that Dr. Townsend was in compliance with the MMMA and all amendments. Mr. Fisher's medical records, produced by Denali Healthcare, were admitted as Exhibit 2. Mr. Fisher also testified that he completed online follow-up with Denali Healthcare in October 2015. In June 2016, Mr. Fisher also had a follow-up visit with Dr. Aperocho at Denali Healthcare.

After his visit with Dr. Townsend, Mr. Fisher testified that he sent the signed certification to the State of Michigan and ultimately received his medical marijuana patient card. Mr. Fisher intended to grow marijuana for himself and his wife. After he received his card, Mr. Fisher testified that he got some marijuana from a dispensary before his own growing marijuana was ready. He testified that he engaged in research online and talked to people at the dispensaries. He wanted to learn about different strains of the marijuana plant and different methods of ingestion.

Mr. Fisher testified that he began with growing marijuana plants and eventually decided to make other marijuana products. Mr. Fisher made coconut oil, Rick Simpson Oil (RSO), marijuana wax, and a lotion containing cannabis. He testified that the coconut oil could be put

into food or drink, that the marijuana wax could be vaporized, and that he would ingest the RSO orally. Mr. Fisher testified that he preferred these other methods of ingestion over smoking marijuana flower because they were healthier and did not require him to inhale smoke.

Mr. Fisher admitted that he possessed 28 marijuana plants at the time his residence and workshop were raided by law enforcement. He testified that it took these plants about two months to get to the vegetative state they were in at the time of the raid. Additionally, he testified that it would be approximately 6 months until these plants were ready for consumption. Mr. Fisher testified that he usually loses approximately 2 or 3 plants before harvest. Of the 28 plants that he possessed at the time of the raid, Mr. Fisher testified that 4 were "shaky," did not look right, and he intended to get rid of them. Mr. Fisher also admitted he had 39 marijuana clones. The clones were cuttings from marijuana plants that were then introduced to a rooting enzyme and would eventually become marijuana plants. Mr. Fisher testified that the clones would not be ready for consumption for at least 9 months. The clones were not counted as "marijuana plants" in the charges against defendant.

Mr. Fisher also admitted that he possessed the other amounts of marijuana and marijuana wax found by law enforcement at his residence and workshop, but he alleges that all the marijuana he possessed would not actually last him and his wife through the 6 months until his marijuana plants were ready for harvest and consumption.

Law enforcement found 2,300 and 2,400 grams of marijuana "shake," which Mr. Fisher testified is what he trims off after taking the flower. A photograph of the 2,300 grams was admitted as Exhibit 5, and a photo of the 2,400 grams was admitted as Exhibit 10. Mr. Fisher testified that he had intended to dispose of this marijuana shake. He stated that he would collect the shake, and when he had enough to fill a barrel, he would dispose of it by burning. He testified that the shake probably could be used, but that it was not of good quality, and so he did not intend to use it. Additionally, Mr. Fisher testified that it would not be worth his time to extract THC from the shake because it would take a considerable amount of time and he would not get much from it.

Law enforcement also found 4,300 grams of marijuana bud in mason jars. Mr. Fisher testified that putting the bud in mason jars was part of a gradual drying process. He testified that he removes it from the jars, dries it, puts it back in the jars, and repeats the process until the drying is complete. A photo of the 4,300 grams was admitted as Exhibit 8. Law enforcement also found 4,990 grams of marijuana bud in vacuum sealed bags. A photo of the 4,990 grams was admitted as Exhibit 9. Mr. Fisher testified that he intended to use the marijuana from the mason jars and from the vacuum sealed bags to make marijuana wax, coconut oil, and RSO.

Additionally, law enforcement found 434 grams of marijuana wax in a refrigerator at Mr. Fisher's workshop. Mr. Fisher testified that the marijuana wax in the refrigerator was impure and not safe for human consumption. An August 26, 2015 lab test from PSI Labs of some of Mr. Fisher's marijuana wax was admitted as Exhibit 4. The lab test shows that the wax contained a high concentration of butane and ethanol. Mr. Fisher testified that a total concentration should not be over 400 to 500 ppm. This test shows a total concentration of nearly 900 ppm. Mr. Fisher testified that some of the wax in the refrigerator was from the batch tested by PSI Labs on August 26, 2015. He testified that the remainder of the wax in the refrigerator was also unsafe for human consumption. All of the wax was very dark in color, which Mr. Fisher testified is an indicator that the wax contains high amounts of contaminants. Mr. Fisher testified that he hoped in the future to find a way to remove the impurities and contaminants from the wax in the

refrigerator, but as of the time of the raid, the wax was completely unusable.

In order to make marijuana wax, Mr. Fisher testified that he would take 2 pounds of marijuana bud, put it in an extraction tube, flood the system with butane, purge the butane, and what is left is the wax containing THC. To finish purging the butane, the wax is then heated in a vacuum oven. Mr. Fisher began making wax in June 2015. He testified that he first took his wax to dispensaries and then sent his wax to PSI Labs to determine if it was fit for human consumption. At first, Mr. Fisher testified that he did not distill the butane, which was why his initial marijuana wax contained such high amounts of contaminants. Mr. Fisher testified that it would take about 4 hours to make one batch of wax. He testified that 2 pounds of marijuana would make approximately 30 grams of wax. Mr. Fisher testified that he would vaporize approximately 3 grams of wax per day.

Mr. Fisher also testified that he made RSO. He stated that he would use a strain of marijuana low in THC but better as an anti-inflammatory to make the RSO. Mr. Fisher testified that it takes 10 ounces of marijuana to make approximately 20 grams of RSO. Mr. Fisher testified that he usually ingests around 1 gram of RSO per day and sometimes less. He testified that the 20 grams of RSO will usually last him for a month.

Mr. Fisher also testified that he made coconut oil. He would heat and combine approximately 5 to 6 cups of coconut oil with approximately half a pound of marijuana. This would result in 5 to 6 cups of coconut oil containing marijuana. Mr. Fisher testified that he and his wife used the coconut oil in food and drinks. Mr. Fisher testified that he would have one or two cups of tea each day containing the coconut oil. He also testified that he would make lotion from the oil. Mr. Fisher testified that lotion made from approximately half a pound of marijuana would last about one month.

Mr. Fisher testified that he would sometimes get various marijuana products from dispensaries, either to try new methods of ingestion or to supplement when he did not have enough of his own marijuana.

Mr. Fisher testified that he told law enforcement that he went to dispensaries to have his marijuana wax checked. He testified that he told law enforcement that the people at the dispensaries told him that no one would want the wax because it was too dark and probably would not be safe for consumption. Additionally, Mr. Fisher testified that he told law enforcement that the marijuana in vacuum sealed bags was part of his "overages," by which he meant that it was marijuana he had not yet used. Mr. Fisher testified that he intended to turn this "overage" into wax for consumption by himself and his wife. Mr. Fisher denies telling law enforcement that he tried to sell marijuana wax to dispensaries. Mr. Fisher denies ever selling or trying to sell marijuana to anyone. He testified that the marijuana he possessed was only for medical use by himself and his wife to alleviate their pain. Mr. Fisher testified that marijuana was effective in alleviating his pain. In addition to the amounts needed to make the wax, RSO, and coconut oil, defendant testified that he likes to keep some bud on hand for his wife to smoke if she needs it. Mr. Fisher testified that the amount of marijuana he possessed was necessary to keep an uninterrupted supply for his and his wife's medical use, and that, in fact, it would not have been enough to last them until his marijuana plants were ready for harvest in approximately 6 months.

Finally, the prosecutor called Lieutenant Matthew Rice of the Michigan State Police to testify. Lieutenant Rice testified that he has been with the Michigan State Police for about 23 years, and that he is currently the team leader for BAYANET North. Lieutenant Rice was present

for the execution of the search warrant at defendant's residence, and he testified that he read defendant his *Miranda* rights and had a conversation with defendant. Lieutenant Rice testified that law enforcement found the amounts of marijuana previously discussed and admitted to by defendant.

Lieutenant Rice testified that defendant told law enforcement that he was trying to sell his leftover marijuana, including the wax found in the refrigerator, to dispensaries. Additionally, he testified that he believed defendant was referring to the marijuana in the vacuum sealed bags when he told law enforcement he was trying to sell his "overages." Lieutenant Rice could not quote defendant's exact words, but he testified that defendant's comments were something along the lines of "I have all this marijuana...what do I do with it?"

This court held a hearing on defendant's motion for §8 defense. The court took the motion under advisement and now issues this written opinion dismissing the charges against defendant pursuant to §8 of the MMMA.

II. ANALYSIS

Defendant asserts immunity from prosecution pursuant to §8 of the MMMA, which states:

[A] patient and a patient's primary caregiver, if any, may assert the medical purpose for using marijuana as a defense to any prosecution involving marijuana, and this defense shall be presumed valid where the evidence shows that:

- (1) A physician has stated that, in the physician's professional opinion, after having completed a full assessment of the patient's medical history and current medical condition made in the course of a bona fide physician-patient relationship, the patient is likely to receive therapeutic or palliative benefit from the medical use of marijuana to treat or alleviate the patient's serious or debilitating medical condition or symptoms of the patient's serious or debilitating medical condition;
- (2) The patient and the patient's primary caregiver, if any, were collectively in possession of a quantity of marijuana that was not more than was reasonably necessary to ensure the uninterrupted availability of marijuana for the purpose of treating or alleviating the patient's serious or debilitating medical condition or symptoms of the patient's serious or debilitating medical condition; and
- (3) The patient and the patient's primary caregiver, if any, were engaged in the acquisition, possession, cultivation, manufacture, use, delivery, transfer, or transportation of marijuana or paraphernalia relating to the use of marijuana to treat or alleviate the patient's serious or debilitating medical condition or symptoms of the patient's serious or debilitating medical condition. MCL 333.26428(a).

A defendant bears the burden of proof as to each of the three elements of the §8 defense. *People v Kolanek*, 491 Mich 382, 410; 817 NW2d 528 (2012). A defendant must establish a prima facie case for this affirmative defense by presenting evidence on all the elements listed in §8(a). *Id.* at 412-13; *People v Hartwick*, 498 Mich 192, 227; 870 NW2d 37 (2015). If a defendant establishes a prima facie case and there are no material questions of fact, then the defendant is entitled to dismissal of the charges following the evidentiary hearing. *Kolanek*, 491 Mich at 412-13; *Hartwick*, 498 Mich at 227. When a defendant asserts a §8 defense, questions of fact, such as credibility of witnesses, are for the jury to decide. *Kolanek*, 491 Mich at 411. If a defendant establishes a prima facie case for the defense but material questions of fact exist, then dismissal of the charge is not appropriate and the defense must be submitted to the jury. *Kolanek*, 491 Mich at 412-13; *Hartwick*, 498 Mich at 227. Finally, if there are no material questions of fact and defendant has not presented prima facie evidence for each of the elements in §8(a), defendant cannot assert a §8 defense at trial. *Kolanek*, 491 Mich at 412-13; *Hartwick*, 498 Mich at 227.

A material question of fact is not created simply because a party produces testimony in support of its position. *Amorello v Monsanto Corp*, 186 Mich App 324, 331; 463 NW2d 487 (1990). In order to create a material question of fact, the testimony must be supported by more than “conjecture and speculation.” *Karbel v Comerica Bank*, 247 Mich App 90, 98; 635 NW2d 69 (2001). Evidence that constitutes only a “mere possibility” is insufficient to raise a material question of fact. *Id.* at 107.

In order to establish the first element of the §8 defense, defendant must satisfy §8(a)(1) by showing: “(1) the existence of a bona fide physician-patient relationship, (2) in which the physician completes a full assessment of the patient’s medical history and current medical conditions, and (3) from which results the physician’s professional opinion that the patient has a debilitating medical condition and will likely benefit from the medical use of marijuana to treat the debilitating medical condition.” *Hartwick*, 498 Mich at 227. The mere presentation of a medical marijuana registration card fails to meet even the prima facie evidence requirements as to this element. *Id.* However, the Michigan Supreme Court has acknowledged that the actual text of the physician’s written certification could itself provide prima facie evidence of a bona fide physician-patient relationship. *Id.* at 231 n77. A defendant who submits proper evidence “would not likely need his or her physician to testify to establish prima facie evidence of any element of §8(a).” A caregiver also bears the burden of presenting evidence as to a bona fide physician-patient relationship for each patient to whom he provides care. *Id.* at 227.

In order to assist the court in establishing whether defendant has satisfied the first requirement of §8(a)(1), the existence of a bona fide physician-patient relationship, MCL 333.26423(a) provides a definition for “bona fide physician-patient relationship”:

[A] treatment or counseling relationship between a physician and patient in which all of the following are present:

- (1) The physician has reviewed the patient's relevant medical records and completed a full assessment of the patient's medical history and current medical condition, including a relevant, in-person, medical evaluation of the patient.
- (2) The physician has created and maintained records of the patient's condition in accord with medically accepted standards.

(3) The physician has a reasonable expectation that he or she will provide follow-up care to the patient to monitor the efficacy of the use of medical marijuana as a treatment of the patient's debilitating medical condition.

(4) If the patient has given permission, the physician has notified the patient's primary care physician of the patient's debilitating medical condition and certification for the medical use of marijuana to treat that condition.

Both defendant and Leslie Fisher testified about meeting with Dr. Townsend in April of 2014. Defense counsel argues that they both had a bona fide physician-patient relationship with Dr. Townsend. Both Mr. and Ms. Fisher testified that they took Dr. Townsend their medical records and that he reviewed such records in their presence. They both testified that Dr. Townsend talked with them about their medical histories, past treatments of their conditions, and their current medical conditions. Ms. Fisher's appointment with Dr. Townsend lasted approximately 40 minutes, and Mr. Fisher's appointment lasted approximately 30 minutes. They each testified that, during the appointment, Dr. Townsend conducted a physical examination of them. It appears that Dr. Townsend reviewed medical records and completed a full assessment of Mr. and Ms. Fisher's medical history and current medical condition, including an in-person evaluation, as required under MCL 333.26423(a)(1). No evidence was introduced that could create a question of fact on this issue.

Both Mr. and Ms. Fisher testified that they provided Dr. Townsend with their medical records and left the records with him at Denali Healthcare. Prior to this hearing, defense counsel requested Denali Healthcare to produce these records, which were admitted during the hearing as Exhibit 2. This exhibit contains a record certification from Denali Healthcare, which states that the records were kept in the course of regularly conducted business activity. Therefore, defendant has produced evidence that Dr. Townsend "created and maintained records of [Mr. and Ms. Fisher's conditions] in accord with medically accepted standards" as required by MCL 333.26423(a)(2). Mr. and Ms. Fisher left their medical records with Denali Healthcare, and those records, along with additional records created by Dr. Townsend, were produced by Denali Healthcare upon request. The People point out that the record certification states that the records were kept in the course of a regularly conducted "business activity" and do not explicitly state that they were kept "in accord with medically accepted standards." However, the People failed to introduce any evidence that would call into question Denali Healthcare's keeping of the records. Additionally, Denali Healthcare's business is medical, and so keeping records in the course of a regularly conducted "business activity" would necessarily require keeping them "in accord with medically accepted standards." Finally, the medical marijuana physician certification signed by Dr. Townsend states that he is in compliance with the MMMA, which would include keeping patients' records "in accord with medically accepted standards." No evidence was introduced that could create a question of fact on this issue.

Mr. and Ms. Fisher both testified that they were aware that Dr. Townsend recommended that they obtain follow-up care from Denali Healthcare. Additionally, a review of Exhibit 2, Mr. and Ms. Fisher's medical records, establishes that each of them signed a form provided by Denali Healthcare which states, "Dr. Townsend recommends that all patients follow up with him on a regular basis to further solidify the 'Dr-Pt Bonafide Relationship' as defined by the State of

Michigan.” This form makes it clear that Dr. Townsend expected to provide follow-up care for both Mr. and Ms. Fisher, and the fact that each of them signed one of these forms shows that this expectation is reasonable. Dr. Townsend knew that Mr. and Ms. Fisher were both informed of the expectation and had essentially agreed to it, or at least acknowledged it, by signing the form. Therefore, defendant has clearly produced evidence that Dr. Townsend had “a reasonable expectation that [he] will provide follow-up care” to Mr. and Ms. Fisher, as required by MCL 333.26423(a)(3). The People argued that this element was not met because Mr. and Ms. Fisher completed only an online follow-up about one and a half years after their first visit with Dr. Townsend and did not follow-up in person at Denali Healthcare until 2 years after their first visit. However, nowhere in the MMMA is there a requirement that a patient actually follow-up with a physician in order to establish a bona fide physician-patient relationship. The only requirement is that the physician must have a “reasonable expectation” that the follow-up will occur. Such a reasonable expectation was present in this case, considering the forms in Exhibit 2 and defendant and Ms. Fisher’s testimony. No evidence was introduced that could create a question of fact on this issue.

As stated above, defendant established a prima facie case for each required element of the definition of “bona fide physician-patient relationship” set forth in MCL 333.26423(a). This satisfies the first requirement of §8(a)(1). Further, the cross examination of Mr. and Ms. Fisher by the People and the testimony of the People’s witness Lieutenant Rice did not create a material question of fact regarding whether a bona fide physician-patient relationship existed between Dr. Townsend and Mr. and Ms. Fisher.

Additionally, in order to comply with the definition of “bona fide physician-patient relationship” set forth in MCL 333.26423(a), defendant had to establish that Dr. Townsend completed a “full assessment of [Mr. and Ms. Fisher’s] medical history and current medical conditions. This satisfies the second requirement of §8(a)(1). As stated previously, defendant produced such evidence without a material question of fact.

Finally, to satisfy the third requirement of §8(a)(1), defendant must show that it was Dr. Townsend’s professional opinion that Mr. and Ms. Fisher have “a debilitating medical condition and will likely benefit from the medical use of marijuana to treat the debilitating medical condition.” Defendant produced in Exhibit 1 a physician certification form for each Mr. and Ms. Fisher. These forms, signed by Dr. Townsend in April 2014, state that Mr. and Ms. Fisher have been diagnosed with debilitating medical conditions and that Dr. Townsend attests in his professional opinion that Mr. and Ms. Fisher are “likely to receive therapeutic or palliative benefit from the medical use of marijuana to treat or alleviate the [patients’] debilitating medical condition or symptoms associated with the debilitating medical condition.” The Michigan Supreme Court has acknowledged that the actual text of the physician’s written certification could itself provide prima facie evidence for the elements establishing the existence of a bona fide physician-patient relationship. *Hartwick* at 231 n77. As defendant has produced physician certifications that state that Mr. and Ms. Fisher have debilitating medical conditions and will likely benefit from the use of medical marijuana, defendant has satisfied this last requirement of §8(a)(1). Further, there was no evidence produced that would raise a material question of fact on this issue. Therefore, defendant has completely satisfied the first element of §8(a).

The second element of §8(a) requires defendant to establish that he did not possess an amount of marijuana that was more than “reasonably necessary to ensure the uninterrupted availability of marijuana” for the purpose of treating defendant’s medical condition and the

medical conditions of his patient. MCL 333.26428(a)(2). Under a §8 defense, a defendant is not required to possess an amount equal to or less than the quantity limits established in §4 of the MMMA. *Hartwick*, 498 Mich at 234. Section 8 does not include any specific volume limitation. *Id.* A patient may have to testify about “whether a specific amount of marijuana alleviated the debilitating medical condition, and if not what adjustments were made.” *Hartwick*, 498 Mich at 227. Likewise a caregiver must establish the amount of marijuana reasonably necessary to treat his patients and ensure “uninterrupted availability.” *Hartwick*, 498 Mich at 227.

When law enforcement searched defendant’s residence and workshop, they found 28 marijuana plants. Mr. Fisher testified that these plants would not be ready for consumption for approximately 6 months. Additionally, law enforcement found 2,300 grams of marijuana shake, 2,400 grams of marijuana shake, 4,500 grams of marijuana bud in mason jars, 4,990 grams of marijuana bud in vacuum sealed bags, and 434 grams of marijuana wax in a refrigerator. This is a total of 14,190 grams, or approximately 31 pounds, of marijuana plus 434 grams of marijuana wax. Mr. Fisher testified that he was going to dispose of the shake and that the wax was unusable. Therefore, that would leave 9,490 grams, or approximately 20.9 pounds of marijuana.

Both defendant and Ms. Fisher testified that they have experimented with different strains and methods of ingesting marijuana, trying to determine what works best to alleviate the symptoms of their medical conditions. Ms. Fisher testified that she has had conversations with her husband, who acted as her caregiver, regarding how effective different strains and methods of ingestion were for her. Both defendant and Ms. Fisher testified to the amount of marijuana they were typically using right before law enforcement’s raid.

Mr. Fisher testified that he would typically vaporize about 3 grams of wax per day. He also testified that he would have a cup or two of tea with coconut oil, which would amount to approximately 4 to 6 grams of marijuana per day. Mr. Fisher also testified that he used around 1 gram of RSO per day, but that 20 grams of RSO would usually last him about a month.

Ms. Fisher testified that, in the past, she would typically smoke 2 joints of 2 grams each every day. Instead of smoking, Ms. Fisher testified that she was trying to move more toward vaporizing marijuana wax. If she vaped, she testified that she would use approximately 2 grams of wax per day. Ms. Fisher also testified that she would have two cups of tea with coconut oil each day, which would amount to approximately 4 to 6 grams of marijuana. Additionally, both Mr. and Ms. Fisher testified that they used lotion containing marijuana oil. Mr. Fisher testified that when he made lotion from ½ a pound of marijuana, that lotion would last for approximately one month.

Both Mr. and Ms. Fisher testified that these amounts of marijuana were necessary and sufficient to alleviate the symptoms of their medical conditions. After listening to the testimony of Mr. and Ms. Fisher, it is clear to the court that these amounts were determined after considerable research and trial and error on the part of both Mr. and Ms. Fisher. Mr. Fisher testified regarding the research he did to determine the best way to use medical marijuana. Both Mr. and Ms. Fisher testified that they tried different methods of ingestion, have ruled out certain methods, and have now determined the methods that work best. For example, both Mr. and Ms. Fisher decided to move away from smoking marijuana and begin vaporizing marijuana wax. They both testified that this method is healthier and is more effective to treat their symptoms. Further, from her testimony, Ms. Fisher appears to have consulted with her caregiver, Mr. Fisher, to determine the appropriate type, amount, and method of ingestion.

In order to produce enough of each product used by Mr. and Ms. Fisher, it takes a considerable amount of marijuana. The People argue that Mr. Fisher possessed an amount that was clearly more than necessary for a medical purpose. However, when the court does the math and adds up the amount of marijuana it would take to produce enough wax, RSO, coconut oil, and lotion to last Mr. and Ms. Fisher for the 6 months until Mr. Fisher's marijuana plants would have been ready for harvest and consumption, it is clear that the marijuana possessed by Mr. Fisher was not nearly enough. Mr. Fisher would likely have had to supplement his marijuana by going to dispensaries, as he testified that he sometimes needed to do in the past.

Mr. Fisher testified that it would take $\frac{1}{2}$ a pound of marijuana to produce enough lotion for one month. He testified that it would take 10 ounces of marijuana to produce enough RSO for one month. Together, Mr. and Ms. Fisher ingest approximately 360 grams of marijuana in coconut oil per month. Half a pound of marijuana, or 226 grams makes 5 to 6 cups of coconut oil. It takes at least $\frac{1}{2}$ a pound of marijuana, and closer to 1 pound, to provide Mr. and Ms. Fisher with enough coconut oil for a month. Finally, Mr. and Ms. Fisher together use about 150 grams of wax per month. Mr. Fisher testified that 2 pounds of marijuana makes about 30 grams of wax. Therefore, it would take 10 pounds of marijuana to make enough wax to last Mr. and Ms. Fisher for a single month. In total, to produce everything used by Mr. and Ms. Fisher in one month, it would take about 11 pounds and 10 ounces of marijuana. Over 6 months, this would amount to 69.75 pounds of marijuana. Mr. Fisher testified that he was going to dispose of the marijuana shake found by law enforcement. However, even if the court considers this marijuana that was intended to be disposed, Mr. Fisher did not possess nearly 69.75 pounds of marijuana. At most, Mr. Fisher possessed 31 pounds of marijuana. This is not even half of the amount of marijuana necessary to produce everything used by Mr. and Ms. Fisher over 6 months. Additionally, even if the court considers the 434 grams of marijuana wax that Mr. Fisher testified is unusable and unsafe for human consumption, the amount of marijuana possessed by Mr. Fisher would not exceed the amount reasonably necessary to ensure uninterrupted availability. The 434 grams of marijuana wax would not last even three months at the rate it would be consumed by Mr. and Ms. Fisher. Regardless, Mr. Fisher's testimony and the lab test from PSI Labs, admitted as Exhibit 4, make it clear that this 434 grams of wax would not have been consumed.

Considering the evidence produced by defendant showing that he and his wife carefully determined, through research and trial and error, the amount of marijuana necessary to treat their symptoms, as well as the fact that the marijuana possessed by defendant was considerably less than was necessary to provide an uninterrupted supply of marijuana during the 6 months until defendant's marijuana plants would be ready for harvest and consumption, this court finds that defendant satisfied §8(a)(2). Additionally, there was no evidence presented that would raise a material question of fact regarding this element. The People argue that defendant possessed too much marijuana, but by doing the math, the court finds that defendant actually did not possess nearly enough marijuana to properly alleviate the symptoms of his and his wife's medical conditions.

In order for defendant to satisfy the third and final element of the §8 defense, defendant must show that any marijuana in his possession was in fact being possessed for medical use. MCL 333.26428(a)(3). A defendant may satisfy this element with sufficient evidence even if the defendant was not actually registered as a patient or caregiver under the MMMA. *Hartwick*, 498 Mich at 237. A patient or caregiver must put forth evidence showing that the marijuana in

question was in fact being grown, possessed, processed or used for medical purposes only. *Hartwick*, 498 Mich at 227.

Both Mr. and Ms. Fisher testified that the marijuana in their possession was for their own medical use only. However, the People's witness Lieutenant Rice testified that defendant made a very different statement to law enforcement. Lieutenant Rice testified that defendant told law enforcement he had tried to sell his "overages" to dispensaries. Lieutenant Rice could not quote defendant exactly, but he testified that, from his conversation with defendant, he understood that defendant had too much marijuana and marijuana wax, had been trying to sell it to dispensaries and others, but no one would buy it. Defendant denied ever making such statements to law enforcement. Defendant stated that if he used the word "overages," he meant marijuana that he had not yet used and intended to turn into wax. Defendant denied ever selling or trying to sell marijuana to anyone.

Initially, it appears that Lieutenant Rice's testimony may create a material question of fact on the third element of §8. However, there are two problems with this testimony. First, there is an issue regarding timing. In *Hartwick*, the Michigan Supreme Court makes it clear that, to satisfy the third element of §8, the defendant must show that "at the time of the charged offense," any marijuana in his possession was being used for a medical purpose. *Hartwick*, 498 Mich at 237. Lieutenant Rice's testimony was that defendant told law enforcement he had "tried" to sell marijuana to dispensaries. While Lieutenant Rice testified that it was his understanding that defendant was still trying to sell the marijuana, it is not clear that this was anything more than speculation on the witness's part. Lieutenant Rice testified that he understood the vacuum sealed bags of marijuana to be the marijuana the defendant had tried to sell to dispensaries, and that defendant told law enforcement that he vacuum sealed this marijuana so it would not spoil. Lieutenant Rice then testified that he understood this to mean that defendant was still trying to sell the marijuana. However, Lieutenant Rice did not testify that defendant made the statement to law enforcement that he was currently engaged in the effort to sell marijuana. From Lieutenant Rice's testimony, it appears that he concluded on his own that, because defendant said he previously tried to sell the vacuum sealed marijuana and now did not want that marijuana to spoil, that meant defendant was currently still trying to sell the marijuana. Lieutenant Rice's testimony on the timing therefore appears to be speculation. In order to create a material question of fact, the testimony must be supported by more than "conjecture and speculation." *Karbel*, 247 Mich App at 98. Lieutenant Rice's speculation that defendant was probably still trying to sell marijuana to dispensaries at the time of the charged offenses is not sufficient to establish a material question of fact.

The second problem with Lieutenant Rice's testimony is that the only portion of the testimony that could create a question of material fact is defendant's alleged statement to law enforcement, the admission at trial of which may violate the corpus delicti rule. In Michigan law, "it has long been the rule that proof of the corpus delicti is required before the prosecution is allowed to introduce the inculpatory statements of an accused." *People v McMahan*, 451 Mich 543, 548; 548 NW2d 199 (1996). Corpus delicti literally means "the body of the crime." Black's Law Dictionary (10th ed. 2014). The doctrine prohibits the prosecution from proving that an offense occurred based solely on a defendant's extra-judicial statements. *Id.* The main purposes of the corpus delicti rule are to preclude conviction for a crime when none was committed and to minimize the weight of a confession by requiring collateral evidence to support conviction. *McMahan*, 451 Mich at 548.

Defendant is charged with possession of marijuana and marijuana plants with intent to deliver. Other cases dealing with possession of controlled substances with intent to deliver have established a standard for proving the corpus delicti in such cases. In *People v Konrad*, 449 Mich 263, 270; 536 NW2d 517 (1995), the Michigan Supreme Court found that, when a defendant was charged with possession of cocaine with intent to deliver, the corpus delicti was satisfied by "evidence independent of defendant's confession that the cocaine existed and was possessed by someone." However, the Supreme Court qualified this determination with a discussion about the fact that cocaine cannot be legally possessed. Therefore, this standard cannot simply be applied to the case currently before this court. Possession of marijuana by someone who is a patient under the MMMA is very different from possession of cocaine by someone who had no legal right to possess cocaine. In the first instance, evidence that marijuana was possessed is not necessarily evidence that any crime was committed at all. In the second instance, mere evidence that cocaine was possessed is quite likely evidence that someone has committed a crime. In this case, simply the evidence that defendant possessed marijuana cannot, in the interest of justice, be sufficient to establish the corpus delicti for the offenses with which defendant is charged. There must be some evidence that defendant committed a crime other than his extra-judicial statement to law enforcement. Otherwise, the corpus delicti rule would not serve its purpose of preventing conviction when no crime has occurred because the simple fact that marijuana was possessed is not necessarily evidence that a crime was committed at all.

In an unpublished Court of Appeals case, the Court discussed additional evidence that could prove the corpus delicti when a defendant was charged with possession of heroin with intent to deliver. In that case, the court found that there was sufficient evidence because heroin was found packaged for sale in individual packets and there was no evidence that the defendant possessed the heroin for personal use because the defendant was not found to possess any paraphernalia used to ingest heroin. *People v Chalmers*, No 251974, 2005 WL 415282, page 5 (Mich Ct App February 22, 2005). If similar evidence of intent to sell marijuana would have been found in the case currently before this court, the prosecutor could have sufficiently proven the corpus delicti of the offenses with which defendant has been charged. However, no such evidence is present here.

In addition to the extensive hearing conducted on the §8 defense, this court has reviewed the preliminary examination in this matter and held hearings over several days on 9 other motions filed by defense counsel, as well as several oral motions made during the aforementioned hearings. In all of this time, the court has not seen any evidence whatsoever that defendant sold, attempted to sell, or intended to sell marijuana, other than defendant's alleged statements to law enforcement.

The People may argue that the large amount of marijuana possessed by defendant could be evidence that he intended to sell marijuana. However, as has been established, defendant possessed less marijuana than was reasonably necessary to ensure an uninterrupted supply of marijuana for medical use by defendant and his wife. Other than defendant's alleged statements to law enforcement, there is no evidence of an intent to deliver marijuana. Under the corpus delicti rule, this would bar the admission at trial of defendant's extra-judicial statements to law enforcement.

In order for defendant's statements to law enforcement to be able to be introduced at trial, law enforcement would have needed to gather additional evidence on this issue. There is certainly more investigation that law enforcement could have done to find evidence in this case.

For example, prior to the execution of the search warrant at defendant's residence and workshop, law enforcement could have sent someone undercover to try to purchase marijuana from defendant. There is no evidence that this was done. Additionally, law enforcement could have followed up on the interview with defendant in an attempt to gather more evidence. Lieutenant Rice testified that defendant told law enforcement he tried to sell marijuana to dispensaries. Law enforcement could have gone to these dispensaries and made inquiries. They could have asked if anyone at the dispensary knows defendant and, if so, if defendant ever tried to sell them marijuana. However, it does not appear that law enforcement engaged in this type of investigation. Therefore, there is no additional evidence to prove the corpus delicti of the charged crimes.


None of the offenses with which defendant is charged can be established unless it is proven that defendant intended to sell marijuana. However, the only evidence of an intent to sell the marijuana he possessed is defendant's extra-judicial statement to law enforcement. This is insufficient under the corpus delicti rule, and so defendant's statements cannot be admitted at trial. *McMahan*, 451 Mich at 548.

As discussed previously, the statements defendant allegedly made to law enforcement do not raise a material question of fact on the third element of §8 because the timing of defendant's alleged actions is primarily speculation. However, the court does not even need to reach such a conclusion. Because defendant's statements to law enforcement cannot be admitted at trial, it would make no sense for the court to consider said statements at all in its analysis under §8. When asserting a §8 defense, the defendant must present evidence from which a reasonable juror could conclude he satisfied each element of the defense. *Hartwick*, 498 Mich at 227. If the standard is that of a reasonable juror, it would only make sense for the court to consider solely that evidence which a reasonable juror would actually see. Both defendant and Ms. Fisher testified that the marijuana defendant possessed was used only for a medical purpose, and there is no evidence, other than defendant's alleged statements to law enforcement, that the marijuana was used for anything other than a medical purpose. If the court does not consider defendant's statements to law enforcement, there remains absolutely no material question of fact on the third element of the §8 defense. As established, defendant has completely satisfied each of the three elements of the §8 defense without the existence of any material question of fact, and so, pursuant to §8 of the MMMA, defendant is entitled to dismissal of the charges against him. *Kolanek*, 491 Mich at 412-13; *Hartwick*, 498 Mich at 227.

THEREFORE IT IS ORDERED that defendant has established a §8 defense, no material question of fact exists, and all charges against defendant shall be dismissed.

This order resolves the last pending claim and closes the case.

Date: January 31, 2017


Hon. Paul H. Chamberlain (P31682)
Chief Judge
Isabella County Trial Court

STATE OF MICHIGAN

IN THE COURT OF APPEALS

ISABELLA COUNTY PROSECUTING ATTORNEY
Ex Rel Bay Area Narcotics Enforcement Team,
Plaintiff-Appellant,

Court of Appeals
No. _____

v.

ONE 1987 BUICK GRAND NATIONAL, et. al.
Defendant-Appellee.

Lower Court
No. 16-13188-CZ

Risa N. Hunt-Scully (P58239)
Prosecuting Attorney Isabella County

Robert A. Holmes, Jr. (P44097)
Chief Asst. Prosecuting Attorney
Isabella County Prosecuting Attorney's Office
200 N. Main St.
Mt. Pleasant, MI 48858
(989)772-0911 Ext 311

Michael A. Komorn (P47970)
Attorney for Claimants Steven and Leslie Fisher
30903 Northwestern Hwy, Ste. 240
Farmington Hills, MI 48334
800-656-3557

2017 OCT 10 AM 11:29
RECEIVED
CLERK OF COURT

2017 OCT 10 AM 11:29

**PLAINTIFF-APPELLANT'S DELAYED APPLICATION
FOR LEAVE TO APPEAL**

ORAL ARGUMENT REQUESTED

DATE: October 10, 2017

Respectfully submitted



Robert A. Holmes, Jr.
Chief Asst. Pros. Atty
Isabella County

STATEMENT OF FACTS PROVIDING REASON FOR DELAY

On January 31, 2017, Isabella County Trial Court Chief Judge Paul H. Chamberlain issued an opinion in the criminal case of *People of the State of Michigan v. Steven A. Fisher*, 16-801-FH. In that opinion Judge Chamberlain found that the marijuana drug activity engaged in by Steven A. Fisher was conduct that was protected under Section 8 of the MMMA, specifically MCL 333.26428, and as a result Judge Chamberlain dismissed the criminal case against Steven A. Fisher. On April 3, 2017, the People filed with the Michigan Court of Appeals (COA # 336902), an appeal asking the Court of Appeals to reverse Judge Chamberlain's Section 8 ruling.

On April 5, 2017 Plaintiff-Appellant filed a Motion to Stay Proceedings, which motion was denied by Judge Chamberlain on April 28, 2017. On June 1, 2017 Plaintiff-Appellant filed a Motion for Reconsideration regarding the Motion to Stay Proceedings, which was also denied by Judge Chamberlain on July 19, 2017.

Additionally, Plaintiff-Appellant sought to disqualify Judge Chamberlain with the original motion for disqualification being denied by Judge Chamberlain on July 21, 2017. A review of Plaintiff-Appellant's disqualification motion was heard and denied on October 2, 2017. The Plaintiff-Appellant has exhausted all of its remedies at the trial court level and now seeks redress of its complaint from the Michigan Court of Appeals.

TABLE OF CONTENTS

STATEMENT OF FACTS PROVIDING REASON FOR DELAY.....	i
INDEX OF AUTHORITIES.....	iv
STATEMENT OF THE BASIS OF JURISDICTION.....	v
STATEMENT OF QUESTION INVOLVED.....	vi
STATEMENT OF FACTS.....	1
ARGUMENT.....	3

THE TRIAL COURT ABUSED ITS DISCRETION IN DENYING
THE PLAINTIFF-APPELLANT'S REQUEST TO STAY
THE CIVIL DRUG FORFEITURE TRIAL PROCEEDINGS
PENDING THE OUTCOME OF THE PEOPLE'S CRIMINAL
APPEAL OF JUDGE CHAMBERLAIN'S MMMA SECTION
8 RULING.

STANDARD OF REVIEW.....	3
STANDARD APPLIED.....	4
REQUEST FOR RELIEF.....	6

ATTACHMENTS

Register of Actions 16-801-FY.....	1
Register of Actions 16-801-FH.....	2
Section 8 Opinion - Judge Chamberlain.....	3
Register of Actions 16-13188-CZ.....	4
Verified Complaint for Drug Forfeiture.....	5
Transcript Motion for Stay of Proceedings.....	6

ATTACHMENTS Cont.

Order Denying Motion to Stay Proceedings.....	7
Order Denying Motion for Reconsideration.....	8
Notice of Hearing - Claimants' Motion for Summary Disposition.....	9

INDEX OF AUTHORITIES

CASE LAW:	PAGE(S)
<i>Bank of Commonwealth, a Michigan Banking Corporation v. Hulett</i> , 82 Mich. App. 442; 266 NW2d 841 (1978).....	4
<i>In re Forfeiture of \$5,264</i> , 432 Mich. 242; 439 NW2d 246 (1989).....	4
<i>Malandonado v. Ford Motor Co.</i> , 476 Mich. 372; 719 NW2d 809 (2006).....	3, 5
<i>People v. Bailey</i> , 169 Mich. App. 492; 42 NW2d 755 (1988).....	3
MICHIGAN STATUTE(S)	
MCL 333.7521, et. seq.	2
MCL 333.26428	2, 3
MICHIGAN COURT RULE(S)	
MCR 7.205(G).....	v

STATEMENT OF JURISDICTION

The Michigan Court of Appeals has jurisdiction over this delayed application for leave to appeal under MCR 7.205(G).

STATEMENT OF QUESTION INVOLVED

WHETHER THE TRIAL COURT ABUSED ITS DISCRETION IN
DENYING THE PLAINTIFF-APPELLANT'S REQUEST TO STAY
THE CIVIL DRUG FORFEITURE TRIAL PROCEEDINGS PENDING
THE OUTCOME OF THE PEOPLE'S CRIMINAL APPEAL OF JUDGE
CHAMBERLAIN'S MMA SECTION 8 RULING?

THE PLAINTIFF-APPELLANT WOULD ANSWER "YES"

THE DEFENDANT-APPELLEE WOULD ANSWER "NO"

THE CIRCUIT COURT WOULD ANSWER "NO"

STATEMENT OF FACTS

That on April 12, 2016, a criminal complaint was filed in the Isabella County Trial Court on Steven A. Fisher, for having committed the crimes of:

I - Deliver/Manufacture 5 - 45 Kilograms of Marijuana;

II - Deliver/Manufacture 5 - 45 Kilograms of Marijuana;

III - Deliver/Manufacture Marijuana;

IV - Felony Firearm;

V - Maintaining a Drug House;

VI - Maintaining a Drug House. (Attachment 1, Register of Actions 16-801-FY).

The aforementioned criminal charges were dismissed by Isabella County Chief Judge Paul H. Chamberlain, as a result of a Michigan Medical Marijuana Act (MMMA) Section 8 motion, which ended on January 25, 2017 with the Trial Court's Opinion and Order being published on January 31, 2017. (Attachment 2, Register of Actions 16-801-FH. Attachment 3, Section 8 Opinion). On April 3, 2017, the People filed an appeal of Judge Chamberlain's Section 8 decision dismissing the criminal case against Steven A. Fisher (COA# 336902).

On May 26, 2016, the Isabella County Prosecuting Attorney on behalf of BAYANET, filed a Summons and Complaint for civil drug forfeiture, in the Isabella County Trial Court, File No. 16-13188-CZ. (Attachment 4, Register of Actions 16-13188-CZ. Attachment 5, Complaint).

On April 5, 2017, a Motion to Stay Proceedings on the drug forfeiture matter was filed by the Isabella County Prosecuting Attorney on behalf of BAYANET, with the motion being heard

on April 28, 2017. At the conclusion of the hearing on the Motion to Stay Proceeding, Judge Chamberlain denied the motion. (Attachment 6, Motion to Stay Proceedings Transcript. Attachment 7, Order denying Motion to Stay Proceedings). On June 1, 2017, the Isabella County Prosecuting Attorney on behalf of BAYANET, filed a Motion for Reconsideration regarding Judge Chamberlain's denial of the Motion to Stay Proceedings. On July 19, 2017 Judge Chamberlain filed an opinion on the Motion for Reconsideration, denying the same. (Attachment 8, Order denying Motion for Reconsideration).

A hearing date of **October 20, 2017 at 10:00 am** has been set by the Court to hear arguments regarding the Claimants' Motion for Summary Disposition on the above-captioned matter. (Attachment 9, Motion for Summary Disposition Notice of Hearing.) That because Judge Chamberlain has ruled that the marijuana drug activity of Steven A. Fisher was protected from prosecution under the auspices of Section 8 of the MMMA, MCL 333.2642(3)(c)(2), there is no drug-related criminal activity on the part of Steven A. Fisher that would allow for the seizure of assets from Steven A. Fisher under the Michigan Drug Forfeiture Statute, MCL 333.7521, et. seq.

ARGUMENT

THE TRIAL COURT ABUSED ITS DISCRETION IN DENYING
THE PLAINTIFF-APPELLANT'S REQUEST TO STAY
THE CIVIL DRUG FORFEITURE TRIAL PROCEEDINGS
PENDING THE OUTCOME OF THE PEOPLE'S CRIMINAL
APPEAL OF JUDGE CHAMBERLAIN'S MMMA SECTION
8 RULING.

STANDARD OF REVIEW

This Court reviews a trial court's decision on a motion to stay proceedings for an abuse of discretion. *People v. Bailey*, 169 Mich. App. 492, 499; 426 NW2d 755 (1988). A trial court abuses its discretion when its decision falls outside the range of reasonable and principled outcomes. *Malandonado v. Ford Motor Co.*, 476 Mich. 372, 388; 719 NW2d 809 (2006).

STANDARD APPLIED

The aforementioned criminal charges were dismissed by Isabella County Chief Judge Paul H. Chamberlain, as a result of a Michigan Medical Marijuana Act (MMMA) Section 8 motion, which ended on January 25, 2017, with the Trial Court's Opinion and Order being published on January 31, 2017. (Attachment 2, Register of Actions 16-801-FH. Attachment 3, Section 8 Opinion). On April 3, 2017, the People filed an appeal of Judge Chamberlain's Section 8 decision dismissing the criminal case against Steven A. Fisher (COA# 336902).

MCL 333.26428(3)(c)(2), provides in pertinent part:

(c) If a patient or a patient's primary caregiver demonstrates the patient's medical purpose for using marihuana pursuant to this section, the patient and the patient's primary caregiver shall not be subject to the following for the patient's medical use of marihuana:

(1) disciplinary action by a business or occupational or professional licensing board or bureau; or

(2) *forfeiture of any interest in or right to property*. (Emphasis added).

Likewise, in the case of *In re Forfeiture of \$5,264*, 432 Mich. 242, 264-265; 439 NW2d 246 (1989), the Michigan Supreme Court found that the party seeking to forfeit property under the Controlled Substance Act, must show a “substantial connection” between the property that is sought to be forfeited and the unlawful drug activity.

That the People have appealed Judge Chamberlain’s MMMA Section 8 ruling on the Steven A. Fisher criminal case 16-801-FH, as the People believe that Steven A. Fisher’s marijuana drug activity falls outside of the protections of Section 8 of the MMMA. The criminal appeal (COA# 336902) is pending in the Michigan Court of Appeals.

The ability of BAYANET to proceed with the above-captioned civil drug forfeiture is completely dependent upon the results of the criminal appeal. Absent the Michigan Court of Appeals reversing Judge Chamberlain’s MMMA Section 8 ruling, Plaintiff-Appellant is unable to move forward with their civil drug forfeiture action against the seized property of Steven and Leslie Fisher. As the criminal case presently stands, the criminal case remains dismissed and the seized property must necessarily be returned to the Fishers as Section 8 precludes the forfeiture of the Fishers’ property.

In the case of *Bank of the Commonwealth, a Michigan Banking Corporation v. Hulett*, 82 Mich. App. 442, 445; 266 N.W.2d 841 (1978), citing 1 Am.Jur.2d, Actions, ss 92-94; pp. 621-622, the Michigan Court of Appeals stated that “Where the rights of parties to the second action cannot be properly determined until the questions raised in the first action are settled, the second action should be stayed.”

Judge Chamberlain's refusal to grant Plaintiff-Appellant a stay of proceedings pending the outcome of the People's appeal of Judge Chamberlain's Section 8 ruling on the criminal case on *People v. Steven A. Fisher*, 16-801-FH (COA# 336902), is a decision which falls outside of the range of reasonable and principled outcomes. *Malandonado, supra*. By forcing the Plaintiff-Appellant to proceed with their civil drug forfeiture while Judge Chamberlain's MMA Section 8 ruling remains in effect and before review of that decision by the Court of Appeals, is unreasonable and unprincipled as the Plaintiff-Appellant is forced into a completely indefensible position.


REQUEST FOR RELIEF

WHEREFORE, for the reasons stated herein, the Plaintiff-Appellant requests this Honorable Court to order a Stay of Proceedings in the civil drug forfeiture case above.

Respectfully submitted,

Risa N. Hunt-Scully
Isabella County Prosecutor

DATE: 10-10-17

BY: 
Robert A. Holmes, Jr. (P44097)
Chief Asst. Prosecuting Attorney
Isabella County.

2017 OCT 10 AM 11:30
CLERK OF DISTRICT
COURT
ISABELLA COUNTY
OFFICE

ATTACHMENT - 1

STATE OF MICHIGAN 76TH JUDICIAL DISTRICT ORI370015J PIN: 070010016	REGISTER OF ACTIONS	CASE NO: 16-801 D01 FY STATUS: CLSD 09/29/16
---	---------------------	---

JUDGE OF RECORD: JANES, ERIC R., P-42026
JUDGE: JANES, ERIC R., P-42026

STATE OF MICHIGAN v

FISHER/STEVEN/ANTHONY
316 NORTH 3RD ST
SHEPHERD MI 48883

CTN: 371600098801
TCN: I716129930X
SID: 5244174J

ENTRY DATE: 04/13/16
OFFENSE DATE: 04/12/16

DEFENDANT PHONE: (989) 621-2051 VEHICLE TYPE: VPN:
DOB: 12/13/1966 SEX: M RACE: DLN: MI F260777067947 CDL: N
VEH YR: VEH MAKE: VIN: PAPER PLATE:

DEFENSE ATTORNEY ADDRESS

KOMORN, MICHAEL A.,

30903 NORTHWESTERN HWY

STE 240

FARMINGTON HILLS MI 48334

OFFICER: JORDAN/RANDALL

BAR NO.

P-47970

Telephone No.

(248) 357-2550

DEPT: MICHIGAN STATE POLICE-MT

DEPT: B.A.Y.A.N.E.T.

P-44097

PROSECUTOR: HOLMES, ROBERT A., JR

VICTIM/DESC:

COUNT 1 C/M/F: F 33374012D11 PACC#333.74012D11

DELIVER/MANUFACTURE 5-45 K MARIJUANA-CONTROLLED SUBSTANCE

ARRAIGNMENT DATE: 04/13/16 PLEA: PLEA DATE:

FINDINGS: EX COND B/O DISPOSITION DATE: 09/29/16

SENTENCING DATE:

FINE	COST	ST.COST	CON	MISC.	REST	TOT FINE	TOT DUE
0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00

JAIL SENTENCE:

PROBATION:

VEH IMMOB START DATE:

NUMBER OF DAYS:

VEH FORFEITURE:

BOND HISTORY:

6,000.00 SURETY BOND POSTED

COUNT 2 C/M/F: F 33374012D11 PACC#333.74012D11

DELIVER/MANUFACTURE 5-45 K MARIJUANA-CONTROLLED SUBSTANCE

ARRAIGNMENT DATE: 04/13/16 PLEA: PLEA DATE:

FINDINGS: EX COND B/O DISPOSITION DATE: 09/29/16

SENTENCING DATE:

FINE	COST	ST.COST	CON	MISC.	REST	TOT FINE	TOT DUE
0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00

JAIL SENTENCE:

PROBATION:

VEH IMMOB START DATE:

NUMBER OF DAYS:

VEH FORFEITURE:

COUNT 3 C/M/F: F 33374012D3 PACC#333.74012D3

DELIVER/MANUFACTURE MARIJUANA-CONTROLLED SUBSTANCE

ARRAIGNMENT DATE: 04/13/16 PLEA: PLEA DATE:

FINDINGS: EX COND B/O DISPOSITION DATE: 09/29/16

SENTENCING DATE:

FINE	COST	ST.COST	CON	MISC.	REST	TOT FINE	TOT DUE
0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00

JAIL SENTENCE:

PROBATION:

VEH IMMOB START DATE:

NUMBER OF DAYS:

VEH FORFEITURE:

NAME: FISHER/STEVEN/ANTHONY

CASE NO: 16-801

PAGE 2

COUNT 4 C/M/F: F 750227B-A

PACC#750.227B-A

FELONY FIREARMS

ARRAIGNMENT DATE: 04/13/16

PLEA:

PLEA DATE:

FINDINGS: EX COND B/O DISPOSITION DATE: 09/29/16

SENTENCING DATE:

FINE	COST	ST.COST	CON	MISC.	REST	TOT FINE	TOT DUE
0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00

JAIL SENTENCE:

PROBATION:

VEH IMMOB START DATE:

NUMBER OF DAYS:

VEH FORFEITURE:

COUNT 5 C/M/F: F 3337405D

PACC#333.7405D

MAINTAIN A DRUG HOUSE-CONTROLLED SUBSTANCE

ARRAIGNMENT DATE: 04/13/16

PLEA:

PLEA DATE:

FINDINGS: EX COND B/O DISPOSITION DATE: 09/29/16

SENTENCING DATE:

FINE	COST	ST.COST	CON	MISC.	REST	TOT FINE	TOT DUE
0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00

JAIL SENTENCE:

PROBATION:

VEH IMMOB START DATE:

NUMBER OF DAYS:

VEH FORFEITURE:

COUNT 6 C/M/F: F 3337405D

PACC#333.7405D

MAINTAIN A DRUG HOUSE-CONTROLLED SUBSTANCE

ARRAIGNMENT DATE: 04/13/16

PLEA:

PLEA DATE:

FINDINGS: EX COND B/O DISPOSITION DATE: 09/29/16

SENTENCING DATE:

FINE	COST	ST.COST	CON	MISC.	REST	TOT FINE	TOT DUE
0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00

JAIL SENTENCE:

PROBATION:

VEH IMMOB START DATE:

NUMBER OF DAYS:

VEH FORFEITURE:

DATE	ACTIONS, JUDGMENTS, CASE NOTES	INITIALS
------	--------------------------------	----------

04/12/16

1	ORIGINAL CHARGE	DEL/MANU MJ	LAW
2	ORIGINAL CHARGE	DEL/MANU MJ	LAW
3	ORIGINAL CHARGE	DEL/MANU MJ	LAW
4	ORIGINAL CHARGE	GUN FELONY	LAW
5	ORIGINAL CHARGE	MAIN DRUG HS	LAW

04/13/16

	FILING DATE	041316		LAW
1	AUTHORIZATION OF COMPLAINT DATE			LAW
	PROS HOLMES, ROBERT A., JR		P-44097	LAW
	COMPLAINT ISSUANCE DATE			LAW
	MAG STRAUS, SANDRA J.,		# 7601	LAW
	VIDEO ARRAIGNMENT SCHEDULED			
		041316 230P	STRAUS, SANDRA J.,	# 7601 LAW
6	MISCELLANEOUS ACTION	MAIN DRUG HS		LAW
	ADDED CHARGE	MAIN DRUG HS		LAW
	FINGERPRINTS FILED			LAW
	++++DNA SAMPLE REQUIRED TO BE TAKEN++++			LAW
	++++DNA SAMPLE-DEF LODGED-JAIL/AGENCY'S RESPONSIBILITY TO TAKE SAMPL			LAW
	ARRAIGNMENT HELD	ALL COUNTS		SJS
	PROBABLE CAUSE CONFERENCE	042116 815A	JANES, ERIC R.,	P-42026 SJS
	PRELIMINARY EXAMINATION	042816 215P	JANES, ERIC R.,	P-42026 SJS

DATE	ACTIONS, JUDGMENTS, CASE NOTES	INITIALS
	10%-CASH-SURETY	SJS
	BOND SET \$ 24000.00	SJS
	HIRING OWN ATTY	SJS
	NOT TO USE/POSSES ANY WEAPON FOR ANY PURP/INCL HUNTING WO/CRT PERMIS	SJS
	NO ALCOHOL OR GO WHERE SERVED, INCLUDING BARS & RESTAURANTS	SJS
	SUBMIT TO ALCOHOL/DRUG TESTING AS REQUESTED OR DIRECTED	SJS
	NOT TO USE/POSS/DEL DRUGS/PARAPH/ALC/MIND ALT SUB OR ASSOC W/ANY1WHO	SJS
	RIGHTS GIVEN TO DEFENDANT ON THE RECORD	SJS
	NOTICE TO APPEAR GENERATED	
	ALL COUNTS	SJS
1	BAIL BOND GENERATED DEL/MANU MJ	SJS
04/14/16	ADVICE OF RIGHTS FORM FILED	JMS
	++++ORDER FOR DNA SAMPLE CERTIFICATION AND RETURN FILED+++++	LAW
04/15/16	MISCELLANEOUS ACTION ALL COUNTS	LAG
	SURETY	LAG
	BOND POSTED \$ 6000.00	LAG
	SURETY BOND POSTED	LAG
	ALWAYS ME BAIL BONDS	LAG
04/21/16	MISCELLANEOUS ACTION ALL COUNTS	AIM
	JDG JANES, ERIC R., P-42026	AIM
	EXAM WAIVED ; DEFENDANT BOUND OVER	AIM
	TRIAL COURT 4/29/16	AIM
	FUTURE CALENDAR DATE(S) REMOVED	AIM
	CASE CLOSED	AIM
04/22/16	+++++JUDGMENT ELECTRONICALLY FILED+++++	LAW
04/28/16	MISCELLANEOUS ACTION ALL COUNTS	MAN
	CONFIRMATION OF ELECTRONIC JUDGMENT BEING PROCESSED BY STATE	MAN
06/01/16	MISCELLANEOUS ACTION ALL COUNTS	LAW
	ATT KOMORN, MICHAEL A., P-47970	LAW
	ATTY FILED AN APPEARANCE GIVEN TO CC SIDE	LAW
06/07/16	1 REMANDED FROM CIRCUIT COURT TO DISTRICT COURT	
	DEL/MANU MJ	LAW
	JDG DUTHIE, MARK H., P-33313	LAW
	PREVIOUS DISPOSITION SET ASIDE/CASELOAD REOPENED	LAW
2	REMANDED FROM CIRCUIT COURT TO DISTRICT COURT	
	DEL/MANU MJ	LAW
	PREVIOUS DISPOSITION SET ASIDE	LAW
3	REMANDED FROM CIRCUIT COURT TO DISTRICT COURT	
	DEL/MANU MJ	LAW
	PREVIOUS DISPOSITION SET ASIDE	LAW
4	REMANDED FROM CIRCUIT COURT TO DISTRICT COURT	
	GUN FELONY	LAW
	PREVIOUS DISPOSITION SET ASIDE	LAW
5	REMANDED FROM CIRCUIT COURT TO DISTRICT COURT	
	MAIN DRUG HS	LAW
	PREVIOUS DISPOSITION SET ASIDE	LAW

DATE	ACTIONS, JUDGMENTS, CASE NOTES	INITIALS
6	REMANDED FROM CIRCUIT COURT TO DISTRICT COURT MAIN DRUG HS	LAW
	PREVIOUS DISPOSITION SET ASIDE	LAW
6	MISCELLANEOUS ACTION MAIN DRUG HS	LAW
	PRELIMINARY EXAMINATION 061616 900A JANES, ERIC R.,	P-42026 LAW
6	MISCELLANEOUS ACTION MAIN DRUG HS	LAW
	REMOVED FROM CALENDAR 061616 900A JANES, ERIC R.,	P-42026 LAW
	PRELIMINARY EXAMINATION 062316 900A JANES, ERIC R.,	P-42026 LAW
	STIPULATED ORDER TO ADJOURN SIGNED/FILED	LAW
	**STIP WAS SIGNED 6-3-16; DID NOT RECEIVE	LAW
	FILE UNTIL 6-7-16**	LAW
6	NOTICE TO APPEAR GENERATED	
	MAIN DRUG HS	LAW
06/23/16		
	PRELIMINARY EXAM HELD ALL COUNTS	AIM
	JDG JANES, ERIC R.,	P-42026 AIM
	PRELIMINARY EXAM STARTED; COURT ADJOURNS TO	AIM
	7/22/16	AIM
	MISCELLANEOUS ACTION ALL COUNTS	AIM
	PRELIMINARY EXAM TO TAKE BALANCE OF MORNING	
	072216 900A JANES, ERIC R.,	P-42026 AIM
	PRELIMINARY EXAM TO TAKE BALANCE OF AFTERNOON	
	072216 100P JANES, ERIC R.,	P-42026 AIM
	NOTICE TO APPEAR GENERATED	
	ALL COUNTS	AIM
07/11/16		
	REQUEST & NOTICE FOR FILM & ELECTRONIC MEDIA	LAW
	COVERAGE OF COURT PROCEEDINGS SIGNED/FILED	LAW
	VICE MEDIA TO APPEAR	LAW
07/14/16		
	PRELIMINARY EXAM TRANSCRIPT FILED	LAW
07/20/16		
	MISCELLANEOUS ACTION ALL COUNTS	LAW
	MOTION HEARING 072216 900A JANES, ERIC R.,	P-42026 LAW
	EMERGENCY MOTION TO QUASH THE AFFIDAVIT AND	LAW
	SEARCH WARRANT ON CONSTITUTIONAL GROUNDS	LAW
	FILED	LAW
	PROOF OF SERVICE FILED	LAW
07/21/16		
	PEOPLE'S OBJECTION TO EMERGENCY MOTION	LAW
	FILED	LAW
07/22/16		
	MISCELLANEOUS ACTION ALL COUNTS	MW
	PRELIMINARY EXAMINATION 081116 900A JANES, ERIC R.,	P-42026 MW
	NOTICE TO APPEAR GENERATED	
	ALL COUNTS	MW
	NOTICE TO APPEAR GENERATED	
	ALL COUNTS	MW
	ALL COUNTS	AIM
	PROCEEDING HELD	AIM
	JDG JANES, ERIC R.,	P-42026 AIM
	PRELIM CONTINUED. MATTER TO BE ADJOURNED	AIM
	TO 8/11/16 AT 9 FOR BALANCE OF THE DAY	AIM
	MISCELLANEOUS ACTION ALL COUNTS	AIM

DATE	ACTIONS, JUDGMENTS, CASE NOTES	INITIALS
	PRELIMINARY EXAM TO TAKE BALANCE OF MORNING	
	081116 900A JANES, ERIC R.,	P-42026 AIM
	PRELIMINARY EXAM TO TAKE BALANCE OF AFTERNOON	
	081116 900A JANES, ERIC R.,	P-42026 AIM
	NOTICE TO APPEAR GENERATED	
	ALL COUNTS	AIM
08/09/16		
	PRELIMINARY EXAM, VOLUME II TRANSCRIPT	LAW
	FILED	LAW
08/10/16		
	MISCELLANEOUS ACTION ALL COUNTS	JOD
	REMOVED FROM CALENDAR 081116 900A JANES, ERIC R.,	P-42026 JOD
	PRELIMINARY EXAMINATION 083016 900A JANES, ERIC R.,	P-42026 JOD
	MISCELLANEOUS ACTION ALL COUNTS	JOD
	REMOVED FROM CALENDAR 081116 900A JANES, ERIC R.,	P-42026 JOD
	MISCELLANEOUS ACTION ALL COUNTS	JOD
	REMOVED FROM CALENDAR 081116 900A JANES, ERIC R.,	P-42026 JOD
	NOTICE TO APPEAR GENERATED	
	ALL COUNTS	JOD
	STIPULATION & ORDER ADJOURING &	LAW
	RESCHEDULING PRELIMINARY EXAMINATION	LAW
	SIGNED/FILED	LAW
09/09/16		
	PEOPLE'S MOTION TO AMEND COMPLAINTS FILED	LAW
	MEMORANDUM REGARDING BINDOVER FILED	LAW
09/13/16		
	MISCELLANEOUS ACTION ALL COUNTS	JOD
	EXAMINATION 092916 900A JANES, ERIC R.,	P-42026 JOD
	NOTICE TO APPEAR GENERATED	
	ALL COUNTS	JOD
09/22/16		
	DEFENDANT'S EMERGENCY MOTION TO ADJOURN	LAW
	FILED	LAW
	ORDER FOR ADJOURNMENT DENIED/FILED	LAW
09/26/16		
	PROOF OF SERVICE FILED	LAW
	MOTION TO QUASH THE AFFIDAVIT AND SEARCH	LAW
	WARRANT ON CONSTITUTIONAL GROUNDS FILED	LAW
09/27/16		
	MISCELLANEOUS ACTION ALL COUNTS	LAW
	MOTION HEARING 092916 900A JANES, ERIC R.,	P-42026 LAW
	NOTICE OF HEARING FILED	LAW
	PEOPLE'S ANSWER TO DEFENDANTS' EMERGENCY	LAW
	MOTION TO QUASH THE AFFIDAVIT AND SEARCH	LAW
	WARRANT ON CONSTITUTIONAL GROUNDS FILED	LAW
09/29/16		
	MISCELLANEOUS ACTION ALL COUNTS	LAW
	JDG JANES, ERIC R.,	P-42026 LAW
	EXAM CONDUCTED ; DEFENDANT BOUND OVER	LAW
	TRIAL COURT 9-30-16	LAW
	CASE CLOSED	LAW
09/30/16		
	++++JUDGMENT ELECTRONICALLY FILED++++	LAW

NAME: FISHER/STEVEN/ANTHONY

CASE NO: 16-801

PAGE 6

DATE	ACTIONS, JUDGMENTS, CASE NOTES	INITIALS
10/26/16	PRELIMINARY EXAM, VOLUME II TRANSCRIPT FILED	LAW LAW

***** END OF REGISTER OF ACTIONS ***** 10/04/17 15:47

STATE OF MICHIGAN 76TH JUDICIAL DISTRICT ORI370015J PIN: 070010016	REGISTER OF ACTIONS	CASE NO: 16-801 D01 FY STATUS: CLSD 09/29/16
---	---------------------	---

JUDGE OF RECORD: JANES, ERIC R., P-42026
JUDGE: JANES, ERIC R., P-42026

STATE OF MICHIGAN v

FISHER/STEVEN/ANTHONY
316 NORTH 3RD ST
SHEPHERD MI 48883

CTN: 371600098801
TCN: I716129930X
SID: 5244174J

ENTRY DATE: 04/13/16
OFFENSE DATE: 04/12/16

DEFENDANT PHONE: (989) 621-2051
DOB: 12/13/1966 SEX: M RACE:
VEH YR: VEH MAKE:

VEHICLE TYPE:
DLN: MI F260777067947
VIN:

VPN:
CDL: N
PAPER PLATE:

DEFENSE ATTORNEY ADDRESS
KOMORN, MICHAEL A.,
30903 NORTHWESTERN HWY
STE 240
FARMINGTON HILLS MI 48334

BAR NO.
P-47970
Telephone No.

(248) 357-2550

OFFICER: JORDAN/RANDALL

DEPT: MICHIGAN STATE POLICE-MT
DEPT: B.A.Y.A.N.E.T.
P-44097

PROSECUTOR: HOLMES, ROBERT A., JR
VICTIM/DESC:

COUNT 1 C/M/F: F 33374012D11 PACC#333.74012D11
DELIVER/MANUFACTURE 5-45 K MARIJUANA-CONTROLLED SUBSTANCE
ARRAIGNMENT DATE: 04/13/16 PLEA: PLEA DATE:
FINDINGS: EX COND B/O DISPOSITION DATE: 09/29/16
SENTENCING DATE:

FINE	COST	ST.COST	CON	MISC.	REST	TOT FINE	TOT DUE
0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00

JAIL SENTENCE: PROBATION:
VEH IMMOB START DATE: NUMBER OF DAYS: VEH FORFEITURE:

BOND HISTORY:

6,000.00 SURETY BOND POSTED

COUNT 2 C/M/F: F 33374012D11 PACC#333.74012D11
DELIVER/MANUFACTURE 5-45 K MARIJUANA-CONTROLLED SUBSTANCE
ARRAIGNMENT DATE: 04/13/16 PLEA: PLEA DATE:
FINDINGS: EX COND B/O DISPOSITION DATE: 09/29/16
SENTENCING DATE:

FINE	COST	ST.COST	CON	MISC.	REST	TOT FINE	TOT DUE
0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00

JAIL SENTENCE: PROBATION:
VEH IMMOB START DATE: NUMBER OF DAYS: VEH FORFEITURE:

COUNT 3 C/M/F: F 33374012D3 PACC#333.74012D3
DELIVER/MANUFACTURE MARIJUANA-CONTROLLED SUBSTANCE
ARRAIGNMENT DATE: 04/13/16 PLEA: PLEA DATE:
FINDINGS: EX COND B/O DISPOSITION DATE: 09/29/16
SENTENCING DATE:

FINE	COST	ST.COST	CON	MISC.	REST	TOT FINE	TOT DUE
0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00

JAIL SENTENCE: PROBATION:
VEH IMMOB START DATE: NUMBER OF DAYS: VEH FORFEITURE:

NAME: FISHER/STEVEN/ANTHONY

CASE NO: 16-801

PAGE 2

COUNT 4 C/M/F: F 750227B-A

PACC#750.227B-A

FELONY FIREARMS

ARRAIGNMENT DATE: 04/13/16

PLEA:

PLEA DATE:

FINDINGS: EX COND B/O DISPOSITION DATE: 09/29/16

SENTENCING DATE:

FINE	COST	ST.COST	CON	MISC.	REST	TOT FINE	TOT DUE
0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00

JAIL SENTENCE:

PROBATION:

VEH IMMOB START DATE:

NUMBER OF DAYS:

VEH FORFEITURE:

COUNT 5 C/M/F: F 3337405D

PACC#333.7405D

MAINTAIN A DRUG HOUSE-CONTROLLED SUBSTANCE

ARRAIGNMENT DATE: 04/13/16

PLEA:

PLEA DATE:

FINDINGS: EX COND B/O DISPOSITION DATE: 09/29/16

SENTENCING DATE:

FINE	COST	ST.COST	CON	MISC.	REST	TOT FINE	TOT DUE
0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00

JAIL SENTENCE:

PROBATION:

VEH IMMOB START DATE:

NUMBER OF DAYS:

VEH FORFEITURE:

COUNT 6 C/M/F: F 3337405D

PACC#333.7405D

MAINTAIN A DRUG HOUSE-CONTROLLED SUBSTANCE

ARRAIGNMENT DATE: 04/13/16

PLEA:

PLEA DATE:

FINDINGS: EX COND B/O DISPOSITION DATE: 09/29/16

SENTENCING DATE:

FINE	COST	ST.COST	CON	MISC.	REST	TOT FINE	TOT DUE
0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00

JAIL SENTENCE:

PROBATION:

VEH IMMOB START DATE:

NUMBER OF DAYS:

VEH FORFEITURE:

DATE	ACTIONS, JUDGMENTS, CASE NOTES	INITIALS
------	--------------------------------	----------

04/12/16

1	ORIGINAL CHARGE	DEL/MANU MJ	LAW
2	ORIGINAL CHARGE	DEL/MANU MJ	LAW
3	ORIGINAL CHARGE	DEL/MANU MJ	LAW
4	ORIGINAL CHARGE	GUN FELONY	LAW
5	ORIGINAL CHARGE	MAIN DRUG HS	LAW

04/13/16

	FILING DATE	041316		LAW
1	AUTHORIZATION OF COMPLAINT DATE			LAW
	PROS HOLMES, ROBERT A., JR		P-44097	LAW
	COMPLAINT ISSUANCE DATE			LAW
	MAG STRAUS, SANDRA J.,		# 7601	LAW
	VIDEO ARRAIGNMENT SCHEDULED			
		041316 230P	STRAUS, SANDRA J.,	# 7601 LAW
6	MISCELLANEOUS ACTION	MAIN DRUG HS		LAW
	ADDED CHARGE	MAIN DRUG HS		LAW
	FINGERPRINTS FILED			LAW
	++++DNA SAMPLE REQUIRED TO BE TAKEN+++++			LAW
	++++DNA SAMPLE-DEF LODGED-JAIL/AGENCY'S RESPONSIBILITY TO TAKE SAMPL			LAW
	ARRAIGNMENT HELD	ALL COUNTS		SJS
	PROBABLE CAUSE CONFERENCE	042116 815A	JANES, ERIC R.,	P-42026 SJS
	PRELIMINARY EXAMINATION	042816 215P	JANES, ERIC R.,	P-42026 SJS

DATE	ACTIONS, JUDGMENTS, CASE NOTES	INITIALS
	10%-CASH-SURETY	SJS
	BOND SET \$ 24000.00	SJS
	HIRING OWN ATTY	SJS
	NOT TO USE/POSSES ANY WEAPON FOR ANY PURP/INCL HUNTING WO/CRT PERMIS	SJS
	NO ALCOHOL OR GO WHERE SERVED, INCLUDING BARS & RESTAURANTS	SJS
	SUBMIT TO ALCOHOL/DRUG TESTING AS REQUESTED OR DIRECTED	SJS
	NOT TO USE/POSS/DEL DRUGS/PARAPH/ALC/MIND ALT SUB OR ASSOC W/ANY1WHO	SJS
	RIGHTS GIVEN TO DEFENDANT ON THE RECORD	SJS
	NOTICE TO APPEAR GENERATED	SJS
	ALL COUNTS	SJS
1	BAIL BOND GENERATED DEL/MANU MJ	SJS
04/14/16	ADVICE OF RIGHTS FORM FILED	JMS
	++++ORDER FOR DNA SAMPLE CERTIFICATION AND RETURN FILED+++++	LAW
04/15/16	MISCELLANEOUS ACTION ALL COUNTS	LAG
	SURETY	LAG
	BOND POSTED \$ 6000.00	LAG
	SURETY BOND POSTED	LAG
	ALWAYS ME BAIL BONDS	LAG
04/21/16	MISCELLANEOUS ACTION ALL COUNTS	AIM
	JDG JANES,ERIC R.,	AIM
	EXAM WAIVED ; DEFENDANT BOUND OVER	AIM
	TRIAL COURT 4/29/16	AIM
	FUTURE CALENDAR DATE(S) REMOVED	AIM
	CASE CLOSED	AIM
04/22/16	+++++JUDGMENT ELECTRONICALLY FILED+++++	LAW
04/28/16	MISCELLANEOUS ACTION ALL COUNTS	MAN
	CONFIRMATION OF ELECTRONIC JUDGMENT BEING PROCESSED BY STATE	MAN
06/01/16	MISCELLANEOUS ACTION ALL COUNTS	LAW
	ATT KOMORN,MICHAEL A.,	LAW
	ATTY FILED AN APPEARANCE GIVEN TO CC SIDE	LAW
06/07/16	1 REMANDED FROM CIRCUIT COURT TO DISTRICT COURT	LAW
	DEL/MANU MJ	LAW
	JDG DUTHIE,MARK H.,	LAW
	PREVIOUS DISPOSITION SET ASIDE/CASELOAD REOPENED	LAW
2	REMANDED FROM CIRCUIT COURT TO DISTRICT COURT	LAW
	DEL/MANU MJ	LAW
	PREVIOUS DISPOSITION SET ASIDE	LAW
3	REMANDED FROM CIRCUIT COURT TO DISTRICT COURT	LAW
	DEL/MANU MJ	LAW
	PREVIOUS DISPOSITION SET ASIDE	LAW
4	REMANDED FROM CIRCUIT COURT TO DISTRICT COURT	LAW
	GUN FELONY	LAW
	PREVIOUS DISPOSITION SET ASIDE	LAW
5	REMANDED FROM CIRCUIT COURT TO DISTRICT COURT	LAW
	MAIN DRUG HS	LAW
	PREVIOUS DISPOSITION SET ASIDE	LAW

DATE	ACTIONS, JUDGMENTS, CASE NOTES	INITIALS
6	REMANDED FROM CIRCUIT COURT TO DISTRICT COURT MAIN DRUG HS	LAW
	PREVIOUS DISPOSITION SET ASIDE	LAW
6	MISCELLANEOUS ACTION MAIN DRUG HS	LAW
	PRELIMINARY EXAMINATION 061616 900A JANES, ERIC R.,	P-42026 LAW
6	MISCELLANEOUS ACTION MAIN DRUG HS	LAW
	REMOVED FROM CALENDAR 061616 900A JANES, ERIC R.,	P-42026 LAW
	PRELIMINARY EXAMINATION 062316 900A JANES, ERIC R.,	P-42026 LAW
	STIPULATED ORDER TO ADJOURN SIGNED/FILED	LAW
	**STIP WAS SIGNED 6-3-16; DID NOT RECEIVE	LAW
	FILE UNTIL 6-7-16**	LAW
6	NOTICE TO APPEAR GENERATED	
	MAIN DRUG HS	LAW
06/23/16		
	PRELIMINARY EXAM HELD ALL COUNTS	AIM
	JDG JANES, ERIC R.,	P-42026 AIM
	PRELIMINARY EXAM STARTED; COURT ADJOURNS TO	AIM
	7/22/16	AIM
	MISCELLANEOUS ACTION ALL COUNTS	AIM
	PRELIMINARY EXAM TO TAKE BALANCE OF MORNING	
	072216 900A JANES, ERIC R.,	P-42026 AIM
	PRELIMINARY EXAM TO TAKE BALANCE OF AFTERNOON	
	072216 100P JANES, ERIC R.,	P-42026 AIM
	NOTICE TO APPEAR GENERATED	
	ALL COUNTS	AIM
07/11/16		
	REQUEST & NOTICE FOR FILM & ELECTRONIC MEDIA	LAW
	COVERAGE OF COURT PROCEEDINGS SIGNED/FILED	LAW
	VICE MEDIA TO APPEAR	LAW
07/14/16		
	PRELIMINARY EXAM TRANSCRIPT FILED	LAW
07/20/16		
	MISCELLANEOUS ACTION ALL COUNTS	LAW
	MOTION HEARING 072216 900A JANES, ERIC R.,	P-42026 LAW
	EMERGENCY MOTION TO QUASH THE AFFIDAVIT AND	LAW
	SEARCH WARRANT ON CONSTITUTIONAL GROUNDS	LAW
	FILED	LAW
	PROOF OF SERVICE FILED	LAW
07/21/16		
	PEOPLE'S OBJECTION TO EMERGENCY MOTION	LAW
	FILED	LAW
07/22/16		
	MISCELLANEOUS ACTION ALL COUNTS	MW
	PRELIMINARY EXAMINATION 081116 900A JANES, ERIC R.,	P-42026 MW
	NOTICE TO APPEAR GENERATED	
	ALL COUNTS	MW
	NOTICE TO APPEAR GENERATED	
	ALL COUNTS	MW
	PROCEEDING HELD ALL COUNTS	AIM
	JDG JANES, ERIC R.,	P-42026 AIM
	PRELIM CONTINUED. MATTER TO BE ADJOURNED	AIM
	TO 8/11/16 AT 9 FOR BALANCE OF THE DAY	AIM
	MISCELLANEOUS ACTION ALL COUNTS	AIM

DATE	ACTIONS, JUDGMENTS, CASE NOTES	INITIALS
	PRELIMINARY EXAM TO TAKE BALANCE OF MORNING	
	081116 900A JANES, ERIC R.,	P-42026 AIM
	PRELIMINARY EXAM TO TAKE BALANCE OF AFTERNOON	
	081116 900A JANES, ERIC R.,	P-42026 AIM
	NOTICE TO APPEAR GENERATED	
	ALL COUNTS	AIM
08/09/16		
	PRELIMINARY EXAM, VOLUME II TRANSCRIPT	LAW
	FILED	LAW
08/10/16		
	MISCELLANEOUS ACTION ALL COUNTS	JOD
	REMOVED FROM CALENDAR 081116 900A JANES, ERIC R.,	P-42026 JOD
	PRELIMINARY EXAMINATION 083016 900A JANES, ERIC R.,	P-42026 JOD
	MISCELLANEOUS ACTION ALL COUNTS	JOD
	REMOVED FROM CALENDAR 081116 900A JANES, ERIC R.,	P-42026 JOD
	MISCELLANEOUS ACTION ALL COUNTS	JOD
	REMOVED FROM CALENDAR 081116 900A JANES, ERIC R.,	P-42026 JOD
	NOTICE TO APPEAR GENERATED	
	ALL COUNTS	JOD
	STIPULATION & ORDER ADJOURING &	LAW
	RESCHEDULING PRELIMINARY EXAMINATION	LAW
	SIGNED/FILED	LAW
09/09/16		
	PEOPLE'S MOTION TO AMEND COMPLAINTS FILED	LAW
	MEMORANDUM REGARDING BINDOVER FILED	LAW
09/13/16		
	MISCELLANEOUS ACTION ALL COUNTS	JOD
	EXAMINATION 092916 900A JANES, ERIC R.,	P-42026 JOD
	NOTICE TO APPEAR GENERATED	
	ALL COUNTS	JOD
09/22/16		
	DEFENDANT'S EMERGENCY MOTION TO ADJOURN	LAW
	FILED	LAW
	ORDER FOR ADJOURNMENT DENIED/FILED	LAW
09/26/16		
	PROOF OF SERVICE FILED	LAW
	MOTION TO QUASH THE AFFIDAVIT AND SEARCH	LAW
	WARRANT ON CONSTITUTIONAL GROUNDS FILED	LAW
09/27/16		
	MISCELLANEOUS ACTION ALL COUNTS	LAW
	MOTION HEARING 092916 900A JANES, ERIC R.,	P-42026 LAW
	NOTICE OF HEARING FILED	LAW
	PEOPLE'S ANSWER TO DEFENDANTS' EMERGENCY	LAW
	MOTION TO QUASH THE AFFIDAVIT AND SEARCH	LAW
	WARRANT ON CONSTITUTIONAL GROUNDS FILED	LAW
09/29/16		
	MISCELLANEOUS ACTION ALL COUNTS	LAW
	JDG JANES, ERIC R.,	P-42026 LAW
	EXAM CONDUCTED ; DEFENDANT BOUND OVER	LAW
	TRIAL COURT 9-30-16	LAW
	CASE CLOSED	LAW
09/30/16		
	+++++JUDGMENT ELECTRONICALLY FILED+++++	LAW

NAME: FISHER/STEVEN/ANTHONY

CASE NO: 16-801

PAGE 6

DATE	ACTIONS, JUDGMENTS, CASE NOTES	INITIALS
10/26/16	PRELIMINARY EXAM, VOLUME II TRANSCRIPT FILED	LAW LAW

***** END OF REGISTER OF ACTIONS ***** 10/04/17 15:48

ATTACHMENT - 2

PA

UCCVPMK

REGISTER OF ACTIONS

Isabella County Rel1312

10/06/17 10:46:31

Pg: 1

Case Disposition: DC

Crt: C 21 37 Jur: DUTHIE

Ref: DUTHIE

CLOSE Pub

Case: 2016 0000000801 FH

STATE OF MI V STEVEN FISHER

Atty: PRO PER

Worker:

CHR DNA CVA ABS

File: 4/21/2016 Dispose: 1/31/2017 Reopen: 9/29/2016 Close: 1/31/2017

D 001

STEVEN ANTHONY FISHER

316 NORTH 3RD ST

SHEPHERD, MI 48883 SID: 5244174J

DOB: 12/13/1966 Gender: M

TCN: I716129930X

CTN: 371600098801

DLN: F260777067947 ST: MI

OFFENSE DATE: 04/12/2016

ARRAIGNMENT: 04/13/2016

LOWER COURT: D 76 37

CASE XREF#: 16-801

PRELIM: 04/21/2016

PROSECUTOR:

ROBERT A. HOLMES JR.

P 44097

Charge History

NUM	TYPE	Offense	ASC Description	DISP	DFR
01	CUR:333.74012D11		CON SUB DEL/MFG 5-45 KILO	DIS	
02	CUR:333.74012D11		CON SUB DEL/MFG 5-45 KILO	DIS	
03	CUR:333.74012D3		CONT SUB DEL/MAN MARIJUANA	DIS	
04	CUR:750.227B-A		FELONY FIREARMS	DIS	
05	CUR:333.7405D		CS-MAINTAINING DRUG HOUSE	DIS	
06	CUR:333.7405D		CS-MAINTAINING DRUG HOUSE	DIS	

Bond History

Party	NUM	Amount	Type	Posted Date	Status
STEVEN ANTHONY FISHER			10%/CSH/ST	04/13/2016	Closed
Last Action: BOND CANCELLED - SUR	Amount:	6000.00	Balance:		.00
Posted By: ALWAYS ME BAIL BONDS					

Events, Actions, and Judgments

NUM	Date	Jurist	Chg/Party	Clerk
5	04/13/2016		D 001	ML
			SURETY BOND POSTED	
			REGISTER NO. PRT19	
			AMOUNT: \$6000.00	
1	04/21/2016		D 001	ML
			BINDOVER	
2	04/21/2016		D 001	ML
			ARRAIGNMENT	
			RESULT: Waived	
3	04/21/2016		D 001	ML
			WAIVER OF ARRAIGNMENT/ELECTION TO STAND MUTE OR ENTER NOT GUILTY PLEA	
4	04/21/2016		D 001	ML
			SCHEDULING CONFERENCE ORDER	
			RESCHED TO 06/01/2016 @ 1015A FROM 05/20/2016 @ 0245P	
			SET NEXT DATE: FPTS 05/20/2016 2:45 PM DUTHIE COURTROOM: C02	
6	04/25/2016		D 001	ML
			INFORMATION	
7	04/27/2016		D 001	JA
			SET CASE ON CALENDAR	

PA

UCCVPPK

REGISTER OF ACTIONS

Isabella County Rel1312

10/06/17 10:46:31

Pg: 2

Case Disposition: DC

Crt: C 21 37 Jur: DUTHIE

Ref: DUTHIE

CLOSE Pub

Case: 2016 0000000801 FH

STATE OF MI V STEVEN FISHER

SET NEXT DATE: FPTS 06/01/2016 10:15 AM DUTHIE COURTROOM: C02
AMENDED DATE AND TIME

8 04/27/2016 D 001 ML

PROOF OF SERVICE FOR NOTICE TO APPEAR

9 06/01/2016 D 001 CN

FINAL PRE-TRIAL

DEFENSE ATTORNEY PHONED AND ADVISED ASSIGNMENT CLERK THAT THIS CASE
WILL BE REMANDED FOR PRELIMINARY EXAM. FINAL PRETRIAL FORM
COMPLETED AND FAXED TO COURT BY DEFENSE ATTORNEY. NOTHING ON
THE RECORD TODAY.

10 06/01/2016 D 001 ML

APPEARANCE OF ATTORNEY

ATTORNEY: KOMORN

11 06/06/2016 D 001 AJD

PRE-TRIAL ORDER

RESCHED TO 07/22/2016 @ 0800A FROM 07/18/2016 @ 0900A

SET NEXT DATE: STC 07/18/2016 9:00 AM DUTHIE COURTROOM: C02

AND/OR PLEA

12 06/06/2016 D 001 AJD

SET CASE ON CALENDAR

REMOVED ON 2016-07-15 BY ALLENJ

SET NEXT DATE: TRLJ 07/25/2016 9:00 AM CHAMBERLAIN COURTROOM: CC04
2-3 DAYS

13 06/06/2016 D 001 AJD

ORDER OF REMAND

DISP: REMAND

14 06/27/2016 D 001 ML

NTC OF RES GESTAE/TRIAL WITNESSES/PRF OF SVC

15 07/15/2016 D 001 JA

SET CASE ON CALENDAR

REASSIGNED TO ALLEN, JODI, M, FOR 07/22/2016 @ 0800A

SET NEXT DATE: MSH 07/22/2016 8:00 AM DUTHIE COURTROOM: C02

GIVE NEW TRIAL AND SETTLEMENT DATE

16 07/15/2016 ALLEN D 001 JA

SET CASE ON CALENDAR

SET NEXT DATE: MSH 07/22/2016 8:00 AM ALLEN COURTROOM: C02

GIVE NEW TRIAL AND SETTLEMENT DATE

17 09/29/2016 D 001 ML

REOPEN CASE

18 09/29/2016 01 D 001 ML

REMOVE DISPOSITION

19 09/29/2016 02 D 001 ML

REMOVE DISPOSITION

20 09/29/2016 03 D 001 ML

REMOVE DISPOSITION

21 09/29/2016 04 D 001 ML

REMOVE DISPOSITION

22 09/29/2016 05 D 001 ML

REMOVE DISPOSITION

23 09/29/2016 06 D 001 ML

REMOVE DISPOSITION

24 09/30/2016 D 001 ML

ARRAIGNMENT

RESULT: Waived

PA

UCCVFPK

REGISTER OF ACTIONS

Isabella County Rel1312

10/06/17 10:46:31

Pg: 3

Case Disposition: DC

Crt: C 21 37 Jur: DUTHIE

Ref: DUTHIE

CLOSE Pub

Case: 2016 0000000801 FH

STATE OF MI V STEVEN FISHER

25 09/30/2016 D 001 ML
WAIVER OF ARRAIGNMENT/ELECTION TO STAND MUTE OR ENTER NOT GUILTY PLEA

26 10/03/2016 D 001 JA
SET CASE ON CALENDAR
SET NEXT DATE: FPT 10/21/2016 3:15 PM CHAMBERLAIN COURTROOM: CC04

27 10/03/2016 D 001 ML
AMENDED
INFORMATION

28 10/05/2016 D 001 ML
PROOF OF SERVICE FOR NOTICE TO APPEAR

29 10/21/2016 CHAMBERLAIN D 001 DMF
FINAL PRE-TRIAL
ALL PARTIES APPEARED AND MET. NOTHING ON THE RECORD.
ALL MOTIONS ARE TO BE FILED BY 11/4/16.
RESCHED TO 12/12/2016 @ 0900A FROM 12/01/2016 @ 0900A
SET NEXT DATE: MOH 12/01/2016 9:00 AM CHAMBERLAIN COURTROOM: CC04
ALL MOTIONS

30 10/21/2016 D 001 DMF
SET CASE ON CALENDAR
RESCHED TO 02/06/2016 @ 0900A FROM 12/12/2016 @ 0900A
SET NEXT DATE: TRLJ 12/12/2016 9:00 AM CHAMBERLAIN COURTROOM: CC04

31 10/21/2016 D 001 DMF
SET CASE ON CALENDAR
RESCHED TO 12/13/2016 @ 0900A FROM 12/02/2016 @ 0900A
SET NEXT DATE: MOH 12/02/2016 9:00 AM CHAMBERLAIN COURTROOM: CC04
CONTINUE OF MOTIONS

32 10/24/2016 D 001 ML
PROOF OF SERVICE FOR NOTICE TO APPEAR

33 11/04/2016 D 001 AJD
MOTION FILED
MOTION TO QUASH BINDOVER AND TO DISMISS

34 11/04/2016 D 001 AJD
MOTION FILED
DEFENDANT'S MOTION TO DISMISS PURSUANT TO DAUBERT OR IN THE ALTERNATIVE
SET FOR AN (EVIDENTIARY) DAUBERT HEARING AND MEMORANDUM OF LAW IN
SUPPORT OF DISMISSAL OR EVIDENTIARY HEARING PURSUANT TO DAUBERT

35 11/04/2016 D 001 AJD
MOTION FILED
DEFENDANT'S MOTION TO DISMISS PURSUANT TO MMA SECTION 4(G), OR
PRECLUDE EVIDENCE OF PARAPHERNALIA AND REQUEST FOR EVIDENTIARY HEARING

36 11/04/2016 D 001 AJD
MOTION FILED
DEFENDANT'S MOTION TO PRECLUDE EVIDENCE BASED ON RELEVANCY

37 11/04/2016 D 001 AJD
MOTION FILED
DEFENDANT'S MOTION TO PRECLUDE EVIDENCE BASED UPON JUDICIAL ESTOPPEL

38 11/04/2016 D 001 AJD
MOTION FILED
MOTION IN LIMINE TO EXCLUDE FORENSIC EVIDENCE OR ALTERNATIVELY FOR A
DAUBERT HEARING

39 11/04/2016 D 001 AJD
MOTION FILED
DEFENDANT'S MOTION TO DISMISS PURSUANT TO SECTION 8 OF THE MMA

40 11/04/2016 D 001 AJD

Crt: C 21 37 Jur: DUTHIE
Case: 2016 0000000801 FH

Ref: DUTHIE
STATE OF MI V STEVEN FISHER

Case Disposition: DC

CLOSE Pub

MOTION FILED

MOTION TO QUASH THE AFFIDAVIT AND SEARCH WARRANT ON CONSTITUTIONAL
GROUNDS

41 11/04/2016 D 001 AJD

MOTION FILED

MOTION TO QUASH THE INFORMATION AND BIND-OVER OF THE FELONY FIREARM
CHARGES BASED UPON CONSTITUTIONAL GROUNDS

42 11/04/2016 D 001 AJD

PROOF OF SERVICE

43 11/09/2016 D 001 AJD

AMENDED

FIRST AMENDEND NOTICE OF RES GESTAE WITNESSES AND TRIAL WITNESSES

44 11/23/2016 D 001 AJD

RESPONSE FILED

PEOPLE'S RESPONSE TO

DEFENDANT'S MOTION TO DIMISS PURSUANT TO DAUBERT OR IN THE ALTERNATIVE
SET FOR AN (EVIDENTIARY) DAUBERT HEARING AND MEMORANDUM OF LAW IN
SUPPORT OF DISMISSAL OR EVIDENTIARY HEARING PURSUANT TO DAUBERT

45 11/23/2016 D 001 AJD

RESPONSE FILED

PEOPLE'S RESPONSE TO MOTION IN LIMINE TO EXCLUDE FORENSIC EVIDENCE OR
ALTERNATIVELY FOR A DAUBERT HEARING

46 11/23/2016 D 001 AJD

RESPONSE FILED

PEOPLE'S RESPONSE TO MOTION TO QUASH THE AFFIDAVIT AND SEARCH WARRANT
ON CONSTITUTIONAL GROUNDS

47 11/23/2016 D 001 AJD

RESPONSE FILED

PEOPLE'S RESPONSE TO MOTION TO QUASH BINDOVER AND TO DISMISS

48 11/23/2016 D 001 AJD

RESPONSE FILED

PEOPLE'S RESPONSE TO DEFENDANT'S MOTION TO DISMISS PURSUANT TO MMA
SECTION 4(G), OR PRECLUDE EVIDENCE OF PARAPHERNALIA AND REQUEST
FOR EVIDENTIARY HEARING

49 11/23/2016 D 001 AJD

RESPONSE FILED

PEOPLE'S RESPONSE TO MOTION TO QUASH THE INFORMATION AND BIND-OVER
OF THE FELONY FIREARM CHARGES BASED UPON CONSTITUTIONAL GROUNDS

50 11/23/2016 D 001 AJD

RESPONSE FILED

PEOPLE'S RESPONSE TO DEFENDANT'S MOTION TO PRECLUDE EVIDENCE BASED
UPON JUDICIAL ESTOPPEL

51 11/23/2016 D 001 AJD

RESPONSE FILED

PEOPLE'S RESPONSE TO DEFENDANT'S MOTION TO PRECLUDE EVIDENCE BASED
UPON RELEVANCY

52 11/23/2016 D 001 AJD

RESPONSE FILED

PEOPLE'S RESPONSE TO DEFENDANT'S UNFILED MOTION TO DIMISS PURSUANT TO
SECTION 4 OF THE MMA AND THE AMENDMENTS (THAT WERE SIGNED INTO LAW
SEPTEMBER 22, 2016 ARE CURATIVE AND RETROACTIVE

53 12/01/2016 CHAMBERLAIN D 001 SHE

MOTION HEARING

RESULT: Under Advisement ENDED: 01/31/2017

COURT HEARD FOLLOWING MOTIONS; COURT DENIED FRANKS HEARING.

*MOTION TO QUASH THE AFFIDAVIT & SEARCH WARRANT ON CONSTITUTIONAL GROUNDS-COURT TAKES THIS MOTION UNDER ADVISEMENT.

*MOTION TO QUASH THE BINDOVER-COURT ISSUED WRITTEN OPINION REGARDING THIS MOTION

(PER JUDGE PHC-ATTORNEYS WERE INFORMED OFF RECORD THAT ALL SUBPOENAS ARE CONTINUED)

HOLMES/KOMORN/RUDOI (PHC/4/SS#8076)

54 12/01/2016 CHAMBERLAIN D 001 MW
SET CASE ON CALENDAR
SET NEXT DATE: MOH 12/12/2016 9:00 AM CHAMBERLAIN COURTROOM: CC04
ALL MOTIONS

55 12/01/2016 CHAMBERLAIN D 001 MW
SET CASE ON CALENDAR
SET NEXT DATE: MOH 12/13/2016 9:00 AM CHAMBERLAIN COURTROOM: CC04
CONTINUE OF MOTIONS

56 12/01/2016 CHAMBERLAIN D 001 MW
SET CASE ON CALENDAR
SET NEXT DATE: TRLJ 02/06/2016 9:00 AM CHAMBERLAIN COURTROOM: CC04

57 12/01/2016 D 001 MW
SET CASE ON CALENDAR
REMOVED ON 2017-01-31 BY D7600MEA
SET NEXT DATE: TRLJ 02/06/2017 9:00 AM CHAMBERLAIN COURTROOM: CC04

58 12/01/2016 D 001 ML
PROOF OF SERVICE FOR NOTICE TO APPEAR

59 12/08/2016 CHAMBERLAIN D 001 SHE
OPINION
OPINION AND ORDER ON DEFENDANT STEVEN FISHER'S MOTION TO QUASH THE
AFFIDAVIT AND SEARCH WARRANT FILED.

60 12/08/2016 D 001 AJD
SUPPLEMENTAL MOTION/MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT'S MOTION
FOR IMMUNITY PURSUANT TO SECTION 4 AND TO SUPPRESS EVIDENCE BASED UPON
STATUTORY/CONSTITUTIONAL VIOLATIONS

61 12/08/2016 D 001 AJD
MOTION FILED
DEFENDANT'S MOTION FOR MIRANDA/WALKER HEARING

62 12/08/2016 D 001 AJD
PROOF OF SERVICE

63 12/09/2016 D 001 AJD
RESPONSE FILED
PEOPLE'S RESPONSE TO DEFENDANT'S MOTION FOR MIRANDA/WALKER HEARING

64 12/12/2016 D 001 CN
MOTION HEARING
RESULT: Under Advisement ENDED: 01/31/2017
DEFENDANT APPEARED FOR HEARING RE MOTIONS: 1) ORAL MOTION FOR
ACCESS TO VIEW EVIDENCE: COURT HEARD ARGUMENT, GRANTED MOTION,
PARTIES TO WORK TOGETHER TO FACILITATE. 2) ORAL MOTION TO
RECONSIDER OPINION RE SEARCH WARRANT MOTION: COURT WILL NOT
HEAR THIS TODAY AS THAT MOTION HAS BEEN HEARD AND RULED UPON.
3) MOTIONS RE MIRANDA/WALKER/SUPPRESSION: 1 WITNESS TESTIFIED,
ARGUMENT HEARD, EXHIBIT 1 ADMITTED, COURT STATED FINDINGS ON THE
RECORD AND DENIED MOTIONS. ATTORNEY HOLMES TO PREPARE ORDER.
4) MOTION TO QUASH INFORMATION AND BIND OVER OF FELONY FIREARMS
ON CONSTITUTIONAL GROUNDS: COURT HEARD ARGUMENT, TOOK THIS MATTER

Crt: C 21 37 Jur: DUTHIE

Ref: DUTHIE

CLOSE Pub

Case: 2016 0000000801 FH

STATE OF MI V STEVEN FISHER

UNDER ADVISEMENT. 5) MOTION TO QUASH BIND OVER AND DISMISS:
COURT HEARD ARGUMENT, TAKES MATTER UNDER ADVISEMENT.

6) MOTION TO QUASH BINDOVER AND DISMISS: COURT HEARD ARGUMENT AND
TOOK MATTER UNDER ADVISEMENT. 7) MOTION TO DISMISS PER DAUBERT OR
SET DAUBERT HEARING: COURT HEARD ARGUMENT AND DAUBERT HEARING
COMMENCED, COURT HEARD FROM 1 WITNESS AS FAR AS DIRECT AND CROSS
EXAM OF THAT WITNESS WILL CONTINUE ON 12/13/16.

HOLMES/KOMORN (PHC/CN7655/4)

65 12/12/2016 CHAMBERLAIN D 001 ML
ORDER

DENYING DEFENDANT'S MOTION FOR SUPPRESSION PER MIRANDA/WALKER

66 12/12/2016 CHAMBERLAIN D 001 ML
ORDER

REGARDING EXHIBITS

67 12/13/2016 CHAMBERLAIN D 001 SHE
MOTION HEARING

MOTIONS CONTINUED; COURT CONTINUED TO HEAR DAUBERT HEARING; TESTIMONY
CONTINUED WITH TWO WITNESSES TESTIFYING. DAUBERT HRG TO CONT 12/14/16
@ 2:00

MOTION(S) HEARING IS CONTINUED UNTIL 1/19/17 @ 8:30 AM

HOLMES/KOMORN (PHC/4/SS#8076)

SET NEXT DATE: MOH 01/19/2017 8:30 AM CHAMBERLAIN COURTROOM: C02

CONTINUATION OF MOTIONS FROM 12/13/16

68 12/13/2016 D 001 SHE

SET CASE ON CALENDAR

SET NEXT DATE: MOH 12/14/2016 2:00 PM CHAMBERLAIN COURTROOM: C02

70 12/13/2016 D 001 AJD

PROOF OF SERVICE FOR NOTICE TO APPEAR

69 12/14/2016 CHAMBERLAIN D 001 SHE

MOTION HEARING

MOTIONS CONTINUED; COURT CONTINUED TO HEAR DAUBERT HEARING; TESTIMONY
CONTINUED FROM ONE WITNESS; IF COUNSEL WOULD LIKE TO ADD ANYTHING
ADDITIONAL BY WAY OF ARGUMENT THE COURT WILL ACCEPT A WRITTEN CLOSING
ARGUMENT BY DECEMBER 19TH AT 4:30 VIA FAX OR ELECTRONICALLY, FINAL
COPIES TO BE MAILED TO THE COURT OR PERSONALLY DELIVERED.

SECTION 4 & 8 TO BE TAKEN UP ON THE JANUARY DATE.

HOLMES/KOMORN (PHC/4/SS#8076)

71 12/19/2016 D 001 AJD

PEOPLE'S ARGUMENT REGARDING DEFENDANT MOTION IN LIMINE TO EXCLUDE
FORENSIC EVIDENCE OR ALTERNATIVELY FOR A DAUBERT HEARING

72 12/20/2016 D 001 ML

ATTORNEY: KOMORN

SUPPLEMENTAL MEMO OF LAW IN SUPPORT OF DEFENDANT'S DAUBERT MOTION

73 12/27/2016 D 001 ML

MOTION FILED

ATTORNEY: KOMORN

TO RECONSIDER DEFENDANT'S MOTION TO QUASH THE AFFIDAVIT AND SEARCH
WARRANT ON CONSTITUTIONAL GROUNDS

74 01/11/2017 D 001 ML

TRANSCRIPT PREPARED/FILED

MOTION FOR ACCESS TO VIEW EVIDENCE, MOTION FOR RECONSIDERATION,
WALKER HEARING, MOTION TO QUASH BINDOVER REGARDING FELONY FIREARMS,
MOTION TO QUASH BINDOVER AND DISMISS AND VOLUME I OF DAUBERT HEARING /
HONORABLE PAUL H. CHAMBERLAIN / MONDAY, DECEMBER 12, 2016 / CN

Crt.: C 21 37 Jur: DUTHIE

Ref: DUTHIE

CLOSE Pub

Case: 2016 0000000801 FH

STATE OF MI V STEVEN FISHER

75 01/11/2017 D 001 ML
TRANSCRIPT PREPARED/FILED
VOLUME II OF DAUBERT HEARING / HONORABLE PAUL H. CHAMBERLAIN / CN

76 01/11/2017 D 001 ML
TRANSCRIPT PREPARED/FILED
VOLUME III OF DAUBERT HEARING / HONORABLE PAUL H. CHAMBERLAIN / CN

77 01/19/2017 CHAMBERLAIN D 001 SHE
ORDER
REGARDING EXHIBITS FROM HEARINGS ON 12/12/16, 12/13/16 & 12/14/16
FILED

78 01/19/2017 CHAMBERLAIN D 001 SHE
OPINION
AND ORDER ON DEFENDANT'S MOTION TO EXCLUDE FORENSIC EVIDENCE,
DEFENDANT'S MOTION TO DISMISS PURSUANT TO DAUBERT, DEFENDANT'S MOTION
TO PRECLUDE EVIDENCE BASED UPON JUDICIAL ESTOPPEL, AND DEFENDANT'S
MOTION TO PRECLUDE EVIDENCE BASED UPON RELEVANCY AND PROOF OF SERVICE
FILED

79 01/19/2017 CHAMBERLAIN D 001 SHE
OPINION
AND ORDER ON DEFENDANT'S MOTION TO QUASH BINDOVER OF THE FELONY
FIREARM CHARGE ON CONSTITUTIONAL GROUNDS AND DEFENDANT'S MOTION TO
QUASH BINDOVER AND PROOF OF SERVICE FILED

80 01/19/2017 CHAMBERLAIN D 001 SHE
OPINION
AND ORDER ON DEFENDANT'S MOTION TO RECONSIDER DEFENDANT'S MOTION TO
QUASH THE AFFIDAVIT AND SEARCH WARRANT ON CONSTITUTIONAL GROUNDS AND
PROOF OF SERVICE FILED

81 01/19/2017 D 001 AJD
ORDER
DENYING DEFENDANT'S MOTION PURSUANT TO MMMA SECTION 4 (A), (B) AND (G)

82 01/19/2017 CHAMBERLAIN D 001 SHE
MOTION HEARING
COURT HEARD SECTION FOUR MOTION - COURT DENIES DEFENDANT'S MOTION FOR
PROTECTION UNDER THE ACT/SECTION FOUR MOTION DENIED. COURT DENIES
MOTION ON SECTION 4. COURT HEARD ORAL MOTION FROM MR. KOMORN REGARDING
ILLEGAL ARREST OF DEFENDANT-COURT REQUIRES MOTION BE FILED AND NOTICE
PROVIDED TO MR. HOLMES. MR. HOLMES TO PROVIDE ORDERS ON SECTION 4
RULINGS. MR. HOLMES FILED ORDER/COPIES DISTRIBUTED IN COURTROOM TO
MR. HOLMES & MR. KOMORN (ON RECORD)
SECTION 8 MOTION - TESTIMONY TAKEN AND TO CONTINUE ON 1/24/17 @ 1:00
PM
HOLMES/KOMORN (PHC/4/SS#8076)
SET NEXT DATE: MOH 01/24/2017 1:00 PM CHAMBERLAIN COURTROOM: C02

83 01/24/2017 CHAMBERLAIN D 001 SHE
MOTION HEARING
COURT CONTINUED TESTIMONY FROM DEFENDANT AND TOOK TESTIMONY FROM
DETECTIVE. PARTIES TO RETURN ON 1/25/17 @ 1:30 PM WITH JUDGE
CHAMBERLAIN.
KOMORN/HOLMES (PHC/4/SS#8076)
SET NEXT DATE: HRG 01/25/2017 1:30 PM CHAMBERLAIN COURTROOM: CC04
CLOSING ARGUMENTS

84 01/25/2017 D 001 ML
MOTION HEARING
RESULT: Under Advisement ENDED: 01/31/2017

PA

UCCVPFK

Isabella County Rel1312

REGISTER OF ACTIONS

10/06/17 10:46:31

Pg: 8

Case Disposition: DC

Crt: C 21 37 Jur: DUTHIE

Ref: DUTHIE

CLOSE Pub

Case: 2016 0000000801 FH

STATE OF MI V STEVEN FISHER

COURT HEARD CLOSING ARGUMENTS ON SECTION 8 MOTION. COURT TAKES MATTER UNDER ADVISEMENT AND WILL ISSUE A WRITTEN OPINION.

HOLMES/KOMORN (PHC/ML/4)

85	01/27/2017	D 001	AJD
	PEOPLE'S NOTICE OF INTENT TO QUALIFY EXPERT WITNESS		
86	01/31/2017	D 001	ML
	CHAMBERLAIN OPINION		
	AND ORDER ON DEFENDANT'S MOTION FOR SECTION 8 DEFENSE FILED & PROOF OF SERVICE		
87	01/31/2017	D 001	ML
	MISCELLANEOUS ACTION BY CLERK		
	RESULT: Return from Under Advisement		
88	01/31/2017	D 001	ML
	CLOSE CASE/PETITION		
	DISP: DISMISSED		
89	01/31/2017	D 001	ML
	CRIMINAL HISTORY REPORTING/ELECTRONIC		
90	01/31/2017	D 001	ML
	REMOVED ATTORNEY		
	ATTORNEY: KOMORN		
	Attorney changed from KOMORN to Pro Per		
91	01/31/2017	D 001	ML
	BOND CANCELLED		
	AMOUNT: \$6000.00		
92	01/31/2017	D 001	AJD
	ORDER		
	REGARDING EXHIBITS		
93	02/07/2017	D 001	AJD
	CLAIM OF APPEAL		
94	02/07/2017	D 001	AJD
	REPORTER/RECORDER CERTIFICATE OF ORDERING OF TRANSCRIPT ON APPEAL		
95	02/21/2017	D 001	ML
	AMENDED		
	REPORTER/RECORDER CERTIFICATE OF ORDERING TRANSCRIPT ON APPEAL		
96	03/13/2017	D 001	ML
	NOTICE OF FILING OF TRANSCRIPT AND AFFIDAVIT OF MAILING		
97	03/13/2017	D 001	ML
	TRANSCRIPT PREPARED/FILED		
	MOTION TO DISMISS PURSUANT TO MMMA SECTION 4(G) OR PRECLUDE EVIDENCE OF PARAPHERNALIA AND VOLUME I OF MOTION TO DISMISS PURSUANT TO SECTION 8 OF THE MMMA / HONORABLE PAUL H. CHAMBERLAIN / THURSDAY, JANUARY 19, 2017 / SS		
98	03/13/2017	D 001	ML
	TRANSCRIPT PREPARED/FILED		
	VOLUME II OF MOTION TO DISMISS PURSUANT TO SECTION 8 OF THE MMMA / HONORABLE PAUL H. CHAMBERLAIN / TUESDAY, JANUARY 24, 2017 / SS		
99	03/13/2017	D 001	ML
	TRANSCRIPT PREPARED/FILED		
	VOLUME III OF MOTION TO DISMISS PURSUANT TO SECTION 8 OF THE MMMA / HONORABLE PAUL H. CHAMBERLAIN / WEDNESDAY, JANUARY 25, 2017 / SS		
100	05/16/2017	D 001	ML
	CERTIFICATE OF RECORDS TRANSMITTED FOR APPEAL		

**** END OF SUMMARY ****

*** END OF REPORT ***

ATTACHMENT - 3

STATE OF MICHIGAN
IN THE ISABELLA COUNTY TRIAL COURT

ISABELLA COUNTY
RECEIVED
JAN 31 2017
PROSECUTING ATTORNEY

THE PEOPLE OF THE STATE OF
MICHIGAN,

Plaintiff,

Case No.
16-801-FH

v

Hon. Paul H. Chamberlain

STEVEN FISHER,

Defendant.

FILED

JAN 31 2017

Robert A. Holmes, Jr. (P44097)
Attorney for Plaintiff

ISABELLA COUNTY CLERK
MT. PLEASANT, MICH.

Michael A. Komorn (P47970)
Attorney for Defendant

OPINION AND ORDER
ON DEFENDANT'S MOTION FOR §8 DEFENSE

I. FACTS

Defendant Steven Fisher is charged with Possession with Intent to Deliver 5 to 45 Kilograms of Marijuana, Possession with Intent to Deliver 20 or more Marijuana Plants, Manufacture and/or Creation of Marijuana Oil, Felony Firearm, and two counts of Maintaining a Drug House. Defendant is registered as a patient under the Michigan Medical Marijuana¹ Act (MMMA). He provided marijuana to his wife Leslie Fisher as a caregiver, but he was not registered as Ms. Fisher's caregiver under the Act. Ms. Fisher is also registered as a patient under the MMMA. Defendant seeks dismissal of the charges against him pursuant to the MMMA's §8 defense.

On January 19, 24, and 25, the court held a §8 hearing. Two witnesses testified for the defense: Leslie Fisher and defendant Steven Fisher. Additionally, the prosecutor called Lieutenant Matthew Rice of the Michigan State Police.

The first witness to testify was Leslie Fisher, defendant's wife. Ms. Fisher testified that she began working at the Soaring Eagle Casino in 1993 as a slot attendant, and as a part of her duties she had to carry bags of coins to the slot machines. As a result, Ms. Fisher testified that

¹ The legislature uses the spelling "marihuana" in the MMMA. However, this court will be using the more common spelling "marijuana" throughout this opinion.

Proof of Service

✓ mail ✓ atty box _____ personal
Date: 1/31/17 Signature: S

she sustained a back injury when a golf ball sized muscle came out from her right shoulder. After taking some time off work, Ms. Fisher returned to work despite her injury, and she testified that she has had problems with her neck and shoulders ever since. To treat the injury and its resulting pain, Ms. Fisher testified that she did some physical therapy but mostly used massage therapy and over-the-counter pain patches and pain reliever rubs. She testified that she had bad reactions to medications and pills. Ms. Fisher testified that she would use pain reliever rubs at work on breaks and would have to have the rubs with her all the time. Additionally, she testified that a car accident in 2010 or 2011 caused her to develop more back pain.

Ms. Fisher also testified that she had a lot of "pelvic problems" primarily caused by a dermoid cyst on one of her ovaries that resulted in pain. Ms. Fisher eventually had to have an ovary removed. To regulate these issues, Ms. Fisher testified that she was put on the birth control pill; however, she had a bad reaction to the pill. Ms. Fisher testified that she wanted to become a medical marijuana patient to deal with her pain and because of her bad reactions to pills and medications.

In April 2014, Ms. Fisher testified that she went to see Dr. Robert Townsend at Denali Healthcare in Mt. Pleasant. She testified that she brought her medical records to the appointment, that Dr. Townsend reviewed and kept the medical records, that she had a 40 minute consultation with Dr. Townsend about her medical history and pain, and that Dr. Townsend did a physical examination of her. Dr. Townsend ultimately recommended that Ms. Fisher was likely to receive therapeutic or palliative benefit from the medical use of marijuana to treat her pain and muscle spasms. The certification signed by Dr. Townsend on April 16, 2014 was admitted as Exhibit 1. The signed certification also attested that Dr. Townsend was in compliance with the MMMA and all amendments. Ms. Fisher's medical records, produced by Denali Healthcare, were admitted as Exhibit 2.

After Dr. Townsend signed the certification form, Ms. Fisher testified that her husband sent the document to the State of Michigan, and she subsequently received a medical marijuana patient card. Ms. Fisher testified that she was aware follow-up care was recommended by Dr. Townsend. She stated that she and her husband returned to Denali Healthcare in June 2015. At that time, Ms. Fisher testified that the staff informed her that she could do follow-up online. In October 2015, Ms. Fisher testified that her husband helped her complete a follow-up form online. In June 2016, Ms. Fisher testified that she had an in-person follow-up visit at Denali Healthcare. This visit was not with Dr. Townsend, but was with another physician at Denali Healthcare, Dr. Aperocho.

Ms. Fisher testified that her husband acted as her medical marijuana caregiver by providing her with marijuana. She testified that, after receiving her patient card, she would try different strains of marijuana and different methods of ingesting it. She stated that she would talk to her husband about how effective the different strains and different methods were at treating her symptoms.

Ms. Fisher testified that her husband initially produced mainly marijuana flower, but eventually began producing oil, wax and lotion. Ms. Fisher stated that she had intended to move towards vaporizing with marijuana wax more than smoking the marijuana flower because vaping was healthier since it did not involve inhaling smoke.

Ms. Fisher testified that, on an average day, she would medicate first thing in the morning, either by smoking a joint or vaping. She stated that a joint contained about 2 grams of marijuana. Then, Ms. Fisher would usually drink tea with 2 or 3 grams of coconut oil containing

marijuana in it. After work, Ms. Fisher testified that she would use lotion containing cannabis, have another cup of tea, and either smoke a joint or vape. In a vaporizing session, Ms. Fisher testified she would use approximately 1 gram of marijuana wax. Ms. Fisher also testified that, on days she did not have to work, she would usually use more marijuana.

Ms. Fisher testified that she used marijuana only to treat her debilitating medical conditions, and that the marijuana she possessed was for her own use only. Ms. Fisher testified that medical marijuana was effective as a sleep aid, helped with the nausea she often experienced after work, and helped with her pain and headaches.

Next, defendant Steven Fisher testified. Mr. Fisher stated that he entered the Army in 1985. During his time in the Army, he testified that he injured his knee when he slid on wet asphalt while running. He later learned that he had torn his ACL, but he did not seek medical treatment at the time of the injury because he did not understand what he had done to his knee. Mr. Fisher testified that he later totally ruptured his ACL while snowmobiling and had to have surgery. He testified that he continues to have pain in both knees. Additionally, Mr. Fisher testified that he hurt his back while working in physically demanding jobs. While he worked at Bandit Industries, he testified that he frequently would pick up a hydraulic pump with a twisting motion, which resulted in a back injury. Mr. Fisher was sent to a chiropractor by his employer, but testified that it did not help much. Mr. Fisher later found out he had a herniated disc in his back. Mr. Fisher's physician was going to prescribe Vicodin for his back pain, but Mr. Fisher testified that he cannot take Vicodin because it hurts his stomach. Mr. Fisher also testified that he was ultimately forced to sell his landscaping business due to severe pain in his heels caused by a shortening of the Achilles tendon. Mr. Fisher also has IBS, which makes it difficult to take pills and medication without adverse effects. Mr. Fisher wanted to try medical marijuana to treat his pain and because he wanted to be "done with pills."

In April 2014, Mr. Fisher testified that he went to see Dr. Robert Townsend at Denali Healthcare in Mt. Pleasant. He testified that he brought his medical records to the appointment, that Dr. Townsend reviewed and kept the medical records, and that he had a 30 minute consultation with Dr. Townsend about his medical history and pain. He testified that Dr. Townsend performed a physical examination, including an examination of his back. Dr. Townsend ultimately recommended that Mr. Fisher was likely to receive therapeutic or palliative benefit from the medical use of marijuana to treat his pain and muscle spasms. The certification signed by Dr. Townsend on April 9, 2014 was admitted as Exhibit 1. The signed certification also attested that Dr. Townsend was in compliance with the MMMA and all amendments. Mr. Fisher's medical records, produced by Denali Healthcare, were admitted as Exhibit 2. Mr. Fisher also testified that he completed online follow-up with Denali Healthcare in October 2015. In June 2016, Mr. Fisher also had a follow-up visit with Dr. Aperocho at Denali Healthcare.

After his visit with Dr. Townsend, Mr. Fisher testified that he sent the signed certification to the State of Michigan and ultimately received his medical marijuana patient card. Mr. Fisher intended to grow marijuana for himself and his wife. After he received his card, Mr. Fisher testified that he got some marijuana from a dispensary before his own growing marijuana was ready. He testified that he engaged in research online and talked to people at the dispensaries. He wanted to learn about different strains of the marijuana plant and different methods of ingestion.

Mr. Fisher testified that he began with growing marijuana plants and eventually decided to make other marijuana products. Mr. Fisher made coconut oil, Rick Simpson Oil (RSO), marijuana wax, and a lotion containing cannabis. He testified that the coconut oil could be put

into food or drink, that the marijuana wax could be vaporized, and that he would ingest the RSO orally. Mr. Fisher testified that he preferred these other methods of ingestion over smoking marijuana flower because they were healthier and did not require him to inhale smoke.

Mr. Fisher admitted that he possessed 28 marijuana plants at the time his residence and workshop were raided by law enforcement. He testified that it took these plants about two months to get to the vegetative state they were in at the time of the raid. Additionally, he testified that it would be approximately 6 months until these plants were ready for consumption. Mr. Fisher testified that he usually loses approximately 2 or 3 plants before harvest. Of the 28 plants that he possessed at the time of the raid, Mr. Fisher testified that 4 were "shaky," did not look right, and he intended to get rid of them. Mr. Fisher also admitted he had 39 marijuana clones. The clones were cuttings from marijuana plants that were then introduced to a rooting enzyme and would eventually become marijuana plants. Mr. Fisher testified that the clones would not be ready for consumption for at least 9 months. The clones were not counted as "marijuana plants" in the charges against defendant.

Mr. Fisher also admitted that he possessed the other amounts of marijuana and marijuana wax found by law enforcement at his residence and workshop, but he alleges that all the marijuana he possessed would not actually last him and his wife through the 6 months until his marijuana plants were ready for harvest and consumption.

Law enforcement found 2,300 and 2,400 grams of marijuana "shake," which Mr. Fisher testified is what he trims off after taking the flower. A photograph of the 2,300 grams was admitted as Exhibit 5, and a photo of the 2,400 grams was admitted as Exhibit 10. Mr. Fisher testified that he had intended to dispose of this marijuana shake. He stated that he would collect the shake, and when he had enough to fill a barrel, he would dispose of it by burning. He testified that the shake probably could be used, but that it was not of good quality, and so he did not intend to use it. Additionally, Mr. Fisher testified that it would not be worth his time to extract THC from the shake because it would take a considerable amount of time and he would not get much from it.

Law enforcement also found 4,300 grams of marijuana bud in mason jars. Mr. Fisher testified that putting the bud in mason jars was part of a gradual drying process. He testified that he removes it from the jars, dries it, puts it back in the jars, and repeats the process until the drying is complete. A photo of the 4,300 grams was admitted as Exhibit 8. Law enforcement also found 4,990 grams of marijuana bud in vacuum sealed bags. A photo of the 4,990 grams was admitted as Exhibit 9. Mr. Fisher testified that he intended to use the marijuana from the mason jars and from the vacuum sealed bags to make marijuana wax, coconut oil, and RSO.

Additionally, law enforcement found 434 grams of marijuana wax in a refrigerator at Mr. Fisher's workshop. Mr. Fisher testified that the marijuana wax in the refrigerator was impure and not safe for human consumption. An August 26, 2015 lab test from PSI Labs of some of Mr. Fisher's marijuana wax was admitted as Exhibit 4. The lab test shows that the wax contained a high concentration of butane and ethanol. Mr. Fisher testified that a total concentration should not be over 400 to 500 ppm. This test shows a total concentration of nearly 900 ppm. Mr. Fisher testified that some of the wax in the refrigerator was from the batch tested by PSI Labs on August 26, 2015. He testified that the remainder of the wax in the refrigerator was also unsafe for human consumption. All of the wax was very dark in color, which Mr. Fisher testified is an indicator that the wax contains high amounts of contaminants. Mr. Fisher testified that he hoped in the future to find a way to remove the impurities and contaminants from the wax in the

refrigerator, but as of the time of the raid, the wax was completely unusable.

In order to make marijuana wax, Mr. Fisher testified that he would take 2 pounds of marijuana bud, put it in an extraction tube, flood the system with butane, purge the butane, and what is left is the wax containing THC. To finish purging the butane, the wax is then heated in a vacuum oven. Mr. Fisher began making wax in June 2015. He testified that he first took his wax to dispensaries and then sent his wax to PSI Labs to determine if it was fit for human consumption. At first, Mr. Fisher testified that he did not distill the butane, which was why his initial marijuana wax contained such high amounts of contaminants. Mr. Fisher testified that it would take about 4 hours to make one batch of wax. He testified that 2 pounds of marijuana would make approximately 30 grams of wax. Mr. Fisher testified that he would vaporize approximately 3 grams of wax per day.

Mr. Fisher also testified that he made RSO. He stated that he would use a strain of marijuana low in THC but better as an anti-inflammatory to make the RSO. Mr. Fisher testified that it takes 10 ounces of marijuana to make approximately 20 grams of RSO. Mr. Fisher testified that he usually ingests around 1 gram of RSO per day and sometimes less. He testified that the 20 grams of RSO will usually last him for a month.

Mr. Fisher also testified that he made coconut oil. He would heat and combine approximately 5 to 6 cups of coconut oil with approximately half a pound of marijuana. This would result in 5 to 6 cups of coconut oil containing marijuana. Mr. Fisher testified that he and his wife used the coconut oil in food and drinks. Mr. Fisher testified that he would have one or two cups of tea each day containing the coconut oil. He also testified that he would make lotion from the oil. Mr. Fisher testified that lotion made from approximately half a pound of marijuana would last about one month.

Mr. Fisher testified that he would sometimes get various marijuana products from dispensaries, either to try new methods of ingestion or to supplement when he did not have enough of his own marijuana.

Mr. Fisher testified that he told law enforcement that he went to dispensaries to have his marijuana wax checked. He testified that he told law enforcement that the people at the dispensaries told him that no one would want the wax because it was too dark and probably would not be safe for consumption. Additionally, Mr. Fisher testified that he told law enforcement that the marijuana in vacuum sealed bags was part of his "overages," by which he meant that it was marijuana he had not yet used. Mr. Fisher testified that he intended to turn this "overage" into wax for consumption by himself and his wife. Mr. Fisher denies telling law enforcement that he tried to sell marijuana wax to dispensaries. Mr. Fisher denies ever selling or trying to sell marijuana to anyone. He testified that the marijuana he possessed was only for medical use by himself and his wife to alleviate their pain. Mr. Fisher testified that marijuana was effective in alleviating his pain. In addition to the amounts needed to make the wax, RSO, and coconut oil, defendant testified that he likes to keep some bud on hand for his wife to smoke if she needs it. Mr. Fisher testified that the amount of marijuana he possessed was necessary to keep an uninterrupted supply for his and his wife's medical use, and that, in fact, it would not have been enough to last them until his marijuana plants were ready for harvest in approximately 6 months.

Finally, the prosecutor called Lieutenant Matthew Rice of the Michigan State Police to testify. Lieutenant Rice testified that he has been with the Michigan State Police for about 23 years, and that he is currently the team leader for BAYANET North. Lieutenant Rice was present

for the execution of the search warrant at defendant's residence, and he testified that he read defendant his *Miranda* rights and had a conversation with defendant. Lieutenant Rice testified that law enforcement found the amounts of marijuana previously discussed and admitted to by defendant.

Lieutenant Rice testified that defendant told law enforcement that he was trying to sell his leftover marijuana, including the wax found in the refrigerator, to dispensaries. Additionally, he testified that he believed defendant was referring to the marijuana in the vacuum sealed bags when he told law enforcement he was trying to sell his "overages." Lieutenant Rice could not quote defendant's exact words, but he testified that defendant's comments were something along the lines of "I have all this marijuana...what do I do with it?"

This court held a hearing on defendant's motion for §8 defense. The court took the motion under advisement and now issues this written opinion dismissing the charges against defendant pursuant to §8 of the MMMA.

II. ANALYSIS

Defendant asserts immunity from prosecution pursuant to §8 of the MMMA, which states:

[A] patient and a patient's primary caregiver, if any, may assert the medical purpose for using marijuana as a defense to any prosecution involving marijuana, and this defense shall be presumed valid where the evidence shows that:

(1) A physician has stated that, in the physician's professional opinion, after having completed a full assessment of the patient's medical history and current medical condition made in the course of a bona fide physician-patient relationship, the patient is likely to receive therapeutic or palliative benefit from the medical use of marijuana to treat or alleviate the patient's serious or debilitating medical condition or symptoms of the patient's serious or debilitating medical condition;

(2) The patient and the patient's primary caregiver, if any, were collectively in possession of a quantity of marijuana that was not more than was reasonably necessary to ensure the uninterrupted availability of marijuana for the purpose of treating or alleviating the patient's serious or debilitating medical condition or symptoms of the patient's serious or debilitating medical condition; and

(3) The patient and the patient's primary caregiver, if any, were engaged in the acquisition, possession, cultivation, manufacture, use, delivery, transfer, or transportation of marijuana or paraphernalia relating to the use of marijuana to treat or alleviate the patient's serious or debilitating medical condition or symptoms of the patient's serious or debilitating medical condition. MCL 333.26428(a).

A defendant bears the burden of proof as to each of the three elements of the §8 defense. *People v Kolanek*, 491 Mich 382, 410; 817 NW2d 528 (2012). A defendant must establish a prima facie case for this affirmative defense by presenting evidence on all the elements listed in §8(a). *Id.* at 412-13; *People v Hartwick*, 498 Mich 192, 227; 870 NW2d 37 (2015). If a defendant establishes a prima facie case and there are no material questions of fact, then the defendant is entitled to dismissal of the charges following the evidentiary hearing. *Kolanek*, 491 Mich at 412-13; *Hartwick*, 498 Mich at 227. When a defendant asserts a §8 defense, questions of fact, such as credibility of witnesses, are for the jury to decide. *Kolanek*, 491 Mich at 411. If a defendant establishes a prima facie case for the defense but material questions of fact exist, then dismissal of the charge is not appropriate and the defense must be submitted to the jury. *Kolanek*, 491 Mich at 412-13; *Hartwick*, 498 Mich at 227. Finally, if there are no material questions of fact and defendant has not presented prima facie evidence for each of the elements in §8(a), defendant cannot assert a §8 defense at trial. *Kolanek*, 491 Mich at 412-13; *Hartwick*, 498 Mich at 227.

A material question of fact is not created simply because a party produces testimony in support of its position. *Amorello v Monsanto Corp*, 186 Mich App 324, 331; 463 NW2d 487 (1990). In order to create a material question of fact, the testimony must be supported by more than "conjecture and speculation." *Karbel v Comerica Bank*, 247 Mich App 90, 98; 635 NW2d 69 (2001). Evidence that constitutes only a "mere possibility" is insufficient to raise a material question of fact. *Id.* at 107.

In order to establish the first element of the §8 defense, defendant must satisfy §8(a)(1) by showing: "(1) the existence of a bona fide physician-patient relationship, (2) in which the physician completes a full assessment of the patient's medical history and current medical conditions, and (3) from which results the physician's professional opinion that the patient has a debilitating medical condition and will likely benefit from the medical use of marijuana to treat the debilitating medical condition." *Hartwick*, 498 Mich at 227. The mere presentation of a medical marijuana registration card fails to meet even the prima facie evidence requirements as to this element. *Id.* However, the Michigan Supreme Court has acknowledged that the actual text of the physician's written certification could itself provide prima facie evidence of a bona fide physician-patient relationship. *Id.* at 231 n77. A defendant who submits proper evidence "would not likely need his or her physician to testify to establish prima facie evidence of any element of §8(a)." A caregiver also bears the burden of presenting evidence as to a bona fide physician-patient relationship for each patient to whom he provides care. *Id.* at 227.

In order to assist the court in establishing whether defendant has satisfied the first requirement of §8(a)(1), the existence of a bona fide physician-patient relationship, MCL 333.26423(a) provides a definition for "bona fide physician-patient relationship":

[A] treatment or counseling relationship between a physician and patient in which all of the following are present:

- (1) The physician has reviewed the patient's relevant medical records and completed a full assessment of the patient's medical history and current medical condition, including a relevant, in-person, medical evaluation of the patient.
- (2) The physician has created and maintained records of the patient's condition in accord with medically accepted standards.

(3) The physician has a reasonable expectation that he or she will provide follow-up care to the patient to monitor the efficacy of the use of medical marijuana as a treatment of the patient's debilitating medical condition.

(4) If the patient has given permission, the physician has notified the patient's primary care physician of the patient's debilitating medical condition and certification for the medical use of marijuana to treat that condition.

Both defendant and Leslie Fisher testified about meeting with Dr. Townsend in April of 2014. Defense counsel argues that they both had a bona fide physician-patient relationship with Dr. Townsend. Both Mr. and Ms. Fisher testified that they took Dr. Townsend their medical records and that he reviewed such records in their presence. They both testified that Dr. Townsend talked with them about their medical histories, past treatments of their conditions, and their current medical conditions. Ms. Fisher's appointment with Dr. Townsend lasted approximately 40 minutes, and Mr. Fisher's appointment lasted approximately 30 minutes. They each testified that, during the appointment, Dr. Townsend conducted a physical examination of them. It appears that Dr. Townsend reviewed medical records and completed a full assessment of Mr. and Ms. Fisher's medical history and current medical condition, including an in-person evaluation, as required under MCL 333.26423(a)(1). No evidence was introduced that could create a question of fact on this issue.

Both Mr. and Ms. Fisher testified that they provided Dr. Townsend with their medical records and left the records with him at Denali Healthcare. Prior to this hearing, defense counsel requested Denali Healthcare to produce these records, which were admitted during the hearing as Exhibit 2. This exhibit contains a record certification from Denali Healthcare, which states that the records were kept in the course of regularly conducted business activity. Therefore, defendant has produced evidence that Dr. Townsend "created and maintained records of [Mr. and Ms. Fisher's conditions] in accord with medically accepted standards" as required by MCL 333.26423(a)(2). Mr. and Ms. Fisher left their medical records with Denali Healthcare, and those records, along with additional records created by Dr. Townsend, were produced by Denali Healthcare upon request. The People point out that the record certification states that the records were kept in the course of a regularly conducted "business activity" and do not explicitly state that they were kept "in accord with medically accepted standards." However, the People failed to introduce any evidence that would call into question Denali Healthcare's keeping of the records. Additionally, Denali Healthcare's business is medical, and so keeping records in the course of a regularly conducted "business activity" would necessarily require keeping them "in accord with medically accepted standards." Finally, the medical marijuana physician certification signed by Dr. Townsend states that he is in compliance with the MMMA, which would include keeping patients' records "in accord with medically accepted standards." No evidence was introduced that could create a question of fact on this issue.

Mr. and Ms. Fisher both testified that they were aware that Dr. Townsend recommended that they obtain follow-up care from Denali Healthcare. Additionally, a review of Exhibit 2, Mr. and Ms. Fisher's medical records, establishes that each of them signed a form provided by Denali Healthcare which states, "Dr. Townsend recommends that all patients follow up with him on a regular basis to further solidify the 'Dr-Pt Bonafide Relationship' as defined by the State of

Michigan.” This form makes it clear that Dr. Townsend expected to provide follow-up care for both Mr. and Ms. Fisher, and the fact that each of them signed one of these forms shows that this expectation is reasonable. Dr. Townsend knew that Mr. and Ms. Fisher were both informed of the expectation and had essentially agreed to it, or at least acknowledged it, by signing the form. Therefore, defendant has clearly produced evidence that Dr. Townsend had “a reasonable expectation that [he] will provide follow-up care” to Mr. and Ms. Fisher, as required by MCL 333.26423(a)(3). The People argued that this element was not met because Mr. and Ms. Fisher completed only an online follow-up about one and a half years after their first visit with Dr. Townsend and did not follow-up in person at Denali Healthcare until 2 years after their first visit. However, nowhere in the MMMA is there a requirement that a patient actually follow-up with a physician in order to establish a bona fide physician-patient relationship. The only requirement is that the physician must have a “reasonable expectation” that the follow-up will occur. Such a reasonable expectation was present in this case, considering the forms in Exhibit 2 and defendant and Ms. Fisher’s testimony. No evidence was introduced that could create a question of fact on this issue.

As stated above, defendant established a prima facie case for each required element of the definition of “bona fide physician-patient relationship” set forth in MCL 333.26423(a). This satisfies the first requirement of §8(a)(1). Further, the cross examination of Mr. and Ms. Fisher by the People and the testimony of the People’s witness Lieutenant Rice did not create a material question of fact regarding whether a bona fide physician-patient relationship existed between Dr. Townsend and Mr. and Ms. Fisher.

Additionally, in order to comply with the definition of “bona fide physician-patient relationship” set forth in MCL 333.26423(a), defendant had to establish that Dr. Townsend completed a “full assessment of [Mr. and Ms. Fisher’s] medical history and current medical conditions. This satisfies the second requirement of §8(a)(1). As stated previously, defendant produced such evidence without a material question of fact.

Finally, to satisfy the third requirement of §8(a)(1), defendant must show that it was Dr. Townsend’s professional opinion that Mr. and Ms. Fisher have “a debilitating medical condition and will likely benefit from the medical use of marijuana to treat the debilitating medical condition.” Defendant produced in Exhibit 1 a physician certification form for each Mr. and Ms. Fisher. These forms, signed by Dr. Townsend in April 2014, state that Mr. and Ms. Fisher have been diagnosed with debilitating medical conditions and that Dr. Townsend attests in his professional opinion that Mr. and Ms. Fisher are “likely to receive therapeutic or palliative benefit from the medical use of marijuana to treat or alleviate the [patients’] debilitating medical condition or symptoms associated with the debilitating medical condition.” The Michigan Supreme Court has acknowledged that the actual text of the physician’s written certification could itself provide prima facie evidence for the elements establishing the existence of a bona fide physician-patient relationship. *Hartwick* at 231 n77. As defendant has produced physician certifications that state that Mr. and Ms. Fisher have debilitating medical conditions and will likely benefit from the use of medical marijuana, defendant has satisfied this last requirement of §8(a)(1). Further, there was no evidence produced that would raise a material question of fact on this issue. Therefore, defendant has completely satisfied the first element of §8(a).

The second element of §8(a) requires defendant to establish that he did not possess an amount of marijuana that was more than “reasonably necessary to ensure the uninterrupted availability of marijuana” for the purpose of treating defendant’s medical condition and the

medical conditions of his patient. MCL 333.26428(a)(2). Under a §8 defense, a defendant is not required to possess an amount equal to or less than the quantity limits established in §4 of the MMMA. *Hartwick*, 498 Mich at 234. Section 8 does not include any specific volume limitation. *Id.* A patient may have to testify about "whether a specific amount of marijuana alleviated the debilitating medical condition, and if not what adjustments were made." *Hartwick*, 498 Mich at 227. Likewise a caregiver must establish the amount of marijuana reasonably necessary to treat his patients and ensure "uninterrupted availability." *Hartwick*, 498 Mich at 227.

When law enforcement searched defendant's residence and workshop, they found 28 marijuana plants. Mr. Fisher testified that these plants would not be ready for consumption for approximately 6 months. Additionally, law enforcement found 2,300 grams of marijuana shake, 2,400 grams of marijuana shake, 4,500 grams of marijuana bud in mason jars, 4,990 grams of marijuana bud in vacuum sealed bags, and 434 grams of marijuana wax in a refrigerator. This is a total of 14,190 grams, or approximately 31 pounds, of marijuana plus 434 grams of marijuana wax. Mr. Fisher testified that he was going to dispose of the shake and that the wax was unusable. Therefore, that would leave 9,490 grams, or approximately 20.9 pounds of marijuana.

Both defendant and Ms. Fisher testified that they have experimented with different strains and methods of ingesting marijuana, trying to determine what works best to alleviate the symptoms of their medical conditions. Ms. Fisher testified that she has had conversations with her husband, who acted as her caregiver, regarding how effective different strains and methods of ingestion were for her. Both defendant and Ms. Fisher testified to the amount of marijuana they were typically using right before law enforcement's raid.

Mr. Fisher testified that he would typically vaporize about 3 grams of wax per day. He also testified that he would have a cup or two of tea with coconut oil, which would amount to approximately 4 to 6 grams of marijuana per day. Mr. Fisher also testified that he used around 1 gram of RSO per day, but that 20 grams of RSO would usually last him about a month.

Ms. Fisher testified that, in the past, she would typically smoke 2 joints of 2 grams each every day. Instead of smoking, Ms. Fisher testified that she was trying to move more toward vaporizing marijuana wax. If she vaped, she testified that she would use approximately 2 grams of wax per day. Ms. Fisher also testified that she would have two cups of tea with coconut oil each day, which would amount to approximately 4 to 6 grams of marijuana. Additionally, both Mr. and Ms. Fisher testified that they used lotion containing marijuana oil. Mr. Fisher testified that when he made lotion from ½ a pound of marijuana, that lotion would last for approximately one month.

Both Mr. and Ms. Fisher testified that these amounts of marijuana were necessary and sufficient to alleviate the symptoms of their medical conditions. After listening to the testimony of Mr. and Ms. Fisher, it is clear to the court that these amounts were determined after considerable research and trial and error on the part of both Mr. and Ms. Fisher. Mr. Fisher testified regarding the research he did to determine the best way to use medical marijuana. Both Mr. and Ms. Fisher testified that they tried different methods of ingestion, have ruled out certain methods, and have now determined the methods that work best. For example, both Mr. and Ms. Fisher decided to move away from smoking marijuana and begin vaporizing marijuana wax. They both testified that this method is healthier and is more effective to treat their symptoms. Further, from her testimony, Ms. Fisher appears to have consulted with her caregiver, Mr. Fisher, to determine the appropriate type, amount, and method of ingestion.

In order to produce enough of each product used by Mr. and Ms. Fisher, it takes a considerable amount of marijuana. The People argue that Mr. Fisher possessed an amount that was clearly more than necessary for a medical purpose. However, when the court does the math and adds up the amount of marijuana it would take to produce enough wax, RSO, coconut oil, and lotion to last Mr. and Ms. Fisher for the 6 months until Mr. Fisher's marijuana plants would have been ready for harvest and consumption, it is clear that the marijuana possessed by Mr. Fisher was not nearly enough. Mr. Fisher would likely have had to supplement his marijuana by going to dispensaries, as he testified that he sometimes needed to do in the past.

Mr. Fisher testified that it would take $\frac{1}{2}$ a pound of marijuana to produce enough lotion for one month. He testified that it would take 10 ounces of marijuana to produce enough RSO for one month. Together, Mr. and Ms. Fisher ingest approximately 360 grams of marijuana in coconut oil per month. Half a pound of marijuana, or 226 grams makes 5 to 6 cups of coconut oil. It takes at least $\frac{1}{2}$ a pound of marijuana, and closer to 1 pound, to provide Mr. and Ms. Fisher with enough coconut oil for a month. Finally, Mr. and Ms. Fisher together use about 150 grams of wax per month. Mr. Fisher testified that 2 pounds of marijuana makes about 30 grams of wax. Therefore, it would take 10 pounds of marijuana to make enough wax to last Mr. and Ms. Fisher for a single month. In total, to produce everything used by Mr. and Ms. Fisher in one month, it would take about 11 pounds and 10 ounces of marijuana. Over 6 months, this would amount to 69.75 pounds of marijuana. Mr. Fisher testified that he was going to dispose of the marijuana shake found by law enforcement. However, even if the court considers this marijuana that was intended to be disposed, Mr. Fisher did not possess nearly 69.75 pounds of marijuana. At most, Mr. Fisher possessed 31 pounds of marijuana. This is not even half of the amount of marijuana necessary to produce everything used by Mr. and Ms. Fisher over 6 months. Additionally, even if the court considers the 434 grams of marijuana wax that Mr. Fisher testified is unusable and unsafe for human consumption, the amount of marijuana possessed by Mr. Fisher would not exceed the amount reasonably necessary to ensure uninterrupted availability. The 434 grams of marijuana wax would not last even three months at the rate it would be consumed by Mr. and Ms. Fisher. Regardless, Mr. Fisher's testimony and the lab test from PSI Labs, admitted as Exhibit 4, make it clear that this 434 grams of wax would not have been consumed.

Considering the evidence produced by defendant showing that he and his wife carefully determined, through research and trial and error, the amount of marijuana necessary to treat their symptoms, as well as the fact that the marijuana possessed by defendant was considerably less than was necessary to provide an uninterrupted supply of marijuana during the 6 months until defendant's marijuana plants would be ready for harvest and consumption, this court finds that defendant satisfied §8(a)(2). Additionally, there was no evidence presented that would raise a material question of fact regarding this element. The People argue that defendant possessed too much marijuana, but by doing the math, the court finds that defendant actually did not possess nearly enough marijuana to properly alleviate the symptoms of his and his wife's medical conditions.

In order for defendant to satisfy the third and final element of the §8 defense, defendant must show that any marijuana in his possession was in fact being possessed for medical use. MCL 333.26428(a)(3). A defendant may satisfy this element with sufficient evidence even if the defendant was not actually registered as a patient or caregiver under the MMMA. *Hartwick*, 498 Mich at 237. A patient or caregiver must put forth evidence showing that the marijuana in

question was in fact being grown, possessed, processed or used for medical purposes only. *Hartwick*, 498 Mich at 227.

Both Mr. and Ms. Fisher testified that the marijuana in their possession was for their own medical use only. However, the People's witness Lieutenant Rice testified that defendant made a very different statement to law enforcement. Lieutenant Rice testified that defendant told law enforcement he had tried to sell his "overages" to dispensaries. Lieutenant Rice could not quote defendant exactly, but he testified that, from his conversation with defendant, he understood that defendant had too much marijuana and marijuana wax, had been trying to sell it to dispensaries and others, but no one would buy it. Defendant denied ever making such statements to law enforcement. Defendant stated that if he used the word "overages," he meant marijuana that he had not yet used and intended to turn into wax. Defendant denied ever selling or trying to sell marijuana to anyone.

Initially, it appears that Lieutenant Rice's testimony may create a material question of fact on the third element of §8. However, there are two problems with this testimony. First, there is an issue regarding timing. In *Hartwick*, the Michigan Supreme Court makes it clear that, to satisfy the third element of §8, the defendant must show that "at the time of the charged offense," any marijuana in his possession was being used for a medical purpose. *Hartwick*, 498 Mich at 237. Lieutenant Rice's testimony was that defendant told law enforcement he had "tried" to sell marijuana to dispensaries. While Lieutenant Rice testified that it was his understanding that defendant was still trying to sell the marijuana, it is not clear that this was anything more than speculation on the witness's part. Lieutenant Rice testified that he understood the vacuum sealed bags of marijuana to be the marijuana the defendant had tried to sell to dispensaries, and that defendant told law enforcement that he vacuum sealed this marijuana so it would not spoil. Lieutenant Rice then testified that he understood this to mean that defendant was still trying to sell the marijuana. However, Lieutenant Rice did not testify that defendant made the statement to law enforcement that he was currently engaged in the effort to sell marijuana. From Lieutenant Rice's testimony, it appears that he concluded on his own that, because defendant said he previously tried to sell the vacuum sealed marijuana and now did not want that marijuana to spoil, that meant defendant was currently still trying to sell the marijuana. Lieutenant Rice's testimony on the timing therefore appears to be speculation. In order to create a material question of fact, the testimony must be supported by more than "conjecture and speculation." *Karbel*, 247 Mich App at 98. Lieutenant Rice's speculation that defendant was probably still trying to sell marijuana to dispensaries at the time of the charged offenses is not sufficient to establish a material question of fact.

The second problem with Lieutenant Rice's testimony is that the only portion of the testimony that could create a question of material fact is defendant's alleged statement to law enforcement, the admission at trial of which may violate the corpus delicti rule. In Michigan law, "it has long been the rule that proof of the corpus delicti is required before the prosecution is allowed to introduce the inculpatory statements of an accused." *People v McMahan*, 451 Mich 543, 548; 548 NW2d 199 (1996). Corpus delicti literally means "the body of the crime." Black's Law Dictionary (10th ed. 2014). The doctrine prohibits the prosecution from proving that an offense occurred based solely on a defendant's extra-judicial statements. *Id.* The main purposes of the corpus delicti rule are to preclude conviction for a crime when none was committed and to minimize the weight of a confession by requiring collateral evidence to support conviction. *McMahan*, 451 Mich at 548.

Defendant is charged with possession of marijuana and marijuana plants with intent to deliver. Other cases dealing with possession of controlled substances with intent to deliver have established a standard for proving the corpus delicti in such cases. In *People v Konrad*, 449 Mich 263, 270; 536 NW2d 517 (1995), the Michigan Supreme Court found that, when a defendant was charged with possession of cocaine with intent to deliver, the corpus delicti was satisfied by "evidence independent of defendant's confession that the cocaine existed and was possessed by someone." However, the Supreme Court qualified this determination with a discussion about the fact that cocaine cannot be legally possessed. Therefore, this standard cannot simply be applied to the case currently before this court. Possession of marijuana by someone who is a patient under the MMMA is very different from possession of cocaine by someone who had no legal right to possess cocaine. In the first instance, evidence that marijuana was possessed is not necessarily evidence that any crime was committed at all. In the second instance, mere evidence that cocaine was possessed is quite likely evidence that someone has committed a crime. In this case, simply the evidence that defendant possessed marijuana cannot, in the interest of justice, be sufficient to establish the corpus delicti for the offenses with which defendant is charged. There must be some evidence that defendant committed a crime other than his extra-judicial statement to law enforcement. Otherwise, the corpus delicti rule would not serve its purpose of preventing conviction when no crime has occurred because the simple fact that marijuana was possessed is not necessarily evidence that a crime was committed at all.

In an unpublished Court of Appeals case, the Court discussed additional evidence that could prove the corpus delicti when a defendant was charged with possession of heroin with intent to deliver. In that case, the court found that there was sufficient evidence because heroin was found packaged for sale in individual packets and there was no evidence that the defendant possessed the heroin for personal use because the defendant was not found to possess any paraphernalia used to ingest heroin. *People v Chalmers*, No 251974, 2005 WL 415282, page 5 (Mich Ct App February 22, 2005). If similar evidence of intent to sell marijuana would have been found in the case currently before this court, the prosecutor could have sufficiently proven the corpus delicti of the offenses with which defendant has been charged. However, no such evidence is present here.

In addition to the extensive hearing conducted on the §8 defense, this court has reviewed the preliminary examination in this matter and held hearings over several days on 9 other motions filed by defense counsel, as well as several oral motions made during the aforementioned hearings. In all of this time, the court has not seen any evidence whatsoever that defendant sold, attempted to sell, or intended to sell marijuana, other than defendant's alleged statements to law enforcement.

The People may argue that the large amount of marijuana possessed by defendant could be evidence that he intended to sell marijuana. However, as has been established, defendant possessed less marijuana than was reasonably necessary to ensure an uninterrupted supply of marijuana for medical use by defendant and his wife. Other than defendant's alleged statements to law enforcement, there is no evidence of an intent to deliver marijuana. Under the corpus delicti rule, this would bar the admission at trial of defendant's extra-judicial statements to law enforcement.

In order for defendant's statements to law enforcement to be able to be introduced at trial, law enforcement would have needed to gather additional evidence on this issue. There is certainly more investigation that law enforcement could have done to find evidence in this case.

For example, prior to the execution of the search warrant at defendant's residence and workshop, law enforcement could have sent someone undercover to try to purchase marijuana from defendant. There is no evidence that this was done. Additionally, law enforcement could have followed up on the interview with defendant in an attempt to gather more evidence. Lieutenant Rice testified that defendant told law enforcement he tried to sell marijuana to dispensaries. Law enforcement could have gone to these dispensaries and made inquiries. They could have asked if anyone at the dispensary knows defendant and, if so, if defendant ever tried to sell them marijuana. However, it does not appear that law enforcement engaged in this type of investigation. Therefore, there is no additional evidence to prove the corpus delicti of the charged crimes.


None of the offenses with which defendant is charged can be established unless it is proven that defendant intended to sell marijuana. However, the only evidence of an intent to sell the marijuana he possessed is defendant's extra-judicial statement to law enforcement. This is insufficient under the corpus delicti rule, and so defendant's statements cannot be admitted at trial. *McMahan*, 451 Mich at 548.

As discussed previously, the statements defendant allegedly made to law enforcement do not raise a material question of fact on the third element of §8 because the timing of defendant's alleged actions is primarily speculation. However, the court does not even need to reach such a conclusion. Because defendant's statements to law enforcement cannot be admitted at trial, it would make no sense for the court to consider said statements at all in its analysis under §8. When asserting a §8 defense, the defendant must present evidence from which a reasonable juror could conclude he satisfied each element of the defense. *Hartwick*, 498 Mich at 227. If the standard is that of a reasonable juror, it would only make sense for the court to consider solely that evidence which a reasonable juror would actually see. Both defendant and Ms. Fisher testified that the marijuana defendant possessed was used only for a medical purpose, and there is no evidence, other than defendant's alleged statements to law enforcement, that the marijuana was used for anything other than a medical purpose. If the court does not consider defendant's statements to law enforcement, there remains absolutely no material question of fact on the third element of the §8 defense. As established, defendant has completely satisfied each of the three elements of the §8 defense without the existence of any material question of fact, and so, pursuant to §8 of the MMMA, defendant is entitled to dismissal of the charges against him. *Kolanek*, 491 Mich at 412-13; *Hartwick*, 498 Mich at 227.

THEREFORE IT IS ORDERED that defendant has established a §8 defense, no material question of fact exists, and all charges against defendant shall be dismissed.

This order resolves the last pending claim and closes the case.

Date: January 31, 2017


Hon. Paul H. Chamberlain (P31682)
Chief Judge
Isabella County Trial Court

ATTACHMENT - 4

PA

UCCVFPK

REGISTER OF ACTIONS

Isabella County Rel1312

10/06/17 10:56:56

Pg: 1

Case Disposition:

Crt: C 21 37 Jur: CHAMBERLAIN Ref: OPEN Pub
 Case: 2016 0000013188 CZ ISABELLA COUNTY PROS V ONE 1987 BUICK GRAND
 Atty: HUNT-SCULLY - KOMORN Worker:
 File: 5/26/2016 Dispose: Reopen: Close:

CLM 001 STEVEN ANTHONY FISHER
 316 NORTH 3RD ST
 SHEPHERD, MI 48883 SID: 5244174J
 DOB: 12/13/1966 Gender: M
 ATTORNEY: (Retained) MICHAEL A. KOMORN
 P 47970 Ph#: 248/357-2550
 ANS: 06/23/2016

CLM 002 LESLIE FISHER
 316 NORTH 3RD ST
 SHEPHERD, MI 48883 SID: 5244246H
 DOB: 03/13/1967 Gender: F
 ATTORNEY: (Retained) MICHAEL A. KOMORN
 P 47970 Ph#: 248/357-2550
 ANS: 06/23/2016

P 001 ISABELLA COUNTY PROSECUTING ATTORNEY
 200 N MAIN STREET
 MOUNT PLEASANT, MI 48858
 ATTORNEY: (Retained) RISA N. HUNT-SCULLY
 P 58239 Ph#: 989/772-0911

D 001 ONE 1987 BUICK GRAND NATIONAL ET AL.
 ATTORNEY: (Retained) MICHAEL A. KOMORN
 P 47970 Ph#: 248/357-2550

Events, Actions, and Judgments

NUM	Date	Jurist	Chg/Party	Clerk
1	05/26/2016			AJD
	SUMMONS AND COMPLAINT			
	RECEIPT #: 71053 AMOUNT: \$175.00			
	SUMMONS (EXPIRES 8/25/16)			
2	05/26/2016		P 001	AJD
	COMPLAINT			
	VERIFIED COMPLAINT FOR DRUG FORFEITURE			
3	05/26/2016			AJD
	ORDER			
	TO SHOW CAUSE			
	REMOVED ON 2016-06-14 BY DZIESINKI			
	SET NEXT DATE: SCH 06/14/2016 3:00 PM CHAMBERLAIN COURTROOM: CC04			
4	05/27/2016			ML
	PROOF OF SERVICE			
5	06/14/2016		DUTHIE	AJD
	STIPULATION & ORDER			
	TO ADJOURN			
	REASSIGNED TO DUTHIE, MARK H., FOR 07/18/2016 @ 0245P			
	SET NEXT DATE: SCH 07/18/2016 2:45 PM CHAMBERLAIN COURTROOM: CC04			
6	06/23/2016		CLM 001	AJD

PA

UCCVFPK

REGISTER OF ACTIONS

Isabella County Rel1312

10/06/17 10:56:56

Pg: 2

Case Disposition:

Crt: C 21 37 Jur: CHAMBERLAIN Ref:

OPEN Pub

Case: 2016 0000013188 CZ

ISABELLA COUNTY PROS V ONE 1987 BUICK GRAND

ANSWER FILED

ATTORNEY: KOMORN

CLAIMANT'S ANSWER TO COMPLAINT

7 06/23/2016 CLM 002

AJD

ANSWER FILED

ATTORNEY: KOMORN

CLAIMANT'S ANSWER TO COMPLAINT

8 06/23/2016 CLM 001

AJD

MOTION FILED

RECEIPT #: 71522 AMOUNT: \$20.00

CLAIMANT'S MOTION TO STAY THE PROCEEDINGS PENDING THE OUTCOME OF THE
CRIMINAL MATTER

9 06/23/2016 CLM 002

AJD

MOTION FILED

CLAIMANT'S MOTION TO STAY THE PROCEEDINGS PENDING THE OUTCOME OF THE
CRIMINAL MATTER

10 06/30/2016 DUTHIE JA

SET CASE ON CALENDAR

RESCHED TO 07/22/2016 @ 0900A FROM 07/18/2016 @ 0245P

SET NEXT DATE: SCH 07/18/2016 2:45 PM DUTHIE COURTROOM: C02

11 07/15/2016 DUTHIE JA

SET CASE ON CALENDAR

REASSIGNED TO CHAMBERLAIN, PAUL H., FOR 07/22/2016 @ 0900A

SET NEXT DATE: SCH 07/22/2016 9:00 AM DUTHIE COURTROOM: DC03

12 07/15/2016 JA

SET CASE ON CALENDAR

REASSIGNED TO JANES, ERIC, R FOR 07/22/2016 @ 0900A

SET NEXT DATE: SCH 07/22/2016 9:00 AM CHAMBERLAIN COURTROOM: DC03

13 07/18/2016 AJD

PROOF OF SERVICE FOR NOTICE TO APPEAR

14 07/21/2016 JANES JA

SET CASE ON CALENDAR

SET NEXT DATE: SCD 07/22/2016 9:00 AM JANES COURTROOM: DC03

15 08/01/2016 JA

SET CASE ON CALENDAR

RESCHED TO 08/30/2016 @ 0900A FROM 08/11/2016 @ 0800A

SET NEXT DATE: MSH 08/11/2016 8:00 AM ALLEN COURTROOM: 291

16 08/10/2016 ALLEN JA

SET CASE ON CALENDAR

REASSIGNED TO JANES, ERIC, R FOR 08/30/2016 @ 0900A

SET NEXT DATE: SCD 08/30/2016 9:00 AM ALLEN COURTROOM: DC03

17 08/10/2016 JANES JA

SET CASE ON CALENDAR

SET NEXT DATE: SCD 08/30/2016 9:00 AM JANES COURTROOM: DC03

18 08/11/2016 AJD

PROOF OF SERVICE FOR NOTICE TO APPEAR

19 10/04/2016 JA

SET CASE ON CALENDAR

SET NEXT DATE: SCD 10/21/2016 3:15 PM CHAMBERLAIN COURTROOM: CC04

20 10/05/2016 ML

PROOF OF SERVICE FOR NOTICE TO APPEAR

21 11/01/2016 AJD

SCHEDULING CONFERENCE ORDER

SET NEXT DATE: FPTS 04/28/2017 10:30 AM CHAMBERLAIN COURTROOM: CC04

PA UCCVPMK

REGISTER OF ACTIONS

Isabella County Rel1312
10/06/17 10:56:56
Pg: 3

Case Disposition:

Crt: C 21 37 Jur: CHAMBERLAIN Ref: OPEN Pub
Case: 2016 0000013188 CZ ISABELLA COUNTY PROS V ONE 1987 BUICK GRAND

22 04/05/2017 AND PEOPLE'S MOTION TO STAY PROCEEDINGS AJD
NOTICE OF HEARING
REMOVED ON 2017-04-27 BY ALLENJ
SET NEXT DATE: MOH 04/28/2017 10:30 AM CHAMBERLAIN COURTROOM: CC04
PEOPLE'S MOTION TO STAY PROCEEDINGS

23 04/05/2017 P 001 AJD
MOTION FILED
ATTORNEY: HUNT-SCULLY
MOTION TO STAY PROCEEDINGS

24 04/24/2017 AJD
RESPONSE FILED
DEFENDANT'S RESPONSE TO PEOPLE'S MOTION TO STAY PROCEEDINGS

25 04/24/2017 AJD
BRIEF FILED
IN SUPPORT OF DEFENDANT'S RESPONSE TO PEOPLE'S MOTION TO STAY
PROCEEDINGS

26 04/24/2017 AJD
PROOF OF SERVICE

27 04/28/2017 SHE
MOTION HEARING
COURT HEARD MOTION TO STAY PROCEEDINGS; COURT DENIES MOTION; MR.
KOMORN TO PREPARE ORDER. COURT ADJOURNS THE FINAL PRETRIAL TO A DATE
TO RUN WITH MOTION FOR SUMMARY DISPO.
MR. KOMORN HAS UNTIL 5/22/16 TO FILE MOTION; MR. KOMORN TO PREPARE
ORDER.
HOLMES/KOMORN (PHC/4/SS#8076)
RESCHED TO 07/13/2017 @ 0930A FROM 06/16/2017 @ 0900A
SET NEXT DATE: MOH 06/16/2017 9:00 AM CHAMBERLAIN COURTROOM: CC04
FOR SUMMARY DISPO

28 04/28/2017 AJD
PROOF OF SERVICE FOR NOTICE TO APPEAR

29 05/04/2017 ML
REPORTER/RECORDER CERTIFICATE OF ORDERING OF TRANSCRIPT ON APPEAL

30 05/04/2017 ML
TRANSCRIPT PREPARED/FILED
MOTION TO STAY PROCEEDINGS / HONORABLE PAUL H. CHAMBERLAIN / FRIDAY,
APRIL 28, 2017 / CN

31 05/15/2017 AJD
NOTICE OF PRESENTMENT

32 05/22/2017 AJD
MOTION FILED
RECEIPT #: 77210 AMOUNT: \$20.00
FOR SUMMARY DISPOSITION

33 05/22/2017 AJD
PROOF OF SERVICE

34 05/23/2017 AJD
ORDER
RE: MOTION TO STAY

35 06/01/2017 AJD
MOTION FILED
FOR RECONSIDERATION, MCR 2.119 (F)

36 06/13/2017 AJD
RESPONSE FILED

PA

UCCVFPK

REGISTER OF ACTIONS

Isabella County Rel1312

10/06/17 10:56:56

Pg: 4

Case Disposition:

Crt: C 21 37 Jur: CHAMBERLAIN Ref:

OPEN Pub

Case: 2016 0000013188 CZ ISABELLA COUNTY PROS V ONE 1987 BUICK GRAND

37 06/13/2017 PLAINTIFF'S RESPONSE TO CLAIMANTS' MOTION FOR SUMMARY DISPOSITION
SET CASE ON CALENDAR
RESCHED TO 07/21/2017 @ 1100A FROM 07/13/2017 @ 0930A
SET NEXT DATE: MOH 07/13/2017 9:30 AM CHAMBERLAIN COURTROOM: CC04
FOR SUMMARY DISPO (AMENDED DATE AND TIME) JA

38 06/14/2017 PROOF OF SERVICE FOR NOTICE TO APPEAR ML

39 06/14/2017 SET CASE ON CALENDAR JA
SET NEXT DATE: MOH 07/21/2017 11:00 AM CHAMBERLAIN COURTROOM: CC04
FOR SUMMARY DISPO (2nd AMENDED DATE AND TIME)

40 06/15/2017 PROOF OF SERVICE FOR NOTICE TO APPEAR AJD

41 07/19/2017 ORDER AJD
OPINION AND ORDER ON PLAINTIFF'S MOTION FOR RECONSIDERATION

42 07/19/2017 PROOF OF SERVICE AJD

43 07/20/2017 P 001 ML
MOTION FILED
ATTORNEY: HOLMES
PLAINTIFF'S MOTION FOR JUDICIAL DISQUALIFICATION MCR 2.003 / PROOF OF SERVICE

44 07/20/2017 NOTICE OF HEARING ML
/ PROOF OF SERVICE
SET NEXT DATE: MOH 07/21/2017 11:00 AM CHAMBERLAIN COURTROOM: CC04
PEOPLE'S MOTION FOR JUDICIAL DISQUALIFICATION

45 07/21/2017 MOTION HEARING SHE
COURT HEARD MOTION FOR JUDICIAL DISQUALIFICATION-COURT WILL TAKE
MATTER UNDER ADVISEMENT AND WILL ISSUE A WRITTEN OPINION.
COURT INDICATED IT CANNOT GO FORWARD ON MOTION FOR SUMMARY DISPO
UNTIL MOTION FOR JUDICIAL DISQUALIFICATION IS DECIDED
HOLMES/KOMORN (PHC/4/SS#8076)

46 07/26/2017 ORDER AJD
OPINION AND ORDER ON THE PEOPLE'S MOTION FOR JUDICIAL DISQUALIFICATION

47 07/26/2017 PROOF OF SERVICE AJD

48 08/01/2017 PLAINTIFF'S REQUEST FOR REFERRAL TO STATE COURT ADMINISTRATOR AJD
MCR 2.003(D) (3) (A) (II)

49 08/24/2017 SET CASE ON CALENDAR JA
SET NEXT DATE: MSH 09/07/2017 8:00 AM ALLEN COURTROOM: 291
JUDGE HILL-KENNEDY MAKE DECISION?

50 08/24/2017 SCAO ASSIGNMENT TO THE HONORABLE SCOTT P. HILL-KENNEDY AJD

51 09/06/2017 SET CASE ON CALENDAR JA
RESCHED TO 10/02/2017 @ 1030A FROM 10/02/2017 @ 1000A
SET NEXT DATE: MOH 10/02/2017 10:00 AM DUTHIE COURTROOM: C02

PA

UCCVPFK

REGISTER OF ACTIONS

Isabella County Rel1312

10/06/17 10:56:56

Pg: 5

Case Disposition:

Crt: C 21 37 Jur: CHAMBERLAIN Ref:

OPEN Pub

Case: 2016 0000013188 CZ

ISABELLA COUNTY PROS V ONE 1987 BUICK GRAND

TO DISQUALIFY JUDGE CHAMBERLAIN TO BE HEARD BY HON SCOTT HILL-KENNEDY
IN ISABELLA COUNTY

52 09/07/2017 AJD

PROOF OF SERVICE FOR NOTICE TO APPEAR

53 09/08/2017 DUTHIE JA

SET CASE ON CALENDAR

RESCHED TO 10/02/2017 @ 1000A FROM 10/02/2017 @ 1030A

SET NEXT DATE: MOH 10/02/2017 10:30 AM DUTHIE COURTROOM: C02

APPELLANT MUST FILE BRIEF 14 DAYS PRIOR TO HEARING DATE AND APPELLEE

MUST FILE BRIEF 7 DAYS PRIOR TO HEARING DATE

54 09/08/2017 DUTHIE JA

SET CASE ON CALENDAR

REASSIGNED TO CHAMBERLAIN, PAUL H., FOR 10/02/2017 @ 1000A

SET NEXT DATE: MOH 10/02/2017 10:00 AM DUTHIE COURTROOM: C02

APPELLANT MUST FILE BRIEF 14 DAYS PRIOR TO HEARING DATE AND APPELLEE

MUST FILE BRIEF 7 DAYS PRIOR TO HEARING DATE

55 09/08/2017 AJD

PROOF OF SERVICE FOR NOTICE TO APPEAR

56 09/26/2017 AJD

MOTION FILED

PLAINTIFF'S MOTION FOR JUDICIAL DISQUALIFICATION MCR 2.003

57 09/29/2017 JA

SET CASE ON CALENDAR

SET NEXT DATE: MOH 10/02/2017 10:00 AM HILL-KENNEDY

APPELLANT MUST FILE BRIEF 14 DAYS PRIOR TO HEARING DATE/APPELLEE MUST

FILE BRIEF 7 DAYS PRIOR TO HEARING DATE (JUDGE HILL-KENNEDY)

58 10/02/2017 ML

RESPONSE FILED

CLAIMANTS' RESPONSE TO PEOPLE'S MOTION TO RECUSE JUDGE CHAMBERLAIN

59 10/02/2017 ML

MOTION HEARING

CLAIMANTS APPEARED WITH ATTY KOMORN; ATTY HOLMES APPEARED FOR

PETITIONER. MOTION FOR DISQUALIFICATION DENIED. ATTORNEY KOMORN TO

PREPARE ORDER. ATTY KOMORN'S VERBAL REQUEST FOR SANCTIONS DENIED.

KOMORN/HOLMES (HILL-KENNEDY/JSW/4)

60 10/02/2017 HILL-KENNEDY ML

Reassign Calendar CHAMBERLAIN to HILL-KENNEDY Beg: 08/24/2017

61 10/02/2017 HILL-KENNEDY ML

Reassign Case Jurist CHAMBERLAIN to HILL-KENNEDY

62 10/03/2017 HILL-KENNEDY JA

SET CASE ON CALENDAR

SET NEXT DATE: STC 10/20/2017 10:00 AM CHAMBERLAIN COURTROOM: CC04

AND MOTION FOR SUMMARY DISPOSITION

63 10/03/2017 AJD

Reassign Case Jurist HILL-KENNEDY to CHAMBERLAIN

64 10/04/2017 ML

PROOF OF SERVICE FOR NOTICE TO APPEAR

**** END OF SUMMARY ****

*** END OF REPORT ***

ATTACHMENT - 5

STATE OF MICHIGAN
IN THE TRIAL COURT FOR THE COUNTY OF ISABELLA

ISABELLA COUNTY PROSECUTING ATTORNEY
Ex Rel Bay Area Narcotics Enforcement Team,
Plaintiff,

JUDGE:
File No: 16 - 13188 - CZ

v.

ONE 1987 BUICK GRAND NATIONAL,
Et. al.,

VERIFIED COMPLAINT
FOR DRUG FORFEITURE

Defendant. /

CLAIMANTS: Steven Fisher
Leslie Fisher

FOR THE PLAINTIFF:
Risa N. Scully (P 58239)
Isabella County Prosecuting Attorney

By: Robert A. Holmes, Jr. (P44097)
200 N. Main St.
Mt. Pleasant, MI 48858
(989)772-0911 Ext. 300 /

FILED

MAY 26 2016

COUNTY CLERK
ISABELLA COUNTY
MT. PLEASANT, MICH.

Now comes the plaintiff by and through the Isabella County Prosecuting Attorney, Risa N. Scully, and Chief Assistant Attorney Robert A. Holmes, Jr., and in support of its verified complaint for drug forfeiture states as follows:

1. This is an In Rem action for the forfeiture of real estate (real property) and personal property, brought pursuant to MCL 333.7521 et seq; MSA 14.15(7521) et seq, as amended.
2. This forfeiture action arose from an investigation conducted by the Bay Area Narcotics Enforcement Team (BAYANET) officers.
3. The BAYANET team consists of sworn police officers employed by law enforcement agencies within Isabella, Clare, Bay, Saginaw and Midland Counties.
4. BAYANET is a public entity which controls and disburses forfeited assets which BAYANET officers seize.
5. The Isabella County Prosecuting Attorney represents BAYANET in forfeiture actions.
6. The subject matter of this action includes personal property seized at 316 North 3rd Street, Shepherd, MI, as well as 432 North 4th Street, Shepherd, MI, Isabella County.

7. The above mentioned personal property is more fully described as:

- A. One 1987 Buick Grand National, #1G4GJ1179HP459894
- B. One Cadillac Eldorado, Reg. Plate CFS 8862
- C. One 2009 Chevrolet Pickup Truck, Reg. Plate DKN 5601
- D. One Enclosed Pace Trailer, #C589446
- E. One 1995 Polaris Indy Snowmobile, #MX5077
- F. One Vacuum Oven with Pump
- G. \$3,918.00 in U.S. Currency
- H. Three (3) pieces of gold
- I. One (1) piece of silver
- J. Eleven (11) Magnum Reflector Lights
- K. Stainless Steel tubing, fittings, hoses
- L. Stainless Steel extraction tank, tubes, valve
- M. Two (2) Proset Refrigerant Systems
- N. One (1) Digital Scale
- O. One (1) Honeywell Humidifier, #14CHCS
- P. Three (3) Titan Heating/Lighting Controls
- Q. Two (2) Can filters
- R. Nineteen (19) grow light bulbs
- S. One (1) Dewalt table saw
- T. One (1) Dewalt 20 volt drill, with charger/battery
- U. One (1) Asus Laptop computer with case and charger
- V. One (1) Dell XPS computer tower
- W. One (1) Apple I-Phone with black case
- X. One (1) white Apple I-Phone with otter box
- Y. Five (5) drying racks
- Z. One (1) marihuana sorter
- AA. Safari Land body armor
- BB. Ten (10) Galaxy grow amps
- CC. One (1) Browning .22 rifle #213MY03098, scope, case, cleaning kit, and mags
- DD. One (1) Berreta .9mm with ammo and mag, # F62593
- EE. One (1) Glock #17 with mag, holster and ammo, #DAC789
- FF. One (1) Winchester .12 gauge semi-automatic shotgun, # N1110645
- GG. One (1) Ithica .12 gauge shotgun, Model 37, # 729674-2
- HH. One (1) EA Co., .223 rifle #EA31382, with case, sling and mags
- II. Eleven (11) .223 mags with miscellaneous ammo
- JJ. Ammo cans and miscellaneous ammo
- KK. Twelve (12) grow lights.

8. Steven Fisher is an adult male who is married to Leslie Fisher, adult female.
9. That the aforementioned personal property is possessed by or belonging to Steven Fisher and Leslie Fisher, as husband and wife.
10. The following incidents occurred on or about March 22, 2016 through April 12, 2016:
- A. That on March 22, 2016, operating on an anonymous tip, Agents of BAYANET, conducted a trash pull for evidence of an illegal marihuana grow operation, at the residence of Steven A. Fisher and Leslie Fisher, 316 North 3rd Street, Shepherd, MI.
 - B. That as a result of the March 22, 2016 trash pull from the Fisher residence, marihuana, THC wax and dryer sheets were retrieved from the same garbage.
 - C. That on April 5, 2016 a second trash pull was conducted by BAYANET Agents, from the Fisher residence at 316 North 3rd Street, Shepherd, MI.
 - D. The second trash pull yielded evidence of residency of 316 North 3rd Street, Shepherd, MI by Steven and Leslie Fisher, in addition to evidence of marihuana, marihuana stems and THC wax.
 - E. That Steven A. Fisher and Leslie Fisher, as husband and wife, possess and/or own commercial property located at 432 North 4th Street, Shepherd MI.
 - F. That on April 12, 2016, Agents from BAYANET secured a search warrant for 316 North 3rd Street, Shepherd MI, as well as 432 North 4th Street, Shepherd, MI.
 - G. That upon the execution of the aforementioned search warrants on the on the respective properties, Agents of BAYANET located and seized the following controlled substance:
 - 1) 2.9 grams marihuana in upstairs bedroom
 - 2) 19.5 grams marihuana in upstairs bedroom night stand
 - 3) 7.5 grams marihuana in upstairs bedroom refrigerator
 - 4) 29.2 grams of marihuana seeds on main floor
 - 5) 2,300 grams of marihuana on dry racks in garage
 - 6) 28 marihuana plants in garage east bay
 - 7) 39 marihuana plant clones in garage east bay
 - 8) 4,300 grams of marihuana in garage east bay
 - 9) 4,990 grams of marihuana in garage east bay
 - 10) 2,400 grams of marihuana at commercial property
 - 11) 434 grams of marihuana THC wax at commercial property

H. That Steven A. Fisher and Leslie Fisher, were found to be patient card holders under the Michigan Medical Marihuana Act (MMMA).

I. That number of marihuana plants, the weight of the processed marihuana, and the production and presence of THC wax, place Steven A. Fisher and Leslie Fisher outside the protections of the MMMA.

J. That neither Steven A. Fisher, or Leslie Fisher are care providers pursuant to the MMMA.

K. That Steven A. Fisher admitted knowledge of his limitations under MMMA as to the number of plants, and amount of processed marihuana.

L. That Steven A. Fisher admitted knowing that he was in excess of marihuana plants and processed marihuana, for both he and Leslie Fisher, under the MMMA.

M. That Steven A. Fisher admitted building his marihuana grow operation, using \$30,000.00 of funds that he obtained through the sale of Fisher's landscaping business.

N. That Steven A. Fisher admitted trying to sell his excess marihuana to marihuana dispensaries.

O. That Steven A. Fisher admitted to processing his marihuana into TCH wax, and trying to sell it to others, but was unable to as he was still trying to "perfect" the method of extracting the THC from the marihuana.

P. That Leslie Fisher, obtains her medical marihuana from Steven A. Fisher.

11. That the marihuana, and/or THC found at the Fisher residence at 316 North 3rd Street, and at 432 North 4th Street, Shepherd MI, was field tested by BAYANET Agents, and proved positive for marihuana/THC.

12. The subject matter of this action needs to be placed under seal of this court during the pendency thereof and until final disposition.

13. All the personal property seized by BAYANET Agents, as described in paragraph 7 above, is subject to forfeiture, because:

A. It is equipment of any kind that is used, or intended for use in the manufacture and/or delivery, and/or processing, and/or illegal possession of the controlled substance marihuana and/or THC wax, MCL 333.7521(1)(b); MSA 14.15(7521)(1)(b), and/or

B. It is property that is/was used, or intended for use as a container for the illegally possessed controlled substances of marihuana and/or THC wax, MCL 333.7521(1)(c); MSA 14.15(7521)(1)(c), and/or,

C. It is a conveyance used or intended for use, to transport, or in any manner facilitate the transportation for the purpose of sale the controlled substance of marihuana and/or THC wax MCL 333.7521(1)(d); MSA 14.15(7521)(1)(d), and/or

D. It is a thing of value that is used or intended to be used to facilitate the manufacture, and/or delivery, and/or processing, and/or illegal possession of the controlled substance marihuana and/or THC wax, MCL 333.7521(1)(f); MSA 14.15(7521)(1)(f).

14. All controlled substances seized by BAYANET Agents, as described in paragraph 10 (G) above, is subject to forfeiture, because:

It is a controlled substance, and/or a controlled substance analogue, and/or other drug that has been manufactured and/or possessed in violation of the Controlled Substance Act.

RELIEF REQUESTED

WHEREFORE, the Plaintiff respectfully prays that this Honorable Court:

A. Place its seal on the subject matter of this action during the pendency thereof and until final disposition;

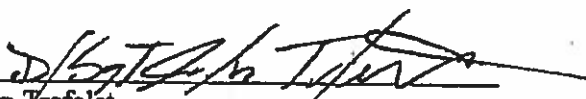
B. Order that the Claimants appear and show cause, if any they may have, as to why the subject matter of this action should not be forfeited;

C. Conduct a hearing, and at the conclusion thereof, order that the subject matter of this action be forfeited to the BAYANET;

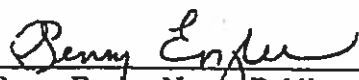
D. Order the Claimant(s) Steven A. Fisher and Leslie Fisher to pay the expense of these proceedings, including costs and attorney fees, pursuant to MCL 333.7524(3).

VERIFICATION OF COMPLAINT

I John Trafelet, declare that the statements above are true to the best of my information, knowledge, and belief.


John Trafelet
Det./Sgt., BAYANET

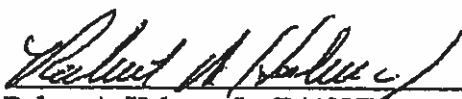
Subscribed and sworn to before me, a Notary Public, on this _____ day of July, 2016.


Penny Engler, Notary Public
Isabella County Michigan
My Commission Expires: March 17, 2022

Respectfully submitted,

RISA N. SCULLY
ISABELLA COUNTY PROSECUTING ATTY.

DATE: 5-25-16


Robert A. Holmes, Jr. (P44097)
Chief Assistant Prosecuting Attorney
Isabella County

ATTACHMENT - 6

STATE OF MICHIGAN
ISABELLA COUNTY TRIAL COURT

ISABELLA COUNTY PROSECUTING ATTORNEY
Ex Rel Bay Area Narcotics
Enforcement Team,

Plaintiff,

v.

File No.: 16-13188-CZ

ONE 1987 BUICK GRAND NATIONAL,
Et. al.,

Defendant.

FILED

MAY 04 2017

COUNTY CLERK
ISABELLA COUNTY
MT. PLEASANT, MICH.

MOTION TO STAY PROCEEDINGS

BEFORE THE HONORABLE PAUL H. CHAMBERLAIN, CHIEF JUDGE

Mount Pleasant, Michigan - Friday, April 28, 2017

APPEARANCES:

For the People:

MR. ROBERT A. HOLMES, P44097
Isabella County Prosecutor's Office
200 North Main Street
Mount Pleasant, Michigan 48858
989-772-0911

For the Defendant:

MR. MICHAEL A. KOMORN, P47970
30903 Northwestern Highway, Suite 240
Farmington Hills, Michigan 48334
800-656-3557

Recorded by:

Ms. Shelly Smalley, CER 8076
Certified Electronic Recorder
989-772-0911

Transcribed by:

Ms. Carolyn J. Nestle, CER 7655
Certified Electronic Recorder
989-775-6551

TABLE OF CONTENTS

	<u>Page</u>
<u>WITNESSES</u>	
None	
<u>EXHIBITS</u>	
	<u>Identified</u> <u>Admitted</u>
None	

1 Mt. Pleasant, Michigan

2 Friday, April 28, 2017 - 11:11 a.m.

3 THE COURT: 16-13188-CZ, Isabella County Prosecuting
4 Attorney verse One 1987 Buick Grand National. Is anyone
5 present on that matter?

6 MR. HOLMES: On behalf of BAYANET, Robert Holmes,
7 Your Honor.

8 MR. KOMORN: Good morning, Your Honor. May it
9 please the Court, Michael Komorn on behalf of Steven Fisher
10 and the property, Leslie Fisher as well. She's -- property of
11 hers is also included in this.

12 THE COURT: This is the date and time set for
13 hearing on Prosecutor's Motion to Stay Proceedings. You may
14 proceed.

15 MR. HOLMES: Yes, Your Honor. Thank you.

16 The motion is relatively simple. As Your Honor is
17 aware, there is currently an appeal with the Court of Appeals
18 concerning the criminal matter regarding Steven Fisher and as
19 a result of that criminal matter, the drug forfeiture matter
20 spins off from, is a part of. Your Honor has ruled on the
21 criminal matter that Section Eight protections caused the case
22 to be dismissed with regard to Mr. Fisher and from that there
23 has been an appeal. That is currently pending.

24 What -- as I put in my motion -- what currently
25 presents itself to the Court is the fact that the ruling in

1 the criminal matter, assuming that Your Honor's order stays in
2 effect, causes the drug forfeiture matter to be dismissed if
3 there has been no criminal violation of the anti-drug laws.
4 It's our contention that Your Honor's ruling was in error and
5 should the Court of Appeals reverse it, then we would be back
6 to square one.

7 So what I'm asking for, very simply, is that the
8 drug forfeiture matter be stayed until such time as the Court
9 of Appeals has an opportunity to rule on the People's appeal
10 and that's basically it until we figure out where, in fact,
11 the case lies with regard to the criminal matter. If Your
12 Honor's ruling stands, then there is no drug forfeiture. If
13 Your Honor's ruling is reversed, then there is a criminal
14 matter and the drug forfeiture will be in play again.

15 So until such time as that happens, the People are
16 asking for the -- basically the same consideration that was
17 offered to the defense during the criminal matter. As Your
18 Honor was making the other five or six rulings against the
19 Defendant, Your Honor had offered the opportunity to stay the
20 proceedings in order to allow for an interlocutory appeal.
21 I'm asking for the same consideration here to allow us to play
22 out our appeal and put a stay on these proceedings.

23 If Your Honor is not inclined to offer the stay of
24 these proceedings, then the People would obviously expect a
25 formal motion for summary judgment with regard to the drug

1 forfeiture matter to be filed and we would take a look at
2 whatever remedies were available to us at that time, including
3 whether or not we would want to proceed. But it's our
4 intention right now to proceed asking for the stay and asking
5 for the same considerations.

6 Thank you.

7 MR. KOMORN: Judge, I -- I think this is rather
8 simple. I would agree only to that extent what Brother
9 Counsel has stated; he began his arg -- his motion by saying
10 that the dismissal ends the forfeiture case. And I -- I want
11 to -- I want to be very clear about that. The -- I mean this
12 motion for a stay seems to me to be a concession that the
13 forfeiture case is over, that they are conceding obviously as
14 he did state that initially; that the law is very clear on
15 that.

16 MCL 333.26428(C), paren 2, that if patient or
17 patient's primary caregiver demonstrate the medical purpose
18 for using medical marijuana pursuant to this Section, the
19 patient or the patient's primary caregiver shall not be
20 subject to the following for the patient's medical use of
21 medical marijuana: paragraph 2; forfeiture of any interest in
22 or right to property.

23 So this isn't just a, you know, like a search
24 warrant dismissal that the property gets -- evidence gets
25 suppressed and the charges get dismissed and there is legal

1 issues pending to that effect and the State still can make
2 their arguments independent of that ruling that there is, you
3 know, that the subject matter of their claim still exists.
4 That is not what took place. There is a legal ruling that
5 says -- and directs there to be no penalty subject -- you
6 know, subject to the Defendant -- caregiver or patient to
7 forfeiture of any interest in or right to property.

8 There is no case law that the State has state -- you
9 know, relied upon for a basis of why the Court should grant a
10 stay. And -- and, you know, the Court is very familiar with
11 the facts of the case and we know what the issues are that
12 they're -- that they've -- that they're interested or think
13 that there is an issue on appeal. And, you know, it still
14 goes back to whether there is any evidence of -- of, you know,
15 sale and what -- you know, other than this uttered statement
16 as the -- a whole thing that they're -- that they're relying
17 on.

18 But I, you know -- there is no case law for them to
19 suggest that this should take place. A good question to ask
20 would be that had the Defendant been convicted at trial and he
21 wanted to appeal and he was in jail or prison or what have
22 you, whether the State would ever consider, you know,
23 stipulating -- which was an argument that was made -- but --
24 or that a Court would grant a stay while the Defendant sat in
25 jail and wanted to, you know, stay the case while he sat and

1 served on his sentence or got some relief from the Court of
2 Appeals. I would -- I would find that extremely hard to
3 believe that that would be an acceptable argument or that any,
4 you know, most Courts would accept unless there was some
5 extraordinary circumstance.

6 There is -- I think the Court could also consider
7 the issue -- issue on appeal -- likelihood of appeal and the
8 delay that would be caused to my client. I would even argue
9 that the holding of the Court is akin to a directed verdict
10 and if that's the case, there would be no either right to an
11 appeal because it seems as a verdict, like a jury verdict, and
12 it may not even be -- it may all be for naught. The request
13 for an appeal may not even be for a legal reason as I
14 interpret the Court's opinion.

15 But, Judge, you know, it's been, I don't know, two
16 years and there is other remedies than just staying the case.
17 The Court, you know, if -- some of the things the Court could
18 consider if it wasn't inclined to deny the stay, would be to
19 order the property to be returned and enter an order that the
20 property shouldn't be secreted pending appeal; much more fair.
21 They've had it, the law requires it to be returned, they're
22 asking you to consider that you are going to be reversed on
23 it. You know, that would be a reasonable -- if the Court was
24 inclined to not return the -- not just -- not deny the motion
25 and end the case.

1 Furthermore, Leslie Fisher, the Court is well aware,
2 the Court dismissed her out, finding probable cause didn't
3 even exist. There is a number of items that are within the
4 property that's at issue that they haven't returned yet.
5 She's not -- her case isn't being appealed. What about her
6 individual property? We have a list of which of that belongs
7 to her and there has been, you know, that's not even accounted
8 for. They just want the entire case appealed including her
9 property. That's irrational.

10 But the idea of just holding it up for longer when
11 the case is over and -- and most significantly, Judge, is that
12 the law is in our favor. The words of the law say that that
13 ruling resolved this matter. It is unique in that sentence
14 because other results in a criminal case, different standards,
15 et cetera, would allow a civil forfeiture to go forward and
16 have fact -- other findings of fact.

17 The holding in the criminal case resolves this
18 matter with the Court's holding and I would suggest that it
19 would be unreasonable to grant a stay at this time. Or if the
20 Court was -- was to do that, a bond should have to be posted
21 by the State and the property can be returned and come up with
22 another remedy how we can secure that the property is not lost
23 or secreted or sold or what have you. But that it remains in
24 the State's possession is patently unfair and I'd ask you to
25 deny the motion.

1 Thank you.

2 THE COURT: Anything further, Mr. Holmes?

3 MR. HOLMES: No, sir. Thank you.

4 THE COURT: All right. This civil drug forfeiture
5 matter was filed on May 26th, 2016, and was based on alleged
6 criminal drug activity pertaining to Steven and Leslie Fisher.
7 Criminal charges were filed against both Steven and Leslie
8 Fisher. On December 8th, 2016, this Court issued an opinion
9 dismissing charges against Leslie Fisher in case number 16-
10 802-FH. On January 31, 2017, this Court issued an opinion
11 dismissing the charges against Steven Fisher in case number
12 16-801-FH, finding that Mr. Fisher had established a Section
13 Eight defense under the Medical Marijuana Act, the Michigan
14 Medical Marijuana Act.

15 The People have filed an appeal of the Court's order
16 dismissing the criminal case against Steven Fisher. The
17 People subsequently filed a Motion to Stay Proceedings in this
18 civil forfeiture action pending completion of the People's
19 appeal in Steven Fisher's criminal case. The People request
20 this Court to stay proceedings in this civil forfeiture action
21 pending the appeal in the criminal action against Steven
22 Fisher. However, they have failed to cite any law in support
23 of this request.

24 Even when a civil forfeiture matter and a criminal
25 action are based upon the same facts, the two cases are

1 completely separate. First, there are different burdens of
2 proof in the two types of cases. The burden of proof in
3 criminal action is beyond a reasonable doubt; while in civil
4 forfeiture proceedings, the government has the burden of
5 proving its case by a preponderance of the evidence. In Re
6 Forfeiture of Twenty-Five Thousand Five Hundred and Five
7 Dollars, 220 Mich App 572, at 574.

8 The different burdens of proof mean that a
9 determination on a particular issue in one case does not
10 require the same outcome on that particular issue in the other
11 case. For example, if a defendant is acquitted in a criminal
12 case because the prosecution did not prove his guilt beyond a
13 reasonable doubt, the prosecutor may still be able to prove
14 the government's case in the civil forfeiture action by a
15 preponderance of the evidence.

16 The separate nature of the criminal action and civil
17 forfeiture proceedings is quite clear. An acquittal of a
18 defendant in a criminal action has no effect on civil
19 forfeiture proceedings. United States verse One Assortment of
20 Eighty-Nine Firearms, 465 U.S. 354, at 366.

21 Because criminal and civil forfeiture actions are
22 completely separate with different burdens of proof, there is
23 no reason to grant the stay requested by Plaintiff. The
24 outcome of the appeal in the criminal case will have no effect
25 on this civil forfeiture case. Further, the People have

1 failed to cite any law in support of their request.

2 Accordingly, this Court denies Plaintiff's motion to
3 stay proceedings.

4 Mr. Komorn, if you will prepare an order in conform
5 -- in conformity with the ruling of the Court today.

6 MR. KOMORN: I will, Judge.

7 THE COURT: And then what's the next event on this
8 case?

9 THE CLERK: (Inaudible)

10 THE COURT: We have a final pretrial scheduled then
11 for today?

12 MR. KOMORN: Judge, if --

13 THE COURT: We have a final pretrial scheduled in
14 this case for today, Counsel. I'll meet with you in a few
15 minutes on that.

16 MR. KOMORN: Well, I -- I know that we -- this was
17 kind of discussed in argument and the Court didn't -- and I'm
18 not -- and I know the Court may have done -- ended exactly
19 where it did intentionally, but in the -- some of the issues
20 that remain are the impact of the holding -- you know, the law
21 that I cited from Section Eight and what impact it has on the
22 forfeiture going forward.

23 I understood the State's position initially to be if
24 because of that holding -- not -- not the dismissal, but the
25 law that was utilized. It's not the dismissal of the case,

1 but if it happens under those circumstances, this law requires
2 a return of the property. That's where we're at. I thought
3 legally -- if the Court needs me to file a motion in that
4 regard; I can do that and cite the law and we can go forward.
5 But I -- I kind of heard that also, the State's position that
6 the forfeiture is over if they don't get a reversal. And I
7 know that's not how the Court ruled.

8 THE COURT: Well, it seems Mr. Holmes conceded that
9 he's likely to see -- see a dispositive motion, I assume a
10 motion for summary disposition.

11 MR. KOMORN: All right.

12 THE COURT: You know, I don't know where this takes
13 us from here minus a stipulation today. I'd like to see a
14 motion.

15 MR. KOMORN: Very well. That -- I'll do that then,
16 Judge.

17 THE COURT: I'll adjourn the final pretrial to a
18 date for the motion. Do you want a date now?

19 MR. KOMORN: That's fine.

20 THE COURT: Let's see if we can get it --
21 How far -- how far out do you need?

22 MR. KOMORN: Probably in two, three weeks is -- you
23 know, to --

24 THE COURT: How much time do you need, Mr. Holmes?

25 MR. HOLMES: Well, I would like the motion within a

1 month and then an opportunity to respond after that. I've got
2 two cases back to back here in the next three weeks.

3 THE COURT: Well --

4 (At 11:27 - 11:28 a.m., Court confers with clerk,
5 not audible to the record)

6 THE COURT: Will you all be available the twenty-
7 third of June?

8 MR. HOLMES: I believe so.

9 MR. KOMORN: No, he means June, in June.

10 I -- I have an examine in -- I am -- any other
11 Friday that month, I'm sure I'm good. The following week I'm
12 good, the thirtieth, if that helps, or even --

13 THE COURT: The sixteenth of June?

14 MR. KOMORN: Yes.

15 THE CLERK: (Inaudible)

16 THE COURT: How about nine o'clock in the morning on
17 the sixteenth of June?

18 MR. KOMORN: That's fine, Judge.

19 MR. HOLMES: That will work.

20 THE COURT: All right. And then what I'll do is --

21 (At 11:29 a.m., Court confers with clerk, not
22 audible to the record)

23 THE COURT: Mr. Komorn, I'll give you until the
24 twenty-fourth of May to file that.

25 And that gives you about three weeks, Mr. Holmes.

1 MR. HOLMES: I appreciate that, sir.

2 THE COURT: There's Memorial Day in there. That's
3 why I kind of put this in the middle of the week to give you
4 some --

5 MR. HOLMES: I've got a week's vacation right in
6 there too, so -- between the filing date and the hearing date.

7 THE COURT: Well, I could say the nineteenth of May,
8 if that helps you, for him getting the motion filed.

9 MR. HOLMES: I don't want to --

10 THE COURT: Can you get it by the nineteenth of May,
11 Mr. Komorn?

12 MR. KOMORN: What day is that?

13 THE COURT: That gives you three solid weeks.

14 MR. KOMORN: That's -- could I have to the Monday?

15 THE COURT: That's Friday

16 MR. KOMORN: Oh, yeah, yeah, that's fine. Would
17 that be -- oh, no, no, wait it would be -- can you give me to
18 the twenty-second, just to have the weekend?

19 THE COURT: All right. I'm going to order it be
20 filed not later than the close of business on the twenty-
21 second.

22 If you'll prepare that order along with the order on
23 the bench opinion I gave a moment ago.

24 MR. KOMORN: The Court -- is nine o'clock locked in
25 stone. Would you -- is ten o'clock okay or do you -- you've

1 got -- that's fine if you want it, if you're specific about
2 that time. I just wasn't sure if it was --

3 THE COURT: I've got -- I'm not going to be here the
4 following week and I've got a meeting at the State Court
5 Administrator's Office starting at ten for the rest of the
6 day. So -

7 MR. KOMORN: We've got to get in. I see what you're
8 saying. All right.

9 THE COURT: I want to get you in.

10 MR. KOMORN: Very good.

11 THE COURT: At nine.

12 MR. KOMORN: And I have to be prompt is what I'm
13 mostly hearing there, yes.

14 THE COURT: Yeah.

15 MR. KOMORN: Got it.

16 THE COURT: Yeah, we've got to get right out of the
17 box at nine o'clock.

18 MR. HOLMES: Very good, sir. Thank you.

19 MR. KOMORN: Thank you, Judge.

20 (At 11:32 a.m., proceeding concluded)

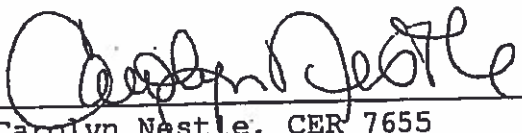
STATE OF MICHIGAN)

)

COUNTY OF ISABELLA)

I certify that that this transcript, consisting of 16 pages, is a complete, true, and correct record of the proceedings and testimony taken in this case as recorded on Friday, April 28, 2017, by Shelly Smalley, Certified Electronic Recorder.

Date: May 4, 2017


Carolyn Nestle, CER 7655
Isabella County Trial Court
300 North Main Street
Mt. Pleasant, MI 48858
(989) 772-0911

ATTACHMENT - 7

STATE OF MICHIGAN
IN THE TRIAL COURT FOR THE COUNTY OF ISABELLA

ISABELLA COUNTY PROSECUTING ATTORNEY
Ex Rel Bay Area Narcotics Enforcement Team,
Plaintiff,

Honorable Paul Chamberlain

v.

ONE 1987 BUICK GRAND NATIONAL, et al.
Defendant,

Case no. 16-13188-CZ

Steven Fisher, and
Leslie Fisher,

Claimants.

ROBERT A. HOLMES, JR. (P44097)
Assistant Prosecuting Attorney
200 N. Main St.
Mt. Pleasant, MI 48858
Phone: 989-772-0911 Ext. 300

MICHAEL A. KOMORN (P47970)
Attorney for the Claimants
30903 Northwestern Hwy, Ste 240
Farmington Hills, MI 48334
Phone: 800-656-3557
Fax: 855-456-6676
e-Mail: michael@komornlaw.com

FILED

ORDER

MAY 23 2017

At a session of said Court held in the Courthouse
in the County of Isabella, State of Michigan,
this 23 day of May, 2017

COUNTY CLERK
ISABELLA COUNTY
MT. PLEASANT, MICH.

PRESENT: Paul H. Chamberlain Circuit Court Judge

HAVING COME before the Court upon the People's Motion to Stay, and the Court being
otherwise informed of the premises;

IT IS ORDERED that the motion is denied for the reasons stated on the record.

Dated: 5/23/17

Paul H. Chamberlain Circuit Court Judge

P31652

ATTACHMENT - 8

STATE OF MICHIGAN
IN THE ISABELLA COUNTY TRIAL COURT

ISABELLA COUNTY PROSECUTING
ATTORNEY Ex Rel Bay Area Narcotics
Enforcement Team,

Plaintiff,

v

Hon. Paul H. Chamberlain

ONE 1987 BUICK GRAND NATIONAL, Et
al.,

Defendant.

Robert A. Holmes, Jr. (P44097)
Attorney for Plaintiff

Michael A. Komorn (P47970)
Attorney for Claimants



Case No.
16-13188-CZ

OPINION AND ORDER
ON PLAINTIFF'S MOTION FOR RECONSIDERATION

FILED

JUL 19 2017

I. FACTS

COUNTY CLERK
ISABELLA COUNTY
MT. PLEASANT, MICH.

This civil drug forfeiture matter was filed on May 26, 2016, and was based on alleged criminal drug activity pertaining to Steven and Leslie Fisher. Criminal charges were filed against both Steven and Leslie Fisher. The property seized from the claimants that is the subject of this forfeiture action includes a 1987 Buick Grand National, a Cadillac Eldorado, a 2009 Chevrolet Pickup Truck, an Enclosed Pace Trailer, a 1995 Polaris Indy Snowmobile, \$3,918.00 in US Currency, three pieces of gold, one piece of silver, a laptop computer, a Dell XPS computer tower, two iPhones, six firearms, and various hoses, lights and drying racks.

On December 8, 2016, this court issued an opinion dismissing the charges against Leslie Fisher in case number 16-802-FH. On January 31, 2017, this court issued an opinion dismissing the charges against Steven Fisher in case number 16-801-FH, finding that Mr. Fisher had established a § 8 defense under the Michigan Medical Marijuana Act. The People have filed an appeal of the court's order dismissing the criminal case against Steven Fisher. The People subsequently filed a motion to stay proceedings in this civil drug forfeiture action pending completion of the People's appeal in Steven Fisher's criminal case.

At a hearing held on April 28, 2017, this court denied the People's motion to stay proceedings. This court held that, because the criminal and civil forfeiture actions are completely

separate with different burdens of proof, there is no reason to grant the stay requested by the People. On June 1, 2017, the People filed a motion for reconsideration of this court's denial of their motion to stay proceedings.

II. ANALYSIS

The People request this court to reconsider its denial of the People's motion to stay proceedings in this civil drug forfeiture action pending completion of the People's appeal in Steven Fisher's criminal case. MCR 2.119(F)(3) states:

Generally, and without restricting the discretion of the court, a motion for rehearing or reconsideration which merely presents the same issues ruled on by the court, either expressly or by reasonable implication, will not be granted. The moving party must demonstrate a palpable error by which the court and the parties have been misled and show that a different disposition of the motion must result from correction of the error.

The People point out that, in deciding the motion to stay proceedings, this court incorrectly identified the burden of proof in a drug forfeiture case. The burden of proof in such a case is clear and convincing evidence, not a preponderance of the evidence. MCL 333.7521(2). Regardless, this has no effect on this court's ruling. This court mentioned the burden of proof in forfeiture cases to emphasize the separate nature of forfeiture and criminal cases. A drug forfeiture case has a burden of proof of clear and convincing evidence, while the burden of proof in a criminal action is beyond a reasonable doubt. Criminal and civil forfeiture actions are completely separate with different burdens of proof, and so, as this court previously held, there is no reason to grant the stay requested by the People.

The People further argue that a stay is appropriate because they cannot go forward with drug forfeiture proceedings as a result of this court's finding in the criminal case that Steven Fisher has not engaged in any criminal activity. The People concede that the only way to proceed in this drug forfeiture action is if the Michigan Court of Appeals overrules this court's decision in the criminal case. However, this does not change the fact that the civil drug forfeiture case and the criminal case are separate actions with different burdens of proof. Further, the People have not cited any law supporting the assertion that when a defendant is found to have not engaged in criminal activity, a stay in a drug forfeiture case should be granted pending an appeal in the defendant's criminal case.


The People argue that it makes sense to stay this forfeiture action because, if the Court of Appeals overrules this court in the criminal action, the forfeiture action may be reinstated. However, a stay does not make sense for the claimants, who have been found not to have engaged in any criminal activity and yet have been without their property since April 2016 when their property was seized at the initiation of the criminal actions. The property seized includes three motor vehicles, a snowmobile, currency, firearms, computers and smart phones. The value of some of this property, including the motor vehicles, will deteriorate with time. In this court's opinion, the People's likelihood of success at the Court of Appeals is low. Continuing to keep the claimants' property from them for more than a year, particularly when they have been found not to have engaged in criminal activity, could have due process ramifications. This court sees no

reason to grant the stay requested by the People and cause the claimants to be deprived of their property for any longer.

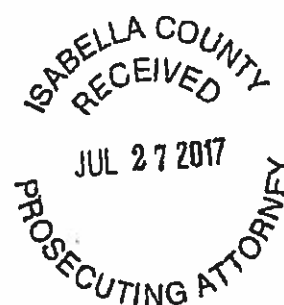
THEREFORE IT IS ORDERED that the People's motion for reconsideration is denied.

This order does not resolve the last pending claim or close the case.

Date: July 19, 2017


Hon. Paul H. Chamberlain (P31682)
Chief Judge
Isabella County Trial Court

STATE OF MICHIGAN
IN THE ISABELLA COUNTY TRIAL COURT



ISABELLA COUNTY PROSECUTING
ATTORNEY Ex Rel Bay Area Narcotics
Enforcement Team,

Plaintiff,

Case No.
16-13188-CZ

Hon. Paul H. Chamberlain

v

ONE 1987 BUICK GRAND NATIONAL, Et
[sic] al.,

Defendant.

FILED

Robert A. Holmes, Jr. (P44097)
Attorney for Plaintiff

JUL 26 2017

Michael A. Komorn (P47970)
Attorney for Claimants

COUNTY CLERK
ISABELLA COUNTY
MT. PLEASANT, MICH.

OPINION AND ORDER
ON THE PEOPLE'S MOTION FOR JUDICIAL DISQUALIFICATION

I. FACTS

This civil drug forfeiture matter was filed on May 26, 2016, and was based on alleged criminal drug activity pertaining to Steven and Leslie Fisher. Criminal charges were filed against both Steven and Leslie Fisher. The property seized from the claimants that is the subject of this forfeiture action includes a 1987 Buick Grand National, a Cadillac Eldorado, a 2009 Chevrolet Pickup Truck, an Enclosed Pace Trailer, a 1995 Polaris Indy Snowmobile, \$3,918.00 in US Currency, three pieces of gold, one piece of silver, a laptop computer, a Dell XPS computer tower, two iPhones, six firearms, and various hoses, lights and drying racks.

On December 8, 2016, this court issued an opinion dismissing the charges against Leslie Fisher in case number 16-802-FH. On January 31, 2017, this court issued an opinion dismissing the charges against Steven Fisher in case number 16-801-FH, finding that Mr. Fisher had established a § 8 defense under the Michigan Medical Marijuana Act. The People have filed an appeal of the court's order dismissing the criminal case against Steven Fisher. The People requested this court to stay this drug forfeiture matter pending a ruling by the Court of Appeals in Mr. Fisher's criminal case. At a hearing held on April 28, 2017, this court denied the People's

motion to stay proceedings. The People filed a motion for reconsideration of this court's decision denying the motion to stay proceedings, which this court denied in an opinion and order dated July 19, 2017.

The claimants filed a motion for summary disposition pursuant to MCR 2.116(C)(10), arguing that because it has been found that Mr. Fisher has not engaged in criminal activity, this court should dismiss this drug forfeiture matter. The People admit that they are unable to go forward unless the Court of Appeals reverses this court's ruling. However, in the response to claimants' motion for summary disposition, the People also suggest that it would be appropriate for this judge to disqualify himself. On July 20, 2017, the People filed a motion for judicial disqualification pursuant to MCR 2.003. This court denies the People's motion.

II. ANALYSIS

All motions for disqualification must be filed within 14 days of the discovery of the grounds for disqualification. MCR 2.003(D)(1)(a). Untimely motions may be granted for good cause shown. MCR 2.003(D)(1)(d). If a motion is not timely filed, untimeliness is a factor in deciding whether the motion should be granted. MCR 2.003(D)(1)(d).

Under MCR 2.003(C), disqualification of a judge is warranted for reasons that include, but are not limited to, the following:

(a) The judge is biased or prejudiced for or against a party or attorney.

(b) The judge, based on objective and reasonable perceptions, has either (i) a serious risk of actual bias impacting the due process rights of a party as enunciated in *Caperton v Massey*, 556 US 868; 129 S Ct 2252; 173 L Ed 2d 1208 (2009), or (ii) has failed to adhere to the appearance of impropriety standard set forth in Canon 2 of the Michigan Code of Judicial Conduct.

The People first argue that this judge is biased in drug forfeiture matters based upon a statement allegedly made by this judge during the drug forfeiture proceedings of *People of the State of Michigan v Residential Real Estate*, 1997-10052-CZ. The People allege that this judge "stated in the presence of the Counsel for BAYANET" that this judge "did not like drug forfeitures as they penalize people twice for the same conduct." No context is provided for this statement, nor is it identified whether the statement was made on the record or whether it was made off the record. After a review of the register of actions of this 1997 case, it does not appear that any hearing throughout the proceedings was ever transcribed, and the recordings were destroyed several years ago in accordance with the Records Retention and Disposal Schedule for Michigan Trial Courts. This judge does not have any memory of what he said 20 years ago in the cited case.

First, a motion for disqualification on the basis of comments made 20 years ago is certainly not timely under MCR 2.003(D)(1)(a). This judge has handled numerous drug forfeiture cases in the 20 years since the 1997 case cited by the People. Not once has anyone from the prosecutor's office ever requested this judge's disqualification in a drug forfeiture matter. To suddenly raise this issue now, after 20 years of having no concerns about this judge

presiding over this type of case, makes it appear that the prosecutor is simply attempting to judge shop because he disagrees with the last few rulings issued in this case and the Fisher criminal case.

Even if a motion on this basis had been timely filed, the statement allegedly made in this 1997 drug forfeiture case is not a legitimate basis for disqualification. This judge, like all judges, has personal opinions on many subjects. Sometimes these opinions may be stated, either on the record or during conferences with counsel. However, this judge, in accordance with the Code of Judicial Conduct, does not let these personal opinions rise to the level of bias. If any personal opinion ever did rise to such a level as to make this judge unable to impartially discharge its duties, this judge would be the first to raise the issue of disqualification. Despite the fact that there is a legitimate academic dispute regarding whether forfeiture is a double jeopardy violation, under prevailing law it is not. It is this judge's duty to uphold the law, and this duty will be discharged faithfully without influence from personal opinion. It appears that Isabella County's prosecutors are aware of this fact because not a single prosecutor has raised this issue in the 20 years since the 1997 drug forfeiture case cited by counsel. This court denies the motion for judicial disqualification on the basis of this judge's alleged statement in the 1997 case.

The People next argue that this judge's involvement in Mr. and Ms. Fisher's criminal cases should lead to disqualification in this drug forfeiture case. This issue arose after this court denied the People's motion for a stay of proceedings and subsequently denied the People's motion for reconsideration on July 19, 2017. The People had requested this court to stay proceedings in this drug forfeiture matter until the Court of Appeals reached a decision in the Fisher criminal matter. Had the motion for a stay been granted, there would have been no need to raise the issue of disqualification. Therefore, the time to bring a disqualification motion based on this issue would begin to run at the time the motion for reconsideration was denied. Accordingly, a motion on this basis is timely pursuant to MCR 2.003(D)(1)(a).

In support of the motion, the People cite the *Crampton v Dep't of State* standard for addressing disqualification. *Crampton v Dep't of State*, 395 Mich 347; 235 NW2d 352 (1975). The *Crampton* Court stated:

The United States Supreme Court has disqualified judges and decisionmakers without a showing of actual bias in situations where 'experience teaches that the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable.' Among the situations identified by the Court as presenting that risk are where the judge or decisionmaker:

- (1) has a pecuniary interest in the outcome;
- (2) has been the target of personal abuse or criticism from the party before him;
- (3) is enmeshed in [other] matters involving petitioner...; or
- (4) might have prejudged the case because of prior participation as an accuser, investigator, fact finder or initial decisionmaker. *Crampton v Dep't of State*, 395 Mich 347, 351; 235 NW2d 352 (1975).

The People argue that in this case the court is "enmeshed in [other] matters involving petitioner" because the court has previously ruled in the Fisher criminal matters. However, this is

a misunderstanding of the meaning of "enmeshed." In *Crampton*, the Court provided an example of a situation in which a judge became "enmeshed in other matters" involving a litigant. A judge was so "enmeshed" when the judge was recently a losing party in a civil rights suit brought by the person who was now the defendant in a criminal contempt proceeding. *Id.* In such a situation, it would not be appropriate for the judge to adjudicate the contempt charges. Such a situation is clearly distinguishable from the situation currently before this court. This judge has certainly not been a party to any case involving either the People or Mr. and Ms. Fisher. The fact that this judge has ruled in a previous case involving these parties, without more, is not sufficient to make a finding that this judge has become "enmeshed." *Id.*

The People next argue that this judge "might have prejudiced the case because of prior participation as an accuser, investigator, fact finder or initial decisionmaker." It is true that this judge was the fact finder in the Fisher criminal matter and is now presiding over this drug forfeiture case. However, the People have not set forth any reason why this is prejudicial. The Michigan Court of Appeals has declined to adopt a rule of automatic disqualification "solely because a judge has sat as a factfinder in a prior trial." *People v Upshaw*, 172 Mich App 386, 389; 431 NW2d 520 (1988). The Court of Appeals held that "unless there are special circumstances which increase the risk of unfairness" disqualification is not required solely because a judge sat as fact finder in a prior matter. *Id.* The People have not set forth any special circumstances which would increase the risk of unfairness in this case, and this judge does not perceive any such circumstances.

Finally, the People argue that there is an appearance of impropriety contrary to Canon 2 of the Michigan Code of Judicial Conduct. The People argue that, because this judge has denied the People's motion for a stay, there is an appearance that the claimants are being given an unfair advantage or that this is some kind of reprisal by the court toward the People for having appealed this court's decision in the criminal case. This is not a credible argument, particularly because this judge clearly set forth the basis for the decision not to grant a stay in this case. As the court stated in its decision to deny the People's requested stay and in its opinion and order denying the People's motion for reconsideration, the People have failed to provide legal authority supporting the necessity of a stay in these circumstances. Additionally, continuing to keep the claimants' property from them for more than a year, particularly when they have been found not to have engaged in criminal activity, could have due process ramifications. There is no appearance of impropriety simply because this court ruled that Mr. Fisher did not engage in criminal activity and then later denied the People's request for a stay based on due process ramifications and the People's failure to cite any significant supporting legal authority. Contrary to the People's argument, a reasonable person would not observe these cases and come to the conclusion that this court is giving the claimants an unfair advantage or acting in reprisal toward the People for having appealed this court's previous decision when the court has so clearly set forth the legal reasoning for its decisions. Instead, it appears that the prosecutor is attempting to judge shop because he disagrees with the last few rulings made by this court. Accordingly, this court denies the People's motion for judicial disqualification.

THEREFORE IT IS ORDERED that the People's motion for judicial disqualification is denied.

IT IS FURTHER ORDERED that, if the People want this motion referred to the state court administrator for assignment to another judge for de novo review pursuant to MCR 2.003(D)(3)(a)(ii), the request must be made within 7 days of the date of this opinion and order.

This order does not resolve the last pending claim or close the case.

Date: July 26, 2017

A handwritten signature in black ink, appearing to read "Paul H. Chamberlain", written over a horizontal line.

Hon. Paul H. Chamberlain (P31682)

Chief Judge

Isabella County Trial Court

ATTACHMENT - 9

STATE OF MICHIGAN
21ST JUDICIAL CIRCUIT

NOTICE TO APPEAR

Case Number
2016-0000013188-CZ

Date: 10/03/2017

ISABELLA COUNTY
TRIAL COURT
300 N. MAIN STREET
MT. PLEASANT, MI 48858
Phone: 989/772-0911

Mail To: RISA N. HUNT-SCULLY
PROSECUTING ATTORNEY
200 N MAIN
MOUNT PLEASANT, MI 48858

ISABELLA COUNTY PROSECUTING ATTOR

PLAINTIFF

V

ONE 1987 BUICK GRAND NATIONAL ET

DEFENDANT

YOU ARE DIRECTED TO APPEAR AT THE ADDRESS ABOVE.

1) SELTMNT CONF On - Friday Date - OCTOBER 20 , 2017 Time - 10:00 A
Jurist: PAUL H. CHAMBERLAIN Courtroom: CC04
AND MOTION FOR SUMMARY DISPOSITION

This Notice has Also Been Sent To:

MICHAEL A. KOMORN A 47970 Representing STEVEN ANTHONY FISHER
MICHAEL A. KOMORN A 47970 Representing LESLIE FISHER
MICHAEL A. KOMORN A 47970 Representing ONE 1987 BUICK GRAND NATI

Chad Carr

From: Wilber, Eric (MSP) <WilberE@michigan.gov>
Sent: Monday, December 18, 2017 1:01 PM
To: Chad Carr
Subject: ITEMS TO BE RETURNED

Sir-

I have a check in the below listed amount written to Steven & Leslie Fisher. These are the items I was informed were to be returned.

-Eric

- Item 23 - pieces of gold
- item 24 - silver ingot
- item 30 - black I-phone with otter box
- item 31 - white I-Phone with otter box
- item 53 - ASUS laptop computer with power cord and thumb drive
- item 54 - laptop case
- item 55 - Dell computer tower
- item 66 - 2000 silver Cadillac
- item 67 - 2009 blue Silverado pickup
- item 69 - Dewalt drill with charger and two batteries
- item 70 - Dewalt table saw
- item 76 - Honeywell humidifier
- item 86 - 1995 Polaris snowmobile
- item 87 - Pace enclosed trailer
- item 88 - 1987 Buick grand national
- items 96 (\$1,692.00) and 98 (\$1,055.00) will be returned in the form of check issued to Steven and Leslie Fisher in the amount of \$2,747.00.

D/Lt. Eric L. Wilber
Team Leader
Bay Area Narcotics Enforcement Team
Michigan State Police
(989) 790-6581 office
(989) 790-6586 fax

"A PROUD tradition of SERVICE through EXCELLENCE, INTEGRITY AND COURTESY"



