

STATE OF MICHIGAN
IN THE ISABELLA COUNTY TRIAL COURT

THE PEOPLE OF THE STATE OF
MICHIGAN,

Plaintiff,

Case No.

v

Hon. Paul H. Chamberlain

Defendant.

FILED

JAN 19 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 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**

I. FACTS

Defendant [REDACTED] 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 requested a *Daubert* hearing regarding the People's proposed expert from the Michigan State Police (MSP) Crime Lab. Defendant argues that the MSP Crime Lab is dealing in junk science in the way it reports marijuana, and so defendant requests this court to prevent the People's expert from testifying as an expert witness, exclude the lab reports, and dismiss this case. Defendant filed a Motion to Exclude Forensic Evidence, a Motion to Dismiss Pursuant to *Daubert*, a Motion to Preclude Evidence Based Upon Judicial Estoppel, and a Motion to Preclude Evidence Based Upon Relevancy.

On December 12, 13, and 14, this court held a *Daubert* hearing regarding the People's proposed expert witness from the MSP Crime Lab, Jerome Waldron. Two witnesses testified: Jerome Waldron, and Bradley Choate, a supervisor at the Michigan State Police Lansing Controlled Substances Unit. This court had the opportunity to observe the witnesses' demeanor

and manner while testifying. This court was likewise able to weigh the witnesses' credibility.

Jerome Waldron is employed as a controlled substance analyst with the Michigan State Police Crime Lab in Bridgeport, Michigan. (Daubert Hearing Transcript Volume I, December 12, 2016, page 123). He has eleven years of experience in this position. *Id.* Mr. Waldron examined the materials in this case and produced the lab reports, which were admitted as Exhibits 2, 3, 4, and 5. *Id.* at 124-25.

Mr. Waldron testified that when he tested the non-plant material substance in this case, he followed a standard procedure: he examined the substance with a macroscopic and microscopic examination and did not see any plant material, he did a gas chromatograph mass spectrometer (GCMS) analysis of the substance and found it to contain THC, then he further confirmed the presence of THC using a gas chromatograph. *Id.* at 133-34. After that analysis, Mr. Waldron determined that the substance contained delta-1-tetrahydrocannabinol (THC). *Id.*

When reporting such a result from a sample that has no plant material present, Mr. Waldron testified that it is the policy of the MSP Crime Lab to report THC with an added qualifying origin statement: "The origin of the delta-1-THC may be from a plant (marihuana) or a synthetic source." *Id.* at 129. This policy was introduced in 2013, and Mr. Waldron believed the purpose of the policy is both conformity and clarity. *Id.* at 132-33. He heard supervisors discussing the fact that, prior to 2013, different MSP Crime Labs were reporting THC differently, and so Mr. Waldron believed the policy is meant to bring conformity to MSP marijuana reporting. *Id.* Additionally, Mr. Waldron testified that the origin statement is meant to clarify the fact that, although THC is present, because there is no plant material present, it is possible that the THC could be from a synthetic source. *Id.* Mr. Waldron acknowledged that this is not probable. In fact, in Mr. Waldron's professional opinion, there is only a 1% chance that the THC is from a synthetic source. *Id.* at 145. Mr. Waldron testified that he has never come across a situation in which there was evidence that a sample of THC was synthetically produced in a laboratory. *Id.* However, Mr. Waldron testified that, when the sample does not contain any plant material, it cannot be determined with complete certainty whether the THC is from a synthetic or organic source. *Id.* at 150. The presence of other cannabinoids could be an indicator that the THC is from an organic source, but Mr. Waldron testified that it is possible that other cannabinoids could also be synthetically produced. *Id.* at 137. However, Mr. Waldron has never come across a situation in which other cannabinoids were synthetically produced. *Id.* Mr. Waldron testified that the origin statement is not intended to indicate that the sample is of synthetic origin, but instead to indicate that synthetic origin cannot be completely ruled out. *Id.* at 130. Mr. Waldron is not aware of any other laboratories that report THC this way; however, he indicated that he is not really aware of how other laboratories report. (Daubert Hearing Transcript Volume II, December 13, 2016, page 143).

Mr. Waldron testified that, when testing plant material in this case, he also followed a standard procedure beginning with a macroscopic and microscopic examination. (Daubert Hearing Transcript Volume I, page 159). Then, he used the Duquenois-Levine color test, looking for a purple reaction to indicate the presence of THC. *Id.* at 158. Mr. Waldron testified that the Duquenois-Levine test has gone through peer review and has been determined to be scientifically reliable. (Daubert Hearing Transcript Volume II, page 16). Additionally, he testified that all the testing procedures he follows comply with the SWGDRUG guidelines, which set forth the criteria for drug testing in the United States. (Daubert Hearing Transcript Volume I, page 155).

Bradley Choate also testified at the *Daubert* hearing. Mr. Choate is a supervisor

employed at the Michigan State Police Lansing controlled substances unit. (Daubert Hearing Transcript Volume II, page 107). Mr. Choate was an analyst with the MSP Crime Lab for eleven years and has been a supervisor for the last fifteen years. *Id.* at 107-8.

Mr. Choate testified that the use of macroscopic examination, microscopic examination, and Duquenois-Levine testing to identify plant material as marijuana is provided for in the SWGDRUG guidelines as a uniformly accepted method of testing for marijuana. (Daubert Hearing Transcript Volume III, December 14, 2016, page 41-42). Likewise, Mr. Choate testified that the use of gas chromatograph mass spectrometer (GCMS) analysis and the use of a gas chromatograph to confirm the presence of THC is also a uniformly accepted method provided for in the SWGDRUG guidelines. *Id.* at 42.

Mr. Choate does not agree with the MSP Crime Lab policy requiring test results indicating THC when no plant material is present to be qualified with the statement "The origin of the delta-1-THC may be from a plant (marihuana) or a synthetic source." Mr. Choate testified that if he was testing a substance and he found a presence of THC, he would want to report it simply as marijuana without the qualifying origin statement. (Daubert Hearing Transcript Volume II, page 141). However, because of the MSP Crime Lab policy, he would not be able to do so. *Id.* Mr. Choate testified that, in his opinion, when THC is found with the presence of other cannabinoids, "that is an extract of marijuana." at 161. Mr. Choate testified that it is possible for other cannabinoids to be synthesized, but he has never had a case or heard of a case in which this has occurred. (Daubert Hearing Transcript Volume III, page 27). Mr. Choate believes that it is "unreasonable" to think that a substance that has tested positive for THC might be synthetic, especially when you find the presence of other cannabinoids. (Daubert Hearing Transcript Volume II, page 126). Therefore, when presence of THC is found, Mr. Choate believes it would be appropriate to go one step further and look for the presence of other cannabinoids. (Daubert Hearing Transcript Volume III, page 34). Once the presence of THC and other cannabinoids is confirmed, Mr. Choate would report the substance simply as "marijuana." *Id.* Mr. Choate testified that he is not aware of any other lab reporting THC with a qualifying origin statement; however, he also indicated that he is not really aware of how other labs report. (Daubert Hearing Transcript Volume II, page 143).

Mr. Choate is concerned by the MSP Crime Lab policy to include the qualifying origin statement when reporting THC. He testified that his concern is that prosecutors might use a lab report that states THC has a possible synthetic origin in order to charge someone with possession of synthetic THC even though there was nothing about the test results to indicate that the substance was likely to have a synthetic origin. (Daubert Hearing Transcript Volume II, page 135). Mr. Choate participated in an email conversation at the time the MSP Crime Lab was considering adopting this policy and he indicated his objections with the proposed policy at that time. *Id.* Mr. Choate testified that he no longer does any marijuana testing at his lab because he disagrees with the policy and does not want to report THC with the qualifying origin statement. (Daubert Hearing Transcript Volume III, page 17). He would prefer to report it as marijuana, or if it must be reported as THC, he believes that there should be additional information added qualifying that there is nothing to indicate that the THC is synthetic. *Id.* at 18.

Mr. Choate testified that the procedures followed by the MSP Crime Lab in testing marijuana are consistent with the SWGDRUG guidelines. *Id.* at 35. SWGDRUG does not indicate how test results are to be reported, so Mr. Choate's opinion is that the MSP's reporting policy is not in contravention of the SWGDRUG guidelines. *Id.* at 36-7. Additionally, Mr.

Choate testified that the procedures followed by the MSP Crime Lab in testing marijuana are scientifically sound. (Daubert Hearing Transcript Volume II, page144). Even when the qualifying origin statement is present, Mr. Choate states that “there is no doubt that we’ve confirmed that presence of THC.” *Id.* Mr. Choate testified that the procedures followed by Mr. Waldron are scientifically sound, do not rely on any unproven theories or unproven methodology, and that “there is no doubt that, in this case,...Jerome Waldron found delta-1-THC and confirmed it.” (Daubert Hearing Transcript Volume III, page 42). Mr. Choate further testified that the fact that Mr. Waldron reported THC with the qualifying origin statement does not affect the analysis or testing procedures. *Id.* at 70. Additionally, Mr. Choate testified that the qualifying origin statement does not have anything to do with Mr. Waldron’s performance, does not affect his credentials, and does not invalidate the resulting determination that THC was present in the substance tested. *Id.* at 40-41.

In addition to the testimony of the two witnesses, 16 exhibits were admitted during the *Daubert* hearing. These exhibits include the lab reports produced by Mr. Waldron in this case, emails related to the MSP Crime Lab policy change, the SWGDRUG manual, and other documents concerning expert and MSP Crime Lab opinion regarding the MSP policy change. Under MCR 2.119(E)(3), the court dispensed with closing arguments but allowed the parties to submit argument in the form of briefs. Both the prosecutor and defense counsel submitted briefs. In deciding these motions, the court considered the testimony of the two witnesses, the admitted exhibits, and the argument of counsel, both oral and in brief form. This court denies defendant’s motions.

II. ANALYSIS

A. Defendant’s Motion to Exclude Forensic Evidence and Motion to Dismiss Pursuant to *Daubert*

In *Gilbert v Daimler Chrysler Corp*, 470 Mich 749, 779; 685 NW2d 391 (2004), the Michigan Supreme Court held that MRE 702 requires the trial court, in its role as gatekeeper, to ensure that each aspect of an expert witness’s proffered testimony, including the underlying data upon which the expert bases his or her opinion, is reliable. While the exercise of the gatekeeper function is within a court’s discretion, the court can neither abandon this obligation nor perform the function inadequately. *Id.* at 780. The proponent of expert witness testimony has the burden of establishing the expert’s qualifications and the reliability of the expert’s opinions and conclusions. *People v Unger*, 278 Mich App 210, 217; 749 NW2d 272 (2008).

MRE 702 states:

If the court determines that scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise if (1) the testimony is based on sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.

In exercising this gatekeeper role, the court should focus on whether the expert based his or her conclusions on a sound foundation. *Chapin v A & L Parts, Inc*, 274 Mich App 122, 139; 732 NW2d 578 (2007). The trial judge must ensure that any and all scientific testimony or evidence admitted is not only relevant, but reliable. *Daubert v Merrell Dow Pharmaceuticals, Inc*, 509 US 579, 589; 113 S Ct 2786; (1993). “Scientific” implies a grounding in the “methods and procedures of science.” *Id.* at 590. The court must look at the following factors:

- 1) a preliminary assessment of whether the reasoning or methodology underlying the testimony is scientifically valid and of whether that reasoning or methodology properly can be applied to the facts in issue.
- 2) whether a theory or technique can be and has been tested.
- 3) whether the theory or technique has been subjected to peer review and publication.
- 4) in the case of a particular scientific technique, the court ordinarily should consider the known or potential rate of error.
- 5) whether the theory or technique has been generally accepted. *Id.* at 592-594.

The People propose to offer Jerome Waldron as an expert witness. Mr. Waldron examined the materials seized from Mr. Fisher in this matter, tested said materials, and produced lab reports detailing the results of his analysis. In this case, Mr. Waldron examined both plant material and substances that did not contain any plant material.

In testing the plant material, Mr. Waldron engaged in a macroscopic examination, which is an inspection with the naked eye. (Daubert Hearing Transcript Volume I, page 159). Then he performed a microscopic examination, which is an inspection under a microscope. *Id.* Finally, he performed a Duquenois-Levine test, in which he looks for a purple reaction to indicate the presence of THC. *Id.* 158. Both Mr. Waldron and Mr. Choate testified that this testing procedure is scientifically reliable, peer reviewed, and consistent with SWGDRUG guidelines. (Daubert Hearing Transcript Volume II, page 16; Daubert Hearing Transcript Volume III, page 41-42).

The court heard no testimony to suggest that the procedures used by Mr. Waldron to test plant material are not scientifically valid. Both witnesses testified that the procedures used have been peer reviewed, are reliable, and are consistent with SWGDRUG guidelines. Additionally, both witnesses testified that they are certain of the result that the materials that tested positive for THC actually contain THC. (Daubert Hearing Transcript Volume III, page 42). The methods and procedures used by Mr. Waldron to test plant material are clearly reliable under the standards set forth in *Daubert* and MRE 702.

In testing non-plant material, Mr. Waldron again engaged in macroscopic and microscopic examinations. (Daubert Hearing Transcript Volume I, page 133-34). He then did a gas chromatograph mass spectrometer (GCMS) analysis of the substance and found it to contain THC, then he further confirmed the presence of THC using a gas chromatograph. *Id.* After that

analysis, Mr. Waldron determined that the substance contained delta-1-tetrahydrocannabinol (THC). *Id.* Both Mr. Waldron and Mr. Choate testified that this testing procedure is scientifically reliable, peer reviewed, and consistent with SWGDRUG guidelines. (Daubert Hearing Transcript Volume II, page 20; Daubert Hearing Transcript Volume III, page 41-42).

As with the testing procedures for plant material, the court heard no testimony to suggest the testing procedures used by Mr. Waldron on the non-plant material are not scientifically valid. Both witnesses testified that the procedures are widely used, have been peer reviewed, are reliable, and are consistent with SWGDRUG guidelines. The methods and procedures used by Mr. Waldron to test plant material are clearly reliable under the standards set forth in *Daubert* and MRE 702.

Testimony at the *Daubert* hearing raised concerns with the qualifying origin statement required by MSP Crime Lab policy to be added to the results of non-plant material that tests positive for THC. Mr. Waldron testified that the statement “[t]he origin of the delta-1-THC may be from a plant (marihuana) or a synthetic source” is intended to clarify the lab results. (Daubert Hearing Transcript Volume I, page 132-33). When no plant material is present, it is Mr. Waldron’s opinion that he cannot determine with certainty whether THC is from an organic or synthetic source. *Id.* at 150. However, Mr. Choate testified that he disagrees with the MSP Crime Lab’s policy. (Daubert Hearing Transcript Volume II, page 141). Mr. Choate’s opinion is that one can identify organic THC with scientific certainty if there is the presence of other cannabinoids. *Id.* at 161. Mr. Waldron testified that, even with the presence of other cannabinoids, it is still impossible to determine organic origin with certainty because the other cannabinoids could also be synthesized. (Daubert Hearing Transcript Volume I, page 137). However, Mr. Choate’s opinion is that it is unreasonable to believe that these other cannabinoids have been synthesized. (Daubert Hearing Transcript Volume II, page 126). Neither Mr. Waldron nor Mr. Choate has ever come across a situation of synthesized THC or other cannabinoids. (Daubert Hearing Transcript Volume I, page 137; Daubert Hearing Transcript Volume III, page 27).

Mr. Choate’s opinion that the qualifying origin statement is unreasonable is supported by the opinion of Jay Siegel, whose expert report was admitted as Exhibit 8. Mr. Siegel is a forensic science professor who formerly taught at Michigan State University. Mr. Siegel shares Mr. Choate’s opinion that, if there are other cannabinoids present in addition to THC, the substance is organic marijuana. Mr. Siegel believes that it is unreasonable to suggest in such a case that the THC may be synthesized.

If this were a case in which the prosecutor was relying on the MSP Crime Lab report to charge Mr. ██████ with possession of synthetic THC and Mr. Waldron was planning to testify that the substances tested were of synthetic origin, there would be a concern with the reliability of Mr. Waldron’s testimony. Based on the testimony of Mr. Choate, it does not appear that the qualifying origin statement provides any evidence from which one could conclude that the THC in this case was synthetic. Likewise, there is no other evidence indicating that the THC is of synthetic origin. In *People v Campbell*, 72 Mich App 411, 412; 249 NW2d 870 (1976), the Michigan Court of Appeals determined that a crime concerning natural THC can only be charged and punished under the statute dealing with marijuana, not synthetic THC. Therefore, if Mr. ██████ had been charged under the statute dealing with synthetic THC, the lack of evidence of THC would make such a charge inconsistent with the holding in *Campbell*. However, Mr. ██████ was not charged with any crime relating to synthetic THC and Mr. Waldron testified

that he did not intend to indicate in the lab reports that the THC is synthetic. (Daubert Hearing Transcript Volume I, page 130).

Despite Mr. Choate's opinion that the qualifying origin statement required by MSP Crime Lab policy is unreasonable, Mr. Choate testified that the inclusion of this statement in a lab report does not affect the overall reliability of the testing procedure or the credentials of the analyst. (Daubert Hearing Transcript Volume III, page 40-41). Mr. Choate testified that the MSP Crime Lab's policy does not conflict with the SWGDRUG guidelines, used nationally as the standard for marijuana testing. *Id.* at 36-7. Mr. Choate further testified that the procedures followed by Mr. Waldron are scientifically sound, do not rely on any unproven theories or unproven methodology, and that "there is no doubt that, in this case,...Jerome Waldron found delta-1-THC and confirmed it." *Id.* at 42. There does not appear to be any question about the reliability of Mr. Waldron's determination that the substances analyzed in this case contain THC.

Mr. Waldron's admission as an expert witness would be consistent with MRE 702 because (1) his testimony is based on sufficient facts or data, (2) his testimony is the product of reliable principles and methods, and (3) he has applied the principles and methods reliably to the facts of the case. Mr. Waldron did not use any unproven theories or methodologies in his testing procedures. The testing procedures used by Mr. Waldron in this case are based on reliable peer reviewed methodology and were performed correctly as described by Mr. Waldron during his testimony and confirmed by Mr. Choate during his testimony. Both Mr. Waldron and Mr. Choate agree that the testing of the substances in this case reliably resulted in the conclusion that the substances contain THC.

The court fully understands that defense counsel is arguing that emails regarding the MSP Crime Lab policy change, which were admitted as Exhibit 6, provide evidence that the qualifying origin statement was adopted, not based on scientifically sound principles, but instead based on prosecutor convenience. Defense counsel argues these emails establish that the policy change was adopted so prosecutors can charge a felony in arguably synthetic cases and use forfeiture to produce revenue for law enforcement. This would certainly not be in compliance with the methods and procedures of science and would cast a cloud over all procedures of the MSP Crime Lab. However, there are two reasons defense counsel's argument is not persuasive to this court. First, the evidence in the emails concerning the alleged intent of the policy change is not unequivocal or explicitly stated and is not verified by the testimony of the witnesses. Additionally, there was no testimony by a policymaker stating that the policy was adopted for the reasons alleged by defense counsel. Second, when this court applies the *Daubert* criteria in this case, it finds that the methods and procedures used to determine the presence of THC are scientifically sound and reliable, and the conclusion that THC is present is unassailable. In a case like this in which there is no argument or allegation that defendant possessed synthetic THC, the court finds that the qualifying origin statement is irrelevant.

Based on the exhibits and testimony at the evidentiary hearing, the court undoubtedly has a concern with the MSP Crime Lab's method of reporting marijuana. However, that concern arises when THC is reported as being possibly from a synthetic source and a defendant is subsequently charged with possession of synthetic THC. According to the testimony of both Mr. Waldron and Mr. Choate, it is incredibly unlikely that anyone would actually create synthetic THC. In fact, neither witness has ever come across a single case of this occurring. The MSP Crime Lab reports marijuana in a way that makes it possible for a defendant to be charged with possession of synthetic THC, a felony, simply when there is no plant material present in a sample

containing THC. This could lead to the unjust situation of a defendant who actually possessed THC with a plant-based origin being improperly charged with possession of synthetic THC. Such a result would be contrary to the Michigan Court of Appeals decision in *People v Campbell*, 72 Mich App 411 (1976). However, that concerning and potentially unjust and unlawful situation is not present in the case currently before this court. Mr. ██████ was never charged with possession of synthetic THC, Mr. Waldron will not testify that Mr. ██████ possessed synthetic THC, and the prosecutor does not argue even that Mr. ██████ may have possessed synthetic THC. In fact, the prosecutor all along has stated that he intends to introduce evidence that the THC is plant-based. Both Mr. Waldron and Mr. Choate testify that the methods used to arrive at the conclusion that substances seized from Mr. ██████ contained THC were reliable and scientifically sound. Therefore, *Daubert* does not require the court in its role as gatekeeper to preclude Mr. Waldron's expert testimony or the MSP Crime Lab reports. Defendant's motion to preclude the expert testimony of Mr. Waldron, to preclude the admission of the lab reports, and to dismiss the charges based upon *Daubert* is denied.

B. Defendant's Motion to Preclude Evidence Based Upon Judicial Estoppel

Defendant also filed a motion requesting this court to preclude the Michigan State Police lab reports based upon judicial estoppel. Judicial estoppel is an equitable doctrine that "prevents a party from prevailing in one phase of a case on an argument and then relying on a contradictory argument to prevail in another phase." *White v Wyndham Vacation Ownership, Inc.*, 617 F3d 472 (CA 6, 2010). The doctrine applies where there is an indication that the court in an earlier proceeding accepted a party's position as true and prevents said party from asserting an inconsistent position in a subsequent proceeding. *Paschke v Retool Indus*, 445 Mich 502, 509; 519 NW2d 441 (1994).

Defendant argues that the People have represented that defendant possessed synthetic THC based upon the Michigan State Police lab reports because of the qualifying origin statement which indicates that "the origin of the delta-1-tetrahydrocannabinol may be from a plant (marihuana) or synthetic source." Defendant claims that the People should now be estopped from alleging that defendant possessed plant-based marijuana. However, the People have never alleged that defendant possessed synthetic THC. From the beginning of this case, defendant has been charged with possession of marijuana and possession of marijuana plants. There is no evidence that anyone involved in this case has ever even suggested that defendant possessed synthetic THC. Therefore, judicial estoppel is not applicable and defendant's motion to preclude evidence based upon judicial estoppel is denied.

C. Defendant's Motion to Preclude Evidence Based Upon Relevancy

Defendant also filed a motion to preclude the Michigan State Police lab reports based upon relevancy grounds. Under MRE 402, all relevant evidence is admissible, except as otherwise provided, and evidence which is not relevant is not admissible. "Relevant evidence" is "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. MRE 401.

Defendant argues that the MSP lab reports are irrelevant because their inconclusiveness

means that they do not have any tendency to make the existence of any fact at issue more or less probable. In claiming that the lab reports are inconclusive, defendant is referring to the qualifying origin statement which indicates that “the origin of the delta-1-tetrahydrocannabinol may be from a plant (marihuana) or synthetic source.” However, as previously discussed, the lab results were not inconclusive. As Mr. Choate stated, “there is no doubt that, in this case,...Jerome Waldron found delta-1-THC and confirmed it.” (Daubert Hearing Transcript Volume III, page 42). Due to the qualifying origin statement, the lab test itself does not categorically state the origin of the THC. However, the prosecutor intends to introduce additional evidence to show that the source of the THC is organic. This additional evidence includes marijuana and marijuana plants seized from Mr. [REDACTED] garage and marijuana located at the same property where THC extraction equipment was located.

This court finds that the lab reports are relevant because they identify the THC wax as containing delta-1-THC. Whether defendant possessed marijuana is certainly a fact of consequence in this action. The lab report indicates that the substance defendant possessed contained delta-1-THC, which makes that fact more probable, and so the report is relevant. Defendant’s motion to preclude the lab report on relevancy grounds is denied.

THEREFORE IT IS ORDERED that defendant’s motion to preclude the expert testimony of Mr. Waldron, to preclude the admission of the lab reports, and to dismiss the charges based upon Daubert is denied.

IT IS FURTHER ORDERED that defendant’s motion to preclude evidence based upon judicial estoppel is denied.

IT IS FURTHER ORDERED that defendant’s motion to preclude evidence based upon relevancy is denied.

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

Date: January 19, 2017



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