

STATE OF MICHIGAN  
IN THE 74TH DISTRICT COURT FOR THE COUNTY OF BAY

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

vs.

File No. 20-31353-SD-TK

SETH JEROME GOSS,

Defendant.

---

MR. RYAN J. JANER (P-82453)  
Assistant Prosecuting Attorney  
1230 Washington Avenue, Suite 768  
Bay City, Michigan 48708  
(989) 895-4185

MR. MICHAEL A. KOMORN (P-47970)  
Attorney for Defendant  
30903 Northwestern Hwy., Ste. 240  
Farmington Hills, Michigan 48334  
(248) 357-2550

---

### Background

On March 4, 2022, Defendant was convicted after jury trial of one count of operating a motor vehicle while under the influence of the controlled substance marijuana, contrary to MCL 257. 625 (1)(a). Defendant brings this motion for new trial.

### Standard Applied

The standards for the trial court to apply are contained in MCL 770.1 and MCR 6.431(B), respectively.

MCL 770.1 Granting new trial to defendant. Sec. 1. The judge of a court in which the trial of an offense is held may grant a new trial to the defendant, for any cause for which by law a new trial may be granted, or when it appears to the court that justice has not been done, and on the terms or conditions as the court directs.

MCR 6.431(B) Reasons for Granting. On the defendant's motion, the court may order a new trial on any ground that would support appellate reversal of the conviction or because it believes that the verdict has resulted in a miscarriage of justice. The court

must state its reasons for granting or denying a new trial orally on the record or in a written ruling made a part of the record.

### Decision and Order

This court is unpersuaded that either justice has not been done or there has been a miscarriage of justice.

At the close of the People's proofs, the Defendant made a Motion for Directed Verdict. As this Court ruled, the only issue in the case was the Defendant's impairment. That remains the same.

Impairment can be proven in many ways. This Court will quote the language in the MSP Laboratory letter dated August 31, 2022, signed by Jeffrey Nye, Director, Forensic Science Division, Michigan State Police. It was not part of the record at trial as it had not been authored. However, it would not have made any difference as will be set forth.

At paragraph 9 it states:

"If you currently have a positive THC confirmation report issued by the laboratory, and you ***do not have other evidence of impairment, such as driving behavior, individual observations, results of Standardized Field Sobriety Tests (SFSTs), Drug Recognition Expert evaluations, or other indicators of THC, please consider the alternative explanation that the sample may be positive for CBD alone.***" (emphasis added).

The evidence of the Defendant's use of marijuana on September 5, 2020 date is completely undisputed. Trooper Holt testified that he smelled marijuana coming from the Defendant, performed SFSTs, and is a Drug Recognition Expert, and in his opinion, the defendant was under the influence of marijuana. The Defendant admitted he used marijuana on that date and testified ***under oath*** that he used marijuana on that date and that he grows his own marijuana. See trial transcript Volume 1, pages 120-156 and 229-245.

The jury was instructed on how to evaluate the evidence and testimony presented. The introduction of the Laboratory Report, People's Exhibit Number 3, neither negated nor mitigated the Defendant's use. By his sworn testimony, he used marijuana on that day and that grew his own marijuana, so it was not CBD. Further the jury was instructed on how to use people Exhibit 3, the Laboratory Report at page 54 of trial transcript Volume 2.

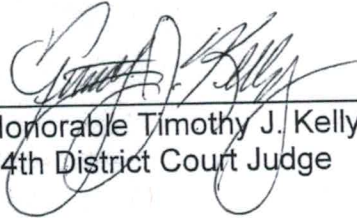
The jury was able to weigh and evaluate all the evidence of impairment in this case, including testimony, expert drug recognition testimony, defendant's admissions and of course, the in-car dash camera. The jury was able make that determination without the lab results. This case is no different than an old-fashioned drunk driving case without a breath, blood or urine test.

Therefore, Defendant's Motion for New Trial is DENIED.

Sentencing will be on October 25, 2022, at 9:30 a.m. in person.

IT IS SO ORDERED

September 14, 2022



---

Honorable Timothy J. Kelly (P36209)  
74th District Court Judge

/ap