

## Wilson, Jennifer (MSP)

---

**From:** Stecker, Ken (AG)  
**Sent:** Tuesday, April 2, 2013 12:15 PM  
**To:** Michaud, Gregoire (MSP)  
**Cc:** Robertson, Thomas (AG); [REDACTED]; 'Wisniewski, Lisa'; 'Guilliat, Stephen'; 'Wendling, Mike'; Wilson, Jennifer (MSP); 'French, Geoffrey'  
**Subject:** 702 Daubert and THC

Good Afternoon Gregoire,

[REDACTED]

---

**From:** Wisniewski, Lisa [mailto:[REDACTED]]  
**Sent:** Tuesday, April 02, 2013 12:02 PM  
**To:** Stecker, Ken (AG)  
**Subject:** 702 Daubert and THC

[REDACTED]

I guess I just wanted your opinion on the whole thing.

Thank you for your help! I appreciate it!

**Lisa Wisniewski**  
Assistant Prosecuting Attorney  
St. Clair County Prosecutor's Office  
201 McMorrان Blvd., Ste. 3300  
Port Huron, MI 48060  
(810) 985-2400  
Fax: (810) 985-2424

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## Wilson, Jennifer (MSP)

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**From:** Gill, Greta (MSP)  
**Sent:** Tuesday, October 7, 2014 3:20 PM  
**To:** Wilson, Jennifer (MSP)  
**Subject:** THC uncertainty call

Hi Jennifer,

I told him you would be out of the office for the next few days, but Genessee County APA Brian Kolodziej (pronounced Kol-oh-jay) will probably be trying to contact you regarding the uncertainty on our THC procedure. I spoke with him last week and again today about TX14-1495. I reported a THC of 2 ng/mL, and apparently the defense is challenging our uncertainty saying it would be brought down to 0...I explained him that was not the case with a 2 ng/mL. They have an expert (he wasn't sure who it was) who has all kinds of crazy ideas about this. Also thinks there's a lot of carry-over causing false positives. I explained that was also not possible. He thinks there might be a lot more in-depth questions regarding uncertainty, so I recommended he speak to you about it, so I'm just giving you a head's up!

Greta Gill  
Forensic Scientist, Toxicology Unit  
Lansing Laboratory  
Forensic Science Division  
Michigan State Police  
7320 N. Canal Rd.  
Lansing, MI 48913  
517-643-6246

"A PROUD tradition of SERVICE through EXCELLENCE, INTEGRITY, and COURTESY"

## Wilson, Jennifer (MSP)

---

**From:** Tyler Thompson <[REDACTED]>  
**Sent:** Monday, November 2, 2015 4:23 PM  
**To:** French, Geoffrey (MSP); Stecker, Ken (PACC-Contractor); Wilson, Jennifer (MSP)  
**Subject:** RE: THC blood uncertainty

I had a great conversation with Geoff. I have been sufficiently educated. Thanks.

Tyler Thompson  
Prosecuting Attorney  
Osceola County  
410 West Upton Avenue  
Reed City, MI 49677  
231.832.3226  
231.832.6147  
[REDACTED]

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**From:** French, Geoffrey (MSP) [mailto:[REDACTED]]  
**Sent:** Monday, November 02, 2015 3:55 PM  
**To:** Stecker, Ken (AG); Wilson, Jennifer (MSP)  
**Cc:** Tyler Thompson  
**Subject:** RE: THC blood uncertainty

Ken,

OK, no problem. I will call Tyler right away.

Geoff

Geoffrey French  
Toxicology Unit Supervisor  
Michigan State Police Forensic Laboratory  
7320 N. Canal Road  
Lansing, MI 48913  
(517) 819-4581

“A PROUD tradition of SERVICE through EXCELLENCE, INTEGRITY, and COURTESY”

---

**From:** Stecker, Ken (AG)  
**Sent:** Monday, November 02, 2015 2:59 PM  
**To:** French, Geoffrey (MSP); Wilson, Jennifer (MSP)  
**Cc:** [REDACTED]  
**Subject:** Fw: THC blood uncertainty

Hi Jennifer and Geoff,

I hope all is well! Any thoughts you may have for Tyler is greatly appreciated.

---

**From:** Tyler Thompson <[REDACTED]>  
**Sent:** Monday, November 2, 2015 2:54:55 PM  
**To:** Stecker, Ken (AG)  
**Subject:** THC blood uncertainty

Ken:

[REDACTED]

Tyler Thompson  
Prosecuting Attorney  
Osceola County  
410 West Upton Avenue  
Reed City, MI 49677  
231.832.3226  
231.832.6147  
[REDACTED]

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## Wilson, Jennifer (MSP)

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**From:** Etue, Kriste (MSP)  
**Sent:** Wednesday, December 26, 2012 11:33 AM  
**To:** Michaud, Gregoire (MSP)  
**Cc:** Atkinson, Daniel (MSP); Zarotney, Greg (MSP); Banner, Shanon (MSP); Hawkins, Christopher (MSP); French, Geoffrey (MSP); Wilson, Jennifer (MSP); Daniels, Gary (MSP); Marier, Scott (MSP)  
**Subject:** Re: Operating Under the Influence of Marijuana

Can you please call Dan and let him know this?

You might want MACP and MSA know as well.

Be sure our Gov. Relations (Sgt. Hawkins and Gill) have this info too.

Thanks

Sent from my iPhone

On Dec 24, 2012, at 7:12 PM, "Michaud, Gregoire (MSP)" <[REDACTED]> wrote:

Col.,

We've already met with the Ingham Co Pros Office and have all but completed the response for their use in any future court proceedings. Much of this response can be used in our letter to the Sheriff's Association.

Have a very Merry X-mas!

Greg

Capt. Greg Michaud

Michigan State Police

Forensic Science Division

7320 North Canal Rd

Lansing, MI 48913

Office:(517)322-6155

Mobile:[REDACTED]

---

**From:** Etue, Kriste (MSP)

**Sent:** Monday, December 24, 2012 12:53 PM

**To:** Michaud, Gregoire (MSP); Atkinson, Daniel (MSP)

**Cc:** Zarotney, Greg (MSP); Banner, Shanon R. (MSP); Hawkins, Christopher (MSP)

**Subject:** Fwd: Operating Under the Influence of Marijuana

Can we prepare a response on this.

Thanks

Sent from my iPhone

Begin forwarded message:

**From:** Daniel Pfannes <[REDACTED]>  
**Date:** December 24, 2012, 12:42:56 PM EST  
**To:** "Etue, Kriste (MSP)" <[REDACTED]>  
**Subject:** FW: Operating Under the Influence of Marijuana

Colonel: Please see the article below. Are you able to provide us with any insight that we may share with our association's members? Thank you in advance.

*Undersheriff Daniel Pfannes FBI/NA #247*

*Wayne County Sheriff's Office*

*4747 Woodward Ave. Detroit, MI 48201*

*(313) 224-2232 Office*

*(313) 224-8535 Fax*

[REDACTED]

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**From:** Daniel Pfannes  
**Sent:** Monday, December 24, 2012 12:40 PM  
**To:** Bobby Stevenson; George Basar; Martin Underhill; Milt Agay; Kim Eddie  
[REDACTED]; Neal Rossow; James Carmody [REDACTED]  
'John Stressman'  
**Subject:** Operating Under the Influence of Marijuana

- FYI. I am going to send an email to Colonel Etue to see if she can supply us with any additional information.

## **Metro and State**

December 24, 2012 at 1:00 am

# **Court strikes pot blood test**

## **It rules state didn't prove test accurate**

- By Mike Martindale

- [The Detroit News](#)
- [4 Comments](#)

*Mason*— A Mason district judge has ruled blood tests on a motorist to determine marijuana presence cannot be used in a case because the head of the Michigan State Police crime laboratory's toxicology unit couldn't convince the judge that testing procedures were "scientifically sound."

State police crime labs analyze blood and urine samples for blood and alcohol, often in tests of Michigan's driving-under-the-influence laws.

The lab annually performs about 13,000 tests for alcohol and 2,500 tests for drugs. Defense attorney Michael Nichols, who represents the motorist, said the Ingham County case could affect prosecutions statewide of drivers suspected of operating under the influence of marijuana.

"We believe this (ruling) is earth-shattering and hope it will lead to striking down any case in which a driver's suspected intoxication by marijuana is at issue," Nichols said. The Ingham County Prosecutor's Office has not indicated if it will appeal the ruling of Mason's 55th District Judge Thomas P. Boyd. Jury selection in the case, which includes charges of failing to stop at the scene of an accident and possession of a controlled substance, is set for Jan. 7, according to Nichols' office. The charges are misdemeanors carrying penalties of up to 93 days in jail and fines.

The Prosecutor's Office would not comment.

The judge's ruling was on a technical scientific issue that has been resolved and won't likely affect other marijuana-related cases, said Capt. Gregoire Michaud, head of the state police Forensic Science Division.

"Some defense attorneys may try to use this in future trials, but the fact remains that we only need to show the presence of the drug," Michaud said in an email.

On Dec. 10, Boyd issued the eight-page ruling involving a May 4, 2011, case in which an Ingham County deputy pulled over an SUV matching the description of a vehicle that had earlier rear-ended another vehicle on Interstate 96 and left the scene.

Blood was drawn from the SUV driver, Jon Goodburn, after deputies found a marijuana pipe and small quantity of marijuana while conducting a warrantless search of the SUV. Goodburn consented to the search, according to deputies.

Goodburn's blood subsequently tested positive for the chemical compound THC, an active ingredient of marijuana that causes intoxication in smokers, police said.

Nichols said he challenged whether the state police lab's testing was consistent with scientific standards and contended it couldn't be validated "due to the presence of discrepancies in control testing and an absence of documentation explaining these discrepancies."

While Boyd denied Nichols' motion to suppress evidence seized from Goodburn's SUV, the judge agreed to throw out the results of the blood test.

"The Court does not find that the procedures of the MSP Lab are inadequate or beneath currently accepted standards," Boyd wrote in his opinion. "Specifically, the Court finds that questions raised by the defense were not answered in such a way that leads the Court to conclude that the offered evidence is scientifically sound."

The head of the state police toxicology unit, Geoffrey French, appeared before Boyd to explain lab procedures, but Boyd's opinion said French was not persuasive.

Countering French's representations at the court hearing was Dr. Andreas Stolz, head of operations at the National Superconducting Cyclotron at Michigan State University. Stolz told Boyd he and others would not accept results of the state police tests for THC for a number of reasons, including that they lacked an acceptable margin of error and that data were not arrived at in a manner recognized by the American Society of Crime Laboratory Directors, a national group that recently certified the state labs.

Michaud said a "variance measurement" was inaccurate and done by an employee who no longer works for the toxicology unit. The unit has changed its procedures on what he called uncertainty measurements.

"The truth of the matter is that this uncertainty measurement doesn't impact the presence of the drug, which is all the law requires," Michaud said.

From The Detroit News:  
<http://www.detroitnews.com/article/20121224/METRO/212240337#ixzz2FzMkLRG8>

*Undersheriff Daniel Pfannes FBI/NA #247*

*Wayne County Sheriff's Office*

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**From:** [Fillinger, Nicholas \(MSP\)](#)  
**To:** [Wilson, Jennifer \(MSP\)](#); [Nye, Jeffrey V. \(MSP\)](#)  
**Cc:** [Norris, Lindsay \(MSP\)](#)  
**Subject:** RE: CR 31197051  
**Date:** Thursday, February 6, 2020 4:53:09 PM  
**Attachments:** [ISO 17025 - 5.10.3.1.pdf](#)  
[Ms. Mary Beebe - 09052019.pdf](#)  
[Mr. Zachary W. Stempien - 09232019.pdf](#)

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I don't have anything regarding the accrediting agency and their response to an unreported MU for THC. That information doesn't exist because it is not a requirement to report it for THC, thus the accrediting agency would not take issue with it.

I do have a couple of additional letters, that I've attached. That's why I wrote a letter to PAAM, because I was trying to preemptively get something out there before I ended up writing 50 of them.

I have nothing regarding P v Feezel.

Nicholas Fillinger  
Toxicology Technical Leader  
Michigan State Police  
Forensic Science Division  
7320 N Canal Rd  
Lansing, MI 48913  
517-819-4541

---

**From:** Wilson, Jennifer (MSP) <[REDACTED]>  
**Sent:** Thursday, February 6, 2020 4:41 PM  
**To:** Nye, Jeffrey V. (MSP) <[REDACTED]>; Fillinger, Nicholas (MSP) <[REDACTED]>  
**Subject:** FW: CR 31197051

Good afternoon Jeff and Nick,

I am forwarding a FOIA request we have received in the portal from Komorn Law, requesting a number of documents and communications regarding THC and THC-COOH, specifically the reporting of uncertainty and communications with PAAM regarding those subjects. Can you please review the attached request and provide requested documents by 2/10/2020. Please let me know if an extension is needed and I will request one.

Thanks,

Jennifer Wilson  
Assistant Laboratory Director  
Forensic Science Division  
Michigan State Police

7320 N. Canal Rd.  
Lansing, MI 48913  
TX: 517-719-5341

---

**From:** Norris, Lindsay (MSP) <[REDACTED]>  
**Sent:** Thursday, February 6, 2020 4:30 PM  
**To:** Wilson, Jennifer (MSP) <[REDACTED]>  
**Subject:** CR 31197051

Jen,

Attached is a FOI request we've received that asks for a lot of documents relating to the uncertainty budget of THC in the Tox Unit. I've also attached a letter from Nick to PAAM on the topic which I was planning to provide. Would Nick or Jeff have anything additional?

Thanks,

*Lindsay Norris*  
Forensic Technician  
Forensic Science Division  
Michigan State Police  
7320 N. Canal Road  
Lansing, MI 48913  
TX: 517-719-0432

"A PROUD tradition of SERVICE through EXCELLENCE, INTEGRITY, and COURTESY."

**From:** [Norris, Lindsay \(MSP\)](#)  
**To:** [French, Geoffrey \(MSP\)](#); [Gill, Greta \(MSP\)](#)  
**Subject:** FW: CR 31197051  
**Date:** Friday, February 7, 2020 8:08:00 AM  
**Attachments:** [CR 31197051.pdf](#)

---

Geoff & Greta,

Please see the below email from Jen to Nick and Jeff about the MU and THC/THC-COOH. I have the letter Nick wrote to PAAM plus a few others he sent me but would you guys have anything additional?

Thanks,

*Lindsay Norris*  
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TX: 517-719-0432

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**From:** [Gill, Greta \(MSP\)](#)  
**To:** [Norris, Lindsay \(MSP\)](#); [French, Geoffrey \(MSP\)](#)  
**Subject:** RE: CR 31197051  
**Date:** Friday, February 7, 2020 8:34:46 AM  
**Attachments:** [THC MU.pdf](#)

---

Lindsay,

I combined a couple that I had, one of which contained an attachment of a motion that was being filed on one of Diane's cases.

Thanks,

Greta

---

**From:** Norris, Lindsay (MSP) <[REDACTED]>  
**Sent:** Friday, February 7, 2020 8:09 AM  
**To:** French, Geoffrey (MSP) <[REDACTED]>; Gill, Greta (MSP) <[REDACTED]>  
**Subject:** FW: CR 31197051

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*Lindsay Norris*  
Forensic Technician  
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Forensic Science Division  
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*Lindsay Norris*  
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7320 N. Canal Road  
Lansing, MI 48913  
TX: 517-719-0432

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**From:** [French, Geoffrey \(MSP\)](#)  
**To:** [Gill, Greta \(MSP\)](#); [Norris, Lindsay \(MSP\)](#)  
**Subject:** RE: CR 31197051  
**Date:** Friday, February 7, 2020 8:53:09 AM  
**Attachments:** [image001.png](#)

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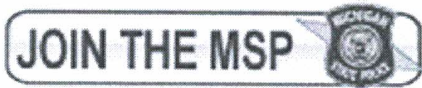
Lindsay,

I don't think that I have any additional information to add. I have had no communication with PAAM regarding uncertainty of measurement and how it is reported for THC/THC-COOH.

Thanks,  
Geoff

Geoffrey French  
Toxicology Unit Supervisor  
Forensic Science Division  
Michigan State Police  
7320 N. Canal Road  
Lansing, MI 48913  
517-819-4581

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**From:** Gill, Greta (MSP) <[GillG@michigan.gov](mailto:GillG@michigan.gov)>  
**Sent:** Friday, February 7, 2020 8:34 AM  
**To:** Norris, Lindsay (MSP) <[REDACTED]>; French, Geoffrey (MSP) <[FrenchG@michigan.gov](mailto:FrenchG@michigan.gov)>  
**Subject:** RE: CR 31197051

Lindsay,

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Thanks,  
Greta

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**From:** Norris, Lindsay (MSP) <[NorrisL@michigan.gov](mailto:NorrisL@michigan.gov)>  
**Sent:** Friday, February 7, 2020 8:09 AM  
**To:** French, Geoffrey (MSP) <[REDACTED]>; Gill, Greta (MSP) <[REDACTED]>  
**Subject:** FW: CR 31197051

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Thanks,

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TX: 517-719-0432

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STATE OF MICHIGAN  
DEPARTMENT OF STATE POLICE  
Forensic Science Division

GRETCHEN WHITMER  
GOVERNOR

COL. JOSEPH M. GASPER  
DIRECTOR

January 15, 2019

Mr. Dillon Salge  
Oakland County Prosecutor's Office  
1200 N. Telegraph Rd.  
Pontiac, Michigan 48341

Dear Mr. Salge:

We recently had a conversation via telephone regarding measurement uncertainty and how it relates to toxicology reporting. I explained how the laboratory is accredited by the ANSI-ASQ National Accreditation Board (ANAB) to ISO 17025:2005. Maintaining that accreditation means that we must adhere to the requirements set forth in ISO 17025:2005, the "General requirements for the competence of testing and calibration laboratories".

There are hundreds of requirements that the laboratory must adhere to, however the requirement that you are interested in is 5.10.3.1.

- 5.10.3.1 *"In addition to the requirements listed in 5.10.2, test reports shall, where necessary for the interpretation of the test results, include the following:"*
- c) *"where applicable a statement on the estimated uncertainty of measurement; information on uncertainty is needed in test reports when it is relevant to the validity or application of the test results, when a customer's instruction so requires, or when the uncertainty affects compliance to a specification limit."*

When considering 5.10.3.1 c), three separate components are present that dictate whether the laboratory must report measurement uncertainty.

First, when it is relevant to the validity or application of the test results. Measurement uncertainty is not required for the validity of the toxicology discipline's test results. The validity of the test result is demonstrated through validation of the analytical testing process.

Second, when a customer's instruction so requires. The toxicology discipline's primary customers are the law enforcement agencies that submit samples, and, to a lesser extent, the prosecuting attorneys. Neither the agencies nor the prosecuting attorneys have requested this information to be included on the discipline's reports.

Third, when the uncertainty affects compliance to a specification limit. In the case of alcohol, there are specification limits, 0.08 g/100 mL and 0.17 g/100 mL. The toxicology discipline reports measurement uncertainty with all alcohol cases because of these specification limits. There are no specification limits associated with THC or THC-COOH, and thus no requirement to report measurement uncertainty.

Sincerely,

Nicholas Fillinger  
Technical Leader  
Toxicology Discipline



STATE OF MICHIGAN  
DEPARTMENT OF STATE POLICE  
LANSING

RICK SNYDER  
GOVERNOR

COL. KRISTE KIBBEY ETUE  
DIRECTOR

December 26, 2012

Capt. Greg Michaud  
Forensic Science Division  
Michigan State Police  
7320 N. Canal Road  
Lansing, Michigan 48913

Subject: Response to Judge Boyd's Opinion and Order in People v [REDACTED]

Dear Captain Michaud,

I am writing to respond to Judge Thomas Boyd's Opinion and Order in the case of People of the State of Michigan v [REDACTED] heard in the 55<sup>th</sup> District Court in the county of Ingham, dated December 10, 2012. There are four main issues that I believe necessitate a response in regard to the conclusions drawn and articulated in this opinion.

- Validation of the protocol for quantification of THC and metabolite in blood.
- Measurement Uncertainty as it relates to the protocol for quantification of THC in blood.
- Discrepancies in control testing for this protocol and absence of documentation explaining these discrepancies.
- Dr. Stolz's interpretation of our protocol and issues from our ASCLD/LAB assessment.

The method for quantification of THC and THC metabolite in blood was created, validated and placed into service by Dr. Michele Glinn, who is the former supervisor of the Toxicology subunit. This method has been in place for approximately eleven years. When asked to provide validation data for this method, Mr. Geoffrey French, the current supervisor of the Toxicology subunit, was unable to locate any raw data associated with this method validation. As Dr. Glinn is no longer employed with the Forensic Science Division, the data was not located. Absence of raw validation data for a procedure currently in use in the laboratory does not invalidate use of that procedure. The Toxicology unit has been analyzing blood samples using this procedure for eleven years. Mr. Mike Nichols, attorney for the defendant, challenged our limit of detection (LOD) and limit of quantification (LOQ) for this methodology. Our current LOQ for THC in blood is 1 ng/ml. This is the lowest value at which THC will be reported positive. If THC is detected and identified below this LOQ, it will not be reported. Every batch of cases analyzed using this method is extracted with a calibration curve and control samples. The lowest calibrator on the calibration curve for THC has a value of 1 ng/ml. A negative blood sample is also extracted as one of the known control samples. This means that in every batch of THC cases analyzed, the scientist performing the analysis is able to differentiate between a negative (the negative blood sample) and a positive case at 1 ng/ml (the lowest calibrator on the calibration curve). If the analyst was unable to do either of these two things, the run would not be valid and would be repeated. The original validation data from eleven years ago could not be located, but the scientist performing THC analysis differentiates a negative sample from a positive at the cutoff level of reporting for every run analyzed in this laboratory. I am currently evaluating our historical calibrator and control data and compiling a statistical analysis of that data that I believe will fulfill any future requests for validation data. This statistical analysis will show that our calibration model is strong and that all requirements for accuracy and precision in our control samples are being met by our current methodology.

Measurement Uncertainty is defined as an estimate of the range of values within which the measured quantity is likely to lie. We are now required by ASCLD/LAB to determine the measurement uncertainty

for all of our quantitative procedures performed in the Toxicology Unit. In Judge Boyd's opinion, he wrote that Dr. Stolz stated the following:

Dr. Stolz explained that the MSP has determined the margin of error for the testing of THC to be 8%. However, he stated that the MSP Lab does not articulate this acceptable margin for error in terms of nanograms per milliliter (ng/ml). Further, three out of the four sample tests were outside of the acceptable margin of error.

This is not an accurate representation of measurement uncertainty, which is simply a statistical calculation based on historical control data and all possible variability in measurements contained in the procedure for the quantitative analysis of THC in blood. At the time that the THC analysis in this case was performed and reported, there was an uncertainty declaration printed on our reports for THC results. It stated:

Uncertainty of measurement is approximately 7.98% at the 99.7% confidence level.

This measurement uncertainty was prepared and added to our reports by Dr. Michele Glinn. When I began reviewing our historical data for THC I was unable to find records of how these calculations were made by Dr. Glinn. After consulting with a laboratory auditor and doing some research on measurement uncertainty calculations, I recalculated the measurement uncertainty for THC in blood in our laboratory and found it to be 35%. This result, as well as the calculations that led to it, are detailed in our protocol *1.9 Measurements of Uncertainty*. A simpler way to understand what this means is that if I performed a THC analysis on a blood sample and determined the THC level to be 11 ng/ml, and then performed that analysis 1000 times, I would expect that 997 of those values obtained would be 11 ng/ml +/- 35%. It is a statistical statement of uncertainty in measurement as it relates to the obtained blood result. It in no way changes the level of the quantitative blood result, and it is not an "acceptable margin of error" as stated by Dr. Stolz. Regardless of what the measurement uncertainty is calculated to be, the result is still 11 ng/ml. Unfortunately, I did not complete the new measurement uncertainty protocol until August of 2012, and Mr. French did not have the accurate measurement uncertainty available to him at the time that he testified in this case. In addition to this, Dr. Stolz also states that we did not articulate our measurement uncertainty in ng/ml. We are not required at this time by ASCLD/LAB to report measurement uncertainty in ng/ml. It is a +/- calculation expressed as a percentage. The actual measurement uncertainty in ng/ml will be different for every different quantitative result obtained. For instance, 35% of 10 ng/ml is a different value than 35% of 20 ng/ml. It is for this reason that measurement uncertainty is reported as a percentage, and this is standard in the scientific community.

Dr. Stolz also called into question our control testing and what he considered to be discrepancies in that testing. First I would like to address the statement made in the last line of the paragraph quoted above, that three out of the four sample tests were outside of the acceptable margin of error. As I have already stated, referring to a measurement uncertainty declaration as "acceptable margin of error" is absolutely incorrect. I can only assume that the three out of the four sample tests that he is referring to in that statement are the values of the four calibrators that make up the calibration curve. The target values for these calibrators are 1, 10, 25, and 100 ng/ml. The measured values of these calibrators in this case, truncated to one decimal were 1.4, 7.8, 30.1, and 98.9 ng/ml. One does not establish the acceptance of a calibration curve by examining the measured values of each of the points. Rather, one establishes its acceptance based on all four points together. This is what is referred to as the R<sup>2</sup> value of the curve. Section 4.3.4.4.9.1 in procedure *4.3.4 Quantitative Confirmation for Cannabinoids in Blood* states:

A standard curve should be generated with  $R^2 \geq 0.95$  for each analyte.

The R<sup>2</sup> value generated on this calibration curve was 0.9946. This far exceeds the requirement set forth in protocol 4.3.4.

Judge Boyd's opinion questions how a discrepancy in the results of one of our positive control samples was handled and asserts that this calls into question our quantitative results. He states:

Proper procedure for this test includes documentation by a supervisor if that test results in a greater variance than 20% from expected. This documentation is to explain why the positive ("control") test with known values was read incorrectly. This does not prove that the test in the instant case is wrong, but it does suggest that there should be an explanation for why the known substance amount was not measured correctly. In this case, the positive test consisted of THC being added to human blood samples at a known concentration of 5 ng/ml. The machine gave a result of 2.63 ng/ml. This result does not fall within the 20% variance. It should have been any amount from 4 ng/ml to 6 ng/ml. It did not, and the procedure calls for a supervisor to determine the cause of this and produce a document explaining why this happened. However no documentation was provided. As a result, Dr. Stolz asserts that the general scientific community would be left to guess as to how the positive test was measured to be so different.

The low positive THC control in this case was out of range at 2 ng/ml, with a target value of 5 ng/ml. However, the interpretation of how those results must be dealt with per our protocol was interpreted incorrectly. From section 4.3.4.4.9.2 of procedure *4.3.4 Quantitative Confirmation of Cannabinoids in Blood* states:

Control values should be returned which are within 20% of the target value. If they are not within this range, discuss with supervisor. A determination will be made whether the cause for variability lies with that particular sample or with the entire analytical run. If it is the latter, the run will be repeated.

There is no requirement in our protocol for "documentation by a supervisor" or "for a supervisor to determine the cause of this and produce a document explaining why this happened." Looking at the control values for this run, I would conclude that the cause for variability was with that particular THC level in the low control only. I base this on the fact that the control values were in range for the THC high control (target value of 20 ng/ml, actual value of 20 ng/ml) and both control values for the THC-COOH were in range (target values of 10 and 50 ng/ml, actual values of 10 and 51 ng/ml). I would argue that Dr. Glinn approved these results by placing her initials and the date on the control packet given to her by the analyst and signing off on it. As our protocol requires no additional documentation, I am unclear as to why Judge Boyd and Dr. Stolz believe that we are not in compliance with our own protocol in this case. Judge Boyd states further:

The level of quantification for THC has been described as 1 ng/ml, but the results of the control tests indicate that this may not be the case. The record in this case does not include an explanation for the MSP Lab's level of quantification. Proof for this standard has not been shown as it should have been. Deviant test results call this level into question. There may be an explanation, but since it was not made available, the proper procedure has not been followed and we are, as a result, left guessing about the level of quantification.

The results of the controls have nothing to do with our limit of quantification. As stated earlier, the analyst performing this analysis differentiated between a negative sample and the low calibrator, which is a level of 1 ng/ml. I believe this alone shows proof of this standard. One control was out of range (low), but signed off on by Dr. Glinn. Judge Boyd states that the proper procedure has not been followed. I disagree, and I believe I have shown with the excerpt from our protocol that all necessary documentation was performed in this case. Judge Boyd states that we are left guessing as to the level of quantification. Even if all of my previous arguments were thrown out, I believe we still have clearly identified the presence of THC in this blood sample. A value of 11 ng/ml is nowhere near our limit of quantification of 1 ng/ml and is more than enough evidence to prove the presence of THC in this blood sample.

Finally, I would like to address the last paragraph on page 6 of Judge Boyd's ruling, which deals with Dr. Stolz's interpretation of a finding from our ASCLD/LAB assessment. Judge Boyd states:

Dr. Stolz also challenges the MSP Lab's representation of this data. He claims that it was not done in a manner that was deemed appropriate by the American Society of Crime Laboratory Directors (ASCLD) in their audit of the MSP Lab. ASCLD recognized that the MSP was

representing their data using only one calibration and forced their linear representation through the origin. This forces that line to be drawn through a point that is not measured and it gives unnecessary weight to that point (0,0). Only the slope of the line can be changed. The ASCLD suggests that the better method is to draw the line from a different spot on the axis that will allow for a second parameter and a more accurate representation of the data. This is easily correctable and a generally more acceptable method of displaying data in the scientific community.

This entire paragraph refers to a finding in our audit by ASCLD/LAB that dealt with our procedure for identifying and quantifying methanol, isopropanol and acetone. Each of those analytes was quantified using a one-point calibration curve forced through zero. The requirement for a multi-point curve for those analytes was a new requirement with this assessment cycle. At the time of the assessment, this lab stopped reporting all quantified results for methanol, isopropanol and acetone. We will resume quantification of those analytes at the start of 2013 with our new method that provides a four point curve for all three of those analytes. The inclusion of this finding in this THC argument is improper. The THC calibration curve used for this analysis was a four point calibration curve. The levels of those four calibrators were previously mentioned in this response. The inclusion of this assessment finding only serves to confuse this issue, as it refers to a completely different protocol than the one being challenged.

In conclusion, I believe the results in this case to be reliable. I believe all requirements from protocol 4.3.4 were met. The uncertainty declaration on the report was not accurate, and has since been corrected, but this in no way changes the result of 11 ng/ml that was obtained in this case. I am currently evaluating our historical calibration and control data to compile statistical analyses showing calibration model, accuracy and precision calculations. I believe these statistics will suffice in the future as proof of our method validity. I will also be having our analysts run replicates of samples at our LOQ to demonstrate accuracy at the low end of our calibration curve. I am confident the procedure for quantifying THC in blood specimens is strong and that all reported results can be successfully defended from any challenges in the future.

Sincerely,

Jennifer Wilson  
Acting Program Coordinator  
Toxicology Unit  
Forensic Science Division  
Michigan State Police



STATE OF MICHIGAN  
DEPARTMENT OF STATE POLICE  
Forensic Science Division

GRETCHEN WHITMER  
GOVERNOR

COL. JOSEPH M. GASPER  
DIRECTOR

September 23, 2019

Mr. Zachary W. Stempien, Chief Assistant Prosecutor  
Branch County, Michigan  
31 Division St.,  
Coldwater, MI 49036

Dear Mr. Stempien,

We recently had a conversation via telephone regarding measurement uncertainty and how it relates to toxicology reporting. I offered to write an explanation of why the Michigan State Police Toxicology Discipline does not report measurement uncertainty for THC. The Forensic Science Division is accredited by the ANSI (American National Standards Institute) National Accreditation Board (ANAB) to ISO 17025:2005. Maintaining that accreditation means that we must adhere to the requirements set forth in ISO 17025:2005, the "General requirements for the competence of testing and calibration laboratories".

There are hundreds of requirements that the laboratory must adhere to, however the requirement that you are interested in is 5.10.3.1.

- 5.10.3.1 "In addition to the requirements listed in 5.10.2, test reports shall, where necessary for the interpretation of the test results, include the following:"
- c) "where applicable a statement on the estimated uncertainty of measurement; information on uncertainty is needed in test reports when it is relevant to the validity or application of the test results, when a customer's instruction so requires, or when the uncertainty affects compliance to a specification limit."

When considering 5.10.3.1 c), three separate components are present that dictate whether the laboratory must report measurement uncertainty.

First, when it is relevant to the validity or application of the test results. Measurement uncertainty is not required for the validity of the toxicology discipline's test results. The validity of the test result is demonstrated through validation of the analytical testing process. The toxicology discipline does not oversee the application of the test result. Our customers are responsible for the application of the test result.

Second, when a customer's instruction so requires. The toxicology discipline's primary customers are the law enforcement agencies that submit samples, and, to a lesser extent, the prosecuting attorneys. Neither the agencies nor the prosecuting attorneys have requested this information to be included on the discipline's reports.

Third, when the uncertainty affects compliance to a specification limit. In the case of alcohol, there are specification limits, 0.08 g/100 mL and 0.17 g/100 mL. The toxicology discipline reports measurement uncertainty with all alcohol cases because of these specification limits. There are no specification limits associated with THC or THC-COOH, and thus no requirement to report measurement uncertainty.

Sincerely,

Nicholas Fillinger  
Technical Leader  
Toxicology Discipline



STATE OF MICHIGAN  
DEPARTMENT OF STATE POLICE  
Forensic Science Division

GRETCHEN WHITMER  
GOVERNOR

COL. JOSEPH M. GASPER  
DIRECTOR

September 5, 2019

Ms. Mary Beebe, Chief Prosecuting Attorney  
Roscommon County Prosecutor's Office  
500 Lake Street  
Roscommon, MI 48653-7690

Dear Ms. Beebe:

We recently had a conversation via telephone regarding measurement uncertainty and how it relates to toxicology reporting. I offered to write an explanation of why the Michigan State Police Toxicology Discipline does not report measurement uncertainty for THC. The Forensic Science Division is accredited by the ANSI (American National Standards Institute) National Accreditation Board (ANAB) to ISO 17025:2005. Maintaining that accreditation means that we must adhere to the requirements set forth in ISO 17025:2005, the "General requirements for the competence of testing and calibration laboratories".

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Sincerely,

Nicholas Fillinger  
Technical Leader  
Toxicology Discipline





STATE OF MICHIGAN  
DEPARTMENT OF STATE POLICE  
Forensic Science Division

GRETCHEN WHITMER  
GOVERNOR

COL. JOSEPH M. GASPER  
DIRECTOR

September 23, 2019

Mr. Kenneth Stecker (PACC-Contractor)  
Ms. Kinga Canike (PACC-Contractor)

Dear Mr. Stecker and Ms. Canike,

Recently, I have had several conversations with prosecuting attorneys regarding measurement uncertainty and how it relates to toxicology reporting. For future reference, I would like to provide an explanation of why the Michigan State Police Toxicology Discipline does not report measurement uncertainty for THC. The Forensic Science Division is accredited by the ANSI (American National Standards Institute) National Accreditation Board (ANAB) to ISO 17025:2005. Maintaining that accreditation means that we must adhere to the requirements set forth in ISO 17025:2005, the "General requirements for the competence of testing and calibration laboratories".

There are hundreds of requirements that the laboratory must adhere to, however the requirement of interest is 5.10.3.1.

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Second, when a customer's instruction so requires. The toxicology discipline's primary customers are the law enforcement agencies that submit samples, and, to a lesser extent, the prosecuting attorneys. Neither the agencies nor the prosecuting attorneys have requested this information be included on the discipline's reports.

Third, when the uncertainty affects compliance to a specification limit. In the case of alcohol, there are specification limits, 0.08 g/100 mL and 0.17 g/100 mL. The toxicology discipline reports measurement uncertainty with all alcohol cases because of these specification limits. There are no specification limits associated with THC or THC-COOH, and thus no requirement to report measurement uncertainty.

Sincerely,

Nicholas Fillinger  
Technical Leader  
Toxicology Discipline

## Gill, Greta (MSP)

---

**From:** Bennett, Diane (MSP)  
**Sent:** Thursday, September 5, 2019 10:06 AM  
**To:** Gill, Greta (MSP)  
**Subject:** FW: Motion to Exclude THC Blood Results  
**Attachments:** Defense Motion to Exclude Blood.pdf

---

**From:** Bennett, Diane (MSP)  
**Sent:** Thursday, September 05, 2019 9:56 AM  
**To:** Jordyn Geiger (MSP) <[REDACTED]>; Kellogg, Samantha (MSP) <[REDACTED]>; Gendhar, Brina (MSP) <[REDACTED]>  
**Subject:** FW: Motion to Exclude THC Blood Results

Another motion to throw out a THC report because the uncertainty statement and range of values are not on our reports.  
~Diane

---

**From:** French, Geoffrey (MSP)  
**Sent:** Wednesday, September 04, 2019 4:55 PM  
**To:** Bennett, Diane (MSP) <[REDACTED]>  
**Subject:** FW: Motion to Exclude Blood

Diane,

I'm forwarding this to you because you did the cannabinoid confirmation on this case.

I left a voice mail message for Mr. Stempien. I will discuss this with you after I get a chance to discuss with Mr. Stempien.

Thanks,  
Geoff

Geoffrey French  
Toxicology Unit Supervisor  
Michigan State Police Forensic Laboratory  
7320 N. Canal Road  
Lansing, MI 48913  
517-819-4581

“A PROUD tradition of SERVICE through EXCELLENCE, INTEGRITY, and COURTESY”

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**From:** Zachary Stempien <[REDACTED]>  
**Sent:** Wednesday, September 04, 2019 3:31 PM

**To:** French, Geoffrey (MSP) <[REDACTED]>

**Subject:** Motion to Exclude Blood

Geoff,

Attached is a motion filed by a Defendant in a OWI-Marijuana case. Frankly, the science on this motion is over my head. I was hoping you could review and give me some insight into your thought. At the hearing, I may have to have you or the scientist testify. Diane Bennett is the scientist. I also cc'd her as well.

Zachary W. Stempien  
Chief Assistant Prosecutor  
Branch County, Michigan  
31 Division St.,  
Coldwater, MI 49036  
517-279-4319



STATE OF MICHIGAN  
IN THE 3A JUDICIAL DISTRICT COURT

PEOPLE OF THE STATE OF MICHIGAN,

PLAINTIFF,

V

FILE NO. 2019-0595-SD

HON. BRENT R. WEIGLE

CHARGE. OWPD,OWI

DEFENDANT.

ATTORNEY FOR PLAINTIFF:  
BRANCH COUNTY PROSECUTING ATTORNEY  
RALPH W. KIMBLE (P64054)  
31 Division Street  
Coldwater, Michigan 49036  
(517) 279-4319

ATTORNEY FOR DEFENDANT:  
THE COVERT LAW FIRM, PLLC  
BY: JOSHUA M. COVERT (P75733)  
1129 North Washington Ave  
Lansing, Michigan 48906  
(517) 512-8364

MOTION TO EXCLUDE EVIDENCE OF BLOOD ANALYSIS  
IN VIOLATION OF MRE 702 DAUBERT

COVERT LAW FIRM

Joshua M. Covert  
James R. McGillie

1129 North Washington Ave  
Lansing, Michigan 48906

(517) 512-8364

NOW HERE COMES Defendant, [REDACTED] through  
her attorney, Joshua M. Covert, The Covert Law Firm, PLLC, and states the following:

1. [REDACTED] is charged with violating MCL 257.625(8) and MCL 257.625(1)
2. The prosecuting attorney served on [REDACTED] a lab report claiming that the Michigan State Police lab completed an analysis on February 19, 2019 that detected 27 ng/mL of THC in her blood and 97 ng/mL of the metabolite, carboxy-THC;

3. Upon information and belief, the government intends to introduce the results of the analysis performed on [REDACTED] blood;

4. Scientific evidence is only admissible in Michigan if it meets a 4-part test; the 4th part of which is that the evidence reflects a reliable application of the principles and methodologies of a reliable principle and method by a qualified expert to the facts of the case. MRE 702. *Daubert v. Merrell Dow Pharmaceuticals, Inc*, 509 US 579; 113 SCt 2786 (1993);

5. This motion specifically seeks to challenge the application of the principles and methods of gas chromatography / mass spectrometry to the facts of this case but not the principles and methods of GC/MS itself as that is a generally-accepted principle and method of science;

6. The result of the blood analysis is inadmissible because it fails to satisfy MRE 702/*Daubert*.;

**WHEREFORE**, Defendant, [REDACTED] respectfully requests this Honorable Court grant the following relief:

- A. Exclude any testimony or the evidence of [REDACTED] blood analysis conducted by the Michigan State Police Laboratory; and
- B. Such other relief that is just, proper and equitable.

#### BRIEF IN SUPPORT

The jury will be misled if it is allowed to hear the evidence of the blood analysis conducted by the Michigan State Police lab in this case. The lab analysis is attached as **Exhibit A**. Exhibit A does not contain any statistical probability that the conclusion in the exhibit is the result of a false positive.

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James R. McGillie

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Lansing, Michigan 48906

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## LAW, ARGUMENT AND APPLICATION

The admissibility of scientific evidence in Michigan is governed by MRE 702 and *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 US 579; 113 SCt 2786 (1993). MRE 702 provides that scientific evidence may only be admitted if “the testimony is the product of reliable principles and methods, and the witness has applied the principles and methods reliably to the facts of the case.” *Daubert* calls for the trial courts to determine whether “the reasoning or methodology underlying the testimony is scientifically valid.” *Daubert* at 592-93.

MRE 702:

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.

Further, MRE 703 provides:

The facts or data in the particular case upon which an expert bases an opinion or inference shall be in evidence. This rule does not restrict the discretion of the court to receive expert opinion testimony subject to the condition that the factual bases of the opinion be admitted in evidence thereafter.

The results of [REDACTED] blood analysis are inadmissible under MRE 702 and *Daubert* because it lacks sufficient facts or data and the witness did not apply the principles and methods reliably to the facts of the case.

MCL 257.625a states that the results of a chemical test of a person's blood, breath or urine:

“at the time alleged as shown by chemical analysis of the person's blood, urine, or breath is admissible into evidence in any civil or criminal

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proceeding and is presumed to be the same as at the time the person operated the vehicle," MCL 257.625a(6)

The statute does not say "must be admitted" or "shall be admitted." The statute enables the court to admit the results of a chemical test. Further, the statute and nearly all of the cases that address challenges to the admissibility of blood or breath tests precede the revision to MRE 702 and 703 when Michigan became a so-called "*Daubert*" state in 2004.

Looking at the report a little differently, the MSP's own uncertainty declaration for its THC method is 35% at a 99.7% confidence level (Please see Uncertainty Declaration attached as **Exhibit B**). This uncertainty has been evaluated by MSP at 5 ng/ml (35% uncertainty at 5 ng/ml =  $5 \pm 1.75$  ng/ml). If the MSP is accurate in estimating its own uncertainty, it has confessed that the report in this case should include a range of values that includes concentrations that fall below its own reporting threshold.

Uncertainty in the quantitation or in other words, the measurement of the concentration, is a little different than uncertainty in the qualitative or in other words, differentiating a false positive from the true presence of the substance of interest (called the analyte). This analysis should be validated and performed within a function of statistical probability. For measurement results close at the instrumental limits it is imperative to determine the probability for a false positive so that the fact finder can evaluate the scientific and legal significance of the measurement result.

Further, evidence that is the product of unreliable principles and methodologies is also inadmissible under MRE 403. MRE 403 provides that evidence is inadmissible if its probative value is substantially outweighed by its prejudicial value. The prejudicial value of allowing a jury to consider the results of unreliable blood analysis that appears

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to show the presence of THC that otherwise could be a false positive substantially outweighs the probative value where the uncertainty is not demonstrated for the fact-finder.

In this case, there is a lab report that leaves [REDACTED] standing right at the gateway of criminality under Michigan's drunk driving statute. That is because it appears at face value to claim that he had "any amount" of a schedule 1 substance in her blood while operating at the time of her arrest. The law sets up people to fail by allowing prosecutions when the lab has declared "any amount" of a schedule 1 drug. In order for someone like [REDACTED] to be declared innocent, the lab's instrumentation would be required to "measure nothing" with a detector system. Yet scientists know that this task is scientifically impossible.

Even the most sophisticated instruments in the world's most renowned laboratories from CERN in Switzerland to the National Superconducting Cyclotron Lab at Michigan State University lack this ability. Any detection instrument including a mass spectrometer will generate a signal regardless of the presence of the analyte. Taking all that into consideration, the lab still generated a report that says "27 ng/mL" – the prosecutor will have the ability to wave Exhibit A before the jury and claim "see – she's guilty!"

#### THE METABOLITE

The statement on Exhibit "A" of 97 ng/mL of THC-COOH is irrelevant for any and all purposes under *People v Feezel*, 486 Mich 184 (2010). Any mention of the metabolite would be misleading, cumulative and otherwise inadmissible as evidence of prior bad acts.

No one can say that 97 ng/mL is anything but the ashes left behind from a fire that

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once generated heat and light but at an unknown degree, that burned out at some unknown point in time prior to when they were observed.<sup>1</sup> Legally, scientifically and pharmacologically the presence of the metabolite is meaningless and should not be heard by the fact-finder at the risk of confusing and misleading the jury to the wrong verdict. The right verdict is based on the law and the facts. In this case, the facts are intertwined with science. Science has spoken – this court need only listen in order to exclude Exhibit A.


### CONCLUSION

For the reasons stated above, [REDACTED] asks for a hearing and further for the evidence of her blood analysis to be excluded for all purposes at trial.

Respectfully submitted,

**THE COVERT LAW FIRM, PLLC**

BY:

  
\_\_\_\_\_  
**JOSHUA M. COVERT (P75733)**  
Attorney for Defendant

Dated: August 21, 2019

**COVERT LAW FIRM**

Joshua M. Covert  
James R. McGillie

1129 North Washington Ave  
Lansing, Michigan 48906

(517) 512-8364

STATE OF MICHIGAN  
IN THE 3A JUDICIAL DISTRICT COURT

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PEOPLE OF THE STATE OF MICHIGAN,

PLAINTIFF,

V

FILE NO. 2019-0595-SD

HON. BRENT R. WEIGLE

CHARGE. OWPD,OWI

DEFENDANT.

---

ATTORNEY FOR PLAINTIFF:  
BRANCH COUNTY PROSECUTING ATTORNEY  
RALPH W. KIMBLE (P64054)  
31 Division Street  
Coldwater, Michigan 49036  
(517) 279-4319

ATTORNEY FOR DEFENDANT:  
THE COVERT LAW FIRM, PLLC  
BY: JOSHUA M. COVERT (P75733)  
1129 North Washington Ave  
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COVERT LAW FIRM

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**EXHIBIT A**



STATE OF MICHIGAN  
DEPARTMENT OF STATE POLICE  
FORENSIC SCIENCE DIVISION

Lansing Forensic Laboratory  
7320 N. Canal Rd  
Lansing, MI 48913  
(517) 284-3491  
FAX (517) 636-4468

LABORATORY REPORT  
Supplemental Report

|                 |                                    |                |                     |
|-----------------|------------------------------------|----------------|---------------------|
| Laboratory No.  | : TX18-15415                       | Record No.     | : 2                 |
| Delivered By    | : First Class Mail                 | Date Received  | : November 29, 2018 |
| Agency          | : Branch County Sheriff Department | Time Received  | : 1:00 p.m.         |
|                 | : 580 Marshall Rd.                 | File Class     | : 5400-2            |
|                 | : Coldwater, MI 49036              | Date Completed | : February 19, 2019 |
| Incident Number | : 7719-18                          |                |                     |

Subject:



Evidence Received:

|              |   |
|--------------|---|
| Container #1 | 1 - Sealed Michigan State Police Specimen kit containing: |
| Item #1      | 1 - 10 mL grey top tube with approx. 8 mL blood           |
| Item #2      | 1 - 10 mL grey top tube with approx. 9 mL blood           |

Results of Analysis:

Item #1:

Detected (quantified):

THC 27 ng/mL  
THC-COOH 97 ng/mL

The submitted specimen(s) were screened for cannabinoids. Preliminary drug screening performed by LCMSMS.

Confirmatory analysis performed by GCMS and/or LCMSMS.

Other toxicology reports associated with this evidence may be pending.

Please contact this laboratory for information regarding additional examinations or if further testing is required.

*Instrumental output and data, library match for spectra data, calibrator and control data are case specific and may not be applicable in every case.*

*This report contains the conclusions, opinions and/or interpretations of the laboratory analyst whose signature appears on this report. This analyst is qualified by education, training, and experience to perform this analysis and does so as part of his or her regular duties. The analysis was conducted in an MSP laboratory accredited under the ANAB International testing program since February 16, 2017.*

*The relevant supporting data upon which the expert opinion or inference was made are available for review/inspection.*

*IMPORTANT: The specimen(s) will be held for 2 years after date received and then be discarded.*

Laboratory No.: TX18-15415  
Agency No.: 7719-18

Record No.: 2

Date of Report: February 19, 2019



Diane Bennett  
Forensic Scientist  
Toxicology Unit  
email: bennettd6@michigan.gov

February 19, 2019

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