

STATE OF MICHIGAN

IN THE 55TH JUDICIAL DISTRICT COURT, INGHAM COUNTY

PEOPLE OF THE STATE OF MICHIGAN,

FILE NO: 12-00012-ST

PLAINTIFF,

HON. THOMAS P. BOYD

V

CHARGE: OPERATING WITH
PRESENCE OF CONTROLLED
SUBSTANCE; FAILING TO STOP
AFTER ACCIDENT; POSS OF MJ

DEFENDANT.

ATTORNEY FOR PLAINTIFF:

STUART J. DUNNINGS, III (P31089)
INGHAM COUNTY PROSECUTING ATTORNEY

303 West Kalamazoo Street
Lansing, Michigan 48993
(517) 483-6108 phone

ATTORNEY FOR DEFENDANT:

THE NICHOLS LAW FIRM, PLLC
BY: MICHAEL J. NICHOLS (P59391)

3452 East Lake Lansing Road
East Lansing, Michigan 48832
(517) 432-9000 phone
(517) 203-4448 fax
mnichols@nicholslaw.net

**OBJECTION TO THE PLAINTIFF'S DATA IN SUPPORT OF ITS METHOD FOR
DETERMINING THC IN BLOOD FOLLOWING THE COURT'S MAY 25, 2012
ORDER**

INTRODUCTION

Data was provided by the Michigan State Police lab on June 18, 2012. The Court directed the defense to timely review the data provided in an Order on May 25, 2012. The Court Order ruled that the Court would infer the answer to its questions:

1. Does the data adequately consider the instrument detection limits and the method detection limits in concluding that the



ATTORNEYS

Michael J. Nichols
Wendy M. Schiller-Nichols
Karen L. Phillips

3452 E. Lake Lansing Road
E. Lansing, MI 48823

Ithaca office:
P.O. Box 188
Ithaca, MI 48847-0188

(517) 432-9000
(800) 550-5892
(517) 203-4448 - facsimile
www.nicholslawyers.com

LOD for THC is 0.1 ng/mL in SIM mode, and that the LOQ for THC is 1 ng/mL in SIM mode?

2. Is the methodology used in making these determinations scientifically sound? (Please see Order dated May 25, 2012)

The Court directed that any objection must be supported by an affidavit of a witness who has testified previously in this case. Dr. Stolz' affidavit is attached (Exhibit A). Also attached is a memorandum authored by Dr. Stolz further detailing his answers (Exhibit B).

Finally, attached please find the transcript from the May 24, 2012 hearing. If the court wishes the transcript from the March 13, 2012 proceeding, please advise as the full transcript was also ordered and provided.

CONCLUSION

For the reasons stated above, [REDACTED] respectfully requests that this Honorable Court suppress the results of blood analysis performed on [REDACTED].

Respectfully Submitted,

THE NICHOLS LAW FIRM, PLLC

Dated: June 29, 2012



MICHAEL J. NICHOLS (P59391)
Attorney for the Defendant
3452 East Lake Lansing Road
East Lansing, MI 48823
(517) 432-9000



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Wendy M. Schiller-Nichols
Karen L. Phillips

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E. Lansing, MI 48823

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EXHIBIT A



ATTORNEYS

Michael J. Nichols
Wendy M. Schiller-Nichols
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Joshua M. Covert

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E. Lansing, MI 48823

Ithaca office:
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AFFIDAVIT OF DR. ANDREAS STOLZ, PhD, IN SUPPORT OF OBJECTION

STATE OF MICHIGAN)
) ss
COUNTY OF INGHAM)

ANDREAS STOLZ, PhD,

1. I make this affidavit on personal knowledge;
2. I reviewed the data that was provided to attorney Nichols on or about June 19, 2012;
3. I reviewed the Order of the Court dated May 25, 2012;



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E. Lansing, MI 48823

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P.O. Box 188
Ithaca, MI 48847-0188

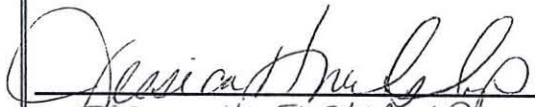
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4. The answer to the Court's 1st question is "no."
5. The answer to the Court's 2nd question is "no". While it can be presumed that the theory of the method is based on sound science, the documents provided do not support an application of the method in a manner that is based on sound science.
6. I prepared a short memorandum of my review of this data. It should be attached to this affidavit by attorney Nichols' office; and
7. Further your affiant sayeth not.



Andreas Stolz, PhD, Affiant

Subscribed and sworn to before me this 29 day of June, 2012.



JESSICA HUELSKAMP
Notary Public, Ingham County
Acting in Ingham County, MI
My Commission Expires: 09/17/2017



Prepared by:
Michael J. Nichols (P59391)
The Nichols Law Firm, PLLC
Attorneys at Law
3452 East Lake Lansing Road
East Lansing, Michigan 48823
(517) 432-9000



ATTORNEYS

Michael J. Nichols
Wendy M. Schiller-Nichols
Karen L. Phillips

3452 E. Lake Lansing Road
E. Lansing, MI 48823

Ithaca office:
P.O. Box 188
Ithaca, MI 48847-0188

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(800) 550-5892
(517) 203-4448 - facsimile
www.nicholslawyers.com

EXHIBIT B



ATTORNEYS

Michael J. Nichols
Wendy M. Schiller-Nichols
Karen L. Phillips

Joshua M. Covert

3452 E. Lake Lansing Road
E. Lansing, MI 48823

Ithaca office:
P.O. Box 188
Ithaca, MI 48847-0188

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Memo 2012-06-28

Review of documents from Michigan State Police Forensic Toxicology Lab submitted by Ingham County Prosecutor to Michael Nichols on 2012-06-18.

Judge Boyd ordered on May 25th to review submitted documents and to answer the following question: Does this data adequately consider the instrument detection limits and the method detection limits in concluding that the LOD for THC is 0.1 ng/ml in SIM mode and that the LOQ for THC is 1 ng/ml? Is the methodology used in making these determinations scientifically sound?

The Michigan State Police Forensic Toxicology Lab procedure states: The LOD for both THC and 11-COOH-THC has been determined to be approximately 0.5 ng/ml in full scan mode and 0.1 ng/ml in SIM mode. LOQ for both compounds has been designated to be 2 ng/ml in Full Scan mode, 1 ng/ml in SIM mode.

Observations

LOD Results - 1 page:

This document list results for THC Drv: 0.8 ng/ul detectable; 0.32 ng/ul not detected. It should be noted that the unit is ng/ul and not ng/ml, which is a difference of a factor of 1000. The detection mode (SIM or Full Scan) is not defined. It is not clear what the abbreviation 'Drv' stands for (derivative?). The document date and author is unknown. No useful information to answer the court's question could be extracted from this document.

Component Summaries THC/THC-COOH – 6 pages:

This document lists measurements results of samples for THC, THC-COOH, D9-THC-COOH, as well as calibrators, negative controls, and BLANK samples. For all three compounds 5 samples are measured for each of the following nominal concentration: 0.1, 0.5, 1.0, 1.5, 2.0 ng/ml.

The 0.1 and 0.5 ng/ml samples for THC and THC-COOH show 'N/A' as a result which indicates that the compounds have not been detected or quantified. Samples with concentration of 1.0 ng/ml and higher for THC and THC-COOH show quantifiable results. D9-THC-COOH, BLANK and negative control sample show no positive results. The printout is labeled with date 6/15/2012, but it is not apparent what the date of the analysis is. The samples names and the value of calibrators could indicate that this is a contemporary document. The mode of detection (SIM or Full Scan) is not indicated. No raw chromatograms or mass spectra were provided.

While the methodology to test a series of identical samples of different concentrations is scientifically sound, the provided documents do not include any statistical analysis of the measurement results to determine an LOD. An analysis of the provided data does not support the conclusion that the LOD for THC is 0.1 ng/ml in SIM mode and does not support that the LOQ for THC is 1 ng/ml.

Quant Methods/Distribution – 13 pages:

This document contains a summary of analysis of spiked blood samples with added THC of 15, 30, 75, 150 with no unit mentioned. For each sample 'Av Calc', 'Std Calc', and 'n' is listed. This could stand for 'mean', 'standard deviation' and 'sample size'. If so, the THC sample size varies between 6 and 9, and the standard deviation varies from 4.65 to 31.41 (no unit indicated) for the spiked samples. The document is labeled with "M. Glinn, Ph.D., MSP Toxicology, 2003".

On the summary page an LOD of 0.5 ng/ml and 2 ng/ml for full scan mode is printed in a box, but there is no description if these numbers were derived from other data on this page and what the rationale of the analysis was. If the missing unit for the data on the top of the page is assumed to be 'ng/ml', then this would not be consistent with an LOD of 0.5 ng/ml and a LOQ of 2 ng/ml, as the standard deviations for all spiked samples are larger than this number. Usually, the LOD would be calculated as a small multiple (2-5) of the standard deviation; the LOQ would be even larger.

No raw data (chromatograms or mass spectra) were provided. The rest of the document lists a THC case statistics (distribution of measured THC concentrations), which cannot be used to determine detection limits as it is based on unknown samples.

EXHIBIT C



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