

2-10-2013

State v. Mendel Clerk's Record Dckt. 40416

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LAW CLERK

IN THE
SUPREME COURT

OF THE
STATE OF IDAHO

STATE OF IDAHO

Plaintiff _____ and

Respondent _____
vs

COPY

BRYCE SCOTT MENDEL

Defendant _____ and

Appellant _____

Appealed from the District Court of the _____ Seventh _____ Judicial

District of the State of Idaho, in and for _____ Bonneville _____ County

Hon. _____ Joel E. Tinney _____, District Judge

Ryan Holdaway, PITCHER & HOLDAWAY

40 W. Cache Valley Blvd. Ste. 3B, Logan, UT 84341

Attorney for Appellant

Attorney General's Office

Statehouse Mail, Room 210, Boise, ID 83720

Attorney for Respondent

Filed this FEB 10 2013 _____, 20____

Supreme Court _____ Court of Appeals _____ Clerk

Spoke or File by _____ Deputy

410416

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff/Respondent,	)	Case No. CR-2012-1397
)	
vs.	)	Docket No. 40416
)	
BRYCE SCOTT MENDEL,)	
)	
Defendant/Appellant.)	
_____)	

CLERK'S RECORD ON APPEAL

Appeal from the District Court of the
Seventh Judicial District of the State of Idaho,
in and for the County of Bonneville

HONORABLE JOEL E. TINGEY, District Judge.

Attorney for Appellant

Attorney for Respondent

Ryan Holdaway
PITCHER & HOLDAWAY
40 W. Cache Valley Blvd., Ste. 3B
Logan, UT 84341

Deputy Attorney General
PO Box 83720
Boise, ID 83720-0010

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State of Idaho vs. Bryce Scott Mendel

Date	Code	User		Judge
1/30/2012	NCRF	KER	New Case Filed-Felony	L. Mark Riddoch
	CRCO	KER	Criminal Complaint	L. Mark Riddoch
	BDST	KER	Bond Set: 65,000.00	L. Mark Riddoch
	ASDJ	KER	Assigned District Judge: Joel Tingey	L. Mark Riddoch
	HRSC	KER	Hearing Scheduled (Arraignment 01/30/2012 01:00 PM)	L. Mark Riddoch
	HRSC	KER	Hearing Scheduled (Preliminary Hearing 02/07/2012 01:30 PM)	L. Mark Riddoch
	MISC	KER	CO-DEFENDANTS: CR-12-1387 - CR-12-1395 - CR-12-1397 - CR-12-1382 - CR-12-1384	L. Mark Riddoch
	ARRN	KER	Hearing result for Arraignment scheduled on 01/30/2012 01:00 PM: Arraignment / First Appearance	L. Mark Riddoch
	AFPD	KER	Application For Public Defender	L. Mark Riddoch
		KER	Order Appointing Public Defender	L. Mark Riddoch
		EGAN	Order Appointing Public Defender	L. Mark Riddoch
1/31/2012	BNDS	WHEATLEY	Bond Posted - Surety (Amount 65000.00)	L. Mark Riddoch
2/1/2012	BNDS	WHEATLEY	Bond Posted - Surety (Amount 65000.00)	L. Mark Riddoch
2/3/2012	NOAP	BELLIN	oDefendant: Mendel, Bryce Scott Notice Of Appearance John Thomas	L. Mark Riddoch
	RQDS	BELLIN	Request For Discovery and Inspection	L. Mark Riddoch
2/6/2012	RQDS	CMADDEN	Request For Discovery and Demand For Notice of Intent to Rely Upon Defense of Alibi	L. Mark Riddoch
	RSRQ	CMADDEN	State's Response To Request For Discovery	L. Mark Riddoch
	SUBC	TABOR	Substitution Of Counsel	L. Mark Riddoch
	NOAP	TABOR	Defendant: Mendel, Bryce Scott Notice Of Appearance Kristopher D Meek	L. Mark Riddoch
	DRQD	TABOR	Defendant's Request for Discovery	L. Mark Riddoch
2/7/2012	CONT	NEWTON	Hearing result for Preliminary Hearing scheduled on 02/07/2012 01:30 PM: Continued	L. Mark Riddoch
	HRSC	NEWTON	Hearing Scheduled (Preliminary Hearing 02/21/2012 01:30 PM)	L. Mark Riddoch
		NEWTON	Notice of Hearing	L. Mark Riddoch
2/21/2012	SUBC	KER	Substitution Of Counsel	L. Mark Riddoch
	MINE	NEWTON	Minute Entry Hearing type: Preliminary Hearing Hearing date: 2/21/2012 Time: 2:11 pm Courtroom: Court reporter: Minutes Clerk: Linda Newton Tape Number: Defense Attorney: Diane Pitcher Prosecutor: Penelope Shaul	L. Mark Riddoch

State of Idaho vs. Bryce Scott Mendel

Date	Code	User		Judge
2/21/2012	MOTN	NEWTON	Motion to Amend Complaint	L. Mark Riddoch
	ORDR	NEWTON	Order to Amend Complaint	L. Mark Riddoch
	AMCO	NEWTON	Amended Complaint Filed	L. Mark Riddoch
2/22/2012	PHHD	NEWTON	Hearing result for Preliminary Hearing scheduled on 02/21/2012 01:30 PM: Preliminary Hearing Held	L. Mark Riddoch
	HRSC	NEWTON	Hearing Scheduled (Arrestment 03/05/2012 08:30 AM)	Joel E. Tingey
2/27/2012	INFO	CMADDEN	Information	Joel E. Tingey
	SUBR	WHEATLEY	Subpoena Returned--Becky Jane	Joel E. Tingey
3/5/2012	DCHH	SOUTHWIC	Hearing result for Arrestment scheduled on 03/05/2012 08:30 AM: District Court Hearing Held Court Reporter: Jack fuller Number of Transcript Pages for this hearing estimated: under 100	Joel E. Tingey
	AURA	SOUTHWIC	Acknowledgement Of Understanding Rights	Joel E. Tingey
	APNG	SOUTHWIC	Appear & Plead Not Guilty	Joel E. Tingey
3/7/2012	MINE	SOUTHWIC	Minute Entry Hearing type: Arrestment Hearing date: 3/5/2012 Time: 8:45 am Courtroom: Court reporter: Jack fuller Minutes Clerk: Marlene Southwick Tape Number: digital Defense Attorney: Diane Pitcher Prosecutor: Penelope Shaul	Joel E. Tingey
	HRSC	SOUTHWIC	Hearing Scheduled (Jury Trial 04/17/2012 10:00 AM)	Joel E. Tingey
	HRSC	SOUTHWIC	Hearing Scheduled (Pretrial Conference 04/02/2012 09:30 AM)	Joel E. Tingey
		SOUTHWIC	Notice of Hearings	Joel E. Tingey
/13/2012	SPRD	EGAN	State's 1st Supplemental Response to Discovery	Joel E. Tingey
/26/2012	RQDS	EGAN	State's Request For Discovery and Demand for Notice of Intent to Rely Upon Defense of Alibi (New Attorney)	Joel E. Tingey
'28/2012	SUBI	BELLIN	Subpoena Issued	Joel E. Tingey
29/2012	MOTN	WHEATLEY	Motion to Continue Pretrial and Trial	Joel E. Tingey
2/2012	DCHH	SOUTHWIC	Hearing result for Pretrial Conference scheduled on 04/02/2012 09:30 AM: District Court Hearing Held Court Reporter: Jack Fuller Number of Transcript Pages for this hearing estimated: under 100	Joel E. Tingey
	CONT	SOUTHWIC	Hearing result for Jury Trial scheduled on 04/17/2012 10:00 AM: Continued	Joel E. Tingey

State of Idaho vs. Bryce Scott Mendel

Date	Code	User		Judge
4/3/2012	RTOS	HEATON	Return Of Service	Joel E. Tingey
4/5/2012	MINE	SOUTHWIC	Minute Entry Hearing type: Pretrial Conference Hearing date: 4/2/2012 Time: 9:30 am Courtroom: Court reporter: Jack fuller Minutes Clerk: Marlene Southwick Tape Number: digital Defense Attorney: Diane Pitcher Prosecutor: Penelope Shaul	Joel E. Tingey
	HRSC	SOUTHWIC	Hearing Scheduled (Pretrial Conference 05/07/2012 09:30 AM)	Joel E. Tingey
	HRSC	SOUTHWIC	Hearing Scheduled (Jury Trial 05/21/2012 10:00 AM)	Joel E. Tingey
4/9/2012	MOTN	WHEATLEY	Motion to Continue	Joel E. Tingey
4/18/2012	HRSC	SOUTHWIC	Hearing Scheduled (Motion 05/07/2012 09:30 AM) Pitcher - mo continue PTC/JT	Joel E. Tingey
	HRSC	SOUTHWIC	Hearing Scheduled (Motion 06/04/2012 03:00 PM) Pitcher - mo dismiss	Joel E. Tingey
4/24/2012	NTOS	KER	Notice Of Service	Joel E. Tingey
4/26/2012	NTOS	WHEATLEY	Notice Of Service	Joel E. Tingey
	SPRD	HEATON	State's Second Supplemental Response to Discovery	Joel E. Tingey
4/30/2012	TRAN	SOUTHWIC	Transcript Filed - Preliminary Hearing - 2/21/12 before Judge L. Mark Riccoch	Joel E. Tingey
5/7/2012	DCHH	SOUTHWIC	Hearing result for Motion scheduled on 05/07/2012 09:30 AM: District Court Hearing Held Court Reporter: Jack fuller Number of Transcript Pages for this hearing estimated: Pitcher - mo continue PTC/JT -- under 100	Joel E. Tingey
	HRVC	SOUTHWIC	Hearing result for Jury Trial scheduled on 05/21/2012 10:00 AM: Hearing Vacated	Joel E. Tingey
	DCHH	SOUTHWIC	Hearing result for Pretrial Conference scheduled on 05/07/2012 09:30 AM: District Court Hearing Held Court Reporter: Jack fuller Number of Transcript Pages for this hearing estimated: under 100	Joel E. Tingey

State of Idaho vs. Bryce Scott Mendel

Date	Code	User		Judge
5/7/2012	MINE	SOUTHWIC	Minute Entry Hearing type: Pretrial Conference/Mo Continue Hearing date: 5/7/2012 Time: 9:30 am Courtroom: Court reporter: Jack Fuller Minutes Clerk: Marlene Southwick Tape Number: digital Defense Attorney: Diane Pitcher Prosecutor: Penelope Shaul	Joel E. Tingey
	HRSC	SOUTHWIC	Hearing Scheduled (Status Conference 06/18/2012 09:30 AM)	Joel E. Tingey
		SOUTHWIC	Notice of Hearing	Joel E. Tingey
5/29/2012	MOTN	WHEATLEY	Motion to Continue Hearing on Motion to Dismiss	Joel E. Tingey
		WHEATLEY	Faxed Order Back with Judge Tingey	Joel E. Tingey
5/31/2012	ORDR	SOUTHWIC	Order to Continue Hearing on Motion to Dismiss	Joel E. Tingey
	CONT	SOUTHWIC	Hearing result for Motion scheduled on 06/04/2012 03:00 PM: Continued Pitcher - mo dismiss	Joel E. Tingey
	HRSC	SOUTHWIC	Hearing Scheduled (Motion 06/18/2012 03:00 PM) Pitcher - mo dismiss	Joel E. Tingey
	MOTN	KER	Motion to Dismiss	Joel E. Tingey
	MEMO	KER	Memorandum in Support of Motion to Dismiss	Joel E. Tingey
	AFFD	KER	Affidavit of Ryan L. Holdaway Re: Support of Defendant's Motion to Dismiss	Joel E. Tingey
3/5/2012	NOTC	KER	Notice of Intent To Call Witnesses	Joel E. Tingey
3/8/2012		CMADDEN	Miscellaneous Payment: For Making Copy Of Any File Or Record By The Clerk, Per Page Paid by: Kent Whittington Receipt number: 0027758 Dated: 6/8/2012 Amount: \$10.00 (Check)	Joel E. Tingey
6/18/2012	CONT	SOUTHWIC	Hearing result for Motion scheduled on 06/18/2012 03:00 PM: Continued Pitcher - mo dismiss	Joel E. Tingey
	CONT	SOUTHWIC	Hearing result for Status Conference scheduled on 06/18/2012 09:30 AM: Continued	Joel E. Tingey
	HRSC	SOUTHWIC	Hearing Scheduled (Motion 07/16/2012 02:30 PM) Mo Dismiss	Joel E. Tingey
		SOUTHWIC	Notice Resetting Hearing	Joel E. Tingey
7/16/2012	DCHH	SOUTHWIC	Hearing result for Motion scheduled on 07/16/2012 02:30 PM: District Court Hearing Held Court Reporter: Rainey Stockton Number of Transcript Pages for this hearing estimated: Def's Mo Dismiss -- under 100	Joel E. Tingey
	PLAG	SOUTHWIC	Plea Agreement	Joel E. Tingey

State of Idaho vs. Bryce Scott Mendel

Date	Code	User	Judge
7/16/2012	PLEA	SOUTHWIC	Joel E. Tingey
			A Plea is Entered for Charge - GT (I37-2732(A)(1)(B)-P/I Controlled Substance-Possession With Intent Manufacture or Deliver)
	HRSC	SOUTHWIC	Joel E. Tingey
			Hearing Scheduled (Sentencing 08/20/2012 10:15 AM)
	PSIO1	SOUTHWIC	Joel E. Tingey
			Pre-Sentence Investigation Evaluation Ordered
		SOUTHWIC	Joel E. Tingey
			Email Sent Date: 07/16/2012 02:57 pm To: State PSI File Attached: mendel bryce opsi.rtf
		SOUTHWIC	Joel E. Tingey
			Notice of Hearing
	MINE	SOUTHWIC	Joel E. Tingey
			Minute Entry Hearing type: Motion to Dismiss/COP Hearing date: 7/16/2012 Time: 2:40 pm Courtroom: Court reporter: Rainey Stockton Minutes Clerk: Marlene Southwick Tape Number: digital Defense Attorney: Diane Pitcher Prosecutor: Penelope Shaul
7/24/2012	MOTN	EGAN	Joel E. Tingey
			Motion for Restitution and Notice of Hearing
3/29/2012	PSIF	SOUTHWIC	Joel E. Tingey
			Pre-sentence Investigation Filed With Court Document sealed
3/4/2012	DCHH	SOUTHWIC	Joel E. Tingey
			Hearing result for Sentencing scheduled on 09/04/2012 10:00 AM: District Court Hearing Held Court Reporter: Jack fuller Number of Transcript Pages for this hearing estimated: under 100
	GUILTY	SOUTHWIC	Joel E. Tingey
			Found Guilty (I37-2732(A)(1)(B)-P/I Controlled Substance-Possession With Intent Manufacture or Deliver)
	STATUS	SOUTHWIC	Joel E. Tingey
			Case Status Changed: closed pending clerk action
1/5/2012	MINE	SOUTHWIC	Joel E. Tingey
			Minute Entry Hearing type: Sentencing Hearing date: 9/4/2012 Time: 10:00 am Courtroom: Court reporter: Jack Fuller Minutes Clerk: Marlene Southwick Tape Number: digital Defense Attorney: Diane Pitcher Prosecutor: Penelope Shaul
	SNIC	SOUTHWIC	Joel E. Tingey
			Sentenced To Incarceration (I37-2732(A)(1)(B)-P/I Controlled Substance-Possession With Intent Manufacture or Deliver) Confinement terms: Discretionary: 90 days. Penitentiary determinate: 2 years. Penitentiary indeterminate: 2 years.

State of Idaho vs. Bryce Scott Mendel

Date	Code	User		Judge
9/5/2012	PROB	SOUTHWIC	Probation Ordered (137-2732(A)(1)(B)-P/I Controlled Substance-Possession With Intent Manufacture or Deliver) Probation term: 3 years. (Supervised)	Joel E. Tingey
	BNDE	SOUTHWIC	Surety Bond Exonerated (Amount 65,000.00)	Joel E. Tingey
	ORDR	SOUTHWIC	Judgment of Conviction Suspended and Order of Probation	Joel E. Tingey
10/16/2012	NOTC	CMADDEN	Notice of Appeal	Joel E. Tingey
	APSC	LMESSICK	Appealed To The Supreme Court	Joel E. Tingey
	CERTAP	LMESSICK	Clerk's Certificate of Appeal	Joel E. Tingey
10/22/2012		LMESSICK	(SC) Order Conditionally Dismissing Appeal	Joel E. Tingey
10/26/2012	BNDC	LMESSICK	Bond Posted - Cash (Receipt 51996 Dated 10/26/2012 for 100.00)	Joel E. Tingey
11/1/2012		LMESSICK	Appellate Record Due 12/31/12	Joel E. Tingey
12/17/2012	HRSC	KER	Hearing Scheduled (OTSC 01/30/2013 09:30 AM) needs fine agreement	Michelle R. Mallard
	STATUS	KER	Case Status Changed: Reopened	Joel E. Tingey
	STATUS	KER	Case Status Changed: closed pending clerk action	Joel E. Tingey
		KER	Notice of Hearing	Joel E. Tingey

BRUCE L. PICKETT
BONNEVILLE COUNTY PROSECUTING ATTORNEY

BONNEVILLE COUNTY
2012 JAN 30 PM 12:01

Penelope North Shaul
Deputy Prosecuting Attorney
605 North Capital Avenue
Idaho Falls, Idaho 83402
Phone: (208) 529-1348
Fax: (208) 529-1189

Attorney for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
STATE OF IDAHO, COUNTY OF BONNEVILLE
MAGISTRATE DIVISION

STATE OF IDAHO,)
)
 Plaintiff,)
)
 vs.)
)
 BRYCE SCOTT MENDEL,)
 [REDACTED])
 Idaho Falls, ID 83401)
 DOB: [REDACTED])
 SSN: [REDACTED])
)
 Defendant.)

Case No. CR-12-1397-k
Temporary No.: TC-2012-0000075-

CRIMINAL COMPLAINT

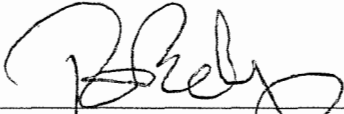
The Bonneville County Prosecuting Attorney's Office having submitted, pursuant to Idaho Criminal Rule 3, the sworn affidavit of Jeremy Galbreath, Idaho Falls Police Department, who complains and alleges the defendant, BRYCE SCOTT MENDEL, committed the following crime(s):

COUNT I
CONTROLLED SUBSTANCE-POSSESSION WITH INTENT TO DELIVER, Felony
§137-2732(A)(1)(B)-P/I

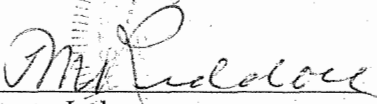
The Defendant, BRYCE SCOTT MENDEL, on or about January 28, 2012, in the County of Bonneville, State of Idaho, did unlawfully possess synthetic drug(s), to wit: AM-2201, a Schedule I controlled substance, with the intent to deliver said controlled substance. (5 years, \$15,000 fine and restitution.)

All of which is contrary to the laws of the State of Idaho. Complainant therefore requests that BRYCE SCOTT MENDEL be dealt with according to law.

Dated this 30th day of January 2012.


/for/ Penelope North Shaul
Deputy Prosecuting Attorney

SUBMITTED AND ACCEPTED for filing before me this 30th day of January 2012.


Magistrate Judge

Bond: \$ 65,000

APPLICATION FOR PUBLIC DEFENDER/APLICACIÓN PARA EL DEFENSOR DE OFICIO

CASE NO.: CR-20

NAME/Nombre Bruce Mendel
ADDRESS/Dirección
Will you be able to post bail/Puede pagar la fianca? N/A Cash/En efectivo? N/A Bondsman/Fiador? N/A

Employer's Name/Nombre de empleo Incentive Delivery Inc - Months Worked/Cuantos meses
Hours working per week/#horas por semana 40+ Pay rate/Redito de pago \$ 3000.00 m/

CURRENT MONTHLY TAKE HOME PAY/Cantidad que lleva a casa \$ 2200.00
CURRENT MONTHLY GROSS PAY/Cantidad mensual antes de impuestos \$ 3000.00
Income this year to date/Ingresos de este año \$ 3000. Income last year/Ingresos del año anterior \$ N/A

Date last employed/Ultima fecha que trabajo Current Last employer's name/Nombre de ultimo empleo Incentive Delivery
Reason for termination/Razon por terminar su trabajo
Other income/Otros Ingresos: Welfare/Asistencia del estado \$ Soc. Security/Seguro Social \$
Worker's Compensation/Compensación de Trabajadores \$ Disability/Desabilidad \$
Money from any other source/Otros ingresos? TOTAL OTHER INCOME/Total de otros Ingresos \$

Spouse's Name/Nombre de Cónyuge Employer/Empleo
Income/Ingresos \$ No. of children you are supporting/Cuantos menores mantiene?
Residing with you/Residen con usted? Child support payment/Pago de Sostentimiento de Menores \$
Are you current/Esta corriente en sus pagos?

Value/Equity of your home(s)/Valor de su casa \$ Amount owed/Cuanto debe \$
Cash on hand/En efectivo a la mano \$ Savings/Ahorros \$
Checking Account/Cuenta de Cheques \$ Your banks/Nombre del Banco

Your motor vehicles/Su vehiculo(s): Year/Model/Año y Modelo Dodge Dartona
Value/Valor del vehiculo \$ 700 Amount owed/Cuanto se debe \$
TOTAL MONTHLY EXPENSES/Gastos Mensuales en Total \$

If you are under 18, state your parent's/guardian's name, address and phone number:
Nombre de sus padres, direccion y num. de telefono si usted tiene menos de 18 años:

I request a lawyer be appointed to represent me. I AGREE TO REPAY BONNEVILLE COUNTY FOR PUBLIC DEFENDER COSTS AS ORDERED BELOW. I swear under penalty of perjury the answers above are true and correct to the best of my knowledge. If these answers are found to be false, I understand I may be prosecuted for the felony of perjury.

Yo pido que me otorgen un abogado para que me represente. ESTOY DE ACUERDO DE PAGAR AL CONDADO DE BONNEVILLE POR COSTOS DEL ABOGADO SEGUN COMO SE ME ORDENE. Declaro bajo pena y perjurio que las respuestas susdichas son ciertas. Si encuentran alguna respuesta ser falsa, comprendo que pueden interponer una acción judicial por dar falso testimonio.

YOUR SIGNATURE/Su Firma DATE/Fecha 1/30/12

PUBLIC DEFENDER IS APPOINTED/Aprobado
PUBLIC DEFENDER IS APPOINTED ONLY UNTIL YOU ARE RELEASED FROM JAIL
El abogado solamente lo representera mientras esta encarcelado
PUBLIC DEFENDER IS DENIED/Negado

You are hereby ORDERED TO REPAY BONNEVILLE COUNTY FOR THE COSTS OF THE PUBLIC DEFENDER \$25 EVERY TWO WEEKS UP TO THE AMOUNT SET BY THE JUDGE IN YOUR FINAL APPEARANCE. YOUR FIRST \$25 PAYMENT IS DUE TWO WEEKS FROM THE DATE OF YOUR RELEASE FROM JAIL OR, IF NOT HELD IN JAIL, TWO WEEKS FROM THIS DATE.

Se ordena que pague al Condado de Bonneville por cosots del Defensor de Oficio en la cantidad de \$25 cada dos semanas hasta que pague por completo la cantidad que sea ordenado por el Juéz en su comparecencia final. Se obliga que dé su primer pago de \$25 dos semanas despues de su libertad o si no esta encarcelado seria entonces dos semanas desde la fecha de hoy.

JUDGE/Juéz DATE/Fecha 1/30/12 09

7th JUDICIAL DISTRICT, STATE OF IDAHO, COUNTY OF BONNEVILLE
FELONY ARRAIGNMENT MINUTE ENTRY/LOG/ORDER

STATE v. BRYCE SCOTT MENDEL Case No. : CR-2012-0001397-FE
D.L.#: [REDACTED] DOB: [REDACTED] Date: 1/30/2012
Address: [REDACTED] Idaho Falls ID 83401 Judge: L. Mark Riddoch
Digital Recording: 1/30/2012 Interpreter: _____

DEFENDANT having been charged with the following:
COUNT 1: Controlled Substance-Possession With Intent Manufacture or Deliver

- Defendant: Appeared () Failed to Appear () Bench Warrant Issued & Bond Forfeiture Ordered
- Advised of all rights and penalties per ICR 5, including right to remain silent, that statements may be used against him/her, right to bail, right to counsel, appointment of Public Defender as provided by law, Preliminary Hearing.
- () Represented by Counsel (present) _____
- Advised of Charges () Waived Counsel Requested PD *granted* () Private Attorney
- Waived Reading Complaint () Complaint Read by Court () Requested Continuance
- Bond \$65,000.00 () Remanded to Custody of Sheriff
- () Ordered Released () Own Recognizance () To Pre-Trial Services
- () Other _____ Clerk _____

Ordered: **Preliminary Hearing (ICR 5.1).** The Prosecutor and Defendant, with attorney, if any, are ordered to appear for a **Preliminary Hearing on February 7, 2012, at 1:30 p.m., before Honorable L. Mark Riddoch** at the Law Enforcement Building, 605 N. Capital Avenue, Idaho Falls, ID, to determine whether there is probable cause that a crime was committed and whether there is probable cause that Defendant committed the alleged crime(s) as charged in the Complaint. Motions to Continue must be submitted in writing at least 24 hours prior to the hearing.

IT IS SO ORDERED. *PAID 554*
Judge _____ *JMR* Date 1-30-12

Received by Defendant _____

Assigned District Judge: Honorable Joel Tingey CO-DEFENDANTS: CR-12-1387 - CR-12-1395 - CR-12-1397 - CR-12-1382 - CR-12-1384

() Personally served copy on Prosecutor/Defendant/Counsel () Mailed
By Clerk *TC* Date 1-30-12

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR BONNEVILLE COUNTY

STATE OF IDAHO,

Plaintiff,

vs.

Bryce Scott Mendel
1444 Cambridge Drive Apt. 1
Idaho Falls, ID 83401

Defendant.

2012 JAN 30 11:27 AM

Case No: CR-2012-0001397-FE

ORDER APPOINTING PUBLIC DEFENDER

Citation No:

The Court being fully advised as to the application of Bryce Scott Mendel, and it appearing to be a proper case,

NOW, THEREFORE, IT IS ORDERED that an attorney be appointed through the:

Bonneville County Public Defender's Office
605 N. Capital
Idaho Falls, Id 83402
529-1350, ext. 1105

Public Defender for the County of Bonneville, State of Idaho, a duly licensed attorney in the State of Idaho, is hereby appointed to represent said Defendant, Bryce Scott Mendel, in all proceedings in the above entitled case.

The Defendant is further advised that he/she may be required to reimburse the Court for all or part of the cost of court appointed counsel.


/s/ L. Mark Riddoch

Date: January 30th, 2012

Judge

Copies to: Public Defender
 Prosecuting Attorney

Date: January 30th, 2012



Deputy Clerk

MAGISTRATE CRIMINAL LOG MINUTES

DATE: Tuesday, February 07, 2012 TIME: 01:30 PM

CASE NO.: CR-2012-0001397-FE

County of Bonneville, Idaho Falls, Idaho

Digital Recording.: 2/7/2012

Magistrate Courtroom No. _____

Judge L. Mark Riddoch presiding

Jury _____ Non-Jury _____

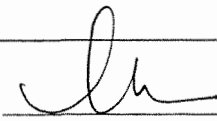
Hearing/Trial: PRELIMINARY HEARING

PLAINTIFF	DEFENDANT
STATE OF IDAHO	BRYCE SCOTT MENDEL
Attorney: Penelope North Shaul	Attorney: Kristopher D Meek

J - Judge
W - Witness
DX - Direct Examination
X - Cross Examination

P - Plaintiff
D - Defendant
PA - Plaintiff's Attorney
DA - Defendant's Attorney

Index	Case Proceedings
	Judge opened and called case:
	PA - addresses the Ct. Asks for 2 wk cont.
	DA - concurs.
	J - continues for 2 wks. OMR



Deputy Clerk

COURT MINUTES

CR-2012-0001397-FE

State of Idaho vs. Bryce Scott Mendel

Hearing type: Preliminary Hearing

Hearing date: 2/21/2012

Time: 2:11 pm

Judge: L. Mark Riddoch

Courtroom: 4

Minutes Clerk: Linda Newton

Defense Attorney: Diane Pitcher

Prosecutor: Penelope Shaul

Digital Recording Session: 022112PMRiddoch

<u>Time</u>	<u>Case Proceedings</u>
2:11	J calls case. Penny North Shaul appears on behalf of the State; Diane Pitcher & _____ Holdaway appears with Bryce Mendel. Ms. Shaul moves to amend the complaint; no objection from defense. J signs the order to amend and signs amended complaint.
2:14	Ms. Shaul calls Officer Corey Hart; sworn in. Dx of Officer Hart.
2:20	Officer Hart sets forth the results of the lab tests on the items taken from the structure.
2:21	Ms. Pitcher addresses the Court. State's exhibit 1 marked – lab results. Dx continues.
2:22	Ms. Shaul moves to admit exhibit 1.

Ms. Pitcher objects to the exhibit.

Ms. Shaul addresses the Court.

Ms. Pitcher responds.

J addresses counsel. Overrules objection and admits exhibit 1.

2:26 Dx continues.

2:31 Officer Hart identifies defendant as the owner of the business that sold the controlled substance.

2:36 Dx ends.

X of Officer Hart.

2:38 Ms. Shaul objects.

J responds.

X continues.

2:42 Ms. Shaul objects.

J sustains.

X continues.

Ms. Shaul objects.

Ms. Pitcher responds.

J addresses Ms. Pitcher.

J overrules.

X continues.

2:44 Ms. Shaul objects.

J sustains.

X continues.

2:45 Ms. Shaul objects

J sustains.

014

Ms. Pitcher addresses the Court.
J renews his sustaining of the objection.
X ends.
ReDx.
2:47 ReDx ends.
ReX..
2:49 Witness excused.
Ms. Shaul calls Sgt. Jeremy Galbraith; sworn in.
Dx of Sgt. Galbraith.
3:05 Dx ends.
X of Sgt. Galbraith.
3:09 Ms. Shaul objects.
J addresses Ms. Pitcher.
X continues.
3:11 X ends.
No ReDx.
Sgt. Galbraith excused.
Ms. Shaul calls Officer Ryan Nelson; sworn in.
Dx of Officer Nelson.
3:21 Dx ends.
X by Ms. Pitcher.
ReDx.
3:24 ReDx ends.
No ReX.
Witness excused.

015

Ms. Shaul calls Kelly Nelson; sworn in.
Dx of Mr. Nelson.
3:30 Ms. Pitcher objects.
J sustains.
Dx continues.
3:33 Dx ends.
X of Mr. Nelson.
3:34 Witness excused.
State rests.
J questions Mr. Holdaway.
Mr. Holdaway responds.
Ms. Shaul responds.
Mr. Holdaway responds.
Ms. Shaul responds.
3:39 Mr. Holdaway responds.
Ms. Shaul responds. Stipulates to what Defendant's expert would say.
3:40 J addresses defense counsel.
J sustains Ms. Shaul's objection.
Mr. Holdaway makes closing argument.
3:44 Ms. Shaul objects.
Mr. Holdaway addresses the Court.
Ms. Shaul responds.
3:49 J binds D over to district court.
End of Record.

BRUCE L. PICKETT
BONNEVILLE COUNTY PROSECUTING ATTORNEY

2012 FEB 22 AM 8:54

Penelope North Shaul
Deputy Prosecuting Attorney
605 N. Capital Avenue
Idaho Falls, Idaho 83402
Phone: (208) 529-1348
Fax: (208) 529-1189

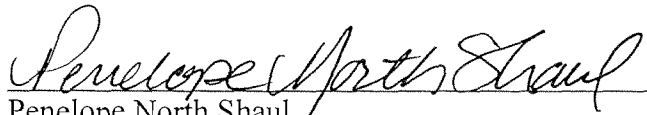
Attorney for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
STATE OF IDAHO, COUNTY OF BONNEVILLE
MAGISTRATES DIVISION

STATE OF IDAHO,)	
	)	Case No. CR-2012-0001397-FE
Plaintiff.)	
	)	MOTION TO AMEND COMPLAINT
vs.)	
)	
BRYCE SCOTT MENDEL,)	
)	
Defendant.)	

The State of Idaho moves the Court for its order amending the above action to include the language "on or between December 17, 2011 and January 28, 2012" by and for the reason that the evidence supports the amendment.

Dated this 21st day of February 2012.

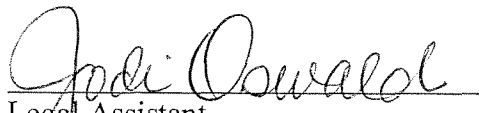

Penelope North Shaul
Deputy Prosecuting Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on 21st of February 2012, I served a true and correct copy of the foregoing document by causing it to be hand delivered or by placing it in the mail with the correct postage affixed thereon to the parties listed below:

DOCUMENT SERVED: MOTION TO AMEND COMPLAINT

PARTIES SERVED: Kristopher D Meek
Hopkins, Roden, Crockett, Hansen & Hoopes
Courthouse Box
Idaho Falls, Idaho 83402


Legal Assistant

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
STATE OF IDAHO, COUNTY OF BONNEVILLE
MAGISTRATES DIVISION

BONNEVILLE COUNTY
2012 FEB 22 AM 8:52

STATE OF IDAHO,) Case No. CR-2012-0001397-FE
)
Plaintiff.) ORDER TO AMEND COMPLAINT
)
vs.)
)
BRYCE SCOTT MENDEL,)
)
Defendant.)

IT IS HEREBY ORDERED that the above action be and is amended to include the language "on or between December 17, 2011 and January 28, 2012" as requested by the State.

Dated this 21st day of February 2012.


Magistrate Judge

NOTICE OF ENTRY

I certify that I am a Clerk in the above-entitled Court and that I mailed, with postage prepaid, or caused to be hand-delivered a true and correct copy of the following document to be served on the following persons this _____ day of February 2012.

DOCUMENT: ORDER TO AMEND COMPLAINT

PARTIES SERVED: Penelope North Shaul
Deputy Prosecuting Attorney
Courthouse Box
Idaho Falls, Idaho 83402

Kristopher D Meek
Hopkins, Roden, Crockett, Hansen & Hoopes
Courthouse Box
Idaho Falls, Idaho 83402

Clerk

BRUCE L. PICKETT
BONNEVILLE COUNTY PROSECUTING ATTORNEY

2012 FEB 22 AM 8:52

Penelope North Shaul
Deputy Prosecuting Attorney
605 North Capital Avenue
Idaho Falls, Idaho 83402
Phone: (208) 529-1348
Fax: (208) 529-1189
Attorney for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
STATE OF IDAHO, COUNTY OF BONNEVILLE
MAGISTRATE DIVISION

STATE OF IDAHO,)
)
 Plaintiff,)
)
 vs.)
)
 BRYCE SCOTT MENDEL,)
)
 Defendant.)

Case No. CR-2012-1397-FE
AMENDED
CRIMINAL COMPLAINT

CONTROLLED SUBSTANCE-POSSESSION WITH INTENT TO DELIVER, Felony
§37-2732(a)(1)(B), §37-2705(d)(30)(ii)

The Defendant, BRYCE SCOTT MENDEL, on or between December 17, 2011 and January 28, 2012, in the County of Bonneville, State of Idaho, did unlawfully possess synthetic drug(s), to wit: AM-2201, a Schedule I controlled substance, with the intent to deliver said controlled substance. (5 years, \$15,000 fine and restitution.)

Dated this 21st day of February 2012.

Penelope North Shaul
Penelope North Shaul
Deputy Prosecuting Attorney

SUBMITTED AND ACCEPTED for filing before me this ²¹ ~~30~~^{February} day of ~~January~~ 2012.

Am Juddson
Magistrate Judge

NOTICE OF ENTRY

I certify that I am a Clerk in the above-entitled Court and that I mailed, with postage prepaid, or caused to be hand-delivered a true and correct copy of the following document to be served on the following persons this 21 day of February 2012.

DOCUMENT:

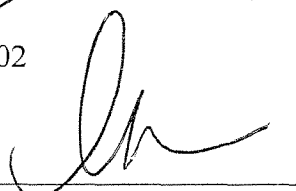
AMENDED CRIMINAL COMPLAINT

PARTIES SERVED:

Penelope North Shaul
Deputy Prosecuting Attorney
Courthouse Box
Idaho Falls, Idaho 83402

Kristopher D Meek
Hopkins, Roden, Crockett, Hansen & Hoopes
Courthouse Box
Idaho Falls, Idaho 83402

Diane Pitcher



Clerk

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

STATE OF IDAHO,)
)
 Plaintiff,)
)
 -vs-)
)
 BRYCE SCOTT MENDEL,)
)
 Defendant.)
 _____)

2012 FEB 22 AM 8:41
Case No. 12-1397
ORDER BINDING DEFENDANT
OVER AND ORDER SETTING
TIME FOR ARRAIGNMENT

The above named defendant has been:

XX Charged with the crime of POSSESSION OF CONTROLLED SUBSTANCE
W/INTENT TO DELIVER, a felony.

_____ Brought before the Court on a Bench Warrant on a Probation Violation and/or Agent's Warrant of Arrest.

_____ Other: _____

There is sufficient probable cause to believe that the crime has been committed and sufficient probable cause to believe that the above named defendant committed said crime.

NOW THEREFORE IT IS HEREBY ORDERED that the above named defendant be bound over to the District Court on the above stated charge to be brought before the Honorable JOEL TINGEY, District Judge on March 5, 2012 at 8:30 A.M. for arraignment.

The defendant has/~~has not~~ posted bond which has been set in the amount of \$ 65,000.00.

Dated: 2/21/2012 [Signature]
Magistrate Judge

NOTICE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Order was mailed, postage prepaid, or delivered to the following:

HAND DELIVERED:
Prosecuting Attorney
County Courthouse
Idaho Falls, ID

HAND DELIVERED/MAILED TO:
~~KRISTOPHER MEEK~~ Diane P. [Signature]

Dated: 2/21/2012 [Signature]
Deputy Clerk

ORDER BINDING DEFENDANT OVER AND
ORDER SETTING TIME FOR ARRAIGNMENT

00 023

BRUCE L. PICKETT
BONNEVILLE COUNTY PROSECUTING ATTORNEY

Penelope North Shaul
Deputy Prosecuting Attorney
605 North Capital Avenue
Idaho Falls, Idaho 83402
Phone: (208) 529-1348
Fax: (208) 529-1189

BONNEVILLE COUNTY
IDAHO

12 FEB 27 P 4:17

Attorney for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
STATE OF IDAHO, COUNTY OF BONNEVILLE


STATE OF IDAHO,	)	Case No. CR-2012-0001397-FE
)	
Plaintiff.)	
)	
vs.	)	PROSECUTING ATTORNEY'S
	)	INFORMATION
)	
BRYCE SCOTT MENDEL,)	
)	
Defendant.)	

BRYCE SCOTT MENDEL is hereby accused by the Deputy Prosecuting Attorney of the County of Bonneville, State of Idaho, of committing, prior to the filing of this Information, the following crime(s):

CONTROLLED SUBSTANCE-POSSESSION WITH INTENT TO DELIVER, Felony §37-2732(a)(1)(B)

The Defendant, BRYCE SCOTT MENDEL, on or between December 17, 2011 and January 28, 2012, in the County of Bonneville, State of Idaho, did unlawfully possess synthetic drug(s), to wit: AM-2201, a Schedule I controlled substance, with the intent to deliver said controlled substance. *(5 years, \$15,000 fine and restitution.)*

Dated this 23rd day of February 2012.


Penelope North Shaul
Deputy Prosecuting Attorney

CERTIFICATE OF MAILING

I hereby certify that on the 23rd day of February 2012, a true and correct copy of the foregoing Information was delivered to the following person(s) by email:

DOCUMENT SERVED: PROSECUTING ATTORNEY'S INFORMATION

PARTIES SERVED: Diane Pitcher
Pitcher & Holdaway, PLLC
diane@pitcherholdaway.com



Legal Assistant

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

STATE OF IDAHO,)
)
 Plaintiff,) Case No. CR-12-1397
)
 vs.) MINUTE ENTRY
)
 BRYCE SCOTT MENDEL,)
)
 Defendant.)
 _____)

Date: March 5, 2012

Defendant appeared in person and with his/her attorney Chad Campos (appearing as a courtesy for Diane Pitcher)

State was represented by Prosecuting Attorney Dan Bevilacqua

Presiding Judge: Joel E. Tingey

Mr. Jack Fuller, Court Reporter, and Mrs. Marlene Southwick, Deputy Court Clerk, were present. The hearing was digitally recorded.

Crime charged: POSSESSION WITH INTENT TO DELIVER A CONTROLLED SUBSTANCE as appears on Information on file.

The Court explained his/her Constitutional rights re: arraignment. Upon inquiry from the Court, the defendant stated he/she understood his/her rights as explained. The defendant and his/her counsel signed the Acknowledgement of Understanding of Rights on Arraignment.

The Defendant gave the following information:

1. Name: Bryce Scott Mendel
Defendant indicated that his/her name as shown on the Information on file was true and correct.
2. The Court informed the Defendant and the Defendant acknowledged that he/she understood that he/she was charged with the criminal offense of (same as above). The Court informed the Defendant that he/she was charged with the aforementioned offense and if found guilty of said charge(s) he/she could be sent to the Idaho State Penitentiary for a period of 5 years and/or a fine of \$15,000.00, restitution to law enforcement for costs of enforcement/investigation; and a \$75.00 fine for the Crime Victim's Compensation fund per

count. Multiple counts or cases can be served on a consecutive basis. The Defendant acknowledged that he/she understood.

3. The Defendant further acknowledged that he/she had a copy of the Information filed in this matter, understood the nature of the charge, waived additional time to consider the same and was ready to proceed in all respects to this case.

X The Defendant waived the reading of the Information.

The Court asked the Defendant if he/she was ready to enter a plea, whereupon the Defendant answered that he/she was ready.

The Court informed the Defendant of the circumstances under which the Defendant might enter a plea of guilty and the circumstances under which the defendant should enter a plea of not guilty, and informed the Defendant that he/she might stand mute, or say nothing, in which event the Court would enter a plea of not guilty for the Defendant.

The defendant then entered a plea of not guilty to the charge(s) set forth in the Information on file in this case.

Upon a plea of not guilty, trial date was set for April 17, 2012, at 10:00 a.m. Pretrial conference was scheduled for 9:30 a.m. on April 2, 2012.

Court was thus adjourned.


JOEL E. TINGEY
DISTRICT JUDGE

c: Prosecutor
Diane Pitcher/Chad Campos
H:mendel Bryce ar

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

BONNEVILLE COUNTY
IDAHO

STATE OF IDAHO,)

Plaintiff,)

-vs-)

Bryce Mendel)
Defendant.)

Case No. 12-123917-5 P6:50

ACKNOWLEDGEMENT OF
UNDERSTANDING OF
RIGHTS IN ARRAIGNMENT
RECONOCIMIENTO Y
ENTENDIMIENTO DE DERECHOS
EN LA VISTA INCOATORIA

BIRTHDATE: [REDACTED] AGE: 26 SSN: [REDACTED] PHONE: [REDACTED]
FECHA DE NAC. EDAD NÚM. DE SEGURO SOCIAL TELÉFONO

ADDRESS: [REDACTED]
DOMICILIO

HOW FAR DID YOU GO IN SCHOOL? HS grad, some college
¿HASTA QUE AÑO DE LA ESCUELA CUMPLIÓ UD.?

LIST EACH STATE (OTHER THAN IDAHO) WHERE YOU HAVE LIVED: N/A
INDICA CADA ESTADO (APARTE DE IDAHO EN LOS EE. UU.) DONDE UD. HA VIVIDO

I, Bryce Scott Mendel, hereby acknowledge and confirm the following:
Yo, (Write your name/Escriba su nombre) por el presente reconozco y entiendo lo siguiente:

- I have reviewed with my attorney a copy of the Information that has been filed against me and I understand the nature of the charges that are stated in the Information.
Yo he repasado con mi abogado una copia del Informe Acusatorio que ha sido elevado contra mi; y yo entiendo la naturaleza de los cargos que están dichos en el Informe Acusatorio.
- Before my arraignment in district court I viewed the video presentation which explained the various plea options that are available to me and my Constitutional rights.
Antes de mi vista incoatoria en el tribunal de distrito, yo ví una programa en video que explicó mis varias opciones declaratorias que son disponibles y mis derechos Constitucionales.
- I understand the various plea options that were explained in the video presentation; I also understand my Constitutional rights and the consequences of exercising each of my plea options.
Yo entiendo las varias opciones declaratorias que fueron explicadas en la programa de video; yo también entiendo mis derechos Constitucionales y las consecuencias por ejercer cada una de mis opciones declaratorias.
- I have had adequate time and opportunity to talk to my attorney before my arraignment and he has advised me concerning the arraignment and answered all of my questions to my satisfaction.
Antes de la vista incoatoria, yo he tenido el tiempo necesario y la oportunidad de hablar con mi abogado y el me ha orientado en cuanto la vista incoatoria y estoy conforme con las respuestas que me ha dado por las preguntas que yo tenía.

DATED this 5 day of March, 2012.
FECHADO ÉSTE DÍA DE

[Signature]
Defendant's Attorney
Abogado Defensor

[Signature]
Defendant
Acusado

AGENCY: COUNTY: IDAD
12 MAY 2012 PM 4:09

Diane Pitcher, ISB# 8340
Ryan L. Holdaway ISB# 8289
PITCHER & HOLDAWAY, PLLC
40 W. Cache Valley Blvd. Ste #3B
Logan, UT 84341
Telephone: (435)787-1200
Facsimile: (855) 787-1200
Email: diane@pitcherholdaway.com
Email: ryan@pitcherholdaway.com

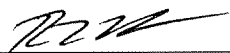
Attorneys for Defendant

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE**

STATE OF IDAHO,)
)
Plaintiff,) Case No. CR-2012-1397 FE
)
v.)
) **MOTION TO DISMISS**
BRYCE SCOTT MENDEL,)
)
Defendant.)
_____)

The Defendant, Bryce Mendel, by and through his attorneys of record, Ryan L. Holdaway and Diane Pitcher, of the firm, Pitcher & Holdaway, PLLC, hereby submits his Motion to Dismiss. This Motion is supported by memorandum and affidavits filed contemporaneously herewith.

DATED this 30th day of May 2012.



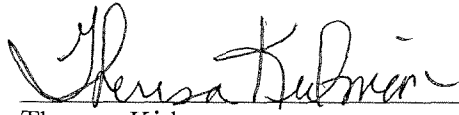
Ryan L. Holdaway
Attorney for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of May 2012. I caused a true and correct copy of the foregoing document to be served by the method indicated below, and addressed to the following:

Penny North-Shaul
Bonneville County Prosecutor's Office
605 N. Capital Ave.
Idaho Falls, ID 83402
Facsimile: (208) 529-1189

- U.S. Mail, Postage Prepaid
- Hand Delivered
- Overnight Mail
- Facsimile



Theresa Kidman

CLERK OF DISTRICT COURT
12 MAY 2012 PM 4:09

Diane Pitcher, ISB# 8340
Ryan L. Holdaway ISB# 8289
PITCHER & HOLDAWAY, PLLC
40 W. Cache Valley Blvd. Ste #3B
Logan, UT 84341
Telephone: (435)787-1200
Facsimile: (855) 787-1200
Email: diane@pitcherholdaway.com
Email: ryan@pitcherholdaway.com

Attorneys for Defendant

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE**

STATE OF IDAHO,)	
)	
Plaintiff,	)	Case No. CR-2012-1397 FE
)	
v.)	
	)	MEMORANDUM IN SUPPORT OF
BRYCE SCOTT MENDEL,	)	MOTION TO DISMISS
)	
Defendant.)	
_____)	

The Defendant, Bryce Mendel, by and through his attorneys of record, Ryan L. Holdaway and Diane Pitcher, of the firm, Pitcher & Holdaway, PLLC, hereby submits his Memorandum in Support of Motion to Dismiss. This memorandum is supported by affidavits filed contemporaneously herewith.

PROCEDURAL AND FACTUAL HISTORY

Mr. Mendel owned and operated a business known as Incense Delivery.¹ Aff. Ryan L. Holdaway Re: Support Defs. Mot. Dismiss at Ex. 'A' (pg. 18 of the report)(May 30, 2012)(hereinafter "Aff. Holdaway"). On December 17, 2011 Idaho Falls police officers were called to respond to robbery. *Id.* at Ex. 'O' (Prelim. Hrg. Transcr. 5:2-5). In responding to the call they ultimately ended up at Incense Delivery. *Id.* at 5:10-20. While there, police observed what they believed to be spice products.² *Id.* at 6:8-15. Some of the product was seized for testing. *Id.* at 6:21-7:3.

The lab test for the seized product showed the presence of AM-2201. *Id.* at Ex. 'B'. An investigation ensued that resulted in a controlled buy and ultimately the arrest and charges in the present case. *Id.* at Ex. 'A'. The sole chemical at issue throughout the investigation is AM-2201. *Id.* at Ex. 'B'.

A preliminary hearing was held on February 21, 2012 before the Honorable L. Mark Riddoch. *Id.* at Ex. 'O'. During that preliminary hearing a Criminalistic Analysis Report was put into evidence in which the lab technician, Scott Hellstrom, purported that the substance AM-2201 was a controlled substance. *Id.* at Ex. 'O' (T Prelim. Hrg. Transcr. 9:21-14:23) and Ex. 'B'. Mr. Hellstrom was not produced for cross examination and the portion of the lab test purporting the chemical was a controlled substance was objected to. *See id.* That objection was overruled and the report in its entirety was entered into evidence. *Id.*

¹ For purposes of this memorandum and motion only the Defendant will adopt the facts as alleged and reported by the State. The Defendant does not admit to said facts but relies on them solely for the purpose of facilitating the present argument which is legal and not factual in nature.

² The terms spice, potpourri, and herbal incense are interchangeable terms and generally refer to a plant material that has been mixed with a chemical one of which is the chemical in question in this case.

Also at the preliminary hearing the Defendant sought to introduce testimony by way of Dr. Karl De Jesus. *Id.* at Ex. 'O' (Prelim. Hrg. Transcr. 77:8-9). Dr. De Jesus was prepared to testify as an expert concerning the chemical properties of AM-2201 as compared to the language of the statutes allegedly covering that chemical (I.C. § 37-2705(d)(30)(ii)(a)). *Id.* (Prelim. Hrg. Transcr. 77:10-17 and 79:21-80:7). Upon objection by the State the court refused to permit testimony from Dr. De Jesus because it concluded the issue raised by Dr. De Jesus's expected testimony was a "factual issue for the jury." *Id.* (Tr. 82:17-83:7). Despite its conclusion that the issue was a factual one the court then opined that the Defendant could raise his issue by motion to dismiss and/or a motion in limine both of which are matters that would go before a judge and not a jury. *Id.* After the court denied the Defendant the opportunity to put his witness on the stand the court concluded there was sufficient evidence to bind over the Defendant whereupon the Defendant has filed the present motion.

ARGUMENT

Mr. Mendel makes the present motion based upon I.C. § 19-815A as to the sufficiency of evidence and pursuant to Idaho Criminal Rule 48(a) as the legality of the chemical AM-2201. Although there is considerable overlap of the two issues each will be addressed in turn.

I. THE MAGISTRATE COURT WRONGFULLY DENIED THE DEFENDANT THE OPPORTUNITY TO PRODUCE EVIDENCE ON HIS OWN BEHALF AND CONSEQUENTLY THE SUBSTANTIAL EVIDENCE RELIED UPON BY THE MAGISTRATE IN BINDING OVER THE DEFENDANT WAS WITH A PROPER BASIS.

To bind over a defendant to district court the magistrate court must first make two distinct determinations: the first is that "a public offense has been committed" and the second is that there is "probable or sufficient cause to believe that the defendant committed such offense." ICR 5.1(b). The burden to prove both a crime has been committed and that there is probable

cause the defendant committed it rests upon the State. *State v. Greensweig*, 102 Idaho 794, 796 (Ct. App. 1982). Finally, the State must provide sufficient evidence that the magistrate court can make the necessary findings based upon substantial evidence. ICR 5.1(b) and *State v. Munhall*, 118 Idaho 602, 606 (Ct. App. 1990).

Furthermore, the question of whether a substance is designated in the Controlled Substance Act as a controlled substance is a question of law for the court. *State v. Hobbs*, 101 Idaho 262, 262 (1980) and *State v. Kellog*, 102 Idaho 628 (1981). It is not a question of fact. *See id.* Consequently, the issue of whether the chemical AM-2201 is even illegal under the statutory language adopted by Idaho is a matter for the court and not the jury.

Finally, at a preliminary hearing the Defendant has the right to produce evidence on his own behalf as well as cross examine witnesses. ICR 5.1(b) and I.C. §§ 19-808 and 809. At the same time the State may introduce some evidence by way of hearsay documentation. ICR 5.1(b). Thus implying that the State may not have to produce some witnesses such as lab technicians in order to get lab results admitted as evidence. *See id.* However, the Rule is unclear about the boundaries of how much information is permitted to come in through hearsay documentation before the State must produce the lab technician for cross examination. *See id.*

In the present case the State introduced evidence that the spice in question contained the chemical AM-2201. *Aff. Holdaway* at Ex. 'B'. The State's lab report purported that AM-2201 is a controlled substance under 37-2705(d)(30)(ii)(a). *Id.* At the preliminary hearing the Defendant was not challenging the fact that AM-2201 was found in the substances tested. *Id.* at Ex. 'O' (Prelim. Hrg. Transcr. 77:10-17, 81:15-82:8). Rather, the Defendant sought only to challenge the State's assertion that AM-2201 was illegal. *Id.* He attempted to do so by calling Dr. Karl De Jesus as an expert witness. *Id.* (Prelim. Hrg. Transcr. 77:8-9).

The State objected and asked that Dr. De Jesus not be permitted to testify. *Id.* (Prelim. Hrg. Transcr. 77:18-78:14; 80:9-81:19; and 82:9-16). It is apparent from the nature of the State's objection and the court's ruling that neither understood the purpose of Dr. De Jesus's testimony. *See id.* The State's objection was twofold with the first reason being that Dr. De Jesus had not "tested the same substance that was taken" from the Defendant. *Id.* (Prelim. Hrg. Transcr. 77:18-78:4). The second part of the objection was that Dr. De Jesus's testimony was "immaterial" because the preliminary hearing was only to determine "whether or not [Mr. Mendel] possessed a substance that had AM-2201..." *Id.* (Prelim. Hrg. Transcr. 78:8-11). The State further argued that the issue of whether AM-2201 is legal or illegal is a "jury question." *Id.* (Prelim. Hrg. Transcr. 80:9-15). The court ruled in favor of the State and found that it was a factual issue for the jury. *Id.* (Prelim. Hrg. Transcr. 82:17-83:7).

The argument of the State and the court's conclusion were in error. The issue being presented was one of law and not fact because it was solely a question of whether or not AM-2201 is a controlled substance under the code. Idaho law has clearly placed that issue as one of law and one that is properly brought before the court and not a jury. *See Hobbs*, 101 Idaho at 262. Additionally, the testimony was material and relevant as the preliminary hearing requires not just a finding that the Defendant possessed the chemical but also that the chemical was illegal. Indeed, there is no question that the court must find that a law was violated before binding a defendant over to district court. ICR 5.1(b) and *Greensweig*, 102 Idaho at 796. Therefore, evidence that goes to the issue of illegality or legality of a substance is material to the threshold question of whether a crime has even been committed.

Furthermore, the court improperly denied the Defendant's witness in contravention to the Defendant's right to call witness and produce evidence on his behalf. ICR 5.1(b) and I.C. § 19-

809. The Defendant was deprived of the opportunity to cross examine the State's witness purporting that AM-2201 is illegal by virtue of the fact the State failed to produce him. At a minimum the Defendant should have been permitted to produce evidence that countered the evidence produced by the State.

The court seemed to have been satisfied that the State had already produced evidence that AM-2201 was illegal by way of the lab report. Aff. Holdaway at Ex. 'O' (Prelim. Hrg. Transcr. 82:17-24). In other words, the court seems to have concluded that because the State already produced evidence that AM-2201 was illegal there was no point in taking evidence from the Defendant that would be contrary to the State's evidence. *See id.* If such reasoning is taken to its logical extension then the Defendant never have any reason to produce any evidence on his own behalf. This is because either the State will fail to produce evidence as to an element of the offense in which case the Defendant cannot be bound over; or the State will have produced evidence as to each element of the crime and there is no reason to take evidence that would counter the State's evidence. Obviously this is not the way the preliminary hearing is supposed to work.

If we look at it in the context of a purely factual issue this point becomes more clear. Suppose the Defendant in this case had evidence that he was not the one that actually possessed the substance in question. The court would not deny the Defendant the opportunity to introduce that evidence merely because the State's witnesses had already testified that the Defendant did in fact possess the substance. The court might ultimately find in favor of the State but the Defendant would at least be permitted to introduce his evidence.

The same is true as to whether the substance is illegal. The fact that the State had produced some evidence that the substance was illegal should in and of itself deprive the

Defendant of the ability to produce his own evidence to the contrary. The court's decision in the preliminary hearing was erroneous because it wrongly concluded that the issue was one of fact rather than law and it wrongfully deprived the Defendant of the opportunity to produce evidence on his behalf.

The court cannot simultaneously deny the Defendant the ability to produce relevant and material evidence while finding substantial evidence exists to bind him over. The reason the substantial evidence was there was solely because the Defendant had been improperly deprived of his opportunity to counter the State's evidence with his own. Because the substantial evidence the court relied upon was gained through denying the Defendant's rights it should not be upheld as a basis for binding the Defendant over in the case is ripe for dismissal under I.C. § 19-815A.

II. THE CHEMICAL AM-2201 IS NOT A CONTROLLED SUBSTANCE UNDER I.C. § 37-2705(d)(30)(ii)(a) BECAUSE ITS CHEMICAL PROPERTIES ARE DIFFERENT FROM THOSE LISTED AS ILLEGAL UNDER THE CODE.

Spice is not illegal in the State of Idaho. *See* I.C. § 37-2705(d)(30). Rather, certain chemicals that may be used to make spice are controlled substances. *Id.* Those chemicals are not listed by name under the Idaho Code. *Id.* Instead, the Code identifies chemical structures and then prohibits numerous chemicals that would fit under the identified structures. *Id.*

The question then becomes which chemicals are described under the Code, or in other words, which chemicals are controlled substances? The question of whether a substance is designated in the Controlled Substance Act as a controlled substance is a question of law for the court. *State v. Hobbs*, 101 Idaho 262, 262 (1980) and *State v. Kellog*, 102 Idaho 628 (1981). Therefore, the present issue of whether AM-2201 is even illegal under the Idaho Code is properly before this Court on a motion to dismiss.

Mr. Mendel has been charged with possession with intent to deliver a controlled substance as defined under I.C. § 37-2705(d)(30)(ii)(a). That section states in its entirety:

Any compound structurally derived from 3-(1-naphthoyl)indole or 1H-indol-3-yl-(1-naphthyl)methane by substitution at the nitrogen atom of the indole ring by alkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl or 2-(4-morpholinyl)ethyl, whether or not further substituted in the indole ring to any extent, whether or not substituted in the naphthyl ring to any extent.

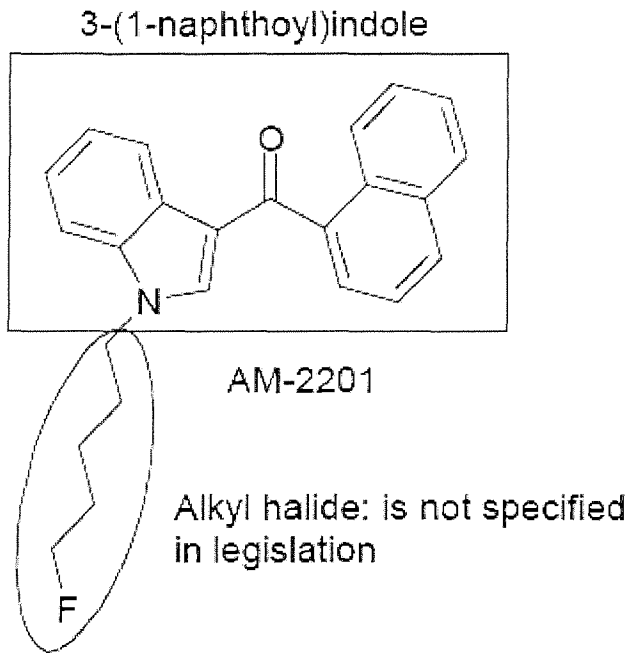
I.C. § 37-2705(d)(30)(ii)(a).

Rules of statutory construction apply in interpreting the applicable code. The court must interpret a statute according to the plain and express meaning of the words. *Arambarri v. Idaho Dept. of Welfare*, 2012 Ida. LEXIS 72 (Idaho Mar. 8, 2012). Each word in the statute must be given effect so that "none will be void, superfluous, or redundant." *Hillside Landscape Construction, Inc. v. City of Lewiston*, 264 P.3d 388, 392 (Idaho 2011). Furthermore, it is presumed that each word was placed into the statute for a reason. *Id.* The negative implication is that omitted words have been left out for a reason. *Id.*

The court may only turn to legislative intent after a determination is made that a portion of the statute is either ambiguous, incomplete, absurd, or arguably in conflict with other laws. *Id.* Pursuant to that rule the Idaho Court of Appeals has held that "[i]f the language is clear and unambiguous, there is no occasion for the court to resort to legislative history, or rules of statutory construction." *Idaho v. Ephraim*, 267 P.3d 1291, 1292-93 (Idaho Ct. App. 2011).

Finally, the more specific statute or portion will control over the more general. *Wheeler v. Idaho Dept. of Welfare*, 147 Idaho 257, 564 (2009). As noted in that Court's decision, "[i]t is a basic tenet of statutory construction that the more specific statute or section addressing the issue controls over the statute that is more general." *Id.* With these rules in mind we now turn to the chemical itself and I.C. § 37-2705(d)(30)(ii)(a).

The term "AM-2201" is the chemical's common name and its proper name under internationally recognized standards is 1-(5-fluoropentyl)-3-(1-naphthoyl)indole. See Aff. Holdaway at Ex. 'D'. Below is a two dimensional diagram of AM-2201 as prepared by Dr. McDougal and as contained in his report. *Id.*



The two hexagons to the right of the "o" is the naphthyl ring. *Id.* The hexagon and pentagon to the left of the "o" is the indole ring. *Id.* The "N" that is on one corner of the pentagon shape in the indole ring is a nitrogen atom. *Id.* It is this nitrogen atom that is referenced in the statute when it state, "by substitution at the nitrogen atom of the indole ring by alkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl or 2-(4-morpholinyl)ethyl" I.C. § 37-2705(d)(3)(ii)(a). The crooked line shooting off of the nitrogen atom is a group of atoms. It is this group that is at issue in the present case. The question is if that group of atoms is covered by the language quoted two sentences ago. This question may more appropriately be phrased as two questions: 1) does AM-

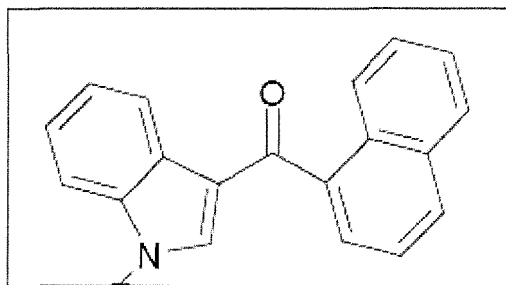
2201 contain something at the nitrogen atom in the indole ring; and 2) is the "something" a "substitution...by alkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl or 2-(4-morpholinyl)ethyl?"

The answer to the first question is straight forwards enough--AM-2201 does contain something at the nitrogen atom of the indole ring. The answer to the second question is also straight forward but requires more discussion. More specifically, what does it mean to "substitute...by alkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl or 2-(4-morpholinyl)ethyl."

The term "alkyl" is defined as a chain of atoms consisting entirely of single bonded hydrogen and carbon atoms. *Id.* The term "alkenyl" refers to a chain of atoms consisting entirely of hydrogen and carbon atoms but where one or more of the carbon atoms are double bonded or pi bonded. *Id.* The term "cycloalkylmethyl" refers to a group of atoms made up entirely of hydrogen and carbon atoms but where the atoms are arranged more or less in a circle pattern as opposed to the more linear structure of an alkyl or alkenyl chain. *Id.* The same is true of "cycloalkylethyl" with the only difference between cycloalkylmethyl and cycloalkylethyl being the number of carbon atoms present. For purposes of the present discussion 2-(4-morpholinyl)ethyl will not be addressed.

An example of a spice related chemical that contains an alkyl chain (or group) would be JWH-018. *Id.* The proper name for JWH-018 is 1-pentyl-3-(1-naphthoyl)indole. *Id.* A two dimensional diagram of JWH-018 is below and depicted as shown in Dr. McDougal's report. *Id.*

3-(1-naphthoyl)indole



JWH-018

Alkyl group: is specified
in legislation

The indole and naphthyl rings of JWH-018 and AM-2201 are identical. The difference appears when looking at the chain attached to the nitrogen atom of the indole ring. As the Court will note the chain in JWH-018 is represented by a crooked line. This signifies that the chain is made up entirely of single bonded hydrogen and carbon atoms. In other words the chain in JWH-018 is an alkyl since an alkyl is a chain made up entirely of single bonded hydrogen and carbon atoms.

When the alkyl chain of JWH-018 is compared with that of AM-2201 there is one noticeable difference. The diagram of AM-2201 has an "F" at the end of the chain. While such a change may appear minor it has a significant impact in how the chemical behaves, how it is named, how it is treated by chemists, and finally how it is defined. The "F" represents a fluorine atom that is in place of a hydrogen atom in the chain.

The field of organic chemistry treats fluorine as a "halide." Fluorine is a functional atom that changes the manner in which the entire chain it is attached to operates. Due to its functional role and due to the fact that fluorine is not hydrogen or carbon the chain in which the fluorine

appears is called an alkyl halide. It is of significant importance to note at this stage that once the term "alkyl" appears in conjunction with "halide" it no longer carries with it the same meaning as does when it appears alone. *See id.* Simply put an alkyl halide is not an alkyl.






A brief analogy may assist the court in understanding the use of alkyl in two different places without maintaining a consistent definition in both cases. "Community" is defined as " a neighborhood, vicinity, or locality; a society or group of people with similar rights or interest; joint ownership, possession, or participation." *Black's Law Dictionary* 297 (Bryan A. Garner ed., 8th ed., West 2004). "Property" means "the right to possess, use, and enjoy a determinate thing (either a tract of land or chattel)..." *Id.* at 1252. As practitioners of the law we understand these terms, their uses, and the limitations of their use. Laypeople sometimes struggle with these words in certain context.

For example one individual came into our office and wanted to know if he could take his employer's truck because he was in a dispute with his employer. We informed him he could not. He replied that Idaho is a community property state and he was a member of the community. The truck was property and therefore he owned some of the truck. Despite our best efforts to convince him otherwise he refused to believe us as he had looked up the terms and confirmed what they meant. The problem was that he was using the definition of "community" and the definition of "property" as defined independent of one another.

However, those of us educated in the law understand that once the term "community" is joined to the word "property" they take on new meaning and collectively become a noun. "Community property" is defined as "assets owned in common by husband and wife as a result of its having been acquired during the marriage by means other than an inheritance or gift to one spouse, each spouse generally holding a one-half interest in the property." *Id.* at 297. The term

"community property" is a legal term of art that carries with it a meaning that is separate from and distinct from the definitions of "community" and "property."

So too are the terms "alkyl" and "alkyl halide." As soon as the term "alkyl" is combined with the term "halide" to describe a group of chemicals the term is treated entirely different from, and distinguishable from, an "alkyl." The term "alkyl halide" denotes an entirely different family of chemicals and structures than what is described by "alkyl." The chart below shows a simple breakdown of these families and groups of chemicals.

Family	Structure	IUPAC nomenclature	IUPAC nomenclature for cyclic parent chains (if different from straight chains)	Common nomenclature
Alkyl groups	R—	Alkyl	-	Alkyl
Halogens	R—X (halogen)	Halalkane	-	Alkyl halide
Alcohols	R—OH	Alkanol	-	Alkyl alcohol
Amines	R—NH ₂	Alkanamine	-	Alkyl amine
Carboxylic acids		(Alk + 1)anoic acid	Cycloalkanecarboxylic acid	-
Aldehydes		Alkanal	Cycloalkanecarbaldehyde	-
Ketones		Alkanone	-	Alk ₍₁₎ yl Alk ₍₂₎ yl ketone
Thiols	R—SH	Alkanethiol	-	-
Amides		(Alk + 1)anamide	Cycloalkanecarboxamide	-
Ethers	R ₁ —O—R ₂	alkoxyalkane	-	Alk ₍₁₎ yl Alk ₍₂₎ yl ether
Esters		Alk ₍₁₎ yl Alk ₍₂₎ anoate	Alk ₍₁₎ yl Cycloalk ₍₂₎ anecarboxylate	Alk ₍₁₎ yl (Alk + 1) ₍₂₎ anoate

http://en.wikipedia.org/wiki/IUPAC_nomenclature_of_organic_chemistry.³

³ This chart was taken from the website on March 13, 2012. Since that time the site has been updated and the chart has been altered. To get to the new chart one must scroll to the "Functional Groups" section and click on "Functional group#Table of common functional groups." The link will take the viewer to a series of tables that breaks down the different families and groups into more detail than the chart used here. The tables relevant here are the "Hydrocarbons" table and the "Groups containing halogens." Those charts evidence the distinction between an alkyl and an alkyl halide in that they are treated differently and charted separately as parts of different groups.

Numerous sources further evidence the distinction between alkyls and alkyl halides such as textbooks and the IUPAC (International Union of Pure and Applied Chemistry).⁴

Because an alkyl halide is not an alkyl the statute does not criminalize a chemical containing an alkyl halide. Under the clear and unambiguous words of the statute a chain cannot be substituted at the nitrogen atom "by alkyl, alkenyl, cycloalkylmethyl" or "cycloalkylethyl." I.C. § 37-2705(d)(30)(ii)(a). An alkyl halide is not an alkyl by definition because an alkyl halide contains a non-hydrogen and/or non-carbon atom. By definition an alkyl, alkenyl, and the cycloalkyls (methyl and ethyl) are made up *entirely* of hydrogen and carbon atoms. Therefore, the statute only prohibits use of highly specific types of hydrogen and carbon chains from being attached to the nitrogen atom. Chains containing chemicals other than hydrogen or carbon are not prohibited under the clear and unambiguous language.

AM-2201 contains an alkyl halide chain off of the nitrogen atom. It therefore does not contain an alkyl, alkenyl, or cycloalkyl (methyl or ethyl) chain as prohibited under the statute. Because AM-2201 falls outside of the statute it is not illegal. Because it is not illegal Mr. Mendel was not in possession of a controlled substance nor was he intending to deliver an illegal substance. As such the charges against him should be dismissed.

Indeed, numerous states have taken pains to specifically include haloalkyls in their laws due to the clear and recognized difference between an alkyls and haloalkyls. For instance, Kansas adopted a law under Senate Substitute for HB 2049 which criminalizes "substitution at the nitrogen atom of the indole ring by an alkyl, *haloalkyl*, alkenyl, cycloalkylmethyl, cycloalkylethyl" and others. *Aff. Holdaway* at Ex. 'I'. The same language has been adopted by Oregon, Nebraska, North Carolina, New York, and Kentucky. *Id.* at Ex. 'J' through 'N'. This list

⁴ Such references are identified in part in the opinion letters of Dr. McDougal, Dr. De Jesus, and Dr. Parent.

is not exhaustive but is meant merely to represent that numerous states have recognized that there is a clear and unambiguous distinction between alkyls and haloalkyls and have therefore prohibited haloalkyls such as AM-2201 through the inclusion of the term "haloalkyls" in their laws. *See id.* There would be little reason for so many states to include the term "haloalkyl" if that term were already included in the clear meaning of the term "alkyl." As such the implication is evident--haloalkyls are NOT alkyls.

The Idaho Code only prohibits the use of alkyls and does not criminalize the distinctly different haloalkyl that is at issue here. Because AM-2201 is a haloalkyl chemical it is by definition not covered by the 37-2705(d)(30)(a)(ii). If it is not covered by that section then it is not a controlled substance and is legal to possess.

DATED this 30th day of May 2012.



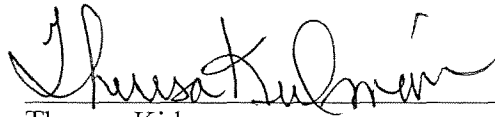
Ryan L. Holdaway
Attorney for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of May 2012. I caused a true and correct copy of the foregoing document to be served by the method indicated below, and addressed to the following:

Penny North-Shaul
Bonneville County Prosecutor's Office
605 N. Capital Ave.
Idaho Falls, ID 83402
Facsimile: (208) 529-1189

- U.S. Mail, Postage Prepaid
- Hand Delivered
- Overnight Mail
- Facsimile



Theresa Kidman

Ryan L. Holdaway, ISB# 8289
 Diane Pitcher, ISB# 8340
PITCHER & HOLDAWAY, PLLC
 40 W. Cache Valley Blvd., Ste. 3B
 Logan, Utah 84341
 Telephone: (435) 787-1200
 Facsimile: (855) 787-1200
 Email: diane@pitcherholdaway.com
 Email: ryan@pitcherholdaway.com

BONNEVILLE COUNTY, IDAHO
 12 MAY 21 PM 4:10

Attorney for Defendant

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE**

STATE OF IDAHO)	
)	
Plaintiff,	)	Case No. CR-2012-1397 FE
)	
v.	)	AFFIDAVIT OF RYAN L. HOLDAWAY
	)	RE: SUPPORT OF DEFENDANT'S
BRYCE SCOTT MENDEL	)	MOTION TO DISMISS
)	
Defendant.)	
)	

STATE OF UTAH)
) ss.
 County of Cache)

Ryan L. Holdaway, first being duly sworn upon oath, deposes and says:

1. I am over eighteen years of age and make this affidavit based upon my own personal knowledge and belief.
2. I am the attorney of record for Mr. Mendel and as such have personal knowledge regarding the facts of this case.
3. Attached to this affidavit are true and accurate copies of the following:

**AFFIDAVIT OF RYAN L. HOLDAWAY RE: SUPPORT OF DEFENDANT'S MOTION
 TO DISMISS - 1**

- a) A copy of the Police Report as Exhibit 'A';
- b) A copy of the Lab Report as Exhibit 'B';
- c) A copy of the curriculum vitae of Dr. Owen McDougal as Exhibit 'C';
- d) A copy of the written opinion of Dr. McDougal as Exhibit 'D';
- e) A copy of the curriculum vitae of Dr. Richard Parent as Exhibit 'E';
- f) A copy of the written opinion of Dr. Parent dated June 9, 2011 as Exhibit 'F';
- g) A copy of the written opinion of Dr. Parent dated April 28, 2011 as Exhibit 'G';
- h) A copy of the curriculum vitae of Dr. Karl De Jesus as Exhibit 'H';
- i) An excerpt of the Senate Substituted HB 2049 for the State of Kansas as adopted in May of 2011 as Exhibit 'F' (the relevant portion has been highlighted);
- j) An excerpt of Oregon Board of Pharmacy Rule as Exhibit 'G' (the relevant portion has been highlighted);
- k) An excerpt of R.R.S. Neb. § 28-405(35)(ii) as Exhibit 'H' (the relevant portion has been highlighted);
- l) A copy of N.C. Gen. Stat. § 90-94 as Exhibit 'I' (the relevant portion has been highlighted);
- m) A copy of the New York Department of Health Summary Order as Exhibit 'J' (the relevant portion has been highlighted); and
- n) A copy of House Bill 481 recently adopted by the State of Kentucky as Exhibit 'N'.
- o) A copy of Transcript from Preliminary Hearing.

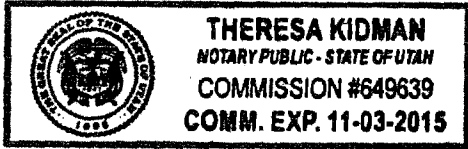
Further your affiant sayeth naught.

DATED this 30th day of May, 2012



Ryan L. Holdaway

SUBSCRIBED AND SWORN to before me this 30th day of May, 2012



Theresa Kidman

Notary Public for Utah
Residing at: Mendon, Cache, UT
My Commission Expires: 11-3-2015

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of May 2012, I caused a true and correct copy of the foregoing document to be served by the method indicated below, and addressed to the following:

Bonneville County Prosecutor's Office
Penelope N. Shaul
605 N. Capital Ave
Idaho Falls, ID 83402
Fax: (208) 529-1189

- U.S. Mail, Postage Prepaid
- Hand Delivered
- Overnight Mail
- Facsimile

Bonneville County Court
605 N. Capital Ave
Idaho Falls, ID 83402
Fax: (208) 529-1300

- U.S. Mail, Postage Prepaid
- Hand Delivered
- Overnight Mail
- Facsimile

Theresa Kidman

Theresa Kidman

EXHIBIT A

050

Case Summary Report

Agency: IFPD

Case Number: 2012-01086

Date: 2/1/2012 15:52:20

Last Modified: 1/31/2012 21:52:00

Notes/Narratives

On 12-28-12 at approx. 1600 hrs. I received the results of some samples of spice that I had sent to the Idaho State Forensic Lab on 12-17-11 (201115025). The samples that I had sent were identified as to have AM--2201 a schedule one drug.

I advised Sgt. Galbreath of the results. Sgt Galbreath then called the company Intense Delivery and ordered some of the same spice (Deja Vu) that had been sent to the lab on 12-17-11. Officer Steele went to 1414 Cambridge and watched as the delivery driver left the company at 1414 Cambridge driving a red Ford Focus. The driver later identified as William Bartlet called Sgt. Galbreath and advised him that he had his order. Sgt. Galbreath advised him to meet in front of Subways on Woodruff. Officers staged in the area, and when Bartlet arrived driving a red Ford Focus he was stopped and detained. Bartlet advised that he was there to make the delivery but denied that the substance was spice. Bartlet was placed into custody for possession with the intent to deliver a schedule one drug. A search of his car incident to arrest found a black box with 27 containers of Deja vu spice and a list of all of Bartlet's deliveries for the night. The items were seized and placed into evidence. Bartlet was booked into jail and his car was impounded.

Sgt. Galbreath then contacted the on call prosecutor Paul Rodgers. Sgt Galbreath advised him of the previous case in December along with the new traffic stop. We spoke with Rodgers about attempting to obtain a search warrant for 1414 Cambridge. Officers were sent to 1414 Cambridge to keep an eye on the business while Sgt. Galbreath and I went to attempt to get a search warrant for the business. After the warrant was finished and in-hand, Sgt. Galbreath and I went to 1414 Cambridge to assist in the search warrant service.

In the office 9 employees were being detained. The owner, Bryce Mendel, was served with his copy of the warrant. Officers then completed the search of the business and located hundred of containers of suspected spice. Thousands of dollars of cash along with computers files and company cars were seized at the business. Mendel along with his employees Kelly Nelson, Henry Villegas, William Brick, Lorraine Torres, Becky Jayne, Marc Adonga-Leonard, Alan Hales, Brian Carson and Brent Powell were all arrested and booked for possession with intent to deliver.

No further.

Notes/Continuation

Case Summary Report

Agency: IFPD

Case Number: 2012-01086

Date: 2/1/2012 15:52:20

Last Modified: 1/31/2012 21:52:00

Supplement Information

Supplement Date	Supplement Type	Supplement Officer
01/29/2012 04:47:40	ASSISTING OFFICER	(8854SS) STEEL, SPENCER D
Contact Name		Supervising Officer
		(8871DT) TRÉMAYNE, DENNIS L

Supplement Notes

The following people were arrested on 1-29-12 during an investigation and search warrant for delivery of "Spice" and other schedule I chemicals. They were each booked for possession with the intent to deliver a controlled substance.

William Bartlett
Kelly Nelson
Henry Villegas
William Brick
Bryce Mendel
Lorraine Torres
Becky Jayne
Marc Adonga-Leonard
Alan Hales
Brian Carson
Brent Powell

At aprox 2308 hrs on 1-28-12 I was surveilling 1414 Cambridge Dr. because it was a known location that distributes spice or "incense" to be used as an inhalant. Sgt. Galbreath had recently received a lab report in which some of the spice from this distribution business had tested positive for illegal schedule I substances. We also knew that the spice was delivered by couriers who are employees for the business.

I was across the street when I saw a red Ford Focus leave the parking lot of the business at 1414 Cambridge. I was announcing the vehicle descriptions that were leaving the area to Sgt. Galbreath and other units who had ordered some of the spice over the phone and were waiting for its delivery. The red Ford Focus later arrived to deliver the spice to Sgt. Galbreath. The driver, William D. Bartlett, was arrested for possession with the intent to deliver.

I approached the business and saw that there were several infrared cameras and several people inside. Several of the people came out to smoke and one looked over and saw me. Soon after a male exited the building and searched the perimeter with a flashlight.

Officer Kelly and Storer came to assist me. Because I believed I had been spotted and because we believed we had enough for a search warrant we planned on making contact with the occupants of the business to detain them and freeze the scene in preparation for the warrant.

I saw Lorraine Torres outside smoking in a Saturn and two other males standing outside smoking. Several of us approached all 3 of the of the people outside and detained them. Several more people came out of the business and were also detained. Sgt. Galbreath, Officer Smith, and Officer Siddoway entered the business to detain the occupants and freeze the scene. We detained 7 people inside or just outside the business. They were William Brick, Bryce Mendel, Lorraine Torres, Becky Jayne, Alan Hales, Brian Carson, and Brent Powell. As they were detained I emptied their pockets into piles and labeled them. I later left all their possessions in the business and kept only their cell phones.

Marc Adonga-Leonard and Henry Villegas arrived shortly after in a Nissan Sentra. Marc said it was his car and he was the driver. Kelly Nelson arrived well after we had obtained the search warrant. He was also detained.

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Sgt. Callbreath received the signed search warrant and we began a search of the vehicles and building. In the Nissan Sentra Officer Storer and I found several bottles of Spice, cash and cell phones. I searched inside the Saturn that Lorraine had been smoking in and I saw 3 bottles of spice in her purse along with a pup can pipe on the seat. The license plate on the Saturn was Idaho 8BCM911. The Saturn was registered to Lorraine.

I worked on the downstairs of the business during the search warrant service. Bryce Mendel came downstairs and assisted by opening several safes and lock boxes. In a large room that had a combination safe door as an entry I found 5 large boxes of Spice in bulk. I estimated the total weight of the 5 large containers as around 100 pounds. There was also a bag with white crystals in another safe inside the safe room. Bryce told me the name of the chemical but I don't remember what it was. There were also several small containers of packaged spice in the safe room. On a shelf just outside the safe room I found a black box with a tranquilizer gun inside. Bryce said they considered using it for protection of their delivery drivers.

In the next adjoining room to the safe room I found a safe in a closet, a computer, and a large bucket of change. Bryce said the change might be worth around \$750. There was also a locking briefcase with several of the Spice samples inside.

In the largest office in the basement I found 3 computers, several vehicle titles, a large file with employee information inside, and other business files.

In the upstairs front office I took 2 Toshiba Laptops.

All of the above items were taken and placed into evidence. I also placed the cell phones from the different employees in evidence.

During the investigation we found 2 employees in possession of glass pipes used to smoke the "incense" that is marked "not for human consumption".

I packaged one of the bottles of spice and a sample of a white powder in state envelopes to be sent to the lab for further identification.

End Report

Steel

053

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Agency: ICPD

Case Number: 2012-01086

Date: 2/1/2012 15:52:20

Last Modified: 1/31/2012 21:52:00

Supplement Information

Supplement Date	Supplement Type	Supplement Officer
01/29/2012 05:40:24	ASSISTING OFFICER	(8B17GK) KELLY, GARREN V
Contact Name		Supervising Officer
		(8B71DT) REMAYNE, DENNIS L

Supplement Notes

Officer G. Kelly, 01/29/2012:

Summary:

On 01/28/2012, I assisted officers in freezing the scene at 1414 Cambridge and the execution of a search warrant at the same location.

Details:

On 01/28/2012 at about 22:15 hours, Sergeant Galbreath requested my assistance in a drug investigation. At 2308 hours, Sergeant Galbreath parked near Subway (316 S. Woodruff) in an unmarked pickup and waited for a male, William Bartlett, who pre-arranged to sell Sergeant Galbreath spice. Bartlett arrived in a red 2002 Ford Focus and was immediately handcuffed by Officer Hart. The 2002 Focus was seized and impounded by Officer Nelson. Hendrickson's Towing towed the 2002 Focus to their secure lot.

Officer Storer and I then contacted Officer Steel who was doing surveillance at 1414 Cambridge, the building Bartlett had left from prior to the stop on Woodruff. This is also the same building Officer Hart had seized containers of spice during a robbery report on 12/17/2011. The containers seized had been tested by the Idaho State Lab and was positive for illegal substances listed in Idaho Code 37-2732 making it a schedule I drug. With this information, Officer Hart and Sergeant Galbreath obtained a search warrant for 1414 Cambridge.

While Officer Storer, Officer Steel, and I waited for the search warrant, Sergeant Galbreath advised we should freeze the scene to prevent anyone from leaving and stop the possible destruction of evidence. Just then, a male, later identified as Brent Powell, walked out the building and towards us. We immediately drew our firearms, advised him of who were, and to show us his hands. Powell was holding a spot light and a collapsible baton in his hands. He then began to reach for his waist, but he stopped when we gave him commands to keep his hand up. Powell then went to the ground. Powell was handcuff and searched. Powell had an Electronic Restraint Device (ERD) attached to his waist. He was advised he was being detained pending the search warrant. Officer Storer then placed Powell in the back of his patrol car.

When Sergeant Galbreath, Officer Stidoway, and Officer Smith arrived, we detained two males and a female who were smoking outside the building. Other officers entered the building and detained five more males and one more female. [See case report for list of names.] Shortly after, two more males arrived in a Nissan Sentra. They too were detained. I recognized the passenger as Henry Villegas. Villegas was holding the same type of plastic container that Bartlett had when he attempted to sell spice to Sergeant Galbreath. All of those detained were handcuffed and allowed to sit inside the building until Officer Hart arrived with the search warrant.

Sergeant Galbreath requested I photograph the building and the illegal contraband. I walked outside to retrieve my camera from my patrol car when I observed a male, later identified as Kelly Nelson, trying to hide behind a building next door. I asked the male what he was doing. He stated he lived in the neighborhood and he noticed all the police cars. I asked him again what he was doing here. Nelson then admitted he was one of the delivery drivers. I then informed him that he was being detained and escorted him back to the building. I then retrieved my camera.

I photographed each room and the contraband or items seized. I later downloaded the photographs to a CD and placed it into evidence. Also during this time, Sergeant Galbreath discovered that Bryce Mendel, the owner of Euphoric Incense Delivery, had paid for the Focus that was stopped on Woodruff with cash. His employees referred to one of two company cars. The second was a red 2005 Ford Focus (ID - 8BCP648) that was parked outside the building. He also was the lien holder of a blue 2000 Dodge K15 pickup (ID - 8BCW218, ID - Temp Tag: 13K075186)

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that was parked outside. Sergeant Galbreath handed me the title of the pickup and requested I seize these two vehicles. I inventoried the Focus. I was unable to inventory the pickup due to the doors being locked. I noted there was an envelope on the driver's seat and another on the front passenger's seat. Hendrickson's towed the vehicles to their lot. I gave Mendel the pink copies of the Impound form as receipts of the seizures. I later placed the title for the pickup in evidence.

No further action. GVK

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Supplement Information

Supplement Date	Supplement Type	Supplement Officer
01/29/2012 06:50:33	ASSISTING OFFICER	(8B32RN) NELSON, RYAN M
Contact Name		Supervising Officer
		(8B71DT) TRIMAYNE, DENNIS I

Supplement Notes

Summary:

On 01/29/2012 I assisted several officers with an investigation and the subsequent search warrant at 1414 Cambridge Drive. I interviewed several subjects involved in the delivery of controlled substances at 1414 Cambridge Drive. Recordings of the interviews from my inside vehicle cabin camera are available on the police department server. A total of eleven adult subjects were arrested and booked on Delivery of a Controlled Substance (Schedule I substances).

Details:

On 01/29/2012 at approximately 2308 hours I was assisting Sgt. Galbreath and Officers Storer, Kelly, Hart, and Steel with a drug investigation. Sgt. Galbreath had received a lab report of substances taken from a delivery business, Euphoric Incense Delivery or Incense Delivery, Inc., and it was determined to be an illegal Schedule I controlled substance, AM 2201.

Sgt. Galbreath arranged for the purchase of DJ vu, the product previously seized and tested positive for AM 2201. A delivery driver from the company, later identified as William Bartlett, arrived to make a delivery of the substance to Sgt. Galbreath. We responded to Sgt. Galbreath's location and Bartlett was taken in custody for the delivery of a controlled substance.

I advised Bartlett of his Miranda rights and asked him if he understood them. Bartlett acknowledged his rights verbally. Bartlett advised that he is a delivery driver for Incense Delivery, Inc. and was not aware that the substances he was delivering for his boss were illegal controlled substances. Bartlett advised that his employer is Incense Delivery, Inc., that the vehicle he was driving is a company vehicle, and that his boss is Bryce Mendel. Bartlett then advised he wanted to speak to an attorney at which point I terminated the interview. The vehicle Bartlett was driving is a red 2002 Ford Focus, Idaho license # 8BCN567, VIN # 1FAPPJ8352W124583. Since the vehicle was involved in delivery of controlled substances, the vehicle was seized and impounded. Hendrickson's Towing responded and impounded the vehicle. See WatchGuard Event #00:1d-96:00:0a:5d-8630855 for audio/video of the interview with Bartlett.

I transported William Bartlett to the Bonneville County jail where I booked him on Delivery of a Controlled Substance.

I responded to 1414 Cambridge Drive where the search warrant was served reference to Incense Delivery, Inc. Several other officers had already seized property at that location and I was assigned by Sgt. Galbreath with the task of interviewing several subjects at the location there.

Interview with Bryce Mendel -

WatchGuard Video/Audio Event ID#: 00:1d-96:00:0a:5d-8640745

I first identified the subject as Bryce Mendel verbally and confirmed his identity by driver's license photograph on my mobile data terminal. I then advised Mendel of his Miranda rights which he verbally acknowledged. The interview was documented on the WatchGuard cabin camera video.

Mendel admitted that he is the President and an officer of the corporation, Incense Delivery, Inc. Mendel stated he is the only officer, or owner, of the corporation and that it is an "S" corporation registered in the State of Idaho. Mendel admitted that his company sells "incense" that contains

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"2201", the controlled substance. Mendel stated that it's a "meditative incense" his company sells and that it was not for human consumption, but "if you smoke it, it can do terrible things to you". Mendel stated that he has approximately 24 employees and brings in approximately \$3,000-4,000 a night in sales. Mendel stated that he only brings in 5% of the profit as income and then reinvests the money in the company. Mendel advises that he pays either a piece rate per delivery to his employees for \$3.50-4.00 per piece, to \$8.00 an hour, or salary of up to \$2,000 a month for full time employees. I then asked Mendel about Bartlett, who was previously arrested and he confirmed he is a delivery driver for his company.

Mendel stated that he normally purchases the product he resells from a Jonathan Reidel, but that Reidel no longer sells to him. Mendel then stated he purchases product from www.buzzwholesale.com, but when I checked that address, the website was not in service. I then concluded the interview with Mendel at that time.

Interview with William C. Brick -

WatchGuard Video/Audio Event ID#: 00:1d:96:00:0a:5d:8643784

I first identified the subject as William Brick verbally and confirmed his identity by driver's license photograph on my mobile data terminal. I then advised Brick of his Miranda rights which he verbally acknowledged. The interview was documented on the WatchGuard cabin camera video.

Brick advised that he works for Mendel as a "Driver Manager" where he deals with the delivery drivers and counts cash from the purchases. Brick advised that his compensation was just recently changed to salary at \$1,400 a month, but was supposed to be \$2,000 a month.

Brick described the product in a little more detail. Brick advised that two products being sold by their company were "Crush" and "Dj vu". Brick advised that the "Dj vu" is a trademarked version and that "Crush" is a little cheaper version. Brick stated that there are people that deliver the large quantities of the product locally by people he doesn't know.

Interview with Brent Powell -

WatchGuard Video/Audio Event ID#: 00:1d:96:00:0a:5d:8646045

I first identified the subject as Brent Powell verbally and confirmed his identity by driver's license photograph on my mobile data terminal. I then advised Powell of his Miranda rights which he verbally acknowledged. The interview was documented on the WatchGuard cabin camera video.

Powell advised that he has worked for the company for approximately 2 months and was initially cleaning Mendel's house, then answering phones and taking orders for the "meditative incense", and just recently Powell was assigned as security. For further information on the product, Powell stated that the "Dj vu" substance was made available in sour green apple, blueberry, and strawberry banana flavors. Powell stated that there are usually 2 employees answering phones, 1 employee assigned to security, 1 employee responsible for cleaning up, and several delivery drivers to deliver the product.

Interview with Marc A. Adonga-Leonard -

WatchGuard Video/Audio Event ID#: 00:1d:96:00:0a:5d:8647786

I first identified the subject as Marc A. Adonga-Leonard verbally and confirmed his identity by driver's license photograph on my mobile data terminal. I then advised Adonga of his Miranda rights which he verbally acknowledged. The interview was documented on the WatchGuard cabin camera video.

Adonga advised that he has been working for Mendel's company for approximately 6 months and that he is a delivery driver. Adonga stated that he makes \$4.00 per piece of product delivered and makes between 10-40 deliveries per day. Adonga stated that he drives five days per week and explained his schedule for me. Adonga also stated that the black Nissan Sentra parked there was his. See Officer Steel's report. The subject's Nissan was towed and seized pursuant to the delivery of controlled substances.

Interview with Henry Villegas -

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WatchGuard Video/Audio Event ID#: 00:1d:96:00:0a:5d-8649341

I first identified the subject as Henry Villegas verbally and confirmed his identity by driver's license photograph on my mobile data terminal. I then advised Villegas of his Miranda rights which he verbally acknowledged. The interview was documented on the WatchGuard cabin camera video.

Villegas advised that he doesn't work for Mendel's company, but that he was riding along with Marc Adonga-Leonard. Villegas stated that he was trying to get a job with Mendel, but he doesn't work for them. Villegas stated that he was riding with Adonga who was delivering the product he referred to as "incense". Villegas stated this wasn't the first time he had been to the Incense Delivery, Inc. business. Villegas stated that he has been with Adonga 2-3 times riding along with him for security since there have been a lot of drivers robbed. Villegas said he wasn't doing anything so he rode with Adonga assisting him with his deliveries. Villegas is also on felony probation for burglary. His probation officer is Clay Holloway with Idaho P&P.

Interview with Alan S. Hales -

WatchGuard Video/Audio Event ID#: 00:1d:96:00:0a:5d-8650583

I first identified the subject as Alan S. Hales verbally and confirmed his identity by driver's license photograph on my mobile data terminal. I then advised Hales of his Miranda rights which he verbally acknowledged. The interview was documented on the WatchGuard cabin camera video.

Hales advised that he works on the phones and dispatches drivers to deliver orders for their "incense". Hales advises that he works 5 days a week and that he has worked for Mendel since September, nearly since the inception of the company. Hales stated he thought it was legal because their labels stated that it was legal and conformed to all federal and state laws. I reminded him that they labeled their own product, which he acknowledged that. Hales advised that he stated Mendel advised everyone that it was a legal substance.

Interview with Lorraine K. Torres -

WatchGuard Video/Audio Event ID#: 00:1d:96:00:0a:5d-8652002

I first identified the subject as Lorraine K. Torres verbally and confirmed her identity by driver's license photograph on my mobile data terminal. I then advised Torres of her Miranda rights which he verbally acknowledged. The interview was documented on the WatchGuard cabin camera video.

Torres stated that this was her 3rd day of working for Mendel's company. Torres stated that she was in charge of the drivers schedule and making sure they were stocked with their product. Torres also counted cash from sales. Torres stated that she believed the product was legal because Mendel stated it was.

Interview with Brian K. Carson -

WatchGuard Video/Audio Event ID#: 00:1d:96:00:0a:5d-8653142

I first identified the subject as Brian K. Carson verbally and confirmed his identity by driver's license photograph on my mobile data terminal. I then advised Carson of his Miranda rights which he verbally acknowledged. The interview was documented on the WatchGuard cabin camera video.

Carson stated that he worked on the phones and dispatched drivers. Carson advised that the small containers of product were sold for \$15 and the large containers for \$50. Carson stated that he has worked for Mendel's company since the beginning of October.

Interview with Becky L. Jayne -

WatchGuard Video/Audio Event ID#: 00:1d:96:00:0a:5d-8654085

I first identified the subject as Becky L. Jayne verbally and confirmed her identity by driver's license photograph on my mobile data terminal. I then advised Jayne of her Miranda rights which he verbally acknowledged. The interview was documented on the WatchGuard cabin camera

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video.

Jayne stated that she currently works on the phones and started doing maintenance when she began working for Mendel's company two weeks ago. Jayne stated that she is paid \$7.75 an hour. Jayne stated that they refer to the product as a "meditation incense". Jayne acknowledged that it was a mind altering substance. Jayne stated that she has used the product. Jayne had a hard time describing the substance, but stated that it has negative side effects such as irritability and it's addictive. Jayne advised that she was told by Mendel that people use it and that they "crave it". Jayne says she feels bad about working for the company because she's contributing to kids using the product. Jayne provided a few more details about company operations and scheduling; similar to what others have stated above.

All the interviews were recorded on the WatchGuard video located internally in my vehicle. Please refer to the WatchGuard videos for more information.

I assisted Officer Steel with another vehicle impound including that of the 2004 Nissan Sentra, Idaho license # 8BCS229, VIN #3N1AB51D34L728162. The vehicle was impounded and towed at the parking lot of 1414 Cambridge Drive as it was involved in the delivery of controlled substances. Officer Steel completed the impound and I turned it over to Eaton's Towing. See Officer Steel's supplemental report for further.

The Bonneville County Jail transport van responded to our location and transported the additional arrestees to the Bonneville County Jail without incident. I responded to the Bonneville County Jail along with Officer Steel to complete the booking paperwork on all of the arrestees. All subjects in this case were charged with Delivery of a Schedule I Controlled Substance, a felony.

All impound sheets and paperwork were turned into the Records inbox. The booking paperwork was left with jail staff.

Nothing further. RN.

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Case Number: 2012-01086

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Last Modified: 1/31/2012 21:52:00

Supplement Information

Supplement Date	Supplement Type	Supplement Officer
01/29/2012 07:27:29	ASSISTING OFFICER	(8B14JC) GALBREATH, JEREMY M
Contact Name		Supervising Officer
		(8B71DJ) LREMAYNE, DENNIS L

Supplement Notes

201201086IncenseDelivery

Sgt. Jeremy Galbreath

Summary:

On 12/17/2011, a substance called Dj vu was seized from a business called Incense Delivery, located at 1414 Cambridge. It was suspected that this substance was spice, so it was sent to ISP's lab. On 1/28/12, I learned that the substance tested positive for AM-2201, a schedule I drug. I contacted the business and arranged to purchase a jar of Dj vu for \$50. William Bartlett arrived and had Dj vu in his car. A search warrant was obtained for 1414 Cambridge. Spice, money, financial paperwork, and other items were seized. The following people were booked into the Bonnerille County Jail for Possession of a Controlled Substance with Intent to Deliver, I.C. 37-2732(A)(1)(A): William Bartlett, Kelly Nelson, Henry Villegas, William Drick, Bryce Mendel, Lorraine Torres, Becky Jayne, Marv Adonga-Leonard, Alan Hales, Brian Corson, and Brent Powell.

Details:

On 1/28/2012 at about 2130 hours, I was in contact with Officer Hart. On 12/17/2011, he had seized some suspected spice from 1414 Cambridge, Incense Delivery (see 2011-15025). Officer Hart had sent this substance to the Idaho State Police Forensic Services Lab for analysis and had just received the results. The substances that the incense company had called "Dj vu" and "Krush" came back positive for AM-2201, a schedule I drug. A copy of this report was turned in to Records.

Officer Steel located a business phone number for Euphoric Incense Delivery at 1414 Cambridge on Facebook. A printout of this profile was turned in to Records.

At 2235 hours, I called Euphoric Incense Delivery at (208) 914-1728. Brian with Incense Delivery answered the phone. He said that he was waiting on a driver to come back and he would call me back to arrange the delivery.

At 2249 hours, I received a call back from (208) 419-0687. The male asked what I wanted to buy. I requested Krush, but was told they were out of stock. I made arrangements to purchase a large jar of Dj vu for \$50. I told the male that I was at the Alberto's parking lot on S. Woodruff. He told me the delivery would be made at 2325 hours if not sooner.

Officer Steel went to the area of Cambridge. He watched a red Ford Focus leave the business and told me over the radio that the vehicle had left.

At 2259 hours, I received a call from (208) 223-8160. The male told me that he would meet me in 10-15 minutes. He said that when he arrived he would call me.

These phone calls were recorded and attached to this report.

At 2308 hours, a red 2002 Ford Focus (1D 8D1N567) pulled into the parking lot next to me. The driver picked up his phone and placed it next to his ear. My cellular phone began ringing from (208) 223-8160. I told the officers in the area that the delivery man had arrived. Officers Nelson, Kelly, Smeer, and Hart arrived to assist. William Bartlett, the driver, was placed into custody for possession of a controlled substance with intent

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to deliver. His vehicle was searched incident to arrest. Dj vu spice was located in the vehicle. See Officer Hart's report for details regarding the drugs in the car. See Officer Nelson's report regarding William's arrest.

I was in contact with Bonneville County Prosecuting Attorney Paul Rogers. I explained the case to him and asked if he would prepare a search warrant for 1414 Cambridge. He agreed to meet me at his office.

I met with Officers Steel, Kelly, Siddoway, and Smith at 1414 Cambridge. We made contact with the employees at the business. They were told that the business was being secured while a search warrant was obtained.

Officer Hart and I contacted BCPA Paul Rogers and obtained the search warrant. The three of us contacted Judge Riddock, told him about the case, and he signed both copies of search warrant 2012-15.

I went back to 1414 Cambridge. The copy of the search warrant was given to Bryce Mendel, the owner of the business.

I located a copy of the work schedule for Incense Delivery Inc. in one of the offices. It had the employees' names, the days and times they worked, and their assignment for the day (dispatch, driver, manager, etc.). I also located two sheets labeled check sign sheet. It appears that the employees had signed for their paychecks. These items were turned in to Records.

The vehicles in the parking lot that belonged to the business or the employees were searched. A Dodge Truck and a Ford Focus that belonged to the business were both seized. See Officer Kelly's report for further.

Officers Smith, Steel, and Siddoway searched the building. They located and seized (5) 22 pound boxes of un-packaged spice, several computers, financial transaction records, \$8,650 cash, and around 800 individually packaged, plastic containers of Dj vu spice. The items that were seized were listed on a property receipt. Copies of the receipts were left at the business. The originals were turned in to records.

At the I.F.B. the evidence was entered, labeled, and placed in evidence lockers or in the IFPD Crime Lab.

Eleven notarized copies of this report were turned in to the shift commander's office. Each report has a copy of the search warrant inventory. The following people were booked into the Bonneville County Jail for Possession of a Controlled Substance with Intent to Deliver: William Bartlett, Kelly Nelson, Henry Villegas, William Brick, Bryce Mendel, Lorraine Torres, Becky Jayne, Marc Adonga-Leonard, Alan Haies, Brinn Carson, and Brent Powell.

No further action taken by this officer at this time.

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Agency: IFPD

Case Number: 2012-01086

Date: 2/1/2012 15:52:21

Last Modified: 1/31/2012 21:52:00

Supplement Information

Supplement Date	Supplement Type	Supplement Officer
01/29/2012 16:08:13	ASSISTING OFFICER	(8B66BS) SMITH, BRIAN D
Contact Name		Supervising Officer (8D71DT) TREMAYNE, DENNIS J

Supplement Notes

On 01-29-2012 at about 0030 hrs Officer Siddoway and I were dispatched to 1414 Cambridge Dr in reference to an operation that Sgt Galbraith and a few other officers were running. As we arrived we were instructed that we were going to secure the above location for a drug search warrant. While we were approaching the location on foot we could see several people standing outside in back of the business. All people outside were secured and Officer Siddoway and I were tasked with securing the inside of the business. As we secured the building and cleared it for people Officer Siddoway and I came across a female in a back room with cubicles who was in the act of packaging and weighing raw material in plastic jars. The substance is being called "Incense" by the people on scene but we commonly know it as "Spice"

After the building was secured Officer Siddoway and I were tasked with counting all of the money and packaged product found in a locked room in the back of the building. We counted \$8650.00 in US currency that was in separate envelopes that looked like delivery driver receipts for the day. We also counted 789 packaged containers of "Spice" that were in the same room.

Officer Siddoway and I entered all money and packaged product that we counted into evidence. We also seized receipt books and misc papers that looked like delivery logs.

No further action taken: Officer B. Smith

Case Summary Report

Agency: IFFPD

Case Number: 2012-01086

Date: 2/1/2012 15:52:21

Last Modified: 1/31/2012 21:52:00

Supplement Information

Supplement Date	Supplement Type	Supplement Officer
01/29/2012 16:37:46	ASSISTING OFFICER	(8B44DS) SIDDOWAY, DAX
Contact Name		Supervising Officer
		(8B71DT) TREMAYNE, DENNIS L

Supplement Notes

Statement of Officer D. Siddoway 01-29-12

Narrative:

On 01-29-12 at approximately 0050 hours, I was dispatched to assist in serving a search warrant at 1414 Cambridge. At the business I assisted by securing the building while other Officers were obtaining the search warrant. While conducting a security sweep of the business, I found Becky Layne in a cubical in the north east side of the business in the process of packaging product that is commonly referred to as Spice. I secured Becky and escorted her out of the building.

After the search warrant arrived, I assisted in the search of the business. After gaining entry into a small locked room, Officer Smith and I discovered a large quantity of packaged product, 2 small safes, and a cash register. Officer Smith and I began the process of inventorying the room. We counted 789 packaged containers along with \$8650.00 in American currency. The cash was found in numerous envelopes that had the amount written out on the front of the envelope. The cash was listed separate from the coins and there were receipts for gas in several of the envelopes. It was evident the envelopes where cash received from delivery drivers from the business.

Officer Smith and I each counted every envelope and placed the currency and envelopes into new envelopes. We wrote the amount of the currency on the outside of each envelope and initialed it. I transported the cash to the LEB and secured it in an evidence locker. I then helped enter other property seized into evidence. Due to the size and volume of the seized property, much of it was secured in the IFFPD lab. Nothing further to report at this time. Inactive. ds

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Agency: IFPD

Case Number: 2012-01086

Date: 2/1/2012 15:52:21

Last Modified: 1/31/2012 21:52:00

Supplement Information

Supplement Date	Supplement Type	Supplement Officer
01/29/2012 22-26-12	ASSISTING OFFICER	(8B21BS) STORER, BRANDON J
Contact Name		Supervising Officer
		(8B71DT) TREMAYNE, DENNIS L

Supplement Notes

Supplement report: B. Storer

On 01-28-12 at approximately 2200 hours, Sgt. Galbreath advised that we were going to attempt to buy some "Euphoria" from the Euphoria delivery business on Cambridge. Euphoria is smoked for a marijuana like high and is marketed as an incense not to be used for human consumption. Sgt. Galbreath advised that the lab results from a Euphoria seizure last month returned from the lab as a Schedule I narcotic.

Sgt. Galbreath called in an order to the business and advised the assisting units that the deal would be made by the Subway on Woodruff. Galbreath stated the deal would happen between 2300 and 2325. Officer Hart and I waited behind a business on Moran and Officer's Kelly and Nelson waited behind a business off of 1st Street. Officer Steel was surveilling the business on Cambridge. At approximately 2315 hours, Sgt. Galbreath advised that the suspect vehicle had pulled up next to his and that it was a red passenger car. Officer Hart and I were seconds away and arrived in the parking lot without lights or sirens.

I pulled up behind the red car and walked up to the open driver's side window. There was a male subject talking on the phone and he looked up at me. I asked the subject to hang up the phone and step from the vehicle. He asked what he had done wrong. I could see a ledger sitting next to him on a clip board and there was a plastic file container sitting on the passenger floor that the Euphoria delivery driver's carry product in. I asked the subject if he was here to deliver Spice. He told me that he was here to deliver Euphoria. I advised the male that he was being detained in reference to a delivery of a controlled substance. The male did not cooperate and refused to step from the vehicle. Officer Hart and I gave him two verbal commands to step from the vehicle and he refused. Officer Hart and I then pulled the subject from the driver's seat and detained him in handcuffs. This subject was later identified as William Bartlett. William was read his Miranda warning by Officer Nelson and placed in his patrol car. I did a tow inventory of William's vehicle and turned it over to Officer Nelson. I then went to Cambridge to assist Officer Steel who was surveilling the Euphoria business.

Officer Kelly and I met with Officer Steel by a business at the corner of Oxford and Cambridge. Officer Steel advised there were a few people coming and going from the business and that one subject was searching the area with a spot light. Sgt. Galbreath stated that he was in the process of getting a search warrant for the business and that he would be en-route in a few minutes. Sgt. Galbreath advised us to secure the people and the building until the warrant was signed. About that time a male subject exited the Euphoria business and started searching around with a spotlight. The subject walked all the way around the business and then came west toward us. The subject was about twenty feet away from us and I decided to detain him before he could tip off his friends in the business. I quickly approached the subject from the shadows and identified myself by saying, "Idaho Falls Police show me your hands". I slowly startled the subject and yelled at him two more times to show he his hands. The subject had a spotlight in his left hand and an expandable baton in the right. I began to draw my firearm when the subject started to reach for his waistband. I heard Officer Steel yell, "Don't do it" toward the subject. The subject then slowly went to the ground in the prone position. I detained the male in handcuffs and explained why he was being detained.

I escorted the subject to my patrol car and identified him as Brent Powell. I advised Brent of his Miranda Warning and he stated he would talk to me. I asked Brent what he was out doing looking around with a spotlight. Brent told me that he works security for Euphoria Incense Delivery. I asked Brent why they needed security. Brent told me to keep the business and driver's safe. I asked Brent why he needed to keep

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Case Summary Report

Agency: IFPD

Case Number: 2012-01086

Date: 2/1/2012 15:52:21

Last Modified: 1/31/2012 21:52:00

the driver's and business safe. Brent stated because they have been robbed before. I asked Brent why anyone would want to rob an incense store. He told me he didn't know. I explained to Brent that the incense that is being sold from the business is a schedule I narcotic. Brent told me that he just does security.

Approximately five minutes later Sgt. Galbreath arrived with Officers Siddoway and Smith. They went and detained the subjects at the building and advised me to bring my patrol car to the business. I transported Brent to the business and as I pulled in I noticed approximately six people detained in handcuffs. I helped watch the detained subjects while Sgt. Galbreath went to finish the search warrant.

While we were waiting a small black passenger car pulled into the driveway way of the business. I approached the car and noticed there was a male driver and a male passenger. Officer Kelly and I had the subjects exit the vehicle and detained them in handcuffs. I noticed a couple containers of "Euphoria" in the center console and there was a plastic file bin on the passenger floor that was similar to the other delivery drivers. The driver verbally identified himself as Marc Adonga. I asked Marc if he works for Euphoria Incense delivery and he stated he did. I asked Marc if I could search him for weapons and contraband and he stated I could. I pat searched Marc and felt a hard object in his right front pants pocket that was very similar to a metal pot pipe. I asked Marc if it was a pipe and he stated it was. I removed the pipe and it had a green leafy substance in it that looked like Spice or Euphoria. I asked Marc if the pipe had Spice in it and he replied, "No, its incense". We had Marc and the other subject sit with the other detained persons.

We waited for about fifteen minutes until Sgt. Galbreath arrived with the signed search warrant. The warrant was served and explained to the owner of the business, Bryce Mendel. We had all the detained subjects sit in chairs in the front room of the business while the search was conducted. Bryce was very cooperative during the search and unlocked doors and retrieved items for us. I mostly watched the detained subjects while the other Officer's inventoried the items seized during the search. There was so much stuff seized that I had to get my personal pickup to haul it to the station to be logged.

When the search was complete the detained subjects were transported to the BCSO jail with the assistance of the court transport van. I then transported the seized evidence items to the LEB and was followed by Officer Kelly and Sgt. Galbreath. The seized items were taken into the patrol room where they were logged into evidence. Officer Siddoway assisted me with logging multiple computers, approximately 800 containers of "Euphoria", and multiple boxes of raw "Euphoria" material. I also logged the weapons that Brent Powell had on his person when he was detained. There was an expandable baton, a stun gun, pepper spray, two cell phones and \$429 in cash. I also logged Eric Adonga's currency from his wallet into evidence. Eric had \$575 in his wallet.

During the inventory I located a large plastic baggie that contained a white powdery substance in it. I field tested the substance for both meth and cocaine and did not get a positive test. I placed a small amount of the white powder in a glass vial to be sent to the stated lab for testing. I then package weighed the rest of the white powder at 502.5 grams. After all the seized items were logged into evidence they were taken down and placed in the secure Lab area of the LEB. // nothing further //

Brandon Storer

EXHIBIT B

066

CL Case No.: M20120570 Agency Case No.: 201201086
 Agency: BNV1 - IDAHO FALLS POLICE DEPARTMENT
 ORI: ID0100200 Crime Date: Jan 29, 2012

Criminalistic Analysis Report - CONTROLLED SUBSTANCE ANALYSIS

Evidence Received Information

Evidence Received: 02/09/2012
 Add. Crime Date:
 How Received: UPS
 Haz. Materials: BIOHAZARD/CHEMICAL
 Inv. Officer: SPENCER STEEL
 Delivered By:
 Received By: JANE DAVENPORT ph. (208)884-7170

Evidence Received: 03/20/2012
 Add. Crime Date:
 How Received: UPS
 Haz. Materials: BIOHAZARD/CHEMICAL
 Inv. Officer: GALBREATH
 Delivered By:
 Received By: JANE DAVENPORT ph. (208)884-7170

Victims and Suspects

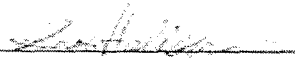
<u>Vic/Susp</u>	<u>Name</u>	<u>DOB</u>	<u>Sex</u>	<u>Race</u>
Suspect	BARTLETT, WILLIAM DAVID	06/11/1987		
Suspect	MENDEL, BRYCE	01/10/1986		

< 04/02/2012 Supplemental Information >

EVIDENCE DESCRIPTION AND CONCLUSION:

32) Agency Exhibit 32. One unopened plastic container labeled "Deja Vu" containing 7.17 grams of green plant material. The sample contains AM-2201 (Schedule I) 37-2705(d)30.ii.a.

This report does or may contain opinions and interpretations of the undersigned analyst based on scientific data.



 Scott Hellstrom
 Forensic Scientist I

Date: _____

CL Case No.:	M20120570	Agency Case No.:	201201085
Agency:	BNV1 - IDAHO FALLS POLICE DEPARTMENT		
ORI:	ID0100200	Crime Date:	Jan 29, 2012

Criminalistic Analysis Report - CONTROLLED SUBSTANCE ANALYSIS

A F F I D A V I T

STATE OF IDAHO)
) ss.
 COUNTY OF ADA)

Scott Hellstrom, being first duly sworn, deposes and says the following:

1. That I am a Forensic Scientist I with Forensic Services and am qualified to perform the examination and draw conclusions of the type shown on the attached report;
2. That Forensic Services is part of the Idaho State Police;
3. That I conducted a scientific examination of evidence described in the attached report in the ordinary course and scope of my duties with Forensic Services;
4. That the conclusion(s) expressed in that report is/are correct to the best of my knowledge;
5. That the case identifying information reflected in that report came from the evidence packaging, a case report, or another reliable source.
6. That a true and accurate copy of that report is attached to this affidavit.

[Signature]

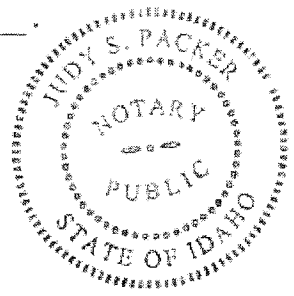
 Scott Hellstrom
 Forensic Scientist I

Date: 4/2/12

SUBSCRIBED AND SWORN TO BEFORE ME 23 April 2012

[Signature]

 Notary Public, State of Idaho
 Commission Expires: 7 October 2013



Owen Michael McDougal, Ph.D.

Consultant in Chemistry

CURRICULUM VITAE

2023 N 18th Street

Boise, ID 83702

Email: owenmcdougal@boisestate.edu

Tel (208) 409-7012

Fax (208) 426-3027

EDUCATION:

Ph.D., University of Utah, Salt Lake City, Utah, 1998

B.S., State University of New York at Oswego, Oswego, New York, 1992

A.S., State University of New York at Morrisville, Morrisville, New York, 1990

PROFESSIONAL POSITIONS:

Associate Professor of Chemistry, Boise State University, Boise, Idaho, 2009-present

Assistant Professor of Chemistry, Boise State University, Boise, Idaho, 2006-2009

Associate Professor of Chemistry, Southern Oregon University, Ashland, Oregon, 2003-2006

Visiting Professor of Chemistry, University of Utah, Salt Lake City, Utah, 2004-2005

Assistant Professor of Chemistry, Southern Oregon University, Ashland, Oregon, 1998-2003

Visiting Professor of Chemistry, University of Oregon, Eugene, Oregon 2002-2005 (summer only)

Visiting Professor of Chemistry, University of Utah, Salt Lake City, Utah, 2001

Laboratory Technician, Galson Laboratories, East Syracuse, New York, 1990

PROFESSIONAL SOCIETIES AND HONORS:

Nominated for Foundation Scholars Service Award, Boise State University, 2012.

American Association for the Advancement of Science Pacific Division

Lifetime Member, 2001-present

Elected President 2012

Program Chair, 93rd Annual Meeting, Boise, Idaho, 2011-2012

Education Committee, 2011-present

Executive Committee, 2006-present

Site-selection Committee, 2006-present

Program Chair, 88th Annual Meeting, Boise, Idaho, 2006-2007

Council Member, 2001-present

Chair, Chemistry and Biochemistry Section, 2001-present

Student Awards Committee, 2001-present

American Chemical Society, Snake River Local Section, 2006-present

Elected Chair 2012

General Meeting Co-chair, 67th Annual Meeting, Boise, Idaho, 2011-2012

Local Section Activities Committee, 2009

Counselor, 2007-2009

Member, 1990-present

Idaho Academy of Sciences, Lifetime Member 2007-present

Sigma Xi, Scientific Research Society, Elected Vice President 2006

COMMITTEES, CHAIRMANSHIPS AND INVITED LECTURES:

- Chairperson, Thesis Committee, Emily Drussel, Chemistry MS, 2011-present.
- Invited Presentation "The Chemical Umbrella: Earth to Clouds", Department of Materials Science and Engineering, Boise State University, Boise, Idaho, October 2011.
- Invited Presentation "Computational Solutions to Biochemical Problems", 2nd Annual Center for Advanced Energy Systems, Modeling, Simulation, and Visualization Conference, Boise, Idaho, September 2011.
- Chairperson, Thesis Committee, Emma Baker, Chemistry MS, 2010-present.
- Member, University Search Committee for Provost and Vice President of Academic Affairs, 2010-2011.
- Member, University Committee for Technology in Teaching and Learning Committee, 2010-2011.
- Member, University Committee for Alternative Academic Calendar, 2010-2011.
- Member, University Search Committee for Associate Vice President for Human Resources, 2010-2011.
- Member, Academic Grievance Board, 2010-2011.
- Member, University Naming Committee 2010-present.
- Member, University Search Committee for Associate Vice President for Information Technology, 2010.
- Invited Presentation "Extracellular Matrix Modulates Cell Signaling", 8th Annual Idea Network of Biomedical Research Excellence Conference, Moscow, Idaho, August 2010.
- Invited Presentation "DockoMatic: Automating Autodock for Ligand to Receptor Binding Prediction", 91st Annual American Association for the Advancement of Science Pacific Division Conference, Ashland, Oregon, June 2010.
- Chairperson, Thesis Committee, Reed Jacob, Interdisciplinary MS, 2009-present.
- Member, Thesis Committee, Brian Dies, Biological Sciences MS, 2009-2011.
- Member, Thesis Committee, Amy Ulappa, Biological Sciences MS, 2009-2011.
- Member, Graduate Council, 2009-2010.
- Member, Faculty Grievance Committee, 2009-2010.
- Member, Graduate Studies Committee, Department of Chemistry and Biochemistry, 2009-2011.
- Invited Presentation "Finding MRSA's Kryptonite: Computational Directed Combatant Pentapeptides", 90th Annual American Association for the Advancement of Science Conference, San Francisco, California, August 2009.
- Invited Presentation "Where does all the Time Go?", Idaho Idea Network of Biomedical Research Excellence Research Symposium, Boise State University, Boise, Idaho, April 2009.
- Invited Presentation "Idaho INBRE Research Opportunity for Undergraduates: Peptides for Parkinson's", Brigham Young University-Idaho, Rexburg, Idaho, February 2009.
- Invited Presentation "What does NMR have to do with Undergraduate Research?", 50th Annual Meeting Experimental Nuclear Magnetic Resonance Conference, Asilomar, California, April 2009.
- Member, Thesis Committee, Jemima Monroe, Materials Science and Engineering MS, 2008-2010.
- Member, Student Awards Committee, Department of Chemistry and Biochemistry, 2008-present
- Member, Honorary Doctorate Degree Selection Committee, 2008-2011.
- Invited Presentation "OSpecWeb: An On-line Educational Resource to Supplement the Instruction of Organic Spectroscopy", 236th Annual Meeting of the American Chemical Society, Philadelphia, Pennsylvania, August 2008.
- Invited Presentation "From Snail Venom to Therapeutics: How Conotoxins Provide Insight into Drug Design", 89th Annual American Association for the Advancement of Science Pacific Division Conference, Waimea, Hawaii, June 2008.
- Invited Presentation "Chemistry, Chemistry Everywhere: In You, On You, Around You", Capital Scholars Showcase of Learning, Boise State University, Boise, Idaho, April 2008.
- Invited Presentation "Energy and Poverty in Idaho", 50th Annual Meeting of the Idaho Academy of Sciences, College of Western Idaho, Nampa, Idaho, March 2008.
- Invited Presentation "Deadly Snails, NMR, and the Treasure Valley", 50th Annual Meeting of the Idaho Academy of Sciences, College of Western Idaho, Nampa, Idaho, March 2008.

COMMITTEES, CHAIRMANSHIPS AND INVITED LECTURES:(cont'd)

Invited Presentation "Biomass Fuel Briquettes: Composition, Compaction and Combustion". 50th Annual Meeting of the Idaho Academy of Sciences. College of Western Idaho. Nampa, Idaho. March 2008.

Member, Faculty Senate, 2007-2011.

NSF Merit Review: Bio & Hydrogen Panel: Sustainable Energy. Washington DC, Virginia. May 2007.

Member, Public Relations and Outreach Committee, Department of Chemistry and Biochemistry, 2006.

Member, Professional Development Committee, 2000-2003.

Member, Environmental Studies Committee, 1999-2004.

CONTINUING EDUCATION:

Presidential Leadership Academy, Boise State University, Boise, Idaho, 2011.

AMIX Metabolomics NMR Software training course, Bruker Biospin Inc., Peabody, Massachusetts, August 2009.

Recipient Scientific User Access, Pacific Northwest National Laboratory-Environmental Molecular Sciences Laboratory, Richland, Washington, May 2008.

Certificate of completion, Center for Teaching and Learning, Service Learning Course Development six-week training workshop, Boise State University, Boise, Idaho, March 2007.

Chemistry Exam Writer, United States Academic Decathlon (USAD), 450 MC questions for high achieving high school students; <http://www.usad.org/>, 2009.

Office of Research Administration: "Travel Award, Scientific or Scholarly Activities" (\$500), 2006.

Professional Development Grant (SOU): "Keeping Current with Modern Technology in Organic Spectroscopy" (\$6,017) PI, 2005.

National Science Foundation Workshop Award, "NMR Fundamentals and Applications." Washington State University, Pullman, Washington, May 2003.

Carpenter II Travel Grant: Applied toward travel to the 43rd ENC, Asilomar, CA (\$350) PI, 2002.

General Education Course Development Grant, Southern Oregon University, Ashland, OR, March 1999.

Carpenter Grant: JEOL ECLIPSE NMR System Management course, Peabody, MA (\$350) PI, 1999.

Student Travel Award to the 39th Annual ENC, Asilomar, CA (\$700) PI, 1998.

APPOINTMENTS:

Elected President, American Association for the Advancement of Science Pacific Division 2012-2013.

Elected Chair, American Chemical Society, Snake River Local Section 2012-2013.

Elected President, Faculty Senate, Boise State University, Boise, Idaho, 2009-2011.

Elected Chair, Professional Development Committee, Southern Oregon University, Ashland, OR, 2003.

PUBLICATIONS:

Martin, B., Chingas, G.C., McDougal, O.M., Origin and Correction of Magnetic Field Inhomogeneity at the Interface in Biphasic NMR Samples, *J. Mag. Reson. (in press)*.

Fang, M., Jacob, R., McDougal, O., Oxford, J., Minor Fibrillar Collagens: Variable Regions, Alternative Splicing, Intrinsic Disorder, and Tyrosine Sulfation, *Protein & Cell (in press)*.

McDougal, O.M., Mallory, C., Warner, L.R., Oxford, J.T., Predicted Structure and Binding Motifs of Collagen $\alpha 1(XI)$, *Journal on Bioinformatics and BioTechnology, (in press)*.

Brown, R.J., Mallory, C., McDougal, O.M., Oxford, J.T., Proteomic Analysis of Collagen-Associated Protein Complexes, *Proteomics, 11(24)*, 4660-4676 (2011).

Mallory, C., McDougal, O., Oxford, J., Collagen Type XI $\alpha 1$ Chain Amino Propeptide Structural Model and Glycosaminoglycan Interactions *in Silico*, *Proceedings of 2011 International Conference on Bioinformatics & Computational Biology*, BIOCAMP'11/ISBN #1-60132-172-4/CSREA.

Editors: Hamid R. Arabnia and Quoc-Nam Tran, pp. 632-635, Las Vegas, USA, 2011.

PUBLICATIONS: (cont'd)

- Weires, N.A.M., Johnston, A., Warner, D.L., McCormick, M.M., Hammond, K., McDougal, O.M., Recycling of Waste Acetone by Fractional Distillation. *J. Chem. Ed.*, **88**(12), 1724-1726 (2011).
- Jacob, R.B., Bullock, C.W., Andersen, T., McDougal, O.M., DockoMatic – Automated Peptide Analog Creation for High Throughput Virtual Screening. *J. Comp. Chem.*, **32**(13), 2936-2941 (2011).
- McDougal, O.M. and Steiner, R.P., *Introduction to Organic and Biological Chemistry*, 3rd ed.: Cengage Learning: Mason, OH, ISBN: 9781133448365, 2011.
- McDougal, O.M., Eidemiller, S., Weires, N., McCormick, M.M., Biomass Briquettes: Turning Waste into Energy. *Biomass Power & Thermal*, **4**(12), 46-49 (2010).
- Bullock, C.W., Jacob, R.B., McDougal, O.M., Hampikian, G., Andersen, T., DockoMatic – Automated Ligand Creation and Docking, *BMC Research Notes*, **3**, 289-297 (2010).
- Jacob, R.B., McDougal, O.M., The M-superfamily of conotoxins: a review. *Cellular and Molecular Life Sciences*, **67**, 17-27 (2010).
- McDougal, O.M. and Steiner, R.P., *Introduction to Organic and Biological Chemistry*, 2nd ed.: Cengage Learning: Mason, OH, ISBN: 1111633673, 2010.
- Turner, M., Eidemiller, S., Martin, B., Narver, A., Marshall, J., Zemp, L., Cornell, K.A., McIntosh, J.M., McDougal, O.M., Structural Basis for α -Conotoxin Potency and Selectivity, *Bioorganic Medicinal Chemistry*, **17**(16), 5894-5899 (2009).
- McDougal, O.M. and Steiner, R.P., *Introduction to Organic and Biological Chemistry*, 1st ed.: Cengage Learning: Mason, OH, ISBN: 1111032300, 2009.
- McDougal, O.M., Turner, M.W., Ormond, A.J., Poulter, C.D., Three-Dimensional Structure of Conotoxin tx3a: An m-1 Branch Peptide of the M-Superfamily, *Biochemistry*, **47**, 2826-2832 (2008).
- Graf, C. and McDougal, O., A Practical Method for the Display of High Resolution One- and Two-Dimensional NMR Spectra on the World Wide Web. *The Chemical Educator*, **13**, 92-95 (2008).
- Corpuz, G.P., Jacobsen, R.B., Jimenez, E.C., Watkins, M., Walker, C., Colledge, C., Garrett, J.E., McDougal, O.M., Li, W., Gray, W.R., Hillyard, D.R., Rivier, J., McIntosh, J.M., Cruz, L.J., Olivera, B.M., Definition of the M-Conotoxin Superfamily: Characterization of Novel Peptides from Molluscivorous *Conus* Venoms, *Biochemistry*, **44**, 8176-8186 (2005).
- Hart, A. and McDougal, O., Spectroscopic Data Management for the Time-Strapped Educator. *The Chemical Educator*, **9**(6), 374-377 (2004).
- Buser, J. and McDougal, O., A Pedagogical Approach to the Instruction of Organic Spectroscopy. *The Chemical Educator*, **9**(4), 216-219 (2004).
- McDougal, O. and Poulter, C.D., Three-Dimensional Structure of Mini-M Conotoxin mr3a, *Biochemistry*, **43**, 425-429 (2004).
- McDougal, O., *Chapter 17, Biochemistry*, A web chapter to accompany, Basic Concepts of Chemistry, 7th Edition by L. Jack Malone, John Wiley & Sons, Inc., Hoboken, NJ, 2003.
- Holstein, S., Stanley, R., McDougal, O., Fuel Briquettes Out of Junk Mail and Yard Wastes. *Journal of Chemical Innovation*, **31**(2), 22-28 (2001).
- McDougal, O., *Essentials of General, Organic, and Biological Chemistry: Student Study and Solutions Guide*, Harcourt College Publishers, Orlando, FL, ISBN 10: 0030056527, 2000.

ABSTRACTS: (2008-present)

- Jacob, R.B. and McDougal, O.M., "DockoMatic with Relaxator: Receptor Side-Chain Flexibility", presented at the 2nd Annual CAES Idaho Modeling, Simulation, and Visualization Conference, Boise, Idaho, September 2011.
- Ambrose, R. and McDougal, O.M., "Extraction and Isolation of Cyclopamine from *Veritrum californicum*", presented at the 9th Annual INBRE Conference, Moscow, Idaho, August 2011.

ABSTRACTS: (cont'd)

- Mallory, C. and McDougal, O.M., "Collagen Type XI $\alpha 1$ Chain Amino Propeptide Structural Model and Glycosaminoglycan Interactions in Silico", presented at the 9th Annual INBRE Conference, Moscow, Idaho, August 2011.
- Mallory, C., Oxford, J.T., McDougal, O.M., "Collagen Type XI $\alpha 1$ Chain Amino Propeptide Structural Model and Glycosaminoglycan Interactions In Silico", presented at the 2011 International Conference on Bioinformatics and Computational Biology, Las Vegas, Nevada, July, 2011.
- McDougal, O.M., "Bridging the Experimental to Computational Divide", presented at the 92nd Annual AAASPD conference, San Diego, California, June 2011.
- Mallory, C., Oxford, J., McDougal, O.M., "Collagen XI $\alpha 1$ Chain Amino Propeptide Structural Model and Glycosaminoglycan Interactions in Silico", presented at the 92nd Annual AAASPD conference, San Diego, California, June 2011.
- Jacob, R.B. and McDougal, O.M., "Predictive Potential Unraveled with DockoMatic", presented at the 92nd Annual AAASPD conference, San Diego, California, June 2011.
- Brasseur, T., Drussel, E., Baker, E., Hill, M., Chingas, G., McDougal, O.M., "Chemical Warfare Agent Decontamination by Surfactant Accelerated Hydrolysis as Studied by ¹H Nuclear Magnetic Resonance Spectroscopy", presented at the Undergraduate Research Conference (URC), Boise State University, Boise, Idaho, April 2011.
- Swartz, M.M., Mallory, C., McDougal, O.M., "Investigation of Parkinson's Using Peptide Probes", presented at the URC, Boise State University, Boise, Idaho, April 2011.
- McDougal, O.M. and Jacob, R., "Automatic DockOmatic: Ligand and Receptor Screening Made Easy", presented at the 240th National American Chemical Society Meeting, Boston, Massachusetts, August 2010.
- Mallory, C., McDougal, O., Oxford, J., "Computational Studies of Collagen XI $\alpha 1$ Domain", presented at the 8th Annual INBRE Conference, Moscow, Idaho, August 2010.
- Swartz, M.M., Eidemiller, S., Cornell, K., McDougal, O., "Metabolic Analysis of MTN Deficiency in *E. coli*", presented at the 8th Annual INBRE Conference, Moscow, Idaho, August 2010.
- Weires, N., Narver, A., McDougal, O., "NMR Investigation of Conotoxin pK₃", presented at the 8th Annual INBRE Conference, Moscow, Idaho, August 2010.
- Drussel, E., Martin, B., Luker, D., Hill, M., Chingas, G., McDougal, O., "Using NMR Techniques in a Model Biphasic System to Find Partition Coefficients", presented at the 91st Annual AAASPD Conference, Ashland, Oregon, June 2010.
- Johnston, A., McCormick, M.M., Hammond, K., Warner, D., McDougal, O.M., "Going Green in the Organic Lab", presented at the 91st Annual AAASPD Conference, Ashland, Oregon, June 2010.
- Woodbury, L., Coonse, K., McDougal, O., Oxford, J., "Determination of Sulfated Glycosaminoglycan Binding Sites within Collagen Type XI Using Surface Plasmon Resonance and Nuclear Magnetic Resonance Spectroscopy", presented at the URC, Boise State University, Boise, Idaho, April 2010.
- Drussel, E., Martin, B., Hill, M., Chingas, G., McDougal, O., "Using NMR Techniques to Find Partition Coefficients Across Biphasic Systems", presented at the URC, Boise State University, Boise, Idaho, April 2010.
- Gonzales, S. and McDougal, O., "Pentapeptide Synthesis, Cleavage, and Purification", presented at the URC, Boise State University, Boise, Idaho, April 2010.
- Mallory, C. and McDougal, O., "Bioinformatics, Homology Modeling, and Parkinson's Disease", presented at the URC, Boise State University, Boise, Idaho, April 2010.
- Narver, A. and McDougal, O., "pK_a Determination of Alpha Conotoxin MII and Analogs", presented at the URC, Boise State University, Boise, Idaho, April 2010.
- Mallory, C., Drussel, E., McDougal, O.M., " α -Conotoxin E11A Binding Activity Towards Nicotinic Acetylcholine Receptor", presented at the 8th Annual INBRE Research Conference, Pocatello, Idaho, August 2009.

ABSTRACTS: (cont'd)

- Woodbury, L., McDougal, O.M., Oxford, J., "Chondroitin Sulfate Glycosaminoglycan Binding Sites within Collagen Type XI", presented at the 8th Annual INBRE Research Conference, Pocatello, Idaho, August 2009.
- Narver, A. and McDougal, O.M., "pK_a Determination in Alpha-Conotoxin MII and Analogs", presented at the 8th Annual INBRE Research Conference, Pocatello, Idaho, August 2009.
- Luker, D. and McDougal, O.M., "Taking a Slice out of NMR – A New Method", presented at the 8th Annual INBRE Research Conference, Pocatello, Idaho, August 2009.
- Johnston, A. and McDougal, O.M., "Peptide Synthesis, Cleavage and Purification", presented at the 8th Annual INBRE Research Conference, Pocatello, Idaho, August 2009.
- Eidemiller, S., Cornell, K., McDougal, O., "Manipulation of *E. coli*: A Metabolomics Study", presented at the 8th Annual INBRE Research Conference, Pocatello, Idaho, August 2009.
- Martin, B., Hill, M., McDougal, O.M., "What does NMR have to do with the Mixing of Oil and Water?", presented at the Council on Undergraduate Research Posters on the Hill, Washington DC, Virginia, May 2009.
- Johnston, A. and McDougal, O., "Going Green at Boise State University", presented at the URC, Boise State University, Boise, Idaho, April 2009.
- Jacob, R., Walters, M., Cornell, K., McDougal, O., "Resistance is Not Futile: Computational Directed Design of Combatant Pentapeptides", presented at the URC, Boise State University, Boise, Idaho, April 2009.
- Swartz, M. and McDougal, O., "Affordable Alternative Energy at the Community Level", presented at the URC, Boise State University, Boise, Idaho, April 2009.
- McDougal, O.M., "Structural Basis for α -Conotoxin Potency and Selectivity", presented at the Experimental Nuclear Magnetic Resonance Conference 50th Annual Meeting, Asilomar, California, March 2009.
- Eidemiller, S. and McDougal, O., "Model Behavior: Synthetic Conotoxin Analogs for Parkinson's", presented at the 237th Annual Meeting of the American Chemical Society, Salt Lake City, Utah, March 2009.
- Parker, B.A., Coppola, J., Charlier, H., McDougal, O., Hill, M., "Hydrolysis of Parathion in a Liquid-Liquid Biphase System", presented at the 237th Annual Meeting of the American Chemical Society, Salt Lake City, Utah, March 2009.
- Swartz, M., Gomez, A., McDougal, O.M., "Alternative Energy at Home", presented at the 237th Annual Meeting of the American Chemical Society, Salt Lake City, Utah, March 2009.
- Johnston, A., McCormick, M.M., McDougal, O.M., "Going Green in Idaho", presented at the 237th Annual Meeting of the American Chemical Society, Salt Lake City, Utah, March 2009.
- Martin, B., Hill, M., McDougal, O., "Distribution of p-Nitrophenol in a Model Biphase System by SPS³RE NMR Spectroscopy", presented at the 237th Annual Meeting of the American Chemical Society, Salt Lake City, Utah, March 2009.
- Turner, M., Zemp, L., McDougal, O., "Three Dimensional Solution Structure for α -Conotoxin MII [E11A]: Structure-Function Studies in the Development of Therapeutic Approaches for Parkinson's Disease", presented at the AAASPD 89th Annual Meeting, Waimea, Hawaii, June 2008.
- Dixon, T., Hill, M., McDougal, O., "Applications of Diffusion-Ordered NMR Spectroscopy and Slice-Selection Imaging in the Study of the Interfacial Region of a Mixed Phase Solution", presented at the Council on Undergraduate Research Posters on the Hill conference, Washington, DC, Virginia, April 2008.
- Turner, M. and McDougal, O., "Three-Dimensional Solution Structure of Conotoxin tx3a: A m-I Branch Peptide of the M-Superfamily", presented at the 50th Annual Idaho Academy of Sciences Meeting, College of Western Idaho, Nampa, Idaho, March 2008.

GRANTS & AWARDS:

- Higher Education Research Council, "Academic Liaison with Industry: Going from Big D Little r to Big D Big R is Good for Idaho" (\$49,600) PI, 2011.
- BHS Marketing LLC, "Dissecting Detergents and Cleansers to Reformulate New Green Products" (\$13,000) Contract, 2011.
- QinetiQ North America, "³¹P ssNMR Analysis of Treated Fabrics" (\$50,000) Contract, 2010.
- Boise Technology Inc. Year IV, "NMR Characterization of Chemical Composition in a Mixed Phase System" (\$45,904) Contract, 2010.
- BSU, Designing for Learning Success, "Expanding Organic Chemistry at BSU" (\$20,000) PI, 2010.
- USAMRAA Defense Threat Reduction Agency contract number W81XWH-07-1-0004, "The DNA Safeguard Project" (Grant: \$1,069,525; McDougal portion: \$103,200) Co-PI, 2010.
- NSF MRI Grant 0923535: "Acquisition of a LC-MS at Boise State University" (\$676,964) Co-PI, 2009.
- Idaho State Board of Education Technology Incentive Grant Program, "Modernizing Freshman Laboratories Using State-of-the-Art Instrumentation" (\$55,700) PI, 2009.
- MSTMRI grant number 6PR3382000170, "Design, Synthesis, and Biological Testing of Novel and Selective Antagonists of nAChRs." (\$7,500) PI, 2009.
- NIH Grant #P20 RR016454 from the INBRE Program of the National Center for Research Resources (Grant: \$16,000,000; McDougal portion: \$100,000 est.) Co-PI, 2009.
- Boise Technology Inc. Year III, "NMR Characterization of Chemical Composition in a Mixed Phase System" (\$35,000) Collaborative Contract, 2009.
- USAMRAA Defense Threat Reduction Agency contract number W81XWH-07-1-0004, "The DNA Safeguard Project" (Grant: \$1,069,525; McDougal portion: \$116,728) Co-PI, 2008.
- Pacific Northwest National Laboratory-Environmental Molecular Sciences Laboratory (PNNL-EMSL), "Metabolomics and Proteomics of Bacterial Signaling" (est. \$15,000) PI, 2008.
- Boise Technology Inc. Year II, "NMR Characterization of Chemical Composition in a Mixed Phase System" (\$26,500) Collaborative Contract, 2008.
- MSTMRI, "In Search of a Cure for Parkinson's: A Structure Activity Relationship Study" (\$5,000) PI, 2008.
- Idaho State Board of Education Technology Incentive Grant Program, "Going Green: Environmental, Economic, Efficient Organic Chemistry Lab Curriculum" (\$99,700) PI, 2008.
- Merck/AAAS Undergraduate Research Program (\$60,000) Co-PI, 2007.
- Research Corporation grant number 6PR3381000172, "The Design, Synthesis, and Biological Testing of Novel and Selective Antagonists of Neuronal Nicotinic Acetylcholine Receptors" (\$56,000) PI, 2007.
- College of Arts and Science Travel Award, "NMR at the Interface," poster presentation, Experimental Nuclear Magnetic Resonance Conference, Asilomar, CA (\$400) PI, 2007.
- College of Arts and Sciences Civic Engagement Grant Program, "Establishing Community Engagement in the Chemistry Curriculum" (\$15,000) PI, 2007.
- Boise Technology Inc., Year I, "NMR Characterization of Chemical Composition in a Mixed Phase System" (\$24,000) Collaborative Contract, 2007.
- MSTMRI, "Electrostatic Topography Mapping of Novel and Selective Antagonists of Neuronal Nicotinic Acetylcholine Receptors" (\$5,000) PI, 2007.
- NSF CRIF-MU/RUI Grant Number 0639251: "Acquisition of a 500-MHz Nuclear Magnetic Resonance Spectrometer at Boise State University" (\$500,000) Co-PI, 2006.
- Professional Development Grant (SOU): "Incorporating a New 400 MHz NMR Spectrometer into the Chemistry Curriculum" (\$3,880) PI, 2003.
- SOU Technology Resource Grant: "A New Printer for Chemistry" (\$1,300) PI, 2003.
- Murdock Charitable Trust: "Organic Spectroscopy Laboratory and Biotechnology Evolution at Southern Oregon University." (\$213,000) Co-PI, 2003.

GRANTS & AWARDS: (cont'd)

- Professional Development Grant (SOU): "Development of a spectroscopic database to be used by undergraduate students to improve their understanding of NMR, IR, and MS." (\$1,713) PI, 2002.
- NSF MRI Grant Number 0116245: "Acquisition of a 400 MHz NMR Spectrometer to Broaden Research Experiences for Undergraduates at Southern Oregon University" (\$293,310) PI, 2001.
- Agilent Technologies University Relations Grant: "A New GC-MS for Chemistry." (\$76,910) Co-PI, 2001.
- Professional Development Grant (SOU): "Development of an advanced NMR instrumentation course for undergraduates" (\$2,350) PI, 1999.
- General Education Course Development Grant (SOU): Development of general scientific coursework and laboratory experiments for non-science majors (\$4,000) PI, 1999.
- Scientific Research Grant (SOU): Black tail deer tarsal gland research. (\$1,200) PI, 1998.

EXHIBIT D

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Owen M. McDougal, Ph.D.
2023 N. 18th Street
Boise, ID 83702

1 April 2012

Pitcher & Holdaway
40 W. Cache Valley Blvd. Suite 3B
Logan, UT 84321

Dear Mr. Holdaway,

It is my professional opinion that AM-2201 is not in violation of Idaho Code § 37-2705. The wording of the legislation addresses derivatives of 3-(1-naphthoyl)indole that “by substitution at the nitrogen atom of the indole ring” are alkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl or 2-(4-morpholinyl)ethyl. As a chemist, the legislation is specific in defining the organic substituents that are not permissible to be substituted on the nitrogen atom of the indole ring. I have provided below examples that fit into the first two categories specified in the legislation (Table 1).

Table 1. Examples of alkyl and alkenyl groups, where a group corresponds to the atoms present in the substituent identified, and a substituent refers to an atom or group of atoms substituted for another atom or group of atoms in a chemical compound.

Alkyl Group	Molecular Formula	Alkenyl Group	Molecular Formula
Methyl	-CH ₃		
Ethyl	-CH ₂ CH ₃	Ethenyl	-CH=CH ₂
Propyl	-CH ₂ CH ₂ CH ₃	Propenyl	-CH ₂ CH=CH ₂
Butyl	-CH ₂ CH ₂ CH ₂ CH ₃	Butenyl	-CH ₂ CH ₂ CH=CH ₂
Pentyl	-CH ₂ CH ₂ CH ₂ CH ₂ CH ₃	Pentenyl	-CH ₂ CH ₂ CH ₂ CH=CH ₂

It is significant to recognize that alkyl and alkenyl correspond to groups of atoms consisting of no other atoms than *carbon* and *hydrogen*. They are hydrides of alkanes and alkenes, i.e. hydrocarbons. *Hydrocarbons* are defined in Morrison and Boyd, 5th edition, p. 39, as, “*Certain organic compounds contain only two elements, hydrogen and carbon, and hence are known as hydrocarbons. On the basis of structure, hydrocarbons are divided into two main classes, aliphatic and aromatic. Aliphatic hydrocarbons are further divided into families: alkanes, alkenes, alkynes, and their cyclic analogs (cycloalkanes, etc.)*.” The “alkyl group” is defined by Morrison and Boyd, 5th edition, p. 87, as, “*The general formula for an alkyl group is C_nH_{2n+1}, since it contains one less hydrogen than the parent alkane, C_nH_{2n+2}*.” The “alkenyl group,” as defined by Anne Marie Helmenstein, Ph.D., on About.com Chemistry, “... *a hydrocarbon group formed when a hydrogen atom is removed from an alkene group*.”

To put this information in the context of the Idaho Code § 37-2705, I have provided the structures for 3-(1-naphthoyl)indole and a number of alkyl derivatives that are covered under the legislation (Figure 1).

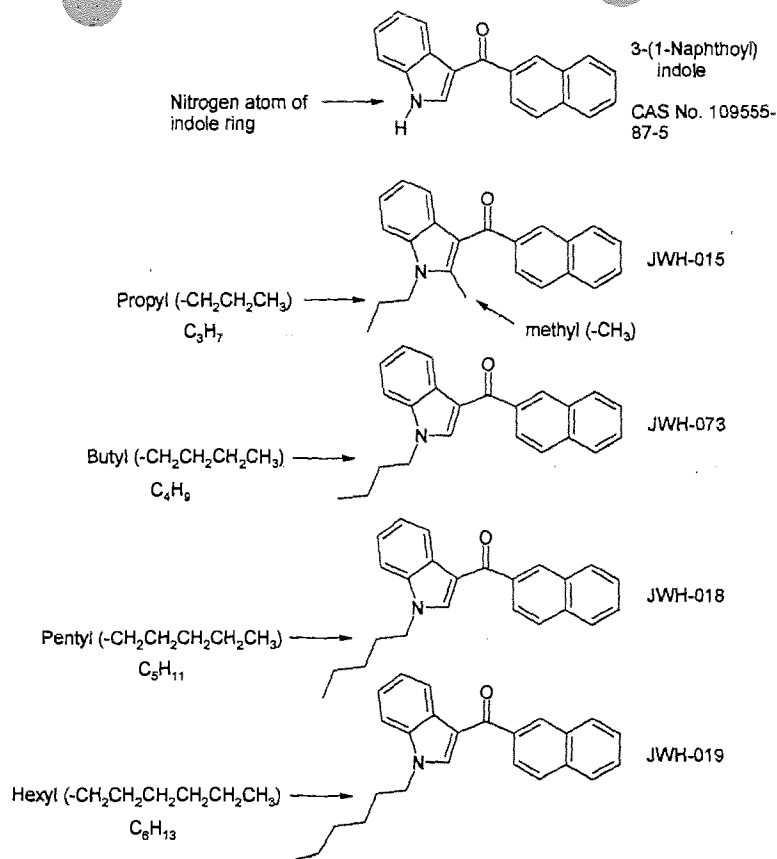


Figure 1. Molecular structures of 3-(1-naphthoyl)indole and alkyl derivatives JWH-015, JWH-073, JWH-018, and JWH-019.

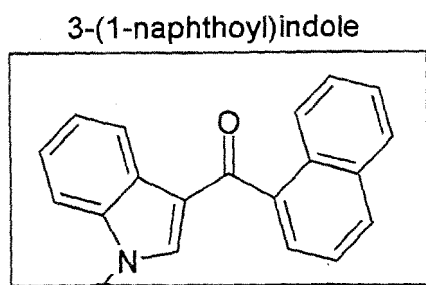
The recommendation provided by the National Alliance for Model State Drug Laws states the following: “3-(1-naphthoyl)indole or 3-(1-naphthyl)indole by substitution at the nitrogen atom of the indole ring, whether or not further substituted on the indole ring to any extent, whether or not substituted on the naphthoyl or naphthyl ring to any extent.” This terminology recommends exemption of all substitution at the nitrogen atom. This is NOT consistent with the Idaho legislation.

Oregon law states the following, “(a) *Naphthoylindoles*: Any compound containing a 3-(1-naphthoyl)indole structure with substitution at the nitrogen atom of the indole ring by an alkyl, ~~haloalkyl~~, alkenyl, cycloalkylmethyl, cycloalkylethyl or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent. Examples of this structural class include but are not limited to: JWH-015, JWH-018, JWH-019, JWH-073, JWH-081, JWH-122, JWH-200, and AM-2201.”

NOTE the inclusion of the term haloalkyl in the Oregon statute. Idaho legislation does NOT take into account alkyl halides, haloalkyls, or other substituted alkyl groups. **It is SIGNIFICANT to note that a substituted alkyl group is NOT an alkyl group.** To be clear, a hydrocarbon chain containing atoms other than carbon and hydrogen is defined by the identity of the heteroatom, e.g. oxygen in the case of alcohols and ethers.

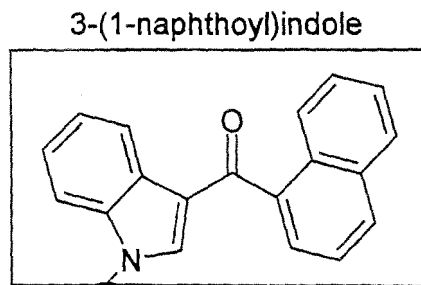
Thus, 1-(5-fluoropentyl)-3-(1-naphthoyl)indole, i.e. AM-2201, which contains an haloalkyl attached to the nitrogen atom of the indole ring in 3-(1-naphthoyl)indole, is NOT in violation of I.C. § 37-2705. Certainly AM-2201, a compound made publically available in 2001 through patent WO 01/28557, would have been included in the Idaho legislation had the intention been to include it. The Oregon legislation specifically states that haloalkyl substituents are in violation, while the Idaho legislation does not.

The structure of AM-2201 is shown below to indicate the haloalkyl substituent (left). To the right is the structure of JWH-018, a 3-(1-naphthoyl)indole derivative that contains an alkyl group attached to the nitrogen atom of the indole ring, and is clearly in violation of I.C. § 37-2705.



AM-2201

Haloalkyl group: is not specified in legislation



JWH-018

Alkyl group: is specified in legislation



Please let me know if I can provide further assistance in this case. My research on the topic turned up a variety of interesting data, where other states that sought to ban haloalkyl derivatives of 3-(1-Naphthoyl)indoles effectively did so. It is my conclusion that Idaho did not intend to ban haloalkyl derivatives of 3-(1-Naphthoyl)indole. If that was the intent, surely the precedent existed to do so properly. As written, AM-2201 is not in violation Idaho Code § 37-2705.

Kindest regards,

Owen M. McDougal, Ph.D.
Associate Professor of Chemistry and Biochemistry
Boise State University

References

John W. Huffman; Wikipedia: http://en.wikipedia.org/wiki/John_W._Huffman (accessed March 2012).

AM-2201 (1-(5-fluoropentyl)-3-(1-naphthoyl)indole); Wikipedia. <http://en.wikipedia.org/wiki/AM-2201> (accessed January 2012).

AM-2201-A Hyperpotent Halogenated Unintended Consequence; <http://countyourculture.com/2011/01/12/am-2201-a-hyperpotent-halogenated-unintended-consequence/> (accessed January 2012).

Synthetic Cannabinoids: JWH-018 Replacements; <http://countyourculture.com/2010/12/06/synthetic-cannabinoids-jwh-018-replacements/> (accessed January 2012).

Synthetic cannabis; http://en.wikipedia.org/wiki/Synthetic_cannabis (accessed January 2012).

Glossary of Class Names of Organic Compounds and Reactive Intermediates Based on Structure; <http://www.chem.qmul.ac.uk/iupac/class/> (accessed January 2012).

AM-2201 (1-(5-fluoropentyl)-3-(1-naphthoyl)indole) Drug Info; <http://www.drugs-forum.com/forum/showthread.php?t=144184> (accessed January 2012).

Simmons, Joshua J. (2011). "Three cases of "spice" exposure." *Clinical toxicology* 49 (5), p. 431.

Penn, Hannah J HJ (2011). "Detection of synthetic cannabinoids in herbal incense products." *Clinical biochemistry* 44 (13), p. 1163.

Brents, Lisa K LK (2011). "Phase I hydroxylated metabolites of the K2 synthetic cannabinoid JWH-018 retain in vitro and in vivo cannabinoid 1 receptor affinity and activity." *PLoS One* 6 (7), p. 21917.

IUPAC Nomenclature; <http://www.acdlabs.com/iupac/nomenclature/> (accessed March 2012).

Definition alkenyl group; <http://chemistry.about.com/od/chemistryglossary/g/Alkenyl-Group-Definition.htm> (accessed March 2012).

UK Misuse of Drug Act,
<http://isomerdesign.com/Cdsa/scheduleUK.php?schedule=2§ion=25&structure=U&structure=C> (accessed March 2012).

National Alliance for Model State Drug Laws,
<http://www.namsdl.org/documents/SyntheticCannabinoidTradeNameandChemicalCompoundChart.pdf> (accessed March 2012).

Oregon Law, 3-(1-Naphthoyl)indole derivatives,
http://www.pharmacy.state.or.us/Pharmacy/Imports/Rules/April11/855-080_4.11.pdf (accessed March 2012).

Makriyannis, A, Deng, H (2001) "Cannabimimetic Indole Derivatives." Patent No. WO 01/28557, April 26, 2001.

EXHIBIT E
083



February 17, 2011

Mr. Ryan L. Holdaway
Pitcher & Holdaway
1191 E. Iron Eagle Drive, Suite 200
Eagle ID 83616

Dear Mr. Holdaway:

In accordance with our recent conversation, my curriculum vitae is enclosed for your review.

While I have been president and principal toxicologist of Consultox for the past 26 years, Consultox has offered independent consulting services providing litigation support for both the plaintiff and defense in matters related to causation. We have participated in cases involving solvents such as trichloroethylene (TCE) and benzene, welding fumes, heavy metals such as hexavalent chromium, lead, arsenic, manganese and nickel, pesticides such as methyl parathion, lindane, chlorpyrifos, and diazinon, prescription and OTC drugs such as Baycol, Vioxx, phenylpropanolamine (PPA) and other Ephedra alkaloids, Pantopaque and Fen-Phen, industrial chemicals such as creosote, PCB's, dioxins, arsenic, PVC and vinyl chloride monomer, irritant gases such as chlorine, ammonia, and sulfur dioxide, hazardous waste sites, alcohol (DUI), illicit drugs, tobacco smoke and breast implants, among others. We have been involved heavily in health/exposure assessment surveys of large populations including sampling of blood, urine, and hair and have organized efforts and experts to address the complex problems of mass tort litigation. Additional information can be found on our web site (www.consultox.com).

My hourly rates are \$500 for case preparation and travel time and \$600 for testimony, both deposition and trial. Initial case work is charged against a \$3,000 nonrefundable retainer which is required to open a file; thereafter, time is billed monthly. Should travel to your location be required, there will be no charge for travel time.

Thank you for your interest in our services. I welcome the opportunity to be of assistance to you.

Sincerely,

A handwritten signature in black ink, appearing to read 'Richard A. Parent'.

Richard A. Parent, PhD, DABT, FATS, RAC, ERT
President

RAP/ecp
Enclosure

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Richard A. Parent, PhD, DABT, FATS, RAC, ERT

Consultant in Toxicology

P. O. Box 1239
Damariscotta, Maine 04543

P. O. Box 51928
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CURRICULUM VITAE



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Tel (504) 529-7500
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email: rparent@consultox.com

EDUCATION:

Ph.D., Rutgers University, New Brunswick, New Jersey, 1963
M.S., Northeastern University, Boston, Massachusetts, 1959
B.S., University of Massachusetts, Amherst, Massachusetts, 1957

CERTIFICATIONS:

Board Certified, Fellow of the Academy of Toxicological Sciences, 2000 to present
Board Certified, American Board of Toxicology, 1981 to present
Board Certified, Regulatory Affairs Certification Board, 1993 to present
Registered Toxicologist in France, 1999 to present
Registered Expert Toxicologist in Europe (EUROTOX), 1999 to present
Certified Specialist - Intoxilyzer 5000, 2006

PROFESSIONAL POSITIONS:

- President, Consultox, Limited, Damariscotta, Maine, and New Orleans, Louisiana, 1984-present
- Member, Board of Directors, CCA Associates, Baton Rouge, Louisiana, 1984-1989
- Director, Life Sciences Division, Gulf South Research Institute, New Iberia, Louisiana, 1982-1984
- Vice President & Director, Food & Drug Research Laboratories, Inc., Waverly, New York, 1979-1982
- Consultant Toxicologist, International Union of Airline Flight Attendants, 1977-1979
- Staff Toxicologist, Xerox Corporation, Rochester, New York, 1969-1979
- Board of Directors & Consulting Toxicologist, Delta Laboratories, Rochester, New York, 1969-1979
- Senior Research Chemist, American Cyanamid, Bound Brook, New Jersey, 1959-1969

LANGUAGES:

- Fluent in French and English

PROFESSIONAL SOCIETIES AND HONORS:

- Fellow, Academy of Toxicological Sciences, 2000-present
- Regulatory Affairs, Certified by the Regulatory Affairs Certification Board, 1993. Re-Certified, 2004, 2007, 2009
- Diplomat, American Board of Toxicology, 1981-present (recertified 1987, 1992, 1997, 2002, 2007)
- Member, Société Française de Toxicologie, 1989-present
- Member, EUROTOX (European Society of Toxicology), 1990-present
- Regulatory Affairs Professional Society, 1992-present
- Chairman, Roundtable of Toxicology Consultants, 1985-1988, Founder 1984, member to present
- American College of Toxicology, 1978-present; Animals in Research Committee, 1988-1989
- Member, Cosmetic Toiletries & Fragrance Association (CTFA), 1995-2000
- Member, Drug Information Association, 1997-2000
- International Society of Regulatory Toxicology and Pharmacology, 1992-present
- Founding Editor, *Journal of the American College of Toxicology*, Part B, *Acute Toxicity Data*, 1989-1997
- Editorial Board, *Journal of Applied Toxicology*, 1980-2008. North American Editor, 1988-1998
- Section Editor, *Journal of the American College of Toxicology*, 1988-1999
- Editorial Board, *International Journal of Toxicology*, 1999-present
- Editorial Board, *Toxicology Methods*, 1990-2002
- Editorial Board, *Toxicology Mechanisms and Methods*, 2002-present
- Society of Toxicology, 1979-present
 - President and Founder, Specialty Section on Epidemiology, 1998-2000
 - Placement Service, Co-director 1982-1984; Director 1984-1986
 - Communications Task Group, 1983-1984
 - Vice-President, Regulatory and Safety Evaluation Specialty Section, 1993-1995
 - President, Regulatory and Safety Evaluation Specialty Section, 1995-1996
 - Carcinogenesis and Risk Assessment Specialty Section, 1984-present
 - Inhalation Toxicology Specialty Section, 1986
 - Technical Committee, 1990
 - Long Range Planning Committee, 1986-1987
 - Anniversary Committee, 1985-1986
 - Mid-Atlantic Chapter, 1981-1982
 - Northeast Chapter, 1994
 - Gulf Coast Chapter, 1982-1990
- Association for the Advancement of Medical Instrumentation, 1993-1996
- ASTM Committee F4 on Medical and Surgical Materials and Devices, Subcommittee on Biocompatibility, 1992-1994
- Member, Society for Biomaterials, 1993-1997
- ASTM Committee E-34 on Occupational Safety & Health
 - Vice Chairman, 1977-1979; Chairman, 1979-1984
 - Award for Outstanding Service, October 19, 1983
 - Member at Large, 1989-1999
- International Society for the Study of Xenobiotics, 1982-present; emeritus 2002-present
- Editorial Board, *Journal of the Society of Cosmetic Chemists*, 1975-1990

PROFESSIONAL SOCIETIES AND HONORS: (cont'd.)

- American Cyanamid Educational Award, 1962-1963
- American Men & Women of Science
- Who's Who in the East, 1982
- 49th Edition of Who's Who, 1995
- National Science Foundation Fellow, 1958-1959, 1960-1961
- New York Academy of Sciences, AAAS
- Sigma Xi, Phi Lambda Upsilon, ACS
- Who's Who in Science and Engineering, 1996
- Who's Who in Executives & Professionals, 1997
- Who's Who in the World, 1998

COMMITTEES, CHAIRMANSHIPS AND INVITED LECTURES:

- Invited Lecture, "Toxicological Consequences of the Gulf Oil Spill on Workers and Residents of the Coast". Presented at the 61st Annual Toxicology Roundtable, Elkhart Lake, Wisconsin, September 27, 2010.
- Chairperson, Informational Session, "Recent Advances in Pulmonary Surfactant Toxicology Assessment and Therapeutics", 49th Annual Meeting of the Society of Toxicology, Salt Lake City, Utah, March 9, 2010.
- Session Chairman and Organizer of Continuing Education Course, "Comparative Biology of the Lung", 49th Annual Meeting of the Society of Toxicology, Salt Lake City, Utah, March 7, 2010.
- Invited Speaker, "Chinese Drywall - Toxicity, Risk and Causation," Chinese Drywall HB Litigation Conference, New Orleans, Louisiana, November 11, 2009.
- Invited Speaker, Continuing Education Course, "Consulting in Toxicology Expert Testimony" 30th Annual Meeting, American College of Toxicology, Palm Springs, California, November 1, 2009.
- Session Chairman and Organizer of Continuing Education Course, "Epidemiology for Toxicologists," 47th Annual Meeting, Society of Toxicology, Seattle, Washington, March 16, 2008.
- Session Chairman, Toxicology in the Courtroom: Establishing Causation. A Roundtable Discussion, Richard A. Parent, Bernard Goldstein and David Eaton, Society of Toxicology Meeting, San Diego, California, March 6, 2006.
- Invited Speaker, 230th National American Chemical Society Meeting, Washington, DC. "Where Toxicology Meets the Law, Focus on Dioxin" Mock Trial, August 31, 2005.
- Invited Speaker, Roundtable of Toxicology Consultants, Summer Meeting. "Structuring an Expert Report", Gaithersburg, Maryland, August, 27, 2005.
- Toxic Torts: Toxicologists in the Courtroom, Co-chair and presenter; platform session, Society of Toxicology Meeting, New Orleans Louisiana, March 8, 2005
- Invited Lecture, "Causation, the Bedrock of Toxic Tort Litigation", Roundtable of Toxicology Consultants, Williamsburg, Virginia, October 16, 2003.
- Invited Lecture, "Causation, the Bedrock of Toxic Tort Litigation", Connecticut Defense Lawyers Association, Quinnipiac University School of Law, Hamden, Connecticut, March 28, 2003.
- Co-Chairman and Organizer of Continuing Education Course, "Environmental Epidemiology and Toxicology: the Interface and the Interactions" 39th Annual Meeting of the Society of Toxicology, Philadelphia, Pennsylvania, March 19, 2000.
- Invited Lecturer, "Mealy Publications Conference on Fen-Phen", St. Regis Hotel, Philadelphia, Pennsylvania, October 18-19, 1999.
- Organized "Electromagnetic Fields: Toxicology, Epidemiology and N.I.E.H.S.", 38th Annual Meeting of the Society of Toxicology, New Orleans, Louisiana, March 17, 1999.
- Co-Chairman and Organizer of Continuing Education Course "Epidemiology for Toxicologists: II. Methodology", 36th Annual Meeting of the Society of Toxicology, Cincinnati, Ohio, March 9, 1997.
- Co-Chairman and Organizer of Continuing Education Course "Epidemiology for Toxicologists", 35th Annual Meeting of the Society of Toxicology, Anaheim, California, March 10, 1996.
- Faculty member, Short Course "Safety Evaluation of Medical Devices: Testing, Materials and Biocompatibility". Center for Professional Advancement, East Brunswick, New Jersey, July 21-23, 1993; Amsterdam, The Netherlands, September 12-16, 1993.
- Member ASTM F4 Committee on Medical and Surgical Materials and Devices, Subcommittee on Biocompatibility, 1992-present
- Chairman of Symposium, "Opening the Doors to the Agencies", Eleventh Annual Meeting, American College of Toxicology, Orlando, Florida, October 31, 1990.
- Invited Paper "Problems in and Approaches to Getting Acute Toxicity Data Into the Literature", Meeting, American College of Toxicology, Williamsburg, Virginia, October 30, 1989.
- Invited Paper "The Role of the Toxicologist", Environmental and Toxic Tort Litigation Section, American Trial Lawyers Association Convention, Seattle, Washington, July 24, 1984.
- Contributed to and co-authored "Abandoned Waste Site Cleanup Cost Allocation Model", Copyright 1983 by G&E Engineering, November, 1983.
My part in the structuring of this model involved setting up criteria by which one could assess the relative hazard and toxicity of the chemicals present at the dumpsite. As a result of my efforts, I was called as an expert witness for one of the defendants in hazardous waste site case (USA versus Petroleum Processors of Louisiana, et. al.).
- Invited Presentation "Career Planning in Toxicology", 27th Annual Meeting of the Society of Toxicology, Dallas, Texas, February, 15-19, 1988.
- Invited Paper "Toxicology and the Material Safety Data Sheet", Symposium, Hazard Communication II, American Society of Testing and Materials (ASTM), Williamsburg, Virginia, March 16-18, 1988.
- Invited Paper "Career Options in Toxicology", University of Mississippi, Medical Center, Jackson, Mississippi, April 25, 1988.
- Member of the following groups within ASTM Committee E34 on Occupational Safety and Health.
 - E34.2 Sub-Committee on Toxicology and Medicine, 1976, chairman, 1977-1979.
 - Elected Member at Large, 1989.
 - Task Group E34.02 on Carbon Disulfide, 1979-1981 (ASTM E752-81 Issued).
 - Task Group E34.05 on Insoluble Chromates, 1978-present (ASTM E848-82 Issued).
 - Task Group E34.06 on Methoxy Ethanol, 1978-1982.
 - Task Group E34.08 on Asbestos, 1978-1985 (ASTM E849-82 Issued).

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COMMITTEES, CHAIRMANSHIPS AND INVITED LECTURES: (cont'd.)

- Task Group E34.10 on Ozone, 1978-1980 (ASTM E591-80 Issued).
- Task Group E34.13 on Styrene, 1978-1985.
- Task Group E34.15 on Core Physical Exam, 1980-1985.
- Task Group E34.16 on Amorphous Silica, 1980-1985.
- Task Group E34.17 on Material Safety Data Sheets, 1981-1983.
- E34.4 Subcommittee on Hazard Communications, 1983-1985.

My membership in all of these task groups and the sub-committee involved the assessment of toxicological effects of the chemicals for the purpose of assigning levels of exposure that would be considered safe within the occupational environment. I contributed to the content and interpretation of the toxicology literature and participated extensively in discussions leading to the setting of occupational exposure limits for each chemical.

- Invited Paper, "The Toxicology of Ozone", presented at the Conference on Air Quality, Meteorology, and Atmospheric Ozone, University of Colorado, Boulder, Colorado, August 5, 1977.

CONTINUING EDUCATION:

- 2010 . . "Leachables and Extractables: Best Practices to Identify and Qualify Leachables in Drug Products", Annual Meeting, American College of Toxicology, Continuing Education Course, Baltimore, Maryland, November 7, 2010.
- 2010 . . "ICH Initiatives for Conducting Pharmaceutical Preclinical Safety Studies: New and Revised Guidelines and Challenges", 49th Annual Meeting of the Society of Toxicology, Salt Lake City, Utah, March 7, 2010.
- 2009 . . "Study Monitoring at CRO," 30th Annual Meeting, American College of Toxicology, Palm Springs, California, November 1, 2009.
- 2009 . . "Topics in Ethics: Conflicts of Interest - Real or Imagined? - PBDEs As a Case Study", 48th Annual Meeting of the Society of Toxicology, Baltimore, Maryland, March 15, 2009.
- 2009 . . "Immunotoxicology for Toxicologists", 48th Annual Meeting of the Society of Toxicology, Baltimore, Maryland, March 15, 2009.
- 2009 . . "New Frontier in Metal Toxicology: Genetic Susceptibility, Early Diagnosis, and Related Biological Indices", 48th Annual Meeting of the Society of Toxicology, Baltimore, Maryland, March 15, 2009.
- 2007 . . "REACH: A New Framework for the Regulation of Chemicals", 46th Annual Meeting of the Society of Toxicology, Charlotte, North Carolina, March 25, 2007.
- 2007 . . "Genomics: From Novice to Expert, From Challenges To Promises", 46th Annual Meeting of the Society of Toxicology, Charlotte, North Carolina, March 25, 2007.
- 2006 . . "Intoxilyzer Breath Alcohol Testing for Lawyers", Industrial Training & Design, Limited, Portland, Maine, October 29-31, 2006.
- 2006 . . "Reproductive Toxicity Testing: Study Design, Evaluation, Interpretation and Risk Assessment", Society of Toxicology, San Diego, California, March 6, 2006.
- 2005 . . "Clinical Pathology - The Granddaddy of Biomarkers", Society of Toxicology, New Orleans, Louisiana, March 6, 2005.
- 2003 . . "Practical Application of Genomic and Proteomic Technologies to Drug Safety Evaluation", American College of Toxicology, Washington, D.C., November 3, 2003.
- 2003 . . "The Human Genome and Toxicology", American College of Toxicology, Washington, D.C., November 3, 2003.
- 2003 . . "Molecular Epidemiology and Biomarkers", American College of Toxicology, Washington, D.C., November 3, 2003.
- 2003 . . "Database and Information Research" given by J Kittleson-Hart at the Roundtable of Toxicology Consultants Seminar Series on October 17, 2003 in Williamsburg, Virginia.
- 2003 . . "Safety Pharmacology Studies for Human Pharmaceuticals" given by Dr. C. B. Spainhour at the Roundtable of Toxicology Consultants Seminar Series, Williamsburg, Virginia, October 17, 2003.
- 2003 . . "Fundamentals of Risk Assessment and Applications of Recent Methodologies to Difficult Problems", Society of Toxicology, 42nd Annual Meeting, Salt Lake City, Utah, March 9, 2003.
- 2002 . . "A Practical Approach to Blood and Lymphoid Tissues (BLT) in Toxicological Assessments", Society of Toxicology, 41st Annual Meeting, Nashville, Tennessee, March 17, 2002.
- 2001 . . "Web Resources for Toxicologists," 40th Annual Meeting, Society of Toxicology, San Francisco, CA, March 25, 2001.
- 1999 . . "Target Organ Toxicology: Respiratory Tract Dosimetry and Response to Inhaled Toxicants" and "Application of Transgenic Models in Toxicology," 38th Annual Meeting of the Society of Toxicology, New Orleans, Louisiana, March 14, 1999.
- 1998 . . "Making the Transition: Converting to PubMed and Internet GratefulMed to Search N.L.M. Databases," Brown University, Providence, Rhode Island, March 7, 1998.
- 1997 . . "Epidemiology for Toxicologists: II. Methodology", 36th Annual Meeting of the Society of Toxicology, Cincinnati, Ohio, March 9, 1997.
- 1997 . . "The Mechanics of Preparing INDs & NDAs & FDA Regulations", Institute for Applied Pharmaceutical Sciences, Boca Raton, Florida, October 20-22, 1997.
- 1996 . . "Epidemiology for Toxicologists", 35th Annual Meeting of the Society of Toxicology, Anaheim, California, March 10, 1996.
- 1995 . . "Cytokines and Growth Factors in Toxicity" and "Advances in Risk Extrapolation: Dose response assessment", 34th Annual Meeting of the Society of Toxicology, Baltimore, Maryland, March 5, 1995.
- 1994 . . "Sensory System Toxicology," 33rd Annual Meeting of the Society of Toxicology, Dallas, Texas, March 13, 1994.
- 1992 . . "Basic and Applied Hematology" and "Case Studies in Risk Assessment: Emphasis on Exposure," 31st Annual Meeting of the Society of Toxicology, Seattle, Washington, February 23, 1992.
- 1992 . . "Medical Device Regulation. . . Europe and North America", Boston, Massachusetts, September 10, 11, 1992.
- 1991 . . "Risk Communications: Problems, Perceptions and Practice" and "Novel Techniques in Inhalation Toxicology", Continuing Education Courses, 30th Annual Meeting of the Society of Toxicology, Dallas, Texas, February 25-March 1, 1991.
- 1990 . . "Concepts in Cell Biology" and "Carcinogen Risk Assessment", Continuing Education Courses, 29th Annual Meeting, Society of Toxicology, Miami, Florida, February 12-16, 1990.
- 1989 . . "Concepts in Molecular Biology", Continuing Education Course, 28th Annual Meeting, Society of Toxicology, Atlanta, Georgia, February 27-March 3, 1989.

CONTINUING EDUCATION: (cont'd.)

- 1988 . . . "Respiratory Tract Toxicology by Classes of Agents" and "Immunotoxicology". Continuing Education Courses, 27th Annual Meeting, Society of Toxicology, Dallas, Texas, February 15-19, 1988.
- 1987 . . . "Clinical Chemistry of Laboratory Animals". Continuing Education Course, 26th Annual Meeting, Society of Toxicology, Washington, DC, February 2, 1987.
- 1986 . . . "Developmental Toxicology" and "Hematological Laboratory Animals". Continuing Education Courses, 25th Annual Society of Toxicology Meeting, New Orleans, Louisiana, March 3-7, 1986.
- 1985 . . . "Inhalation Toxicology" and "Renal Toxicology". Continuing Education Courses, 24th Annual Society of Toxicology Meeting, San Diego, California, March 18-22, 1985.
- 1984 . . . "Neurotoxicology Training Course" and "Current Concepts and Mechanisms of Carcinogenicity". Continuing Education Courses, 23rd Annual Society of Toxicology Meeting, Atlanta, Georgia, March 12-16, 1984.
- 1983 . . . "Consensus Workshop on Formaldehyde", Little Rock, Arkansas, October 3-6, 1983.
- 1983 . . . "Dermatotoxicology" and "Male Reproductive Tract Toxicology". Continuing Education Courses, 22nd Annual Meeting, Society of Toxicology, Las Vegas, Nevada, March 7-11, 1983.
- 1982 . . . "Basic Concepts of Immunotoxicology". Continuing Education Course, 21st Annual Meeting, Society of Toxicology, February 22-26, 1982.
- 1981 . . . "Inhalation Toxicology". A Refresher Course, 20th Annual Meeting, Society of Toxicology, San Diego, California, March 1-5, 1981.
- 1980 . . . "Principles of Toxicology, Basic Kinetics". A Refresher Course, 19th Annual Meeting, Society of Toxicology, Washington, DC, March 9-13, 1980.

APPOINTMENTS AND CONSULTING ACTIVITIES:

- Consultant, Tennessee Valley Authority, TVA Coal Ash Grant Review FY 2010, January 2010.
- Consultant, National Institutes of Health, NIAID, Safety Evaluation of Anti-Infective Agents, Bethesda, Maryland, February 12, 2007.
- Consultant, National Cancer Institute, Preclinical Pharmacology & Toxicology of New Cancer Preventing Agents, Bethesda, MD, 2003.
- Elected President, Epidemiology Specialty Section, Society of Toxicology, 1999-2000.
- Appointed, Chairperson, Poster Session on Eye Toxicity, Society of Toxicology, 1997 Meeting, Cincinnati, Ohio, March 10, 1997.
- Elected President, Regulatory and Safety Evaluation Specialty Section of Society of Toxicology, 1996-1997.
- Appointed, Co-Chairman, Symposium on Clinical and Pre-clinical Evaluation of Drug Abuse Liability, American College of Toxicology Annual Meeting, Williamsburg, Virginia, October 25, 1994.
- Appointed, Co-Chairman, Poster Session on Regulatory Toxicology, Society of Toxicology, Annual Meeting, Dallas, Texas, March 15, 1994.
- Appointed, Co-Chairman, Platform Session on Risk Assessment, Society of Toxicology, Annual Meeting, Seattle, Washington, February 25, 1992.
- Appointed, Co-Chairman, Platform Session of Reproductive Toxicology, Society of Toxicology, Annual Meeting, Miami Beach, Florida, February 15, 1990.
- Appointed, Consultant to the Chemical Specialties Manufacturing Association, Washington, D.C., 1986-1987
- Appointed, Chairman Platform Session of Inhalation Toxicology, Society of Toxicology, Annual Meeting, New Orleans, Louisiana, March 9, 1986.
- Appointed, Chairman Platform Session on Inhalation Toxicology, Society of Toxicology, Annual Meeting, San Diego, California, March, 20, 1985.
- Appointed, Moderator, Information Resources, Symposium on Hazard Communication, Hyatt Regency, Houston, Texas, March 11-12, 1985.
- Appointed, Discussion Leader, Gordon Research Conferences on Toxicology and Safety Evaluations, July 30 - August 3, 1984.
- Appointed, Co-chairman Platform Session on Methods in Toxicology, Society of Toxicology, Annual Meeting, Atlanta, Georgia, March 14, 1984.
- Appointed, Chairman of the Society of Toxicology Placement Service, 1984-1986 (Co-chairman 1982-1984).
This appointment by the President of SOT involves maintaining a placement service for those seeking positions and those seeking candidates for positions. This activity is continuous during the year but peaks at the annual SOT meetings.
- Appointed as Special Advisor to American Association for Accreditation of Laboratory Animal Care (AAALAC), March 8, 1983.
This appointment involves participation in laboratory site reviews to determine if a laboratory should be certified by AAALAC or continue its AAALAC certification.
- Appointed to the Communications Task Group of the Society of Toxicology, 1983.
An appointment by the President of SOT, this committee involves the study of better ways to communicate toxicology to the general public both through the media and through educational programs.
- Appointed as Consultant to the American Welding Society and Member of Safety and Health Committee, 1982-1986.
This appointment has involved writing protocol for a complex series of studies focusing on the inhalation of various welding fumes. Protocols were then priced and a laboratory selected based on my recommendation. Experiments are now complete. During the experimental phase, I audited the studies and had sign-off authority for all protocol amendments and deviations.
- Appointed, Co-chairman, Poster Session on the Environment, Society of Toxicology Annual Meeting, Washington, D.C., February 23, 1982.
- Appointment to Expert Committee on Adverse Effects of Inflight Exposure to Atmospheric Ozone, House of Representatives sub-committee on oversight and Investigations of the Committee on Interstate and Foreign Commerce-Testimony given on July 18, 1979, on "The Toxicology of Ozone as it relates to in-Flight Exposure" and entered into the congressional record.
This forty-five minutes of testimony was requested in an effort to determine if indeed there is a hazard relating to ozone exposure on overseas flights. My testimony was sought after recognition of my extensive efforts in writing the toxicology section of ASTM's published document entitled "Standard Practice for Safety and Health Requirements Related to Occupational Exposure to Ozone". E591-80, my invited contribution and

APPOINTMENTS AND CONSULTING ACTIVITIES: (cont'd.)

subsequent publication of an extensive critical review of ozone toxicology and its implications relating to employee health. These efforts were all aimed at assessment of risk relative to ozone exposure. Lung pathology, reproductive implications, biochemical responses and chromosomal alterations were discussed relative to risk of both short term and long term health effects.

- Appointed as Consultant in Toxicology to the International Union of Airline Flight Attendants, February, 1977 to February, 1979
This effort involved assessment of risk of exposure to ozone on overseas flights and, in particular, the effect of exercise on both exposure and symptomatology observed in overseas flights. Acute respiratory distress as well as assessment of effects on reproductive parameters, and chromosomal abnormalities were considered relative to exposure and dose. As a result of these efforts, Congress has passed legislation to limit in-flight exposure to ozone, and the airlines have installed catalytic converters to limit ozone concentrations in cabin supplied air.
- Appointed to Board of Directors of Delta Laboratories, Rochester, New York. A not-for-profit environmental laboratory, February, 1969 to February, 1979
This laboratory operating at a yearly budget as high as \$100,000, investigated various consumer and environmentally related toxicological and contamination problems. Acting both on the Board of Directors and as a consulting toxicologist, I investigated and commented on a variety of toxicological problems.

PUBLICATIONS:

- Parent, R.A., Radon. In: *Encyclopedia of Toxicology, Chemical and Concepts*. Second Edition. Volume 3. Wexler, P. (ed). Elsevier Press, Oxford, U. K., ISBN 0-12-745354-7, pp. 617-620, 2005.
- Parent, R.A., Trichloroethylene. In: *Encyclopedia of Toxicology, Chemical and Concepts*. Second Edition. Volume 4. Wexler, P. (ed). Elsevier Press, Oxford, U. K., ISBN 0-12-745354-7, pp. 382-386, 2005.
- Parent, R.A., Methylene Chloride. In: *Encyclopedia of Toxicology, Chemical and Concepts*. Second Edition. Volume 3. Wexler, P. (ed). Elsevier Press, Oxford, U. K., ISBN 0-12-745354-7, pp. 92-95, 2005.
- Parent, R.A. and Nordone, A.J., Furfural. In: *Encyclopedia of Toxicology, Chemical and Concepts*. Second Edition. Volume 2. Wexler, P. (ed). Elsevier Press, Oxford, U. K., ISBN 0-12-745354-7, pp. 394-397, 2005.
- Parent, R.A., Tetrachloroethylene. In: *Encyclopedia of Toxicology, Chemical and Concepts*. Second Edition. Volume 4. Wexler, P. (ed). Elsevier Press, Oxford, U. K., ISBN 0-12-745354-7, pp. 150-153, 2005.
- Parent, R.A., Picloram. In: *Encyclopedia of Toxicology, Chemical and Concepts*. Second Edition. Volume 3. Wexler, P. (ed). Elsevier Press, Oxford, U. K., ISBN 0-12-745354-7, pp. 436-438, 2005.
- Parent, R.A., 3-Methyl cholanthrene. In: *Encyclopedia of Toxicology, Chemical and Concepts*. Second Edition. Volume 3. Wexler, P. (ed). Elsevier Press, Oxford, U. K., ISBN 0-12-745354-7, pp. 89-91, 2005.
- Parent, R.A., A Toxicologist's Look at PPA and Stroke. Harris Martin Columns, Premier Issue Featured Article, Published 2002.
- Sharp, D.E., Berge, M. A., Paust, D.E., Talaat, R.E., Wilkes, L.C., Servatius, L.J., Loftus, M.L., Doane, R.A. and Parent, R.A., Metabolism and Distribution of 2,3-[¹⁴C]-Acrolein in Lactating Goats, *Journal of Agricultural and Food Chemistry*, 49(3), 1630-1638 (2001).
- Sharp, D.E., Berge, M.A., Hennes, M.G., Wilkes, L.C., Servatius, L.J., Loftus, M.L., Doane, R.A. and Parent, R.A., Metabolism and Distribution of 2,3-[¹⁴C]-Acrolein in Laying Hens, *Journal of Agricultural and Food Chemistry*, 49(3), 1639-1647 (2001).
- Parent, R.A., Paust, D.E., Schrimpf, M.K., Talaat, R.E., Doane, R.A., Caravello, H.E., Lee, S.J. and Sharp, D.E., Metabolism and Distribution of 2,3-[¹⁴C]-Acrolein in Sprague-Dawley Rats II. Identification of Urinary and Fecal Metabolites, *Toxicological Sciences*, 43, 110-120 (1998).
- Parent, R.A., Kline, T.R. and Sharp, D.E., Tetrachloroethylene. In: *Encyclopedia of Toxicology, Chemicals and Concepts*, Wexler, P. (ed.), Academic Press, New York, New York, Volume 3, pp 220-221 (1998).
- Parent, R.A., Kline, T.R. and Sharp, D.E., Methylene Chloride. In: *Encyclopedia of Toxicology, Chemicals and Concepts*, Wexler, P. (ed.), Academic Press, New York, New York, Volume 2, pp 308-310 (1998).
- Parent, R.A., Kline, T.R. and Sharp, D.E., Picloram. In: *Encyclopedia of Toxicology, Chemicals and Concepts*, Wexler, P. (ed.), Academic Press, New York, New York, Volume 2, pp 530-531 (1998).
- Parent, R.A., Kline, T.R. and Sharp, D.E., 3-Methylcholanthrene. In: *Encyclopedia of Toxicology, Chemicals and Concepts*, Wexler, P. (ed.), Academic Press, New York, New York, Volume 2, pp 305-306 (1998).
- Nordone, A.J., Sharp, D.E. and Parent, R.A., Furfural. In: *Encyclopedia of Toxicology, Chemicals and Concepts*, Wexler, P. (ed.), Academic Press, New York, New York, Volume 2, pp 40-41 (1998).
- Parent, R.A., Kline, T.R. and Sharp, D.E., Radon. In: *Encyclopedia of Toxicology, Chemicals and Concepts*, Wexler, P. (ed.), Academic Press, New York, New York, Volume 3, pp 19-20 (1998).
- Parent, R.A., Kline, T.R. and Sharp, D.E., Hexachlorocyclopentadiene. In: *Encyclopedia of Toxicology, Chemicals and Concepts*, Wexler, P. (ed.), Academic Press, New York, New York, Volume 2, pp 82-83 (1998).
- Parent, R.A., Kline, T.R. and Sharp, D.E., Trichloroethylene. In: *Encyclopedia of Toxicology, Chemicals and Concepts*, Wexler, P. (ed.), Academic Press, New York, New York, Volume 3, pp 372-374 (1998).
- Nordone, A.J., Matherly, R., Bonnavier, B., Doane, R., Caravello, H., Paakonon, S. and Parent, R.A., The Mobility and Degradation of Acrolein in Agricultural Canals Treated with Magnacide® H herbicide, *Chemosphere*, 32(5), 807-814 (1996).
- Nordone, A.J., Matherly, R., Bonnavier, B., Doane, R., Caravello, H., Paakonon, S., Winchester, W. and Parent, R.A., Effect of Magnacide® H Herbicide Residuals on Water Quality within Wildlife Refuges of the Klamath Basin, California, *Bulletin of Environmental Contamination and Toxicology*, 56(6), 964-970 (1996).
- Parent, R.A., Caravello, H.E. and Sharp, D.E., Metabolism and Distribution of ¹⁴C(2,3)Acrolein in Sprague-Dawley Rats, *Journal of Applied Toxicology*, 16(5), 449-457 (1996).
- Parent, R.A., Caravello, H.E., and San R.H.C., Mutagenic Activity of Acrolein in *S. typhimurium* and *E. coli*, *Journal of Applied Toxicology*, 16(2), 103-108 (1996).
- Parent, R.A., Caravello, H.E., Christian, M.S. and Hoberman, A.M., Developmental Toxicity of Acrolein in New Zealand White Rabbits, *Fundamental and Applied Toxicology*, 20, 248-256 (1993).
- Parent, R.A., Caravello, H.E., and Long, J.E., Two-Year Toxicity and Carcinogenicity Study of Acrolein in Rats, *Journal of Applied Toxicology*, 12(2), 131-140 (1992).

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- Parent, R.A., Editor, A Comprehensive Treatise on Pulmonary Toxicology, in four volumes, Volume I. *Comparative Biology of the Normal Lung*, CRC Press, Boca Raton, Florida, 830 pages, February (1992).
- Parent, R.A., Caravello, H.E. and Hoberman, A.M., Reproductive Study of Acrolein on Two Generations of Rats, *Fundamental and Applied Toxicology*, 19, 228-237 (1992).
- Parent, R.A., Caravello, H.E., Balmer, M. F., Shellenberger, T. E. and Long, J. E., One-Year Chronic Toxicity of Orally Administered Acrolein to the Beagle Dog, *Journal of Applied Toxicology*, 12(5), 311-316 (1992).
- Parent, R.A., Caravello, H.E. and Long, J.E., Eighteen Month Oncogenicity Study of Acrolein in Mice, *Journal of the American College of Toxicology*, 10(6), 647-659 (1992).
- Parent, R.A., Caravello, H.E. and Harbell, J.W., Gene Mutation Assay of Acrolein in the CHO/HGPRT Test System, *Journal of Applied Toxicology*, 11(2), 91-95 (1991).
- Parent, R.A., Summary of Potential Health Effects of Nineteen Chemical Substances Involved in the Livingston Train Derailment In *Ecological, Physical, Economic, Sociological and Psychological Assessment of the Illinois Central Gulf Train Derailment*. Volume 2, Gulf South Research Institute, Baton Rouge, Louisiana, p. 2-231 to 2-339, August (1984).
- Parent, R.A., invited paper, "The LD₅₀ and Animal Utilization", presented at a Symposium entitled Development of Effective Models for Biomedical Research, Louisiana State University, Baton Rouge, Louisiana, September 19 (1983).
- Hess, F.G., Parent, R.A., Stevens, K.R., Cox, G.E. and Becci, P.J., Effects of Subchronic Feeding of Ginseng Extract G115 in Beagle Dogs, *Food and Chemical Toxicology*, 21(1), 95-97 (1983).
- Parent, R.A., Cox, G.E., Babish, J.G., Gallo, M.A., Hess, F.G. and Becci, P.J., Subchronic Feeding Study of Carnauba Wax in Beagle Dogs, *Food and Chemical Toxicology*, 21(1), 85-87 (1983).
- Parent, R.A., Re, T.A., Babish, J.G., Cox, G.E., Voss, K.A. and Becci, P.J., Reproduction and Subchronic Feeding Study of Carnauba Wax in Rats, *Food and Chemical Toxicology*, 21(1), 89-93, (1983).
- Becci, P.J., Voss, K.A., Hess, F.G., Gallo, M.A., Parent, R.A., Stevens, K.R. and Taylor, J.M., Long-term Carcinogenicity and Toxicity Study of Zearalenone in the Rat, *Journal of Applied Toxicology*, 2(5), 247-254, (1982).
- Becci, P.J., Johnson, W.D., Hess, F.G., Gallo, M.A., Parent, R.A., and Taylor, J.M., Combined Two-Generation Reproduction-Teratogenesis Study of Zearalenone in the Rat, *Journal of Applied Toxicology*, 2(4), 201-206 (1982)
- Hess, F.G., Parent, R.A., Cox, G.E., Stevens, K.R. and Becci, P.J., Reproduction Study in Rats of Ginseng Extract G115, *Food and Chemical Toxicology*, 20, 189-192, (1982).
- Becci, P.J., Knickerbocker, M.J., Reagan, E.L., Parent, R.A. and Burnette, L.W., Teratology Study of N-methylpyrrolidone after Dermal Application to Sprague-Dawley Rats, *Fundamental and Applied Toxicology*, 2, 73-76 (1982).
- Hess, F.S., Cox, G.E., Daily, R.E., Parent, R.A. and Becci, P.J., Reproduction and Teratology Study of 1,3-Butanediol in Rats, *Journal of Applied Toxicology*, 1(4), 204-209 (1981).
- Becci, P.J., Cox, G.E., Daily, R.E. and Parent, R.A., Long Term Carcinogenicity and Toxicity Studies of Patulin in the Rat, *Journal of Applied Toxicology*, 1(5), 256-261 (1981).
- Parent, R.A. and Dressler, I., "Intratracheal Absorption and Distribution of ¹⁴C-Labeled C.I. Solvent Red 24 in Rats", presented, 18th Annual Meeting, Society of Toxicology, New Orleans, Louisiana, March 14, 1979; *Drug and Chemical Toxicology*, 2(4), 409-20 (1979).
- Parent, R.A., 18-Month Skin Painting Study of a Mercapto-Functional Silicon Oil in Mice, *Drug and Chemical Toxicology*, 2(4), 369-374 (1979).
- Parent, R.A., 90-Day Sub-Chronic Inhalation Toxicity of a Mercapto-Functional Silicon Oil in Rats, *Drug and Chemical Toxicology*, 2(4), 355-368 (1979).
- Parent, R.A., Acute Toxicology of a Mercapto-Functional Silicon Oil, *Drug and Chemical Toxicology*, 2(3), 295-307 (1979).
- Parent, R.A., Dilley, J.V. and Simon, V.F., Mutagenic Activity of Smoke Condensates from the Non-Flaming Combustion of Ten Flexible Polyurethane Foams Using the Salmonella/Microsome Assay, *Journal of Combustion Toxicology*, 6, 256-264 (1979).
- Parent, R.A., Dilley, J.V., Martin, S.B. and McKee, R.B., Acute Toxicity in Fischer Rats of Smoke from Non-Flaming Combustion of Ten Flexible Polyurethane Foams, *Journal of Combustion Toxicology*, 6, 155-197 (1979).
- Parent, R.A., Lin, G.H.Y., Pryor, G.T., Martin, S.B., McKee, R.B. and Dilley, J.V., Behavioral Toxicity in Fischer Rats of Smoke from Non-Flaming Combustion of Ten Flexible Polyurethane Foams, *Journal of Combustion Toxicology*, 6, 215-227 (1979).
- Parent, R.A., Testimony before House Subcommittee on Oversight and Investigations, U.S. House of Representatives, The Toxicology of Ozone as it Relates to In-Flight Exposure, July 18 (1979).
- Parent, R.A. and Castro, B.C., Effect of Acrylonitrile on Primary Syrian Hamster Embryo Cells in Culture: Transformation and DNA Fragmentation, *Journal of the National Cancer Institute*, 62(4), 1025-1029 (1979).
- Parent, R.A., A Review of Ozone Toxicology Studies in Air Quality, Meteorology and Atmospheric Ozone, Morris, A.L. and Barras, R.C., (eds.), ASTM Publication STP653, p. 575-605 (1978).
- Parent, R.A., Chemicals, Cancer, Risks and Uncertainties, Research and Development Newsletter, National Safety Council, Chicago, Illinois, September (1978).
- Dilley, J.V., Martin, S.B., Pryor, G.T., McKee, R.G. and Parent, R.A., "Toxicity and Behavioral Effects Resulting from Inhalation of Pyrolysis Products from Various Polyurethane Foams", presented at the International Conference on Fire Safety, University of San Francisco, January 16 (1978).
- Parent, R.A., "The Toxicology of Ozone", invited paper, presented at the Conference on Air Quality, Meteorology and Atmospheric Ozone, University of Colorado, Boulder, Colorado, August 1-6 (1977).
- Parent, R.A., "Toxicology, A Field In Transition", invited paper, presented at the University of Massachusetts, Amherst, Massachusetts, April 14 (1977).
- Parent, R.A., "Toxicology, A Survey", invited paper, presented at Ohio Wesleyan University, Delaware, Ohio, February 8 (1977).
- Parent, R.A., Selenium Measurements, *Chemical and Engineering News*, p. 3, 27 (1976).
- Parent, R.A., Selenium Measured in Air in Xerography Room, *Nature*, 263, 5579, 708 (1976).
- Parent, R.A., Toxicological Risk Assessment in Chronic Predictor Testing, given at the International Symposium of Approaches to Early Detection of Chemical Toxicity, University of Surrey, Guildford, Surrey, U.K., September 3 (1974).

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- Parent, R.A., Synthesis and Infra-Red Characterization of a Series of Arylazopyrazolones, *Journal of the Society of Dyers and Colourists*, 92(10), 371-377 (1976).
- Parent, R.A., On the Structure of Arylazopyrazolones, *Journal of the Society of Dyers and Colourists*, 92(10), 368-370 (1976).
- Sauers, R.R., Parent, R.A. and Damle, S.B., Synthesis and Chemistry of the Tricyclo(3.2.1.0^{3,6}) Octane System, *Journal of the American Chemical Society*, 88, 2257 (1966).
- Parent, R.A., Gas Chromatographic Preparative Separations, (K.P. Dinick, Ed.), Varian Aerograph, Palo Alto, California, p. 8-1 (1966).
- Parent, R.A., Sauers, R.R., and Howe, H.M., Carbonium Ion Reactions of Norbornenyl Systems, *Tetrahedron*, 21, 2907 (1965).
- Parent, R.A. and Sauers, R.R., Rearrangements in Norbornenyl Carbonyl Systems, Abstract of Papers, 158th Meeting, American Chemical Society, Chicago, Illinois, p. 58S (1965).
- Parent, R.A., in Aerograph Previews and Reviews, Varian Aerograph, Palo Alto, California (1964).

ABSTRACTS:

- Parent, R. A., "Vioxx - The Case for Causation", Society of Toxicology, San Diego, California, March 8, 2006.
- Parent, R. A., Palausky, J. A., Hallstrom, S. and Dux, T. "Evaluation of Polychlorinated Biphenyl Levels in Whole Blood Samples From Residents of Crystal Springs, Mississippi" presented at the Dioxin 2003 Conference, Boston, MA, August 28, 2003.
- Parent, R. A., Palausky, J. A., Hamilton, C. and Barclay, W. L., "Summary of Polychlorinated Biphenyl, Polychlorinated Dibenzo-p-dioxin and Dibenzofuran Levels in Blood Samples Taken From Residents of Crystal Springs, Mississippi" presented at the Dioxin 2003 Conference, Boston, MA, August 28, 2003.
- Berge, M.A., Sharp, D.E., Hennes, M.G., Wilkes, L.C., Loftus, M.L., Doane, R.A. and Parent, R.A., Metabolism of 2,3-[¹⁴C]- Acrolein in Laying Hens, *ISSX Proceedings*, 10, 87 (1996).
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11/2010

EXHIBIT F

093



June 9, 2011

Mr. Ryan L. Holdaway
Pitcher & Holdaway, PLLC
1191 East Iron Eagle Drive
Eagle ID 83616

Dear Mr. Holdaway:

Re: Austin (Spice)
Our File: L11-789

You have requested that I describe in graphic form why AM 2201 is not covered by the Idaho House Bill No. 139, Section I, 37-2705, Schedule I(d)30(ii)[a]. For your convenience, I have attached the scanned section of the bill in question (Attachment I), including the chemical structures of AM 2201, naphthalene and indole. Note that each of the positions on naphthalene and indole rings are numbered both on the individual compounds and on the AM 2201. The portion of the AM 2201 in question here is the five carbon hydrocarbon with a terminal fluorine atom all attached to the nitrogen of the indole ring at position 1. The bill cited above covers various groups attached to the indole nitrogen at position 1, but does not cover compounds containing the attached fluorine entity. Consider the terminology in the cited bill which reads, "... by substitution at the nitrogen atom of the indole ring by alkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, or 2-(4-morpholinyl)ethyl, whether or not further substituted in the indole ring to any extent, whether or not substituted in the naphthyl ring to any extent."

Focusing on the substitution on the indole nitrogen, all substituents cited are hydrocarbons with the exception of the 2-(4-morpholinyl) ethyl group. Other than that specific entity, no other functionalized hydrocarbon is claimed. By citing the morpholinylethyl group as a substituent, one can infer that this is a specific substituent which differs from the other hydrocarbon substituents cited in the bill and that it is an exception to the cited hydrocarbons. Thus, the 5-fluoropental substituent, which is attached to the indole nitrogen of AM 2201, is also an exception; is not specifically cited; and is therefore not covered by this legislation.

Additional language in the cited bill "whether or not further substituted in the indole ring to any extent, whether or not substituted in the naphthyl ring to any extent" tends

Mr. Ryan L. Holdaway
June 9, 2011
Page 2

to be overly broad and encompassing thousands of compounds with various patterns of substitution by various groups in the seven available positions on the naphthalene ring and the five positions on the indole ring. Considering all possible substitution patterns and the vast number of varied substituents, it would not be difficult to describe many thousands of compounds that are claimed by this bill. Attachment II will provide you with some examples of the various groups that could be attached in various mono-, di- and poly-substitution patterns of both the naphthalene and indole rings, thereby resulting in many thousands of compounds being covered by this bill.

I hope that this information is helpful.

Sincerely,



Richard A. Parent, PhD, DABT, FATS, RAC, ERT
President

RAP/ecp

Attachments

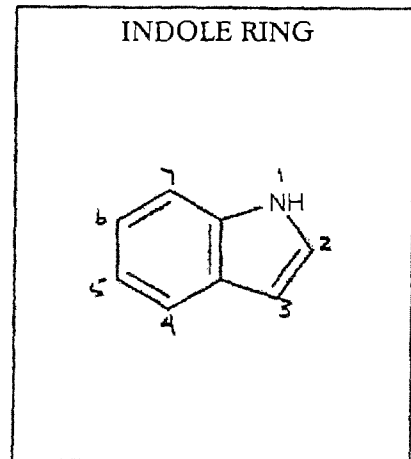
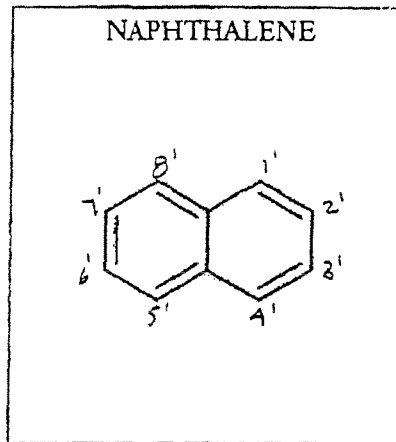
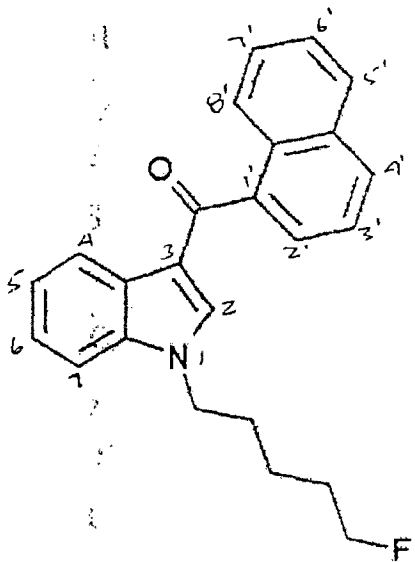
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ATTACHMENT I

ii. The following synthetic drugs:

a. Any compound structurally derived from 3-(1-naphthoyl)indole or 1H-indol-3-yl-(1-naphthyl)methane by substitution at the nitrogen atom of the indole ring by alkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl or 2-(4-morpholinyl)ethyl, whether or not further substituted in the indole ring to any extent, whether or not substituted in the naphthyl ring to any extent.

AM 2201



ATTACHMENT II

[0008] R_6 signifies, halogen, cyano, nitro, C_1 - C_6 -alkyl, C_3 - C_6 -cycloalkyl, C_2 - C_6 -alkenyl, C_2 - C_6 -alkynyl, halo- C_1 - C_6 -alkyl, halo- C_3 - C_6 -cycloalkyl, halo- C_2 - C_6 -alkenyl, halo- C_2 - C_6 -alkynyl, hydroxy, C_1 - C_6 -alkoxy, C_2 - C_6 -alkenyloxy, C_2 - C_6 -alkynyloxy, C_3 - C_6 -cycloalkyloxy, halo- C_1 - C_6 -alkoxy, halo- C_2 - C_6 -alkenyloxy, halo- C_2 - C_6 -alkynyloxy, halo- C_3 - C_6 -cycloalkyloxy, SH, C_1 - C_6 -alkylthio, C_3 - C_6 -cycloalkylthio, halo- C_1 - C_6 -alkylthio, halo- C_3 - C_6 -cycloalkylthio, C_1 - C_6 -alkylsulfinyl, C_3 - C_6 -cycloalkylsulfinyl, halo- C_1 - C_6 -alkylsulfinyl, halo- C_3 - C_6 -cycloalkylsulfinyl, C_1 - C_6 -alkylsulfonyl, C_3 - C_6 -cycloalkylsulfonyl, halo- C_1 - C_6 -alkylsulfonyl, halo- C_3 - C_6 -cycloalkylsulfonyl, SO_3R_7 , $SO_2NR_7R_8$, NR_7R_8 , COR_7 , $COOR_7$, $CONR_7R_8$, SF_5 , unsubstituted or substituted aryl, unsubstituted or substituted arylalkyl, unsubstituted or substituted aryloxy, unsubstituted or substituted arylthio, unsubstituted or substituted heteroaryl, unsubstituted or substituted heteroarylalkyl, unsubstituted or substituted heteroaryloxy, or unsubstituted or substituted heteroarylthio, the aryl, arylalkyl, aryloxy, arylthio, heteroaryl, heteroarylalkyl, heteroaryloxy and heteroarylthio substituents in each case independently from each other being selected from the group consisting of halogen, nitro, cyano, hydroxy, C_1 - C_6 -alkyl, halo- C_1 - C_6 -alkyl, C_1 - C_6 -alkoxy, halo- C_1 - C_6 -alkoxy, NH_2 , C_1 - C_6 -alkylamino, di- C_1 - C_6 -alkylamino, C_1 - C_6 -alkylthio, COR_7 , $COOR_7$ and $CONR_7R_8$, whereby the signification of R_6 may be identical or different for all significations of n;

EXHIBIT G

098



April 28, 2011

Mr. Ryan L. Holdaway
Pitcher & Holdaway, PLLC
1191 East Iron Eagle Drive
Eagle ID 83616

Dear Mr. Holdaway:

Re: Ciccarello, et al. (Spice)
Our File: L11-789

You have requested my evaluation of a naphthoyl indole compound to determine if it would be restricted by the legislation proposed in the State of Idaho, specifically House Bill No. 139 entitled "An Act Relating to Uniform Controlled Substances; Amending Section 37-2705, Idaho Code, to Identify Additional Substances to be Classified in Schedule I; and Declaring an Emergency". The specific naphthoyl indole which is of interest to you is one that contains a fluoride on the sixth position of a linear hexane group (an alkyl group) attached to the N-position of a naphthoyl indole.

House Bill No.139 contains the following verbiage relating to naphthoyl indoles.

- "ii. The following synthetic drugs:
- a. Any compound structurally derived from 3-(1-naphthoyl)indole or 1H-indol-3-yl-(1-naphthyl)methane by substitution at the nitrogen atom of the indole ring by **alkyl**, alkenyl, cycloalkylmethyl, cycloalkylethyl or 2-(4-morpholinyl)ethyl, whether or not further substituted in the indole ring to any extent, whether or not substituted in the naphthyl ring to any extent."

The particular portion of this paragraph that is pertinent to your case is that which refers to "alkyl" substitution on the nitrogen atom of the indole. This refers to any alkyl group but does not include a substituted alkyl group such as a fluorine group or any other substitution. You could interpret "alkyl" as being any alkyl group with any substitutes, but these additional possibilities are not obviously included in the bill. Thus, interpreting the bill as written, indicating an alkyl group but not a substituted alkyl group, I would assume that the fluoro-alkyl compound of interest to you is not covered in this bill.

Mr. Ryan L. Holdaway
April 28, 2011
Page 2

You have provided me with a list of products containing this naphthoyl indole including the following: Strawnana, Passion, Train Wreck, Blueberry, Bubblegum, Hawaiian, 420, Tropical, and Strawberry. You have analyzed these materials as Batch/Lot Number HZ-HB139032511, sample date 4/1/2011 at Research Triangle Park Laboratories in Raleigh, North Carolina, (File: A&J Dist 11-447-1) and found that the material analyzed does not contain the following compounds at levels of 0.05% or more: JWH-018(AM-678), JWH-073, JWH-200, CP 47,497, CP 47 497-C8, HU-210/211, Delta-THC, JWH-015, JWH-019, JWH-081, JWH-122, JWH-203, JWH-210, JWH-250, CP-55,940, WIN-48098, WIN-5512-2, HU-308, HU-331, AM-694, RCS-4, RCS-8(BTW-9, SR-18). Testing was conducted according to FDA cGMP for Dietary Supplements Final Rule, June 25, 2007, by this DEA Registered Analytical Laboratory. I assume that this analysis was carried out in order to demonstrate the purity of the previously named products containing the naphthoyl indole compound and the finding that they do not contain any substances which are regulated under House Bill No 139.

I hope that this information is helpful to your client.

Sincerely,



Richard A. Parent, PhD, DABT, FATS, RAC, ERT
President

RAP/ecp

Z:\SECURITY\LEGAL\11-789 Holdaway\Holdaway 11-789 rpt for 2011.001

EXHIBIT H

101

CURRICULUM VITAE

KARL DE JESUS

- ADDRESS AND TELEPHONE** ISU Box 8023
Pocatello, ID 83209
Tel.(208)282-2673
E-mail: dejekarl@isu.edu
- CURRENT POSITION** Professor - Idaho State University, Pocatello, Idaho (2004 -)
- EDUCATION** Ph.D., Organic Chemistry, 1979-1986
University of Wisconsin, Madison, Wisconsin
Thesis: Asymmetric Induction in the Diels-Alder Reaction Using Chiral Dienes.
Research Advisor: Professor Barry M. Trost
- B.Sc., Chemistry, 1973-1977
Texas Christian University, Fort Worth, Texas
- PROFESSIONAL EXPERIENCE** Postdoctoral Research Associate
Oregon State University (1986-1988)
Synthesis of biosynthetic carbohydrate precursors; isolation and purification of antibiotics by fermentation; structural elucidation of microbial metabolites and synthetic intermediates using conventional and 2-D high field NMR.
- Visiting Professor
Connecticut College (1988-1990)
Courses taught: organic chemistry lecture and laboratory, general chemistry laboratory, independent study.
- Assistant Professor
Union College (1990-1993)
Courses taught: organic chemistry lecture and laboratory, general chemistry laboratory, advanced organic chemistry lecture and laboratory, independent study.
- Associate Professor
Idaho State University (1998-2004)
Assistant Professor
Idaho State University (1994-1998)
Courses taught: organic chemistry lecture and laboratory, general/organic/biochemistry, lecture and laboratory, advanced organic lecture and laboratory, chemical practicum, independent study.
- PUBLICATIONS** "Nucleoside Intermediates in Blastocidin S Biosynthesis Identified by the In Vivo Use of Enzyme Inhibitors," S.J. Gould*, J. Guo, K. De Jesus, A. Geitmann, *Canadian Journal of Chemistry*, 72(1), 6-11, 1994.
- "A Problem Based Approach to Organic Chemistry," K. De Jesus, *Journal of Chemical Education*, 72(3), 224-226, 1995.
- "The Mechanism of NaBH₄ Addition to Aldehydes - Labeling Experiment," R.K. Robinson, K. De Jesus*, *Journal of Chemical Education*, 75(3), 264-266,

1996.

"The Selective Monohalogenation of Dihydro and Trihydrosilanes", P.B. Gansle, B.C. Gruber, J.T. Jarvis, A. Slaitas, SenaMarie De Jesus, K. De Jesus", *Microchemical Journal*, 55, 222-234, 1997.

"Determining the Solution State Geometry of a Ti Enolate *via* Stable Isotope Labeling, NMR Spectroscopy and Modeling Studies", David B. Kimball, Ryszard Michalczyk, Eddie Moody, Morgane Ollivault-Shiflett, Karl De Jesus, Louis A. "Pete" Silks III, *J. Am. Chem. Soc.*, **2003**, 125(48), 14666-14667.

"Activity-dependent Fluorescent Labeling of Bacterial Cells Expressing the TOL Pathway", Scott R. Clingenpeel, William K. Keener, Caron R. Keller, Karl De Jesus, M. Hope Howard, Mary E. Watwood, *Journal of Microbiological Methods*, **2005**, 60, 41-46.

BOOKS

Contributor: Sheila Tobias and Jacqueline Raphael, *The Hidden Curriculum: Faculty-Made Tests in Science, Part 1*, Plenum Press, New York, 1997.

PRESENTATIONS

"The Synthesis of N-Bromosuccinimides", Launa M. Lynch, Colleen Carkeet, Paul B. Gansle, Jr., Karl De Jesus, March 1998, Idaho Academy of Science.

"The Synthesis of Chiral Succinimides", Launa M. Lynch, Colleen Carkeet, Paul B. Gansle, Jr. and Karl De Jesus, March 1998, ISU Undergraduate Symposium.

"Preparation of Fluorophores with Potential Affinity to Chloroalkene Metabolizing Bacteria", Evanson G. Baiya, Colleen Carkeet, and Karl De Jesus, March 1998, ISU Undergraduate Symposium.

"Synthesis of Diphenylphosphinoethylsilanes", Evanson G. Baiya and Karl De Jesus, March 1998, ISU Undergraduate Symposium.

"The Synthesis of N-Bromosuccinimides", Launa M. Lynch, Paul B. Gansle, Jr., Colleen Carkeet, Karl De Jesus, June 1998, ACS Northwest Regional Meeting, Pasco, Washington.

"Synthesis of Chiral Bromosilanes", James T. Jarvis, Brian R. Rosa, and Karl De Jesus, March 2000, Twin Falls, Idaho, Idaho Academy of Sciences.

"Synthesis of ¹³C, ¹⁵N- Labeled Thalidomide", Daniel A. Foster, Amery D. McBride, and Karl De Jesus, April 2000, Missoula, Montana, National Conference on Undergraduate Research.

"Synthesis of Chiral Bromosilanes", James T. Jarvis, Brian R. Rosa, and Karl De Jesus, June 2000, Idaho Falls, ACS Northwest Regional Meeting.

"Synthesis and Analysis of Chiral Succinimidodisilanes", Travis Woodland, and Karl De Jesus, March 2003, Salt Lake City, UT, National Conference on Undergraduate Research.

"One Carbon Homologation of Ribose/Deoxyribose Precursors", Adam R. Bowman, Karl De Jesus, Rodolfo A. Martinez, and Louis A. "Pete" Silks, March 2003, Salt Lake City, UT, National Conference on Undergraduate Research.

"Synthetic Studies of Labeled Thalidomides", Karl De Jesus, September, 2000, Pocatello, Idaho, Pharmaceutical Sciences Seminar.

"Undergraduate Journeys Through the Chemical Jungle", Karl De Jesus, Keynote Address, April 2003, Idaho State University, Pocatello, ID, ISU Undergraduate Research Symposium.

"Preliminary Studies on the Synthesis of ^{13}C , ^{15}N -Labeled Thalidomide", Daniel A. Foster and Karl De Jesus, April 1999, ISU Undergraduate Symposium.

"Preparation of Diphenylphosphinoethylsilane Derivatives", D. Shane Hanson and Karl De Jesus, April 1999, ISU Undergraduate Symposium.

"Synthesis of Chiral Bromosilanes", Brian R. Rosa and Karl De Jesus, April 2000, ISU Undergraduate Symposium.

"Synthesis of Compounds with NO Releasing Potential", James C. Williams and Karl De Jesus, April 2000, ISU Undergraduate Symposium.

"Preparation of ^{13}C -Labeled Aromatic Acetylene Fluorophores", Caron R. Keller, Maribeth Watwood, and Karl De Jesus, April 2000, ISU Undergraduate Symposium.

"Synthesis of ^{13}C , ^{15}N -Labeled -Labeled Thalidomide", Daniel A. Foster, Amy D. McBride, and Karl De Jesus, April 2000, ISU Undergraduate Symposium.

"Synthetic Studies on Aromatic Alkyne Fluorophores", Caron R. Keller and Karl De Jesus, April 2001, ISU Undergraduate Symposium.

"Synthesis of α -Dicarbonyls and Laboratory Studies on their Atmospheric Photooxidation", Steven L. Windsor, Betsy L. Clemons, Jeff Scow, Karl De Jesus, and Lisa M. Goss, April 2001, ISU Undergraduate Symposium.

"Synthesis of Labelled Toluene for Laboratory Studies of Its Atmospheric Photooxidation", Clay D. Mortensen, Karl De Jesus, and Lisa M. Goss, April 2002, ISU Undergraduate Symposium.

"One Carbon Homologation of Ribose/Deoxyribose Precursors", Adam R. Bowman and Karl De Jesus, April 2003, ISU Undergraduate Symposium.

"Chiral Ligand Embedded Polymers for Use in Stereoselective Reactions", Jodie Hale, Joshua Pak, Rene Rodriguez, Lisa Lao, and Karl De Jesus, April 2005, ISU Undergraduate Symposium.

"Synthesis of (4R, 5S)-Glyoxyl-4-methyl-5-phenyl-2-oxazolidinone". Johnny Cairl and Karl De Jesus, April 2005, ISU Undergraduate Symposium.

"Chiral Ligand Embedded Polymers for Use in Stereoselective Reactions", J. Hale, J. Pak, R. Rodriguez, D. P. Strommen, L. Lau, and K. De Jesus, October 2005, AMIS/ISU Research Symposium.

"Preparation of Tetrahydro-1H,3H-pyrrolo[1,2-c]oxazoles for Use as Chiral Auxiliaries in Organic Reactions", Saige Schureman and Dr. Karl De Jesus, October 2005, AMIS/ISU Research Symposium.

"Synthesis of γ -(*o*-Carboxybenzamido)glutarimide", Danton Bradshaw and Karl De Jesus, March 2007, ISU Undergraduate Symposium.

"Enantioselective Deuteration of Glycals", Brandi Stephens and Karl De Jesus, March 2007, ISU Undergraduate Symposium.

"Synthesis of γ -(*o*-Carboxybenzamido)glutarimide", Danton Bradshaw and Karl De Jesus, October 2006, AMIS/ISU Research Symposium.

"Preparation of Tetrahydro-1H,3H-pyrrolo[1,2-c]oxazoles", John A. Patton, Saige Schureman, and Karl De Jesus, October 2007, AMIS/ISU Research Symposium.

"Enantioselective Deuteration of Glycals", Aaron Wilkinson, Brandi Stephens, John W. Cairl, Karl De Jesus, June 2008, ACS Norwest Regional Meeting, Park City.

AWARDS

Excellence in Teaching Award, Connecticut College, 1988.
ISU Faculty Administrative Fellow, 2000.

HONORS

Who's Who Among America's Teachers, 1996.
ISU Most Influential Professor, Masters Student, 1998.
Who's Who in Sciences Higher Education, 2004.
Who's Who Among America's Teachers, 2005.

House Status: Adjourned until Wednesday, 25 April 2012 at 10:00 a.m.
 Senate Status: Adjourned until Wednesday, 25 April 2012 at 10:00 a.m.

S Sub for HB2049

Short Title

Senate Substitute for HB 2049 by Committee on Public Health and Welfare -- Controlled substances.

Summary of Legislation

Bill Versions

SN: Supplementary Note FN: Fiscal Note

Version	Documents	SN	FN
Enrolled			
Version 3			
As Amended by House Committee			
As introduced			
Current Sponsor			
Introduced by			

Bill History

- 1
- 2
- 3

AR: Amendment Report CCRB: Conference Committee Report Brief JPN: Journal Page Number

Date	Chamber	Status	AR	CCRB	JPN
Wed 01 Jun 2011	House	Approved by Governor on Wednesday, 18 May 2011			1662
Wed 01 Jun 2011	House	Enrolled and presented to Governor on Friday, May 13, 2011			1668
Tue 10 May 2011	House	Reengrossed on Thursday, 05 May 2011			1111
Tue 03 May 2011	House	Conference Committee Report was adopted; <u>Yea: 120 Nay: 3</u>			962
Tue 03 May 2011	House	Motion to suspend Joint Rule 4 (k) to allow consideration adopted;			950
Fri 29 Apr 2011	Senate	Conference Committee Report was adopted; <u>Yea: 36 Nay: 2</u>			637
Fri 29 Apr 2011	Senate	Motion to suspend Joint Rule 4 (k) to allow consideration adopted;			636
Fri 29 Apr 2011	Senate	Conference committee report now available			
Thu 28 Apr 2011	Senate	Motion to accede adopted; <u>Senator V. Schmidt</u> , <u>Senator Brungardt</u> and <u>Senator Kelly</u> appointed as 2nd conferees			633
Wed 27 Apr 2011	House	Conference Committee Report not adopted; <u>Representative Colloton</u> , <u>Representative Kinzer</u> and <u>Representative McCray-Miller</u> appointed as 2 conferees			890
Fri 01 Apr 2011	Senate	Conference Committee Report was adopted; <u>Yea: 35 Nay: 2</u>			598
Fri 01 Apr 2011	Senate	Conference committee report now available			
Tue 22 Mar 2011	Senate	Motion to accede adopted; <u>Senator V. Schmidt</u> , <u>Senator Brungardt</u> and <u>Senator Kelly</u> appointed as conferees			438
Mon 21 Mar 2011	House	Nonconcurrent with amendments; Conference Committee requested; appointed <u>Representative Colloton</u> , <u>Representative Kinzer</u> and <u>Representative McCray-Miller</u> as conferees			591
Thu 17 Mar 2011	Senate	Final Action - Substitute passed; <u>Yea: 36 Nay: 1</u>			377

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SENATE SUBSTITUTE for HOUSE BILL, No. 2049

AN ACT concerning controlled substances; amending K.S.A. 65-4107, 65-4109 and 65-4111 and K.S.A. 2010 Supp. 21-36a05, 21-36a06, 65-4105 and 65-4113 and repealing the existing sections; also repealing K.S.A. 65-4107, as amended by section 2 of 2011 House Bill No. 2023, 65-4109, as amended by section 3 of 2011 House Bill No. 2023, 65-4111, as amended by section 4 of 2011 House Bill No. 2023 and K.S.A. 2010 Supp. 65-4105, as amended by section 1 of 2011 House Bill No. 2023 and 65-4113, as amended by section 5 of 2011 House Bill No. 2023.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 2010 Supp. 21-36a05 is hereby amended to read as follows: 21-36a05. (a) It shall be unlawful for any person to cultivate, distribute or possess with the intent to distribute any of the following controlled substances or controlled substance analogs thereof:

(1) Opiates, opium or narcotic drugs, or any stimulant designated in subsection (d)(1), (d)(3) or (f)(1) of K.S.A. 65-4107, and amendments thereto;

(2) any depressant designated in subsection (e) of K.S.A. 65-4105, subsection (e) of K.S.A. 65-4107, subsection (b) or (c) of K.S.A. 65-4109 or subsection (b) of K.S.A. 65-4111, and amendments thereto;

(3) any stimulant designated in subsection (f) of K.S.A. 65-4105, subsection (d)(2), (d)(4) or (f)(2) of K.S.A. 65-4107 or subsection (e) of K.S.A. 65-4109, and amendments thereto;

(4) any hallucinogenic drug designated in subsection (d) of K.S.A. 65-4105, subsection (g) of K.S.A. 65-4107 or subsection (g) of K.S.A. 65-4109, and amendments thereto;

(5) any substance designated in subsection (g) of K.S.A. 65-4105 and subsection (c), (d), (e), (f) or (g) of K.S.A. 65-4111, and amendments thereto; ~~or~~

(6) any anabolic steroids as defined in subsection (f) of K.S.A. 65-4109, and amendments thereto; *or*

(7) *any substance designated in subsection (h) of K.S.A. 65-4105, and amendments thereto.*

(b) It shall be unlawful for any person to distribute or possess with the intent to distribute a controlled substance or a controlled substance analog designated in K.S.A. 65-4113, and amendments thereto.

(c) (1) Violation of subsection (a) is a drug severity level 3 felony, except that:

(A) Violation of subsection (a) is a drug severity level 2 felony if the trier of fact makes a finding that the offender is 18 or more years of age and the substance was distributed to or possessed with intent to distribute to a minor or the violation occurs on or within 1,000 feet of any school property;

(B) violation of subsection (a)(1) is a drug severity level 2 felony if that person has one prior conviction under subsection (a)(1), under K.S.A. 65-4161 prior to its repeal, or under a substantially similar offense from another jurisdiction; and

(C) violation of subsection (a)(1) is a drug severity level 1 felony if that person has two prior convictions under subsection (a)(1), under K.S.A. 65-4161 prior to its repeal, or under a substantially similar offense from another jurisdiction.

(2) Violation of subsection (b) is a class A nonperson misdemeanor, except that, violation of subsection (b) is a drug severity level 4 felony if the substance was distributed to or possessed with the intent to distribute to a child under 18 years of age.

(d) It shall not be a defense to charges arising under this section that the defendant was acting in an agency relationship on behalf of any other party in a transaction involving a controlled substance.

Sec. 2. K.S.A. 2010 Supp. 21-36a06 is hereby amended to read as follows: 21-36a06. (a) It shall be unlawful for any person to possess any opiates, opium or narcotic drugs, or any stimulant designated in subsection (d)(1), (d)(3) or (f)(1) of K.S.A. 65-4107, and amendments thereto, or a controlled substance analog thereof.

(b) It shall be unlawful for any person to possess any of the following controlled substances or controlled substance analogs thereof:

(1) Any depressant designated in subsection (c) of K.S.A. 65-4105, subsection (e) of K.S.A. 65-4107, subsection (b) or (c) of K.S.A. 65-4109 or subsection (b) of K.S.A. 65-4111, and amendments thereto;

(2) any stimulant designated in subsection (f) of K.S.A. 65-4105, sub-

central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Mefloqualone 2572
- (2) Methaqualone 2365
- (3) Gamma hydroxybutyric acid

(f) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers and salts of isomers:

- (1) Fenethylamine 1503
- (2) N-ethylamphetamine 1475
- (3) (+)-cis-4-methylaminorex (1+)-cis-4,5-dihydro-4-methyl-5-phenyl-2-oxazolamine) 1590
- (4) N,N-dimethylamphetamine (also known as N,N-alpha-trimethylbenzencethanamine; N,N-alpha-trimethylphenethylamine) 1480
- (5) Cathinone (some other names: 2-amino-1-phenol-1-propanone, alpha-amino propiophenone, 2-amino propiophenone and nophedrone) 1235
- (6) *Substituted cathinones*

Any compound, except bupropion or compounds listed under a different schedule, structurally derived from 2aminopropan-1-one by substitution at the 1-position with either phenyl, naphthyl, or thiophene ring systems, whether or not the compound is further modified in any of the following ways:

- (A) *By substitution in the ring system to any extent with alkyl, alkylenediary, alkoxy, haloalkyl, hydroxyl, or halide substituents, whether or not further substituted in the ring system by one or more other univalent substituents;*
- (B) *by substitution at the 3-position with an alicyclic alkyl substituent;*
- (C) *by substitution at the 2-amino nitrogen atom with alkyl, dialkyl, benzyl, or methoxybenzyl groups; or*
- (D) *by inclusion of the 2-amino nitrogen atom in a cyclic structure.*

(g) Any material, compound, mixture or preparation which contains any quantity of the following substances:

- (1) N-[1-benzyl-4-piperidyl]-N-phenylpropanamide (benzylfentanyl), its optical isomers, salts and salts of isomers 9818
- (2) N-[1-(2-thienyl)methyl-4-piperidyl]-N-phenylpropanamide (thienylfentanyl), its optical isomers, salts and salts of isomers 9834
- (3) ~~Methcathinone (some other names: 2-methylamino-1-phenylpropan-1-one; Ephedrone; Monomethylpropion; ER1427; its salts, optical isomers and salts of optical isomers) 1237~~
- (3) Aminorex (some other names: Aminoxaphen 2-amino-5-phenyl 2-oxazoline or 4,5-dihydro-5-phenyl-2-oxazolamine, its salts, optical isomers and salts of optical isomers) 1585
- (4) Alpha-ethyltryptamine, its optical isomers, salts and salts of isomers 7249
- Some other names: etryptamine, alpha-methyl-1H-indole-3-ethanamine; 3-(2-aminobutyl) indole.

(h) Any of the following cannabinoids, their salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers and salts of isomers is possible within the specific chemical designation:

- (1) *Tetrahydrocannabinols* 7370
Meaning tetrahydrocannabinols naturally contained in a plant of the genus Cannabis (cannabis plant), as well as synthetic equivalents of the substances contained in the plant, or in the resinous extractives of Cannabis, sp. and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following: Delta 1 cis or trans tetrahydrocannabinol, and their optical isomers Delta 6 cis or trans tetrahydrocannabinol, and their optical isomers Delta 3,4 cis or trans tetrahydrocannabinol, and its optical isomers (Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered.)
- (2) *Naphthoylindoles*
Any compound containing a 3-(1-naphthoyl)indole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent.
- (3) *Naphthylmethylindoles*
Any compound containing a 1H-indol-3-yl-(1-naphthyl)methane structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl or 2-(4-morpholinyl)ethyl group whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent.
- (4) *Naphthoxypyrides*
Any compound containing a 3-(1-naphthoxypyridole structure with substitution at the nitrogen atom of the pyrrole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl or 2-(4-morpholinyl)ethyl group whether or not further substituted in the pyrrole ring to any extent, whether or not substituted in the naphthyl ring to any extent.

- (5) *Naphthylmethylindenes*
Any compound containing a naphthylideneindene structure with substitution at the 3-position of the indene ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl or 2-(4-morpholinyl)ethyl group whether or not further substituted in the indene ring to any extent, whether or not substituted in the naphthyl ring to any extent.
- (6) *Phenylacetylindoles*
Any compound containing a 3-phenylacetylindole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl or 2-(4-morpholinyl)ethyl group whether or not further substituted in the indole ring to any extent, whether or not substituted in the phenyl ring to any extent.
- (7) *Cyclohexylphenols*
Any compound containing a 2-(3-hydroxycyclohexyl)phenol structure with substitution at the 3-position of the phenolic ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl or 2-(4-morpholinyl)ethyl group whether or not substituted in the cyclohexyl ring to any extent.
- (8) *Benzoylindoles*
Any compound containing a 3-(benzoyl)indole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl or 2-(4-morpholinyl)ethyl group whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent.
- (9) 2,3-Dihydro-5-methyl-3-(4-morpholinylmethyl)pyrrol[1,2,3-de]-1,4-benzoxazin-6-yl]-1-naphthalenylmethanone.
Some trade or other names: WIN 55,212-2.
- (10) 9-(4-hydroxymethyl)-6, 6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[*c*]chromen-1-yl.
Some trade or other names: HU-210, HU-211.

Sec. 4. K.S.A. 65-4107 is hereby amended to read as follows: 65-4107.
(a) The controlled substances listed in this section are included in schedule II and the number set forth opposite each drug or substance is the DEA controlled substances code which has been assigned to it.

(b) Any of the following substances, except those narcotic drugs listed in other schedules, whether produced directly or indirectly by extraction from substances of vegetable origin or independently by means of chemical synthesis or by combination of extraction and chemical synthesis:

(1) Opium and opiate and any salt, compound, derivative or preparation of opium or opiate, excluding apomorphine, dextrorphan, nalbuphine, nalmeferene, naloxone and naltrexone and their respective salts, but including the following:

(A) Raw opium	9600
(B) Opium extracts	9610
(C) Opium fluid	9620
(D) Powdered opium	9630
(E) Granulated opium	9640
(F) Tincture of opium	9630
(G) Codeine	9050
(H) Ethylmorphine	9190
(I) Etorphine hydrochloride	9059
(J) Hydrocodone	9193
(K) Hydromorphone	9150
(L) Metopon	9260
(M) Morphine	9300
(N) Oxycodone	9143
(O) Oxycodone	9652
(P) Thebaine	9333
(Q) Dihydroetorphine	9334
(R) Oripavine	9330

(2) Any salt, compound, isomer, derivative or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph (1), but not including the isoquinoline alkaloids of opium.

(3) Opium poppy and poppy straw.

(4) Coca leaves (9040) and any salt, compound, derivative or preparation of coca leaves, but not including decocainized coca leaves or extractions which do not contain cocaine (9041) or ecgonine (9180).

(5) Cocaine, its salts, isomers and salts of isomers (9041).

(6) Ecgonine, its salts, isomers and salts of isomers (9180).

(7) Concentrate of poppy straw (the crude extract of poppy straw in either liquid, solid or powder form which contains the phenanthrene alkaloids of the opium poppy) (9670).

(c) Any of the following opiates, including their isomers, esters, ethers, salts and salts of isomers, esters and ethers, whenever the existence of these

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BOARD OF PHARMACY

DIVISION 80

SCHEDULE OF CONTROLLED SUBSTANCES

855-080-0015

Definitions

As used in these rules:

- (1) "Act" means the Uniform Controlled Substances Act, ORS Chapter 475, and rules thereunder;
- (2) "CFR" means Code of Federal Regulations;
- (3) The term "registration" or variants thereof means the annual registration required of manufacturers, distributors and dispensers of controlled substances under ORS 475.125, and the term "registrants" or variants thereof refers to persons so registered; provided that where references of this nature are used in CFR sections referred to in these rules, the reference is to the registration requirements and registrants under the Federal Controlled Substances Act, and Title 21, CFR.
- (4) "USC" means United States Code;
- (5) Terms not defined in this rule have the definitions set forth in ORS 475.005.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 475.035 & 475.940

Hist.: 1PB 6-1978(Temp), f. & ef. 7-1-78; 1PB 8-1978, f. & ef. 10-17-78; 1PB 6-1982, f. & ef. 8-6-82; PB 5-1991, f. & cert. ef. 9-19-91; BP 3-2002(Temp), f. & cert. ef. 3-1-02 thru 8-23-02; BP 4-2002, f. 6-27-02, cert. ef. 7-1-02; BP 1-2007, f. & cert. ef. 6-29-07

855-080-0020

Schedules

Pursuant to ORS 475.005(6) those drugs and their immediate precursors classified in Schedules I through V under the Federal Controlled Substances Act, 21 U.S.C. Sections 811 to 812 and as amended by the Board pursuant to ORS 475.035 are the controlled substances for purposes of regulation and control under the Act. Those schedules are set out in OAR 855-080-0021 through 855-080-0026.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 475.035

Hist.: 1PB 6-1978(Temp), f. & ef. 7-1-78; 1PB 8-1978, f. & ef. 10-17-78; 1PB 6-1982, f. & ef. 8-6-82; 1PB 2-1984, f. & ef. 3-7-84; 1PB 4-1984(Temp), f. & ef. 9-17-84; 1PB 1-1985, f. & ef. 2-27-85; 1PB 2-1985, f. & ef. 7-24-85; 1PB 4-1985, f. & ef. 12-2-85; 1PB 2-1986, f. & ef. 7-10-86; PB 4-1987, f. & ef. 3-30-87; PB 5-1991, f. & cert. ef. 9-19-91; BP 8-2010, f. & cert. ef. 6-29-10

855-080-0021

Schedule I

(1) Schedule I consists of the drugs and other substances, by whatever official, common, usual, chemical, or brand name designated, listed in 21CFR part 1308.11, and unless specifically excepted or unless listed in another schedule, any quantity of the following substances, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation:

(a) 1,4-butanediol;

(b) Methamphetamine, except as listed in OAR 855-080-0022;

(c) Substituted derivatives of cathinone and methcathinone that are not listed in OARs 855-080-0022 through 0026 (Schedules II through V) or are not FDA approved drugs, including but not limited to,

(A) Methylmethcathinone (Mephedrone);

(B) Methylenedioxypropylvalerone (MDPV);

(C) Methylenedioxymethylcathinone (Methylone);

(D) 2-Methylamino-3',4'-(methylenedioxy)-butyrophenone (Butylone);

(E) Fluoromethcathinone (Flephedrone);

(F) 4-Methoxymethcathinone (Methedrone).

(2) Schedule I also includes any compounds in the following structural classes (2a–2g) and their salts, that are not FDA approved drugs, unless specifically excepted or when in the possession of an FDA registered manufacturer or a registered research facility, or a person for the purpose of sale to an FDA registered manufacturer or a registered research facility:

(a) Naphthoylindoles: Any compound containing a 3-(1-naphthoyl)indole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent. Examples of this structural class include but are not limited to: JWH-015, JWH-018, JWH-019, JWH-073, JWH-081, JWH-122, JWH-200, and AM-2201;

(b) Phenylacetylindoles: Any compound containing a 3-phenylacetylindole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl or 2-(4-morpholinyl)ethyl group whether or not further substituted in the indole ring to any extent, whether or not substituted in the phenyl ring to any extent. Examples of this structural class include but are not limited to: JWH-167, JWH-250, and JWH-251;

(c) Benzoylindoles: Any compound containing a 3-(benzoyl)indole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl or 2-(4-morpholinyl)ethyl group whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent. Examples of this structural class include but are not limited to: RCS-4, RCS-8 and AM-694;

(d) Cyclohexylphenols: Any compound containing a 2-(3-hydroxycyclohexyl)phenol structure with substitution at the 5-position of the phenolic ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl or 2-(4-morpholinyl)ethyl group whether or not substituted in the cyclohexyl ring to any extent. Examples of this structural class include but are not limited to: CP 47,497 and its C8 homologue (cannabicyclohexanol);

(e) Naphthylmethylindoles: Any compound containing a 1H-indol-3-yl-(1-naphthyl)methane structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl or 2-(4-morpholinyl)ethyl group whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent;

(f) Naphthoylpyrroles: Any compound containing a 3-(1-naphthoyl)pyrrole structure with substitution at the nitrogen atom of the pyrrole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl or 2-(4-morpholinyl)ethyl group whether or not further substituted in the pyrrole ring to any extent and whether or not substituted in the naphthyl ring to any extent;

(g) Naphthylmethylindenes: Any compound containing a 1-(1-naphthylmethyl)indene structure with substitution at the 3-position of the indene ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl or 2-(4-morpholinyl)ethyl group whether or not further substituted in the indene ring to any extent and whether or not substituted in the naphthyl ring to any extent.

(3) Schedule I also includes any other cannabinoid receptor agonist that is not listed in OARs 855-080-0022 through 0026 (Schedules II through V) or is not an FDA approved drug.

(4) Exceptions. The following are exceptions to subsection (1) of this rule:

(a) 1, 4-butanediol and gamma-butyrolactone when in the possession of a person for the purpose of its sale to a legitimate manufacturer of industrial products and the person is in compliance with the Drug Enforcement Administration requirements for List I Chemicals;

(b) 1,4-butanediol and gamma-butyrolactone when in the possession of a person for the purpose of the legitimate manufacture of industrial products;

(c) Marijuana and delta-9-tetrahydrocannabinol (THC).

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 475.035, 475.059 & 475.065

Hist.: PB 4-1987, f. & ef. 3-30-87; PB 8-1987, f. & ef. 9-30-87; PB 10-1987, f. & ef. 12-8-87; PB 15-1989, f. & cert. ef. 12-26-89; PB 9-1990, f. & cert. ef. 12-5-90; PB 5-1991, f. & cert. ef. 9-19-91; PB 1-1992, f. & cert. ef. 1-31-92 (and corrected 2-7-92); PB 1-1994, f. & cert. ef. 2-2-94; PB 1-1996, f. & cert. ef. 4-5-96; PB 1-1997, f. & cert. ef. 9-22-97; BP 4-2000, f. & cert. ef. 2-16-00; BP 9-2000, f. & cert. ef. 6-29-00; BP 2-2002(Temp), f. & cert. ef. 2-4-02 thru 7-31-02; BP 3-2002(Temp), f. & cert. ef. 3-1-02 thru 8-23-02; BP 4-2002, f. 6-27-02, cert. ef. 7-1-02; BP 5-2002, f. & cert. ef. 11-14-02; BP 1-2003, f. & cert. ef. 1-14-03; BP 1-2007, f. & cert. ef. 6-29-07; BP 8-2010, f. & cert. ef. 6-29-10; BP 10-2010(Temp), f. & cert. ef. 10-15-10 thru 4-11-11; BP 2-2011, f. & cert. ef. 4-11-11

855-080-0022

Schedule II

Schedule II consists of the drugs and other substances by whatever official, common, usual, chemical, or brand name designated, listed in 21 CFR part 1308.12 and any quantity of the following substances:

(1) Marijuana;

(2) Methamphetamine, when in the form of an FDA approved product containing methamphetamine, its salts, isomers and salts of its isomers as an active ingredient for the purposes of currently accepted medical use.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 475.035, 475.059, 475.065

Hist.: PB 4-1987, f. & ef. 3-30-87; PB 8-1987, f. & ef. 9-30-87; PB 10-1987, f. & ef. 12-8-87; PB 15-1989, f. & cert. ef. 12-26-89; PB 9-1990, f. & cert. ef. 12-5-90; PB 5-1991, f. & cert. ef. 9-19-91; PB 1-1992, f. & cert. ef. 1-31-92 (and corrected 2-7-92); PB 1-1994, f. & cert. ef. 2-2-94; PB 1-1996, f. & cert. ef. 4-5-96; PB 1-1997, f. & cert. ef. 9-22-97; BP 3-1999(Temp), f. & cert. ef. 8-9-99 thru 1-17-00; BP 4-2000, f. & cert. ef. 2-16-00; BP 4-2006, f. 6-9-06, cert. ef. 7-1-06; BP 1-2007, f. & cert. ef. 6-29-07; BP 8-2010, f. & cert. ef. 6-29-10

855-080-0023

Schedule III

Schedule III consists of the drugs and other substances by whatever official, common, usual, chemical, or brand name designated, listed in 21 CFR part 1308.13; and

(1) Products containing pseudoephedrine or the salts of pseudoephedrine as an active ingredient.

(2) Products containing ephedrine or the salts of ephedrine as an active ingredient.

(3) Products containing phenylpropanolamine or the salts of phenylpropanolamine as an active ingredient.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 475.035

Hist.: PB 4-1987, f. & ef. 3-30-87; PB 11-1989, f. & cert. ef. 7-20-89; PB 5-1991, f. & cert. ef. 9-19-91; PB 1-1992, f. & cert. ef. 1-31-92 (and corrected 2-7-92); BP 3-1999(Temp), f. & cert. ef. 8-9-99 thru 1-17-00; BP 4-2000, f. & cert. ef. 2-16-00; BP 9-2000, f. & cert. ef. 6-29-00; BP 4-2006, f. 6-9-06, cert. ef. 7-1-06; BP 1-2007, f. & cert. ef. 6-29-07

855-080-0024

Schedule IV

Schedule IV consists of:

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NEBRASKA REVISED STATUTES ANNOTATED
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*** Current through the 2011 102nd First Special Session ***
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CHAPTER 28. CRIMES AND PUNISHMENTS
ARTICLE 4. DRUGS AND NARCOTICS

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R.R.S. Neb. § 28-405 (2012)

§ 28-405. Controlled substances; schedules; enumerated.

The following are the schedules of controlled substances referred to in the Uniform Controlled Substances Act:

Schedule I

(a) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation:

- (1) Acetylmethadol;
- (2) Allylprodine;
- (3) Alphacetylmethadol, except levo-alphacetylmethadol which is also known as levo-alpha-acetylmethadol, levomethadyl acetate, and LAAM;
- (4) Alphameprodine;
- (5) Alphamethadol;
- (6) Benzethidine;
- (7) Betacetylmethadol;
- (8) Betameprodine;

(21) Thiophene analog of phencyclidine. Trade and other names shall include, but are not limited to: 1-(1-(2-thienyl)-cyclohexyl)-piperidine; 2-thienyl analog of phencyclidine; TPCP; and TCP;

(22) 2,5-dimethoxyamphetamine. Trade and other names shall include, but are not limited to: 2,5-dimethoxy-alpha-methylphenethylamine; and 2,5-DMA;

(23) Hashish or concentrated cannabis;

(24) Parahexyl. Trade and other names shall include, but are not limited to: 3-Hexyl-1-hydroxy-7,8,9,10-tetrahydro-6,6,9-trimethyl-6H-dibenz o(b,d)py ran; and Synhexyl;

(25) Ethylamine analog of phencyclidine. Trade and other names shall include, but are not limited to: N-ethyl-1-phenylcyclohexylamine; (1-phenylcyclohexyl)ethylamine; N-(1-phenylcyclohexyl)ethylamine; cyclohexamine; and PCE;

(26) Pyrrolidine analog of phencyclidine. Trade and other names shall include, but are not limited to: 1-(1-phenylcyclohexyl)-pyrrolidine; PCPy; and PHP;

(27) 3,4-methylenedioxymethamphetamine (MDMA), its optical, positional, and geometric isomers, salts, and salts of isomers;

(28) 4-Bromo-2,5-dimethoxyphenethylamine. Some trade or other names: 2-(4-bromo-2,5-dimethoxyphenyl)-1-aminoethane; alpha-desmethyl DOB; 2C-B; and Nexus;

(29) Alpha-ethyltryptamine. Some trade or other names: etryptamine; Monase; alpha-ethyl-1H-indole-3-ethanamine; 3-(2-aminobutyl) indole; alpha-ET; and AET;

(30) 2,5-dimethoxy-4-ethylamphet-amine; and DOET;

(31) 1-(1-(2-thienyl)cyclohexyl)pyrrolidine; and TCPy;

(32) Alpha-methyltryptamine, which is also known as AMT;

(33) 5-Methoxy-N,N-diisopropyltryptamine, which is also known as 5-MeO-DIPT;

(34) Salvia divinorum or Salvinorin A. Salvia divinorum or Salvinorin A includes all parts of the plant presently classified botanically as Salvia divinorum, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, derivative, mixture, or preparation of such plant, its seeds, or its extracts, including salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation; and

(35) Any material, compound, mixture, or preparation containing any quantity of synthetically produced cannabinoids as listed in subdivisions (i) through (viii) of this subdivision, including their salts, isomers, and salts of isomers, unless specifically excepted elsewhere in this section. Since nomenclature of these synthetically produced cannabinoids is not internationally standardized and may continually evolve, these structures or compounds of these structures shall be included under this subdivision, regardless of their specific numerical designation of atomic positions covered, so long as it can be determined through some form of scientific testing or analysis that the substance contains properties that fit within one or more of the following categories:

(i) Tetrahydrocannabinols: Meaning tetrahydrocannabinols naturally contained in a plant of the genus cannabis (cannabis plant), as well as synthetic equivalents of the substances con-

tained in the plant, or in the resinous extractives of cannabis, sp. and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following: Delta 1 cis or trans tetrahydrocannabinol, and their optical isomers Delta 6 cis or trans tetrahydrocannabinol, and their optical isomers Delta 3,4 cis or trans tetrahydrocannabinol, and its optical isomers;

(ii) Naphthoylindoles: Any compound containing a 3-(1-naphthoyl)indole structure with substitution at the nitrogen atom of the indole ring by a alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent;

(iii) Naphthylmethyloindoles: Any compound containing a 1 H-indol-3-yl-(1-naphthyl)methane structure with substitution at the nitrogen atom of the indole ring by a alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent;

(iv) Naphthoylpyrroles: Any compound containing a 3-(1-naphthoyl)pyrrole structure with substitution at the nitrogen atom of the pyrrole ring by a alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the pyrrole ring to any extent and whether or not substituted in the naphthyl ring to any extent;

(v) Naphthylideneindenes: Any compound containing a naphthylideneindene structure with substitution at the 3-position of the indene ring by a alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the indene ring to any extent and whether or not substituted in the naphthyl ring to any extent;

(vi) Phenylacetylindoles: Any compound containing a 3-phenylacetylindole structure with substitution at the nitrogen atom of the indole ring by a alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent;

(vii) Cyclohexylphenols: Any compound containing a 2-(3-hydroxycyclohexyl)phenol structure with substitution at the 5-position of the phenolic ring by a alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl or 2-(4-morpholinyl)ethyl group, whether or not substituted in the cyclohexyl ring to any extent; and

(viii) Benzoylindoles: Any compound containing a 3-(benzoyl)indole structure with substitution at the nitrogen atom of the indole ring by a alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent.

(d) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:



2 of 3 DOCUMENTS

General Statutes of North Carolina
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*** Statutes current through the 2011 Regular Session ***
*** Annotations current through SEPTEMBER 9, 2011 ***

CHAPTER 90. MEDICINE AND ALLIED OCCUPATIONS
ARTICLE 5. NORTH CAROLINA CONTROLLED SUBSTANCES ACT

Go to the North Carolina Code Archive Directory

N.C. Gen. Stat. § 90-94 (2012)

§ 90-94. Schedule VI controlled substances

This schedule includes the controlled substances listed or to be listed by whatever official name, common or usual name, chemical name, or trade name designated. In determining that such substance comes within this schedule, the Commission shall find: no currently accepted medical use in the United States, or a relatively low potential for abuse in terms of risk to public health and potential to produce psychic or physiological dependence liability based upon present medical knowledge, or a need for further and continuing study to develop scientific evidence of its pharmacological effects.

The following controlled substances are included in this schedule:

- (1) Marijuana.
- (2) Tetrahydrocannabinols.
- (3) Synthetic cannabinoids. -- Any material, compound, mixture, or preparation that is not listed as a controlled substance in Schedule I through V, is not an FDA-approved drug, and contains any quantity of the following substances, their salts, isomers (whether optical, positional, or geometric), homologues, and salts of isomers and homologues, unless specifically excepted, whenever the existence of these salts, isomers, homologues, and salts of isomers and homologues is possible within the specific chemical designation:
 - a. Naphthoylindoles. Any compound containing a 3-(1-naphthoyl)indole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not

further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent. Some trade or other names: JWH-015, JWH-018, JWH-019, JWH-073, JWH-081, JWH-122, JWH-200, JWH-210, JWH-398, AM-2201, WIN 55-212.

b. Naphthylmethylindoles. Any compound containing a 1H-indol-3-yl-(1-naphthyl)methane structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent.

c. Naphthoylpyrroles. Any compound containing a 3-(1-naphthoyl)pyrrole structure with substitution at the nitrogen atom of the pyrrole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the pyrrole ring to any extent and whether or not substituted in the naphthyl ring to any extent. Another name: JWH-307.

d. Naphthylmethylindenes. Any compound containing a naphthylideneindene structure with substitution at the 3-position of the indene ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the indene ring to any extent and whether or not substituted in the naphthyl ring to any extent.

e. Phenylacetylindoles. Any compound containing a 3-phenylacetylindole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent. Some trade or other names: SR-18, RCS-8, JWH-250, JWH-203.

f. Cyclohexylphenols. Any compound containing a 2-(3-hydroxycyclohexyl)phenol structure with substitution at the 5-position of the phenolic ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not substituted in the cyclohexyl ring to any extent. Some trade or other names: CP 47,497 (and homologues), cannabicyclohexanol.

g. Benzoylindoles. Any compound containing a 3-(benzoyl)indole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent. Some trade or other names: AM-694, Pravadoline (WIN 48,098), RCS-4.

h. 2,3-Dihydro-5-methyl-3-(4-morpholinylmethyl)pyrrolo[1,2,3-de]-1,4-benzoxazin-6-yl]-1-naphthalenylmethanone. Some trade or other names: WIN 55,212-2.

i. (6aR,10aR)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl) -- 6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol 7370. Some trade or other names: HU-210.

HISTORY: 1971, c. 919, s. 1; 1973, c. 476, s. 128; c. 1358, s. 15; 1977, c. 667, s. 3; 1981, c. 51, s. 9; 1997-456, s. 27; 2011-12, s. 5.

NOTES: EFFECT OF AMENDMENTS. --Session Laws 2011-12, s. 5, effective June 1, 2011, and applicable to offenses committed on or after that date, added subsection (3).

LEGAL PERIODICALS. --For survey of 1976 criminal case law, see *55 N.C.L. Rev.* 976 (1977).
For survey of 1982 criminal law, see *61 N.C.L. Rev.* 1060 (1983).

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Non-Pharmacy Drug Controls

CASE NOTES

NEITHER POSSESSION NOR POSSESSION WITH INTENT TO SELL INCLUDED IN THE OTHER. --To prove the offense of possession of over one ounce of marijuana, the State must show possession and that the amount possessed was greater than one ounce. To prove the offense of possession with intent to sell or deliver marijuana, the State must show possession of any amount of marijuana and that the person possessing the substance intended to sell or deliver it. Thus, the two crimes each contain one element that is not necessary for proof of the other crime. One is not a lesser included offense of the other. *State v. Gooch*, 58 N.C. App. 582, 294 S.E.2d 13, rev'd on other grounds, 307 N.C. 253, 297 S.E.2d 599 (1982).

FINDINGS NOT REQUIRED AS TO MARIJUANA. --The requirement that the Drug Authority (now Drug Commission) make findings as to whether a substance comes within this section applies only to drugs the Authority (now Commission) may wish to add, delete or reschedule, and not to substances, such as marijuana, which have already been included by the *General Assembly*. *State v. Dietz*, 289 N.C. 488, 223 S.E.2d 357 (1976).

In a prosecution for felonious sale and delivery of marijuana and felonious possession of marijuana with intent to sell, it is not necessary for the State to show that the Drug Authority (now Drug Commission) has made a finding that marijuana is a controlled substance, since it has been listed as such under this section. *State v. Dietz*, 289 N.C. 488, 223 S.E.2d 357 (1976).

APPLIED in *State v. McIntyre*, 13 N.C. App. 479, 186 S.E.2d 207 (1972); *State v. McKinney*, 288 N.C. 113, 215 S.E.2d 578 (1975).

CITED in *State v. Harvey*, 281 N.C. 1, 187 S.E.2d 706 (1972); *State v. Shufford*, 34 N.C. App. 115, 237 S.E.2d 481 (1977); *State v. Best*, 292 N.C. 294, 233 S.E.2d 544 (1977); *State v. McGill*, 296 N.C. 564, 251 S.E.2d 616 (1979); *State v. Board*, 296 N.C. 652, 252 S.E.2d 803 (1979); *State v. Lombardo*, 306 N.C. 594, 295 S.E.2d 399 (1982); *State v. Reddick*, 55 N.C. App. 646, 286 S.E.2d 654 (1982); *State v. Jenkins*, 74 N.C. App. 295, 328 S.E.2d 460 (1985); *State v. Damon*, 78 N.C. App. 421, 337 S.E.2d 170 (1985); *State v. Thomas*, 81 N.C. App. 200, 343 S.E.2d 588 (1986); *State v. Pavone*, 104 N.C. App. 442, 410 S.E.2d 1 (1991); *State v. Ledbetter*, 120 N.C. App. 117, 461 S.E.2d 341 (1995); *State v. Ferguson*, -- N.C. App. --, 694 S.E.2d 470 (June 15, 2010); *State v. Ward*, 364 N.C. 133, 694 S.E.2d 738 (June 17, 2010).

EXHIBIT M

124

STATE OF NEW YORK : DEPARTMENT OF HEALTH

X

IN THE MATTER

OF

THE SALE AND DISTRIBUTION
OF SYNTHETIC CANNABINOIDS

ORDER FOR
SUMMARY
ACTION

X

WHEREAS, a "cannabinoid" is a class of chemical compounds in the marijuana plant and the cannabinoid Δ^9 -tetrahydrocannabinol (THC) is the primary psychoactive constituent of marijuana. "Synthetic cannabinoids" encompass a wide variety of chemicals that are synthesized and marketed to mimic the action of THC. A "synthetic cannabinoid" is defined herein as any chemical compound that is a cannabinoid receptor agonist and includes, but is not limited to any material, compound, mixture, or preparation that is not listed as a controlled substance in the Schedule I through V of § 3306 of the Public Health Law, is not a federal Food and Drug Administration (FDA) approved drug, and contains any quantity of the following substances, their salts, isomers (whether optical, positional, or geometric), homologues (analogs), and salts of isomers and homologues (analogs), unless specifically exempted, whenever the existence of these salts, isomers, homologues (analogs), and salts of isomers and homologues (analogs) is possible within the specific chemical designation:

- i. Naphthoylindoles. Any compound containing a 3-(1-Naphthyl)indole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the indole ring to any

extent and whether or not substituted in the naphthyl ring to any extent. (Other names in this structural class include but are not limited to: JWH 015, JWH 018, JWH 019, JWH 073, JWH 081, JWH 122, JWH 200, JWH 210, JWH 398, AM 2201, and WIN 55 212).

ii. Naphthylmethyloindoles. Any compound containing a 1 H-indol-3-yl-(1-naphthyl)methane structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidiny)methyl, or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent. (Other names in this structural class include but are not limited to: JWH-175, and JWH-184).

iii. Naphthoypyrroles. Any compound containing a 3-(1-naphthoyl) pyrrole structure with substitution at the nitrogen atom of the pyrrole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidiny)methyl, or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the pyrrole ring to any extent and whether or not substituted in the naphthyl ring to any extent. (Other names in this structural class include but are not limited: JWH 307).

iv. Naphthylmethyloindenes. Any compound containing a naphthylidene indene structure with substitution at the 3-position of the indene ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidiny)methyl, or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the indene ring to any extent and whether or not substituted in the naphthyl ring to any extent. (Other names in this structural class include but are not limited: JWH-176).

v. Phenylacetylindoles. Any compound containing a 3-phenylacetylindole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidiny)methyl, or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent. (Other names in this structural class include but are not limited to: RCS-8 (SR-18), JWH 250, JWH 203, JWH-251, and JWH-302).

vi. Cyclohexylphenols. Any compound containing a 2-(3-hydroxycyclohexyl)phenol structure with substitution at the 5-position of the phenolic ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidiny)methyl, or 2-(4-morpholinyl)ethyl group, whether or not substituted in the cyclohexyl ring to any extent. (Other names in this structural class include but are not limited to: CP 47,497 (and homologues (analogs)), cannabicyclohexanol, and CP 55,940).

vii. Benzoylindoles. Any compound containing a 3-(benzoyl)indole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidiny)methyl, or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent. (Other names in this structural class include but are not limited to: AM 694, Pravadoline (WIN 48,098), RCS 4, and AM-679).

viii. [2,3-Dihydro-5-methyl-3-(4-morpholinylmethyl)pyrrolo [1,2,3-de]-1, 4-benzoxazin-6-yl]-1-naphthalenylmethanone. (Other names in this structural class include but are not limited to: WIN 55,212-2).

ix. (6aR,10aR)-9-(hydroxymethyl)-6, 6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10, 10a-tetrahydrobenzo[c]chromen-1-ol 7370. (Other names in this structural class include but are not limited to: HU-210).

x. Adamantoylindoles. Any compound containing a 3-(1-adamantoyl)indole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the adamantyl ring system to any extent. (Other names in this structural class include but are not limited to: AM-1248).

xi. Any other synthetic chemical compound that is a cannabinoid receptor agonist that is not listed in Schedules I through V of § 3306 of the Public Health Law, or is not an FDA approved drug; and

WHEREAS, synthetic cannabinoids are frequently applied to plant materials and then packaged and marketed online, and in convenience stores, gas stations and smoke shops as incense, herbal mixtures or potpourri, and often carry a "not for human consumption" label, and are not approved for medical use in the United States; and

WHEREAS, products containing synthetic cannabinoids are, in actuality, produced, distributed, marketed and sold, as a supposed "legal alternative" to marijuana and for the purpose of being consumed by an individual, most often by smoking, either through a pipe, a water pipe,

or rolled in cigarette papers; and

WHEREAS, synthetic cannabinoids have been linked to severe adverse reactions, including death and acute renal failure, and reported side effects include: tachycardia (increased heart rate); paranoid behavior, agitation and irritability; nausea and vomiting; confusion; drowsiness; headache; hypertension; electrolyte abnormalities; seizures; and syncope (loss of consciousness); and

WHEREAS, products containing synthetic cannabinoids have become prevalent drugs of abuse, especially among teens and young adults. Calls to New York State Poison Control centers relating to the consumption of synthetic cannabinoids have increased dramatically, with a total of 105 reported incidents of exposure to these substances having been reported since 2011, compared to four reported instances in 2009 and 2010. Over half of the calls to the Upstate Poison Control Center this year involved children under the age of 19 years of age. Nationally, poison control centers have received approximately 8,000 calls relating to exposure to these substances since 2011. Calls received by poison control centers generally reflect only a small percentage of actual instances of poisoning. Therefore, it is clear that many additional New York residents have been harmed as a result of using products containing synthetic cannabinoids; and

WHEREAS, on March 1, 2011, the United States Drug Enforcement Administration (DEA) temporarily scheduled five synthetic cannabinoids, JWH-018, JWH-073, JWH-200, CP 47, 497 and cannabicyclohexanol (CP 47, 497, C8, which is a homologue of CP 47, 497), as Schedule 1 substances under the federal Controlled Substances Act (21 U.S.C. § 812[c]), in order to avoid an imminent hazard to public safety, because the substances have a high potential for

abuse and have no currently accepted medical use in treatment in the United States. On March 1, 2012, the federal DEA ban was extended for six months; and

WHEREAS, individuals and entities can avoid -- and have avoided -- the federal ban of specifically identified synthetic cannabinoids by developing or synthesizing cannabinoids that are not expressly covered under any such ban; and

WHEREAS, based upon the foregoing, the Commissioner of Health of the State of New York, after investigation, is of the opinion that the sale or distribution of products containing synthetic cannabinoids, including, but not limited to, the products identified in the Appendix, is an activity which constitutes danger to the health, safety and welfare of the people of the State of New York; and

WHEREAS, it therefore appears to be prejudicial to the interest of the people to delay action for fifteen (15) days until an opportunity for a hearing can be provided in accordance with the provisions of Public Health Law § 12-a.

NOW, THEREFORE, THE COMMISSIONER OF HEALTH DOES HEREBY ORDER THAT:

1) Pursuant to Public Health Law § 16, any individual or entity in the State of New York engaged in the sale or distribution of products containing synthetic cannabinoids, including, but not limited to, those products identified in the Appendix, and that receives notice of this Order, shall immediately cease the sale and/or distribution of said products in New York State.

2) The presiding officer of each local health unit or local board of health in the State of New York, is hereby directed, pursuant to Public Health Law § 1303(4) and Title 10 NYCRR

8.5, to convene each such local health unit or local board of health as is necessary to disseminate this Order and to ensure compliance with this Order.

FURTHER, I DO HEREBY give notice that any individual or entity that receives notice of and is subject to this Order shall be provided an opportunity to be heard within fifteen (15) days of service of this Order, at the offices of the New York State Department of Health, to present proof that the sale or distribution of products containing synthetic cannabinoids does not constitute a danger to the health of the people of the State of New York. Any such individual or entity that wishes to avail themselves of this opportunity, should notify the Department of Health in writing, within five (5) days of receipt of service of this Order, to the following address: New York State Department of Health, Bureau of Administrative Hearings, Corning Tower, Room 2438, Governor Nelson A. Rockefeller Empire State Plaza, Albany, New York 12237. This notice may also be submitted by FAX at (518) 486-1858, or by email at ndfhl@health.state.ny.us. The Department will, within five business days of its receipt of a request for hearing, provide written notice of the date, place and time of the scheduled hearing.

DATED: Albany, New York
March 28, 2012

NEW YORK STATE DEPARTMENT OF
HEALTH



NIRAV R. SHAH, M.D., M.P.H.
Commissioner of Health

APPENDIX

K2

Spice

Chronic Spice

Spice Gold

Spice Silver

Skunk

Black Mamba

Zohal

Mr. Nice Guy

K3

K3 Legal

Genie

Sence

Smoke

Chill X

Earth Impact

Galaxy Gold

Space Truckin

Solar Flare

Moon Rocks

Aroma

Scope

Sky High



Kentucky Legislature



HB481

12RS

WWW Version

The hyperlink to a bill draft that precedes a summary contains the most recent version (introduced/GA/Enacted) of the bill. If the session has ended, the hyperlink contains the latest version of the bill at the time of sine die adjournment. Note that the summary pertains to the bill as introduced, which is often different from the most recent version.

HB 481/LM/CI (BR 443) - J. Tilley, J. Richards, J. Adams, R. Adams, R. Adkins, L. Belcher, J. Bell, R. Bunch, D. Butler, J. Carney, L. Clark, H. Collins, L. Combs, W. Coursey, J. Crenshaw, R. Damron, J. DeCesare, M. Denham, M. Dossett, T. Edmonds, C. Embry Jr., D. Floyd, D. Ford, J. Glenn, D. Graham, J. Greer, S. Gregory, M. Henley, J. Hoover, B. Housman, W. Hurt, J. Jenkins, D. Keene, K. King, M. King, A. Koenig, Ji. Lee, M. Marzian, D. Mayfield, T. McKee, M. Meredith, C. Miller, T. Mills, T. Moore, L. Napier, F. Nesler, D. Osborne, S. Overly, D. Owens, R. Palumbo, T. Pullin, R. Quarles, M. Rader, R. Rand, S. Riggs, C. Rollins II, B. Rowland, S. Rudy, S. Santoro, J. Short, A. Simpson, K. Sinnette, R. Smart, F. Steele, J. Stewart III, W. Stone, G. Stumbo, T. Thompson, B. Waide, J. Wayne, A. Webb-Edgington, S. Westrom, B. Yorts, J. York

AN ACT relating to controlled substances and declaring an emergency.

Create a new section of KRS Chapter 218A to prohibit trafficking in or possession of synthetic drugs including provisions for a maximum fine of double the gain from the commission of the offense; amend KRS 218A.010 to define "synthetic cannabinoids or piperazines," "synthetic cathinones," and "synthetic drugs"; amend KRS 218A.020 to permit the Office of Drug Control Policy to make recommendations to the Cabinet for Health and Family Services regarding controlled substances scheduling; amend KRS 218A.141, relating to cleanup costs for drug trafficking, to include trafficking in synthetic drugs; amend KRS 218A.350 to create a penalty structure mirroring that established for trafficking in synthetic drugs; amend KRS 218A.1411, relating to trafficking in the vicinity of a school, to include synthetic drugs; amend KRS 218A.410, relating to forfeiture in drug cases, to add trafficking in synthetic drugs; amend KRS 218A.992 to include trafficking in synthetic drugs as an offense triggering a penalty increase when committed while in possession of a firearm; amend KRS 243.500, relating to liquor licenses revocations, to include synthetic drugs; repeal KRS 218A.1426, 218A.1427, 218A.1428, 218A.1453, 218A.1454, 218A.1455; EMERGENCY.

HB 481 - AMENDMENTS

HCS/LM/CI - Amend emergency clause to specify that the substances covered bill the bill pose a clear and present danger to the citizens of the Commonwealth; declare an EMERGENCY.

Feb 27-introduced in House
 Feb 28-to Judiciary (H); posting waived
 Feb 29-reported favorably, 1st-reading, to Calendar with Committee Substitute
 Mar 1-2nd reading, to Rules
 Mar 7-posted for passage in the Regular Orders of the Day for Thursday, March 8, 2012
 Mar 13-3rd reading, passed 96-0 with Committee Substitute
 Mar 14-received in Senate
 Mar 19-to Judiciary (S)
 Mar 26-taken from Judiciary (S); 1st reading; returned to Judiciary (S)
 Mar 27-reported favorably, 2nd reading, to Rules as a Consent Bill
 Mar 29-posted for passage in the Consent Orders of the Day for Thursday, March 29, 2012; 3rd reading, passed 35-2; received in House; enrolled, signed by Speaker of the House
 Mar 30-enrolled, signed by President of the Senate; delivered to Governor

Vote History

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AN ACT relating to controlled substances and declaring an emergency.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

→ SECTION 1. A NEW SECTION OF KRS CHAPTER 218A IS CREATED TO READ AS FOLLOWS:

- (1) (a) A person is guilty of trafficking in synthetic drugs when he or she knowingly and unlawfully traffics in synthetic drugs.
- (b) Trafficking in synthetic drugs is a Class A misdemeanor for the first offense and a Class D felony for each subsequent offense.
- (c) In lieu of the fine amounts otherwise allowed under KRS Chapter 534, for any offense under this subsection the court may impose a maximum fine of double the defendant's gain from the commission of the offense, in which case any fine money collected shall be divided between the same parties, in the same ratio, and for the same purposes as established for forfeited property under KRS 218A.420.
- (d) It shall be an affirmative defense to an offense under this subsection that the defendant committed the offense during the course of the defendant's employment as an employee of a retail store and that the defendant did not know and should not have known that the trafficked substance was a synthetic drug.
- (2) (a) A person is guilty of possession of synthetic drugs when he or she knowingly and unlawfully possesses synthetic drugs.
- (b) Possession of synthetic drugs is a Class B misdemeanor, except that, KRS Chapter 532 to the contrary notwithstanding, the maximum term of incarceration shall be no greater than thirty (30) days.

→ Section 2. KRS 217.065 is amended to read as follows:

Except for violations of KRS 218A.350, a drug or device shall be deemed to be misbranded:

hydroxytetrahydrocannabinol (HU-210); 1-Butyl-3-(1-naphthoyl)indole; 1-Pentyl-3-(1-naphthoyl)indole; dexanabinol (HU-211); or any compound in the following structural classes:[(1-(2-morpholin-4-ylethyl)indol-3-yl)-naphthalen-1-ylmethanone (JWH-200); 1-pentyl-3-(2-methoxyphenylacetyl)indole (JWH-250); or 2-[(1R,3S)-3-hydroxycyclohexyl]-5-(2-methyloctan-2-yl)phenol]. The term shall not include synthetic cannabinoids that require a prescription, are approved by the United States Food and Drug Administration, and are dispensed in accordance with state and federal law;]

(a) Naphthoylindoles: Any compound containing a 3-(1-naphthoyl)indole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent. Examples of this structural class include but are not limited to JWH-015, JWH-018, JWH-019, JWH-073, JWH-081, JWH-122, JWH-200, and AM-2201;

(b) Phenylacetylindoles: Any compound containing a 3-phenylacetylindole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent. Examples of this structural class include but are not limited to JWH-167, JWH-250, JWH-251, and RCS-8;

(c) Benzoylindoles: Any compound containing a 3-(benzoyl)indole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group whether or not further

substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent. Examples of this structural class include but are not limited to AM-630, AM-2233, AM-694, Pravadoline (WIN 48,098), and RCS-4;

- (d) Cyclohexylphenols: Any compound containing a 2-(3-hydroxycyclohexyl)phenol structure with substitution at the 5-position of the phenolic ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group whether or not substituted in the cyclohexyl ring to any extent. Examples of this structural class include but are not limited to CP 47,497 and its C8 homologue (cannabicyclohexanol);
- (e) Naphthylmethylindoles: Any compound containing a 1H-indol-3-yl-(1-naphthyl)methane structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent. Examples of this structural class include but are not limited to JWH-175, JWH-184, and JWH-185;
- (f) Naphthoylpyrroles: Any compound containing a 3-(1-naphthoyl)pyrrole structure with substitution at the nitrogen atom of the pyrrole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group whether or not further substituted in the pyrrole ring to any extent and whether or not substituted in the naphthyl ring to any extent. Examples of this structural class include but are not limited to JWH-030, JWH-145, JWH-146, JWH-307, and JWH-368;

(g) Naphthylmethylindenes: Any compound containing a 1-(1-naphthylmethyl)indene structure with substitution at the 3-position of the indene ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group whether or not further substituted in the indene ring to any extent and whether or not substituted in the naphthyl ring to any extent. Examples of this structural class include but are not limited to JWH-176; or

(h) Any other synthetic cannabinoid or piperazine which is not approved by the United States Food and Drug Administration, or if approved, which is not dispensed or possessed in accordance with state and federal law;

(45) "Synthetic cathinones" means any chemical compound which is not approved by the United States Food and Drug Administration, or if approved, which is not dispensed or possessed in accordance with state and federal law (not including bupropion or compounds listed under a different schedule) structurally derived from 2-aminopropan-1-one by substitution at the 1-position with either phenyl, naphthyl, or thiophene ring systems, whether or not the compound is further modified in one (1) or more of the following ways:

(a) By substitution in the ring system to any extent with alkyl, alkylenedioxy, alkoxy, haloalkyl, hydroxyl, or halide substituents, whether or not further substituted in the ring system by one (1) or more other univalent substituents. Examples of this class include but are not limited to 3,4-Methylenedioxcathinone (bk-MDA);

(b) By substitution at the 3-position with an acyclic alkyl substituent. Examples of this class include but are not limited to 2-methylamino-1-phenylbutan-1-one (buphedrone);

(c) By substitution at the 2-amino nitrogen atom with alkyl, dialkyl, benzyl, or methoxybenzyl groups, or by inclusion of the 2-amino nitrogen atom in a

cyclic structure. Examples of this class include but are not limited to Dimethylcathinone, Ethcathinone, and α -Pyrrolidinopropiophenone (α -PPP); or

(d) Any other synthetic cathinone which is not approved by the United States Food and Drug Administration, or if approved, is not dispensed or possessed in accordance with state or federal law;

(46) "Synthetic drugs" means any synthetic cannabinoids or piperazines or any synthetic cathinones.

~~(47)~~~~(45)~~ "Telehealth" has the same meaning it has in KRS 311.550;

~~(48)~~~~(46)~~ "Tetrahydrocannabinols" means synthetic equivalents of the substances contained in the plant, or in the resinous extractives of the plant Cannabis, sp. or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following:

1. Delta 1 cis or trans tetrahydrocannabinol, and their optical isomers;
2. Delta 6 cis or trans tetrahydrocannabinol, and their optical isomers; and
3. Delta 3, 4 cis or trans tetrahydrocannabinol, and its optical isomers;

~~(49)~~~~(47)~~ "Traffic," except as provided in KRS 218A.1431, means to manufacture, distribute, dispense, sell, transfer, or possess with intent to manufacture, distribute, dispense, or sell a controlled substance;

~~(50)~~~~(48)~~ "Transfer" means to dispose of a controlled substance to another person without consideration and not in furtherance of commercial distribution; and

~~(51)~~~~(49)~~ "Ultimate user" means a person who lawfully possesses a controlled substance for his or her own use or for the use of a member of his or her household or for administering to an animal owned by him or her or by a member of his or her household.

➔ Section 4. KRS 218A.020 is amended to read as follows:

(1) The Cabinet for Health and Family Services shall administer this chapter and may

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IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO
IN AND FOR THE COUNTY OF BONNEVILLE

THE STATE OF IDAHO,)
Plaintiff,)
vs.) CASE NO. CR-2012-1397-FE
BRYCE SCOTT MENDEL,)
Defendant.)

PRELIMINARY HEARING
FEBRUARY 21, 2012
HONORABLE MAGISTRATE L. MARK RIDDOCH PRESIDING

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A P P E A R A N C E S:

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E X H I B I T I N D E X

<u>STATE'S</u>	<u>DESCRIPTION</u>	<u>OFF</u>	<u>ADM</u>
1	Lab Report	11	14

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PRELIMINARY HEARING
FEBRUARY 21, 2012

THE COURT: We call the next case, State vs. Bryce Mendel. As I say, this is State vs. Bryce Scott Mendel, Bonneville County Case Number CR-2012-1397. Ms. Shaul is here as Deputy Prosecutor for the State.

And, Counsel, what was your name?

MS. PITCHER: Diane Pitcher. And this is my partner, Ryan Holdaway.

THE COURT: And what was your last name again?

MS. PITCHER: Pitcher, P-I-t-c-h-e-r.

THE COURT: And your colleague is?

MR. HOLDAWAY: I'm Ryan Holdaway, H-o-l-d-a-w-a-y.

THE COURT: Holdaway?

MR. HOLDAWAY: Yes.

THE COURT: Thank you.

MR. HOLDAWAY: And, Your Honor, before we get started, can we ask that any witnesses be excluded if they haven't already?

THE COURT: Who are you going to call?

MS. NORTH-SHAUL: Your Honor, Officer Hart, Officer Nelson, Sergeant Galbreath. He's the State's designee, so he should be allowed to remain in the

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1 courtroom. And I may be calling one other person
2 depending on the testimony that comes out today, but he
3 is not in the courtroom at this time.

THE COURT: Very well. Other than your first witness and the officer there designated, the others are directed to wait out in the hall.

MS. NORTH-SHAUL: All right. Thank you.

THE COURT: And, as I say, this is a preliminary hearing in the case that I have just read for the record. We're proceeding on a charge of -- find the Complaint here -- one count, controlled substance, possession with intent to deliver. Do we have any matters, other matters, before we begin?

MS. NORTH-SHAUL: Yes, Your Honor. At this time I'm moving to amend the Complaint in this matter to change the dates to on or between December 17th of 2011 and January 28th of 2012.

THE COURT: Response from Defense?

MR. HOLDAWAY: No objection, Your Honor.

THE COURT: Very well. And I am actually now -- have been presented with a motion to amend the Complaint consistent with the oral motion; and there having been no objection, I'll sign the order granting that amendment and sign the Amended Complaint.

Any other matters before we begin?

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MS. NORTH-SHAUL: Not from the State, Your Honor.

MS. PITCHER: No, Your Honor.

THE COURT: All right, then. You may call your first witness.

MS. NORTH-SHAUL: Thank you, Your Honor. The State calls Officer Cory Hart.

(Witness sworn)

MS. NORTH-SHAUL: May I proceed?

THE COURT: You may.

MS. NORTH-SHAUL: Thank you, Your Honor.

CORY HART

having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. NORTH-SHAUL:

Q. Officer Hart, could you please state your full name for the record?

A. It's Cory Hart.

Q. And how are you employed?

A. I'm a police officer with Idaho Falls, the City of Idaho Falls.

Q. All right. And how long have you been in law enforcement?

A. For about 12 years.

Q. Has all of that been with the City of Idaho

1 Falls?

2 A. No. I worked for the City of Bellevue. I also
3 worked for the City of Blackfoot.

4 Q. All right. How long have you been with Idaho

5 Falls?

6 A. For about eight years.

7 Q. Are you a POST-certified officer?

8 A. I am.

9 Q. And what level of certification do you hold?

10 A. I hold the advanced.

11 Q. Do you know when you obtained that certificate?

12 A. About two years ago.

13 Q. All right. What are your current duties for the
14 City of Idaho Falls?

15 A. I'm in the Patrol Division.

16 Q. And what does that mean?

17 A. Basically respond to complaints, ongoing
18 in-progress calls, things of that nature.

19 Q. Okay. Were you on duty on December 17th of 2011?

20 A. I was.

21 Q. And do you recall what shift you were working?

22 A. I believe it was the swing shift.

23 Q. What is the time frame of the swing shift?

24 A. From 4:00 to 2:00.

25 Q. Okay. 4:00 p.m.?

1 A. 4:00 p.m. to 2:00 in the morning.
 2 Q. Okay. Did something occur on December 17th of
 3 2011 that -- where you were dispatched?

4 A. Yeah. I was dispatched to a robbery that had
 5 occurred at 1911 East 17th.

6 Q. Okay. Is that in Idaho Falls?

7 A. It is.

8 Q. Okay. Bonneville County, State of Idaho?

9 A. Yes.

10 Q. All right. So you responded to a complaint of a
 11 robbery?

12 A. Yes.

13 Q. All right. Do you recall who you made contact
 14 with when you got there?

15 A. Initially they said the robbery occurred at 1911
 16 East 17th. I initially went there first. The
 17 complainant was not there. I -- he had went to 1414
 18 Cambridge and asked that we make contact there.

19 Q. Okay. So did you go to 1414 Cambridge?

20 A. I did.

21 Q. Is that in Idaho Falls, Bonneville County?

22 A. Yes.

23 Q. State of Idaho?

24 A. Yes.

25 Q. All right. What happened when you got to that

1 spice, and I sent a sample of that to the State Lab.

2 Q. Okay. To the Idaho State Forensic Lab?

3 A. Yes.

4 Q. Okay. Did you receive a lab report back
 5 regarding the substance that you took out of 1414
 6 Cambridge on December 17th?

7 A. Yes.

8 Q. Okay. When did you get that lab report?

9 A. I got it on January 28th of 2012.

10 Q. Okay. And did you provide a copy of that lab
 11 report to my office?

12 A. Yes.

13 Q. Okay. Now, we'll get back to the lab report in
 14 just a moment. You said you took custody of an amount
 15 of what you believed to be spice. Can you tell me --
 16 describe what the -- what it was that you took into your
 17 custody?

18 A. Yes. They were in clear plastic containers.
 19 There was a larger container and a smaller container. I
 20 could tell you the -- what they were listed as, the
 21 amount of spice, if I could look at my report.

22 Q. Okay. Now, hold on just a second. You have a
 23 copy of your report up there with you?

24 A. Yes.

25 Q. Okay. And when you wrote this report, was the

1 location?

2 A. My sergeant, Sergeant Galbreath, was there; and
 3 I made contact with a Jeremy Beasterfield, who was the
 4 reporting party.

5 Q. Okay. And did you talk to Mr. Beasterfield about
 6 his complaint?

7 A. Yes.

8 Q. While you were there visiting with
 9 Mr. Beasterfield regarding his complaint, did another
 10 law enforcement concern arise?

11 A. Yes.

12 Q. Okay. What was the concern?

13 A. Sergeant Galbreath advised me that he had
 14 witnessed in plain view a large amount of what he
 15 suspected to be spice in the building.

16 Q. Okay. And so what was done at that point, do you
 17 know?

18 A. He advised that he was going to contact the
 19 prosecutor and see about taking the spice for -- to be
 20 tested.

21 Q. Okay. And I'll talk with Sergeant Galbreath
 22 about what he did after that. But at some point did you
 23 receive evidence that was seized from the location of
 24 1414 Cambridge?

25 A. Yes. We did take -- or seize the suspected

1 information that you wrote down fresh in your mind?

2 A. Yes.

3 Q. Okay. And do you recall that information
 4 independent of looking at your report?

5 A. The amount of spice in each container, I would
 6 have to look at my report.

7 Q. Okay. So if you were to look at your report,
 8 would it then refresh your recollection as to how much
 9 each container was labeled as weighing?

10 A. Yes.

11 Q. All right.

12 MS. NORTH-SHAUL: Your Honor, I would ask
 13 that the witness be allowed to look at his report for
 14 those purposes.

15 THE COURT: You're entitled to look at the
 16 report.

17 A. (Reviewing report). In the larger of the
 18 containers they were listed that they had 7.5 grams. In
 19 the smaller containers they were listed as having 1.5
 20 grams.

21 Q. (BY MS. NORTH-SHAUL) Okay. What was the -- the
 22 7.5 grams, do you recall if there was a name or a label?

23 A. They were listed as being crush.

24 Q. Okay. Crush what?

25 A. Crush is what I have listed here, is what it was

1 listed --

2 Q. Okay.

3 A. -- on that container.

4 Q. And do you know how many bottles there were of

5 that?

6 A. There were 56 bottles.

7 Q. Okay.

8 A. Of the 7.5 grams of crush.

9 Q. Now, you said there were also some that

0 weighed -- were labeled as weighing 1.5 grams?

11 A. Yes.

12 Q. Did they have a brand or a name on them?

13 A. Deja Vu is what they were listed as.

14 Q. And how many bottles were there?

15 A. There were 11 bottles.

16 Q. Okay. Now, did you send -- how many bottles did

17 you send to the lab for testing

18 A. I sent one of each.

19 Q. So one bottle of crush and one bottle of Deja Vu?

20 A. Yes.

21 Q. Okay. All right. Now, you said you received a

22 lab report back, correct?

23 A. Yes.

24 Q. Okay.

25 MS. NORTH-SHAUL: I would ask -- you have

1 Q. All right. Do you recognize what State's

2 Exhibit 1 is?

3 A. Yes.

4 Q. How is it that you recognize what this document

5 is?

6 A. This was the results returned to me with the

7 samples that I'd sent.

8 Q. This is the lab report?

9 A. Yes.

10 Q. That you received?

11 A. Yes.

12 Q. In connection with the two samples you sent; is

13 that what you're saying?

14 A. Yes.

15 Q. Okay.

16 MS. NORTH-SHAUL: Your Honor, at this time I

17 would move to admit State's Exhibit 1 pursuant to Idaho

18 Criminal Rule 5.1.

19 MS. PITCHER: And I'm objecting because it

20 draws a legal conclusion. Nowhere on that document does

21 it make a factual finding. It simply says that AM-2201

22 is a Schedule I compound, and there's nowhere in the

23 Code that that's specified.

24 THE COURT: All right. I'll make a

25 preliminary examination of the proposed Exhibit 1.

1 one?

2 MS. PITCHER: Yeah.

3 MS. NORTH-SHAUL: Okay.

4 MS. PITCHER: I'm going to be objecting to

5 the lab report, being that it draws a legal conclusion

6 about the illegality of AM-2201.

7 THE COURT: Well, let's take it one step at

8 a time.

9 MS. PITCHER: Okay.

10 THE COURT: You're entitled to go ahead and

11 have it marked and lay some foundation if you haven't

12 already done that. All right. I don't know if we're

13 ready for the objection yet or if you have any other

14 questions.

15 MS. NORTH-SHAUL: Well, Your Honor, I

16 haven't moved to admit it at --

17 THE COURT: Exactly.

18 MS. NORTH-SHAUL: -- this point, so --

19 THE COURT: You may proceed, then.

20 MS. NORTH-SHAUL: May the witness be handed

21 State's Exhibit 1, please?

22 Q. (BY MS. NORTH-SHAUL) All right. Officer Hart,

23 could you take a moment and look at State's Exhibit 1,

24 please?

25 A. Okay.

1 MS. PITCHER: If I may, Your Honor, the

2 person who made this legal conclusion is not here for

3 cross-examination.

4 THE COURT: Well, I understand that. But I

5 believe under the Rule, for preliminary hearing

6 purposes, that we can proceed. And I'll double-check

7 that.

8 MS. NORTH-SHAUL: Your Honor, I can read the

9 language into the --

10 THE COURT: Yes.

11 MS. NORTH-SHAUL: -- record. The rule is

12 5.1 of the Idaho Criminal Rules, indicating that reports

13 of scientific examinations of evidence by state or

14 federal agencies is admissible if -- provided the

15 magistrate determines the source of said evidence to be

16 credible and that nothing in this rule prevents

17 admission of evidence under any recognized exception of

18 the hearsay rule.

19 There's nothing that prevents the State from

20 submitting a scientific report in this form. It's a

21 notarized document from Scott Helfstrom. These are

22 routinely admitted at preliminary hearing. We're not

23 required to have the lab -- the forensic scientist here

24 at preliminary hearing. Under the Rule the scientific

25 report or analysis is sufficient for purposes of finding

1 probable cause. They will have the opportunity to
2 cross-examine the forensic scientist fully at a jury
3 trial if they so desire.

4 THE COURT: Response.

5 MS. PITCHER: The objection that I have is
6 not to the chemical. For example, if this was
7 marijuana, if it said this has tested positive for
8 marijuana, that's a factual finding. The lab report
9 makes a legal conclusion about the illegality that we
0 can't cross-examine that witness. We have no problem
11 submitting it on the record for the purpose of admission
2 of the AM-2201. We're simply not allowing the part that
3 makes a legal conclusion that it's illegal into
4 evidence.

5 THE COURT: Well --

6 MS. NORTH-SHAUL: Your Honor, I don't see
7 anything on this document that says it's illegal. What
8 it says is, it tests as a Schedule I substance, which is
9 controlled under the statute; and that's for this Court
0 to determine. If it tests as a Schedule I, it's a
1 controlled substance; but that's not a legal conclusion
2 the lab person makes. They're just making a factual
3 assessment as to what the substance is, and it's a
4 Schedule I controlled substance.

5 MS. PITCHER: And we're contesting that it's

1 took out of 1414 Cambridge, what did you do?

2 A. When Sergeant Galbreath came on duty about 9:00
3 p.m., I spoke with him about the results as we were
4 waiting for them to come back.

5 Q. All right. Now, let me just go back for just
6 one -- what day did you get that, do you recall?

7 A. It was January 28th, I believe.

8 Q. Okay. So January 28th of 2012 you were on duty?

9 A. Yes.

10 Q. Okay. What shift were you working?

11 A. I was again working the swing shift from 4:00 to
2 2:00 in the morning.

13 Q. Okay. And so when Sergeant Galbreath came on,
14 what time was it?

5 A. It was 9:00 o'clock p.m.

16 Q. Okay. And did you discuss with him the results
7 of the lab report?

8 A. Yes.

19 Q. And what did you guys at that point determine to
0 do?

1 A. We decided to see if we can actually call the
22 business and see if they would deliver us spice, the
3 suspected spice.

24 Q. Do you recall, did you make a phone call to 1414
25 Cambridge?

1 not a Schedule I controlled substance. In fact, that's
2 why we're doing the preliminary hearing. We have
3 evidence from the statute that we plan on producing an
4 expert witness to show that that chemical is not
5 included anywhere on this statute.

6 THE COURT: Well, the -- as I recall,
7 Rule 5.1 at some point was amended specifically to
8 preclude the State from having to bring the lab
9 researcher or scientist into the courtroom for the many
10 preliminary hearings that we have in the state of Idaho.
11 So Ms. Shaul is correct in the reading of the rule and
12 what it says, and I've indicated its very purpose as to
13 my understanding.

14 So -- and Ms. Shaul is also correct that
15 what this Exhibit 1, this lab report, states is a
16 conclusion, a factual conclusion, of what they found and
17 that it comes within Schedule I. So I've got to
18 overrule the objection. And that's for purposes of this
19 hearing. It's a different matter in a trial.

20 You may proceed. You moved for the
21 admission of 1, correct?

22 MS. NORTH-SHAUL: Yes, Your Honor.

23 THE COURT: And it is admitted.

24 Q. (BY MS. NORTH-SHAUL) Officer Hart, once you had
25 the lab report back regarding the substance that you

1 A. I did not. Sergeant Galbreath did.

2 Q. Sergeant Galbreath did?

3 A. Yes.

4 Q. Okay. What else did you do on the 28th
5 besides -- January 28th besides talking to Sergeant
6 Galbreath about the lab report results?

7 A. After he informed me that he had made the call
8 and that he -- they were going to deliver the spice to
9 him, officers were staged in the area; and when the
10 delivery driver did show up to deliver the spice, we
11 conducted a traffic stop on that.

12 Q. Where were you staged?

13 A. I was on Woodruff right -- the stop was right
14 near Subway.

15 Q. Okay. And who else were you working with, do you
16 recall?

17 A. Officer Ryan Nelson, Officer Brandon Storer, and
18 then I believe that's the three that were on the traffic
19 stop.

20 Q. Okay. And so what happened? You said that a car
21 showed up to your location?

22 A. Yes.

23 Q. Okay. And what happened once the car showed up?

24 A. Officers pulled in behind him. We advised him
25 why he was being stopped and asked if he was here to

1 deliver the suspected spice. He said that he was there
2 to deliver the suspected spice, but he believed that it
3 was not the illegal form of the spice.

4 Q. Okay. So did you further participate in an
5 arrest or any further dealings with the driver of that
6 vehicle?

7 A. The driver was interviewed, I believe, by Officer
8 Nelson at that point and transported to the County Jail.

9 Q. Okay. Did you do anything other than be part of
10 the staging of that controlled -- or of that purchase,
11 attempted purchase?

12 A. Yes. Well, the -- there was a bag found in the
13 car; and it did contain the same Deja Vu and crush that
14 initially that we had seized from the initial on the
15 17th.

16 Q. Okay. Now, after that happened, did you have
17 any -- what else did you do?

18 A. I took -- I seized -- took the spice from the
19 car, and then Sergeant Galbreath and I called the
20 prosecutor to see if we could get a warrant for the 1414
21 Cambridge.

22 Q. Okay. Do you recall what you seized out of
23 that -- of the vehicle?

24 A. Yes. There was, I believe, 26 containers of the
25 suspected spice.

1 room. I made contact with the owner of the business,
2 Bryce Mendel, and --

3 Q. Okay. Now, do you see Bryce Mendel here today?

4 A. I do.

5 Q. Where is that person seated?

6 A. He's the gentleman in the black suit at the
7 Defendant table.

8 Q. Okay. And how do you know his name?

9 A. He's -- he provided that information.

10 Q. Okay. He identified himself to you?

11 A. Yes.

12 Q. Okay. So you made contact with Bryce Mendel, and
13 what happened?

14 A. We provided a copy of the search warrant to him
15 and advised that we were here to search the business.

16 Q. Okay. Did you participate in the search of the
17 business?

18 A. Yes.

19 Q. Okay. And do you recall what, if anything, you
20 found?

21 A. Yes. In the same room as before, in the back
22 room, a large amount of the same suspected containers,
23 spice, was found; and there was another basement that a
24 large amount of product was found, suspected.

25 Q. Do you know how much?

1 Q. Okay. Was it -- can you describe the packaging?

2 A. It was the same packaging as before. There was
3 different colors of labels on some of the containers as
4 before, but it was the crush and the Deja Vu. There was
5 also the same colors as before of the labels.

6 Q. Okay. So at that point then you said you and
7 Sergeant Galbreath went to get a search warrant; is
8 that correct?

9 A. Yes.

10 Q. Okay. Did you subsequently receive a search
11 warrant?

12 A. Yes.

13 Q. And did you assist with executing a search
14 warrant?

15 A. Yes.

16 Q. And where was the search warrant executed?

17 A. At 1414 Cambridge.

18 Q. In Idaho Falls?

19 A. In Idaho Falls.

20 Q. Okay. Do you -- what did you do at that location
21 when you went there with the search warrant?

22 A. By the time Sergeant Galbreath and I had
23 arrived, officers were already at the business watching,
24 seeing if anybody left, that type of thing. When we
25 walked in, there was people being detained in the front

1 A. I mean, it was large bags, 50-pound bags.

2 Q. Okay.

3 A. And I can't -- you know, I could -- looking at
4 the property I could tell you, but not offhand.

5 Q. Okay. But you saw large bags?

6 A. Yeah, about 50-pound bags of the suspected
7 product.

8 Q. Did you talk to Mr. Mendel at the time you gave
9 him his -- gave him this -- a copy of the search
10 warrant?

11 A. I did not.

12 Q. Okay. And so you said you saw a lot of product
13 there. What else happened?

14 A. Officers searched the building. We were asked to
15 seize any suspected spice, any computers, any -- there
16 was a large amount of cash, records, computers. There
17 were -- we searched cars out in the parking lot. There
18 was quite a bit of work done.

19 Q. Okay. So I want to go back just a minute to how
20 this -- the controlled purchase was set up on January
21 28th. You said you called the business. How did you
22 know to call the business?

23 A. Well, the -- Officer Steel and Officer -- or
24 Sergeant Galbreath found the business on Facebook.

25 Q. Okay.

1 A. And got the number.

2 Q. Okay. All right. And so -- but you're not the

3 one that placed the call?

4 A. No.

5 Q. Is that correct? Okay. All right. Anything

6 else that you did on the night of the 28th of January?

7 A. No.

8 Q. Okay. So did you -- were you the evidence

9 custodian? Or who was the evidence custodian, do you

0 know?

11 A. There was so much evidence, you know, we all had

2 to assist in putting it into evidence.

3 Q. Okay. So you did some of that?

4 A. But there wasn't -- there was no one custodian.

5 Everybody had to help.

6 Q. Put it all in -- all together?

7 A. Yes.

8 Q. Okay. And do you know, has it been sent off for

9 testing, the substance that was taken on the 28th?

0 A. Not that I believe. Not that I know of.

1 Q. You don't know?

2 A. No, I don't know.

3 Q. But you wouldn't be in charge of that, correct?

4 A. Right.

5 Q. Okay. So on the -- now, when this controlled

1 THE COURT: You may do so.

2 MS. NORTH-SHAUL: Thank you.

3 A. Yes, there was a list of the delivery drivers,

4 deliveries for that night. He had it on a tablet of

5 deliveries that he had made the past few nights and was

6 scheduled to make that night.

7 Q. Okay.

8 MS. NORTH-SHAUL: Nothing further for this

9 witness, Your Honor.

10 THE COURT: The Defense may inquire.

11 **CROSS-EXAMINATION**

12 **BY MS. PITCHER:**

13 Q. So let's go back to the robbery incident on the

14 17th. You've described that you had seized some spice.

15 Can you tell me the process by which, when you seize

16 something, what you do?

17 A. Well, the -- we initially spoke with the

18 prosecutor; and at that point we advised him that we

19 believed that the suspected spice was there and we were

20 going to seize it. We documented everything that we

21 took and gave them copies of everything that we took

22 from the building that night.

23 Q. We are talking about December 17th?

24 A. Yes.

25 Q. Okay. So you talked to the prosecutor on

1 delivery was conducted with -- on the call that Sergeant

2 Galbreath placed, did you assist in searching the car?

3 A. Yes.

4 Q. Okay. You said you found -- that you found a

5 bunch of containers of suspected spice, correct?

6 A. Yes.

7 Q. Was there anything else that you recall finding

8 in there?

9 A. A small amount of change. It appeared that he

10 had brought change.

11 Q. Were there any kind of ledgers?

12 A. If I could look at my report, I could tell you

13 exactly.

14 Q. Okay. So again, would that information, if it

15 existed, be included in your report?

16 A. Yes.

17 Q. Okay. And it would have been recorded when it

18 was still all fresh in your mind, correct?

19 A. Yes.

20 Q. Would it refresh your recollection if you could

21 look at it?

22 A. Yes.

23 Q. All right.

24 MS. NORTH-SHAUL: Your Honor, may the

25 witness --

1 December 17th?

2 A. I did not. Sergeant Galbreath did.

3 Q. Okay. And what made you believe that it might

4 have illicit chemicals in it?

5 A. Just because of the whole totality of the

6 circumstances. This would have been the third or fourth

7 robbery of the delivery drivers, delivering all sorts

8 through all hours of the night, the types of places they

9 were delivering to, people only giving first names, very

10 vague information. Every time we had a dealing with

11 these delivery drivers, they had hired security. Things

12 like this would not be needed to deliver incense. I --

13 we suspected that something else was going on.

14 Q. Okay. Let's talk about the product. Do you know

15 how spice is made?

16 A. I do not.

17 Q. Are you aware that there is an inert plant

18 material and that chemicals are sprayed on top of it?

19 A. I have an idea.

20 Q. Would you be able to tell which stuff was treated

21 and which stuff was not treated, what product?

22 A. No.

23 Q. So is there any way to look at it that you would

24 be able to identify whether there was chemicals applied

25 or not?

1 A. No.

2 Q. Okay. So you sent the product in for testing.

3 Where did you send it to?

4 A. The State of Idaho Laboratory.

5 Q. Okay. And it came back positive for AM-2201?

6 A. Yes.

7 Q. And what makes you believe that AM-2201 is

8 illegal?

9 A. We --

10 MS. NORTH-SHAUL: Your Honor, that's really

11 not material here; and it's your legal conclusion to

12 make.

13 THE COURT: That's true. But there is an

14 element of -- that's showing, perhaps not through this

15 witness, but showing that it's -- that there is

16 something illegal here.

17 Q. (BY MS. PITCHER) So what's your basis for

18 believing that AM-2201 is illegal?

19 A. It was listed as a Schedule I drug and that we

20 looked in the Code book and determined that it was

21 illegal.

22 Q. Legal or illegal?

23 A. Illegal.

24 Q. Okay. So you said it was listed. Where is this

25 list?

1 there's the two little I's and the A. And I did mark

2 that. That is our markings. It's not original to the

3 statute. Can you tell me from looking at that what part

4 of that statute is the language where the chemical

5 derivative that AM-2201 would be?

6 A. This is only -- that night that we looked at it,

7 you may actually want to ask Sergeant Galbreath who --

8 because he was the one who pulled the report and showed

9 me where it was. I don't know where he found it or what

10 section he was looking under.

11 Q. Right. I'm just asking you because you said you

12 had also looked at it and found it. And so I was asking

13 you where it was that you found that.

14 A. I read it that night, and we determined that it

15 was the illegal form. But --

16 Q. Okay. But you --

17 A. To tell you where -- I mean, this is not

18 something that -- that night that we looked at it, it

19 was pointed out to me and we read it in a certain

20 section. I don't know where he found it at that point.

21 Q. Okay. So are you saying that this is the wrong

22 spot, where he was charged was not where you were

23 looking? Would you --

24 A. I'm telling you, I don't know.

25 Q. Okay. So it may or may not be that spot?

1 A. This is -- the reports stated that it was a

2 Schedule I drug; and then we looked in the Schedule I,

3 you know, section of the Code book.

4 Q. Who's "we"?

5 A. Sergeant Galbreath and I.

6 Q. So an officer was able to determine from looking

7 at the Code that AM-2201 was illegal?

8 A. Yes. It was listed as a Schedule I drug. I

9 don't -- I don't know what AM-2201 is other than what

10 they were telling me.

11 Q. Okay. So you were told by somebody else that it

12 was illegal?

13 A. Yes.

14 Q. But you're saying -- who did you say again that

15 looked at this statute? What officer was that?

16 A. Sergeant Galbreath and I.

17 Q. So you also looked at it?

18 A. Yes.

19 Q. So what made you draw the conclusion from looking

20 at this statute that it was illegal?

21 A. I believe it was listed.

22 Q. You believe it's listed. Can I show you a copy

23 of the statute? It's a very long statute, so I'm going

24 to show you just 30 on. Just to make you aware,

25 Mr. Mendel was charged under 30-2705(d)(30). And then

1 A. Right.

2 Q. At this point you don't know, but at some point

3 you were -- you believed that you read it in the

4 statute?

5 A. Yes.

6 Q. Okay. All right. Are you aware about -- let's

7 just talk about your general understanding of synthetic

8 cannabinoids. Are you aware that there's more than one?

9 A. Yes.

10 Q. How many would you say there are just --

11 A. I wouldn't have any idea.

12 Q. Would you agree that there are many?

13 A. Yes.

14 Q. That there are several? Okay. I just want you

15 to say -- if you recognize one of these, I want you to

16 just say if you recognize it or if you don't once I say

17 the name. Okay? JW-018.

18 A. No.

19 Q. Okay.

20 MS. NORTH-SHAUL: Your Honor, I'm going to

21 object. This isn't relevant. We're here to talk about

22 AM-2201 and the substance that was taken out of 1414

23 Cambridge. We have a lab test that says that it's

24 Schedule I. This officer is here as a factual witness

25 to say, "This is what I seized." It's your

1 determination to make whether or not an illegal
2 substance based upon the evidence that's presented to
3 you and the lab report.

4 THE COURT: I agree. Sustained.

5 Q. (BY MS. PITCHER) All right. Do you believe that
6 there are chemicals out there that are synthetic
7 cannabinoids that may or may not be covered by the
8 statute?

9 MS. NORTH-SHAUL: Your Honor, I'm going to
0 object. That is immaterial.

11 MS. PITCHER: It's not immaterial because it
12 goes to the basis that this officer and other officers
13 garnered to take the product. They had to draw a legal
14 conclusion or believe that something was illegal. They
15 said that they looked in the statute, so I'm testing his
16 basis of knowledge of synthetic cannabinoids, which this
17 product is -- they're stating that it is; and I should
18 be able to test his knowledge of this issue.

19 THE COURT: Ultimately we're dealing with a
20 lab report that labels it as a Schedule I substance.
21 Now, if you're trying to inquire as to their basis in
22 the first instance for seizing it and sending it to the
23 lab, I may have to give you some room.

24 MS. PITCHER: That's what we're inquiring
25 over because they wouldn't have had the report at that

1 THE COURT: Yeah. If you want to ask him
2 about how he understood, what was his basis for making
3 his determination on this substance, you may do so.

4 MS. PITCHER: Okay.

5 Q. (BY MS. PITCHER) Did you know there was AM-2201
6 in that product when you seized it?

7 A. No.

8 Q. Did you have any way of knowing that?

9 A. No.

10 Q. Okay. Did you have any other way of determining
11 at that time that there was any other illicit chemical
12 in that?

13 A. No.

14 Q. Did you have any way of determining that there
15 was any other type of synthetic cannabinoid that could
16 be present?

17 A. No.

18 Q. Are you aware of the amount of counterfeit
19 products there are in this market that we're talking
20 about?

21 MS. NORTH-SHAUL: Objection, Your Honor.
22 It's not relevant.

23 THE COURT: Sustained.

24 MS. PITCHER: The reason that I'm asking him
25 is, it was the basis for taking the same exact product.

1 time. So that's what I want to go back and ask --

2 THE COURT: You can proceed.

3 MS. PITCHER: Okay.

4 Q. (BY MS. PITCHER) So again I want to ask you some
5 questions about synthetic cannabinoids in general. You
6 said that you know there are many, and so I just want to
7 test your basis of knowledge if you've heard of some or
8 not. Have you heard about 4AM?

9 A. No.

10 MS. NORTH-SHAUL: Your Honor, the same
11 objection applies here. It doesn't matter what he knows
12 about all these other things. If she wants to talk to
13 him about why he thought this particular --

14 THE COURT: I agree with that.

15 MS. PITCHER: Okay.

16 THE COURT: So to that extent I sustain the
17 objection.

18 MS. PITCHER: Okay.

19 Q. (BY MS. PITCHER) Do you believe that there are
20 chemicals out there that may or may not be covered under
21 the Idaho statute that would be considered synthetic
22 cannabinoids?

23 MS. NORTH-SHAUL: Your Honor.

24 THE COURT: I don't --

25 MS. NORTH-SHAUL: We are going to object.

1 He compared the labels, and he believed based on that
2 that the products were identical or the same.

3 THE COURT: I sustained the objection.

4 MS. PITCHER: Okay. That's all. Thank you.

5 THE COURT: Ms. Shaull.

6 MS. NORTH-SHAUL: Just briefly.

7 REDIRECT EXAMINATION

8 BY MS. NORTH-SHAUL:

9 Q. Officer Hart, are you being trained by POST that
10 the generic term "spice" is illegal, that it's a
11 controlled substance?

12 A. "Spice" is a generic term, yes.

13 Q. Okay. Have you over the course of the last --
14 the course of your career in law enforcement, have you
15 had opportunity to be trained on generally what spice
16 looks like?

17 A. Yes. I have not been in the specific training
18 because spice is relatively new.

19 Q. Okay. Have you seen it on the street?

20 A. Yes.

21 Q. Okay. Have you seen how it's packaged?

22 A. Yes.

23 Q. Okay. Can you tell the Court what, based upon
24 your experience as a patrol officer, what does spice
25 usually look like?

1 A. It's a green substance. It does appear to be --
2 looks like incense. It looks like marijuana to some
3 people. And on the street these people who have it are
4 telling me it's spice.

5 Q. Okay. Now, you said it does not appear to be
6 incense? Is that what you're saying?

7 A. It's a green leafy substance.

8 Q. Okay. And how is it -- how have you seen it
9 packaged?

10 A. A lot like marijuana a lot of times. It's in
11 plastic baggies, small containers. This case was the
12 first time I've ever seen it manufactured, you know, an
13 assembly line almost of these same specific containers.

14 Q. Okay. Now, on the night of December 17th, 2011,
15 when you were at the Cambridge address, is this the type
16 of substance that you saw, this green leafy substance?

17 A. Yes.

18 Q. In separate packages?

19 A. Yes.

20 Q. Okay. And at that point were you concerned that
21 it was spice?

22 A. Yes.

23 Q. Okay. Is that why you seized it?

24 A. Yes.

25 Q. Okay.

1 Q. Right. If this was marijuana, how would you test
2 it?

3 A. With a NIK test.

4 Q. Why is that important to do?

5 A. What's that?

6 Q. Why is it important to do a NIK test?

7 A. To determine whether it's marijuana or not.

8 Q. And why is that important to do at that time?

9 A. There's -- to have it tested?

10 Q. Yes.

11 A. To prove that it is marijuana.

12 Q. Well, you send it to the lab anyway, don't you,
13 even after -- if you took marijuana you tested, you
14 would still send it to a lab?

15 A. Yes. But they do have NIK tests or street tests
16 that would provide the results of marijuana. They don't
17 have that for spice.

18 Q. Are you sure they don't have it for spice?

19 A. As far as I know.

20 Q. Okay.

21 A. They do not have that for spice.

22 Q. But why is field-testing important?

23 A. To just corroborate what you are finding out on
24 the street.

25 MS. PITCHER: That's all the questions I

1 MS. NORTH-SHAUL: Nothing further, Your

2 Honor.

3 THE COURT: You may inquire.

4 **RE-CROSS-EXAMINATION**

5 **BY MS. PITCHER:**

6 Q. You just spoke that you -- when you see this
7 spice, that it's packaged similar to how you see
8 marijuana packaged; is that correct?

9 A. Yes.

10 Q. Have you ever seen a marijuana package that had a
11 brand name on it?

12 A. No. I said that it's usually packaged in the
13 similar -- out on the street what I've found is similar
14 like marijuana, in plastic baggies, small containers and
15 stuff. This was the first time I actually had like a
16 manufacturer or assembly line with the labels, with the
17 same similar containers and things like that.

18 Q. You said the word "spice" is kind of a generic
19 term, but you've also testified that you understand that
20 spice is an inert green material that is sprayed with a
21 synthetic chemical.

22 A. Yes.

23 Q. So to look at it, you would not be able to tell
24 if it was treated or untreated product; is that correct?

25 A. I would have to have it tested.

1 have.

2 THE COURT: All right. Thank you. You may
3 step down.

4 MS. NORTH-SHAUL: The State calls Sergeant
5 Galbreath,

6 (Witness sworn)

7 THE COURT: You may be seated.

8 MS. NORTH-SHAUL: Thank you, Your Honor.

9 **JEREMY MATTHEW GALBREATH,**

10 **having been first duly sworn, testified as follows:**

11 **DIRECT EXAMINATION**

12 **BY MS. NORTH-SHAUL:**

13 Q. Sergeant Galbreath, could you please state your
14 full name for the record?

15 A. Jeremy Matthew Galbreath.

16 Q. And how are you employed?

17 A. With the City of Idaho Falls as a police officer.

18 Q. How long have you been in law enforcement?

19 A. 13-1/2 years.

20 Q. Has all of that been with the City of Idaho
21 Falls?

22 A. Yes.

23 Q. And are you a POST-certified officer?

24 A. I am.

25 Q. And what level of certification do you hold?

1 A. I have an advanced certificate and a supervisor's
2 certificate.

3 Q. Okay. Do you know when you obtained your
4 advanced certificate?

5 A. My sixth year in.

6 Q. How about your supervisor's certificate?

7 A. About three years ago. About two years ago.

8 Q. All right. So, now, you are a sergeant; is that
9 correct?

0 A. Yes.

11 Q. Patrol sergeant? What are your duties?

2 A. I supervise the weekend night shift, the patrol.

3 Q. Okay. And I would like to call your attention to
14 December 17 of 2011. Do you recall, were you on-shift
5 on that date?

6 A. I was working that date.

7 Q. Do you know what shift you were working?

8 A. I was working the night shift.

9 Q. Okay. Were you called out to assist Officer Hart
20 on a complaint of a robbery?

1 A. Yes.

22 Q. Okay. And did you respond to his location?

23 A. I responded to where the reporting party was at,
4 14 --

25 Q. Where was that?

1 Q. Okay. Why was he contacting you?

2 A. He was inside the business and had come out.

3 Q. Did he speak with you with Mr. Beasterfield?

4 A. Yes.

5 Q. Okay. And after you spoke with those two
6 individuals, what happened?

7 A. I asked if I could see the product that they were
8 selling.

9 Q. Did they allow you to?

10 A. Yes.

11 Q. What were you shown?

2 A. I was shown separately packaged plastic jars
13 containing green leafy substance.

14 Q. Okay. And what were you concerned about?

5 A. I suspected that it was spice.

16 Q. Why is that?

7 A. Just based on the appearance of the substance and
8 the suspiciousness of what it was that was going on.

19 Q. Okay. So you said late hours. What else?

0 A. Late hours, there were security cameras up around
11 the business, Brandon McGuffey head of security, and
22 then just the general appearance of the substance.

13 Q. Okay. So did you at that point -- were you
24 concerned that there was a controlled substance at the
25 premises of 1414 Cambridge?

1 A. 1414 Cambridge.

2 Q. Here in Idaho Falls?

3 A. Yes.

4 Q. Okay. And do you recall who you talked to?

5 A. I spoke with a male named Jeremiah Beasterfield.

6 Q. And did you take a complaint or you or Officer
7 Hart take a complaint regarding an alleged robbery?

8 A. An attempted robbery, yes.

9 Q. Okay. An attempted robbery. Sorry. And while
10 you were there working on that complaint, did something
11 catch your attention that caused you concern?

12 A. Yes.

13 Q. What was that?

14 A. I -- after speaking with Mr. Beasterfield, I was
15 under the impression that people were delivering spice.

16 Q. You were under the impression; is that what you
17 said?

18 A. Yes.

19 Q. Okay. And why is that?

20 A. The late hours of the delivery. It was after
21 midnight. They had security cameras up around the
22 business. I was later contacted by a male identifying
23 himself as the head of security.

24 Q. Do you recall who that was?

25 A. Brandon McGuffey.

1 A. Yes.

2 Q. Okay. And what did you do?

3 A. We seized it.

4 Q. Okay. Did you speak with the owner of this
5 business?

6 A. I spoke to the owner by phone.

7 Q. Okay. Do you recall what the business was
8 calling itself?

9 A. Incense Delivery.

10 Q. Okay. And who did you speak with on the phone?

11 A. Bryce Mendel.

12 Q. Okay. And why were you talking with him?

13 A. He was concerned about the amount of money he had
14 tied up into the inventory and wanted to know when he'd
15 be getting it back.

16 Q. Okay. So you advised him you were taking it.
17 Did you advise -- explain to him why you were seizing
18 it?

19 A. Yes.

20 Q. What did you tell him?

21 A. I told him that I suspected it was spice.

22 Q. What did he respond, if anything, to that?

23 A. I don't remember.

24 Q. Okay. So do you -- and was that -- the items
25 that you took on the -- on December 17th, was that

1 turned over to Officer Hart?
 2 A Yes.
 3 Q. And then that was sent off for testing, correct?
 4 A Yes.
 5 Q. Okay. So now let's move forward to -- well,
 6 after that, did you do any kind of investigation as to
 7 what Incense Delivery, what kind of business that was?
 8 After December 17th.
 9 A. We responded to a couple more calls in that
 10 general area.
 11 Q. Calls of what?
 12 A. We responded -- I misspoke. We didn't respond to
 13 any calls at the business.
 14 Q. Okay. You responded to more calls for what?
 15 A. We responded to calls from the apartment complex
 16 where Mr. Mendel lives, and that's two doors down from
 17 the business.
 18 Q. Okay. Did you do any investigation as to what
 19 Incense Delivery, what type of business that was?
 20 A. Not until January.
 21 Q. Okay.
 22 A. Not until we got the lab results back.
 23 Q. All right. So after you got the lab results
 24 back, did you do any investigation to try to determine
 25 what this business was for or how to contact it?

1 Q. Okay. What time of night was this that this was
 2 set up?
 3 A. Around 11:00 p.m.
 4 Q. Okay. So did -- now, you heard Officer Hart
 5 testify. Was that area staged by law enforcement?
 6 A. Yes.
 7 Q. Were you there?
 8 A. Yes.
 9 Q. And did you see what happened?
 10 A. Yes.
 11 Q. What happened?
 12 A. I was advised over the radio by Officer Steel
 13 that a red Ford Focus had left the business.
 14 Q. Was Officer Steel over at the Cambridge location?
 15 A. Yes.
 16 Q. Okay.
 17 A. A few minutes after that, a red Ford Focus pulled
 18 into the parking lot next to my vehicle.
 19 Q. Were you in an unmarked car?
 20 A. Yes.
 21 Q. Had you given your description of your vehicle?
 22 A. Yes.
 23 Q. Okay. And so the red Focus pulled up next to
 24 you. What happened?
 25 A. The driver had called me before and told me that

1 A. Yes. Officer Steel and I found it located on
 2 Facebook.
 3 Q. Tell me about that.
 4 A. It had a -- it had the name of the business,
 5 contact information.
 6 Q. So what did you do once you had that information?
 7 A. I called the -- I called the number and asked if
 8 I could buy some Deja Vu or crush.
 9 Q. And?
 10 A. I was told that they no longer -- they were out
 11 of stock of crush but I could purchase Deja Vu.
 12 Q. So did you order any?
 13 A. I did. I asked for a large jar of it.
 14 Q. How much was it to be sold for?
 15 A. \$50.
 16 Q. Okay. And did you make arrangements to meet with
 17 someone?
 18 A. Yes.
 19 Q. Who was that?
 20 A. I don't know if I ever got his name. It was a
 21 delivery person from the business.
 22 Q. Where were you going to meet this person?
 23 A. In the parking lot in front of Alberto's and
 24 Subway. It's in the 400 block of John Adams -- or, I'm
 25 sorry, the 400 block of Woodruff.

1 he would call me as soon as he got there. The red Ford
 2 Focus pulled up, and my phone started ringing. I looked
 3 over and saw that the male was on the phone.
 4 Q. And did you recognize the phone number?
 5 A. Yes. It was the same phone number that had --
 6 that I'd been in contact with earlier that night.
 7 Q. Okay.
 8 A. With the delivery guy.
 9 Q. Okay. And so what did you do?
 10 A. I advised over the radio that this was the
 11 vehicle, and marked patrol units moved in at that time.
 12 Q. Okay. Did you assist in searching that vehicle?
 13 A. No.
 14 Q. Did you see what was taken -- what, if anything,
 15 was taken out?
 16 A. Yes.
 17 Q. Okay. After the vehicle was searched, what did
 18 you do?
 19 A. I -- myself and other officers went to the
 20 business location and froze it so that we could get a
 21 search warrant.
 22 Q. Okay. So I asked you if you saw what was taken
 23 out of the vehicle. What did you see?
 24 A. There was a backpack that had spice in it.
 25 Q. When you say "spice," what do you mean?

- 1 A. Deja Vu, a plastic jar marked "Deja Vu."
- 2 Q. Okay. And how much, do you know?
- 3 A. I don't. It -- the jar was about that big.
- 4 Q. So one large bottle. Did you see any others?
- 5 A. Yes, there were others.
- 6 Q. Multiple bottles?
- 7 A. Yes.
- 8 Q. Okay. Did they look familiar?
- 9 A. Yeah. Yes.
- 0 Q. How did they look familiar?
- 11 A. They were the same type of bottles that we seized
2 in December.
- 3 Q. Did they have similar labeling?
- 14 A. Yes.
- 5 Q. Okay. So you went back to 1414 Cambridge and you
6 froze the scene?
- 17 A. Yes.
- 8 Q. And then did you obtain a search warrant?
- 19 A. Yes, I did.
- 20 Q. Did you assist in executing the search warrant?
- 1 A. Yes, I did.
- 22 Q. How did -- what did you do?
- 23 A. I helped round up the seized items and load them
4 up into the truck.
- 25 Q. What were you searching to seize?

- 1 packaged in the jars and labeled.
- 2 Q. Do you have an estimate as to how many of those?
- 3 A. I -- we took a cabinet that stood about this
4 high. It was a Rubbermaid, Tupperware thing; and the
5 drawers were full of these jars.
- 6 Q. Okay. You gestured about 3 feet tall, 2-1/2 feet
7 tall?
- 8 A. Yes, ma'am.
- 9 Q. Okay. And that was -- and about how wide?
- 10 A. Another 2 feet.
- 11 Q. Okay. All right. So did you speak with anyone
2 on scene, any of the people that were there other than
13 law enforcement?
- 14 A. No.
- 5 Q. Okay. Did you ever speak with Mr. Mendel there?
- 16 A. Yes, I spoke to -- I spoke to Mr. Mendel just --
7 I showed him the search warrant and told him the process
8 as to what we were going to be doing. I did ask for his
19 help in unlocking some doors so we didn't have to knock
0 them down, and he cooperated.
- 1 Q. Okay. And do you see Mr. Mendel here today?
- 22 A. Yes.
- 3 Q. Where is he seated?
- 24 A. He's seated at the Defendant's table in a black
25 suit.

- 1 A. Evidence of the delivery of a controlled
2 substance, things like journals, ledgers, financial
3 paperwork, cash, contraband, spice.
- 4 Q. Okay. So you searched for controlled substances?
- 5 A. Yes.
- 6 Q. And did you search -- you said you searched for
7 the records, business records?
- 8 A. Yes.
- 9 Q. Okay. Were those types of items seized?
- 10 A. Yes.
- 11 Q. Do you know how much suspected spice or suspected
12 product containing a controlled substance was taken out
13 of that location?
- 14 A. I don't know an exact count, but a lot.
- 15 Q. Can you give an estimate as to weight?
- 16 A. In the downstairs part there were boxes that were
17 marked 22 pounds each, and I believe we took five pounds
18 of those.
- 19 Q. Okay.
- 20 A. Or, I'm sorry, five boxes of those.
- 21 Q. Okay. So five boxes each marked 22 pounds?
- 22 A. Yes.
- 23 Q. All right. And what else, if anything, did you
24 take out of there?
- 25 A. We took bottles of spice that was already

- 1 Q. Okay. So he unlocked doors for you. Anything
2 else?
- 3 A. No.
- 4 Q. Okay. Did he make any statements to you?
- 5 A. No.
- 6 Q. Anything else that happened that night that I
7 haven't asked you about?
- 8 A. Not that I can think of.
- 9 Q. Okay. Now, I want to ask you just a little bit
10 about -- we talked a little bit about why you were
11 concerned that this was spice. How long have you been
12 in Patrol?
- 13 A. Well, I did five years when I was a new rookie
14 police officer; and then I've been back in another
15 three.
- 16 Q. Okay. In the last three years have you had
17 occasion to see suspected controlled substance commonly
18 called spice?
- 19 A. Yes.
- 20 Q. Okay. Have you had a lot of occasions to see
21 that?
- 22 A. Yes.
- 23 Q. Okay. Are you pretty familiar, then, with what
24 it looks like?
- 25 A. Yes.

1 Q. Okay. And from -- pretty fan with how it's
 2 packaged when you see it out on the street?
 3 A. Yes.
 4 Q. Okay. Now, how did this -- the substance that
 5 you saw at 1414 Cambridge, how did that compare with
 6 what you've been seeing out on the street?
 7 A. It looked like spice.
 8 Q. Okay. Was it packaged a little more -- in a
 9 little more sophisticated manner than usual?
 10 A. I've seen spice packaged in plastic bags,
 11 cigarette -- the Cellophane off of cigarettes. I've
 12 seen it packaged in jars. Up till that day I had never
 13 seen it packaged in such a big jar.
 14 Q. Okay. How much were you going to purchase the
 15 spice for?
 16 A. \$50.
 17 Q. Okay. What time was the search warrant executed?
 18 A. I don't know. I don't remember. I want to say
 19 it was well after midnight, probably closer to 1:00 in
 20 the morning.
 1 Q. And do you know where Mr. Mendel lives?
 2 A. Yes.
 3 Q. How do you know that?
 4 A. Just from going over to that house for other
 25 calls.

1 Q. So you don't know what chemicals could comprise
 2 or not comprise spice?
 3 A. I just know what the lab report says.
 4 Q. So when you see spice, when you think you see
 5 spice, you testified that you see a green leafy
 6 substance?
 7 A. Yes.
 8 Q. Is it your understanding that the green leafy
 9 substance is what's illegal?
 10 A. No. There's a chemical that is inside of it that
 11 makes it illegal.
 12 Q. So is it your understanding that the green leafy
 13 substance is inert, that it's not what the illegal part
 14 of it is?
 15 A. I don't know what you're getting at.
 16 Q. I'm asking you if the green leafy substance in
 17 and of itself is illegal or contains illegal material
 18 naturally.
 19 A. What green leafy substance are we talking about?
 20 Q. The green leafy substance you've been talking
 21 about.
 22 A. That's spice. That's illegal.
 23 Q. So your testimony is, the green leafy substance
 24 organically is illegal, that -- just itself?
 25 A. No. There's a chemical in it.

1 Q. Where does he live?
 2 A. 1440 Cambridge.
 3 Q. Okay. So just down the street from the location
 4 where the --
 5 A. Two doors down, yes.
 6 Q. Where Incense Delivery was operating?
 7 A. Yes.
 8 Q. Okay.
 9 MS. NORTH-SHAUL: Nothing further for this
 10 witness.
 11 THE COURT: You may inquire.
 12 CROSS-EXAMINATION
 13 BY MS. PITCHER:
 14 Q. Officer, you testified about your basic knowledge
 15 of spice and that you've seen this term generally. Can
 16 you tell me your understanding of what spice is?
 17 A. It's an illegal drug that's green and leafy.
 18 Q. So what -- you understand there's more than one
 19 chemical that's --
 20 A. I don't.
 21 Q. Have you sent reports off? When you've seized
 22 spice in other cases, you've sent reports off?
 23 A. I haven't, no.
 24 Q. You haven't?
 25 A. No.

1 Q. Okay. So take off the chemical. Is the green
 2 leafy substance itself illegal?
 3 A. No.
 4 Q. Okay. That's what I was trying to ask you. So
 5 when you see the spice, you're viewing it by what?
 6 You've said it was a --
 7 A. Sight.
 8 Q. Okay. So what -- the part that you're viewing is
 9 the part that wouldn't contain any illegal chemical?
 10 A. I don't have any idea whether it's been treated
 11 with the chemical or not.
 12 Q. That's correct. You don't have any way of
 13 knowing, do you?
 14 A. That's what I just said.
 15 Q. So the way of identifying it would be by the
 16 inert plant material that is not illegal?
 17 A. The way to identify it would be to send it to the
 18 lab.
 19 Q. Okay. And that would be the way to identify the
 20 chemical that's on it?
 21 A. Yes.
 22 Q. Are you aware of how many different chemicals
 23 there are that could be applied to this inert green
 24 material?
 25 A. No.

1 Q. Okay. Your other officer, Officer Hart,
2 testified earlier that you and him had looked at a
3 statute and had looked through and determined where
4 AM-2201 was in the statute; is that correct?

5 A. Yes.

6 Q. Can I show you a part of the statute that
7 contains the cannabinoid sections? Can you tell me
8 where in that statute you determined that AM-2201 would
9 fall?

10 A. The one that's marked (a).

11 Q. Okay. And what is it about that section of the
12 statute that made you believe that AM-2201 was the
13 chemical thus described in (a)?

14 A. That was the reference on the lab report.

15 Q. So when you seized the product, because the other
16 officer testified that on December 17th, that you and he
17 had looked through the statute and determined that
18 AM-2201 would fit into this; is that not correct?

19 A. I didn't look at the statute until the 28th of
20 January.

21 Q. So what did you glean from the statute?

22 MS. NORTH-SHAUL: Your Honor, what matters
23 is what the lab test says. There's a difference between
24 what the lab test says and a legal conclusion based on
25 asking this officer what his probable cause was. If she

1 Q. What did you look at in the statute that said
2 that AM-2201 was illegal?

3 THE COURT: Okay, let's save some time here.

4 MS. PITCHER: Okay.

5 THE COURT: The statute in question here as
6 charged contains chemical formulas. The lab report
7 labeled -- what was it, AM?

8 MS. NORTH-SHAUL: AM-2201.

9 THE COURT: 2201. So --

10 Q. (BY MS. PITCHER) Okay. So if I -- just so I can
11 understand, so what you're saying is, you just matched
12 this number to this just to make sure it was there, not
13 the chemical?

14 A. That's correct.

15 Q. Okay. That's what I was looking for. Thank you.
16 Have you seen AM-2201 on any bulletins or anything that
17 you've received as an officer?

18 A. No.

19 Q. You expressed some concern about the amount of
20 security at the building. Does the amount of security
21 indicate to you whether the goods that were -- that are
22 being secured would be legal or illegal?

23 A. I found it suspicious.

24 Q. Okay. Is it suspicious if somebody's been robbed
25 two times, that they might increase their security?

1 wants to inquire -- look like spice like he's seen
2 on the street based on the factors that were happening
3 surrounding these robberies, those are probable cause
4 issues.

5 THE COURT: Well, I believe that she's
6 responding to the prior officer's testimony that they
7 looked at the statute to -- but there's other testimony
8 here. It was -- so anything that they may or may not
9 have done with the statute is not going to be conclusive
10 for probable cause.

11 MS. PITCHER: Sure. I understand. I just
12 want to ask him.

13 Q. (BY MS. PITCHER) If it said on the lab report
14 that it was a Schedule I, why were you looking at the
15 statute? What were you hoping to glean by looking at
16 the statute?

17 A. To find out whether the substance was illegal or
18 not.

19 Q. Okay. So what did you find out from looking at
20 the statute that you did not glean from looking at the
21 lab report?

22 A. That the substance was illegal.

23 Q. Okay. And where do you see that in the statute?

24 A. It's the same statute that says marijuana,
25 Mescaline, Peyote. It's the same statute.

1 A. No.

2 MS. PITCHER: That's all the questions I
3 have.

4 THE COURT: Anything else?

5 MS. NORTH-SHAUL: No, Your Honor.

6 THE COURT: You may step down.

7 MS. NORTH-SHAUL: Sorry, Your Honor. He's
8 in the hall. Your Honor, the State calls Officer Ryan
9 Nelson.

10 (Witness sworn)

11 THE COURT: You may begin.

12 MS. NORTH-SHAUL: Thank you, Your Honor.

13 **RYAN M. NELSON,**
14 **having been first duly sworn, testified as follows:**

15 **DIRECT EXAMINATION**

16 **BY MS. NORTH-SHAUL:**

17 Q. Officer Nelson, could you please state your full
18 name for the record?

19 A. It's Ryan M. Nelson, N-e-l-s-o-n.

20 Q. And how are you employed?

21 A. I am a Senior Patrol Officer with the Idaho Falls
22 Police Department.

23 Q. And how long have you been in law enforcement?

24 A. I've been in law enforcement for about 11 years,
25 9-1/2 years as a sworn patrol officer.

1 Q. Okay. So the other year and a half, was that --
2 what was that?

3 A. I was a cadet. I was a cadet with the Idaho
4 Falls Police Department.

5 Q. Okay. So you said you're a Senior Patrol
6 Officer. Are you POST-certified?

7 A. I am.

8 Q. And when did you obtain your certification?

9 A. In 2003.

10 Q. What level do you hold?

11 A. Intermediate certification.

12 Q. And what are your current duties, then, for the
13 City of Idaho Falls?

14 A. Just general patrol duties. Respond to calls for
15 service, self-initiate law enforcement activity. You
16 name it. Just the general run-of-the-mill cop work.

17 Q. Okay. Can you tell me, were you on duty on
18 January 28th of 2012?

19 A. I was.

20 Q. And spilling over into the early morning hours of
21 two thousand -- or of January 29th?

22 A. Correct.

23 Q. Okay. Were you assisting in execution of a
24 search warrant at 1414 Cambridge in Idaho Falls?

25 A. I was.

1 Q. Okay. And did Mr. Mendel understand -- or did
2 you ask him if he understood his rights?

3 A. I did. And he said he did understand.

4 Q. Was he willing to talk to you after you read him
5 his Miranda rights?

6 A. He was.

7 Q. Okay. So what did you talk to him about?

8 A. Mainly just his participation in this location,
9 the company that he said that he was the only officer of
10 the corporation.

11 Q. Okay. What was the name of the business?

12 A. Incense Delivery, Incorporated.

13 Q. Okay. And did you ask him who the owner was?

14 A. I did.

15 Q. And who did he say the owner was?

16 A. Well, he said it was a corporation.

17 I said, "Well, you know, how are you related
18 to that?"

19 And he says, "Well, I'm an officer in the
20 corporation."

21 I said, "Are there any other officers in the
22 corporation?"

23 "No."

24 So I took him to be the owner of the --

25 Q. Okay. So did he say what his position was?

1 Q. Okay. And did you interview people that were on
2 scene, people other than law enforcement obviously, but
3 people that were on scene at that location?

4 A. I did.

5 Q. Okay. Okay. All right. Officer Nelson, do you
6 recall speaking with an individual by the name of Bryce
7 Mendel?

8 A. I did. I interviewed Mr. Mendel.

9 Q. Okay. And do you see him here today?

10 A. Yes. He's seated at the Defendant's table right
11 there.

12 Q. All right. And when you interviewed him, did you
13 obtain his identification?

14 A. I did.

15 Q. Do you recall how you identified him?

16 A. Yeah. I brought Mr. Mendel, as well as all the
17 other subjects I interviewed, into my car so they could
18 be recorded by the dashcam and the internal cabin
19 camera; and I ran every single one of them on my
20 computer in front of me so that I could see their
21 photograph and identification that way.

22 Q. Okay. And you did that with Mr. Mendel too?

23 A. Uh-huh.

24 Q. All right. Did you read him his Miranda rights?

25 A. I did.

1 A. He was the president.

2 Q. President.

3 A. Uh-huh.

4 Q. Okay. Did you ask him what the purpose of this
5 business was?

6 A. Yeah. He said that they -- well, basically yes
7 and just advised that they were delivering incense. It
8 was an incense delivery business.

9 Q. Okay. Did he tell you what the incense
10 contained?

11 A. No. We didn't get into specifics. I just had
12 asked him about the substance that had came back on
13 the --

14 Q. Did you ask him if the incense his business sold
15 contained AM-2201?

16 A. Yeah. He had said that it contained 2201.

17 Q. Okay.

18 A. And he said that he searched and wasn't aware it
19 was a controlled substance.

20 Q. Okay. Did he tell you what the purpose of this
21 incense was? What was this incense for?

22 A. He says it was a meditative incense.

23 Q. Okay.

24 A. That people burnt it and it created like a
25 meditative -- he said meditative incense but that it

1 wasn't for human consumption and that you consumed
2 it, that, you know, it would mess you up.

3 **Q. Did he say what would happen if you smoked it?**

4 A. Yeah. He mentioned something about it would
5 just -- it was bad, it was bad to smoke it, and it would
6 mess you up.

7 **Q. Okay. Did he tell you how many employees he had?**

8 A. We went through those. It was -- there was
9 actually an employee list that we were going off of in
0 addition to the ones that we were interviewing, and he
11 said more than 20. I remember it was more than 20.

2 **Q. Did you write a report in conjunction with this?**

3 A. I did.

4 **Q. Okay. Do you have a copy of it up there with
5 you?**

6 A. No. You have my copy.

7 **Q. All right. So if you were to review your
8 report -- well, let me just -- let me see if we need to
9 go that route. You said there were more than 20?**

20 A. Uh-huh.

1 **Q. 20 employees; is that correct?**

22 A. Yeah.

23 **Q. Do you recall how much -- did you ever ask him
4 how much money Mr. Mendel makes selling this meditative
25 incense?**

1 A. Yes.

2 **Q. Okay. But you were there that night; is that
3 correct?**

4 A. I was.

5 **Q. Did you find anyone smoking any of this
6 substance? Did you see anyone smoking any of this
7 substance at the location?**

8 A. I didn't personally observe anyone smoking the
9 substance, no.

10 **Q. Okay.**

11 A. I kind of showed up after the fact. I had
2 transported the male earlier that we'd dealt with.

13 **Q. Did you ask -- now, you said Mr. Mendel said he
14 believed that AM-2201 was not a controlled substance; is
5 that correct?**

16 A. That's correct.

7 **Q. Okay. Did he indicate how the product got on
8 his -- well, what was the product that you said he was
9 getting? Do you recall what it was? Did you discuss
0 with him what that was?**

1 A. Well, we -- I mean, we called it spice and that's
22 what -- the reason we were there; but, you know, they
3 refer to it as incense. Spice is actually just a name
4 brand that was given to it. It's kind of been
25 generalized, I guess, or genericized, turned into a

1 A. I did.

2 **Q. Do you recall --**

3 A. He said --

4 **Q. -- what he told you?**

5 A. He said it's about three or four thousand a day.

6 **Q. Okay. Did you ask him if -- did you ask him how
7 he gets his product?**

8 A. Yeah. He advised that he purchases a lot of it
9 from the internet. There was a few things. Like there
10 was a lot of product there that there was -- they'd
11 mixed it up themselves there. He advised me that some
12 of the stuff he purchased off of buzzwholesale.com,
13 which I'm like, well, I had my computer there, so I
14 pulled it up while we were right there; and, of course,
15 it came back that it wasn't an active website.

16 And then I asked him further about that. He
17 advised that there was someone that was delivering it,
18 some of the product, to them. Said it wasn't like a,
19 you know, like a Fed Ex or UPS. Like it wasn't a
20 commercial carrier. It was, rather, someone that was
21 just -- and he mentioned a name and -- a first name and
22 not much more details. He was kind of very vague on
23 where exactly the product came from.

24 **Q. Okay. Now, he indicated to you, though, this was
25 not for human consumption; is that correct?**

1 generic term used as spice. But it's just about the
2 different chemical compounds that's in it. You know,
3 it's a synthetic Cannabis and -- synthetic cannabinoids.
4 And I guess this 2201 was one of the ones that they've
5 had issues with. And I was rather premised at the --
6 saw the lab report that said it was a Schedule I
7 controlled substance, and that's the premise that we
8 served the warrant under.

9 **Q. Okay. So back to my question. What was the
10 product that he had? Do you recall what specifically
11 you were talking to him about?**

12 A. Oh. Deja Vu. He, I guess, has coined his own
13 name brand term and called it Deja Vu. And then there
14 was another product. I'd have to re -- I'd have to use
15 the report to refresh my memory, but --

16 **Q. Would that be crush?**

17 A. Crush, yes.

18 **Q. Okay.**

19 A. Crush. Crush and Deja Vu. I guess crush was the
20 cheaper of the two and Deja Vu had flavors added to it
21 and different things like this. Basically it was like
22 this green -- the green substance with all these
23 different chemicals in it, and they add some flavorings.

24 **Q. Okay. So the green substance, is that a plant
25 material?**

1 A. Yeah, the herbal -- yeah, herbal materials, yeah.
 2 Q. Some sort of plant material?
 3 A. Uh-huh.
 4 Q. Okay. And then how did the AM -- do you know --
 5 did you talk to Mr. Mendel about how the AM-2201 got on
 6 the product?
 7 A. No.
 8 Q. Okay. Did he ever tell you that they made it
 9 them -- that they put together the product themselves?
 10 A. No.
 11 Q. Okay. But he indicated that AM-2201 was on his
 12 product?
 13 A. Yes.
 14 Q. Okay. Do you know how the labels got on his
 15 product?
 16 A. I just -- they labeled it. They've done -- they
 17 did everything there.
 18 Q. Did you see the --
 19 A. I saw all the -- yeah, I saw all the materials
 20 that they were using.
 21 Q. Okay. So you saw the plant material?
 22 A. Uh-huh.
 23 Q. Did you see the packaging material?
 24 A. Yes.
 25 Q. Did you see the labels?

1 A. Yes, there were some -- there was a couple of
 2 people that advised that because of the stickers, that
 3 they thought that that meant it was legal.
 4 Q. But that was a few of the people you
 5 interviewed's belief?
 6 A. Yeah, based off the statements that Mr. Mendel
 7 was advising them.
 8 Q. Okay.
 9 MS. PITCHER: That's all the questions I
 10 have.
 11 **REDIRECT EXAMINATION**
 12 **BY MS. NORTH-SHAUL:**
 13 Q. Officer Nelson, you said the -- that the labels
 14 were being made there?
 15 A. They were there. I didn't know if they were
 16 being printed. I didn't see how they were being made,
 17 but I --
 18 Q. Did it say "Incense Delivery" on the label?
 19 A. Just their name. Just the company.
 20 Q. And then it said "Deja Vu" or "Crush"?
 21 A. Yeah. "Not For Human Consumption," et cetera.
 22 Q. Okay. So you don't know who made the distinction
 23 that it conformed to state and federal law, correct?
 24 A. Mr. Mendel advised that he had looked on the
 25 internet. That's how he had determined that the

1 A. Yes.
 2 Q. Okay. And Mr. Mendel indicated to you, he was
 3 making three to four thousand dollars a night in sales?
 4 A. Yes. On their busier nights, yeah.
 5 Q. Okay. And sales of the Deja Vu and crush?
 6 A. Correct. Sales of the products, yeah.
 7 Q. All right. Okay.
 8 MS. NORTH-SHAUL: I have nothing further,
 9 Your Honor.
 10 THE COURT: All right. Defense may inquire.
 11 **CROSS-EXAMINATION**
 12 **BY MS. PITCHER:**
 13 Q. That evening that we've been talking about, you
 14 interviewed a bulk of people that worked for Mr. Mendel?
 15 A. That is correct.
 16 Q. Did you hear from more than one person that they
 17 had believed what they were doing was legal?
 18 A. Yes. They said -- advised that Mr. Mendel
 19 advised that all the substances there were legal.
 20 Q. Okay. Did you talk to a man named Alan Hales?
 21 A. Alan Hales, the name sounds familiar, yeah.
 22 Q. Well, I'll just say, did he say something to the
 23 effect that he believed it was legal because there were
 24 stickers on it that said it conformed to federal and
 25 state laws?

1 substances were legal.
 2 Q. Mr. Mendel made that determination?
 3 A. Yes, he did.
 4 Q. Okay. Okay.
 5 MS. NORTH-SHAUL: Nothing further, Your
 6 Honor.
 7 THE COURT: Anything else?
 8 (No audible response)
 9 THE COURT: You may step down.
 10 Any other witnesses?
 11 MS. NORTH-SHAUL: Yes, Your Honor. Your
 12 Honor, the State calls Kelly Nelson.
 13 (Witness sworn)
 14 THE COURT: You may be seated.
 15 MS. NORTH-SHAUL: Thank you, Your Honor.
 16 **KELLY MARK NELSON,**
 17 **having been first duly sworn, testified as follows:**
 18 **DIRECT EXAMINATION**
 19 **BY MS. NORTH-SHAUL:**
 20 Q. Mr. Nelson, could you please state your full name
 21 for the record?
 22 A. Kelly Mark Nelson.
 23 Q. And can you spell your last name?
 24 A. N-e-l-s-o-n.
 25 Q. Thank you. And first name?

1 A. Kelly, K-e-l-l-y.
 2 Q. Okay. Can I call you "Kelly"?
 3 A. Yes, ma'am.
 4 Q. All right. Thank you. All right, Kelly. Were
 5 you employed by a company known as Incense Delivery?
 6 A. Yes, ma'am.
 7 Q. Do you know when you were employed?
 8 A. The 25th of December of 2012.
 9 Q. Okay. How long did you work there?
 10 THE COURT: You said 2012?
 11 THE WITNESS: Yes. Wait. No.
 12 Q. (BY MS. NORTH-SHAUL) You mean two thousand and --
 13 A. January. Sorry. January 25th. January 25th,
 14 I'm sorry, 2012.
 15 Q. Okay.
 16 A. And I was employed until the 28th. So three
 17 days.
 18 Q. Okay.
 19 A. Not quite three full days.
 20 Q. Okay. What was the purpose -- what was your
 21 position there?
 22 A. I was a delivery driver. I would pick up product
 23 and take it to individuals or business areas. And
 24 basically I drove to and from. And that was my job
 25 title, to be responsible for any product I had and any

1 Q. Did other drivers have people ride with them?
 2 A. Every so often. Like we were allowed to have
 3 friends along with us if we wanted as long as we
 4 followed the same safety procedures and things of that
 5 sort.
 6 Q. Okay. And how much -- when you made a delivery,
 7 let's say you were selling a small bottle of Deja Vu or
 8 crush. What was the price?
 9 A. \$15 for a small. And then I don't know if there
 10 were deviations between types. I hadn't been there long
 11 enough to really know. I just know usually 15 for a
 12 small and 50 for a large.
 13 Q. You said 50 for a large?
 14 A. Yeah. Or some of them were 40 and some were 50.
 15 I don't know if there was a 45 range. I don't know what
 16 the medians are. And then there was -- I think crush
 17 was like more expensive, like \$20 for a small one; but
 18 I'm not sure.
 19 Q. Okay. When you -- who hired you?
 20 A. I got called by their hiring manager, and his
 21 name is Dillon. And I interviewed with him and then
 22 started training that day. And as far as I knew, I was
 23 just hired by -- well, I filled out my W-2 with him --
 24 or W-4 with him; and he took all my information. We
 25 went -- who -- what's his name? As far as I know -- I

1 money I had and make sure that it was all accounted for.
 2 It would get released to me, I would sign for it, I
 3 would have a dispatcher who would tell me where I needed
 4 to go, and I would just drive there and call whoever had
 5 the delivery, and I would give it to them and take their
 6 money for it.
 7 Q. So a dispatcher gave you the location you were to
 8 go to?
 9 A. Yes, ma'am.
 10 Q. Okay. What was the protocol for delivering once
 11 you got there?
 12 A. We were told to not lower the windows, don't ever
 13 unlock or get out of the vehicle, and to make sure --
 14 Q. Why?
 15 A. Because just the fact that we didn't have any
 16 security going out with us or anything like that and
 17 sometimes we'd be going into areas that were more
 18 dangerous than other parts of the city and we'd had
 19 other drivers been even pulled out of cars as far as I
 20 understood or threatened at gunpoint. So they were
 21 beefing up on security so that people wouldn't get hurt
 22 on the job.
 23 Q. Okay. So did you have anybody driving with you
 24 as security?
 25 A. No.

1 cannot -- I'm sorry. I cannot remember the assistant
 2 manager's name to save my life. I knew I was working
 3 for Bryce because Bryce was the owner. But as far as
 4 that, I knew my assistant managers, dispatch manager,
 5 but I don't know that I actually would have said who I
 6 was working for. Do you mean a physical person or do
 7 you mean -- what -- it's like if I were to get a job at
 8 any other place, I would know directly who my supervisor
 9 was. Is that what you're asking me? I'm sorry. I
 10 don't understand the question.
 11 Q. I don't remember what the question was.
 12 A. Oh.
 13 Q. That's okay.
 14 A. Sorry.
 15 Q. All right. So, now, let me ask you this: Did
 16 you talk with Mr. Mendel about rules as a driver? You
 17 told me a little bit about don't lower your window,
 18 don't unlock your door. What other rules were part of
 19 the company?
 20 A. No using of any alcohol or any other substances
 21 that can impair your ability to drive. If you have less
 22 money or less product when you get back to home base,
 23 then you are responsible for that money or that product,
 24 which I, you know, never had happen to me personally.
 25 Q. Were you ever advised not to smoke the product?

1 A. They never said not to smoke while we were
2 delivering or anything like that. It was never -- if
3 you mean were we told not to use it while we were at
4 work?

5 Q. Yeah. Were you told not to use it while you were
6 at work?

7 A. They said that we were not allowed to do anything
8 that could impair our driving.

9 Q. Okay.

10 A. And so if --

11 Q. Could this impair your driving, use of this
12 product?

13 MS. PITCHER: Objection, Your Honor. I
14 don't think he's an expert on what is --

15 THE WITNESS: I'm really not.

16 MS. PITCHER: -- to say he's able to drive
17 or not.

18 MS. NORTH-SHAUL: I asked about his driving.

19 MS. PITCHER: Then, lay some foundation that
20 he's used it.

21 THE COURT: I'm going to have to sustain
22 that.

23 MS. NORTH-SHAUL: That's fine.

24 Q. (BY MS. NORTH-SHAUL) Mr. Nelson, were you advised
25 not to smoke this product while on duty?

1 I'd asked one of the other drivers if they'd had a
2 problem with it and that driver said, "Yeah. You don't
3 do anything like that when you're driving." Now, if --

4 Q. What -- I'm sorry.

5 A. -- he had mentioned it and said specifically to
6 the, whatever you want to call it, spice, incense,
7 potpourri, synthetic cannabinoid, whatever, if he had
8 mentioned it, then I would have said, "Yeah, they told
9 us not to use it." But whether or not they said that
10 directly because that's what they said or whether or not
11 that was my own inclination on what they meant, I'm not
12 sure I could be able to tell you.

13 But as far as it goes, nobody ever said
14 directly, "No, you do not smoke this while you're
15 driving." Nobody ever mentioned smoking it. Nobody
16 ever mentioned using it in that way. Now, we all had
17 our own little private conversations about it; but none
18 of those came to full fruition about anybody there using
19 it on-shift or using it in the building.

20 Q. What did you believe it was being used for?

21 A. It's not really up to me to decide what it's up
22 for.

23 Q. Did you believe you were delivering it to people
24 for smoking?

25 A. I believe that the majority of people would use

1 A. Never specifically with that intent. It was
2 never like knowledgeable. Like they knew that we were
3 all smoking it on the sidelines and they warned us not
4 to do it while we were driving, it was not like that.
5 It was like this is the same as any other -- whether you
6 deliver pizza, whether you deliver windshields, it's the
7 same thing. You do not drive while impaired as far as I
8 understood it.

9 Q. Did you know if people were smoking it?

10 A. No, not personally.

11 Q. Did you ever see any of the people you worked
12 with smoking it?

13 A. Not personally.

14 Q. Did you ever tell Detective Galbreath that you
15 knew people were smoking it?

16 A. I said that if I had to guess, that everybody
17 probably did; but I didn't say that I saw anyone
18 directly smoke it.

19 Q. Did you ever tell Detective Galbreath that the
20 rule is, no using this product while you were driving
21 for the company?

22 A. Yeah.

23 Q. Yes, you told him that?

24 A. But I did not say no smoking it while we were
25 driving. I said that there -- it was obvious and that

1 it for that.

2 Q. Okay.

3 MS. NORTH-SHAUL: Nothing further, Your
4 Honor.

5 THE COURT: You may inquire.

6 Hold on a second. She has the right to
7 question.

8 THE WITNESS: I didn't know I couldn't step
9 down yet.

10 MS. PITCHER: You're okay. I'll be gentle.

11 **CROSS-EXAMINATION**

12 **BY MS. PITCHER:**

13 Q. Was it your impression, was it your belief, that
14 what you were selling was legal?

15 A. Yes.

16 Q. Did you believe you were doing something illegal?

17 A. No.

18 Q. Did you have a lot of rules at your job?

19 A. Yes.

20 Q. About money, procedure, cleaning?

21 A. Unequivocal, yes.

22 Q. Okay.

23 MS. PITCHER: That's all the questions I
24 have.

25 THE COURT: Anything else?

1 MS. NORTH-SHAUL: Your Honor. Thank
2 you.

3 THE COURT: You may step down now.

4 THE WITNESS: Thank you, sir, Your Honor.

5 MS. NORTH-SHAUL: Your Honor, the State
6 rests.

7 THE COURT: All right. Turn to the Defense.

8 MR. HOLDAWAY: Yes, Your Honor. We'd call
9 Dr. Karl De Jesus.

10 THE COURT: All right. Before you call that
11 witness, I want to inquire generally your purpose of
12 that witness.

13 MR. HOLDAWAY: The witness is here to
14 testify he's analyzed AM-2201 under the statute and he's
15 able to opine and has drafted a written opinion that
16 it's, in fact, not illegal in the state of Idaho to have
17 that chemical.

18 MS. NORTH-SHAUL: Your Honor, I would argue
19 that, first of all, this witness has not tested the same
20 substance that was taken from Mr. Mendel's place of
21 business either on December 17th or on January 28th.
22 All of that product is in the State's custody at this
23 time. We would happily make it available for testing
24 purposes, but that's really not an issue today. It
25 doesn't matter what this doctor says about some other

1 that is going to be uniform. In other words, it's -- as
2 soon as somebody identifies it as AM-2201, it's going to
3 be an exact precise chemical structure. And the way the
4 statute is drafted defines, as Your Honor pointed out
5 earlier, chemical structures that are illegal. If this
6 chemical structure does not fit within the description
7 of the statute, it is by definition not illegal.

8 So the question -- and part of the
9 preliminary hearing is not just to establish that the
10 elements of a crime has been committed but that there is
11 a crime to begin with -- in other words, i.e., that
12 something is actually illegal. If the State can't meet
13 that threshold, then this proceedings cannot even go
14 forward to the District Court.

15 Furthermore, as pointed out by the State,
16 the State has introduced a lab report that simply makes
17 this conclusion that, in fact, AM-2201 is a Schedule I
18 substance; and we have a right to impeach that evidence
19 by introduction of testimony from our expert to that
20 effect.

21 THE COURT: Now, of course, if you create
22 just a factual issue, then that is something that the
23 jury would be entitled to hear.

24 MR. HOLDAWAY: I don't know. It gets into a
25 very gray area because the ultimate question is, is

1 substance. What matters is this substance that was
2 tested here, that we know about from December 17th, and
3 that Mr. Mendel indicated had 2201 on it on January
4 28th. That's what matters here.

5 Frankly, I'm not going to discount that he's
6 going to get up and say that AM-2201 doesn't come within
7 the statute; but what you have is a lab report that says
8 it does. So I really think that his testimony, it's
9 immaterial for today's hearing. Today's hearing is
10 whether or not this individual possessed a substance
11 that had AM-2201 that the only testing agency who's had
12 a crack at it says falls within the ambit of this
13 statute. And that's really all that we're here to
14 decide today for purposes of probable cause.

15 MR. HOLDAWAY: May I reply to that, Your
16 Honor?

17 THE COURT: One second. Mr. Holdaway?

18 MR. HOLDAWAY: Yes.

19 THE COURT: Is it true that your witness has
20 not examined the actual substance in question?

21 MR. HOLDAWAY: Well, it -- and I don't mean
22 to be edgy on this; but it really depends on how you
23 look at it. Has he taken the sample and determined for
24 himself that it has AM-2201 in it? No, he has not
25 because that's not why he's here. AM-2201 is a chemical

1 AM-2201 even illegal, period, not whether this person
2 had it, not whether this person intended to distribute,
3 but that the standard elements of a distribution case
4 that we normally look at, the question is, is actually a
5 legal one to the extent of what -- how do we interpret
6 this statute to define what is legal and what is not
7 legal.

8 THE COURT: Response.

9 MS. NORTH-SHAUL: Your Honor, then, that,
10 again, would be a jury -- that's a jury question and
11 that's an issue -- if they want to have it -- and I've
12 already extended that to them. If they want to test the
13 substance that's at issue here today to see if the
14 substance that was taken from Mr. Mendel has AM-2201 on
15 it, fine. We'll make it available for their testing.

16 The issue for today is, did this individual
17 have a substance or have a product in his control,
18 custody, that he had for delivery, which the testimony
19 is ample he was selling it. It's simply to determine
20 those facts. This Court has a lab report in front of it
21 that says AM-2201 comes within Schedule I of the Idaho
22 Code. I agree -- I'll stipulate that their testimony --
23 their witnesses' testimony is going to be that it
24 doesn't. But then you're left with, I have this and
25 this in front of me. And the State has proven it's

1 burden for purposes of probable cause.
 2 So it really is something that should be
 3 dealt with on another day at a motion to dismiss or a
 4 motion in limine hearing when the two scientists are
 5 here to testify. But for today that's not what we're
 6 here to determine. This is not that type of hearing.
 7 This is a probable cause hearing, and probable cause is
 8 that the sample that was taken from Mr. Mendel on
 9 December 17th has a controlled substance in it.

10 MR. HOLDAWAY: May I respond again, Your
 11 Honor?

12 THE COURT: One moment.
 13 (Pause)

14 THE COURT: You may respond.

15 MR. HOLDAWAY: Thank you. Your Honor, I
 16 turned to Rule 5.1 of the Idaho Criminal Rules. The
 17 very opening sentence says, "If from the evidence the
 18 magistrate determines that a public offense has been
 19 committed and that there is probable or sufficient cause
 20 to believe that the defendant committed such offense,"
 21 then it shall be bound over. I think that language is
 22 really telling because the first threshold question
 23 isn't whether there's probable cause that an offense had
 24 been committed; it is that an offense was committed and
 25 then is there probable cause that this individual

1 says it's not, we have a factual issue for the jury.
 2 And I think Ms. Shaul is correct that that needs to be
 3 answered in a motion to dismiss or a motion in limine
 4 with both sides expressed; and then you can question,
 5 cross-examine them. So I will sustain your objection.
 6 And you've stipulated to the effect of what the witness
 7 would say.

8 Anything else from the Defense today?

9 MR. HOLDAWAY: No, Your Honor. That's it.

10 THE COURT: Then, I conclude that the State
 11 has met its burden of showing sufficient probable cause
 12 on the elements of this crime.

13 MR. HOLDAWAY: I'm sorry. I didn't know if
 14 you were asking for arguments yet or if you were asking
 15 for us to introduce witnesses. We do have argument.

16 THE COURT: I understand.

17 MR. HOLDAWAY: And I will retain that.

18 THE COURT: Go ahead. See if you can change
 19 my mind.

20 MR. HOLDAWAY: Well, thank you.

21 **CLOSING ARGUMENT BY THE DEFENDANT**

22 MR. HOLDAWAY: If I can just go back to --
 23 given that we haven't brought the expert in, I think
 24 there's only one aspect really that we'd like to
 25 address; and that is the issue of dates and probable

1 committed it.

2 There is a threshold question that must be
 3 answered here as to whether or not that statute actually
 4 includes AM-2201. We're not here contesting whether the
 5 lab actually found AM-2201, whether it was accurate in
 6 finding that. The sole question that is a threshold
 7 question under 5.1 is whether that in and of itself is
 8 an illegal act.

9 MS. NORTH-SHAUL: And, Your Honor, that's a
 10 determination for you to make. That is not a
 11 determination for this witness to come in and say. He
 12 can say, "I don't think that's what it is," but he
 13 doesn't even -- hasn't even had the opportunity to test
 14 the substance we tested. He can make that argument.
 15 And I'll stipulate that's what he's going to say, but
 16 it's immaterial to your decision today.

17 THE COURT: I agree with Ms. Shaul for a
 18 couple of reasons. The lab report concludes that the
 19 sample contains AM-2201 (Schedule I) and then the
 20 specific code section which references a chemical
 21 formula. In my mind, for purposes of this hearing,
 22 that's as if they cited the chemical formula. I might
 23 have preferred that they cited the chemical formula, but
 24 I think this suffices.

25 Therefore, if you present a witness that

1 cause.

2 There are two key dates in this case. The
 3 first one is December 17th, 2011. The second one is
 4 January 28th of 2012. On December 17th is when Officer
 5 Hart, I believe it was, testified that through another
 6 officer, quote, unquote, "spice" had been identified at
 7 this particular location. Then he testified that after
 8 consulting with the prosecuting attorney and with
 9 another officer, consulting the law, they determined
 10 that, in fact, it was an illegal substance and seized it
 11 to be sent in to the lab for testing.

12 Our concern is, is that they did not have
 13 enough sufficient information to make a determination at
 14 that time that the substance that they were looking at
 15 was actually a controlled substance. And here's why:
 16 The number one reason is, the use of the term "spice," I
 17 think, is very problematic; and the reason being is that
 18 spice is no one chemical. It is an herbal mixture which
 19 has a chemical adhere to it. Those chemicals vary a
 20 great deal.

21 Your Honor can look at this yourself through
 22 the Board of Pharmacy action back in October of 2010,
 23 through the Utah statutes, through the DEA listing.
 24 There's numerous chemicals that can be used -- JWH-18,
 25 19, 210, 122. AM-2201 is another one. 4AM is another

1 one. URB-597 is another one. JPT. If these are
2 chemicals that can be used in spice. So to simply look
3 at a leafy substance and conclude that the chemical
4 substance contained in that must be illegal is not
5 reasonable because there's absolutely -- every
6 possibility that the chemical inside is absolutely legal
7 under the statute.

8 There's no presumptive test that they can
9 use in the field to try it. They didn't ascertain any
10 testimony on the 17th to determine that it was 2201.
11 Now, we do have testimony that on the 28th, when the
12 raid was going on, after they already had the lab
13 report, that the Defendant said, "Yes, it has AM-2201 in
14 it." But as of the time of the 17th they did not have
15 any evidence whatsoever to suggest that it had a
16 chemical in it that was illegal.

17 And Your Honor has the statute in front of
18 him. Consulting that, nowhere in there will the word
19 "spice" show up, "incense," "potpourri." None of the
20 chemicals by name will show up because what it's doing
21 is describing chemicals by groups and then saying you
22 can't change them in any one of these enumerated
23 methods and, in other words, describing whole families
24 of chemicals. And then the question is, well, which
25 family and which changes are allowed and which ones

1 MR. HOLDAWAY: Well, ultimately. The
2 initial issue is challenging the lab result itself
3 because that was based upon illegally obtained goods.

4 THE COURT: I understand that.

5 MR. HOLDAWAY: And that that in turn would
6 be --

7 THE COURT: I think you're going to the
8 on-site --

9 MR. HOLDAWAY: Correct. Well, no, we don't
10 even have to challenge the search warrant itself.
11 Rather, what we get into then is that the only lab test
12 that definitively proves that, in fact, AM-2201 was in
13 any of this product derives from the December 17th,
14 2011, seizure. If that seizure is illegal and the lab
15 result therefore is inadmissible, then there is no
16 evidence before this Court as far as lab results or
17 anything suggesting that, in fact, the material obtained
18 on December 28th, 2012, contains AM-2201 in it.

19 And I disagree with the State's position as
20 to 5.1. It specifically provides that if at the
21 preliminary hearing the evidence shows facts which would
22 ultimately require the suppression of evidence sought to
23 be used against a defendant, such evidence shall be
24 excluded and shall not be considered by the magistrate
25 in its determining probable cause.

1 aren't allowed? A that's obviously, due to your
2 ruling, set for another date.

3 But the thing is, is that the officers don't
4 have that information at the time that they're seizing
5 this stuff to be sent off to the lab; and that results
6 in a deprivation of property without probable cause
7 because you cannot look -- and we have this testimony
8 from the officers -- well, you can't look at it and
9 determine, number one, if it's even been faced with a
10 chemical, let alone what chemical it may have been faced
11 with. And so to that extent, if that holds true going
12 down the chain of consequences then, then we have an
13 illegally seized substance.

14 MS. NORTH-SHAUL: Your Honor, I'm sorry.
15 This is essentially an attempt to bring a motion to
16 suppress at preliminary hearing. Rule 5.1 is clear that
17 those are to be brought before the trial court unless it
18 is glaringly obvious that it is -- it should be dealt
19 with at prelim, and it's not here.

20 MR. HOLDAWAY: Your Honor, may I respond to
21 that?

22 THE COURT: Well, I think you have the right
23 to argue that there was no probable cause for the
24 seizure. I don't know that -- if you -- are you
25 challenging the search warrant?

1 So to that extent, if in fact this Court
2 determines that there was not probable cause to seize
3 the spice on December 17th of 2011, then this Court is
4 absolutely within the rule in suppressing that evidence
5 for purposes of the probable cause hearing. And now we
6 don't have any definitive lab results permitting this
7 Court to bind it over to the District Court, and for
8 that reason we'd ask this Court to dismiss.

9 THE COURT: Response.

10 MS. NORTH-SHAUL: Thank you, Your Honor.

11 **REBUTTAL ARGUMENT BY THE STATE**

12 MS. NORTH-SHAUL: Going back to the events
13 of December 17th, the testimony of the officers is, they
14 responded to a robbery; were directed to 1414 Cambridge;
15 allowed into the premises by the head of security,
16 Mr. McGuffey -- that's the testimony that came from, I
17 believe, Sergeant Galbreath -- observed in plain view
18 what appeared to them to be items consistent with spice.
19 Both officers testified that they had seen it. They
20 were concerned that that's what was going on.
21 Officer -- I think Officer Hart as well as Sergeant
22 Galbreath said the circumstances surrounding the things
23 that were going on around the people that were coming
24 out of 1414 Cambridge and the things that had been
25 happening -- the robberies, the late-night deliveries,

1 just all of the things that they had to deal with
 2 over time -- led them to believe that this was illegal
 3 drug trafficking, that they were selling spice.
 4 The officers were there with consent to be
 5 on the premises. They were invited there to take a
 6 report on the robbery, invited into the premises to look
 7 around, allowed into the premises to look around, saw
 8 what they believed to be spice, actually talked to
 9 Mr. Mendel on the phone and told them what they were --
 10 told him what they were doing. But it's in plain view.
 11 The officer can seize it in plain view in front of them.

2 They had enough from their time on the
 3 street, the work on the street that they've done, that
 4 they were concerned and they really -- and had enough
 5 probable cause at that point to seize those items and
 6 send them off for testing.

7 Moving forward to the 28th of January, they
 8 had a controlled delivery set up. They went back to the
 9 premises. They saw an operation that was up and
 10 running. The statements by the Defendant himself, it
 11 had 2201 on it, that in and of itself is sufficient to
 12 establish the probable cause for this -- purposes of
 13 this hearing.

14 I don't -- I disagree with Mr. Holdaway's
 15 premise that this is absolutely an illegal seizure and

1 reset that date with the District Court if we're not
 2 available for that date?

3 THE COURT: Yes. And what I would suggest
 4 is, you first concur with Counsel, perhaps a
 5 stipulation.

6 MR. HOLDAWAY: Okay.

7 THE COURT: Or, if not, a motion to the
 8 judge.

9 MR. HOLDAWAY: Sure. Thank you.
 10 (Proceedings concluded)

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1 therefore that the search warrant is illegal. Like I
 2 said before, that is an issue for the District Court to
 3 deal with on a motion to suppress. It is not an issue
 4 before this Court today appropriately because it is not
 5 glaringly obvious. And in this particular case maybe
 6 more testimony -- and I know more testimony can be
 7 presented on it if need be, but not for today's hearing.

8 We'd ask the Court to bind this Defendant
 9 over to face these charges in District Court. Thank
 10 you.

11 THE COURT: All right. We need to bring
 12 this to a conclusion.

COURT'S RULING

13 THE COURT: I affirm my prior ruling. I
 14 believe that based upon a totality of the circumstances
 15 and the testimony that I've heard, that there was
 16 probable cause both -- on both dates and in addition to
 17 statements on the second date, statements made -- or a
 18 statement, singular or plural, from the Defendant, that
 19 there was probable cause and that the State has met its
 20 burden on each of the elements of the charge.

21 Therefore, I order the Defendant to be bound
 22 over to answer the charge in District Court. Judge
 23 Tingey is listed as the judge. March 5th at 8:30 a.m.

24 MR. HOLDAWAY: Your Honor, are we able to
 25

REPORTER'S CERTIFICATE

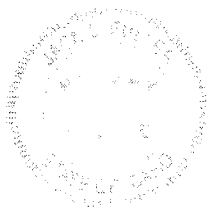
STATE OF IDAHO)
) CASE NO. CR-2012-1397-FE
 COUNTY OF BONNEVILLE)

I, JACK L. FULLER, Certified Shorthand Reporter and Notary Public in and for the State of Idaho, do hereby certify:

That pursuant to request of counsel, the foregoing proceedings, having been previously recorded in digital audio, were reported in machine shorthand by me from said digital audio recording and thereafter reduced to typewriting by me and that the foregoing transcript contains a verbatim record of said proceedings to the fullest extent possible.

I further certify that I am not related to any of the parties nor do I have any interest, financial or otherwise, in the cause of action of which said proceeding was a part.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office this 30th day of April, 2012.



Jack L. Fuller

 Jack L. Fuller, Idaho CSR #762
 CSR Expiration Date: 07-10-12
 Notary Expiration Date: 04-04-13

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BONNEVILLE COUNTY, IDAHO
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Attorneys for the Defendant

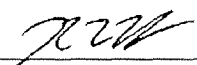
**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE**

STATE OF IDAHO)	
)	
Plaintiff,	)	Case No. CR-2012-1397 FE
v.)	
BRYCE SCOTT MENDEL	)	NOTICE OF INTENT TO CALL WITNESSES
Defendant.)	

The Defendant, Bryce Scott Mendel, by and through his attorneys of record, Ryan L. Holdaway and Diane Pitcher, of the firm, Pitcher & Holdaway, PLLC, hereby submits its Notice of Intent to Call Witnesses.

The Defendant intends to call witnesses at the June 18, 2012 hearing. The witnesses will testify in support of the Defendant's Motion to Dismiss. It is anticipated that two witnesses will be called and those witnesses are Dr. Owen Michael McDougal and Dr. Karl De Jesus.

DATED this 5th day of June, 2012.


 Ryan L. Holdaway
 Attorney for Defendant

NOTICE OF INTENT TO CALL WITNESSES - 1

CERTIFICATE OF SERVICE

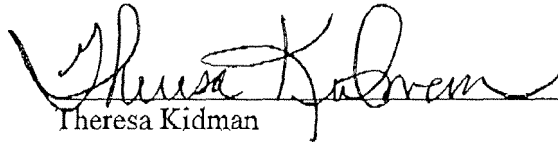
I HEREBY CERTIFY that on this 5th day of June, 2012, I caused a true and correct copy of the foregoing document to be served by the method indicated below, and addressed to the following:

Bonneville County Prosecutor's Office
Penelope N. Shaul
605 N. Capital Ave
Idaho Falls, ID 83402
Fax: (208) 529-1189

- Via U.S. Certified Mail
- Via Facsimile
- Via Overnight Mail
- Via Hand Delivery
- Via email

Bonneville County Court
605 N. Capital Ave
Idaho Falls, ID 83402
Fax: (208) 529-1300

- Via U.S. Certified Mail
- Via Facsimile
- Via Overnight Mail
- Via Hand Delivery
- Via email


 Theresa Kidman

NOTICE OF INTENT TO CALL WITNESSES - 2

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

STATE OF IDAHO,)
)
Plaintiff,) Case No. CR-12-1397
)
-vs-)
) MINUTE ENTRY
BRYCE SCOTT MENDEL,)
)
Defendant.)
_____)

On July 16, 2012, at 2:40 p.m. in Courtroom 3 a motion to dismiss came on for hearing before the Honorable Joel E. Tingey, District Judge, sitting in open court at Idaho Falls, Idaho.

Ms. Rainey Stockton, Court Reporter, and Ms. Marlene Southwick, Deputy Court Clerk, were present.

Mr. James Murdock appeared on behalf of the State.

Mr. Ryan Holdaway appeared on behalf of the Defendant. The Defendant was in attendance.

Mr. Holdaway placed a stipulation regarding the motion to dismiss on the record.

The Court will take the matter under advisement and issue an opinion as soon as possible.

There is a conditional plea agreement in this case.

The Court reviewed the file and, after a discussion between the Court and the defendant, the defendant entered a plea of guilty to POSSESSION WITH INTENT TO DELIVER A CONTROLLED SUBSTANCE - AM2201.

After a discussion between the Court and counsel, Mr. Holdaway stated he consents to the guilty plea.

The defendant was placed under oath by the Clerk.

The defendant explained the circumstances of the crime. After further discussion, the Court found the defendant understands the nature of the offense and the consequences of a guilty plea and found there is a factual basis for the plea. The Court further found the plea is freely, voluntarily, and knowingly made and accepted the guilty plea. The Court ordered a pre-sentence investigation and scheduled sentencing for September 4, 2012 at 10:00 a.m.

Court was thus adjourned.


JOEL E. TINGEY
District Judge

c: Prosecutor
Ryan Holdaway
H:mendel Bryce 29

BRUCE L. PICKETT
BONNEVILLE COUNTY PROSECUTING ATTORNEY

12 JUL 16 P4:14

Penny North Shaul
Deputy Prosecuting Attorney
605 N. Capital Avenue
Idaho Falls, Idaho 83402
Phone: (208) 529-1348

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

STATE OF IDAHO,)	
	)	Case No. CR-2012-1397-FE
Plaintiff,)	
)	
vs.	)	PLEA AGREEMENT
	)	I.C.R. 11(f)(1)(B), (D)
BRYCE SCOTT MENDEL,)	
)	
Defendant.)	
)	

The State of Idaho, by and through the Bonneville County Prosecutor's Office, and the Defendant, BRYCE SCOTT MENDEL, with the attorney of record Ryan Holdaway, Pitcher & Holdaway, hereby stipulates and agrees as follows:

STIPULATION AND AGREEMENT

1. In Case No. CR-2012-1397-FE, the Defendant agrees to plead guilty to Possession With Intent to Deliver (AM-2201), Felony, I.C. §37-2732(a)(1)(B), §37-2705(d)(30)(ii), as charged.
2. The State agrees to recommend four (4) years probation with an underlying sentence of two (2) years determinate, three (3) years indeterminate for a total of five (5) years.
3. The Defendant is free to argue as he sees fit.
4. The State agrees that the Defendant may withdraw his guilty plea in the event that an Idaho appellate court determines that AM-2201 is not a Schedule I controlled substance.
5. The Defendant agrees to pay full restitution for costs of investigation, prosecution, and lab testing on all counts.
6. As to any other conditions not expressly agreed upon in this written plea agreement, the

parties are free to argue as they see fit.

THIS AGREEMENT IS NOT BINDING ON THE COURT

This agreement is made pursuant to I.C.R. 11(f)(1)(B) and is not intended to be binding upon the Court. If the Court rejects this plea agreement, the defendant acknowledges that there would nevertheless be no right to withdraw the guilty plea.

DEFENDANT'S ACKNOWLEDGMENT AND CONSENT

The Defendant in the above entitled case, by executing this plea agreement, acknowledges the following:

1. ***Understanding of the Potential Punishment.***
 - a. I understand that the crime of Possession With Intent to Deliver (AM-2201) is punishable as follows:
 - 1) Imprisonment in the State Penitentiary for up to five (5) years;
 - 2) A fine of up to fifteen thousand dollars (\$15,000);
 - 3) Restitution; or
 - 4) Any combination of fine, imprisonment, and restitution as listed above.
2. ***Consequences for Non-United States Citizens.*** I understand that if I am not a citizen of the United States, the entry of a plea or making of factual admissions could have consequences of deportation or removal, inability to obtain legal status in the United States, or denial of an application for United States citizenship.
3. ***Parties Affected by the Agreement.*** I understand that this plea agreement is only between the State of Idaho and me and therefore this plea agreement does not affect the rights of anyone else.
4. ***Intelligent, Knowing, And Voluntary Entry Into This Agreement.*** I believe that:
 - a. I am signing this agreement with full knowledge of the facts, my legal rights, and the consequences of entering the plea as described above.
 - b. No unlawful threats have been made to secure my plea of guilty, nor have any promises been made to get me to plead guilty, other than those promises made by the State of Idaho as set forth in this agreement.
 - c. I sign this agreement willingly, without force or duress, and of my own free will and choice.
5. ***No Other Promises or Agreements.*** I understand and acknowledge that no other agreements or conditions have been made or represented to me, except those terms of the plea agreement which are set forth within this written agreement.
6. ***Waiver of Constitutional Rights.*** I understand that I am waiving the following rights as guaranteed by the United States Constitution and the Constitution of the State of Idaho:
 - a. My right to a jury trial;
 - b. My right against self-incrimination, including my right not to testify against myself;
 - c. My right to require the State of Idaho to call witnesses against me and my right to call witnesses in my defense; and
 - d. My right to require the State of Idaho to prove my guilt beyond a reasonable doubt.
7. ***Changes in Circumstances.*** I understand that the State has made this agreement contingent on the condition that the circumstances under which the agreement was made

is in accordance with my representations and that such circumstances will remain unchanged prior to sentencing. These circumstances include but are not limited to my representations concerning my past criminal record, my compliance with bail release conditions (such as appearing at all hearings), and my compliance with the law prior to sentencing. I understand that changes in these circumstances could amount to a breach of this agreement, and in that case the State would be excused from fulfilling its promised recommendation.


8. ***Understanding of the Agreement.*** I acknowledge the following:
- a. I have read this written plea agreement and understand its terms and the consequences of his entering into this plea agreement,
 - b. I agree to be bound by the terms of this plea agreement,
 - c. Prior to agreeing to this plea agreement, I have had sufficient time to discuss the terms and the consequences of entering into this agreement, with my attorney, my family and anyone else with whom I wished to consult with, and
 - d. I am satisfied with the services and advice of my attorney.

AGREED, ACKNOWLEDGED AND CONSENTED, dated this 16 day of July 2012.




Bryce Scott Mendel
Defendant

AGREED AND CONSENTED, dated this 16th day of July 2012.



Ryan Holdaway
Attorney for Defendant

AGREED, dated this 19th Day of June, 2012.



Penny North Shaul
Deputy Prosecuting Attorney

RESET (Clerk, check if applicable)

ORIGINAL OF THIS DOCUMENT TO IDOC

Assigned to: _____
Assigned: _____ Due Date: _____

BONNEVILLE COUNTY
IDAHO

**SEVENTH JUDICIAL DISTRICT COURT, STATE OF IDAHO
IN AND FOR BONNEVILLE COUNTY**

STATE OF IDAHO,)
Plaintiff,)
vs.)
Bryce Scott Mendel)
[Redacted])
Idaho Falls, ID 83401)
Defendant.)
DOB: [Redacted])
DL or SSN: [Redacted] ID)
Telephone: [Redacted])

Case No: CR-2012-0001397-FE

ORDER FOR PRESENTENCE REPORT

Charge(s):

GLTY - Controlled Substance-Possession With Intent
Manufacture or Deliver I37-2732(A)(1)(B)-P/I

On this Monday, July 16, 2012, a **Pre-Sentence Investigation Report** was ordered by the Honorable Joel E. Tingley to be completed for court appearance on **Tuesday, September 4, 2012 at: 10:00 AM.**

Per Idaho Code §19-2516, the defendant is ordered to pay a Pre-Sentence Investigation Fee in an amount to be determined by the Idaho Department of Correction, not to exceed \$100.00.

Judge's Comments: _____

EVALUATIONS TO BE DONE: (Check Required Evaluation) Copy of Evaluation to be sent to Presentence Investigation Office		
Under § 19-2524 screening(s) are ordered.	<input type="checkbox"/> Mental Health	<input type="checkbox"/> Substance Abuse
Full assessments will be completed if clinically indicated in screenings		
<input checked="" type="checkbox"/> None	<input type="checkbox"/> Sex Offender	<input type="checkbox"/> Drug & Alcohol
<input type="checkbox"/> Domestic Violence	<input type="checkbox"/> Other	_____
Evaluator: _____		

DEFENSE COUNSEL: Diane Pitcher PROSECUTOR: Penelope North Shaul

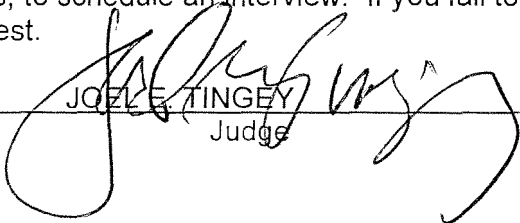
THE DEFENDANT IS IN CUSTODY: NO YES If yes where: _____

PLEA AGREEMENT: NO YES

ATTENTION DEFENDANT: IT IS ORDERED that after you leave the courthouse TODAY you report in person to Brenda Moon, the Pre-Sentence Investigator, (208) 528-4220, ext. 225, at the Department of Probation and Parole, located at 2048 E. 17th Street, Idaho Falls, to schedule an interview. If you fail to comply with this Order, a bench warrant will be issued for your arrest.

Date: 7/16/2012

Signature: /s/ JOEL E. TINGEY
Judge



BRUCE L. PICKETT
BONNEVILLE COUNTY PROSECUTING ATTORNEY

BONNEVILLE COUNTY
IDAHO

2012 JUL 24 AM 10: 51

Penny North Shaul
Deputy Prosecuting Attorney
605 N. Capital
Idaho Falls, Idaho 83402
(208) 529-1350 x 1348
Attorney for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
STATE OF IDAHO, COUNTY OF BONNEVILLE

STATE OF IDAHO,)	
)	
Plaintiff,	)	Case No. CR-2012-1397-FE
)	
vs.	)	MOTION FOR RESTITUTION
	)	AND NOTICE OF HEARING
BRYCE SCOTT MENDEL,)	
)	
Defendant.)	
)	

Pursuant to Idaho Code Section 37-2732 (k), the State of Idaho presents to the court a list of restitution owing by the Defendant and moves the court for its order of restitution.

I HEREBY CERTIFY that the following is a true and correct list of the person(s) involved in the above criminal action and the amount of restitution claimed by the law enforcement agency(s) to be owed by the Defendant.

<u>Law Enforcement Agency</u>	<u>Amount</u>
Idaho Falls Police Department Narcotics Division c/o Bonneville County Prosecutor's Office Courthouse Mailbox (IFPD Report No. 2012-01086)	\$417.41
Forensic Services 700 South Stratford Drive, Suite 125 Meridian, Idaho 83642-6202	\$100.00
TOTAL RESTITUTION	\$517.41

Dated this 23rd day of July, 2012.


Penny North Shaul
Deputy Prosecuting Attorney


NOTICE OF HEARING

PLEASE TAKE NOTICE that on **September 4, 2012, at 10:00 a.m.**, the State will call up for hearing its Motion for Restitution before the Honorable Joel Tingey.

NOTICE

In the event defendant intends to produce evidence on the amount of restitution or otherwise intends to challenge the State's motion for restitution, defendant shall notify the court and the State by written objection filed at least five days prior to the above hearing date.

Dated this 23rd day of July, 2012.


Penny North Shaul
Deputy Prosecuting Attorney

CERTIFICATE OF SERVICE


I HEREBY CERTIFY that on the 23rd day of July, 2012, I served the above document on the following parties by email.

DOCUMENT SERVED:

MOTION FOR RESTITUTION
AND NOTICE OF HEARING

PARTIES SERVED:

Ryan Holdaway
Pitcher & Holdaway
ryan@pitcherholdaway.com



Jodi Oswald



CITY OF IDAHO FALLS
P.O. BOX 220
IDAHO FALLS, IDAHO 83402



IDAHO FALLS POLICE DEPARTMENT

The following expenses were incurred by the Idaho Falls Police Department. It is requested the Court be asked to order restitution as provided in I.C. 37-2732 (K).

Defendant: Bryce Scott Mendell

Agency Case Number: 2012-01086

Case Date: Saturday, January 28, 2012

Officers Involved	Hr/Salary	No. of Hrs	Total
C. Hart	\$26.07	4	\$104.28
J. Galbraith	\$30.22	2	\$60.44
S. Steel	\$23.93	2	\$47.86
B. Storer	\$23.29	2	\$46.58
R. Nelson	\$22.95	2	\$45.90
G. Kelly	\$24.45	2	\$48.90
D. Siddoway	\$24.52	2	\$49.04
S. Ovard	\$14.41	1	\$14.41
			\$0.00
			\$0.00
			\$0.00
			\$0.00
			\$0.00
			\$0.00
			\$0.00
			\$0.00
			\$0.00

Total \$417.41

Buy Money Expended

Date	Amount
Total	\$0.00

C.I. Fee

Date	Amount
Total	\$0.00

Miscellaneous Expence

Travel:	
Per Diem:	
Lab Fees:	\$100.00
Surv. Equipment	

Grand Total \$517.41

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

STATE OF IDAHO,)	
)	
Plaintiff,	)	Case No. CR-12-1397
)	
vs.)	
	)	MINUTE ENTRY
BRYCE SCOTT MENDEL,)	
)	
Defendant.)	
<hr/>		

On September 4, 2012, at 10:02 a.m. in Courtroom 3, this matter came on for sentencing before the Honorable Joel E. Tingey, District Judge, sitting in open court at Idaho Falls, Idaho.

Mr. Jack Fuller, Court Reporter, and Mrs. Marlene Southwick, Deputy Court Clerk, were present.

Mr. John Dewey appeared on behalf of the State.

Mr. Ryan Holdaway appeared on behalf of the Defendant.

The Defendant was in attendance.

There is a conditional plea agreement in this matter.

The Court reviewed the history of the case and the conditions of the plea agreement. The Court inquired if the defendant wished to stand by the guilty plea previously entered to POSSESSION WITH INTENT TO DELIVER, to which the defendant stated he/she did.

The Court noted a pre-sentence report has been filed and inquired if there are any areas needing clarification or

correction.

There were no corrections to the PSI.

Mr. Holdaway addressed the Court in mitigation.

Mr. Dewey addressed the Court in aggravation.

The defendant presented a statement to the Court.

After a discussion between the Court and the defendant, the Court sentenced the defendant to 2 years determinate, 2 years indeterminate, suspended, and placed his on probation for a period of 3 years. Defendant is to receive credit for time served towards the underlying sentence.

Defendant must pay \$75.00 to the Victims Rights Fund, restitution (\$517.41 per the Order of Restitution), \$750.00 fine, and court costs. Costs of preparation of the Presentence Investigation Report will be assessed.

Defendant may serve 90 days or longer in the Bonneville County Jail at the discretion of the Court. Defendant shall be subject to the usual terms and conditions of probation as contained in Attachments 1 and 2.

Defendant shall be subject to the following special conditions:

- a. Complete a 19-2524 substance abuse evaluation and receive treatment as recommended in the 19-2524 evaluation including attendance at AA/NA meetings, in-patient, out-patient, halfway house, etc.
- b. Serve 100 hours community service; pay \$.60 per hour required workers compensation insurance. Community service should be completed within 6 months of sentencing.
- c. Maintain full-time employment and/or be enrolled in a full-time education program or any combination totaling at least 40 hours per week.
- d. Prohibited from possessing, making, selling or using illegal drugs or alcoholic beverages or being present while anyone else does so.

- e. Complete any other cognitive programming/treatment as recommended by Probation Officer.
- f. No association with known felons or other persons as specified by Probation Officer.
- g. Random testing of bodily fluids.
- h. Make a payment agreement and pay fines, fees, costs, restitution, etc. as ordered.

Mr. Holdaway orally moved the Court to stay sentence pending completion of appeal process. Mr. Dewey responded to the motion. The Court stayed implementation of the sentence as to fines and community service until appeal is completed.

The Court advised the Defendant regarding his rights on appeal.

The Defendant was remanded to the custody of the Bonneville County Jail pending transport to the Department of Corrections.

Court was thus adjourned.


JOEL E. TINGEY
District Judge

c: Prosecutor
Ryan Holdaway
H:mendel Bryce sme

BONNEVILLE COUNTY
 IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

STATE OF IDAHO,)	
)	
Plaintiff,	)	Case No. CR-12-1397
)	
vs.	)	JUDGMENT OF CONVICTION
	)	SUSPENDED AND ORDER OF
BRYCE SCOTT MENDEL,	)	PROBATION
)	
Defendant,)	
)	

WHEREAS, on the 5th day of March, 2012, the defendant was arraigned before the Honorable Joel E. Tingey, District Judge of the Seventh Judicial District Court in and for the County of Bonneville.

AND WHEREAS, the defendant was fully informed by the Court of the nature of POSSESSION WITH INTENT TO DELIVER - AM-2201 as set forth in the Information, a violation of Idaho Code Section 37-2732(a)(1)(B), which was committed on or between December 17, 2011 and January 28, 2012. The defendant entered a plea of guilty to the offense pursuant to a plea agreement. Upon inquiry from the Court, the defendant advised that he/she did not wish to withdraw said plea.

AND WHEREAS, on the 4th day of September, 2012, the Prosecuting Attorney together with the above-named defendant and his/her counsel of record, Ryan Holdaway, appeared before the Court for the pronouncement of sentence upon the defendant;

AND WHEREAS, counsel for the defendant was provided the opportunity to speak on behalf of the defendant and the Court addressed the defendant personally and advised the defendant of his/her right to make a statement in his/her own behalf and to present any information in mitigation of punishment;

AND WHEREAS, the defendant was asked if there was any legal cause why sentence should not be pronounced and no sufficient cause was given. Based upon the finding of guilt, the Court pronounced sentence as follows:

IT IS ORDERED, ADJUDGED AND DECREED that the defendant is guilty of the crime as charged in the Information and in execution thereof, IT IS FURTHER ORDERED, that the defendant be sentenced to the custody of the Idaho State Board of Corrections

for a term of 3 year(s), subject to credit for time served prior to sentencing plus retained jurisdiction if any, which credit shall be applied at the end of any mandatory minimum sentence, or in the absence thereof, at the conclusion of any indeterminate sentence. Of the total sentence heretofore pronounced, the defendant shall serve a confinement for a minimum period of 2 year(s). The minimum period of confinement shall be followed by an indeterminate period of confinement of 2 year(s).

IT IS ORDERED, that said sentence shall be suspended and the defendant placed on probation for a period of 3 years under the following conditions:

1. That the probation is granted to and accepted by the probationer, subject to all the terms and conditions specified in the Conditions of Probation and the Department of Corrections Agreement of Supervision, which must be obeyed, a copy of which is attached hereto and made a part hereof by this reference, and with the understanding that the Court may at any time, in case of violation of the terms of the probation, cause the probationer to be returned to the Court for the imposition of sentence as prescribed by law.

2. That the probationer shall be under the legal custody and control of the Director of Probation and Parole of the State of Idaho and the District Court and subject to the rules of probation as prescribed by the Board of Correction and the District Court including those attached hereto.

3. That the probationer, if placed on probation to a destination outside the State of Idaho, or leaves the confines of the State of Idaho with or without permission of the Director of Probation and Parole does hereby waive extradition to the State of Idaho and also agrees that the said probationer will not contest any effort by any state to return the probationer to the State of Idaho.

4. That the probationer is also subject to the following Special Conditions, to wit:

- a. Complete a 19-2524 substance abuse evaluation and receive treatment as recommended in the 19-2524 evaluation including attendance at AA/NA meetings, in-patient, out-patient, halfway house, etc.
- b. Serve 100 hours community service; pay \$.60 per hour required workers compensation insurance. Community service should be completed within 6 months of sentencing.
- c. Maintain full-time employment and/or be enrolled in a full-time education program or any combination totaling at least 40 hours per week.
- d. Prohibited from possessing, making, selling or using illegal drugs or alcoholic beverages or being present while anyone else does so.
- e. Complete any other cognitive programming/treatment as

- recommended by Probation Officer.
- f. No association with known felons or other persons as specified by Probation Officer.
 - g. Random testing of bodily fluids.
 - h. Make a payment agreement and pay fines, fees, costs, restitution, etc. as ordered.
5. That any outstanding bond/bail is hereby exonerated.

IT IS FURTHER ORDERED that Defendant pay each of the sums indicated, in the manner and on such terms as are more particularly specified below:

- a. COURT COSTS: Court costs of \$17.50 per felony count will be paid to the clerk of the court. (I.C. 31-3201A(b)).
- b. VICTIMS' COMPENSATION: \$75.00 per felony count will be paid to the clerk of the court for deposit into the crime victims' compensation account (I.C. § 72-1025).
- c. PROBATION SUPERVISION/WORK RELEASE REIMBURSEMENT: A per case fee of not more than \$50.00 per month for probation supervision if such payment is determined by the Division of Probation and Parole of the Idaho Department of Corrections to be appropriate. The exact amount to be paid and the terms and conditions of payment, will be determined by the Division of Probation and Parole. (I.C. § 20-225.)
- d. VICTIM RESTITUTION: Restitution to the victim(s) of the crime(s), which shall be payable through the district court in the following amounts (I.C. § 19-5302): \$517.41 per the Order of Restitution
Said restitution is due and payable on: 9/2015
These amounts will include interest at the annual rate of 10%, which interest shall accrue from and be calculated from the date of this order.
- e. IDAHO STATEWIDE TRIAL COURT AUTOMATED RECORDS SYSTEM TECHNOLOGY FEE: A fee of \$10.00 per felony count will be paid to the clerk for deposit into the ISTARs technology fund. (I.C. § 31-3201(5)).
- f. COMMUNITY SERVICE FEE: A per case fee of \$60.00 (\$.60 x 100 hours of community service) will be paid to the clerk of the court for defendant's workers compensation coverage. (I.C. § 31-3201C).
- g. P.O.S.T. FEE: A fee of \$10.00 per felony count will be paid to the clerk of the court for deposit into the peace officers' standards and training account. (I.C. § 31-3201B).
- h. CRIMINAL FINE: A fine of \$750.00 per felony count is hereby imposed, which sum shall be paid to the clerk of the court for distribution.
- i. COUNTY ADMINISTRATIVE SURCHARGE FEE: A per case fee of \$10.00 will be paid to the clerk of the court for deposit in the county justice fund. (I.C. § 31-3201(3), 31-4602).
- j. DRUG ENFORCEMENT RESTITUTION: Restitution shall be

paid to the agency or agencies listed below as restitution for the costs of investigation and/or prosecution of the violations hereinabove found to have been committed (I.C. § 37-2732(k)).

- k. DRUG HOTLINE FEE: A fee of \$10.00 per felony count will be paid to the clerk of the court to fund drug enforcement (I.C. §37-2735A).
- l. EMERGENCY FELONY SURCHARGE: A fee of \$100.00 per case will be paid to the clerk of the court.

DATED this 5 day of September, 2012.



JOEL E. TINGEY
DISTRICT JUDGE

CONDITIONS OF PROBATION

1. Probationer shall report within 72 hours unless otherwise directed by the Court to the District 7 Probation and Parole Office and make him/herself available to the probation activation process.

2. Probation has been ordered for a specific length of time; however, probation shall not be terminated until the Court has both reviewed the performance of the probationer and has signed an order discharging the probationer. Probation is subject to extension for non-payment of costs, fines, and restitution or unsatisfactory performance.

3. In addition to any jail sentence to be served immediately, the probationer may serve up to an additional 180 days at any time during the probationary period at the discretion of the court as recommended by an agent of probation and parole.

4. Probationer shall pay the following to the clerk of the District Court:

Court Costs	<u>\$as ordered</u>
Victim's Relief Fund	<u>\$as ordered</u>
Public Defender Fees	\$
Fine	<u>\$ 750.00</u>
Restitution	<u>\$as ordered</u>

Probationer shall also pay to the Clerk of the District Court all amounts required by any separate order under I.C. 19-5304 for all restitution to any victim for economic losses, and all amounts required by any separate order under I.C. 37-2732(k) for restitution to any law enforcement agency for prosecution of controlled substance act violations.

Unless otherwise ordered by the Court, Probationer shall pay such costs, fees, fines and restitution as ordered before the conclusion of the probation term. Payments shall be made at a rate of not less than \$25.00 per month starting with the first day of the month following acceptance of probation, but may be at a higher monthly rate if established in the Agreement of Supervision entered into with the Probationer and the Department of Corrections. Probationer acknowledges that discretionary jail time shall be imposed for failure to timely pay such costs, fees, fines and restitution, and that probation also may be revoked.

The Court may order probationer to pay up to an additional 25% of restitution to compensate for delay in payment. If restitution is not set at the time of sentencing, the prosecutor's office shall submit an itemized statement of costs which will determine restitution, subject to further order of the court.

If community service has been ordered by the Court or as a condition of supervision on a specialized caseload, the probationer is responsible for workman's compensation fees at a rate of 60 cents per hour unless waived or reduced by the Court.

5. Probationer shall not purchase, carry, or have in possession or control any firearm, ammunition, explosives, or other dangerous weapons.

6. Probationer shall not, without permission from the Court or probation department: (a) purchase or operate a motor vehicle; (b) incur any unnecessary indebtedness; (c) leave the assigned district.

7. Probationer shall submit to a search of his person, residence or vehicle, at the request of an agent of probation and parole, without a search warrant.

8. Probationer shall maintain employment or an approved program at all times or, if not employed, make a diligent effort to obtain employment. Probationer shall report any termination of employment or program to the supervising probation officer within two days of termination.

9. Probationer shall participate in any mental health, drug/alcohol abuse program, vocational rehabilitation, educational or learning program as recommended by his probation officer and pay the costs of such programs.

10. Probationer shall participate in and successfully complete any specialized caseload program prescribed by the Department of Corrections as recommended by the supervising probation officer.

11. Probationer shall not associate with any individual specified by his/her probation officer. Probationer shall not associate with anyone connected unlawfully to this crime unless approved by his supervising officer. Further, probationer shall not associate with anyone who uses unlawful drugs.

12. Probationer shall not enter any establishment where the sale of alcohol is the major source of income and must not consume any alcoholic beverages nor use any drugs or controlled substances not prescribed by a licensed physician.

13. Probationer shall submit at his own expense (unless waived) blood, breath, or urine at the request of an agent of probation and parole to be analyzed for the detection of substance abuse or alcohol consumption.

14. Probationer shall respect and obey all laws and report any criminal arrest or receipt of any citation for violation of the law to his/her probation officer within two days of arrest or receipt of any citation.

15. Probationer shall submit to a polygraph examination at his own expense (unless waived) if requested by his/her probation officer.

This is to certify that I have read or have had read to me and fully understand all the conditions, regulations, and restrictions as made by the State Department of Corrections and those imposed by the District Court as conditions of my being granted probation. I hereby agree to abide by and conform to them strictly and fully understand that my failure to do so may result in the revocation of my probation.

Probationer

Date

Probation Officer

Date

CERTIFICATE OF SERVICE

I hereby certify that on the 5 day of September, 2012, I caused a true and correct copy of the foregoing document to be delivered to the following:

Prosecuting Attorney
(Courthouse Box)

Ryan Holdaway
40 W. Cache Valley Blvd, Ste 3B
Logan, UT 84341
Defense Attorney
(Mail)

Probation and Parole
(Courthouse Box)

Bonneville County Jail
(Courthouse Box)
(Fax)

RONALD LONGMORE



Deputy Court Clerk

Ryan L. Holdaway, ISB# 8289
 Diane Pitcher, ISB# 8340
PITCHER & HOLDAWAY, PLLC
 40 W. Cache Valley Blvd., Ste. 3B
 Logan, Utah 84341
 Telephone: (435) 787-1200
 Facsimile: (855) 787-1200
 Email: diane@pitcherholdaway.com
 Email: ryan@pitcherholdaway.com

12 SEP 16 12:33

Attorneys for Defendant

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE**

STATE OF IDAHO,)	
)	
Plaintiff,	)	Case No. CR 12-1397 FE
)	
v.)	
	)	NOTICE OF APPEAL
BRYCE SCOTT MENDEL,)	
)	
Defendant.)	
)	

Notice is hereby given that:

1. The above named Defendant/Appellant, Bryce Mendel, appeals against the above named Plaintiff/Respondent to the Idaho Supreme Court from the district court's findings of law and rulings on the Defendant/Appellant's motion to dismiss which is anticipated to be issued by the above captioned court. The Honorable Joel E. Tingey presiding.

The Defendant filed a motion to dismiss in this case on May 31, 2012. At the time the Defendant filed his motion a similar motion had been filed and heard in two other cases; *State v. Alley*, CR FE 11-15482, Ada County; and *State v. Sauers*, CR 12-915 FE, Bannock County. Both

of those motions were denied. Because there was no controlling precedent the motion was filed in Bonneville County in the present case.

To avoid the cost of a hearing on both the State and the Defendant in the present case, the State and the Defendant entered into a conditional plea agreement. On July 16, 2012 a hearing was held in which the State and Defendant stipulated that the evidence to be submitted through a hearing on the Defendant's motion would be the same as that produced by the State in *State v. Sauers* and *State v. Alley* and by the Defendant as well. Consequently, it was agreed on the record that the Defendant would acquire transcripts of those hearings for submission to the Court in the present case. The Court would then rule based upon the written memoranda of the parties and the filed transcripts.

On that same day, July 16, 2012, the Defendant entered a conditional plea of guilty to one count of Possession With Intent. Sentencing was held on September 4, 2012. The plea is conditional in that it reserves the Defendant's right to appeal his conviction and it is conditional on the pending ruling from the District Court on the Defendant's motion to dismiss. Due to difficulties in getting the transcripts in the other cases the District Court has not yet ruled on the motion to dismiss filed by the Defendant. Consequently, it appears there may not yet be an appealable judgment and ruling in the present case. Nevertheless, to avoid any concerns with the deadline as established from the date of sentencing the Defendant is filing this Notice of Appeal now in an effort to preserve his right to appeal should the District Court's ruling be adverse to the Defendant.

2. That the party has a right to appeal to the Idaho Supreme Court, and the judgments or orders described in paragraph 1 above are appealable orders under and pursuant to Rule 11 I.A.R.

NOTICE OF APPEAL - 2

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3. The Defendant raises a number of issues on appeal:

- Idaho Code 37 § 2705(d)(30)(a) does not prohibit the possession, manufacturing, and/or distribution of the chemical AM-2201 and the district court's findings to the contrary were in error.
- Under the interpretation afforded I.C. § 37-2705(d)(30)(a) by the State, and district court, that section is rendered unconstitutionally vague;

4. The Defendant is not aware of any order sealing any portion of the record.

5. Due to the unique circumstances of the present case the Defendant is not requesting any transcripts from the present case but rather will rely on the transcripts from hearings held in *State v. Alley* and *State v. Sauers*. Those transcripts will be the basis of the record upon which the District Court ultimately relies in ruling on the Defendant's motion to dismiss. No hearing will be held on the Defendant's motion to no transcript will be necessary in that regard.

6. The Defendant/Appellant requests that all exhibits introduced with the Defendant's motion be included in the record.

7. I certify that a copy of this notice of appeal has been served on each reporter of whom a transcript has been requested as named below at the address set out below:

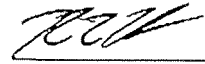
State v. Alley
Fran Morris
11981 La Pan Dr.
Boise, ID 83709

State v. Sauers
Stephanie Davis
PO Box 4316
Pocatello, ID 83205

I further certify that the court reporters preparing the transcripts have been paid the estimated amount for the requested transcripts, the estimated fee for the preparation of the

record, and the appeal filing fee. I certify that service has been made upon all parties required to be served pursuant to Rule 20 and in conformity with I.C. § 67-1401(1).

DATED this 16th day of October, 2012.



Ryan L. Holdaway
Attorney for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of October 2012, I caused a true and correct copy of the foregoing document to be served by the method indicated below, and addressed to the following:

Penelope Shaul
Bonneville County Prosecutor's Office
605 N. Capital Ave.
Idaho Falls, ID 83402
Facsimile: (208) 529-1189

- U.S. Mail, Postage Prepaid
- Hand Delivered
- Overnight Mail
- Facsimile

Fran Morris
Court Reporter
11981 La Pan Dr.
Boise, ID 83709

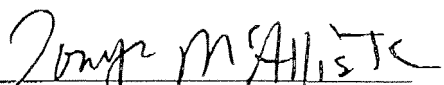
- U.S. Mail, Postage Prepaid
- Hand Delivered
- Overnight Mail
- Facsimile

Stephanie Davis
Court Reporter
PO Box 4316
Pocatello, ID 83205

- U.S. Mail, Postage Prepaid
- Hand Delivered
- Overnight Mail
- Facsimile

LaMont Anderson
Idaho Attorney General's Office
Criminal Law Division
700 W. Jefferson St.
PO Box 83720
Boise, ID 83720

- U.S. Mail, Postage Prepaid
- Hand Delivered
- Overnight Mail
- Facsimile


Tonya McAlist

2012 OCT 18 A 9:31

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

STATE OF IDAHO,)
)
Plaintiff/Respondent,)
)
vs.)
)
BRYCE SCOTT MENDEL,)
)
Defendant/Appellant.)
_____)

Case No. CR-2012-1397

Docket No. 40416

CLERK'S CERTIFICATE
OF APPEAL

Appeal from: Seventh Judicial District, Bonneville County

Honorable Joel E. Tingey, District Judge, presiding.

Case number from Court: CR-2012-1397

Order or Judgment appealed from: Judgment of Conviction Suspended and Order of Probation, entered September 5, 2012

Attorney for Appellant: Ryan L. Holdaway

Attorney for Respondent: Attorney General's Office

Appealed by: Bryce Scott Mendel

Appealed against: State of Idaho

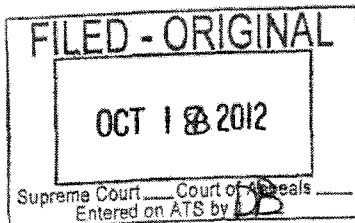
Notice of Appeal Filed: October 16, 2012

Appellate Fee Paid: N/A

Was District Court Reporter's Transcript requested? Transcript not requested in this case

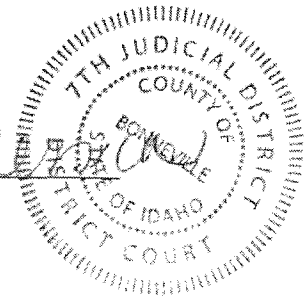
If so, name of reporter: N/A

Dated: October 16, 2012



RONALD LONGMORE
Clerk of the District Court

By: *[Signature]*
Deputy Clerk



**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE**

STATE OF IDAHO,)	
)	
Plaintiff/Respondent,	)	Case No. CR-2012-1397
)	
vs.	)	Docket No. 40416
)	
BRYCE SCOTT MENDEL,	)	CLERK'S CERTIFICATION
	)	OF EXHIBITS
Defendant/Appellant.)	
<hr style="border: 0.5px solid black;"/>		

STATE OF IDAHO)
)
County of Bonneville)

I, Ronald Longmore, Clerk of the District Court of the Seventh Judicial District of the State of Idaho, in and for the County of Bonneville, do hereby certify that the foregoing Exhibits were marked for identification and offered in evidence, admitted, and used and considered by the Court in its determination: please see attached sheets.

1. Magistrate Court Exhibit List
State's Exhibit 1: Idaho State Police Forensic Services, lab results, dated 12/28/2011

I further certify that the following documents will be submitted as exhibits to the record:

1. Preliminary Hearing Transcript, dated February 21, 2012

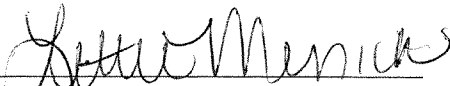
I further certify that the following documents will be submitted as CONFIDENTIAL EXHIBITS to the Record:

1. Pre-Sentence Report, dated August 28, 2012

And I further certify that all of said Exhibits are on file in my office and are part of this record on Appeal in this cause, and are hereby transmitted to the Supreme Court.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the District Court
this 21st day of December, 2012.

RONALD LONGMORE
Clerk of the District Court

By 
Deputy Clerk

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE**

STATE OF IDAHO,)	
)	
Plaintiff/Respondent,	)	Case No. CR-2012-1397
)	
vs.	)	Docket No. 40416
)	
BRYCE SCOTT MENDEL,	)	CLERK'S CERTIFICATE
)	
Defendant/Appellant.)	
_____)	

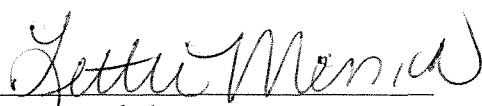
STATE OF IDAHO)
)
County of Bonneville)

I, Ronald Longmore, Clerk of the District Court of the Seventh Judicial District of the State of Idaho, in and for the County of Bonneville, do hereby certify that the above and foregoing Record in the above-entitled cause was compiled and bound under my direction and is a true, correct and complete Record of the pleadings and documents as are automatically required under Rule 28 of the Idaho Appellate Rules.

I do further certify that all exhibits, offered or admitted in the above-entitled cause, will be duly lodged with the Clerk of the Supreme Court along with the Court Reporter's Transcript (if requested) and the Clerk's Record as required by Rule 31 of the Idaho Appellate Rules.

IN WITNESS WHEREOF, I have hereunto set my hand affixed the seal of the District Court this 21st day of December, 2012.

RONALD LONGMORE
Clerk of the District Court

By: 
Deputy Clerk

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

STATE OF IDAHO,)
)
Plaintiff/Respondent,)
)
vs.)
)
BRYCE SCOTT MENDEL,)
)
Defendant/Appellant.)
_____)

Case No. CR-2012-1397

Docket No. 40416

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 11 day of ^{Jan 2013} December, 2012, I served a copy of the Reporter's

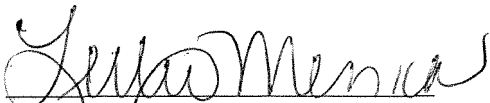
Transcript (if requested) and the Clerk's Record in the Appeal to the Supreme Court in the above entitled cause upon the following attorneys:

Ryan Holdaway
PITCHER & HOLDAWAY
40 W. Cache Valley Blvd., Ste. 3B
Logan, UT 84341

Deputy Attorney General
PO Box 83720
Boise, ID 83720-0010

by depositing a copy of each thereof in the United States mail, postage prepaid, in an envelope addressed to said attorneys at the foregoing address, which is the last address of said attorneys known to me.

RONALD LONGMORE
Clerk of the District Court

By: 
Deputy Clerk

BONNEVILLE COUNTY
CLERK

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IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

<p>STATE OF IDAHO,</p> <p>Plaintiff,</p> <p>vs.</p> <p>BRYCE SCOTT MENDEL,</p> <p>Defendant.</p>	<p>Case No. CR-12-1397</p> <p>ORDER ON MOTION FOR DISMISSAL</p>
--	--

THIS MATTER comes before the Court on Defendant's motion for dismissal. The procedure by which this motion is addressed by the Court is somewhat unorthodox as evident from the chronology.

Defendant was charged with possession of a controlled substance with intent to deliver. On May 31, 2012, Defendant filed a motion to dismiss. The motion was based upon I.C. § 19-815A and Rule 48(a), ICR. By agreement of the Parties, the motion was held in abeyance and Defendant entered into a plea agreement on July 16, 2012, pleaded guilty to the charge, and was sentenced on September 5, 2012. A notice of appeal was then filed on October 16, 2012.

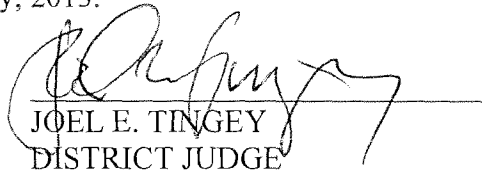
The agreement for this Court to delay ruling on the motion was based on the grounds that other district courts were in the process of considering the same issue, namely, whether the chemical substance known as AM-2201 is a controlled substance under Idaho law. Those other courts having ruled, the issue is now submitted to this Court ostensibly for the purpose of preserving this issue on appeal and possibly joining the appeal in this case with the appeal in other cases.

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This Court has reviewed the record and arguments submitted by the Parties, and is cognizant of the decisions of other district judges on the issue. In consideration of the foregoing, Defendant's motion to dismiss is denied.

IT IS SO ORDERED.

DATED this 6 day of February, 2013.


JOEL E. TINGEY
DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on this 6 day of February, 2012, I did send a true and correct copy of the foregoing document upon the parties listed below by mailing, with the correct postage thereon; by causing the same to be placed in the respective courthouse mailbox; or by causing the same to be hand-delivered.

Penny North-Shaul
Bonneville County Prosecutor's Office
605 N. Capital
Idaho Falls, ID 83402

Ryan L. Holday
PITCHER & HOLDAWAY
40 w. Cache Valley Blvd. Ste 3B
Logan, UT 84341 FAX 855-787-1200

RONALD LONGMORE
Clerk of the District Court
Bonneville County, Idaho

By ms
Deputy Clerk