No. _____

In the

Supreme Court of the United States

RICKY DARNELL PATTERSON,

Petitioner,

v.

THE STATE OF MICHIGAN

Respondent.

Petition For A Writ of Certiorari
To The Supreme Court of Michigan

SUPPLEMENTAL APPENDIX
Vol. I of III

PETITION FOR A WRIT OF CERTIORARI

DANIEL C. WILLMAN (P55867)
OFFICE OF JACKSON COUNTY
PUBLIC DEFENDER
505 S.Jackson
Jackson, MI 49203
(517) 768-6792
Attorney for Petitioner

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PEOPLE OF THE STATE OF MICHIGAN
Plaintiff-Appellee,
V
RICKEY DRANELL PATTERSON,
Defendant-Appellant.

SC: 169028
COA 375655
Jackson CC: 24-005111-FH

JACKSON COUNTY PROSECUTOR
Matthew J. Way (P77286)
Prosecuting Attorney
312 S. Jackson St.
Jackson, MI 49201
Phone: (517) 788 – 4283
Fax: (517) 780-4714
Email: mway3@mijackson.org

OFFICE OF JACKSON COUNTY
PUBLIC DEFENDER
Daniel C. Willman (P55867)
505 S. Jackson St.
Jackson, MI 49203
Phone: (517) 768-6792
Fax: (517) 768-6809
Email: dwillman@mijackson.org

DEFENDANT-APPELLANT'S
APPLICATION FOR LEAVE OF APPEAL

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Daniel C. Willman (P55867)
Assistant Public Defender
Attorney for Appellant

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JUDGMENT APPEALED FROM AND RELIEF SOUGHT

On April 29, 2025, the 4th Circuit Court denied Defendant-Appellant's Motion & Brief "In Regard to What Constitutes Impairment Under MCL 257.625(5)(a) In Regard to Marijuana Usage."

On May 16, 2025, Defendant-Appellant filed an Application for Leave of Interlocutory Appeal with the Court of Appeals. On September 8, 2025, the Court of Appeals denied the above-mentioned Appeal "for lack of merit in the grounds presented."

Defendant-Appellant seeks review because the issue raised involves legal principles of

major significance to the People of the State of Michigan and the State's jurisprudence. MCR 7.3505(b)(3). The Court of Appeals' decision will cause material injustice. MCR 7.305(b)(5)(a).

Because there is a clear absence of a set standard in what constitutes an acceptable level of THC in a driver's blood system, a multitude of various inconsistent judgements will be rendered.

STATEMENT OF QUESTION PRESENTED

Did the court abuse its discretion when a bind over is based on an incorrect interpretation of a factual issue, law and science.

District Court answered, "No."

Trial Court answered, "No."

Court of Appeals: answered, "Denied for lack of merit in the grounds presented."

Plaintiff-Appellant answers, "Yes."

Defendant Appellee answers, "No."

NOTE: See Defendant's Motion Exhibits # pgs 8, 12, 18 (THC & BAC comparison graph) Cannabis use as a risk factor for causing motor vehicle crashes: a

prospective study 29: Setting. Trauma centers in British Columbia, Canada 2019). (Also see Defendant's Motion, Exhibit #5 pg 1 of 26, Graph adjusted OR for crash responsibility, THC as compared to BAC).

SUMMARY OF ARGUMENT

Defendant-Appellant Ricky Patterson was charged under MCL 257.625 causing serious bodily impairment based on a low level of THC in his system (Defendant's THC was only equal to .0027 BAC (See infra ft note #8). The decision of the District Court to bind over and the decisions of the Circuit Court and Court of Appeals to uphold the lower court is not based on law, fact or science.

Currently, there is not set standard (only silence, *Koon,* infra) in the State of Michigan for impairment based on a Defendant's actual active THC level in their blood stream. To date there does not exist any objective "practical and feasible psychomotor, behavioral or cognitive test" (at the State or Federal level) to determine if simply having drugs in a person's blood system correlates or equals impairment. *Bowden,* infra.

"No one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes. All are entitled to be informed as to what the State commands or forbids." *Cramp v Orange County,* 368 US 278, (1961).

This case is ripe for appellate review until the State of Michigan Legislative and Executive Branch passes legislation to set forth a permissible standard in regard to permissible active levels of THC for a driver.

Currently there is zero statutory authority to put any citizen on notice of their due process rights, and allowing prosecution without proper notice clearly "offends traditional notions of fair play and substantial justice. *International Shoe Co. v Washington,* 326 US 310 (1945).

A multitude of various inconsistent judgements could be rendered, making this case and others Capable of Repetition yet Evading Judicial Review.

STATEMENT OF FACTS AND PROCEEDINGS

On September 17, 2024 at 10:11 P.M., complaining witness Paul Conaway was riding a light entry level Harley-Davidson 1200 Sportster westbound on W. Franklin St., when he collided into the side of a vehicle (2016 Jeep) driven by Appellant Ricky Patterson (accident happened at Third and W. Franklin, Jackson, Michigan). Mr. Conaway claimed that Mr. Patterson did not stop at a stop sign and pulled out in front of him. Mr. Conaway claimed he attempted to brake but was unable to stop and ran into the side of Mr. Patterson's vehicle with his motorcycle (PET Vol. I, October 30, 2024, pg. 4 lines 7-18).

Appellant Mr. Patterson stated he was leaving a friend's house and offered two other friends a ride home. Mr. Patterson stated he was headed north bound on Third St. and that he did in fact stop at the stop sign at the corner of Third and W. Franklin St. Mr. Patterson stated he did not see Mr. Conaway on his motorcycle until after Mr. Conaway hit Mr. Patterson's vehicle (as stated in Defendant's Motion, pg. 1, 2nd paragraph).

DISTRICT COURT FINDINGS

At a preliminary hearing held on Wednesday, October 30, 2024 at 9:30 A.M., before 12th District Court Judge the Honorable Michael Klaeren., the Court found that Defendant was impaired under MCL 257.625(5)(a) (PET Vol. I pg. 41, lines 20-21), Court states Defendant was intoxicated).

Michigan State Trooper Joshua Leddy was called to the scene and concluded at the scene and subsequently testified on direct exam at the preliminary exam that Defendant Mr. Patterson passed all field tests and was not impaired.

Q: And can you just describe his performance on the Modified Romberg?

A: When I was conducting the test, I didn't see any clues to indicate that he was under the influence of anything.

(PET, Vol. I, pgs 30, lines 11-14)

Q: Okay. And was his performance?

A: On that test as well I did not see any eye movements, bouncing out or anything

Q: Okay:

A: -- to indicate he was under the influence.

Q: So no clues for that?

A: No, ma'am.

(PET, Vol. I, pgs. 31, lines 15-21)

The above is also consistent with the cross examination of Trooper Leddy.

Q: Okay. But you said that he, when you did the head test he was fine with that, correct?

A: Correct.

Q: And when you did the Lack of Convergence, finger in the face he was fine with that also?

A: Correct

(PET, Vol. I, pgs. 32, lines 16-21).

At the end of the above hearing, the Court directed the parties to brief under the above

statute what actually meet/constituted a serious bodily impairment under MCL 257.625(5)(a). Defense Counsel argued that the injuries complained of did not meet the standard of a serious bodily impairment (PET. Vol I, pg. 42, lines 4-10). The defense argument was based on what constitutes a serious bodily injury under both the Michigan No-Fault and Workers Compensations Acts (citation omitted).

After a review of the law by defense counsel (PET. Vol II, pg. 5, lines 12-25 and pg. 6), it was determined that the Michigan legislature did in fact make a distinction between MCL 257.625(5)(a) and the Michigan No-Fault and Workers Compensations Acts. Indeed, the standard for serious impairment is a significantly lower threshold, which is backed up by case law. *People v Thomas,* 263 Mich App 70, 75, 687 NW2d 598 (2004) which held the:

… definition is significantly different than the definition of "serious impairment of body function" in the no-fault act. For example, the no-fault act's definition requires that such an impairment must be "objectively manifested," MCL 500.3135(7), a requirement that does not appear in the criminal stature. MCL 257.58c. Similarly, the no-fault act limits the "serious impairment" definition by specifying that the body function affected must be an "important" one and that the impairment must "affect" the person's general ability to lead his or her normal life." MCL 500.3135(7).

In contrast, the criminal statute's definition of a "serious impairment" has no such limitations. It is clear that the category of injuries that constitute a "serious impairment of body function" under the criminal statute is broader than the category of injuries constituting a serious impairment of body function" under the no-fault act. Thus, the no-fault act definitions and precedents construing it are not helpful.

The legislative history also supports the above conclusion. Noted in *People v Thomas,* the complaining witness offered only his testimony and zero proof of his injuries at the preliminary exam in this matter. After review of body cam in this matter, police officers are heard discussing this same guy (complaining witness) that had been in another motorcycle accident months earlier in May 2024 (See Defendant's Motion, Exhibit #7, pgs. 2-6). It has also been discovered that the complaining witness is suing Defendant and his insurance carrier Progressive insurance.

In their Response to the Court of Appeals Appellee did not brief on the issue of impairment in regard to THC in a driver's blood stream. Appellee instead chose to rely on and assert that the findings of the District Court did not violate MCR 6.110 (C) (D) (E) or (F) (People's Response, pg. 3, 1st para).

It has always been the position of the Appellant that no statutory authority exists

for the District Court to find that Appellant was impaired.

CIRCUIT COURT OPINION
Under the Influence April 29. 2025

The Court held that Mr. Patterson was under the influence of a controlled substance citing MCL 257.625 and *People v Dupre,* 335 Mich App 126, 128 (2020) (See Circuit Court Opinion, pg. 3, 3rd para, line 10). Without any proof, the Court found that THC in Mr. Patterson's blood influenced his person, weakening his ability to drive and with less caution than an ordinary prudent driver. *Id.*

The Court concluded that only two issues remained on the charge (1) whether Defendant Patterson was under the influence of marijuana; and (2) whether Mr. Conaway (the complaining witness) sustained a serious injury.

The Court concluded its findings holding that the evidence presented at the preliminary examination demonstrated by the probable cause standard that Defendant Patterson likely operated his Jeep while under the influence of marijuana (PET Vol. II, pg. 6).

It was discovered through police video that Mr. Conaway was involved in an accident in May of 2024, police report prior accident (Defendant's Motion, Exhibit #7, pgs. 1-6). Defendant contends that the May 2024

accident could be the source of a pre-existing injury that Mr. Conaway is now seeking compensation. Mr. Conaway also admitted smoking marijuana earlier on May 2024 and, in fact, Mr. Conaway had an active Delta-9 TCH of 7.5 ng/ml as compared to Defendant's 4.6 ng/mg. Mr. Conaway also had Delta-9 Carboxy THC of 39 ng/ml, which is more than twice that of Defendant's who's 18 ng/mg.[1]

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[1] **Constitutionally Disparate Treatment**

In contrast to Defendant, Mr. Conaway was not charged with OWI despite having significantly higher active and non-active levels of THC in his system. The video evidence in this matter shows that Mr. Conaway had several friends (all White/Caucasian) show up to the scene (he clearly sped away from the pack at a higher rate of speed since they all left the same establishment at the same time, then Mr. Conaway's friends arrived moments later) and parked their motorcycles on the sidewalk, were completely disorderly (yelling at police) yet not one person was placed under arrest.

Defense Counsel takes professional umbrage that the above is in complete contrast to the treatment of Joaquin Nathaniel Edwards 2405248-FH. In Edwards case, police showed up late at night in regard to an alleged domestic dispute between a couple in a parked car. Numerous Jackson Police officers on the scene demanded that the male driver of the car exit or police would smash the car window out. Mr. Edwards who was on private property (he was standing in a front yard on a small patch of grass) respectfully and rightfully exercised his 1st Amendment Right to Free speech questioning why police were going to smash out a window on a car. Mr. Edwards was charged with Disorderly Person and Resisting Arrest (R/O). Mr. Edwards (Black/African American) happened to be the lone citizen bystanders outside while scores of police officers and police cruiser flashers woke the entire

Based on the above, Defendant also sought to introduce Mr. Conaway's criminal history and propensity for truth or dishonesty. (Defendant's Motion, Exhibit #8, pg. 1).

Based on the above, Defendant also sought to introduce Mr. Conaway's criminal history and propensity for truth or dishonesty.

In 1995, Mr. Conaway was convicted under MCL 750.520E1B[2] Criminal Sexual Conduct

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neighborhood (Mr. Edwards was also bound over to Circuit Court).

The officers at the scene involving Mr. Patterson and Mr. Conaway showed restraint with the white motorcycle riders and may have shown the same restraint with Mr. Edwards (if they were on the scene), yet it is the contention of defense counsel that there exists a rogue element (of young officers) within the Jackson P.D. that exercises a regular custom, practice and policy of treating black citizens in a grossly disrespectful, disproportionate, and Constitutionally Disparate (Impact) manner then they do white citizens.

The point is raised here so that maybe the Jackson P.D. will take appropriate steps to ensure they show black citizens the same Constitutional protections and respect they offer white citizens. As cited in Defendant's Motion pg. 5, ft #4.

[2]Amended MCL 750.520E(1)(c) **History:** Add. 1974, Act 266, Eff. Apr. 1, 1975; -- Am. 1983, Act 158, Eff. Mar. 29, 1984; -- Am. 1988, Act 86, Eff. June 1, 1988; -- Am. 1994, Act 21, Eff. Oct. 1, 1994; -- Am. 1996, Act 155, Eff. June 1, 1996; -- Am. 2000, Act 227, Eff. Oct. 1, 2000; -- Am. 2000, Act 505, Eff. Mar. 28. 2001; -- Am. 2002, Act 714, Eff. Apr. 1, 2003; -- Am. 2007. Act

4th Degree (Incapacitated person)[3] and in 2005 and 2010 Mr. Conaway was convicted of Sex Offender Failure to Comply with Reporting duties.

Defendant asserted that having non-consensual sex with an incapacitated person is at or near the top of the scale of dishonest acts. Failure to comply twice with Sex Offender reporting duties (evading detection) demonstrates and supports a finding that Mr. Conaway has a propensity for being dishonest.

The Trial Court held that these acts were more than 10 years old and not admissible under MRE 609.[4] (See Circuit Court Opinion, pg 6, 2d full para).

163, Eff. July 1, 2008; -- Am. 2012, Act 372, Eff. Apr. 1, 2013; -- Am. 2023, Act 126, Imd. Eff. Sept. 27, 2023.

[3] Mr. Conaway also has criminal convictions for two counts of Domestic Violence under MCL 750.812, one count of Assault and Battery, as well as a conviction of Child Abuse 4th Degree under MCL 750.136B5 (See Attachment #3, Exhibit #6).

[4] MCL 500.3135 has since been amended and the language noted is now part of subsection MCL 500.3135(5).

Argument

I.

BECAUSE THERE IS NO SET STATUTORY STANDARD IN THE STATE OF MICHIGAN FOR IMPAIRMENT BASED ON A PERSON'S ACTUAL ACTIVE THC LEVEL, THE DECISIONS OF THE COURT OF APPEALS AND THE CIRCUIT COURT TO UPHOLD THE DISTRICT COURT DECISION TO BIND OVER WAS NOT SUPPORTED BY LAW, FACT, OR SCIENCE.

II.

THE CASE AT HAND IS CAPABLE OF REPITION YET EVADING JUDICIAL REVIEW.

I.

BECAUSE THERE IS NO SET STATUTORY STANDARD IN THE STATE OF MICHIGAN FOR IMPAIRMENT BASED ON A PERSON'S ACTUAL ACTIVE THC LEVEL, THE DECISIONS OF THE COURT OF APPEALS AND THE CIRCUIT COURT TO UPHOLD THE DISTRICT COURT DECISION TO BIND OVER WAS NOT SUPPORTED BY LAW, FACT, OR SCIENCE.

Standard of Review

The standard of review for a ruling on a motion to dismiss is abuse of discretion. *People v Scott,* 324 Mich App 459, 462; 924 NW2d 252 (2018). An abuse of discretion occurs when the trial court's "decision falls outside the range of principled outcomes." Id. (quotation marks and citations omitted). "Absent an abuse of discretion, a reviewing court should not disturb the district court's bind over decision." *People vs Seewald,* 499 Mich 111, 116; 879 NW2d 237 (2016).

However, this Court reviews for clear error the trial court's factual findings. *People v Hyde,* 285 Mich App 428,436; 775 NW2d 833 (2009). "Clear error occurs if the reviewing court is left with a definite and firm conviction that the trial court made a mistake." *People v Johnson,* 502 Mich 541, 565; 918 NW2d 676 (2018) (quotation marks and citation omitted).

The appellate court reviews "de novo the bind over decision to determine whether the district court abused it's discretion, giving no deference to the circuit court's decision." *People v Norwood,* 303 Mich App 466, 468; 843 NW2d 775 (2013) (quotation marks and citation omitted).

The interpretation of a statutory phrase is reviewed de novo. *People v Davis,* 468 Mich, 77, 79. 658 NW2d 849 (1996). Also see *Brightmore Gardens, LCC v Marijuana Regulatory Agency* 337 Mich App 149, 166, 975 NW2d 52, 62-63 (2021).

In regard to the issue of the effects of the THC in his blood system and its effect on Mr. Patterson's ability to drive, the Court of Appeals and the Circuit Court Opinions, much like the District Court opinion, was not supported by law, fact or science.

Defendant Patterson's blood results detected 4.9 ng/mL (report states 4.6ng/mL) of Delta Nine THC (sic should be Delta 9), which is the active THC level and contributes to active THC intoxication (Circuit Court Opinion, pg 2, 3rd para, line 8). The Court also noted that defendant requested his case to be dismissed, and that 4.6 ng/mL of THC cannot establish intoxication (Circuit Court Opinion, pg 2, 3rd para).

The Court went on further to assert it is "likely" to infer that Defendant Patterson

operated his vehicle under the influence of marijuana (Circuit Court Opinion, pg. 6, conclusion).

In *People v Bowden,* 344 Mich App 171 999 NW2d 80 (2022) the Court noted there is no objective way (at the State or Federal level) to determine if simply having drugs in a person's blood system correlates or equals impairment. Indeed, the Court relied on a study by the National Highway Traffic Safety Administration (NHTSA) (which was offered by the State and not the Defendant). Holding **there does not exist:**

"a practical and feasible psychomotor, behavioral or cognitive test that would indicate the degree of driving impairment and elevated risk of crash involvement due to marijuana use." At 190-91.

Employing the expert standard set in *Daubert v Merrell Dow Pharm.,* 509 US 579, 113 SCt 2786, 125 Led 2d 469 (1993), **the Court also ruled there is no standard test that the State could use to qualify any law enforcement officer as an expert witness (MRE 702) in regard to marijuana usage and impairment.** *Bowden ID at 186-87).*

Without statutory authority, the District Court found that Defendant was impaired (PET Vol. II pg 6) based on the conclusion that Defendant had an active THC level of Delta-9 THC or 4.6 ng/mL. (Defendant's Motion, Exhibit #1, pg. 1 MSP Lab Report). As noted

above, the testimony of MSP Trooper Leddy, who conducted the field test, concluded that Defendant was not impaired.

Plain Language Statutory Interpretation

The District Court findings were unfounded (under MCL 257.625(5)(a)) as noted in *Nickhola v MIC,* 500 Mich 115, 125, 894 NW2d 552 (2017) "We do not read requirements into a statute where none appear in the plain language, and the statute is unambiguous."

The primary goal of statutory interpretation is "to ascertain and give effect to the intent of the Legislature." *People v Weeder,* 469 Michi 493, 497, 674 NW2d, 374 (2004). *People v Pasha,* 466 Mich. 378, 382, 645 NW2d 275 (2002) a statute is clear, it must be enforced as plainly written.

"However, if a statute is susceptible to more than one interpretation, judicial construction is proper to determine legislative intent." *Id.* "Statutory language should be construed reasonably, keeping in mind the purpose of the act." *Id. People v Spann,* 250 Mich App 527, 530, 655 NW2d 251 (2002). [5]

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[5] [I]nterpreting a statute a court should always turn to one cardinal canon before all others… [C]ourts must presume that a legislature says in a statute what it means and means in a statue what is says there." *Connecticut National Bank v Germain,* 503 US 249, (1992). It should be generally assumed that … that

"Under the influence" means more than having a specified amount of marijuana in a person's system; there must be an "effect on the person." *People v Koon,* 494 Mich 1, 6; 832 NW2d 724 (2013).

While statutory definition of "under the influence" is defined as to alcohol and driving. It is not relative to marijuana. In *Koon* the Supreme Court clarified that "under the influence" is a "term of art used in other provisions of the Michigan Vehicle Code." *Koon,* 494 Mich at 6 n 14; see, e.g., MCL 257.625(1)(a) (stating that a person is "operating while intoxicated" if he or she is "under the influence of… a controlled substance…"). Therefore, though *Koon* was defining what it meant to be "under the influence" for purposes of the Michigan Medical Marihuana Act, MCL 333.26424 et seq., this definition seems to be applicable to other sections of the Michigan Compiled Laws using this "terms of art. [6]

'[absent] a clearly expressed legislative intention to the contrary, [statutory] language must ordinarily be regarded as conclusive.' *Escondido v La Jolla,* 466 US 765, 772 (1984).

[6] The Michigan Criminal Jury Instructions state that "under the influence of a controlled substance" means that because of using or consuming a controlled substance, the defendant's ability to operate a motor vehicle in a normal manner was substantially lessened. M Crim JI 15.2a. Mere consumption of a controlled substance is not enough to prove someone is intoxicated. M Crim JI 15.2a(4). The rest is whether,

THC Measurement

A nanogram (ng) is a unit of measurement for mass that is equal to one billionth of a gram. Defendant had an active THC level of Delta-9 THC – 4.6 ng/mL 0.000045999999999 Milligram. A milligram (mg) is a unit of measurement for mass in the metric system that is equal to one thousandth of a gram. [7]

Currently, there is no set standard (only silence, *Koon,* supra) in the State of Michigan for impairment based on a Defendant's actual active THC level and in this matter the Defendant passed all field tests for impairment conducted by Michigan State Tropper Leddy, surpra. As was note in *Bloomfield Twp v Kane,* 302 Mich App 170, 185 n 10; 839 NW2d 505 (2013), "[u]nder the influence effectively means that the defendant was substantially deprived of normal control or clarity of mind." (quotation marks and citation omitted). *People v*

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because of consuming a controlled substance, the person's "ability to operate a motor vehicle in a normal manner was substantially lessened." M Cim JI 15.2a(4). The person's ability must be so affected that they can no longer operate a vehicle in a "normal manner." M Crim JI 15.2a(4).

[7] ng/mL To Molarity Formula

The following formula is used to calculate molarity from ng/mL.

$M = C*MW)/(V*106)M=(C*MW).V*10^6$

Lambert, 395 Mich 296, 305; 235 NW2d 338 (1975), holding that the driver's ability to drive must have been "substantially and materially affected."

A recent simulator study suggested that drivers with blood THC > 8.2 ng/mL were as impaired as drivers with blood alcohol content (BAC) > 0.05%.
(https://pmc.ncbi.nlm.nih.gov/articles/PMC6771478/)

In the case at hand, the active THC level found in Mr. Patterson's blood was only 4.6 ng/mL or equal to a BAC of 0.028. [8] (Defendant's Motion, Exhibits # pgs. 8, 12, 18 (THC & BAC comparison graph) Cannabis use as a risk factor for causing motor vehicle crashes; a prospective study 29: Setting. Trauma centers in British Columbia, Canada 2019). (also see Defendant's Motion, Exhibit #5 pg 1 of 26, Graph adjusted OR for crash responsibility, THC as compared to BAC).

For all of the above, Mr. Patterson was not impaired on the night in question, and the trial court abused its discretion. Additionally, this Court should rule that an Active THC

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[8] 82 ng/mL / (0.05 BAC) = (4.6 ng/mL) / (xBAC)
X = (46. ng/mL * 0.05 BAC / (82 ng/mL)
X = 0.23 BAC / 82
X = 0.0028 BAC
(https://pmc.ncbi.nlm.nih.gov/articles/PMC6771478)

Appellant-Defendant asserts that he was only taken into custody to test his blood alcohol content which was zero (Defendant's Motion, Exhibit #1).

level of > 8.2 ng/mL (BAC) > 0.05% or even a higher level does not meet the threshold for impairment under MCL 257.625[9] or any of it's corresponding sections.

I.
THE CASE AT HAND IS CAPABLE OF REPETITION YET EVADING JUDICIAL REVIEW.

Standard of Review

The standard of review for cases that are "capable of repetition, yet evading review" involves whether the issue is of public significance, likely to recur, and likely to evade judicial review. This standard is applied to moot cases to decide if they should still be adjudicated.

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[9] (See https://onlinelibrary.wiley.com/doi/10.1111/add.14663) Many jurisdictions, including many US states and Canada, have set THC per se limits of 2 or 5 ng/mL. These levels, especially the 2 ng/mL level, have been criticized because they my not indicate impairment, especially in frequent users who develop tolerance to some THC impairing effects 24, 58, 59. In addition, because cannabinoids accumulate in fat, some daily users may have blood THC >2 ng/mL after a week or more of abstinence 10, 60. Advocates of lower per se levels note that THC concentration drops rapidly after smoking, so a driver could be impaired with high THC levels at the time of driving but be below 5 ng/mL several hours later if there is a delay in obtaining blood samples, a fact that supports lower per se limits for THC.

Public Significance, Likely to Recur, and Evading Judicial Review: A moot issue will be reviewed if it is publicly significant, likely to recur, and yet likely to evade judicial review (*Michigan Republican Party v Donahue,* 12 NW3d 631 (2024). This principle is consistently applied across various cases in Michigan courts (also see *People v Richmond,* 486 Mich 29 (2010) transitory nature of the controversy).

Argument

As was confirmed during preliminary examination in this matter the burden to prove impairment under MCL 257.625 and it's corresponding subsections lie with the prosecution. (PET Vol. I pg. 37, lines 20-25 and page 38, lines 1-2): o

THE COURT: Okay. Years ago, if you had active THC in your system and you didn't need to establish impairment, you automatically lose absent a medical marijuana card.

MS. MILLER: Okay.

THE COURT: I'm asking whether that is the current law?

MS. MILLER: I think we need to establish the Impairment.

The above exchange is correct statement of the law. In 2018, Michigan voters approved a ballot measure initiating marijuana

legalization in marijuana. (See 2018 IL 1. The ballot-initiated law – **MICHIGAN REGULATION AND TAXATION OF MARIHUANA ACT** a.k.a and herein MRTMA – became effective on December 5, 2018. See MCL 333.27951 et seq).

The MRTMA expressly allows for the use of recreational marijuana under state law. MCL 333.27951 et seq. The MRTMA further states that "**[a]all other laws inconsistent with this act do not apply to conduct that is permitted by this act."** MCL 333.27954(5). (See full statute in Addendum in C.O.A. Brief)

One o the laws inconsistent with the MRTMA is our state's motor vehicle code prohibition on individuals operating with the presence of marijuana (a controlled substance). Under Michigan law, it is unlawful to operate a motor vehicle under certain circumstances.

The Michigan motor vehicle code prohibits a person from operating a motor vehicle while intoxicated (OWI), MC 257.625(1), operating a motor vehicle while visibly impaired (OWVI), MCL 257.625(3), and operating a motor vehicle with the presence of a controlled substance (OWPCS), 257.625(8). The major difference between the three charges is the level of "impairment" that the prosecutor must prove. Under the OWPCS statute, a prosecutor must merely prove the presence of a controlled substance—in other

words, it is a zero-tolerance standard. MCL 257.625(8).

Clearly when this ballot measure was passed it was the intent and expectation of Michigan voters that drivers on Michigan's roads could drive a motor vehicle with active THC in their blood system. This is based on the fact that THC stays in a person's blood system much longer than alcohol (MRE 201).

MRTMA does not authorize operating, navigating, or being in physical control of any motor vehicle, aircraft, snowmobile, off-road recreational vehicle, or motorboat while **under the influence of marihuana.** MCL 333.27654(a), which means intoxicated and impaired driving, and driving under the influence are not protected by MRTMA.

MRTMA controls over MCL 257.625 and its corresponding sections for persons at least 21 years of age with THC in their system that are driving while NOT impaired, intoxicated, or under the influence. The above is consistent with the holding of *Koon* (supra) that MMMA card holders also cannot be convicted under MCL 257.625(8) for OWPCS, the prosecutor has to show under the influence.

Because there is no set standard in the State of Michigan for driving while impaired (OWI) based on a driver's actual active THC level (*Bowden).* This case is a classic example of an actual case and controversy that is Capable of Repetition yet

Evading Judicial Review. *US v Nixon,* 418 US 683 (1974), *Globe Newspaper v Superior Court County of Norfolk,* 457 US 596 (1982). Such practices must not be allowed, *Gerstein v Pugh,* 420 US 103, (1975). "[O]ne does not have to await the consummation of threatened injury to obtain preventive relief." *Farmer v Brennan,* 511 US. 825, 827 (1994).

While the right to drive is not a fundamental right or privilege (subject too strict scrutiny, citations omitted), any driver is stopped or detained for any cause is still entitled to the full fundamental substantive and procedural safeguards offered by the 14th Amendment Due Process clause of the United States Constitution (US Const Amend. V, XIV) and the Due Process clause of the Constitution of the State of Michigan (Const 1963, Art 1, Sec 17).

"No one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes. All are entitled to be informed as to what the State commends or forbids." *Cramp v Orange County,* 368 US 287, 82 SCt 275, 7 LEd2d 285 (1961),

In the case at hand, there is zero statutory authority to put any citizen on notice of their due process rights, and allowing prosecution without proper notice clearly "offends traditional notions of fair play and substantial justice." *International Shoe Co. v Washington,* 326 US 310 (1945).

The Fourteenth Amendment requires due process of law for the deprival of "liberty, just as for deprival of life" and there cannot constitutionally be a difference in the quality of the process based merely upon a supposed difference in the sanction involved. *Gideon v Wainwright*, 372 US 335, 350 (1963) "[T]he full scope of the liberty guaranteed by the Due Process Clause … is not a series of isolated points … It is a rational continuum which, broadly speaking, includes freedom from all substantial arbitrary impositions and purposeless restraints …." Justice Souter, concurring *Albright v Oliver,* 510 US 266, 288 (1994).[10]

Based on the above, even if the charges against Mr. Patterson are dropped, this case

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[10] Due Process of Law … Before the Civil War, *24 Harv.L.Rev. 366, 368 (1911),* was "intended to secure the individual from the arbitrary exercise of the powers of government," *Hurtado v California,* 110 US 516, 527 (1884) (quoting *Bank of Columbia v Okely,* 4 Wheat. 235, 17 US 244 (1819)"); *Parratt,* supra, at 451 US 549 (POWELL, J., concurring in result). By requiring the government to follow appropriate procedures when its agents decide to "deprive any person of life , liberty or property," the Due Process Clause promotes fairness in such decisions. And by the barring certain government actions regardless of the fairness of the procedures used to implement them, e.g., *Rochin,* supra, it serves to prevent governmental power from being "used for purposes of oppression," *Murray's Lessee,* 474 US 332. Also see in *Daniels v Williams,* 474 US 327, (1986). *Cleveland Board of Education v Loudermill,* 470 U.S. 532 (1985). Substantive due process applies to the right a plaintiff has been denied, life, liberty or property. *County of Sacramento v Lewis* 523 US 833 (1998).

is ripe for appellate review until the State of Michigan Legislative and Executive Branch pass legislation to set forth a permissible standard in regard to permissible active levels of THC for a driver.

CONCLUDING SECTION

The District Court, the Circuit Court and the Court of Appeals clearly errored in consideration of the law, facts and science in this case. *People v Hyde,* 285 Mich App 428, 436; 775 NW2d 833 (2009). Based on the above, Appellant challenges the issue of impairment.

Appellant respectfully asserts he was not impaired under MCL 257.625(5)(a), OWI causing serious impairment of a bodily function. The level of active THC in Defendant's blood was 4.6 ng/mL, which would equate to a BAC of 0.028. Furthermore, as noted in *Bowden,* supra there is no objective way (at the State or Federal level) to determine if simply having drugs in a person's blood system correlates or equals impairment. Additionally, the *Bowden* court ruled that there is no standard test that the State could use to qualify any law enforcement officer as an expert witness (MRE 702) in regard to marijuana usage and impairment.

For all of the above, Appellant Mr. Patterson was not impaired on the night in question and the case against him should be dismissed with prejudice. Additionally, this Court should rule

that an Active THC level of > 8.2 ng/mL (BAC) > 0.05% or even a higher level does not meet the threshold for impairment under MCL 257.625 or any of its corresponding sections.

Because there is a clear absence of a set standard in Michigan in regard to what constitutes an acceptable level of THC in a driver's blood system, a multitude of various inconsistent judgements could be rendered, making this case and others Capable of Repetition yet Evading Judicial Review.

REQUEST FOR RELIEF

WHEREFORE: Appellant respectfully requests that this Honorable Court grant Appellant's Leave for Appeal with his purpose being that this Honorable Court rule in favor of his cause and grant whatever relief is just and equitable under the circumstances.

DATED: September 11, 2025

OFFICE OF THE JACKSON COUNTY PUBLIC DEFENDER

By: /s/ Daniel C. Willman
Daniel C. Willman (Bar P No. 55867)
Assistant Public Defender

CONCISE ARGUMENT

This Application for Leave of Appeal complies with MCR 7.212(C).

OFFICE OF THE JACKSON COUNTY PUBLIC DEFENDER

By: /s/ Daniel C. Willman
Daniel C. Willman (Bar P No. 55867)

PEOPLE OF THE STATE OF MICHIGAN
Plaintiff-Appellee,
V

SC:
COA 375655
Jackson CC: 24-005111-FH

RICKEY DRANELL PATTERSON,
Defendant-Appellant.

JACKSON COUNTY PROSECUTOR
Kelsey Guernsey Way (P77856)
Prosecuting Attorney
Matthew J. Way (P77856)
Chief Appellate Attorney
312 S. Jackson St.
Jackson, MI 49201
Phone: (517) 788 – 4283
Fax: (517) 780-4714
Email: mway3@mijackson.org

OFFICE OF JACKSON COUNTY PUBLIC DEFENDER
Daniel C. Willman (P55867)
505 S. Jackson St.
Jackson, MI 49203
Phone: (517) 768-6792
Fax: (517) 768-6809
Email: dwillman@mijackson.org

DEFENDANT-APPELLANT'S APPLICATION FOR LEAVE OF INTERLOCUTORY APPEAL

*****ORAL ARGUMENT REQUESTED*****

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NOTE: All cited State and Federal Constitutional Provisions, State Statutes, State Court Rules, Michigan Rules of Evidence (except MRE 201 and 609) are all added as an addendum at the end of this brief after the WORD COUNT provision. Michigan Criminal Jury Instruction M Crim JI 15.2a is printed in full within the body of this brief.

APPENDIX

Lower Court Documents

Register of Actions R.O.A. District Court Attachment ..... #1

Register of Actions R.O.A. Circuit Court Attachment ..... #2

Defendant Motion ..... #3

Exhibits attached to Defendant's Motion

Exhibit # 1
Michigan State Lab Alcohol Toxicology Report

Exhibit # 2
Michigan State Lab THC Toxicology Report

Exhibit # 4
Cannabis Use as a risk factor for causing Motor vehicle crashes: a prospective study

Exhibit # 5
Cannabis Use as a risk factor for causing motor vehicle crashes: Graphs.

Exhibit # 6
ICHAT history Complaining Witness

Exhibit # 7
Police Case Report of Complaining Witness's Prior Accident

Exhibit # 8
Michigan State Lab Alcohol Toxicology Report And Michigan State Lab THC Toxicology Report Complaining Witness

People's Response to Defendant's Motion Attachment ..... #4

Circuit Court Opinion Attachment ..... #5

Preliminary Hearing Transcripts Attachment #6 Vol I & Vol II
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..... #7

Preliminary Hearing Transcripts Attachment #6 Vol I & Vol II
Attachment
..... #8

JURISDICTIONAL STATEMENT

Jurisdiction is proper in this matter as appeals from the Circuit Court shall be to the Court of Appeals and further, shall be by application MCR 7.203(B)(1).

If the issues raised infra by Appellant are not granted leave for appellate review, Appellant would suffer substantial harm by awaiting final judgment before taking an appeal MCR 7.205.

Circuit Court Opinion being appealed was issued on April 29, 2025.

STATEMENT OF QUESTION PRESENTED

Did the court abuse its discretion when a bind over is based on an incorrect interpretation of a factual issue, law, and science.

District Court answered, "No."

Trial Court answered, "No."

Plaintiff-Appellant answers, "Yes."

Defendant-Appellee answers, "No."

SUMMARY OF ARGUMENT

Defendant Ricky Patterson was charged under MCL 257.625 causing serious bodily impairment based on a low level of THC in his system. The decision of the District Court to bind over and the decision of the Circuit Court to uphold the lower court decision was not based on law, fact, or science. Defendant's THC was only equal to .0028 BAC (See infra ft note #8).

Currently, there is no set standard (only silence, *Koon*, infra) in the State of Michigan for impairment based on a Defendant's actual active THC level in their blood stream. To date there does not exist any objective "practical and feasible psychomotor, behavioral or cognitive test" (at the State or Federal level) to determine if simply having drugs in a person's blood system correlates or equals impairment. *Bowden,* 344 Mich App 171 (2022).
Additionally, there is no standard test that the State could use to qualify any law enforcement officer as an expert witness (MRE 702) in regard to marijuana usage and impairment. *Daubert.*

Because there is a clear absence of a set standard in Michigan in regard to what constitutes an acceptable level of THC in a driver's blood system, a multitude of various inconsistent judgements could be rendered, making this case and others Capable of Repetition yet Evading Judicial Review.

STATEMENT OF FACTS AND PROCEEDINGS

On September 17, 2024, at 10:11 PM, complaining witness Paul Conaway was riding a light entry level Harley-Davidson 1200 Sportster westbound on W. Franklin St., when he collided into the side of a vehicle (2016 Jeep) driven by Appellant Ricky Patterson (accident happened at Third and W. Franklin, Jackson, Michigan). Mr. Conaway claimed that Mr. Patterson did not stop at a stop sign and pulled out in front of him. Mr. Conaway claimed he attempted to brake but was unable to stop and ran into the side of Mr. Patterson's vehicle with his motorcycle (PET Vol. I , October 30, 2024, pg. 4 lines 7-18).

Appellant Mr. Patterson stated he was leaving a friend's house and offered two other friends a ride home. Mr. Patterson stated he was headed north bound on Third St. and that he did in fact stop at the stop sign at the corner of Third and W. Franklin St. Mr. Patterson stated he did not see Mr. Conaway on his motorcycle until after Mr. Conaway hit Mr. Patterson's vehicle (as stated in Defendant's Motion, pg. 1, 2nd paragraph).

DISTRICT COURT FINDINGS

At a preliminary hearing held on Wednesday, October 30, 2024, at 9:30 AM, before 12th District Court Judge the Honorable Michael Klaeren, the Court found that Defendant was

impaired under MCL 257.625(5)(a) (PET Vol. I pg 41, lines 20-21), Court states Defendant was intoxicated).

Michigan State Trooper Joshua Leddy, was called to the scene and concluded at the scene and subsequently testified on direct exam at the preliminary exam that Defendant Mr. Patterson passed all field tests and was not impaired.

Q. And can you just describe his performance on the Modified Romberg?

A: When I was conducting the test, I didn't see any clues to indicate that he was under the influence of anything.

(PET, Vol. I, pgs. 30, lines 11-14).

Q: Okay. And what was his performance?

A: On that test as well I did not see any eye movements, bouncing out or anything

Q; Okay:

A. – to indicate he was under the influence.

Q. So no clues for that?

A. No, ma'am.

PET, Vol. I, pgs. 31, lines 15-21).

The above is also consistent with the cross examination of Trooper Leddy.

Q: Okay. But you said that he, when you did the head test he was fine with that, correct?

A: Correct.

Q: And when you did the Lack of Convergence, finger in the face he was fine with that also?

A: Correct

(PET, Vol. I, pgs 32, lines 16-21).

At the end of the above hearing, the Court directed the parties to brief under the above statute what actually meet/constituted a serious bodily impairment under MCL 257.625 (5)(a). Defense Counsel argued that the injuries complained of did not meet the standard of a serious bodily impairment (PET. Vol I, pg. 42, lines 4-10). The defense argument was based on what constitutes a serious bodily injury under both the Michigan No-Fault and Workers Compensations Acts (citation omitted).

After a review of the law by defense counsel (PET. Vol II, pg. 5, lines 12-25 and pg. 6), it was determined that the Michigan legislature did in fact make a distinction between MCL 257.625 (5)(a) and the Michigan No-Fault and Workers Compensations Acts. Indeed, the standard for serious impairment is a

significantly lower threshold, which is backed up by case law. *People v Thomas*, 263 Mich App 70, 75, 687 NW2d 598 (2004) which held the:

. . . definition is significantly different than the definition of "serious impairment of body function" in the no-fault act. For example, the no-fault act's definition requires that such an impairment must be "objectively manifested," MCL 500.3135(7), a requirement that does not appear in the criminal statute. MCL 257.58c. Similarly, the no-fault act limits the "serious impairment" definition by specifying that the body function affected must be an "important" one and that the impairment must "affect" the person's general ability to lead his or her normal life." MCL 500.3135(7). In contrast, the criminal statute's definition of a "serious impairment" has no such limitations. It is clear that the category of injuries that constitute a "serious impairment of a body function" under the criminal statute is broader than the category of injuries constituting a serious impairment of body function" under the no-fault act. Thus, the no-fault act definitions and precedents construing it are not helpful.

The legislative history also supports the above conclusion. Noted in *People v Thomas,* the complaining witness offered only his testimony and zero proof of his injuries at the preliminary exam in this matter. After a review of body cam in this matter, police officers are heard discussing this is the same

guy (complaining witness) that had been in another motorcycle accident months earlier in May 2024 (See Defendant's Motion, Exhibit #7, pgs. 2-6). It has also been discovered that the complaining witness is suing Defendant and his insurance carrier Progressive insurance.

Appellee did not brief on the issue of impairment in regard to THC in a drivers blood stream. Appellee instead chose to rely on and assert that the findings of the District Court did not violate MCR 6.110 (C) (D) (E) or (F) (People's Response, pg. 3, 1st para). Appellee did address the issue of whether it was permissible to admit the criminal record of the complaining witness.

It has always been the position of Appellant that no statutory authority exists for the District Court to find that Appellant was impaired (See Attachment #3).

CIRCUIT COURT OPINION-Under the Influence April 29, 2025

The Court held that Mr. Patterson was under the influence of a controlled substance citing MCL 257.625 and *People v Dupre,* 335 Mich App 126, 128 (2020) (See Circuit Court Opinion, pg. 3, 3rd para, line 10) Without any proof, the Court found that THC in Mr. Patterson's blood influenced his person, weakening his ability to drive and with less caution than an ordinary prudent driver. *Id.*

The Court concluded that only two issues remained on the charge (1) whether Defendant Patterson was under the influence of marijuana; and (2) whether Mr. Conaway (the complaining witness) sustained a serious injury.
The Court concluded its findings holding that the evidence presented at the preliminary examination demonstrated by the probable cause standard that Defendant Patterson likely operated his Jeep while under the influence of marijuana (PET Vol. II pg. 6).

It was discovered through police video that Mr. Conaway was involved in an accident in May of 2024 (Defendant's Motion, Exhibit #7, pgs. 1-6). Defendant contends that the May 2024 accident could be the source of a pre-existing injury that Mr. Conaway is now seeking compensation. Mr. Conaway also admitted smoking marijuana earlier on May 2024 and had an active Delta-9 TCH of 7.5 ng/ml which is also well below the level of intoxication (See argument infra, including ft #8) yet Mr. Conaway was not charged with OWI. (Defendant's Motion, Exhibit #8, pg1). (Constitutionally Disparate Treatment, see Defendant's Motion pg. 5, Ft 4)

Based on the above, Defendant also sought to introduce Mr. Conaway's criminal history and propensity for truth or dishonesty. In 1995, Mr. Conaway was convicted under MCL 750.520E1B Criminal Sexual Conduct 4th Degree (Incapacitated person) and in 2005 and 2010 Mr. Conaway was convicted of Sex

Offender Failure to Comply with Reporting duties.

Defendant asserted that having non-consensual sex with an incapacitated person is at or near the top of the scale of dishonest acts. Failure to comply twice with Sex Offender reporting duties (evading detection) demonstrates and supports a finding that Mr. Conaway has a propensity for being dishonest (Defendant's Motion, pg. 6, 2d para).

The Trial Court held that these acts were more than 10 years old and not admissible under MRE 609. (See Circuit Court Opinion, pg 6, 2d full para).

ARGUMENT

I.
BECAUSE THERE IS NO SET STATUTORY STANDARD IN THE STATE OF MICHIGAN FOR IMPAIRMENT BASED ON A PERSON'S ACTUAL ACTIVE THC LEVEL, THE DECISION OF THE CIRCUIT COURT TO UPHOLD THE DISTRICT COURT DECISION TO BIND OVER WAS NOT SUPPORTED BY LAW, FACT, OR SCIENCE.

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II.
THE CASE AT HAND IS CAPABLE OF REPITITION YET EVADING JUDICIAL REVIEW IN VIOLATION OF THE DUE PROCESS CLAUSE OF THE UNITED STATES AND MICHIGAN CONSTITUTIONS.

Pg 14

I.

BECAUSE THERE IS NO SET STATUTORY STANDARD IN THE STATE OF MICHIGAN FOR IMPAIRMENT BASED ON A PERSON'S ACTUAL ACTIVE THC LEVEL, THE DECISION OF THE CIRCUIT COURT TO UPHOLD THE DISTRICT COURT DECISION TO BIND OVER WAS NOT SUPPORTED BY LAW, FACT, OR SCIENCE.

Standard of Review

The standard of review for a ruling on a motion to dismiss is abuse of discretion. *People v Scott*, 324 Mich App 459, 462; 924 NW2d 252 (2018). An abuse of discretion occurs when the trial court's "decision falls outside the range of principled outcomes." Id. (quotation marks and citations omitted). "Absent an abuse of discretion, a reviewing court should not disturb the district court's bind over decision." *People v Seewald,* 499 Mich 111, 116; 879 NW2d 237 (2016).

However, this Court reviews for clear error the trial court's factual findings. *People v Hyde*, 285 Mich App 428, 436; 775 NW2d 833 (2009). "Clear error occurs if the reviewing court is left with a definite and firm conviction that the trial court made a mistake." *People v Johnson,* 502 Mich 541, 565; 918 NW2d 676 (2018) (quotation marks and citation omitted).

The appellate court reviews "de novo the bind over decision to determine whether the district court abused its discretion, giving no deference to the circuit court's decision." *People v Norwood,* 303 Mich App 466, 468; 843 NW2d 775 (2013) (quotation marks and citation omitted).

The interpretation of a statutory phrase is reviewed de novo. *People v Davis,*

468 Mich, 77, 79. 658 NW2d 849 (1996*). Also see Brightmore Gardens, LLC v*

Marijuana Regulatory Agency 337 Mich App 149, 166, 975 NW2d 52, 62-63 (2021).

Argument

In regard to the issue of the effects of the THC in his blood system and its effect on Mr. Patterson's ability to drive, the Circuit Court much like the District Court opinion, was not supported by fact or science.

Defendant Patterson's blood results detected 4.9 ng/mL (report states 4.6ng/mL, infra) of Delta Nine THC (sic should be Delta 9), which is the active THC level and contributes to active THC intoxication (Circuit Court Opinion, pg. 2, 3rd para, line 8). The Court also noted that defendant requested his case to be dismissed, and that 4.6 ng/ml of THC cannot establish intoxication (Circuit Court Opinion, pg. 2, 3rd para).

The Court went on further to assert it is "likely" to infer that Defendant Patterson

operated his vehicle under the influence of marijuana (Circuit Court Opinion, pg 6, conclusion).

In *People v Bowden*, 344 Mich App 171 999 NW2d 80 (2022*)* the Court noted there is no objective way (at the State or Federal level) to determine if simply having drugs in a person's blood system correlates or equals impairment. Indeed, the Court relied on a study by the National Highway Traffic Safety Administration (NHTSA) (which was offered by the State and not the defendant). Holding **there does not exist**:

"a practical and feasible psychomotor, behavioral or cognitive test that would indicate the degree of driving impairment and elevated risk of crash involvement due to marijuana use." At 190-91.

Employing the expert standard set in *Daubert v Merrell Dow Pharm.,* 509 US 579, 113 SCt 2786, 125 LEd 2d 469 (1993*),* the Court also ruled there is no standard test that the State could use to qualify any law enforcement officer as an expert witness (MRE 702) in regard to marijuana usage and impairment. *Bowden ID at 186-87).*

Without statutory authority, the District Court found that Defendant was impaired (PET Vol. II pg. 6) based on the conclusion that Defendant had an active THC level of Delta -9 THC or 4.6ng/mL. (Defendant's Motion, Exhibit #1, pg. 1 MSP Lab Report). As

noted above, the testimony of MSP Trooper Leddy, who conducted the field test, concluded that Defendant was not impaired.

The District Court findings were unfounded (under MCL 257.625 (5)(a)) as noted it *Nickola v MIC,* 500 Mich 115, 125, 894 NW2d 552 (2017) "We do not read requirements into a statute where none appear in the plain language and the statute is unambiguous."

The primary goal of statutory interpretation is "'to ascertain and give effect to the intent of the Legislature." *People v Weeder,* 469 Mich 493, 497, 674 NW2d 374
(2004). *People v Pasha,* 466 Mich. 378, 382, 645 NW2d 275 (2002) a statute is clear, it must be enforced as plainly written.

"However, if a statute is susceptible to more than one interpretation, judicial construction is proper to determine legislative intent." *Id.* "Statutory language should be construed reasonably, keeping in mind the purpose of the act." *Id. People v Spann,* 250 Mich App 527, 530, 655 NW2d 251 (2002).[11]

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[11] "[I]n interpreting a statute a court should always turn to one cardinal canon before all others. .[C]ourts must presume that a legislature says in a statute what it means and means in a statute what it says there." *Connecticut National Bank v Germain,* 503 US 249, (1992*).* It should be generally assumed that . . . that '[absent] a clearly expressed legislative intention to the contrary,

"Under the influence" means more than having a specified amount of marijuana in a person's system; there must be an "effect on the person." *People v Koon,* 494 Mich 1, 6; 832 NW2d 724 (2013).

So while the statutory definition of "under the Influence" is defined as to alcohol and driving. It is not relative to marijuana. In *Koon* the Supreme Court clarified that "under the influence" is a "term of art used in other provisions of the Michigan Vehicle Code." *Koon*, 494 Mich at 6 n 14; see, e.g., MCL 257.625(1)(a) (stating that a person is "operating while intoxicated" if he or she is "under the influence of . . . a controlled substance . . ."). Therefore, though *Koon* was defining what it meant to be "under the influence" for purposes of the Michigan Medical Marihuana Act, MCL 333.26424 et seq., this definition seems to be applicable to other sections of the Michigan Compiled Laws using this "term of art.[12]"

[statutory] language must ordinarily be regarded as conclusive.' *Escondido v La Jolla,* 466 US 765, 772 (1984).

[12] The Michigan Criminal Jury Instructions state that "under the influence of a controlled substance" means that because of using or consuming a controlled substance, the defendant's ability to operate a motor vehicle in a normal manner was substantially lessened. M Crim JI 15.2a. Mere consumption of a controlled substance is not enough to prove someone is intoxicated. M Crim JI 15.2a(4). The test is whether, because of consuming a controlled substance, the person's

THC measurement

A nanogram (ng) is a unit of measurement for mass that is equal to one billionth of a gram. Defendant had an active THC level of Delta - 9 THC- 4.6ng/mL 0.0000459999999999 Milligram. A milligram (mg) is a unit of measurement for mass in the metric system that is equal to one thousandth of a gram. [13]

Currently, there is no set standard (only silence, *Koon*, supra) in the State of Michigan for impairment based on a Defendant's actual active THC level and in this matter the Defendant passed all field tests for impairment conducted by Michigan State Trooper Leddy, supra. As was noted in *Bloomfield Twp v Kane*, 302 Mich App 170, 185 n 10; 839 NW2d 505 (2013), "[u]nder the influence effectively means that the defendant was substantially deprived of normal control or clarity of mind." (quotation marks and citation omitted). *People v*

"ability to operate a motor vehicle in a normal manner was substantially lessened." M Crim JI 15.2a(4). The person's ability must be so affected that they can no longer operate a vehicle in a "normal manner." M Crim JI 15.2a(4).

[13] ng/mL To
Molarity Formula
The following formula is used to calculate molarity from ng/ml. M = C*MW)/(V*106)M=(C*MW)/(V*10^6.

Lambert, 395 Mich 296, 305; 235 NW2d 338 (1975), holding that the driver's ability to drive must have been "substantially and materially affected."

A recent simulator study suggested that drivers with blood THC > 8.2 ng/ml were as impaired as drivers with blood alcohol content (BAC) > 0.05%.(https://pmc.ncbi.nlm.nih.gov/articles/PMC6771478/).

In the case at hand, the active THC level found in Mr. Patterson's blood was only 4.6ng/ml or equal to a BAC of 0.028[14] (Defendant's Motion , Exhibits # pgs. 8, 12, 18 (THC & BAC comparison graph) Cannabis use as a risk factor for causing motor vehicle crashes: a prospective study 29: Setting. Trauma centers in British Columbia, Canada 2019). (also see Defendant's Motion, Exhibit#5 pg. 1 of 26, Graph adjusted OR for crash responsibility, THC as compared to BAC).

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[14] **82 ng/mL / (0.05 BAC) = (4.6 ng/mL) / (xBAC) x = (4.6 ng/ml * 0.05 BAC / (82 ng/ML)**

x = 0.23 BAC / 82 x = 0.0028 BAC

(https://pmc.ncbi.nlm.nih.gov/articles/PMC6771478/)

Appellant-Defendant asserts that he was only taken into custody to test his blood alcohol content which was zero (Defendant's Motion, Exhibit #1).

For all of the above, Mr. Patterson was not impaired on the night in question and the trial court abused its discretion. Additionally, this Court should rule that an Active THC level of > 8.2 ng/ml (BAC) > 0.05% or even a higher level does not meet the threshold for impairment under MCL 257.625[15] or any of its corresponding sections.

II.
THE CASE AT HAND IS CAPABLE OF REPITITION YET EVADING JUDICIAL REVIEW IN VIOLATION OF THE DUE PROCESS CLAUSE OF THE UNITED STATES AND MICHIGAN CONSTITUTIONS.

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[15] Jurisdictions, including with the US states and Canada, have set THC per se limits of 2 or 5 ng/ml. These levels, especially the 2 ng/ml level, have been criticized because they may not indicate impairment, especially in frequent users who develop tolerance to some THC impairing effects 24, 58, 59. Because cannabinoids accumulate in fat, some daily users may have blood THC > 2 ng/ml after a week or more of abstinence 10, 60. Advocates of lower per se levels note that THC concentration drops rapidly after smoking, so a driver could be impaired with high THC levels at the time of driving but be below 5 ng/ml several hours later if there is a delay in obtaining blood samples, a fact that supports lower per se limits for THC. (See https://onlinelibrary.wiley.com/doi/10.1111/add.14663).

Standard of Review

The standard of review for cases that are "capable of repetition, yet evading review" involves whether the issue is of public significance, likely to recur, and likely to evade judicial review. This standard is applied to moot cases to decide if they should still be adjudicated.

Public Significance, Likely to Recur, and Evading Judicial Review: A moot issue will be reviewed if it is publicly significant, likely to recur, and yet likely to evade judicial review (*Michigan Republican Party v Donahue,* 13 NW3d 631 (2024). This principle is consistently applied across various cases in Michigan courts (also see *People v Richmond,* 486 Mich 29 (2010) transitory nature of the controversy).

Argument

As was confirmed during preliminary examination in this matter the burden to prove impairment under MCL 257. 625 and it's corresponding subsections lie with the prosecution. (PET Vol. I pg. 37, lines 20-25 and page 38, lines 1-2):

THE COURT: Okay. Years ago if you had active THC in your system and you didn't need to establish impairment, you automatically loose absent a medical marijuana card.

MS. MILLER: Okay.

THE COURT: I'm asking weather that is the current law?

MS. MILLER: I think we need to establish the Impairment.

The above exchange is a correct statement of the law. In 2018, Michigan voters approved a ballot measure initiating marijuana legalization in marijuana. (See 2018 IL 1. The ballot initiated law— **MICHIGAN REGULATION AND TAXATION OF MARIHUANA ACT** a.k.a. and herein MRTMA—became effective on December 5, 2018. See MCL 333.27951 et seq).

The MRTMA expressly allows for the use of recreational marijuana under state law. The MRTMA further states that "**[a]ll other laws inconsistent with this act do not apply to conduct that is permitted by this act.**" MCL 333.27954(5). (See full statue in Addendum)

One of the laws inconsistent with the MRTMA is our state's motor vehicle code prohibition on individuals operating with the presence of marijuana (a controlled substance). Under Michigan law, it is unlawful to operate a motor vehicle under certain circumstances.

The Michigan motor vehicle code prohibits a person from operating a motor vehicle while intoxicated (OWI), MCL 257.625(1), operating

a motor vehicle while visibly impaired (OWVI), MCL 257.625(3), and operating a motor vehicle with the presence of a controlled substance (OWPCS), MCL 257.625(8). The major difference between the three charges is the level of "impairment" that the prosecutor must prove. Under the OWPCS statute, a prosecutor must merely prove the presence of a controlled substance—in other words, it is a zero-tolerance standard. MCL 257.625(8).

Clearly when this ballot measure was passed it was the intent and expectation of Michigan voters that drivers on Michigan's roads could drive a motor vehicle with active THC in their blood system. This is based on the fact that THC stays in a person's blood system much longer then alcohol (MRE 201).

MRTMA does not authorize operating, navigating, or being in physical control of any motor vehicle, aircraft, snowmobile, off-road recreational vehicle, or motorboat while **under the influence of marihuana**. MCL 333.27954(a), which means intoxicated and impaired driving, and driving under the influence are not protected by MRTMA.

MRTMA is controlling over MCL 257.625 and its corresponding sections for persons at least 21 years of age with THC in their system that are driving while NOT impaired, intoxicated, or under the influence. The above is consistent with the holding of *Koon* (supra)

that MMMA card holders also cannot be convicted under MCL
257. 625(8) for OWPCS, the prosecutor has to show under the influence.

Because there is no set standard in the State of Michigan for driving while impaired (OWI) based on a driver's actual active THC level (*Bowden)* this case is a classic example of an actual case and controversy that is Capable of Repetition yet Evading Judicial Review. *US v Nixon,* 418 US 683 (1974)*, Globe Newspaper v Superior Court County of Norfolk,* 457 US 596 (1982). Such practices must not be allowed, *Gerstein v Pugh,* 420 US 103, (1975). "[O]ne does not have to await the consummation of threatened injury to obtain preventive relief." *Farmer v Brennan,* 511 US.825, 827 (1994).

Due Process

While the right to drive is not a fundamental right or privilege (subject to strict scrutiny, citations omitted), any driver who is stopped or detained for any cause is still entitled to the full fundamental substantive and procedural safeguards offered by the 14th Amendment Due Process clause of the United States Constitution (US Const Amend. V, XIV) and the Due Process clause of the Constitution of the State of Michigan (Const 1963, Art 1, Sec 17).

"No one may be required at peril of life, liberty, or property to speculate as to the

meaning of penal statutes. All are entitled to be informed as to what the State commands or forbids." *Cramp v Orange County,* 368 US 278, 287, 82 SCt 275, 7 LEd2d 285 (1961).

In the case at hand, there is zero statutory authority to put any citizen on notice of their due process rights, and allowing prosecution without proper notice clearly "offends traditional notions of fair play and substantial justice *International Shoe Co. v Washington*, 326 US 310 (1945).

The Fourteenth Amendment requires due process of law for the deprival of "liberty, just as for deprival of life" and there cannot constitutionally be a difference in the quality of the process based merely upon a supposed difference in the sanction involved. *Gideon v Wainwright*, 372 US 335, 350 (1963) "[T]he full scope of the liberty guaranteed by the Due Process Clause . . . is not a series of isolated points It is a rational continuum which, broadly speaking, includes a freedom from all substantial arbitrary impositions and purposeless restraints . . . ." Justice Souter, concurring *Albright v Oliver,* 510 US 266, 288 (1994). [16]

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[16] Due Process of Law . . . Before the Civil War, *24 Harv.L.Rev. 366, 368 (1911),* was "intended to secure the individual from the arbitrary exercise of the powers of government,'" *Hurtado v California*, 110 US 516, 527 (1884) (quoting Bank of *Columbia v Okely*, 4 *Wheat.* 235, 17 US 244 (1819)). See also *Wolff v Donnell*, 418 US 539,

Based on the above, even if the charges against Mr. Patterson are dropped, this case is ripe for appellate review until the State of Michigan Legislative and Executive Branch pass legislation to set forth a permissible standard in regard to permissible active levels of THC for a driver.

CONCLUDING SECTION

The District Court and the Circuit Court clearly erred in consideration of the facts in this case. *People v Hyde*, 285 Mich App 428, 436; 775 NW2d 833 (2009). Based on the above, Appellant challenges the issue of impairment.

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558 (1974) ("The touchstone of due process is protection of the individual against arbitrary action of government, *Dent v West Virginia*, 129 U S 114,123 (1889)"); *Parratt*, supra, at 451 US 549 (POWELL, J., concurring in result). By requiring the government to follow appropriate procedures when its agents decide to "deprive any person of life, liberty, or property," the Due Process Clause promotes fairness in such decisions. And by barring certain government actions regardless of the fairness of the procedures used to implement them, e.g., *Rochin*, supra, it serves to prevent governmental power from being "used for purposes of oppression," *Murray's Lessee*, 474 US 332. Also see in *Daniels v Williams*, 474 US 327, (1986). *Cleveland Board of Education v Loudermill,* 470 U.S. 532 (1985). Substantive due process applies to the right a plaintiff has been denied, life, liberty or property. *County of Sacramento v Lewis* 523 US 833 (1998).

Appellant respectfully asserts he was not impaired under MCL 257.625(5)(a), OWI causing serious impairment of a bodily function. The level of active THC in Defendants blood was 4.6 ng/ml, which would equate to a BAC of 0.028. Furthermore, as noted in *Bowden, supra* there is no objective way (at the State or Federal level) to determine if simply having drugs in a person's blood system correlates or equals impairment. Additionally, the *Bowden* court ruled that there is no standard test that the State could use to qualify any law enforcement officer as an expert witness (MRE 702) in regard to marijuana usage and impairment.

For all of the above, Appellant Mr. Patterson was not impaired on the night in question and the case against him should be dismissed with prejudice. Additionally, this Court should rule that an Active THC level of > 8.2 ng/ml (BAC) > 0.05% or even a higher level does not meet the threshold for impairment under MCL 257.625 or any of its corresponding sections.

Because there is a clear absence of a set standard in Michigan in regard to what constitutes an acceptable level of THC in a driver's blood system, a multitude of various inconsistent judgements could be rendered, making this case and others Capable of Repetition yet Evading Judicial Review.

REQUEST FOR RELIEF

WHEREFORE: Appellant respectfully requests that this Honorable Court grant Appellant's Leave for Interlocutory Appeal with his purpose being that this Honorable Court of Appeals rule for in favor of his cause and grant whatever relief is just and equitable under the circumstances.

Dated: May 16, 2025

OFFICE OF THE JACKSON COUNTY PUBLIC DEFENDER

By: /s/ Daniel C. Willman
Daniel C. Willman (Bar P No. 55867)
Assistant Public Defender

WORD COUNT

Pursuant to MCR 7.212(B)(3), undersigned certifies that there are 4,832 countable words (including summary of argument, pg. ix) in the sections of this answer covered by MCR 7.212(C)(6)-(8).

OFFICE OF THE JACKSON COUNTY PUBLIC DEFENDER

By: /s/ Daniel C. Willman (Bar P No. 55867)
Assistant Public Defender