

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT 38

HON. DARRELL MAVIS, JUDGE

THE PEOPLE OF THE STATE OF CALIFORNIA,)

PLAINTIFF,)

VS.)

NO. BA361893

JAN 25 2010

01 CHRISTOPHER DEFEO,)

02 CLINT ESKENAZI,)

DEFENDANTS.)

REPORTER'S TRANSCRIPT OF PRELIMINARY HEARING

WEDNESDAY, JANUARY 13, 2010

PAGE 1 THROUGH 54, INCLUSIVE

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

FOR THE PEOPLE:

STEVE COOLEY,
DISTRICT ATTORNEY
BY: LOUIS MORIN, DEPUTY
210 WEST TEMPLE STREET
18TH FLOOR
LOS ANGELES, CA 90012

FOR THE DEFENDANT
(01) DEFEO

RONALD N. RICHARDS,
PRIVATELY RETAINED

FOR THE DEFENDANT
(02) ESKENAZI

CRAIG WORMLEY,
PRIVATELY RETAINED

COPY

HTA: 01-27-10
DEPT. 123

MARTHA EMERICH, CSR. NO. 6864
OFFICIAL REPORTER

1 SO THERE'S NO -- THERE'S NO --

2 MR. MORIN: THE OFFER IS HE WILL TESTIFY THAT UPON
3 RECEIVING THE INFORMATION FROM OFFICER DAY HE EXPLAINED TO
4 JUDGE VILLAR WHAT HAD OCCURRED, OBTAINED A SIGNED SEARCH
5 WARRANT FROM JUDGE VILLAR, SERVED THAT SEARCH WARRANT AND
6 THEN RECOVERED THE ITEMS AT ISSUE IN THIS CASE.

7 THE COURT: WELL, THEIR POINT IS THAT THEY ARE NOT
8 ATTACKING THE VALIDITY OF THE WARRANT AND WHETHER THERE
9 WAS PROBABLE CAUSE TO SIGN THE WARRANT. THEY ARE
10 ATTACKING THE INITIAL ENTRY INTO THE HOUSE.

11 MR. RICHARDS: THAT IS CORRECT.

12 MR. MORIN: I UNDERSTAND.

13 THE COURT: YOU CAN -- IT'S REAL SIMPLE. ALL YOU
14 HAVE TO DO IS OFFER A STIPULATION.

15 MR. MORIN: I WAS ABOUT TO SAY I WILL JUST PHRASE
16 THE STIPULATION AS SUCH.

17 COUNSEL, WILL YOU STIPULATE FOR PURPOSES OF
18 PRELIMINARY HEARING ONLY THAT DETECTIVE ALVES, UPON
19 RECEIVING INFORMATION FROM OFFICER DAY, OBTAINED A SEARCH
20 WARRANT SIGNED BY THE HONORABLE JUDGE VILLAR, SERVED THAT
21 SEARCH WARRANT AT THE LOCATION 1304 SOUTH CLOVERDALE AND
22 IN THE PROCESS RECOVERED SUBSTANCES INCLUDING 17.47 GRAMS
23 OF OXANDROLONE, O-X-A-N-D-R-O-L-O-N-E; 58.05 GRAMS OF
24 M.D.M.A. OR ECSTASY; AND I HAVE NOT TOTALED THE --

25 MR. RICHARDS: WHY CAN'T WE JUST STIPULATE THAT HE
26 RECOVERED WHATEVER IS ON THE LAB REPORT, MAKE IT EASY.

27 MR. MORIN: I WILL JUST READ THE NUMBERS. IT WILL
28 JUST TAKE A SECOND.

1 MR. RICHARDS: OKAY.

2 MR. MORIN: -- AS WELL AS 14.82, 0.24, 0.82, 5.18,
3 30.75, 4.90, 15.06, 15.10, AND 15.04 GRAMS OF MARIJUANA?

4 MR. RICHARDS: YES.

5 SO STIPULATED FOR THE PURPOSES OF PRELIM.

6 MR. WORMLEY: SO STIPULATED FOR THE PURPOSE OF
7 PRELIM.

8 THE COURT: OKAY. THANK YOU.

9 THE COURT APPRECIATES THAT STIPULATION AND
10 WILL GRATEFULLY RECEIVE IT.

11 MR. MORIN: AND DO YOU FURTHER STIPULATE THAT THE
12 ITEMS CONTAINING MARIJUANA AND THE ITEMS CONTAINING
13 ECSTASY WERE POSSESSED FOR PURPOSES OF SALE FOR
14 PRELIMINARY HEARING?

15 MR. RICHARDS: FOR THE M.D.M.A., FOR THE PURPOSE OF
16 PRELIMINARY HEARING, AND THE MARIJUANA, YES.

17 MR. WORMLEY: JOIN.

18 THE COURT: AGAIN, THANK YOU.

19 THE COURT APPRECIATES THAT STIPULATION AND
20 WILL RECEIVE IT.

21 MR. MORIN: NOTHING FURTHER, YOUR HONOR.

22 THE COURT: MR. RICHARDS.

23 MR. RICHARDS: YES, YOUR HONOR, THE -- DO YOU WANT
24 US TO ARGUE THE MOTION FIRST?

25 THE COURT: FIRST I NEED TO KNOW WHETHER YOU ARE
26 PUTTING ON ANY TESTIMONY.

27 MR. RICHARDS: NO, WE'RE NOT.

28 THE COURT: OKAY.

1 WHAT IS GOING ON. THAT'S WHAT LAW-ABIDING
2 TAX-PAYING CITIZENS DESIRE AND EXPECT OF
3 THEIR LOCAL CONSTABULARY.

4 THIS IS EXACTLY WHAT THE OFFICERS ARE DOING
5 IN THIS PARTICULAR CASE, AND AS A RESULT, THE MOTION TO
6 SUPPRESS IS RESPECTFULLY DENIED.

7 MR. RICHARDS: YOUR HONOR, DO YOU MIND IF I GIVE
8 YOU JUST ANOTHER CASE ON THE RECORD THAT -- BECAUSE RAY
9 HAS A LOT OF FLAGS ON IT THAT IT'S BEEN CALLED INTO DOUBT.
10 I DON'T KNOW IF THE COURT KNOWS THAT.

11 THE COURT: OKAY.

12 WELL, YOU KNOW WHAT YOUR ALTERNATIVES ARE
13 GIVEN THE COURT'S RULING.

14 HOW WOULD YOU LIKE TO PROCEED AT THIS
15 POINT?

16 DO YOU HAVE ANY FURTHER ARGUMENT ON THE
17 CHARGES?

18 MR. RICHARDS: YEAH, YOUR HONOR, I HAVE A MOTION TO
19 DISMISS THE CHARGES. I WOULD LIKE TO FOCUS THE COURT
20 FIRST ON THE M.D.M.A. COUNT.

21 THE COURT: OKAY.

22 MR. RICHARDS: WE STIPULATED THAT THE M.D.M.A. WAS
23 M.D.M.A., AND THE COMPLAINT ALLEGES THAT MR. ESKENAZI IS
24 CHARGED WITH A VIOLATION OF HEALTH AND SAFETY CODE 11378,
25 METHYLENEDIOXYMETHAMPHETAMINE.

26 BUT IF THE COURT WILL TAKE A LOOK, I WILL
27 STIPULATE THAT THAT'S NOT A SCHEDULED SUBSTANCE IN
28 CALIFORNIA AND THAT THERE'S SPECIFIC ELEMENTS UNDER 11400

1 AND 11401 OF THE ANALOGUE ACT THAT THE PEOPLE HAVE.

2 AS A REQUIRED ELEMENT OF THIS OFFENSE, THEY
3 HAVE TO PROVE THAT THE SUBSTANCE THAT THEY ARE GOING TO
4 PROSECUTE THE DEFENDANT UNDER IS AN ANALOG OF A CONTROLLED
5 SUBSTANCE THAT IS PROPERLY SCHEDULED.

6 AND I HAVE A CASE WHICH I WILL GIVE THE
7 PEOPLE A COPY, I WILL GIVE THE COURT A COPY, PEOPLE VS.
8 SILVER AT 230 CAL.APP.3D 389.

9 I HAVE ARGUED THIS MOTION MANY TIMES. I
10 CAN REPRESENT TO THE COURT THAT I HAVE HANDLED MORE
11 M.D.M.A. CASES THAN ANY LAWYER IN THE UNITED STATES ON
12 THIS ISSUE. THIS CASE WILL SHOW WHAT IS REQUIRED IN ORDER
13 TO PROVE M.D.M.A.

14 THE COURT: MR. MORIN.

15 MR. MORIN: YES.

16 IN MY STIPULATION, I USED THE PHRASE
17 "M.D.M.A. OR ECSTASY." I DID NOT REFER TO
18 METHAMPHETAMINE.

19 MR. RICHARDS: NO. METHLENEDIOXY, JUST REFERRING
20 TO WHAT YOU PLED IN THE COMPLAINT. THAT'S ALL.

21 MR. MORIN: THE COMPLAINT IS PLED WITH
22 METHYLENEDIOXYMETHAMPHETAMINE, WHICH IS WHAT THE LAB
23 RECEIPT CONFIRMS.

24 MR. RICHARDS: RIGHT, BECAUSE THE LAB TESTED A
25 SUBSTANCE THAT IS NOT SCHEDULED IN CALIFORNIA. SO JUST
26 POSSESSING THAT SUBSTANCE IS NOT ILLEGAL UNLESS THERE IS
27 EVIDENCE BEFORE THE TRIER OF THE FACT BY THE WAY OF EXPERT
28 TESTIMONY THAT THAT SUBSTANCE IS AN ANALOG OF A CONTROLLED

1 SUBSTANCE.

2 THIS CASE OUTLINES WHAT IS REQUIRED, AND
3 THERE'S EVEN CALJIC INSTRUCTIONS ON IT. IT'S NOT ILLEGAL
4 TO POSSESS M.D.M.A. IT'S NOT A SCHEDULED DRUG IN
5 CALIFORNIA. THE ECSTASY IS JUST A SLANG. WHEN YOU'RE
6 DEALING WITH SPECIFIC NARCOTICS YOU HAVE TO -- YOU HAVE TO
7 PROSECUTE PEOPLE UNDER THE SPECIFIC CHEMICAL MONIKER THAT
8 IS REFERRED TO ON A SPECIFIC SUBSTANCE.

9 IN THIS CASE, HE'S BEING CHARGED WITH A
10 SUBSTANCE THAT IS NOT ILLEGAL. THE ONLY WAY IT BECOMES
11 ILLEGAL IS IF HE'S PROSECUTED UNDER THE ASSIMILATIVE OR
12 THE CONTROLLED SUBSTANCE IS AN ASSIMILATIVE CONTROLLED
13 SUBSTANCE OR AN ANALOGUE CONTROLLED SUBSTANCE.

14 AND SO IN ORDER TO MEET THAT BURDEN, THE
15 PEOPLE WOULD HAVE HAD TO CALL AN EXPERT TO PROVIDE
16 TESTIMONY TO THE COURT AS TO WHAT THIS SUBSTANCE IS AND
17 WHETHER OR NOT IT'S AN ANALOG OF A LISTED SUBSTANCE IN
18 CALIFORNIA.

19 M.D.M.A., IF THE COURT GOES THROUGH HEALTH
20 AND SAFETY CODE 11054 SUBDIVISION (E), IT WILL SEE THAT
21 M.D.M.A. IS NOT SCHEDULED IN THE STATE OF CALIFORNIA.
22 IT'S ONLY SCHEDULED FEDERALLY.

23 THE COURT: MR. MORIN.

24 MR. MORIN: I AM NOT FAMILIAR WITH THE CASE,
25 YOUR HONOR. IT APPEARS TO BE DEALING WITH THE STANDARD OF
26 PROOF AT A JURY TRIAL, HOWEVER. SO I WOULD ARGUE THAT THE
27 STANDARD OF PROOF AT A PRELIMINARY HEARING IS LOWER AND
28 THAT A COURT COULD REASONABLY INFER THAT ECSTASY OR

1 M.D.M.A. IS A RELATIVE OF METHAMPHETAMINE.

2 MR. RICHARDS: WELL, NO, A COURT CANNOT AUGMENT ONE
3 DRUG INTO ANOTHER. THAT WOULD BE HIGHLY IMPROPER. THAT
4 WOULD BE MAKING UP FOR BURDEN OF PROOF.

5 THE -- HE'S CHARGED WITH POSSESSION OF A
6 DRUG THAT IS CLEARLY NOT ILLEGAL IN CALIFORNIA. IF THE
7 COURT WANTS TO LOOK AT 11 -- 11378 CORRELATES TO 11054.
8 THAT LISTS WHAT THE CONTROLLED SUBSTANCES ARE.

9 THIS -- THIS SUBSTANCE IS JUST SIMPLY NOT
10 ILLEGAL. SO YOU HAVE TO PROVE THAT THE SUBSTANCE IS AN
11 ANALOG, AND YOU CAN'T INFER IT'S AN ANALOG OF ANOTHER
12 SUBSTANCE BECAUSE YOU DIDN'T HEAR ANY TESTIMONY ABOUT
13 THAT. THE -- THIS IS -- I COULD SHOW THE COURT
14 TRANSCRIPTS OF OTHER HEARINGS THAT I HAVE ARGUED THIS
15 SUCCESSFULLY EVERY SINGLE TIME BECAUSE IT IS NOT ILLEGAL.

16 THE COURT: LOOK, TRANSCRIPTS OF OTHER HEARINGS IS
17 NOT PROPER AUTHORITY FOR THIS COURT.

18 MR. RICHARDS: I AGREE.

19 THE COURT: I WILL TAKE A LOOK AT PEOPLE VS.
20 SILVER.

21 MR. MORIN: AND, YOUR HONOR, IF I COULD POINT YOU
22 TO THE DRUG SCHEDULES THEMSELVES, SCHEDULE 1, WHICH IS 11054
23 SUBSECTION (D), NO. 6, SPECIFICALLY MENTIONS M.D.M.A.

24 MR. RICHARDS: NO, IT DOESN'T. IT DOES NOT. I
25 THINK HE'S READING A DIFFERENT DRUG.

26 MR. MORIN: I SEE, YOUR HONOR.

27 SUBSECTION 6 IS M.D.A. WITHOUT THE
28 METHAMPHETAMINE.

1 MR. RICHARDS: I AGREE.

2 THAT'S A TOTALLY DIFFERENT ISOMER AND
3 COMPOUND. THEY ARE TOTALLY DIFFERENT DRUGS.

4 MR. MORIN: THERE'S NO EVIDENCE OF THAT.

5 THE COURT: IT'S THE PEOPLE'S BURDEN. SO IF YOU
6 WANT TO POINT TO ME THE SCHEDULE AND THE SECTION UNDER
7 1135 -- 11378 THAT YOU ARE RELYING ON.

8 MR. MORIN: YES.

9 I WOULD ARGUE THAT THE -- UNDER SUBSECTION
10 (D) OF SCHEDULE 1, WHICH INCLUDES NOT JUST THE LISTED
11 SUBSTANCES BUT ALSO CITES SALTS OF ISOMERS AND OTHER
12 RELATED SUBSTANCES, THE COURT CAN DRAW A REASONABLE
13 INFERENCE THAT M.D.M.A. UNDER SILVER IS A COGNATE OF 34
14 METHYLENEDIOXYMETHAMPHETAMINE FOR PURPOSES OF PRELIMINARY
15 HEARING.

16 MR. RICHARDS: BUT SILVER SHOWS THAT'S A FACTUAL
17 ISSUE THAT HAS TO BE PROVEN WITH EVIDENCE. YOU DIDN'T
18 HEAR ANY EVIDENCE THAT M.D.M.A. IS ANYTHING BUT M.D.M.A.
19 THAT'S WHAT HE'S CHARGED WITH.

20 I CAN HAVE YOU TAKE JUDICIAL NOTICE OF THE
21 FEDERAL SECTION WHICH 34 METHYLENEDIOXYMETHAMPHETAMINE IS
22 LISTED AS A SCHEDULED DRUG. IT'S JUST NOT SCHEDULED IN
23 CALIFORNIA.

24 SO YOU CAN'T TAKE JUDICIAL NOTICE OR MAKE
25 ANY INFERENCES THAT IT'S AN ANALOG OF -- OF ANY OTHER DRUG
26 IN OUR SCHEDULES, AND THAT'S WHAT WE'RE ON NOTICE OF IN
27 THE COMPLAINT. THE COMPLAINT IS FOR
28 METHYLENEDIOXYMETHAMPHETAMINE, AND THAT'S WHAT WE'RE

1 DEFENDING.

2 SO IT WOULD BE MALPRACTICE FOR US TO
3 TELEGRAPH TO THE D.A. THAT HE CHARGED OUR CLIENT WITH A
4 DRUG THAT IS NOT SCHEDULED IN THE -- IN THE HEALTH AND
5 SAFETY CODE. SO I WAITED TO SEE IF THERE WAS GOING TO BE
6 ANY EVIDENCE ON THAT. I DIDN'T HEAR ANY EVIDENCE ON THAT,
7 AND I DIDN'T SEE AN EXPERT OR GET DISCOVERY THAT THERE WAS
8 GOING TO BE AN EXPERT. I ANTICIPATED THAT ISSUE COMING
9 UP.

10 MR. MORIN: WE CAN, OF COURSE, GET A CHEMIST ON THE
11 PHONE RIGHT NOW IF THAT WILL SIMPLIFY THINGS, YOUR HONOR.

12 MR. RICHARDS: IF YOU WANT THE CALJIC INSTRUCTION,
13 I CAN GIVE YOU THAT TOO. IT SHOWS WHAT THE REQUIRED
14 ELEMENTS ARE. AND IT'S ON PAGE 397, PAGE 6 OF THE CASE
15 THAT I CITED YOU, WHAT YOU NEED TO PROVE, RIGHT BY THE
16 STAR, 397 OF THE PAGE.

17 THE COURT: OKAY.

18 ANY FURTHER ARGUMENTS BY THE DEFENSE?

19 MR. RICHARDS: NO.

20 MR. WORMLEY: NO.

21 THE COURT: OKAY.

22 THE MOTION TO DISMISS COUNT 2 IS GRANTED.

23 THE MOTIONS TO DISMISS COUNTS 1 AND 3 ARE
24 DENIED.

25 THE COURT HAS REVIEWED PEOPLE VERSUS
26 SILVER, 230 CAL.APP.3D 389, AND IT IS THE PEOPLE'S BURDEN
27 TO PROVE THAT M.D.M.A. IS AN ANALOG OF METHAMPHETAMINE,
28 AND THEY HAVE NOT DONE SO.

1 MR. MORIN: IF I MAY POINT OUT THE OBVIOUS,
2 YOUR HONOR, THE SILVER CASE SPECIFICALLY SAYS THAT
3 M.D.M.A. IS AN ANALOG OF METHAMPHETAMINE. SO THE LANGUAGE
4 OF THE CASE ITSELF MAKES THE POINT.

5 MR. RICHARDS: IT DOESN'T SAY THAT. IT'S --

6 MR. MORIN: YES, IT DOES.

7 MR. RICHARDS: IT'S AN ISSUE OF FACT FOR THE JURY.

8 THE COURT: YES, IT DOES SAY THAT IT'S AN ISSUE OF
9 FACT FOR THE JURY. SO THE MOTION TO DISMISS COUNT 2 IS
10 GRANTED.

11 IT APPEARING TO ME FROM THE EVIDENCE THAT
12 THE FOLLOWING OFFENSES HAVE BEEN COMMITTED AND THAT THERE
13 IS SUFFICIENT CAUSE TO BELIEVE THAT DEFENDANT DEFEO IS
14 GUILTY THEREOF, TO WIT, VIOLATION IN COUNT 1, HEALTH AND
15 SAFETY CODE SECTION 11359 --

16 YOU'VE ONLY CHARGED DEFEO WITH THAT COUNT;
17 RIGHT?

18 MR. RICHARDS: RIGHT.

19 MR. MORIN: RIGHT.

20 THE COURT: -- AND COUNT 3, HEALTH AND SAFETY CODE
21 SECTION 11377 SUBDIVISION (A) AS TO ESKENAZI, I ORDER THE
22 DEFENDANTS HELD TO ANSWER THEREFORE.

23 ARE BOTH DEFENDANTS ON BOND?

24 MR. RICHARDS: YES.

25 MR. WORMLEY: YES, YOUR HONOR.

26 THE COURT: THEY MAY REMAIN ON BOND.

27 DATE OF ARRAIGNMENT IN SUPERIOR COURT IS
28 JANUARY 27TH IN DEPARTMENT 123 AT 8:30.