

1 ATTORNEY FOR THE PEOPLE: Mr. Douglas

2 THE WITNESS: Detective Mary Swiss

3 THE COURT

4 ATTORNEY FOR THE DEFENDANT: Ms. Fresno

5

6 **WARM-UP**

7 Q. BY MR. DOUGLAS: Good morning, ma'am. Please state
8 your name for the record.

9 A. Detective Mary Swiss.

10 Q. How are you employed?

11 A. As a detective with the Auburn Police Department. /

12 Q. For how long have you been a peace officer?

13 A. Nine years.

14 Q. Have you had other duties in your career as a peace
15 officer?

16 A. I have. /

17 Q. Please describe those duties for us.

18 A. I have worked as a patrol officer. I have been
19 assigned as a street crimes detective. And I now / work
20 as a detective in the major crimes unit.

21 Q. Please describe your background and training with
22 respect to drug cases.

23 MS. FRESNO: Your Honor, the defense will //
24 stipulate to this officer's background and training in
25 drug cases.

1 THE COURT: Okay. Counsel, you can skip the part on
2 her background and training and move on / to your
3 questions with respect to the case before you.

4 MR. DOUGLAS: Yes, I will get there.

5 Q. Have you ever testified as an expert in court
6 where /// drugs were the focus of the charges?

7 A. Yes.

8 Q. How many drug cases have you been involved in as a
9 lead detective?

10 A. I would say that / in the last nine years, I have
11 participated in about 1,000 cases where I have been the
12 lead or assisting in some way.

13 MS. FRESNO: Your /*(1) Honor, can we have the
14 witness speak closer to the microphone? I'm having some
15 trouble hearing her.

16 THE COURT: Yes, of course.

17 Officer, could you speak up. / I'm having trouble
18 hearing you as well.

19 THE WITNESS: I am sorry. I will do my best to speak
20 louder.

21 Q. BY MR. DOUGLAS: How many times have you spoken to /
22 users of drugs during your career as a peace officer?

23 A. For people that use drugs, I would say thousands of
24 times over the course of / my career.

25 Q. How many times have you spoken with sellers of drugs

1 during your career as a peace officer?

2 A. I would say on many occasions // I have spoken with
3 people who sell drugs.

4 Q. During your career as a peace officer, how many times
5 have you observed, smelled, or ever come / into contact
6 with weed?

7 A. Many times.

8 Q. Have you ever identified a green leafy substance as
9 weed and then later found you were wrong and that /// it
10 was not weed?

11 A. Not to my knowledge.

12 Q. How many times have you spoken with users of hash
13 oil?

14 A. I would say on many occasions. / More than 25.

15 MS. FRESNO: I'm sorry, can you repeat that question?
16 I could not understand you through the noise coming from
17 outside the room.

18 THE COURT: I /*(2) believe the question was how many
19 times she has spoken with users of hash oil.

20 Is that correct, Counsel?

21 MR. DOUGLAS: Yes, Your Honor. And her answer / was
22 that she has spoken to more than 25 users.

23 Q. My next question, how many times have you spoken with
24 sellers of hash oil? /

25 A. Many occasions.

1 Q. Can users of hash oil also be sellers?

2 A. Yes.

3 Q. On May 10 of last year, were you asked to investigate

4 a house burglary / at 512 Amber Drive in Auburn?

5 A. Correct. I was.

6 Q. Did anyone contact you on May 10 of last year, with

7 regard to that // burglary?

8 A. May I see my report to refresh my recollection?

9 Q. If you need to, you may.

10 A. I did speak with Mr. Berg on that day. /

11 Q. What did he tell you with respect to your inquiry?

12 A. That his neighbor across the street had a camera.

13 Q. Were you able to view the /// video footage?

14 A. I did.

15 Q. Did he bring that to you?

16 A. Yes.

17 Q. What did Mr. Berg tell you with respect to the video?

18 A. That his son / had seen the video clip.

19 MS. FRESNO: I object. This is not relevant, and it

20 is double hearsay.

21 MR. DOUGLAS: It is offered to show his state of

22 mind. /* (3)

23 **END OF WARM-UP**

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EXAM

Q. BY MR. DOUGLAS: Did Mr. Berg inform you he knew something about this?

A. He informed me that when he saw the video with his son, that his son / had recognized the truck shown in the video as belonging to Thomas White.

Q. And did you follow up on that tip?

A. Yes.

Q. How did you / do that?

A. I went to the neighborhood to look for more videos. I was not able to find any.

Q. What other search, if any, did / you do with respect to Thomas White?

A. I went to the police department and checked some databases. I found a photo of Thomas White so // that I could determine his true name. I discovered other criminal arrests tied to this person. One was at 345 Cheney Street. And / I do not believe I can provide the spelling for you.

MS. FRESNO: Would your report assist you in that?

THE WITNESS: To provide a correct spelling, yes. May /// I use my supplemental report to provide the proper spelling of the street name?

THE COURT: Sure.

THE WITNESS: C-h-e-n-e-y.

1 Q. BY MR. DOUGLAS: And what did you / learn about that
2 address?

3 A. That it was the same address he gave at the time of
4 his prior arrest. And I believe that was also /*(1) the
5 same address that the probation department had.

6 Q. And did you go to that address?

7 A. I did.

8 Q. And did you see anything from your search / there
9 that was helpful to you?

10 A. Not at that address.

11 Q. Did you locate another address for him?

12 A. Yes.

13 Q. And how did you locate that address? /

14 A. In the prior arrest report. May I read from my
15 report to help me.

16 THE COURT: Yes, you may.

17 THE WITNESS: Okay. It was on a prior arrest
18 report / that he was detained at the Main Street
19 residence.

20 Q. BY MR. DOUGLAS: And did you investigate that
21 address?

22 A. I did.

23 Q. And what did you see at that address // relevant to
24 the investigation?

25 A. A truck just like the vehicle in the video clip.

1 Q. And do you see Tom White in court today?

2 A. I do. /

3 Q. Please identify where he is seated and describe what
4 he is wearing.

5 A. The far end of the table with the black jacket with a
6 zipper, /// a light blue shirt, and a tie.

7 THE COURT: Indicating the defendant.

8 MS. FRESNO: I agree with the description.

9 Q. BY MR. DOUGLAS: Did you find out who the truck
10 belonged to?

11 A. Yes. / Pam Lee.

12 Q. Were you able to learn her relationship to the
13 defendant?

14 A. Through other means, she was found to be the mother
15 of the child. /* (2)

16 **END OF LEAD-IN (NO PAUSE, KEEP READING)**

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START TYPING

Q. BY MR. DOUGLAS: And did you make any other efforts to determine whether the defendant lived at 506 Main Street?

A. I did.

Q. What efforts did you / make?

A. I contacted an agent with the United States Post Office, and he was able to look at mail and confirm that mail to Thomas / White was being sent to that address.

Q. Were you on duty as an Auburn detective also on February 1st of that year?

A. I was.

Q. Did / you return to 506 Main Street again?

A. I did.

MS. FRESNO: I'm sorry. Did you indicate that was located in the city of Auburn?

THE WITNESS: Yes, // it is.

MS. FRESNO: Thank you.

Q. BY MR. DOUGLAS: What was the purpose of going to that address again?

A. I wanted to conduct a probation search at that address to / try to locate the stolen property from the theft on Amber Drive.

Q. Was anybody with you during that search?

A. Yes.

1 Q. Do you recall who?

2 A. We /// had probation officers help us conduct a
3 search.

4 Q. And what happened when you first arrived?

5 A. We first knocked on the door. Someone looked out
6 through / the blinds. Then there was a brief pause
7 before anyone came to the door.

8 Q. Was anybody else in the residence?

9 A. Ms. Reynolds.

10 Q. Were there any /*(1) children at the house?

11 A. One small child, yes.

12 Q. Approximately how old?

13 A. Maybe one year old.

14 Q. And did you go into the residence?

15 A. Yes, I did. /

16 Q. And did you notice any odors in the house?

17 A. Yes. A strong odor of what I thought was marijuana.

18 MS. FRESNO: Objection.

19 THE COURT: Sustained.

20 Ask your next question. /

21 Q. BY MR. DOUGLAS: Did you search the house?

22 A. Yes.

23 Q. Did you find any indications of the defendant living
24 at the house?

25 A. Yes.

1 Q. What?

2 A. Mail with what I believed / to be court paperwork.

3 Q. Anything else?

4 A. A work ID in a drawer in a bedroom, which appeared to

5 be the child's bedroom. I also // found a medical card

6 belonging to Tom White inside that same bedroom.

7 Q. And was the child also in that room?

8 A. Yes.

9 Q. Did the child appear / to be able to have the ability

10 to move around the house?

11 A. Not very well. It was a young child.

12 Q. And did you see any /// indications in the residence

13 of the child living there, such as a crib?

14 A. Yes. There was a child's crib, blankets, and a

15 diaper pail full / of diapers in the bedroom.

16 Q. And do you have children?

17 A. No, I do not.

18 MS. FRESNO: I would object as relevance.

19 THE COURT: She said no.

20 MS. FRESNO: I still object /* (2) on relevance

21 grounds.

22 THE COURT: Overruled.

23 Q. BY MR. DOUGLAS: Did you find any tools in the house?

24 A. Yes.

25 Q. Please take a look at what's been marked as People's

1 Exhibits 1 / through 4.

2 A. Okay.

3 Q. Do you recognize what is depicted in those photos?

4 A. Yes.

5 Q. How?

6 A. These are the tools that were located at the house.

7 Q. Are / these true and correct depictions of those

8 tools?

9 A. Yes.

10 Q. Do you remember where you found the tools in the

11 house?

12 A. I remember one set of / tools in the bed of a truck

13 belonging to Ms. Reynolds. I would have to refer to my

14 report for the exact location of the // other set of

15 tools.

16 Q. Go ahead and review your report for that information.

17 A. It does not indicate which room, but I recall the

18 other set / was located somewhere inside the house.

19 Q. And did you do an investigation on who the tools

20 belonged to?

21 A. I did.

22 Q. And who did you determine /// they belonged to?

23 A. Well, I believe the tools belonged to Mr. Berg.

24 Q. What else of note did you find at the residence?

25 MS. FRESNO: I would object / as vague.

1 THE COURT: Overruled.

2 THE WITNESS: I recall a duffle bag with heroin in it
3 was found in the dryer with some clean clothes.

4 Q. BY MR. DOUGLAS: Did you find something /*(3) on the
5 front porch?

6 MS. FRESNO: I object. That is leading.

7 THE COURT: That is sustained.

8 Q. BY MR. DOUGLAS: Did you find any other items of
9 interest?

10 A. One of the officers showed / me a glass tube that was
11 located on the front porch. It contained a substance
12 that appeared to be marijuana. There was a paper
13 filter / taped over the glass tube, which I believe to be
14 consistent with known methods used in producing hash oil.

15 MR. DOUGLAS: Your Honor, I would move to / admit
16 Exhibits 5 and 6.

17 MS. FRESNO: No objection.

18 THE COURT: Exhibits 5 and 6 will be received.

19 Q. BY MR. DOUGLAS: What else did you find in the house?

20 A. I recall finding // what appeared to be hash oil,
21 which is a form of cannabis.

22 MS. FRESNO: I would object on relevance grounds.

23 THE COURT: Overruled.

24 You may continue.

25 Q BY MR. DOUGLAS: Did you find / anything else?

1 A. There was a can of butane on the back porch on top of
2 a toolbox. Butane is a chemical solvent which is
3 used /// in the production of hash oil.

4 Q. And did you find anything in the living room?

5 A. The living room was where the hash oil was located. /

6 Q. And anything else in the living room?

7 MS. FRESNO: If you need to refer to your report to
8 refresh your recollection, I have no objection.

9 THE WITNESS: I would /* (4) need to look at my report
10 to be able to answer that.

11 Q. BY MR. DOUGLAS: Directing your attention to page 3
12 of your report.

13 A. Okay.

14 Q. What else did / you locate in the living room?

15 A. A substance that I believed to be weed.

16 Q. Where was that located?

17 A. I believe it was located on an / end table.

18 Q. Would that have been accessible to a toddler?

19 A. I believe so.

20 Q. Did you form any conclusions about what the glass
21 tube with weed / was being used for?

22 A. Yes.

23 Q. Based on your background and training, are there any
24 dangers that come with the making of hash oil?

25 A. Absolutely.

1 MS. FRESNO: I // object on relevance grounds.

2 MR. DOUGLAS: Well, it is clear that there is danger
3 present not only to the defendant and his girlfriend but
4 also to the / child.

5 THE COURT: You may proceed.

6 Q. BY MR. DOUGLAS: Describe those dangers.

7 A. The butane alone is a danger.

8 Q. Did you find any cell phones present in the house?

9 A. Yes.

10 Q. Do /// you recall where in the house?

11 A. I believe it was in the living room.

12 Q. Did you get an opportunity to speak with the
13 defendant at / the house?

14 A. Yes.

15 Q. Did you advise the defendant of his Miranda rights?

16 A. I did.

17 Q. Did he acknowledge those rights and agree to speak
18 with you? /* (5)

19 A. Yes.

20 Q. Did you obtain a search warrant to search the phone
21 that you located in the residence?

22 A. I did.

23 Q. And do you remember what phone / it was?

24 A. As far as make and model of the phone, I don't
25 recall. But Ms. Reynolds did say during the initial

1 investigation that it / was the defendant's phone.

2 MS. FRESNO: I would object as nonresponsive to the
3 question.

4 THE COURT: I think the question was asking about a
5 search warrant.

6 MR. DOUGLAS: I asked her / what phone it was.

7 THE COURT: You are correct.

8 Q. BY MR. DOUGLAS: Were you able to conduct a search of
9 that phone?

10 A. Yes.

11 Q. Were you successful in retrieving messages from //
12 that phone?

13 MS. FRESNO: Objection, Your Honor. I move to strike
14 the answer. Also, as to the prior question, I don't
15 think my objection was ruled upon. /

16 THE COURT: Her answer was nonresponsive.

17 MS. FRESNO: I move to strike.

18 MR. DOUGLAS: I will withdraw the question.

19 THE COURT: Okay.

20 MR. DOUGLAS: I think it was the answer that she was
21 objecting to. ///

22 THE COURT: Correct.

23 MR. DOUGLAS: I will withdraw the question.

24 THE COURT: The answer will be stricken.

25 MS. FRESNO: Okay. Thank you, Your Honor.

1 Q. BY MR. DOUGLAS: And just to remind you of where we
2 were, / I will ask the question again.

3 Did you search the phone?

4 A. Yes.

5 Q. Were there any messages from the date of the burglary
6 you were investigating? /* (6)

7 A. No. The phone appeared to have been activated right
8 before the burglary.

9 Q. Did you learn who the phone belonged to?

10 A. Yes.

11 Q. How did you reach / that conclusion?

12 A. Ms. Reynolds said the phone belonged to her.

13 MS. FRESNO: Objection. Well, I haven't heard the
14 answer yet; so I'll withdraw that.

15 THE COURT: She said that / the phone belonged to
16 her.

17 THE WITNESS: I remember I had asked Mr. White for
18 consent to search the phone.

19 MS. FRESNO: I would object as nonresponsive.

20 MR. DOUGLAS: I believe / it is responsive. I think
21 she is talking about the defendant's statements with
22 respect to the phone.

23 THE COURT: The question had to do with who the //
24 phone belongs to.

25 MS. FRESNO: I withdraw my objection.

1 Q. BY MR. DOUGLAS: Were you talking about Mr. White's
2 statements with respect to the phone?

3 A. Yes. He verbally gave consent. When / I asked him
4 to provide a written consent, he said he wanted to speak
5 with an attorney.

6 Q. No search of the phone was conducted until /// the
7 issuance of a search warrant; correct?

8 A. Correct.

9 Q. Did the defendant make any statements with respect to
10 what you might find on that phone?

11 A. I / do not recall.

12 Q. Would it refresh your memory to see your report?

13 A. Yes.

14 Q. Drawing your attention to page 4, does that refresh
15 your memory?

16 A. Yes, /*(7) it does.

17 Q. What did he tell you with respect to what you might
18 find on that phone?

19 MS. FRESNO: Objection. Hearsay.

20 THE COURT: Overruled.

21 You may answer.

22 THE WITNESS: I remember / asking him if there would
23 be anything associated with the tools on the phone, and
24 he told me there would not be.

25 Q. BY MR. DOUGLAS: After the search / of the house, was

1 the defendant arrested?

2 A. Yes.

3 Q. Where did you take him?

4 A. To the police department.

5 Q. And after you obtained the search warrant and /
6 searched the phone, what did you locate on there?

7 A. During the search of the phone, I found many text
8 messages containing pictures of the truck. //

9 Q. Did I understand you correctly he was indicating he
10 got the truck over a year ago?

11 MS. FRESNO: I object. I think it was asked and
12 answered, / but I withdraw.

13 THE COURT: Okay. You may answer.

14 THE WITNESS: Yes. And there was also a text
15 message, which seemed to be a list of tools.

16 MS. FRESNO: Objection. Narrative. /// I also object
17 as nonresponsive to the question.

18 THE COURT: Do you want to ask a question that gets
19 that information?

20 MR. DOUGLAS: Sure.

21 Q. Did you find anything else / on the phone relevant to
22 your case?

23 A. Yes.

24 Q. What else?

25 A. A list of tools being offered for sale.

1 MS. FRESNO: I would object. Narrative.

2 THE COURT: It is what /*(8) she found on the phone.

3 THE WITNESS: Should I answer the question?

4 THE COURT: Yes.

5 THE WITNESS: One of the sets of tools matched
6 exactly what Mr. Berg had indicated on / his property
7 sheet which outlined what was stolen from him at the
8 time.

9 MS. FRESNO: I renew my objection.

10 THE COURT: That will be overruled.

11 Q. BY MR. DOUGLAS: And this may have / already been
12 stated, but did you recognize the pickup truck in the
13 messages on the cell phone?

14 A. Yes.

15 Q. And how did you recognize that pickup / truck?

16 A. By the photographs.

17 Q. And it may be an obvious question, but how did you
18 recognize it? Had you seen that truck before?

19 A. It is // the truck I had seen parked at 506 Main
20 Street.

21 Q. The Chevy?

22 A. Yes.

23 Q. Did you later book into evidence the items you
24 recovered / at 506 Main Street on February 1st, 2018?

25 A. Yes.

1 Q. Did you assign the substances that you found in the
2 house different /// item numbers?

3 A. Yes.

4 Q. And what item number did you assign to the hash oil?

5 A. It was Item 3.

6 Q. Item 3.

7 And was that item later / sent to the Department of
8 Justice for testing?

9 A. Yes.

10 Q. Prior to the hearing today, did you have occasion to
11 speak with someone from the crime /*(9) lab?

12 A. Yes.

13 Q. Did you ask her how she is employed?

14 A. Yes.

15 Q. How did she respond?

16 A. She is a senior deputy with the Department of
17 Justice. /

18 Q. Did you ask what background and training she
19 possessed that would qualify her to conduct testing?

20 A. Yes.

21 Q. And how did she respond to that?

22 A. She / provided me a copy of her CV, which I have
23 here.

24 Q. What items in her CV make you confident that she is
25 qualified / for the testing she performs in her position?

1 A. It lists all schools and trainings that she has
2 attended.

3 MS. FRESNO: I would object to that as hearsay. //

4 THE COURT: Overruled.

5 Q. BY MR. DOUGLAS: All right. Did you go over the
6 resume with the deputy?

7 A. No. Since I had a copy of it, I did not ask her / to
8 read it to me.

9 Q. And what were you expecting to see on her resume with
10 respect to education?

11 A. I expected to see lab training /// courses that
12 prepared her for the work that she performs.

13 Q. And did she provide that resume to you?

14 A. Yes.

15 MR. DOUGLAS: May I mark her resume as / an exhibit?

16 THE COURT: Any objection?

17 MS. FRESNO: No, sir.

18 THE COURT: All right. This will be marked.

19 MR. DOUGLAS: And can I also move it into evidence?

20 THE COURT: Yes. It will be received. / ***(10)**

21

22 **END OF DICTATION**

23

24 *****EACH EXAM VARIES. THE ACTUAL TEST GIVEN MAY BE**

25

SLIGHTLY DIFFERENT***