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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF YUBA

THE PEOPLE OF THE STATE)
OF CALIFORNIA,)
)
Plaintiff,)
vs.)
)
HEIDI LEPP,)
)
Defendant.)
_____)

No. CRF17-1752

COPY

CROSS-EXAMINATION OF SGT. SPEAR BY MR. TULLY

Marysville, Yuba County, California, February 7, 2019.
Court called to order at 9:00 a.m. of this day.
Before Hon. Julia Scrogin, Judge.
Irma Mendoza, Clerk of the Court.
Tammy J. Anderson, Certified Shorthand Reporter, No. 8835.

APPEARANCES:

For the Plaintiff: JOHN VACEK, ESQ.
Deputy District Attorney
County of Yuba
Marysville, CA 95901

For the Defendant: JOSEPH M. TULLY, ESQ.
Tully & Weiss
713 Main St.
Martinez, CA 94553

TRANSCRIPT OF PROCEEDINGS

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DEFENDANT'S EXHIBITS:

(None)

PEOPLE'S EXHIBITS:

(None)

1 THE COURT: You may cross-examine, Mr. Tully.

2 MR. TULLY: Thank you, Judge.

3 **CROSS-EXAMINATION**

4 BY MR. TULLY:

5 Q. Good morning, sir.

6 A. Good morning, sir.

7 Q. Now, yesterday you were speaking about a prior
8 contact with Ms. Lepp and no plants were cut down because it
9 was a valid collective. Do you recall that?

10 A. The 2016 case?

11 Q. Yes, sir.

12 A. Yes.

13 Q. And you cited the fact that it was a valid
14 collective because it had membership agreements, patient
15 recommendations that covered the amount of plants. You
16 recall that?

17 A. Yes, sir.

18 Q. Okay. However, membership agreements are not
19 required under the law, correct?

20 A. Correct.

21 Q. And their membership agreements are not required
22 to be even written down, correct?

23 A. It can be oral or -- yes, by the law.

24 Q. Okay. And membership agreements aren't required
25 to be posted on any garden?

26 A. That is correct.

1 Q. And it's not even required for collectives to keep
2 membership recommendations?

3 A. They need to in the sense that we need to know how
4 many patients they have and the collective/caregiver, if
5 that's what you're referring to, has to be in the same city
6 or county of the caretaker.

7 Q. Okay. So, number one, the law doesn't require --
8 there's no requirement under the law for a collective to
9 keep paperwork. You're just saying it's a good practice
10 because otherwise you could be arrested?

11 A. Correct. It's a way to validate the collective
12 aspect, yes.

13 Q. So it's a way to maybe prevent yourself from being
14 arrested, but even that doesn't work all the time, right?

15 A. Yes.

16 Q. All right. But it's not a requirement under the
17 law?

18 A. Yes.

19 Q. And it's actually -- being a caregiver isn't --
20 isn't a necessary part of being a member of a collective?

21 A. No, it is not.

22 Q. You could be a caregiver and not -- not be a part
23 of a collective?

24 A. That is correct, yes.

25 Q. And, actually, the law about collectives comes to
26 us from Senate Bill 420?

1 A. Yes.

2 Q. And 420 was codified by our California legislature
3 in Health and Safety Code 11362.775?

4 A. Yes.

5 Q. And regarding patient recommendations, a patient
6 recommendation can be written down?

7 A. Yes.

8 Q. And it can be oral?

9 A. Yes.

10 Q. So there's no legal requirement that anyone
11 actually have a piece of paper that says "I'm a qualified
12 patient"?

13 A. It's a good practice for them to have, yes.

14 Q. It's a good practice but it's not a legal
15 requirement?

16 A. Yes.

17 Q. All right. So someone might have an oral
18 recommendation and they would be totally qualified to keep a
19 reasonably related amount of marijuana with them?

20 A. If they know that they're part of that collect --
21 are you talking collectives or just qualified patients?

22 Q. Just qualified patients

23 A. As long as that's within their recommended dosage
24 amounts and what they can possess, yes.

25 Q. And someone can have their recommendation written
26 down from a doctor and still be arrested, right?

1 A. It could.

2 Q. All right. And, actually, let's go with a
3 qualified patient that's in the law, and just to be a
4 qualified patient, you need an oral or written
5 recommendation from a physician?

6 A. Yes.

7 Q. All right. And there's no legal requirement for
8 collectives to have it posted on the garden?

9 A. No.

10 Q. And there's no legal requirement for collectives
11 to even keep the recommendations?

12 A. They should know who their members are and the
13 members should know that they're part of a collective, yes.

14 Q. Well, but the question is --

15 A. Okay.

16 Q. -- it's not a legal requirement for a collective
17 to keep written paperwork?

18 A. They should have their Secretary of State and --
19 are you talking their nonprofit status?

20 Q. I'm talking about a collective, sir.

21 A. Oh, sorry. Okay. No.

22 Q. All right. So Bob and his dad and his brother and
23 his sister can all be a collective?

24 A. If they're qualified patients, yes.

25 Q. If they're qualified patients, yes.

26 And, again, to be a qualified patient, just an

1 oral or written recommendation from a physician, right?

2 A. Yes.

3 Q. And they don't need to keep any paperwork on each
4 other?

5 A. Are you talking the collective members or the head
6 of the collective?

7 Q. Anybody. There's no requirement --

8 A. Correct, yes.

9 Q. Okay. There's no requirement in any law?

10 A. Correct. Under 11362, yes.

11 Q. .775?

12 A. Yes.

13 Q. Now, it would be illegal for a qualified patient
14 to associate with a non-qualified patient?

15 A. That is correct, yes.

16 Q. And in terms of reasonably related, there's no
17 legal recommendation for a physician to put a number on a
18 recommendation?

19 A. That is correct, yes.

20 Q. So they don't have to write the plants down?

21 A. They used to and then they changed practices of
22 that, yes.

23 Q. But there's no legal requirement that they do so?

24 A. That is correct.

25 Q. And there's no legal requirement that they put any
26 amount, like in weights, in terms of pounds or, you know,

1 ounces or anything like that?

2 A. That is correct.

3 Q. And the law as it's written says that a qualified
4 patient can have cannabis as long as it's an amount
5 reasonably related to their conditions?

6 A. That is correct.

7 Q. Okay. So it doesn't specify a certain number?

8 A. No, it does not. That comes on our interview with
9 the patients.

10 Q. And "reasonably related," you would agree, doesn't
11 mean exact?

12 A. It would be on their interview with the patients,
13 yes.

14 Q. It doesn't mean exact, right? It's reasonably
15 related?

16 A. It would be -- it would be on their interview,
17 yes.

18 Q. Okay. Put it like this --

19 A. Okay.

20 Q. -- say there's a doctor who does only shoulder
21 surgeries.

22 A. Uh-huh.

23 THE COURT: Is that a "yes"?

24 THE WITNESS: Yes. Sorry.

25 THE COURT: Thank you.

26 MR. TULLY: Thank you, Judge.

1 Q. And in this doctor's practice, an average patient
2 uses ten pain pills. Okay. Now, some patients are going to
3 use three. Some patients are going to use none. Some
4 patients are going to use all ten and need more. But would
5 you agree that that's an example of what "reasonably
6 related" is?

7 A. I would say no, because when physicians are doing
8 that, they're prescribing a certain amount to cover what
9 that patient's pain would be. This is totally different. A
10 doctor's not giving an amount there.

11 Q. Yeah. It's only reasonably related.

12 A. You're giving a certain amount which is totally
13 different. You're giving a doctor that's prescribing 30
14 pills after a shoulder surgery. That should cover them
15 through there. Physicians' recommendations on medicinal
16 marijuana don't have that. That comes on the qualified
17 patient and their interview on how much cannabis they are
18 actually using.

19 Q. Okay. There's nothing in the law that requires a
20 cannabis patient to give an interview to police officers;
21 isn't that correct?

22 A. That is correct.

23 Q. All right. So reasonably related has nothing to
24 do with a patient's interview with police officers, correct?

25 A. I was using your analogy. So are we back to your
26 original question?

1 Q. Yes, sir.

2 A. Okay. And state your original question, please.

3 Q. Well, how about you go with that answer -- or with
4 that question. Reasonably related has nothing to do with
5 whether or not a patient has a conversation with a police
6 officer?

7 A. I think it has everything to do with it because
8 how a person sitting on 150 pounds that smokes one marijuana
9 joint a day, that's beyond their medicinal needs of what
10 they're needing for their condition.

11 Q. You're making a lot of assumptions in that
12 analogy. So let's just go back to the question, sir.

13 A. Okay.

14 Q. There's nothing in the law that requires anybody
15 to talk to an officer about their medical conditions.

16 A. That is correct, yes.

17 Q. Therefore, there's no requirement under the law
18 that a patient speak with an officer to give them an amount
19 of what their reasonably related medical amount would be?

20 A. Yes, sir.

21 Q. Okay. And just to be clear, the answer is no, it
22 is not required under the law for someone to speak with a
23 police officer?

24 A. Yes, they do not have to.

25 Q. What is reasonably related to the patient's
26 medical needs is determined by a doctor in a doctor setting

1 versus by law enforcement?

2 A. It would be the patient because the doctors aren't
3 putting amounts on their recommendations.

4 Q. Uh-huh. But they're recommending a reasonable
5 amount to the patient?

6 A. They're recommending cannabis --

7 Q. Okay.

8 A. -- that would help their ailment.

9 Q. Let's go on with the answer.

10 THE COURT: Let's hang on a second. Was the
11 "uh-huh" a "yes"?

12 THE WITNESS: Yes.

13 THE COURT: Thank you.

14 I believe it was counsel. Was that the "uh-huh"?

15 THE REPORTER: (Nodded head.)

16 MR. TULLY: Thank you, Judge.

17 Q. Are you saying, then -- is your answer under oath
18 then saying what is reasonably related is entirely up to the
19 patient and their belief?

20 A. Are you asking for a number?

21 Q. Sir, I'm asking for a --

22 A. Okay.

23 Q. -- if you can answer the question. You said that
24 it wasn't up to a doctor. It was up to a patient what is
25 reasonably related to their medical needs. Okay?

26 A. Because under the law they do not have to write an

1 amount.

2 Q. Exactly.

3 Okay. But they can discuss it with a patient,
4 right?

5 A. Yes.

6 Q. Okay. But your answer was that a patient decides
7 the amount that's reasonably related?

8 A. They're going to know what gets them through their
9 pain or whatever ailment they're taking marijuana for.

10 Q. So your answer is whatever the patient says they
11 need, that's what's reasonably related to their medical
12 conditions?

13 A. Unless you can get ahold of the doctor and get
14 them to tell you, which is a HIPAA violation.

15 Q. Okay. So -- and you can't do that?

16 A. Correct.

17 Q. So which is it, sir? I'm fine with whatever
18 answer you want. Is it reasonably related is decided by the
19 physician after consulting with the patient or is it
20 whatever the patient feels they need?

21 A. I would say both, as I've seen recommended --
22 recommendations that have a written amount on them, and I've
23 seen recommendations that don't have an amount written on
24 them.

25 Q. Fair enough, sir.

26 It's a give-and-take between a patient and a

1 doctor?

2 A. Correct, yes, sir. I will agree with you on that.

3 Q. Okay. Thank you.

4 And for instance, if a patient got 12 pounds after

5 a harvest for their yearly supply --

6 A. Okay.

7 Q. -- and they only use ten --

8 A. Okay.

9 Q. -- a year -- they thought they were going to need

10 12 --

11 A. Uh-huh.

12 Q. -- they only used ten for whatever reason --

13 A. Okay.

14 Q. -- they wouldn't be criminal?

15 A. Correct.

16 Q. They just thought -- they had 12 pounds. It was

17 reasonably related. They ended up only using two [sic]. So

18 be it, right?

19 A. Yes.

20 Q. Thank you.

21 Now, if somebody had, let's say, their --

22 hypothetically speaking. Let's say their recommendation was

23 what was reasonably related -- let's go with this.

24 If somebody smoked an ounce a week --

25 A. Oh, wow.

26 Q. -- for their medical conditions, that would be 3.2

1 pounds per year, right?

2 A. Yes.

3 Q. Now, if that same person went from smoking to
4 using edibles or concentrates or tinctures, that amount
5 would change?

6 A. Yes, it would.

7 Q. Okay. So the amount to make a tincture, a
8 concentrate, a salve could be three to five times the amount
9 that somebody would need for smoking, right?

10 A. Yes.

11 Q. Okay. So if somebody started off with 3.2 pounds
12 for the year, if they switched from smoking to edibles, they
13 could use, let's say, five times that amount, so 16.25
14 pounds?

15 A. Yes, I'd agree.

16 Q. Okay. So even if you had somebody who was a
17 patient and they had "3.25" written on their recommendation,
18 say the doctor did it for whatever reason, and you found
19 them with 16.25 pounds, five times their amount, they still
20 wouldn't be criminal because it could still be reasonably
21 related to their conditions because they switched from
22 smoking to using edibles?

23 A. Yes, I agree.

24 Q. Okay. Thank you.

25 Now, there's no legal limitation on how many
26 collective members a collective can have?

1 A. As long as they're within the state of California.

2 Q. Exactly. But in terms of numbers, sir, there's no
3 legal limitation?

4 A. As in how many qualified patients they can have as
5 part of their collective?

6 Q. Yes, sir.

7 A. No, there's not.

8 Q. Okay. They can have -- a collective can consist
9 of two people? It could consist of two million people?

10 A. As long as they know they're part of a collective,
11 yes.

12 Q. Well, the requirement that you know you're part of
13 a collective actually isn't in the law, right?

14 A. But they have to know their -- their cannabis,
15 their marijuana is being utilized for other qualified
16 patients.

17 Q. Okay. Under .775, they have to be -- a collective
18 consists of a qualified patient --

19 A. Uh-huh.

20 Q. -- in the state of California who associates with
21 other collective patients in the state of California
22 regarding the cultivation of medical cannabis, right?

23 A. Yes.

24 Q. Okay. So they don't have to know who all the
25 other collective members are?

26 A. They have to know they're part of a collective,

1 not the other members.

2 Q. Okay. So if someone goes to a doctor --

3 A. Uh-huh.

4 Q. -- and they get a recommendation --

5 THE COURT: Is that a "yes"?

6 THE WITNESS: Sorry. Yes.

7 Q. BY MR. TULLY: -- and they get a recommendation
8 for medical cannabis, and they go to a dispensary and buy
9 marijuana and come out, but say they have six joints, and an
10 officer comes up to them and they say, "Are you a member of
11 a collective?"

12 And that person says, "No, I'm not. I just went
13 to a doctor. I bought this," is it your testimony that they
14 would be a criminal?

15 A. No. Because they bought from a storefront legal
16 dispensary.

17 Q. But they didn't know they were part of a
18 collective and just not knowing if you're part of a
19 collective doesn't make you a criminal, right?

20 A. Rephrase the question. Sorry. Or ask it again.
21 Okay.

22 Q. Okay. Somebody goes -- a qualified patient --

23 A. Yeah.

24 Q. They've never been to a --

25 A. Okay.

26 Q. -- dispensary before.

1 A. Uh-huh.

2 Q. They go to a dispensary. They buy marijuana.

3 A. Okay.

4 Q. On the way out the door, an officer approaches
5 them and they say, "Do you know" -- well, they say, "Are you
6 a part of a medical marijuana collective?"

7 And the person says, "No. I don't know what that
8 means."

9 A. Uh-huh.

10 Q. "I'm only here -- I got my doctor's card. I
11 bought my medicine, and I don't know what you're talking
12 about."

13 A. Okay.

14 Q. "I'm not part of a collective."

15 A. Uh-huh.

16 Q. Are you saying that would make them a criminal?

17 A. No, that instance that you said would not.

18 Q. Because knowing whether or not you're part of a
19 collective isn't part of the law?

20 A. You're talking dispensaries.

21 Q. A dispensary is a collective, is it not?

22 A. A dispensary is a business that can serve
23 medicinal marijuana patients.

24 Q. And functionally -- okay. Walmart is a business.

25 A. Uh-huh.

26 Q. It doesn't serve medical marijuana because it

1 would be illegal, right?

2 A. Correct.

3 THE COURT: Okay. The "uh-huh" was a "yes"?

4 THE WITNESS: I apologize --

5 THE COURT: Sorry for picking on you.

6 THE WITNESS: -- Your Honor.

7 THE COURT: Let's stop every time we hear an
8 "uh-huh." I'll have to clarify it or, down the line, it
9 won't be an answer.

10 THE WITNESS: Correct.

11 THE COURT: Okay. Next question.

12 MR. TULLY: Thank you, Judge.

13 Q. So a dispensary is a collective. A dispensary
14 that is qualified patients --

15 A. Uh-huh.

16 Q. -- it's in the state of California. It involves
17 people associating regarding medical cannabis, correct?

18 A. They're purchasing, yes.

19 Q. Okay. The dispensary itself is a storefront
20 collective. It's a collective. They just have a store?

21 A. I would agree with you there, yes.

22 Q. Okay. Thank you.

23 So we can have informal collectives and we can
24 have formal collectives?

25 A. Yes.

26 Q. And we can have informal collectives and we can

1 have storefront collectives?

2 A. Yes.

3 Q. And whether or not something is a collective
4 doesn't depend on what roof it's under?

5 A. Yes.

6 Q. What matters in terms of whether or not you're a
7 collective is whether or not you fall under the laws of
8 11362.775?

9 A. As qualified patients in California, yes.

10 Q. Qualified patients in California associating
11 regarding medical cannabis and don't make a profit?

12 A. Correct.

13 Q. Thank you.

14 Now, some people can contribute to a collective
15 simply by providing money in exchange for cannabis?

16 A. Yes.

17 Q. So not everybody needs to grow the plants?

18 A. That is the whole point of the collective, yes.
19 Some can't.

20 Q. Thank you, sir.

21 Now, in terms of the medical conditions of the
22 collective members of Ms. Lepp's church, what were their
23 medical conditions?

24 A. Of which members? I don't recall any.

25 Q. Any of them?

26 A. Yes.

1 Q. What were their medical conditions?

2 A. I can't answer that.

3 Q. You have no evidence to offer this jury as to what
4 the medical conditions were of the qualified patients in
5 Ms. Lepp's collective?

6 A. Because she stated she was a church and not a
7 collective.

8 Q. Okay. And the person who went to the dispensary
9 who says they're not part of a collective, you just agreed
10 with me a few minutes ago they were still part of a
11 collective and they were still operating legally, right?

12 A. Correct.

13 Q. So what somebody says, what somebody tells you has
14 nothing to do with whether or not they're falling under
15 11362.775?

16 MR. VACEK: Your Honor, this is argumentative.

17 THE COURT: Sustained.

18 Q. BY MR. TULLY: Would you agree -- okay. You just
19 answered that Ms. Lepp's statement to you that she was not a
20 collective and that she was a church makes her not a
21 collective?

22 MR. VACEK: Again, argumentative.

23 THE COURT: Sustained.

24 Q. BY MR. TULLY: Is it your testimony, sir, that
25 whether or not -- the words out of somebody's mouth either
26 makes them part of a collective or not?

1 A. As in the words "collective"?

2 Q. Yes. No. Just what they tell you out of their
3 mouth.

4 A. I take their statements, yes. She stated she was
5 a church --

6 Q. Okay.

7 A. -- not a collective that she had prior done.

8 Q. Okay. And we won't argue but maybe -- you do
9 remember just from a few minutes ago the line of questioning
10 regarding the person coming out of a collective. Their
11 words have nothing to do with whether or not their behavior
12 falls under 11362.775?

13 MR. VACEK: Object. Argumentative.

14 THE COURT: Please approach.

15 (Court and Counsel at bench, reported as follows.)

16 THE COURT: Okay. I didn't hear an objection a
17 while back. The witness is an expert but he has not been
18 tendered as such. I didn't hear an objection. Experts can
19 answer hypotheticals but only based upon the facts we're
20 going to have in this case. I don't know the facts in this
21 case.

22 MR. VACEK: My point here was that basically the
23 point has been made and it's beginning to be continued
24 argument with the witness at this point.

25 THE COURT: What did you -- okay. So you're
26 saying it's argumentative?

1 MR. VACEK: Correct.

2 THE COURT: And it's already been covered?

3 MR. VACEK: Correct.

4 THE COURT: Okay. Mr. Tully?

5 MR. TULLY: Yes, thank you.

6 The witness made the point and then the witness
7 reversed himself. And he said, well -- you know, we did the
8 whole dispensary thing, and then he reversed himself. But
9 he said Heidi Lepp said she's a church. Well, that
10 disqualifies her from being a collective. "Now I want to
11 probe on what you just said, you know, two -- a few minutes
12 ago, that it was -- you agreed with me it was a behavior
13 under 11362.775, not the words out of her mouth. Why is it
14 different with Ms. Lepp?"

15 He changed it so I get to probe on that.

16 THE COURT: Well, I think he answered it, that I
17 take the statements that she was a church and not a
18 collective, that I took her statements so, you know, what
19 they are --

20 MR. TULLY: That -- yeah, but that --

21 THE COURT: Is that not answering your question?

22 MR. TULLY: No. No. I want to get the point out
23 he -- because he's trying to make a point that -- by
24 Ms. Lepp saying that she's not a collective and that's not
25 true, and it's inconsistent with his prior testimony. But I
26 just want to establish that point. And I'm allowed to

1 because he brought it up by switching --

2 THE COURT: The testimony is in.

3 Can he not ask if it's not inconsistent?

4 MR. VACEK: He did ask that.

5 THE COURT: Madam Court Reporter, did we have that
6 question asked and answered? Let's let her look it up. I
7 don't recall it.

8 MR. VACEK: I'll withdraw the objection.

9 THE COURT: Okay.

10 MR. VACEK: But I will make it again if this goes
11 on and on because it's silly.

12 THE COURT: Thank you.

13 (End of at-bench discussion.)

14 Objection withdrawn. You may proceed.

15 MR. TULLY: Thank you.

16 Q. Hopefully we can do this in one last question.

17 Would you not agree with me, sir, that the words
18 that Ms. Lepp says out of her mouth have nothing to do with
19 qualifying her or disqualifying her from her behavior under
20 11362.775 as it relates to lawful activities of a medical
21 marijuana collective?

22 A. Again, she stated she was not a collective and the
23 members had stated they were not part of a collective as
24 well.

25 Q. Okay. And my question is you've just said -- I
26 will move on.

1 A. Okay.

2 Q. So Ms. Lepp was pretty adamant when you spoke with
3 her prior that she was a legal medical collective?

4 A. The 2016 case?

5 Q. Yes.

6 A. Yes.

7 Q. Okay. So she was adamant about that. She was
8 putting that forth to you?

9 A. To Deputy Moore, but, yes.

10 Q. Okay. Thank you, sir.
11 But now you're saying when you spoke to her the
12 last time, that she said, "I'm a church now"?

13 A. That's correct. She stated her husband had
14 started a church in '97 and she had quit the state-run
15 permits and the state collective and had now become a
16 church.

17 Q. Okay. And what was the point that you took away
18 from that?

19 A. That she was no longer using qualified patients
20 and she was now a church trying to use religion.

21 Q. Okay. And she was saying that to you and you had
22 identified yourself as an officer?

23 A. Yes.

24 Q. Okay. Did you have any reason to believe that she
25 was insincere in what she was telling you?

26 A. No.

1 Q. Okay. So what you took away from that is that
2 Ms. Lepp had a sincere belief that being a church exempted
3 her from the laws on medical cannabis?

4 A. Part of it that I took away from that interview is
5 she did not require members to have 215 cards as part of it
6 and that also that she had churches that were out of state
7 as well that cannabis went to.

8 Q. Okay. So in terms of patients not having medical
9 cards, what were their names?

10 A. I don't recall the names or asking them.

11 Q. Okay. Well, who -- in your investigation, who
12 were the patients that didn't have medical cards that got
13 cannabis from Ms. Lepp?

14 A. I did not ask her those names.

15 Q. Did you ask anybody those names?

16 A. We went off the locations that she provided us
17 that were her churches.

18 Q. Okay. So in terms of one human being in court
19 that can come in and testify to the jury that, "Yes, I got
20 marijuana from Ms. Lepp and I did not have a medical card,
21 and she knew it and she gave me cannabis anyway," do you
22 have one person?

23 A. No.

24 Q. Do you know how the collective members used their
25 medical cannabis? Do you know if any of Ms. Lepp's
26 collective members used vaporizers?

1 A. I believe the other deputies can testify to what
2 they found on scene.

3 Q. Okay. But I'm talking about her collective
4 members, the people that ended up using the cannabis.

5 A. As in you're wanting a name? I don't have one,
6 no.

7 Q. I'm wanting a use, sir. How did they use it? You
8 don't need to know their names.

9 A. Mr. Ochoa did not. He stated the marijuana was
10 all hers. And Mr. Bennett during that had stated they smoke
11 a lot of weed, was his statement.

12 Q. Okay. So she did not use a vaporizer?

13 A. Not that I recall, no.

14 Q. All right. Do you know what a salve is?

15 A. Vaguely, yes.

16 Q. Okay. What is it?

17 A. Tincture or rubbing for them as well.

18 Q. Okay. Well, a salve is like -- it's a lotion.

19 A. Yes.

20 Q. Another name for lotion.

21 A. Yes, uh-huh.

22 THE COURT: Is that a "yes"? Sorry.

23 THE WITNESS: I apologize, yes.

24 Q. BY MR. TULLY: And a tincture is like a little
25 dropper?

26 A. Yes.

1 Q. Okay. You put it under your tongue like other
2 essential oils or minerals, right?

3 A. Yes.

4 Q. Juicing -- did you speak with any collective
5 members to determine whether or not they used cannabis --
6 raw cannabis to juice with?

7 A. No.

8 Q. Have you ever encountered a medical cannabis
9 patient who juiced?

10 A. No.

11 Q. Have you -- did you speak with any collective
12 members about whether or not they used concentrates?

13 A. No.

14 Q. Water hash is a concentrate, right?

15 A. Yes, it is.

16 Q. Okay. And that's known as a physical extraction?

17 A. That is the legal way to extract, yes.

18 Q. That's one legal way to extract?

19 A. Correct, yes.

20 Q. Okay. Another way is using a crockpot and
21 Everclear?

22 A. Yes.

23 Q. Okay. And then there are other illegal ways?

24 A. Correct.

25 Q. And you didn't find any of those illegal ways on
26 Ms. Lepp's properties?

1 A. We found concentrated cannabis. It was not tested
2 to show if it was a solvent or not.

3 Q. Okay.

4 A. But we found some concentrates, yes.

5 Q. So just concentrates aren't illegal?

6 A. Not -- depending on the way they're made. If you
7 just have the product itself, no, it is not illegal.

8 Q. Okay. And, actually, a patient can have -- let's
9 say -- let's say we have Bad -- Bad Tom. Okay. Guy named
10 Bad Tom. He makes -- he makes concentrates illegally.
11 Okay. And he brings it to a dispensary and they take it in
12 and they sell it to Mary who comes in. She's a patient.
13 She comes in and buys concentrate. Mary wouldn't be guilty
14 of any crime, correct?

15 A. No, sir.

16 Q. Okay. And, actually, since we're going to go with
17 the illegalities of making concentrates, somebody can have
18 cannabis, right?

19 A. Yes.

20 Q. Okay. And let's go with a closed-loop system and
21 those are the types of things that -- it's a machine that
22 makes concentrates?

23 A. Yes.

24 Q. Okay. And sometimes it's the same machine that
25 makes, like, essential oils, like lavender oil?

26 A. Yes.

1 Q. Okay. So you can have the cannabis and you can
2 have the machine, right? And that's legal?

3 A. Yes.

4 Q. Okay. And, again, Mary -- you know, the
5 hypothetical patient -- she can have the concentrates made
6 from that machine, right?

7 A. As long as they're not using the chemical
8 solvents, yes.

9 Q. No. No. Mary, the end user, can have that. So
10 somebody can possess what comes out of that?

11 A. Oh, sorry. Yes.

12 Q. Okay. The illegality is putting the legal
13 cannabis in the legal machine, right, under our current
14 laws?

15 A. You're saying the illegality of that?

16 Q. Yeah. It's illegally making concentrates?

17 A. Yes.

18 Q. Okay. But all those other facets of it are legal?

19 A. Yes.

20 Q. Okay. And you only found concentrates on --
21 during this raid. You don't know how they were made?

22 A. Correct.

23 Q. Could be water hash?

24 A. Could be.

25 Q. Could be the crockpot method?

26 A. Could be.

1 Q. Do you know what Rick Simpson oil is?

2 A. I have never heard that term, sir.

3 Q. Okay. So did you do any interviews with

4 collective members prior to cutting down the plants?

5 A. Deputies did on each site, yes.

6 Q. Okay. Just the people that were there. So like

7 sort of the people that were there at the property?

8 A. Yes.

9 Q. But it's -- there's nothing required in the law

10 where a collective member has to live at the farm, right?

11 A. That is correct.

12 Q. Okay. So somebody can live in a different city, a

13 different state, as long as they're in the state of

14 California, they could be a collective member?

15 MR. VACEK: Object to the form of the question.

16 THE COURT: Please read back the question.

17 (Record was read.)

18 THE COURT: Your objection is?

19 MR. VACEK: I took it to be confusing the person

20 could live in a different state as long as they're in the

21 state of California.

22 THE COURT: Counsel?

23 MR. TULLY: Then I misspoke.

24 THE COURT: Sustained.

25 Q. BY MR. TULLY: Somebody could live in a different

26 city, a different county, and as long as they're in the

1 state of California, they could be a collective member?

2 A. Yes.

3 Q. Okay. So beyond the people who were there at the
4 time, did you make any effort to speak with any collective
5 members before cutting down the plants?

6 A. We spoke with the responsible parties for that
7 church site.

8 Q. Okay. And, again, sir, not all collective members
9 have to live on the farm?

10 A. Correct.

11 Q. Okay. So it's actually more probable that
12 collective members wouldn't be at the site during the raid?

13 MR. VACEK: Your Honor, I'd object. The witness
14 has already indicated that the sites all disclaimed being
15 collectives.

16 MR. TULLY: It's a speaking objection. It's a
17 non-legal objection.

18 I'd like an answer to the question, please.

19 THE COURT: I believe it's vague and ambiguous.
20 Sustained.

21 Please rephrase.

22 MR. TULLY: Thank you.

23 Q. Okay. Back to basics. There's nothing in the law
24 that requires collective members to live on a farm?

25 A. You're correct.

26 Q. There's nothing in the law that requires

1 collective members to be present at the place where plants
2 are growing?

3 A. Correct.

4 Q. So someone can live in San Diego and be a
5 collective member to a grow happening in Yuba City?

6 A. Yes.

7 Q. All right. Did you speak with any collective
8 members who were not present at the site prior to cutting
9 down the plants?

10 A. No. As in, she stated she was not a collective
11 and the church sites stated they were not part of
12 collectives.

13 Q. Now, are you purposefully going back and
14 contradicting your statement that it's not the words out of
15 somebody's mouth, it's their behavior that either qualifies
16 or disqualifies them under 11362.775?

17 MR. VACEK: Objection. Argumentative.

18 THE COURT: Sustained.

19 Q. BY MR. TULLY: Now, the nature of plants in a
20 garden tell an investigator a lot about whether or not a
21 plant is going to be used for medicinal purposes or illegal
22 purposes?

23 A. Are you talking the different strains?

24 Q. Yes.

25 A. Yes.

26 Q. Okay. So do you know what THC is?

1 A. Yes.

2 Q. And what is that, sir?

3 A. That's the psycho portion of the plant that causes
4 someone to get high.

5 Q. Okay. But by itself, THC isn't psychoactive. It
6 has to be --

7 A. Heated up.

8 Q. -- heated up. Okay. To a certain temperature?

9 A. Yes.

10 Q. Okay. So if somebody juiced marijuana, they --
11 even if it had a high THC, they wouldn't get high?

12 A. Yeah, you'd not unlock that property. You'd need
13 a lot.

14 Q. Okay. And if somebody ate marijuana, they
15 wouldn't get high, even if it had high THC values?

16 A. Correct.

17 Q. Okay. Now, THC or a high-THC plant is what would
18 be good for an illegal grow, right?

19 A. Yes.

20 Q. Okay. And that's because criminals or somebody --
21 somebody who wants to make their head fuzzy for whatever
22 reason, if they want to use THC to do that -- or if they
23 want to use cannabis to do that, they want it high in THC?

24 A. Is that a question?

25 Q. Yes.

26 A. Yes.

1 Q. Okay. And so if you came across somebody carrying
2 a pound on the street and it had high THC values, that would
3 be more likely -- that's a factor to consider whether or not
4 that cannabis is going to be used medicinally or for illegal
5 purposes?

6 A. I can't answer that hypothetical.

7 Q. Okay. Do you know what CBD is?

8 A. Yes.

9 Q. What is it?

10 A. That's the medicinal purpose of the plant that
11 medicinal patients like.

12 Q. Okay. However, THC can be used medicinally,
13 though, right?

14 A. Yes.

15 Q. THC can be a great pain killer for people in pain?

16 A. Yes.

17 Q. And smoking it will give somebody in a lot of pain
18 quicker relief?

19 A. Correct.

20 Q. Okay. An edible might give them longer-lasting
21 relief but it takes longer to kick in, right?

22 A. Yes, sir.

23 Q. Okay. And tincture is maybe somewhere in between?

24 A. I would agree with that, yes.

25 Q. Thank you, sir.

26 Now, CBD, there's no high with it?

1 A. That is correct.

2 Q. And because there's no high, CBD is the -- has a
3 good medicinal value to it?

4 A. Yes.

5 MR. VACEK: Your Honor, I'm going to object to the
6 form of the question here. There is no question. Counsel
7 is simply testifying. If he has a question to ask, ask a
8 question.

9 THE COURT: You can ask a leading question of an
10 expert. Overruled.

11 You may answer the question.

12 MR. TULLY: Thank you.

13 Q. So there's no black market for high CBD/no THC
14 plants?

15 A. The black market person would have to know that
16 and know what they were doing with that.

17 Q. Okay. And an officer investigating whether or not
18 a grow is going to be used medicinally versus illegally
19 would have to know whether or not something is high in THC
20 or high in CBD?

21 A. Yes.

22 Q. Okay. Did you do any testing on any of the
23 gardens to determine their CBD versus THC levels before
24 tearing down the crops?

25 A. No, we did not.

26 Q. Now, the raid was October 3rd, 2016?

1 A. No.

2 Q. Raid was when?

3 A. October 3rd, 2017.

4 Q. My mistake. Thank you.

5 So that would be one year, four months and five

6 days, correct?

7 A. Yes.

8 Q. And within that one year, four months and five

9 days, no testing has been done to determine what little

10 remains of the crops, whether or not it was high CBD?

11 A. No.

12 Q. Different strains would be different -- could be

13 used by different people for different medicinal purposes?

14 A. Is that a question?

15 Q. Yes, sir.

16 A. Yes.

17 Q. And how long have you been an officer, sir?

18 A. Sixteen years.

19 Q. Okay. Sixteen years. And before becoming an

20 officer you went to an academy?

21 A. Yes, sir.

22 Q. And you took classes on different aspects of being

23 a police officer?

24 A. Yes, sir.

25 Q. Okay. And one of the classes that you took on --

26 was being in a courtroom testifying?

1 A. Yes, sir.

2 Q. Okay. And you learned about direct examination.
3 It's when the Prosecution asks you questions?

4 A. Yes.

5 Q. And you learned about cross-examination, and
6 that's when a defense attorney asks you questions?

7 A. Yes.

8 Q. And you've testified in court before?

9 A. Yes.

10 Q. You've been under direct examination before?

11 A. Yes.

12 Q. You've been under cross-examination before?

13 A. Yes.

14 Q. You're getting paid to testify? Part of your
15 salary includes testifying in court?

16 A. Yes.

17 Q. You've received a paycheck before where part of
18 your work was testifying?

19 A. I'm compensated for the hours I'm here, yes.

20 Q. Okay. Thank you, sir.
21 And you would agree with me, sir, would you not,
22 that, colloquially speaking, somebody who gets paid to do
23 something is a professional? Somebody who gets paid to play
24 tennis is a professional tennis player?

25 A. Yes.

26 Q. Okay. So in some respects, you're a professional

1 testifier. It's part of what do you in the course of your
2 duties.

3 A. Those are part of my duties, yes.

4 Q. And you know what cross-examination is, right,
5 sir?

6 A. Yes.

7 Q. Okay. It's where a defense attorney asks you
8 questions and you answer for a jury, right?

9 A. Yes.

10 Q. How many times have you testified in court before,
11 a rough ballpark, please?

12 A. One hundred times.

13 Q. Thank you.

14 Now, different strains would be a benefit to
15 different medicinal uses.

16 A. Is that a question?

17 Q. Yes, sir.

18 A. Yes, they could.

19 Q. Okay. And so, for instance, one strain might be
20 good for a patient in terms of curing their -- or helping
21 them through migraines?

22 A. I'm not a doctor.

23 Q. Have you ever spoken with patients before?

24 A. Yes.

25 Q. Okay. And you know that they use different
26 strains for different medicinal purposes?

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A. Yes.

Q. And what works for somebody might not work for another person?

A. Yes.

Q. It's not a "one size fits all" when it comes to cannabis?

A. Correct.

Q. And somebody who wanted to provide a full spectrum of cannabis to be used medicinally would plant different strains?

A. Yes.

Q. Okay. And different strains come from a combination of the different types of cannabis plants, right?

A. Yes. Whether they're doing seeds or clones.

Q. Okay. And let's go over this, seeds and clones, real quick.

THE COURT: Is this now a good time, Counsel, to take our morning recess?

MR. TULLY: Anytime, Judge. Thank you.

THE COURT: I'll go ahead and do it now, Mr. Tully, if we could.

Ladies and gentlemen of the jury, I'm going to take a 20-minute morning recess. It's 10:30 already. Please do not discuss this matter even among yourselves.

And would you please reassemble in the jury room

1 at 10:50. Thank you. Court's in recess.

2 (Recess taken.)

3 (Proceedings held, not transcribed.)

4 THE COURT: Okay. We're back from the morning
5 recess. I have 12 jurors seated and two alternates.

6 Sergeant Spear is on the witness stand on
7 continued cross-examination.

8 MR. TULLY: Thank you, Your Honor.

9 Q. Good morning again, sir.

10 A. Morning.

11 Q. Let's cover a topic that's kind of pleasant, okay?
12 Shall we? Let's talk about seeds. All right. You just
13 mentioned seeds.

14 In terms of cannabis, what is your experience with
15 seeds? Or what is your knowledge and training and
16 experience with seeds?

17 A. Most -- most people have switched to clones but,
18 obviously, seeds are where everything starts, to get that.
19 And then they'll cross some to make different strains of the
20 clones.

21 Q. Okay. So before we move on to clones -- we'll get
22 to clones. But would you say it's true that most people who
23 are cultivating cannabis don't start from seed?

24 A. Yeah. Most of my experience, correct.

25 Q. Okay. Part of the reason is because with a seed,
26 you don't know what you're going to get on the plant. You

1 don't know how it's going to look or what kind of properties
2 it's going to have?

3 A. Yes.

4 Q. Okay. And also with seeds, it could turn out to
5 be a male; it could be a female?

6 A. Correct.

7 Q. Okay. And why wouldn't somebody who is
8 cultivating cannabis want a male plant?

9 A. Because they're not going to flower like the
10 female does, in a large amount.

11 Q. The flower is really what the cannabis -- all
12 cannabis is kind of based around; is that right?

13 A. That's the precedent, yes.

14 Q. So while some people do start with seeds, that's
15 probably a small amount?

16 A. Yes.

17 Q. Okay. Now, the other people that are going to
18 cultivate cannabis medicinally, they would begin with
19 clones?

20 A. Yes.

21 Q. Okay. And what is a clone? Can you explain that
22 to the jury?

23 A. It's a part of the plant that they will obviously
24 have a small root to make that same type of strain or cross
25 different strains as well.

26 Q. Okay. Let's break it down because you have a lot

1 of experience with cannabis, right?

2 A. Yes.

3 Q. Okay. So let's go through the nuts and bolts.
4 Say somebody has a nice female cannabis plant that they like
5 the strain or the properties. How would they make a clone
6 out of this?

7 A. They would pull a portion of it or pull part of
8 the root sample as well to start the younger plant as well.

9 Q. Could they -- what part of the plant -- could they
10 take like scissors and cut off a leaf and then put that in
11 the ground?

12 A. No. No. It would be a portion of the root ball
13 sample as well to start that off.

14 Q. Okay. So you can take -- is it true they call
15 these kind of plants a mother plant?

16 A. Yes.

17 Q. Okay. So they would take a mother plant and they
18 would take these portions -- these samples out and then
19 individually pot those plants?

20 A. In the small, yes.

21 Q. Some start off like cubes or something like that?

22 A. Correct.

23 Q. Okay. And then they grow a whole plant from these
24 little clones?

25 A. Yes.

26 Q. All right. So we've covered kind of seeds and

1 clones.

2 Oh. And then if somebody is going to grow a
3 garden, then, they would go up to -- they would need to meet
4 with somebody who does clones?

5 A. If that's the choice they were going, yes.

6 Q. Uh-huh. And if somebody wanted to make a garden,
7 let's say, that had a certain strain or a certain property,
8 they would need to contact -- they would need to get ahold
9 of clones that have the properties that they want?

10 A. Yes.

11 Q. Okay. So somebody who wanted to do a high-CBD
12 garden, they would have to get -- they wouldn't have to, but
13 they would most likely go to get CBD clones?

14 A. If they were going that route, yes.

15 Q. And if somebody wanted to do a THC garden, then
16 they would need to contact or get clones from somebody who
17 has clones for a THC garden?

18 A. If they were going that route, yes.

19 Q. Thank you.

20 Okay. Now, back to like the properties of
21 gardens. If somebody wanted to have a garden that provided
22 sort of a full spectrum of what a cannabis plant can offer,
23 wouldn't it be the case they would have different strains
24 within a garden?

25 A. It depends on the grower.

26 Q. Sure.

1 But if that grower wanted, you know, some high
2 CBD, some high THC, some right in the middle, they might
3 plant different clones within their garden?

4 A. A grower could grow multiple different strains,
5 yes.

6 Q. Okay. And somebody who wanted to provide sort of
7 a spectrum of using cannabis as a medicine, they would want
8 to -- they would want to have different types of plants in
9 their garden?

10 A. They could.

11 Q. Okay. And, again, different strains work for
12 different things. Something might work for epilepsy, but
13 some things might be great for migraines, right?

14 A. It could.

15 Q. Okay. So do you know what a sativa plant is?

16 A. I've heard of the strain, yes.

17 Q. Okay. Do you know what an indica plant is?

18 A. I've heard of the strain, yes.

19 Q. Okay. Can you tell the jury what you know about a
20 sativa plant?

21 A. I believe those are higher-level THC.

22 Q. Okay. Now how about an indica plant?

23 A. I believe those are the lower -- the higher CBDs,
24 low-THC content.

25 Q. Okay. But it's complicated, right?

26 A. Yes.

1 Q. All right. So you can have a sativa plant that
2 has low THC and high CBD, right?

3 A. I believe so, yes.

4 Q. And you can have an indica plant that has high THC
5 and low CBD, depending on the strain?

6 A. I believe so, yes.

7 Q. Okay. So have you ever heard of the designation
8 of a "body high" versus a "head high"?

9 A. No, I have not actually.

10 Q. Okay. Have you ever heard anyone when you're
11 speaking with a patient talk about sativa being a head high
12 whereas indica is more of a body high?

13 A. No, I have not.

14 Q. Okay. Have you ever heard of "daytime marijuana"
15 versus "nighttime marijuana"?

16 A. Are you talking on their growing cycles of --

17 Q. No. Like when you would use it. You would use
18 this type of marijuana during the day and this type of
19 marijuana is better to use at night?

20 A. Oh, no, sir.

21 Q. Okay. All right. Have you ever heard anyone
22 refer to indica as more of a nighttime marijuana?

23 A. No.

24 Q. Okay. You do know that sometimes marijuana can
25 make people sleepy?

26 A. Yes.

1 Q. Okay. And sometimes marijuana can -- depending on
2 the strain and the THC, it can, you know, be -- I don't
3 know -- more mentally activating?

4 A. Yes.

5 Q. Okay. Thank you.

6 Now, you got a warrant, and part of the warrant
7 for these different properties allowed you to destroy a lot
8 of the crops?

9 A. Yes.

10 Q. Okay. And in that warrant, a part -- well, you
11 submitted a warrant to the Court?

12 A. Yes.

13 Q. Okay. And part of what you submitted to the Court
14 for a judge to sign stated that you would follow the laws
15 pertaining to destruction pursuant to Health and Safety Code
16 11479?

17 A. Yes.

18 Q. Okay. And then you were talking about -- well,
19 let's be fair to you.

20 This sort of process was -- you didn't establish
21 it. You didn't -- you didn't invent that warrant that you
22 submitted to the Court?

23 A. What are you talking about? I authored it or --

24 Q. You authored it, but is this something that
25 somebody showed you how to do?

26 A. Yes.

1 Q. Okay. And that exact same kind of warrant, you've
2 seen other people do it in your department?

3 A. Yes.

4 Q. Okay. It's something throughout your department.
5 It's not something specifically that you did?

6 A. Correct.

7 Q. Okay. You didn't do anything different outside
8 your department?

9 A. Correct.

10 Q. Okay. But your department -- this is sort of its
11 tradition, should we say? You submitted a traditional
12 standard warrant for this type of case to the Court?

13 A. Working with the DA's Office, yes, we've adapted
14 one.

15 Q. And it is reviewed by a District Attorney prior to
16 submitting it to Court, right?

17 A. Yes.

18 Q. Okay. Now, again, part of the warrant that a
19 judge signs, when a judge signs it, then that's kind of like
20 telling you what to do; you have to follow that warrant,
21 right?

22 A. Yes.

23 Q. And, again, part of the warrant was saying that
24 you would follow the laws pertaining to Health and Safety
25 Code 11479?

26 A. Yes.

1 Q. Now, 11479 -- it specifies that not that you just
2 have to take photos, but that you have to take photos in
3 such a way that all of the plants that are in the grow are
4 covered so that you can evaluate every single individual
5 plant, correct?

6 A. It says photos and video, yes.

7 Q. Okay. Well, the code section is very specific.
8 So, in other words, you couldn't go to a grow and kind of at
9 eye level take a picture and look at maybe six rows of
10 plants that are maybe, you know, 10 deep, maybe 20 deep,
11 maybe 50 deep. The photos have to fairly and accurately
12 depict the entire grow.

13 A. The garden, yes, overall.

14 Q. So you couldn't take a photo of one plant and say,
15 "Well, I took a photo"?

16 A. Correct.

17 Q. Okay. And same thing with video. One of the
18 reasons that -- well, when 11479 was first passed by the
19 legislature, it did not specify video but the legislature
20 recently updated 11479 specifically requiring video,
21 correct?

22 A. Yes.

23 Q. Okay. And the video -- you are supposed to take a
24 video in such a manner that someone can evaluate the entire
25 crop, right?

26 A. Yes.

1 Q. Okay. Again, you wouldn't take a video of one
2 plant and think that you've complied with 11479?
3 A. Yes.
4 Q. Okay. So the pictures that were taken in this
5 case -- well, put it like this: You wouldn't destroy
6 evidence in, let's say, a burglary case, right?
7 A. No.
8 Q. Okay. But part of the reason that law enforcement
9 has -- part of the problem with cannabis cases is that it's
10 hard for law enforcement to store, you know, bags and bags
11 of cannabis, right?
12 A. Yes.
13 Q. So the legislature gave you the ability to destroy
14 evidence in a criminal case as long as you follow that law,
15 Health and Safety Code 11479?
16 A. Yes.
17 Q. Okay. And the photos in this case, they don't
18 depict every single plant in every single garden?
19 A. I have not reviewed every disk, no.
20 Q. Okay. And there was absolutely no videos taken?
21 A. Correct.
22 Q. And another thing that 11479 requires is for you
23 to file an affidavit with the Court saying that you've
24 complied with 11479?
25 A. Yes.
26 Q. And that affidavit is where you make a statement

1 under oath, you say that?

2 A. Yes.

3 Q. And one of the reasons behind 11479 is because in
4 a cannabis case where you have to take the amount of the
5 people in the collective, think about their
6 reasonable-related needs of cannabis, you have to weigh that
7 versus the total amount of cannabis that was taken, right?

8 A. It says -- it doesn't say anything about the
9 collectives in 479.

10 Q. Sure. I'm just saying that -- you believe in the
11 constitution, right?

12 A. Yes.

13 Q. And the constitution gives someone accused of a
14 crime the right to confront their accusers, right?

15 A. Yes.

16 Q. Okay. So if somebody wanted to say, "Look, I was
17 planting a garden. There was a hundred plants, but I'm a
18 bad gardener. I have a bad history. And 50 of them were
19 sick. So, Officer, don't hold these hundred plants against
20 me, but hold 50 against me because that's what I would
21 reasonably need," that's one of the purposes behind 11479,
22 right?

23 MR. VACEK: Objection, Your Honor. Argumentative.

24 THE COURT: A bit vague too. Sustained.

25 MR. TULLY: I'll move on. Thank you.

26 Q. Now, there's a failure rate for crops, right?

1 A. I've heard of that, yes.

2 Q. Well, have you received any training on that?

3 A. Yes.

4 Q. Do you have any experience with failure rates of
5 crops?

6 A. Yes.

7 Q. Okay. What in your opinion is a general -- well,
8 would you go with this? You might have five percent failure
9 rate. It might go all the way up to -- I mean, there's
10 different levels. You might have a hundred percent failure
11 rate, right?

12 A. I can't put a number to that, no.

13 Q. Okay. It's always wildly unpredictable, right?

14 A. Yes.

15 Q. Okay. Sometimes sick plants look healthy?

16 A. Correct.

17 Q. Have you heard of -- can mold affect cannabis
18 plants?

19 A. Yes.

20 Q. And mold can destroy the use of a cannabis plant
21 for medicinal use, right?

22 A. Yes.

23 Q. Have you heard of botrytis mold?

24 A. I have not.

25 Q. Okay. Have you heard of root rot?

26 A. Yes.

1 Q. And what is root rot?

2 A. Basically where the bottom of the plant that
3 absorbs all the nutrients is no longer viable and the plant
4 will die because it can't absorb any of the nutrients or
5 water that it needs to survive.

6 Q. Have you heard of budworms?

7 A. Yes.

8 Q. Okay. And what are budworms?

9 A. They basically eat the bud, the flower of the
10 plant, where it's not a usable amount, contaminate them.

11 Q. And how budworms work is they kind of eat their
12 way from inside out. So sometimes you don't see them until
13 it's too late?

14 A. Yes.

15 Q. Okay. And some farmers, if they have an
16 infestation of budworms, they may not even touch that plant
17 because if you move it or shake it out or pull it out, it
18 will disperse the budworms?

19 A. That is correct, yes.

20 Q. Okay. How many of the plants that were eradicated
21 that day, October 3rd, 2017 -- how many of them were sick?

22 A. I was in the command post. I did not go out to
23 each garden.

24 Q. But you're sort of -- you're in the command post.
25 You're receiving all the information, right?

26 A. Yes.

1 Q. Did you make any kind of determination as to how
2 many of the plants in the areas were sick or not healthy?
3 A. No, I did not.
4 Q. Did you ask anyone before they cut down the plants
5 to make a determination as to the health of each plant?
6 A. No, I did not.
7 Q. Did anybody do so, even though you didn't ask them
8 to?
9 A. Not that I recall.
10 Q. Would it refresh your recollection to look at
11 anything?
12 A. No. That -- I would remember that if they told
13 me.
14 Q. Okay. How many of the plants in any of the
15 gardens suffered from mold, if any?
16 A. I don't recall being told about any.
17 Q. Did you make any investigation into whether or not
18 any of the plants had mold?
19 A. No, I did not.
20 Q. Okay. How many of the plants in any of the
21 gardens had root rot?
22 A. None that were reported to me.
23 Q. Okay. Did you make -- did you ask anyone to
24 investigate for any plants having root rot?
25 A. No.
26 Q. Did anyone report to you about any plants being

1 sick, having root rot, even though you didn't ask them to?

2 A. No.

3 Q. Thank you.

4 Same question with budworms. How many plants in
5 any of the gardens had budworms?

6 A. None that were reported to me.

7 Q. Okay. Did you make any investigation into any of
8 the health of the plants relating to budworms?

9 A. No.

10 Q. Okay. Did you ask anyone to evaluate whether or
11 not any of the plants were healthy or sick because of the
12 presence of budworms?

13 A. No.

14 Q. Did anyone report to you despite you not having
15 said that to them?

16 A. No.

17 Q. Now, you did take some samples. Did you ever have
18 any of those samples tested for mold?

19 A. No, we did not.

20 Q. Did you ever have any of those samples tested for
21 budworms?

22 A. No, we did not.

23 Q. Did you ever have any of those samples tested for
24 any known maladies?

25 A. No, we did not.

26 Q. And, again, did you ever have any of those plants

1 tested for their CBD content versus their THC content?

2 A. No, we did not.

3 Q. Okay. So if those plants or the majority of them
4 were high in THC, there's no way the jury can know that?

5 A. No.

6 Q. Okay. Thank you, sir.

7 Yesterday you talked about Yuba County having a
8 cultivation problem.

9 A. Yes.

10 Q. And you mentioned that part of the factors
11 contributing to that problem was a lack of access?

12 A. The ruralness to some of the areas, yes.

13 Q. In other words, if somebody wanted to do an
14 illegal garden, they could kind of find some place to hide
15 out and do an illegal garden and not be discovered?

16 A. Yes.

17 Q. Okay. Thank you, sir.

18 However, in Ms. Lepp's case, she posted big bright
19 colorful posters at each one of her gardens?

20 A. At a lot of them, yes.

21 Q. Okay. At the vast majority of them?

22 A. Yes.

23 Q. Okay. And they had her name on it?

24 A. Yes.

25 Q. And they had her church name on it?

26 A. Yes.

1 Q. And they had her phone number on it?

2 A. Yes.

3 Q. On August 1st, 2017, Ms. Lepp called you?

4 A. The Sheriff's Office.

5 Q. Okay. She called the Sheriff's Office. And you

6 ended up speaking to her?

7 A. Not on the first, no.

8 Q. Okay. At some point you spoke with her on the

9 phone?

10 A. Yes.

11 Q. And she told you that she had moved from a

12 collective to a church?

13 A. Yes.

14 Q. And she agreed to provide you church sites?

15 A. Later in the month, yes.

16 Q. Okay. So she -- you asked her for church sites

17 after she told you about -- she was moving from a collective

18 to a church, and she voluntarily emailed you them?

19 A. Yes.

20 Q. And then a few days later or sometime later she

21 emailed you more locations --

22 A. Yes.

23 Q. -- openly designating them as a church?

24 A. Yes.

25 Q. And did you have to kind of pry this information

26 out of her, or did she freely give it to you?

1 A. No. She freely gave it to me.

2 Q. Okay. And she had no fear -- or it seemed like
3 she had no fear of freely giving you this information as to
4 her churches?

5 A. Correct.

6 Q. And she expressed to you at some point, her
7 demeanor and the words that she said, because that she was a
8 church, that she didn't need to fear from law enforcement or
9 wasn't worried about it?

10 A. I don't recall her reactions as that.

11 Q. Okay. But she told you she was a church and she
12 gave you her information, right?

13 A. Yes.

14 Q. And she wasn't cagey about it? She was open --
15 open to you about it?

16 A. Yes.

17 Q. Now, in looking at a location, there are certain
18 factors that law enforcement would look at in terms of
19 whether or not a location -- and we're going to go general
20 drugs right now -- so whether or not a location is being
21 used to sell drugs illegally or not, right?

22 A. You're asking the factors that we utilize?

23 Q. There are certain factors that law enforcement
24 would look at to make this determination?

25 A. Through the totality of the investigation, yes.

26 Q. Yes. And one of the factors is high traffic --

1 like, high traffic volume?

2 A. It could be.

3 Q. Okay. That would be sort of general with any
4 illegal drug. You would look at high volume traffic, people
5 coming and going from a house, staying short periods of
6 time?

7 A. You could say both.

8 Q. Okay. And -- sure. Yeah. However, with cannabis
9 growing, it's a little bit different than someone selling
10 meth from a meth house, right?

11 A. Yes.

12 Q. Okay. But one of the factors that you would look
13 at specifically for cannabis as related to illegal sales
14 would be the presence of moving vans or rental cars, right?

15 A. It could be both.

16 Q. Okay. Now, why would someone who was trafficking
17 in illegal cannabis -- why would they have a moving van at a
18 grow location?

19 A. It depends on the time of year. Beginning of the
20 year, if they're already bringing in plants that have grown,
21 to bring them in that way. End of the year, once they've
22 actually harvested, before they're actually trimming the
23 marijuana off, they're hauling the large stalks that go with
24 it away.

25 Q. And why specifically would somebody who's
26 trafficking in illegal cannabis want a moving van?

1 A. In illegal cannabis or cannabis in general? I've
2 seen it in both.

3 Q. Sure. Yeah. But why in illegal cannabis, why
4 would they want a moving van?

5 A. To mask their identity.

6 Q. Okay. They don't want to drive around their own
7 vehicle, right?

8 A. Correct.

9 Q. Okay. On the other hand, as you pointed out,
10 somebody using cannabis legally might have a moving van or a
11 moving truck because because they have a lot of stuff and
12 they need to move it and they might not have another vehicle
13 to move it, right?

14 A. It could be both, yes.

15 Q. So it's just a factor to look at, right?

16 A. It's one of them, yes.

17 Q. Okay. Were there any moving vans or moving trucks
18 located at any of these properties?

19 A. Not that I recall, no.

20 Q. Okay. And same thing with rental cars, right?

21 A. Not that I recall, no.

22 Q. Now, in terms of -- you didn't arrest Ms. Lepp
23 that day?

24 A. I didn't personally, no.

25 Q. Okay. I'll skip this round of questioning.
26 Well, how about this, though. Did you make any

1 investigation with regard to Ms. Lepp's finances?

2 A. I attempted to do a financial warrant on the
3 account that I was told about.

4 Q. Uh-huh.

5 A. A small account that I located was a small amount
6 of money. But, again, in the marijuana business, it's a
7 cash business. So looking at banks wouldn't tell me the
8 totality of someone's finances when they're engaged
9 especially in cultivation.

10 Q. Sure.

11 Now, on the other hand, someone who needs to
12 launder their gains from illegal cannabis might buy big
13 ticket items, right? They might have an expensive car or,
14 you know, big diamond ring or something, right?

15 A. I guess they could.

16 Q. Okay. A nice very expensive painting? You know,
17 the presence of big ticket items --

18 A. Yes.

19 Q. -- indicate or can be a factor in determining an
20 illegal drug seller, right?

21 A. I have not seen it in this small rural area.

22 Q. Okay. Ms. Lepp is from Sacramento?

23 A. Yes.

24 Q. All right. How about -- well, did you ever at any
25 point in time in this area with Ms. Lepp ever come across
26 her having something that looked out of place because it was

1 an expensive item?

2 A. Not that I recall in her history, no. I think she
3 drives an older Mercedes.

4 Q. Okay. How -- well, how about the concept of
5 hidden cash? Marijuana being -- illegal cannabis being a
6 cash business as you've stated.

7 A. Yes.

8 Q. People, if they're not buying big ticket items to
9 launder their money or invest it, they'll need to bury cash
10 or keep it someplace, right?

11 A. They could.

12 Q. Okay. Did you find the presence of anyone trying
13 to hide cash or put it away someplace?

14 A. We found large amounts of currency at some
15 locations, yes.

16 Q. Okay. Anything having to do with Ms. Lepp?

17 A. Other than it being her church branches.

18 Q. Okay. Ms. Lepp, did she have -- did you find any
19 money on her?

20 A. No.

21 Q. Okay. Any record of anybody giving her large
22 amounts of cash from -- due to anything related to do with
23 these marijuana grows?

24 A. Yes.

25 Q. Okay. And you're talking about the church buying
26 into the membership, right?

1 A. Yes.

2 Q. Okay. But not selling marijuana and giving her
3 the money?

4 A. They had stated that half the garden was hers.
5 Ms. Lepp had even said that in her interview.

6 Q. Okay. So -- and, actually, with a collective,
7 sir, again, we have growers and we have distributors --

8 A. Uh-huh.

9 Q. -- and we have patients, right?

10 A. Yes.

11 Q. So a lot of times with a legal garden, a
12 collective garden, somebody will grow and they'll have to --
13 they'll either get support for growing the garden but then,
14 in exchange, they'll have to give up some of the proceeds of
15 the garden?

16 A. Yes.

17 Q. And that's very common in a medical collective
18 garden?

19 A. That's what a collective is, yes.

20 Q. Okay. And some people might get their bud and
21 then transfer it to somebody else who makes concentrates
22 and -- but then they'll have to pay them in cannabis?

23 A. They could, yes, if that's their arrangement.

24 Q. Okay. So -- thank you, sir.

25 So in other words, if somebody uses edibles or
26 tinctures and they get five pounds for their allotment from

1 a garden, and somebody else makes edibles or tinctures, they
2 might turn over their five pounds to that person, and that
3 person will take a certain amount as their payment for
4 making concentrates and turn around and give back
5 concentrates?

6 A. Yes.

7 Q. A collective is a fluid -- a fluid group, right?

8 A. It's supposed to work that way, yes.

9 Q. Okay. And would you -- do you think kind of going
10 through 11362.775 and describing a collective as
11 loosey-goosey, is that a fair kind of statement? Even
12 though it doesn't sound very legal, but is that a fair
13 statement?

14 A. There's different parameters but, yes.

15 Q. Okay. Thank you, sir.

16 Now, in terms of money, law enforcement does get a
17 certain percentage from asset forfeiture for its budget,
18 correct?

19 A. Not for our budget. We have a special account.

20 Q. Okay. So law enforcement can personally benefit
21 from the asset forfeiture procedure?

22 A. We participate in the asset forfeiture program,
23 yes.

24 Q. Okay. And part of that is when you seize cash
25 related to cannabis, if nobody claims it or nobody fights
26 it, part of it goes back to your budget?

1 A. Cash related to all narcotic seizures, yes, can be
2 seized as the asset forfeiture.

3 Q. Okay. And vehicles and possessions, things of
4 that nature, can also benefit law enforcement's budget?

5 A. Those have to be approved by the DA's Office
6 before seizure, but yes.

7 Q. Okay. Thank you, sir.

8 Now, under the medical collective laws, it doesn't
9 mean that you can't make money. It means you can't make a
10 profit, right?

11 A. Yes.

12 Q. Okay. So a person can recoup their costs?

13 A. Yes.

14 Q. Okay. A person can recoup the costs for their
15 equipment?

16 A. Yes.

17 Q. A person can recoup reasonable -- a reasonable
18 cost for their time?

19 A. Yes.

20 Q. Okay. And you can consider expertise. So someone
21 who is gardening who has a lot of experience, who's a good
22 gardener, can be paid a different hourly wage from someone
23 who's just watering plants and doesn't have a lot of
24 experience?

25 A. That's on the individual.

26 Q. Sure. Kind of a loosey-goosey concept, right?

1 A. It's up to whatever deal the cultivator and that
2 person have made up, yes.

3 Q. Okay. So in other words, if -- let's say, farmer
4 John plants a garden for him and his wife, and the clones
5 cost \$2,000, fertilizers cost 1,500, the water bill costs so
6 much, and they put so much time into it. They can keep the
7 garden that they need for their medical needs, but if
8 there's extra, they can sell it to a dispensary and recoup
9 their costs for the cost of the garden?

10 A. As long as they aren't showing profit or it's not
11 profitable, yes.

12 Q. Thank you, sir.

13 And profit, again, doesn't mean that you can't
14 make money. It means that you can't make a profit, right?
15 There's more to it than just collecting money?

16 A. Correct.

17 Q. So in other words -- let's go with the United Way.
18 I'm not sure if they're technically a nonprofit
19 organization, but let's assume that they are. The United
20 Way can have a cookie sale and sell cookies and let's say
21 they make a million dollars. Does that mean that the
22 executive director has committed a crime?

23 A. Could, depending on what he does with his taxes.

24 Q. Exactly. Yeah. Or if the executive director
25 takes that entire million dollars and buys a personal jet
26 and flies to Bali on a vacation and drinks cocktails for two

1 weeks in a very expensive hotel, that would be a profit,
2 right?

3 A. I'm not a tax person, but yes.

4 Q. You're law enforcement, and part of law
5 enforcement is sort of knowing when someone is committing
6 fraud, right?

7 A. Yes.

8 Q. Okay. And that would be -- that would raise some
9 red flags with you, right?

10 A. Yes.

11 Q. Okay. So, again, collecting a million dollars
12 even, for a nonprofit organization, it's not that you
13 collect it. It's what you do with the money, right?

14 A. Yes.

15 Q. Okay. Thank you, sir.

16 THE COURT: Are we getting to --

17 Q. BY MR. TULLY: In terms of making a profit, you
18 have to determine what costs were versus what money came in?

19 A. Yes.

20 Q. Okay.

21 THE COURT: Counsel, let me stop you here.

22 MR. TULLY: Yes.

23 THE COURT: It's 12:00.

24 MR. TULLY: Yes. Thank you.

25 THE COURT: Hate to interrupt you. I was going to
26 let you keep going with your questioning but at this point

1 in time, we're going to take the lunch recess.

2 I'll order the members of the jury, please not
3 form or express any conclusions about this case. And do not
4 discuss it in any way. Please return to the jury room at
5 1:30.

6 Have a nice lunch.

7 And Counsel can remain. Thank you.

8 (Jury vacated the courtroom.)

9 THE COURT: Okay. For the record, the 12
10 members -- can we shut the door. Twelve members and two
11 alternates have left the courtroom. I just wanted to give
12 them a headstart before anybody here starts heading out for
13 lunch.

14 Have a nice lunch. See you at 1:30.

15 MR. TULLY: Thank you very much.

16 THE WITNESS: Thank you.

17 (Recess taken.)

18 (Discussion, not transcribed.)

19 THE COURT: Okay. Thank you.

20 We can go ahead and bring in the jury. We have
21 the sergeant still on the witness stand.

22 MR. TULLY: Thank you.

23 (Jury returned to the courtroom.)

24 THE COURT: We're back from the lunch recess. I
25 have twelve jurors seated and two alternates. The
26 Defendant, Ms. Lepp, is personally present, her attorney,

1 Mr. Tully. On behalf of the People, we have Mr. Vacek, and
2 Sergeant Spear is on the witness stand on continued cross.

3 Counsel, you may proceed.

4 MR. TULLY: Thank you, Judge.

5 Q. Good afternoon, sir.

6 A. Good afternoon.

7 Q. We were on the issue of profit as to -- one of the
8 prongs of staying within the realm of legal medical cannabis
9 is that you can't make a profit?

10 A. Yes.

11 Q. You can make money. You just can't make a profit.

12 A. Correct.

13 Q. Okay. And in order to determine a profit, you
14 would agree that you need to weigh costs versus income,
15 right?

16 A. Yes.

17 Q. Okay. So I'm looking at Rice Crossings Road. And
18 if you need me to approach with any of these photos, let me
19 know and I'll gladly do so. I'm looking at a photo. It
20 looks like it's sort of like a light-depo tent. Do you know
21 what that is?

22 A. Are you talking the hoop house canvas?

23 Q. Yes, sir.

24 A. Okay, yes.

25 Q. Now, hoop houses can be also known as a light-depo
26 technique?

1 A. Okay. That's new to me, but yes.

2 Q. Do you know what I mean by that?

3 A. I vaguely understand your representation of it,
4 yes.

5 Q. Okay. So in other words, it's -- it's this big
6 grow that they put the plants inside a hoop house, right,
7 and it's like a semi-circular kind of tent, right?

8 A. Yes.

9 Q. Okay. And it's covered with tarps?

10 A. Yes.

11 Q. And then at a certain time during the day, they
12 can take the tarp off and let the sunlight hit it?

13 A. Yes.

14 Q. Okay. Do you want to explain to the jury the
15 technique behind that and why people do that?

16 A. Correct. So they'll use the hoop houses at night
17 as well to cover it with the tarps and then turn on the
18 ambient lights to keep the sunlight, depending on what
19 timing system and how many hours they're producing sunlight
20 to how many hours they're not. And then during the daytime
21 once the temperature is risen to their desired effect,
22 they'll pull the tarps off and let the natural sunlight go
23 through.

24 Q. Okay. Now, to get a plant to flower, to get a
25 cannabis plant to flower, it starts to flower -- it's
26 triggered by sunlight, right?

1 A. That is one of the things, yes.

2 Q. Okay. Can you explain to the jury -- like, is it
3 more sunlight? Is it less sunlight? What triggers a
4 cannabis plant -- if you want to trick a cannabis plant into
5 flowering, would you do it with more light or less light?
6 Can you explain that to the jury, please?

7 A. More light. Obviously, the longer you leave it
8 the more flower that will go onto the plant and the longer
9 you can leave it in the sunlight. And depending if you're
10 doing outdoor hoop houses, controlled environment, there's a
11 lot of other factors that affect that, but the more light
12 the better, yes.

13 Q. Okay. And so in terms of quantity, too, would you
14 agree with me, sir, that an indoor grow, you kind of measure
15 the yield by the light sources?

16 A. For an indoor grow?

17 Q. Yes.

18 A. They're a different type. They are a smaller
19 plant. They're a different strain. They're usually a 60-
20 to 90-day indoor cycle, where an outdoor will last most of
21 the summertime, and not yield as much as an outdoor plant.

22 Q. Let's go sort of general yield. On a scale of
23 general yields, indoor grow, if you had, let's say, ten
24 marijuana plants, you'd get the lowest yield out of indoor
25 versus a hoop house versus an outdoor grow?

26 A. Yes.

1 Q. Okay. And an outdoor grow, you're going to get
2 the most yield out of those three different techniques?
3 A. Yes.
4 Q. And hoop houses, kind of in the middle?
5 A. Yeah. It can depend on the grower, yes.
6 Q. Okay. Generally speaking, that's the case?
7 A. Yes, sir.
8 Q. So a hoop house won't produce as much as a pure
9 outdoor grow?
10 A. It could, depending on how well you trick the
11 lights.
12 Q. Sure. And how good the grower is and that kind of
13 thing?
14 A. Correct.
15 Q. But as a general rule, an outdoor grow is going to
16 produce more per plant than a hoop house?
17 A. Again, it depends on everything.
18 Q. But you would agree with me as a general rule?
19 A. Okay. Yes.
20 Q. Okay. Thank you.
21 And so -- and with a hoop house, there looks
22 like -- on this Rice Crossings, there looks like there's
23 some lighting?
24 A. I can't see it so...
25 Q. Would you like me to approach, sir?
26 A. If you need to.

1 Q. Did you need to see it?
2 A. It depends if I need it for your answer.
3 MR. TULLY: May I approach, please?
4 THE COURT: Yes, you may.
5 MR. TULLY: Thank you.
6 THE WITNESS: Yes.
7 Q. BY MR. TULLY: Okay. And did you conduct any
8 analysis into the expenses that it would have taken to get
9 this hoop house operational?
10 A. I was not on that site.
11 Q. But did you conduct any analysis into how much
12 money it would take to get this operation going?
13 A. Are you talking Rices Crossing?
14 Q. Yes.
15 A. I did not.
16 Q. Okay. How about the clones? Do you know how
17 much -- where these plants came from, if they came from seed
18 or from clones?
19 A. I do not recall, no.
20 Q. Do you know -- well, do you have that information?
21 A. I could review Deputy Torres's report and see if
22 he documented it in there.
23 Q. Okay. Let's go with this. Do you know how much
24 these plants cost to get them to this stage?
25 A. It depends. It depends on several variant
26 factors.

1 Q. Do you have an amount?

2 A. I can't say an amount, no.

3 Q. Okay. Do you know how much anybody -- if anybody

4 paid X-amount of dollars for all these clones?

5 A. I do not.

6 Q. Okay. Do you know how much somebody paid to have

7 this hoop house built?

8 A. I do not.

9 Q. Do you know how much these tarps cost?

10 A. I do not.

11 Q. Do you know how much this lighting cost?

12 A. I do not.

13 Q. Okay. Do you know how much the electrical bill

14 was for this hoop house?

15 A. I do not know if there was even one.

16 Q. Okay. Thank you.

17 Well, the lighting would have had to have been

18 powered by something, right?

19 A. Most illegal growers that we deal are run off

20 generator power. They won't use PG&E, especially in our

21 rural foothills. A lot of people use generators.

22 Q. Do you know how much generator bills were?

23 A. No, I do not.

24 Q. And using a generator, really, it might be a

25 factor but it really doesn't have anything to do with legal

26 versus illegal, right?

1 A. You asked specifically for the PG&E power bill.

2 Q. Okay. Yeah. Power bill. Okay. Including

3 generators.

4 A. No, I do not.

5 Q. Okay. You don't know how much the generator cost

6 to bring to this site?

7 A. No.

8 Q. Okay. You don't know how much the fuel costs to

9 power that generator?

10 A. No.

11 Q. Okay. And then it looks like there are some --

12 there's an outdoor grow as well?

13 A. Yes.

14 Q. Okay. And it looks like there's some smart pots?

15 A. Yes.

16 Q. Okay. Do you know -- can you explain to the jury

17 what a smart pot is?

18 A. Yes, it's a round usually black canvas bag that

19 they'll fill up with the nutrients and soil that they

20 determine they want to grow with. And then once the plant

21 has reached a certain size in their small little clone

22 starter plants, that they will put in that soil to grow it

23 in.

24 Q. Okay. And the smart pots cost money, right?

25 A. Yes.

26 Q. Do you know on average how much maybe some of

1 these smart pots cost?

2 A. No.

3 Q. Okay. Now, as you were talking about the dirt and
4 nutrients, someone who's serious about medical cannabis or
5 about growing cannabis in general, they wouldn't just put
6 regular dirt in smart pots, right?

7 A. That depends.

8 Q. Well, they'd want to put good dirt in. You put
9 good dirt in and the plant's going to grow bigger and
10 better, right?

11 A. I've talked to several people that have used both.

12 Q. Okay. Generally speaking, would you agree --
13 well, if you're just going to put regular dirt in it, what's
14 the advantage of using a smart pot versus putting it in the
15 ground?

16 A. It depends on how big your root system will be or
17 what type of cycle you're doing with that.

18 Q. Generally speaking, if you're going to put
19 something in a smart pot, it's because you want to put it in
20 good soil as opposed to just putting it in the ground?

21 A. It could. It depends on the grower.

22 Q. And good dirt, good soil is very expensive. Would
23 you agree with me?

24 A. Yes.

25 Q. Okay. It looks like -- further, in addition to
26 the hoop houses and the smart pots, it looks like some red

1 wood boxes were built or wooden boxes. Do you need to
2 refresh your recollection? I can approach.

3 A. No. It's okay.

4 Q. Okay. Do you -- do you know what I'm referring
5 to?

6 A. Yes.

7 Q. Okay. Is that accurate, sir?

8 A. Yes.

9 Q. And how many of these wood boxes were built?

10 A. I don't recall.

11 Q. Okay. Now, the wood would cost money, right? It
12 looks like it was purchased at a lumber yard. It looks like
13 it was processed in a way?

14 A. Yes.

15 Q. Okay. And the labor to build these would cost
16 money, right?

17 A. If you're paying someone.

18 Q. Yeah. But even if you're not paying someone, even
19 if you're a medical marijuana collective, they'd be allowed
20 to be compensated for their labor, right?

21 A. Yes.

22 Q. Okay. So people could get paid for building
23 these, and it would be legal, right?

24 A. They could and couldn't. It just depends on each
25 site.

26 Q. Sure. Well, if they're a qualified patient and

1 they're contributing to the collective by building boxes,
2 that would be legal?

3 A. Yes.

4 Q. Okay. And if somebody -- if a grower didn't have
5 money to pay them up front, they could be promised a portion
6 of the garden?

7 A. Yes.

8 Q. Okay. Or they could be promised to be paid in
9 cash at any point in time?

10 A. Yes.

11 Q. They could be promised to be paid in cash after
12 the crop is harvested and money is taken in and you could
13 pay off your workers?

14 A. As long as that person did not have profit, yes.

15 Q. Yeah. As long as it's reasonably related. If
16 they were paid a million dollars for each box, that would
17 probably be a profit, right?

18 A. Yes.

19 Q. Okay. But maybe 100, \$200 might be appropriate,
20 right?

21 A. It could.

22 Q. Okay. Thank you.

23 Do you know what a reservoir is, sir?

24 A. They're an extra water holding tank, yes.

25 Q. It's a big plastic holding tank that farmers will
26 put water in?

1 A. Yes.

2 Q. Those have an expense to them, correct?

3 A. The tanks themselves?

4 Q. Yes.

5 A. Yes.

6 Q. All right. And putting water in them has an
7 expense, right?

8 A. That depends.

9 Q. If somebody has a well versus if somebody
10 purchases water?

11 A. Or if someone is stealing water or diverting or --
12 yes.

13 Q. Okay. All kinds of things.
14 Now, there's no water diversion in these
15 locations, correct?

16 A. Not that I recall.

17 Q. Okay. And I won't belabor. Okay.
18 So reservoir -- how about irrigation? Do you know
19 what irrigation is?

20 A. Yes. They're drip lines that are leading plant to
21 plant to keep them on whatever timing cycle they have,
22 depending on how often they're watering their plants.

23 Q. Like a plumber: pipes -- PVC pipes carries water
24 from a source to water the plants, right?

25 A. Depending on what system they're using, yes.

26 Q. Okay. And, again, all the supplies would cost

1 money, right?

2 A. Could, yes.

3 Q. And -- well, sure. Unless somebody is giving it
4 for free?

5 A. Correct.

6 Q. All right. And the fertilizers cost money?

7 A. Yes.

8 Q. And do you know what a sweetener is?

9 A. I've heard of that, yes. Adding.

10 Q. It's like extra kind of extra nutrients for
11 plants?

12 A. Growers will add different things depending on
13 what you call it would be a recipe to grow that plant, yes.

14 Q. In terms of clearing this land, that's a job that
15 is part of a collective too or can be part of a collective,
16 correct?

17 A. Depends what they're on, public land, private
18 land, owned.

19 Q. Okay. So assuming that someone is on private land
20 and they want to build a garden and there's a bunch of
21 bushes and shrubs and trees, you get a tractor and kind of
22 raise the area, make it suitable for gardening, right?

23 A. Again, if they've done that legally, yes.

24 Q. Okay. If they didn't do it legally, then they
25 would be in violation of zoning, right?

26 A. And could be in violation of cultivation by

1 watershed. You're distributing a bunch of factors right
2 there.

3 Q. Okay. Just regular plot of land, has trees and
4 shrubs, and somebody makes a garden area out of it. A
5 collective can legally have that done, right?

6 A. Yes.

7 Q. Okay. Do you know, out of all these locations how
8 many of these locations where the land had to be cleared?

9 A. No, I do not.

10 Q. Okay. If the land did have to be cleared, the
11 money to get a tractor, the paying the person to operate the
12 tractor and clearing everything off, that that would be an
13 expense of the garden, right?

14 A. The grower, whoever is planning to do that, yes.

15 Q. And, again, sometimes it might take a while to
16 recoup your costs for a garden, right?

17 A. It could.

18 Q. Okay. And even taking all the shrubs and trees
19 and everything off and taking it to the dump and paying
20 that, that would be an expense of a garden?

21 A. If they did that.

22 Q. If they did that, and somebody can legally recoup
23 that?

24 A. If they did that that way, yes.

25 Q. Okay. So in other words, they could take part of
26 their crop and take it to a dispensary and sell it and take

1 in money, and as long as they're balancing out their costs
2 and not making a profit, that would be legal?

3 A. It could be, yes.

4 Q. Now, the time, people can be compensated for their
5 time as you said earlier, time planting the clones or seeds
6 or whatever into the hoop houses or smart pots, right?

7 A. Yes.

8 Q. And, again, if somebody has a lot of skill, they
9 would be paid -- they could be paid at a different rate than
10 somebody who doesn't have the skill?

11 A. That's up to that person.

12 Q. Sure.

13 Watering the plants. That's a position that could
14 be a paid position?

15 A. It could.

16 Q. All right. It's an expense that you could
17 accumulate in terms of growing a garden?

18 A. Yes, it could.

19 Q. And tending to the plants on a daily basis, a
20 collective could compensate an individual for doing that.

21 A. It could.

22 Q. What are some of the reasons why a collective
23 would have somebody who would come and maybe stay at the
24 garden and watch over it every day?

25 A. There's several factors.

26 Q. Uh-huh.

1 A. There's protection of the garden, obviously,
2 rip-offs are a thing. There's making sure the water pumps,
3 reservoirs, all those stay filled, the nutrients, the plants
4 are getting sprayed.

5 Q. Okay. Thank you very much, sir.

6 And so almost -- a good garden almost requires
7 daily maintenance?

8 A. Yes.

9 Q. Now, trimming costs to harvesting marijuana is
10 very labor intensive, would you say?

11 A. Yes, it is.

12 Q. Okay. Everything needs to be taken off the plant?

13 A. Yes.

14 Q. And then they dry the -- I guess the branches of
15 the plant?

16 A. Yes.

17 Q. And then after everything is dry and cured, then
18 somebody needs to take the buds off that?

19 A. That is correct.

20 Q. And then once the buds are taken off, that's not
21 the end of it because the buds need to be trimmed?

22 A. Yes, sir.

23 Q. Can you explain to the jury what the trimming
24 process involves?

25 A. The trimming process involves getting all the fine
26 little hairs, all the little extra leaves, making sure

1 there's no dust or mites or anything in that. And getting
2 it -- depending on if they're that intrusive in the way they
3 trim.

4 Q. Okay. And you have good trimmers and bad
5 trimmers. Some people can do it quicker than others, right?

6 A. Yes.

7 Q. Okay. And trimming is an expense that a garden
8 would have as part of its necessity?

9 A. They could.

10 Q. All right. Well, if you have a garden, you're
11 going to want to harvest the buds, right?

12 A. Yes.

13 Q. And you're not going to be able to harvest the
14 buds unless they're trimmed?

15 A. Again, it just -- you're saying some
16 hypotheticals.

17 Q. Yes. Generally speaking, sure. Somebody could be
18 making water hash, and they wouldn't necessarily have to go
19 through all that, right?

20 A. Yes.

21 Q. Okay. But if somebody wants to take manicured
22 bud, part of that process is trimming it?

23 A. Yes, sir.

24 Q. Okay. And isn't it true, sir, that our California
25 Board of Equalization, one of our tax boards, lets
26 collectives deduct the cost of trimming?

1 A. I have not seen that, but okay.

2 Q. And it would be legal for a collective -- a
3 medical collective to pay trimmers?

4 A. Yes, we've established that.

5 Q. Yeah. And they could pay them in cash?

6 A. Yes.

7 Q. And they could pay them using in-trade for
8 cannabis?

9 A. Yes.

10 Q. Okay.

11 MR. VACEK: Your Honor, the questions are getting
12 very repetitive and the point's made.

13 THE COURT: Sustained. Please move on.

14 Q. BY MR. TULLY: Now, you talked a little before
15 about Ms. Lepp saying she had churches in other states.
16 It's legal for someone from New York to come to California
17 and visit Venus Beach and get their card and partake in our
18 dispensaries, right?

19 A. It could be, yes.

20 Q. Well, if they get -- you know, they go see a
21 doctor, they get their -- they become a qualified patient,
22 they'd be in California, Venus Beach, they could go to a
23 dispensary and partake?

24 A. Yes.

25 Q. Okay. And it's legal to go to, let's say,
26 Washington D.C. and partake of their medical cannabis laws

1 if you did so under their laws?

2 A. I don't know Washington D.C.'s law so...

3 Q. Let's assume for the purposes of this hypothetical
4 that Washington D.C. has similar laws, just --

5 MR. VACEK: Argumentative, Your Honor.

6 THE COURT: Sustained. It would be a bit
7 irrelevant about Washington D.C.

8 Q. BY MR. TULLY: Okay. Well, Ms. Lepp going to
9 another state and having a church there wouldn't violate the
10 laws in California?

11 A. If she's taking her cannabis there, which she said
12 they take it to other states --

13 Q. No. You said earlier that she said she had
14 churches in other states so crossing state lines would be
15 illegal, but having churches in other states would not be
16 illegal?

17 A. Yes.

18 Q. Okay. And, actually, you don't have any evidence
19 of Ms. Lepp taking any cannabis across state lines?

20 A. Other than her testimony to me.

21 Q. So -- okay. Before you said she had churches in
22 another state. And now you're saying that she told you, "We
23 take cannabis from California and move it across state
24 lines," which should involve the federal government, "and
25 bring it to our other churches." Is that your testimony
26 now?

1 A. In her initial interview to me, yes.

2 Q. Did you record that interview?

3 A. It was on a recorded line, yes.

4 Q. Okay. So if somebody is transporting across state
5 lines, they're probably going to have proof on cell phones,
6 correct? They could?

7 A. What do you mean?

8 Q. When you get a warrant for illegal drugs, you ask
9 in your search warrant to be able to search electronic
10 devices, correct?

11 A. If that's one of the things you applied for, yes.

12 Q. But you would do that for an illegal drug suspect,
13 right?

14 A. You could.

15 Q. You would do that, right?

16 A. You could. I can't attest to everyone.

17 Q. Okay. Fair enough.

18 Also, an area that would be a benefit for police
19 investigation towards illegal drugs is looking at somebody's
20 computer?

21 A. Yes.

22 Q. Their hard drive, right?

23 A. Yes.

24 Q. Might have data, might have communications. It
25 might have emails that pertain to illegal selling, right?

26 A. Yes.

1 Q. And in this case, you seized Ms. Lepp's computers?

2 A. Yes.

3 Q. You seized devices?

4 A. Yes.

5 Q. You seized cell phones?

6 A. Yes.

7 MR. TULLY: Thank you. Nothing further.

8 THE COURT: Redirect?

9 (Redirect examination not transcribed.)

10 THE COURT: Any recross?

11 MR. TULLY: Yes. Thank you.

12 **RECROSS-EXAMINATION**

13 BY MR. TULLY:

14 Q. So, sir, in your experience with growers, they're
15 very prideful of their genetics?

16 A. I guess they could be, yes.

17 Q. And just so we're clear, there's no -- there's no
18 breakdown anywhere in your police reports pertaining to
19 these raids that relate to costs or breakdown of costs of
20 these gardens?

21 A. No.

22 Q. One of the advantages of the collective -- of the
23 collective model that we have in this state is that people
24 who can farm can get their clones from somebody else?

25 A. Yes.

26 Q. So somebody can provide clones; somebody can grow

1 them; somebody can take care of them, and somebody can
2 process them at the end, right?

3 A. Yes.

4 Q. And you mentioned moving vans and smart pots. If
5 you're being illegal and the cops are going to come, you're
6 going to want to take and put them -- take the smart pots
7 and put them in the moving van and scurry away, right?

8 A. I don't think he said anything about illegal. I
9 think he just said if the cops are coming.

10 Q. Okay. But there's no moving vans related to any
11 of these locations?

12 A. Not that I can recall.

13 Q. So somebody who was planning on being upfront and,
14 you know, being legal, they wouldn't be planning on moving
15 their pots or somebody being illegal, they might be more
16 prone to be moving if police were called?

17 A. It could be both sides. You're asking a --

18 Q. I get it.

19 Honey oil is not the same as water hash, correct?

20 A. Okay. Yes.

21 Q. Water hash comes out to be a hard brick?

22 A. Yes.

23 Q. There's concentrates, right?

24 A. Yes.

25 Q. And honey oil is a concentrate and water hash is a
26 concentrate, but they're not the same thing?

1 A. Correct.

2 Q. All right. And I suppose if we're going to get
3 into concentrates, just very briefly, there's water hash.
4 There's honey oil, like you said, made from butane. There's
5 also the closed-loop system, which could be even either
6 butane or CO2.

7 A. Yes.

8 Q. And that produces concentrates, right?

9 A. Yes.

10 Q. And the reason why you refer to sometimes
11 concentrate as honey oil is because it has a consistency and
12 look of honey?

13 A. That is correct. That's where it's gotten the
14 name from.

15 MR. TULLY: Thank you.

16 Nothing further.

17 THE COURT: Any further redirect?

18 MR. VACEK: No.

19 THE COURT: Okay. Thank you, sir, for your
20 testimony.

21 You're the investigating officer so you're subject
22 to being recalled. You may have a seat at counsel table.

23 Thank you.

24 (End of requested transcript.)

25

26

1 REPORTER'S CERTIFICATE

2
3 STATE OF CALIFORNIA)

4) SS.

5 COUNTY OF YUBA)

6
7 I do hereby certify that the foregoing transcript,
8 consisting of 89 pages, was taken by me at the time of the
9 proceedings therein, and that the foregoing is a full, true,
10 and correct transcription of the proceedings held at said
11 time.

12 Dated: September 3, 2019.

13
14 

15 TAMMY J. ANDERSON
16 Certified Shorthand Reporter
17 CSR License No. 8835
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