

STATE OF MICHIGAN
IN THE MICHIGAN SUPREME COURT
(APPEAL FROM THE MICHIGAN COURT OF APPEALS)

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff/Appellee,
vs.

GERALD MAGNANT,

Defendant/Appellant.

Michigan Supreme Court Docket No.

COA No. 341627

Ingham CC: 17-407-FH

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APPENDIX A

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOHN FRANCIS DAVIS,

Defendant-Appellant.

UNPUBLISHED

February 5, 2019

No. 341621

Ingham Circuit Court

LC No. 17-000406-FH

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GERALD MAGNANT,

Defendant-Appellant.

No. 341627

Ingham Circuit Court

LC No. 17-000407-FH

Before: SWARTZLE, P.J., and SAWYER and RONAYNE KRAUSE, JJ.

PER CURIAM.

Defendants appeal two orders, one denying their joint motion to quash the information and one denying their joint motion to dismiss the case for a due process violation. Defendants had been bound over on charges of transporting over 3,000 cigarettes without a license to transport them, contrary to the Tobacco Products Tax Act (TPTA), MCL 205.421 *et seq.*, and more particularly MCL 205.428(3). In denying defendants' motions to dismiss, the circuit court concluded that under *People v Shouman*, unpublished per curiam opinion of the Court of Appeals, issued October 4, 2016 (Docket No. 330383), the statute provided adequate notice that individuals can be transporters in violation of the statute. In denying the motion to quash, the circuit court concluded that there was evidence of at least constructive possession and evidence of knowledge that the truck defendants were driving had illegal cigarettes. Defendants

filed an interlocutory appeal, we granted leave, and the cases were consolidated for administrative efficiency.¹ We now affirm.

I. BACKGROUND

Defendants were nonsupervisory employees of the Keweenaw Bay Indian Community (KBIC). On December 11, 2015, defendant John Francis Davis was driving a KBIC truck pulling a trailer and defendant Gerald Magnant was a passenger. A Michigan State Police officer pulled the truck over for speeding. During the stop—which did not occur on KBIC property—56 cases of “Seneca” cigarettes were found in the trailer. The cigarettes bore a KBIC stamp but no Michigan Department of Treasury tax stamp. The parties stipulated that there was no record of any tobacco license or transport license for the KBIC, its affiliates, or defendants. Defendant Magnant allegedly admitted that he had helped load the trailer, but there was no indication that either defendant was actually aware that a license was needed to transport the tobacco products under state law.

II. ANALYSIS

A. Motion to Quash

On appeal, defendants first argue that the circuit court erred by denying their motion to quash the information, asserting that the statute required not only that they have knowledge that they were transporting cigarettes but also knowledge that it was illegal to transport the tobacco products without a license. They asserted that such knowledge was lacking, and defendant Davis also asserted that, in any event, there was no evidence establishing probable cause to believe that he knew he was transporting cigarettes.

“This Court reviews a trial court’s decision on a motion to quash the information for an abuse of discretion.” *People v Miller*, 288 Mich App 207, 209; 795 NW2d 156 (2010). The trial court abuses its discretion where its decision falls “outside the range of principled outcomes.” *People v Shami*, 501 Mich 243, 251; 912 NW2d 526 (2018). We review de novo questions of law. *People v McKerchie*, 311 Mich App 465, 471; 875 NW2d 749 (2015).

In all felony cases, the district court has a duty “to determine whether a crime has been committed and if there is probable cause to believe that the defendant committed it.” *People v Laws*, 218 Mich App 447, 451-452; 554 NW2d 586 (1996) (cleaned up). “To bind a criminal defendant over for trial in the circuit court, the district court must find probable cause to believe that the defendant committed a felony.” *Shami*, 501 Mich at 250. Probable cause “requires sufficient evidence of each element of the crime charged, or from which the elements may be

¹ *People v John Francis Davis*, unpublished order of the Court of Appeals, entered July 18, 2018 (Docket No. 341621); *People v Gerald Magnant*, unpublished order of the Court of Appeals, entered July 18, 2018 (Docket No. 341627).

inferred, to cause a person of ordinary prudence and caution to conscientiously entertain a reasonable belief of the defendant's guilt." *Id.* at 250-251 (cleaned up).

Intent to Violate MCL 205.428(3). Defendants first argue that, because there was no evidence presented that defendants knew they were required to have a license to transport tobacco products, the district court could not have found probable cause to bind them over on a charge under MCL 205.428(3). We disagree.

The district court found that there was probable cause to believe that defendants violated MCL 205.428(3) of the TPTA, which provides in pertinent part that a "person who possesses, acquires, transports, or offers for sale contrary to this act 3,000 or more cigarettes, tobacco products other than cigarettes with an aggregate wholesale price of \$250.00 or more, 3,000 or more counterfeit cigarettes . . . is guilty of a felony." The purpose of the TPTA is to "regulate and license manufacturers of tobacco products, as well as provide penalties for violations of the act." *Shami*, 501 Mich at 251-252. The Act provides that a "person shall not purchase, possess, acquire for resale, or sell a tobacco product as a manufacturer, wholesaler, secondary wholesaler, vending machine operator, unclassified acquirer, transportation company, or transporter in this state unless licensed to do so." MCL 205.423(1). Thus, a person possessing a tobacco product as a transporter must be licensed under the Act, and if that person transports a certain value or quantity of tobacco product without a license, then the person is guilty of a felony. *Id.*; see also *Shami*, 501 Mich at 247, 251-252 (addressing who is a "manufacturer" under the TPTA).

Relying on *Shouman*, the circuit court found that the prosecutor was required to prove "[t]hat defendants knowingly transported cigarettes, that defendants did not have a Michigan Department of Treasury license or permit to transport tobacco, and that defendants transported 3,000 or more cigarettes." Defendants argue that, in addition to having knowledge that they were transporting cigarettes, the statute requires that they "must have knowingly possessed or transported cigarettes 'contrary to this act' or with knowledge that they were required to obtain a transporter license but did not do so."

"Criminal intent can be one of two types: the intent to do the illegal act alone (general criminal intent) or an act done with some intent beyond the doing of the act itself (specific criminal intent)." *People v Janes*, 302 Mich App 34, 41; 836 NW2d 883 (2013) (cleaned up). Here, MCL 205.428(3) does not specify an intent requirement. Still, "the omission of any mention of criminal intent must not be construed as eliminating the element from the crime," and, therefore, we must "infer the presence of the element unless a statute contains an express or implied indication that the legislative body wanted to dispense with it." *Id.* at 43 (cleaned up).²

Defendants argue that *People v Nasir*, 255 Mich App 38; 662 NW2d 29 (2003), supports their proposition that the intent requirement should have been that "defendants knowingly

² We note that the default *mens rea* statute enacted by our Legislature, MCL 8.9, does not apply here because the offense was committed before January 1, 2016. MCL 8.9(1). With that said, we agree with the panel's observation in *Shouman* that "it does not appear that the application of MCL 8.9(1) would require a different outcome." *Shouman*, unpub op at 4 n 2.

possessed or transported cigarettes ‘*contrary to this act,*’ i.e., with knowledge that they were required to obtain a transporter license but did not do so” (emphasis added). In *Nasir*, this Court analyzed a different subsection of the TPTA, MCL 205.428(6), which does not contain an explicit fault element, to determine whether the statute provided for strict liability, that is, no requirement to prove intent. *Id.* at 40-41. MCL 205.428(6) provides in pertinent part:

A person who manufactures, possesses, or uses a stamp or manufactures, possesses, or uses a counterfeit stamp or writing or device intended to replicate a stamp without authorization of the department, a licensee who purchases or obtains a stamp from any person other than the department, or who falsifies a manufacturer’s label on cigarettes, counterfeit cigarettes, gray market cigarette papers, or counterfeit cigarette papers is guilty of a felony.

The *Nasir* Court weighed several factors to determine “whether the Legislature . . . intended to require some fault as a predicate to finding guilt.” *Nasir*, 255 Mich App at 41. The *Nasir* Court held that “knowledge is an element of the offense of which defendant stands convicted.” *Id.* at 45. Specifically, the *Nasir* Court concluded that, to convict under MCL 205.428(6), the prosecutor had to demonstrate that “the defendant possessed or used the counterfeit tax stamp, or a writing or device intended to replicate a stamp, with knowledge that the stamp, writing, or device was not an authentic tax stamp.” *Id.* at 45-46.

Defendants argue that, following *Nasir*, the intent element that should have been read into the language of MCL 205.428(3) is a knowing possession of 3,000 or more cigarettes, knowing that the possession was “contrary to” the TPTA. In other words, defendants argue that the statute requires that they have knowledge that a license was required to transport the cigarettes legally. Again, the statute states, “A person who possesses, acquires, transports, or offers for sale contrary to this act 3,000 or more cigarettes . . . is guilty of a felony.” MCL 205.428(3). Thus, the question is whether the intent of “knowingly,” which is not expressly in the act, applies to just the “possession of cigarettes,” or to both “the possession of cigarettes” and “contrary to the act.”

Notably, in interpreting MCL 205.428(6), the *Nasir* Court concluded, “We do not believe that the Legislature intended that the offense contain a specific intent element, nor do we believe that a defendant need act with knowledge that the defendant does so without the authorization of the Michigan Department of Treasury.” *Nasir*, 255 Mich App at 46. Thus, it would be consistent with *Nasir* to interpret MCL 205.428(3) as a general-intent crime requiring only the intent to do the illegal act of transporting the cigarettes without a license, rather than a specific-intent crime requiring the intent to violate the TPTA. Note that *Nasir* requires an intent to do the illegal act alone of possessing or using a counterfeit tax stamp that defendant knew was not authentic, and has as a separate element “that the defendant acted without authorization of the Michigan Department of Treasury.” *Id.* This is similar to the circuit court here requiring the prosecutor to demonstrate that defendants knew that they transported cigarettes, and separately that they “did not have a Michigan Department of Treasury license or permit to transport tobacco.” Thus, it appears that the phrase, “contrary to the act,” included in MCL 205.428(3), describes the unlicensed status of the tobacco transporter, possessor, or manufacturer, rather than the knowledge of the defendants.

This reading is consistent with the conclusion reached by another panel of this Court in *Shouman*. The *Shouman* Court considered the argument that defendants have made here, and concluded:

Indeed, this Court in *Nasir* explicitly rejected the proposition that the offense in MCL 205.428(6) contained a specific intent element and concluded that the prosecutor did not have to prove that the defendant knew that he lacked the authorization of the Michigan Department of Treasury. *Nasir*, 255 Mich App at 46. Accordingly, defendant's suggestion below that *Nasir* should be read to require proof in this case that defendant knew he was required to have a license to transport tobacco products and that he specifically intended to violate the TPTA is utterly without any support from the holding in *Nasir*, in addition to lacking any basis in the language of MCL 205.428(3). [*Shouman*, unpub op at 6.]

Even though *Shouman*, as an unpublished case, is not binding on this Court, the *Shouman* panel's thorough analysis of this issue and sound reasoning is persuasive. MCR 7.215(C)(1). Thus, the circuit court's determination that the district court applied an appropriate intent standard to MCL 205.428(3) was not an error of law.

Knowing Transport of Tobacco Products. Defendant Davis argues that the district court erred by finding probable cause to believe that he knew that he was transporting cigarettes. The district court found such probable cause because, "taken as a whole, his work assignment, the amount of cigarettes, statements and demeanor viewed on the video indicated [defendant Davis's] knowledge of the cigarettes being transported in the trailer."

At the preliminary examination, Detective Kevin Ryan testified that he witnessed the truck that defendant Davis was driving arrive at a storage area and drive away. Trooper Chris Lajimodiere, who ultimately stopped the truck for speeding, said that defendant Davis told him that he and his passenger, defendant Magnant, were driving to a store in the area and were hauling supplies. According to Trooper Lajimodiere, either defendant Davis or defendant Magnant also told him that they were hauling "chips." At Trooper Lajimodiere's request, defendant Davis unlocked and opened the trailer, exposing numerous cardboard boxes of "Seneca" cigarettes. Trooper Lajimodiere reported that defendant Davis said, "There you go, boss," that he said to defendant Davis, "You knew that stuff was back there," and that defendant Davis replied that he was just a worker and did not pack the trailer. The police seized 56 cases of Seneca cigarettes, each containing 12,000 cigarettes. According to Detective Ryan, while he and another officer were transporting defendant Magnant, defendant Magnant told them that he was involved in loading the cigarettes into the truck and had transported cigarettes for a long time for the KBIC. A videorecording of the traffic stop was entered into evidence.

Defendant Davis argues accurately that, at this stage in the proceedings, the prosecutor has not offered any *direct* evidence that he knew that he was transporting cigarettes. Nonetheless, there was sufficient circumstantial evidence that defendant Davis knew that there were cigarettes in the trailer to bind him over on this charge. Defendant Magnant's statements that he loaded the cigarettes and that his work involved transporting cigarettes for the KBIC were evidence that the truck was being used as a cigarette delivery vehicle at the time it was stopped,

and was circumstantial evidence that defendant Davis, as the driver of the truck, was complicit in delivering what his codefendant knew were cigarettes.

The district court also cited the amount of cigarettes found in the trailer. The sheer volume made it less likely that defendant Davis not know what was in the truck. Additionally, defendant Davis admitted to Trooper Lajimodiere that he was working, and it would be reasonable to infer that defendant Davis was as aware of his work assignment as was defendant Magnant. The district court also cited the statements defendant Davis made to police and his demeanor on the videorecording as evidence that defendant Davis knew that there were cigarettes in the trailer. Thus, there was sufficient circumstantial evidence that defendant Davis knew of the cigarettes to present the question to the jury.

The circuit court did not err by denying defendants' motion to quash the bindover.

B. Motion to Dismiss

Defendants next argue that the circuit court erred by denying their motion to dismiss based on their claim that MCR 205.428(3) is unconstitutionally vague. "This Court reviews a trial court's ruling regarding a motion to dismiss for an abuse of discretion." *People v Adams*, 232 Mich App 128, 132; 591 NW2d 44 (1998). We review de novo constitutional issues of law. *People v Hall*, 499 Mich 446, 452; 884 NW2d 561 (2016).

"The 'void for vagueness' doctrine is derived from the constitutional guarantee that the state may not deprive a person of life, liberty, or property, without due process of law." *People v Roberts*, 292 Mich App 492, 497; 808 NW2d 290 (2011). A statute may be overly vague where "it does not provide fair notice of the conduct proscribed," or is "so indefinite that it confers unstructured and unlimited discretion on the trier of fact to determine whether an offense has been committed." *Id.* (cleaned up). "A statute must give a person of ordinary intelligence a reasonable opportunity to know what is prohibited or required." *People v Noble*, 238 Mich App 647, 652; 608 NW2d 123 (1999).

Defendants were charged with transporting cigarettes without a license to transport tobacco. As previously stated, MCL 205.428(3) provides in pertinent part that a "person who possesses, acquires, transports, or offers for sale contrary to this act 3,000 or more cigarettes, tobacco products other than cigarettes with an aggregate wholesale price of \$250.00 or more, 3,000 or more counterfeit cigarettes . . . is guilty of a felony." MCL 205.423(1) provides, in relevant part, that "a person shall not purchase, possess, acquire for resale, or sell a tobacco product as a manufacturer, wholesaler, secondary wholesaler, vending machine operator, unclassified acquirer, transportation company, or transporter in this state unless licensed to do so." "Person" is defined by MCL 205.422(o) to include "an individual . . . corporation, or other legal entity." Thus, the statutory language of MCL 205.423(1) and MCL 205.428(3) makes clear that an individual possessing 3,000 or more cigarettes for transport, without having a license to do so, is guilty of a felony.

Defendants' vagueness argument focuses not on the language of the relevant statutes, but rather on the interpretation of that language by two Department of Treasury employees. Defendants note that Angela Littlejohn, the manager of the Tobacco Tax Unit, testified that, to

transport tobacco products in Michigan, an individual would have to work for a wholesaler or unclassified acquirer with a transporter's license, be a licensed transporter, or be an interstate commerce carrier. Doug Miller, the administrator of special taxes, clarified that, if a Michigan licensed tobacco wholesaler had an employee transport tobacco to another place in Michigan, the employee would not need an individual tobacco transporter license. Essentially defendants argue that, under these employees' interpretations, the statute does not put them on notice of a potential violation because that violation hinges on whether their employer has obtained the license. We disagree.

First, departmental interpretations of statutes, although entitled to respectful consideration, are not binding on this Court. *D'Agostini Land Company LLC v Dep't of Treasury*, 322 Mich App 545, 558; 912 NW2d 593 (2018). As already discussed, the plain language of the statute indicates that an individual violates the TPTA by possessing for transport large quantities of tobacco without a license. Second, even if the department's interpretations are credited, the statute makes clear that *someone*—either the individual or the individual's employer—must have a license authorizing the possession for transport of a large quantity of tobacco. Thus, the statute is sufficiently clear to put defendants on notice that, if they did not personally hold individual licenses to possess the tobacco for transport, they should have inquired as to whether their employer—the KBIC—held such a license before accepting the load for transport. The statute is not unconstitutionally vague.

The dissent does raise an interesting point based on this Court's decision in *People v Assy*, 316 Mich App 302; 891 NW2d 280 (2016). Ultimately, we conclude that the *Assy* decision is distinguishable from this one. The statute here defines the term "transporter" to include "a person . . . transporting in this state, a tobacco product." MCL 205.422(y). The statute further defines the term "person" to include both individuals and legal entities, MCL 205.422(o), and provides that a "person" can be a "transporter," MCL 205.422(y). Therefore, under a plain reading of the statutory language, an individual driver can be subject to prosecution under the TPTA as a "transporter."

The dissent, however, points to this Court's decision in *Assy* and concludes that the Legislature did not intend to include within the definition of "transporter" any low-level employees, such as those who drive the vehicles transporting cigarettes. In *Assy*, this Court concluded that the term "retailer" did not include "a cashier or stocker," but only included "a person who directs or manages the business." The *Assy* Court reached this conclusion based on the statute's requirement that a "retailer" means a person who "operates a place of business" and read the term "operates" to include an element of direction and control, i.e., "someone who has control over the business's day-to-day operations." *Assy*, 316 Mich App at 310-311. In contrast, the Legislature defined the term "transporter" to include "a person . . . transporting in this state, a tobacco product." The verb "transport" is defined to mean "To carry or convey (a thing) from one place to another." *Black's Law Dictionary* (10th ed.). Contrary to the ordinary meaning of the term "retailer," the ordinary meaning of the term "transport" or "transporter" only requires the physical action of carrying or conveying a thing, in this case, cigarettes. Therefore, this case is distinguishable from *Assy*, in that the ordinary meaning of the term "transporter" reasonably includes the individuals who drive truckloads of cigarettes.

Affirmed.

/s/ Brock A. Swartzle
/s/ David H. Sawyer

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Before: SWARTZLE, P.J., and SAWYER and RONAYNE KRAUSE, JJ.

RONAYNE KRAUSE, J. (*dissenting*)

I respectfully dissent. The majority's recitation of the facts is accurate. However, I conclude that, for several reasons, the district court abused its discretion by binding defendants over for trial. I would therefore reverse the circuit court's orders.

I. STANDARD OF REVIEW

This Court effectively reviews de novo a circuit court's decision on a motion to quash a bindover. *People v Harlan*, 258 Mich App 137, 144-145; 669 NW2d 872 (2003); *People v Hudson*, 241 Mich App 268, 276; 615 NW2d 784 (2000). We therefore review the district court's ultimate decision whether to bind over a defendant for an abuse of discretion, but we review any underlying questions of law de novo. *People v Flick*, 487 Mich 1, 9; 790 NW2d 295

(2010). “Whether conduct falls within the scope of a penal statute is a question of statutory interpretation” and therefore reviewed de novo. *Id.* at 8-9. Review of a bindover decision entails consideration of the entire record. *People v Norwood*, 303 Mich App 466, 468; 843 NW2d 775 (2013).

An abuse of discretion occurs where the lower court’s decision falls “outside the range of principled outcomes.” *People v Shami*, 501 Mich 243, 251; 912 NW2d 526 (2018). This standard recognizes that there may “be no single correct outcome.” *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003). However, an abuse of discretion necessarily occurs if a trial court’s decision is based on an error of law. *Ronnisch Constr Group, Inc v Lofts on the Nine, LLC*, 499 Mich 544, 552; 886 NW2d 113 (2016). An abuse of discretion also necessarily occurs if the trial court fails or refuses to exercise its discretion. *People v Merritt*, 396 Mich 67, 80; 238 NW2d 31 (1976).

The fundamental goal of statutory interpretation is to give effect to the intent of the Legislature, with the presumption that unambiguous language should be enforced as written. *Veenstra v Washtenaw Country Club*, 466 Mich 155, 159-160; 645 NW2d 643 (2002). We may not inquire into the wisdom or fairness of a statute or statutory scheme. *Smith v Cliffs on the Bay Condo Ass’n*, 463 Mich 420, 430; 617 NW2d 536 (2000), abrogated on other grounds in *Jones v Flowers*, 547 US 220; 126 S Ct 1708; 164 L Ed 2d 415 (2006). We may also not depart from the literal language of a statute merely because the result would be absurd. *People v McIntire*, 461 Mich 147, 155-159; 599 NW2d 102 (1999) (internal quotation omitted). However, where construction of a statute is necessary, any construction should avoid an absurd or unjust result to the extent possible.¹ See *Rafferty v Markovitz*, 461 Mich 265, 270; 602 NW2d 367 (1999). A statute may be found ambiguous on its face if it is susceptible to multiple interpretations, and a superficially clear statute may become ambiguous when considered in context of other statutes. *People v Denio*, 454 Mich 691, 699; 564 NW2d 13 (1997).

II. STANDARD FOR BINDOVER

“To bind a criminal defendant over for trial in the circuit court, the district court must find probable cause to believe that the defendant committed a felony, which requires sufficient evidence of each element of the crime charged, or from which the elements may be inferred, to cause a person of ordinary prudence and caution to conscientiously entertain a reasonable belief of the defendant’s guilt.” *Shami*, 501 Mich at 250-251 (footnote citations and internal quotations omitted). The examining magistrate may evaluate the credibility of any witnesses. *People v Moore*, 180 Mich App 301, 309; 446 NW2d 834 (1989). However, the prosecutor need not prove guilt beyond a reasonable doubt; rather, any conflicts or doubts must be resolved by the trier of fact. *People v Yost*, 468 Mich 122, 126; 659 NW2d 604 (2003).

¹ It is not entirely clear whether there is a level of absurdity at which the “absurd result rule” may still apply in Michigan. See *Detroit Int’l Bridge Co v Commodities Export Co*, 279 Mich App 662, 674-675; 760 NW2d 565 (2008). Fortunately, we need not resolve that issue here.

Defendants were charged with violating two provisions of the Tobacco Products Tax Act (TPTA), MCL 205.421 *et seq.* Specifically, the alleged crime is a violation of MCL 205.428(3), which provides:

A person who possesses, acquires, transports, or offers for sale contrary to this act 3,000 or more cigarettes, tobacco products other than cigarettes with an aggregate wholesale price of \$250.00 or more, 3,000 or more counterfeit cigarettes, 3,000 or more counterfeit cigarette papers, 3,000 or more gray market cigarettes, or 3,000 or more gray market cigarette papers is guilty of a felony, punishable by a fine of not more than \$50,000.00 or imprisonment for not more than 5 years, or both.

Defendants allegedly transported cigarettes “contrary to this act” because they lacked licenses mandated by MCL 205.423(1), which provides:

Beginning May 1, 1994, a person shall not purchase, possess, acquire for resale, or sell a tobacco product as a manufacturer, wholesaler, secondary wholesaler, vending machine operator, unclassified acquirer, transportation company, or transporter in this state unless licensed to do so. A license granted under this act is not assignable.

It is not disputed that the trailer attached to the vehicle contained more than the requisite number of cigarettes, and neither defendants nor their employer, the Keweenaw Bay Indian Community (KBIC), possessed a license.² The prosecution agreed to require a *mens rea*, but defendants challenge the scope of the *mens rea* required and whether the above provisions apply to them at all.

III. PURPOSE OF THE TPTA

The necessary starting point is the purpose of the TPTA. The TPTA’s preamble provides, in relevant part, that its purpose is:

to provide for a tax upon the sale and distribution of tobacco products; to regulate and license . . . transportation companies, transporters, and retailers of tobacco products; to prescribe the powers and duties of the revenue division and the department of treasury in regard to tobacco products; to provide for the administration, collection, and disposition of the tax; . . . to prescribe penalties and provide remedies for the violation of this act[.] [1993 PA 327.]

“Although a preamble is not to be considered authority for construing an act, it is useful for interpreting its purpose and scope.” *Malcolm v City of East Detroit*, 437 Mich 132, 143; 468 NW2d 479 (1991) (citation omitted); see also *Shami*, 501 Mich at 251-252. The preamble is

² There is apparently an ongoing dispute between Michigan, KBIC, and the federal government whether KBIC can be required to obtain a license under the TPTA. That issue is not before us, and I do not believe it would be relevant to this appeal in any event.

consistent with MCL 205.427a, which provides, in relevant part, that “[i]t is the intent of this act to impose the tax levied under this act upon the consumer of the tobacco products by requiring the consumer to pay the tax at the specified rate.” MCL 205.427a. Thus, the TPTA “is at its heart a revenue statute, designed to assure that tobacco taxes levied in support of Michigan schools are not evaded.” *Value, Inc v Dep’t of Treasury*, 320 Mich App 571, 577; 907 NW2d 872 (2017) (internal quotations omitted).

The above discussion is critical, because to the extent there is ambiguity in any particular provision within the TPTA, that ambiguity must be resolved in favor of furthering the purposes of the act. This Court has previously discussed such a situation in the context of a “retailer.” This Court observed that a “retailer” was defined as including “a person,” and therefore could apply to discrete individuals. *People v Assy*, 316 Mich App 302, 310-311; 891 NW2d 280 (2016). However, when read in context, this Court concluded that the definition of a “retailer” was not intended to apply to low-level employees, but rather individuals with some degree of meaningful control over an operation. *Id.* This Court’s conclusion is also consistent with the underlying purpose of the TPTA.

In the instant case, the word “transporter” is also defined as including “a person . . . transporting in this state, a tobacco product . . .” MCL 205.422(y). As was the case in *Assy*, a discrete individual could, under appropriate circumstances, be prosecuted under the TPTA. However, as was also the case in *Assy*, when read in in context, the Legislature clearly intended to constrain “transporters” to a more limited class of individuals.

Notably, *Assy* first considered how the relevant terms would be used “in ordinary speech.” *Assy*, 316 Mich App at 310. Possession specifically “as a . . . transporter,” MCL 205.423(1) (emphasis added), in ordinary speech, suggests that transportation is a more primary function than merely serving as an employee. Additionally, an applicant for a license is required to have “a minimum net worth of \$25,000.00,” MCL 205.423(6)(a), further suggesting that low-level employees are not expected to be licensed. Finally, the Legislature has mandated that “[e]xcept for transportation companies, each place of business shall be separately licensed,” and that licenses “shall be prominently displayed on the premises covered by the license.” MCL 205.423(2). A “place of business” is “a place where a tobacco product is sold or where a tobacco product is brought or kept for the purpose of sale or consumption, including a vessel, airplane, train, or vending machine.” MCL 205.422(p). These provisions strongly imply that licensure is, much like the situation in *Assy*, linked to some degree of meaningful control.³

³ The majority accurately notes that the definition of “retailer” at issue in *Assy* does not perfectly parallel the definition of “transporter” here. I believe the majority’s analysis overlooks the context and clear intent of the TPTA. “[T]he meaning of statutory language, plain or not, depends on context.” *People v Vasquez*, 465 Mich 83, 89; 631 NW2d 711 (2001), quoting *King v St Vincent’s Hosp*, 502 US 215, 221; 112 S Ct 570; 116 L Ed 2d 578 (1991) (MARKMAN, J.). Furthermore, even if this was a “close call,” MCL 205.428(3) imposes a criminal penalty, and “ambiguity concerning the ambit of criminal statutes should be resolved in favor of lenity.” *Rewis v United States*, 401 US 808, 812; 91 S Ct 1056; 28 L Ed 2d 493 (1971); see also *People v*

When read in context, MCL 205.428(3) and MCL 205.423(1) indicate that low-level employees are not required to be licensed and are not truly engaging in “transportation” within the meaning of the TPTA. Alternatively, the statutes are ambiguous regarding the class of persons who can be transporters. Construing the statutes as exempting low-level employees would be most consistent with the intent and spirit of the TPTA. Prosecuting ministerial agents like defendants would not further the goal of ensuring tax revenue is properly collected from the ultimate consumers of tobacco products. As a practical matter,⁴ the only entity truly acting *as a transporter* is defendants’ employer and the registered owner of the vehicle and trailer: KBIC. The purpose of the TPTA would have been served by pursuing charges against KBIC.⁵ Pursuing KBIC’s low-level employees⁶ not only fails to serve the purposes of the TPTA, but amounts to an overreach that makes a mockery of both the Legislature’s intent and fundamental justice.

IV. ELEMENTS OF THE CHARGED OFFENSE

A. GENERAL INTENT

Presuming the TPTA permits charging a mere low-level employee under MCL 205.428(3), the next issue is the extent and nature of any *mens rea* requirement. The parties agree that a *mens rea* is required, but dispute the scope of that requirement.

There are few circumstances under which the courts may depart from the literal language of a penal statute. One of those circumstances is inferring that the Legislature intended to include a *mens rea* element without expressly drafting one. See *People v Quinn*, 440 Mich 178, 185-195; 487 NW2d 194 (1992). The TPTA does not codify a common law crime, so we may

Bergevin, 406 Mich 307, 311-312; 279 NW2d 528 (1979). “If there is doubt with regard to whether the act charged is embraced in [a statutory] prohibition, that doubt is to be resolved in favor of the defendant.” *People v Sartor*, 235 Mich App 614, 623; 599 NW2d 532 (1999).

⁴ Courts look to the substance of matters rather than superficialities. *Hurtford v Holmes*, 3 Mich 460, 463 (1855); *Wilcox v Moore*, 354 Mich 499, 504; 93 NW2d 288 (1958); *Norris v Lincoln Park Police Officers*, 292 Mich App 574, 582; 808 NW2d 578 (2011). Furthermore, the prosecutor admitted at oral argument that, as is readily apparent, defendants were mere “mules.”

⁵ This would remain the case even if it is ultimately determined that Michigan cannot subject KBIC to the TPTA.

⁶ Several jurisdictions have observed that no doctrine of “respondeat inferior” exists. See, e.g., *Coleman v Houston Independent School Dist*, 113 F 3d 528, 534-535 (CA 5, 1997); *Davis v Hoffman*, 972 F Supp 308, 314 (ED Penn, 1997); *Speer v Taira Lynn Marine, Ltd, Inc*, 116 F Supp 2d 826, 830 (SD Tex, 2000); *Grubb v Smith*, 523 SW3d 409, 426 (Ky, 2017); *Thede v Kapsas*, 386 Ill App 3d 396, 401; 897 NE2d 345 (2008). Cases from other jurisdictions are merely persuasive. *People v Stone*, 269 Mich App 240, 245; 712 NW2d 165 (2005). However, I have found no Michigan authority suggesting that an agent may be held strictly liable for the misconduct of a principal, and I would not create that authority now.

consider various factors to determine whether the Legislature intended to include a *mens rea* element, including:

(1) the statute's legislative history or its title, (2) guidance to interpretation provided by other statutes, (3) the severity of the punishment provided, (4) the severity of potential harm to the public, (5) the opportunity to ascertain the true facts, and (6) the difficulty encountered by prosecuting officials in proving a mental state. [*Id.* at 190 n 14 (citing LaFave & Scott, Criminal Law (2d ed), § 3.8, pp 244-245).]

Stipulations of law are not binding on the courts. *In re Finlay Estate*, 430 Mich 590, 595-596; 424 NW2d 272 (1988). Consequently, the parties' agreement that a *mens rea* element exists does not obviate the need for us to make that determination in the first instance.⁷

By default, the courts will presume that a penal statute imposes a general intent requirement unless it is clear that the Legislature intended to omit such a requirement. *People v Janes*, 302 Mich App 34, 45-46; 836 NW2d 883 (2013). Public welfare laws are a notable exception. *Quinn*, 440 Mich at 187; *Janes*, 302 Mich App at 46-47. However, as discussed, MCL 205.428(3) is a revenue provision, not a public welfare provision. Indeed, the entirety of the TPTA is intended to counteract a specific form of tax evasion. See *People v Nasir*, 255 Mich App 38, 42-43; 662 NW2d 29 (2003) (discussing MCL 205.428(6)). As with the statute at issue in *Nasir*, the immediate harm from a violation of MCL 205.428(3) "is not the type of immediate harm to the public welfare that is common to many strict-liability offenses." *Id.* at 45.

The United States Supreme Court has observed that many statutes lacking a *mens rea* requirement carry relatively light penalties, and a harsh penalty suggests that a *mens rea* is required. *Staples v US*, 511 US 600, 616-619; 114 S Ct 1793; 128 L Ed 2d 608 (1994). A felony cannot ever be considered a light penalty, irrespective of the length of the ensuing sentence or amount of the ensuing fine. In contrast to a misdemeanor, a felony on one's record will be a potentially catastrophic blight for the rest of one's life, strongly suggesting a *mens rea* element. See *People v Olson*, 181 Mich App 348, 350-353; 448 NW2d 845 (1989); see also *People v Pace*, 311 Mich App 1, 12; 874 NW2d 164 (2015).

⁷ The parties and the trial courts placed considerable importance on *People v Shouman*, unpublished per curiam opinion of the Court of Appeals, issued October 4, 2016 (Docket No. 330383), which touched on whether MCL 205.428(3) includes a *mens rea* element. *Shouman* is unpublished and therefore not binding, although it may be considered persuasive. MCR 7.215(C)(1); *Cox v Hartman*, 322 Mich App 292, 307; 911 NW2d 219 (2017). Furthermore, to the extent *Shouman* commented on a *mens rea* requirement, it did so after emphasizing that it did not actually need to reach the issue. Consequently, the pertinent discussion in *Shouman* is both non-binding and dicta. If either trial court believed itself bound by *Shouman*, it committed an abuse of discretion per se. *Merritt*, 396 Mich at 80; *Ronnisch*, 499 Mich at 552. As will be discussed, I also believe *Shouman* was wrong.

Proving state of mind is always a challenge, but I do not believe doing so would be exceptional here. See *Nasir*, 255 Mich App at 45. The prosecution asserts that it is unlikely for ordinary persons to drive around with more than 3,000 cigarettes or \$250.00 worth of tobacco. See *Id.* at 44-45. I presume the reasonableness of that assertion. Nevertheless, the severity of the penalty, the nature of the crime, and the purpose of the TPTA overwhelmingly show that the Legislature did not intend to dispense with the traditional *mens rea* requirement for felonies.⁸

B. SPECIFIC INTENT

Defendants argue that MCL 205.428(3) carries a specific intent element in addition to a general *mens rea* element. Defendants base their argument on the phrase “contrary to this act” in MCL 205.428(3). Defendants contend that this phrase requires knowledge that the transportation occurred in violation of the TPTA. In other words, defendants argue the statute requires (a) knowledge that they were transporting cigarettes, *and* (b) knowledge that they were doing so without a required license. In contrast, the prosecution argues the statute requires (a) knowledge *only* that they were transporting cigarettes, and (b) factually doing so without a required license. The prosecution’s construction is therefore partially strict liability. As the majority accurately summarizes, “the question is whether the intent of ‘knowingly,’ which is not expressly in the act, applies to just the ‘possession of cigarettes’ or to both ‘the possession of cigarettes’ and ‘contrary to the act.’”

The distinction between general intent and specific intent is simple in theory, albeit difficult to apply in practice: general intent requires only the intent to do the physical act itself, whereas specific intent requires an additional mental state beyond what is necessary to commit the physical act. *People v Langworthy*, 416 Mich 630, 638-639, 639 n 9; 331 NW2d 171 (1982). The common law *mens rea* presumption is only of general intent, based on the general rule that ignorance or a mistake of law is not a defense to a crime. See *Cheek v US*, 498 US 192, 199-200; 111 S Ct 604; 112 L Ed 2d 617 (1991). Nonetheless, especially concerning voluminous and convoluted statutory schemes such as tax laws, statutes might be construed as requiring a defendant to have voluntarily and intentionally violated a known legal duty. *Id.*

As discussed, the TPTA is a revenue statute, not a public welfare law. As also discussed, prosecuting low-level employees who have no meaningful control of the transportation operations is contrary to the fundamental purposes of the TPTA. However, *if* low-level employees can be subjected to felony prosecutions for merely doing their jobs, the above general intent discussion applies with equal force to *all* elements of the crime. In other words, such a prosecution could only be fundamentally fair if defendants actually knew that what they were

⁸ The prosecution is therefore incorrect to the extent it asserts that MCL 205.428(3) is really a strict liability offense, to which it has agreed to append a *mens rea* requirement as a matter of grace rather than entitlement. Likewise, to the extent *Shouman* suggests that MCL 205.428(3) should be considered a strict liability offense, *Shouman* was wrong.

doing was unlawful. Therefore, defendants must have known both that they were transporting cigarettes, and at least generally that they were doing so in violation of the TPTA.⁹

V. KNOWLEDGE BY DEFENDANT DAVIS

Irrespective of the above, I would find that the district court erred in binding defendant Davis over on the facts.

A knowledge requirement in a statute does not include constructive knowledge, unless the Legislature included a statutory phrase like “should have known.” *Echelon Homes, LLC v Carter Lumber Co*, 472 Mich 192, 197-198; 694 NW2d 544 (2005). Actual knowledge may always be proven by circumstantial evidence. *Id.* at 198-200. Nevertheless, state of mind “may be inferred from all the facts and circumstances, but the inferences must have support in the record and cannot be arrived at by mere speculation.” *People v Plummer*, 229 Mich App 293, 301; 581 NW2d 753 (1998); see also *People v Bailey*, 451 Mich 657, 673-675, 681-682; 549 NW2d 325 (1996); and *Skinner v Square D Co*, 445 Mich 153, 163-167; 516 NW2d 475 (1994). It is well established that mere suspicion does not establish probable cause to bind over a defendant. See *People v Fairey*, ___ Mich App ___, ___; ___ NW2d ___ (2018) (Docket No. 333805, slip op at pp 3-4).

Here, there is simply *no* evidence that Davis had any knowledge of the contents of the trailer. The prosecution’s assertion that Davis must have known because there were a lot of cigarettes is an impermissible imputation of constructive knowledge. The prosecution also infers that Davis’s mention of “chips” must have been a reference to cigarettes, and Davis’s invitation to the police to look in the trailer was a concession that he had been caught fair and square. These inferences about what Davis may have meant are pure guesswork. No evidence in the record permits any reasonable inference of knowledge by Davis. Therefore, even under the prosecution’s construction of the TPTA, the trial court abused its discretion by binding Davis over for trial.

VI. DUE PROCESS

Defendants finally argue that the statute is unconstitutionally vague. In light of the above discussion, I do not believe I need to reach this issue. However, the majority’s reasoning suggests that defendants should somehow be aware that *they* might be committing a crime simply because their *employer* might lack a license. Neither Michigan nor any other jurisdiction recognizes a doctrine of “*respondeat inferior*” as far as I can determine, and I would not adopt such a complete inversion of well-established agency law here.

⁹ Defendants concede that they need not have known that they were committing a crime, or the specific details of how they were in violation of the TPTA. Rather, they contend that they need only have a general awareness that some provision of the TPTA was being contravened. This concession reasonably balances fundamental fairness, the purposes of the TPTA, and the need for realistic law enforcement. However, it is not necessary to reach that question in this appeal.

VII. CONCLUSION

The district court erred as a matter of law by binding defendants over. The TPTA requires defendants prosecuted under MCL 205.428(3) to have knowledge of each element of the offense. The prosecution overreached and violated the spirit and intent, if not the letter, of the TPTA by seeking to prosecute low-level employees for what is really a wrong committed by their employer. In any event, the district court abused its discretion by finding that Davis knew even that there were cigarettes in the trailer. For any and all of these reasons, I would reverse.

/s/ Amy Ronayne Krause

APPENDIX B

Michigan Department of Treasury
336 (Rev. 03-16)

The license year runs from
July 1, 2016 through June 30, 2017

Instructions for the Tobacco Tax License Application (Form 336)

Read all instructions before completing the Tobacco Tax License Application. **Failure to accurately complete your application and submit all required documents, including the appropriate fee, will result in processing delays.** All required forms can be found at www.michigan.gov/tobaccotaxes.

Use the appropriate checklist below to ensure all required documents are submitted in addition to the Tobacco Tax License Application (Form 336).

RENEWAL APPLICANTS

NOTE: If you do not submit your application to Treasury before July 1 of the license year, it will be considered an application for a **NEW** license and not a renewal. This means that **you will not be licensed beginning July 1 and so will be unable to operate as a licensee until your new license is issued.** If you have any questions about this please call the Tobacco Tax Unit at 517-636-4630.

- Form 4154:** Tobacco Products Tax Electronic Application. This form is needed to provide a User ID and password for access to the Department's web site to complete your monthly tobacco tax return.
- Form 3999:** Trading Partner Agreement. Required for companies intending to submit tax return data via an ASCII file.
- Financial Statement: This statement should include current assets and liabilities.
- A valid lease agreement, if applicable.
- Applicable license application fee (see page 5).

NEW APPLICANTS-Wholesaler or Unclassified Acquirer License

- Photo identification (driver's license, passport, or similar ID) for each owner, officer, member, or partner of the organization.
- Form 4154:** Tobacco Products Tax Electronic Application. This form is needed to provide a User ID and password for access to the Department's web site to complete your monthly tobacco tax return.
- Form 4240:** Tobacco Products Electronic Funds Transfer (EFT) Debit Application. This form will provide you with a password so you can pay your monthly tobacco taxes electronically.
- Form 323:** Application for an Other Tobacco Products Tax Stamp (Non-Cigarette).
- Form 3999:** Trading Partner Agreement. Required for companies intending to submit tax return data via an ASCII file.
- Photographs of the physical location where tobacco products will be stored and sold.
- Financial Report: This report provides proof that the applicant has a minimum net worth of \$25,000.00.
- A valid lease agreement, if applicable.
- Applicable license application fee (see page 5).

NEW APPLICANTS-Secondary Wholesaler or Manufacturer License

- Photo identification (driver's license, passport, or similar ID) for each owner, officer, member, or partner of the organization.
- Form 4154:** Tobacco Products Tax Electronic Application. This form is needed to provide a User ID and password for access to the Department's web site to complete your monthly tobacco tax return.
- Form 3999:** Trading Partner Agreement. Required for companies intending to submit tax return data via an ASCII file.
- Photographs of the physical location where tobacco products will be stored and sold.
- Financial Report: This report provides proof that the applicant has a minimum net worth of \$25,000.00.
- A valid lease agreement, if applicable.
- Applicable license application fee (see page 5).

Retain a copy of your completed application and forms for your records.

Mail your original application, forms and any documentation with the proper application fee to:

Michigan Department of Treasury
Special Taxes Division / Tobacco Taxes
PO Box 30474
Lansing MI 48909

If you have questions, contact the Tobacco Tax Unit at 517-636-4630.

The license year runs from
July 1, 2016, through June 30, 2017

New License Renewal

Tobacco Tax License Application

Issued under authority of Public Act 327 of 1993 as amended.

PART 1: BUSINESS INFORMATION													
Legal Name of Business										Account # (FEIN, TR or ME)			
Business Organization: <input type="checkbox"/> Individual/Sole Proprietor <input type="checkbox"/> Corporation <input type="checkbox"/> LLC or LLP <input type="checkbox"/> Other: _____													
Operating Name of Business or DBA (You MUST enter any/all DBAs your company uses)						Business Telephone Number			Business Fax Number				
Legal Address						City		State		ZIP Code			
Mailing Address of Business (Street or P.O. Box)						City		State		ZIP Code			
Address Where Tobacco Products are Received, Stored and Sold (Street)						City		State		ZIP Code			
Is this building owned or leased? <input type="checkbox"/> Owned <input type="checkbox"/> Leased Lease Expiration Date: _____ If leased, you must attach a copy of the current lease to this application.													
Hours of Operation (please type N/A if business is closed on a particular day):													
Sunday		Monday		Tuesday		Wednesday		Thursday		Friday		Saturday	
Open	Close	Open	Close	Open	Close	Open	Close	Open	Close	Open	Close	Open	Close
License Contact Person Name				Telephone Number		Fax Number		E-mail Address					
Tobacco Tax Return Preparer Name				Telephone Number		Fax Number		E-mail Address					
PART 2: BUSINESS OWNERS AND OPERATORS													
Provide the following information for EACH and EVERY business owner, officer, partner, member, and any persons authorized to make purchasing decisions for this company. If there are any changes in owners/operators during the license year, you must notify the Department. Attach additional sheets if necessary.													
Name				Title				Home Telephone Number		Social Security Number			
Residential Street Address				City				State		ZIP Code			
Are you a United States citizen? <input type="checkbox"/> Yes <input type="checkbox"/> No		If no, are you eligible to obtain employment in the US? <input type="checkbox"/> Yes <input type="checkbox"/> No		Driver's License Number		State of Issuance		Date of Birth					
Name				Title				Home Telephone Number		Social Security Number			
Residential Street Address				City				State		ZIP Code			
Are you a United States citizen? <input type="checkbox"/> Yes <input type="checkbox"/> No		If no, are you eligible to obtain employment in the US? <input type="checkbox"/> Yes <input type="checkbox"/> No		Driver's License Number		State of Issuance		Date of Birth					
Name				Title				Home Telephone Number		Social Security Number			
Residential Street Address				City				State		ZIP Code			
Are you a United States citizen? <input type="checkbox"/> Yes <input type="checkbox"/> No		If no, are you eligible to obtain employment in the US? <input type="checkbox"/> Yes <input type="checkbox"/> No		Driver's License Number		State of Issuance		Date of Birth					
Name				Title				Home Telephone Number		Social Security Number			
Residential Street Address				City				State		ZIP Code			
Are you a United States citizen? <input type="checkbox"/> Yes <input type="checkbox"/> No		If no, are you eligible to obtain employment in the US? <input type="checkbox"/> Yes <input type="checkbox"/> No		Driver's License Number		State of Issuance		Date of Birth					

Notify the Tobacco Tax Unit if there are changes to any information provided on this application.

PART 2: BUSINESS OWNERS AND OPERATORS — CONTINUED

Concerning each business owner, officer, partner, member and any person authorized to make purchasing decisions for this company, answer ALL of the following questions:

1. Has an owner, officer, partner, member or any person authorized to make purchasing decisions for this company:

(a) Been issued a tobacco tax license in another state in his/her own name or in the name of a corporation, LLC, LLP or other entity? Yes No
 If yes, list the name of the business and state located in: _____

(b) Had a tobacco tax license/application suspended, revoked, refused or denied in Michigan or in any other state?..... Yes No
 If yes, name of state(s): _____

(c) Been charged, pled guilty to, or convicted of a crime (e.g., felony or misdemeanor)?..... Yes No
 If yes, please explain (attach additional sheets if necessary): _____

2. Does an owner, officer, partner, member or any person authorized to make purchasing decisions for this company have a financial interest in a retail business located in Michigan or elsewhere that sells tobacco products? Yes No
 If yes, provide the name, address and telephone number for each of those retail businesses.

PART 3: TRANSPORTATION/CARRIER INFORMATION

List the transportation company or carrier name, address, telephone number and contact person for each shipping company used to ship and/or receive tobacco INTO Michigan, ship and/or receive tobacco IN Michigan, or export FROM Michigan to an out-of-state destination.

Company Name	Company Address	Telephone Number	Contact Person

Notify the Tobacco Tax Unit if there are changes to any information provided on this application.

PART 4: BUSINESS OPERATIONS			
<p>List ALL companies from which you plan to purchase cigarettes, cigarette roll your own tobacco (RYO) or other tobacco products (OTP). Brand families must be reported for all Cigarettes and RYO. (Attach additional sheets if necessary.)</p> <p>NOTE:</p> <ul style="list-style-type: none"> If, during the license year, you wish to purchase tobacco products from a company that is not listed below, you MUST notify the department prior to doing so. If importing tobacco from out of the country, you MUST include a current copy of your TTB Importers Permit. You MUST keep four (4) years of invoices at the physical location where tobacco will be received, stored or sold per 1993 PA 327. Purchases of non-approved NPM products are not allowed. Please review the authorized NPM products directory if you plan to purchase NPM products. 			
Company Name, Address and Telephone Number	Tobacco Type	Michigan Tobacco Tax Paid or Unpaid	Brand Family of Cigarette and/or RYO
	<input type="checkbox"/> CIGARETTE <input type="checkbox"/> RYO <input type="checkbox"/> OTP	<input type="checkbox"/> PAID <input type="checkbox"/> UNPAID	
	<input type="checkbox"/> CIGARETTE <input type="checkbox"/> RYO <input type="checkbox"/> OTP	<input type="checkbox"/> PAID <input type="checkbox"/> UNPAID	
	<input type="checkbox"/> CIGARETTE <input type="checkbox"/> RYO <input type="checkbox"/> OTP	<input type="checkbox"/> PAID <input type="checkbox"/> UNPAID	
	<input type="checkbox"/> CIGARETTE <input type="checkbox"/> RYO <input type="checkbox"/> OTP	<input type="checkbox"/> PAID <input type="checkbox"/> UNPAID	
	<input type="checkbox"/> CIGARETTE <input type="checkbox"/> RYO <input type="checkbox"/> OTP	<input type="checkbox"/> PAID <input type="checkbox"/> UNPAID	
	<input type="checkbox"/> CIGARETTE <input type="checkbox"/> RYO <input type="checkbox"/> OTP	<input type="checkbox"/> PAID <input type="checkbox"/> UNPAID	
	<input type="checkbox"/> CIGARETTE <input type="checkbox"/> RYO <input type="checkbox"/> OTP	<input type="checkbox"/> PAID <input type="checkbox"/> UNPAID	
	<input type="checkbox"/> CIGARETTE <input type="checkbox"/> RYO <input type="checkbox"/> OTP	<input type="checkbox"/> PAID <input type="checkbox"/> UNPAID	
	<input type="checkbox"/> CIGARETTE <input type="checkbox"/> RYO <input type="checkbox"/> OTP	<input type="checkbox"/> PAID <input type="checkbox"/> UNPAID	

Notify the Tobacco Tax Unit if there are changes to any information provided on this application.

PART 5: LICENSE TYPES AND FEES

Answer the following questions:

1. Do you plan to sell cigarettes or other tobacco products (OTP) to other businesses that will resell the tobacco to others, including your own retail stores at another location? Yes No
2. Do you plan to purchase cigarettes or OTP from companies or out-of-state distributors that are NOT Michigan tobacco tax licensees?..... Yes No
3. Do you plan to purchase Michigan tobacco tax-paid cigarettes and/or OTP? Yes No
4. What license or licenses are you applying for? Check ALL that apply. Contact the Tobacco Tax Unit if you have questions.

License Type	Tobacco Type	Fee	Description of License Type
<input type="checkbox"/> Manufacturer	<input type="checkbox"/> Cigarette <input type="checkbox"/> RYO or OTP	\$100	A business that produces or manufactures cigarettes or other tobacco products and sells the tobacco to a Michigan licensed wholesaler or unclassified acquirer. A person who operates or who permits any other person to operate a cigarette making machine in Michigan for the purpose of producing, filling, rolling, dispensing, or otherwise generating cigarettes. A person meeting this description shall constitute a non-participating manufacturer.
<input type="checkbox"/> Wholesaler	<input type="checkbox"/> Cigarette <input type="checkbox"/> RYO or OTP	\$100	A Michigan business that purchases cigarettes or other tobacco products from a manufacturer and sells 75% or more of the tobacco to other businesses for resale. Includes a chain of stores retailing tobacco to consumers if 75% of the tobacco was purchased from a manufacturer. A wholesaler may purchase TAX PAID and TAX UNPAID tobacco products.
<input type="checkbox"/> Unclassified Acquirer	<input type="checkbox"/> Cigarette	\$100	A business that imports or acquires TAX UNPAID cigarettes or other tobacco products from a source other than a wholesaler or secondary wholesaler for its own consumption, for sale to consumers or for sale to other businesses for resale.
	<input type="checkbox"/> RYO or OTP	\$10	
<input type="checkbox"/> Secondary Wholesaler	<input type="checkbox"/> Cigarette <input type="checkbox"/> RYO or OTP	\$25	A business that purchases Michigan tobacco TAX PAID cigarettes or other tobacco products from a Michigan licensed wholesaler or unclassified acquirer and that sells the tobacco to other businesses for re-sale. NOTE: A secondary wholesaler must maintain an established place of business in Michigan where the tobacco is received, stored and is available for sale or for inspection purposes during normal business hours.
<input type="checkbox"/> Vending Machine Operator	<input type="checkbox"/> Cigarette <input type="checkbox"/> RYO or OTP	Fee Varies	A business that purchases TAX PAID cigarettes or other tobacco products from a Michigan licensed manufacturer, wholesaler or secondary wholesaler and sells the tobacco to consumers through 1 or more vending machines. The fee for a vending machines operator license is calculated as follows: \$25 for the first vending machine plus \$6.25 for each additional vending machine.
<input type="checkbox"/> Transporter	<input type="checkbox"/> Cigarette <input type="checkbox"/> RYO or OTP	\$50 per day	A business that imports or transports into this state, or transports in this state, cigarettes or other tobacco products obtained from a source located outside this state, or obtained from a person that is not a Michigan tobacco tax licensee. An interstate commerce carrier licensed by the Interstate commerce commission to carry commodities in interstate commerce is not required to obtain a Transporter license. In addition, a Michigan tobacco tax licensee that has a business located outside of Michigan does not have to obtain a Transporter license.

Notify the Tobacco Tax Unit if there are changes to any information provided on this application.

PART 6: MANUFACTURER'S LICENSE		
If you are applying for a Manufacturer's license, complete this section.		
Indicate below which type of manufacturer applies to you:		
<input type="checkbox"/> I am on the NAAG list of Participating Manufacturers (www.naag.org). <input type="checkbox"/> I am a Non-Participating Manufacturer approved to sell tobacco products in the state of Michigan. <input type="checkbox"/> I am a Non-Participating Manufacturer operating or allowing another person to operate a Cigarette Making Machine in Michigan. <input type="checkbox"/> I am a manufacturer of Other Tobacco Products, including cigars and hookah. <input type="checkbox"/> I am a manufacturer that will have in-state representatives. If checked, complete and attach the <u>Tobacco Manufacturer's Representative Permission List (form 4857)</u> .		
Provide the following supporting documentation:		
<input type="checkbox"/> Copy of TTB Federal Manufacturer of Tobacco Product Permit (MTP). <input type="checkbox"/> Current wholesale price list for all products being imported/sold into Michigan, including UPC codes for all cigarette products.		
<i>The Department must be notified of any changes/updates to UPC codes for cigarette product.</i>		
TOBACCO TYPE	BRAND FAMILY OF Cigarette, RYO OR OTP (Attach additional sheets if necessary.)	
<input type="checkbox"/> Cigarette <input type="checkbox"/> RYO <input type="checkbox"/> OTP		
<input type="checkbox"/> Cigarette <input type="checkbox"/> RYO <input type="checkbox"/> OTP		
<input type="checkbox"/> Cigarette <input type="checkbox"/> RYO <input type="checkbox"/> OTP		
<input type="checkbox"/> Cigarette <input type="checkbox"/> RYO <input type="checkbox"/> OTP		
<input type="checkbox"/> Cigarette <input type="checkbox"/> RYO <input type="checkbox"/> OTP		
<input type="checkbox"/> Cigarette <input type="checkbox"/> RYO <input type="checkbox"/> OTP		
PART 7: VENDING MACHINE OPERATOR'S LICENSE		
If you are applying for a vending machine operator's license, complete this section. (Attach additional sheets if necessary.)		
Number of vending machines in use	Number of vending machines in storage	Total number of vending machines
List below the business names and addresses where each vending machine is located:		
1.		
2.		
3.		

Notify the Tobacco Tax Unit if there are changes to any information provided on this application.

PART 8: CIGARETTE MAKING MACHINES/ROLLING MACHINES/MECHANICAL DEVICES			
Please note a response is required to each question in Part 8.			
MCL 205.422(b) defines a "cigarette making machine" as any machine or other mechanical device which meets all of the following criteria:			
<ul style="list-style-type: none"> • Is capable of being loaded with loose tobacco, cigarette tubes or cigarette papers, and any other components related to the production of cigarettes; • Is designed to automatically or mechanically produce, roll, fill, dispense, or otherwise generate cigarettes; • Is commercial-grade or otherwise designed or suitable for commercial use; and • Is designed to be powered or otherwise operated by a main or primary power source other than human power. 			
CIGARETTE MAKING MACHINES:			
A. Does the business currently own or lease a CIGARETTE MAKING MACHINE?..... <input type="checkbox"/> Yes <input type="checkbox"/> No			
If YES, please provide the address where the machine is located.			
Address			
B. Is there currently or will there be at least one CIGARETTE MAKING MACHINE operated at the above business address to produce, roll or otherwise generate cigarettes?..... <input type="checkbox"/> Yes <input type="checkbox"/> No			
If YES, please indicate the number of CIGARETTE MAKING MACHINES currently operated at the above location (indicate zero if none currently operate): _____			
OTHER ROLLING MACHINES OR MECHANICAL DEVICES:			
A. Is there currently or will there be at least one machine or other mechanical device (which is not a CIGARETTE MAKING MACHINE) available for use by customers or others at the above business address for the purpose of producing, rolling or otherwise generating cigarettes? <input type="checkbox"/> Yes <input type="checkbox"/> No			
If YES, please indicate the number of machines or other mechanical devices (which are not CIGARETTE MAKING MACHINES) currently operated at the above address: _____			
Address			
If YES, check ALL of the following that apply which best describes how the machine(s) or mechanical device(s) are powered in order to operate:			
<input type="checkbox"/> Manual/Hand Crank <input type="checkbox"/> Electric (Plug-In) <input type="checkbox"/> Battery Operated			
PART 9: CERTIFICATION			
EACH and EVERY business owner, officer, partner, member, and other persons authorized to make decisions for this company listed in Part 2 must sign this application.			
IN SIGNING THIS APPLICATION, I AGREE to comply with the provisions of the Tobacco Products Tax Act, 1993 PA 327. I declare UNDER PENALTY OF PERJURY that I have examined the information on this application, including any accompanying statements or attachments, and that, to the best of my knowledge, it is true and complete. I authorize the Michigan Department of Treasury to fax confidential tax information of the business to the fax number provided on this application. I recognize that faxing is not a secure means of transmission and I assume all risks involved.			
Signature	Printed Name	Title	Date
Signature	Printed Name	Title	Date
Signature	Printed Name	Title	Date
Signature	Printed Name	Title	Date

Notify the Tobacco Tax Unit if there are changes to any information provided on this application.

APPENDIX C

STATE OF MICHIGAN

54-A JUDICIAL DISTRICT COURT (CITY OF LANSING)

PEOPLE OF THE STATE OF MICHIGAN,

v

File No. 16-05237

JOHN F. DAVIS,

Defendant,

v

File No. 16-05238

GERALD MAGNANT,

Defendant.

PRELIMINARY EXAMINATION

BEFORE THE HONORABLE LOUISE ALDERSON, DISTRICT JUDGE

Lansing, Michigan - Thursday, March 16, 2017

Courtroom No. 3

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Lansing, Michigan

Thursday, March 16, 2017

At 1:38 p.m.

(People's Exhibits 1 through 8 and Defense Exhibit A marked for identification prior to proceedings)

THE COURT: On the record with People versus Gerald Magnant and John Davis. These are files 16-05237 and 38. Date and time scheduled for preliminary examination. Counsel, appearances, please.

MR. GRANO: Good afternoon, Your Honor; Assistant Attorney General Dan Grano for the People.

MR. PISZCZATOWSKI: Go on, Sam.

MR. SAAMAN: Good afternoon, Your Honor; for the record, Salem Samaan, appearing on behalf of Mr. Gerald Magnant.

MR. PISZCZATOWSKI: Wally Piszczatowski appearing on behalf of Mr. John Davis, Your Honor.

THE COURT: All right. And just because they're in numerical order 37 and 38, I'm gonna ask to go in that direction as we move through counsel.

MR. PISZCZATOWSKI: Do you want me to move?

THE COURT: No, you don't have to move. I'm just going to be calling on Mr. Magnant's lawyer first and then Mr. Davis'.

1 MR. PISZCZATOWSKI: Oh, sure, Your Honor.
2 That's fine. That's fine.

3 THE COURT: Excuse me, I'm backwards already.
4 Mr. Davis and then Mr. Magnant.

5 MR. PISZCZATOWSKI: Oh, all the pressure's on
6 me.

7 THE COURT: Yeah.

8 MR. SAMAN: Hey.

9 MR. PISZCZATOWSKI: Well, I don't know about
10 that, Judge, can't we --

11 THE COURT: Of all days as Chief Judge I was
12 pulled into a meeting at 3:00. I will be out of here at
13 3:00 until probably 3:30. I'll be back. I hope that we
14 get all the, at least testimony in, in today's date.

15 I have read both of your briefs, so I'm familiar
16 with what your issues are with regard to intent and other
17 things, but are there any preliminary matters for the
18 People?

19 MR. GRANO: Yes, Your Honor. Two things:
20 First, there has been a misdemeanor offer extended to both
21 defendants, and it's my understanding they don't wish to
22 avail themselves of that and they want to continue with a
23 preliminary exam.

24 THE COURT: So that's off the table at this
25 point in time?

1 MR. PISZCZATOWSKI: What's that, I'm sorry?

2 MR. GRANO: Pardon?

3 THE COURT: So they're off the table at this
4 time?

5 MR. GRANO: Correct. Well, it might come back
6 later, but at this point they're off the table. We can
7 talk about that in the future.

8 MR. PISZCZATOWSKI: I don't know if I ever got
9 an offer. I'm sorry, Your Honor. I don't know, are you
10 saying there's a plea offer? I missed that.

11 MR. GRANO: Yeah, in the beginning I sent that
12 via email. There was a plea offer to a misdemeanor.

13 MR. PISZCZATOWSKI: Not to me.

14 MR. GRANO: And the tax to be determined. And
15 it's my understanding they didn't want that and that's why
16 we're going forward with the exam. I just wanted to put
17 that on the record.

18 THE COURT: Do you want a minute with your
19 clients, or do you already know the answer?

20 MR. PISZCZATOWSKI: I'm sure we know the -- I
21 think we know the answer, Your Honor, but I just -- what's
22 the offer? It was a felony plus what?

23 MR. GRANO: No, to plea to a misdemeanor Tobacco
24 Products Tax Act, and then pay tax restitution joint and
25 several for the tobacco they had in their possession.

1 MR. PISZCZATOWSKI: And what's that number?

2 MR. GRANO: That will be determined. We don't
3 have an assessment yet.

4 MR. PISZCZATWOSKI: Okay.

5 MR. SAMAAN: Thank you, Your Honor.

6 THE COURT: All right.

7 MR. GRANO: Secondly, Your Honor, there are
8 treasury witnesses. There is attorney generals that are
9 assigned to them to protect them. Under the Revenue Act
10 treasury witnesses need an order of the Court to be able
11 to testify and disclose treasury information. Um, it's my
12 understanding that that counsel has made contact with the
13 Defense counsel and they do not object to an order
14 permitting disclosure of information pursuant to MCL
15 205.28(1)(f). If I could present those orders to the
16 Court so the treasury witnesses could testify here today.

17 THE COURT: On behalf of Mr. Davis?

18 MR. PISZCZATOWSKI: That's true, Your Honor,
19 we've had an opportunity to speak to a representative from
20 the State and we don't have any objection. There's a stip
21 and order I think they prepared.

22 MR. SAMAAN: No objection, Your Honor, on behalf
23 of Mr. Magnant.

24 THE COURT: Thank you. You want to present the
25 order to the Court? And this is a full disclosure of all

1 information, not a partial, "I can't answer that
2 question," it's gonna be the whole disclosure of whatever
3 treasury information is available?

4 MR. GRANO: I think it's treasury information as
5 it relates to these defendants.

6 THE COURT: Obviously to these defendants.

7 MR. GRANO: Yeah.

8 THE COURT: Without objection, the Court will
9 sign the orders as to each file.

10 MR. GRANO: Thank you, Your Honor. I would ask
11 for a mutual sequestration order.

12 MR. PISZCZATOWSKI: No objection.

13 MR. SAMAN: No objection.

14 THE COURT: And nobody in the courtroom that
15 anybody's aware of that needs to be out?

16 All right, any preliminary matters for Defense?

17 MR. PISZCZATOWSKI: Yes, Your Honor. Your
18 Honor, just for clarification purposes so we know what
19 we're basing an exam. The way the information is drafted
20 at present on a complaint and warrant, I'm sorry, is
21 drafted, it alleges actually three separate -- or four
22 separate crimes in count one: Possess, acquire, transport
23 or offer. And we want to know whether we're being -- we'd
24 like to know what specific section we're being charged
25 with and what we have to defend against. I understand it

1 tracks the statute, Judge, but we still have a right to
2 know whether he's claiming we're offering these cigarettes
3 for sale.

4 THE COURT: Well, that's what the preliminary
5 exam is, what their evidence conforms with.

6 MR. PISZCZATOWSKI: We're charged with all those
7 things, and we're gonna have to cross-examine on all those
8 issues?

9 THE COURT: If that's the way the presentation
10 is made, that's what you'll have to defend against.

11 MR. PISZCZATOWSKI: Okay. So we also have to
12 deal then with, also, Your Honor, since there's a section
13 in the exam that talks about 428(3), without a license.
14 I'd like to know, or at least we'd ask what license we
15 were supposed to obtain, or what the government claims we
16 should have obtained.

17 THE COURT: Well, did you pull a copy of the
18 statute, 423?

19 MR. PISZCZATOWSKI: I'm sorry, 428(3), Your
20 Honor.

21 THE COURT: Did you pull out 423, which has the
22 list of the statutes and F that was so noted?

23 MR. PISZCZATOWSKI: I understand. So under
24 428(3) a person that possesses da-da-da-da-da, and says in
25 violation of a statute, right, for sale contrary to this

1 Act.

2 THE COURT: Yeah.

3 MR. PISZCZATOWSKI: So then they're saying under
4 423 that we're in violation of the Act somehow, under 423.
5 And I'd like to know what the government claims the
6 violation of 423 that we're in violation of, that they
7 charge us with, just so we can deal with that. Are they
8 saying --

9 THE COURT: Mr. Grano, do you have a response?

10 MR. GRANO: I do, Your Honor. This isn't a case
11 where I'm dealing with a licensee, no entity involved.
12 Neither of the defendants claim their employer has a
13 license, so the State of Michigan's position is to move
14 tobacco in the state of Michigan you need to be a licensed
15 wholesaler or a licensed unclassified acquirer or obtain a
16 transporter's license and permit. Nothing was pulled in
17 this case; therefore, my position would be the fact that
18 there's no license pulled out of 205.428(3) means that the
19 tobacco can't be moved.

20 MR. PISZCZATOWSKI: That's fine, but are they
21 saying that we should have obtained a wholesaler's
22 license? Is that the -- a secondary acquirer's license, a
23 secondary wholesaler's license, an unclassified acquirer?
24 That's what I'm trying to say. I understand what the
25 government's proofs are going to be. We have that. But

1 what's the violation? We at least have a right to know
2 that, what the violation -- the specific violation.

3 MR. GRANO: Again --

4 THE COURT: Give us -- give us a section there.

5 MR. GRANO: Of 428(3), um, they'd either have to
6 be a wholesaler, unclassified acquirer, a transportation
7 company or transporter to move tobacco in the state.
8 They're none of these things. So our allegation is they
9 had no license; therefore, they can't move tobacco. If we
10 had a license, then we'd have different arguments going
11 on, but there's no license.

12 THE COURT: Anything else, preliminary matters?

13 MR. SAMAN: It didn't answer the question.

14 MR. PISZCZATOWSKI: That's going to make for a
15 very interesting exam, Your Honor. That's all I'm gonna
16 say.

17 THE COURT: Okay. Preliminary matters?

18 MR. SAMAN: We're good, Judge.

19 THE COURT: All right. And you want to call
20 your first witness?

21 MR. GRANO: Sure. I would call Trooper
22 Lajimodiere. Was it close?

23 MR. LAJIMODIERE: Close.

24 THE COURT: You can raise your right hand. Do
25 you swear or affirm the testimony that you're about to

1 give to be the truth, the whole truth, under penalty of
2 perjury?

3 MR. LAJIMODIERE: Yes.

4 THE COURT: You can have a seat, please. And
5 speak in the loudest voice that you have for us, and don't
6 put your hands over the microphone or over your mouth.
7 And answers should be yes or no if those are responses and
8 not uh-huh or uh-uh so we can know what the appropriate
9 responses are.

10 Mr. Grano, direct.

11 CHRIS LAJIMODIERE,

12 At 1:46 p.m., called by Mr. Grano and sworn by the Court;
13 testified as follows:

14 DIRECT EXAMINATION

15 BY MR. GRANO:

16 Q Good afternoon, Trooper.

17 A Good afternoon.

18 Q How are you employed?

19 THE COURT: Can you please state your name for
20 the record and spell your last name?

21 MR. GRANO: I'm sorry.

22 THE WITNESS: Chris James Lajimodiere. It's L-
23 a-j-i-m-o-d-i-e-r-e.

24 BY MR. GRANO:

25 Q How are you employed?

1 A I'm employed with the Michigan State Police.

2 Q And how long have you been so employed?

3 A A little bit over 18 ½ years.

4 Q Okay. Are you assigned to a district?

5 A Yes, I'm currently assigned to 8th District headquarters.

6 Q And where is 8th District?

7 A The entire UP, Upper Peninsula.

8 Q And is that according to a specific spot in the 8th

9 District?

10 A It's located in Marquette City.

11 Q Okay. And what are your duties with the Michigan State

12 Police up in the 8th District?

13 A I'm currently assigned to the 8th District Hometown

14 Security Team. We work as a criminal interdiction team

15 for the district.

16 Q Okay. As part of your duties, do you do traffic

17 enforcement?

18 A Yes, I do.

19 Q Were you so working on December 11th, 2015?

20 A Yes.

21 Q Did you receive information from another trooper to make a

22 traffic stop?

23 A Yes, I was contacted by then Trooper Ryan, and I believe

24 also sometime had conversation with Detective Sergeant

25 Croley.

1 Q Okay. And what type of vehicle did they want you to stop?

2 A Looking for a green, Ford pickup pulling a utility
3 trailer.

4 Q And did you happen to see that vehicle?

5 A Yes, I did.

6 Q And when you saw it, what did you do?

7 A I made a traffic stop on it for a speed violation.

8 Q Okay. Were you in a marked car?

9 A Yes, a fully marked blue, Dodge Charger.

10 Q And were you in full uniform?

11 A Correct.

12 Q And does that car have radar?

13 A Yes, it does.

14 Q And do you test or calibrate the radar beginning and end
15 of every shift?

16 A Yes.

17 Q And did, in fact, you do that on December 11th?

18 A Yes.

19 Q Were you able to get the suspect F-250 on radar?

20 A Yes, I did.

21 Q And how fast was it going?

22 A Sixty-two miles per hour.

23 Q And what was the speed limit in that area?

24 A Fifty-five miles per hour.

25 Q Okay. And where exactly were you when you took the speed

1 and effectuated a stop?

2 A It was on U.S. 41 and near County Road Charles Paul. I
3 guess you could say it would be west of Charles Paul.
4 Right in Ely Township, Humboldt Township kind of area
5 right there in Marquette County.

6 Q In Marquette County, okay. With your duties in the UP,
7 are you familiar with where Indian reservations are?

8 A Yeah, some of them.

9 Q Okay. When you made that stop, were you in an Indian
10 reservation?

11 A No.

12 Q Are you familiar with the Keweenaw Bay Indian Community?

13 A A little bit, yes.

14 Q Do you know where their reservation is?

15 A ~~In Baraga.~~

16 Q Okay. In Baraga County?

17 A Yes.

18 Q You already indicated you were in Marquette County.

19 A Correct.

20 Q The Keweenaw Bay Indian Community goes by KBIC?

21 A Yes.

22 Q Do they have any lands in Marquette County that you're
23 aware of?

24 A They have a casino located in Chocolay Township in
25 Marquette County.

1 Q And is that -- were you near that location?

2 A No.

3 Q How far away would you say that casino was?

4 A I'd estimate 40 miles.

5 Q Okay. And how far away was Baraga where the KBIC
6 reservation is?

7 A I would estimate 60 miles.

8 Q Where this stop took place, was there anything around you?

9 A No, we're pretty -- rural area.

10 Q Okay. When you got the speed indication on the radar, 62
11 in a 55, you said you effectuated a stop?

12 A Correct.

13 Q To do that did you put on your overhead lights?

14 A Yes.

15 Q And did the vehicle stop?

16 A Yes.

17 Q Did you approach the vehicle?

18 A Yes, I did.

19 Q You made contact with the driver?

20 A Yes.

21 Q Was there anybody else in the vehicle?

22 A There was a passenger, yes.

23 Q Okay. Were you able to identify the driver?

24 A Yes.

25 Q All right. And you see Mr. Davis in the courtroom?

1 A Yes, he's seated in the, I guess, light blue shirt in
2 front of me here.

3 MR. GRANO: For the record he's identified
4 Defendant John Davis.

5 THE COURT: Any objection to the identification?

6 MR. PISZCZATOWSKI: No, Your Honor.

7 THE COURT: Thank you. So noted.

8 BY MR. GRANO:

9 Q Were you able to identify the passenger?

10 A Yes, verbally. He said he didn't have an ID on him at the
11 time, but he verbally identified himself as Mr. Gerald
12 Magnant.

13 Q Okay. And do you see that person in the courtroom today?

14 A Yes, I do.

15 Q And where is he seated?

16 A In the tan short-sleeve shirt there on the end.

17 MR. GRANO: And for the record he's identified
18 Defendant Gerald Magnant.

19 MR. SAMAN: No objection, Judge.

20 THE COURT: The record will so reflect.

21 BY MR. GRANO:

22 Q When you made contact with the driver, what, if anything -
23 - well, let me back up for a second. What type of traffic
24 plates did this vehicle have on it?

25 A KBIC plates.

1 Q Okay. Not Michigan plates?

2 A No Michigan plate. KBIC plate.

3 Q Did the vehicle have any U.S. Department of Transportation
4 number on it?

5 A No, I don't recall any markings on the vehicle.

6 Q Okay. Did it have any -- outside of the license plate,
7 did it have any insignia on the vehicle at all?

8 A No, I don't recall any markings on the side or anything.

9 Q Okay. When you made contact with the driver, what, if
10 anything, did you ask him?

11 A I asked him if he saw me traveling the other way. He said
12 he did. Um, asked him how fast he was going. I'm pretty
13 sure he said that he didn't know. I then advised him at
14 that time that he had been traveling at 62 miles per hour.

15 Q Okay. Did you ask him where he was headed to?

16 A Yes, I did.

17 Q And what did he say?

18 A He said they were traveling to the new -- the new gas -- I
19 don't know what the actual words are, but it's a new store
20 that's located in Marquette Township.

21 Q Okay. And did you ask him if he knew what he was hauling?

22 A At first I was advised it was supplies.

23 Q And then did he give you any more specifics than just
24 supplies?

25 A I later asked again what was in the trailer and I was told

1 chips.

2 MR. PISZCZATOWSKI: I have no problem with that
3 answer, Your Honor, but are we talking about -- Your
4 Honor, can we sit or do you want us to rise?

5 THE COURT: If you're going to object, I would
6 like you to rise.

7 MR. PISZCZATOWSKI: I'll just stand up, then. I
8 just want to know when he says he, I don't know if we're
9 talking about Mr. Davis, so if we can use names, or Mr.
10 Magnant, it would be helpful, I think, for the record.

11 MR. GRANO: That's fine.

12 THE COURT: Absolutely. Thank you.

13 MR. PISZCZATOWSKI: Thank you, Your Honor.

14 BY MR. GRANO:

15 Q Just to clarify the record, at this point you've only been
16 talking to Mr. Davis?

17 A There was conversation back and forth.

18 Q Okay.

19 A So I can't say who was answering what at that point.

20 Q Okay. Do you know if Mr. Davis was the person that told
21 you they were moving chips?

22 A I can't recall exactly who said.

23 Q Okay. At some point did you ask Mr. Davis if you could
24 see what was in the vehicle -- in the trailer? I'm sorry.

25 A Yes.

1 Q And did he comply with that?

2 A Yes. He voluntarily exited the vehicle.

3 Q Okay. Was the trailer locked?

4 A I believe it was, yes.

5 Q And did he unlock it for you?

6 A Yes, he did.

7 Q Okay. And when he opened it, what did he say?

8 A "There you go, Boss."

9 Q And what did you see inside the trailer?

10 A Brown cardboard boxes, I guess, like the one, I don't know
11 what exhibit this is, but I would say numerous boxes like
12 that, and I didn't see any other sorts of supplies or
13 chips or anything like that.

14 Q And just for the record he's pointed to People's proposed
15 Exhibit 2, which I haven't gotten to yet, but.

16 Did you ask him if he knew that there were
17 cigarettes in the vehicle?

18 MR. PISZCZATOWSKI: I'm going to object to
19 leading.

20 THE COURT: Response?

21 MR. GRANO: Okay, I'll rephrase.

22 THE COURT: Please rephrase. Sustained.

23 BY MR. GRANO:

24 Q At that point when he said, "There you go, Boss," did you
25 ask him any other questions?

1 A I pretty much said, you knew that's -- something to the
2 effect that, you knew that stuff was back there.

3 Q And how did he reply?

4 A He replied, "I'm just a worker."

5 Q Okay. At that point what did you do?

6 A We stepped to the side. I contacted -- via radio I
7 contacted members of the Tobacco Tax Enforcement Team.

8 Q Okay. Are you a member of the Tobacco Tax Enforcement
9 Team?

10 A No, I'm not.

11 Q And I think in the beginning of your testimony you
12 indicated that Sergeant Croley had, or Ryan, had given you
13 information to stop this vehicle?

14 A If I could get a stop on it.

15 Q Okay. And do you know if they're members of the Tobacco
16 Tax Team?

17 A Yes, they both are.

18 Q Okay. Did you know why they wanted you to stop this
19 vehicle?

20 A I was told that it may possibly contain illegal
21 cigarettes.

22 Q Now, that fully marked squad car, does it have video in
23 it?

24 A Yes.

25 Q And was the video working?

1 A Yes.

2 Q The video that the squad car has, it's in a digital format
3 now?

4 A Correct.

5 Q Okay. At the end of your shift, was the video uploaded to
6 some device?

7 A I don't know. I'm not in charge of uploading the videos.
8 I mean, it was -- I'm not in charge of it. It's a hard
9 drive.

10 Q Okay.

11 A I can't remember even which camera I had at that time. It
12 was either on a hard drive one or the new ones that are
13 worse than that one.

14 Q Okay. I'm going to show you People's proposed Exhibit 1;
15 do you recognize what that is?

16 A A copy of video from the traffic stop.

17 Q Okay. And you had a chance to see your video since the
18 traffic stop.

19 A Yes.

20 Q And is that a fair and acc -- the video of the digital
21 format video that we have on DVD now, is that a fair and
22 accurate copy of what was filmed on December 11th?

23 MR. SAMAN: Objection, Your Honor, we don't
24 even know what that video has on it. He's already asked
25 him is that fair and accurate. He's not the one that

1 prepared this disc or anything else, so how can he know
2 what's on it.

3 THE COURT: Well, he said he looked at it.

4 MR. SAMAN: We're talking about this particular
5 exhibit.

6 THE COURT: Right.

7 MR. SAMAN: So he's asking about the exhibit
8 before we see it.

9 MR. PISZCZATOWSKI: To the extent, Your Honor,
10 that I can just join in, Your Honor, so we don't both
11 object, can we have a joint -- in other words, if I make
12 an objection, Mr. Saman would be then -- he doesn't have
13 to join every time and I don't have to join his, or do you
14 want us to join --

15 THE COURT: Yeah, I would like that just for
16 your record.

17 MR. PISZCZATOWSKI: Specifically join? Okay,
18 I'll join. I think it's lack of foundation. If the
19 Trooper saw that video, put it in a machine and watched
20 it, we don't have -- I don't have an objection, but that
21 isn't what we heard.

22 THE COURT: Okay. I thought that's what I
23 heard, but if you want to repeat your foundation.

24 MR. GRANO: Well, if you want, Your Honor, I can
25 play part of it, Your Honor, so you can --

1 MR. PISZCZATOWSKI: No objection to that.

2 MR. SAMAAN: No objection, Your Honor.

3 MR. GRANO: And, Your Honor, it was my intention
4 to save the Court's time, because this video is 47 minutes
5 long, that we don't have to play the whole thing because
6 he's doing paperwork for a good 20 minutes of it.

7 MR. PISZCZATOWSKI: That's fair.

8 MR. GRANO: The stop takes about seven minutes.
9 So my intention was to only play the stop, Your Honor, if
10 that's okay with Defense.

11 THE COURT: You guys want to see the whole
12 thing?

13 MR. SAMAAN: We have, Your Honor. No.

14 THE COURT: Okay. I don't know how any of that
15 works, so I hope you do.

16 (At 1:59 p.m., Mr. Grano displays video in
17 courtroom)

18 MR. GRANO: All right, sir, I'm playing -- just
19 for the record I'm playing the video that is in proposed
20 People's 2.

21 THE WITNESS: Yes.

22 THE COURT: I thought it was proposed one?

23 MR. GRANO: Oh, sorry. Proposed People's 1.

24 THE COURT: All right.

25 BY MR. GRANO:

1 Q I just have the first screen up. Does that look familiar
2 to you?

3 A Yes, it does.

4 (From 2:00 p.m. to 2:07 p.m., video being played
5 in courtroom)

6 BY MR. GRANO:

7 Q I played 7 minutes and 14 seconds of the video; was that
8 the video from your car?

9 A Yes.

10 Q Okay. And that's a fair and accurate copy of what
11 happened on December 11th, 2015?

12 A Yes.

13 Q Okay. And you testified prior about stopping the KBIC
14 truck and trailer; is that the stop that's indicated in
15 this video?

16 A Yes, it is.

17 MR. GRANO: I would move for admission of
18 People's 1, Your Honor.

19 MR. PISZCZATOWSKI: No objection, Your Honor.

20 MR. SAMAN: No objection, Your Honor.

21 THE COURT: It'll be admitted, People's 1.

22 MR. GRANO: Thank you.

23 BY MR. GRANO:

24 Q Officer, you indicated earlier that you do some traffic
25 enforcement; is that correct?

1 A Yes, at the time of the stop I was assigned to the
2 Negaunee Post.

3 Q Okay. And was that mostly traffic in that post?

4 A At the post it's complaint work, traffic work. Assigned a
5 district, it's criminal interdiction.

6 Q Do you have some training in what an interstate common
7 carrier is?

8 A Yes.

9 Q Is that truck that you stopped here an interstate common
10 carrier?

11 A I'd say, no. It had no markings, no numbers listed at
12 all.

13 Q Okay. Just a second, Your Honor. I stopped the video at
14 7:14, the back of the trailer's open. What was inside the
15 trailer that you observed?

16 A As I stated earlier, it's kind of dark in the video there,
17 but just boxes, like, I believe that's Exhibit Number 2.
18 It was just boxes in the trailer. I didn't see anything
19 else, any other items.

20 Q And did the boxes have any brand name on them?

21 A Seneca.

22 Q And do you know what Seneca is?

23 MR. PISZCZATOWSKI: Objection to if he knows
24 now. I think it's relevant what he knew back then,
25 December 11, 2015, Your Honor.

1 THE COURT: Do you want to rephrase your
2 question.

3 BY MR. GRANO:

4 Q Did you know back on December 11th, 2015, what Seneca is?

5 A Yes, I did.

6 MR. PISZCZATOWSKI: And now let me ask of his
7 own personal knowledge, Your Honor, not from hearsay.

8 THE COURT: He asked did he know then what
9 Seneca was.

10 MR. PISZCZATOWSKI: Yes, and how does he -- and
11 I guess a foundation of how he knows it. Is it gonna be
12 hearsay, did he hear from somebody else, does he have
13 personal knowledge?

14 THE COURT: Did he smoke them himself or what?

15 MR. PISZCZATOWSKI: Yeah, if he knew of them
16 from his investigations or whatever he happens to know, I
17 guess, as opposed to what he heard.

18 MR. GRANO: Your Honor, I think he said from his
19 personal knowledge he knew what it was. People have
20 personal knowledge that's based on hearsay all the time.
21 It doesn't change the fact that it's still personal
22 knowledge.

23 THE COURT: If you want to cross-examine him on
24 that, you're welcome to do that.

25 MR. PISZCZATOWSKI: Okay, Your Honor.

1 BY MR. GRANO:

2 Q And what is Seneca, if you know?

3 A A brand of cigarettes that weren't taxed to the State
4 properly?

5 THE COURT: I'm sorry, the end of that?

6 THE WITNESS: Properly.

7 THE COURT: Type of cigarettes --

8 THE WITNESS: That weren't taxed properly, or
9 weren't taxed.

10 THE COURT: Is that the question you asked?

11 MR. GRANO: I asked what was Seneca, he said
12 they were cigarettes, and then he said that weren't taxed.

13 THE COURT: Okay.

14 MR. GRANO: So partial answer, yes.

15 BY MR. GRANO:

16 Q So that was a truck full of Seneca cigarettes?

17 A Yes.

18 Q Okay. At any point while you were effectuating the stop,
19 did anybody give you a tobacco license, a tobacco permit,
20 or invoices for those cigarettes?

21 A No.

22 Q And once you saw tobacco in the back of the vehicle, what
23 did you do?

24 A I contacted members of the Tobacco Tax Enforcement Team
25 via radio.

1 Q Okay. And then you just maintained the scene?

2 A Yes.

3 MR. GRANO: I have no further questions.

4 THE COURT: Cross-examination.

5 MR. PISZCZATOWSKI: Thank you, Your Honor.

6 THE COURT: Is it Piszczatowski?

7 MR. PISZCZATOWSKI: Yes, Your Honor.

8 THE COURT: Okay. I just want to make sure I'm
9 pronouncing it correctly.

10 MR. PISZCZATOWSKI: Thank you.

11 CROSS-EXAMINATION

12 BY MR. MR. PISZCZATOWSKI:

13 Q My name is as tough as yours, so I'm just gonna call you
14 Trooper, if that's okay?

15 A That's fine.

16 Q Okay, thank you. So you got a call that said -- from some
17 other trooper or some other Michigan State police officer,
18 correct, by radio?

19 A I was at the post. I was asked to contact, I can't
20 remember if it was Kevin Ryan or Detective Croley.

21 Q That's fair. And when you were -- when you pulled over,
22 as we saw on that thing, when you pulled over on the side
23 of the road on the shoulder, do you remember, on the
24 video?

25 A Yes.

- 1 Q Okay. You were looking for a particular vehicle, correct?
- 2 A Correct.
- 3 Q And you were looking for a particular trailer, correct?
- 4 A I was looking for a vehicle trailer. A vehicle and
5 trailer.
- 6 Q Okay. And you knew the make and the type of trailer that
7 was coming?
- 8 A Yes.
- 9 Q And would it be fair to say that you were told that the
10 trailer and vehicle may possibly contain Seneca cigarettes
11 as opposed to illegal cigarettes?
- 12 A I don't know what the exact term was. I know it was
13 something to do with cigarettes.
- 14 Q Okay. And I don't want to get into all the stuff, but you
15 did write a report in this case, fair enough?
- 16 A Yes.
- 17 Q And at the time, you know, when you wrote the report it
18 was a lot closer in time than it was now, correct?
- 19 A Yes.
- 20 Q True?
- 21 A Yes, I did the report the same day.
- 22 Q And when you made the report you were trying to make it as
23 accurate as you could, correct?
- 24 A Yes.
- 25 MR. PISZCZATOWSKI: And, Your Honor, I guess,

1 well, can I have this marked as Defense proposed 1? I was
2 gonna show it for refreshing recollection.

3 THE COURT: It doesn't have to be an exhibit to
4 recollect, but you can if you choose.

5 MR. PISZCZATOWSKI: Yeah, if I can just show it
6 to him, I won't mark it. I don't really need to, Your
7 Honor.

8 THE COURT: Anything can be used to refresh
9 someone's memory.

10 MR. PISZCZATOWSKI: Thank you, Your Honor.

11 BY MR. PISZCZATOWSKI:

12 Q I'm going to hand you a report that we received from the
13 State. It appears to be a three-pager with what I think
14 is your name and number?

15 A Yes.

16 Q You can read from the whole thing. I don't care how much
17 you read. You can read all three pages. You can read all
18 my notes. You can read anything you want, but I just want
19 to refer you to that first paragraph.

20 A Okay.

21 Q So would it be fair to say that at the time you received
22 the information from, apparently, Trooper Ryan?

23 A Yes.

24 Q That you were told it may possibly contain Seneca
25 cigarettes, fair enough?

1 A Yes.

2 Q Okay. Now, just because you were asked, um, at the time
3 the December 11th, 2015, the date of the stop, can you tell
4 me that you had ever come in contact with Seneca
5 cigarettes before?

6 A I don't recall having any investigations myself.

7 Q Did you ever perform any tobacco tax enforcement
8 investigations prior to December 11th of 2015?

9 A No investigations.

10 Q Did you ever arrest anyone for the possession of Seneca
11 cigarettes prior to December 11th of 2015, to your
12 recollection?

13 A No.

14 Q To your recollection, do you know what a proper stamp on a
15 cigarette pack would be?

16 A Off the top of my head I can't say what one looks like.

17 Q I mean, at least on December 11th of 2015 that would be the
18 same answer, correct?

19 A Right.

20 Q You're not a smoker?

21 A No.

22 Q Okay. So any information that you had with respect to
23 Seneca cigarettes, whatever that information was, you
24 didn't come of that from your own personal knowledge based
25 on any investigation, correct?

- 1 A We had some minor training. Like I said before, I'm not a
2 member of the Tobacco Tax Enforcement Team.
- 3 Q Fair enough.
- 4 A I haven't been to their training.
- 5 Q That's fair. And did you go into any of the cases on that
6 -- in that trailer by any chance? Did you open any boxes
7 up?
- 8 A No, I did not.
- 9 Q So whatever you observed was as cardboard box, correct?
- 10 A Correct.
- 11 Q And it had, I guess, the word Seneca on it someplace?
- 12 A Yes.
- 13 Q And do you know whether a stamp is required to be placed
14 on or affixed on the outside of a box?
- 15 A I do not know the answer to that.
- 16 Q So you don't know whether it has to be on the box or --
17 fair enough. You gave an answer. Sorry. So at the time
18 you were going to stop this vehicle, you were informed --
19 you were asked to try to stop the vehicle, correct?
- 20 A Yes.
- 21 Q You didn't just pull over on the side of the road and say
22 I'm gonna start traffic enforcement at 12/11 2015 at about
23 10:37 and put your radar on?
- 24 A Right. As you could see I was moving.
- 25 Q You were moving, you pulled over, and you got this. So it

1 was your intent in some way, shape or form to stop that
2 vehicle if you could lawfully? Lawfully?

3 A If I could lawfully, yes.

4 Q And it happened to be that you got him 62 on your radar?

5 A Yes.

6 Q And I don't much about radar, sir, you got a great break.
7 I'm not gonna ask you any questions about radar. And then
8 you followed him for a while down the street, as well,
9 correct?

10 A Yes.

11 Q You pulled him over, you put your flashers on, correct?

12 A Yes.

13 Q So you were doing what you were asked to do, you were
14 effectuating a traffic stop, if you could, of this
15 vehicle, correct?

16 A Correct.

17 Q And, ultimately, would it be fair to say that it was your
18 intent to try to get into the back of the trailer?

19 A The reason to stop, to see if I could see any illegal or
20 Seneca cigarettes.

21 Q Fair enough. Now, you approached the cab -- I'm gonna
22 call it the cab, the truck?

23 A Yes.

24 Q And you asked for -- and you approached, you identified
25 Mr. Davis, and you got his license and registration at

1 some point, correct?

2 A Correct.

3 Q Okay. And you did not, at that point, put him under
4 arrest, correct?

5 A Correct.

6 Q It was your intent, I think, to issue a traffic violation
7 or traffic citation?

8 A Yes, we were just talking for a minute.

9 Q Okay. You had his license, you had his registration, you
10 had the information necessary to write a ticket if you
11 wanted, correct?

12 A Yes.

13 Q You clocked him at 62. You got his license and
14 registration. You don't need any other further
15 information to write a ticket, fair enough?

16 A Correct.

17 Q Okay. You engaged the passenger in a conversation,
18 correct?

19 A I asked for his ID, yes.

20 Q Asked for his ID, even though he wasn't driving, correct?

21 A Correct.

22 Q You had no knowledge of any illegal violation at that
23 point that Mr. Magnant, the passenger, committed?

24 A Correct.

25 Q And other than Mr. Davis, who was driving, who had

1 violated a traffic law by speeding, you didn't have any
2 information or under -- I mean, at least to a standard of
3 probable cause, that he had violated any other law?

4 A Correct.

5 Q Okay. But you stood out there and you talked to these
6 guys for a while, correct?

7 A Yes.

8 Q You had Mr. Magnant spell his name?

9 A (No verbal response)

10 Q You have to answer yes or no.

11 A Yes. I'm sorry.

12 Q That's fair. And then, you know, you took all that
13 information down and put it in your tablet or whatever you
14 use at that point?

15 A Yes.

16 Q Okay. Now, at that point you still decide not to write a
17 ticket, correct?

18 A I hadn't decided on enforcement.

19 Q So you were, like, figuring out whether you were gonna
20 write a ticket or not?

21 A When I was handed the paperwork, there was a bunch of
22 different paperwork, and I'm not sure if anybody's
23 familiar, the paperwork's a little different than a normal
24 Michigan registration and things are just laid out
25 different than what I'm used to.

1 Q Uh-huh.

2 A So you see on the video, you know, I'm trying to sort
3 through. In my car I can easily run a Michigan
4 registration. I can't be behind somebody and run a KBIC
5 registration.

6 Q You can't run it in your computer?

7 A Correct. So I --

8 Q Is it (unintelligible) I'm just curious?

9 A I don't know what it has to do with. It's beyond me. I'm
10 just a trooper.

11 Q Okay. So, in any event, you continue the conversation
12 with these guys, correct?

13 A Yes.

14 Q Okay. And at some point you are talking to them about
15 what's in the vehicle, correct?

16 A Correct.

17 Q And, again, to the extent that what's in that trailer or
18 not in that trailer, that doesn't really have any impact
19 on whether or not you're going to write a traffic ticket,
20 right?

21 A Correct.

22 Q Okay. But you were trying to help the Tobacco Team out or
23 Tobacco Enforcement Team, whatever they're called, fair
24 enough?

25 A Yes.

1 Q Okay, by somehow getting in the back of that trailer,
2 correct?

3 A See what I could see.

4 Q Gotcha. Fair enough. Now, you also -- so then you still
5 have the license and registration in your hand, correct?

6 A Correct.

7 Q Okay. And at some point you had that discussion and
8 supplies or chips, somebody says, and you don't remember
9 who it was?

10 A Yes.

11 Q Okay. So then you have Mr. Davis, you ask him if you can
12 look in the back of the -- in the back of the trailer,
13 correct?

14 A Correct.

15 Q Okay. And at some point Mr. Davis gets out of the truck,
16 opens the back of the trailer, fair enough?

17 A Yes.

18 Q Okay. Still you hadn't written a traffic ticket at that
19 point, correct?

20 A Correct.

21 Q As a matter of fact, let's just be clear, you never wrote
22 a traffic ticket in this case?

23 A That's correct.

24 Q Okay. Still got the license and registration in your
25 hand, correct?

1 A Yes.

2 Q Now, if Mr. Davis decided, I'll see you later, Trooper,
3 I'm gonna drive down the road, what would you have done?

4 A I guess we're speculating on what would happen.

5 Q What's that?

6 A We're speculating, you know, what if?

7 Q Yeah, it would be, but you know what you do. You got his
8 license and registration, you got a vehicle stopped, now
9 he pulls away, what do you do? Just let him go?

10 A I've never had somebody do that.

11 Q Right, because people are respecting your authority,
12 right?

13 A Yes.

14 Q But had someone done that in this case by Mr. Davis, would
15 you just let him get away, just drive on down the street,
16 go wherever he's gonna go?

17 A I mean, if you're saying that we're out of the vehicle,
18 and he just takes off on me, is that your question?

19 Q No, no, no. He's in the vehicle, and he decides -- you're
20 outside on the side and he just pulls away?

21 A I could stop him

22 Q You'd stop him.

23 A Or try. If he's running away, he probably ain't gonna
24 stop.

25 Q Right, and you're gonna stop him and arrest him at that

1 point, right?

2 A Yes.

3 Q For failure to lawfully respect the orders of an officer
4 at that point, fair enough?

5 A There would probably be a charge.

6 Q There would be something. So, in other words, if he drove
7 down the street, down into the reservation, you didn't
8 want that to happen, fair enough?

9 A I mean, besides talking to him, I mean --

10 Q You didn't think that way?

11 A -- I didn't know where they were going until I stopped
12 them.

13 Q I got it. But in any event, you still had his license and
14 registration. He opens the back of the vehicle up. At
15 some point he drops down that back hatch, correct?

16 A Yes.

17 Q Or I'm gonna call back door?

18 A Yes.

19 Q And you said he says the words, "Here you go, Boss"?

20 A Yes.

21 Q Okay. Now, before you did that you were very polite,
22 you're a very polite guy, I mean, you are?

23 A Thank you.

24 Q Right, you try to be polite to everyone, I'm sure.

25 A Yes.

1 Q And you said to him -- did you tell Mr. Davis, look it,
2 you don't have to open that door?

3 A I mean, we just saw the video. We had conversation as
4 he's walking around the back of the trailer, and, you
5 know, from what I recall just right here, you know,
6 nobody's gonna jump out of the trailer, you know, nobody's
7 gonna jump out or anything like that.

8 Q Right.

9 A Um, there's just chips and stuff in there, and he kept
10 just going on, and, um, I know I made a comment that, hey,
11 obviously, I'm not forcing you to do this, and Mr. Davis
12 kept, I think he was on the right side of the trailer,
13 just kept, you know, undoing the lock there.

14 Q So, effectively, he gave you permission to look inside the
15 trailer, correct, by opening that door?

16 A Yes.

17 Q Okay. Did you ask him whether you could open any of the
18 cigarette boxes?

19 A Did I?

20 Q Yes, did you?

21 A No.

22 Q I'm gonna ask -- he's gonna be ready for all these
23 questions.

24 A No.

25 Q And then did you ask him whether or not, or did you tell

- 1 him, I should say, that he had a right not to open that
2 trailer door?
- 3 A I had never made a statement like that.
- 4 Q Did you ever indicate to him that depending on what was in
5 there someone might seize that material or he could get
6 charged with something?
- 7 A The only discussion we had is, like I said, when we were
8 coming around the back of the trailer is, hey, nobody's
9 gonna jump out me, you know, there's just chips and stuff
10 in here.
- 11 Q Wait a minute, just so I have that. You said, oh, you
12 said something to him, is that right?
- 13 A Right, after the trailer is opened, that's where I say,
14 you know, somebody's going to be coming to speak with
15 them.
- 16 Q Oh, okay, I gotcha. Someone's gonna come after. I see.
- 17 A Right.
- 18 Q I thought I misheard you. And, then, just so it's clear,
19 at the time that the trailer door is opened, he says
20 something like he's just the worker or something like
21 that?
- 22 A Right.
- 23 Q And then you say to him, I'm just doing my job?
- 24 A I just got a job also.
- 25 Q Right. So did you ask him whether he packed the trailer?

1 A Yes, I did.

2 Q And it's fair to say that he said he didn't pack the
3 trailer?

4 A Correct.

5 Q Now, with respect --

6 THE COURT: When you're saying him, just so we
7 can be clear, you mean Mr. Davis?

8 MR. PISZCZATOWSKI: I'm sorry, Your Honor.

9 Yeah, yeah, I'm violating my own request, Your Honor.

10 Sorry. Yeah, with respect to Mr. Davis.

11 MR. PISZCZATOWSKI:

12 Q Now, did you ever ask Mr. Davis whether he had a license
13 for those boxes?

14 A I don't recall asking for a license like that.

15 Q And even though you saw the word Seneca on those boxes,
16 you don't know whether the boxes contained tobacco; you
17 don't know what was in those boxes, because you never went
18 in, fair enough?

19 A Never opened them.

20 Q Right. Okay. You never asked him whether he had a
21 license. You probably didn't -- did you even know to ask
22 him whether he needed to have a license?

23 A It wasn't -- once the trailer was open, I called for
24 Tobacco Tax. I didn't go into any further questioning.

25 Q No, I understand. That's okay. I'm just -- did you even

1 think about asking him whether he had a license?

2 A No.

3 Q No. Were you aware of the fact that he needed,
4 theoretically, that there's a requirement that someone
5 who's hauling tobacco needs to have a license?

6 A Like I said, I'm not a member of Tobacco Tax.

7 Q So the answer's no?

8 A No.

9 Q Now, did you ever, I'm just curious, did you ever testify
10 at a forfeiture hearing or seizure hearing in this case at
11 the State?

12 A I believe there was a tele -- or teleconference kind of --
13 I can't remember what it was.

14 Q Okay. And the owner of that tobacco, do you know, was it
15 the Community, the Keweenaw Bay, the KBIC as you call
16 them, if you know?

17 A I don't know. I mean, I don't know directly who the
18 owners.

19 Q Fair enough. The truck was registered in the name of the
20 KBIC, correct?

21 A Correct.

22 Q The trailer was registered in the name of the KBIC,
23 correct?

24 A Correct.

25 Q Okay.

1 THE COURT: Just so I'm clear, you were a party
2 to a telephone conference or meeting that was about the
3 cigarettes, but you don't know who called it or why it was
4 being --

5 THE WITNESS: No, ma'am, I can't. It was months
6 ago.

7 THE COURT: Okay, that's fine.

8 BY MR. PISZCZATOWSKI:

9 Q Trooper, prior to the back of the trailer being opened,
10 would it be fair to say if you wanted to write a traffic
11 ticket, if you wanted to, you had time to write one?

12 A Usually a traffic stop takes ten minutes or so. Depends
13 on going back and running everything. Like I said, Mr.
14 Magnant didn't have an ID card with him, so that would
15 have took a little bit longer to go through.

16 Q But Mr. Magnant wasn't violating any laws at the time that
17 you approached the truck?

18 A I would have still conducted a file check.

19 Q Okay. But it's clear you didn't do that, right? We know
20 that.

21 A I -- I did both.

22 Q Before the trailer door had came down?

23 A No, that was after.

24 Q Right. Fair. Did you ever put Mr. Davis under arrest?

25 A No.

1 Q Did you ever put Mr. Magnant under arrest?

2 A No.

3 MR. PISZCZATOWSKI: I don't think I have any
4 other questions, Your Honor, if I could just have two
5 seconds. Nothing else, Your Honor. Thank you.

6 THE COURT: Mr. Samaan.

7 MR. SAMAAN: Your Honor, just a few. Both
8 counsel did a good job questioning the trooper.

9 CROSS-EXAMINATION

10 BY MR. SAMAAN:

11 Q Trooper, when you received a call from either Ryan or
12 Croley, what exactly did they tell you?

13 A I can't recall exactly what was said, sir.

14 Q Did they tell you that the vehicle may be possibly
15 containing Seneca cigarettes? Well, you can refresh your
16 memory?

17 A I'd have to see the report again. I mean, I know the
18 report, I think, you showed me that it was in the
19 paragraph that says Seneca cigarettes.

20 MR. SAMAAN: May I approach?

21 THE COURT: Yes.

22 BY MR. SAMAAN:

23 Q This text highlighted, so it makes it easier.

24 A Yes. I was advised the vehicle trailer may possibly
25 contain Seneca cigarettes.

1 Q Okay. And is that all they told you?

2 A Yes.

3 Q Did they say anything about the -- anything about
4 licensing?

5 A No.

6 Q Tobacco licensing?

7 A No.

8 Q That the Seneca cigarettes may be contraband?

9 A I don't know, sir. There was probably discussion about
10 Seneca cigarettes, but I don't know what the discussion
11 would have been about.

12 Q So when you pulled the vehicle over.

13 A Yes.

14 Q In your mind you want to pull it over and you want to see
15 if it contained Seneca cigarettes, correct?

16 A If I was able to see.

17 Q When you say, "if I'm able to see," what if Mr. Davis said
18 to you I'm not gonna open up the back, what would you have
19 done at that point?

20 A If I had his information, I guess, could have went back,
21 did my file checks, and took whatever enforcement action I
22 was taking.

23 Q Which would have been what?

24 A I probably would have gave him a verbal warning.

25 Q Verbal warning and let him off on their way?

1 A Yes.

2 Q Did you at any time ask either Mr. Davis or Mr. Magnant
3 that you intended to look in the trailer because you
4 believed it may have Seneca cigarettes?

5 A No, I never made a statement like that to them.

6 Q Did you at any time ask, after the trunk was open or the
7 trailer door was open, did you at any time ask either one
8 of them who the cigarettes belonged to?

9 A I don't believe I did.

10 Q So once you saw the Seneca cigarettes, you had no other
11 reason to believe that it was contraband, that these
12 people were violating any Tobacco Product Tax Act,
13 anything like that, correct?

14 A I just had the information on the Seneca cigarettes.

15 Q That's it?

16 A Correct.

17 Q But did they tell you, Ryan or Croley, hold them if you
18 see Seneca cigarettes?

19 A I don't think I was told to hold, just contact them.

20 Q So if, at that point, once you saw the cigarettes and you
21 weren't taking any action, you were just contacting the
22 troopers to come by, the TPTA team to come by and take a
23 look, did you at that point tell Mr. Davis, you're free to
24 go, go ahead, take off?

25 A I recall Mr. Magnant at one time got out, and I told them

1 they weren't under arrest. I mean, we talked a little bit
2 before the other detective showed up.

3 Q Okay. That's basically after the fact. I'm talking about
4 once you opened up and saw the cigarettes in there, you at
5 that point didn't know whether they were illegal, whether
6 there's stamping on it, not stamping on it, license, did
7 you tell them I've seen what I've seen, you're free to go?

8 A I never told them they were free to go, no.

9 Q Were they free to go?

10 A No.

11 Q And why would that be?

12 A I see the boxes or cases of Seneca cigarettes and I
13 contacted the TT Unit to respond.

14 Q Okay. And when you saw the cigarettes, you said that you
15 couldn't tell whether they were legal, illegal, stamped or
16 unstamped?

17 A Right, so I contacted the people that are familiar with
18 it. I'm not an expert in that, so.

19 Q You contacted the people that told you to stop the
20 vehicle?

21 A If I could get a stop on the vehicle.

22 MR. SAMAN: I have no further questions.

23 THE COURT: Any redirect?

24 MR. GRANO: Briefly, Your Honor.

25 REDIRECT EXAMINATION

1 BY MR. GRANO:

2 Q Just so we're clear, when you saw tobacco in the back of
3 the trailer, you didn't know if a crime was occurring or
4 not?

5 MR. PISZCZATOWSKI: I'm gonna object to the
6 characterization of tobacco, Your Honor. He saw boxes.

7 MR. GRANO: I'll rephrase it.

8 THE COURT: Thank you.

9 BY MR. GRANO:

10 Q When you saw the Seneca brand boxes in the back of that
11 trailer, you didn't know if a crime was occurring or not?

12 A Like I said, I'm not an expert on this tobacco tax. I had
13 information, not just from that day, regarding Seneca
14 cigarettes. The trailer was opened, I saw numerous cases,
15 and that's when I made contact with the team.

16 Q So you --

17 A From what I saw I thought there was a violation.

18 Q Okay, but you weren't sure so you called in an expert from
19 MSP?

20 A Right, because that's beyond me.

21 MR. GRANO: Nothing further, Your Honor.

22 THE COURT: You can stand down. Thank you.

23 THE WITNESS: Thank you.

24 THE COURT: Other witnesses?

25 MR. GRANO: Your Honor, I'd call Sergeant Ryan.

1 MR. PISZCZATOWSKI: Your Honor, can we just ask
2 one question or two on that last statement he made, the
3 trooper?

4 THE COURT: I typically don't go back twice.

5 MR. PISZCZATOWSKI: What's that, Your Honor?

6 THE COURT: Because we keep going -- bouncing
7 back when we start doing that.

8 MR. PISZCZATOWSKI: Yeah, but I won't be outside
9 the scope of redirect.

10 THE COURT: So as to the one question.

11 MR. PISZCZATOWSKI: Yes.

12 RE-CROSS-EXAMINATION

13 BY MR. PISZCZATOWSKI:

14 Q So you thought there was -- I heard you say that you
15 thought there was a violation?

16 A Right.

17 Q What was the violation?

18 A I saw the Seneca cases, and the amount of the boxes or
19 cases.

20 Q What was the violation of law?

21 A That's what I can't say.

22 MR. PISZCZATOWSKI: Thank you. That's fair.

23 THE COURT: Any questions?

24 MR. SAMAN: Thank you, Your Honor.

25 THE COURT: All right. You can stand down.

1 (At 2:34 p.m., witness excused)

2 MR. GRANO: Can you send in Sergeant Ryan.

3 THE COURT: Can you please approach the stand.

4 Raise your right hand. Do you swear or affirm the

5 testimony you're about to give shall be the truth, the

6 whole truth, under penalty of perjury?

7 MR. RYAN: I do.

8 THE COURT: Please be seated.

9 KEVIN RYAN,

10 At 2:34 p.m., called by Mr. Grano and sworn by the Court;

11 testified as follows:

12 DIRECT EXAMINATION

13 BY MR. GRANO:

14 Q Trooper, can you state your name for the record?

15 A Yes, Kevin Ryan.

16 Q How are you employed?

17 A I am employed as a Detective Sergeant with the Michigan
18 State Police.

19 Q How long have you been so employed?

20 A For just about 19 years now.

21 Q And are you assigned to a district?

22 A Yes, I'm assigned to the 8th District Negaunee Post.

23 Q And how long have you been so assigned to that?

24 A Since about 2013.

25 Q Okay. What are your duties at the Negaunee Post?

1 A Right now I'm assigned as a Detective Sergeant with major
2 cases. I'm also assigned as a Tobacco Tax Enforcement
3 Team, 8th District, part-time.
4 Q Okay. The 8th District Tobacco Team is part-time?
5 A Part-time, yes.
6 Q Have you received training in tobacco tax enforcement?
7 A Yes, I have.
8 Q And where did you receive that training?
9 A Down here in Lansing.
10 Q And who put the training on, if you recall?
11 A Department of Treasury.
12 Q And is that a yearly thing?
13 A Yes.
14 Q Were you working in those capacities back on December 11,
15 2015?
16 A Yes, sir, I was.
17 Q Are you familiar with the Keweenaw Bay Indian Community?
18 A Yes, sir, I am.
19 Q Sometimes called KBIC?
20 A Correct.
21 Q Were you working an investigation involving KBIC?
22 A Yes, sir, I was, along with the rest of the team.
23 Q On December 11th, did you see anything that brings you here
24 to court today?
25 A Yes, sir. We were up in the Houghton area. We were

1 driving down along U.S. 41 going by what's called the
2 Pines Convenience Store, I believe. I don't know if
3 that's the -- we know it as The Pines.
4 Q Okay. I'm gonna stop you right there. You said you were
5 up in the Houghton area. That's Houghton County?
6 A Houghton County area, yes.
7 Q That's not where KBIC is?
8 A No.
9 Q And you were driving back somewhere?
10 A Correct. We were actually headed back to Marquette.
11 Q And that was on U.S. 41?
12 A That is correct.
13 Q And U.S. 41 would go through Baraga?
14 A Yes, sir.
15 Q And that's where the KBIC reservation is?
16 A That is correct.
17 Q And The Pines Convenience Store, is that a KBIC business?
18 A Yes, sir.
19 Q So when you were going by The Pines Convenience Store,
20 what did you see?
21 A There was a couple of trucks with trailers parked towards
22 the back of the convenience store that got our attention.
23 Q Okay. Had you previously seen those trucks?
24 A Yes, we had.
25 Q And when was that?

1 A Uh, earlier that year, I believe September, roughly, we
2 had been doing some surveillance up there and we'd seen
3 those trucks before.

4 Q Okay. And was your surveillance related to tobacco or
5 other criminal matters?

6 A It was towards tobacco.

7 Q And so on December 11th you see the trucks, what did you do
8 when you saw the trucks?

9 A We went down the road a little way and waited for the
10 trucks to leave The Pines and we began following the
11 trucks to see where they were going.

12 Q And where did the truck go?

13 A The trucks went down, I think it's M-38, basically across
14 from the casino.

15 Q And this is the casino in Baraga?

16 A In Baraga, yes, sir.

17 Q Okay.

18 A And there was a storage unit or pole barn, whatever you
19 wanna call it, that's across from the casino; the truck
20 and trailers went there.

21 Q Okay. Is the pole barn and the casino KBIC businesses?

22 A The casino is. I'm not sure what the pole building is. I
23 never looked at ownership.

24 Q Okay. Could you tell who was driving the vehicles?

25 A There was a couple male subjects. I couldn't tell you who

1 they were at that time.

2 Q Okay. So you said two trucks went into the pole barn;
3 what happened next?

4 A One of the trucks was parked. Two gentlemen got into one
5 of the trucks, and the truck and trailer left, again, I
6 believe it's M-38. They left heading back towards U.S.
7 41.

8 Q Okay.

9 A And then proceeded down U.S. 41, ended up heading towards
10 the Marquette area.

11 Q Okay. Were you in an unmarked vehicle or marked vehicle?

12 A Unmarked vehicle.

13 Q Were you working with a partner that day?

14 A Yes, sir, I was.

15 Q And who was that?

16 A Detective Sergeant Chris Croley.

17 Q Okay. And when you saw the vehicle leave the pole barn in
18 Baraga and head back down toward U.S. 41, what, if
19 anything, did you do?

20 A At that time we were just all in the vehicle seeing where
21 it was headed, and it headed towards the Marquette area.
22 We began looking to see if there was a patrol vehicle
23 around the area that might be able to make a stop, just a
24 contact stop, type of thing.

25 Q Okay. Were you able to find one?

- 1 A Yes. Actually, ended up finding -- calling regional
2 dispatch, which is based out of Negaunee, they dispatched
3 for all the UP, um, and they contacted Trooper Lajimodiere
4 out of the Negaunee Post, and Trooper Lajimodiere
5 contacted me by telephone.
- 6 Q Okay. And you wanted, essentially, a marked car to make a
7 stop, is that what you're testifying to, or am I
8 mischaracterizing it?
- 9 A We were looking to see if there was a patrol vehicle
10 around, that if there was a legal way to stop it to
11 contact the subjects, to do so.
- 12 Q At some point in time did you receive information that a
13 stop was effected on that vehicle?
- 14 A Yes, sir, there was.
- 15 Q And did you respond to the scene?
- 16 A Yes, sir, I did.
- 17 Q And when you got to the scene, what did you see?
- 18 A When I got to the scene, the truck and trailer were parked
19 off the side of U.S. 41 on what we call the Evergreen
20 Stretch. It's a passing lane area. The back of the
21 trailer was already open. Looking into the trailer you
22 could see cases of Seneca brand cigarettes.
- 23 Q Okay. And were you familiar with Seneca brand cigarettes?
- 24 A Yes, sir, I am.
- 25 Q How is it that you were familiar with Seneca brand

1 cigarettes?

2 A Through training and working some other cases, Seneca
3 brand cigarettes are part of a non-participating
4 manufacturer that don't have a, um, agreements with the
5 Department of Treasury to bring the tobacco into the state
6 of Michigan.

7 Q When you saw the tobacco in the trailer, what did you do
8 next?

9 A I believe at that time -- I don't remember if it was right
10 then or shortly after, I did photographs of the interior
11 of the vehicle, interior of the back of the trailer, and
12 the full exterior of the vehicle.

13 Q Where were the suspects at the time you were doing those
14 photographs, if you know?

15 A I believe they were outside the vehicle.

16 Q Okay. Were they --

17 A I didn't have any contact with them personally at that
18 time.

19 Q Do you remember if they were handcuffed or not?

20 A They were not handcuffed, no.

21 Q Okay. At some point in time did you go into the trailer?

22 A Yes, sir, I did.

23 Q And did you open one of the boxes?

24 A I did. I opened up a case. I picked a carton out, opened
25 it up to check for a tax stamp on it.

1 Q Okay. Did it have a tax stamp?

2 A It had a Keweenaw Bay Indian Community stamp, is how it
3 was worded on that stamp, uh, which is not a recognized or
4 authorized stamp by the Michigan Department of Treasury.

5 Q Okay. Did it have any Michigan Department of Treasury
6 stamps on it?

7 A No, sir, it did not.

8 Q Did the boxes have any stamps or labels on them? Did it
9 have the cartons -- the shipping cartons, did they have
10 any stamps or labels on them?

11 A The exterior of the box stated Seneca on them, so it was
12 readily witnessed that as far as that. As far as anything
13 Michigan wise, I didn't see anything, no.

14 Q Okay. So you said you opened up a pack of cigarettes and
15 it was, in fact, tobacco?

16 A I opened -- I didn't open a pack. I opened up the box. I
17 opened up a carton and pulled an individual pack, which
18 was Seneca brand cigarettes.

19 Q Okay. At some point in time did you seize those boxes of
20 Seneca cigarettes?

21 A They were seized, yes, by the team, I guess, is probably
22 the best way. I can't say I personally seized them.

23 Q Okay. Do you know how many shipping cartons or how many
24 cigarettes were seized? .

25 A I'd have to do the math. If I remember correctly, there

1 were 56 cases of Seneca brand cigarettes. And each case
2 has approximately 12 -- I think it's 12,000 cigarettes per
3 case. So if you give me a pencil and paper, I'll figure
4 it out for ya, but --

5 Q Whatever 56 cases times 12,000 cigarettes is. A lot of
6 cigarettes?

7 A Yeah, a lot of cigarettes.

8 Q There were over 3,000?

9 A Yes.

10 Q Okay. At any time while you were doing your investigation
11 on the roadside, did anybody present to you with a tobacco
12 license?

13 A No, I did not see any tobacco licenses, invoices, anything
14 of that nature, no.

15 Q Did anybody present you with a transporter's permit?

16 A No, sir.

17 Q Okay. I want to show you -- this is People's proposed
18 Exhibit Number 2, do you recognize that?

19 A Yes, sir. It's a case of Seneca brand cigarettes.

20 Q Okay. How do you recognize it?

21 A This one I know came from that seizure based off the label
22 we have on it.

23 Q So you put an evidence tag on it?

24 A There was an evidence tag put on it, yes, sir.

25 Q And where was that carton of cigarettes stored once it was

1 seized from the roadside?

2 A Once we left the roadside the truck and trailer were taken
3 back to the Michigan State Police headquarters, and they
4 were stored in a secured facility.

5 Q And is that in Marquette?

6 A That is in Marquette, yes, sir.

7 Q And is that where the tobacco's been stored since the
8 stop?

9 A No. It was stored there for most of the time. After that
10 Detective Sergeant Croley made the arrangements it was
11 stored down here in Lansing.

12 Q Okay. Did you bring this box of cigarettes with you here
13 today?

14 A The three of us did, yes, sir.

15 Q And is this in substantially the same condition as it was
16 when you guys seized it back on December 11th?

17 A Yes, sir.

18 MR. GRANO: I would move for People's 11 -- I'm
19 sorry, I mean People's 2, Your Honor.

20 THE COURT: Any objection to People's 2?

21 MR. PISZCZATOWSKI: No, Your Honor, no
22 objection.

23 THE COURT: Mr. Samaan?

24 MR. SAMAAAN: No objection.

25 THE COURT: People's 2 will be admitted.

1 BY MR. GRANO:

2 Q Sergeant, can I have you open the box just to show us
3 what's inside of it?

4 A Uh, somebody has something to break the seal? You want
5 one out or?

6 Q Yeah, we can just take one out. Is that a carton of
7 Seneca cigarettes?

8 A Yes, sir, it is.

9 Q Okay. Can you open that and see if there's cigarettes in
10 it?

11 A Yes, sir.

12 Q And you indicated that's one -- this box is one shipping
13 container, contains 12,000 cigarettes?

14 A That's correct.

15 Q So in this box in front of us there's 12,000 cigarettes?

16 A That's correct.

17 Q Okay. We'll leave it there for now. Once you and your
18 team determined that there was cigarettes and there was no
19 license, a seizure was effectuated of the vehicle and the
20 tobacco?

21 A That is correct.

22 Q Did you have to transport the defendants back to a post?

23 A I was with Detective Sergeant Croley. He was driving.
24 Mr. Magnant is the one that rode with us.

25 Q Okay. At some point in time while you were transporting

1 him, did he make any statements to you?

2 A Not to me directly. He did to Detective Sergeant Croley.

3 Q Okay. You were present when some questions were asked and
4 answered?

5 A That is correct.

6 Q Okay. Do you recall if he was ever asked if he was
7 involved in loading the trailer with these cigarettes?

8 A Yes, sir, I was.

9 Q And what did he say?

10 A He advised he had been.

11 Q Okay. Do you recall if he was asked about what he did for
12 KBIC?

13 A Yes, sir.

14 MR. PISZCZATOWSKI: At this point I'm going to
15 interpose an objection on behalf of Mr. Davis that it'd
16 be hearsay and it'd be a prudent violation if there's any
17 evidence coming with respect to -- so with respect to Mr.
18 Davis.

19 MR. GRANO: Your Honor, these statements are
20 only directed toward Mr. Magnant.

21 THE COURT: Thank you. As to Mr. Magnant?

22 MR. GRANO: Correct.

23 THE COURT: Issues of KBIC.

24 BY MR. GRANO:

25 Q Did he indicate what he did for KBIC?

1 A I believe he said he was maintenance.

2 Q And did he indicate to you whether he ever transported
3 tobacco?

4 A He did make a comment about transporting tobacco, yes,
5 sir.

6 Q And what did he say?

7 A He, I don't remember the exact wording, but he had done it
8 for a while anyway.

9 Q And was there a place that he took the tobacco?

10 A To Marquette.

11 MR. GRANO: Just a moment. I have no further
12 questions of this witness, Your Honor.

13 THE COURT: Thank you. Cross-examination.

14 MR. PISZCZATOWSKI: Yes, Your Honor. Thank you.

15 THE COURT: I'm going to leave right at three.

16 MR. PISZCZATOWSKI: Whenever the Court has to
17 leave, of course the Court's gonna leave, so.

18 THE COURT: I understand, but I --

19 CROSS-EXAMINATION

20 BY MR. PISZCZATOWSKI:

21 Q Sergeant Ryan, just so I understand, you were traveling
22 from somewhere and you came into the area of Baraga
23 County, correct, on December 11th?

24 A I'm sorry, is it Baraga County you said or Barrien?

25 Q No, no, not Barrien. No, no, no.

1 A I'm sorry. I've got a head stuffed and sinus issue, too,
2 I'm sorry.

3 Q No, no, I'm sorry. Okay. I'll try to speak louder and
4 I'll try to speak more clearly.

5 A Thank you.

6 Q So you were coming down into and you came through Baraga
7 County, correct?

8 A Correct.

9 Q Okay. And you observed these vehicles, two trucks, I
10 think you said?

11 A Yes, sir.

12 Q The two trucks you had seen before, correct?

13 A That is correct.

14 Q So you had had an ongoing investigation into KBIC,
15 correct?

16 A That is correct.

17 Q Would it be fair to say that the KBIC has had an ongoing
18 issue, shall we say, with the Michigan Department of
19 Treasury that you're aware of?

20 A I am assuming so.

21 Q And that they had taken the position that are, as a
22 sovereign nation, without getting into all that stuff, but
23 as a sovereign nation that they did not have to pay tax on
24 cigarettes, by way of example?

25 A I'm sorry, what's your -- I don't understand what you're

1 asking?

2 Q They take the position, if you're aware, I don't know if
3 you are?

4 A KBIC's position?

5 Q Yes, correct. KBIC, not the State. The State takes a
6 different position, I understand. The KBIC takes the
7 position that they don't have to pay tax on cigarettes?

8 MR. GRANO: Your Honor, I'm gonna object to
9 relevancy. It's not relevant to this exam.

10 MR. PISZCZATOWSKI: I'm sorry, I think it's
11 relevant, because there's a reason why we have two guys
12 here that are mere employees, and it isn't cause they
13 didn't pay taxes or get a license. That's our position.

14 THE COURT: This person, as to what KBIC
15 believes or what is their position wouldn't --

16 MR. PISZCZATOWSKI: What he knows, Your Honor.
17 What he knows. I'll ask it a different way.

18 THE COURT: Okay, that'll be helpful.

19 BY MR. PISZCZATOWSKI:

20 Q Do you -- when you do your investigation, for example, of
21 the KBIC, when you did -- you had an investigation ongoing
22 prior to December of -- sorry, I'll slow down -- December
23 11, 2015, correct?

24 A Yes.

25 Q Did you have contact with the Michigan Department of

1 Treasury?

2 A Yes, sir, I've had contact with them, yes.

3 Q About KBIC?

4 A About Seneca brand cigarettes, anyway, yes, sir.

5 Q And about KBIC selling Seneca brand cigarettes, correct?

6 A Correct.

7 Q Okay. Fair. Who did you have contact with in the

8 Michigan Department of Treasury?

9 A Back then I couldn't tell you. I don't know the person

10 right off hand.

11 Q Really?

12 A Really.

13 Q Okay, fair enough. Did you have contact on the telephone

14 or was it email?

15 A Telephone, I believe. There was also training that was

16 had before then, too.

17 Q And do you know who from the Michigan Department of

18 Treasury?

19 A Not right off hand. I don't know who did that training,

20 no.

21 Q Did the training?

22 A The training was done by the Michigan Department of

23 Treasury.

24 Q Yes.

25 A Which individual person, I couldn't tell you.

1 Q Okay. Do you -- okay. Fair enough. Did you -- but it
2 was -- was the training specifically with respect to
3 tobacco tax enforcement?

4 A Yes.

5 Q And was it specifically with respect to the rules and
6 regulation of the Michigan Department of Treasury with
7 respect to tobacco tax?

8 A Yes, sir.

9 Q And was there someone who discussed Seneca brand
10 cigarettes during the course of that training?

11 A There was discussion about two tribes in the state of
12 Michigan that do not have an agreement with the state of
13 Michigan.

14 Q And except -- okay, so there are two tribes, and one of
15 those tribes would be the Keweenaw Bay Indian Community?

16 A That is correct.

17 Q Okay. There are other tribes that have some agreement,
18 whatever that is, with the State?

19 A I have no idea what their agreement is.

20 Q That's not your issue?

21 A That's not me.

22 Q Okay. Fair enough. Now, when you're coming down from
23 wherever you were coming down from, Houghton, you saw
24 these two trucks. So we're back to that.

25 A Uh-huh.

- 1 Q And when you saw the trucks, do you know whether they were
2 on the -- I'm gonna use the word reservation, because it's
3 easy for me.
- 4 A Okay.
- 5 Q Trust lands, fair enough?
- 6 A Okay.
- 7 Q Okay. Were the trucks on trust lands?
- 8 A Yes.
- 9 Q And are you, I'm just curious, are you authorized to go on
10 those truck (sic) lands -- I'm sorry, the trust lands and
11 investigate?
- 12 A The Michigan State Police goes through those lands on a
13 regular basis for enforcing traffic and stuff like that,
14 yes.
- 15 Q Are you also, I'm just curious cause I don't even know,
16 are you authorized to make a felony arrest on those trust
17 lands?
- 18 A I'm not sure if I am or not. I don't know if that's an
19 individual post thing, or if that's an agreement post by
20 post or not.
- 21 Q Okay. But, in any event, you didn't go on the trust lands
22 on December 11, 2015, when you were observing these two
23 trucks?
- 24 A We were driving down 41 when we first saw those vehicles.
- 25 Q Pardon me?

1 A We were driving down 41 when we first saw those vehicles.

2 Q Okay. So did you stop at all or did you just drive by?

3 I'm just curious.

4 A At that point in time we just drove by.

5 Q Okay. Did you come back?

6 A We drove down the road a way. I believe we stopped -- I'm
7 not sure where we were at -- until the vehicles came by.

8 Q Two vehicles came by you?

9 A Yes.

10 Q All right. And then they stopped at a pole barn, I think
11 you said?

12 A That is correct.

13 Q All right. And so were you able, from your position where
14 you were standing -- and I use the word standing. You
15 were in a vehicle but you were not moving.

16 A Okay.

17 Q You were observing a pole barn, correct?

18 A Yeah, we could see the pole barn, yes.

19 Q And you could see these two trucks, fair?

20 A Uh-huh.

21 THE COURT: Is that a yes?

22 THE WITNESS: Yeah, I'm sorry. Yes

23 MR. PISZCZATOWSKI: Yeah, thank you.

24 BY MR. PISZCZATOWSKI:

25 Q And so you saw the trucks, and then at some point you were

1 still sitting in your car not moving, correct?

2 A That is correct.

3 Q And you're observing that one of the trucks is parked and
4 the other truck starts moving again, correct?

5 A That is correct.

6 Q And at that point, I'm sorry, do you radio the post at any
7 point at that time for assistance to try to get a -- to
8 make a stop, as you said?

9 A At that time?

10 Q Yes.

11 A No.

12 Q So do the trucks move down the highway?

13 A Yes, sir.

14 Q Do they pass you?

15 A I don't remember where I was at when they went by at that
16 time.

17 Q At some point they --

18 A At some point in time we ended up behind them.

19 Q You ended up behind them?

20 A Yeah.

21 Q And at what point, I'm just curious, do you make a call to
22 try to have that truck stopped?

23 A Timing wise, I'm not exactly sure. I know part of what I
24 was thinking. I can't speak for what other officers are
25 thinking.

1 Q Understood.

2 A Was where are those vehicles headed?

3 Q Where are they headed?

4 A Uh-huh.

5 Q But you wouldn't have -- if you were gonna say where are
6 they headed, you're trying to say, what, that you're gonna
7 make a stop to find out where they're headed?

8 A No, trying to figure out where they were headed to.

9 Q Where they're headed to.

10 A We were trying to figure out at that point in time what
11 the mode of transportation would be.

12 Q What the -- I'm sorry?

13 A Mode. I'm sorry, mode of transportation. At that time we
14 didn't know how the things were being transported.

15 Q Okay. But at that point you didn't know what was in the
16 trailer, fair enough?

17 A No, I did not.

18 Q So when you say what the mode of transportation is, can
19 you explain what you mean by that, because I don't
20 understand that?

21 A Yeah. Um, we're not sure if Seneca brand cigarettes are
22 being moved by truck, trailer, semi; we had no clue at
23 that time.

24 Q Okay. So it would be fair to say that when you radioed
25 the post, you told them that this vehicle may possibly

1 contain Seneca cigarettes?

2 A May possibly, yes.

3 Q And at that point you were hoping, obviously, to get the
4 vehicle stopped, if it was legal?

5 A If it was legal, yes.

6 Q Understood. And at some point you become aware that the
7 vehicle was stopped, correct?

8 A That is correct.

9 Q And when you come on scene the back of that trailer is
10 open?

11 A That is correct.

12 Q And you can see inside the trailer?

13 A Yes, sir.

14 Q And when you can see inside the trailer, you can see boxes
15 similar to that?

16 A That is correct.

17 Q That's one example of multiple boxes, fair?

18 A Exactly.

19 Q Some may have menthols, some may be regulars, some maybe
20 king size, whatever, but they're all -- their box is
21 similar to that?

22 A That is correct.

23 Q Did you go into a box on -- I'm sorry. When you got on
24 the scene, did you go, after you took the pictures --

25 A Uh-huh.

1 Q We'll see the back of your body on the video maybe.
2 A Okay.
3 Q But did you go into a box inside that trailer?
4 A Yes, sir.
5 Q And you opened the box inside that trailer?
6 A That is correct.
7 Q And you took out something from the box?
8 A That is correct.
9 Q Okay. And when you took it out, was it kind of the same
10 example that you just did for us here, for the record, you
11 went into the box?
12 A The same type of deal what I did as far as looking, yes.
13 Q So for the record, just because we couldn't see that, you
14 went into a box, you pull out a carton of cigarettes,
15 correct?
16 A That is correct.
17 Q And then you opened the carton?
18 A That is correct.
19 Q You pull out or look inside that carton and you see
20 individual cigarette packs?
21 A That is correct.
22 Q I'm not a smoker either, so I'm not sure I got it right,
23 but that's fair, right?
24 A Yes, sir.
25 Q Okay. Now --

1 THE COURT: I'm gonna stop you right there,
2 because I think it's a good stopping point.

3 MR. PISZCZATOWSKI: Oh, I had a good question
4 coming up, Your Honor.

5 THE COURT: You had the best question, I know.
6 Save it, and I'll be back in about 30 minutes. Thank you.

7 (At 3:00 p.m., off the record)

8 (At 3:38 p.m., back on the record)

9 THE COURT: Back on the record with People
10 versus Magnant and Davis.

11 Witness, you're still under oath.

12 THE WITNESS: Yes, ma'am.

13 THE COURT: And if you want to continue with
14 your cross-examination, sir.

15 MR. PISZCZATOWSKI: Thank you, Your Honor.

16 BY MR. PISZCZATOWSKI:

17 Q So I just wanna be clear. Can you approximate for me from
18 the time that you first observed the vehicles on the
19 reservation to when you went into the trailer, about what
20 was the time lapse between that time?

21 A I could guess, but it would be just purely a guess.

22 Q I understand. I'll take that answer.

23 A Maybe total half hour.

24 Q Okay. That's fair. I understand it's a guess. It's
25 very, very, you know, approximate.

1 Now, you indicated though at one point, and
2 we're almost to the point of -- well, I was gonna ask you
3 one question, but just to clarify. You went into the
4 trailer, you opened the box, and you did the same
5 demonstration you did in court, correct?

6 A That is correct.

7 Q Okay. And prior to opening the box of Seneca cigarettes,
8 the carton, I'll call it the box.

9 A Okay.

10 Q Did you have any conversation with Mr. Davis?

11 A No, sir.

12 Q Did you have any conversation with Mr. Magnant?

13 A No, sir.

14 Q Okay. So it would be fair to say, then, you did not ask
15 their permission to go and open that box, fair enough?

16 A That is correct.

17 Q And would it also be accurate to say that you did not have
18 a warrant at the time you opened that box?

19 A That is correct?

20 Q You didn't seek a warrant?

21 A No, sir.

22 Q Do you know at that point when you went and opened that
23 box whether Mr. Davis was in the patrol car -- or I call
24 it the patrol car, the cruiser, whatever it's called?

25 A I don't know, sir.

- 1 Q You don't know remember where he was?
- 2 A No, I do not.
- 3 Q Okay. But, in any event, you took it upon yourself to go
4 and open that box, correct?
- 5 A After contacting the Attorney General, yes, sir.
- 6 Q Oh, okay. So you were in radio contact with the Attorney
7 General's Office?
- 8 A No, one of the other members made a telephone call in
9 regards to what we had found.
- 10 Q Okay. And at that time that was prior to, um, that was
11 prior to opening the box?
- 12 A That is correct.
- 13 Q So someone from the team; do you remember who it was?
- 14 A I believe it was Detective Sergeant Belanger, but I'm not
15 a hundred percent.
- 16 Q All right, so let's just get the players, too, because we
17 don't have those. So you got yourself, you're Detective
18 Sergeant Ryan?
- 19 A Right. At the time I was a trooper, if it makes a
20 difference.
- 21 Q You had Detective Trooper Croley. You got the trooper,
22 the guy with the hard name?
- 23 A Lajimodiere.
- 24 Q Yeah, and then who else do you have out there?
- 25 A Detective Sergeant Jean Belanger and Trooper Ron Berry.

- 1 Q So, is Detective Sergeant Belanger, that's a female?
- 2 A Correct.
- 3 Q Okay, got it. So she was in contact with the AG's Office,
- 4 correct?
- 5 A I believe it was her, but I'm not a hundred percent.
- 6 Q Did you have the, at least in your mind, the permission
- 7 from someone in the Attorney General's Office to open that
- 8 box prior to getting a warrant?
- 9 A I was advised to go ahead and make -- to see what kind of
- 10 stamp it had on it, yes, sir.
- 11 Q I'm sorry?
- 12 A To see what kind of stamp it had on it.
- 13 Q To see what kind of stamp it had on it. And that was
- 14 Detective Sergeant Belanger that gave you that
- 15 information?
- 16 A Like I said, I think it was, but I'm not a hundred
- 17 percent.
- 18 Q Well, it's not Trooper Lajimodiere, correct, we know that?
- 19 A No, the ones that were in the vehicle were Detective
- 20 Sergeant Chris Croley and Detective Sergeant Jean Belanger
- 21 that I remember. I don't know if there was anybody in the
- 22 backseat at the time.
- 23 Q Okay.
- 24 A I was outside the vehicle.
- 25 Q So they directed you to see if there was a stamp on it.

1 A That is correct.

2 Q Okay. Now, there was no stamp on the outside of the box,
3 correct?

4 A Just as they are.

5 Q Just as they are. So when you look at -- other than your
6 knowledge of Seneca cigarettes, which I understand we
7 talked about, do those boxes require a Michigan Department
8 of Treasury stamp on them?

9 A No, I believe it's just the OTP that takes the stamps,
10 other tobacco products.

11 Q Other tobacco products, okay. So other your own
12 experience, quote, unquote, whatever that is, and looking
13 at the box Seneca cigarettes, that's what led you to
14 believe that it may be -- there may be some illegality,
15 let's say it that way?

16 A From my training in that, yes.

17 Q From the Department of Treasury.

18 A It's being provided by a non-participating manufacturer
19 and it's an illegal product in the state of Michigan.

20 Q So when you say a non-participating manufacturer, are you
21 saying I can't find a brand of Seneca cigarette -- I can't
22 find a Seneca cigarette with a Michigan tax stamp?

23 A That is my understanding, that is correct.

24 Q It is.

25 A Yeah.

1 Q Okay. So if I went in -- you would be surprised if I went
2 into a store and I can buy a pack of Seneca cigarettes
3 somewhere, correct?

4 A In the state of Michigan?

5 Q Yes.

6 A That is correct.

7 Q And if that were, in fact, the case that would present a
8 problem in terms of the fact that not all Seneca
9 cigarettes would be, in fact, I'm gonna use the word
10 contraband, correct?

11 A I believe the way you put it, yes, sir.

12 Q And so did you know whether any other people from the AG's
13 Office, the Attorney General's Office, indicated to do
14 anything else with respect to those boxes, other than open
15 them and check for a stamp?

16 A Not that I know of.

17 Q Okay. Now, if I could, did you go in -- there's how many
18 boxes, did you say?

19 A Approximately, 56 cases.

20 Q Fifty-six cases. Boxes, I'm calling them boxes, because
21 I'm a, like a basic guy. But 56 boxes, and did you go
22 into all of the 56 boxes, just out of curiosity?

23 A No, sir, I did not.

24 Q How many have you gone into now?

25 A Just the two now.

1 Q One on the scene --

2 A And one today.

3 Q -- and one today. Got it. Okay. Does the, I'm just
4 curious, does the Michigan State Police still have a
5 consent form that they utilize?

6 A Yes, sir.

7 THE COURT: For what purpose?

8 MR. PISZCZATOWSKI: Pardon me?

9 THE COURT: For what purpose?

10 MR. PISZCZATOWSKI: Oh, for consent to search,
11 Your Honor.

12 THE COURT: Thank you.

13 MR. PISZCZATOWSKI: Thank you.

14 THE WITNESS: Yes.

15 BY MR. PISZCZATOWSKI:

16 Q And did you have a consent to search form on you, by any
17 chance, on that day, December 11th, 2015?

18 A I don't believe I did.

19 Q How far away from the Michigan State Police post were you
20 at that time when this stop occurred; how far was that?

21 A Probably 15, 20 miles anyway.

22 Q Fifteen, 20 miles?

23 A Yeah.

24 Q You had a radio, correct?

25 A Yes, sir.

- 1 Q You never called for a consent to search form to be
2 brought to the scene, correct?
- 3 A Correct.
- 4 Q And the individuals that were there, Mr. Davis and
5 Magnant, did you ever ask either of them whether they had
6 a license to transport, quote, unquote, tobacco?
- 7 A No, sir, I did not.
- 8 Q Did you ask them, and I'll ask it this way, did you ask
9 them whether they had any tobacco license at all?
- 10 A No, sir, I did not.
- 11 Q Did you hear any other officer out there ask either Mr.
12 Davis or Mr. Magnant whether they had any tobacco tax
13 license?
- 14 A The only conversation I was privy to is the one in the car
15 with Detective Sergeant Croley and Mr. Magnant.
- 16 Q That guy over there?
- 17 A Yes, sir.
- 18 Q Okay. All right. Now, the individuals were both placed
19 in cruisers, correct, respective -- or police cars?
- 20 A I don't know where Mr. Davis went. Mr. Magnant was --
21 ended up eventually in the unmarked car with Detective
22 Sergeant Croley and I.
- 23 Q Fair enough. And he was placed in that car?
- 24 A He had a seat back there.
- 25 Q Who had the keys to the truck, by the way?

1 A That I do not know.

2 Q What did you place Mr. Davis or Mr. Magnant under arrest
3 for?

4 A They weren't placed under arrest.

5 Q So they were just being transported?

6 A Correct. We were literally out in the middle of nowhere.

7 Q And you never arrested them?

8 A No.

9 Q Okay. And you seized the product on the truck, or the
10 Michigan State Police seized the product on the truck?

11 A Correct.

12 Q And seized the truck?

13 A Yes.

14 THE COURT: Just one second. You flipped that
15 onto the recorder there.

16 MR. PISZCZATOWSKI: Did I do something, Judge?

17 MR. SAMAAN: No, no, it was me.

18 THE COURT: No, your friend here.

19 MR. PISZCZATOWSKI: Judge.

20 MR. SAMAAN: Judge, please.

21 THE COURT: Your acquaintance. But anytime
22 paper comes on that, it rings in her ears.

23 MR. PISZCZATOWSKI: I'm sorry, Your Honor.

24 MR. SAMAAN: Sorry about that.

25 BY MR. PISZCZATOWSKI:

1 Q I think I can repeat it. So you seized -- I think we
2 should probably repeat that. So the Michigan State Police
3 seized the boxes, the 56 boxes in the trailer, correct?
4 A That is correct.
5 Q Seized the trailer?
6 A That is correct.
7 Q And seized the truck?
8 A That is correct.
9 Q And were there forfeiture proceedings, as you know,
10 started against those items?
11 A Yes, sir, there were.
12 Q And was the owner of the truck, the Community, the KBIC,
13 as far as you know?
14 A Were they what?
15 Q The owner of the truck?
16 A I believe so, but I'm not hundred percent.
17 Q Were they the claimant in the forfeiture proceedings?
18 A Yes, sir.
19 Q Mr. Davis wasn't a claimant in the forfeiture proceedings?
20 A No, sir.
21 Q Mr. Magnant wasn't?
22 A No, sir.
23 Q No. Okay. Same thing, same question with respect to the
24 trailer, they were the -- KBIC was the claimant?
25 A That is correct.

1 Q And also they were the claimant with respect to the 56
2 boxes of cigarettes?

3 A That is correct?

4 Q Okay. Do you know whether there was a tax assessment in
5 this case that was placed by the Michigan Department of
6 Treasury?

7 A I'm not sure if there was or not.

8 Q You don't know that? You never attended anything with
9 respect to any assessment?

10 A Tax assessment has nothing to do with the Michigan State
11 Police.

12 Q Okay.

13 A It's all Department of Treasury?

14 Q So you don't know whether the KBIC was the assessed party?
15 That's not you?

16 A That's not me.

17 MR. PISZCZATOWSKI: Okay. Can I have one
18 second, Your Honor?

19 THE COURT: Sure.

20 MR. PISZCZATOWSKI: Sorry, Your Honor. Thank
21 you. No further questions. Thank you.

22 THE COURT: Go ahead, sir, Mr. Samaan.

23 MR. SAMAN: Thank you.

24 CROSS-EXAMINATION

25 BY MR. SAMAN:

1 Q I'll try to minimize the questions and not repeat some of
2 the questions that have been asked by brother counsel.

3 You said that you're traveling back toward
4 Marquette from Houghton County; is that correct?

5 A That is correct.

6 Q And as you were driving back, you happened to see -- and
7 tell me, what is The Pines?

8 A It's a convenience store.

9 Q Is it a gas station, as well?

10 A Yes.

11 Q Okay. So it's a gas station convenience store?

12 A That is correct.

13 Q And as you were driving by you saw two trailers and two
14 trucks at that location; is that correct?

15 A That is correct.

16 Q Is that unusual to see two trailers and two trucks at a
17 convenience store gas station?

18 A Well, they were backed up towards the back of the
19 building, and like I said, at that time we were trying to
20 figure out the mode of transportation.

21 Q The mode of transportation for what?

22 A The tobacco products.

23 Q Those trucks were backed up, so by looking at them as
24 you're driving by, you couldn't tell whether they belonged
25 to the KBIC or anybody else, could you?

1 A That is correct.

2 Q Okay. So how were you gonna figure out if those trucks
3 were transporting cigarettes, Seneca cigarettes?

4 A I mean, like I said, we'd seen those vehicles before. We
5 weren't sure what they were hauling. They had made the
6 run -- or I'm not sure if it was both or one. I think it
7 was just one of the vehicles had made a trip to the casino
8 in Marquette.

9 Q Okay.

10 A So that's what drew our attention towards them.

11 Q So they made a trip to the casino in Marquette; did you
12 ever at any time see any cigarettes being either loaded or
13 unloaded into either of those trucks?

14 A No, sir.

15 Q So you were just fishing to see if that's what they're
16 doing? I mean --

17 A What's that?

18 Q What were you acting on when you decided to check to see
19 what they were transporting?

20 A Basically playing a hunch, if they had --

21 Q Okay.

22 A Figure out if they were transporting or not.

23 Q And so that was the basis for you asking Trooper, um --

24 A Lajimodiere.

25 Q Thank you. To pull him over?

1 A If he had a legal reason to do so, that's correct.

2 Q Okay. And if he didn't have a legal reason, would you
3 have just let them go?

4 A Absolutely.

5 Q You would not have pursued them?

6 A Nope.

7 Q So on that date when you saw them there was nothing loaded
8 or on off of it, right?

9 A I'm sorry, what was that?

10 Q You never saw anything loaded on those trucks; is that
11 correct?

12 A Correct. I never saw anything loaded on them.

13 Q And when they went, did you follow both -- did both the
14 trucks go to the facility or to the pole barn?

15 A Both trucks went to the pole barn, yes.

16 Q Okay. And did they go by you when they left The Pines to
17 go to the --

18 A Like I said earlier, I don't remember if they drove by --
19 I believe they drove by us and we got behind them, but I'm
20 not a hundred percent.

21 Q You don't know whether you were waiting in front of them,
22 behind them when they left The Pines?

23 A I don't recall, no, sir.

24 Q Did you sit there and observe the truck and trailer at The
25 Pines?

1 A No, sir.

2 Q Could you see from your vantage point who was driving
3 which truck?

4 A No, sir.

5 Q They both get to The Pines -- or to the pole barn, and
6 describe for me the pole barn, please? What is a pole
7 barn?

8 A It's just literally that. It's just a pole barn directly
9 across from the casino. So it's kinda like down in a hole
10 right on the corner of the -- everything. It's M-38 and I
11 don't remember what the crossroad is.

12 Q Where were you when you were observing the pole barn when
13 you sat there?

14 A I don't recall where I was at.

15 Q Are you familiar with what is known as trust land for the
16 Indian tribes up there?

17 COURT RECORDER: I need you to speak up.

18 BY MR. SAMAN:

19 Q Trust land. I'm sorry.

20 A Are you talking reservation?

21 Q Reservation or trust lands belonging to the Tribe?

22 A Okay, yes, sir.

23 Q Do you know if that pole barn was, in fact, on the trust
24 land belonging to the reservation?

25 A I would assume so. Again, I don't know who owns that

1 piece of property, but I'm assuming it's on that land,
2 yes.

3 Q Okay. Is that the first time that you put surveillance at
4 that pole barn?

5 A I've seen vehicles go to that pole barn before?

6 Q Okay. So you've had surveillance of that pole barn
7 before?

8 A Yes.

9 Q Did you ever question who owned that pole barn?

10 A No, sir.

11 Q Do you know who was driving which pickup?

12 A I have no idea.

13 Q Okay. Did you eventually find out who was driving the
14 green pickup?

15 A I can tell you who I was told. I never saw who was
16 driving.

17 Q Okay. And who were you told?

18 A Mr. Davis.

19 Q Was driving the green pickup?

20 A Yes.

21 Q When you arrived on the scene, I believe you did not
22 question whether in fact they had a transporter license;
23 is that correct?

24 A That is correct.

25 Q Did you ask them about whether they had invoices for the

1 tobacco?

2 A No, sir, I did not.

3 Q I believe you testified that you didn't see any invoices?

4 A That is correct.

5 Q Okay. Do you know if invoices were eventually found
6 relative to that tobacco product, sir?

7 A I know there was a notebook found. I'm not sure if there
8 were invoices or not.

9 Q Okay. And did you review any reports that were generated
10 relative to this seizure?

11 A Not for this -- for this court hearing, yes.

12 Q Okay. And you didn't see any invoices?

13 A Like I said, I don't know if there was invoices. There
14 may be. I'm not sure.

15 Q Would it made a difference to you whether there were
16 invoices or not?

17 A Depends on the situation. Again, the cigarettes are from
18 a non-participating manufacturer, which aren't for sale in
19 the state of Michigan.

20 Q So as we sit here today, it is your belief that the
21 manufacturer of Seneca cigarettes is a non-participating
22 manufacturer?

23 A It is a non-participating manufacturer that does not have
24 an agreement with the State of Michigan.

25 Q And how did you know that?

1 A From the training.

2 Q And the training took place when?

3 A It's yearly in Lansing.

4 Q Okay. And you have the training in 2015?

5 A Yes, sir.

6 Q And at that time the training told you that Seneca
7 manufacturer does not distribute to --

8 A I don't remember if they said that in 2015. I know I was
9 told that during one of the trainings.

10 Q You didn't talk to the Attorney General at the time of the
11 stop, did you?

12 A No, I did not.

13 Q The reason that you seized the tobacco was?

14 A It's illegal tobacco from a non-participating manufacturer
15 being transported, possessed, or sold -- used or sold -- I
16 forget how the whole wording goes under that law, in the
17 state of Michigan.

18 Q Okay. And does an employee -- let's assume that this was
19 tobacco that was being transported to a wholesaler here in
20 Michigan.

21 A Okay.

22 Q Does that wholesaler have to have a transporter license?

23 A I believe if they're being done by commercial means, I do
24 not believe so.

25 Q Okay. What if an employee is asked by its employer to go

1 pick up some tobacco and bring it back, would that
2 employee have to secure a transporter license? This is
3 based on your training, sir.

4 A I guess, where are they picking up and going -- I mean,
5 can you give me a little bit of a scenario anyway?

6 Q Yeah. They're transporting cigarettes through the state
7 of Michigan.

8 A Okay.

9 Q You pull them over. You find out that they're employed by
10 ABC Warehouse.

11 A Okay.

12 Q They don't have a transporter license with them.

13 A Okay. And they're delivering taxed --

14 Q Doesn't matter.

15 A They have invoices?

16 Q They've got invoices, they're delivering product to their
17 employer, whether it's to the employer or to a customer of
18 their employer, would they need to have a transporter
19 license with them, or is it just the employer that should
20 have one?

21 A I'm not sure. I can't answer that question.

22 MR. SAMAAN: We're good. Thank you, Your Honor.

23 THE COURT: Just cause I'm sort of confused,
24 you're doing sort of an ongoing investigation in part of
25 this special task force that you have on tobacco tax?

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THE WITNESS: Yes, ma'am.

THE COURT: And on other occasions you've seen this particular vehicle, as well as other vehicles, that you believe were moving tobacco products without either licensure or transport licenses?

THE WITNESS: That is correct.

THE COURT: Okay. On this particular occasion you noticed this at a pole barn, going to a convenience store, and then back on the road?

THE WITNESS: We first saw them at the convenience store, went to the pole barn, and then back on the road.

THE COURT: And at which point in time after the pole barn is when you made a call to -- or someone in your unit made a call to dispatch to try to get a uniform officer to stop if there was a legal reason to do so?

THE WITNESS: That is correct.

THE COURT: And so were you stationary until that call came back into you or were you following along behind these -- either one or the other of the suspect vehicles?

THE WITNESS: We were following along.

THE COURT: So you weren't -- how far away were you from when the officer did make the stop? Were you behind that vehicle or the other one that was not stopped?

1 THE WITNESS: The one vehicle never left the
2 pole barn.

3 THE COURT: Oh, okay. All right. Thank you.

4 THE WITNESS: So there's just one truck and one
5 trailer.

6 THE COURT: And so this vehicle left and --

7 THE WITNESS: And when that vehicle was stopped,
8 I'd guess a quarter, half mile away from it, maybe.

9 THE COURT: So you had it under surveillance as
10 you were waiting for another, perhaps uniform officer to
11 cut in and see if there was some kind of violation of
12 which to stop the vehicle?

13 THE WITNESS: That is correct.

14 THE COURT: Okay. Thank you. As to the Court's
15 questions, Mr. Grano?

16 MR. GRANO: Nothing, Your Honor.

17 THE COURT: As to the Court's questions?

18 FURTHER CROSS-EXAMINATION

19 BY MR. PISZCZATOWSKI:

20 Q So you're a half a mile behind the green Ford truck that
21 we're talking about, right, it's a green Ford truck,
22 right?

23 A I was guessing a quarter to a half mile. It's just a
24 guess.

25 Q I'm with ya. And then you're radioing and you radio to

1 the headquarters, or whatever they are, the post; they
2 then radio to Trooper Lajimodiere? Sorry, Trooper
3 Lajimodiere, I apologize for that butchering of your name
4 on the record. And then there's stuff that goes out,
5 right? And you're still following, right? You're still
6 traveling?

7 A That is correct.

8 Q Right. Okay. So did you ever see Mr. Davis go to the
9 rear of the trailer and open it?

10 A No, I did not.

11 Q So you were -- okay. Did you ever stop while you were
12 traveling on Highway 41, is it?

13 A No.

14 Q Did you ever stop on Highway 41 once you left the area of
15 that pole barn?

16 A No, sir.

17 Q Continued on the speed limit 55?

18 A We were continuing down the road, yes.

19 Q Might have been a little over 55? Anyway --

20 A They were driving a little over 55, sir.

21 Q Okay, I know, I'm with ya.

22 A To keep up with them, yes.

23 Q But you kept going, right?

24 A Yes.

25 MR. PISZCZATOWSKI: Okay. Thank you.

1 FURTHER CROSS-EXAMINATION

2 BY MR. SAMAAN:

3 Q How long did it take you to get to the location after the
4 car was pulled over?5 A I don't recall. It was after Trooper Lajimodiere had made
6 the stop and let us know what he had found. Whatever that
7 time frame was.8 Q How fast would it take you to travel half a mile at 55
9 miles an hour?10 A It wasn't a long time. It all depends on the amount of
11 time he was at the stop. I've never -- I haven't even
12 watched the video to see how long the stop was. I mean,
13 it wasn't an hour, if that's what you're getting at.14 Q No, no, I'm not saying that. We know that -- we watched
15 the video and from the time that the trooper saw the car,
16 pulled it over, I think it's about seven minutes, I
17 believe. So would you say that you got to there before
18 the trailer door was opened or after?

19 A After.

20 Q So it took you --

21 A If the stop was seven minutes, it would have been, you
22 know, longer than that.23 Q And I believe you testified you did not pull over at all;
24 you just kept following, and the car was pulled over?

25 A We just kept going.

1 Q You had visual of this vehicle the whole time you were
2 traveling behind him, the trailer?

3 A From the time we left their area?

4 Q From the time you left the pole barn --

5 A Yep.

6 Q -- until it was pulled over, did you have visual of the
7 vehicle?

8 A Yes.

9 Q Were there any other cars, trucks, on the road at the
10 time?

11 A Yes, sir.

12 Q So your view of the trailer and the truck was
13 unobstructed; is that correct?

14 A It may have been at times for a matter of, you know, 30
15 seconds that you might be out of view point, but if you're
16 wondering if the vehicle stopped when we were following
17 it, no.

18 MR. SAMAN: Okay. I have no further questions.

19 Thank you.

20 THE COURT: I don't think I ever asked you if
21 you had any redirect?

22 MR. GRANO: No redirect, Your Honor.

23 THE COURT: All right. Go ahead and stand down.

24 Thank you, sir.

25 (At 4:03 p.m., witness excused)

1 MR. GRANO: Can you send Angela Littlejohn in.
2 While we're waiting for the next witness, Your Honor,
3 People's proposed Exhibits 3, 4, 5, 6, 7 and 8, I believe
4 will be entered by stipulation. These are tax --
5 Certificate of Tax Records that Carla D. Ward, an employee
6 at the Michigan Department of Treasury, searched the
7 Michigan Department of Treasury records for tobacco tax
8 licenses as it relates to Keweenaw Bay Indian Community,
9 The Pines Convenience Center, the Ojibwa Casino in Baraga,
10 the Ojibwa Casino in Marquette, John Francis Davis and
11 Gerald Magnant, that no records of any license was
12 discovered. So I would move for People's 3 through 8.

13 THE COURT: Any objection to 3 through 8, Mr.
14 Piszczatowski?

15 MR. SAMAAN: Are these the ones that you're
16 gonna introduce through --

17 MR. GRANO: I was gonna, but you said you would
18 stipulate to them.

19 MR. SAMAAN: No, no, I'm talking about through -
20 - are you gonna ask Littlejohn on those?

21 MR. GRANO: Yeah, we'll talk about licensing
22 with her.

23 MR. SAMAAN: Okay, that's fine.

24 MR. PISZCZATOWSKI: We're fine with that, Your
25 Honor.

1 THE COURT: By stipulation, People's 3 through 8
2 will be admitted.

3 MR. GRANO: And the People call Angela
4 Littlejohn.

5 THE COURT: Ma'am, can you come forward to the
6 witness stand right over here. There is a step as you
7 come around so watch yourself. And if you could stand and
8 face me and raise your right hand, please. Do you swear
9 or affirm the testimony that you're about give will be the
10 truth, the whole truth, under penalty of perjury?

11 MS. LITTLEJOHN: Yes, I do.

12 THE COURT: Please be seated. If you can speak
13 in the loudest voice you have so that we can all hear your
14 testimony today and record it. And direct exam, Mr.
15 Grano.

16 ANGELA LITTLEJOHN,
17 At 4:05 p.m., called by Mr. Grano and sworn by the Court;
18 testified as follows:

19 DIRECT EXAMINATION

20 BY MR. GRANO:

21 Q Can you state your name for the record?

22 A My name is Angela Littlejohn.

23 Q Can you spell your last name?

24 A L-i-t-t-l-e-j-o-h-n.

25 Q Where are you employed?

1 A I'm employed at the Michigan Department of Treasury.

2 Q In what capacity?

3 A I'm the manager of the Tobacco Tax Unit and the
4 Miscellaneous Taxes and Fees Unit.

5 Q How long have you been so employed?

6 A I've been the manager for two years.

7 Q Have you received training in tobacco tax?

8 A On-the-job training for two years.

9 Q Treasury puts on a yearly training, is that fair?

10 A Yes.

11 Q Have you attended that?

12 A I have not.

13 Q So you work for the Department of Treasury?

14 A Yes.

15 Q Do you know the official address for the Department of
16 Treasury?

17 A 430 West Allegan in Lansing.

18 Q In the world of tobacco tax are there different license
19 types?

20 A Yes, there is.

21 Q Okay. So I want to talk a little bit about that with you
22 as it relates to this matter. What are the license types
23 that would allow somebody to import tobacco into the state
24 of Michigan?

25 A A wholesaler license and an unclassified acquirer license.

1 Q Okay. Is there -- is it possible for a licensee wanting
2 to import tobacco into the state of Michigan to be located
3 outside of the state of Michigan?

4 A Yes.

5 Q So it's possible a wholesaler could be in Indiana and send
6 tobacco to Michigan?

7 A Well, it wouldn't be a wholesaler, because wholesalers
8 have to be located in Michigan, but an out-of-state
9 unclassified acquirer could.

10 Q Okay. Would a person need a transporter's license to
11 transport tobacco in the state of Michigan?

12 A If they're not licensed.

13 Q Okay. If they are licensed --

14 THE COURT: Hold on a second. Say that again?

15 MR. GRANO: Would a person -- I asked if a
16 person --

17 THE COURT: Would an individual driver?

18 MR. GRANO: Well, I'll clarify that a little.

19 THE COURT: Okay, please.

20 BY MR. GRANO:

21 Q Can only a business receive a license or can an individual
22 receive a license, as well?

23 A An individual could.

24 Q And a business can?

25 A And a business can.

1 Q Okay. So if somebody was transporting tobacco, it would
2 either have to be working for a wholesaler or unclassified
3 acquirer or obtain a transporter's license?

4 A Correct.

5 Q And an individual could obtain the transporter's license?

6 A Correct.

7 Q Or the business could obtain the transporter's license?

8 A Correct.

9 Q Okay.

10 THE COURT: So let me just ask if an employee of
11 a wholesaler was a transporter, does that individual need
12 a license to move the product?

13 THE WITNESS: No.

14 THE COURT: Okay, thank you.

15 BY MR. GRANO:

16 Q Would the wholesaler need a transporter's license?

17 A Yes.

18 THE COURT: Say that again. She's --

19 MR. GRANO: You're not picking that up?

20 THE COURT: Does a wholesaler need a transporter
21 license? In addition to their wholesaler license,
22 then they need a transporter license; is that --

23 MR. GRANO: If they were going to move the
24 tobacco, them or their employees?

25 THE WITNESS: Not within the state.

1 BY MR. GRANO:

2 Q If they weren't gonna use a license to move the tobacco,
3 how would they do it?

4 A They would hire an interstate commerce carrier.

5 THE COURT: And do they need a license, an
6 interstate commerce carrier?

7 THE WITNESS: No.

8 BY MR. GRANO:

9 Q As your job as the manager of the Tobacco Tax Unit, are
10 you familiar with most of the licensees in the state of
11 Michigan?

12 A I'm not intimately familiar with them.

13 Q Would you say -- and I know you don't have numbers in
14 front of you, but anecdotally, would more people be using
15 a transporter's license or be using the interstate common
16 carrier to move tobacco?

17 A Common carrier.

18 Q That's the standard way to move tobacco in the state?

19 A Correct.

20 Q And is it easier to use the common carrier than doing all
21 the licensing?

22 A Yes.

23 Q Okay. And is that why people use that?

24 A Yes.

25 Q Okay. You briefly talked about a wholesaler and an

1 unclassified acquirer; who are the licensees that pay the
2 tax?

3 A The wholesaler can pay the -- will pay the tax and the
4 unclassified acquirer will pay the tax.

5 Q Okay. Are they the only two licensees that are able to
6 pay the tax?

7 A Yes.

8 Q So those licensees can pay the tax and import tobacco in
9 the state -- when I say those licensees, wholesalers and
10 unclassified acquirers are the only two that can import
11 tobacco into the state and can pay the tax in the state?

12 A Correct.

13 Q Okay. And do you know offhand if a wholesaler or an
14 unclassified acquirer or a transportation company is
15 moving tobacco, do they have to have that license on their
16 person at the time?

17 MR. SAMAN: I didn't get that question, if you
18 can repeat it?

19 BY MR. GRANO:

20 Q Would a wholesaler, unclassified acquirer, or a
21 transporter while they're moving the tobacco throughout
22 the state have to have the license on their person?

23 A No. The wholesaler and the unclassified acquirers don't
24 have the license on them. Um, again, I'm not familiar --
25 as familiar with the transporter license, so I'm honestly

1 not sure if they have to have it on their person.

2 Q Okay.

3 MR. GRANO: Nothing further, Your Honor.

4 THE COURT: Cross.

5 CROSS-EXAMINATION

6 BY MR. PISZCZATOWSKI:

7 Q So, Ms. Littlejohn, you are the manager of the Tobacco Tax
8 Unit of the Michigan Department of Treasury, if I got
9 that?

10 A Correct.

11 Q I'm pretty neophyte on this, so you're gonna have to help
12 a little bit. But what I'm understanding is there are
13 various kinds of tobacco tax licenses, correct?

14 Q Correct. And you talked about a wholesaler?

15 A Uh-huh.

16 Q And a wholesaler would be someone who can sell cigarettes
17 to retail people? What is a wholesaler?

18 A A wholesaler could sell to a retailer but generally that's
19 not their business model.

20 Q Their business model is general what? They could but
21 what's --

22 A Well, they generally sell most of the tobacco for resale,
23 so they do sell to unclassified acquirers or retailers.

24 Q Secondary wholesalers?

25 A Yes. Yes, or secondary wholesalers.

1 Q Okay, gotcha. Now, if I'm a wholesaler, right, which I
2 think Mr. Grano was asking, so I'm a wholesaler and I am
3 going to sell my tobacco, I gotta get my tobacco from my
4 warehouse to my customer, correct?

5 A Correct.

6 Q Okay. And I have an employee, Mr. Davis is my employee,
7 let's say, and I say, Mr. Davis, this customer bought 56
8 cases of tobacco products, i.e., cigarettes, can you drive
9 them over to my customer who is a mile away. He does.
10 Does he need a transporter's license?

11 A No.

12 Q Okay. Okay, that's pretty good. So now, you indicated
13 that -- are you familiar with the KBIC? Do you know those
14 words, the Keweenaw Bay Indian Community?

15 A I've heard of them.

16 Q I bet you have lately, especially. So the KBIC, are you
17 aware that they're an Indian, I'm gonna use the word tribe
18 but it's a community, okay?

19 A Yes.

20 Q Okay. Do you know that there's a dispute between the KBIC
21 and the State of Michigan with respect to whether they
22 need to acquire certain licenses?

23 A Yes.

24 Q And pay certain taxes?

25 A Yes.

1 Q Okay. And would it be fair to say that to the extent that
2 the tobacco products that the KBIC has in its possession
3 and it sells to its tribal members, there is no tax?

4 A There is no tax that has been paid, is that what you're
5 saying?

6 Q There's no tax that's required by the Michigan Department
7 of Treasury.

8 A I'm not familiar with that.

9 Q You're not, okay. Okay. Do you know who, I'm just
10 curious, do you know who Mr. Doug Miller is?

11 A Yes.

12 Q Is Doug Miller your supervisor?

13 A Yes.

14 Q Okay. Well, we can maybe talk to Mr. Miller about that.
15 All right. You indicated you're not that familiar with
16 transfer -- I'm sorry, transporter licenses, correct?

17 A Correct.

18 Q Let me ask if you know this: If I have two people in a
19 vehicle, okay, and there is a trailer attached to the back
20 of my vehicle, and there's tobacco product in there,
21 cigarettes, right. We have two people. Do you need two
22 transporter licenses or one transporter license?

23 A I'm not -- I'm not certain.

24 Q Okay.

25 THE COURT: If there was a wholesaler license

1 you wouldn't need any; is that correct?

2 THE WITNESS: Correct.

3 THE COURT: Okay. I'm just clearing my mind.

4 MR. PISZCZATOWSKI: We're all over this, Judge.
5 We've got this tobacco tax stuff down now. You know,
6 we're right with Mr. Grano.

7 THE COURT: Prepare for briefs.

8 BY MR. PISZCZATOWSKI:

9 Q And the transporter is not responsible for the payment of
10 the tax on the cigarettes, correct?

11 A Correct.

12 Q The transporter, if you want to transporter license as an
13 individual, if you did, you would have to pay fifty bucks
14 and sign an application and you got your transporter's
15 license, correct?

16 A I think there's a little bit more to it.

17 Q Oh?

18 A Um, I think that there's other, uh, regulations that go
19 with it, other steps that you would have to go through.

20 Q Okay. Okay. And I'm here to be educated. Tell me what
21 they are?

22 A Well, I know it's a doilar a day per -- or a dollar per
23 load, and there's other steps that you would have to go
24 through, too, but the first step would be to submit an
25 application and pay the fifty dollars.

1 Q Can you apply for that license, the fifty-dollar license
2 to transport, can you apply for that elsewhere in Lansing
3 or can I do it up in, you know, an office anywhere else in
4 the state of Michigan, just out of curiosity?

5 A Well, my area handles the applications, so it would have
6 to get to Lansing.

7 Q Ultimately gets to Lansing?

8 A Right.

9 Q For fifty bucks, right?

10 A Correct.

11 Q Yeah, okay. Does the Michigan Department of Treasury
12 publish any regulations or rules with respect to the
13 acquiring of a transporter's license?

14 A Not to my knowledge.

15 Q Okay. So other than the actual application, the Form 336,
16 are you familiar with that form?

17 A Yes.

18 Q That one I know you're familiar with. That's your
19 bailiwick, right? Other than that Form 336, that would be
20 the only indication with respect to what's required,
21 published, what's required by the Michigan Department of
22 Treasury?

23 A Yes.

24 Q In addition to statutes, obviously?

25 A Right.

1 Q I'm just gonna have you, if you could, identify what's
2 been marked as Defense Exhibit A.

3 A This looks like an application for tobacco tax license.

4 Q Okay. And so you're familiar with that?

5 A Yes.

6 Q That form. There might be another form I have off line,
7 but does that one work for you?

8 A Yes.

9 MR. PISZCZATOWSKI: Just move for the admission
10 of Defense A, Your Honor.

11 MR. GRANO: No objection.

12 THE COURT: This is a blank form?

13 MR. PISZCZATOWSKI: It's blank, Your Honor, yes,
14 it is.

15 THE COURT: You have no objection?

16 MR. GRANO: No objection.

17 THE COURT: Defense A is admitted.

18 BY MR. PISZCZATOWSKI:

19 Q And if you go back to that, I guess it's going to be about
20 page -- or part five on that, license types and fees. Is
21 that the right page?

22 THE COURT: Your paperwork is on our microphone.
23 If you can just move it to the side, please.

24 BY MR. PISZCZATOWSKI:

25 Q Ms. Littlejohn, does that -- does page five look something

1 like this?

2 A Yes.

3 Q And if you look at the different licenses, it starts
4 manufacturer, wholesaler, unclassified acquirers,
5 secondary wholesaler, vending machine operator, and the
6 last one is transporter, right?

7 A Yes.

8 Q Okay. And when it describes the license type for
9 transporter it says, a business that imports or transports
10 into this state, or transports in this state, cigarettes
11 or other tobacco products obtained from a source located
12 outside this state, or obtained from a person that is not
13 a Michigan tobacco tax licensee, correct?

14 A Correct.

15 Q Okay. And it goes on and talks about an interstate
16 commerce carrier licensed by the interstate commerce
17 commission to carry commodities in interstate commerce is
18 not required to obtain a transporter license, which is
19 what you told us earlier, right?

20 A Correct.

21 Q Okay. In addition, a Michigan tobacco tax licensee that
22 has a business located outside of Michigan does not have
23 to obtain a transporter license, fair enough?

24 A Correct.

25 Q And that's what the Michigan Department of Treasury has

1 published with respect to a transporter license, correct?

2 A Correct.

3 MR. PISZCZATOWSKI: Okay. I don't have any
4 other questions, Your Honor.

5 THE COURT: Mr. Samaan?

6 MR. SAMAAN: Yes, just a few.

7 CROSS-EXAMINATION

8 BY MR. SAMAAN:

9 Q I believe you testified that if a wholesaler is bringing
10 in tobacco from outside the state of Michigan, there would
11 not be a need for a transporter license, correct?

12 A Not if they used a common carrier.

13 Q How about if they use an employee of the wholesaler?

14 A I'm not certain about that.

15 Q So let's say there's a wholesaler, a licensed wholesaler
16 in Michigan, and he is selling tobacco through another
17 wholesaler or unclassified, whatever, in Chicago, would
18 his employee that's delivering the product need to have a
19 wholesaler license?

20 A Not the employee.

21 Q I mean a transporter license. The employee does not need
22 that. Will the wholesaler need a transporter license?

23 A No.

24 Q Okay. So in that scenario the employee or the wholesaler
25 would not need a transporter license?

1 A No.

2 Q Okay. So employees, really, if they're doing a function
3 for their employer, they don't need a wholesaler license,
4 is that correct, or a transporter license? I'm sorry.

5 A Not in that example that you gave.

6 Q Okay. And as far as paying taxes, if a wholesaler in
7 Michigan sells tobacco to somebody in Chicago, will that
8 Chicago wholesaler have to pay taxes on that product?

9 A No.

10 Q Who pays the taxes?

11 A Well, there won't be taxes due.

12 Q But the wholesaler pays the taxes when he receives the
13 product, right?

14 A No. The wholesaler pays the taxes when the product is
15 sold.

16 Q So if he sells tobacco out of state and he's already paid
17 the taxes, he can request a refund from the department?

18 A Correct.

19 MR. SAMAN: Okay. I don't have any questions.

20 THE COURT: Redirect?

21 MR. GRANO: No, Your Honor.

22 THE COURT: Ma'am, you can stand down.

23 MR. GRANO: At this point the People rest.

24 THE COURT: Calling witnesses?

25 You're all set, ma'am. I'm sorry. Thank you.

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THE WITNESS: Do I leave this here?

THE COURT: Yes.

(At 4:22 p.m., witness excused)

THE COURT: Are you calling witnesses?

MR. PISZCZATOWSKI: Yes, we are, Your Honor.

MR. SAMAN: Yes, Your Honor.

THE COURT: Who's going --

MR. SAMAN: Do you want to stipulate to the --

MR. PISZCZATOWSKI: Yeah, Your Honor, we can put a stipulation on the record. Your Honor, the Defense is prepared to call Hannah Beasley, who would testify to the fact that she is a Director of Human Relations at the Keweenaw Bay Indian Community, and that she would testify to the fact that both Mr. Davis and Mr. Magnant on December 11, 2015, were employed by the Community.

THE COURT: December 11th of 2015?

MR. PISZCZATOWSKI: I'm sorry, Your Honor? Yes, employed by the Community or employees of the Community, and neither of them were in a supervisory position but rather merely employees. That's what she would testify to.

THE COURT: Any objection to that?

MR. GRANO: No, Your Honor.

THE COURT: And that's both for --

MR. SAMAN: Yes, Your Honor.

1 MR. PISZCZATOWSKI: Yes, Your Honor, both for
2 Mr. Magnant and Mr. Davis.

3 THE COURT: All right, so physical witnesses?

4 MR. SAMAAN: Yes, Your Honor. At this time we
5 would like to call Mr. Doug Miller.

6 MR. GRANO: Your Honor, if I could ask for a
7 proffer. I don't know why -- Mr. Miller had nothing to do
8 with this case, so I don't know why he would be relevant
9 to the preliminary exam.

10 MR. SAMAAN: Your Honor, he's head of the
11 Tobacco Tax License Unit, and I think he can shed some
12 light as to what is required by employees. I was hoping
13 to get that from Ms. Littlejohn, but she seemed to not
14 know a whole lot.

15 THE COURT: Well, your exhibits three through
16 whatever, which were stipulated to, indicated that nobody
17 has a license, in any event, to be a wholesaler, but the
18 employees would have an exemption because there was a
19 wholesaler's license. So I'm -- is there more to that?

20 MR. SAMAAN: The issue is, first of all, whether
21 in fact an employee, as in this case, is required to get a
22 transporter license to be able to bring -- deliver product
23 on behalf of his employer. Regardless of whether they're
24 wholesalers or otherwise, licensed or otherwise, that
25 particular employee, these defendants, are they required

1 to secure a transporter license to do a job on behalf of
2 their employer? Because I think that issue came up quite
3 a bit relative to --

4 THE COURT: Okay, call him. Come on, bring him
5 in. You got him right here? Is he here?

6 MR. GRANO: He's in the witness room, yeah.

7 THE COURT: Okay. Are you going to call
8 anybody, because I was going to you and then you.

9 MR. PISZCZATOWSKI: But now we're on the Defense
10 case, Judge, so we can --

11 THE COURT: Understood, but I was just kind of
12 keeping a system here.

13 MR. PISZCZATOWSKI: No, no, no, I don't think --
14 these are joint witnesses. We subpoenaed them together,
15 Your Honor.

16 THE COURT: Oh, all right.

17 MR. PISZCZATOWSKI: Defense subpoenaed them
18 together.

19 THE COURT: You're just disrupting my system.

20 MR. PISZCZATOWSKI: I'm going to let that one
21 witness go back, Your Honor, that we had the stipulation
22 on, if I could have one minute.

23 THE COURT: Come right over here, sir. And if
24 you could stand and raise your right hand. Do you swear
25 or affirm the testimony that you're about to give shall be

1 the truth, the whole truth, under penalty of perjury?

2 MR. MILLER: I do.

3 THE COURT: Please be seated.

4 DOUG MILLER,

5 At 4:27 p.m., called by Mr. Samaan and sworn by the Court;

6 testified as follows:

7 DIRECT EXAMINATION

8 BY MR. SAMAN:

9 Q Good afternoon, Mr. Miller.

10 A Good afternoon.

11 Q Could you please state your name and address for the
12 record, please?

13 A Doug Miller, 2758 Delmar, Okemos, Michigan.

14 Q And who are you employed with?

15 A Michigan Department of Treasury.

16 MR. PISZCZATOWSKI: Did Ms. Littlejohn leave
17 the --

18 THE COURT: She did.

19 MR. MILLER: Do I need this?

20 MR. SAMAN: Not now but you will.

21 THE COURT: No, I'll take it. It's my exhibit
22 now. If you guys need it, just let me know.

23 MR. SAMAN: Okay.

24 BY MR. SAMAN:

25 Q And how long have you been employed by the Department of

1 Treasury?

2 A Nineteen years.

3 Q And what is your current position with the department?

4 A I'm the Administrator of Special Taxes.

5 Q What exactly is that? What does that entail?

6 A Well, I oversee the administration of about, depending on
7 how you count them, 12 to 15 different taxes and fees,
8 including tobacco tax, motor fuels, severance, IFTA, and a
9 bunch of other smaller ones.

10 Q So you oversee, among the other duties, the tobacco tax;
11 is that correct?

12 A Yes, I do.

13 Q And what do you do as the Administrator of the tobacco
14 tax, what exactly is that?

15 A Well, as Administrator of Special Taxes, I'm involved in a
16 lot of different things; essentially, making sure
17 hopefully that the taxes are being administered pursuant
18 to statute.

19 Q Administered according to statute, and is that the statute
20 that is in --

21 A For purposes of tobacco, it's the TPTA. There's obviously
22 a bunch of other ones, but yes.

23 Q And the statute applies, as far as taxes are concerned, to
24 wholesalers, unclassified acquirers --

25 A Yes, among others.

1 Q -- secondary wholesalers?

2 A Yes.

3 Q Retailers, for example, are not obligated -- they're not
4 licensed under the Act, are they?

5 A That's correct.

6 Q Now, these wholesalers, you're familiar with the statute,
7 are you not?

8 A I'm pretty familiar with it, yes.

9 Q You've reviewed it once or twice over the years?

10 A Yes.

11 Q Were you the administrator of this unit back in -- back in
12 2015, December?

13 A Yes.

14 Q Are you familiar with the process that a wholesaler or
15 unclassified acquirer has to go through to secure a
16 license?

17 A Yes, generally. I mean, obviously, people down the line
18 from me are involved more in the day-to-day of the
19 licensing season in doing that, but I have, I think, a
20 pretty good understanding at a higher level, at least, of
21 what goes on, yes.

22 MR. SAMAN: Could we, Your Honor, provide him
23 with this exhibit?

24 THE COURT: This is Defense Exhibit A.

25 THE WITNESS: Okay.

1 THE COURT: I'm gonna ask you, there's a little
2 box here, the microphone that's on --

3 THE WITNESS: Oh, I'm sorry.

4 THE COURT: If we can keep it --

5 THE WITNES: I need to not cover that, okay.

6 THE COURT: There you go, exactly.

7 THE WITNESS: Okay, thank you.

8 BY MR. SAMAN:

9 Q Now, are you familiar with this exhibit, with this tobacco
10 license application?

11 A Yeah, it looks a little different for some reason, but
12 maybe it's just the copy quality, but yeah, this looks
13 familiar, yes.

14 Q Okay. And this could be -- you could apply for a license
15 online?

16 A You know, I think it's a paper system right now, but you
17 can file your taxes online, that's all electronic, but I
18 thought that maybe we do this on paper.

19 Q Okay. Can you look at the instructions on the first page?

20 A Yep.

21 Q And does that allow this to be -- people to apply online,
22 according to that?

23 A Let me see. Is there a particular part or just keep
24 reading?

25 Q Well, it says, Form 4154, Tobacco Products Tax Electronic

1 Application.

2 A Uh-huh.

3 Q So does that mean that you could apply for it online?

4 A Well, it certainly means that it's found online. There's
5 an electronic version online you can download, but in
6 terms of the -- I do not believe, I'm pretty sure that at
7 this point they would not be able to actually, um, file it
8 online. I don't know for sure. They might -- again, I'm
9 not very much involved in the day-to-day, but I don't know
10 if they can actually fill it in online, um, and then send
11 it in. I'm almost sure they have to send in a filled out
12 paper copy. So whether they fill it in online or not,
13 they're not gonna be able to submit that to us
14 electronically.

15 Q Okay. But they can send it by way of mail; is that
16 correct?

17 A Yes.

18 Q They don't have to present themselves personally?

19 A That's true.

20 Q Now, this application, was it prepared by the Department
21 of Treasury?

22 A Yes. It is, yes, put together by the Department of
23 Treasury.

24 Q And so when somebody reviews this application and wants to
25 fill out the application, whether it's for a wholesaler

1 licensed, unclassified acquirer license, or a transporter
2 license, they can rely on the information that's set forth
3 in this form, is that correct?

4 A Yes.

5 Q Let me ask you a question: Would an employee of a
6 wholesaler that's delivering product to one of their
7 customers, would that employee need a transporter license?

8 A Let me see, would the employee of the wholesaler need it?
9 I think the person who is transporting the tobacco would
10 need that.

11 Q Okay.

12 A And I assume the employee would have to work for someone
13 who is a transporter.

14 Q Okay, well, my question is this: Let's assume there's ABC
15 Warehouse, and they sell tobacco. They're a wholesaler.

16 A Uh-huh.

17 Q And they're delivering tobacco to another wholesaler in
18 the state of Michigan.

19 A Uh-huh.

20 Q And they don't use a commercial carrier. They have one of
21 their employees --

22 A Uh-huh.

23 Q -- whether it's 10 cases, 50 cases, load them up on a
24 truck and deliver them. Would that employee have to have
25 a transporter license?

1 A Well, again, you're talking about the actual person
2 driving the truck?

3 Q We're talking about an employee that's delivering the
4 product.

5 A I cannot answer the question about the employee. I can
6 tell you that they would -- they would -- it would depend
7 on the circumstances. If you're saying the wholesaler was
8 a licensed wholesaler in Michigan transporting tobacco
9 within Michigan to another, then they would not need to
10 have a transporter license if the company moving the
11 tobacco was theirs and they were licensed, if I'm
12 understanding your question.

13 Q When you say if the company is licensed, are you talking
14 about them having a tobacco sales license or a transporter
15 license?

16 A If they're only going to be moving it in Michigan, they
17 would need to have, I believe a wholesaler license, an
18 unclassified acquirer license, or even a secondary
19 wholesaler license in order to move the tobacco in
20 Michigan. If they're going to bring it in from out of
21 state, I think the statute treats that differently.

22 Q But they would not need a transporter license, would they?

23 A If the company was licensed and they were located in
24 Michigan, they had a -- if they had a wholesaler,
25 unclassified acquirer, or a secondary wholesaler license

1 in Michigan and they were moving the tobacco in the state
2 of Michigan, they would be able to do that with that
3 license. They would not need a transporter license in
4 addition to just move it from one place in Michigan to
5 another, if they had -- if they were properly licensed.

6 Q Okay. So if they don't need it, then the employee, in
7 fact, doesn't need it, correct?

8 THE COURT: I don't understand that question.

9 BY MR. SAMAN:

10 Q The employee, the wholesaler ABC says Mr. Magnant is an
11 employer there, I want you to deliver this product to this
12 wholesaler about three or four miles away from here, would
13 that employee require a license?

14 A Well, I guess that would be -- there'd be a legal question
15 there. My opinion is that if they're transporting it and
16 they're not doing it for a licensee, they would need a
17 license, because someone has to be licensed properly under
18 the TPTA to move the tobacco.

19 THE COURT: Are you being specific to the facts
20 of this case, or are you saying in general -- as in a
21 general?

22 THE WITNESS: In general as I understand the
23 statute, because I'm, frankly, not that familiar with the
24 facts of this case.

25 THE COURT: Oh, okay. Thank you.

1 BY MR. SAMAAN:

2 Q Okay. According to that application that you have, who is
3 authorized to request a transporter license? And I'll
4 refer you to, I think, page five.

5 A Yep.

6 Q The bottom.

7 A You just want me to --

8 Q Tell me who's authorized to apply for a transporter
9 license?

10 A Here it says, you want me to read this, it says, "A
11 business that imports or transports into this state, or
12 transports in this state, cigarettes or other tobacco
13 products obtained from a source outside this state, or
14 obtained from a person that is not a Michigan tobacco tax
15 licensee." That's the first sentence.

16 Q Okay. Well, let's stop there for a second.

17 A Okay.

18 Q A business.

19 A Yes.

20 Q Is there anything in this definition of who can apply that
21 pertains to an employee, a driver of that business?

22 A Well, it says a business.

23 Q Okay. So it has to be a business that's either importing
24 or taking out, but not necessarily an employee of that
25 business, correct?

1 A Well, again --

2 MR. GRANO: Your Honor, I'd object because this
3 calls for a conclusion of law. Furthermore, the Court of
4 Appeals in November has -- this issue was raised in the
5 Court of Appeals. That exact issue of whether the
6 business part of the license is correct legally, and the
7 Court of Appeals found the Treasury's statement is
8 incorrect as it relates to the Tobacco Products Tax Act.
9 So I understand what the application says, but I don't
10 think Mr. Miller is in a position to know what the actual
11 law that applies to this case would be. So, ultimately, I
12 think we're kind of wasting time that's not really
13 relevant to what the application says.

14 THE COURT: Well, I'm gonna let him ask the
15 questions, but you're correct in that overall there is
16 going to be a legal definition of what that means. You
17 can tell me what the application says and how that
18 pertains to what information Treasury is putting out to
19 people as that application; but, again, there may have
20 been differences with regard to what that definition means
21 at a legal level.

22 So as to what Treasury puts out, go ahead and
23 ask him, but it's not going to be sort of the end of the
24 program there.

25 MR. SAMAN: Okay.

1 THE COURT: I mean the document speaks for
2 itself.

3 BY MR. SAMAN:

4 Q If Treasury puts out this application for people, it's
5 expected that the people will rely on the information in
6 this particular application; is that correct?

7 A I think they can rely on it. Not as a statement of law,
8 but yes.

9 Q We're not talking about a statement of law. They can rely
10 on the fact that, hey, I have to be a business in order to
11 apply for that transporter license; is that correct?
12 That's what it says, I mean, plain letter.

13 A Well, yeah, I guess, a business can be an individual, so
14 I'm not sure how to answer that exactly. I mean --

15 MR. SAMAN: I have no further questions.

16 CROSS-EXAMINATION

17 BY MR. PISZCZATOWSKI:

18 Q So, Mr. Miller, hi.

19 A Hi.

20 Q We've never met, right?

21 A No.

22 Q Okay. I'm going to ask you some questions, and if you
23 don't understand something I'm gonna ask, please tell me
24 that okay, because sometimes I get a little convoluted.

25 A Okay.

- 1 Q As the Judge will tell you.
- 2 A Okay.
- 3 Q Okay. So, let me ask this first: You've been in the
4 Department of Treasury for 18 years, right?
- 5 A Uh-huh.
- 6 Q You're the administrator of a number of tax laws,
7 statutes, including the Tobacco Products Tax Act, we got
8 that, right?
- 9 A Uh-huh.
- 10 Q And you've been doing that for how many years?
- 11 A Been the administrator for about nine years.
- 12 Q Okay. And as the administrator you get to put out rules
13 and regulations to help people understand the laws,
14 correct?
- 15 A Rules and regulations, yeah, among other things.
- 16 Q No, of course, among other things. But to help the
17 public, because you want the public to comply, et cetera,
18 correct? Right?
- 19 A Yes.
- 20 Q And you have the authority to ask people to promulgate
21 rules and regulations if you think some things aren't
22 clear, unclear or inaccurate, correct?
- 23 A Yes.
- 24 Q Okay. And you're -- I think I heard you are even a
25 lawyer, right?

1 A Yes, that's true.

2 Q So, you know, you're a University of Michigan graduate?

3 A Uh-huh.

4 Q Correct?

5 A Uh-huh.

6 Q Very nice. You know, I didn't get to the University of
7 Michigan; they wouldn't let me in, but anyway, okay. So
8 the short version is this, you got a form here, 336,
9 right?

10 A Yes.

11 Q That's Defense Exhibit A.

12 A Okay.

13 Q And it's -- I can't get a transporter license if I called
14 Mr. Miller and said, hey, hook me up, I'd like to get a
15 transporter license, right? There's only one way I can do
16 it, fair enough?

17 A That there's only one way to acquire --

18 Q This form?

19 A Yes.

20 Q This form?

21 A Yes.

22 Q So I gotta look at this form, if I want one?

23 A Uh-huh.

24 Q And this is the only thing that the Department of Treasury
25 puts out, and I gotta fill in this form if it applies to

1 me, correct?

2 A Yes.

3 Q Fair. Okay. Now, would you agree with me that an
4 individual is an individual, a business is a business?
5 There's a difference as a lawyer? Well, let me say this,
6 let me take that back. An individual can own a business,
7 fair enough?

8 A Yes. Yes.

9 Q But an individual necessarily isn't a business; he's gotta
10 own a business, correct?

11 A I don't know the answer to that.

12 Q Okay. Fair enough. Well, if I'm an employee, I don't own
13 the business, correct?

14 A You could.

15 Q Well, I could. I guess I could. An employee could be the
16 owner of a business, okay.

17 A Uh-huh.

18 Q But let's assume that the employee doesn't own the
19 business.

20 A Okay.

21 Q Because those are the facts.

22 A Okay.

23 Q So an employee, if he is working for a business, in a
24 sense, would not be someone that's -- he's not the
25 business that's importing or transporting, because the

1 owner or the business itself is the one that's
2 transporting or importing into the state, fair enough?

3 A I think that's probably true.

4 Q And that business would be the owner of the tobacco
5 products, whatever they are, cigarettes, loose tobacco,
6 that they're importing into the state or transporting
7 within the state, fair enough?

8 A That could be, yes. It wouldn't be clear to me, this
9 hypothetically, who would own it, but yes.

10 Q But let's just assume the business does own it.

11 A Okay.

12 Q And so it seems fair, and you want the tax laws to be
13 fair, right?

14 A Of course.

15 Q I mean, that's part of your job as an administrator?

16 A Yep. Yes.

17 Q You want to treat people fairly, correct?

18 A Absolutely.

19 Q And so the person that's gonna make the money on the
20 tobacco products and the person that's got the
21 responsibility for the tobacco products would be the owner
22 of the tobacco products, right?

23 A I'm not sure I would necessarily agree. I mean, it could
24 be the person who has possession. Again, without a very
25 specific scenario, I'm not sure I can -- I don't know how

- 1 to answer that, because --
- 2 Q Okay. Okay. Let me give you a specific hypothetical.
- 3 A Okay. All right.
- 4 Q Because you're an expert in the area.
- 5 A Okay.
- 6 Q So you know the KBIC, right? We've heard the Keweenaw Bay
7 Indian Community, you've heard of them?
- 8 A Yes.
- 9 Q You've heard of them because they're one of the few Indian
10 tribes that are not willing to agree to pay tax on their
11 tobacco products that they purchase and sell, right?
- 12 A Well, I don't -- I don't necessarily -- again, I'm not
13 much involved in the enforcement, you know, so I have
14 heard of the Tribe, and yes.
- 15 Q Okay. So, let's assume the Tribe owns a bunch of tobacco.
- 16 A Uh-huh.
- 17 Q Let's assume they paid for a bunch of tobacco.
- 18 A Uh-huh.
- 19 Q Let's further assume that the State is assessing the Tribe
20 for that tobacco as unlicensed; fair enough?
- 21 A Okay.
- 22 Q I'm giving you --
- 23 A Because it's in the state and they -- right, okay.
- 24 Q Okay, which they can do.
- 25 A Okay, yep, uh-huh.

1 Q So the Tribe now is the owner of the tobacco.
2 A Okay.
3 Q Fair enough?
4 A Okay.
5 Q Okay. Now, they're gonna make the money on the sale or
6 the purchase, fair enough?
7 A So you're saying they're the owner of the tobacco and now
8 they've paid tax because they've been assessed?
9 Q They haven't paid any tax.
10 A Oh, they haven't paid any? Okay. Okay.
11 Q But the State says you owe us tax, right?
12 A Uh-huh.
13 Q So now the employees that work for the Tribe, right?
14 A Uh-huh.
15 Q There's no showing that they own any business, correct?
16 A Uh-huh.
17 Q Just assume that fact.
18 A Okay, yep.
19 Q Now, so we have employees that are gonna move tobacco from
20 point A to point B, right?
21 A Yes.
22 Q Okay. Now, they're not a business. They're employees.
23 A Okay.
24 Q Just assume that. All right. If the Tribe were licensed
25 they would clearly not need a transporter's license,

1 correct?

2 A If they were -- yeah, licensed as a wholesaler,
3 unclassified -- well, again, it gets a little -- as long
4 as we're talking about tobacco that's in the state, moving
5 in the state; it's a little different if you're bringing
6 it in from outside. The law applies differently.

7 Q It changes?

8 A Right. Okay. So we're talking about tobacco in the state
9 moving, yes, if the Tribe was --

10 Q Licensed.

11 A -- licensed properly, that's true.

12 Q Right. That's fair. So would it be fair to say that the
13 appropriate person to be charged would be the Tribe?

14 A Charged with a crime?

15 Q Yeah, with trans -- it's their tobacco; they're telling
16 people to move it?

17 A I am not sure. I don't think I'm qualified to answer
18 whether they're the one who should be charged, but if --

19 Q They're the business in that case, correct? They're
20 selling the tobacco product.

21 A I'm not sure.

22 Q Okay.

23 A I'm not sure.

24 Q But we want the laws to be fair?

25 THE COURT: The Department of Treasury does not

1 commence criminal activity. Someone else does.

2 MR. PISZCZATOWSKI: Sure. I know that, Judge.
3 But he's the expert. This guy's the guy that promulgates
4 the rules.

5 THE COURT: But he's not the one who brings
6 charges, is what I'm saying.

7 MR. PISZCZATOWSKI: I agree with that.

8 MR. GRANO: Just for the record, Your Honor,
9 he's not been declared an expert in the case.

10 THE COURT: Yeah, that's also true.

11 MR. PISZCZATOWSKI: We'll stipulate that he is.

12 THE COURT: Well, that would make -- two people
13 need to stipulate to it. I haven't heard that.

14 MR. PISZCZATOWSKI: Well, I'm given that one.

15 MR. PISZCZATOWSKI:

16 Q Does the State Department of Treasury -- does the
17 Department of Treasury have a position on if I have two
18 people in a vehicle transporting tobacco whether they both
19 need a transporter's license?

20 A I don't think we have -- I'm not aware of a policy that
21 would say whether one or two would have to have a
22 transporter's license. I think if the license was
23 required, someone would have to have it, yes.

24 Q And the key, as I understand it, which was enlightening,
25 was that as long as someone's got a license, then -- as

1 long as the transporter -- I'm sorry. As long as the
2 wholesaler or the unclassified acquirer or the secondary
3 wholesaler, whatever, as long as they have a license,
4 their employees can move tobacco wherever they want within
5 the state?

6 A That is my understanding.

7 Q Okay. And I'm just curious, would you have a position on
8 whether if there were two people in the truck that are
9 transporting, who should have the license? The
10 transporter's license?

11 A Again, you know, whether it's someone in the truck or
12 whether it's the company that owns it, it needs to be
13 someone.

14 Q Gotcha. Last couple of questions. Does the -- does the
15 State of Michigan Department of Treasury send out any
16 notifications, you know like they do with these labor laws
17 that the feds do all the time, they post them, do you send
18 out anything like that so the employees know if they're
19 transporting they need to have a license or not have a
20 license?

21 A Employees of, for example, our licensees?

22 Q Yes.

23 A I don't believe we've sent any notices out to employees of
24 our licensees saying that if you're transporting and your
25 employer doesn't have a license, you would need to have

1 one, no.

2 Q And I'm sorry, maybe I asked this, but maybe I didn't.

3 A Okay.

4 Q Do you send any directly to your licensees with respect to
5 how to handle that?

6 A Well, we communicate with our licensees about a number of
7 things, but not that particular issue.

8 Q Gotcha. Thank you.

9 MR. PISZCZATOWSKI: Nothing further, Your Honor.

10 THE COURT: Any cross?

11 MR. GRANO: Just one question.

12 CROSS-EXAMINATION

13 BY MR. GRANO:

14 Q The Department of Treasury does not provide legal advice
15 to licensees; is that correct?

16 A No, we don't provide legal advice. We try to provide them
17 with the information they need in order to get a license
18 and comply with our requirements, but no, we don't provide
19 legal advice. Our policy -- our policy might if asked
20 specifically, but we don't.

21 MR. GRANO: No further questions, Your Honor.

22 THE COURT: As to that question?

23 MR. SAMAAAN: Just to that question.

24 REDIRECT EXAMINATION

25 BY MR. SAMAAAN:

1 Q When you say policy, what do you mean by policy?

2 A Well, if there are -- I mean, my division administers the
3 law. There is a policy area in Treasury, and if there --
4 if someone has a legal question and it comes to us, we
5 will say, we don't have the answer, you can send a letter
6 to policy and ask them for a specific, like a letter
7 ruling, something like that.

8 Q But without giving legal advice when somebody asks a
9 question, the statute itself, do you view the statute as
10 clear as to the different areas that it applies to?

11 A I think some parts are very clear and there are others
12 probably that might, you know, like all legislation be a
13 little bit more unclear.

14 Q And with respect to those other parts that may not be as
15 clear, has the Department of Treasury, to your knowledge -
16 -

17 THE COURT: Does this have to do with legal
18 opinion, because that's the question?

19 MR. SAMAN: No, it has nothing to do with legal
20 opinion.

21 THE COURT: Then it's beyond the scope.

22 MR. SAMAN: Because he mentioned about policy,
23 and there's a policy area that would do that, and that's
24 my question to him. What has policy, the people involved
25 in policy --

1 THE COURT: Okay. One more question, and we're
2 gonna be done, because this is getting way too far afield
3 from what the cross was. Go ahead. I mean, you're used
4 to being in a different spot.

5 BY MR. SAMAAN:

6 Q To your knowledge, is there any rules or clarifications
7 been promulgated by the policy section that would clarify
8 those sections that you say are not clear?

9 A Um, possibly some of them, but certainly not all of them.

10 MR. SAMAAN: I'm done, Judge. Thank you.

11 THE COURT: Okay.

12 MR. PISZCZATOWSKI: None.

13 THE COURT: None. Okay. You can stand down,
14 sir. Thank you. I'll take that exhibit.

15 THE WITNESS: Thank you.

16 (At 4:54 p.m., witness excused)

17 THE COURT: Other witnesses?

18 MR. PISZCZATOWSKI: No, nothing else, Your
19 Honor.

20 THE COURT: Mr. Samaan, other witnesses?

21 MR. SAMAAN: We're done, Judge. Thank you.

22 MR. GRANO: Your Honor, the People would make a
23 motion to bindover. Do you want me to make argument? I
24 assume you would.

25 THE COURT: I would, because this is so much

1 more interesting than I ever thought it would be.

2 MR. PISZCZATOWSKI: Your Honor, can we ask the
3 Court, and I don't know that -- I'm sorry. Can we ask the
4 Court to allow us to digest all this and to give closing
5 arguments rather than off the cuff arguments and to come
6 back? And we'd waive the presence of our clients. They
7 don't really have to be there. If the Court binds over,
8 they know where they'll be and we're gonna take them
9 there.

10 THE COURT: There was a lot of material that was
11 brought out today, I will agree, and I don't have an issue
12 with that, because there may be some specific issues that
13 I may need to have briefed, as well. So let's give some
14 opportunity to digest what we've done. I don't want to go
15 real long, because we've already gone sort of long. But
16 we can give a date certain to have you back with that
17 argument, because I would like the opportunity to have a
18 colloquy of oral question -- Q and A from the Court, as
19 well.

20 MR. PISZCZATOWSKI: I'd love that, Your Honor.

21 THE COURT: Okay. If you want to check your
22 schedules and we can see what an appropriate date would be
23 for argument.

24 (At 4:56 p.m., off the record)

25 (At 4:59 p.m., back on the record)

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THE COURT: All right. So we've selected a new date of April 6th at 1:30, and so that's for the record. And you wanted to talk about there was no issue between any counsel of defendants not appearing for the argument portion of this case, and should there be bindover they are waiving their circuit court arraignment?

MR. PISZCZATOWSKI: Yes, they are, Your Honor. I've spoken to Mr. Davis. He's comfortable with both of those things, Your Honor.

THE COURT: All right.

MR. SAMAN: And Mr. Magnant, as well.

THE COURT: All right, very good. I will so note, and I will look forward to having additional argument on April 6th.

MR. PISZCZATOWSKI: Thank you, Your Honor.

THE COURT: Thank you, all.

(At 5:02 p.m., off the record)

COUNTY OF INGHAM)
)
STATE OF MICHIGAN)

I certify that this transcript, consisting of 142 pages, is a complete, true, and correct record of the proceedings and testimony taken in this case on March 16, 2017.

March 27, 2017

Tami J. Marsh, CER 5271
54-A District Court
124 West Michigan Avenue
6th Floor
Lansing, Michigan 48933
(517) 483-4421

APPENDIX D

STATE OF MICHIGAN

54-A JUDICIAL DISTRICT COURT (CITY OF LANSING)

PEOPLE OF THE STATE OF MICHIGAN,

v

File No. 16-05237

JOHN F. DAVIS,

Defendant,

_____ /

v

File No. 16-05238

GERALD MAGNANT,

Defendant.

_____ /

PRELIMINARY EXAMINATION

(Session II of (2) - Argument on Bindover)

BEFORE THE HONORABLE LOUISE ALDERSON, DISTRICT JUDGE

Lansing, Michigan - Thursday, April 6, 2017

Courtroom No. 2

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Lansing, Michigan

Thursday, April 6, 2017

At 1:50 p.m.

THE COURT: We're on the record with People versus John Davis and Gerald Magnant, 16-05237 and 38; this is the date and time scheduled for argument on bindover. Counsel, appearances, please?

MR. GRANO: Good afternoon, Your Honor, Assistant Attorney General Dan Grano for the People.

MR. PISZCZATOWSKI: Good afternoon, Wally Piszczatowski on behalf of Mr. Davis, Your Honor. I apologize for being late.

MR. SAMAAN: Your Honor, for the record, Salem Samaan appearing on behalf of Mr. Magnant.

THE COURT: Thank you. And for the moving of courtrooms, apparently we're getting new equipment so this is the one that works best.

I have received both arguments with regard to suppressing evidence, and so I'll hear argument and if I can make a ruling today, I will. If I need more time, I'll take it. Argument, Mr. Grano.

MR. GRANO: Sure. Would you like me to address the motion first or just --

THE COURT: Including it as part and parcel of your bindover or --

1 MR. PISZCZATOWSKI: I guess we could, Your
2 Honor; that probably makes the most sense.

3 THE COURT: They're all intertwined. You'd be
4 arguing search and seizure matters and then bindover?

5 MR. PISZCZATOWSKI: Yeah, I think so.

6 MR. GRANO: Your Honor, As was stated in my
7 reply brief to their -- the defendants' bench brief, the
8 elements in this case are that the defendants knowingly
9 transported cigarettes, the defendants did not have a
10 license or permit to transport those cigarettes issued by
11 the Michigan Department of Treasury, and that they were
12 transporting over 3,000 cigarettes. This comes from the
13 *People v Shouman* case, which is an unpublished court of
14 appeals case that came out, I believe, in December of last
15 year. The *Shouman* case is, I think, most illustrative to
16 this case, a case I handled. An alleged employee of a
17 wholesaler, who actually had a license, went down to
18 Toledo in that case, picked up some tobacco and drove it
19 back up to the wholesaler and was stopped on I75; he
20 didn't have any licenses on his person, and the court of
21 appeals held that he could be criminally charged. In this
22 matter --

23 THE COURT: I thought there was some -- drivers
24 of a wholesaler could not be -- is that because they went
25 across the state line or something? When we had Mr.

1 Miller here and the --

2 MR. GRANO: Yeah, I don't necessarily --

3 THE COURT: I'm thinking back several weeks, so.

4 MR. GRANO: You're right. The treasury
5 employees, Your Honor, did indicate that they don't think
6 the person would need a license. I'm not so sure that the
7 TPTA is that clear, and in that case we argued that the
8 person needed the license and the court of appeals said
9 that they needed the license.

10 THE COURT: Okay. Just trying to keep my --

11 MR. GRANO: And I think that's how the statute
12 is set up. Regardless --

13 THE COURT: This is a different situation,
14 though.

15 MR. GRANO: It's a different situation in that
16 nobody here has a license. So this isn't an employee
17 working for a licensed wholesaler. Nobody's licensed. I
18 think that makes this case easier. In this matter, um,
19 Trooper Croley and Trooper Ryan, sergeants in the 8th
20 District Tobacco Tax Team, were up in Houghton, Michigan.
21 The testimony was that they were driving back to Marquette
22 where they're stationed. On the way they had -- they were
23 on U.S. 41 -- they had to pass by The Pines Convenience
24 store, which was a Keweenaw Bay Indian Community, KBIC,
25 property, store open to the public off of U.S. 41. As

1 they were traversing they saw two pickup trucks with
2 trailers behind the store. They previously seen those
3 pickup trucks at the Marquette Casino. They were trying
4 to figure out how KBIC was moving the tobacco from Baraga
5 to Marquette. They indicated that they pulled forward.
6 They didn't stop at The Pines. They pulled forward and
7 waited for the trucks to leave. They followed the trucks
8 to a pole barn on M-38. When the trucks pulled out of the
9 -- two trucks went into the pole barn, two gentlemen get
10 out, one from each truck. Presumably both get into one
11 truck. They leave the pole barn in one truck and trailer,
12 head back to U.S. 41 and then turn, head towards
13 Marquette. At that point they asked for dispatch to send
14 a marked unit to make a stop if there's a legal basis to
15 do so. Trooper Lajimodiere, I think that's how you
16 pronounce his name, indicates he responded to that
17 dispatch. He saw the truck and trailer pass him while he
18 was going the opposite direction on U.S. 41. He turned
19 around. The video of -- his in-car video was entered into
20 evidence, which is the best evidence of what happened. He
21 indicated he had a working radar that was calibrated. He
22 used it on the truck. The truck was going 62 in a 55. He
23 then did a stop. He approached the truck, made contact
24 with the driver, John Davis. The passenger was Gerald
25 Magnant. Mr. Magnant didn't have identification on him

1 but he verbally identified himself. They struck up a
2 conversation. Mr. Davis -- he asked Mr. Davis if he could
3 see what he was hauling after he was told supplies and
4 chips. The trailer -- Mr. Davis got out, unlocked the
5 trailer. While he was doing that the Trooper advised him,
6 you know, I'm not forcing you to do this. It was
7 voluntary consent. When he opened it he saw 56 cases of
8 Seneca cigarettes. At that point he radioed in for the
9 tobacco team to catch up, because he was not an expert in
10 tobacco. When the tobacco team got there Sergeant Ryan
11 indicated that he took photos and then he went into the
12 trailer, opened one of the boxes to check if indeed there
13 were cigarettes in the box and if the cigarettes had a
14 stamp on it. He also indicated he knew from training that
15 that brand of cigarette was illegal in the state of
16 Michigan.

17 We have shown by probable cause that I believe
18 the quantity of tobacco shows that they were knowingly
19 transporting cigarettes. Mr. Magnant had indicated to the
20 troopers, when he was being interviewed, that he loaded
21 the truck. I think he certainly knew what was in the
22 truck. I think the -- like in drugs, the amount of
23 tobacco is something that they didn't just happen to be
24 moving accidentally. I think they would have known that
25 they had \$67,000 worth of cigarettes, or 56 cases, each

1 containing 12,000 cigarettes, in the back of that trailer.
2 The certified records from treasury indicated that nobody
3 had a license, nobody had a permit to be moving tobacco
4 products in the state of Michigan either as a wholesaler,
5 unclassified acquirer, or as a transporter in this case,
6 and then, in fact, that they were moving more than 3,000
7 cigarettes.

8 As it relates to suppressing the evidence, first
9 and foremost the defendant needs to show that he has
10 standing to object. My belief that on cross they brought
11 out that the truck and trailer were the property of KBIC
12 as such, and then I think they also, the defense witness
13 that we stipulated to, indicated they were employees of
14 KBIC. I do not believe that they have standing to be
15 challenging the search of this matter.

16 If the Court were to find that they had
17 standing, I would note that there are at least four search
18 warrant exceptions that apply. The first is consent. I
19 think we went through that. Trooper Lajimodiere indicated
20 that he asked if he could see in the back. He didn't
21 force anybody. Mr. Davis got out, he unlocked it. While
22 he was doing that, he said I'm not forcing you to do this,
23 uh, you don't have to do this. Mr. Davis went forward and
24 did it. I think that's consent.

25 Furthermore, once the trailer's open and the

1 next trooper gets there, he sees 56 cases of Seneca brand
2 cigarettes. Under the Tobacco Products Tax Act, the
3 cigarettes would need a shipping label, and it's illegal
4 to be in possession of Seneca brand cigarettes at that
5 time in the state of Michigan. So he could have seen at
6 that point from where he legally was that a felony was
7 occurring in front of him. He had probable cause of a
8 felony appearing in front of him. He had the right with
9 plain view to investigate further to confirm that.

10 The automobile exception also applies to this
11 case, which the case as note comes out of exigency
12 exception to the search warrant rule for destruction of
13 evidence. Not only was there the mere possibility as they
14 talked about it in the automobile exception that evidence
15 can move, but in this case tobacco actually was being
16 transported down the highway. So it seemed to me like, I
17 don't know if that exception would apply the greatest.

18 Lastly, the Tobacco Products Tax Act provides
19 for administrative warrantless searches which were upheld
20 in *People v. Beydoun*. Had the defendants and KBIC been
21 doing everything legally, the troopers at any time during
22 regular business hours could go into their business or
23 storage sheds and search the tobacco and their records
24 without a warrant. The TPTA and MCL 205.429(2) says that
25 a police officer or treasury inspector upon reasonable

1 cause can search any truck believed to be moving tobacco
2 illegally. In this case when the tobacco team arrives and
3 they see 56 cases of tobacco being transported by
4 somebody, illegal tobacco being transported, I think they
5 have reasonable cause to continue their search and
6 investigate further. And I think it would be an absurd
7 result to say that the MSP would have to get a search
8 warrant for people breaking the law, but for people
9 following the law you don't need to get a search warrant,
10 um, in effect, giving criminals more right than law
11 abiding citizens. I don't think that's what the
12 legislature intended where they passed the Tobacco Product
13 Tax Act.

14 Therefore, I think all the evidence is legally
15 admissible and at a probable cause standard, at least,
16 there's evidence for each element of the crime. Clearly,
17 Mr. Magnant wasn't driving, but I think under an aiding
18 and abetting theory of loading the truck and knowing what
19 was being transported in the back as he's riding in the
20 truck to Marquette, that he's certainly also liable for
21 the offense at hand. Thank you, Your Honor.

22 THE COURT: Mr. Piszczatowski.

23 MR. PISZCZATOWSKI: Thank you, Your Honor.

24 Judge, the only good news about me being sick is I'm gonna
25 be real slow, probably because my brain is not -- anyway.

1 Okay.

2 THE COURT: (Inaudible)

3 MR. PISZCZATOWSKI: Your Honor, it's just
4 helpful, I think, and it's one thing for the Court to
5 consider during the course of our argument that when you
6 take and go back to the scene, it's interesting, we've got
7 a bunch of backfill now. And, you know, I guess the
8 government can do that, but I just wanna have -- just
9 point out for the Court one thing because it has
10 application. No one even has a clue about bringing some,
11 at the time those cigarettes were found, haven't had a
12 clue about bringing some violation of a transporter's
13 license under the statute. Nobody even -- if that were
14 the case, someone would have asked, hey, by the way, guys,
15 you got a transporter's license for this tobacco? No one
16 asked that. Not one question. Why? Because they didn't
17 have a clue that they even needed a transporter's license.
18 The officers, both of them, admitted that fact. And if
19 you look at the treasury folks, they had some question
20 about who had to have a transporter's license as well. So
21 no one even has a concept to ask for a transporter's
22 license. So, just kind of as an overarching thought, if
23 the officer doesn't know that that's a requirement or
24 that's a violation, I would submit to the Court that these
25 two guys, there's been nothing on this record to show that

1 these two guys had any knowledge that that was a
2 necessity. Now, that may or may not be what the Court
3 finds necessary to bindover, but let's just keep in mind
4 that fact because I think it's an important one. And it's
5 also important, it's the Tribe that's assessed the tax in
6 this case, and it's also the Tribe that's assessed the
7 forfeiture, dealing with the forfeiture of the vehicle,
8 the cigarettes, and the trailer. So eleven months after
9 this incident occurs, we come up with a crime, and the
10 crime is some violation of 428(3), a failure to have a
11 transporter's license. And I'm gonna cite this language a
12 fair amount, but it's important for the Court to recall a
13 person who possesses, acquires, transports, or offers for
14 sale contrary to this act -- contrary to this act -- 3,000
15 cigarettes. And it's the contrary to this act that will
16 be an important decision for this Court to make in terms
17 of what the actual intent has to be, depending on what the
18 Court ultimately finds. But what we have here is a
19 statute contrary to this act, so now we're gonna say that
20 people are gonna be required to know all this act before
21 they can actually violate a law or not violate it. The
22 government's position is --

23 THE COURT: The motor vehicle code. It's a
24 bigger book than that one.

25 MR. PISZCZATOWSKI: Okay, but those are civil

1 infractions, to some extent, except for when you kill
2 someone or you do anything of that nature. But the motor
3 vehicle code, the difference is, it doesn't say -- well,
4 maybe it does because I'm not a motor vehicle expert -- I
5 know you are, but does it say contrary to the act? And
6 that's an element of the crime. I'm gonna submit to the
7 Court that that is an element of the crime, and I think
8 that's why that's important.

9 Now, so we know that the treasury folks that
10 testified who deal with the statute every day or this
11 Tobacco Tax Act every day, we know that the people that
12 are enforcing it, the Tobacco Tax Team, they didn't have a
13 clue, they don't ask, they don't do anything. And Mr.
14 Grano did a very, very good job, because he's a good
15 lawyer. He says, hey, you know, did anybody give you a
16 license? No. Okay. I got that. But did anybody ask for
17 a license? Isn't that the question here, if you really
18 think there's some violation at that point? And I'm gonna
19 disagree with Mr. Grano, and I guess the Court will make
20 the determination if it finds it's necessary, that the
21 officer testified that Seneca was a non-participating
22 manu -- brand. A non-participating brand. The possession
23 of a non-participating manufacturer's brand of cigarettes
24 in the state of Michigan, at least as far as I know, is
25 not a crime. It's a crime when it comes to rest in the

1 state of Michigan, as we cited in our brief. There is
2 nothing under the Tobacco Products Tax Act that makes it
3 unlawful to possess tobacco products from a non-
4 participating manufacturer, or even untaxed tobacco
5 products in Michigan, to transport them through Michigan.
6 The question is does it come to rest in the state of
7 Michigan? And that's an important fact in this case
8 because it does two things. That's gonna be the attempt
9 of buttress in part, the propriety of the search here.
10 But it also, and that's really the main thing I guess,
11 because -- and to say that it's illegal, I don't know.
12 Maybe it is and maybe it isn't. I'm not the judge and I
13 didn't write the law. But the tobacco, was it going to
14 the state of Michigan, did it come to rest in the state of
15 Michigan? That's the question. And I don't -- and it
16 didn't under these facts.

17 We all know this was a pretext stop. There's no
18 question about that. Trooper Lajimodiere gave us that and
19 so did Ryan. They said, look it, if you can stop it
20 legally, we want to stop it. Okay. But it's real clear
21 that the trooper never intended to write a ticket. It's,
22 you know, come on, he stopped it because he wanted to get
23 in the back of the vehicle. Why, because "the trailer may
24 possibly contain Seneca cigarettes." That's not even
25 close to probable cause. It doesn't rise to the level of

1 an articulable suspicion under *Terry* even. And all it is,
2 as Detective Sergeant Ryan said, it's a hunch, we're
3 playing a hunch. We're trying to get, basically, into the
4 back of that trailer. No PC, no articulable suspicion.

5 Now, the search goes on. There's a consent
6 issue. There's a lot of stuff that the Court got dropped
7 on the last minute. I have not had an opportunity to read
8 Mr. Grano's finely written brief, I'm sure. And I'll just
9 address a couple of things that he does talk about.

10 The scope of consent is relevant. What's the
11 scope of consent? The trailer is open. The search is
12 limited. When you get consent, the law is that a search
13 is limited by the specific scope of that consent when
14 you're relying on a consent search. So now the door's
15 open. They can look in, they can walk around, they can
16 touch, they can feel, take a picture, anything they want.
17 But there was no question that no one gave those guys
18 permission to go into any of those boxes to open them up.
19 And that is, I think, the significant search question.

20 And to claim that this is an administrative
21 search, I just heard that now, it baffles me, because
22 administrative searches are done at businesses where
23 people have been operating, but this is on the scene.
24 There's a, quote, not an arrest, but a detention. And so
25 I -- I don't, you know, that one, if that -- we're really

1 gonna stand on that, I'd love to argue that one and brief
2 it because that was, I don't think that'll have any
3 application to an on-the-scene truck being stopped. But
4 what you do have, and this is what we say in our brief,
5 that the detention, it's the detention, in *Rodriguez*, in
6 *Gonzales*, in those cases, the Supreme Court, U.S. Supreme
7 Court talks about what's the reasonable length of the
8 detention? What's the reasonable length of the stop? If
9 you're gonna write a ticket, we know what that is. You're
10 gonna go, you're gonna get the ticket, you're gonna get
11 the -- I mean, the license, you get the registration, you
12 get whatever you need, go back to your car, punch in the
13 computer or whatever, and then write a ticket or not. But
14 here that was not what was going on, and that's where the
15 argument for the government seems to start -- starts to
16 fall. Because there was only one thing they were trying
17 to do. Let me -- let's get in the back of that truck.
18 And the Trooper was very polite, I'll give him that. And
19 he was very -- I think he was very honest guy, quite
20 honestly, very honest guy. One of the more honest guys
21 I've seen and I don't usually admit that. But the fact
22 is, that there was still this length of the detention
23 issue, Your Honor, that was not appropriate based on the
24 nature of the stop. He wasn't stopping it because he had
25 an articulable suspicion to investigate for illegal

1 cigarettes or whatever or contraband or whatever you wanna
2 say. So there's a question with respect to what that
3 scope is and whether they had to or could go into those
4 boxes.

5 And what really is interesting is this, and it's
6 just a fact that exists, they don't call to get a warrant.
7 They could have got a search warrant really easily. They
8 probably had -- they probably had probable cause, I guess
9 arguably, but what they didn't have is they didn't have
10 the need to go in on any exigent basis, because if that
11 were the case there would be no need for those officers to
12 have called the Attorney General's Office to get
13 permission or the okay or the advice as to whether to go
14 into those boxes. Because if officers are really
15 operating under exigent circumstances, they and they alone
16 make that determination and then a court on the back end
17 decides maybe it was exigent or maybe it wasn't. But here
18 they've got enough time to say, here's the facts, here's
19 what we got, can we go in? So they were looking for
20 permission, they were looking for help, they were looking
21 for advice. Unfortunately, they did not seek the advice
22 of a neutral and detached magistrate. They didn't want to
23 go through the trouble of getting a search warrant,
24 apparently, or felt, based on the advice of the AG, they
25 could, but you know, the AG's not a judge, not a neutral

1 and detached magistrate. So they don't have -- they don't
2 have the authority from an independent legal judge or
3 neutral, detached magistrate.

4 So, now the question then becomes, okay, so --
5 so that's the search issue in a nutshell. I mean, we
6 briefed it, there's a lot more there, Your Honor, that --
7 may I have some water, Your Honor, I just got some dry
8 agents going on.

9 So there's not a lot -- it's interesting. I
10 don't know about the standing issue, because this is
11 charged as a possessory crime -- seems that if you have a
12 possessory crime, I have to do that research. I really
13 don't know. It might be a great argument for the
14 government on standing. Maybe the Court's got the answer.
15 But it's interesting that they're gonna charge these two
16 folks with possession when they know who's really -- whose
17 tobacco that really was and they really know whose
18 tobacco, who's responsible for all the tobacco when they
19 got these two employees, but I guess they can do that if
20 the Court finds they can do it.

21 But who needs a transporter's license, Your
22 Honor? Does the driver need a transporter's license, does
23 the passenger need the transporter's license, does the
24 Tribe need a transporter's license? Who needs a
25 transporter's license in this case? Admittedly, there

1 isn't one, but who needs it? And when you listen to the
2 police officers, they couldn't even opine on that. And
3 when you listen to the Michigan treasury people, the
4 Department of Treasury people, you know, they're pretty
5 much all over the board. And the only thing that really
6 came out, I think, from maybe Ms. Littlejohn was, or maybe
7 it was Mr. Miller or both, maybe both, that if the
8 employer has a license, a tobacco tax license, then these
9 folks don't need a license. That's what the Court has
10 before it. That's the testimony that you have. So the
11 Community, I'd submit to the Court that since you've got
12 these employees -- and, you know, and that's all they
13 were. There's been no showing about anything else. And
14 you've got a statute that is extremely, I won't say vague,
15 but it's complicated. It's unclear. And I'm gonna submit
16 to the Court, just as the Court talked in *People v. Assy*,
17 *A-s-s-y*, which is a court of appeals case, where they
18 raised a similar issue, that the statute is not providing
19 the necessary or reasonable notice to people of common
20 intelligence or ordinary intelligence to allow them to
21 determine what's prohibited or not prohibited. These are
22 not -- unlike the case of *Shoumon*, what's that case,
23 *Shouman*, S-h-o-u-m-a-n?

24 MR. SAMAAN: *Shouman*.

25 MR. PISZCZATOWSKI: *Shouman*, yeah, however they

1 say it. You know, *Shouman* was a guy, it's interesting,
2 because the court of appeals, you know, it's like the bad
3 man theory of criminal justice, *Shouman* was a guy who was
4 previously licensed. The guy was previously licensed, he
5 was a -- he was a -- you know, some kind of tobacco
6 license, so this guy is clearly aware that he needed a
7 license. His license lapsed. So there's no issue with
8 respect to him, whether the guy knows that he needs to be
9 licensed under the Tobacco Tax Act. We've got a couple
10 employees here, who are real basic guys. The Court got to
11 see them. They don't have any knowledge about the Tobacco
12 Tax Act. They're just assuming --

13 THE COURT: And the record should reflect that
14 they're not here today.

15 MR. PISZCZATOWSKI: They're not here today. We
16 waived their presence, Your Honor, and they agreed to
17 waive their presence. They are not here, no.

18 So I just submit to the Court that it becomes
19 vague when applied in this context to an employee. And I
20 understand that, you know, there's an argument as to that
21 employees can be held responsible, but again that argument
22 goes to when the employee is acting as an owner or
23 operator in the business, and that's what the *Assy, A-s-s-*
24 *y*, case talked about. And so the transporter in this case
25 is the Community, and yeah, these guys are the employees,

1 but they were only acting on behalf of their employer. So
2 they didn't own the cigarettes. They didn't own the
3 trailer. They didn't own the truck. We agree with that.
4 They didn't own the pole barn. So it's interesting that
5 the law, apparently if you listen to the government's
6 argument, is gonna turn on -- it's the responsibility now
7 of an employee, maybe this is what the Court will find,
8 that they have to ask their employee, by the way, do we
9 have a valid license before I drive these cigarettes down
10 the road? Okay. Maybe that's what they have to do. So
11 that assumes that they have to know that there's some
12 added responsibility, otherwise they're not in a knowing
13 violation of the statute, of the law. They don't even
14 know to do that. There's been no showing that they had
15 any clue or any contact or any prior, at least as to Mr.
16 Davis, any contact with any cigarettes in his life, or
17 even if he smoked cigarettes for that matter. And the
18 treasury officials, Your Honor, support the case in that
19 proposition regarding the lack of intent, because they
20 don't even have a specific idea of what was required or
21 who in that truck needed to have a license, or whether
22 employees need to have a license, and their attitude was
23 they don't, which was, okay, great. So now we're
24 punishing these guys because someone else doesn't have a
25 license. There's just something unfair about that on a

1 most basic human level. But, you know, that's the
2 question in this case, one of the questions in this case.
3 And then you have, even if these guys were to go and try
4 to have gotten a license, it talks about a business. It
5 doesn't talk about individuals. You've got this whole
6 issue of notice that Mr. Samaan and I raised in one of our
7 prior briefings for the Court, and it's actually coming to
8 pass now, because that becomes the issue. One of the
9 issues.

10 There is a -- the question, Your Honor, is first
11 of all, and I kinda hear, I guess, the government saying
12 that there needs to be some intent element here and that
13 this is not a strict liability crime. So now the question
14 is, if that's the requirement, what is the intent? Is the
15 intent the knowledge of transporting contrary to this act,
16 which is what the statute reads, or is the knowledge
17 merely the knowledge of possessing cigarettes? So then we
18 get into a situation if it's knowledge of only possessing
19 cigarettes, we can have innocent people, which is the
20 concern of any reasonable notice statutes, if I'm
21 possessing cigarettes in whatever amount, some are lesser
22 and some are more under the statute, here it's more than
23 3,000, there's a lot, I get that. That's the charge.
24 Then I am in possession of these cigarettes and I think
25 that my employer -- I think that everything's copacetic,

1 and I don't even ask because they just tell me, hey, drive
2 them down the street, no big deal, now I'm gonna be
3 charged with the wrongdoing of my employer, and that's
4 what we've got. That's really what we've got. There's no
5 showing that Mr. Davis or Mr. Magnant knew that they were
6 transporting cigarettes contrary to this act. There's
7 just no evidence on this record. There's no basis to --

8 THE COURT: So why say when you're asked, so
9 what are you transporting? Uh, chips, uh -- I don't
10 remember the other one, but stuff, or something.

11 MR. PISZCZATOWSKI: Supplies.

12 THE COURT: Supplies. If you were an unknowing,
13 I don't know anything about this statute, I don't know
14 what I'm transporting, hey, man, I'm taking cigarettes
15 from my pole barn to my thing, I don't have any problem
16 with that because that's what I do, that's -- that's how I
17 haul. As part of --

18 MR. PISZCZATOWSKI: Got it.

19 THE COURT: -- a knowledge requirement. I'm
20 doing something wrong or I would just be, hey, I'm the guy
21 that transports cigarettes.

22 MR. PISZCZATOWSKI: Yeah, and I'm just very
23 curious as to why the Court and where the Court sees any
24 evidence that Mr. Davis, any evidence on this record, that
25 Mr. Davis knew that there were cigarettes in the back of

1 that truck. And you're -- the Court, and I'm respectfully
2 gonna disagree, the Court's theory or the proposed theory,
3 the question on the table, maybe he was told that they
4 were supplies and chips and didn't know that they were
5 cigarettes. That's just -- that's equally as plausible
6 for sure, because Mr. Davis said chips, and then if he
7 really thinks he's got something that's illegal, is he
8 gonna go say, okay, here you go, let's take a look?
9 Maybe. Maybe. Maybe some people --

10 THE COURT: Happens all the time.

11 MR. PISZCZATOWSKI: Well, yeah, it happens all
12 the time, but I don't think it happens as often as we hear
13 it happens. Doesn't mean it's true (unintelligible). We
14 know it happened here, we watched it happen. Chips and
15 supplies. So what does he say -- I mean, does this Court
16 think he's lying?

17 THE COURT: I don't know.

18 MR. PISZCZATOWSKI: No, no, I'm saying -- I
19 know.

20 THE COURT: All I'm raising is --

21 MR. PISZCZATOWSKI: That's right.

22 THE COURT: -- is you're saying there's nothing
23 on this record, and I'm questioning --

24 MR. PISZCZATOWSKI: Right, I know.

25 THE COURT: -- something on this record. If I

1 don't know what I'm hauling, then I don't know what I got
2 back there.

3 MR. PISZCZATOWSKI: That's right. And that's
4 exactly what I think the facts show, that Mr. Davis had no
5 -- okay, there's no -- there's no facts on this record,
6 the pole barn notwithstanding, nothing happened at the
7 pole barn. The officers didn't see anything. So you can
8 speculate what happened there. You can guess. We don't
9 even know what's in that pole barn. Right? There's
10 nothing on this record. So I would submit that it would
11 be an unreasonable inference for the Court to draw that
12 they were transferring cigarettes from the pole barn or --
13 or that the pole barn contains any cigarettes, because
14 there's nothing on the record that shows that. There's
15 nothing on the record that shows anything that happened at
16 The Pines. There's nothing to show that Mr. Davis loaded
17 or unloaded any cigarettes into that trailer. And that's
18 why I say to the Court there's no showing, unless you
19 think he's lying, which the officer didn't say he was
20 lying -- of course I wouldn't have let him say it, but the
21 fact is, he -- he didn't make that. He said, somebody
22 said chips. He didn't even know which -- here's what's
23 interesting, Judge, you're attributing that statement to
24 Mr. Davis, theoretically, as a statement that he made.
25 The officer was very clear if you read the transcripts

1 when the transcripts are available, that he did not know
2 who said that. He did not know. And he said that. So I
3 think it would be inappropriate for the Court at this
4 juncture to ascribe either of those comments to Mr. Davis,
5 because there is nothing on this record to say that.
6 There's something that says that someone in that cab said
7 chips and then later on supplies and then chips or
8 something like that. And then when the officer goes back
9 to open -- gets to take a look in the thing, he says
10 something about chips and Davis doesn't say anything.

11 THE COURT: There you go, boss.

12 MR. PISZCZATOWSKI: Pardon?

13 THE COURT: He said something like, there you
14 go, boss.

15 MR. PISZCZATOWSKI: When he was opening it, he
16 goes, there you go, boss, which is just a sign of
17 acquiescence to authority. You're the police, here you
18 go, boss, here you go.

19 So I'm gonna suggest to the Court that
20 regardless of what standard you apply in terms of what the
21 elements of this case are, whether that standard is
22 knowledge that they were transporting or that Mr. Davis,
23 and I'll speak for him alone at this point, transporting
24 contrary to the act, which I think is a little higher
25 standard, but if you look at the *Nasir* case, N-a-s-i-r,

1 that is a cited -- that is a published case. It's
2 interesting there that *Nasir*, when it talks about the
3 knowledge issue, there it was a case, um, uh, let's see,
4 I'm just gonna read briefly if I could for the Court, it
5 said, In order to establish that a defendant is guilty of
6 possessing or using a counterfeit tax stamp, the
7 prosecution must prove...yada-yada-yada...that the
8 defendant possessed or used the counterfeit stamp, or a
9 writing or device intended to replicate a stamp, with
10 knowledge that the stamp, writing, or device was not an
11 authentic tax stamp."

12 Now, that's *Nasir*, that's a published case. Mr.
13 Grano likes *Shouman*, because it says other things, but
14 it's not published. This is published. This is
15 controlling. And what does that suggest to the Court?
16 What does it suggest to Mr. Piszczatowski, more important?
17 I'm gonna tell you what it suggests to me. That the
18 element is, not just that he knew he had a stamp, not that
19 Mr. Davis here knew that he had cigarettes, which I'm not
20 even agreeing the record shows in this case, and I would
21 not -- and I'll talk about that a little bit more later,
22 but you have to have knowledge of some type of wrongdoing.
23 And here in *Nasir* they talk about the device that's not an
24 authentic stamp. You have to have knowledge of that. And
25 I would submit here you have to have a similar showing

1 that it was possessed, the cigarettes were possessed
2 contrary to the act.

3 And further, in support of the fact that he
4 didn't know there were cigarettes back there, he's not a
5 supervisor. The cigarettes are claimed by the Community.
6 Davis didn't claim those cigarettes. Davis didn't try to
7 file in a forfeiture claim. Davis isn't getting assessed
8 the tax in this case. The Community is. And so the
9 ownership of all the things that would arguably point to
10 some knowledge on his part we're lacking and, in fact,
11 would only point to the Community. So even if you have
12 minimal knowledge, the only knowledge that you need
13 cigarettes, which I think is contrary to the law is
14 contrary to an intent requirement, and here you just have
15 no actual showing that Davis had any knowledge of what was
16 in that trailer. There's zero showing, zero showing by
17 the government. It's not our job to make those proofs, as
18 the Court knows, that Davis knew there were cigarettes in
19 the truck, no showing. Never showed that he knew the
20 cigarettes had been loaded into that trailer. Frankly,
21 until the moment when that trailer got opened, there's
22 nothing to show that he didn't think they were chips or
23 supplies in the back of that trailer.

24 And so I'd submit to the Court that the proofs
25 in this case, while perhaps, you know, facially attractive

1 at some point, when you start to scrape the layers off and
2 you see what the government was really able to prove in
3 this case, all they could prove is that in fact there was
4 a trailer and a truck owned by the Community, cigarettes
5 in that truck, in that trailer that were from a non-
6 participating manufacturer, and there was no showing at
7 all that Davis had any connection to that trailer or that
8 truck prior to this day, had no connection to anything in
9 that trailer, obviously, except for the fact that he was
10 driving. And I think from that perspective we'd ask the
11 Court to deny the request for bindover in this case, and
12 because I think not only the law in this case, *Nasir*, the
13 statutes, the testimony of all the individuals in this
14 case, but just basic fairness in some way says it's unfair
15 to prosecute these individuals who are mere employees of
16 the Community who don't have any knowledge, or at least
17 there's no showing on this record that they had any
18 knowledge that they were doing anything wrong. Thank you,
19 Your Honor. Except for speeding, perhaps.

20 THE COURT: Thank you.

21 MR. SAMAAN: Not as to Mr. Magnant, he wasn't
22 driving.

23 MR. PISZCZATOWSKI: That's true. That's true.

24 MR. SAMAAN: Your Honor, I'm not gonna reiterate
25 what Mr. Piszczatowski argued. However, again, I think

1 one of the issues, and it was in one of the cases that was
2 decided by the Supreme Court, it's not a question of
3 whether the tobacco or the cigarettes were contraband, it
4 becomes contraband, as far as the State is concerned if,
5 in fact, the end use is either distribution and/or sale in
6 the state of Michigan. This is what -- I mean, the
7 federal court said that, because if they're transporting
8 through and the end use is going to be someplace outside
9 of the state of Michigan, then the TPTA does not apply.
10 They don't have to be licensed, because the only time --
11 the reason for the act is what? To collect taxes on
12 products sold and distributed in the state of Michigan.
13 We know for a fact that this product was being brought and
14 is gonna be sent not out of state, to a whole different
15 country, the Community, the Reservation.

16 THE COURT: I don't know that there was any
17 testimony to that.

18 MR. SAMAAN: What's that again, Judge? The
19 whole idea is this product was being transported to the
20 employer, to their employer, KBIC, at the Indian
21 Reservation. Everything that was testified --

22 THE COURT: The testimony says that?

23 MR. SAMAAN: The testimony?

24 THE COURT: Yeah.

25 MR. SAMAAN: The ownership of the truck, the

1 ownership of the trailer, the ownership of the cigarettes
2 all -- this is testimony of the officers. Who filed for
3 the -- against the forfeiture of the product? KBIC, the
4 Community. It wasn't Mr. Magnant and it wasn't Mr. Davis.
5 This product was in a truck owned by the Community.

6 THE COURT: I agree with that.

7 MR. SAMAAN: Okay. It was in a trailer owned by
8 the Community. And it was being transported, and we can
9 assume that it's for the Community because --

10 THE COURT: Ah, there you go. Thank you.

11 MR. SAMAAN: Well, that's --

12 THE COURT: Thank you. Thank you.

13 MR. SAMAAN: The assumption is it's for the
14 Community. Why?

15 THE COURT: We're all assuming things not in
16 evidence.

17 MR. SAMAAN: Well, other than the fact that who
18 was assessed for this tobacco?

19 THE COURT: Next argument.

20 MR. PISZCZATOWSKI: No further questions, Your
21 Honor.

22 MR. SAMAAN: (Laughing)

23 THE COURT: They're travelling along non-Indian
24 land.

25 MR. SAMAAN: I would beg to --

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THE COURT: I know you guys wanna --

MR. SAMAAN: I would beg to differ with that, Judge.

THE COURT: -- another argument about something. I don't remember the word associated with it.

MR. SAMAAN: I would beg to differ with that, Judge, because, and let me see, I think there's a case on point. The Keweenaw Bay Indian Tribe versus Michigan. In that particular case, and I think we've listed it in our brief; the Court held that all land within the exterior boundaries of the Keweenaw Bay Reservation is Indian country. So where they were travelling, it's still considered Indian country, and any evidence obtained because of the said activity on the Community Reservation is not admissible in prosecution.

THE COURT: Reservation versus Community property?

MR. SAMAAN: It's the same thing. It's considered as a Reservation.

THE COURT: I'm gonna have to hear --

MR. SAMAAN: Pardon?

THE COURT: I think that was your first argument way back when when you didn't want me to even hear this case because there was a federal case pending, whether it is or it isn't.

1 MR. SAMAAN: But this has nothing to do with the
2 federal case. This is a case -- a Michigan case that says
3 anything within those boundaries is considered Indian
4 country, and so the police officers in this case were on
5 Indian country surveilling members of the Community of the
6 Reservation or on trust land.

7 THE COURT: At the time of the traffic stop?

8 MR. SAMAAN: At the time of the surveillance
9 which led to the traffic stop.

10 THE COURT: Okay, because I'm talking about the
11 time of the traffic stop.

12 MR. SAMAAN: The traffic stop, that whole
13 area --

14 THE COURT: That whole thing is travel portion
15 of the highway where they were speeding and there was a
16 stop, you're claim is that that's all Indian land and it's
17 not --

18 MR. SAMAAN: It's still considered Indian
19 country, Judge.

20 THE COURT: Okay.

21 MR. SAMAAN: And that is according to Keweenaw
22 Bay Indian Tribe versus Michigan.

23 As far as the consent, and I'm just gonna be
24 brief on that, the police officer pulls the truck over,
25 comes up and addresses the driver, Mr. Davis, do you know

1 why I stopped you? No. You were going 60 miles an hour.
2 That is the last time that whole subject of speeding comes
3 up period. From that point on everything changed in the
4 questions by the Trooper to Mr. Davis and/or -- we don't
5 know to whom he was asking and who answered. What's in
6 the back? Can I see what's in the back? Do you know
7 what's in the back? Supplies, chips, whatever. But the
8 whole thing -- this whole stop then rested on what was
9 being transported, removed away from the reason for the
10 stop. And I trust, and I venture to guess, Judge, that he
11 was -- Trooper Ryan called ahead and said we have a hunch
12 that they may be transporting Seneca cigarettes. No one
13 testified, even Trooper Ryan, he had some training with
14 the Department of Treasury, can't tell when. Was it in
15 2/14, was it in 2/15? When? Because Seneca cigarettes
16 were approved for sale in Michigan between December '14
17 and August of 2015, and the statute goes on to say for,
18 you know, you can't be held liable for 90 days past that,
19 so now that takes us to November 30th.

20 THE COURT: Of 2015?

21 MR. SAMAAN: Of 2015.

22 THE COURT: And this was --

23 MR. SAMAAN: December 11, eleven days after.

24 The crux of this whole case is what did these
25 two employees know? We heard testimony from Mr. Miller,

1 who is the individual in charge of special taxes for the
2 Department of Treasury, and one of those special taxes is
3 tobacco tax. And he testified -- he couldn't tell you who
4 needs to be licensed, who does not need to be licensed,
5 who needs to have a transportation license or otherwise.
6 And when he was questioned about the issue of transporter
7 license, we put form 326 into play, and what is the
8 definition of transporter? A business. We know that Mr.
9 Magnant was not a business. He's an employee. We know
10 he's not in the business of transporting cigarettes,
11 because he works for the Community, carrying on a
12 directive of his employer. Just like he acquiesced when
13 the trooper asked him to look in the back, he acquiesced
14 to authority. He worked for them. The other issue that
15 came up was well, if in fact it was a wholesaler who was
16 licensed in the state of Michigan, has tobacco tax
17 license, would they need to have a transporter license?
18 And after going back and forth, I think Mr. Miller said
19 no, they would not need to have a transporter license if
20 they had tobacco tax license. Would their employees need
21 to have a transporter license? No. So now we're putting
22 the onus on the employee to know whether, in fact, the
23 Community was licensed or not, whether in fact Seneca
24 cigarettes were approved for sale in Michigan or not.
25 When an employee goes to get a job, whether it's for a

1 wholesaler or the Community, I venture to say to this
2 Court that the employer doesn't say, you know what, before
3 you get this job you need to study, read, and understand
4 the TPTA, because it may come to haunt you one day. That
5 is not one of their requirements for an employee, whether
6 he is a cashier or stock boy, or in this case a
7 maintenance person for the Community. The last thing the
8 employee says is, well, by the way -- and how would they
9 know that? Are you licensed by the State of Michigan? I
10 don't think that's a question that would ever come up.

11 On the approved list is Seneca Manufacturing.

12 Now, --

13 THE COURT: You're gonna have to tell me what
14 you're talking about.

15 MR. SAMAN: Well, the non-participating
16 manufacturer list. It's put out by the Department of
17 Treasury every six months, I believe, give or take. And
18 on that list at one time, it continues to be on the list,
19 Seneca Manufacturing. This product could have -- the
20 label on the box, Seneca. It could have been tobacco that
21 was approved because Seneca Manufacturing is an approved
22 non-participating manufacturer in the state of Michigan.
23 How else would you know what's inside of it? If Seneca is
24 an approved manufacturer, wouldn't it make sense that the
25 trooper had to get --

1 THE COURT: I don't recall there being evidence
2 one way or another. Remind me of one way or another
3 whether Seneca is or is not on a list. Testimony.

4 MR. SAMAAN: It did not come out in testimony.
5 No, Judge. Did it?

6 MR. GRANO: Yeah. It's on page 57 of the
7 transcript, Your Honor. Trooper Ryan indicated that he
8 knew Seneca brand cigarettes were illegal because they did
9 not have an agreement with the Department of Treasury.

10 THE COURT: Well, I just heard some rhetoric
11 here, and I don't know --

12 MR. GRANO: The list that he's talking about
13 from treasury, none of that's in evidence, but there was
14 some information that the trooper knew that the cigarettes
15 to be illegal in the state of Michigan.

16 THE COURT: And when he tried to say when, he
17 didn't have --

18 MR. SAMAAN: Yeah, he didn't know when it was
19 illegal, when it wasn't illegal, when he heard it in
20 training, he couldn't say it was 2/15, 2/14, whatever,
21 either way.

22 I think we've gone over the issue of a tobacco
23 tax license. In this case the fact that there was no
24 tobacco tax license granted or issued or applied for by
25 the Community should not affect the employees. The

1 employees are just doing their job for the employer. And
2 whether there was a license or not, they're not obligated
3 to get a transporter license. At best, at best from
4 everything we've heard, maybe they should have gotten a
5 \$1.00 permit to transport cigarettes. And I venture to
6 guess that \$1.00 permit does not raise the level of the
7 crime to a felony, a five-year felony. So I don't believe
8 that there's anything that would show that these people
9 knew or intended to violate the statute, because, frankly,
10 they didn't know. They were just plain and simple
11 employees.

12 And, again, Gerald Magnant is a passenger in the
13 car. Is that -- and he may have loaded, according to the
14 testimony, he may have loaded some of those boxes onto the
15 truck, but does that mean that he knew or had knowledge
16 that Seneca cigarettes or whatever was loaded was illegal,
17 that he had to have a transporter license? He was only
18 acting on what his employer did. Again, authority,
19 acquiesced to authority. The employer said you need to go
20 pick up cigarettes and bring them back or pick up supplies
21 and bring them back. He didn't tell them, by the way, be
22 careful because --

23 THE COURT: Well, you don't know what he told
24 him.

25 MR. SAMAN: Well, we don't but that's exactly

1 what it is. Everybody's assuming. And in this case --

2 THE COURT: Well, I'm gonna be asking the People
3 to give me an argument as to what their argument is, that
4 there was, A) knowledge, or B) that he doesn't believe
5 that there's a knowledge requirement in the statute as to
6 each individual.

7 MR. SAMAN: Then I will let the Court ask that
8 question. Thank you, Your Honor.

9 THE COURT: Thank you. Mr. Grano.

10 MR. GRANO: Thank you, Your Honor. I'll start
11 with the knowledge as an element in this case. I think
12 the statute is pretty clear that it does not contain a
13 knowledge requirement. My position has always been in
14 prosecuting these cases that this should be a general
15 intent crime, not a specific intent crime. By that I mean
16 that you knowingly possess or you're knowingly
17 transporting, which is what I've asked for as an element
18 in this case, which is what I asked for in *People v.*
19 *Shouman*. The Court, in footnote one of *People v. Shouman*,
20 goes through a long analysis about why this should be a
21 true strict liability offense and why *Nasir* does not apply
22 to this case. And then they said we will not reach that
23 because the prosecutor has conceded that he's asking for
24 knowingly possessed or knowingly transported tobacco. I
25 think that applies here. *Nasir* does not apply to this

1 case. *Nasir* deals with a violation of 205.426(6) which is
2 a one to ten year felony. But of note, since I lived with
3 *Nasir* for so long during the *Shouman* case, the *Nasir* court
4 specifically says the defendant need not know that he was
5 violating a treasury regulation, or something to that
6 point. He just had to know that he was in possession of a
7 fake stamp. So the People would have to prove in that
8 case that he knew the stamp was fake. Not that he knew
9 that he needed, what the actual regulation was, which is
10 what they're essentially asking for. They're saying
11 nobody knows what the law is, and ignorance of the law is
12 not a defense.

13 In this case I think it's pretty clear as to Mr.
14 Magnant. He testified he loaded the truck. I would say
15 that that puts him in joint constructive possession of the
16 tobacco in the back of that truck as he's a passenger, he
17 loaded it, presumably since he's in the truck he's going
18 wherever the tobacco's going to be delivered. As for Mr.
19 Davis, he's driving the truck. And I think, and I know
20 this isn't a drug case, but in drugs you look at the
21 volume of material being transported or being possessed
22 can go to the person's knowledge. And I would argue that
23 the same should hold true here. Sixty seven thousand
24 dollars' worth of tobacco, the testimony is there's 56
25 cases, each containing 12,000 cigarettes, they're moving

1 6,700 -- excuse me, 6,000 -- 72,000 cigarettes. As the
2 Court asked in its question, when they were initially
3 stopped, um, he says he's moving supplies. Somebody says
4 chips later. He didn't know who said chips. I think from
5 the video you can hear the initial conversation when
6 supplies was said, occurred with the driver. He said
7 name, license, registration, where are you --

8 THE COURT: I couldn't hear -- if there was
9 something, it was -- the only thing I heard was the very
10 end statement when he was at the back of the truck. Just
11 from what I recall.

12 MR. GRANO: But regardless, Your Honor, I think
13 the amount and the fact that only tobacco is being moved,
14 I don't think the guy was moving that much tobacco without
15 knowing what he was moving.

16 Furthermore, as it relates to an innocent -- the
17 defense keeps arguing is that nobody would know and this
18 would criminalize innocent behavior. The court of appeals
19 in *Shouman* points to the Tobacco Products Tax Act in MCL
20 205.4267(7) and (8) in footnote one. The act requires
21 that not only you obtain a permit to move tobacco in the
22 state of Michigan, but that you carry the licenses on your
23 person, which would protect -- the court of appeals reason
24 would protect the innocent person because they would know
25 they were doing this legally, they would have the license

1 on their person. Without having a license, they know
2 something's up.

3 Angela Littlejohn from the Department of
4 Treasury testified there's two ways to do this. You do it
5 through the licensing way or you use a common carrier.
6 Most of the people, presenting it anecdotally, most of the
7 people in Michigan use the common carrier because it's way
8 easier. You can call up UPS or United Postal Service and
9 send the tobacco and you don't have to worry about all
10 these licensing and permits and the complications. So
11 when they elect not to go that route but become the
12 transporter themselves, the regulations apply to them.

13 THE COURT: And when you say them, you mean the
14 Community?

15 MR. GRANO: The Community, the defendants, in
16 this case anybody, and I think the act is clear that it
17 criminalizes individuals, businesses, partnerships. It
18 criminalizes anybody in the chain. And I think like any
19 other criminal case, any other criminal conspiracy case,
20 you sometimes get the low guy on the ladder, you got an
21 employee of somebody, it doesn't resolve you of your
22 liability by the fact that, well, I'm just doing this for
23 somebody else. That's not a defense that I'm aware of in
24 this state.

25 I would point to the Court Mr. Piszczatowski

1 indicated he's not aware that possessing non-participating
2 manufacturer cigarettes is illegal. The statute is MCL
3 205.426d(8). It says nobody in the state shall possess
4 any of the tobacco that was listed in subsection three.
5 Subsection three is dealing with the notice that had to be
6 provided to treasury which Mr. Samaan was arguing to you
7 about that's on the treasury website. None of that came
8 in.

9 And just to correct the record, Seneca
10 Manufacturing does not make Seneca cigarettes in the state
11 of Michigan. Seneca cigarettes are made by Grand River
12 Enterprises. They're an outfit out of Ontario, Canada.
13 There's another company called Seneca Manufacturing. They
14 don't make Seneca cigarettes. So it's kind of confusing,
15 the notice.

16 THE COURT: Is that something that was
17 supposedly on the list from December?

18 MR. GRANO: What's not on the list is the Grand
19 River Enterprises. And the notice specifically from
20 August, the 90 days prior, said we're removing Grand River
21 Enterprises because they haven't met their obligations
22 under the statute, which would have allowed Seneca. So
23 they list the manufacturers and their brands of cigarettes
24 that get made. Grand River and Seneca Cigarettes were on
25 notice saying they're no longer legal in the state of

1 Michigan.

2 THE COURT: And that came out in?

3 MR. GRANO: That notice came out on August 31st,
4 2015.

5 THE COURT: 2015?

6 MR. GRANO: August 31st, 2015. I would point to
7 the Court, Mr. Piszczatowski said once the trooper got
8 there and he saw the Seneca cigarettes he probably had
9 probable cause. I appreciate that concession. In
10 205.429(2) it talks about an authorized inspector of the
11 Department of Treasury or a police officer having
12 reasonable cause to believe and does believe tobacco
13 products as being acquired, possessed, transported, kept
14 or offered for sale in violation of this act for which the
15 penalty is a felony, may investigate or search the vehicle
16 of transportation in which the tobacco product is believed
17 to be located. I think that gives them authority without
18 a warrant to go in when they see Seneca cigarettes and
19 they knew Seneca cigarettes to be illegal, A), and B), he
20 testified none of the boxes had any labels on them. The
21 requirement in 205.426(6) is there has to be shipping
22 labels on the outer cases of shipping cases of saying
23 where the cigarettes are coming from and where they're
24 going. These boxes lack any labels, and I think in
25 People's Exhibit 2, outside of the evidence tag we put on

1 the box, the Court could see there was no labeling on the
2 box other than the brand name of Seneca. So that would,
3 in my mind, by plain view the officer had a reasonable
4 cause to believe a Tobacco Products Tax Act felony was
5 happening in front of him. That would give him cause to
6 continue the search.

7 There is case law, it's *Nevada v.* -- and I don't
8 know what -- *Nevada v. Hicks*, it's a U.S. Supreme Court
9 case that talks about an Indian Reservation being a part
10 of the state. They're not going to a sovereign country.
11 I know the argument was they're going from one sovereign
12 country to another. The regulation of the state apply
13 when they're -- specifically in the state of Michigan, but
14 just because it's going to an Indian Reservation doesn't
15 make it all of a sudden not have -- they are exempt from
16 regulations. I would strongly disagree with that, Your
17 Honor.

18 There was some talk about Indian country. I
19 tried in my direct to be clear on this when the first
20 trooper testified. He indicated from his experience being
21 a UP trooper for 18 years that the KBIC Reservation is in
22 Baraga County, which was approximately 60 miles away from
23 him. The KBIC had some territory in Marquette County
24 where the stop occurred, up near Marquette in Chocolay
25 Township, I think the testimony was, and that that was

1 approximately 40 miles from him, and that where he was was
2 Marquette County, state of Michigan. The stop, everything
3 happened in the state of Michigan. We are not an Indian
4 country. This is not an Indian country case.

5 However, to the argument that observations were
6 made at The Pines, which is Indian country, I would direct
7 the Court to the Michigan case law on technical trespass,
8 which talks about people can technically trespass on lands
9 of another. Police officers can if it would be ordinary
10 and customary, for example, for a neighbor to walk to the
11 backyard to see if his neighbor was home, the police can
12 walk to the backyard of a neighbor to see if home. In
13 this case the only record that we have is that the
14 troopers were on U.S. 41. If the Court's inclined to find
15 that U.S. 41 through KBIC territory is KBIC Indian
16 country, I believe that it's a technical trespass. I
17 don't think Michigan residents and the Michigan police
18 should be banned from traversing Michigan highways and not
19 be allowed to observe what they observed from the highway.
20 And that's what was testified to, that they saw these
21 trucks from the highway, they pulled up farther, they
22 didn't stop at the store, they pulled up farther and
23 waited for the truck. There was no testimony that they
24 veered off the road at all. When they went to the pole
25 barn they were on M-38. It seems to me like they stayed

1 on state highways the whole time. Anything they saw would
2 be, at most, a technical trespass.

3 THE COURT: Just so I'm clear on the question
4 that I did ask, the knowledge issue. Your argument is
5 this is a general intent crime, not strict liability?

6 MR. GRANO: Correct.

7 THE COURT: And not specific intent but a
8 general intent, that they knew there were cigarettes in
9 there and therefore they were -- because they were non-
10 participating manufacturers, that in and of itself
11 triggers them being contrary to the statute?

12 MR. GRANO: Correct, contrary to the act.

13 THE COURT: And the knowledge that -- for Mr.
14 Magnant was that he's the loader of the car, so he clearly
15 knew because of the volume, et cetera. And as to Mr.
16 Davis, Mr. Davis was driving --

17 MR. GRANO: Mr. Davis, two things: One, that he
18 first indicated, in my mind, I think the testimony in the
19 video indicated that he said he was hauling supplies; and
20 then the volume, that there were 672,000 cigarettes being
21 transported in the back of the truck. Nothing else, it
22 was just cigarettes. I think that it's a question of fact
23 at a probable cause level on whether he knew something was
24 in the back, but when you're dealing with that volume, 56
25 cases, each containing 12,000 cigarettes, that I don't

1 believe he accidentally was transporting it. I think he
2 knew what was in that trailer and I think case law would
3 support the belief that when there's --

4 THE COURT: For purposes of bindover.

5 MR. GRANO: For purposes of bindover that, uh,
6 his mental state would be a question of fact that was
7 proven by a probable cause standard in this matter. I
8 believe there is evidence at a probable cause standard for
9 each element in this case. And I agree with the Court, I
10 have to prove knowing possession or knowing transport, I
11 don't have to prove knowingly needing a license in this
12 case. That's a higher standard. That would be a standard
13 of specific intent, that he was knowingly violating the
14 Tobacco Product Tax Act. That is not in the language of
15 this act. That is not even supported by *Nasir*, which is
16 the only case putting such a high burden on the
17 prosecutor.

18 THE COURT: And it was about stamps and --

19 MR. GRANO: It was about a fraudulent tobacco
20 stamp. And that carried -- and as I indicated that
21 carried a mandatory prison time. This does not carry
22 mandatory prison time. This is a five-year felony on the
23 G-grid, which is most likely probation, even with the
24 volume of cigarettes in this case.

25 For reasons in my brief and particularly on the

1 record I would ask the Court bind each defendant over.

2 THE COURT: Brief response to my question about
3 reasonableness.

4 MR. PISZCZATOWSKI: So, Judge, and I respect Mr.
5 Grano, but I'm gonna say when he says I don't think he was
6 -- he was moving that much product without knowing. He
7 didn't testify, number one. And, you know, there's a
8 great quote by Justice Scalia that says unexamined
9 assumptions have a, by way of force of usage, have a way
10 of becoming bad law. And that's exactly right. If you
11 want to -- you can justify anything to these courts. I've
12 seen Michigan Court of Appeals -- I would be embarrassed
13 to write some of their opinions, but you can take that up
14 to them, not you.

15 And by the way, Judge, I'm gonna correct one
16 thing that you said, we didn't say we didn't want you to
17 hear the case. We're delighted that you're hearing the
18 case. We just didn't want you to hear it as early as you
19 were gonna hear it, but anyway.

20 So here's the thing, the amount of cigarettes
21 has nothing to do, Judge, I don't even know how that even
22 has any impact on this case. When you're moving
23 controlled substances, I guess you're moving stuff that's
24 clearly illegal so maybe you put, you know, someone you
25 trust in there, sometimes you tell them, sometimes you

1 don't, but the fact that you've got it doesn't mean you
2 knew it was there. There's nothing on the record to show
3 that. And the fact that he said supplies, unless you're
4 going to take some nefarious viewpoint of what he said for
5 whatever reason, because if they can show that he had some
6 prior knowledge before he said that, that he was lying,
7 that's exactly what you have in these kind of cases, where
8 the officer says I know he's lying because he said
9 supplies and I know I saw him moving cigarettes before. I
10 know that's a lie. Then you've got something to work
11 with. Then you've got something that means something,
12 because then supplies are a lie, but when you have it in
13 the vacuum of I'm approaching, here's my license,
14 registration, what's in the back, supplies. There's
15 nothing to say that he knew anything different. And the
16 fact that the stuff's back there, you know, if that were
17 the case, then, you know, we wouldn't have to try
18 anything. We could just prosecute people and throw them
19 in jail, because once they got something in their car,
20 they're guilty. That's not what happens here. And you
21 gotta have some type of proof beyond the mere possession,
22 and they don't have it. I didn't hear them say it.
23 Regardless of if it's a specific -- I'm sorry. Regardless
24 of what the intent requires, there's a knowledge element
25 that's basically conceded in this case, and that knowledge

1 element requires, at a minimum, that he knew they were
2 cigarettes. Okay. I didn't hear a great response. I
3 heard, you know, there's a lot of cigarettes. Okay,
4 you're right, there's a lot of cigarettes. I hear people
5 don't, you know, don't think he was moving that much
6 without knowing. Okay, I get that. That's a great
7 opinion, but that's not a fact. That's not a fact.
8 That's argument. And arguments don't constitute facts
9 upon which this Court can bind over.

10 Finally, this statute is unambiguous. I don't
11 care what -- what -- anyway. A person who possesses,
12 acquires, transports for sale contrary to this act. It
13 doesn't say -- it doesn't say a person who possesses,
14 acquires --

15 THE COURT: Where are you reading?

16 MR. PISZCZATOWSKI: Oh, 428(3), Judge. I'm
17 sorry. What we're charged with. 428(3) says a person who
18 possesses, acquires, transports or offers for sale
19 contrary to this act. The key here is, where is that
20 language put? Where is that lan -- it's statutory
21 construction. It's clear and ambiguous. Contrary to this
22 act 3,000 or more cigarettes. It doesn't say who
23 possesses 3,000 or more cigarettes, yada, yada, yada,
24 yada, which may be in contravention of this act later on
25 in the phrase. The phrase contrary to this act modifies

1 the cigarettes. That's the statutory construction. So I
2 would submit to the Court that that is an element of the
3 knowledge requirement. You don't have to know
4 specifically that this was the particular crime that
5 you're violating. That would be specific intent. That's
6 not -- but you have to know that you're possessing or
7 transporting in violation of the act, whatever, whatever
8 you're violating in that act, and that I think is a
9 significant difference.

10 Well, Judge, I would be remiss if I didn't
11 address the *Nevada v. Hicks* comment, because I actually
12 saw that, and I know we have esteemed counsel here on
13 *Hicks*, you know, just to further our education on Indian
14 law, but that was just -- that case involved a pretty
15 sophisticated set of facts. Ah, I can't find it, but
16 basically you had two justices signing on for the position
17 that the State follows, and six that did not. Thank you.

18 MR. SAMAN: Your Honor, just a few commentaries.
19 Number one, I believe the testimony was that cigarette
20 boxes do not need to have a label on them. The labels on
21 the outside of the box only applies to other tobacco
22 products, like cigars, chewing tobacco, uh, hookah
23 tobacco, whatever, but cigarette boxes per se, cartons
24 that transport cigarettes do not have any kind of
25 markings. And there's nothing required in the statute for

1 them to have any kind of markings on them. Those markings
2 are only on other tobacco products.

3 THE COURT: Do you have a statute or something
4 that you can --

5 MR. SAMAAN: That was testified to --

6 THE COURT: Well, the testimony that witness --

7 MR. GRANO: Your Honor, the statute is
8 205.426(6).

9 THE COURT: I'm sorry, say that again.

10 MR. GRANO: 205.426(6).

11 THE COURT: And that supposedly tells me that
12 shipping labels need to be on the boxes of reg --

13 MR. GRANO: Correct.

14 THE COURT: -- of cigarettes and not just other
15 tobacco products?

16 MR. GRANO: Correct. And just so the record's
17 clear, I believe the testimony was there doesn't need to
18 be a tax stamp on the outside, an OTP tax stamp, because
19 non-cigarette tobacco needs a tax stamp on the box, but I
20 don't think there's any testimony relating to the shipping
21 label.

22 THE COURT: Is there something other that you
23 wanted to direct me to?

24 MR. SAMAAN: I'm looking at sub six, 426(6) is
25 that what --

1 THE COURT: That's what was given to me.

2 MR. SAMAAN: I think it says other than
3 cigarettes, Judge. That would be --

4 THE COURT: I don't have the statute in front of
5 me.

6 MR. SAMAAN: May I approach? It has no markings
7 on it.

8 THE COURT: I can find the statute.

9 MR. SAMAAN: Okay. And, again, the argument by
10 brother counsel that Mr. Magnant said he loaded all the
11 cigarettes, I don't believe that was the case. Did you
12 help load the cigarettes? I helped load some of the
13 cigarettes, not all the cigarettes. The question still
14 goes back to knowledge of the employees. Did they know
15 that what they were transporting was illegal? Did they
16 know they were supposed to have a license? And, again, go
17 back to the same issue that it's not for use and
18 distribution in the state of Michigan. So even assuming
19 they knew, which there's no evidence that they did, it
20 would have to end in the state of Michigan, distribute in
21 the state of Michigan, and there's nothing in here that
22 says it's for sale or distribution in the state of
23 Michigan. Everything -- all testimony was that all this
24 stuff belonged to KBIC. The forfeiture was filed -- the
25 KBIC filed to keep the product from being forfeited. It

1 was not Mr. Magnant and was not Mr. Davis.

2 Again, regardless of what Mr. Grano likes to
3 term as whether it's specific, general knowledge, there
4 has to be knowledge that what they possessed was
5 contraband, contrary to the statute. I venture to guess
6 that neither of these employees, Magnant or Davis, knew
7 anything about the Tobacco Tax Act, knew that possessing
8 Seneca cigarettes, if they knew that as a fact, was
9 illegal contraband. They were just carrying out a job.
10 They didn't need to have a license, they didn't need to
11 have a tobacco tax license, and they were not aware that
12 this product was illegal. And, in fact, it was legal
13 until 11 days prior. So even if they knew --

14 THE COURT: Wasn't it the issue of the Seneca
15 Manufacturing versus the Grand Lakes Manufacturing or
16 some kind of --

17 MR. SAMAAN: Well, Seneca Manufacturing is still
18 in the books. They can still distribute whatever
19 cigarettes they do, but their brand --

20 THE COURT: That brand.

21 MR. SAMAAN: Their brand, their name is Seneca
22 on the box. What's inside the box, we don't know. The
23 one they're talking about is Grand River Enterprises that
24 was approved for sale in December of '14 until August of
25 '15, and for 90 days thereafter you couldn't get anybody

1 for selling or distributing. So we're going now through
2 November 30th. Okay. So if anyone knew or should have
3 known, if anybody is to be charged, it should be the
4 people that owned the product. It should be the people
5 that the State says should have been licensed. The
6 Community. Not the employees. I didn't hear anybody up
7 there say the employees need to be licensed under the act.
8 It's the employer, whether it's the wholesaler,
9 unclassified wholesaler, or secondary wholesaler, they're
10 the ones that are licensed. Not the employees.

11 THE COURT: Nobody had a license.

12 MR. SAMAAN: Uh?

13 THE COURT: Nobody had a license.

14 MR. SAMAAN: But that's not the employees'
15 problem whether the employer did or not, Judge.

16 THE COURT: Mr. Grano.

17 MR. GRANO: Just to correct the record, Your
18 Honor, 205.426(6), I was reading it again. Um, I believe
19 that does only apply to non-cigarette tobacco. I don't
20 think that applies.

21 THE COURT: So other tobacco products and not
22 cigarettes?

23 MR. GRANO: Correct.

24 THE COURT: So the argument that they didn't
25 have a shipping label on them was not automatically that

1 these were Seneca cigarettes that had --

2 MR. GRANO: I think there's a regulation, but I
3 don't know where it is, so we can strike that from the
4 record at this point.

5 THE COURT: I haven't heard anything today that
6 changes my opinion of where I was at with regard to the
7 motion to suppress evidence. So I'm willing to answer
8 that here on the record today.

9 The other issues with regard to the broader
10 scope of the statute itself, I want to read some more
11 information and get some -- feel more comfortable where my
12 position is with regard to the arguments that were made
13 today, which were somewhat different than I've heard. I
14 was prepared to rule on these issues of search and
15 seizure, albeit I didn't have the response until just
16 today.

17 I think the evidence was clear that this was a
18 pretext stop and everybody -- I don't think there's anyone
19 shying away from the fact that it was a pretext stop. So
20 clearly it was done with a traffic violation as the basis
21 for the stop. If that hadn't been there, then you
22 wouldn't have any kind of reasonableness even for the stop
23 and we wouldn't go any further. But the traffic stop is
24 reasonable as long as the driver is detained for the
25 purpose allowing to ask brief questions concerning the

1 violation of the law and the context of that period.

2 And then there is this idea that the, of the
3 pretext itself, was whether or not they wanted to get a
4 look in the back of the truck. The officer testified, and
5 he was quite open about this, as I think all counsel had
6 noted, that that was what he wanted to do, to see if he
7 could get in the back of the truck. But he did go about
8 his business with regard to going back to his car, and he
9 got the license and registration, but this particular one
10 had a Community license and he could not run that through
11 his own, so it was gonna take longer for him to even be
12 able to do any kind of examination of this individual
13 vehicle than others. And I believe in the tape that we
14 saw from the beginning of that to the end was seven
15 minutes. That included the stop, going to the car, I
16 don't think that's an unreasonable amount of detention of
17 individuals for a traffic stop. And certainly the -- when
18 a defendant voluntarily consents to its vehicle, no Fourth
19 Amendment violation occurs. And if the officer had
20 independent, reasonable articulable suspicion with regard
21 to this traffic violation, he had reasonableness to have
22 the stop. And I don't think there was anything that
23 anyone said that he didn't consent to the search. And
24 there's some question whether it was argument that, well,
25 maybe he was detained a little longer, but he consented to

1 that search. Once the back of that trailer was raised,
2 and this idea that Seneca cigarettes were in there, that
3 gave rise to a whole different set of circumstances. And
4 you look at the reasonableness for the stopping and
5 searching the motor vehicle, certainly fewer foundational
6 facts are needed with a moving vehicle rather than a house
7 or anything else, and when the second set of officers came
8 by, and I think we talked about this issue with regard to
9 -- I didn't talk about it -- it was argued, this issue of
10 tobacco tax and then being able to go in and open the box
11 and see what was in the box, I think once the potential
12 felony was there, there's probable cause to continue that
13 search and to look inside the box itself.

14 So as far as the evidence collection of that, I
15 don't find that there was a violation of the Fourth
16 Amendment or others. I'm not gonna even talk about
17 standing, because I think that -- was a driver of the
18 vehicle, I'm gonna address the issue itself.

19 The issue that's of more note here is this issue
20 of the knowledge that's necessary with regard to the
21 underlying complaint and whether or not there was
22 testimony and not just argument with regard to this issue
23 of knowledge and to what level that applies in this case.
24 I've been given a lot of case law. I've read a couple of
25 them. I did not read all of them, but I will do a written

1 opinion only on that section and not this one that I just
2 gave orally.

3 I like to do these fairly quickly, because I
4 don't like them sitting on my desk. So I have an
5 expectation within the next week or so there will be a
6 response to that and whether or not there will be a
7 bindover and if there was a bindover, then we would have
8 arraignment dates given, and then you can make other
9 arguments to see if it was here or somewhere else, because
10 I think that's where that argument could be raised, if
11 necessary.

12 Anyone want to make any other arguments prior to
13 going off the record?

14 MR. GRANO: No, Your Honor.

15 MR. PISZCZATOWSKI: So, Your Honor, will the
16 Court issue a written opinion, then?

17 THE COURT: Written opinion as to that section
18 and not what --

19 MR. PISZCZATOWSKI: Yes, just as to the bindover
20 itself. And so will you just mail it out to us or would
21 we be required to come back over?

22 THE COURT: You would not be required to come
23 back.

24 MR. PISZCZATOWSKI: Okay. Thank you.

25 THE COURT: I still have the exhibits, but for

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the cigarettes, so I'm keeping those.

MR. GRANO: That's fine, Your Honor. Does the Court want any additional briefing?

THE COURT: I will accept briefs through the end of next week if people want to add anything.

MR. GRANO: Thank you.

THE COURT: Thank you.

(At 3:09 p.m., off the record)

APPENDIX E

STATE OF MICHIGAN

IN THE 54A DISTRICT COURT FOR THE CITY OF LANSING

People of the State of Michigan,

Plaintiff,

v

File No. 16-05237-FY

John Francis Davis,

Defendant,

_____ /

Gerald Magnant,

File No. 16-05238-FY

Defendant.

_____ /

OPINION AND ORDER

At a session of said court held in the District Court,
City Hall Building, Lansing, Ingham County, Michigan,

This 24th day of April, 2017

PRESENT: HONORABLE LOUISE ALDERSON, District Judge

At a preliminary exam it is the Court's responsibility to determine by a probable cause standard whether a crime has been committed and whether defendant committed that crime. MCL 766.13. If the evidence introduced at the preliminary exam conflicts or raises a reasonable doubt about the defendant's guilt, the magistrate must let the factfinder at trial resolve those questions of fact, *People v - Hill*, 433 Mich 464 (1989). The magistrate may not weigh the evidence, but must restrict his or her attention to whether there is evidence regarding each of the elements of the offense, *People v Coons*, 158 Mich App 735 (1987).

The alleged crime committed is MCL 205.428(3) which states:

- (3) A person who possesses, acquires, transports, or offers for sale contrary to this act 3,000 or more cigarettes, tobacco products other than cigarettes with an aggregate wholesale price of \$250.00 or more, 3,000 or more counterfeit cigarettes, 3,000 or more counterfeit cigarette papers, 3,000 or more gray market cigarettes, or 3,000 or more gray market cigarette papers is guilty of a felony, punishable by a fine of not more than \$50,000.00 or imprisonment for not more than 5 years, or both.

The People allege that this possession was “contrary to the act” by not obtaining/possessing a Michigan tobacco license as required by MCL 205.423, as noted in the felony complaint.

MCL 205.423(1) states:

- (1) Beginning May 1, 1994, a person shall not purchase, possess, acquire for resale, or sell a tobacco product as a manufacturer, wholesaler, secondary wholesaler, vending machine operator, unclassified acquirer, transportation company, or transporter in this state unless licensed to do so. A license granted under this act is not assignable. (Emphasis added)

Much attention has been brought on the intent requirement for the crime charged. As to the issue of intent, MCL 8.9 does not apply as the offense occurred prior to January 1, 2016. The Court reviewed all cases cited by both the Prosecution and Defense. In *People v Nasir*, 255 Mich App 38, (2003) the court reversed defendant’s conviction under the Tobacco Products Tax Act (TPTA) because the jury was not instructed on the element of mens rea required for the offense. As to what intent is necessary in a violation of this section of the TPTA, this Court finds the rationale of *People v Shouman*, 2016 WL 5853301, while unpublished, to be persuasive.

“The premise of defendant’s argument is faulty because the trial court’s instruction does require proof of some knowledge on the part of defendant. In particular, the instruction requires proof that defendant knowingly possessed, acquired, offered for sale or transported tobacco products other than cigarettes. As explained below, we conclude that proof of any additional knowledge or

intent is not required...Moreover, there is no support in *Nasir* or other case law for defendant's contention below that the prosecutor had to prove that defendant knew he was required to have a license and that he specifically intended to violate the TPTA. That is, the defendant was required to have knowledge of what it was that he possessed, which is consistent with the general intent element requiring that one have the requisite intent to do the prohibited physical act...Given defendant's statutory responsibility to have a license and permit in his possession, he was in a position to know whether he had the requisite license and permit, thereby undercutting defendant's claim that the prosecutor must prove his knowledge regarding the licensure requirement." *Shouman*.

There is no standard jury instruction for MCL 205.428(3). The Court finds the elements for the crime charged as follows:

- (1) That defendants knowingly transported cigarettes.
- (2) That defendants did not have a Michigan Department of Treasury license or permit to transport tobacco.
- (3) That defendants transported 3000 or more cigarettes.
- (4) That this violation occurred on 12/11/15 at 403 W. Ottawa, Lansing Michigan

As to element two, certified tax records indicated that neither Defendant Davis nor Defendant Magnant applied for a license under the Tobacco Products Tax Act. (Plaintiff's Exhibits 7 and 8) Other tax records indicated that the Keweenaw Bay Indian Community, The Pines Convenience Center, Ojibwa Casino – Baraga, and Ojibwa Casino – Marquette, never applied for a license. (Plaintiff's Exhibits 3 through 6) Absent a wholesaler license, an unclassified acquirer license, or the use of a common carrier, a transporter of tobacco is required to have in his possession a transporter license and a permit for the load. (Littlejohn testimony, prelim transcript pages 100 through 103). Testimony indicated that the vehicle used by the defendants was not a common carrier. Both defendants were employees of the Keweenaw Bay Indian Community on 12/11/15. (Stipulation, prelim transcript, page 114) Testimony from Trooper Ryan provided evidence that Seneca brand cigarettes are part of a non-participating manufacturer that does not have an agreement with the Department of Treasury to bring tobacco into the state of Michigan. (Ryan testimony, prelim transcript, page 57)

As to element three, 56 cases of cigarettes were seized from the trailer, each case containing 12,000 cigarettes. (Ryan testimony, prelim transcript, page 59)

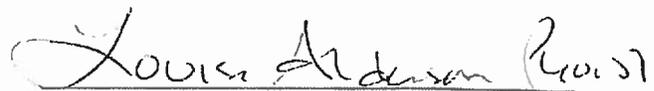
As to element four, the stop and seizure of the cigarettes occurred on 12/11/15 and the license would have been obtained from the Department of Treasury at 403 W. Ottawa, City of Lansing, Ingham County, Michigan. (The Court previously ruled on another issue of venue)

The question for the Court remains as to element one, was there evidence at the preliminary exam that defendants knew that cigarettes were in the trailer of the vehicle? As to Defendant Magnant, he indicated that he loaded the cases into the trailer which would be evidence of knowledge of the cigarettes. As to Defendant Davis, he was the driver of the vehicle providing transport services for his employer, KBIC. When Davis got out of his vehicle to open the trailer, Trooper Lajimodiere asked Davis "nobody's gonna jump out of the trailer, you know, nobody's gonna jump out or anything like that." The response from Davis was "Um, there's just chips and stuff in there, and he kept just going on." (Prelim transcript, page 40) When asked if he knew whether the stuff was back there, Davis responded "I'm just a worker." (Prelim transcript, page 20) Taken as a whole, his work assignment, amount of cigarettes, statements and demeanor viewed on the video indicated his knowledge of the cigarettes being transported in this trailer, either as a principal or on an aider/abettor theory.

Accordingly, John Davis and Gerald Magnant are bound over to Circuit Court on the charged offense. Both Defendants waived their right on the record to a Circuit Court arraignment, which would have been on May 3, 2017. The bond as to both Defendants is continued.

APR 24 2017

Date


Honorable Louise Alderson,
54A District Court

APPENDIX F

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STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM

PEOPLE OF THE STATE OF MICHIGAN, :
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Plaintiff, :
 :
-vs- : File No.
 : 17-406-FH
JOHN FRANCIS DAVIS, :
 :
Defendant. :

PEOPLE OF THE STATE OF MICHIGAN, :
 :
Plaintiff, :
 :
-vs- : File No.
 : 17-407-FH
GERALD MAGNANT, :
 :
Defendant :

MOTION HEARINGS
BEFORE THE HONORABLE ROSEMARIE E. AQUILINA
Lansing, Michigan - November 2, 2017

1 APPEARANCES:
2 For the People: Attorney General's Office
3 DANIEL C. GRANO (P70863)
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7
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16 For Defendant
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19 Plymouth, MI 48150
20
21 Reported by: Genevieve A. Hamlin, CSR-3218
22
23
24
25

<p>1 I N D E X</p> <p>2 WITNESS: PAGE</p> <p>3 KEVIN RYAN:</p> <p>4 Direct Examination by Mr. Grano: 51</p> <p>5 Cross Exam by Mr. Piszczatowski: 63</p> <p>6 Cross Examination by Mr. Samaan: 78</p> <p>7 Redirect Examination by Mr. Grano: 89</p> <p>8 Recross Exam by Mr. Piszczatowski: 90</p> <p>9</p> <p>10 CHRIS LAJIMODIERE:</p> <p>11 Direct Examination by Mr. Grano: 96</p> <p>12 Cross Exam by Mr. Piszczatowski: 104</p> <p>13 Cross Examination by Mr. Samaan: 116</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18 * * *</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: center;">3</p>	<p>1 Lansing, Michigan</p> <p>2 November 2, 2017</p> <p>3 2:06 p.m.</p> <p>4 R E C O R D</p> <p>5 THE COURT: This is dockets 17-406-FH and</p> <p>6 17-407-FH, People of the State of Michigan versus</p> <p>7 John Francis Davis and Gerald Magnant.</p> <p>8 MR. GRANO: Good afternoon, Your Honor,</p> <p>9 Assistant Attorney General Dan Grano for the people.</p> <p>10 MR. PISZCZATOWSKI: Wally Piszczatowski on</p> <p>11 behalf of Mr. Davis.</p> <p>12 MR. SAMAN: Good afternoon, Your Honor,</p> <p>13 for the record Salem Samaan appearing on behalf of</p> <p>14 Mr. Magnant.</p> <p>15 THE COURT: And who do we have on the</p> <p>16 screen? Are these --</p> <p>17 DETECTIVE CROLEY: Detective Sergeant Chris</p> <p>18 Croley, Michigan State Police eighth district</p> <p>19 headquarters.</p> <p>20 DETECTIVE RYAN: Detective Sergeant Kevin</p> <p>21 Ryan Michigan State Police.</p> <p>22 THE COURT: Are you all witnesses now, is</p> <p>23 that what we've done here?</p> <p>24 DETECTIVE CROLEY: I believe -- I'm the</p> <p>25 case officer and I think there's two witnesses for</p> <p style="text-align: center;">5</p>
<p>1 EXHIBITS: ADMITTED</p> <p>2 Exhibit 1 58</p> <p>3 Exhibit 2 60</p> <p>4 Exhibit 3 61</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: center;">4</p>	<p>1 the state, Your Honor.</p> <p>2 MR. GRANO: And the defendants are there.</p> <p>3 THE COURT: Okay. And, I'm sorry, can you</p> <p>4 just start again, then?</p> <p>5 DETECTIVE CROLEY: Yes, ma'am. Detective</p> <p>6 Sergeant Christopher Croley, C-r-o-l-e-y, Michigan</p> <p>7 State Police Eighth District Headquarters.</p> <p>8 THE COURT: Thank you.</p> <p>9 DETECTIVE RYAN: Detective Sergeant Kevin</p> <p>10 Ryan, Michigan State Police, Negaunee post.</p> <p>11 THE COURT: Thank you.</p> <p>12 TROOPER LAJIMODIERE: Trooper Chris</p> <p>13 Lajimodiere, MSP Eighth District Headquarters, last</p> <p>14 name is L-a-j-i-m-o-d-i-e-r-e.</p> <p>15 THE COURT: Thank you, sir.</p> <p>16 DETECTIVE CROLEY: Your Honor, we have the</p> <p>17 two defendants here as well.</p> <p>18 THE COURT: All right.</p> <p>19 MR. DAVIS: John Davis.</p> <p>20 DETECTIVE CROLEY: Go ahead, sir.</p> <p>21 MR. MAGNANT: Jerry Magnant, J-e-r-r-y,</p> <p>22 M-a-g-n-a-n-t.</p> <p>23 THE COURT: All right. And then John</p> <p>24 Davis, is that correct?</p> <p>25 DETECTIVE CROLEY: You probably have to</p> <p style="text-align: center;">6</p>

1 stand right here.
 2 MR. DAVIS: Yes, that's correct.
 3 THE COURT: All right. Thank you. So
 4 shall I -- we'll just, as we address everyone, swear
 5 them; is that correct?
 6 MR. GRANO: Yes.
 7 THE COURT: You're going to call witnesses?
 8 MR. PISZCZATOWSKI: I don't know if we have
 9 to, judge. We may not have to. If not, we can make
 10 argument without our clients but they're there so
 11 they can at least be present at the hearing.
 12 THE COURT: Thank you. Can you, on the
 13 screen, can you all hear us?
 14 DETECTIVE CROLEY: Yes, ma'am, we can hear
 15 you just fine.
 16 THE COURT: All right, thank you. Thanks
 17 for doing this. All right, then. So we have a
 18 motion to dismiss, a motion to quash information, a
 19 motion to suppress evidence, and a motion to -- for
 20 leave to file motions.
 21 Now, the motion for leave to file motions,
 22 is that really necessary, because --
 23 MR. PISZCZATOWSKI: Just -- judge, you want
 24 us to stand --
 25 THE COURT: Yes.

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1 MR. PISZCZATOWSKI: I don't know if it's
 2 easier --
 3 THE COURT: Actually, I would like you at
 4 the podium, if possible. I don't know -- it's easier
 5 for the court reporter. I don't know if you're
 6 needed there. I think it's just easier for us. I
 7 don't know if that affects the screen, if they can't
 8 see you if you're at the podium, but I think for us
 9 we need you at the podium.
 10 MR. PISZCZATOWSKI: I'm going to be at the
 11 podium.
 12 THE COURT: Thank you. Do you need to set
 13 up your paperwork?
 14 MR. PISZCZATOWSKI: Not for this question.
 15 THE COURT: All right.
 16 MR. PISZCZATOWSKI: No, Your Honor, it's
 17 not necessary, but I thought we would just follow an
 18 access of caution. I don't know what the cut off
 19 encompassed, whether it encompassed motions in
 20 limine? We just weren't clear. We probably should
 21 have called, but that's the only basis for that
 22 motion.
 23 THE COURT: All right. Well, I don't -- do
 24 we even have a trial date on this?
 25 MR. PISZCZATOWSKI: No, we don't.

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1 THE COURT: This is quite early in this
 2 case.
 3 MR. PISZCZATOWSKI: No.
 4 THE COURT: All right. So as far as I'm
 5 concerned, until at least right before the trial --
 6 and, of course, it depends on what kind of motion.
 7 Feel free to file. Certain motions, of course, as
 8 you all know, we need some time to file, respond, et
 9 cetera, and some motions I will allow even the day of
 10 the jury trial as long as it's not going to delay,
 11 because it takes about an hour for the jury to come
 12 up, but those are very few motions, but depending
 13 what they are, we'll have a pretrial and decide what
 14 the cut off is, so up until then, file away, and I'll
 15 make sure you have time on my docket.
 16 MR. PISZCZATOWSKI: Thank you, Your Honor.
 17 THE COURT: All right? So -- but thank you
 18 for that courtesy of letting me know that you have
 19 that concern and find some time.
 20 MR. PISZCZATOWSKI: Yes. We'll definitely
 21 contact your clerk, Your Honor.
 22 THE COURT: All right, thank you. So do
 23 you have a problem with that?
 24 MR. GRANO: No, Your Honor. And for the
 25 rest of the motions it would be my suggestion that we

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1 do the due process and the motion to quash first
 2 because I think that may resolve the evidentiary --
 3 the need for an evidentiary hearing, potentially.
 4 THE COURT: All right. Okay. I don't have
 5 a problem with that.
 6 MR. SAMAAN: Good afternoon, Your Honor.
 7 THE COURT: Good afternoon, counsel.
 8 MR. SAMAAN: For the record, again, Salem
 9 Samaan appearing on behalf of Mr. Magnant. This is
 10 our joint motion to dismiss for due process
 11 violations.
 12 Your Honor, we filed a brief. I don't know
 13 how in depth you would like us to go through. I can
 14 just --
 15 THE COURT: I've read the briefs. I have
 16 the information, but obviously you need to make
 17 enough of a record in the event either side wants to
 18 appeal my rulings, so that's really what you should
 19 be doing as I don't know because either side may want
 20 the appellate courts, just down the road, to take a
 21 look at what we do here, so from that perspective, I
 22 always let counsel make the record. I liked to do
 23 that as a practitioner when I was unhappy with the
 24 judge, so make your record from that perspective. I
 25 have read all the trees that you've cut down.

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1 MR. SAMAAN: All right. Thank you, Your
 2 Honor. The instant criminal charges were brought by
 3 the Attorney General's office under MCL 205.423(3)(f)
 4 and MCL 205.428(3). The charges were brought against
 5 community members, employees of the community. When
 6 I say community, I'm talking about the KBIC, the
 7 Indian tribe up in Marquette, Baraga County. The two
 8 individuals charged were employees of the community
 9 at the time the charges were brought and the arrest.

10 The elements of the charge are as follows,
 11 judge, as I listed them out. The defendants in their
 12 capacity as employees of the tribe were acting as a
 13 transporter as defined in MCL 205.422(y).

14 Second element, the defendants, in their
 15 capacity as employees of the tribe, knowingly
 16 transported cigarettes which were the property of the
 17 tribe.

18 Defendants, while transporting cigarettes,
 19 knew the tribe was not licensed by the Department of
 20 Treasury either as a wholesaler or unclassified
 21 acquirer;

22 And defendants knowingly violated the law
 23 by failing to obtain a transporter license.

24 The case law is very clear, judge, that
 25 defendants may not be held culpable of transporting

1 tobacco products without a license in the absence of
 2 fair notice of the violation, and I think the whole
 3 basis of this motion is that the defendants did not,
 4 in fact, have fair notice of the violation. That the
 5 TPTA is vague, at best.

6 The TPTA provides that a person who
 7 transports cigarettes contrary to the act is guilty
 8 of a felony punishable by a fine of not more than
 9 50,000 or imprisonment of not more than five years or
 10 both. Due process does require a person to have fair
 11 notice, and the cases we cited, Mesick and the other
 12 ones, basically deal with those issues.

13 The facts that came out at the preliminary
 14 exam is as follows, judge: The people put forth a
 15 witness in this case, and that was Ms. Angela
 16 Littlejohn, and she is the manager, the administrator
 17 of the tobacco tax unit, and when she was testifying
 18 she clearly testified that an employee of a
 19 wholesaler -- employee -- does not need to secure a
 20 transport license. Even the wholesaler would not
 21 need to secure -- if they were licensed to be a
 22 dealer, they would not need to have transporter's
 23 license to have their employee deliver product or
 24 pick up product for them.

25 THE COURT: But we weren't dealing with a

1 wholesaler here, correct?

2 MR. SAMAAN: Well, we will get to that,
 3 judge. No, we were dealing with an Indian tribe, a
 4 sovereign nation. A sovereign nation that does not
 5 fall under the auspice of Michigan laws, TPTA, or
 6 anything else.

7 So if -- and let's assume for argument sake
 8 that there was a need for a transporter license or a
 9 license, it's not the employees that are the ones who
 10 are to have that. It would be, in this case, the
 11 tribe, not the employees, so the employees are not
 12 obligated to get -- they couldn't get one if they
 13 wanted to, judge. They couldn't get one because it
 14 says a person who is in the business of. These
 15 employees were not in the business of selling,
 16 possessing, or trans -- they were not. They were
 17 just mere employees doing a job for their employer.

18 And it's very -- I think we cited the one
 19 case that I think is very important in this case, the
 20 Asta case, and in that case the court held that the
 21 State of Michigan Department of Treasury can tax
 22 tobacco if it is going to come to rest and/or be
 23 distributed and sold in the state of Michigan,
 24 because they said that that basically -- otherwise,
 25 it would interfere with commerce, so in this case

1 we're not only dealing with transportation from one
 2 city to the next, we're dealing with transportation
 3 from one country, sovereign nation, to another
 4 sovereign nation, and so if the court says you can't
 5 do it if they're going -- if the product is going to
 6 come to rest in another state, not in the state of
 7 Michigan, then how can they enforce this act against
 8 an employee who's transporting product to a different
 9 nation, sovereign nation?

10 Now, brother counsel in his reply brief
 11 tries to distance himself and the people from the
 12 testimony of Angela Littlejohn by saying the court
 13 should not read or accept her interpretation, but the
 14 lawyers yet in another part of his brief, he says the
 15 statute is very clear, that any reasonable
 16 Michigander would know what is prescribed. Well, I
 17 think that goes against his argument. If the
 18 administrator of the tobacco tax unit, the people in
 19 charge of administrating this particular statute
 20 believe that employees do not need to have a
 21 transporter license, how is it, then, an average
 22 employee is supposed to know what is prescribed and
 23 what is not prescribed?

24 I think in their brief the people also
 25 argue that entities, individuals engaged in tobacco

1 business on their own may be subject to license
 2 requirements, and I guess the words that we need to
 3 stress here is engage in tobacco business on their
 4 own, i.e., their own business. In this particular
 5 case, as testimony showed, these were employees.
 6 They were delivering product for their employer.
 7 They were not transporting tobacco on their own or
 8 for their own business, and based on the testimony of
 9 Angela Littlejohn, they would not be required to have
 10 a transporter license. In fact, the statute itself
 11 says an individual who is in the business of can
 12 apply for transporter license. These guys were not
 13 in the business of. They were carrying out a
 14 function for their employer.
 15 And what's important here, Your Honor, is
 16 that the licensing requirements of TPTA do not apply
 17 to Indian tribes. The Indian tribe is certainly not
 18 an individual, as is required by this, or partnership
 19 or fiduciary, limited liability company, or a
 20 corporation, or other legal entity. Each one of
 21 these terms, as I referenced in our brief, has their
 22 own precise meaning. An individual is a natural
 23 person. And the other terms refer to business
 24 organizations and relationships that are the
 25 creations of state law. As a sovereign nation, KBIC

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1 is not one of those entities and will not qualify as
 2 one of those entities. They are a sovereign nation
 3 that has their own rules, their own laws, and they
 4 govern their people.
 5 And, again, the defendants here as
 6 employees of the community are not obligated or
 7 required to get a license under the TPTA. In fact,
 8 no reasonable employee -- and this goes to the issue
 9 of reasonable Michiganders would know -- no
 10 reasonable employee, when you go to get a job as a
 11 maintenance person or truck driver, would ask his
 12 employer, oh, by the way, are you licensed to sell
 13 tobacco? Do I need a license? They're 12, \$15 an
 14 hour employee. I don't think that's a question that
 15 would come up. There's no way that they would know,
 16 and one important thing to note, the statute when it
 17 was enacted, it authorized the Department of Treasury
 18 to issue rules, regulations, clarifications of the
 19 statute, and, Your Honor, in the last 24 years, and
 20 I've been doing this work for a good long time, they
 21 have not issued any such regulations, and as Doug
 22 Miller, who is the individual in charge of the
 23 Michigan tobacco tax unit testified, well, no, we
 24 have never -- we sent out some notice but never on
 25 this particular issue.

16

1 THE COURT: Well, isn't the Indian tribe
 2 subject to having the -- I'm sorry, the license?
 3 Aren't they -- I mean, the employee -- even if your
 4 argument is that the employee doesn't have to have
 5 that transporting license, doesn't the tribe have to
 6 comply with state law?
 7 MR. SAMAAAN: Your Honor, I don't believe
 8 they do, and I think there's cases right now pending
 9 in the federal court relative to this issue. The
 10 Indian tribe is a sovereign nation and in carrying
 11 out their function as a sovereign nation they do not
 12 fall under any laws of the State of Michigan
 13 whatsoever.
 14 THE COURT: Is there federal law that
 15 exempts them?
 16 MR. SAMAAAN: The treaty from 1812. They
 17 are a sovereign nation. In other words, a state
 18 trooper cannot go on the reservation to arrest
 19 somebody, to search, do anything.
 20 THE COURT: I understand that, but once
 21 they cross on to state lands, do they then need to
 22 comply with that law in transporting tobacco?
 23 MR. SAMAAAN: I don't think so, judge.
 24 THE COURT: I don't care what you think.
 25 What does the statute say?

17

1 MR. SAMAAAN: Well, the Asta case, I think,
 2 addresses that issue. That would be interfering with
 3 state government. The TPTA would apply to any
 4 tobacco product brought into the state to either be
 5 sold and come to rest in the state of Michigan. They
 6 do not apply to any tobacco that's going through the
 7 state to a different state. For example, if a
 8 wholesaler in the state of Michigan wants to sell
 9 tobacco to a wholesaler in Chicago, that wholesaler
 10 in Chicago would not have to pay the tax and, in
 11 fact, if the wholesaler in Michigan had prepaid the
 12 tax to the Department of Treasury, they are entitled
 13 to a refund. If that's the case with the state, now
 14 we're talking about a sovereign nation. The tobacco
 15 product was being delivered from one Indian
 16 reservation to another Indian reservation. It didn't
 17 come to rest, was not going to come to rest in the
 18 state of Michigan or be sold in the state of
 19 Michigan. It was to be sold on the reservation. The
 20 stores that carry their tobacco are tribal stores,
 21 reservation stores, and we're also talking about not
 22 just the actual reservation but we have trust lands,
 23 that that trust land is also considered Indian
 24 territory.
 25 THE COURT: What about MCL 205.423 that

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1 says that -- the Tobacco Products Tax Act that
2 requires those transporting tobacco in to and
3 throughout the state of Michigan to obtain a license?

4 MR. SAMAAN: Throughout the state of
5 Michigan, but where is that tobacco going to come to
6 rest? And that's what the Asta case clarified. Is
7 it coming to rest in the state of Michigan, in which
8 case they would have to, and actually not a transport
9 license, because employees don't need it, but that's
10 where they can tax. If the tobacco product is going
11 to be sold and/or distributed in the state of
12 Michigan, but if they're going through, the courts
13 have held that that would interfere with commerce,
14 national commerce -- interstate commerce.

15 THE COURT: Okay.

16 MR. SAMAAN: Your Honor, in this case the
17 evidence is largely undisputed. KBIC owned the truck
18 that was hauling tobacco products at issue. KBIC
19 owned the trailer which the tobacco products were in.
20 As mentioned earlier, KBIC is a sovereign nation.
21 The truck, the documents for the truck, and the
22 trailer all list KBIC as the owner.

23 KBIC placed its governmental seal of
24 approval on such tobacco products, not the State of
25 Michigan stamp. The treasury assessed KBIC with the

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1 Michigan tobacco tax. They assessed them, not John
2 Davis and not Gerald Magnant. They were mere
3 employees, so if we're going to take the people's
4 argument one step further, who owns the tobacco? Is
5 it -- who is the transporter in this case? Is it the
6 employees that are carrying out a function for their
7 employer or is it in this case, just for argument
8 sake, KBIC?

9 Your Honor, basically I don't believe that
10 the employees fall under the TPTA. I don't think
11 they are required to secure a transporter license.
12 They can't if they wanted to. The statute doesn't
13 provide for that. It says those who are involved in
14 a business, so, therefore, I believe that there was
15 not proper notice for these employees that they, in
16 fact, needed, and the argument of -- or the testimony
17 of Ms. Angela Littlejohn, I think, clarifies that as
18 well. Thank you.

19 THE COURT: Response.

20 MR. GRANO: First and foremost, Your Honor,
21 I think the defense would like to cloud this issue by
22 bringing in Indian law. This case isn't really about
23 Indian law at all. It's a simple Tobacco Products
24 Tax Act case. Charged two individuals, not an Indian
25 tribe for transporting tobacco while they were in the

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1 state of Michigan, not on an Indian reservation.
2 They did not have a license. Nobody involved in this
3 case had a license. Where the tobacco was going from
4 didn't have a license. Where the tobacco came from
5 didn't have a license.

6 I believe -- they're not published, highly
7 persuasive is People V Shouman which the Court of
8 Appeals decided last year, very similar case in that
9 a man down in Garden City was transporting tobacco,
10 he was actually working for a licensee, did not have
11 a license on his person, he himself was not
12 personally licensed, and the Court of Appeals said
13 that he had to personally be licensed, that the act
14 provided notice to him, and that under the statutory
15 regulations you have to physically have the
16 regulation and the permit for the load on your person
17 as you're transporting the tobacco, therefore any
18 person transporting tobacco in the state without a
19 license or permit for the load on their person would
20 know that they are no longer in compliance with the
21 Tobacco Products Tax Act.

22 Now, I disagree with counsel also in terms
23 of the elements he claims we have to prove. I think
24 the Shouman case, which was all about what the
25 elements of this crime are, should control what the

21

1 elements are. There's only three elements. One --
2 and I've conceded -- the Court of Appeals in a
3 footnote actually said this could be a strict
4 liability offense because there's no knowledge
5 requirement in the act. I personally don't favor
6 that so I've conceded in both Shouman and in this
7 case that you need to knowingly possess the tobacco
8 product. In this case you knowingly have to
9 transport cigarettes. That the defendants did not
10 have a license and/or permit to transport tobacco
11 issued by the Michigan Department of Treasury and
12 that they were transporting over 3,000 or more
13 cigarettes to make it a felony. Those are the three
14 elements that need to be proven. Those three
15 elements, I believe, provide fair notice to any
16 resident or person acting in the state of Michigan

17 As cited in my case, there was a case last
18 year in the Michigan Court of Appeals where the fair
19 notice issue came up regarding the Tobacco Products
20 Tax Act, that case dealing with a retailer. Court of
21 Appeals found that the Tobacco Products Tax Act is
22 not indiscriminatory law. It applies fairly to
23 everybody in the state and it adequately gives notice
24 to the people operating.

25 I would note, unlike other areas of

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1 business, our courts have held that the tobacco
 2 business is a highly regulated business and I don't
 3 think people haphazardly wander into a highly
 4 regulated business and then say I didn't know there
 5 was any regulations. I don't think that's a
 6 reasonable position. People know alcohol, tobacco,
 7 soon to be medical marijuana, those are industries
 8 that are well known in the public that have a ton of
 9 regulations. You don't just wander into that on your
 10 own. All the terms in the TPTA are defined, and
 11 where they are not defined, the dictionary definition
 12 would apply.

13 The defense has raised issue about Angela
 14 Littlejohn. I think her testimony doesn't really
 15 apply because those are all hypothetical, A, on
 16 license wholesalers and how they can move tobacco and
 17 whether their employees need a license. There's no
 18 licensed body, entity, person in this case.

19 Furthermore, our courts in this state have
 20 been very consistent in that departments and
 21 employees of departments don't get to decide what the
 22 law is. That's your job, Your Honor. It is the
 23 higher court's job to decide what the law in the
 24 state is.

25 Now, as it relates to the Indian tribes,

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1 Keweenaw Bay Indian Community sued the state back in
 2 2006 and seven claiming the Tobacco Product Tax Act
 3 didn't apply to them. They lost that case. The
 4 case, Keweenaw Bay V Rising, 477 F 3rd 881, in that
 5 the court found that purchased taxed tobacco products
 6 from entities that are licensed -- it requires KBIC
 7 to purchase taxed tobacco products from entities that
 8 are licensed under the TPTA and then they can file a
 9 refund for the tax. State of Michigan doesn't have a
 10 right to tax Indian tribe members but the tribe needs
 11 to collect the tax for everybody else and remit it to
 12 the State of Michigan.

13 THE COURT: And that would apply -- and I
 14 read that, and it appears that that goes to the
 15 argument or can go to the argument that counsel just
 16 made where the tobacco is being driven from tribal
 17 grounds through the state of Michigan to the
 18 destination point which could be another tribal
 19 ground. Then they can apply for that refund,
 20 correct?

21 MR. GRANO: Correct.

22 THE COURT: If that were the case and the
 23 argument would be made to Michigan, hey, we used your
 24 roads but we didn't do anything else so we're asking
 25 for this refund, right?

24

1 MR. GRANO: I think there's two different
 2 issues. One is how the tax is paid and collected.
 3 The other is how the tobacco originates in the state
 4 of Michigan and to the tribe, and so they still are
 5 required to comply with the Tobacco Products Tax Act
 6 in obtaining the tobacco. If they want to be exempt
 7 from the requirements of how tobacco arrives, counsel
 8 was talking about interstate commerce and the state
 9 doesn't have the ability, because the federal law --
 10 there's a federal tobacco law that talks about
 11 that -- that applies to interstate carriers licensed
 12 under the Department of Transportation, U.S.
 13 Department of Transportation. If you're moving the
 14 tobacco yourself, you must comply with state law. In
 15 this case we have a pickup truck with a snowmobile
 16 trailer.

17 THE COURT: Right.

18 MR. GRANO: No licensing with federal
 19 government and, therefore, they are individually
 20 moving the tobacco and they must be following the
 21 laws of the land.

22 It would be akin, Your Honor, to somebody
 23 having a CPL in Michigan, in New York state, which
 24 they don't, but if they did, having reciprocal CPL
 25 requirements, saying you're legal in Michigan, you

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1 can be legal in New York, and then driving through
 2 Canada and telling Canada, I don't have to follow
 3 your CPL law because where I'm going it's legal and
 4 where I came from it's legal. Canada would say,
 5 that's not how it works. In our country you're going
 6 to follow our laws. Same thing here. And it's --
 7 and that's not a perfect example because they claim
 8 that the tribe is a sovereign nation. It's not an
 9 equally sovereign nation. It's not like Canada.
 10 They take money from the state. We pave the roads.
 11 We have business with them, and so they're a legal
 12 entity. They're akin to a domestic subservient
 13 nation in the U.S. The federal government can pass
 14 regulations and tell the tribes what their rights are
 15 and what they are not, and, in fact, the U.S. Supreme
 16 Court has said that tobacco laws apply to the tribes
 17 especially when they are off reservation, and in this
 18 case they are off reservation moving tobacco.

19 The other tribes -- Michigan issues a
 20 tribal stamp for tribal cigarettes. KBIC refuses to
 21 use tribal -- Michigan's tribal stamp, they use their
 22 own tribal stamp. The tobacco being moved in this
 23 case, the Seneca brand cigarette, was illegal in the
 24 state of Michigan. Nobody in the state of Michigan
 25 can possess that tobacco because they refuse -- that

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1 company has no tax agreement with the State of
 2 Michigan and so even another tribe couldn't have
 3 Seneca brand cigarettes in the state of Michigan.
 4 THE COURT: Okay.
 5 MR. GRANO: So I don't believe the tribe
 6 gets to go do whatever they want and then the
 7 employees get immunity when they start moving tobacco
 8 or this highly regulated product through the state.
 9 The act, I think, is clear what the requirements are.
 10 And for those reasons I would ask that the due
 11 process claim be denied. Thank you.
 12 MR. PISZCZATOWSKI: Your Honor, since this
 13 is a joint motion, may I just address the court very
 14 briefly?
 15 THE COURT: You may.
 16 MR. PISZCZATOWSKI: Thank you, Your Honor.
 17 And I know the facts tend to get very intertwined in
 18 all these arguments.
 19 THE COURT: They do.
 20 MR. PISZCZATOWSKI: And that's good and
 21 bad, I guess, from the court's perspective. But let
 22 me try to just focus, if I could, on the due process
 23 argument for a second.
 24 What the defense -- at least Mr. Davis, and
 25 I'm sure I can speak for Mr. Magnant in this case, is

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1 to say this, first of all, we're not saying the
 2 entire act is ambiguous. There are portions that are
 3 certainly going to survive and they're very clear.
 4 And -- but in this case when applied to the
 5 circumstances here, and Mr. Grano can make the
 6 distinction between sovereign nation as some
 7 subservient nation or whatever those words were, and
 8 I'm not a tribal guy so I apologize, I'm not a very
 9 good guy to discuss Indian law, there are a lot
 10 better people than I, but -- but they certainly rank
 11 at a different level and a much higher level, shall
 12 we say, than ABC Warehouse or Joe Sanefski, the
 13 Ragman, Inc. They are a sovereign nation. They are
 14 recognized as such. Okay.
 15 THE COURT: I agree.
 16 MR. PISZCZATOWSKI: I think that's probably
 17 undisputable, so when you apply this
 18 employee/employer relationship, which we have here,
 19 and the employer is a sovereign nation and not ABC
 20 Warehouse -- and I'm going to talk about ABC
 21 Warehouse in a minute -- it becomes even more unclear
 22 as to the application of the statute, and that's what
 23 makes the ambiguity here a little bit clearer and
 24 more pronounced.
 25 First of all, the question is in this

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1 situation, it's kind of a factual one and whether the
 2 statute is clear about -- we know what the definition
 3 of a transporter is because it's in the statute, 422,
 4 whatever, O, or whatever number it is, but -- but as
 5 applied, which is what we're talking about here, can
 6 reasonable people differ as to that application and
 7 then the need for a license, and I'm going to tell
 8 the court our position and the court is going to make
 9 a determination, but here it is, the answer is, yes.
 10 Why? Because you've got people that are tasked with
 11 the job of enforcing this statute. That's their job.
 12 Ms. Littlejohn, that's her job. Mr. Miller is the
 13 head of, you know, multiple units including enforcing
 14 this and giving pronouncements as to the law and the
 15 rules. And what do they say? Here's what they say,
 16 if the employer is licensed, the employee doesn't
 17 have to be licensed.
 18 Now, let's say this, the Shouman court,
 19 which we're going to hear a lot about today and we're
 20 going to hear about it probably in the motion to
 21 quash a little bit also, you have three judges, and
 22 those three judges, I guess they -- they're seeing it
 23 a different way, and maybe they pronounced the law --
 24 maybe -- because it's unpublished, number one, so
 25 it's persuasive, I got it, but you've got people that

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1 are tasked with enforcing and really pronouncing and
 2 issues regulations, rules, guidelines, all those
 3 things that that's what their job is, and people rely
 4 on that. They're the guys that put out form 326 that
 5 doesn't talk about individuals -- so form 326, Your
 6 Honor, I don't know if you know what it is, but it's
 7 the form where if I want to be a transporter and I
 8 want to get a license, that's the form I'm going to
 9 use -- and it was introduced at the preliminary
 10 exam -- that's the form I'm going to use to apply,
 11 and everybody agreed that that's the form. That's
 12 the only way to get a transporter's license, and that
 13 form talks about business. Businesses. So, yes, the
 14 statute can be an individual when that individual
 15 theoretically is maybe set up as some business, you
 16 know, Wally P Transporter -- Tobacco Transporter,
 17 yeah, I'm an individual, okay? That's a separate
 18 business. But it's not -- I'm not under an employer.
 19 So let me go back. Reasonable people are
 20 differing here and at a pretty high level -- at a
 21 pretty high level. You've got some Court of Appeals'
 22 unpublished decision that has some gratuitous, what
 23 we used to call dicta that in the old days when I was
 24 in a law school -- that was a long time ago -- and it
 25 says, you know, these cases -- well, in that case --

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1 that case, if I can just backtrack for a second,
 2 judge, that case involved kind of the bad man theory
 3 of criminal justice because the guy, Shouman there,
 4 was previously licensed, so this is not an issue
 5 where the guy had a question about, oh, do I need a
 6 license or not? He was previously licensed. His
 7 license lapsed and the Court of Appeals -- and so he
 8 knows about the licensing requirements, so for him
 9 it's -- we're at a little different level than some
 10 employees that are working as maintenance at the
 11 tribe and driving a truck. The prosecution made the
 12 claim that the defendants weren't, I guess, even
 13 employed by this company but, anyway, the Court of
 14 Appeals goes on to give its pronouncements of dicta
 15 that the state wants to rely on. Regardless of
 16 whether defendant was employed by LZ defendant,
 17 defendant was required to have in his possession a
 18 transporter's license and permit for the load in his
 19 possession. Okay. But that's funny because, you
 20 know, you look at Mr. Miller and Ms. Littlejohn and
 21 they say, no, no, that's not how we interpret this.
 22 That's not what it's about.
 23 So you got a principle called the rule of
 24 lenity. When there's a question, who gets the break?
 25 What we have found in the United States of America --

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1 you know, we're still, you know, regardless of who is
 2 our president, whatever, we got the rule of lenity,
 3 and the rule of lenity breaks in our favor in this
 4 case, and it is a very, very confusing statutory
 5 scheme, and we're submitting to the court that this
 6 is a trap for the unwary employee who is now going
 7 to be punished because your conversation with Mr.
 8 Grano was, going back, who's the transporter? Is it
 9 Mr. Davis and Mr. Magnant? Are they really
 10 transporters or is it the tribe, and we use, you
 11 know, the example of ABC Warehouse. ABC Warehouse is
 12 going to deliver a refrigerator -- do they have
 13 refrigerators? Anyway, they're going to deliver a
 14 refrigerator to me. Their truck, ABC Warehouse
 15 truck. KBIC truck. Owner of the refrigerator, ABC
 16 Warehouse. Owner of the tobacco, KBIC. Who gets
 17 assessed? Who is making the delivery? Wally
 18 Piszczatowski who is driving the ABC Warehouse truck?
 19 Is he really the transporter under the statute? All
 20 I am is an employee. I'm getting paid 10 bucks, 12
 21 bucks an hour to get it from point A to point B, but
 22 who's transporting it? ABC Warehouse is transporting
 23 it.
 24 And if the government wants to make an
 25 example out of the KBIC, that's not my problem. They

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1 can do it. And they can do it because the law is
 2 very clear that as the entities, people, you know,
 3 speak through their agents, so they can clearly
 4 prosecute the KBIC if they want. That's their choice
 5 One last thing and I'm going to shut up.
 6 Your Honor, this case, Shouman, first of all, was
 7 decided in October of '16. October of '16. I submit
 8 to the court that neither Davis nor Magnant, even if
 9 they were presumed to have some quote, unquote,
 10 notice, it isn't from the Shouman case, that's for
 11 sure, because this is December 11 of '15 that the act
 12 occurs, Shouman is decided October of 2016. And what
 13 we have here is -- if they want to make a
 14 pronouncement from that day forward, People V
 15 Dempster, Michigan Supreme Court case talked about
 16 securities, and in that case I think there was a
 17 commodity deal and they said that's not really a
 18 security -- even though the jury prosecuted and
 19 convicted Ms. Dempster, we're not going to convict
 20 her, but from this day forward anybody does this,
 21 you're on notice, so if you want to argue that from
 22 that day forward, October 4, 2016, the people are on
 23 notice, okay. And that's what Dempster says, Your
 24 Honor. It says that at some point, you know, you
 25 can't hold people where they're not reasonably on

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1 notice. You can't trap the unwary, and if the tribe
 2 is required to comply, which is the court's
 3 questions, with the licensing act, even if that's the
 4 case, we shouldn't punish an employee for the acts of
 5 its employer. That's un-American. Thank you.
 6 THE COURT: So ultimately you are in
 7 disagreement with the unpublished case of the Shouman
 8 Court of Appeals, Borrello, Markey, Riordan, saying
 9 that the plain language of the TPTA supports the
 10 conclusion that an individual may be a transporter.
 11 Your ABC example is that really who ought to be on
 12 trial here is -- if anybody, is the tribe?
 13 MR. PISZCZATOWSKI: Well, that's certainly
 14 part of the argument, that's what I made, Your Honor,
 15 that's correct.
 16 THE COURT: That is your argument?
 17 MR. PISZCZATOWSKI: Well -- and because of
 18 a notice issue, but that's correct. I mean, there's
 19 a separate argument on the motion to quash, but
 20 that's correct, because they're the transporter.
 21 THE COURT: All right. Well, let's take it
 22 a step further, because it's criminal law, and let me
 23 not pose it to you but to the people. Why are they
 24 not co-defendants?
 25 MR. GRANO: The tribe?

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1 THE COURT: Yeah. Co-defendants, why not?
 2 MR. GRANO: I -- well, first I would argue
 3 that the state recognizes to a certain extent that
 4 they have some sovereignty and so I don't believe the
 5 state is in a position to be charging a sovereign in
 6 and of itself.
 7 THE COURT: Let's stop right there. Let's
 8 stop right there. Because the sovereignty would then
 9 spill over on the employees, would it not? Or are we
 10 wrong? The sult of armor is distributed, is it not?
 11 MR. GRANO: It is not, Your Honor.
 12 THE COURT: Tell me why not.
 13 MR. GRANO: If I could just grab my notes.
 14 It is not, because the US Supreme Court and the
 15 federal law allows the state to require the tribes to
 16 be involved in tobacco tax collection, and that in
 17 this case, this stop specifically has been in front
 18 of the federal district court for the western
 19 district and the judge handling the case, Judge
 20 Maloney, has said Rising applies, the state had a
 21 right to go seize tobacco going to the tribe
 22 illegally, and so I believe the federal law is saying
 23 that Michigan has the right in this case to be
 24 enforcing its laws, and when we're not on tribal land
 25 and nobody has a license, it doesn't matter if you're

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1 a member of the tribe or not, you're subject to
 2 Michigan law, and so it's important, we didn't do
 3 this on KBIC land. We did this on US-41 in Marquette
 4 County. We're, I think the testimony was, 30 miles
 5 from one and about 60 miles from the reservation
 6 lands, so you're solidly in the state of Michigan.
 7 These folks need to be having a license or they can
 8 use interstate commerce. They can use an interstate
 9 trucking company to move the tobacco between their
 10 lands as long as they're in compliance with the law.
 11 The way they're doing it here is not in compliance,
 12 and that was, I think, the point of Shouman. The guy
 13 had a license in Shouman, the alleged employer, Mr.
 14 Shouman was a former licensee, he went to Ohio and
 15 brought tobacco back to the state of Michigan.
 16 That's not the way you do it. You have to -- it was
 17 done all wrong, and the court said it was proper for
 18 us to charge, Mr. Shouman ultimately pled guilty.
 19 I believe in this case it applies likewise,
 20 and I would also point to the case to the Colville
 21 case. It doesn't matter if the tobacco comes to
 22 rest. That's not the test for the court. The test
 23 for the court is whether there's a substantial nexus
 24 between the tobacco and the state. In this case
 25 there is because they're taking the tobacco to

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1 sell -- some goes to their members, which we refund,
 2 but the rest of it is going to a casino in Marquette,
 3 a gas station in Marquette, and a gas station in
 4 Baraga, all being sold to Michigan residents tax
 5 free, and those residents are required to buy tobacco
 6 taxed product which, the way the system is set up,
 7 the retailer business from a licensed source. The
 8 licensed, a wholesaler second -- secondary wholesaler
 9 or an unclassified acquirer, the tax gets passed
 10 through to the consumer. In this case since they're
 11 cutting out the wholesaler, the tax never gets
 12 collected on anybody, and that's the problem. It's
 13 substantially unfair to the businesses in the region
 14 that are complying with the law because these folks
 15 have chosen to not follow the regulations which were
 16 clear in Michigan law. Thank you.
 17 THE COURT: And I don't disagree with any
 18 of that. Here's my concern, because I think you're
 19 all right and somebody we know has to be wrong here.
 20 I think law enforcement did exactly what they were
 21 supposed to. I think that you are all arguing the
 22 correct thing. I think the tribe did the wrong thing
 23 and the employee is getting slapped for it. So now I
 24 get to decide what to do here, and I suppose the
 25 employee can hide under, I did not know what was

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1 going on, and maybe that's true and maybe it's not,
 2 and that's the crux of what I have to decide. That's
 3 really the issue here, is did the employee know that
 4 the tribe was doing something wrong that it should
 5 not have been doing and was the -- were the employees
 6 part of the wrongdoing of the tribe? Did they, with
 7 knowledge, know that the tribe was acting wrong and
 8 in violation of the law, or not? Because that's
 9 really the problem here, sir. I understand there's a
 10 violation of law here. I understand what you're
 11 saying, but it's really the tribe that has the
 12 wrongdoing here and the employees get caught with it.
 13 It's a question of did they have knowledge of this or
 14 not, because they then carry out this act without a
 15 license.
 16 MR. GRANO: Your Honor, in response to
 17 that, that issue I didn't address at the preliminary
 18 exam because I didn't think it was necessary.
 19 However, there is evidence in this case when the
 20 state police are there to do the inspection on the
 21 side of the road, defendant Magnant tells them, you
 22 need to leave our -- I don't have the quote in front
 23 of me, and if I had a second I can probably pull it
 24 up, to the effect we're a sovereign nation, leave us
 25 alone, so I think he knew exactly what he was doing

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1 when he was moving this tobacco.
 2 As it relates to Mr. Davis, it's not
 3 exactly clear because I believe he chose not to
 4 speak.
 5 THE COURT: He was the non-driver?
 6 MR. GRANO: Davis was the driver, Magnant
 7 was the non-driver.
 8 THE COURT: One of them, I don't remember
 9 from reading, actually physically carried --
 10 MR. GRANO: Correct.
 11 THE COURT: And one did not so one knew and
 12 one did not.
 13 MR. GRANO: The passenger loaded the truck,
 14 Mr. Magnant.
 15 THE COURT: Right.
 16 MR. GRANO: Mr. Magnant is also the person
 17 that says we're a sovereign nation to the state
 18 police, you need to stop bothering us. Mr. Davis is
 19 the guy driving the truck which is why he's also
 20 charged and was the person that let him in the back,
 21 because the state's belief is you don't transport
 22 672,000 cigarettes unknowingly. I think that's -- I
 23 think he had some knowledge that there was tobacco in
 24 the car, too. I don't have -- he didn't give any
 25 other real statements to the state police so I have

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1 no other evidence, to be honest with the court, of
 2 what his knowledge of the Indian tribe's fight with
 3 the State of Michigan is.
 4 THE COURT: Anything further?
 5 MR. SAMAN: If I may, Your Honor, just
 6 briefly. It was interesting to hear brother counsel
 7 saying that the tribe is a subservient nation and
 8 that Michigan has a right to when actually the
 9 sovereignty of the tribe was given by the federal
 10 government and so that -- somehow we're saying that
 11 Michigan, we can do whatever we want, it doesn't
 12 matter what the federal government does. The issue
 13 of do we go with Shouman or do we go with what the
 14 statute said, what the court may have interpreted
 15 versus what the people are involved in administering
 16 the statute believe, and the people that testified
 17 that are in charge of it say an employee does not
 18 need to have a transporter license. It is -- if one
 19 is needed, it would be -- and even -- it would be the
 20 employer, not the employee. And it doesn't matter
 21 that Mr. Magnant may have said, oh, we are a
 22 sovereign nation, leave us alone. What did he mean
 23 by that? Don't stop us, don't search us, don't do
 24 anything because we are a sovereign nation. The
 25 Indian tribe is. He was just telling the police what

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1 he believes the Indian nation is. It's a sovereign
 2 nation.
 3 So it's just like with ABC Warehouse. ABC
 4 sells and delivers a refrigerator that they knew
 5 was -- had a problem with it. The question is, well,
 6 maybe the employee should be held liable because
 7 maybe they knew that there was a problem with the
 8 refrigerator when they delivered it. I don't think
 9 that's going to fly, judge. Thank you.
 10 MR. GRANO: Your Honor, if I can just
 11 put -- I found the part in the police report so just
 12 so it's accurate. Mr. -- when the -- Sergeant Croley
 13 was interviewing Mr. Magnant on the side of the road
 14 Mr. Magnant indicated he helped load the cigarettes.
 15 Mr. Magnant -- Croley then asked Magnant where they
 16 got the cigarettes from. He stated another tribe,
 17 another sovereign nation. Magnant then stated that
 18 the cigarettes have already been taxed and that the
 19 federal government has to hold up their end of the
 20 treaty. Magnant further stated that the state tax
 21 does not help tribal members. Magnant advised him
 22 that he was the card carrying KBIC tribal member. I
 23 believe that section provides knowledge that Mr.
 24 Magnant knew exactly what he was doing. Thank you.
 25 MR. PISZCZATOWSKI: So, judge, are we still

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1 on the due process? Because we haven't gotten to the
 2 motion to quash yet, right? Okay. Just want to make
 3 sure. And so, you know, that's argument because
 4 that's not in the record anywhere --
 5 MR. GRANO: Correct.
 6 MR. PISZCZATOWSKI: -- what Mr. Grano --
 7 MR. GRANO: That's --
 8 MR. PISZCZATOWSKI: Which is fair but I
 9 want to make sure -- okay. So as long as we're still
 10 on due process, I'm going to sit down, Your Honor.
 11 THE COURT: The Seneca cigarettes, am I
 12 understanding -- because this may change what I'm now
 13 thinking -- this is -- these are cigarettes that must
 14 stay on the tribal land and could not be exported
 15 through Michigan; is that correct?
 16 MR. PISZCZATOWSKI: I don't think so.
 17 THE COURT: Is that what you said, counsel?
 18 Is that correct?
 19 MR. GRANO: I believe the Seneca brand
 20 cigarettes --
 21 THE COURT: I don't care what you believe.
 22 MR. GRANO: -- in the state of Michigan --
 23 THE COURT: I need to know the law.
 24 Beliefs don't count. As I always tell -- when I
 25 teach and to too many lawyers in this courtroom I say

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1 take your beliefs to church, give me evidence, give
 2 me the law, give me a statute. What is it? Is it
 3 that Seneca must stay on tribal land or can Seneca be
 4 exported out to our nation?
 5 MR. GRANO: The position of the State of
 6 Michigan is it can't even be on the tribal land. For
 7 the tobacco to be on the tribal land it needs to have
 8 a tax agreement, be a tax paid product in the state
 9 of Michigan on the tribal land. They get a refund --
 10 the tribe gets a refund for tobacco sold to tribal
 11 members. Seneca has no tax agreement with the State
 12 of Michigan and, therefore, there was a 90 day notice
 13 which expired in November of 2015 saying Seneca brand
 14 cigarettes have no tax agreement with the State of
 15 Michigan, they're not allowed in the state of
 16 Michigan, therefore they wouldn't be allowed on the
 17 tribal land either.
 18 THE COURT: So that is -- so they have --
 19 do they have an agreement with anybody, as far as you
 20 know, or is that federal law as well?
 21 MR. GRANO: Seneca?
 22 THE COURT: Yeah, Seneca. I'm not a
 23 smoker, I don't know.
 24 MR. GRANO: They're manufactured by Grand
 25 River Enterprises. At times they've had agreements

1 with the state. It's state by state. It's a state
 2 tax. It's a state law. At the time of this offense
 3 there was no tax agreement with the State of
 4 Michigan. They've had one in the past, and I can't
 5 tell you since then. I haven't looked.
 6 THE COURT: Do you know?
 7 MR. SAMAAN: Your Honor, if I may, I think
 8 he's talking about NPM or non-participating
 9 manufacturers. This applies to whether Seneca, or
 10 Grand River, can distribute and sell tobacco in the
 11 state of Michigan. This tobacco came from a
 12 sovereign nation. It's going to another sovereign
 13 nation. It's not going to come to rest in the state
 14 of Michigan and so, therefore, it would not -- the
 15 TPTA, whatever agreement Seneca may have had or Grand
 16 River had with the Department of Treasury does not
 17 apply in this case because it's not -- they can only
 18 tax -- the Department of Treasury can only tax
 19 product being distributed and sold in the state of
 20 Michigan. This product was not going to be doing
 21 either. There's no proof that it's going anywhere
 22 but the Indian reservation.
 23 THE COURT: But Michigan can still control
 24 what goes through our state, regardless.
 25 MR. SAMAAN: Not through interstate

1 commerce. Michigan cannot interfere with interstate
 2 commerce, and that's what's happening here. This
 3 tobacco product was being transported. It doesn't
 4 matter whether it's an international carrier or, you
 5 know, the tribal employees. They are transporting
 6 that product from one nation to the next. There's no
 7 evidence that it's going to be sold or come to rest
 8 in the state of Michigan.
 9 And the way this whole thing came about,
 10 they were -- the troopers, and I think you'll hear
 11 that later perhaps, they were actually -- put up
 12 surveillance and watching this truck at the Indian
 13 store, Indian reservation so they were watching them,
 14 following them, and they had no idea what they were
 15 carrying, and this will come up later, I'm sure, with
 16 the other motions, but in this case, no, I do not
 17 believe -- it's not a question of taxes issues. It's
 18 a question that this product is not going to come to
 19 rest in the state of Michigan. State of Michigan,
 20 Department of Treasury cannot tax product that's
 21 going to another state. They can only tax tobacco in
 22 the state of Michigan.
 23 THE COURT: But if Michigan -- and this may
 24 be far afield, but it may not be. Even in interstate
 25 commerce, if we find contraband on our roads or

1 highways and the troopers have probable cause to
 2 stop, which they seem to have had here, we can still
 3 confiscate it.
 4 MR. SAMAAN: Contraband --
 5 THE COURT: So that's an issue and then we
 6 have to deal with it, and here there was probable
 7 cause to stop because of speeding, otherwise this
 8 case would never have come to light.
 9 MR. SAMAAN: And I think the court will
 10 hear a little bit more about that through the
 11 testimony.
 12 THE COURT: Okay. Then let's get to that
 13 issue, because I think -- I'm not sure I can decide
 14 one without the other, because this issue, if they
 15 have cigarettes that they should not have on our
 16 interstate commerce and we find out about it, we
 17 certainly can take any illegal contraband regardless
 18 of who it belongs to, and that's a different issue.
 19 MR. SAMAAN: Taking it is one thing.
 20 Charging the employees who were doing a job for their
 21 employer is a completely different issue and a
 22 question of notice. The issue -- what they have here
 23 today, the charges brought, is that they were
 24 transporting this tobacco without a transporter
 25 license. That's what the charges are. Transporter

1 license. We're not talking about whether the state
 2 has a right to seize that product or not. Maybe they
 3 do, maybe they don't. That's an issue they have to
 4 deal with with the tribe, with KBIC, but the issue
 5 before us today is the charge that they brought
 6 against these defendants is transporting tobacco
 7 without a transporter license. That's the extent of
 8 it. That is the extent of it. They don't need a
 9 transporter license as employees.

10 THE COURT: Sir, if they would have been
 11 transporting marijuana or underage girls or whatever
 12 they also would have been criminally charged. I
 13 don't see any difference, so let's talk about the
 14 next issue and let me make an overall ruling.

15 MR. SAMAN: Thank you, Your Honor.

16 DETECTIVE CROLEY: Your Honor?

17 THE COURT: Yes.

18 DETECTIVE CROLEY: Your Honor, Detective
 19 Sergeant Croley. We had a generator that's located
 20 right behind the polycom so we had to put it on mute
 21 so we didn't disturb what was going on so obviously
 22 we're back on.

23 THE COURT: Thanks for letting us know.
 24 All right. Let's move on to another issue.

25 MR. GRANO: Well, Your Honor, it sounds

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1 like the court wanted to switch to the evidentiary
 2 motion, the motion to suppress?

3 THE COURT: Why don't we move on, yes.

4 MR. GRANO: I would just make an argument
 5 before we start that the defendants have the burden
 6 to show that they have standing to challenge the
 7 search in this case and that in the due process and
 8 motion to quash their position is we're just an
 9 employee, it's not our truck, it's not our tobacco,
 10 none of it's ours, therefore I don't think an
 11 evidentiary hearing is actually necessary because
 12 they have no standing to challenge any of the
 13 searches in this case.

14 THE COURT: Well, they had control over the
 15 vehicle. That's a different issue, isn't it? I
 16 mean, thinking back to criminal procedure, even if it
 17 wasn't theirs, it was -- they had control over it,
 18 that's a different issue, isn't it, counsel?

19 MR. GRANO: There may be some --

20 THE COURT: There may be some?

21 MR. GRANO: -- privacy concerns when it
 22 relates to control but I don't know -- I think they
 23 both need to show, because it's a joint motion, Mr.
 24 Magnant is a passenger in the car, I think there's
 25 plenty of case law that says a passenger doesn't have

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1 any fourth amendment rights in the vehicle. We
 2 didn't search his personal stuff. We searched the
 3 vehicle so there may be some to the driver who gave
 4 consent to search the car, so (pause) --

5 THE COURT: I would say there is -- I don't
 6 care who owns it. The driver did have control over
 7 the vehicle and so he does have at least temporary
 8 ownership of the vehicle. I don't care what the
 9 title says. So let's move on.

10 MR. PISZCZATOWSKI: Yes, Your Honor. All
 11 we have to show is a possessory interest, which is
 12 clear.

13 THE COURT: Exactly. Very clear. Move on.

14 MR. GRANO: Evidentiary hearing?

15 THE COURT: Yes.

16 MR. GRANO: All right.

17 THE COURT: Unless you need a break?

18 MR. PISZCZATOWSKI: Before I forget, can I
 19 just address one thing?

20 THE COURT: Yes.

21 MR. PISZCZATOWSKI: Very briefly. I have
 22 to get the dates right, and I just don't want to
 23 forget.

24 Your Honor, Mr. Davis, who is my client,
 25 he's waiving there, he's the guy with all the hair on

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1 the left, Your Honor, Mr. Davis, his daughter is
 2 getting married, and I should have talked to Mr.
 3 Grano, I'm sure he's okay with it, getting married --
 4 the daughter is getting married December 16 in
 5 Centreville, Virginia, and I'd ask the court and Mr.
 6 Grano for permission to allow him to travel two days
 7 before and to return two days after since he'll have
 8 to leave the state to go to his daughter's wedding
 9 because she's in the army and she's going to be going
 10 overseas.

11 THE COURT: Anybody have any problem with
 12 that?

13 MR. GRANO: I have no objection.

14 THE COURT: I don't have any problem with
 15 that. Just give me an order, please.

16 MR. PISZCZATOWSKI: Yes, Your Honor, thank
 17 you.

18 MR. GRANO: Your Honor, I guess the people
 19 would first call Trooper Kevin Ryan.

20 THE COURT: Please raise your right hand.
 21 Do you swear or affirm the testimony you
 22 are about to give will be the truth, the whole truth,
 23 and nothing but the truth under penalty of perjury?

24 THE WITNESS: I do.

25 THE COURT: Thank you. You may have a

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1 seat.

2 MR. PISZCZATOWSKI: Motion to sequester. I

3 don't know if anybody else is going to be a witness

4 in the room.

5 MR. GRANO: My only other witness is

6 Lajimodiere. I don't have a problem if he's

7 sequestered.

8 THE COURT: All right.

9 DETECTIVE CROLEY: One second, Your Honor.

10 All set, Your Honor.

11 DIRECT EXAMINATION

12 BY MR. GRANO:

13 Q. Trooper Ryan, can you state your name for the record,

14 please?

15 A. Yes. My name is Kevin Ryan.

16 Q. And where are you employed?

17 A. I am employed with the Michigan State Police at the

18 Negaunee post.

19 Q. And what's your duties there?

20 A. I am currently a detective sergeant, criminal

21 investigations.

22 Q. Are you assigned to the tobacco tax enforcement team?

23 A. Yes, sir. I'm assigned to the district tobacco tax

24 enforcement team temporary -- it's a temporary team.

25 Q. Okay.

1 A. Part time, I guess is the best terminology.

2 Q. And where is the eighth district?

3 A. Eighth district is in the upper peninsula, Michigan.

4 Q. Is it the entire upper peninsula?

5 A. Yes, sir, it is.

6 Q. Okay. Were you working in that capacity in December

7 11, 2015?

8 A. Yes, sir, I was.

9 Q. Where were you on December 11, 2015, as it relates to

10 your work?

11 A. We were -- just before this incident actually started

12 off we were up in the Houghton area, Houghton,

13 Michigan.

14 Q. And were you traveling somewhere?

15 A. Yeah. We were actually headed back towards

16 Marquette, Michigan, US-41 out of Houghton going

17 southbound.

18 Q. Okay. And is your office in Marquette?

19 A. My office is in Negaunee, yes, near Marquette.

20 Q. Okay. When traveling on US-41 from Houghton to

21 Marquette, do you travel through Baraga?

22 A. Yes, sir, we do.

23 Q. Are you familiar with an area called The Pines?

24 A. Yes, sir, I am.

25 Q. What's The Pines?

1 A. The Pines is a convenience gas station, convenient

2 store/gas station.

3 Q. Do you know who owns The Pines?

4 A. I believe it's owned by the Keweenaw Bay Indian

5 Community, but I'm not a hundred percent sure.

6 Q. Is the gas station visible from the roadway?

7 A. Yes, sir, it is.

8 Q. Do you know what government maintains US-41?

9 A. My understanding is US-41 is through the State of

10 Michigan.

11 Q. When you were passing The Pines, did you see anything

12 that caught your attention?

13 A. Yes. I observed a couple of pickup trucks and

14 trailers on the back side of the building.

15 Q. Had you seen those trucks before?

16 A. Yes, sir, I had.

17 Q. Where did you see them?

18 A. I believe it was back in September. I'd have to look

19 at the dates. I observed those vehicles across from

20 the casino, I believe it's M-38, I believe it is, in

21 Baraga near a pole barn.

22 Q. Okay. Did the vehicles go anywhere back in

23 September?

24 A. Yes. We followed one of the vehicles to Marquette

25 and it actually went into the casino in Marquette.

1 Q. Okay. And is that a KBIC casino?

2 A. Yes, sir, it is.

3 Q. And at that date and time did you know what they were

4 transporting?

5 A. No, I did not.

6 Q. Okay. Back to December 11, what did you do when you

7 saw the trucks?

8 A. We began watching them to see where they were going.

9 We actually ended up following them to the same pole

10 barn I had seen them originally.

11 Q. Okay. And then what did you do once you found that

12 pole barn?

13 A. At that time there is -- what I observed, anyway, two

14 different drivers, two different vehicles. They got

15 into one vehicle and began heading towards Marquette.

16 Q. When they got in the vehicle headed towards

17 Marquette, what did you do?

18 A. We began following them down 38 and then down 41

19 heading towards Marquette.

20 Q. At some point in time did you request another trooper

21 get involved?

22 A. Yes, sir, I did.

23 Q. And let me just ask you, when you're traveling from

24 Houghton to Marquette, are you in plain clothes?

25 A. Yes, sir, I was.

1 Q. And are you in a marked vehicle?
 2 A. No, sir, I was not.
 3 Q. Did your vehicle have lights and sirens on it?
 4 A. No, sir, it did not.
 5 Q. Okay. So when you requested another trooper, what
 6 did you request?
 7 A. I was making several different calls trying to find a
 8 MSP unit or motor carrier officer. At that point we
 9 couldn't find one available. The closest we got -- I
 10 believe Negaunee regional dispatch center that had
 11 Trooper Lajimodiere contact me.
 12 Q. And did you advise him to make a stop in this case?
 13 A. I advised him of what we were following, our
 14 suspicions that it might be a vehicle hauling Seneca
 15 cigarettes, but if he could find a legal reason to
 16 stop it, attempt to do so. If not, just let it go.
 17 Q. Okay. And why did you believe it was hauling Seneca
 18 cigarettes?
 19 A. Based off of surveillance in the past, watching the
 20 truck do the transport to the casino, being backed up
 21 at The Pines. When The Pines -- knowing what types
 22 of tobacco products they're selling, it was a belief
 23 at that time it was possibly how it was being
 24 transported.
 25 Q. Were you still at the stage where you were trying to

1 parked off the south side of US-41 known as the
 2 Evergreen stretch of Marquette County. The back of
 3 the trailer was open when I got there and I could see
 4 inside that trailer cardboard boxes, cases of Seneca
 5 cigarettes -- or Seneca labels on the boxes for
 6 Seneca cigarettes.
 7 Q. And did you open any of the boxes?
 8 A. Yes, sir, I did.
 9 Q. And what did you find in the box?
 10 A. I opened up one of the boxes which contained cases --
 11 or cartons of cigarettes. I then opened one carton
 12 of cigarettes, pulled out a pack of cigarettes, pack
 13 of Seneca cigarettes. On the bottom it had a
 14 Keweenaw Bay Indian Community stamp on it which is
 15 not a recognized Michigan tax stamp through the
 16 Department of Treasury.
 17 Q. Okay. At the time of the stop were Seneca brand
 18 cigarettes allowed to be sold in the state of
 19 Michigan?
 20 A. At that time Grand River Enterprise -- they're a
 21 non-participating manufacturer and they did not have
 22 an escrow agreement with the Department of Treasury
 23 for sale in the state of Michigan.
 24 Q. All right. I'm going to go back. That picture in
 25 front of you, do you know what that is?

1 figure out all the details, you weren't sure yet?
 2 A. Yes, sir, I was.
 3 Q. Okay. Did Trooper Croley print out some pictures
 4 that I sent him?
 5 DETECTIVE CROLEY: Yes, I did.
 6 THE WITNESS: Yes, sir.
 7 THE COURT: Sir, how long did you follow
 8 the vehicle?
 9 THE WITNESS: Maybe about -- well, during
 10 the time we first saw it until the time it was
 11 stopped was -- I don't know if it was an hour,
 12 somewhere around less than an hour probably.
 13 BY MR. GRANO:
 14 Q. Before I get to the pictures, at some in time was the
 15 vehicle stopped?
 16 A. Yes, sir, it was.
 17 Q. Okay. And did you arrive on that scene?
 18 A. Eventually, yes, I did, sir.
 19 Q. You weren't there when the vehicle was first stopped;
 20 is that fair to say?
 21 A. No, sir. No, sir, I was not.
 22 Q. When the vehicle was stopped, what did it appear --
 23 describe the scene to us when you got there.
 24 A. Oh, when I got to the scene after the vehicle had
 25 already been stopped, the truck and trailer were

1 A. Which one are you looking at, sir?
 2 Q. The one that you're looking at.
 3 A. Okay. It looks like an overview of the Baraga area,
 4 it has a red teardrop area that shows The Pines
 5 Convenient Center.
 6 Q. Is that a map, like a Google map of the area?
 7 A. Yes, sir. It appears it is.
 8 Q. That looks to be a fair and accurate map of the area
 9 to you?
 10 A. Yes, sir, it does.
 11 Q. Okay.
 12 MR. GRANO: I move for People's Exhibit
 13 Number 1, Your Honor.
 14 MR. PISZCZATOWSKI: No objection.
 15 MR. SAMAN: No objection.
 16 THE COURT: Admitted.
 17 (At or about 3:23 p.m., Exhibit No. 1
 18 was admitted into evidence.)
 19 BY MR. GRANO:
 20 Q. And on that map you already indicated The Pines has a
 21 red dot on it?
 22 A. That is correct, sir.
 23 Q. And if you look down towards the bottom left-hand
 24 corner, is the pole barn on there?
 25 A. It's hard to make out. If it was blown up a little

1 bit I could probably pick it out.
 2 Q. Let me ask you this, would the pole barn be -- sort
 3 of be in the bottom left-hand corner whether it's on
 4 the picture, or not?
 5 A. Correct, it would be.
 6 Q. Okay. I can't put it up for the court. I will
 7 tender these to the court in a second. I'll go
 8 through them all first.
 9 I'm going to skip the next one you have.
 10 A. Okay.
 11 Q. Can you hold that picture up to the camera for a
 12 second? Okay. The one you're holding up to the
 13 camera, that's People's Proposed Exhibit 2. Do you
 14 recognize that image?
 15 A. Yes, sir, I do.
 16 Q. And what's that an image of?
 17 A. That is an image of The Pines Convenience Center.
 18 That's actually looking at it from what I consider a
 19 southerly direction, looking north.
 20 Q. So if you were going north on US-41 it would be on
 21 your right-hand side?
 22 A. That is correct.
 23 Q. And that's a fair and accurate picture The Pines?
 24 A. Yes, sir, it is.
 25 MR. GRANO: I move for People's 2.

1 THE COURT: Any objection?
 2 MR. SAMAAAN: No objection.
 3 MR. PISZCZATOWSKI: No objection.
 4 THE COURT: Admitted.
 5 (At or about 3:25 p.m., Exhibit No. 2
 6 was admitted into evidence.)
 7 BY MR. GRANO:
 8 Q. You can skip that picture. What you're holding is
 9 People's Proposed Exhibit 3. Do you recognize that
 10 document or picture?
 11 A. Yes, sir, I do.
 12 Q. What's that a picture of?
 13 A. Again, that is The Pines Convenient Center on US-41
 14 looking back basically in an easterly direction.
 15 You're looking at the northern gas pumps.
 16 Q. Okay. And would that be the direction you were
 17 traveling in?
 18 A. No. We actually were traveling in a southerly
 19 direction, not northerly.
 20 Q. Okay. And that's a fair and accurate picture of The
 21 Pines?
 22 A. Yes, sir, it is.
 23 Q. Can you hold that picture up? I just want to make
 24 sure we have the same one. We're doing a different
 25 one. You can put that one aside. I don't know if

1 you can see mine.
 2 A. Okay.
 3 Q. Pull that one out.
 4 A. Is that the one you're looking at?
 5 Q. Yeah, that's the one. There you go.
 6 A. Okay.
 7 Q. Is that a fair and accurate picture of The Pines?
 8 A. Yes, sir, it is.
 9 Q. And is that a picture sort of the direction you were
 10 traveling at the time?
 11 A. Yeah. We were southbound on 41.
 12 Q. You're looking basically at the northwest corner the
 13 The Pines?
 14 A. Yes.
 15 MR. GRANO: So I would move for People's 3,
 16 Your Honor.
 17 THE COURT: Any objection?
 18 MR. PISZCZATOWSKI: None.
 19 MR. SAMAAAN: None.
 20 THE COURT: Three is admitted.
 21 (At or about 3:26 p.m., Exhibit No. 3
 22 was admitted into evidence.)
 23 BY MR. GRANO:
 24 Q. Now, if you look at that picture there's a pickup
 25 truck parked behind the building. Do you see that?

1 A. Yeah. It looks like a red crew or extended cab
 2 pickup truck.
 3 Q. Is that sort of where the pickup truck was when you
 4 saw it when you drove by?
 5 A. Yes, sir.
 6 Q. Based on what you saw when you got to the stop, did
 7 you make any seizures?
 8 A. There was eventually a seizure made, yes, sir.
 9 Q. Okay. What was seized?
 10 A. I believe it was total of 56 cases of Seneca
 11 cigarettes.
 12 Q. Was there any type of tobacco found?
 13 A. No, sir.
 14 Q. When you go there, the trailer was open, is that what
 15 you testified to?
 16 A. Yes, sir. The trailer was open when I got there,
 17 yes, sir.
 18 MR. GRANO: I have no further questions of
 19 this witness, Your Honor, and I will leave these
 20 pictures with you --
 21 THE COURT: Thank you.
 22 MR. GRANO: -- with the paper.
 23 THE COURT: Thank you. Cross.
 24
 25

1 CROSS EXAMINATION
 2 BY MR. PISZCZATOWSKI:
 3 Q. Good afternoon, Detective Ryan.
 4 A. Hello there.
 5 Q. How are you?
 6 A. Not too bad.
 7 Q. So when you first saw the -- you said you saw two
 8 vehicles?
 9 A. Yes, sir.
 10 Q. And when you saw those vehicles, you first saw them
 11 at The Pines Convenient store in the back?
 12 A. Correct.
 13 Q. And that would have been on the exhibit that Mr.
 14 Grano had where there was a red pickup truck and it
 15 was -- were both those trucks in that area or just
 16 one?
 17 A. Both pickup trucks were in that area.
 18 Q. All right. Did you ever see any cigarettes in either
 19 of those trucks at that time?
 20 A. No, sir, I did not.
 21 Q. Were either of those trucks at the time hauling a
 22 trailer?
 23 A. Both those trucks were hauling trailers at that time.
 24 Q. And did you ever see any cigarettes in either of the
 25 trailers?

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1 A. No, sir.
 2 Q. Did you ever see anyone at that time take any
 3 cigarettes out of either trailer?
 4 A. No, sir, I did not.
 5 Q. Did you ever see anyone put any cigarettes into
 6 either trailer?
 7 A. No, sir, I did not.
 8 Q. You saw the trucks with the trailers move from The
 9 Pines convenient store, correct?
 10 A. Yes, sir.
 11 Q. Or from the area, I should say, of The Pines
 12 convenient store, I'm sorry. Fair enough?
 13 A. Okay. They were parked in the back of the building,
 14 yes.
 15 Q. Okay. They moved to someplace -- you said a pole
 16 barn or something?
 17 A. Yes, sir.
 18 Q. And that pole barn is on the actual Indian
 19 reservation, correct?
 20 A. It's in the area known -- I don't know who owns that
 21 piece of property but it's in the area that I know of
 22 as a reservation, yes, sir.
 23 Q. Okay. Fair enough. In any event, you were observing
 24 the trucks with the trailers while it was in the area
 25 of the pole barn, correct?

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1 A. Correct, sir.
 2 Q. And during that time, same question, see any tobacco
 3 products go in or out of those trailers?
 4 A. No, sir, I did not.
 5 Q. All right. Then you see one of the trucks, I think
 6 it's a dark green truck, leave that area, correct?
 7 A. Yes, sir.
 8 Q. And that truck is going down the highway that you
 9 talked about, correct?
 10 A. Yes, sir.
 11 Q. And you're following that truck, correct?
 12 A. Correct.
 13 Q. How far behind that truck are you?
 14 A. It varied over the time. Quarter mile probably is
 15 the longest.
 16 Q. Okay.
 17 A. Somewhere right in there. It varied.
 18 Q. And while you are following that truck and trailer,
 19 you are radioling trying to get some assistance of
 20 some sort from someone else in law enforcement, I'll
 21 say it that way?
 22 A. Yes, sir.
 23 Q. Okay. And you indicated that you filed -- you were
 24 talking to -- was it a post or a dispatch or -- I'm
 25 sorry, who did you talk to? Let me ask it that way.

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1 A. The dispatch I talked to was Negaunee regional
 2 center. It was based out of Negaunee, Michigan.
 3 They dispatch for multiple different state police
 4 posts throughout the entire upper peninsula.
 5 Q. And at that time you indicated -- did you actually
 6 communicate with that dispatch or was it someone else
 7 on the team?
 8 A. I did.
 9 Q. And just to be clear, are you in a vehicle or are you
 10 in a truck following the truck with the trailer at
 11 issue here?
 12 A. I was in a departmental unmarked vehicle.
 13 Q. And were there other people with you?
 14 A. Detective Sergeant Croley was with me.
 15 Q. All right. Was there a Detective Belanger or
 16 something like that? I might be saying it wrong.
 17 A. Yeah. Yes. Detective Belanger and Trooper Barry
 18 were in a separate unmarked vehicle.
 19 Q. Okay. Okay. So you're on the dispatch and you're --
 20 you tell dispatch -- what do you tell them
 21 specifically?
 22 A. I wanted to see if there was a law enforcement
 23 vehicle, state vehicle in the area to assist us.
 24 Q. And what do you say?
 25 A. Literally asking if there was a state vehicle in the

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1 area. Up in that area we don't have, unfortunately,
 2 as many MSP vehicles and such around as we do in some
 3 other areas.
 4 Q. All right. It was an unartful question. I'll try to
 5 ask it this way. After you found out there was
 6 someone that could assist you --
 7 A. Okay.
 8 Q. -- did you communicate some information?
 9 A. Yes. Trooper Lajimodiere called me on the phone and
 10 I talked to him by phone.
 11 Q. So you talked to him on the phone directly?
 12 A. Yes, sir.
 13 Q. And when you talked to him, you said what to him?
 14 A. I advised him we were following a vehicle that we
 15 were suspect of transporting basically illegal
 16 cigarettes and wondered if he could come out and see
 17 if he could find a legal reason to stop it, basically
 18 do an investigative stop for us.
 19 Q. So you communicated to Trooper Lajimodiere?
 20 A. LJ.
 21 Q. LJ. Good. I like that. Trooper LJ, if I could,
 22 Your Honor, that you were suspecting that vehicle had
 23 illegal cigarettes, correct?
 24 A. Correct.
 25 Q. And would it be fair to say at that time you used the

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1 word may possibly but -- the vehicle may possibly
 2 contain illegal cigarettes?
 3 A. At that point in time we were still trying to find
 4 mode of transportation so I guess it would be safe to
 5 say it in that form.
 6 Q. And would be fair to say also that at that time you
 7 were playing your hunch, a hunch that it might
 8 contain illegal cigarettes; fair enough?
 9 A. Yes, sir.
 10 Q. Okay. So you tell Trooper LJ, may contain illegal
 11 cigarettes, correct?
 12 A. Yes, sir.
 13 Q. Those were the words that you used?
 14 A. I can't state my exact words, sir.
 15 Q. Okay.
 16 A. That was the message that was relayed. I don't know
 17 exactly what I stated.
 18 Q. All right. But the message you connoted or tried to
 19 connote was you thought there might be illegal
 20 cigarettes in that vehicle?
 21 A. I knew there was a possibility that there may be,
 22 yes.
 23 Q. And when we use the word -- when you use the word
 24 illegal, you mean cigarettes that are not approved by
 25 the state because they're not stamped? You mean that

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1 they're stolen? What do you mean when you say
 2 illegal? What were you trying to connote?
 3 A. I didn't explain the finer points to Trooper LJ.
 4 Basically it's a -- Seneca are made by a
 5 non-participating manufacturer and Seneca -- well,
 6 Grand Rapids (sic) Enterprises makes Seneca and at
 7 that point in time they did not have an escrow
 8 account agreement to bring tobacco products into the
 9 state. I did not relay all that to Trooper LJ.
 10 Basically it was looking for a traffic stop, a legal
 11 traffic stop on the vehicle.
 12 Q. Okay. But what's important, though, is that what you
 13 told us today -- you talked about Grand River
 14 Enterprises, correct?
 15 A. Yes, sir.
 16 Q. And do you recall when you testified -- I just want
 17 to ask you during the preliminary exam back in March
 18 of 2017, did you ever use the phrase or words, Grand
 19 River Enterprises?
 20 A. I don't recall, sir.
 21 Q. Did you do some research after your testimony on
 22 March 16, 2017, and prior to today to determine and
 23 find out that Grand River Enterprises was a
 24 non-participating manufacturer, to use your words?
 25 A. No. I knew that before, sir.

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1 Q. You did know that before?
 2 A. Yes, sir.
 3 Q. Okay. So you knew that Seneca cigarettes were
 4 produced by Grand River Enterprises, correct?
 5 A. Correct.
 6 Q. And you knew that on March 16, 2017, correct? That's
 7 the date of the preliminary examination --
 8 A. Right.
 9 Q. -- right?
 10 A. Yes.
 11 Q. Right?
 12 A. Yes, sir.
 13 Q. And you knew at that time that on December 11, 2015,
 14 they were a non-participating manufacturer, correct?
 15 A. Yes, sir.
 16 Q. Now, had the stop occurred on November 30, 2015,
 17 would you take that same position?
 18 A. I would have to look back to see if they were still a
 19 non-participating -- excuse me, it would still be a
 20 non-participating manufacturer. I don't know if they
 21 would be an authorized non-participating manufacturer
 22 at that time.
 23 Q. I'm not sure -- what's the difference?
 24 A. Non-participating manufacturer does not participate
 25 in the master settlement agreement.

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1 Q. You and I probably both need to slow down just a
 2 little bit.
 3 A. Okay.
 4 Q. So to continue, the difference between authorized
 5 non-participating manufacturer and a
 6 non-participating manufacturer?
 7 A. Okay. You're cutting in and out a little bit so I'll
 8 try to keep up with you.
 9 Q. I'm sorry. I'll try to stay closer.
 10 A. It's the technology. Non-participating manufacturer
 11 can bring tobacco products into the state of Michigan
 12 for sale if they have an agreement with the
 13 Department of Treasury, an escrow agreement, which we
 14 discussed a little bit of that in the preliminary.
 15 They did not have an agreement with the State of
 16 Michigan to bring Seneca cigarettes into the state.
 17 Q. So when I -- when we talk about non-participating
 18 manufacturers, the brand of cigarettes, Seneca
 19 cigarettes, was it ever properly sold in the state of
 20 Michigan?
 21 A. I believe it was at one time. The dates I could not
 22 tell you. I believe they were actually authorized
 23 through the state at one point in time.
 24 Q. And did you learn -- strike that. When did you learn
 25 that the Seneca brand cigarettes were no longer

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1 properly being sold in the state of Michigan in
 2 connection with the date, December 11, 2015? Before
 3 or after?
 4 A. Before.
 5 Q. And when?
 6 A. I couldn't answer that question, sir. I don't know.
 7 Q. Well, who did you learn it from?
 8 A. The Department of Treasury sends out information on
 9 who is participating and who is not participating.
 10 Q. All right. And you get that notice?
 11 A. Yes, sir.
 12 Q. And is that part of your files somewhere?
 13 A. I may have -- I don't know how old of one I have.
 14 That one I can't answer.
 15 Q. In any event, we're going to go back now. So you
 16 tried to -- you tried to have a stop of this vehicle
 17 to get a look at the vehicle, correct?
 18 A. If they had a legal stop, yes, sir.
 19 Q. To look into the trailer. I guess we're saying
 20 vehicle but it's really the trailer, correct?
 21 A. Well, at that point in time it was a matter of making
 22 a legal stop on it and seeing if there was any
 23 information to make you believe that that's how it
 24 was being transported.
 25 Q. And you indicated, if you could get a legal stop, you

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1 wanted that, correct? That's what you were asking
 2 for?
 3 A. If there was a legal reason, yes, sir.
 4 Q. But the real reason you wanted to stop the vehicle
 5 was to see whether there were cigarettes in the
 6 trailer?
 7 A. To see if that was the mode of transportation.
 8 Q. Okay. So the answer is you were looking to stop the
 9 vehicle to get a look inside the trailer to see if it
 10 had cigarettes, correct?
 11 A. If they had a reason to get into the trailer to see,
 12 I would be interested, yes, sir.
 13 Q. When you got to the scene and the vehicle was pulled
 14 over, the back of the trailer was open, correct?
 15 A. Yes, sir.
 16 Q. Okay. And when you looked at the back of the trailer
 17 you saw boxes inside the trailer, correct?
 18 A. Yes, sir.
 19 Q. Okay. And those were sealed boxes, correct?
 20 A. Yes, sir.
 21 Q. And those sealed boxes had some lettering on them,
 22 markings, whatever, correct?
 23 A. Correct.
 24 Q. Okay. Now, at one point you took photos inside the
 25 trailer, correct?

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1 A. Yep. I took photos of the entire exterior and look
 2 in from -- or around the entire vehicle, truck,
 3 trailer.
 4 Q. And then at some point you actually went into a box
 5 and opened one of the boxes, correct?
 6 A. Yes, sir.
 7 Q. Okay. Before you went in and opened one of those
 8 boxes, did you ever ask either Mr. Davis or Mr.
 9 Magnant, who are seated kind of to your right, for
 10 permission to open one of those boxes?
 11 A. I never spoke with them at the scene at all, sir --
 12 Q. Okay.
 13 A. -- at any time.
 14 Q. And before you went in and opened that box, did you
 15 have any discussions with anyone from the Attorney
 16 General's office for the State of Michigan?
 17 A. I did not, no, sir.
 18 Q. Did anyone on your team have any discussions with the
 19 Attorney General's office for the State of Michigan?
 20 A. Yes, sir.
 21 Q. And who was that?
 22 A. I believe that was Detective Sergeant Belanger.
 23 Q. And do you know who Detective Sergeant Belanger
 24 talked to?
 25 A. No, sir, I do not.

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1 Q. Do you know what Detective Belanger asked this
 2 assistant or someone from the Attorney General's
 3 office?
 4 A. No, sir, I do not. I was not part of that
 5 conversation.
 6 Q. Okay. Was there any discussion about whether or not,
 7 as far as you know, you could go into one of those
 8 boxes and open them without a search warrant?
 9 A. With the Attorney General?
 10 Q. That's correct.
 11 A. I guess -- again, sir, I was not part of that
 12 conversation.
 13 Q. Um-hum. You did not request a search warrant
 14 yourself, correct?
 15 A. That is correct.
 16 Q. No one on the team, your team, Sergeant Belanger,
 17 yourself, Detective Croley, and whoever the fourth
 18 person was obtained a search warrant prior to you
 19 opening those -- that box, correct?
 20 A. Correct.
 21 Q. Okay. And when you opened that box, you then went in
 22 and took a carton of cigarettes out, correct?
 23 A. Yes, sir.
 24 Q. And you took that carton of cigarettes out to look
 25 inside the carton, correct?

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1 A. Yes, sir.
 2 Q. And when you looked inside the carton, you pulled out
 3 a pack of cigarettes, correct?
 4 A. Yes, sir.
 5 Q. And you looked at that pack of cigarettes for a
 6 tobacco tax stamp from the State of Michigan?
 7 A. That is correct.
 8 Q. Okay. Now, did you at any time during that process
 9 suggest to any of your team that you think you should
 10 get a search warrant?
 11 A. No, sir, I did not.
 12 Q. Okay. Prior to arriving on the scene with the
 13 vehicle parked on the side, the trailer open, you
 14 would agree with me that you had no probable cause to
 15 go into that trailer based on your personal
 16 knowledge?
 17 A. I wouldn't -- to just go up and open it on our own
 18 for the sake of opening, no, I never would have done
 19 that, sir, no.
 20 Q. And that's because you didn't -- you wouldn't feel
 21 that you could based on any probable cause standard,
 22 correct?
 23 A. Correct.
 24 Q. You had a hunch, that's what you had?
 25 A. Yes, sir.

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1 Q. When you arrived now at the scene and the trailer is
 2 open, was there anything precluding you from calling
 3 and getting a search warrant to go into the boxes and
 4 do further searches in the boxes?
 5 A. I guess -- are you just asking could I have done
 6 that?
 7 Q. Yes. Could have you done that?
 8 A. Yeah. I could have done that, yes.
 9 Q. Did you ever ask anyone on the scene -- strike that.
 10 Did you ever ask either Mr. Davis or Mr. Magnant on
 11 the scene whether they had a transporter's license?
 12 A. Again, sir, like I stated earlier, I had no
 13 discussion with Mr. Magnant or Mr. Davis at all on
 14 the scene.
 15 Q. Did you ever hear anyone from law enforcement on the
 16 scene ask either Mr. Davis or Mr. Magnant -- whether
 17 they had a transporter's license?
 18 A. I was not -- I was not privy to any conversation with
 19 them on the scene.
 20 Q. Okay. Who would be -- just out of curiosity, who was
 21 in charge, if you will, of the scene?
 22 A. That would have been Detective Sergeant Croley and
 23 Detective Sergeant Belanger.
 24 Q. Okay.
 25 A. They were the immediate supervisors.

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1 Q. Okay.
 2 MR. PISZCZATOWSKI: If I can just have one
 3 second, Your Honor? I don't have any other
 4 questions, Your Honor. Thank you.
 5 THE COURT: Cross.
 6 MR. SAMAAN: Yes, Your Honor. Just a few
 7 brief question.
 8 THE COURT: I'm sorry, yes. Direct (sic).
 9 CROSS EXAMINATION
 10 BY MR. SAMAAN:
 11 Q. Detective Sergeant Ryan?
 12 A. Yes, sir.
 13 Q. I believe you testified that prior to December 11,
 14 2015, some time in September that you had -- you were
 15 surveilling one of the two trucks; is that correct?
 16 A. We had seen the truck, yes, sir.
 17 Q. Okay. And you said that -- I believe you followed
 18 them from the barn to the casino, correct?
 19 A. The casino -- the casino in Marquette, yes, sir.
 20 Q. Okay. And both of those locations are Indian land,
 21 correct?
 22 A. Yes, sir.
 23 Q. All right. Back in September why were you following
 24 and surveilling that truck?
 25 A. At that point that's the first time we ever seen that

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1 truck. We were trying to figure out -- like we were
 2 this last time, trying to figure out a mode of
 3 transportation.
 4 Q. For Seneca cigarettes?
 5 A. Yes, sir.
 6 Q. Okay. And did I understand you correctly, you
 7 testified in September of 2015 Grand River was
 8 authorized to sell and distribute Seneca cigarettes
 9 in the state of Michigan; is that correct?
 10 A. I never said that, sir. I said as of December 11 I
 11 knew they were not allowed to. Prior to that I do
 12 not know the dates.
 13 Q. All right. Were you aware that between December 2014
 14 and August of 2015, and then usually it goes 90 days
 15 beyond that, Grand River was a participating
 16 manufacturer of cigarettes? Do you know that? Are
 17 you aware of that?
 18 A. Again, like I said, I don't know the dates that they
 19 were authorized. I knew they were authorized at one
 20 time.
 21 Q. All right. Now, you knew that in December they
 22 weren't, December 11, because you received a notice
 23 from the Department of Treasury that told you Grand
 24 River is no longer authorized?
 25 A. We received notification of which NPMs are authorized

1 for sale in the state of Michigan. I believe that
 2 same notification is also on their website.
 3 Q. And did you ever look on the website to see if, in
 4 fact, Seneca cigarettes or Grand River was authorized
 5 to distribute tobacco in the state of Michigan?
 6 A. On December 11?
 7 Q. Before that. In September when you were surveilling
 8 this trailer did you check to see whether, in fact,
 9 Seneca cigarettes were not authorized in the state of
 10 Michigan?
 11 A. Like I said, we had received notifications for that
 12 which would be the same information.
 13 Q. Okay.
 14 A. It would be based off what they sent.
 15 Q. Based on what who said?
 16 A. Department of Treasury.
 17 Q. Okay. Now, maybe you can help me out, did you go
 18 through a training to become a tobacco tax -- --
 19 training to be tobacco tax enforcement?
 20 A. Yes.
 21 Q. And when was that?
 22 A. There's yearly updates. I think the first time was
 23 2012 or 2013. I'd have to go back and see when the
 24 teams were actually set up.
 25 Q. And did you attend each one of those conferences or

1 seminars every year?
 2 A. Yes, sir.
 3 Q. And what time of year do they usually have those
 4 seminars? Beginning of the year? Middle of the
 5 year?
 6 A. I want to say it's the end of the year. I don't
 7 recall.
 8 Q. Okay. And did you discuss non-participating
 9 manufacturers, Seneca cigarettes, anything else at
 10 that time?
 11 A. We discussed non-participating and participating
 12 manufacturers, yes, sir.
 13 Q. And in 2000 -- so let's say maybe you were there at
 14 the end of the 2014, perhaps, the meeting, it would
 15 be December?
 16 A. I would have gone to the training in 2014, yes, sir.
 17 Q. And at that time did you receive any brochures or any
 18 information from the Department of Treasury that, in
 19 fact, Grand River Enterprises is authorized to
 20 distribute to sell Seneca cigarettes in the state of
 21 Michigan?
 22 A. It's possible those were in the packets. I can't
 23 remember 2014, sir.
 24 Q. Okay. Now, if you know, just because Grand River was
 25 not authorized to distribute, did not have an

1 agreement with Department of Treasury to distribute
 2 Seneca cigarettes for sale in the state of Michigan,
 3 do you know if they're able to sell it in Illinois,
 4 for example?
 5 A. That would be an agreement with a different state. I
 6 would have no knowledge of that.
 7 Q. But the State of Michigan cannot stop Grand River
 8 Enterprises from shipping product to Illinois to be
 9 sold there, would they?
 10 A. That I wouldn't be aware of, sir.
 11 Q. Okay. And I believe in your testimony you said not
 12 authorized -- Seneca was not authorized for sale in
 13 the state of Michigan; is that what you testified to
 14 earlier?
 15 A. Yes, sir.
 16 Q. Okay. Were you aware --
 17 A. I'm sorry, not authorization -- or to sell or possess
 18 in the state of Michigan, yes, sir.
 19 Q. Okay.
 20 A. I'd have to look at the exact wording of how it's
 21 written in the TPTA, but, yes, sir.
 22 Q. Okay. Now, you testified that you were following
 23 these trucks and you followed them for about an hour
 24 after they left the --
 25 A. It would have been an hour or less.

1 Q. Or less?
 2 A. I didn't document any times.
 3 Q. It doesn't matter. And I believe you testified that
 4 at most you were behind them for -- about a quarter
 5 mile behind them; is that correct?
 6 A. That would be just -- it varied, you know, depending
 7 on what was going on with the roadway and the
 8 traffic.
 9 Q. Okay. And how fast were you going when you were
 10 following them?
 11 A. I don't know, sir. I wasn't driving. Detective
 12 Sergeant Croley was.
 13 Q. What's the speed limit on that road?
 14 A. Speed limit is 55.
 15 Q. The truck and trailer when they were pulled over,
 16 they were going 62 miles per hour?
 17 A. According to what Trooper Lajimodiere told me, yes,
 18 sir.
 19 Q. So you wanted to make sure you stayed behind them all
 20 the time, correct? You wanted to have contact with
 21 this vehicle, correct?
 22 A. I did not want to lose sight of that vehicle, that is
 23 correct, sir.
 24 Q. All right. How far -- how long do you think it would
 25 take a car traveling at about 50, 55 miles an hour to

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1 travel a quarter of a mile?
 2 A. I don't know the answer, sir.
 3 Q. A minute, two minutes? You drive, correct? In
 4 fact --
 5 A. Yes.
 6 Q. -- you drive for a living?
 7 A. 55 miles an hour, doing a quarter mile, less than a
 8 minute, probably.
 9 Q. Okay. Less than a minute. Now, when you -- I
 10 believe at the preliminary exam -- I believe you were
 11 there when we watched the video of the stop of the
 12 vehicle by Trooper Lajimodiere?
 13 A. No, sir, I was not. I was sequestered. I did not
 14 see the video.
 15 Q. Okay. Do you know how long the vehicle was stopped
 16 before you arrived on scene?
 17 A. No idea, sir.
 18 Q. Okay. If I was to tell you that it was about seven
 19 minutes before you arrived on the scene, before your
 20 team arrived on the scene, would you have a problem
 21 with that?
 22 A. I have no idea how long it was, sir. It didn't seem
 23 long to me but the video would show the time frame.
 24 I don't know it.
 25 Q. Okay. So I guess my question is did you stop at any

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1 time between the time you were following them and the
 2 time the vehicle was stopped on the side of the road?
 3 Did you stop anywhere, pull off the road?
 4 A. I don't recall, sir.
 5 Q. Can you tell me why it took seven minutes -- when you
 6 got to the scene, the trailer door was open, correct?
 7 A. Yes, sir.
 8 Q. Okay. Tell me why perhaps it took you guys seven
 9 minutes or more to get to the scene if you were
 10 traveling behind this vehicle at 55 miles an hour,
 11 quarter mile behind them?
 12 A. Again, sir, we weren't stopping just to get me into
 13 the vehicle so we didn't stop with it. We continued
 14 on. What happened at the time of the traffic stop
 15 was with Trooper Lajimodiere. I wasn't present
 16 during any of that.
 17 Q. Oh, so you're saying that you went by the vehicle as
 18 it was stopped on the side of the road?
 19 A. While it was being stopped I went by it. I never
 20 stopped.
 21 Q. And how far did you go before you came back?
 22 A. Probably half, three-quarters mile down the road
 23 there's a -- I don't know if it's a drive or road
 24 that goes back to the south. We pulled on that and
 25 just sat and waited.

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1 Q. So you did pull over and stop?
 2 A. After the traffic stop, yes, sir.
 3 Q. At any time back in September -- you already
 4 testified December when you were surveilling them you
 5 never saw any cigarettes being loaded or unloaded on
 6 the truck, correct?
 7 A. Correct.
 8 Q. In September of 2015 when you followed them from the
 9 barn to the casino did you see any cigarettes in the
 10 trailer?
 11 A. No, sir, I did not.
 12 Q. Did you witness anybody taking or putting back
 13 cigarettes, loading or unloading cigarettes in the
 14 trailer?
 15 A. I did not.
 16 Q. You remember testifying at the preliminary exam,
 17 correct?
 18 A. Yes, sir.
 19 Q. All right. And let's see if I can -- I believe
 20 earlier today you testified that you didn't know
 21 whether there was any kind of authorization given by
 22 the Attorney General's office for you guys to go
 23 ahead and open up the boxes; is that correct?
 24 A. I advised I was not part of that conversation.
 25 Q. Okay. But you spoke to the individual, is it

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1 Belanger?
 2 A. Belanger.
 3 Q. That may have spoken to the Attorney General's
 4 office, correct?
 5 A. Detective Sergeant Belanger supposedly talked to the
 6 Attorney General's office. I was not part of the
 7 conversation, though.
 8 Q. Okay. And to a question that was posed to you at
 9 that time by, I believe it was brother counsel, he
 10 said, did you have that, at least in your mind, the
 11 permission from someone at the Attorney General's
 12 office to open the box prior to getting a warrant?
 13 That's on page 77 of the transcript, judge. And your
 14 answer, I was advised to go ahead and make -- to see
 15 what kind of stamp it had on it, yes, sir. So, in
 16 fact, it was communicated to you by whomever spoke to
 17 the Attorney General's office, in this case Belanger,
 18 that there was permission given by someone at the
 19 Attorney General's office for you to go ahead and
 20 open up the boxes to see what kind of stamp was on
 21 it?
 22 A. Detective Sergeant Belanger requested I go into the
 23 trailer to check on the stamp. Whether that was a
 24 request of the Attorney General or an authorization,
 25 again, I was not part of that conversation.

1 Q. So she's the one that -- It's a she -- I'm sorry,
 2 Detective Belanger is the one that told you to go
 3 ahead and go into it?
 4 A. I'm sorry, you cut out.
 5 Q. It was Detective Belanger that told you to go ahead
 6 and go into the box and see what kind of stamp is on
 7 it, is that what you're saying?
 8 A. Yes, sir.
 9 Q. And that was after she spoke with somebody from the
 10 Attorney General's office, correct?
 11 A. Yes, sir.
 12 Q. Okay. Prior to speaking to somebody from the
 13 Attorney General's office, she never said go ahead
 14 and go in there, did she?
 15 A. Prior to that conversation? No, sir.
 16 Q. Does she outrank you or do you guys have the same
 17 ranking?
 18 A. We have the same rank now. At the time I was a
 19 trooper. That's why I say Detective Sergeant Croley
 20 and Detective Sergeant Belanger were the lead
 21 officers on the investigation. I was not.
 22 Q. And she told you go ahead and do it, correct?
 23 A. Yes, sir.
 24 Q. Okay.
 25 MR. SAMAAN: I have no further questions.

1 Thank you.
 2 THE COURT: On behalf of the people.
 3 REDIRECT EXAMINATION
 4 BY MR. GRANO:
 5 Q. When you drove to The Pines on December 11, what time
 6 of day was it?
 7 A. I don't recall. I know it was daylight. I could
 8 easily see. As far as a time frame, I'm not sure,
 9 sir.
 10 Q. Was the store open for business?
 11 A. Yes, sir, it was.
 12 Q. When you did your surveillance in September was The
 13 Pines open for business?
 14 A. Yes, sir.
 15 Q. Was the casino -- the Marquette casino open for
 16 business?
 17 A. As far as I know it was, sir. I did not go into it.
 18 I've never known that place -- as far as I know,
 19 that's open 24 hours a day, seven days a week. I
 20 don't know that it ever shuts down.
 21 MR. GRANO: I have no further questions.
 22 MR. PISZCZATOWSKI: If I can just ask one
 23 or two questions, if I could?
 24
 25

1 RECROSS EXAMINATION
 2 BY MR. PISZCZATOWSKI:
 3 Q. Is there a difference in your mind between Seneca
 4 Manufacturing and Seneca cigarettes?
 5 A. Yes, sir.
 6 Q. And was Seneca Manufacturing an approved manufacturer
 7 or participating manufacturer in the state of
 8 Michigan on December 11, 2015?
 9 A. Seneca Manufacturing is a non-participating
 10 manufacturer. As far as whether they were approved
 11 for sale -- Seneca Manufacturing, whether they're
 12 approved for sale in the state of Michigan in 2015, I
 13 can't answer that, sir.
 14 Q. Do you know National Tobacco?
 15 A. I know of National Tobacco, yes, sir.
 16 Q. Were they a non-participating manufacturer or were
 17 they approved for sale in December of '15?
 18 A. Sir, I can't answer who was or was not approved
 19 without looking it up to find out who is approved for
 20 sale in the state of Michigan at that time.
 21 Q. Other than Seneca cigarettes, you can tell us that,
 22 though?
 23 A. Seneca brand cigarettes, the ones we're talking about
 24 today?
 25 Q. Yes.

1 A. For December 11?

2 Q. Yes.

3 A. That I can say yes.

4 Q. Okay. Now -- and what's important is when you were

5 concerned that the tribe was moving -- I forgot what

6 word you used, but transporting Seneca cigarettes,

7 you were doing surveillance back in September of '15,

8 correct?

9 A. We did surveillance in September of '15, yes, sir.

10 Q. And was it -- were Seneca cigarettes approved for

11 sale in September of '15?

12 A. Again, sir, I cannot answer that question.

13 Q. But you said you were concerned they were moving

14 Seneca cigarettes and that's why you were surveilling

15 back in September of '15, correct?

16 A. We knew that the KBIC --

17 Q. Excuse me. Let me just stop you. You were doing --

18 if you can answer the question yes or no, please do.

19 A. I can't. I can't.

20 Q. Okay.

21 A. I can't answer your question yes or no.

22 Q. I'll rephrase it. So you were doing surveillance in

23 September of 2015, correct?

24 A. Yes, sir, we were.

25 Q. Okay. And you testified, if I heard you correctly,

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1 that you were concerned -- that you were concerned

2 that the tribe was transporting Seneca brand

3 cigarettes back in September of '15, correct?

4 A. I was -- well, we were concerned about selling

5 untaxed tobacco in the state of Michigan, yes.

6 Whether they were a non-participating -- excuse me,

7 an approved non-participating manufacturer or

8 unapproved non-participating manufacturer at that

9 time, I cannot answer that question.

10 Q. Okay. And whether they were an approved

11 non-participating manufacturer, so if they were an

12 approved non-participating manufacturer, that means

13 they could sell cigarettes, correct, in the state of

14 Michigan?

15 A. If they're approved in an escrow account with the

16 Department of Treasury, yes, they can, and they still

17 put their Michigan tax stamp on it.

18 Q. And if they're a non-approved non-participating, that

19 means they can't, I guess is what you're saying,

20 correct?

21 A. Correct.

22 Q. Okay. And in September -- just so I'm clear, in

23 September of 2015, when you were surveilling, you

24 don't know whether Seneca brand cigarettes were being

25 sold as a non-approved participating manufacturer or

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1 as an approved non-participating manufacturer,

2 correct?

3 A. Correct. I cannot answer that question.

4 Q. Okay.

5 MR. PISZCZATOWSKI: Thank you, Your Honor.

6 THE COURT: Sir, how did you specifically

7 choose this vehicle? Is this one that you had been

8 watching?

9 THE WITNESS: Yes, sir. Excuse me, yes,

10 ma'am. I apologize. That vehicle we had seen at the

11 pole barn in the Baraga area with a trailer. We

12 watched it travel to Marquette to the casino where it

13 backed up. We -- at that point in time we were

14 starting to wonder if that was possibly the mode of

15 transportation. We again seen that vehicle in

16 December and that's when we were starting to figure

17 out that that was probably the mode of

18 transportation.

19 THE COURT: So did it take an hour or

20 thereabout, a little under, over, whatever it was you

21 said, until the driver was speeding and then he could

22 be stopped?

23 THE WITNESS: No, ma'am. When we were

24 headed towards Marquette -- Trooper Lajimodiere --

25 Trooper LJ was based out of the Negaunee post. He

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1 was actually headed in our direction. We were

2 westbound. When he first crossed paths with it is

3 when he got his radar, first time he saw the vehicle.

4 THE COURT: And then the radar picked up

5 the speeding and then they were stopped?

6 THE WITNESS: Yes, ma'am.

7 THE COURT: And so if they were suspected

8 of transporting the cigarettes, why not get a

9 warrant, if you had all this time, or why not --

10 THE WITNESS: At that point?

11 THE COURT: Yes.

12 THE WITNESS: At that point in time we did

13 not know if that was the mode of transportation.

14 That's what we were trying to determine.

15 THE COURT: So once you have them on and

16 once you have the vehicle, why not get a warrant at

17 that point?

18 THE WITNESS: At that point the vehicle was

19 open, as I explained they were -- those cigarettes

20 were produced by a non-participating manufacturer. I

21 can tell you what my opinion was. I can't tell you

22 what Detective Sergeant Belanger, what her reason was

23 for telling me to go in to do the inspection. I can

24 tell you what I believe.

25 THE COURT: That's all I'm asking is why

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1 not get a warrant then?

2 THE WITNESS: Well, I go by what I believe

3 as far as what I was doing. Under the TPTA, if the

4 officer agent of the Department of Treasury has

5 belief that -- or reason to believe a felony -- a

6 violation of the TPTA is being committed, we are able

7 to search. When the back of that trailer was open, I

8 observed those cigarettes. That's what I went under

9 my belief on. Now, what Detective Sergeant

10 Belanger --

11 THE COURT: That's okay. You can stop

12 right there. That's all I'm asking.

13 THE WITNESS: Okay.

14 THE COURT: Thank you. Anything else based

15 on what I've asked?

16 MR. GRANO: Nothing for the people.

17 MR. PISZCZATOWSKI: No, thank you, Your

18 Honor.

19 THE COURT: All right. Next witness.

20 Thank you, sir.

21 THE WITNESS: Yes. Thank you, ma'am.

22 MR. GRANO: The people would call Trooper

23 LJ.

24 DETECTIVE RYAN: I'll go get him. Do you

25 want me sequestered?

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1 MR. GRANO: Yep.

2 THE COURT: Thank you.

3 DIRECT EXAMINATION

4 BY MR. GRANO:

5 Q. Trooper, can you state your name for the record?

6 A. Chris J Lajimodiere, L-a-j-i-m --

7 MR. GRANO: I'm sorry.

8 THE WITNESS: -- o-d --

9 MR. GRANO: One second. You have to get

10 sworn in.

11 THE COURT: Sir, please raise your right

12 hand.

13 Do you swear or affirm the testimony you

14 are about to give will be the truth, the whole truth,

15 and nothing but the truth under penalty of perjury?

16 THE WITNESS: Yes, I do.

17 THE COURT: Thank you. Please state and

18 spell your name for the record.

19 THE WITNESS: Chris J Lajimodiere,

20 L-a-j-i-m-o-d-i-e-r-e.

21 THE COURT: Thank you. Counsel.

22 THE WITNESS: You're welcome.

23 BY MR. GRANO:

24 Q. Sir, how are you employed?

25 A. With the Michigan State Police.

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1 Q. What unit?

2 A. I am currently assigned to the eighth district

3 hometown security team.

4 Q. Did you work for Michigan State Police in December

5 2015?

6 A. Yes. I was assigned to the Negaunee post at that

7 time.

8 Q. Like, road patrol?

9 A. Yes, sir.

10 Q. Okay. Did you -- were you working on December 11,

11 2015?

12 A. Yes, I was.

13 Q. Did you receive information from Trooper Ryan

14 regarding a pickup truck with trailer?

15 A. Yes. I talked to Trooper Ryan. I had received

16 information that there was a green Ford pickup truck

17 with a gray trailer traveling eastbound on US-41 near

18 Negaunee.

19 Q. How far is it from Baraga to Negaunee, to the post,

20 approximately? You don't have to be exact.

21 A. Baraga to Negaunee I would estimate 75 miles.

22 Q. Okay. And where were you when you got this call from

23 Trooper Ryan?

24 A. I was at the state police post in Negaunee Township.

25 Q. Okay. And so did you head out on US-41 towards

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1 Baraga?

2 A. Yes. I started patrolling towards Ely Township on

3 US-41.

4 Q. How far is that from the post?

5 A. From the post to -- a little shy of -- maybe 15, 20

6 miles.

7 Q. Okay. And did you see the vehicle you were looking

8 for?

9 A. Yes, I did. It was traveling eastbound on US-41 just

10 going into Ely Township.

11 Q. Were you in a marked squad car?

12 A. Yes. I was in a fully marked blue Michigan State

13 Police Charger patrol vehicle.

14 Q. Okay. And does that vehicle have radar?

15 A. Yes, it does, sir.

16 Q. And were you able to get the vehicle -- the truck

17 vehicle you saw on radar?

18 A. Yes, I was. I was -- had a radar reading of 62 miles

19 per hour in a 55 miles per hour zone.

20 Q. Based on that reading, what did you do?

21 A. Due to traffic I had to pull over onto the side of

22 the road, allow some traffic, I pursued after the

23 vehicle and waited until a straight stretch of

24 roadway to initiate a traffic stop.

25 Q. Were you able to stop the vehicle?

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1 A. Yes, I was. I stopped the vehicle on US-41, what is
 2 known as Evergreen stretch in Ely Township.
 3 Q. Did you make contact with the driver?
 4 A. Yes, I did. I contacted the driver, requested his
 5 driver's license, vehicle paperwork.
 6 Q. And who was the driver?
 7 A. The driver was Mr. Davis.
 8 Q. Okay. And that's John Davis?
 9 A. Yes, sir.
 10 Q. Okay. And you see him sitting next to you in court
 11 there -- or in that room?
 12 A. Yes, sir. A checkered green, black or blue shirt.
 13 Q. Okay. And what, if anything, did you inquire of Mr.
 14 Davis?
 15 A. I had asked him if he had seen me going the other
 16 way. He said that he had. I asked him if he knew
 17 how fast he had been going. I don't recall him
 18 saying that he knew. I advised him that he was going
 19 62 miles per hour and that's the reason for the
 20 traffic stop. I also ID'd Mr. Magnant. Mr. Magnant
 21 did not have an ID card on him so I verbally got his
 22 information and took that down in my notebook.
 23 Q. Okay. I'm going to stop you right there. Did either
 24 of them give you a State of Michigan driver's
 25 license?

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1 A. I believe Mr. Davis would have identified himself
 2 with a Michigan license.
 3 Q. Okay. Did the truck you stopped, did that have
 4 Michigan plates or KBIC plates?
 5 A. The truck and trailer I had stopped had KBIC plates.
 6 Q. Do you know in your experience as a road trooper in
 7 the eighth district, does KBIC maintain any type of
 8 electronic database with the State of Michigan?
 9 A. I don't believe so. I cannot run -- I can run -- if
 10 I make a traffic stop and it's a Michigan plated
 11 vehicle or a Michigan license, I can easily run that.
 12 With KBIC it's been my experience I can't run that
 13 plate. I think we either have to have dispatch
 14 center call up to KBIC -- I don't even know who they
 15 call up there to get information back if we needed
 16 it.
 17 Q. Is it a significantly longer process to get
 18 information on a KBIC plate than a Michigan plate?
 19 A. Yes. Because I have to have the dispatch center
 20 call, you know, if I need some information.
 21 Q. Okay. So you indicated you got information from the
 22 driver. At some point did you ask the driver if you
 23 could -- what he was hauling?
 24 A. Yes. We had a conversation. They said that they
 25 were going -- or they were traveling to --

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1 MR. PISZCZATOWSKI: Objection, Your Honor.
 2 They. I would like to have someone identified. If
 3 there's words being spoken, who it was, Your Honor.
 4 THE COURT: Sir, can you just restate your
 5 answer and identify who you're talking about instead
 6 of using they?
 7 THE WITNESS: Your Honor, there was
 8 conversation back and forth. I'd have to review the
 9 tape and try to see who was actually answering. I
 10 cannot recall who did most of the talking back and
 11 forth from inside the vehicle, if it was Mr. Davis or
 12 Mr. Magnant. That's why I refer as they.
 13 BY MR. GRANO:
 14 Q. Did anybody indicate to you that they were
 15 transporting cigarettes?
 16 A. Nobody said they were transporting cigarettes. I
 17 talked to them. Talking to Mr. Magnant, Mr. Davis,
 18 was advised --
 19 MR. PISZCZATOWSKI: Objection.
 20 THE WITNESS: -- they were en route --
 21 MR. PISZCZATOWSKI: Objection. Unless he
 22 can say who said what, Your Honor, I'm not sure it's
 23 relevant for this court's consideration.
 24 MR. GRANO: We can just move on.
 25 THE COURT: Well, let's move on and strike

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1 the answer. Move on.
 2 MR. GRANO: Well, he can say that nobody
 3 testified -- or nobody gave him information that
 4 there was cigarettes. I think we can stop it there.
 5 THE COURT: Well, then stop it there or
 6 rephrase or reask the question. He didn't answer it
 7 that way, sir.
 8 MR. GRANO: Okay.
 9 BY MR. GRANO:
 10 Q. Did anybody give you information that there was
 11 cigarettes being transported?
 12 A. No, sir.
 13 Q. Okay. Did you ask Mr. Davis or -- I think you
 14 indicated Mr. Davis was driving?
 15 A. Correct.
 16 Q. Did you ask Mr. Davis if you could see what was in
 17 the trailer?
 18 A. Yes.
 19 Q. And did he agree to that?
 20 A. Yes. He voluntarily exited the vehicle with some
 21 keys. They walked -- we walked back towards the
 22 trailer and had some conversation.
 23 Q. Okay. Did you tell him he did not have to open the
 24 trailer?
 25 A. I made a statement that was obviously not forcing him

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1 to open the trailer.
 2 Q. Okay. And did he still open the trailer?
 3 A. Yes. He still kept with the lock and opening the
 4 trail.
 5 Q. And when he opened it, what did you see inside?
 6 A. I observed brown cardboard boxes that had Seneca on
 7 them.
 8 Q. Okay. Do you have any training of tobacco products
 9 tax?
 10 A. I have in the past. I've kind of done some research
 11 on some of it. It looks like I might have received
 12 some back in 2013.
 13 Q. Okay. Once you saw tobacco, what did you do?
 14 MR. PISZCZATOWSKI: Objection. He didn't
 15 say he saw tobacco. Object to the characterization.
 16 Saw some boxes, had the word Seneca.
 17 MR. GRANO: Rephrase.
 18 THE COURT: Sustained, rephrase.
 19 BY MR. GRANO:
 20 Q. Do you know what Seneca -- you said the box had
 21 Seneca. Do you know what Seneca is?
 22 A. I knew Seneca to be a brand of cigarettes.
 23 Q. Okay. Once you saw a box with a brand of cigarettes
 24 on it, what did you do?
 25 A. I saw the amount of boxes, I contacted the tobacco

1 tax enforcement team.
 2 Q. Okay. And was your involvement over at that point or
 3 did you continue to search?
 4 A. I remember asking Mr. Davis, kind of like, you knew
 5 that was back there, and he said that he was just a
 6 worker and I told him, I have a job to do also. I
 7 had -- we kind of stepped off to the shoulder and I
 8 just stayed with them. I didn't do any other
 9 searches or anything.
 10 MR. GRANO: Thank you. No further
 11 questions.
 12 CROSS EXAMINATION
 13 BY MR. PISZCZATOWSKI:
 14 Q. Trooper, excuse me because I'm going to try to face
 15 this way just so the court reporter can hear me. I
 16 don't mean any disrespect to you, okay?
 17 A. None taken.
 18 Q. Okay. Cool. So you got a radio message at some
 19 point -- I'll try to jump to the jump street, but you
 20 basically got a radio or something, communication
 21 from Trooper Ryan, correct?
 22 A. Yes. That morning I talked to Trooper Ryan and
 23 Detective Sergeant Croley.
 24 Q. Trooper Ryan and Detective Sergeant Croley?
 25 A. Correct.

1 Q. Okay. And what did Trooper Ryan -- do you remember
 2 the exact words that Trooper Ryan said to you?
 3 A. I don't remember exact words, no, sir.
 4 Q. Okay. He asked you, though, to try to effectuate a
 5 traffic stop on a vehicle?
 6 A. Yes, sir.
 7 Q. And do you recall if he said anything in addition to
 8 the traffic stop? What else did he say, why he
 9 wanted you to effectuate a traffic stop?
 10 A. That it may possibly be containing or hauling Seneca
 11 cigarettes.
 12 Q. And he used the word in your memory, Seneca
 13 cigarettes, correct?
 14 A. Yes.
 15 Q. As opposed to illegal or untaxed cigarettes?
 16 A. I mean, we had this discussion at the preliminary.
 17 Q. You remember he used the words Seneca cigarettes, is
 18 that what --
 19 A. Yes. We went over there. In the report I said
 20 Seneca cigarettes.
 21 Q. Okay. And at that time he used the words may
 22 possibly -- the trailer may possibly contain Seneca
 23 cigarettes, correct?
 24 A. Correct.
 25 Q. Okay. And so you tried to effectuate a traffic stop,

1 which you did, 62 In a 55, we know that whole drill.
 2 You pull him over, you approach the cab, correct?
 3 A. Yes, sir.
 4 Q. Okay. You get a driver's license from Mr. Davis,
 5 correct?
 6 A. Correct.
 7 Q. Registration for the vehicle, correct?
 8 A. Yes.
 9 Q. You have a discussion, then, with the passenger, you
 10 get some verbal identification, et cetera, correct?
 11 A. Yes.
 12 Q. Okay. You go back now to your vehicle and start
 13 writing a ticket?
 14 A. No. I continue to speak with Mr. Davis.
 15 Q. Because fairly put, your goal was to try to get into
 16 the back of that trailer, correct?
 17 A. I was ascertaining what their travel plans were or
 18 what they had in the trailer.
 19 Q. Let me ask it again. You didn't go back to write a
 20 ticket, correct?
 21 A. Correct.
 22 Q. You had a different idea in mind at that point,
 23 correct? I'll withdraw the question.
 24 A. I would agree.
 25 Q. Okay. Okay. Fair enough. I mean, let's be honest,

1 you weren't stopping -- we all got this from the
 2 exam, you weren't stopping this trailer because you
 3 were on speed patrol that day, right? You weren't on
 4 traffic enforcement, right? I mean, you might have
 5 been but that's not why you stopped the trailer and
 6 the truck, right?
 7 A. Right. I was told to be on the look out for it and
 8 see if I could get a valid stop.
 9 Q. And to try to see if there was a way to get into the
 10 back of the trailer to see what they were hauling,
 11 correct?
 12 A. Well, it was to see if I could see if they had any
 13 Seneca cigarettes.
 14 Q. Okay. And you looked into the cab, correct, the cab
 15 of the truck?
 16 A. I'm kind of short. I don't know if I could even see
 17 in that F 250.
 18 Q. Okay. So I guess the question is did you look into
 19 the cab of the truck and did you see any Seneca
 20 cigarettes?
 21 A. From where I was standing I didn't see anything.
 22 Q. Okay. So you then continue the conversation with the
 23 driver and the passenger, correct?
 24 A. Yes, sir.
 25 Q. And at some point you continue it rather than writing

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1 a ticket for the 62 in a 55; fair enough?
 2 A. We had a short conversation, yes.
 3 Q. Okay. And during the course of that short
 4 conversation you asked to try to see what's in that
 5 trailer, correct?
 6 A. Yes.
 7 Q. Okay. And what words do you use when you make that
 8 request?
 9 A. I don't remember verbatim. I guess we'd have to
 10 watch the video and see if we can hear it.
 11 Q. Okay. But you basically said something like, can I
 12 look in the back of the trailer?
 13 A. Something to that effect. Do you mind or -- I don't
 14 know exactly, sir.
 15 Q. You're a pretty polite guy, I got that, so you said,
 16 do you mind if I look in the back of the trailer,
 17 correct?
 18 A. I can't remember exactly what.
 19 Q. Okay. Now, at that point you have seen nothing that
 20 Mr. Davis or Mr. Magnant have done that would cause
 21 you as a state trooper to arrest them; fair enough?
 22 A. Yes.
 23 Q. Okay. So now you go back to the trailer with Mr.
 24 Davis, fair enough?
 25 A. Correct.

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1 Q. And Mr. Davis opens up the trailer; fair enough?
 2 A. Yes.
 3 Q. And you look in the trailer and you see boxes and it
 4 has the words Seneca and it has the word -- I'm sure
 5 it has cigarettes -- well, I don't know what it has.
 6 What did it have, do you remember?
 7 A. I just remember the Seneca and the brown cardboard
 8 boxes.
 9 Q. Okay. Now, at that point do you arrest Mr. Davis?
 10 A. I don't arrest anybody.
 11 Q. Okay. So at that point you don't arrest Mr. Davis.
 12 So -- correct? You don't arrest anybody?
 13 A. Correct.
 14 Q. Okay. So now you see Seneca cigarettes, you see Mr.
 15 Davis, he's the driver, but you don't make an arrest;
 16 fair enough?
 17 A. Yes.
 18 Q. Okay. And what you do do, however, is -- now the
 19 trailer is open so you call the tobacco tax
 20 enforcement team, correct?
 21 A. Yes.
 22 Q. Fair to say that before you stop that trailer and
 23 that truck you had no contact with that truck or
 24 trailer in your life, at least as far as you know?
 25 A. Not that I know of.

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1 Q. Okay. Anyway, you go and you go into -- and you make
 2 a call, you call the tobacco tax people. Who did you
 3 call, by the way?
 4 A. I do not recall, sir. I remember just -- I think I
 5 called them via radio so I don't know who answered.
 6 Q. Okay. Now, you don't -- I'm sorry, you never asked
 7 Mr. Davis or Mr. Magnant, do you have a transporter's
 8 license, correct?
 9 A. Correct.
 10 Q. You don't ask them whether they're licensed to haul
 11 tobacco, correct?
 12 A. Correct.
 13 Q. And fair enough to say at that point you don't even
 14 know whether that's a violation or whether they've
 15 committed any violation; fair enough?
 16 A. I believe there was a violation due to the amount of
 17 Seneca cigarettes back there but I don't know an
 18 exact violation.
 19 Q. And, in fact, when we talked about that at the
 20 preliminary exam when you were examined -- and I hate
 21 to do this -- when we asked what was the violation of
 22 law, your answer, that's what I can't say?
 23 A. Right. I do not know the exact violation of law.
 24 Q. Okay. Got it. So you don't -- again, you don't
 25 effectuate an arrest at that point. We move along.

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1 How long is it before the tobacco tax team now
 2 arrives on the scene?
 3 A. I cannot recall exactly. It would be -- we'd have to
 4 watch the video. It wasn't a long period of time. I
 5 would say just minutes.
 6 Q. Like, how many minutes, do you know?
 7 A. One or two maybe.
 8 Q. Okay. You think it was that quick?
 9 A. I think so.
 10 Q. They arrive on the scene. They get out of the car
 11 and then they go into the trailer, correct? Someone
 12 goes into the trailer?
 13 A. I think I was back in my patrol car at some point. I
 14 really didn't pay much attention of who was talking
 15 to who or what was going on.
 16 Q. Now, before the tobacco tax team arrives on the
 17 scene, you have to wait minutes, or whatever, at
 18 least is your recollection, and it could be longer
 19 than minutes, correct? You don't really know.
 20 A. I believe it was just a couple minutes.
 21 Q. Okay. We'll go with a couple minutes. And during
 22 those couple minutes, had Mr. Davis got back in the
 23 truck and tried to drive away, would it be fair to
 24 say that you would have stopped him?
 25 A. Yes.

1 Q. You would not allow them to leave, correct?
 2 A. Correct.
 3 Q. Okay. Now, did you ask either Mr. Davis or Mr.
 4 Magnant whether they knew what was in the boxes?
 5 A. No, sir.
 6 Q. You never looked in the boxes, correct?
 7 A. I never looked in the boxes, correct.
 8 Q. Fair to say you don't know what's in them?
 9 A. Correct.
 10 Q. Mr. Grano asked you a couple questions and I'm going
 11 to follow the process of you getting, you know, to
 12 the back of trailer. Before you went into the
 13 trailer, did you tell Mr. Magnant or Mr. Davis that
 14 they had a right to refuse to consent to open that
 15 trailer?
 16 A. I never went into the trailer and, no, I never told
 17 them they could refuse.
 18 Q. Okay. And did you ever explain to them that if there
 19 was something in that trailer, like cigarettes, that
 20 they could get in trouble?
 21 A. No, no conversation like that.
 22 Q. So you had no conversation about what, if any, their
 23 rights were on the scene; fair enough?
 24 A. When the trailer was opened, like I said, I had Mr.
 25 Davis stand by the side -- we stood on the side. I

1 think at one time Mr. Magnant came out and, like I
 2 said, we just stood by on the shoulder until tobacco
 3 tax team arrived.
 4 Q. And at the time when Mr. Davis opens that trailer
 5 door, do you recall him saying words like, there you
 6 go, boss?
 7 A. Yes, when the door was opened, correct.
 8 Q. And you were in uniform just like you are today?
 9 A. Yes.
 10 Q. Okay. You had a firearm, I'm presuming?
 11 A. Correct.
 12 Q. Okay. It was holstered but you had it?
 13 A. Correct.
 14 Q. Okay. Now, did you have -- I'm just curious, did you
 15 actually have Mr. Davis' driver's license at that
 16 point?
 17 A. I would have had all the paperwork and license that
 18 was provided to me when I was at the vehicle.
 19 Q. So you still were in that -- you had possession of
 20 that stuff?
 21 A. Yes. I don't know if I had it in my hands or
 22 underneath my tie. I had it somewhere.
 23 Q. Did you ever go back to the radio and call in that
 24 KBIC plate, just out of curiosity? Strike that. Did
 25 you ever call in that plate before you asked Mr.

1 Davis to -- if you could look in the back of the
 2 trailer?
 3 A. I don't think I even called out the traffic stop. I
 4 was in a different talk group on the radio.
 5 Q. Okay. So you -- after you stopped the vehicle for
 6 speeding and did whatever you did out on the scene,
 7 correct? You got the license and registration, you
 8 talked to them for a while, all that stuff, right?
 9 Are you with me so far? It's kind of a compound
 10 question, isn't it, judge?
 11 A. Yes.
 12 Q. I'll try to ask it one at a time. So you got the
 13 license, you got the registration, you had all of
 14 that information, personal information about them,
 15 correct?
 16 A. That they had provided to me, correct.
 17 Q. At least enough information that you could have gone
 18 back to your car and wrote a traffic ticket, correct?
 19 A. I could have went back and did my checks and took my
 20 enforcement action, correct.
 21 Q. So from that point, instead of going back to the car,
 22 that's when you engage him in the conversations,
 23 what's in the trailer, et cetera, where are you
 24 going, that kind of talk, right?
 25 A. Right. Like I do on many stops.

1 Q. Of course. And then you continue the conversation,
 2 got the trailer, the door was open, and then you
 3 called the tobacco tax team, right?
 4 A. I guess, I'm sorry, I missed your question. If
 5 you're asking was the trailer door --
 6 Q. Open?
 7 A. The trailer door was open.
 8 Q. Yeah.
 9 A. And that's when I contacted the tobacco tax.
 10 Q. Here's my last question, so you'll be happy to hear
 11 that and so will the court, so when you got the call
 12 from Trooper Ryan, right? You got the call?
 13 A. Yes.
 14 Q. Until the time that Trooper Ryan and his -- the
 15 tobacco tax enforcement team arrives, what's the time
 16 frame?
 17 A. I can't give an answer to that. I would have to see,
 18 you know, what time is on the report there. I know
 19 from when I had to stop, from the time I make initial
 20 contact with occupants of the truck, the trailer is
 21 open within about five minutes and then tobacco tax
 22 team is there. I can't -- I can't give you, sir, a
 23 definite time on when I got the call from -- at the
 24 post and then I think you're asking when the stop is
 25 made.

1 Q. But you came to find out that the Seneca cigarettes
 2 that were in the truck or in the trailer were not
 3 approved for sale in Michigan; is that correct?
 4 A. Well, I had prior information.
 5 Q. From the troopers that were on the scene with you?
 6 A. I don't understand your question, sir.
 7 Q. It was confirmed that the Seneca cigarettes that were
 8 in that truck were not approved for sale in Michigan,
 9 correct, at the scene?
 10 A. I believe so.
 11 Q. Okay. Was anybody arrested? Was anybody --
 12 A. I don't believe -- I don't believe so.
 13 Q. Okay. A crime was committed, correct?
 14 A. Correct.
 15 Q. Yet nobody was arrested?
 16 A. No. I remember transporting -- I think I transported
 17 Mr. Davis down here to Marquette.
 18 Q. And you told them they were free to go, correct?
 19 A. I didn't have any conversation about the
 20 investigation. When I called the tobacco tax team to
 21 come out to the scene, I conducted no further
 22 investigation, sir.
 23 Q. Nobody from the tobacco tax team asked you to arrest
 24 Mr. Davis?
 25 A. I don't recall anybody telling me to arrest anybody.

1 Q. And when the people arrived on the scene.
 2 A. Right now I can't speculate on that, give a time.
 3 Q. Okay. All right.
 4 MR. PISZCZATOWSKI: Thank you.
 5 MR. SAMAAN: Your Honor, just a couple of
 6 questions.
 7 CROSS EXAMINATION
 8 BY MR. SAMAAN:
 9 Q. Trooper, were you at the scene the whole time from
 10 the time you pulled the truck over until everyone
 11 left the scene?
 12 A. I believe so.
 13 Q. Okay. And obviously you were there when Trooper
 14 Ryan, Croley, and that whole crew got there, right?
 15 A. I was there, correct.
 16 Q. And were you privy to any of the discussions that
 17 took place between the other troopers relative to
 18 what was inside the truck?
 19 A. I don't recall talking to them out there at the
 20 scene. I think at one time Mr. Davis and I had a
 21 seat in my patrol car and we chatted for a good time.
 22 Q. Did you ever hear Trooper Ryan say, whoa, there's
 23 illegal cigarettes here, it's a felony?
 24 A. I don't recall hearing that. Like I said, I was
 25 mostly in my car.

1 Q. In fact, you just drove him to a place where he can
 2 get home from, correct? You didn't want to leave him
 3 by the side of the road?
 4 A. Right. I was just asked to transport him and that's
 5 what I did.
 6 MR. SAMAAN: All right. Thank you. No
 7 further questions.
 8 MR. GRANO: Nothing more for the people.
 9 THE COURT: Thank you. Sir, you may step
 10 down.
 11 MR. GRANO: Your Honor, I have no --
 12 THE WITNESS: Thank you.
 13 MR. GRANO: I have no other witnesses.
 14 THE COURT: Any additional witnesses at
 15 this time?
 16 MR. PISZCZATOWSKI: No other witnesses on
 17 behalf of defense.
 18 MR. SAMAAN: No.
 19 THE COURT: All right. Argument. Thank
 20 you.
 21 MR. GRANO: Just briefly, Your Honor --
 22 THE COURT: Briefly.
 23 MR. GRANO: -- because we did file
 24 extensive briefs. The people's position is that,
 25 first, the defendants lack standing. That, secondly,

1 for -- Sergeant Croley, can you mute your microphone?
 2 DETECTIVE CROLEY: I'm sorry. The
 3 defendants wanted to know if they can go. I told
 4 them they should probably stay.
 5 MR. GRANO: On the microphone if you --
 6 yeah, it should mute it.
 7 THE COURT: They need to stay. We won't be
 8 much longer but they do need to stay, please.
 9 MR. GRANO: Thank you. I believe four
 10 search warrant exceptions apply.
 11 First, there's consent. I believe that the
 12 driver was told when there was a valid -- first
 13 there's a valid traffic stop. Well, let me back all
 14 the way up.
 15 First we have surveillance of these
 16 vehicles and I believe the argument is going to be
 17 that there was trespassing. The test for
 18 trespassing, Your Honor, is the girl scout test. If
 19 the girl scouts can go there, the police can go
 20 there, okay? So in this case Trooper Ryan testified
 21 he was never anywhere when the business wasn't open
 22 to the public. The casino is always open to the
 23 public.
 24 My Google photo that was admitted as an
 25 exhibit of The Pines, because I don't know if Your

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1 Honor has ever been up that way or not, but as you
 2 can see, it's on the side of the road. Google took a
 3 photo of a pickup truck in the same spot where the
 4 truck was in this case. If the guy, whatever vehicle
 5 took that picture, took it while driving down US-41,
 6 it was in a place where my trooper could have been
 7 legally to see those trucks. So that's the first,
 8 there's no trespass in obtaining that information
 9 On the day in question they see the truck,
 10 they follow to a pole barn, two trucks -- the
 11 defendants were in two trucks. They come out of the
 12 pole barn in one truck. They radio ahead if there's
 13 a legal reason to stop the vehicle, stop the vehicle,
 14 see if you can get in the back. Trooper LJ gets that
 15 call, gets them going 62 in a 55, stops, strikes up a
 16 conversation, asks, can I go back in the truck?
 17 Says, I'm not forcing you to do this. The driver
 18 takes them to the back, opens the truck. At that
 19 point all of the Seneca brand cigarettes are in plain
 20 view.
 21 Secondly, they're in a motor vehicle so the
 22 automobile exception would apply.
 23 Thirdly, tobacco is a heavily regulated
 24 industry. In People V ^ Bay Dune, I believe that's
 25 a 2009 case, and other administrative tobacco

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1 searches the Michigan Court of Appeals has held that
 2 the state police do not need search warrants to
 3 effectuate Tobacco Products Tax Act inspections.
 4 And, lastly, as Trooper Ryan pointed out,
 5 MCL 205.429 states if an inspector for treasury, and
 6 MSP is considered an inspector for treasury, they're
 7 an agent for treasury, if they have reasonable cause
 8 to believe tobacco is being transported, what would
 9 constitute a felony, they are able to search without
 10 a warrant per the statute, and so all of these would
 11 apply to this case.
 12 The evidence was gathered legally. A
 13 search warrant was not needed, and, therefore, we
 14 would ask that this motion be denied. Thank you.
 15 MR. PISZCZATOWSKI: Your Honor, I'm happy
 16 to argue the search and seizure motion. Your Honor,
 17 we still have the argument on the motion to quash
 18 which is -- could be -- I don't know, could be
 19 significant.
 20 THE COURT: You may.
 21 MR. PISZCZATOWSKI: But it's, like -- you
 22 know, it's going to be late, and I'm fine with coming
 23 back if the court would just do this on a regular day
 24 or if you want us to go --
 25 THE COURT: I am ready to rule.

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1 (Discussion off the record)
 2 MR. PISZCZATOWSKI: So on a search, Your
 3 Honor, the search and seizure, we've cited, and I'm
 4 not going to reiterate everything in the briefs but
 5 you've got the Rodriguez case, Supreme Court. You've
 6 got a detention. We clearly have a pretext stop. We
 7 all understand what that means, and we understand,
 8 you know, under Whren you can do it, the Supreme
 9 Court said it, but there's also an issue to the
 10 reasonableness of the stop and the length of the stop
 11 and that once you go beyond that detention that says
 12 what's necessary for the traffic ticket, you go into
 13 uncharted water, and that's where we're at, Your
 14 Honor. And Trooper LJ basically said, look it, I
 15 could have wrote the ticket, could have went back
 16 but, no, I was going to keep talking, and he did keep
 17 talking, and we're not talking about a significant
 18 length of time but we're talking about, you know,
 19 search, ten minutes, whatever we're talking about,
 20 his best recollection, but it's not a temporal issue.
 21 It becomes a defense and an improper detention and it
 22 transfers from a -- proper pretext stop into a
 23 detention and an improper seizure, a seizure at that
 24 point when he then extends the length of that time
 25 from which a normal officer would have written a

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1 traffic ticket. And that's what he's got.
 2 The government claims that we have consent
 3 here and that consent was by -- was obtained in part,
 4 certainly, by that extended detention, that seizure,
 5 which transferred to an unlawful seizure, and so we'd
 6 submit to the court that that consent -- you have to
 7 look at the consent in that regard and whether it's
 8 just a mere acquiescence or not to authority. In
 9 this case, he goes, hey, there you go, boss. What
 10 does that mean? It means, there you go, boss. Boss.
 11 There's a reason you use that. He's not using that
 12 as a colloquialism. He's saying this is the guy
 13 running the show.
 14 There's no plain view seizure. We
 15 established that. There were boxes. You couldn't
 16 tell there was anything improper about that until the
 17 officer went in and had to look for a stamp on the
 18 packs, and that's pretty clear what's going on.
 19 The auto exception you can argue whatever
 20 you want. They're on the scene. They've got control
 21 of the vehicle. The fact is they had time. There
 22 was no exigency at that time, which is the whole
 23 Chambers versus Maroney and Carroll and all those
 24 crazy cases I remember from law school that I never
 25 use anymore, but the fact of the matter is there was

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1 no exigency at that time because they had total
 2 control of the situation and they were in control of
 3 the vehicle as well as the trailer.
 4 The administrative search gets to be
 5 interesting because that's what Trooper Ryan said --
 6 so if you look at 205.429, and I'm a neophyte but I
 7 can say this, it says if an authorized -- and I'm
 8 going to quote, you know, and, like, three dot it a
 9 lot -- if an authorized inspector, police officer has
 10 reasonable cause to believe and does believe that a
 11 tobacco product is acquired, transported for which
 12 the penalty is a felony -- nobody said that but,
 13 okay -- he may investigate or search the vehicle of
 14 transportation in which the product is believed to be
 15 located. He can search the vehicle. I got it, okay?
 16 He can look. He can go into that vehicle and do
 17 things you couldn't otherwise do. They can look at
 18 the outside of those boxes. That's what that gives
 19 him permission to do.
 20 And then it goes on, if -- I have to find
 21 that sentence. If a tobacco product is found in a
 22 vehicle searched under this subsection,
 23 yada-yada-yada, in possession of a person in control
 24 of the tobacco product, may be seized by the
 25 inspector or police officer. They can seize it. I'm

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1 all over it. So they go in the vehicle. That's what
 2 this gives them authority to do. They go in the
 3 vehicle. They can search. They can look. They can
 4 see. They can do things that you couldn't otherwise
 5 do, even under this administrative exception, and
 6 then what can they do? They can seize it, and then
 7 what are they supposed to do after they seize it?
 8 Get a search warrant and look inside the boxes.
 9 That's the defense's position, Your Honor,
 10 and I think -- this statute doesn't give them
 11 anything more. They can seize, because it's
 12 contraband, quote, unquote, and they did seize it and
 13 they did forfeit it and they sent the notice to the
 14 KBIC, and they can have a big fight about it, but Mr.
 15 Davis didn't claim anything. Neither did Mr. Magnant
 16 because it's not their property. So that's just, you
 17 know, the basics on that search and seizure issue.
 18 Okay. You got some questions?
 19 THE COURT: No.
 20 MR. PISZCZATOWSKI: If it was earlier you
 21 would have, I know that.
 22 THE COURT: No, not on that one. All
 23 right.
 24 MR. PISZCZATOWSKI: So we're going to do
 25 the quash after this?

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1 THE COURT: No. Say what you need to. You
 2 have a couple minutes and then I'm going to rule.
 3 MR. PISZCZATOWSKI: But the quash is the
 4 big one, judge, because you've got two issues on the
 5 quash, and that's like -- well, I know what the best
 6 motion is -- they're all good but this is the best
 7 one for sure.
 8 You've got two things when you've got a
 9 motion to quash. You have abuse of discretion, which
 10 I get, but if you look at what the standard is and
 11 you look at Shouman -- let's go back to Shouman for
 12 30 seconds, and I love the Court of Appeals because
 13 whenever it suits them the Court of Appeals ignores
 14 language of the statute, and the statute in this case
 15 talks about contrary to this act, and those words are
 16 predominately mentioned in 428 subsection three which
 17 says a person who possesses, acquires, transports, or
 18 offers for sale, contrary to this act, 3,000 or more
 19 cigarettes is guilty, et cetera, et cetera, okay?
 20 So what is Shouman. I looked at that
 21 opinion. I didn't see the words contrary to this act
 22 even talked about. So what's important in terms of
 23 the motion to quash is that those words -- you have
 24 to -- those words have to mean something. You can't
 25 ignore them. The legislature put them in there for a

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1 reason, and what do those words mean? It means that
 2 a person who possesses or transports contrary to this
 3 act, so they have to know at a minimum, because we've
 4 already gone over the knowledge thing. We don't have
 5 to worry about knowledge. We've got Nasir telling us
 6 there's knowledge and we've got Shouman telling us
 7 that we're going to require knowledge, and, in fact,
 8 Mr. Grano when he argued basically said I have to
 9 grant you knowledge, right? And Shouman says a lot
 10 of things that I could segue into which would be
 11 great for a discussion, but we don't have time,
 12 because the state now has a default provision for
 13 knowledge, right? After January 1 of '16, so if this
 14 had occurred after that day we would have that
 15 default provision where it's requiring knowledge.
 16 But Shouman never talks about that because it wants
 17 to ignore the words contrary to this act even though
 18 every rule of statutory construction says you cannot
 19 ignore those words, so it doesn't mean that these
 20 defendants have to intentionally say I'm going to set
 21 out and violate this act, but at a minimum they have
 22 to know there is tobacco in that trailer and that
 23 they're transporting it or possessing it or whatever
 24 contrary to this act. The lower court just ignored
 25 that language, judge. The magistrate ignored it, so

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1 there's abuse of discretion because she found that
 2 those words didn't mean anything in this context.
 3 And we're not saying it's a specific intent
 4 crime, because we know specific intent has been
 5 abrogated in the state of Michigan. That's not
 6 specific intent. It's not requiring that but you
 7 have to have -- because a specific intent would be to
 8 violate the statute, but here you have to have
 9 knowledge at least that you're acting contrary to
 10 this act. Contrary to this act. I can't say it
 11 enough. So that is -- you know, that's a big deal,
 12 and you have to be transporting contrary to the act.
 13 Okay. Now, we already argued, and I would
 14 ask the court to consider this, too, the transporter.
 15 Who is the transporter here, right? Because who's
 16 the transporter? Are they, the -- the individuals
 17 the transporter or is it the tribe that's the
 18 transporter? That's just a factual consideration,
 19 and we'd submit to the court that it was -- the
 20 magistrate abused her discretion by finding the
 21 transporters were these two individuals, but I'm
 22 going to go to the final argument and wrap up.
 23 There was nothing on that record below in
 24 the preliminary -- at the preliminary exam that says
 25 Mr. Davis, the driver of the truck, had knowledge

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1 that there was tobacco in the trailer. There's
 2 nothing there. You can guess. You can speculate.
 3 The court can do whatever it wants, and it did, but
 4 the fact is there's not one bit. He didn't touch it.
 5 He didn't load it. He didn't unload it. They never
 6 saw him in these trailers or trucks before. He
 7 doesn't own the truck. He doesn't own the trailer.
 8 The KBIC owns the tobacco. He never made a claim for
 9 the tobacco. There's not one iota of testimony on
 10 the record below that says Mr. Davis had knowledge --
 11 putting aside, contrary to this act or not -- had
 12 knowledge of any tobacco in that trailer, and just
 13 like you can't presume knowledge of stolen property
 14 from the mere possession of the stolen property, you
 15 have to have something, right? That's the same thing
 16 here. You cannot jump -- I submit to the court you
 17 can't jump to the conclusion that -- and, in fact,
 18 the record says someone said there were chips,
 19 supplies, we don't know who it was. There's nothing
 20 to say that when that person said chips or supplies
 21 that they were lying, and I made that point with the
 22 examining magistrate. You can't say, oh, we found
 23 tobacco and, therefore, they were lying when they
 24 said chips and supplies. No. You have to have
 25 something that says when they said chips or supplies

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1 someone knew they were lying. There's nothing on
 2 this record, so all I'm suggesting to the court --
 3 and I can talk for a lot longer, but I'm not, and the
 4 fact is, Your Honor, that whether you view the
 5 statute -- and I think it's really important that
 6 someone says contrary to this act means something,
 7 Shouman notwithstanding, Court of Appeals ignoring
 8 language whenever it's convenient to ignore, even
 9 though every rule of statutory construction says to
 10 the contrary, you have to give every word meaning,
 11 but even if you don't use those words, for Mr. Davis
 12 there is nothing in the record to say that he knew
 13 there was tobacco products, let alone tobacco
 14 products that are contrary to this act in that
 15 trailer. Thank you.
 16 MR. GRANO: I'll only make one point and
 17 it's contrary to the act. Contrary to the act
 18 incorporates the regulations that are found earlier
 19 in the Tobacco Product Tax Act which is the reason
 20 why we've charged without possessing -- without
 21 obtaining or possessing a Michigan tobacco license as
 22 required by MCL 205.423. We have given meaning to
 23 that. The Court of Appeals gave meaning to that.
 24 The regulation that is at issue here is whether they
 25 had a license to do what they were doing. That's how

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1 you use contrary to the act. There's paper
 2 requirements, so you have to have invoices if you're
 3 selling the tobacco. When they don't, that's what
 4 goes in that line, and if you look at the PAC manual
 5 that comes out on how to charge it, it follows --
 6 that's where we get this stuff from, it follows the
 7 same formula, instead of saying without obtaining a
 8 license it would say without having proper invoices
 9 to substantiate the tobacco product. Contrary to the
 10 act is given meaning. I don't think that applies.
 11 Otherwise, the judge did not abuse her discretion and
 12 I'd ask that that motion be denied.

13 THE COURT: It's also interesting when you
 14 read that paragraph of how you connect the ors or
 15 don't or whether there's a proper or improper or lack
 16 of commas or ors, because legislature sometimes
 17 should or should not place commas and that is how you
 18 should or should not read a statute, so I might take
 19 exception with the way that paragraph is, but not
 20 today.

21 Anyways --

22 MR. SAMAN: Just briefly with respect to
 23 Mr. Magnant. I think the whole issue of knowledge
 24 surrounds what did Mr. Magnant know. Did he know
 25 that the tobacco products were in the back? If he

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1 knew, were they illegal? Is that a question he asked
 2 his employer? He was just performing a function for
 3 his employer. It had nothing to do with what the
 4 statute says, whether Seneca was approved or not, any
 5 of those questions, so, again, the issue of
 6 knowledge, did he know that the tobacco in the back
 7 of that truck was, in fact, illegal or not taxed.
 8 Thank you.

9 THE COURT: And there's also a very odd
 10 thing that we have in America and that's that
 11 constructive possession where we're deemed to know
 12 what's in our vehicles, so there's a lot of dips and
 13 turns in this case.

14 So let me start backwards. The pretext.
 15 When I began hearing this, and of course when I read
 16 what you wrote, I was very interested to hear the
 17 rest of the story, as I always am. And so I also
 18 went back to some very basic case law that I also
 19 teach when I teach criminal procedure and I looked at
 20 the Heien, H-e-i-e-n, versus North Carolina case, 135
 21 Supreme Court 530, 2014 case, and that case says, a
 22 traffic stop for a suspected violation of law is a
 23 seizure of the occupants of the vehicle and,
 24 therefore, must be conducted in accordance with the
 25 fourth amendment.

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1 But that case, if you read it, it talks
 2 about police officers and that they're not perfect,
 3 and we see that time and time again. They're
 4 overworked. They don't always get it right, and when
 5 we look at that, it says such a seizure comports with
 6 the constitution only if the officers had articulable
 7 and reasonable suspicion, that Heien -- and that's
 8 who we were talking about in that particular case --
 9 was breaking the law. What matters, we said, are the
 10 facts as viewed by an objectively reasonable officer
 11 and the rule of law, not an officer's conception of
 12 the rule of law and not even an officer's reasonable
 13 misunderstanding about the law, but the law.

14 It goes on to talk about other cases and
 15 says that not that they always be correct but that
 16 they always be reasonable, so we look at the
 17 circumstances here, and it's even okay if a mistake
 18 is made as long as the officers are reasonable, and
 19 here one asked -- and I'm not real happy that they
 20 knew what was going on and followed for about an hour
 21 or had -- they suspected what was going on and
 22 followed for an hour, but they do that, and I go
 23 right into Gillespie and Gillespie says the stop is
 24 still valid so long as objectively viewed it was
 25 justified under the law.

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1 And then, counsel, you talked about Whren,
 2 W-h-r-e-n versus United States, 517 U.S. 806, it's a
 3 1996 case, and that talks about the Supreme Court
 4 where Justice Scalia held in that case that
 5 constitutional reasonableness of traffic stops does
 6 not depend on the actual motivations of the
 7 individual officers involved, temporary detention of
 8 motorists who police have probable cause to believe
 9 have -- has committed civil traffic violation is
 10 consistent with fourth amendment's prohibition
 11 against unreasonable seizures regardless of whether
 12 reasonable officer would have been motivated to stop
 13 the automobile by a desire to enforce the traffic
 14 laws; and balancing inherent in fourth amendment
 15 inquiry does not require court to weigh governmental
 16 and individual interests implicated in a traffic
 17 stop.

18 Bottom line here is, it was a good stop,
 19 and given that there was a violation of speed and
 20 coupled with there was consent to search and then
 21 coupled with an opening of the trunk and seeing the
 22 Seneca right in the back, it's valid all the way
 23 through. I don't find that I'm -- I can find an
 24 illegal search. I'm not going to suppress the
 25 evidence, and that motion is hereby denied, so I made

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1 my record. The next stop on that is the Court of
 2 Appeals.
 3 As to the motion to dismiss for due process
 4 violation, again, I find this very difficult but I am
 5 also going to deny this motion as well. I do think
 6 it provides notice. I am troubled by it in some
 7 respects, but I also think that when we apply this,
 8 what this does is it wants the statute, specifically
 9 wants to have a chilling effect against all people to
 10 deter any games played by any employer to say, well,
 11 my employee did it, oh, well, and the employee is to
 12 say, well, my employer did it, and to have this
 13 chicken/egg kind of theory as to who did it and then
 14 the state is left holding the bag of criminal
 15 activity throughout it.
 16 There is this interesting sovereign nation,
 17 and I agree that this Indian sovereign nation is
 18 equal to Michigan. The federal government tells us
 19 so. I've seen it time and time again, even when I
 20 practiced law under ICWA. The tribal nation can come
 21 in at any time and -- in the middle of our trials
 22 with children and take it over. That's okay with me.
 23 That's how it's set up. There are many reasons for
 24 that.
 25 In this particular case our federal

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1 government can come in and tell Michigan that we
 2 screwed up, but the way that I read it under my
 3 jurisdiction, this has to stand, and I think this may
 4 be a federal fight, not a state fight. I've been
 5 trounced on before by the federal government and I
 6 may be trounced on again by the federal government,
 7 but that's a fight perhaps in a different court.
 8 As the state -- as I read this and the
 9 statutes that have been provided and the case law
 10 that you all have cited, which I think I just buried
 11 in all this paperwork that I have in front of me, the
 12 Shouman case, I may not necessarily agree with it but
 13 it is the cases -- or the case right now that does
 14 govern how I have to rule, and it's an appellate
 15 case, although unpublished, and it does reach a
 16 conclusion that an individual may be a transporter,
 17 so I am going to follow and support our appellate
 18 courts, whether I agree with it or not. I think that
 19 there is good reason in the long run as to the
 20 rationale in this case, so I am denying all of your
 21 motions. Very well argued. You've all given me good
 22 cause here to think about what I'm doing.
 23 As for the information, quashing the
 24 information, I am also not doing that because I do
 25 believe that there is -- based on the information

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1 that I have seen, there is -- it's probable cause to
 2 believe that a crime was committed, that the
 3 defendants committed the crime, and that there was at
 4 least constructive possession and knowledge, and so
 5 this case will go forward.
 6 Now, whether a jury believes this, there's
 7 jury nullification all the time. I don't think this
 8 is the strongest case I've ever seen in this court, I
 9 have to say that, but it's going to stay here and we
 10 will have further battles, I am sure, and the
 11 appellate court is a couple roads down. That's all
 12 for this record.
 13 (Whereupon hearing concluded at 5:08 p.m.)
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1 STATE OF MICHIGAN)
2 COUNTY OF EATON) SS

3 I, GENEVIEVE A. HAMLIN, Certified Shorthand
4 Reporter and Notary Public in and for the County of
5 Eaton, (Acting in Ingham County) State of Michigan,
6 do hereby certify that the foregoing was taken before
7 me at the time and place hereinbefore set forth.

8 I FURTHER CERTIFY THAT said witness was
9 duly sworn in said cause; that the testimony then
10 given was reported by me stenographically;
11 subsequently with computer-aided transcription,
12 produced under my direction and supervision; and that
13 the foregoing is a true and correct transcript of my
14 original shorthand notes.

15 IN WITNESS WHEREOF, I have hereunto set my
16 hand and seal this 6th day of November, 2017.

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Genevieve A. Hamlin
RPR-CM/CSR-3218

APPENDIX G

STATE OF MICHIGAN
30TH JUDICIAL CIRCUIT COURT
INGHAM COUNTY

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

Case No. 17-406-FH & 17-407-FH
Judge Rosemarie Elizabeth Aquilina

v.

JOHN FRANCIS DAVIS
and GERALD MAGNANT,

Defendants.

LAW OFFICES HERTZ SCHRAM PC

DANIEL C. GRANO (P70863)
Assistant Attorney General
Attorney for People
3030 W. Grand Blvd. Ste. 10-305
Detroit, MI 48202
(313) 456-0180
granod@michigan.gov

WALTER J. PISZCZATOWSKI (P27158)
Hertz Schram PC
Attorneys for Defendant Davis
1760 S. Telegraph Rd., Ste. 300
Bloomfield Hills, MI 48302
(248) 335-5000
wallyp@hertzschram.com

SALEM F. SAMAAAN (P31189)
Law Offices Salem F. Samaan
Attorneys for Defendant Magnant
150 N. Main Street
Plymouth, MI 48150
(734) 459-4040
sfsamaan@gmail.com

ORDER DENYING DEFENDANTS' MOTION TO QUASH

At a session of said Court held in the
City of Lansing, County of Ingham, and State of Michigan

On APR 30 2019

Present: ROSEMARIE ELIZABETH AQUILINA
Circuit Court Judge

This matter having come before the Court on Defendants' Motion to Quash, the People of the State of Michigan having had an opportunity to respond, and the Court having heard argument on the Motion;

It is hereby ordered that the Motion to Quash as to each Defendant is denied for the reasons stated on the record.

It is so ordered.

JUDGE ROSEMARIE E. AQUILINA P37670

Circuit Court Judge

LAW OFFICES HERTZ SCHRAM PC

APPENDIX H

STATE OF MICHIGAN
30TH JUDICIAL CIRCUIT COURT
INGHAM COUNTY

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

Case No. 17-406-FH & 17-407-FH
Judge Rosemarie Elizabeth Aquilina

v.

JOHN FRANCIS DAVIS
and GERALD MAGNANT,

Defendants.

LAW OFFICES HERTZ SCHRAM PC

DANIEL C. GRANO (P70863)
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Attorney for People
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wallyp@hertzschram.com

SALEM F. SAMAAAN (P31189)
Law Offices Salem F. Samaan
Attorneys for Defendant Magnant
150 N. Main Street
Plymouth, MI 48150
(734) 459-4040
sfsamaan@gmail.com

ORDER DENYING DEFENDANTS'
MOTION TO DISMISS FOR DUE PROCESS VIOLATION

At a session of said Court held in the
City of Lansing, County of Ingham, and State of Michigan

On NOV 30 2017

Present: JUDGE ROSEMARIE E. AQUILINA
Circuit Court Judge

This matter having come before the Court on Defendants' Motion to Dismiss for Due Process Violation, the People of the State of Michigan having had an opportunity to respond, and the Court hearing oral argument on the issue;

It is hereby ordered that the Motion to Dismiss for Due Process Violation is denied for the reasons stated on the record.

It is so ordered.

JUDGE ROSEMARIE E. AQUILINA P27670
Circuit Court Judge

LAW OFFICES HERTZ SCHRAM PC

APPENDIX I

STATE OF MICHIGAN
30TH JUDICIAL CIRCUIT COURT
INGHAM COUNTY

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

Case No. 17-406-FH & 17-407-FH
Judge Rosemarie Elizabeth Aquilina

v.

JOHN FRANCIS DAVIS
and GERALD MAGNANT,

Defendants.

LAW OFFICES HERTZ SCHRAM PC

DANIEL C. GRANO (P70863)
Assistant Attorney General
Attorney for People
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WALTER J. PISZCZATOWSKI (P27158)
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SALEM F. SAMAAAN (P31189)
Law Offices Salem F. Samaan
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150 N. Main Street
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(734) 459-4040
sfsamaan@gmail.com

ORDER STAYING PROCEEDINGS

At a session of said Court held in the
City of Lansing, County of Ingham, and State of Michigan

On DEC 13 2017

Present: JUDGE ROSEMARIE E. AQUILINA
Circuit Court Judge

The Court having before it the Stipulation of the parties to stay the proceedings in this
matter and the Court being otherwise duly advised in the circumstances of this case;

APPENDIX J

Ingham County, Michigan - Court Record Search

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Case Summary

Case Title: THE STATE OF MICHIGAN vs DAVIS, JOHN FRANCIS
Case Number: 17-000406-FH
Judge: ROSEMARIE AQUILINA
DEFENDANT: JOHN DAVIS
Case Status: CLOSED
Disposition: 7BC-INACTIVE STATUS - 12/13/2017
File Date: 04/26/2017

Charge, Disposition & Sentencing

Charge 1: TOBACCO PRODUCTS TAX ACT VIOLATIONS - FELONY
Disposition:

Case Events

- 65 08/01/2018 REPORTER'S NOTICE OF FILING OF TRANSCRIPT W/ POS - ON 11/06/17 THE TRUE AND COMPLETE TRANSCRIPTS OF THE HRG HELD ON 11/02/17 FILED W/ THE COURT
- 64 07/20/2018 ORDER - THIS COURT ORDERS THAT THE APPLICATION FOR LEAVE TO APPEAL IS GRANTED; THE COURT ORDERS THAT THIS CASE BE CONSOLIDATED W/ THE APPLICATION FILED IN DOCKET NO. 341627, PEO OF MI V. JOHN FRANCIS DAVIS
- 63 05/22/2018 STIPULATION ALLOWING TRAVEL / ORDER - IT IS HEREBY ORDERED THAT DEF, JOHN DAVIS, SHALL BE ALLOWED TO TRAVEL BETWEEN THE DATES OF 05/27/18 AND 06/06/18; IT IS SO ORDERED
- 62 05/13/2018 STIPULATION ALLOWING TRAVEL / ORDER ALLOWING TRAVEL - IT IS HEREBY ORDERED THAT DEF, JOHN DAVIS, SHALL BE ALLOWED TO TRAVEL BETWEEN THE DATES OF 05/27/18 AND 06/06/18 TO KENTUCKY
- 61 12/13/2017 ORDER STAYING PROCEEDINGS - IT IS HEREBY ORDERED THAT THIS MATTER IS STAYED UNTIL DEFS HAVE HAD AN OPPORTUNITY TO FILE THEIR INTERLOCUTORY APPEAL IN THIS MATTER AND THE MI COA RULES ON THEIR REQUEST
- 60 12/13/2017 CASE CLOSED C30
- 59 12/11/2017 STIPULATION - STIPULATE AND AGREE TO STAY THE INSTANT PROCEEDINGS (SEE ORDER)
- 58 11/30/2017 ORDER DENYING DEFS' MOTION TO SUPPRESS EVIDENCE - IT IS HEREBY ORDERED THAT DEFS' JOIN MOTION TO SUPPRESS IN THIS CASE IS DENIED
- 57 11/30/2017

ORDER DENYING DEFS' MOTION TO DISMISS FOR DUE PROCESS VIOLATION - IT IS HEREBY ORDERED THAT THE MOTION TO DISMISS FOR DUE PROCESS VIOLATION IS DENIED

56 11/30/2017 ORDER DENYING DEFS' MOTION TO QUASH - IT IS HEREBY ORDERED THAT THE MOTION TO QUASH AS TO EACH DEF (17-407FH) IS DENIED

55 11/20/2017 HEARING ADJOURNED THE FOLLOWING EVENT: JURY TRIAL CRIMINAL SCHEDULED FOR 11/20/2017 AT 9:00 AM HAS BEEN RESULTED AS FOLLOWS: RESULT: C30 ADJOURNED JUDGE: AQUILINA, ROSEMARIE E. LOCATION: COURTROOM 5 - VETERANS MEMORIAL RESULT STAFF: STAFF: COURT REPORTER: HAMLIN, JEAN ANN CERTIFICATION NUMBER: 3218

54 11/13/2017 STIPULATION AND ORDER ALLOWING TRAVEL - IT IS HEREBY ORDERED THAT DEF, JOHN DAVIS, SHALL BE ALLOWED TO TRAVEL BETWEEN THE DATES OF 12/14/17 AND 12/18/17, TO ATTEND THE WEDDING OF HIS DAUGHTER IN CENTREVILLE, VIRGINIA

53 11/06/2017 TRANSCRIPT OF PROCEEDINGS - MOTION HEARINGS BEFORE THE HONORABLE ROSEMARIE E. AQUILINA ON 11/02/17 (COURT REPORTER: GENEVIEVE A. HAMLIN, CSR-3218)

52 11/02/2017 DENIED ON THE RECORD THE FOLLOWING EVENT: MOTION TO QUASH SCHEDULED FOR 11/02/2017 AT 1:00 PM HAS BEEN RESULTED AS FOLLOWS: RESULT: DENIED JUDGE: AQUILINA, ROSEMARIE E. LOCATION: COURTROOM 5 - VETERANS MEMORIAL RESULT STAFF: STAFF: COURT REPORTER: HAMLIN, JEAN ANN CERTIFICATION NUMBER: 3218

51 11/02/2017 HEARING IN OPEN COURT ON DEFENDANT'S JOINT MOTION FOR LEAVE TO FILE ADDITIONAL MOTIONS RELATED TO TRIAL MATTERS (GRANTED), JOINT MOTION TO SUPPRESS (DENIED), JOINT MOTION TO DISMISS (DENIED), AND MOTION TO QUASH (DENIED) - ATTY TO PREPARE

50 11/02/2017 DENIED ON THE RECORD THE FOLLOWING EVENT: MOTION TO DISMISS SCHEDULED FOR 11/02/2017 AT 1:00 PM HAS BEEN RESULTED AS FOLLOWS: RESULT: DENIED JUDGE: AQUILINA, ROSEMARIE E. LOCATION: COURTROOM 5 - VETERANS MEMORIAL RESULT STAFF: STAFF: COURT REPORTER: HAMLIN, JEAN ANN CERTIFICATION NUMBER: 3218

49 11/02/2017 DENIED ON THE RECORD THE FOLLOWING EVENT: MOTION TO SUPPRESS SCHEDULED FOR 11/02/2017 AT 1:00 PM HAS BEEN RESULTED AS FOLLOWS: RESULT: DENIED JUDGE: AQUILINA, ROSEMARIE E. LOCATION: COURTROOM 5 - VETERANS MEMORIAL RESULT STAFF: STAFF: COURT REPORTER: HAMLIN, JEAN ANN CERTIFICATION NUMBER: 3218

48 11/02/2017 GRANTED ON THE RECORD THE FOLLOWING EVENT: MOTION FOR LEAVE SCHEDULED FOR 11/02/2017 AT 1:00 PM HAS BEEN RESULTED AS FOLLOWS: RESULT: GRANTED JUDGE: AQUILINA, ROSEMARIE E. LOCATION: COURTROOM 5 - VETERANS MEMORIAL RESULT STAFF: STAFF: COURT REPORTER: HAMLIN, JEAN ANN CERTIFICATION NUMBER: 3218

47 11/01/2017 PROOF OF SERVICE - ON 10/26/17 PLF'S COUNSEL SERVED W/ A COPY OF THE DEFS' REPLY IN SUPPORT OF THEIR JOINT MOTION TO DISMISS FOR DUE PROCESS VIOLATIONS VIA EMAIL AND FIRST CLASS MAIL

46 10/27/2017

HEARING ADJOURNED THE FOLLOWING EVENT: MOTION TO SUPPRESS SCHEDULED FOR 11/01/2017 AT 11:00 AM HAS BEEN RESULTED AS FOLLOWS: RESULT: C30 ADJOURNED JUDGE: AQUILINA, ROSEMARIE E. LOCATION: COURTROOM 5 - VETERANS MEMORIAL RESULT STAFF: STAFF: COURT REPORTER: HAMLIN, JEAN ANN CERTIFICATION NUMBER: 3218

45 10/27/2017 HEARING SET: THE FOLLOWING EVENT: MOTION TO QUASH SCHEDULED FOR 11/01/2017 AT 11:00 AM HAS BEEN RESCHEDULED AS FOLLOWS: EVENT: MOTION TO QUASH DATE: 11/02/2017 TIME: 1:00 PM JUDGE: AQUILINA, ROSEMARIE E. LOCATION: COURTROOM 5 - VETERANS MEMORIAL RESULT: DENIED

44 10/27/2017 HEARING ADJOURNED THE FOLLOWING EVENT: MOTION TO QUASH SCHEDULED FOR 11/01/2017 AT 11:00 AM HAS BEEN RESULTED AS FOLLOWS: RESULT: C30 ADJOURNED JUDGE: AQUILINA, ROSEMARIE E. LOCATION: COURTROOM 5 - VETERANS MEMORIAL RESULT STAFF: STAFF: COURT REPORTER: HAMLIN, JEAN ANN CERTIFICATION NUMBER: 3218

43 10/27/2017 HEARING SET: THE FOLLOWING EVENT: MOTION FOR LEAVE SCHEDULED FOR 11/01/2017 AT 11:00 AM HAS BEEN RESCHEDULED AS FOLLOWS: EVENT: MOTION FOR LEAVE DATE: 11/02/2017 TIME: 1:00 PM JUDGE: AQUILINA, ROSEMARIE E. LOCATION: COURTROOM 5 - VETERANS MEMORIAL RESULT: GRANTED

42 10/27/2017 HEARING ADJOURNED THE FOLLOWING EVENT: MOTION FOR LEAVE SCHEDULED FOR 11/01/2017 AT 11:00 AM HAS BEEN RESULTED AS FOLLOWS: RESULT: C30 ADJOURNED JUDGE: AQUILINA, ROSEMARIE E. LOCATION: COURTROOM 5 - VETERANS MEMORIAL RESULT STAFF: STAFF: COURT REPORTER: HAMLIN, JEAN ANN CERTIFICATION NUMBER: 3218

41 10/27/2017 HEARING SET: THE FOLLOWING EVENT: MOTION TO SUPPRESS SCHEDULED FOR 11/01/2017 AT 11:00 AM HAS BEEN RESCHEDULED AS FOLLOWS: EVENT: MOTION TO SUPPRESS DATE: 11/02/2017 TIME: 1:00 PM JUDGE: AQUILINA, ROSEMARIE E. LOCATION: COURTROOM 5 - VETERANS MEMORIAL RESULT: DENIED

40 10/27/2017 HEARING SET: THE FOLLOWING EVENT: MOTION TO DISMISS SCHEDULED FOR 11/01/2017 AT 11:00 AM HAS BEEN RESCHEDULED AS FOLLOWS: EVENT: MOTION TO DISMISS DATE: 11/02/2017 TIME: 1:00 PM JUDGE: AQUILINA, ROSEMARIE E. LOCATION: COURTROOM 5 - VETERANS MEMORIAL RESULT: DENIED

39 10/27/2017 HEARING ADJOURNED THE FOLLOWING EVENT: MOTION TO DISMISS SCHEDULED FOR 11/01/2017 AT 11:00 AM HAS BEEN RESULTED AS FOLLOWS: RESULT: C30 ADJOURNED JUDGE: AQUILINA, ROSEMARIE E. LOCATION: COURTROOM 5 - VETERANS MEMORIAL RESULT STAFF: STAFF: COURT REPORTER: HAMLIN, JEAN ANN CERTIFICATION NUMBER: 3218

38 10/26/2017 DEF'S REPLY IN SUPPORT OF THEIR JOINT MOTION TO DISMISS FOR DUE PROCESS VIOLATIONS; W/ POS

37 10/09/2017 HEARING SET: EVENT: JURY TRIAL CRIMINAL DATE: 11/20/2017 TIME: 9:00 AM JUDGE: AQUILINA, ROSEMARIE E. LOCATION: COURTROOM 5 - VETERANS MEMORIAL RESULT: C30 ADJOURNED

36 10/03/2017

PEOPLE'S REPLY BRIEF TO DFS MOTION TO QUASH INFORMATION
- REPLY BRIEF TO DFS JOINT MOTION TO DISMISS FOR DUE
PROCESS VIOLATIONS W/PS

35 10/02/2017 HEARING ADJOURNED THE FOLLOWING EVENT: MOTION (MISC)
SCHEDULED FOR 10/25/2017 AT 11:15 AM HAS BEEN RESULTED
AS FOLLOWS: RESULT: C30 ADJOURNED JUDGE: AQUILINA,
ROSEMARIE E. LOCATION: COURTROOM 5 - VETERANS MEMORIAL
RESULT STAFF: STAFF: COURT REPORTER: HAMLIN, JEAN ANN
CERTIFICATION NUMBER: 3218

34 10/02/2017 HEARING SET: EVENT: MOTION TO DISMISS DATE: 11/01/2017
TIME: 11:00 AM JUDGE: AQUILINA, ROSEMARIE E. LOCATION:
COURTROOM 5 - VETERANS MEMORIAL RESULT: C30 ADJOURNED

33 10/02/2017 HEARING SET: EVENT: MOTION FOR LEAVE DATE: 11/01/2017
TIME: 11:00 AM JUDGE: AQUILINA, ROSEMARIE E. LOCATION:
COURTROOM 5 - VETERANS MEMORIAL RESULT: C30 ADJOURNED

32 10/02/2017 HEARING SET: EVENT: MOTION TO QUASH DATE: 11/01/2017
TIME: 11:00 AM JUDGE: AQUILINA, ROSEMARIE E. LOCATION:
COURTROOM 5 - VETERANS MEMORIAL RESULT: C30 ADJOURNED

31 10/02/2017 HEARING SET: EVENT: MOTION TO SUPPRESS DATE: 11/01/2017
TIME: 11:00 AM JUDGE: AQUILINA, ROSEMARIE E. LOCATION:
COURTROOM 5 - VETERANS MEMORIAL RESULT: C30 ADJOURNED

30 09/29/2017 HEARING SET: THE FOLLOWING EVENT: MOTION (MISC)
SCHEDULED FOR 10/25/2017 AT 2:30 PM HAS BEEN
RESCHEDULED AS FOLLOWS: EVENT: MOTION (MISC) DATE:
10/25/2017 TIME: 11:15 AM JUDGE: AQUILINA, ROSEMARIE E.
LOCATION: COURTROOM 5 - VETERANS MEMORIAL RESULT: C30
ADJOURNED

29 09/29/2017 HEARING ADJOURNED THE FOLLOWING EVENT: MOTION (MISC)
SCHEDULED FOR 10/25/2017 AT 2:30 PM HAS BEEN RESULTED
AS FOLLOWS: RESULT: C30 ADJOURNED JUDGE: AQUILINA,
ROSEMARIE E. LOCATION: COURTROOM 5 - VETERANS MEMORIAL
RESULT STAFF: STAFF: COURT REPORTER: HAMLIN, JEAN ANN
CERTIFICATION NUMBER: 3218

28 09/25/2017 DEFENDANT'S JOINT MOTION TO QUASH INFORMATION; W/
BRIEF IN SUPPORT ATTORNEY: SAMAAN, SALEM F. (31189) ON
BEHALF OF DEFENDANT MAGNANT ATTORNEY: PISZCZATOWSKI,
WALTER J. (27158) ON BEHALF OF DEFENDANT DAVIS

27 09/25/2017 DEFENDANT'S JOINT MOTION TO DISMISS FOR DUE PROCESS
VIOLATION; W/ BRIEF IN SUPPORT ATTORNEY: SAMAAN, SALEM
F. (31189) ON BEHALF OF DEFENDANT MAGNANT ATTORNEY:
PISZCZATOWSKI, WALTER J. (27158) ON BEHALF OF DEFENDANT
DAVIS

26 09/25/2017 DEFENDANT'S JOINT MOTION TO SUPPRESS EVIDENCE OBTAINED
AS A RESULT OF ILLEGAL SEARCH OR, IN THE ALTERNATIVE, FOR
EVIDENTIARY HEARING; W/ BRIEF IN SUPPORT ATTORNEY:
SAMAAN, SALEM F. (31189) ON BEHALF OF DEFENDANT MAGNANT
ATTORNEY: PISZCZATOWSKI, WALTER J. (27158) ON BEHALF OF
DEFENDANT DAVIS

25 09/25/2017 CERTIFICATE OF SERVICE - COPY OF DEF'S JOINT MOTION TO
DISMISS FOR DUE PROCESS VIOLATION W/ BRIEF, DEF'S JOINT
MOTION TO SUPPRESS EVIDENCE OBTAINED AS A RESULT OF
ILLEGAL SEARCH W/ BRIEF, DEF'S JOINT MOTION TO QUASH
INFORMATION W/ BRIEF, DEF'S JOINT MOTION FOR LEAVE TO
FILE ADDITIONAL MOTIONS RELATED TO TRIAL MATTERS W/

INVORPORATED BRIEF, AND THIS CERT OF SERVICE UPON ATTY FOR THE PEOPLE VIA EMAIL AND USPS ON 09/25/17

24 09/25/2017 DEFENDANT'S JOINT MOTION FOR LEAVE TO FILE ADDITIONAL MOTIONS RELATED TO TRIAL MATTERS AND INCORPORATED BRIEF IN SUPPORT THEREOF ATTORNEY: SAMAAN, SALEM F. (31189) ON BEHALF OF DEFENDANT MAGNANT ATTORNEY: PISZCZATOWSKI, WALTER J. (27158) ON BEHALF OF DEFENDANT DAVIS

23 08/23/2017 HEARING ADJOURNED THE FOLLOWING EVENT: JURY TRIAL CRIMINAL SCHEDULED FOR 09/18/2017 AT 9:00 AM HAS BEEN RESULTED AS FOLLOWS: RESULT: C30 ADJOURNED JUDGE: AQUILINA, ROSEMARIE E. LOCATION: COURTROOM 5 - VETERANS MEMORIAL RESULT STAFF: STAFF: COURT REPORTER: HAMLIN, JEAN ANN CERTIFICATION NUMBER: 3218

22 08/18/2017 STIPULATION AND ORDER TO ADJOURN MOTION HEARING - IT IS HEREBY ORDERED THAT THE MOTION HEARING SHALL BE ADJOURNED TO 10/25/2017 @ 2:30 P.M. ; IT IS FURTHER ORDERED THAT THE DEFENDANT'S MOTIONS SHALL BE FILED NO LATER THAN 09/25/2017; STIPULATED BY ATTORNEY: PISZCZATOWSKI, WALTER J. (27158) AND ATTORNEY: GRANO, DANIEL CORRIGAN (70863)

21 08/16/2017 HEARING ADJOURNED THE FOLLOWING EVENT: MOTION (MISC) SCHEDULED FOR 09/27/2017 AT 2:00 PM HAS BEEN RESULTED AS FOLLOWS: RESULT: C30 ADJOURNED JUDGE: AQUILINA, ROSEMARIE E. LOCATION: COURTROOM 5 - VETERANS MEMORIAL RESULT STAFF: STAFF: COURT REPORTER: HAMLIN, JEAN ANN CERTIFICATION NUMBER: 3218

20 08/16/2017 HEARING SET: THE FOLLOWING EVENT: MOTION (MISC) SCHEDULED FOR 09/27/2017 AT 2:00 PM HAS BEEN RESCHEDULED AS FOLLOWS: EVENT: MOTION (MISC) DATE: 10/25/2017 TIME: 2:30 PM JUDGE: AQUILINA, ROSEMARIE E. LOCATION: COURTROOM 5 - VETERANS MEMORIAL RESULT: C30 ADJOURNED

19 08/10/2017 TRANSCRIPT OF PROCEEDINGS - PRELIMINARY EXAMINATION (SESSION II OF II) ARGUMENT ON BINDOVER BEFORE THE HONORABLE LOUISE ALDERSON, DISTRICT JUDGE ON 04/06/2017 CLERKS NOTE: TWO CASE NUMBERS INDICATED ON FACE OF TRANSCRIPT (17-406-FH AND 17-407-FH), HOWEVER, ONLY ONE COPY PROVIDED. THEREFORE, ONLY DOCKETED IN 17-406-FH.

18 08/07/2017 HEARING SET: EVENT: JURY TRIAL CRIMINAL DATE: 09/18/2017 TIME: 9:00 AM JUDGE: AQUILINA, ROSEMARIE E. LOCATION: COURTROOM 5 - VETERANS MEMORIAL RESULT: C30 ADJOURNED

17 07/13/2017 HEARING ADJOURNED THE FOLLOWING EVENT: JURY TRIAL CRIMINAL SCHEDULED FOR 07/17/2017 AT 9:00 AM HAS BEEN RESULTED AS FOLLOWS: RESULT: C30 ADJOURNED JUDGE: AQUILINA, ROSEMARIE E. LOCATION: COURTROOM 5 - VETERANS MEMORIAL RESULT STAFF: STAFF: COURT REPORTER: HAMLIN, JEAN ANN CERTIFICATION NUMBER: 3218

16 06/21/2017 HEARING SET: EVENT: MOTION (MISC) DATE: 09/27/2017 TIME: 2:00 PM JUDGE: AQUILINA, ROSEMARIE E. LOCATION: COURTROOM 5 - VETERANS MEMORIAL RESULT: C30 ADJOURNED

15 06/21/2017 CRIMINAL PRE-TRIAL CONFERENCE ORDER

14 06/21/2017 PEOPLE'S WITNESS LIST; W/ POS ATTACHED ATTORNEY: GRANO, DANIEL CORRIGAN (70863)

13 06/21/2017 HELD BUT NOT ON THE RECORD THE FOLLOWING EVENT:
CRIMINAL PRETRIAL CONFERENCE SCHEDULED FOR 06/21/2017
AT 11:00 AM HAS BEEN RESULTED AS FOLLOWS: RESULT: HELD
BUT NOT ON RECORD JUDGE: AQUILINA, ROSEMARIE E.
LOCATION: COURTROOM 5 - VETERANS MEMORIAL RESULT
STAFF: STAFF: COURT REPORTER: HAMLIN, JEAN ANN
CERTIFICATION NUMBER: 3218

12 06/13/2017 HEARING ADJOURNED THE FOLLOWING EVENT: CRIMINAL
PRETRIAL CONFERENCE SCHEDULED FOR 06/21/2017 AT 8:30 AM
HAS BEEN RESULTED AS FOLLOWS: RESULT: C30 ADJOURNED
JUDGE: AQUILINA, ROSEMARIE E. LOCATION: COURTROOM 5 -
VETERANS MEMORIAL RESULT STAFF: STAFF: COURT REPORTER:
HAMLIN, JEAN ANN CERTIFICATION NUMBER: 3218

11 06/13/2017 HEARING SET: THE FOLLOWING EVENT: CRIMINAL PRETRIAL
CONFERENCE SCHEDULED FOR 06/21/2017 AT 8:30 AM HAS BEEN
RESCHEDULED AS FOLLOWS: EVENT: CRIMINAL PRETRIAL
CONFERENCE DATE: 06/21/2017 TIME: 11:00 AM JUDGE:
AQUILINA, ROSEMARIE E. LOCATION: COURTROOM 5 - VETERANS
MEMORIAL RESULT: HELD BUT NOT ON RECORD

10 06/05/2017 HEARING SET: EVENT: JURY TRIAL CRIMINAL DATE: 07/17/2017
TIME: 9:00 AM JUDGE: AQUILINA, ROSEMARIE E. LOCATION:
COURTROOM 5 - VETERANS MEMORIAL RESULT: C30 ADJOURNED

9 05/30/2017 AMENDED INFORMATION AS TO CT 1 DATED 05/24/2017 CLERK'S
NOTE: ORGINIAL AMENDED INFORMATION SIGNED BY
ATTORNEY: GRANO, DANIEL CORRIGAN (70863)

8 05/25/2017 HEARING SET: EVENT: CRIMINAL PRETRIAL CONFERENCE DATE:
06/21/2017 TIME: 8:30 AM JUDGE: AQUILINA, ROSEMARIE E.
LOCATION: COURTROOM 5 - VETERANS MEMORIAL RESULT: C30
ADJOURNED

7 05/25/2017 ORDER SETTING CRIMINAL PRETRIAL CONFERENCE ON
06/21/2017 @ 8:30 A.M. BEOFRE THE HONORABLE ROSEMARIE E.
AQUILINA - DEF MUST BE PRESENT

6 05/24/2017 AMENDED INFORMATION AS TO CT 1 DATED 05/24/2017 (CLERK
NEVER RECEIVED ORIGINAL INFORMATION)

5 05/19/2017 WRITTEN WAIVER OF ARRAIGNMENT THE FOLLOWING EVENT:
ARRAIGNMENT SCHEDULED FOR 05/24/2017 AT 9:00 AM HAS
BEEN RESULTED AS FOLLOWS: RESULT: WRITTEN WAIVER FILED
JUDGE: AQUILINA, ROSEMARIE E. LOCATION: COURTROOM 5 -
VETERANS MEMORIAL

4 05/19/2017 HEARING SET: EVENT: ARRAIGNMENT DATE: 05/24/2017 TIME:
9:00 AM JUDGE: AQUILINA, ROSEMARIE E. LOCATION:
COURTROOM 5 - VETERANS MEMORIAL RESULT: WRITTEN
WAIVER FILED

3 05/19/2017 ARREST BOND ARREST BOND ADDED TO CASE WITH: ACTION
CODE: TOBACCO PRODUCTS TAX ACT VIOLATIONS - FELONY
ARREST DATE: 12/01/2016 CUSTODY LOCATION: DF
INCARCERATED IN JAIL BOND STATUS: C30 BOND NOT POSTED
STATUS DATE: 04/24/2017 BLANKET BOND: NO OKAY TO APPLY:
NO BOND TYPE: PR BOND AMOUNT: 3500

2 04/26/2017 DISTRICT COURT BINDOVER RECEIVED COMPLIANCE WITH
FINGER PRINT REQUIREMENT RESULT STAFF: STAFF: COURT
REPORTER: HAMLIN, JEAN ANN CERTIFICATION NUMBER: 3218

1 04/26/2017 WRITTEN WAIVER OF ARRAIGNMENT

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APPENDIX K



Cited

As of: April 1, 2019 9:18 PM Z

People v. Shouman

Court of Appeals of Michigan

October 4, 2016, Decided

No. 330383

Reporter

2016 Mich. App. LEXIS 1812 *

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee, v ALI RIAD SHOUMAN, Defendant-Appellant.

Notice: THIS IS AN UNPUBLISHED OPINION. IN ACCORDANCE WITH MICHIGAN COURT OF APPEALS RULES, UNPUBLISHED OPINIONS ARE NOT PRECEDENTIALLY BINDING UNDER THE RULES OF STARE DECISIS.

Prior History: [*1] Wayne Circuit Court. LC No. 15-005989-FH.

Core Terms

transporter, tobacco product, license, cigarettes, possessed, counterfeit, firearm, offenses, stamp, wholesaler, strict liability, acquirer, require proof, authorization, records, tobacco, loaded, trial court's instructions, element of an offense, corrupt intent, tax stamp, substantiation, imprisonment, referral, fault, marks, proposed instruction, mens rea, manufacturer, criminalize

Judges: Before: BORRELLO, P.J., and MARKEY and RIORDAN, JJ.

Opinion

PER CURIAM.

Defendant appeals by interlocutory leave granted¹ an order adopting the prosecutor's proposed jury instruction regarding the elements of the felony offense of possessing, acquiring, transporting, or offering for sale tobacco products other than cigarettes with an aggregate wholesale price of \$250 or more without having a license, MCL 205.428(3). We affirm.

MCL 205.423(1), which is a provision of the Tobacco Products Tax Act (TPTA), MCL 205.421 et seq., provides:

Beginning May 1, 1994, a person shall not purchase, possess, acquire for resale, or sell a tobacco product as a manufacturer, wholesaler, secondary wholesaler, vending machine operator, unclassified acquirer, transportation company, or transporter in this state unless licensed to do so. A license granted under this act is not assignable.

Defendant is charged with violating MCL 205.428(3), which states:

A person who possesses, acquires, transports, or offers for sale contrary to this act 3,000 or more cigarettes, tobacco products other than cigarettes with an aggregate wholesale price [*2] of \$250.00 or more, 3,000 or more counterfeit cigarettes, 3,000 or more counterfeit cigarette papers, 3,000 or more gray market cigarettes,

¹ See *People v Shouman*, unpublished order of the Court of Appeals entered April 7, 2016 (Docket No. 330383).

or 3,000 or more gray market cigarette papers is guilty of a felony, punishable by a fine of not more than \$50,000.00 or imprisonment for not more than 5 years, or both.

It is alleged that defendant possessed, acquired, offered for sale, or transported tobacco products other than cigarettes with an aggregate wholesale price of \$250 or more without a license.

Defendant argues that the trial court erred in concluding that MCL 205.428(3) is a strict liability offense without a *mens rea* or fault requirement that must be included in the jury instruction. The premise of defendant's argument is faulty because the trial court's instruction *does* require proof of some knowledge on the part of defendant. In particular, the instruction requires proof that defendant *knowingly* possessed, acquired, offered for sale, or transported tobacco products other than cigarettes. As explained below, we conclude that proof of any additional knowledge or intent is not required.

Questions of law pertaining to jury instructions are reviewed de novo. People v Gillis, 474 Mich 105, 113; 712 NW2d 419 (2006). A trial court's determination whether [*3] a jury instruction applies to the facts of a case is reviewed for an abuse of discretion. *Id.* An abuse of discretion occurs when the trial court's decision falls outside the range of principled outcomes. People v Armstrong, 305 Mich App 230, 239; 851 NW2d 856 (2014). "Determining the elements of a crime is also a question of law that we review de novo." People v Pace, 311 Mich App 1, 4; 874 NW2d 164 (2015). In People v Phillips, 469 Mich 390, 395; 666 NW2d 657 (2003), our Supreme Court set forth the following principles of statutory interpretation:

When construing a statute, our primary goal is to ascertain and give effect to the intent of the Legislature. To do so, we begin by examining the language of the statute. If the statute's language is clear and unambiguous, we assume that the Legislature intended its plain meaning and the statute is enforced as written. Stated differently, a court may read nothing into an unambiguous statute that is not within the manifest intent of the Legislature as derived from the words of the statute itself. Only where the statutory language is ambiguous may a court properly go beyond the words of the statute to ascertain legislative intent. [Quotation marks and citations omitted.]

There is no case law stating the elements of the offense specified in MCL 205.428(3). The parties discuss at length this Court's opinion in People v Nasir, 255 Mich App 38; 662 NW2d 29 (2003). In *Nasir*, this [*4] Court addressed the elements of MCL 205.428(6), another criminal offense contained in the TPTA, which provides:

A person who manufactures, possesses, or uses a stamp or manufactures, possesses, or uses a counterfeit stamp or writing or device intended to replicate a stamp without authorization of the department, a licensee who purchases or obtains a stamp from any person other than the department, or who falsifies a manufacturer's label on cigarettes, counterfeit cigarettes, gray market cigarette papers, or counterfeit cigarette papers is guilty of a felony and shall be punished by imprisonment for not less than 1 year or more than 10 years and may be punished by a fine of not more than \$50,000.00.

The defendant in *Nasir* was convicted of possessing or using counterfeit tax stamps in violation of MCL 205.428(6). Nasir, 255 Mich App at 39. The trial court concluded that the statute created a strict liability offense and instructed the jury that the prosecutor had to prove that the defendant possessed or used a counterfeit stamp without the Department of Treasury's authorization. 255 Mich App at 40. On appeal, this Court noted that MCL 205.428(6) does not contain a fault element. 255 Mich App at 41. This Court considered several factors in ascertaining whether the Legislature nonetheless [*5] intended to require some fault as a predicate to finding guilt. 255 Mich App at 41-45. MCL 205.428(6) did not codify a common-law crime but was "at its heart a revenue statute, designed to assure that tobacco taxes levied in support of Michigan schools are not evaded." 255 Mich App at 42. Nor did the statute create a public welfare offense which may impose criminal penalties irrespective of intent; instead, MCL 205.428(6) is a revenue provision that was "not designed to place the burden of protecting the public welfare on an 'otherwise innocent' person who is in a position to prevent an injury to the public welfare with no more care than society might reasonably expect." 255 Mich App at 42-43 (quotation marks, ellipsis, and citations omitted). Further, the punishment provided was severe given that the violation of MCL 205.428(6) is a felony punishable by imprisonment for up to 10 years, with a mandatory prison term of at least one year, and a fine of up to \$50,000; such punishment is not typical of public welfare offenses. 255 Mich App at 43-44. The damage to one's reputation arising from such punishment suggested that some level of fault is required. 255 Mich App at 44. Failure to include a *mens rea*

element could criminalize a broad range of apparently innocent conduct, such as by rendering criminal a retail consumer's [*6] possession of a pack of cigarettes bearing a counterfeit tax stamp. *Id.* The possible loss of potential tax revenue was not the type of immediate harm to the public welfare that is common to strict liability offenses. 255 Mich App at 45. Prosecutors would not face an oppressive burden from the inclusion of a fault element because the difficulty in proving an actor's state of mind is addressed by the rule that minimal circumstantial evidence will suffice to prove state of mind. *Id.*

Accordingly, we hold that knowledge is an element of the offense of which defendant stands convicted. Therefore, in order to establish that a defendant is guilty of possessing or using counterfeit tax stamps, the prosecution must prove that (1) the defendant possessed or used (2) a counterfeit stamp, or a writing or device intended to replicate a stamp, (3) that the defendant possessed or used the counterfeit tax stamp, or a writing or device intended to replicate a stamp, with knowledge that the stamp, writing, or device was not an authentic tax stamp, and (4) that the defendant acted without authorization of the Michigan Department of Treasury. We do not believe that the Legislature intended that the offense contain a specific [*7] intent element, nor do we believe that a defendant need act with knowledge that the defendant does so without the authorization of the Michigan Department of Treasury. We also conclude that any potential due process problem is remedied by the inclusion of the above fault element in the prima facie case. [255 Mich App at 45-46.]

The *Nasir* Court therefore reversed the defendant's conviction because the jury was not instructed on the element of *mens rea* required for the offense. 255 Mich App at 46-47.

It is unnecessary in this case to determine whether the offense set forth in MCL 205.428(3) constitutes a true strict liability crime, i.e., a crime that requires no mental element but only the prohibited act. See People v Quinn, 440 Mich 178, 188; 487 NW2d 194 (1992). The prosecutor has agreed to require proof of knowledge concerning defendant's possession of the tobacco products, and the trial court has adopted that knowledge requirement in its instructions. "[W]here a statute requires a criminal mind for some but not all of its elements, it is not one of strict liability." 440 Mich at 187. In *Quinn*, our Supreme Court considered whether transportation or possession of a loaded firearm other than a pistol in or upon a vehicle, MCL 750.227c, required proof of the defendant's knowledge that the firearm was loaded. Quinn, 440 Mich at 180. The Supreme Court [*8] noted:

The prosecutor does not contest that the statute requires proof of knowledge of the presence of the firearm in the vehicle. We assume arguendo that proof of knowledge of the presence of the firearm is an element of the offense in question, recognizing that the question has not been decided by this Court or the Court of Appeals. [440 Mich at 180 n 1.]

Our Supreme Court further explained that "[i]n light of the prosecutor's concession, we do not deal with the more controversial issues involved in true strict liability crimes, i.e., statutes requiring no *mens rea* at all." 440 Mich at 184 n 8. Likewise, here, because the prosecutor has agreed to an instruction requiring the jury to find that defendant *knowingly* possessed the tobacco products in order to convict him, this Court need not address whether the offense in MCL 205.428(3) constitutes a true strict liability crime for which no proof of *mens rea* is required.²

²We note, however, that applying the factors discussed in *Nasir* might be more likely to lead to the conclusion that MCL 205.428(3) is a true strict liability crime than in the case of MCL 205.428(6). In particular, the punishment provided for by MCL 205.428(3) is less severe than for MCL 205.428(6). Although MCL 205.428(3) authorizes imprisonment for up to five years, it does not, unlike MCL 205.428(6), mandate [*9] imprisonment for at least one year or authorize imprisonment for up to 10 years. Moreover, whereas *Nasir* concluded that the failure to include a *mens rea* requirement in MCL 205.428(6) could criminalize a broad range of apparently innocent conduct such as by rendering criminal a retail consumer's possession of a pack of cigarettes bearing a counterfeit tax stamp, Nasir, 255 Mich App at 44, it is more difficult to envision a likely scenario in which a person would innocently transport tobacco products with a wholesale aggregate price of \$250 or more without the required license or permit, particularly in light of the transporter's statutory responsibility to have the requisite license and permit in his or her possession while transporting the tobacco products. See MCL 205.426(7) and (8). In any event, because the prosecutor in this case has agreed to instruct the jury that defendant must have *knowingly* possessed or transported the tobacco products, this Court need not address whether MCL 205.428(3) is a true strict liability crime. See Quinn, 440 Mich at 180 n 1, 184 n 8. Also, we

There is, nonetheless, useful analysis in *Quinn* and other cases concerning both strict liability crimes and the requirement of proving a defendant's intent or knowledge. The Court noted in *Quinn* that true strict liability crimes are proper under some circumstances and that "[t]he Legislature may impose certain penalties regardless of the actor's criminal intent and regardless of what the actor actually knew or did not know." *440 Mich at 188*. The *Quinn* Court noted that "the prosecution need not prove as an element of the offense of carrying a concealed weapon, *MCL 750.227*, that the defendant knew his permit was expired[.]" *440 Mich at 189*, citing *People v Combs*, *160 Mich App 666, 673; 408 NW2d 420 (1987)*. In some situations, requiring proof of knowledge would frustrate a statute's regulatory purpose. *Quinn*, *440 Mich at 189*. "[I]t is clear under both federal and state authority that the Legislature, as part of its police powers, may define an act to make it criminal without defining the actor's knowledge as an element of the offense." *440 Mich at 189-190*. In *Quinn*, the Supreme Court concluded that knowledge of the firearm [*11] being loaded is not an element of *MCL 750.227c*. *440 Mich at 197*.

Section 227c promotes justice and effects the objects of the law by imposing on those who transport firearms in their vehicles the duty to ensure that those firearms are unloaded. . . . The person who transports a firearm must inspect it before transporting it. [*440 Mich at 197-198* (quotation marks, ellipsis, and citation omitted).]

In *People v Motor City Hosp & Surgical Supply, Inc.* *227 Mich App 209, 210; 575 NW2d 95 (1997)*, this Court held that *MCL 400.604*, a provision of the Medicaid False Claims Act (MFCA), and *MCL 752.1004*, a provision of the Health Care False Claims Act (HCFA), both of which criminalize the receipt of a referral fee, did not include a "knowledge or corrupt intent" element. The plain language of the statutory offenses did not include such an element. *227 Mich App at 212*. Because the offenses did not codify a common law crime, this Court evaluated whether the Legislature intended scienter as an element of the offense and concluded that the Legislature did not intend to include a corrupt intent element. *Id.* This Court noted that other sections of the MFCA and the HCFA included a knowledge element, thus evincing a legislative intent not to include a corrupt intent element in the offenses at issue. *227 Mich App at 213-214*. "When construing a statute, this Court may not assume that the Legislature [*12] inadvertently omitted from one statute the language that it placed in another statute, and then on the basis of that assumption, apply what is not there." *227 Mich App at 213* (quotation marks and citation omitted).

The absence of a corrupt intent element in the instant offenses also furthers the underlying purposes of the MFCA and HCFA by criminalizing conduct that fosters false claims. By their plain terms, *MCL 400.604* and *MCL 752.1004* criminalize the receipt of referral fees. The blanket prohibitions make those who engage in the business of providing goods and services responsible for ensuring that no referral fees are paid because they are in the best position to do so. Accordingly, the Legislature did not intend a corrupt intent element in these offenses. [*227 Mich App at 214*.]

This Court further explained that the offenses at issue were ones of general rather than specific intent, i.e., "[t]he requisite intent is the intent to do the prohibited physical act, i.e.[.] to receive a referral fee." *227 Mich App at 215*.

See also *People v Roby*, *52 Mich 577, 579; 18 NW 365 (1884)* ("Many statutes which are in the nature of police regulations . . . impose criminal penalties irrespective of any intent to violate them, the purpose being to require a degree of diligence for the protection of the public which shall render violation [*13] impossible."); *Pace*, *311 Mich App at 6-7* (strict liability offenses are disfavored, but the Legislature has authority to enact such offenses, and whether it intended to do so is a matter of statutory interpretation); *People v Ramsdell*, *230 Mich App 386, 392-399; 585 NW2d 1 (1998)* (concluding that the crime of prisoner in possession of contraband, *MCL 800.281(4)*, was a strict liability crime because the Legislature did not include a knowledge or intent element in the statute, and particularly given that another statute proscribing the possession of controlled substances included language setting forth a knowledge or intent requirement).

note that the recently enacted default *mens rea* statute, *MCL 8.9*, does not apply here because the offense was committed before January 1, 2016. See *MCL 8.9(1)* ("Except as otherwise provided in this section, a person is not guilty [*10] of a criminal offense committed on or after January 1, 2016 unless both of the following apply . . .") (emphasis added); 2015 PA 250. In sum, it does not appear that the application of *MCL 8.9(1)* would require a different outcome.

In the present case, defendant has failed to establish that an intent or knowledge element in addition to that set forth in the trial court's instruction is required. Again, the trial court's instruction *already* requires that defendant *knowingly* possessed, acquired, offered for sale, or transported tobacco products other than cigarettes. In the trial court, defendant offered a proposed instruction that would have required proof that defendant knew he was required to have a license in order to transport tobacco products and that he specifically intended to violate the TPTA. On appeal, defendant appears to have abandoned the request to include those elements [*14] in the jury instruction. And those elements are not included in his proposed instruction in his appellate brief, which defendant acknowledges differs from his proposed instruction below. Defendant has failed to adequately present an appellate argument in support of his proposed instructions filed below; consequently, he has abandoned any claim that he is entitled to the elements set forth in those proposed instructions. See People v Kelly, 231 Mich App 627, 640-641; 588 NW2d 480 (1998).

Moreover, there is no support in *Nasir* or other case law for defendant's contention below that the prosecutor had to prove that defendant knew he was required to have a license and that he specifically intended to violate the TPTA. Rather, as discussed above, the *mens rea* element required by *Nasir* is that the defendant had knowledge that the stamp was counterfeit. Nasir, 255 Mich App at 45-46. That is, the defendant was required to have knowledge of what it was that he possessed, which is consistent with the general intent element requiring that one have the requisite intent to do the prohibited physical act. See Motor City Hosp. 227 Mich App at 215. Indeed, this Court in *Nasir* explicitly rejected the proposition that the offense in MCL 205.428(6) contained a specific intent element and concluded that the prosecutor did not have to prove [*15] that the defendant knew that he lacked the authorization of the Michigan Department of Treasury. Nasir, 255 Mich App at 46. Accordingly, defendant's suggestion below that *Nasir* should be read to require proof in this case that defendant knew he was required to have a license to transport tobacco products and that he specifically intended to violate the TPTA is utterly without any support from the holding in *Nasir*, in addition to lacking any basis in the language of MCL 205.428(3). The trial court's instruction in this case, by requiring proof that defendant *knowingly* possessed tobacco products other than cigarettes, effectuates the notion of general intent discussed earlier and is consistent with the general intent element deemed necessary for the offense at issue in *Nasir*. Defendant has cited no authority requiring a specific intent element in this case and, again, appears to have abandoned on appeal his argument below that such an element is required.

And as discussed later, a transporter of tobacco such as defendant is required by MCL 205.426(7) and (8) to have *in his possession* a transporter license and a permit for the load. Given defendant's statutory responsibility to have the license and permit *in his possession*, he was in a position [*16] to know whether he had the requisite license and permit, thereby undercutting defendant's claim that the prosecutor must prove his knowledge regarding the licensure requirement. Cf. Quinn, 440 Mich at 197-198 (knowledge of a firearm being loaded is not an element of MCL 750.227c; the statute imposes on a person who transports a firearm the duty to ensure that the firearm is unloaded and to inspect the firearm before transporting it); Motor City Hosp. 227 Mich App at 214 (the prohibitions on the receipt of referral fees in the MFCA and HCFCA "make those who engage in the business of providing goods and services responsible for ensuring that no referral fees are paid because they are in the best position to do so. Accordingly, the Legislature did not intend a corrupt intent element in these offenses.").

On appeal, defendant presents a confusing argument concerning a presumption contained in MCL 205.426(6). But that presumption is wholly inapplicable to the issues here. MCL 205.426(6) provides in relevant part:

If a tobacco product other than cigarettes is found in a place of business or otherwise in the possession of a wholesaler, secondary wholesaler, vending machine operator, unclassified acquirer, transporter, or retailer without proper markings on the shipping case, box, or container [*17] of the tobacco product or if an individual package of cigarettes is found without a stamp affixed as provided under this act or if a tobacco product is found without proper substantiation by invoices or other records as required by this section, the presumption shall be that the tobacco product is kept in violation of this act.

Defendant says that he was arguably a transporter of tobacco products other than cigarettes and concedes that LZ Distribution, LLC (LZ), the entity that defendant claims was his employer,³ apparently did not obtain a transporter license.⁴ Defendant suggests, therefore, that his failure to have proper records or invoices created a rebuttable presumption that the tobacco products were kept in violation of the TPTA. Defendant says that the trial court's instruction is inappropriate because it eliminates his ability to rebut the presumption in MCL 205.426(6).

Defendant fundamentally misunderstands the language of MCL 205.426(6). The statute provides that if a tobacco product lacks proper markings or proper substantiation by invoices or other records, then it is presumed that the tobacco product is kept in violation of the TPTA. Defendant apparently assumes that his lack of licensure equates to a lack of proper substantiation by invoices or other records. Defendant fails to explain how he concludes that the failure to have a license comprises a lack of proper substantiation by records. "An appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims, nor may he give only cursory treatment with little or no citation of supporting authority." Kelly, 231 Mich App at 640-641, MCL 205.426(1) refers to "records" as including "a written statement containing the name and address of both the seller and the purchaser, the date of delivery, the quantity, the trade name or brand, and the price paid for each tobacco product purchased." Records also include "a true copy of all purchase orders, invoices, bills of lading, and other written matter substantiating the purchase or acquisition of each tobacco [*19] product" MCL 205.426(1). There is no indication in the statute that a license itself constitutes a record for the purpose of the presumption in MCL 205.426(6). The statutory reference to substantiation of the purchase or acquisition of each tobacco product indicates that the license itself is not the type of record contemplated in this statutory provision. Even if the presumption applied to the failure to have a license, the presumption does not pertain to the defendant's state of mind. Instead, the presumption that arises is that the tobacco product is being kept in violation of the TPTA. Defendant's confusing argument that the presumption in MCL 205.426(6) is relevant to establishing the proper *mens rea* element for a violation of MCL 205.428(3) is meritless.

Defendant further contends that the trial court's instruction is inappropriate because the requirement of having a transporter license applies to a business rather than a driver or employee of the business. According to defendant, a driver or employee is not in a position to know whether a transporter license is needed. Defendant's argument assumes that he is a mere driver or employee of LZ. The prosecution indicates it will present evidence at trial disputing defendant's claim [*20] that he was employed by LZ, and will show that, in fact, defendant had his own business and had recently lost his tobacco license before this particular incident. The case is currently in an interlocutory posture, and this Court need not address or resolve whether defendant was employed by LZ.⁵ Regardless of whether defendant was employed by LZ, defendant was required by MCL 205.426(7) and (8) to have in his possession a transporter license and a permit for the load in his possession. Defendant's contention that he lacked a means of determining the licensure status of his purported employer is thus incorrect in light of his statutory responsibility to have the required license and permit in his possession when transporting the tobacco product.

Moreover, MCL 205.423(1) provides that "a person shall not purchase, possess, acquire for resale, or sell a tobacco product as a manufacturer, wholesaler, secondary wholesaler, vending machine operator, unclassified

³The prosecutor disputes defendant's claim that he was employed by LZ, noting that defendant had his own tobacco business and that his license was revoked before the incident in this case.

⁴The prosecutor disputes defendant's claim that he was employed by LZ, noting that defendant had his own tobacco business and that his license [*18] was revoked before the incident in this case.

⁵The prosecutor argues that LZ lacked a transporter license and that defendant was therefore not transporting under either an independent transporter license of his own or a transporter license of his purported employer, LZ, in violation of MCL 205.423(1). The prosecutor explains that although LZ had a license as an unclassified acquirer of tobacco products other than cigarettes, LZ did *not* have a transporter license or a permit to transport the tobacco from Ohio to Michigan. [*21] See MCL 205.423(2) (stating, in relevant part, that "[i]f a person acts in more than 1 capacity at any 1 place of business, a license shall be procured for each capacity.") (emphasis added).

acquirer, transportation company, or transporter in this state unless licensed to do so." "'Transporter' means a person importing or transporting into this state, or transporting in this state, a tobacco product obtained from a source located outside this state, or from any person not duly licensed under this act." MCL 205.422(y). "'Person' means an individual, partnership, fiduciary, association, limited liability company, corporation, or other legal entity." MCL 205.422(o). Because a "transporter" includes a "person" who transports a tobacco product from a source outside the state and because a "person" includes an individual, defendant's suggestion that he could not qualify as a "transporter" is inconsistent with the statutory definitions.⁶ Further, as discussed, MCL 205.426(7) requires a "transporter" to have the license "in his or her actual possession" [*22] while transporting or possessing the tobacco product, and MCL 205.426(8) likewise requires a "transporter" to have the permit for a specific load "in his or her possession[]" while possessing the tobacco product. These statutory provisions thereby further confirm that an individual may be a "transporter" under the TPTA.

In support of his contention that the transporter license requirement applies only to businesses and not individuals, defendant relies on language in the Department of Treasury's license application form that describes a transporter as "[a] business that imports or transports into this state, or transports in this state, cigarettes or other tobacco products obtained from a source located outside this state, or obtained from a person that is not a Michigan tobacco tax licensee." This document is not in the lower court record. A party may not expand the record [*23] on appeal. People v Nix, 301 Mich App 195, 203; 836 NW2d 224 (2013), citing People v Powell, 235 Mich App 557, 561 n 4; 599 NW2d 499 (1999). Defendant fails to acknowledge that the license application form is not in the lower court record or to address whether it constitutes a type of document of which this Court may take judicial notice. See MRE 202(a) (permitting a court to take judicial notice of regulations of governmental agencies). It is not this Court's role to undertake on its own a party's argument. Kelly, 231 Mich App at 640-641. In any event, a state agency's interpretation of a statute, although entitled to respectful consideration, is not binding on courts and cannot conflict with the legislative intent expressed in a statute's plain language. In re Complaint of Rovas Against SBC Mich. 482 Mich 90, 103; 754 NW2d 259 (2008). As discussed, the plain language of the TPTA supports the conclusion that an individual may be a "transporter." A governmental agency's statement on a form cannot supersede the statutory text.

We affirm.

/s/ Stephen L. Borrello

/s/ Jane E. Markey

/s/ Michael J. Riordan

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⁶Defendant at one point of his appellate brief concedes that he "arguably was a transporter of other tobacco products." And defendant also acknowledges that a driver could be charged and convicted of violating the TPTA. These concessions are inconsistent with defendant's suggestion that only a business could qualify as a transporter.