COUNTY COURT BOULDER COUNTY COLORADO 1777 6th Street Boulder, CO 80302	
PEOPLE OF THE STATE OF COLORADO, Plaintiff, v. JAMES MAGUIRE, Defendant.	Case No. 12 T 2357 Division 9
For Plaintiff: Laura Kinde, Deputy District Attorney Krista Batchelder, Deputy District Attorney For Defendant: Leonard Frieling, Esq.	

The matter came on for Jury Trial on August 6, 2013, before the HONORABLE KAROLYN MOORE, Judge of the County Court, and the following proceedings were had.

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1 SARAH URFER

2 called as a witness on behalf of the Plaintiff, having

3 been first duly sworn, testified as follows:

4 THE WITNESS: Yes.

5 THE COURT: Thank you. Please be seated.

6 DIRECT EXAMINATION

7 BY MS. BATCHELDER:

8 Q Good afternoon, Ms. Urfer.

9 A Good afternoon.

10 Q Would you please introduce yourself to the jury

11 and spell your last name for the record?

12 A Sarah with an h. Urfer, U-r-f-e-r.

13 Q What is your occupation?

14 A I'm a forensic toxicologist and laboratory

15 director for ChemaTox Laboratory.

16 Q How long have you been employed there?

17 A Since 2006.

18 Q And did you have any previous employment in the

19 field of forensic toxicology?

20 A As part of my Master's degree is was an intern

21 and did independent study with the Illinois State Police

22 Forensic Science Center in Chicago.

23 Q And could you please describe for the jury the

24 general nature of your work as a forensic toxicologist?

25 A As a forensic toxicologist, I test blood and

1 other body fluids for drugs and alcohol, review cases
2 where there are drugs and alcohol involved and do
3 interpretation on the effects of drugs and alcohol on the
4 human body because that's where my area of expertise
5 lies.
6 Q And how long in total have you worked in the
7 field?
8 A I have worked in forensic toxicology since
9 2006.
10 Q What education and training did you undergo to
11 become a forensic toxicologist?
12 A I have an undergraduate degree from the
13 University of Colorado in Boulder where I graduated with
14 a degree in biochemistry and graduated with honors. My
15 undergraduate degree also had a minor in chemistry. I
16 went on to do my Master's degree in forensic science from
17 the University of Illinois in Chicago. While I was there
18 as I mentioned I did my internship in independent study
19 with the Illinois State Police Forensic Science Center of
20 Chicago before coming back to Boulder to work at
21 ChemaTox.
22 Q Are you currently a member of any professional
23 societies or associations?
24 A Yes.
25 Q And what would those be?

1 A I am a member of the American Academy of
2 Forensic Sciences Toxicology Division, the Society of
3 Forensic Toxicologists and the International Association
4 of Forensic Toxicologists.
5 Q Sounds like a mouthful.
6 A It is.
7 Q Do you perform the analysis of blood samples as
8 part of your regular duties?
9 A I do.
10 Q And have you had any additional specialized
11 training in the area of blood analysis?
12 A As part of my Master's degree it's something
13 that I studied, and then when I started working at
14 ChemaTox I had on-the-job training. And I do additional
15 ongoing continuing education in the field also.
16 Q And do you keep current on any developments in
17 this field?
18 A I do.
19 Q Okay. How do you do that?
20 A There's a couple of different things I do. I
21 follow ongoing journal articles and new research that's
22 going on in the field. I stay up to date by going to
23 meetings for a couple of the organizations I mentioned
24 earlier have annual meetings with continuing education
25 and presentations. I try to attend at least two of those

1 every year. And that keeps me up to date on what's going
2 on in the field and gives me an opportunity to talk to
3 other toxicologists that are currently in the field.
4 Q How long have you been performing analysis on
5 blood?
6 A Since I started working at ChemaTox in 2006.
7 Q And does that include analyzing blood for the
8 presence of drugs?
9 A Yes.
10 Q And approximately how many times have you
11 performed a blood analysis to determine its drug content?
12 A I couldn't say the specific number off the top
13 of my head but we process anywhere between 10 to 20
14 samples to over 100 samples a day for drugs and alcohol.
15 Q Okay. I think that gives us an idea. And so
16 have you had training, education, or experience on the
17 effects of certain drugs on human beings?
18 A Yes.
19 Q And have you previously testified as an expert
20 in the field of forensic toxicology?
21 A Yes.
22 Q About how many times have you done that?
23 A Over 100 times.
24 Q And in what kinds of -- types of courts? Like
25 civil, criminal --

1 A Both civil and criminal.
2 Q Both civil and criminal. For both the
3 Prosecution and the Defense?
4 A Yes.
5 MS. BATCHELDER: At this time we'd like to
6 offer this witness as an expert in the field of forensic
7 toxicology.
8 THE COURT: Mr. Frieling?
9 MR. FRIELING: No objections.
10 THE COURT: All right. Ms. Urfer will be
11 qualified to testify as an expert in the area of forensic
12 toxicology.
13 MS. BATCHELDER: Thank you.
14 Q (By Ms. Batchelder) Ms. Urfer, can you briefly
15 describe how samples of blood come into and through your
16 office?
17 A Yes. We receive samples in a number of
18 different ways. The most common are going to be either
19 dropped off through the mail or picked up by our office.
20 So we have our own courier, and so we'll go and pick up
21 samples from other locations. Or they'll come in the
22 mail. Or sometimes officers, especially local ones, will
23 just bring them to us.
24 Q What sort of security measures do you have in
25 place for those samples that come to your office?

1 A We’re a secured facility. So it’s a badged
2 entrance facility and everybody has to have proper
3 identification and everybody who works there has to have
4 that identification when they’re on site. And for the
5 courier who picks it up, that courier is employed by us,
6 it’s not a third party courier, so they’re also required
7 to undergo the same sort of security.
8 Q And what are your specific duties in the
9 laboratory?
10 A As a laboratory director and forensic
11 toxicologist in addition to what I mentioned earlier with
12 case reviews and doing testing, I also maintain the
13 training for the analyst that work at the lab, make sure
14 that they to through ongoing training. I help maintain
15 our certifications for the laboratory, and I oversee just
16 day to day operations at the lab for any kind of problems
17 that might come up and deal with any ongoing cases that I
18 might have done testing with and am involved in.
19 Q Okay. And I want to draw your attention to
20 this case. Did you review a laboratory report for this
21 Defendant?
22 A Yes.
23 Q And did you review anything else?
24 A I also reviewed some other reports that were
25 provided.

1 Q Okay. And is the lab that this analysis was
2 conducted in certified for this purpose?
3 A Yes.
4 Q And was it certified when the sample was
5 received?
6 A Yes.
7 MS. BATCHELDER: I'd like to approach the
8 witness with what has been previously marked as Exhibit
9 15.
10 THE COURT: You may.
11 MR. FRIELING: What did you say? I'm sorry.
12 MS. BATCHELDER: Previously marked as Exhibit
13 15.
14 MR. FRIELING: Got it. Thank you.
15 Q (By Ms. Batchelder) Ms. Urfer, do you
16 recognize this?
17 A Yes.
18 Q Okay. And what is that?
19 A This is a copy of a form, it's a request for
20 analytical services from another laboratory in Colorado.
21 The Department of Health.
22 Q Okay. And when did you receive this form? Do
23 you recall?
24 A Well, this is the copy from prior to when we
25 received it. But we would receive this form if it came

1 to our lab with the sample.
2 Q Okay. And what normally -- so is it the sample
3 that normally accompanies this form? Is that --
4 A It depends on how we receive the sample.
5 Q Okay.
6 A So, if we receive the sample from the law
7 enforcement agency then we normally get it with this
8 form. If we receive it directly from the Department of
9 Health, we normally do not get it with this form.
10 Q Okay. Thank you for clarifying that. So did
11 your lab analyze a tube of blood to determine what if any
12 drugs were present for this Defendant?
13 A Yes.
14 Q Okay. And where did your lab get that blood
15 from?
16 A Our lab received the sample from the Department
17 of Health lab.
18 Q Okay. And was that blood sealed when you
19 received it?
20 A It was.
21 Q Okay. Did it appear to have been tampered
22 with?
23 A Not tampered with, no.
24 Q Okay. Would you have performed the test if it
25 had been?

1 A No.

2 Q And what instrument would your laboratory have

3 used to analyze that blood?

4 A Depends on the testing we would be doing. So,

5 if we're doing drug testing like we're talking about in

6 this case, we do drug testing confirmations by a

7 technique called gas chromatography mass spectrometry

8 which is a mouthful so I will abbreviate it as GC-MS.

9 Q Okay.

10 MS. BATCHELDER: If I could have just one

11 moment?

12 Q (By Ms. Batchelder) And without telling me any

13 results that are on that form, do you recognize this?

14 A Yes.

15 Q And what is that?

16 A This is a final lab report issued by my

17 laboratory for testing that was done on -- in our lab on

18 the sample in this case.

19 Q Okay. And after the testing was done were you

20 able to retain a result?

21 A Yes.

22 Q And does this form accurately reflect the form

23 that you recorded the results on?

24 A Yes.

25 Q And was there a seal number listed on that

1 form?
2 A Yes.
3 MS. BATCHELDER: If I may approach the witness?
4 THE COURT: You may. And if you could --
5 Ms. Batchelder, if you could tell me if those are
6 exhibits that you may admit and for identification
7 purposes if you could tell me the numbers, please.
8 MS. BATCHELDER: Yes, Your Honor. I haven't
9 moved to admit those as of yet but --
10 THE COURT: That's fine. Just for
11 identification purposes then.
12 Q (By Ms. Batchelder) Ms. Urfer, do you
13 recognized what I've just passed you?
14 A Yes.
15 Q Okay. What is that?
16 A This is a photocopy of the -- it's a
17 certificate for the kits that the Department of Health
18 kits have on the inside of them.
19 Q And is that a fair and accurate representation
20 of the label on the kit that you received in this case?
21 A We didn't receive the kit in this case.
22 Q Okay. If you could have a look does the seal
23 number written on Exhibit 17, can you compare that to
24 what is on Exhibit 16?
25 A Yes.

1 Q Do they match?
2 A Yes.
3 MS. BATCHELDER: Your Honor, at this time the
4 People move to admit Exhibits 16 and 17.
5 THE COURT: All right. So that's why I asked
6 for the numbers.
7 MS. BATCHELDER: Okay. Sorry.
8 THE COURT: I'm still trying to figure those
9 out. So 16 is the final lab report from ChemaTox and 17
10 is the photocopy of the document in the kit; is that
11 correct?
12 MS. BATCHELDER: That is correct.
13 THE COURT: Mr. Frieling, what's your position?
14 MR. FRIELING: Your Honor, we object absolutely
15 to the admission of 16. We believe that a proper
16 foundation for the admission of that has not been laid
17 and a chain of custody has not been established to show
18 that that is the same blood, that it was not tampered
19 with, and if you'd like I can proceed to voir dire when
20 the People are ready.
21 THE COURT: And so I'll allow you to voir dire
22 right now, Mr. Frieling, based on your objection you're
23 asking to do so.
24 MR. FRIELING: Thank you.
25 //

1 VOIR DIRE EXAMINATION
2 BY MR. FRIELING:
3 Q Good afternoon, Ms. Urfer.
4 A Good afternoon.
5 Q How are you doing today?
6 A So far so good.
7 Q Has it been a little crazy out at your lab?
8 A It has definitely been crazy.
9 Q I hear that. The blood that you got at your
10 lab was received from what laboratory?
11 A The Department of Health.
12 Q And that's the Department of Health Laboratory
13 that's been involved with problems over the last several
14 months?
15 A Yes.
16 Q In fact, that's why it was sent to your lab.
17 A I can only testify to why we picked it up. I
18 don't know what the motives were of the people who
19 requested that.
20 Q Okay. It was at one lab, you were then asked
21 by the People, by the District Attorney --
22 A Yes.
23 Q -- to pick it up?
24 A That's correct.
25 Q Okay. Do you know how long the blood was at

1 the CDPHE?

2 A Other than what I can derive from paperwork,

3 no.

4 Q Please.

5 A Okay. So there’s on the paperwork that’s

6 marked People’s 15, which is the paperwork that comes in

7 the kit it has a received date on it of 7-20-12. Which

8 would be when the Department of Health Laboratory

9 processed the receipt of the sample. And then we

10 received the sample on 6-11-2013. So --

11 Q 7-20-12 to 6-11 --

12 A Correct.

13 Q -- ‘13? So 11 months.

14 A Approximately.

15 Q Okay. During that 11 months, does it matter

16 how that tube was stored?

17 A Yes.

18 Q What matters?

19 A The drugs in a sample can break down and go

20 away if a sample is not stored properly because they’re

21 heat sensitive, and so a sample needs to be stored

22 properly in order to be able test it over time. We

23 normally maintain samples for a year, and so we have

24 established criteria for up to a year for testing.

25 Q Have you spent time in the laboratory at CDPHE?

1 A Not significant time, no.
2 Q Okay. You've been there?
3 A I've been there, yes.
4 Q But not much more than that?
5 A Correct.
6 Q Okay. Is it fair to say that not on anything
7 related to this case, this blood?
8 A No, I don't work there, so I would not have
9 processed any of their cases.
10 Q All right. So it's heat sensitive. The blood
11 arrives at CDPHE?
12 A Correct.
13 Q And the paperwork that you have indicates they
14 did some testing on that, doesn't it?
15 A Correct.
16 Q And it indicates they did several types of
17 testing, correct?
18 A Not the paperwork I currently have, but the
19 request for testing does indicate multiple tests.
20 MR. FRIELING: If I may approach --
21 THE COURT: Yes.
22 Q (By Mr. Frieling) Does that look familiar? Do
23 you know what that is?
24 A Yes.
25 Q And does that appear to reflect testing done at

1 CDPHE on blood from Mr. Maguire in this case?
2 A Yes.
3 Q Okay. Can you tell by looking at that whether
4 one test was done, more than one?
5 A Yes.
6 Q And what can you see as far as initial testing?
7 We're not looking at results, just what testing was done?
8 A Okay. So their form indicates that there was
9 an ethanol test done, which is alcohol, drinking alcohol.
10 A drug screen panel that was completed and then there was
11 an additional GC-MS screen and a -- and that that was
12 also used to do a confirmation.
13 Q And if it was tested for more than one drug is
14 that the same run on the GC-MS or separate runs on the
15 machine?
16 A It's going to depend on what the drugs are.
17 Q If for example the drugs tested for were --
18 okay. Depends on the drug. And there's a reference
19 there to ELISA testing?
20 A No.
21 Q I'm sure I'm saying it wrong. What is --
22 A ELISA.
23 Q ELISA testing. Now, that's different from GC-
24 MS.
25 A It is.

1 Q Okay. And so if I were at the lab, I'd have to
2 get the blood from the refrig.
3 A Yes.
4 Q And do I have to unseal it to get the blood
5 out?
6 A It is in a sealed tube so you would have to
7 open it.
8 Q So I unseal it and then remove a portion --
9 A Correct.
10 Q Okay. What do I do with the tube then?
11 A I can testify to what my lab would do to the
12 tube.
13 Q Yes.
14 A So, when we do testing we take a portion, an
15 aliquot is just a portion of the sample out of the tube.
16 And then we seal the tube -- the original tube back up
17 and put it back into the refrigerator, and then we do the
18 testing on the portion that we took out. And when we're
19 done with the testing that just gets disposed of because
20 it's biohazard.
21 So in this case we're talking about ELISA, or
22 EIA as it's abbreviated here. So, we would take it out,
23 we would run that test, we would get the results of that
24 testing and then decisions would be made as to whether or
25 not additional testing needed to be done based off of

1 those results.

2 Q That's the way you would do it in your lab?

3 A That's how we would do it in our lab.

4 Q Okay. You don't know whether that was or was

5 not done at CDPHE, do you?

6 A Correct.

7 Q So the aliquot could have been removed and for

8 all we know that tube could have been left on the counter

9 until the next sample was needed?

10 A I can't testify to what they did to it.

11 Q Right. No way of knowing?

12 A Correct.

13 Q Is your understanding the same as mine that one

14 of the CDPHE problems was that this refrigerator we're

15 referring to was not kept locked?

16 A I've read some of the reports that have gone

17 out. There's mention of a refrigerator and questions

18 about the security, but I don't have any firsthand,

19 detailed knowledge on that topic.

20 Q In your refrigerator, is your refrigerator kept

21 locked?

22 A The room it's in is secured.

23 Q The room it's in. Okay. And who would have

24 access to that?

25 A The only people who have access to our samples

1 are people who work for our lab, who have been cleared
2 through our background check process, or people who are
3 escorted by somebody who's been cleared by our process.
4 Q Okay. So you can speak to the way your lab
5 handles it?
6 A Right.
7 Q So we have a tube. We don't know if was
8 refrigerated or not while at CDPHE?
9 A Right. Yes. I cannot testify to their
10 storage.
11 Q We do not know if it was unsealed, resealed,
12 unsealed, resealed, unsealed, resealed, at least that
13 many times?
14 A I -- again, I cannot testify to what they did
15 to it.
16 Q Or more for all we don't know?
17 A I don't know.
18 Q We don't know if it was refrigerated, we don't
19 know how many times it was opened and resealed. We don't
20 know whether it was resealed or not resealed during all
21 of those steps. Are you familiar with the expression
22 garbage-in garbage-out?
23 A Yes.
24 Q Common expression?
25 A Yes.

1 Q Does it sound like that applies here?
2 A I don’t know what happened at the beginning so
3 I can’t testify to that part.
4 Q The part that you’re responsible for is blood
5 is picked up. You’re told to take that blood.
6 A Correct.
7 Q So you’re not responsible for selecting which
8 blood to take, not responsible for anything that did or
9 didn’t happen to it during the 11 months?
10 A That’s correct.
11 Q All right. Blood looks like blood, doesn’t it?
12 A Yes.
13 Q You couldn’t look at a tube of blood and --
14 could you look at a tube of blood and tell anything about
15 whether or not that was connected to Mr. Maguire or
16 anyone else?
17 A Only by any seals that were on it. But not
18 from the liquid that’s inside.
19 Q Right. The liquid itself we call fungible?
20 A I mean, it looks like blood.
21 Q Looks like blood. You are aware that -- are
22 you aware that one of the reasons CDPHE had the problems
23 they had came out to be particular anti-defense bias by
24 one of it’s --
25 MS. BATCHELDER: Your Honor, I would object.

1 MR. FRIELING: -- people?

2 THE COURT: I don't see that this is relevant

3 at this particular time. So the objection's sustained.

4 MR. FRIELING: Thank you.

5 Q (By Mr. Frieling) So, we're clear that if the

6 blood was -- you have no way of knowing whether the blood

7 was tampered with or not, correct?

8 A I do not know anything about it before we

9 received it.

10 Q And what I'm doing -- I'm not trying to trick

11 you into saying something else, I just want to establish

12 the list of things that you don't know. Is it fair to

13 say those things are important?

14 A How the sample was handled prior to us

15 receiving it is important.

16 Q It really matters, doesn't it?

17 A Yes.

18 Q And you can't speak to that at all?

19 A That's correct.

20 Q For 11 months while it's at CDPHE?

21 A Correct.

22 MR. FRIELING: Your Honor, I could go on but as

23 chain of custody cannot be established, it's fungible,

24 real evidence, as opposed to demonstrative evidence.

25 Blood is blood. You can't tell by looking at it, it's

1 not like there's a famous case of an initial screwdriver
2 that went missing for a day. But what we have here is a
3 tube of blood that's basically gone missing for 11
4 months. We have absolutely no evidence on how it was
5 stored, whether it was stored properly, whether it was
6 resealed, now many times it was resealed and unsealed.
7 How long it was kept unsealed. Whether or not it was
8 tampered with. We have no way of knowing so to try to
9 take lab two, skip over lab one and put lab two as if
10 they were --
11 THE COURT: All right. Mr. Frieling, can you
12 just keep your objections to a minimum. I can allow you
13 to make a record --
14 MR. FRIELING: Yes.
15 THE COURT: -- later on but just at this
16 particular time, I understand your objection.
17 Ms. Batchelder, what's your position?
18 MS. BATCHELDER: If I could just ask a few more
19 questions.
20 THE COURT: All right. So I will allow that
21 regarding the foundation. You may do so.
22 DIRECT EXAMINATION (Continued)
23 BY MS. BATCHELDER:
24 Q Ms. Urfer, was there anything to indicate to
25 you that the sample had deteriorated when you received

1 it?

2 A No.

3 Q Was there anything to indicate to you that the

4 sample had not been handled properly?

5 A No.

6 Q And was there -- you testified that it had been

7 resealed?

8 A Correct.

9 Q And was the amount of sample left in the tube

10 consistent with it having been tested for those tests

11 that you have in front of you?

12 A I don't know what the initial volume is.

13 Q Okay.

14 A That came in the tube, so I don't actually

15 know.

16 Q Okay. And was there a sufficient sample left

17 for you to run a test when you received it?

18 A We were able to do some testing, yes.

19 Q Okay. And is it uncommon to retest a sample?

20 A No.

21 Q And how about the span of time involved in this

22 case? Is it uncommon to retest a sample that was

23 previously tested ten months prior?

24 A We test -- we retest samples both that have

25 been previously tested and never tested for up to a year

1 at our laboratory.

2 Q Is it sometimes the Defense that requests a

3 retest?

4 A Yes.

5 Q Was there anything about the condition of the

6 blood that would make you think that it was substantially

7 unchanged in this case?

8 A Whenever we receive a sample, we inspect the

9 sample to make sure that it meets some specific criteria.

10 The blood needs to be free flowing, so if it -- so it

11 hasn't clotted or dried out or anything else.

12 Q And what would cause the clotting and the

13 drying out?

14 A Clotting can be -- it's normally caused by

15 insufficient preservative. There's two additives in the

16 tubes, and if they're not there for some reason, then the

17 sample will clot. And the drying is if it doesn't get

18 sealed properly and air gets in. The blood can dry out.

19 Q And the sample in this case was it unclotted?

20 A Correct.

21 Q And was it not dry?

22 A Correct.

23 Q Was it free flowing the way you described it?

24 A It was free flow. Yes.

25 Q Okay.

1 MS. BATCHELDER: I have nothing further, Your
2 Honor.
3 THE COURT: All right. Thank you.
4 MS. BATCHELDER: For the voir dire portion.
5 THE COURT: Will the parties approach, please?
6 (Whereupon the Court and Counsel had an off-the-
7 record discussion at the bench.)
8 VOIR DIRE EXAMINATION
9 BY MR. FRIELING:
10 Q Ms. Urfer, the People have pointed out that you
11 observed that when you received the blood it hadn't dried
12 up, that it was still liquid. Would you have been able
13 to see contamination?
14 A No.
15 Q In all fairness, if I dumped sand into it, you
16 would have seen it. Are there huge numbers of possible
17 contaminants that you would not have seen?
18 A Correct.
19 Q And you have no way of ruling those in or out?
20 A Correct.
21 Q If there had been heat damage but not enough to
22 cook it dry but not stored properly enough to make it an
23 improper sample, you wouldn't necessarily have seen that
24 either would you?
25 A Correct.

1 Q So, you can't tell by looking at whether it was
2 treated properly in terms of refrigeration or whether it
3 was adulterated. You can't tell how long it was exposed
4 to oxygen?
5 A Correct.
6 Q And exposing it to oxygen would have changed
7 its chemistry?
8 A In some cases, yes.
9 Q And any way to tell whether that happened in
10 this case?
11 A No.
12 MS. BATCHELDER: Your Honor, we would object.
13 This is outside the scope.
14 THE COURT: The objection's overruled. You can
15 finish your voir dire, Mr. Frieling.
16 MR. FRIELING: Thank you.
17 Q (By Mr. Frieling) And you made several
18 references to not uncommon to retest.
19 A Yes.
20 Q That's within your own laboratory with a sample
21 you've held from day one, correct?
22 A No.
23 Q It's not unusual for you to retest from another
24 laboratory?
25 A Right. We frequently pick up samples from

1 other laboratories for up to a year after they were
2 collected to retest.
3 Q And are you ever required to speculate as to
4 what did or didn’t happen to the sample while it was at
5 the other laboratory?
6 A No.
7 Q Because it’s the other laboratory’s problem?
8 A Correct.
9 Q And is it fair to say scientifically we cannot
10 eliminate nearly all of the things that could have
11 happened to this blood while it was at CDPHE by seeing
12 that it was still liquid and not dried out?
13 A I can -- yes. I can only testify to the things
14 that happen in my lab. I cannot testify to the things
15 that happened at the Department of Health Lab.
16 Q My point, and tell me if I’m wrong, but my
17 point is that by looking at these couple of things, was
18 it dried up, was it still liquid, did it still look red,
19 that doesn’t tell us whether we have good blood or not
20 does it?
21 A It meets the requirements that we have to be
22 testable.
23 Q But that doesn’t mean we have a good
24 evidentiary sample into your lab.
25 A I can’t testify to what happened to it before

1 it got to my lab.

2 Q Right. So you can say yes, it looks like

3 blood, there is nothing obviously wrong with it on its

4 face and we can get our aliquot to run our tests?

5 A Correct.

6 Q But I'm understanding correctly that many

7 things could have happened that would have made this an

8 absolutely unscientific -- a sample with no scientific

9 use that you couldn't rule out?

10 A Anything that happened to it before we got it,

11 I can't say anything about.

12 Q And again, for the last time, the questions the

13 People asked didn't eliminate all the possibilities

14 nearly, did they?

15 A Again, I don't know what all the possibilities

16 are so I can't testify to whether or not --

17 Q Fair enough.

18 A -- you know, what happened to it before I got

19 it what that might have been.

20 MR. FRIELING: I renew my objection, Your

21 Honor.

22 THE COURT: All right. The objection is noted.

23 The Court is going to allow Exhibits 15, 16, and 17 in

24 and note the objection. And any issues will go to the

25 weight the evidence is to be given and not its

1 admissibility.

2 (Plaintiff's Exhibits 15, 16, and 17 admitted into

3 evidence.)

4 MS. BATCHELDER: Thank you, Your Honor. If I

5 may continue?

6 THE COURT: You may.

7 THE WITNESS: Your Honor, I have a folder from

8 the Defense attorney should I give that back.

9 THE COURT: Mr. Frieling, do you want your

10 folder back?

11 MR. FRIELING: Sorry. Yes I do.

12 THE WITNESS: Thank you, Your Honor.

13 DIRECT EXAMINATION (Continued)

14 BY MS. BATCHELDER:

15 Q So, Ms. Urfer, do you still have the exhibits

16 in front of you?

17 A I have 15, 16 and 17.

18 Q So drawing your attention to Exhibit 16 --

19 A Yes.

20 Q -- which was the blood results. So when you're

21 doing the testing, do you review all aspects of testing a

22 sample before signing the report?

23 A Yes.

24 Q And what does that involve?

25 A When the sample was tested in our laboratory,

1 the testing is going to include a screen if it's for
2 drugs, if we have a screen for it and then the
3 confirmation test. So when the confirmation testing is
4 done, I actually am the person who makes the call and
5 decides yes, this drug is there, no, it's not; that all
6 of the calibraters and controls came out correctly and
7 that that sample is acceptable to be reported out.
8 And so if there's a drug conformation, that
9 part's going to be done by myself. But then when the
10 sample is actually reported, there's an additional round
11 of review that's done by myself to ensure that all of the
12 standards and controls and procedures related to that
13 case since our lab had it were followed properly prior to
14 myself signing it to send it out.
15 Q And were all those procedures followed in this
16 case?
17 A Yes.
18 Q And looking at that report, what substances
19 were found present in the lab results in this case?
20 A There were two substances that were found.
21 Those substances were Tramadol and Zolpidem.
22 Q Okay. And I'd like to talk about those one at
23 a time. Let's discuss the Tramadol just briefly. What's
24 the prescribed purpose of Tramadol if you know?
25 A It's a pain killer. Tramadol is a prescription

1 pain killer, it's an opiate based pain killer, and it's
2 often used for individuals who have pain that can't be
3 controlled in another manner. It is -- because it's a
4 prescription, it's stronger than an over-the-counter
5 drug. And it is going to exhibit a lot of the similar
6 signs that you would see -- and effects that you would
7 see from more common opiates that people are used to like
8 morphine and codeine.
9 Q And what are those effects that you're
10 referring to?
11 A So that class of drugs while uses as a pain
12 killer is going to have other side effects. It's going
13 to include depressed respiration, so slowed breathing,
14 slowed reaction time. It often makes people dizzy or
15 drowsy or both and can affect a person's vision because
16 it can affect the constriction of their pupils. The drug
17 can cause varying levels of pretty severe impairment just
18 with your ability to react and respond to your
19 environment around you.
20 Q And how much of this drug was found in the
21 Defendant's system?
22 A It was a concentration we reported out as
23 positive less than 200 nanograms per mil.
24 Q Can you explain what that means for everyone?
25 A Yes. So the technology that we use, the

1 instrumentation, the GC-MS, has a fundamental limit to
2 how small of an amount it can see. So it's basically --
3 if it's below a certain amount we call our limit of
4 detection, the instrument can't detect it anymore. So
5 that's 100 nanograms per mil for Tramadol. And the other
6 part of this would be where we can accurately give you a
7 number, so that's the limit of quantization. And so in
8 this case the limit of quantization is 200. It means
9 that the sample was somewhere between 100 and 200
10 nanograms per mill.
11 Q And when someone has an amount that falls
12 within that range, would the -- could they still be
13 exhibiting those signs and effects that you talked about
14 earlier?
15 A Yes.
16 Q And what was the second substance that you
17 noted that you had found?
18 A Zolpidem.
19 Q And is there a generic -- or a common name that
20 most people would refer to that drug?
21 A So, Zolpidem is the drug name. The most common
22 brand name is Ambien.
23 Q And what is the intended use of that drug?
24 A It's a sleeping pill.
25 Q What are some of the side effects?

1 A Zolpidem is an interesting drug in that it has
2 some well known side effects. It's a sleeping pill so
3 the intended effect is that the person will be asleep
4 when they take it. However if the person is not asleep
5 and they're on it it can cause short term amnesia, very
6 severe impairment, it can cause hallucinations, visual
7 perception issues, that they may not see how far away or
8 how close something is and very erratic behavior caused
9 by a combination of all of those effects.
10 Q And what are some of the warnings associated
11 with someone who's been prescribed Zolpidem?
12 A Zolpidem is a prescription medication and comes
13 with a handout from the pharmacy. It's an FDA guide.
14 And the one for Zolpidem includes a warning that
15 individuals who are taking Zolpidem while on the
16 medication may perform complex tasks with no memory of
17 the event after the fact. These tasks may include sleep
18 driving, sleep sex, and sleep eating.
19 Q Okay. And do they warn you about not doing
20 certain things?
21 A Yes.
22 Q What would some of those things be?
23 A The drug comes with a warning to not take it
24 with other medications that may interact with it to --
25 that include CNS depressants, specifically alcohol.

1 Q Okay. And what are the common doses that this
2 drug is prescribed in?
3 A Zolpidem has a couple of different dosings so
4 there’s five milligrams, ten milligrams, and then there’s
5 an extended release version which I think is 6.5 and
6 12.5.
7 Q And how long does it take for this medication
8 to take effect?
9 A It’s very rapid. It has an onset of 15
10 minutes.
11 Q Okay. And how long does it take for it to wear
12 off?
13 A Again, very quickly. It has a very short half
14 life. It’s about four hours. Studies have shown if
15 somebody takes a normal dose before bed it will be
16 completely gone after eight hours.
17 Q And I have some questions for you regarding the
18 effect of combining medications. Can you explain to the
19 jury what that would do to someone who was on one or
20 either of these drugs at the same time?
21 A So, when anybody takes two drugs together and
22 alcohol for this is considered a drug also, they both
23 cause sedative effects in slightly different ways and so
24 those effects are going to add up together. So you have
25 one drug that’s already causing you to be dizzy or

1 drowsy, and now you have another drug that's also causing
2 similar effects they're going to add together to have an
3 even more profound effect when taken together.
4 MS. BATCHELDER: Your Honor, if I may approach
5 and collect Exhibit 3?
6 THE COURT: You may.
7 MS. BATCHELDER: If I may approach the witness?
8 Q (By Ms. Batchelder) Ms. Urfer, if I can just
9 have you take a look at that and let me know when you are
10 finished.
11 A Okay.
12 Q And do you recognize this type of report?
13 A Yes.
14 Q Okay. And is that the blood alcohol result
15 from the Intoxilyzer test that was done in this case?
16 A No. It's a breath alcohol.
17 Q Excuse me. Thank you. And the result in this
18 case I believe was a .024. Can you explain to the jury
19 how alcohol would affect someone who was also on both
20 Tramadol and Zolpidem?
21 A So alcohol is a central nervous system
22 depressant, and so as I mentioned earlier that those
23 drugs can interact with the drugs were talking about.
24 There is a specific warning on both Tramadol and on
25 Zolpidem to -- if you combine them with alcohol that that

1 can cause increased effects which is a true statement.
2 The CNS depressants combined with other sedative drugs
3 are just going to again compound all of those effects to
4 make them even more severe. As you take all of these
5 drugs together.
6 MS. BATCHELDER: I have no further questions
7 for this witness.
8 THE COURT: Cross-examination?
9 MR. FRIELING: Thank you, Judge.
10 CROSS-EXAMINATION
11 BY MR. FRIELING:
12 Q Do you mind if I jump around a little bit?
13 A That’s fine.
14 Q Are you aware -- you have a special interests
15 in Zolpidem.
16 A Yes.
17 Q And subject to special study --
18 A Yes.
19 Q You’ve presented a paper on it?
20 A Yes.
21 Q And we’ll talk about that in a moment.
22 Specifically what I want to look at here, are you aware
23 of the FDA drug safety communication dated 5-14-2013
24 dealing with Zolpidem dosing?
25 A I know that they were looking at adjusting the

1 dosing, I don't know if I've reviewed that exact one but
2 I've seen communications about it.
3 Q Are you aware that they officially chopped the
4 evening -- this is an evening drug, right before --
5 presumably you're sleeping at night?
6 A Correct.
7 Q You take this at night?
8 A Yes.
9 Q And you wouldn't be surprised to learn that in
10 this 5-14 release, they chopped the recommended dosage in
11 half?
12 A Yes, that was one of the recommendations I'd
13 heard.
14 Q So the 10 became five and the five became two
15 and a half. And are you also aware that the reason they
16 did it is that they were discovering levels of the drug
17 that could be problematic the next morning?
18 A I've looked at some of that research. I didn't
19 make the decision so I can't say what they based their
20 decision on. It was more complex than just that.
21 Q So, are you disagreeing with the statement, the
22 U.S. Food and Drug Administration, FDA, is notifying the
23 public of new information about Zolpidem, widely
24 prescribed insomnia drug. FDA recommends that the
25 bedtime dose be lowered because new data show that blood

1 levels in some patients may be high enough the morning
2 after use to impair activities that require alertness
3 including driving.
4 A I would need to see the specific thing you're
5 looking at but that sounds --
6 Q Absolutely.
7 A Yeah. That would be great. Thank you. Okay.
8 So the part that you read was a portion of this document
9 which I don't disagree with. It's definitely a portion
10 of this document. This document is addressing actually a
11 couple of different issues. One has to do with a
12 specific dosing type for Zolpidem. And then the other is
13 that they're doing ongoing testing because a lot of the
14 FDA's data comes from just reports that they get in
15 versus a controlled study, so they are talking about
16 that. So that's why I said it's more complicated than
17 just this one thing happened.
18 Q It is fair to say that they cut the dosing
19 recommendation in half?
20 A Under those specific circumstances, yes.
21 Q And is it fair to say that a significant part
22 of that recommendation was based on their concern about
23 blood levels and impairment the next day?
24 A As stated in that document, yes.
25 Q Okay. Let's take a look at the numbers for a

1 moment on the Tramadol, you -- you don't know what the
2 number is on the Tramadol?
3 A Only the range. That's correct.
4 Q You believe it's over 100 nanograms per
5 milliliter.
6 A The testing showed it to be over 100.
7 Q And you're confident in that?
8 A Yes.
9 Q Your limited quantization is 200?
10 A Yes.
11 Q So there wasn't enough Tramadol in the blood to
12 be quantitiated. You had enough blood but not enough
13 Tramadol?
14 A Correct.
15 Q Right. What is the therapeutic range for
16 Tramadol?
17 A Therapeutic range -- well, first of all
18 therapeutic range is the concentration a doctor is aiming
19 for.
20 Q Would you please explain what therapeutic range
21 is?
22 A Therapeutic range, when a doctor gives you a
23 prescription is going to be the concentration of the drug
24 that the doctor is aiming for to get the desired effect.
25 So if it's a pain killer, it's enough of the drug to get

1 the pain killing effects. If it's a sleeping aid, enough
2 of the drug to make sure that you're sleeping. So that's
3 what therapeutic range means.
4 And then the therapeutic range I believe for
5 Tramadol was your other question --
6 Q Yes.
7 A -- it again is going to depend on what they're
8 aiming for, but I -- I think it's like 200 or 300 to 600
9 so it's in that range.
10 Q So what we think we have here is less than the
11 therapeutic dosage, less than the floor of the
12 therapeutic target range, but we don't know how much
13 less.
14 A Right.
15 Q So it could have been half of the therapeutic
16 range. Could have been 100?
17 A Right.
18 Q Could have been 101?
19 A Right.
20 Q Could have been 190?
21 A That's also correct.
22 Q But we don't know?
23 A That's correct.
24 Q And then with the Zolpidem -- I'm sorry, that
25 was Tramadol. Getting myself confused here. I

1 apologize. Okay. So I hope I haven't confused us. The
2 studies that you looked at was for reducing the dosage
3 for Ambien Zolpidem.
4 A Yes.
5 Q Okay. On that the limit of detection is 20 --
6 A Yes.
7 Q -- nanograms per milliliter?
8 A Yes.
9 Q And all you know is it was above 20?
10 A Right.
11 Q You believe it was above 20?
12 A Correct.
13 Q Limit of detection?
14 A Yes.
15 Q But we don't know how much?
16 A Correct.
17 Q It could have been 21?
18 A Correct.
19 Q Do you know the therapeutic range for Zolpidem?
20 A Yes.
21 Q And what is that?
22 A It's from around the mid-20 nanograms per mil
23 range, the highest is -- that I've seen reported so far
24 is about 270 nanograms per mil with an average of about
25 60 nanograms per mil.

1 Q Average of?

2 A 60.

3 Q 60. Let’s talk about effects just for a
4 moment. Is the impairing effect of a drug specifically
5 of Zolpidem, of Tramadol, is the impairing effect the
6 same the first time you take it, after you’ve been taking
7 it for a week, a month, a year?

8 A So interestingly the answer is yes and no.
9 Some of the effects will be the same even with repeated
10 doses and some of the effects will not.

11 Q Is there any adjustment on -- let’s talk about
12 Tramadol first. The pain killer. To the extent that it
13 has impairing impact does the person adapt to Tramadol?

14 A So the concept that we’re talking about is
15 tolerance --

16 Q Yes.

17 A -- to a drug.

18 Q Thank you.

19 A And tolerance to a drug is frequently sort of
20 misconstrued, because we talk about tolerance to a drug,
21 but what we actually mean is tolerance to the effects of
22 that drug. Because if you developed a tolerance to every
23 effect, it would have no effect in which case there would
24 be no point in taking it anymore.

25 So instead what happens -- and Tramadol is a

1 good example of this is -- it's an opiate class drug, is
2 people can develop tolerance to some of the effects. So
3 with opiates, people develop tolerance to the pain-
4 killing effect and the impairing effect, and then
5 sometimes they'll have to take an increased dose and
6 they'll repeat this and they'll develop tolerance to the
7 effects.
8 And what can happen is a person can develop
9 tolerance to the impairing effects but not the pain-
10 killing effects depending on their dosing and sometimes
11 vice versa. So it's very specific to that -- how long
12 they've been taking it, how much they take, and how
13 frequently they take it. Because to develop tolerance,
14 you need repeat exposure over a long period of time at
15 the same concentration.
16 So, depending on the circumstances, sometimes,
17 yes, and sometimes, no.
18 Q It would be a problem -- well, that's out of
19 your area of expertise I think. In fact it's not an
20 opiate is it?
21 A It's an opiate -- yeah, it's an opiate class
22 drug.
23 Q But it's not an opiate?
24 A Right.
25 Q Synthetic?

1 A Correct.
2 Q Zolpidem is in a class all it’s own, isn’t it?
3 A It’s a sedative hypnotic.
4 Q Sedative hypnotic. And that’s not a common
5 thing, is it?
6 A Correct. There are -- it’s not the only one
7 but it’s not common.
8 Q It’s not a clear category like opiates.
9 A Right.
10 Q And it behaves differently.
11 A Correct.
12 Q It’s used as a pain killer of less
13 physiological impact than the strong opiates, then
14 morphine, then Vicodin, this is a --
15 A We’re talking about Tramadol again, right?
16 Q We’re talking about Tramadol.
17 A Okay.
18 Q Thank you.
19 A Just making sure.
20 Q Thank you for keeping me in line.
21 A Okay. Yes. It’s used in the way you described
22 as long as we’re talking about Tramadol.
23 Q Yeah. Okay. So it’s not something where a
24 person would find that the narcotics aren’t working
25 anymore so they put them on Tramadol, it’s the other way

1 around generally?

2 A I'm not a doctor so I don't make those

3 decisions, but in my experience I see Tramadol in cases

4 where they maybe didn't want to give them morphine

5 because it might be too strong. But that's only a

6 pattern, I don't -- I'm not a doctor, and I don't do

7 prescriptions.

8 Q You wound -- your science is not impacted by

9 the fact that the business is benefitting from the CDPHE

10 debacle?

11 A That's correct.

12 Q You see yourself as a scientist and frankly

13 you're just as happy giving the answers I might like as

14 the answers the DA might like, because you're here just

15 to tell it the way you see it. Is that a fair statement?

16 A I'm a scientist. I testify about science.

17 That's it.

18 Q In fact -- do you have any ownership interest

19 in the lab?

20 A I do.

21 Q You do?

22 A Yes.

23 Q And there was an article I believe in this

24 morning's paper, have you seen that yet?

25 A I don't read the paper.

1 Q Would you be surprised to learn that you have
2 four new employees?
3 A No.
4 Q Is it accurate that you have four new
5 employees?
6 A Technically we're in the process of hiring four
7 new employees. I have two that have been hired and two
8 that I'm in the process of hiring.
9 Q And am I correct that that's primarily
10 substantially a result of the business that you now have
11 to take -- or are taking on because of the CDPHE problem?
12 A Yes.
13 Q You're hiring more people so that you can
14 properly deal with that work?
15 MS. BATCHELDER: Your Honor, we would object to
16 relevance.
17 MR. FRIELING: Goes to bias.
18 THE COURT: I will allow some of this, and I
19 think you're almost done, Mr. Frieling.
20 MR. FRIELING: Correct.
21 THE COURT: The objection's overruled.
22 Q (By Mr. Frieling) Does the State pay the same
23 thing -- if I went to your lab, you would of course do
24 testing for me?
25 A Absolutely.

1 Q And the same testing you would do for the
2 State?
3 A Yes.
4 Q And you’d come to court and testify for me if I
5 asked that?
6 A Correct.
7 Q Would you charge me the same as what you charge
8 the State?
9 A I don’t do the billing but our testing rates
10 are pretty much the same, I think, for both sides for
11 drug testing.
12 Q Does the State pay $17.50 for a blood alcohol?
13 A I don’t know.
14 Q You have, and I believe you mentioned in your
15 study, in your presentation, you have looked at 28 -- 23
16 Zolpidem --
17 A Yeah. There were different classes, so I think
18 I looked at a total of 37 cases for that but not all of
19 them met the criteria for what I was trying to look at
20 and I think it was in the mid 20's for the total number
21 that I looked at in the end.
22 Q Do I recall correctly that the level of
23 Zolpidem found in this case is lower than any level
24 reported in your presentation?
25 A Well, we had some undetected which would be

1 zero. So --
2 Q It's not lower than zero.
3 A True.
4 Q For tests that were positive for Zolpidem, this
5 one is the lowest one you have, right?
6 A Well, I don't have a number for this one.
7 Q Right.
8 A So --
9 Q But you had numbers for the others?
10 A Right.
11 Q In your presentation?
12 A Correct.
13 Q And you have them because you had enough to be
14 able to quantitate.
15 A I didn't have enough sample to quantitate the
16 Zolpidem. That wasn't a level issue, it was a sample
17 issue. The Tramadol was a level issue.
18 Q Okay. Okay. Go ahead. I'm listening.
19 Tramadol was a level issue. Zolpidem was a sample. But
20 at the end of the day, we're left with the same
21 information scientifically which is we don't know expect
22 it was over 20.
23 A That's correct.
24 Q Did you have a single other person that had --
25 it's a fair characterization for me to say small. I

1 don't want to use the word trace but very small
2 quantities of alcohol, Zolpidem, and Tramadol. Did any
3 of your other subjects in your presentation and your
4 study of your labs results have levels this low?
5 A So I don't have a level for the Zolpidem, I
6 can't say what level it's at. But I had low level
7 alcohol and low level other drugs in some of my Zolpidem
8 cases. But since I don't have a level of Zolpidem in
9 this case, I can't compare it.
10 MR. FRIELING: One moment, please. I need just
11 a moment, Your Honor, please.
12 Q (By Mr. Frieling) Did you look at any of the
13 reports in this case?
14 A The ones that were provided I did. Yes.
15 Q You were provided reports by the People?
16 A Yes.
17 Q And you read them?
18 A Yes.
19 Q And do I understand your opinion correctly that
20 you used the word impairment is consistent with what you
21 saw in your lab results?
22 A Yes.
23 Q What does that mean scientifically? Consistent
24 with?
25 A So, you have in science a set of expectations.

1 You have an expected set of outcome and when we do
2 testing or evaluating a case we're looking to see whether
3 or not the outcome is consistent with or the same as what
4 we would expect versus what we would not expect.
5 Q Your opinions on whether drugs or alcohol or
6 both are consistent with or -- when you put them together
7 with a report of impairment, you have different levels of
8 assessment as to how sure you are that the impairment is
9 caused by drugs/alcohol?
10 A Correct.
11 Q Is that fair?
12 A Yes.
13 Q You can be really sure, a little sure, what
14 kind of language would you use for really sure? A nice,
15 high Tramadol number, good solid Zolpidem number and a 12
16 BAC -- .12?
17 A It's just going to depend on the case. I mean
18 I just don't --
19 Q Is it fair to say that consistent with -- what
20 else is consistent with the kind of impairment you saw?
21 Your forensic toxicologist?
22 A Right.
23 Q So human behavior and things that impact human
24 behavior; is that within your scope of expertise?
25 A I really focus on the effects of drugs and

1 alcohol on human behavior because toxicology is a study
2 of drugs and alcohol.
3 Q In this case the impairment, if there was
4 impairment, could have been caused by other things,
5 correct?
6 A Right. So I evaluate impairment which is just
7 what it sounds like and then the drugs and the
8 consistency between the two, but I'm not eliminating all
9 other possible sources of impairment as not contributing
10 at all.
11 Q Because you can't?
12 A Right.
13 Q In part because the numbers are so low?
14 A Really it's just because of the nature of the
15 evaluation of a case.
16 Q Had the numbers been higher would your opinion
17 have been stronger?
18 A The level of impairment I would have expected
19 to see would have been different if it was like a lethal
20 level of Tramadol, but I mean outside of that, I have to
21 look at a whole case.
22 Q Okay.
23 A And evaluate it as a whole to really tell you
24 what my opinion would be in that case.
25 Q Is it fair for me to say that you would not --

1 a little twist, a little convoluted, you would not
2 testify that to a reasonable degree of scientific
3 certainty the impairment in this case was caused by the
4 drugs and alcohol?
5 A I would use my own words if I was asked a
6 question like that.
7 Q Would you testify that to a reasonable degree
8 of scientific certainty that the impairment in this case
9 was caused by the drugs you found and the quantities you
10 found them and with the unknowns and the .024 that you
11 were told about. Were you told about the .024?
12 A Yes.
13 Q Okay. So based upon that, would you say to a
14 reasonable degree of scientific certainty that the
15 impairment was caused by drugs and alcohol?
16 A I would phrase it differently.
17 Q You said consistent with. Because that's what
18 you wrote, that's what you put forth?
19 A It would be more complicated than that, but the
20 word consistent would probably be in the paragraph.
21 MR. FRIELING: Thank you.
22 THE COURT: Redirect?
23 REDIRECT EXAMINATION
24 BY MS. BATCHELDER:
25 Q Ms. Urfer, at the end of that cross-

1 examination, you were trying to say how you would phrase
2 Mr. Frieling's question, would you like to phrase that
3 for us?
4 A Yes.
5 Q The impairment seen in the reports as I said
6 was consistent with the levels found and those levels and
7 those drugs do cause impairment and can cause impairment
8 at the levels that were found in this case, therefore,
9 the impairment found in this case is consistent with the
10 drugs that were found.
11 Q Okay. Thank you. And you were asked about,
12 you know, being -- someone being on the floor of the
13 therapeutic level. If someone was on the floor of the
14 therapeutic range for both Zolpidem and Tramadol and they
15 consumed alcohol in your expert opinion, could that cause
16 impairment?
17 A Yes.
18 Q Would that cause impairment?
19 A Yes.
20 MS. KINDE: No further questions.
21 THE COURT: Recross?
22 RECROSS-EXAMINATION
23 BY MR. FRIELING:
24 Q Would -- on that last question, would that
25 cause impairment, does that take into account the

1 different individuals and individual's tolerance to a
2 medication when the medication was taken? Does that take
3 any of that into account?
4 A Some of it, yes.
5 Q Okay.
6 A It's a general statement because I haven't
7 studied the individual.
8 Q Never met Mr. Maguire?
9 A Not that I'm aware of.
10 Q Never saw his blood unless perhaps what you got
11 from CDPHE was his?
12 A I've seen a sample that I testified about
13 earlier, that's it.
14 Q That -- and today is it?
15 A That's it.
16 MR. FRIELING: Okay. Thank you.
17 THE COURT: Do the jurors have any questions of
18 this witness? Just give me a moment.
19 (Whereupon the Court and Counsel had an off-the-
20 record discussion at the bench.)
21 THE COURT: Ms. Urfer, you gave the effective
22 time frame for Zolpidem to -- between 15 minutes and four
23 hours, what is that range for Tramadol?
24 THE WITNESS: Tramadol takes a little bit
25 longer to set in. It can be half an hour to 45 minutes

1 and the effective time is about four to six hours
2 depending on dose.
3 THE COURT: Does time/heat exposure do anything
4 to the integrity of the results on the sample?
5 THE WITNESS: The results that we got are
6 accurate for the sample that we tested.
7 THE COURT: Are the two drugs typically present
8 together?
9 THE WITNESS: I'm not a doctor so I don't know
10 what typical prescribing practices are.
11 THE COURT: All right. Ms. Batchelder, do you
12 have any additional questions based on those questions
13 and answers?
14 MS. BATCHELDER: No, Your Honor.
15 THE COURT: Mr. Frieling?
16 MR. FRIELING: Thank you.
17 RECROSS-EXAMINATION (Continued)
18 BY MR. FRIELING:
19 Q So if I understood your answer on the heat --
20 time and heat, the answer was you're comfortable with the
21 testing -- I'm paraphrasing. Once it was at your lab or
22 picked up by your person, I think the question may have
23 focused on the 11 months of CDPHE, what impact the heat
24 might have had on the blood if it was improperly stored I
25 think is a fair paraphrase.

1 A Were you asking me to answer the second
2 question?
3 Q Yes, please. Why do we care?
4 A Okay. So, heat causes degradation, so the
5 levels could've been higher and if the sample was stored
6 improperly, the drugs can break down. But it is one
7 direction, they do not magically appear in the sample,
8 they only go away. They either stay at the same level or
9 they go away.
10 THE COURT: All right. So, I thank you,
11 Ms. Urfer, you may step down.
12 MS. URFER: Can I be excused?
13 MS. BATCHELDER: Yes, Your Honor.
14 THE COURT: And Mr. Frieling?
15 MR. FRIELING: Yes.
16 THE COURT: You are excused from your subpoena.
17 MS. URFER: Thank you.
18 THE COURT: And if you have any exhibits --
19 MS. URFER: Yes.
20 THE COURT: -- I will take those from you.
21 Thank you.
22 The Prosecution may call their next witness.
23 MS. KINDE: Your Honor, the People call Deputy
24 Mark George.
25 THE COURT: If you'd raise your right hand,

TRANSCRIBER'S CERTIFICATION

STATE OF COLORADO)
) SS.
COUNTY OF JEFFERSON)

I, Maureen O'Toole, do hereby certify that I have listened to the electronic recording of the foregoing; further that the foregoing transcript pages 1 through 339, were reduced to typewritten form from an electronic recording of the proceedings held August 6, 2013, in the Boulder County Court, in the matter of People of the State of Colorado v. James Maguire; and that the foregoing is an accurate record of the proceedings as above transcribed in this matter on the date set forth.

DATED this 29th day of November, 2013.

Maureen O'Toole

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