

STATE OF WISCONSIN : CIRCUIT COURT : MARINETTE COUNTY
Branch 1

STATE OF WISCONSIN,

Plaintiff,

v.

Case No. 02-CF-78

ISAAC AARON DETTMAN,

Defendant.

MOTION TO DISMISS

Isaac Aaron Dettman, by undersigned counsel, respectfully moves this Court for the entry of an order dismissing this prosecution upon the following grounds:

1. The defendant is charged with offenses arising from his alleged distribution of 1,4-butanediol which is asserted to be a controlled substance analog of gamma-hydroxybutyric acid (GBH). GHB is a schedule I controlled substance. Wis. Stat. §961.14(5)(ag). The definition of a controlled substance analog is “a substance the chemical structure of which is substantially similar to the chemical structure of a controlled substance in schedule I or II.” Wis. Stat. §961.01(4m)(a).
2. In support of this Motion, the defendant invites the attention of the Court to the attached report of Dr. John Steele, 1,4-BUTANEDIOL

AND 4-HYDROXYBUTYRIC ACID: A SIMILARITY ASSESSMENT and the opinion of the United States District Court for the Southern District of New York in *United States v. Roberts*, 2002 U.S. Dist. LEXIS 16778 (September 9, 2002). [Copies of the matters that appear in the Appendix to Dr. Steele's report and the testimony of the defense and prosecution experts in *United States v. Roberts* will be provided to the Court during Dr. Steele's testimony. Copies will be provided to opposing counsel, prior to the hearing, upon request.]

3. At the evidentiary hearing, the defendant will establish the following through Dr. Steele's testimony and the materials upon which he relies:
 - a. The description "substantially similar, " as applied to the structure of chemical compounds has no accepted meaning within the scientific community and experts differ in their interpretation of this phrase depending upon their area of expertise.
 - b. Chemo-informatics is the science of manipulating chemical data with computers. Structural similarities of organic compounds can be evaluated using techniques of chemo-informatics. Such methods provide the only quantitative measure of the structural similarity of organic compounds. When the structures of GHB and 1,4-butanediol are compared by recognized methodologies in

chemo-informatics, the results demonstrate that their structures are not substantially similar. One of these methodologies calculated the similarity of 1,4-butanediol and GHB as between 44 and 45 percent. The other methodology calculated the similarity as less than 50 percent; this program only calculates similarity figures above fifty percent.

4. Dr. Steele will also testify that the mass spectra, upon which the prosecution's analyst relied to identify 1,4-butanediol, do not permit an opinion to a reasonable degree of scientific certainty that the substances tested are 1,4-butanediol and indeed reflect that the probability that this identification is correct is only .50. Dr. Steele will further testify that in order to establish whether the tests performed by the prosecution's analyst on the substances allegedly delivered by the defendant accurately identify 1,4-butanediol it is necessary to analyze the archived data from these tests. These data have been requested by the defense, but were not furnished to plaintiff's counsel by the Wisconsin State Crime Laboratory.

Accordingly, this Court is asked to conclude that a judicial construction of Wis. Stat. §961.01(4m)(a) that 1,4-butanediol is a controlled substance analog of GHB violates the due process and notice guarantees of the Wisconsin and United States Constitution and renders the controlled substance analog statute void-for-

vagueness in this application and allows for arbitrary and discriminatory enforcement.

If, and only if, the Court denies the MOTION TO DISMISS, the Court is asked to order the Wisconsin Crime Laboratory to furnish the archived data to the defendant.

Dated at Milwaukee, Wisconsin, this 14th day of November, 2002.

Respectfully submitted,

Isaac Aaron Dettman, Defendant

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