



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**STATE OF ARIZONA v. DANNY R. HARDESTY
CR-08-0244-PR**

PARTIES AND COUNSEL:

Petitioner: Danny Hardesty is represented by Daniel J. DeRienzo and Craig Williams, DeRienzo & Williams, P.L.L.C, Prescott Valley.

Respondent: The State of Arizona is represented by Joseph L. Parkhurst, Assistant Attorney General

FACTS:

Hardesty was pulled over by police for driving with a burned out headlight on his van. The officer smelled burnt marijuana. Hardesty admitted that he had been smoking a “joint” and had thrown it out the window. The officer found the joint and seized a baggie of marijuana from the back of the van. Hardesty was charged with possession of marijuana and possession of drug paraphernalia, class 6 felonies.

Prior to trial, Hardesty moved to dismiss the charges on the ground that the use of marijuana was part of the practice of his religion, citing the Arizona Free Exercise of Religion Act (FERA), A.R.S. § 41-1493, et seq., and other statutory and constitutional provisions. The State opposed the motion, arguing that the rules of criminal procedure did not permit one to raise a fact-based defense prior to trial. The State also argued that laws prohibiting possession of marijuana did not violate Hardesty’s right to the free exercise of religion because they were laws of general applicability. At a hearing on the motion, Hardesty testified that he has been a practicing member of the Church of Cognizance since 1993. Hardesty presented testimony from Michael Senger, an officer or “Cogniscenti” of the Church. He explained the background of the Church and confirmed that Hardesty was a member. Marijuana or “Haoma” is the main religious sacrament of the Church and its use provides a connection to the divine mind and spiritual enlightenment. The State presented no evidence. It did not contest that the Church of Cognizance constituted a “religion” for purposes of the free exercise clause. It did not contest the fact that Hardesty was a practicing member of the Church. The trial court denied the motion to dismiss on the ground that fact-based motions to dismiss are not authorized by the rules.

Before trial the State filed a motion in limine to preclude Hardesty from presenting evidence or arguing a free exercise defense to the jury. The trial court granted the motion finding that such a defense was “not recognized, not cognizable under Arizona law.” Hardesty waived his right to a jury and the matter was tried to the court. Hardesty was found guilty as charged. The court suspended a prison sentence and placed him on probation for 18 months.

On appeal, the court of appeals found that Arizona law does recognize a free exercise defense in criminal cases under the Arizona Free Exercise of Religion Act (FERA), A.R.S. § 41-1493, et seq. While the trial court erred in its reasoning for excluding evidence of Hardesty's free exercise defense, the court of appeals affirmed the exclusion of this evidence for a different reason. The court of appeals found that the State had satisfied the requirements of FERA and established that the laws criminalizing possession of marijuana were the least restrictive means of effectuating a compelling government purpose. The court arrived at this conclusion by taking judicial notice of the effects and harmfulness of marijuana, based on the Arizona legislature's intent in criminalizing the possession and use of marijuana as well as other state and federal precedent.

ISSUE:

The Court of Appeals erred by not remanding this case for an evidentiary hearing and by taking judicial notice of facts which are in dispute.

Definitions:

A.R.S. §41-1493.01 provides:

- A. Free exercise of religion is a fundamental right that applies in this state even if laws, rules or other government actions are facially neutral.
- B. Except as provided in subsection C, government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability.
- C. Government may substantially burden a person's exercise of religion only if it demonstrates that application of the burden to the person is both:
 - 1. In furtherance of a compelling governmental interest.
 - 2. The least restrictive means of furthering that compelling governmental interest.
- D. A person whose religious exercise is burdened in violation of this section may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief against a government. A party who prevails in any action to enforce this article against a government shall recover attorney fees and costs.

This Summary was prepared by the Arizona Supreme Court Staff Attorneys' Office solely for educational purposes. It should not be considered official commentary by the court or any member thereof or part of any brief, memorandum or other pleading filed in this case.