



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**STATE OF ARIZONA v. HON. MYRA HARRIS,
(real party in interest HRACH SHILGEVORKYAN)
CV-13-0056 -PR**

PARTIES:

Petitioner: Hrach Shilgevorkyan, real party in interest

Respondent: State of Arizona

FACTS:

After petitioner was stopped for speeding and unsafe lane change and a blood test detected the presence of Carboxy-Tetrahydrocannabinol, or Carboxy-THC, he was charged in justice court with two counts of DUI. Count A alleged that he drove while impaired. Count B alleged that he drove with drugs in his system.

Petitioner moved to dismiss the complaint. He argued it would be impossible to find he violated the driving with drugs statute because “the” metabolite of marijuana, Hydroxy-tetrahydrocannabinol, or Hydroxy-THC, was not found in his blood. The State opposed the motion, arguing that Carboxy-THC is itself a metabolite of marijuana and falls within the scope of the drugs statute, §28-1381(A)(3).

At an evidentiary hearing, the State presented an expert witness who testified that Hydroxy-THC is the psychoactive primary metabolite of marijuana. Carboxy-THC, a metabolite of Hydroxy-THC and secondary metabolite of marijuana, is not psychoactive, does not cause impairment, and can linger in the body a substantial period of time (up to one month) following cannabis use. The court granted the motion to dismiss the complaint. The State dismissed Count A and appealed the decision as to Count B.

On appeal, the superior court affirmed, finding no error. It said the statute was ambiguous because it was unclear whether the term “metabolite” is singular or plural. The court recognized that it could interpret the singular form in the plural to overcome the ambiguity, but it declined to do so. Instead it reasoned that the State did not show “the legislature necessarily intended to include all possible derivatives of drugs – particularly inactive end products that no longer affect an individual.” Relying on the State’s expert’s testimony regarding Carboxy-THC, it found Carboxy-THC is *a* metabolite of marijuana, but determined the legislature did not intend to include it within the term “its metabolite.” The superior court concluded that “the legislature did not intend for the term metabolite to include more than the single active metabolite – [H]ydroxy THC.”

The State sought special action relief in the court of appeals, which accepted jurisdiction and granted relief. The court considered whether Count B should be dismissed pursuant to criminal Rule 16.6(b) (dismissal allowed on motion by defendant if indictment, information, or complaint is found insufficient as a matter of law). Because petitioner argued only that he could admit to all the allegations

charged against him and still not have committed a crime because Carboxy-THC is not included in the statutory phrase “its metabolite,” he made no challenge to the constitutionality of the statute. The court observed that, on this record, it is undisputed that Carboxy-THC is a metabolite of marijuana, and it was the only metabolite found in the petitioner’s blood.

The appeals court then explained it was persuaded by case law, which the superior court had rejected on appeal. It noted the statutory prohibition of driving while there is any drug or “its metabolite” in the person’s body was “designed to protect the public by reducing the terrible toll of life and limb on our roads.” To effectuate the legislative intent, the statute must be construed broadly. Thus, the court in *State v. Phillips*, 178 Ariz. 368, 873 P.2d 706 (1994), determined the legislative ban in the predecessor to A.R.S. § 28-1381(A)(3) was intended to create a “per se prohibition” extending to all proscribed substances, whether capable of causing impairment or not, and that the “legislature was reasonable in determining that there is no level of illicit drug use which can be acceptably combined with driving a vehicle.” *Id.* at 372, 873 P.2d at 710. The *Phillips* court, therefore, upheld the constitutionality of the statute.

In *State v. Hammonds*, 192 Ariz. 528, 530 ¶ 6, 968 P.2d 601, 603 (1998), the court again upheld the constitutionality of the predecessor statute. There, the defendant had Carboxy-THC as well as metabolites of a prescription drug in his system. After reiterating the reasoning in *Phillips*, the *Hammonds* court also noted metabolic rates differ from drug to drug and that the “presence of an illicit drug’s metabolite [whether active or inactive] establishes the possibility of the presence of the active, impairing component of the drug.” *Id.* This fact, the court held, “justifies the legislature banning entirely the right to drive when the metabolite is present.” *Id.* at ¶ 11.

Although *Phillips* and *Hammonds* do not directly interpret the phrase “its metabolite,” they stand for the proposition that § 28-1381(A)(3) must be interpreted broadly to appropriately effectuate the legislative purpose and intent underpinning the statutory language. Thus, the appeals court held that § 28-1381(A)(3)’s language prohibiting driving with a proscribed drug or “its metabolite” includes the metabolite Carboxy-THC.

The appeals court found its holding to be consistent with A.R.S. § 1-214(B), which permits interpretation of “[w]ords in the singular number [to] include the plural” in order to effectuate legislative intent. *Estate of McGill ex rel. McGill v. Albrecht*, 203 Ariz. 525, 529 ¶ 11, 57 P.3d 384, 388 (2002) (explaining that § 1-214(B) is “a permissive statute” and allows courts to interpret the singular as the plural “when such an interpretation will enable us to carry out legislative intent”). Because no authority suggests the legislature intended § 28-1381(A)(3) to be construed only in “the singular number,” the court concluded Carboxy-THC must be included in the phrase “its metabolite.”

ISSUE:

Arizona’s DUI statute, A.R.S. § 28-1381(A)(3), makes it “unlawful for a person to drive or be in actual physical control of a vehicle in this state . . . [w]hile there is any drug defined in section 13-3401 or its metabolite in the person’s body.” The only drug defined in § 13-3401 with regard to marijuana is THC, which is psychoactive and causes impairment. It is undisputed that any level of THC detected in the body is a violation of § 28-1381(A)(3). THC’s metabolite is Hydroxy-THC, which is also psychoactive and also causes

impairment. It is undisputed that any level of Hydroxy-THC is a violation of § 28-1381(A)(3). Hydroxy-THC's metabolite is Carboxy-THC, which is not psychoactive, does not cause impairment and remains in a person's system for up to one month after ingesting marijuana. Did the Court of Appeals err in reversing the trial court's dismissal of a prosecution for DUI under § 28-1381(A)(3) as a matter of law when a blood test ruled out THC and Hydroxy-THC, and the only substance present in the body was the non-psychoactive, non-impairing secondary metabolite, Carboxy-THC?

RELEVANT STATUTES:

A.R.S. § 28-1381(A)(3) makes it “unlawful for a person to drive or be in actual physical control of a vehicle in this state . . . [w]hile there is any drug defined in section 13-3401 or its metabolite in the person's body.”

A.R.S. § 13-3401(4)(b) defines “cannabis” as also including “[e]very compound, manufacture, salt, derivative, mixture or preparation of such resin [derived from any part of a cannabis plant] or tetrahydrocannabinol.”

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