



**ARIZONA SUPREME COURT  
ORAL ARGUMENT CASE SUMMARY**



**KRISTINA R. DOBSON and MARVELLE D. ANDERSON  
v. HON. CRANE McCLENNEN/MESA PROSECUTOR  
CV-14-0313-PR**

**PARTIES:**

*Petitioners:* Kristina R. Dobson and Marvelle D. Anderson  
*Respondent:* Real Party in Interest City of Mesa's Prosecutor's Office  
*Amicus Curiae:* Arizona Attorneys for Criminal Justice

**FACTS:**

Kristina R. Dobson and Marvelle D. Anderson each were charged with two counts of DUI. They were charged with violating A.R.S. § 28-1381(A)(1) (driving under the influence) and (A)(3) (driving, or in actual physical control of a vehicle, while there is any illegal drug or its metabolite in the person's body). Both Dobson and Anderson held medical marijuana cards.

After considering briefs and oral argument, the Mesa Municipal Court denied Dobson's motion to present evidence of her Oregon medical marijuana card at trial. It also granted the State's motion to preclude evidence of Anderson's Arizona medical marijuana card at trial.

Dobson and Anderson submitted their respective cases for decision on the record. The court convicted each defendant of the (A)(3) charge, and it granted the State's motions to dismiss the (A)(1) charges.

The superior court affirmed Dobson's conviction on appeal. In a minute entry dated June 10, 2014, the court ruled that the trial court correctly precluded Dobson from presenting evidence of her Oregon medical marijuana card. It reasoned:

1. A.R.S. § 28-1381(A)(3) does not apply to or support a DUI/drugs prosecution where only the non-impairing metabolite of marijuana, carboxy-THC, appears in a driver's body. *State ex rel. Montgomery v. Harris*, 234 Ariz. 343, 322 P.3d 160 (2014).
2. The statutory affirmative defense to DUI/drugs contained in A.R.S. § 28-1381(D) provides no protection to medical marijuana cardholders charged with an (A)(3) violation based on a concentration of marijuana or its active metabolite in the body. Marijuana remains a Schedule 1 illegal drug under the federal Controlled Substances Act; so, as such it cannot be "prescribed" under federal law, and the AMMA provides no state authorization for a medical marijuana "prescription."

The superior court also affirmed Anderson’s conviction on appeal. In a minute entry dated August 12, 2014, it affirmed the Mesa Municipal Court ruling precluding Anderson from presenting evidence of his Arizona medical marijuana card. The court based that ruling on its rejection of arguments presented in recent cases that it had decided earlier, including *Dobson*.

The court of appeals consolidated Dobson’s and Anderson’s cases and accepted special action jurisdiction. In the opinion deciding the cases, it first said that the petitioners presented purely legal questions of statewide importance, likely to arise again, and for which they had no further right to appeal. Then, the court stated it would review the municipal court’s determinations about admitting evidence (including the exclusion of evidence) for an abuse of discretion, and it would review issues of statutory construction *de novo*.

The court of appeals then discussed the Arizona Medical Marijuana Act (“AMMA”), a voter-approved initiative. It observed that the petitioners asserted that they were registered, qualifying patients with valid registry identification cards (Oregon’s having the same force and effect as Arizona’s under the AMMA), and that they used medical marijuana pursuant to a written certification from a physician. Both argued their written certification was an affirmative defense to the (A)(3) charge under A.R.S. § 28-1381(D), and therefore they are immune from prosecution.

The appellate court set out and applied general principles of statutory construction. *Harris*, 234 Ariz. at 344, 345 ¶¶ 8-9, 322 P.3d at 161, 162 (when statutory language is clear and unequivocal, it is determinative of a statute’s construction; secondary construction principles are used only when a statute’s meaning cannot be discerned from its language alone).

With those principles in mind, it agreed with the superior court that qualified patients using medical marijuana pursuant to a written certification could not raise the DUI defense that A.R.S. § 28-1381(D) affords to users of actual prescription medicines. Notably, it recognized that the AMMA does not make the phrase “as prescribed” applicable to medical marijuana. Instead of a prescription, patients receive a certification to use the medicine. The voters could have added it, if they wanted – the phrase already had been added to the DUI statute before the AMMA was adopted. Since § 28-1381(D) does not provide an affirmative defense to an (A)(3) charge based on marijuana use, the court of appeals held that Dobson and Anderson did not show the municipal court erred in holding their registry cards were inadmissible at trial.

In addition, the court of appeals held that the provisions of the AMMA do not provide immunity for an (A)(3) DUI/drugs charge. It concluded that the latter part of A.R.S. § 36-2802(D), providing that a presumption will not arise that an AMMA patient is under the influence solely because marijuana or its metabolites is present in the body, does not apply to an (A)(3) charge. The court observed that (A)(3) does not require the defendant to be under the influence, or the State to prove impairment, in order to sustain a conviction. The appellate court also held that A.R.S. § 36-2811(B)(1) does not immunize petitioners from prosecution under (A)(3). It reasoned:

Petitioners' (A)(3) convictions do not run afoul of A.R.S. § 36–2811(B)(1). As applicable here, to be convicted of violating (A)(3), the State was required to show that Petitioners: (1) were driving or in actual physical control of a vehicle and (2) had marijuana or an impairing metabolite in their body. A.R.S. § 28–1381(A)(3); *see also Harris*, 234 Ariz. at 347 ¶ 24, 322 P.3d at 164. Petitioners were not prosecuted or penalized for using or

possessing marijuana; they were prosecuted and penalized *for driving* after having used marijuana. Petitioners' use of marijuana while having valid registry identification cards did not mean they could then drive or control a vehicle without violating (A)(3). Accordingly, because their convictions were not prohibited by A.R.S. § 36–2811(B)(1). Petitioners have not shown the municipal court erred in finding their registry identification cards were inadmissible under these provisions of the AMMA. *See Amaya–Ruiz*, 166 Ariz. at 167, 800 P.2d at 1275.

For these reasons, concluded the court, it would accept jurisdiction but deny relief.

#### **ISSUES:**

“1. Did the COA err in holding that the AMMA does not prohibit the State from prosecuting a cardholder for a violation of A.R.S. § 28-1381(A)(3) for driving and having any amount of medical marijuana in his [or her] body?

“2. Did the COA err is [sic: in] holding that a cardholder cannot assert the affirmative defense contained in A.R.S. § 28-1381(D)?”

#### **DEFINITIONS:**

A.R.S. § 28-1381(D) provides: “A person using a drug as prescribed by a medical practitioner licensed pursuant to title 32, chapter 7, 11, 13 or 17 is not guilty of violating subsection A, paragraph 3 of this section.”

A.R.S. § 36-2811 (B)(1) provides: “A registered qualifying patient or registered designated caregiver is not subject to arrest, prosecution or penalty in any manner, or denial of any right or privilege, including any civil penalty or disciplinary action by a court or occupational or professional licensing board or bureau: . . . For the registered qualifying patient's medical use of marijuana pursuant to this chapter, if the registered qualifying patient does not possess more than the allowable amount of marijuana.”

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