

"Arizona Supreme Court Rules that the Presence of "Non-Impairing Metabolites" Does Not Justify Drunk Driving Conviction"

CASE NAME: State of Arizona v. Harris Shilgevorkyan [No. CV-13-0056-PR, April 22, 2014]

FACTS:

Police stopped a vehicle driven by Hrach Shilgevorkyan for speeding and making unsafe lane changes. Suspecting that he was impaired, officers administered field sobriety tests. After participating in the tests, Shilgevorkyan admitted that he had smoked some “weed” the night before and voluntarily submitted to a blood test that revealed Carboxy-THC in his blood. The State charged Shilgevorkyan with two counts of driving under the influence. Count one alleged a violation of A.R.S. § 28-1381(A)(1) (“the (A)(1) charge”), which prohibits a person from driving a vehicle in Arizona “[w]hile under the influence of . . . any drug . . . if the person is impaired to the slightest degree.” Count two alleged a violation of A.R.S. § 28-1381(A)(3) (“the (A)(3) charge”), which prohibits driving a vehicle “[w]hile there is any drug defined in § 13-3401 or its metabolite in the person’s body.”

PROCEDURAL HISTORY:

Shilgevorkyan moved to dismiss the (A)(3) charge, arguing that the blood test revealed neither the presence of THC nor “its metabolite” Hydroxy-Tetrahydrocannabinol (“Hydroxy-THC”). At an evidentiary hearing, the State presented expert witness testimony that: (1) marijuana has “many, many metabolites,” (2) Hydroxy-THC and Carboxy-THC are the two major marijuana metabolites, (3) although it is possible to test for Hydroxy-THC in the blood, the Arizona Department of Public Safety chooses not to do so because Hydroxy-THC does not “exist in the blood for very long” and is quickly converted to Carboxy-THC, (4) Carboxy-THC is inactive and does not cause impairment, and (5) Carboxy-THC can remain in a person’s body for as many as twenty-eight to thirty days after the ingestion of marijuana. At the conclusion of the hearing, the justice court dismissed the (A)(3) charge, and the State voluntarily dismissed the (A)(1) charge. The State appealed to the superior court, which affirmed. That court reasoned that the word “metabolite” in § 28-1381(A)(3) is ambiguous because it is unclear whether it should be read as singular or plural. Although the court acknowledged that Carboxy-THC is a marijuana metabolite, it was unconvinced that the legislature intended to include all possible byproducts — particularly those that are inactive and cannot impair the driver. The State then filed a petition for special action with the court of appeals, which accepted jurisdiction and granted relief. The court held that “§ 28-1381(A)(3)’s language prohibiting driving with a proscribed drug or ‘its metabolite’ includes the metabolite Carboxy-THC. The court of appeals noted that although neither case considered the meaning of “metabolite,” they demonstrated that A.R.S. § 28-1381(A)(3) “must be interpreted broadly to appropriately effectuate the legislative purpose and intent underpinning the statutory language.”

ISSUE:

Does Arizona Code Section § 28-1381(A)(3) apply to non-impairing metabolites?

HOLDING:

No. In enacting the (A)(3) charge, the legislature sought to proscribe driving by those who could be impaired from the presence of illegal drugs in their body. However, unlike alcohol, there is no generally applicable concentration that can be identified as an indicator of impairment for illegal drugs. The (A)(3) charge establishes that a driver who tests positive for any amount of an impairing drug is legally and irrefutably presumed to be under the influence. Although the legislature could rationally choose to penalize the presence of any amount of an impairing metabolite, we do not believe that the legislature contemplated penalizing the presence of a metabolite that is not impairing. We find that the legislature intended to prohibit driving with any amount of an impairing substance resulting from a drug proscribed in § 13-3401 in the body. The State, however, essentially contends that the legislature intended a law that punishes driving under the influence to also punish drivers who it cannot prove were under the influence or had any impairing substance in their system at the time of driving. We are not persuaded and reject the State's argument that § 28-1381(A)(3) "creates a flat ban on the presence of any drug or its metabolite in a person's body while driving or in actual physical control of a vehicle," even when the only metabolite found is not impairing. But we likewise reject Shilgevorkyan's argument that "its metabolite" means only the primary metabolite, because there are drugs proscribed under § 13-3401 that have multiple primary or secondary impairing metabolites. Because the legislature intended to prevent impaired driving, we hold that the "metabolite" reference in § 28-1381(A)(3) is limited to any of a proscribed substance's metabolites that are capable of causing impairment. Accordingly, marijuana users violate § 28-1381(A)(1) if they drive while "impaired to the slightest degree," and, regardless of impairment, violate (A)(3) if they are discovered with any amount of THC or an impairing metabolite in their body. Drivers cannot be convicted of the (A)(3) offense based merely on the presence of a non-impairing metabolite that may reflect the prior usage of marijuana.