

SUPREME COURT OF ARIZONA

STATE OF ARIZONA

Appellee,

v.

RODNEY CHRISTOPHER JONES,

Appellant.

Arizona Supreme Court
No. CR-18-0370-PR

Court of Appeals
Division One
No. 1 CA-CR 16-0703

Yavapai County
Superior Court
No. P1300CR201400328

**AMICUS CURIAE BRIEF OF
THE ARIZONA PROSECUTING ATTORNEYS' ADVISORY COUNCIL
IN SUPPORT OF APPELLEE STATE OF ARIZONA**

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Introduction

An old legal adage holds that “bad facts make bad law.” The risk in this case is that bad science will make bad law. The arguments proposed by Defendant Rodney Jones and various *amici curiae* surrounding the science of marijuana would lead this Court to believe that marijuana plant material and separated marijuana resin—containing higher concentrations of marijuana’s most addictive compound, Tetrahydrocannabinol (“THC”)—are the same. Not so. The potential for addiction and abuse is greater with separated marijuana resin than marijuana plant material because of its higher concentration of THC. Marijuana foodstuffs need not be made with separated marijuana resin to be effective, and marijuana’s medicinal compound, Cannabidiol (“CBD”), can be found in prescribed medicine, hemp oil with CBD, and marijuana plant material without higher concentrations of THC. Arizona law recognizes the increased risk posed by separated marijuana resin, and this Court should not disturb that legislative prerogative.

Interests of Amicus Curiae

The Arizona Prosecuting Attorneys’ Advisory Council (“APAAC”) represents approximately 900 state, county, and municipal prosecutors. APAAC’s primary mission is to provide training to Arizona’s prosecutors. Additionally, the agency works collaboratively with community and criminal justice stakeholders on a variety of policy and public issues. On occasion, APAAC submits *amicus curiae*

briefs in state or federal appellate courts on issues of significant concern. This is one of those occasions. Pursuant to Arizona Rule of Civil Appellate Procedure 16(a), APAAC respectfully submits this *amicus curiae* brief on behalf of its members, in support of Appellee the State of Arizona.

Argument

I. Marijuana is an addictive, abused substance, and the potential for addiction and abuse is greater with separated marijuana resin than marijuana plant material.

A. Separated marijuana resin contains greater concentration of THC—marijuana’s most addictive property—than marijuana plant material.

When the female marijuana plant matures, it produces flowering tops with resin glands. The resin contains over 60 chemical compounds known as cannabinoids. (Appendix at 15 (“Griffith Dec.”) ¶ 7(a)). The most common cannabinoids are THC and CBD. Both cannabinoids cause physiological effects. (*Id.* ¶ 7(b)). Marijuana’s addictive and abusive properties stem from THC, which produces the psychoactive component of the marijuana plant. (*Id.* ¶ 7(c)). CBD is a non-psychoactive component of the marijuana resin. (*Id.* ¶ 7(d)).

THC has the major effects of euphoria, muscle relaxation, time and spatial distortions, damage to the developing adolescent brain, memory problems, and addiction. (Griffith Dec. ¶ 7(c)). It also produces muscle relaxation, pain relief, lowering of intraocular eye pressure, and contains anti-emetic properties. (*Id.*).

CBD does not cause euphoria, time and spatial distortion, damage to the developing adolescent brain, memory problems or addiction while producing muscle relaxation, pain relief, and lowering of intraocular eye pressure, and containing strong anti-seizure and anti-emetic properties. (*Id.* ¶ 7(d)). Marijuana's medicinal properties primarily come from CBD; its psychoactive properties come exclusively from THC. (*Id.* ¶ 7 (e)).

When heated and concentrated, separated marijuana resin reaches very high THC levels. (Griffith Dec. ¶ 7(q); *see also id.* ¶ 7(g) (describing process of converting THC Acid to THC in harvested marijuana)). The availability and use of high potency psychoactive drugs—such as separated marijuana resin high in THC—possess the capacity for rapid delivery to the brain, greatly increasing the incidence of addiction and abuse. (*See id.* ¶ 7(i)). This is not an idle concern. The THC content of separated marijuana resin and its potential for addiction and abuse has grown rapidly. Separated marijuana resin containing 10 to 15 percent THC in the 1970s and 1980s now contains 80 to 90 percent THC, and a recent marijuana resin oil form has been found to contain 96 percent THC. (*Id.* ¶ 7(l)).

B. The *amicus curiae* brief of the Arizona Dispensaries Association exaggerates the usefulness of separated marijuana resin for making marijuana foodstuffs while downplaying its significant risks.

Marijuana foodstuffs used for medicinal purposes present users with a significant risk: the user has no way of knowing what dosage of THC, CBD, or

other cannabinoids is ingested. This risk is particularly acute with marijuana edibles, which often contain high THC concentrations, because it takes anywhere from one half hour to two hours for the THC to be digested, enter the blood stream, and affect the brain. (Griffith Dec. ¶ 7(n)).

The *amicus curiae* brief of the Arizona Dispensaries Association wrongly implies that only separated marijuana resin with enhanced THC through heating can be used for edibles. (See, e.g., Amicus Curiae Brief of Arizona Dispensaries Association in Support of Appellant at 22 (“[T]he majority’s reasoning actually prohibits making edible and effective brownies.”)). This is false. Marijuana flowering tops—the marijuana plant—contain resin and have been used to make marijuana brownies for years. The brief appears to promote the highest potency THC administered as easily as possible, which will lead to more marijuana abuse and addiction problems. (See Griffith Dec. ¶ 7(k)).

The brief also claims that without the separated marijuana resin, medical marijuana would be restricted to only smoking. (See, e.g., Amicus Curiae Brief of Arizona Dispensaries Association in Support of Appellant at 19 (“The Opinion therefore necessarily restrict medical marijuana patients to only one method of administration—smoking—regardless of whether other methods of administration are more appropriate or even medically necessary.”)). But ground marijuana plant material can be put in marijuana foodstuffs. (Griffith Dec. ¶ 7(p)).

In contrast to THC-heavy resin-based edibles, alternative marijuana (cannabinoid) drugs offer the hope of healing with a reduced risk of addiction. There are available by prescription four marijuana (cannabinoid) drugs: Marinol (dronabinol), a form of THC prescribed for loss of appetite and as an anti-emetic for cancer patients; Cesamet (nabilone), a synthetic THC derivative prescribed as an anti-emetic for cancer patients; Sativex (nabiximols), a form of CBD and THC prescribed for pain and multiple sclerosis; and Epidiolex (CBD), prescribed as an anti-seizure medication particularly for childhood epilepsy. These medicines have specific and effective drug levels, usage regimens, and delivery methods. (Griffith Dec. ¶ 7(m)).

In addition to prescribed drugs, CBD is available under Arizona law because pure CBD, or resin with CBD and no THC, does not meet the statutory definition of cannabis. *See* A.R.S. § 13-3401(4). Recently, the federal Agriculture Improvement Act of 2018, Pub. L. No. 115-334, Dec. 20, 2018, 132 Stat 4490, § 10113 (the “2018 Farm Bill”), defined hemp as “the plant *Cannabis sativa* L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.” The 2018 Farm Bill allows hemp with essentially no THC (0.3 percent or less THC on a dry weight basis) to be cultivated, and it places no

restrictions on the sale, transport or use of hemp-derived products—including pure CBD and hemp oil—by adding industrial hemp to the list of agricultural commodities and removing it from federal controlled substances schedules. *See* 2018 Farm Bill § 10114; (Griffith Dec. ¶ 7(h)). Therefore, a marijuana plant strain that has high CBD and low THC is available. (*See* Griffith Dec. ¶ 7(o)).

Under existing Arizona law, medical marijuana dispensaries would be able to provide CBD, hemp oil with CBD, two and one half ounces of marijuana plant material with resin containing THC, CBD plus other cannabinoids and marijuana foodstuffs. *See* A.R.S. §§ 36-2801(1)(a)(i), (8), (15), 36-2811(B)(1). Brownies, teas, cookies, and chocolate have been made for years using the ground up marijuana plant material. Further, CBD and hemp oil with CBD can be used to make marijuana foodstuffs. Simply put, marijuana resin heated to concentrate THC content is not required to make marijuana foodstuffs. (Griffith Dec. ¶ 7(p)).

C. Arizona law recognizes the increased risk of addiction and abuse with separated marijuana resin than marijuana plant material.

The availability and use of high potency psychoactive drugs with rapid delivery to the brain greatly increases the incidence of addiction and abuse. (Griffith Dec. ¶ 7(i)). Marijuana is one such addictive, abused substance. (*Id.* ¶ 7(k)).

In order to combat addiction and abuse, Arizona statutes have included stiffer penalties for possession and use of high potency drug forms. For example,

marijuana plant material containing resin (statutorily defined as “marijuana”) has an overall percentage of THC that is lower from separated marijuana resin (statutorily defined as “cannabis”). (See Griffith Dec. ¶ 7(k)); A.R.S. §§ 13-3401(4) (defining “[c]annabis”), (19) (defining “[m]arijuana”); *State v. Bollander*, 110 Ariz. 84, 87 (1973) (“[T]he legislature has recognized hashish and marijuana as two distinct forms of cannabis.”). Possession or use of statutorily defined marijuana has lower penalties than possession or use of statutorily defined cannabis. Compare A.R.S. §§ 13-3405(B)(1) (classifying possession or use of marijuana as class 6 felony), 13-3405(D) (setting fines), 13-3405(G) (setting community service hour requirement) with A.R.S. §§ 13-3401(20) (defining “[n]arcotic drugs” to include “[c]annabis”), 13-3408(B)(1) (classifying possession or use of “narcotic drug” as class 4 felony), 13-3408(F) (setting higher fines than -3405(D)), 13-3408(H) (setting higher community service hours than -3405(G)); see also A.R.S. § 13-702(D) (differentiating terms of imprisonment based, in part, on felony classification).¹

Arizona courts have approved these legislative differences based on potency. See, e.g., *State v. Floyd*, 120 Ariz. 358, 360 (App. 1978) (upholding legislative distinction between hashish and marijuana based on “[t]he greater concentration in

¹ Arizona’s statutory scheme further differentiates marijuana and cannabis from “[d]angerous drugs.” See A.R.S. §§ 13-3401(6), 13-3407(B)(1) (classifying possession or use of “dangerous drug” as class 4 felony), 13-3407(H) (setting fines), 13-3407(J) (setting community service hour requirement).

hashish of the psychoactive agent Delta 9 tetahydrocannabinol” and its “susceptib[ility] to serious and extensive abuse” compared to marijuana). As discussed above, the THC content of marijuana and its potential for addiction and abuse has grown rapidly in the last few years. (See Griffith Dec. ¶ 7(1)). THC resin extracts heated and concentrated to obtain very high THC levels are primarily used by those who seek the psychoactive euphoria of marijuana, prompting the legislature’s differential classification and penalization. This Court should not disrupt that legislative scheme on the basis of bad science.

Conclusion

APAAC respectfully requests that this Court reject the arguments made by Petitioner Jones and various *amici curiae* that marijuana plant material and separated marijuana resin—hashish—are indistinguishable from one another. Such an approach mangles the science of marijuana and would have a deleterious effect on public policy in Arizona.

RESPECTFULLY SUBMITTED this 14th day of February, 2019.

By 

ELIZABETH BURTON ORTIZ
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Arizona Prosecuting Attorneys’ Advisory
Council

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SUPREME COURT OF ARIZONA

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Arizona Supreme Court
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DECLARATION OF TODD A. GRIFFITH

I swear under penalty of perjury that the following is true to the best of my knowledge, information and belief:

1. My name is Todd A. Griffith. I am over eighteen years old and competent to testify.
2. I received a Bachelor of Science Degree in Chemistry from Arizona State University in January, 1968. I graduated with 53 semester hours of Chemistry, which is 23 hours more than a simple Bachelor's Degree in Chemistry and 7 hours less than a Master's Degree. I have a Master's in Business Administration Degree from Arizona State University.
3. I began my career in Forensic Science on July 1, 1968 with the State of

Arizona Crime Laboratory which became the Arizona Department of Public Safety (DPS) Crime Laboratory, July 1, 1969. I analyzed substances for the presence of drugs and wrote reports identifying the specific drugs, listing their legal name and classification under Arizona Statutes such as Marijuana, Narcotic, or Dangerous Drug. I was accepted and testified over 1,000 times as an Expert Scientific Witness in Arizona State Courts and Federal Courts regarding drugs, their chemistry and effects.

4. During my career, I received training and education on drug Chemistry and drug Pharmacology from numerous scientific sources including: The University of Arizona School of Pharmacology, The Drug Enforcement Administration Special Testing Laboratory, The American Society of Forensic Scientists, The Southwestern Association of Forensic Scientists, The California Association of Criminalists, the American Society of Crime Laboratory Directors, etc.
5. From July 1, 1968 until January 1, 1991, I was employed by the DPS Crime Laboratory as a Forensic Scientist analyzing evidence submitted in criminal cases, as a laboratory unit supervisor overseeing the analysis of evidence, and a Regional Laboratory Manager. In January 1, 1991 I became the Director of the DPS Crime Lab System and I was employed in that position until December 31, 2011 when I retired from public service. Since my

retirement, I have served as a consultant on Arizona Drug Statutes, drafting complex scientific and legal descriptions to bring under control over 1,000 synthetic drugs and have consulted on the effects and dangers of marijuana.

6. As part of my responsibilities as Director of the DPS Crime Lab, I managed four Regional Crime Laboratories. These responsibilities included all scientific aspects of the analysis of evidence and I provide the final approval for all scientific analysis protocols including drug and marijuana analysis. I kept abreast of all laws related to forensic analysis and drafted many changes and additions to the Arizona Drug Statutes which were enacted into law. I, also, testified before the Arizona legislature regarding these drugs their effects, dangers and abuse potential.
7. I have been asked by Arizona Prosecuting Attorneys' Advisory Council ("APAAC") to present the following information regarding marijuana. This scientific information is being presented based upon my knowledge, education, training and experience in the field of forensic science.
 - a. Marijuana is scientifically listed as the plant *Cannabis sativa* L. The female marijuana plant matures, producing flowering tops with resin glands, which exude a resin containing over 60 chemical compounds known as cannabinoids. *See Handbook of Cannabis and Related Pathologies*, Edited by V.R. Preedy, Published 2017 Academic Press;

Marijuana and the Cannabinoids, edited by Mahmoud A. ElSohly, published 2007 Humana Press.

- b. Tetrahydrocannabinol (THC) and Cannabidiol (CBD) are two of the major compounds produced in the marijuana resin. They both have been identified as attaching to receptors in the human brain and causing physiological effects. *See Cannabis, a complex plant: different compounds and different effects on individuals, Therapeutic Advances in Psychopharmacology, December, 2012.*
- c. THC is the psychoactive component of the marijuana plant which has the major effects of: euphoria, muscle relaxation, time and spatial distortions, pain relief, lowering of intraocular eye pressure, anti-emetic properties, damage to the developing adolescent brain, memory problems and addiction. *See Cannabis, a complex plant: different compounds and different effects on individuals, Therapeutic Advances in Psychopharmacology, December, 2012; Adverse health effects of marijuana use, New England Journal of Medicine, June 5, 2014.*
- d. CBD is a non-psychoactive component of the marijuana resin that has major effects of muscle relaxation, pain relief, lowering of intraocular eye pressure, strong anti-seizure properties, and anti-emetic properties. CBD does not cause euphoria, time and spatial distortion, damage to the

developing adolescent brain, memory problems or addiction. *See Cannabis, a complex plant: different compounds and different effects on individuals, Therapeutic Advances in Psychopharmacology, December, 2012.*

- e. The medicinal properties of marijuana come primarily from CBD while the psychoactive properties of marijuana including euphoria and addiction come exclusively from THC. *See Cannabis, a complex plant: different compounds and different effects on individuals, Therapeutic Advances in Psychopharmacology, December, 2012.*
- f. The marijuana plant has different varieties that can be cultivated to produce resin high in THC and very low in CBD or high in CBD and very low in THC. *See Marijuana and the Cannabinoids, edited by Mahmoud A. ElSohly, published 2007 Humana Press; Cannabidiol Report, Expert Committee on Drug Dependence, World Health Organization, November, 2017.*
- g. The female marijuana varieties that produce resin with high THC/low CBD initially produce THC Acid that naturally converts to the THC. This is the normal process that occurs when the mature plant material is harvested and no longer part of the growing plant. The normal drying and storing of the harvested plant material results in resin with high

THC content plus THC Acid. Heating the plant material or separated resin will increase the THC content and psychoactive potency. *See Marijuana and the Cannabinoids*, edited by Mahmoud A. ElSohly, published 2007 Humana Press; *Cannabidiol Report*, Expert Committee on Drug Dependence, World Health Organization, November, 2017.

- h. The term hemp was originally used to identify the fiber from the marijuana plant that was used to make a very strong rope known as hemp rope. In the last few years hemp has become defined legally as: the plant *Cannabis sativa L.* with a THC concentration of not more than 0.3 percent on a dry weight basis. The Federal 2018 Farm Bill allows hemp (with 0.3 percent or less THC) to be cultivated and places no restrictions on the sale, transport or use of hemp-derived products. Agriculture Improvement Act of 2018, Pub. L. No. 115-334, Dec. 20, 2018, 132 Stat 4490, § 10113. Therefore, the marijuana plant strain that has high CBD /low THC (0.3 percent or less) appears to now be available with no restrictions. *See The farm bill, hemp legalization and the status of CBD: an explainer*, The Brookings Institution, December, 2018.
- i. The availability and use of high potency psychoactive drugs with rapid delivery to the brain, greatly increases the incidence of addiction and

abuse. This is shown by a few examples. “Crack” or “free base” cocaine, containing, nearly 100 percent, pure cocaine, and “Crystal meth”, containing nearly 100 percent pure methamphetamine, are both highly addictive. *See* Goodman & Gilman’s, *The Pharmacological Basis of Therapeutics*, 12th Edition, published 2011 McGraw-Hill.

- j. In order to combat addiction and abuse, Arizona statutes have included stiffer penalties for high potency drug forms such as “Crack” cocaine. A.R.S. §§ 13-3401(36); 13-3408.
- k. Marijuana is an addictive, abused substance and the addiction/abuse, is caused by the psychoactive component, THC and especially the substances containing high percentages of THC. *See* Examining the profile of high-potency cannabis and its association with severity of cannabis dependence, *Psychological Medicine*, November, 2015. Arizona laws have differentiated the marijuana plant material containing resin (defined in statute as “marijuana”, A.R.S. § 13-3401(19), which has an overall lower percentage of THC; from the marijuana resin removed from the plant (defined in statute as “cannabis”, A.R.S. §§ 13-3401(4); 13-3401(20) (w), which has an overall higher percentage of THC. Statutorily defined marijuana has lower penalties (A.R.S. § 13-3405) and statutorily defined cannabis has higher penalties (A.R.S. § 13-

3408).

- l. The THC content of marijuana and its potential for addiction and abuse has grown rapidly in the last several years. Marijuana plant material which contained 3 to 5 percent THC in the 1970's and 1980's is now found to contain 25 to 40 percent THC. Marijuana resin removed from the plant material (hashish, marijuana oil, etc.) containing in the range of 10 to 15 percent THC in 1970's and 1980's now contains 70 to 90 percent THC and a recent oil form has been reported to be 96 percent THC. *See* A rise in marijuana's THC levels, National Institute on Drug Abuse; Marijuana: effects, medical uses and legalization, Drugs.com., November, 2018; New study shows how marijuana's potency has changed over time, CBS News, March, 2015; Risks of increasingly potent cannabis: the joint effects of potency and frequency, Current Psychiatry, February, 2017; Marijuana far more potent than it used to be, tests find, CBS News, May, 2017; Strongest marijuana strains, Cannabis Ground, June, 2018; The 12 most potent THC concentrates, Canniseur.com, July, 2018.
- m. There are available by prescription, four marijuana (cannabinoid) drugs. Marinol (dronabinol) a form of THC prescribed for loss of appetite and as an anti-emetic for cancer patients. Cesamet (nabilone) a synthetic

THC derivative prescribed as an anti-emetic for cancer patients. Sativex (CBD and THC) prescribed for pain and multiple sclerosis. Epidiolex (CBD) prescribed as an anti-seizure medication particularly for childhood epilepsy. These medicines have specific drug levels, usage regimens and delivery methods which have been shown to be effective. *See* Marijuana: effects, medical uses and legalization, Drugs.com, November, 2018; individual drug manufactures web sites.

- n. Marijuana plant material, marijuana foodstuffs, etc., used for medicinal purposes can be administered in various ways but the user usually has no way of knowing what dosage of THC, CBD or other cannabinoids, he or she is ingesting. This is particularly problematic with marijuana edibles, especially those with high THC concentrations, because it takes anywhere from one half hour to two hours for the THC to be digested, enter the blood stream and ultimately affect the brain. Numerous incidents have been reported of individuals eating marijuana edibles ingesting too much THC before they realized what was happening and having very adverse reactions including psychotic breaks with resulting injury and death. *See* Edible cannabis-induced psychosis: intoxication and beyond, The American Journal of Psychiatry, September, 2015; Gone to pot-a review of the association between cannabis and psychosis,

Frontiers in Psychiatry, May, 2014; Third death in Colorado linked to marijuana edibles, Food Safety News, March 2015; Two Denver deaths tied to recreational marijuana use; CBS News, April, 2014; Marijuana cookie death highlights need for warning labels, CDC says, CBS News, March, 2018.

- o. In addition to prescribed drugs, CBD, which has medicinal properties but no psychoactive effects, appears to be available under Arizona Statutes because pure CBD or oils with CBD and no THC, do not meet the statutory definition of marijuana or cannabis. Also, the 2018 Federal Hemp legislation places no restrictions on pure CBD or as Hemp oil containing CBD with essentially no THC (0.3 percent or less). A.R.S. §§ 13-3401(19); 13-3401(4); Agriculture Improvement Act of 2018, Pub. L. No. 115-334, Dec. 20, 2018, 132 Stat 4490, § 10113.
- p. As a result under existing laws, medical marijuana dispensaries should be able to provide CBD, Hemp Oil with CBD, two and one half ounces of marijuana plant material with resin containing THC, CBD plus other cannabinoids and marijuana foodstuffs. Marijuana edibles such as brownies, teas, cookies and chocolate have been made for years, using the ground up marijuana plant material. This has been seen at the Arizona Dept. of Public Safety Crime Laboratory for many years. Also,

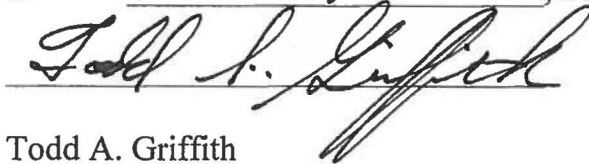
CBD or Hemp Oil with CBD can be used to make various foodstuffs. Marijuana resin with THC, or marijuana resin, heated to concentrate THC content (both statutorily listed as cannabis) are not required to make marijuana foodstuffs. A.R.S. §§ 13-3401(4); 13-3401(20) (w).

- q. THC resin extracts heated and concentrated to obtain very high THC levels are primarily valuable to those who wish to obtain the psychoactive euphoria of marijuana which is why they have been classified as cannabis, different from marijuana, under Arizona statutes with different penalties. A.R.S. §§ 13-3401(19); 13-3401(4); 13-3401(20) (w); 13-3405; 13-3408.

8. I provide this declaration in my personal capacity and I am not acting on behalf of the Arizona Department of Public Safety Crime Laboratory.

FURTHER DECLARANT SAYETH NAUGHT.

DATE: FEB. 12, 2019



Todd A. Griffith