

1 **IN THE COURT OF APPEALS**
2 **STATE OF ARIZONA**
3 **DIVISION ONE**

4 **STATE OF ARIZONA,**) **Case Number: 1 CA-CR 17-0417**
5)
6 **Appellant,**) **La Paz County Superior Court**
7) **No. S1500CR2016-00241**
8 **vs.**)
9)
10 **STANLEY K. KEMMISH, JR,**)
11)
12 **Appellee.**)
13)

14 **APPELLANT’S REPLY BRIEF**

15 **TONY ROGERS**
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2 **I: ALLOWING NONRESIDENTS TO POSSESS MEDICAL MARIJUANA IN**
3 **ARIZONA WITH ONLY A PHYSICIAN’S RECOMMENDATION PUTS**
4 **A.R.S. § 36-2804.03(C) INTO CONFLICT WITH THE REST OF THE**
5 **AMMA**

6 The AMMA was passed by voter initiative in 2010. See [Dobson v. McClennen,](#)
7 [238 Ariz. 389, 390 ¶ 1 \(2015\).](#) The text of the AMMA was included with Proposition
8 203 and was available to the voters prior to voting on the proposition. See Appendix to
9 Appellant’s Opening Brief at 5-15.

10 “Marijuana possession and use are illegal in Arizona, but the AMMA ‘permits
11 those who meet statutory conditions to use medical marijuana.’” [State v. Liwski, 238](#)
12 [Ariz. 184, 186 ¶ 6 \(Ct. App. 2015\),](#) quoting [Reed-Kaliher v. Hoggatt, 237 Ariz. 119, ¶ 7](#)
13 [\(2015\).](#) “The protections provided by the AMMA are not available, however, if the
14 cardholder fails to comply with any of the [statutory] conditions, thus subjecting the
15 cardholder to prosecution for all marijuana use or possession.” [Id. at 187 ¶ 8.](#)

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17
18 To possess marijuana under the AMMA, a patient is required to register with the
19 Arizona Department of Health Services (“DHS”) and receive a registry identification
20 card from DHS. See [Ariz. Rev. Stat. §§ 36-2804.02](#) (providing for how a patient
21 receives a registry identification card), [36-2811](#) (providing that registered qualifying
22 patients are entitled to presumption of medical use of marijuana and are not subject to
23 arrest or prosecution if they are in possession of a registry identification card), [36-](#)
24 [2801\(14\)](#) (defining a registry identification card as “a document issued by [DHS] that
25
26

1 identifies a person as a registered qualifying patient....”). One cannot possess medical
2 marijuana with only a physician’s recommendation under the AMMA.
3

4 Based on these statutory provisions, the clear policy of the AMMA is to require
5 people to register with the state before they can possess medical marijuana. This is also
6 evidenced by the arguments presented in favor of the AMMA included in the Secretary
7 of State’s publicity pamphlet. Andrew Myers, the campaign manager for the Arizona
8 Medical Marijuana Policy Project, stated that patients “will...have to register with the
9 state and will be entered into a database accessible by all medical marijuana
10 dispensaries to ensure that patients cannot purchase more marijuana than they need.”
11 Appendix to Appellant’s Opening Brief at 16. Interpreting A.R.S. § 36-2804.03(C) to
12 only apply when a visiting qualifying patient possesses a state issued medical marijuana
13 card ensures that this policy is consistently applied.
14
15
16

17 Defendant argues that the State’s proposed interpretation renders A.R.S. § 36-
18 2804.03(C) invalid, because nonresidents cannot have a registry identification card
19 issued by the Arizona Department of Health Services. This misconstrues the State’s
20 argument.
21

22 The State’s argument is that, based upon the definition of registry identification
23 card used by the AMMA, the initial reference to a registry identification card in A.R.S.
24 § 36-2804.03(C) is a signal that the statute is referring to a state issued card. The
25 statute’s language makes it clear that it is a state issued card issued under the laws of
26

1 another state, not a card issued by the Arizona Department of Health Services. [Ariz.](#)
2 [Rev. Stat. § 36-2804.03\(C\)](#).¹ The State’s interpretation is not that a nonresident must be
3 in possession of a registry identification card issued by the Arizona Department of
4 Health Services under the laws of another state. The State’s interpretation is that a
5 visiting qualifying patient must be in possession of a state issued card.
6

7
8 The “or its equivalent language” should thus be read as a catchall provision for
9 state issued cards in case other states do not refer to their medical marijuana cards as
10 “registry identification cards” or their cards are issued by an agency other than the
11 “Department of Health Services.” The State’s interpretation does not render A.R.S. §
12 36-2804.03(C) invalid. Rather, it ensures that its application is consistent with the rest
13 of the AMMA by requiring that visiting qualifying patients possess a state issued
14 medical marijuana card to possess medical marijuana in Arizona.
15

16
17 Interpreting A.R.S. § 36-2804.03(C) to permit nonresidents to possess medical
18 marijuana with only a physician’s recommendation does not further the policy of the
19 AMMA requiring registration with the state. Rather, such an interpretation places it into
20 conflict with the rest of the AMMA. In interpreting statutes, courts are to interpret them
21 so that all related statutes are harmonious and consistent. [Castillo v. Lazo, 241 Ariz.](#)
22

23
24 ¹ The statute provides, in part a “registry identification card, or its equivalent, that is
25 issued under the laws of another state...that allows a visiting qualifying patient to
26 possess or use marijuana for medical purposes in the jurisdiction of issuance has the
same force and effect when held by a visiting qualifying patient as a registry
identification card issued by the department....” [Ariz. Rev. Stat. § 36-2804.03\(C\)](#).

1 [295, 297 ¶ 5 \(Ct. App. 2016\)](#). And in construing ballot measures, courts look to give
2 effect to the voters' intent. [State v. Gear, 239 Ariz. 343, 345 ¶ 11 \(2016\)](#).
3

4 The AMMA would be inconsistently applied if it required Arizona residents to
5 possess a state issued card to possess medical marijuana, but not residents of other
6 states. Such an interpretation of A.R.S. § 36-2804.03(C) essentially creates an
7 exception to the AMMA's clear policy in favor of state registration to possess medical
8 marijuana that only applies to nonresidents. The trial court's interpretation of A.R.S. §
9 36-2804.03(C) does this.
10

11
12 Under the trial court's interpretation, A.R.S. § 36-2804.03(C) is the only portion
13 of the AMMA that would not require a patient to have a state issued card to possess
14 medical marijuana in Arizona. This places it into conflict with the rest of the AMMA.
15 Interpreting A.R.S. § 36-2804.03(C) to permit nonresidents to possess medical
16 marijuana with just a physician's recommendation would make it the lone provision of
17 the AMMA to allow a medical marijuana patient to possess medical marijuana without a
18 state issued card.
19

20
21 This creates a conflict in the AMMA and leads to unequal application of the
22 AMMA's protections. It will afford nonresidents greater protections than Arizona
23 residents. Such an application would work an absurd result because Arizona voters
24 would not have intended to grant greater protections to nonresidents than they granted to
25 themselves. "An absurd result in one so irrational, unnatural, or inconvenient that it
26

1 cannot be supposed to have been within the intention of persons with ordinary
2 intelligence and discretion.” [Liwski, 238 Ariz. at 187 ¶ 12](#), *internal quotations omitted*.

3
4 The trial court’s interpretation of A.R.S. § 36-2804.03(C) thus places it into
5 conflict with the rest of the AMMA. The State’s proposed interpretation, that A.R.S. §
6 36-2804.03(C) only affords protections to visiting qualifying patients possessing a state
7 issued medical marijuana card, avoids this conflict and ensures that the AMMA’s policy
8 in favor of registration with the state is consistently applied.

9
10 Defendant argues that *State v. Abdi* precludes the State’s interpretation of A.R.S.
11 § 36-2804.03(C). The State’s proposed interpretation does not require this Court to read
12 anything into A.R.S. § 36-2804.03(C) that would conflict with the plain language of the
13 statute. This case is thus distinguishable from *Abdi*, which involved the issue of
14 whether a caregiver from another state was entitled to the protections contained in
15 A.R.S. § 36-2804.03(C). [State v. Abdi, 236 Ariz. 609, 610 ¶ 2 \(Ct. App. 2015\)](#). The
16 *Abdi* court ruled that a caregiver was not entitled to the protections, because the
17 language of the statute only referred to patients, not caregivers. [Id. at 612 ¶ 13](#).

18
19 Here, the State is not asking this Court to extend the protections of A.R.S. § 36-
20 2804.03(C) to a group not covered by the language of the statute. Rather, the State is
21 asking this Court to hold that A.R.S. § 36-2804.03(C) treats nonresidents the same as
22 Arizona residents by only extending its protections to nonresidents with state issued
23 medical marijuana cards. This does not go beyond the plain language of the statute.

1 Rather, it clarifies the statute’s purpose and ensures the AMMA’s policy requiring
2 registration with the state is applied consistently.
3

4 Because the trial court’s application of A.R.S. § 36-2804.03(C) placed it into
5 conflict with the rest of the AMMA, its application was in error. Accordingly, the trial
6 court’s ruling should be reversed.
7

8
9 **II: IF DEFENDANT’S PHYSICIAN’S RECOMMENDATION DOES NOT**
10 **COMPLY WITH THE AMMMA, THEN THERE WERE NO INDICIA OF**
11 **AMMA COMPLIANCE PRESENT AT THE TIME OF THE SEARCH**

12 Police may conduct a warrantless search of an automobile, including containers
13 within the automobile, if they have probable cause to believe contraband or evidence of
14 a crime will be found. [State v. Cheatham, 240 Ariz. 1, 375 P.3d 66, 67 ¶ 7 \(2016\).](#)

15 Notwithstanding the passage of the AMMA, the sight or smell of marijuana alone
16 will still support a finding of probable cause “unless, under the totality of the
17 circumstances, other facts would suggest to a reasonable person that the marijuana use
18 or possession complies with [the] AMMA.” [State v. Sisco, 239 Ariz. 532, 373 P.3d 549,](#)
19 [555 ¶ 26 \(2016\).](#) Police officers are required to “consider any indicia of AMMA-
20 compliant possession or use” of marijuana, and facts indicating AMMA compliance
21 “might dispel probable cause that otherwise exists based on odor alone.” [Cheatham,](#)
22 [375 P.3d at 68 ¶ 12.](#)
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1 If this Court were to conclude that Defendant's physician recommendation is not
2 the equivalent of an AMMA registry identification card for the purposes of A.R.S. § 36-
3 2804.03(C), then there were no indicia of AMMA compliant possession of marijuana
4 present in this case. The only documentation permitting Defendant to possess medical
5 marijuana was his physician's recommendation card issued under California law.
6 Defendant did not have an AMMA registry identification card or other state issued card
7 allowing him to possess medical marijuana. If this Court were to conclude that his
8 physician's recommendation was not compliant with the AMMA, then it becomes
9 irrelevant that it is valid under California law. The issue, for *Sisco* and *Cheatham*, is
10 whether there are indicia of AMMA compliance.
11
12

13
14 If Defendant's physician's recommendation did not comply with the AMMA,
15 then there were no indicia of AMMA-compliant possession of marijuana. Accordingly,
16 there would be nothing to dispel the officers' probable cause to search his vehicle.
17

18 Defendant argues that the evidence in this case should still be suppressed if this
19 Court were to conclude that a physician's recommendation issued under the CUA is not
20 the equivalent of a registry identification card. Defendant's argument is that because he
21 was not arrested for possession of marijuana after presenting his physician's
22 recommendation that the officers did not possess probable cause to search his vehicle.
23 Defendant's argument conflates probable cause to search a vehicle with an officer's
24 determination to make an arrest.
25
26

1 Police may have probable cause to search and still locate no evidence of a crime.
2 Or police may have probable cause to search and locate evidence of a crime, but
3 exercise their discretion and decline to make an arrest.² An officer's determination to
4 make an arrest, and what charges to arrest a suspect on, is independent of whether an
5 officer has probable cause to conduct a search.
6

7
8 The fact the officers did not arrest Defendant for possession of marijuana is not
9 determinative of the question of whether they had probable cause to search his vehicle.
10 The issue is whether there were indicia of compliance with the AMMA prior to the
11 officers' decision to search Defendant's vehicle. As Defendant did not possess an
12 AMMA registry identification card or state issued medical marijuana card, there were
13 no indicia of AMMA compliance here. Because there were no indicia of AMMA
14 compliance here, the officers had probable cause to search Defendant's vehicle based
15 upon seeing a marijuana pipe in Defendant's vehicle and Defendant's admission to
16 possessing marijuana in his vehicle. Therefore, the search was valid.
17
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19
20 **III: CONCLUSION**

21 The trial court's interpretation and application of A.R.S. § 28-3604.03(C) places
22 it into conflict with the rest of the AMMA, as it undermines the AMMA's clear policy
23 in requiring state registration to possess medical marijuana. The trial court's application
24

25 ² For example, an officer could locate a small amount of marijuana, and rather than
26 arrest a suspect for felony charges for possession of marijuana issue a misdemeanor
citation, or release a suspect and refer the case for long form charges.

1 of the A.R.S. § 36-2804.03(C) was thus an error of law, and its ruling should be
2 reversed.

3
4 Additionally, if this Court concludes Defendant's physician's recommendation
5 was not the equivalent of an AMMA registry identification card, then there were no
6 indicia of AMMA compliance present when Defendant's vehicle was searched.
7
8 Accordingly, the search of Defendant's vehicle was also valid.

9
10 RESPECTFULLY SUBMITTED

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