

APPENDIX

1. Minute Entry denying Request to Stay on 12/30/14
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5. Petitioner's Medical Marijuana Registration Card for 10/16/13 – 10/17/14
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SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2014-127252-001 SE

12/30/2014

HONORABLE DEAN M. FINK

CLERK OF THE COURT
Y. King
Deputy

STATE OF ARIZONA

RYAN JOSEPH MCCARTHY

v.

ANDRE LEE JUWAUN MAESTAS (001)

ANDRE LEE JUWAUN MAESTAS
6505 E OSBORN RD
#270
SCOTTSDALE AZ 85251
THOMAS W DEAN

RULING

On 12/17/2014 the Court Notes that the Defendant may request that the Arizona Supreme Court issue a stay of this matter.

IT IS ORDERED denying the Defendant's filed Request to Stay Trial Court Proceedings Pending Supreme Court Petition for Review.

IT IS ORDERED affirming the Final Trial Management Conference on 02/09/2015 at 8:30 a.m. before this division.

This case is eFiling eligible: <http://www.clerkofcourt.maricopa.gov/efiling/default.asp>. Attorneys are encouraged to review Supreme Court Administrative Order 2011-140 to determine their mandatory participation in eFiling through AZTurboCourt.

NOTICE OF CLAIM OF UNCONSTITUTIONALITY

Attached: Defendant's Petition for Review challenging the constitutionality of A.R.S §15-108.

Case name: *Andre Maestas (Petitioner) v. Honorable Dean M. Fink (Respondent) and State of Arizona (Real Party in Interest)*

CR No.: CR2014-127252-001

Court: Arizona Supreme Court

Caption: Petition for Review

Description of Proceeding:

Defendant filed a Motion to Dismiss a felony charge of Possession of Marijuana on 10/07/14 with the Maricopa County Superior Court challenging the constitutionality of A.R.S §15-108 in *State v. Maestas*, CR2014-127252-001. The Motion to Dismiss was denied on 11/19/14. The Court of Appeals denied jurisdiction on a Petition for Special Action 12/12/14 and Defendant has now filed the attached Petition for Review with the Arizona Supreme Court.

Basis for claim of unconstitutionality:

Petitioner is a registered medical marijuana patient who was found to be in possession of approximately .6 grams of marijuana at his ASU dorm room. He is being prosecuted based on A.R.S §15-108, which amended the AMMA to expand the places where a registered patient is not permitted to possess his medicine. Defendant argues that A.R.S §15-108 violates the Arizona Voter Protection Act because the amendment does not further the purpose of the AMMA, which is to protect patients from criminal and other penalties.

Hearing Date:

No hearing date has been set as of the date of this Notice.

Attorney asserting unconstitutionality:

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AZ Bar No. 015700

Michael K. Jeanes, Clerk of Court
*** Electronically Filed ***
11/19/2014 8:00 AM

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2014-127252-001 SE

11/10/2014

HONORABLE DEAN M. FINK

CLERK OF THE COURT
V. Morales
Deputy

STATE OF ARIZONA

RYAN JOSEPH MCCARTHY

v.

ANDRE LEE JUWAUN MAESTAS (001)

THOMAS W DEAN

MINUTE ENTRY

The Court has reviewed Defendant's Motion to Dismiss filed October 7, 2014, State's Objection to Defendant's Motion to Dismiss filed October 17, 2014, Supplemental to State's Response to Defendant's Motion to Dismiss filed October 21, 2014, and Defendant's Reply to State's Objection to Defendant's Motion to Dismiss filed October 23, 2014.

IT IS ORDERED denying Defendant's Motion to Dismiss Count 2 filed October 7, 2014.

This case is eFiling eligible: <http://www.clerkofcourt.maricopa.gov/efiling/default.asp>. Attorneys are encouraged to review Supreme Court Administrative Order 2011-140 to determine their mandatory participation in eFiling through AZTurboCourt.

IN THE
Court of Appeals
STATE OF ARIZONA
DIVISION ONE



DIVISION ONE
FILED: 12/12/2014
RUTH A. WILLINGHAM,
CLERK
BY: RB

ANDRE LEE JUWAUN MAESTAS,) Court of Appeals
) Division One
Petitioner,) No. 1 CA-SA 14-0245
)
v.) Maricopa County
) Superior Court
THE HONORABLE DEAN M. FINK,) No. CR2014-127252-001
Judge of the SUPERIOR COURT OF)
THE STATE OF ARIZONA, in and for)
the County of MARICOPA,)
)
Respondent Judge,)
)
STATE OF ARIZONA,)
)
Real Party in Interest.)
_____)

ORDER DECLINING SPECIAL ACTION JURISDICTION

The court, Presiding Judge Margaret H. Downie, and Judges Andrew W. Gould and Samuel A. Thumma, participating, has considered the petition for special action filed by the petitioner.

IT IS ORDERED that the Court of Appeals, in the exercise of its discretion, declines to accept jurisdiction in this special action.

IT IS FURTHER ORDERED vacating this court's previous order requiring the filing and service of a response.

/s/

MARGARET H. DOWNIE,
Presiding Judge

To: Thomas W Dean
Ryan Joseph McCarthy
Hon Dean M Fink
Hon Dean M Fink
Michael K Jeanes

Arizona Medical Marijuana Program ID



Patient ID: 0071665QPOP849277001

PATIENT



Issued: 10/16/2013
Expires: 10/17/2014
DOB: 05/26/1995

ANDRE MAESTAS
1215 S FOREST AVE BEST HALL #212
TEMPE AZ 85287

Not Authorized to Cultivate

WILLIAM G MONTGOMERY
MARICOPA COUNTY ATTORNEY

WIC

James E Blair
Deputy County Attorney
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Mesa, AZ 85210
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MCAO Firm #: 00032000
Attorney for Plaintiff

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

THE STATE OF ARIZONA,

Plaintiff,

vs.

ANDRE LEE JUWAUN MAESTAS,

Defendant.

528

CR2014-127252-001

619 GJ 495

NOTICE OF SUPERVENING
INDICTMENT

An indictment having been filed this 8th day of September, 2014, in the Superior Court of Maricopa County, Arizona, charging you, Andre Lee Juwaun Maestas, with the crimes of

COUNT 1: (13-2906A) OBSTRUCTING A HIGHWAY OR OTHER PUBLIC THOROUGHFARE, A CLASS 3 MISDEMEANOR committed on March 18, 2014,

COUNT 2: (13-3405A1) POSSESSION OR USE OF MARIJUANA, A CLASS 6 FELONY committed on March 18, 2014,

and affirming the release conditions previously ordered by this court in Direct Complaint CR2014-127252-001 in the Superior Court, Maricopa County, Arizona, you are

HEREBY NOTIFIED to appear before this court to answer the Indictment in the South Court Tower, 175 West Madison Street, 3rd Floor, Phoenix, Arizona, on September 17, 2014, at the hour of 8:30 a.m. Requests for reasonable accommodation for persons with disabilities must be made to the division assigned to the case by parties at least three judicial days in advance of a scheduled court proceeding. Requests for an interpreter for persons with limited

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2014-127252-001 SE

09/17/2014

HONORABLE CASEY J. NEWCOMB

CLERK OF THE COURT
S. Fromm
Deputy

STATE OF ARIZONA

JAMES EDWARD BLAIR JR.

v.

ANDRE LEE JUWAUN MAESTAS (001)

THOMAS W DEAN

Custody Status: Own Recognizance Release

NOT GUILTY ARRAIGNMENT

9:36 a.m.

Courtroom SCT 3C

State's Attorney: Jo Ann Sakato on behalf of Leonard Ruiz
Defendant's Attorney: Thomas W. Dean
Defendant: Present

A record of the proceedings is made by audio and/or videotape in lieu of a court reporter.

IT IS ORDERED entering a Not Guilty Plea to all charges on behalf of the Defendant at this time.

Defense counsel waives formal reading of the charge(s).

Defense counsel makes an oral motion to allow the Defendant to travel to Arlington, Virginia, from September 26-29, 2014.

The State leaves it at the Court's discretion.

MEMORANDUM

I. FACTS:

On March 18th, 2014, Defendant, Andre Maestas, was arrested by Officer Mark Janda of the ASU Police Department for a violation of A.R.S. §13-2906 (obstruction of a public highway or other public thoroughfare). During the search of his wallet incident to the arrest, Officer Janda discovered a valid Arizona medical marijuana registration card bearing Mr. Maestas' name and photograph. At the ASU Police Station, Officer Janda questioned Mr. Maestas about his marijuana use and about how much marijuana he had in his dorm room. Mr. Maestas indicated he had less than a gram in his dorm room. Based on this information Officer Janda was able to obtain a search warrant by fax that authorized the search of Mr. Maestas' dorm room. During the search, officers allegedly discovered a total of approximately four (4) grams of medical marijuana was found.

Mr. Maestas was indicted on September 8th, 2014 for (1) obstructing a highway or other public thoroughfare and (2) possession of marijuana. During testimony by Sergeant Mark Janda at the grand jury proceedings, the Pima County Seputy County Attorney Angela Andrews asked: "And in fact having marijuana on school grounds is a violation of the law, correct?" to which Sergeant Janda answered: "Yes, even with a medical marijuana card. (GJ transcripts at p. 8). Ms. Andrews next asked: "And how much medical marijuana card was allowed to have (sic)" to which Sergeant Janda answered: "He's not allowed to have any on a college campus, but I believe it's two ounces". (GJ transcripts at p. 8). Ms. Andrews then provided the grand jury with a copy of A.R.S. §15-108(A) which prohibits possession of marijuana on a public university campus. She stated to the grand jury:

"... [P]ossession marijuana even on a university is prohibited by the Medical Marijuana Card Act. And so the medical marijuana card would not have pernnitted the possession of medical

marijuana under circumstances in which it can be proven that it was in fact on a school campus" (GJ transcripts at p. 9).

Ms. Andres then presented the grand jury with a draft indictment for the members to consider and, after deliberating, the grand jury then returned a true bill and Mr. Maestas was indicted for Possession of Marijuana.

II. LAW:

A. Legal Authority

Grand Jury indictments must be dismissed when the person indicted was prejudiced by the denial of a substantial procedural right. The Arizona and United States Constitutions as well as Rule 12.9 allow an accused to challenge a grand jury proceeding if he was denied a substantial procedural right. The U.S. Supreme Court has described the Grand Jury as "a primary security to the innocent against hasty, malicious and oppressive persecution; it serves the invaluable function in our society of standing between the accuser and the accused...to determine whether a charge is founded upon reason or was dictated by an intimidating power or by malice or ill will." *Wood v. Georgia*, 370 U.S. 375, 390 (1962). Remand of an indictment to the Grand Jury is appropriate when the person under investigation is denied a "substantial procedural right," including due process rights, which results in prejudice to the defendant. See Ariz. R. Crim. P. 12.9; *State ex rel. Woods v. Cohen*, 173 Ariz. 497, 502, 844 P.2d 1147, 1152 (1992).

The State has a duty to instruct the Grand Jury on all of the law relevant to their deliberations. It is the duty of the prosecutor, as the legal advisor to the Grand Jury, to instruct the jurors on all statutes relevant to their deliberations, in order to ensure a fair and impartial presentation of the law and evidence to the Grand Jury as required by due process. *State v. Crimmins*, 137 Ariz. 39, 42, 668 P.2d 882, 885 (1983). "The prosecutor acts not simply as an advocate, but as a 'minister of justice' who assists the jurors in their inquiry." *Maretick*, 204 Ariz. At 197. It is indisputable that a prosecutor appearing before a grand jury bears a

“particularly weighty duty not to influence the jury because the defendant has no representative to watch out for his interests” *Id.* The Court relies on the principle that a “prosecutor cannot posture [the] handling of a case to avoid informing the [grand] jury of known exculpatory evidence.” *Harrel v. Sargeant*, 189 Ariz. 627, 630 (1997).

This Due Process analysis is informed by another Supreme Court decision, *State v. Crimmins*, 137 Ariz. 39, 668 P.2d 882, (1983). In that case, the defendant was charged with kidnapping and assault when he detained a young man in his truck, on the suspicion that the young man and his friends had robbed the defendant’s house earlier that day. *Crimmins*, 137 Ariz. at 39, 668 P.2d at 882. At the Grand Jury proceeding, the State did not instruct the Grand Jury on Arizona’s citizen’s arrest statutes, despite the fact the defendant called the police after he had detained the suspected robber, and told officers that he believed he had made a citizen’s arrest. *Id.* at 42, 688 P.2d at 885. On appeal, the Arizona Supreme Court held that the State’s failure to properly instruct the Grand Jury on the law applicable to the charges and possible defenses “rendered the presentation of [the] case less than fair and impartial...” *Id.*

B. The Arizona Medical Marijuana Act:

On November 2, 2010, Arizona voters passed Proposition 203, an initiative called the “Arizona Medical Marijuana Act” (AMMA). The AMMA decriminalized medical marijuana for use by people with certain chronic and debilitating medical conditions. The purpose of the AMMA as set forth in section 2(G) of Proposition 203, “is to protect patients with debilitating medical conditions... from arrest and prosecution, criminal and other penalties”.

Upon an approved application to the Department of Health Services, patients are issued a patient registration card which entitles them to possess up to 2 ½ ounces of marijuana for their personal medical use. See A.R.S. §36-2801(1)(a)(i). Provided that a patient stays within his allowable amount of

marijuana, he is immune from prosecution and penalty for his use and possession of marijuana.

The AMMA provides patients with broad protections in connection with their medical use of marijuana. For example, A.R.S. §36-2811(b)(1) provides as follows:

A registered qualifying patient... 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... [f]or 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.

The above protection applies to the possession of marijuana by registered patients *anywhere* in the State of Arizona except in the following areas, which are enumerated in in the AMMA (A.R.S. 36-2802):

1. On a school bus.
4. On the grounds of any preschool or primary or secondary school.
3. In any correctional facility.

In this case, Mr. Maestas was not found to have been in possession of marijuana in any of those prohibited areas. Rather, the marijuana was found in his dorm room at Arizona State University. Therefore, he was within his rights under the AMMA and is immune from prosecution and penalty.

C. Legislative Tampering:

The State will, no doubt, attempt to justify this prosecution based on A.R.S §15-108, a piece of legislation that was signed into law on April 3rd, 2012, after the enactment of the AMMA. A.R.S §15-108 provides as follows:

- A. In addition to the limitations prescribed in section 36-2802, subsection B, a person, including a cardholder as defined in section 36-2801, may not lawfully possess or use marijuana on the campus of any public university, college, community college or postsecondary educational institution.

- B. A person may not lawfully possess or use marijuana on the campus of any high school, junior high school, middle school, common school or preschool in this state.

Any attempt by the state to rely upon A.R.S §15-108 must be rejected, however, because the statute itself is unconstitutional because it violates the Arizona Voter Protection Act.

D. The Arizona Voter Protection Act:

The AMMA was the third attempt by the voters of Arizona to legalize the medical use of marijuana. The first medical marijuana voter initiative passed in 1996 (Prop. 200). The Legislature overturned pertinent parts of that initiative, however, based on certain objections to the nomenclature used by the voters. Rather than clarifying the initiative to give affect to the voter's intent, the medical marijuana provisions of the initiative were declared unlawful and it were never implemented.

In response to government's willingness to disregard for the people's initiative power in connection with medical marijuana and other laws passed by the people, former Secretary of State Richard Mahoney formed the Voter Protection Alliance to put the Arizona Voter Protection Act (AVPA) on the ballot as Proposition 105 in 1998. The AVPA passed and became part of the Arizona Constitution. In short, it prohibits legislative tampering of people passed initiatives in Arizona.

The AVPA is codified at Article 4, Part 1, Section 1, Subsection (6)(C) of the Arizona Constitution, and prohibits that the state legislature from modifying an initiative unless it "further the purpose of that initiative:

Legislature's power to amend initiative or referendum. The legislature shall not have the power to amend an initiative measure approved by a majority of the votes cast thereon, or to amend a referendum measure decided by a majority of the votes

cast thereon, unless the amending legislation furthers the purposes of such measure and at least three-fourths of the members of each house of the legislature, by a roll call of ayes and nays, vote to amend such measure. (emphasis added).

III. ANALYSIS:

Before it can determine whether A.R.S §15-108 can be said to further the purpose of the AMMA, the Court must first determine what that purpose is. "Our primary objective in construing a ballot initiative is to place a reasonable interpretation on "the intent of the electorate that adopted it." *State v. Estrada*, 34 P. 3d 356, 201 Ariz. 247 (Ariz., 2001); *Foster v. Irwin*, 196 Ariz. 230, 231, 995 P.2d 272, 273 ¶ 3 (2000) (quoting *Jett v. City of Tucson*, 180 Ariz. 115, 119, 882 P.2d 426, 430 (1994)) (internal quotations omitted); *State v. Gomez*, 212 Ariz. 55, 57, ¶ 11, 127 P.3d 873, 875 (2006). "Initiatives... come from the electorate and are fundamental to Arizona's scheme of government." *Calik v. Kongable*, 195 Ariz. 496; 990 P.2d 1055 (1999) (at ¶ 16); See *Fairness & Accountability in Ins. Reform v. Greene*, 180 Ariz. 582, 584, 886 P.2d 1338, 1340 (1994).

Because there is no legislative history and associated documentation retained for an initiative proposed and enacted by the electorate, the search for "popular intent" can be even more difficult than the traditional search for legislative intent. *Calik, supra* at ¶ 16. The *Calik* court, however, surmounted that problem by finding a stated purpose of Proposition 200 set forth in the initiative's publicity pamphlet. In this case the Court has an even better source of the purpose of the AMMA. The purpose of the AMMA is expressly set forth in section 2(G) of Proposition 203 itself, which states that it is to "protect patients... from arrest and prosecution, criminal and other penalties..." The issue here is, therefore, whether A.R.S. §15-108 furthers that purpose. That is, whether the statute protects patients from arrest, prosecution, and penalty. The obvious answer is that it does not. A.R.S §15-108 clearly amends the AMMA by adding public universities and other facilities to the list of places where a patient cannot

possess medical marijuana. In fact, subsection "A" of the statute expressly states that it is amending the AMMA provision in question (A.R.S. 36-2802). The official Arizona Senate Fact Sheet (attached and incorporated by reference) for the underlying bill (H.B. 2349) stated as follows: "Purpose: Adds to the possession and use limitations of the Arizona Medical Marijuana Act". Therefore, the statute is subject to scrutiny under the Arizona Voter Protection Act (AVPA). In order to pass muster, the modification must be "further the purpose" of the AMMA. That purpose is explicitly set forth in Section 2(G) of the AMMA (2010 Proposition 203) as follows:

State law should make a distinction between the medical and nonmedical uses of marijuana. Hence, the purpose of this act is to protect patients with debilitating medical conditions, as well as their physicians and providers, from arrest and prosecution, criminal and other penalties and property forfeiture if such patients engage in the medical use of marijuana. (emphasis added).

Accordingly, A.R.S §15-108 is an unconstitutional violation of the Voter Protection Act. In fact, its intent and impact is totally contrary to the purpose of the AMMA, the initiative expressly modifies, because it actually exposes (not protects) registered patients, like Mr. Maestas, to criminal prosecution. The instructions given to the grand jury in this case and the statutory basis for the indictment (A.R.S §15-108) directly violated the clear and unambiguous provisions of the AMMA and were, therefore, in violation of the Arizona Voter Protection Act (Article 4, Part 1, Section 1, Subsection (6)(C) of the Arizona Constitution).

IV. CONCLUSION:

If the rule of law is to prevail, laws and the words they are made of must be given meaning. It cannot be disputed that A.R.S §15-108 modifies the AMMA. Specifically it modifies A.R.S. 36-2802 by expanding the list of areas that a

registered medical marijuana patient may not possess marijuana. Nor can it be disputed that the modification is contrary to the purpose of the AMMA because the statute subjects registered patients to precisely what the AMMA was meant to protect them from: arrest, prosecution and penalty. The Grand Jury was instructed to follow a bad law. Although the prosecutor may not have acted in bad faith, the instructions were faulty, nonetheless. If remanded, the State would not be able to meet its burden of proof because Mr. Maestas is immune from prosecution under the AMMA (A.R.S. 36-2811(B)(1)). Count 2 ought to be, therefore, be dismissed with prejudice.

For the foregoing reasons, Defendant, Andre Maestas, respectfully requests that the Court dismiss Count 2 of the indictment (Possession or Use of Marijuana) for the reason that the basis for that charge was a statute that is in violation of Article 4, Part 1, Section 1, Subsection (6)(C) of the Arizona Constitution (the Arizona Voter Protection Act).

RESPECTFULLY SUBMITTED October 7, 2014,

/s/

Thomas W Dean
Attorney for Defendant

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

| | | |
|---------------------------|---|-----------------------------|
| STATE OF ARIZONA, |) | Case No.: CR2014-127252-001 |
| |) | |
| Plaintiff, |) | |
| vs. |) | ORDER |
| ANDRE LEE JUWAUN MAESTAS, |) | |
| |) | |
| Defendant. |) | |

Upon considering Defendant's Rule Motion to Dismiss, and good cause appearing therefore, IT IS ORDERED:

- GRANTING Defendant's Motion to Dismiss Count 2 of the indictment (Possession of Marijuana) with prejudice.

- Denying Defendant's Motion to Dismiss.

DATED this _____ day of _____, 2014,

Judge of the Superior Court

Ryan McCarthy
Deputy County Attorney
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Mcaoctd@mcao.Maricopa.Gov
MCAO Firm #: 00032000
Attorney for Plaintiff

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

THE STATE OF ARIZONA,)
)
 Plaintiff,)
)
 vs.)
)
 Andre Lee Juwaun Maestas,) CR2014-127252-001
)
 Defendant.) STATE'S OBJECTION TO
) DEFENDANT'S MOTION TO DISMISS
)
)
)
)

The State of Arizona hereby requests that this Court to deny the Defendant's motion to dismiss Count 2 of the indictment. The State's position is outlined in the attached Memorandum of Points and Authorities.

Submitted October 17, 2014.

WILLIAM G MONTGOMERY
MARICOPA COUNTY ATTORNEY

BY: /s/ Ryan McCarthy
/s/ Ryan McCarthy
Deputy County Attorney

MEMORANDUM OF POINTS AND AUTHORITIES

I. Factual Background

On March 18, 2014 at approximately 12:38 in the morning, the Defendant was contacted by an Arizona State University police officer near the intersection of Forest and Lemon in Tempe. The officer was driving southbound on Forest when he observed the Defendant sitting in the roadway. The officer turned his car in front of the Defendant to ensure that cars would not strike the Defendant. The Defendant appeared dazed, he had a white film on the sides of his mouth and he spoke in a very slow manner. The Defendant was arrested for obstructing a public thoroughfare and was transported to the ASU police station. The arresting officer located a medical marijuana card in the Defendant's wallet. At the police station, the Defendant said that he may have smoked marijuana the previous night. He admitted he had approximately ¼ gram of marijuana in his apartment.

A search warrant was obtained for the Defendant's dorm room on the Arizona State University campus. While searching the Defendant's dorm room, the officer located marijuana and several items of drug paraphernalia. The officer specifically located the following: a cardboard box containing .3 grams of a green organic substance, a wooden pipe kit with approximately .3 grams of a green organic substance, a black plastic film canister with marijuana residue, a purple and black pipe with burnt marijuana residue, a metal grinder with marijuana residue, and six empty package of medical marijuana with residue. The officer identified the green organic substance as marijuana based on his training and experience. The Defendant is charged with Obstructing a Public Thoroughfare, a class 3 misdemeanor and Possession of Marijuana, a class 6 felony.

II. Legal Argument

The Defendant argues that A.R.S. § 15-108 is unconstitutional because the statute violates the Arizona Voter Protection Act (the “VPA”) by failing to “further the purpose” of the Arizona Medical Marijuana Act (the “AMMA”).

A. A.R.S. § 15-108 was passed in accordance with the VPA.

In November 2010, Arizona voters approved Proposition 203, the initiative entitled the Arizona Medical Marijuana Act. The AMMA was subsequently codified into Chapter 28.1 of the Arizona Revised Statutes. See A.R.S. § 36-2801–2819. The function of the AMMA is to allow persons with a “debilitating medical condition” to possess an “allowable amount of marijuana” to alleviate their medical condition. A.R.S. § 36-2811(B)(1); *See also* A.R.S. § 36-2801 (a “qualified patient” is defined as “a person who has been diagnosed by a physician as having a debilitating medical condition.”). In addition to decriminalizing the possession of marijuana for certain patients, the AMMA also established a regulatory framework for how medical marijuana is to be facilitated. That framework includes directives on every aspect of medical marijuana including: how a medical marijuana card can be obtained, where and how medical marijuana dispensaries can be established, and how much medical marijuana a person can possess at one time. *See* A.R.S. §§ 36-2804-2807.

Although the AMMA generally decriminalizes medical marijuana for qualifying patients, it does not shield “qualified patients” with a medical marijuana card from all prosecution. The AMMA included limitations on where qualified patients could possess or use medical marijuana. Under A.R.S. § 36-2802, the AMMA does not prevent prosecution for “qualified patients, who “possess[] or engag[e] in the medical use of marijuana:

- (1) On a school bus;
- (2) On the grounds of any preschool or primary or secondary school;
- (3) In any correctional facility.

A.R.S. § 36-2802. The original AMMA does not embrace the notion that medical marijuana can be possessed or used in any location. In fact, there are several locations where the possession or use of medical marijuana is clearly prohibited.

In 2012, the legislature proposed to amend § 36-2802 through HB 2349 by adding college campuses to the list of places prohibiting the possession of marijuana possession, including medical marijuana cardholders. Ariz. House of Representatives Facts Sheet for H.B. 2349, 50th Leg., 2nd Reg. Sess. (April 4, 2012). The legislative fact sheet identifies HB 2349 was an addition to the already-existing § 36-2802. *Id.* A.R.S. § 36-2802. The bill was passed by over a three-fourths vote from the House of Representatives, as well as the Senate. Bill Status Overview for H.B. 2349, 50th Legislature, 2d Reg. Sess. (Ariz, 2012) (where the house passed the bill with 52 ayes, 2 nays, 5 not voting, and 1 vacant, and the senate passed the bill with 28 ayes, 2 nays). Subsequently, the bill was enacted into law as A.R.S. § 15-108, which states:

- (A) In addition to the limitations prescribed in § 36-2802, subsection B, a person, including a cardholder as defined in § 36-2801, may not lawfully possess or use marijuana on the campus of any public university, college, community college or postsecondary education institution.

A.R.S. § 15-108(A).

The legislature amended the AMMA by enacting A.R.S. § 15-108 to comply with the VPA, set forth in Article 4 of the Arizona Constitution, Part 1, § 1. The VPA was voter-approved in 1998 by Proposition 105, which limited the legislature's authority in the initiative and referendum processes to amend voter-approved acts. *Ariz. Early Childhood Dev. & Health Bd. v. Brewer*, 221 Ariz. 467, 469, 212 P.3d 807, 809 (2009); *See* Ariz. Const. art. 4 Pt. 1 § 1. "Through the initiative and referendum processes, 'the people reserve[d] the power to propose laws and amendments to the constitution and to enact or reject such laws and amendments at the polls independently of the legislature.'" *Cave Creek Unified School Dist. v. Ducey*, 233 Ariz. 1,

4, 308 P.3d 1152, 1155 (2013); *see* Ariz. Const. art. 4, pt. 1, § 1(1). When amending a voter-approved law, the legislature must comply with Article 4 of the Arizona Constitution, Part 1, § 1 (6)(C), which states:

The legislature shall not have the power to amend an initiative measure approved by a majority of the votes cast thereon, or to amend a referendum measure decided by a majority of the votes cast thereon, unless the amending legislation furthers the purposes of such measure and at least three-fourths of the members of each house of the legislature, by a roll call of ayes and nays, vote to amend such measure.

Ariz. Const. Art. 4 Pt. 1 § 1 (6)(C).

Section 15-108 does not violate the VPA because it was passed by three-fourths of the members of each house of the legislature and the substance of the amendment furthers the purpose of the AMMA.

B. A.R.S. § 15-108 furthers the purpose of the AMMA.

Section 15-108 serves to further the purpose of the AMMA to allow patients with debilitating conditions to have access to medical marijuana, but with reasonable restrictions on where the medical marijuana can be possessed. Section 15-108 does not violate the purpose or function of the AMMA in any way, and instead, provides a reasonable amendment to an existing list of locations where medical marijuana cannot be used or possessed.

The Arizona Supreme Court has stated that “[o]ur primary objective in construing statutes adopted by initiative is to give effect to the intent of the electorate.” *Ariz. Early Childhood Dev. & Health Bd.*, 221 Ariz. at 470 (citing *State v. Gomez*, 212 Ariz. 55, 57 ¶ 11, 127 P.3d 873, 875 (2006)). To interpret an amendment consistent with the legislature’s intent, the Court does so by “fairly interpreting the language used and, unless the context suggests otherwise, giving words ‘their natural obvious and ordinary meaning.’” *Cave Creek Unified School District*, 233 Ariz. at 7 (citing *Ramery v. Baier*, 231 Ariz. 275, 278 ¶ 15, 294 P.3d 113, 116 (2013)).

Given the entirety of the AMMA, it is clear the purpose of the AMMA is not simply to decriminalize medical marijuana for qualifying patients, but also to establish a regulatory framework to effectuate the goal of making medical marijuana available in a safe and uniform manner. The AMMA provides directives on how medical marijuana can be obtained, the specific amount of marijuana that can be possessed, and which dispensaries the marijuana can be obtained by a qualifying patient. *See* A.R.S. § 36-2804-2807. The AMMA also codified a reasonable measure to ensure that medical marijuana was not going to be possessed or used in inappropriate locations. The principle protection was to areas where young people gather for education. The original prohibition included having medical marijuana on a school bus or the grounds of any preschool or primary or secondary school. A.R.S. § 36-2802. In doing so, the original AMMA adopted the principle that a qualified patient's ability to use or possess medical marijuana did not extend to all places at all times. In certain locations, the importance of promoting a marijuana free environment trumps the qualified patient's license to use or possess marijuana.

miss

The State does not dispute with the defendant that A.R.S. § 15-108 provides an additional limitation to qualified patients under the AMMA. Section 15-108 itself provides that: "(A) In addition to the limitations prescribed in § 36-2802, subsection B, a person...may not lawfully possess or use marijuana on the campus of any public university..." A.R.S. § 15-108(A) (emphasis added). Additionally, it is stated explicitly in the House of Representatives Information Sheet for HB 2349 that the purpose of A.R.S. § 15-108 was to amend the AMMA by supplementing § 36-2802 and providing an additional limitation to medical marijuana cardholder use and possession of marijuana. Ariz. House of Representatives Facts Sheet for H.B. 2349, 50th Leg., 2nd Reg. Sess. (April 4, 2012).

This addition, however, furthers the purpose and function of the AMMA to decriminalize medical marijuana, and at the same time, providing reasonable measures to ensure that marijuana is not possessed or used in inappropriate locations. Section 15-108 simply adds public universities, colleges, or postsecondary education institution to a list that already included school facilities as an area where medical marijuana could not be used or possessed. This addition does not frustrate or violate the purpose or function of the AMMA. It is a reasonable extension to the limitations already contemplated by the original AMMA. Section 15-108 only furthers the notion in the original AMMA that educational facilities are in special need of protection from the presence or use of marijuana. ^{no minors} This type of amendment does not violate the VPA which specifically gives the legislature the ability to amend initiatives if certain conditions are satisfied.

III. Conclusion

For the foregoing reasons, the State requests that this Court deny the Defendant's motion to dismiss Count 2 of the indictment and deny any request to remand to the Grand Jury. Section 15-108 does not violate the VPA because the statute "furthers the purpose" of the AMMA and was approved by a three-fourths vote. Therefore, section 15-108 is constitutional.

Submitted October 17, 2014.

WILLIAM G MONTGOMERY
MARICOPA COUNTY ATTORNEY

BY: /s/ Ryan McCarthy
/s/ Ryan McCarthy
Deputy County Attorney

COPY mailed/delivered
October 17, 2014,
to:

The Honorable Phemonia Miller, CMC03
Judge of the Superior Court

Thomas Dean
13201 N. 35th Ave.
Phoenix, Arizona 85029
Attorney For Defendant

BY: /s/ 
/s/ Ryan McCarthy
Deputy County Attorney

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AZ Bar No. 015700

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

| | | |
|---------------------------|---|-----------------------------|
| STATE OF ARIZONA, |) | Case No.: CR2014-127252-001 |
| |) | |
| Plaintiff, |) | |
| vs. |) | DEFENDANT'S REPLY TO |
| |) | STATE'S OBJECTION TO |
| ANDRE LEE JUWAUN MAESTAS, |) | DEFENDANT'S MOTION TO |
| |) | DISMISS |
| Defendant. |) | |
| |) | |
| |) | |

Defendant, through counsel, hereby replies to the "State's Objection to Defendant's Motion to Dismiss", and to the "State's Supplemental to State's Response to Defendant's Motion to Dismiss". The reply is set forth in the following memorandum.

RESPECTFULLY SUBMITTED October 23, 2014,

/s/

Thomas W Dean
Attorney for Defendant

SERVICE: Copy of the foregoing delivered via the e-file system this October 23, 2014 to the Maricopa County Attorney's Office.

/s/

Thomas Dean

MEMORANDUM

I. Correction to Defendants factual statement:

In his Motion to Dismiss, Defendant indicated that the Tempe Police Department discovered approximately four (4) grams of medical marijuana in his ASU dorm room. In actuality, they discovered only .6 grams.

II. Reply to "State's Supplemental to State's Response to Defendant's Motion to Dismiss":

At the outset, Defendant addresses the "State's Supplemental to State's Response to Defendant's Motion to Dismiss". Rather than challenge the opinion of the State that A.R.S. §12-1841 applies to criminal proceedings and requires a defendant in a criminal case to send a copy of the pleading to the attorney general, speaker of the house of representatives and president of the senate, Defendant, in the interests of judicial economy, mailed a copy of the Motion to Dismiss attached to a Notice of Claim of Unconstitutionality to those persons on October 23, 2014.

III. State's Objection to Defendant's Motion to Dismiss:

The State concedes that any statute that modifies the AMMA must "further the purpose" of the initiative it modifies. It argues, however, that the statute in question, which suspends the protections of the AMMA on all public university campuses (A.R.S. §15-108), meets that requirement. The State argues that the Court should put aside the AMMA's expressed purpose and find that, implicitly, the true overarching purpose of the Act is to prohibit possession in "areas where young people gather for education" (Objection p. 6). The State asks the Court to find that this hidden purpose "trumps" the explicit purpose set forth in the AMMA, which is to protect patients from criminal prosecution and penalty.

Case law does not support the State's theory. Rather, Arizona Courts defer to an initiative's stated purpose and do not substitute an imagined alternative where the purpose is otherwise clearly set forth in the initiative, or even in the initiative's promotion materials. For example, in *Calik v. Kongable*, 195 Ariz. 496; 990 P.2d 1055 (1999), the Court acknowledged that the search for the purpose of an initiative is not always easy because there is no legislative history and associated documentation to review. In *Calik*, however, the Court found that Prop. 200's publicity pamphlet clearly set forth the purpose of that initiative and was, therefore, controlling over a different purpose that was offered by the State in that case. Fortunately, in this case, the Court has an even better source for the purpose. The purpose of the AMMA is expressly and unambiguously set forth in Proposition 203 itself which states that its purpose is to "protect patients... from arrest and prosecution, criminal and other penalties..." (Proposition 203, section 2(G)).

The cases cited by the State do not help its argument. Rather, they support Defendant's position that the proper purpose of the AMMA is the one that is expressly set forth in the AMMA itself. In support of its argument that the Court should accept a different purpose, the State cites *Ariz. Early Childhood Dev. & Health Bd.*, 212 P.3d 805, 221 Ariz. 467 (2006). The issue presented in that case concerned "the interaction of two measures passed by voters: a constitutional amendment known as the Voter Protection Act, and a statutory amendment known as the Arizona Early Childhood Development and Health Initiative ("Early Childhood Initiative")." The Court explained that "[i]n determining the purpose of an initiative, we consider such materials as statements of findings passed with the measure as well as other materials in the Secretary of State's publicity pamphlet available to all voters before a general election." 221 Ariz. at 471, ¶ 14, 212 P.3d at 809. The Court held that "Parsing the supporting materials associated with the Early Childhood Initiative as the State suggests does not square with the measure's obvious aims and structure. Consequently, we reject

the State's argument that the language of the Early Childhood Initiative exempts interest and investment income from the Voter Protection Act." Id at P.3d 809. The Court in this case should also decline to parse the language of the AMMA, as suggested by the State. The Court need not look beyond the actual purpose pronounced in the initiative itself and ought not do so where it is otherwise set forth in "statements of findings passed with the measure". Here, the purpose of the AMMA is set forth in section 2(G) of the initiative which clearly states that the purpose is to protect patients from criminal prosecution and penalty, not expose them to it, as the State's proposed interpretation would do.

The State also cites *State v. Gomez*, 212 Ariz. 55, 127 P.3d 873 (2006). *Gomez* examined Prop. 200, officially designated the "Drug Medicalization, Prevention, and Control Act of 1996," a 1996 measure that, among other things, protected criminal defendants from incarceration for their first two convictions for possession of a controlled substance. As the state quoted in its Response brief, the Court in *Gomez* stated that "[o]ur primary objective in construing statutes adopted by initiative is to give effect to the intent of the electorate." The State did not quote the remainder of the statement, however. The Court went on to opine that "[w]hen the language is "clear and unambiguous," and thus subject to only one reasonable meaning, we do so by applying the language *without using other means of statutory construction.*" Id at P.3d 875 (emphasis added). Here, the AMMA's purpose is "clear and unambiguous". It is expressly set forth in the section 2(G) of the initiative (to "*protect patients... from arrest and prosecution, criminal and other penalties...*"). Therefore, applying the State's proposed statutory construction would not be appropriate.

The State also cites *Cave Creek Unified School District v. Ducey*, 233 Ariz. 1, 308 P.3d 1152, 670 Ariz. Adv. Rep. 31. That case held that an initiative should give the words of an initiative "their natural, obvious and ordinary meaning." Id at P.3d 1158. In this case, the natural, obvious and ordinary meaning of the expressed purpose of the AMMA is to protect patients from criminal liability.

Prop. 203 section 2(G) (to “*protect patients... from arrest and prosecution, criminal and other penalties...*”). The Court should not, therefore, look behind those words and superimpose another implicit purpose over and above it.

Finally, the State also cites *Rumery v. Baier*, 294 P.3d 113 651 Ariz. Adv. Rep. 24). *Rumery* does not address the interpretation of a voter passed initiative, however, and only discusses the construction principle to be used when interpreting the Arizona Constitution; specifically Article 10, Section 7(A), which deals with state trust lands (“we apply Article 10, Section 7 according to its terms and decline to infer unstated exceptions to its restrictions on the use of state trust land proceeds”) Id at 114. As in *Rumery*, however, the Court in this case should use the same judicial restraint and refrain from inferring the unstated exception to the AMMA that is suggested by the State.

The gist of the cases cited by the State is that the Court should not attempt to impose a purpose that is not expressly set forth in an initiative where the initiative itself already clearly and unambiguously proclaims that purpose. If the voters intended that the purpose of the AMMA was to prohibit medical marijuana patients from possessing their medication in “areas where young people gather for education”, they could have easily done so by using specific language to that effect. They did not, however, and the speculative purpose advanced by the State is, therefore, not authorized and should be rejected by the Court. Moreover, contrary to the State’s assertion that the addition of public universities “does not frustrate or violate the purpose or function of the AMMA” (Objection p. 7), the State’s proposed purpose is in direct conflict with the AMMA’s own express, clear and unambiguous proclamation. Pursuant to section 2(G) of Prop. 203, the specific purpose of the AMMA “is to protect patients with debilitating medical conditions... from arrest and prosecution, criminal and other penalties”. A.R.S. §15-108 exposes registered patients like Mr. Maestas to “arrest and prosecution, criminal and other penalties”, rather than protect them from the same.

The State's proposed purpose of the AMMA is unauthorized and cannot withstand scrutiny under Article 4, Part 1, Section 1, Subsection (6)(C) of the Arizona Constitution. The Grand Jury was, therefore, instructed to follow a bad law and, therefore, the charge of Possession of Marijuana ought to be dismissed with prejudice. For the foregoing reasons, Defendant, Andre Maestas, respectfully requests that the Court dismiss Count 2 of the indictment (Possession or Use of Marijuana) because basis for that charge was a statute that is an unconstitutional violation of Article 4, Part 1, Section 1, Subsection (6)(C) of the Arizona Constitution (the Arizona Voter Protection Act).

RESPECTFULLY SUBMITTED October 23, 2014,

/s/

Thomas W Dean

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

PROCEEDINGS BEFORE THE 619TH
MARICOPA COUNTY GRAND JURY
IN RE:
ANDRE LEE JUWAUN MAESTAS

) No. 619 GJ 495
)
) CR2014-127252-001
)
)
)
)

Phoenix, Arizona
September 8, 2014

14 SEP 22 AM 9:09

MICHAEL K. JEANES, CLERK
BY *[Signature]*
DEP
FILED

REPORTER'S TRANSCRIPT OF PROCEEDINGS

(Original)
GJT

Prepared by:
Dotty Reaume, RMR, CRR
Certified Reporter
Certificate No. 50210

A P P E A R A N C E S

DEPUTY COUNTY ATTORNEY:

Ms. Angela Andrews

GRAND JURORS PRESENT:

Mr. James Brenner

Mr. Scott Smith

Ms. Juanita Salinas

Ms. Trisha Dilcox

Mr. Michael Johnson

Mr. Lemuel Gonzalez

Ms. Kimberly Young

Mr. Daniel Hadley - Alternate Foreperson

Mr. George Rocheleau

1 * * * * *

2 MS. ANDREWS: This is 619 GJ 495. This is
3 the investigation involving Andre Lee Juwaun Maestas,
4 M-a-e-s-t-a-s. This investigation alleges one count of
5 obstructing a highway or other public thoroughfare and
6 possession or use of marijuana. These are alleged to
7 have occurred on or about March 18, 2014, in Maricopa
8 County, Arizona.

9 Don't tell me you've never been read this
10 statute. All right. At this time we are going to take
11 a quick recess and I'll get you the statute.

12 (Whereupon, a recess was taken.)

13 MS. ANDREWS: Back on the record.

14 The statutes that may assist you in a
15 determination of probable cause are A.R.S. 13-2906,
16 13-3401, 13-3405 and 13-105.

17 According to Maricopa County Attorney
18 records, with the exception of 13-2906, all statutes
19 were read to the members of the Grand Jury and copies
20 were given to the members of the Grand Jury on June 9,
21 2014.

22 At this time I've given the members of the
23 Grand Jury 13-2906, which I will read at this time.

24 13-2906. Obstructing a highway or other
25 public thoroughfare; classification.

1 "A. A person commits obstructing a highway
2 or other public thoroughfare if, having no legal
3 privilege to do so, such person, alone or with other
4 persons, recklessly interferes with the passage of any
5 highway or public thoroughfare by creating an
6 unreasonable inconvenience or hazard.

7 "B. Obstructing a highway or other public
8 thoroughfare is a class 3 misdemeanor."

9 Are there any members of the Grand Jury who
10 would like me to reread or clarified any of these
11 statutes at this time? I take it by your silence that
12 there are none.

13 The witness who will be testifying for us
14 today from the ASU Police Department, I believe it's
15 Sergeant Mark Janda, J-a-n-d-a.

16 The record should reflect the presence of
17 the entire Grand Jury with the exception of Brundage,
18 Ewoniuk, Haro, Harscher, O'Malley, Romano, and Izuka.

19 The admonitions I read to you this morning
20 concerning persons disqualified from serving as Grand
21 Jurors do apply. And I take it by your silence that
22 they do not apply to you.

23 GRAND JUROR HADLEY: We are about to
24 consider the matter of 619 GJ 495 and the investigation
25 involving the individuals named.

1 A. Yes, I did.

2 Q. And was that in a location in Maricopa County?

3 A. It was.

4 Q. Tell us about your investigation of Mr., is it
5 Maestas, that day.

6 A. Yes. I was on patrol in a fully marked police
7 vehicle. I was in the area of Forest and Lemon, which
8 as she mentioned is in Maricopa County. I was traveling
9 southbound approaching the four-way intersection there
10 at Forest and Lemon.

11 On Forest, on the other side of the
12 intersection, in the northbound lane I saw something in
13 the roadway. I couldn't make out what it was. I was
14 about 150 feet or so away from the object, still
15 couldn't tell what it was. Took out binoculars, and
16 using binoculars I was able to determine it was a person
17 sitting in the road facing away from me so their legs
18 were hidden by their torso. I could just see his torso.

19 As I monitored the person to see what it was
20 they were doing, a vehicle started driving northbound
21 toward this person, did not appear to be slowing as if
22 they had seen this person in the roadway. So I turned
23 on my overhead light and pulled in front of the vehicle
24 to block it from being able to strike this person.

25 I contacted him. He identified himself as

1 Andre Maestas with an Arizona driver's license. Asked
2 him what he was doing in the roadway. He basically said
3 he didn't -- or he was there thinking. It should be
4 noted that there were some benches and a bus stop,
5 sheltered bus stop in the area that he had been sitting
6 at. I was concerned initially that he maybe was trying
7 to hurt himself. He denied that but said that he didn't
8 have any reason why he was sitting in the road.

9 As I was talking to him, I noticed that he
10 was, seemed to be disoriented. He was sluggish. He had
11 white, thick white film in the corners of his mouth.
12 Despite being, you know, within sight of his residence,
13 he wasn't able to tell me easily where he lived. He was
14 disoriented.

15 Ultimately he was placed under arrest for
16 obstructing a public thoroughfare. At that time while
17 conducting a search after the arrest, I located an
18 Arizona medical marijuana card in his possession. And
19 after advising him of his Miranda rights, he admitted
20 that he had -- he said he had about a fourth of a gram
21 of marijuana back in his dorm room.

22 I obtained a search warrant for his dorm
23 room and served that on his dorm room and located in two
24 different areas within his room three-tenths of a gram
25 in each location, for a total of about six-tenths of a

1 gram of marijuana. This marijuana I recognize as, due
2 through my training and experience as a police officer
3 for 14 years, as a usable quantity of marijuana. And
4 that's about it.

5 Q. And in fact having marijuana on school grounds
6 is a violation of the law, correct?

7 A. Yes, even with a medical marijuana card.

8 Q. And how much with a medical marijuana card was
9 he allowed to have?

10 A. He's not allowed to have any on a college
11 campus, but I believe it's two ounces.

12 MS. ANDREWS: Do any members of the Grand
13 Jury have any factual questions?

14 GRAND JUROR SMITH: How many ounces would
15 that be, six-tenths of a gram?

16 THE WITNESS: There's 28 grams per ounce, so
17 if he were off campus, would be allowed to have
18 56 grams. He had a little more than half of one gram.

19 MS. ANDREWS: Any additional factual
20 questions?

21 GRAND JUROR BRENNER: I didn't hear. Was it
22 field tested or --

23 THE WITNESS: I recognized it based on my
24 training and experience.

25 Q. BY MS. ANDREWS: And he admitted that it was in

1 fact marijuana?

2 A. Yes, he.

3 MS. ANDREWS: Are there any additional
4 factual questions?

5 Seeing that there are no additional factual
6 questions, sir, I will remind you of the admonition that
7 Arizona law prohibits you from discussing your testimony
8 here today with anyone other than the prosecution. If
9 you want to take a step out in the hall, I'll be with
10 you shortly.

11 (Whereupon, the witness left the Grand Jury
12 room.)

13 MS. ANDREWS: All right. So at this time
14 before we get to any legal questions, I'll provide you,
15 pursuant to A.R.S. 15-108(A), possessing marijuana even
16 on a university is prohibited by the Medical Marijuana
17 Card Act. And so the medical marijuana card would not
18 have permitted the possession of medical marijuana under
19 circumstances in which it can be proven that it was in
20 fact on a school campus.

21 GRAND JUROR SMITH: So would it be smart to
22 read that statute -- or have that statute in front of us
23 for deciding on?

24 MS. ANDREWS: That's what I'm looking for
25 now.

1 So that's not in the book, so I will be
2 back.

3 (Whereupon, a recess was taken.)

4 MS. ANDREWS: All right. Pursuant to
5 15-108, I've provided you all copies at this point in
6 time and now I will read it to you. "15-108. Medical
7 marijuana; school campuses; prohibition; definition.

8 "(Subsection A was added with a 1998 Prop.
9 105 clause pursuant to L12, Ch. 159).

10 "A. In addition to the limitations
11 prescribed in section 36-2802, subsection B, a person,
12 including a cardholder as defined in section 36-2801,
13 may not lawfully possess or use marijuana on the campus
14 of any public university, college, community college or
15 postsecondary educational institution. This subsection
16 does not prohibit medical research projects involving
17 marijuana that are conducted on the campus of any public
18 university, college, community college or postsecondary
19 institution as authorized by applicable federal
20 approvals, which may include the United States food and
21 drug administration, the United States drug enforcement
22 administration and the national institutes on drug
23 abuse, and on approval of any applicable university
24 institutional review board.

25 "B. A person may not lawfully possess or

1 use marijuana on the campus of any high school, junior
2 high school, middle school, common school or preschool
3 in this state."

4 All right. Do any members of the Grand Jury
5 would you like me to reread or clarified any of the
6 statutes at this time?

7 I take it by your silence that there are
8 none.

9 Are there any legal questions that I can
10 assist you with at this time?

11 Seeing that there are no legal questions,
12 we'll leave you to deliberate about which of your
13 options you wish to pursue.

14 (Whereupon, the deputy county attorney and
15 the court reporter were excused from the
16 Grand Jury room, were subsequently recalled
17 into the Grand Jury room, and the following
18 proceedings were had:)

19 GRAND JUROR HADLEY: The jury has voted and
20 directs the county attorney to prepare a draft
21 indictment for our consideration.

22 MS. ANDREWS: The county attorney has
23 prepared a draft indictment for your consideration.
24 I'll remind you the admonitions read to you this morning
25 regarding draft indictments do apply.

1 (Whereupon, the deputy county attorney and
2 the court reporter were excused from the
3 Grand Jury room, were subsequently recalled
4 into the Grand Jury room, and the following
5 proceedings were had:)

6 GRAND JUROR HADLEY: The clerk may read the
7 findings of the Grand Jury at this time, please.

8 GRAND JUROR SMITH: The Grand Jury, with
9 nine members present and only members of the Grand Jury
10 present, deliberated upon evidence, and with nine jurors
11 voting, by a vote of nine to zero returned a true bill.
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R E T U R N S A P P E A R A N C E S

DEPUTY COUNTY ATTORNEY:

Ms. Angela Andrews

GRAND JURORS PRESENT:

Mr. James Brenner

Ms. Juanita Salinas

Mr. Peter O'Malley - Foreperson

Ms. Trisha Dilcox

Ms. Jacklynn Haro

Mr. Lemuel Gonzalez

Ms. Kimberly Young

Mr. Daniel Hadley - Alternate Foreperson

Mr. George Rocheleau

C E R T I F I C A T E

Dotty Reaume and Karen Bolton, Certified
Shorthand Reporters, do hereby certify that the
foregoing constitutes a true and accurate printed record
of our stenographic notes taken at said time and place,
all done to the best of our skill and ability.

/s/ Dotty Reaume
Dotty Reaume
Certified Court Reporter
Certificate Number 50210

/s/ Karen Bolton
Karen Bolton
Certified Court Reporter
Certificate Number 50186