Clerk of the Superior Court
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SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2023-000215-001 DT 08/02/2023

HONORABLE JUSTIN BERESKY

CLERK OF THE COURT
J. Matlack
Deputy

STATE OF ARIZONA

v.

HONORABLE RAYMOND SCHUMACHER (001)
ALLISON RENEE BOISVERT (001)

PAUL WARNER HAWKINS

HONORABLE RAYMOND SCHUMACHER
C/O MESA MUNICIPAL COURT
250 E 1ST AVENUE
MESA AZ 85210
GORDON E THOMPSON

JUDGE BERESKY
MESA MUNICIPAL COURT

UNDER ADVISEMENT RULING

The Court having accepted special action jurisdiction and considered the arguments of counsel made on July 28, 2023, makes the following findings:

The State argues A.R.S. § 36-2852(B) does not require the State to prove impairment to the slightest degree as part of a DUI charge against an individual under twenty-one with marijuana metabolites or components in their body.

The statute at issue reads: "Notwithstanding any other law, a person with metabolites or components of marijuana in the person's body is guilty of violating § 28-1381, subsection A, paragraph 3 only if the person is also impaired to the slightest degree." A.R.S. § 36-2852(B) (emphasis added).

The Court's primary purpose in statutory construction "is to effectuate the intent of those who framed the provision and, in the case of an [initiative], the intent of the electorate that

adopted it." *Calik v. Kongable*, 195 Ariz. 496, 498 ¶10, 990 P.2d 1055, 1057 (1999) (citing *Jett v. City of Tucson*, 180 Ariz. 115, 119, 882 P.2d 426, 430 (1994)). With few exceptions, "if the language is clear and unambiguous, we apply it without using other means of statutory construction." *Calik* at 498 ¶10, 990 P.2d at 1057 (referencing *Hayes v. Continental Ins. Co.*, 178 Ariz. 264, 268, 872 P.2d 668, 672 (1994)). "Absent a clearly expressed legislative intention to the contrary, that language must ordinarily be regarded as conclusive." *Consumer Product Safety Commission et al. v. GTE Sylvania, Inc. et al.*, 447 U.S. 102 (1980), *see also Desert Palace, Inc. v. Costa*, 539 U.S. 90, 98–99, 123 S. Ct. 2148, 2153, 156 L. Ed. 2d 84 (2003) (holding that, where the words of a statute are unambiguous, the judicial inquiry is complete). The State argues that despite these long held holdings in analyzing statutory construction that is clear and unambiguous on its face, the entirety of the underlying purpose of Proposition 207 should nevertheless be considered.

The word "person" is generally a broad term. Black's Law defines a person as "[a] human being. — Also termed natural person." PERSON, Black's Law Dictionary (11th ed. 2019). Generic use of the word is not limited to those under twenty-one. Even restricting the word to adults would not lead to the reading the State advocates, as that would necessarily include those over eighteen years of age. There is nothing in the plain meaning of the term "person" that suggests it is restricted to those over twenty-one. To apply a different means of statutory interpretation, the plain language would need to render the statute unclear or ambiguous. *See Calik* at 498 ¶10, 990 P.2d at 1057.

The State argues that the term "person" as used in other parts of the initiative refer only to individuals twenty-one or older. (Petition for Special Action 8:6.) It references a section setting limits on the amount of marijuana that a person may possess, which states that "a <u>person</u> who possesses an amount of marijuana greater than the amount allowed pursuant to section 36-2852 . . . is guilty of a petty offense." A.R.S. § 36-2853(A) (emphasis added). The state argues that this section must only address lawful acts by a person over twenty-one because no amount of marijuana is legal if the person is under twenty-one. Petition for Special Action 8:6-15.

What the State does not addresses is that this section plainly uses section 36-2852 as a qualifier for the term "person" within this section, stating that "a person <u>who possesses an amount of marijuana</u> <u>greater than the amount allowed pursuant to section 36-2852</u>. . .) A.R.S. § 36-2853(A) (emphasis added). The cross-reference acts as an age constraint, as § 36-2852(A) itself renders possession legal only if the individual is at least twenty-one. The statute is not "nonsensical," as the State suggests. Petition for Special Action 8:14.

The State also argues that the generic use of the term "person" renders A.R.S. § 36-2853(B)(3) and A.R.S. § 36-2853(C) contradictory. Petition for Special Action 9:14. The first states that "a person who is under twenty-one" who consumes marijuana may be guilty of up to a

class one misdemeanor. A.R.S. § 36-2853(B)(3). Yet, a "person" who smokes marijuana in a public place is guilty of a petty offense. A.R.S. § 36-2853(C). The State argues that this is a contradiction that is resolved if the term "person" only refers to individuals twenty-one or older.

This argument ignores that a single act may violate one or several statutes. Thus, a person under twenty-one who consumes marijuana in private may violate only the first provision. If they do so in public though, they may violate both the first *and* the second. One violation is the act itself. The second results from the location it is committed. Meanwhile, a person who is legally permitted to consume marijuana may still violate A.R.S. § 36-2853(C) if they do so in public. These are separate and distinct offenses.

The State's argument that applying the standard meaning of the term "person" renders A.R.S. § 36-2852(B) nonsensical is also incorrect. Petition for Special Action 11:4. The section states, "[n]otwithstanding any other law, a person with metabolites of marijuana in the person's body is guilty of violating section 28-1381, subsection A, paragraph 3 only if the person is also impaired to the slightest degree." *Id*. The State argues that this cannot apply to individuals under twenty-one because no one under twenty-one is permitted to ingest marijuana. Petition for Special Action 10:26. Yet, this section does not contradict the proposition that those under twenty-one cannot ingest marijuana. Rather, it states the conditions under which a person under twenty-one can *also* be charged and convicted with a marijuana DUI under 28-1381. Furthermore, the phrase "[n]otwithstanding any other law" contravenes the idea that language in this section should be narrowly construed and explicitly subverts other laws that may appear to contravene this language.

Applying the State's limited definition of the term "person" would probably render other qualifying language superfluous. It is a "cardinal principle of statutory construction that courts must give effect, if possible, to every clause and word of a statute . . . *Williams v. Taylor*, 529 U.S. 362, 364–65, 120 S. Ct. 1495, 1498, 146 L. Ed. 2d 389 (2000).

Multiple sections qualify the generic term "person" using the additional language, "under twenty-one." *See* A.R.S. §§ 36-2853(B), 36-2853(E), 36-2853(F). In further instances, statute qualifies the term individual with the phrase "under twenty-one." *See* A.R.S. §§ 36-2852(A)(2)-(6). The publicity pamphlet the State itself references as evidence of the public's intent also qualifies the term "person," stating that the purpose is to legalize responsible adult use of marijuana "for persons twenty-one years of age or older." Petition for Special Action 14:9-11 (emphasis added). Were the term "person" limited to those under twenty-one in any other instance, there would be no need to include the qualifying language to distinguish a "person" from a "person under twenty-one."

The State does not directly raise this issue, but appears to be attempting to apply a definition of "person" that would render Arizona's marijuana DUI statute for those under twenty-one equivalent to Arizona's alcohol DUI statute. The alcohol DUI statute imposes an automatic DUI on drivers under twenty-one with alcohol in their system, irrespective of impairment. It is unlawful "[f]or a person who is under twenty-one years of age to drive or be in physical control of a motor vehicle while there is any spirituous liquor in the person's body." A.R.S. § 4-244(34), *see also* A.R.S. § 4-246(B) (stating that "[a] person violating § 4-242.01, subsection A or § 4-244, paragraph 9, 14, 34, 42 or 44 is guilty of a class 1 misdemeanor.").

Whether or not the State's interpretation would make for good policy, plain language does not appear to support its position. Even in the automatic alcohol DUI context, statute distinguishes between the term "person" and "person under twenty-one." It prohibits a "person who is under twenty-one years" from driving with alcohol in their system. A.R.S. § 4-244(34). Yet, when addressing possible violations by multiple categories of person, of which those under twenty-one are only one subgroup, it states "a person violating § 4-242.01, subsection A or § 4-244, paragraph 9, 14, 34, 42 or 44 is guilty of a class 1 misdemeanor." A.R.S. § 4-246(B) (emphasis added).

Proposition 207 distinguishes between the term "person" and "person over twenty-one" in multiple instances. Applying the common definition of the term "person" does not lead to ambiguous or contradictory results. Even if the language were ambiguous or contradictory, and the court were to make an effort to divine the intent of the public when enacting Proposition 207, the publicity pamphlet itself distinguishes the term "person" by adding the phrase "over twenty-one." Limiting the term "person" to those over twenty-one would render superfluous all instances of "over twenty-one" qualifying language throughout the proposition.

Based on the foregoing, the Court finds State must prove impairment to the slightest degree to succeed in its DUI charge against a person under twenty-one as set for in the plain language of A.R.S. § 36-2852(B).

IT IS ORDERED DENYING the requested relief and affirming the finding of the trial court.

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