

Driving With Metabolites on Board
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Introduction

Three Keys to Remember

- 1- Statutes are presumed constitutional
- 2- They bear the burden, not us. We operate from position of strength on this!
 - "The burden of demonstrating unconstitutionality, however, is a heavy one." State v. Mohi, 901 P.2d 991, 996 (Utah 1995)
- 3- Courts don't get to 2nd guess the legislature's wisdom
 - Only determining if constitutional rights are infringed, not if what they did was smart

41-6a-517(2)

"In cases not amounting to a violation of Section 41-6a-502, a person may not operate or be in actual physical control of a motor vehicle within this state if the person has any measurable controlled substance or metabolite of a controlled substance in the person's body."

General Defense Arguments

- Violates 8th Amendment/Cruel and Unusual Punishment (punishes a “status”)
- Violates Due Process
- Violates Equal Protection/Uniform Operations of Laws
- Affirmative Defense from statute:
 - Legal use in another state
 - Used under a valid prescription

8th Amendment

- Robinson v. California, 370 US 660 (1962)
 - Analyzed the punishment of being addicted to drugs, not the actual use, possession, sell, manufacture, etc
- State v. Robinson, 2011 UT 30
 - Analyzed the punishment for use of a controlled substance where a blood test resulted in the presence of an active illegal controlled substance in the body

State v. Robinson

Three Main Takeaways

- Use begins at ingestion and continues until the person is no longer under the influence of the drug
- “Status” is something that is beyond a person’s ability to control
- Hints about how the Court would feel about if this was a metabolite case

State v. Robinson Dicta on Metabolite

"Thus if Utah's measurable amount provision criminalized the presence of metabolites in the person's body, Mr. Robinson's argument **MIGHT** have merit."

- Dicta- Not controlling language as the issue was not before the Court
- Made no definitive statement, simply said "might" and said metabolites are "similar" to a status.
- Is not analogous anyway, because this case was not about driving, was simply about possession or use

Status Offense

- Metabolite statute requires the overt act of driving or being in actual physical control of a vehicle
- This is not punishing a status

Due Process

- Requires notice and ability to conform to the law
- Not a fundamental right- therefore rational basis test
 - Rationally related to a legitimate state interest
- When no fundamental right implicated, presumed constitutional
- State has legitimate interest in public safety and prevention of illegal drug use (among others)

Equal Protection/Uniform Operation of Laws

3-Prong Test

- Does the statute create separate classifications?
- Do classifications impose disparate treatment on persons similarly situated?
- If there is disparate treatment, does legislature have a reasonable objective that warrants the disparity?
 - This brings another 3-prong test

Classifications and Disparate Treatment

- Need to frame the classifications correctly
 - Not “two classes of unimpaired drivers”
 - Classification is actually lawful vs unlawful drug users
- No disparate treatment because all in each class is treated similarly

Disparate Treatment/Legislative Objectives

- Whether classification is reasonable
- Whether the objectives of the legislative action are legitimate
- Whether there is a reasonable relationship between the classification and the legislative purpose

Reasonableness of Classification

- Broad deference given to legislature for both reasonableness and relation
- State has strong interest in deterring illegal drug use and in public safety, so the classification is reasonable

Objectives of Legislative Action

- Only need to identify one POSSIBLE legitimate objective
- No evidence or actual proof needed to sustain classification (*Chettero*)
- “[t]he law need not be in every respect logically consistent with its aims...It is enough that there is an evil at hand for correction, and that it might be thought that the classification selected is a rational way to correct it, even if it exact[s] a needless, wasteful requirement.” *State v. Chettero*, 2013 UT 9, ¶ 22.
- “In determining whether legislative objectives are legitimate, we are not limited to considering those purposes that can be plainly shown to have been held by some or all legislators. We will sustain a classification if we can reasonably conceive of facts which would justify the distinctions...[I]t is enough that they may be reasonably imputed to the legislative body.” *Blue Cross & Blue Shield v. State*, 779 P.2d 634, 641 (Utah 1989).

Relationship Between Classification and Purpose

- Very similar analysis to the Due Process argument
- These classifications are reasonably related to public safety and the deterrence of illegal drug use.
- Every state that has taken this issue up has ruled in our favor except one (Georgia)
- Lots of case law in our favor
 - NV and Arizona are the closest geographically and have great language for us
 - Wisconsin, Indiana, Ohio, Illinois, Iowa, all have good language as well (others?)

Affirmative Defense

- Legal use in Colorado, Washington, or California before coming to Utah
 - Still illegal in all 50 states under federal law
 - 18 U.S.C. § 812 classifies THC as a Schedule I drug
- Valid Prescription
 - FDA has to approve any drug before it can be handed out in a prescription, and the FDA has not approved marijuana.
 - These are not “prescriptions” but medical recommendations, medical certificates, or medical use cards. Get a copy in discovery and look at it closely
 - None of these are listed in the affirmative defense, so it does not apply. Only to a valid prescription
