

*The State of Wyoming,
First Judicial District*



FILED

KIM ERICKSON
JUDICIAL ASSISTANT

JUL 29 2015

TAMMY FLEMING
COURT REPORTER

STEVEN K. SHARPE
DISTRICT JUDGE

LARAMIE COUNTY COURTHOUSE
309 WEST 20TH STREET
SUITE 3300
CHEYENNE, WYOMING 82001
(307) 633-4290

DIANE SANCHEZ
CLERK OF THE DISTRICT COURT

July 29, 2015

Ryan Wright
District Attorney's Office
310 W. 19th Street, 2nd Floor
Cheyenne, WY 82001

Joanne R. Sweeney
Woodhouse Roden Nethercott, LLC
1912 Capitol Ave., Suite 500
Cheyenne, WY 82001

Re: 32-530, *State v. Christopher Piessens*

DECISION LETTER

Dear Counsel:

This case involves the possession of chocolate bars, cookies, and other edible marijuana products. On April 13, 2015, a Wyoming Highway Patrolman stopped the Defendant, Christopher Piessens, for a traffic violation. A subsequent search of Piessens' car resulted in the seizure of 1.9 pounds of edible marijuana candies, cookies, bread, and chocolate bars. Seeking to take a bite out of crime, the State charged Defendant with felony possession of marijuana. *See Wyo. Stat. § 35-7-1031(c)(ii)*. That statute makes it a felony to possess more than three (3) ounces of a controlled substance "in plant form." Believing the State's charging decision to be half-baked, Defendant argues that he did not possess more than three ounces of marijuana in a plant form. He asked this court to certify various legal questions to the Wyoming Supreme Court. This court held a hearing to consider Defendant's argument on July 15, 2015.

After carefully considering the testimony presented to this court at the hearing, and considering the arguments and briefs of the parties, this court concludes that the State bit off more than it could chew in charging the Defendant with felony marijuana possession. The court will therefore deny Defendant's request to certify legal questions to the Wyoming Supreme Court and will *sua sponte* issue an order dismissing Count I.

Facts and Procedural History

The salient facts in this case are not in dispute. A Wyoming Highway Patrolman stopped Defendant for a traffic violation on April 13, 2015. Upon contacting the Defendant, the officer smelled the odor of marijuana coming from the vehicle. Defendant admitted that he smoked marijuana approximately an hour before the stop and further advised the trooper that he had some marijuana cigarettes and marijuana edibles in the vehicle. A subsequent search resulted in the seizure of 1.9 pounds of marijuana candies, cookies, bread, and chocolate bars from a black backpack located behind the driver's seat. Additionally, the trooper found two marijuana cigarettes in the center console of the vehicle.

The State subsequently charged the Defendant with felony possession of over three (3) ounces of a controlled substance in plant form pursuant to Wyo. Stat. § 35-7-1031(c)(iii), as well as a misdemeanor count of driving under the influence of a controlled substance. The Defendant pled not guilty at his arraignment on May 11, 2015. Defendant's case is presently scheduled for a jury trial on September 1, 2015.

On July 6, 2015, Defendant filed a *Stipulated Motion for Certification Pursuant to W.R.A.P. 11*. Both the Defendant and the State requested that this court enter an order certifying the following questions to the Wyoming Supreme Court:

1. Whether possession of "edibles" containing marijuana in a non-plant form consists of a violation of Wyo. Stat. § 35-7-1031(c)(i)(A) and thereby violates Wyo. Stat. § 35-7-1031(c)(iii) a felony?
2. If the above question is answered in the affirmative, then are the "edibles" weighed by their total weight including all food (i.e. ingredients therein), and packaging, or must the marijuana be separated from the other ingredients of the "edible," and packaging to be weighed?

This court held a hearing on Defendant's request for certification on July 15, 2015. During that hearing, the State presented evidence from Amber Peterson from the Wyoming Crime Lab. She testified as to her testing of the various marijuana edibles found in the Defendant's vehicle and confirmed that the edibles all tested positive for the presence of tetrahydrocannabinol (THC), the active ingredient in marijuana. On cross examination, however, Ms. Peterson admitted that the marijuana edibles were not

in "plant form," and that the only items that contained a controlled substance in plant form were the two marijuana cigarettes, which weighed well under three (3) ounces.¹

At the conclusion of the hearing, the court instructed both parties to submit briefs outlining their respective legal arguments within ten (10) days. Both parties complied with the court's request. After reviewing the parties' briefs and considering the undisputed evidence presented at the hearing, the court concludes that certification of legal questions to the Wyoming Supreme Court is unwarranted. This case involves relatively straightforward issues of statutory construction. The Wyoming Supreme Court has outlined, in numerous cases, the legal standards that apply to the interpretation of criminal and civil statutes.

Legal Standards

The Wyoming Supreme Court has clearly set forth the recipe this court must follow in resolving this controversy over "cookies, candy and chocolate bars." That recipe starts out by requiring this court to apply the well-established rules of statutory interpretation that our Supreme Court recently recited in the case of *Adekale v. State*, 2015 WY 30, ¶¶12, 13, 344 P.3d 761, 765-66 (Wyo. 2015):

Statutory interpretation is a question of law which we review *de novo*. *Crain v. State*, 2009 WY 128, ¶ 8, 218 P.3d 934, 938 (Wyo. 2009). The plain, ordinary, and usual meaning of words used in a statute controls in the absence of clear statutory provisions to the contrary. *Id.* Where there is plain, unambiguous language used in a statute there is no room for construction, and a court may not look for and impose another meaning. *Id.* Where legislative intent is discernible a court should give effect to the "most likely, most reasonable, interpretation of the statute, given its design and purpose." *Rodriguez v. Casey*, 2002 WY 111, ¶ 20, 50 P.3d 323, 329 (Wyo. 2002).

We have said that we will not add language or choose other words to change the meaning of a statute. *Stutzman v. Office of Wyoming State Eng'r*, 2006 WY 30, ¶¶ 14-16, 130 P.3d 470, 475 (Wyo. 2006). On the other

¹ The undisputed testimony presented at the hearing established that the edible marijuana products in this case did not contain material "in plant form." While Ms. Peterson did not testify as to "how" marijuana edibles are made, an abundance of information exists that explains the process. *See, e.g., People v. Carruthers*, 301 Mich. App. 590, 837 N.W.2d 16 (Mich. App. 2013). Typically, marijuana edibles are made by extracting marijuana resin from raw marijuana by heating the marijuana with a substance like butter or olive oil. The raw marijuana is then strained off, and the butter (often called "Cannabutter") or oil ("Cannaoil") is then used to make the edible product. *See The Stoner's Cookbook* at http://www.thestonerscookbook.com/how_to_make_cannabutter.php.

hand, "it is one of the surest indexes of a mature and developed jurisprudence ... to remember that the statutes always have some purpose or object to accomplish, whose sympathetic and imaginative discovery is the surest guide to their meaning." *Cabell v. Markham*, 148 F.2d 737, 739 (2d Cir.1945), *judgment aff'd*, 326 U.S. 404, 66 S.Ct. 193, 90 L.Ed. 165 (1945); 2A Norman J. Singer and J.D. Shambie Singer, *Sutherland on Statutory Construction* § 45:9 (7th ed. 2014). This Court will not interpret a statute in a way which renders any portion of it meaningless or in a manner producing absurd results. *Stutzman*, ¶ 16, 130 P.3d at 475.

Additionally, in interpreting criminal statutes, any ambiguity should be resolved in favor of lenity to the defendant. *Adekale*, 2015 WY at ¶¶25-27, 344 P.3d at 768. The rule of lenity applies with greater vigor to offenses which are *malum prohibitum*, as opposed to *malum in se*. *Id.*

With those legal standards in mind, the court will next attempt to digest the arguments made by both the Defendant and the State.

Discussion

Wyoming law makes it a crime for an individual to knowingly or intentionally "possess a controlled substance," if the substance was not obtained pursuant to a valid prescription. Wyo. Stat. § 35-7-1031(c). Under the Wyoming Controlled Substances Act of 1971, "marijuana" is listed as a Schedule I controlled substance. See Wyo. Stat. § 35-7-1014(d)(xiii).²

Wyoming's statutory scheme classifies drug possession offenses as either "felonies or misdemeanors" based on both the "form" that a controlled substance is in, as well as its "weight." Wyo. Stat. § 35-7-1031(c)(i). It is a felony offense for an

² Marijuana is specifically defined by statute as follows:

"Marijuana" means all parts of the plant of the genus Cannabis, whether growing or not; the seed thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil or cake, or the sterilized seed of the plant which is incapable of germination.

Wyo. Stat. § 35-7-1002(a)(xiv). See also *Leyva v. State*, 2005 WY 22, 106 P.3d 873 (Wyo. 2005).

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individual to possess more than three (3) ounces of a controlled substance that is "in plant form." Wyo. Stat. § 35-7-1031(c)(iii).

In this case, the State charged the Defendant with possessing more than three ounces of marijuana "in plant form." However, the undisputed testimony presented by the State's chemist established that the marijuana edibles were not in plant form. The only controlled substances she tested that were in "plant form" were the two marijuana cigarettes that the patrolman found in the center console, which weighed well under the required three ounces needed to constitute a felony.

In response to this observation, the State asks this court apply the language found in Wyo. Stat. § 35-7-1031(d), which provides:

For purposes of determining the weights to be given the controlled substances under this section, the weights designated in this section shall include the weight of the controlled substance and the weight of any carrier element, cutting agent, diluting agent or any other substance excluding packaging material (emphasis added).

The court understands the State's argument to be this: since the chemist found that the various edibles all contained THC, and since THC comes from the marijuana plant, this court must consider the entire weight of the edibles to determine if the offense charged is a felony. In support of that position, the State cites *Smith v. State*, 964 P.2d 421, 423 (Wyo. 1998)(holding that the weight of water in a beaker containing a mixture of water and methamphetamine could be considered to raise the crime of possession of methamphetamine from a misdemeanor to a felony under Wyo. Stat. § 35-7-1031(d)).

While the State's argument provides interesting food for thought, its logic begins to crumble when you apply the required rules for statutory interpretation. Those rules make clear that a court must read all parts of the statute *in para materia* and must "not interpret a statute in a way which renders any portion of it meaningless." See *Adekale*, ¶ 13, 344 P.3d at 765, citing *Stutzman v. Office of Wyoming Engineer*, 2006 WY 30, ¶16, 130 P.3d 470, 475 (Wyo. 2006).

To adopt the State's argument, this court would have to ignore the language from Wyo. Stat. § 35-7-1031 (c)(i)(A) referencing the weight of a "controlled substance in plant form." Reading the plain and unambiguous language of the statute, and giving effect to each word, the court determines that the State can charge a person with felony possession of marijuana under Wyo. Stat. § 35-7-1031(c)(iii) when three circumstances exist: (1) The defendant is in possession of a "controlled substance," to wit: marijuana;

(2) the controlled substance is in "plant form,"³ and (3) the weight of the controlled substance exceeds three (3) ounces. Because it is undisputed that the edibles in this case were not in plant form (but rather in cookie or candy "form"), the prosecution for felony possession of marijuana must fail.

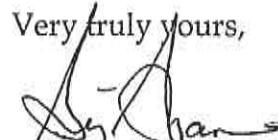
Conclusion

The court hopes its tongue-in-cheek writing style is not misconstrued by the parties as minimizing the significance of this topic. To the contrary, the court acknowledges the serious potential health risks associated with edible marijuana products. *See, e.g., Why Marijuana Edibles Might Be More Dangerous Than Smoking.*⁴ The court accepts that this is a very important subject, worthy of serious legislative study and debate. In fact, the court notes that the Joint Judiciary Committee of the Wyoming Legislature is aware of perceived deficiencies in the present drug statute when it is applied to the subject of edible marijuana products. The Committee has directed the Legislative Services Office and the Attorney General's Office to provide more information to the Committee as to how other states have addressed the subject of edible marijuana products. *See Summary of Proceedings, Joint Judiciary Committee Meeting, April 14 and 15, 2015, page 9, found at www.wyoleg.gov.*

But the role of this court is to interpret existing statutes, not create new ones. The court ultimately finds that Count I in this case charging the Defendant with felony possession of marijuana must be dismissed. The court will give the State five (5) days from the issuance of this letter to decide whether it wishes to proceed in this court on the DUI count (Count II), or dismiss and re-file in Circuit Court. *See Wyo. Stat. § 5-9-129.*

Thank you.

Very truly yours,


Steven K. Sharpe
District Judge

³ Wyoming Statutes do not define either "plant" or "plant form" so this court must afford those words their common and ordinary meaning. Webster's New College Dictionary defines a plant as "any of the various photosynthetic, eukaryotic multicellular organisms of the kingdom Plantae, characteristically producing embryos, containing chloroplasts, having cellulose cell walls, and lacking the power of locomotion."

⁴ <http://abcnews.go.com/US/marijuana-edibles-dangerous-smoking/story?id=23468248>.

STATE OF WYOMING)
) SS:
COUNTY OF LARAMIE)

CIRCUIT COURT
FIRST JUDICIAL DISTRICT
Criminal Action No. 20-7

THE STATE OF WYOMING

Plaintiff,)
)
vs.)
)
CHRISTOPHER MICHAEL PIJESSENS)
Defendant.)
)

IN THE DISTRICT COURT
FIRST JUDICIAL DISTRICT

AFFIDAVIT OF PROBABLE CAUSE

COMES NOW, Trooper Jeramy D. Pittsley , and being first duly sworn on oath, deposes and states as follows:

1. That on April 13, 2015 at about 0842 hours I was dispatched to the area of mile marker 354 on Interstate 80 eastbound for a traffic complaint. I was advised a maroon Lincoln MKZ bearing California 7KDY702 passenger registration was eastbound and was swerving all over the road. The reporting party stated the driver could be texting.
2. That at approximate mile marker 361.5 on Interstate 80 I located the suspect vehicle traveling eastbound. The vehicle continued eastbound until exiting at exit 362 abruptly and without properly signaling the movement.
3. That when I activated my emergency lights to stop the vehicle. The driver continued down the ramp and to the intersection of US 85. The driver then turned south onto US 85, then right into the parking lot of the Exxon gas station and parked.
4. That upon making contact with the driver and front seat passenger I could smell the strong distinct odor of marijuana coming out of the vehicle. I asked the driver back to my patrol car so I could speak with him about the odor.
5. That once in my patrol car, the driver who was identified by a Illinois identification card as CHRISTOPHER MICHAEL PIJESSENS (DOB:10/11/1985) was asked about the odor of marijuana. PIJESSENS stated he had some marijuana cigarettes and some marijuana edibles in the vehicle. PIJESSENS also stated he and his passenger smoked marijuana in Laramie, Wyoming about an hour prior to the stop.
6. That I searched the vehicle and in a black back pack located behind the driver's seat I located two paper bags containing approximately 1.9 pounds of marijuana candies, cookies, bread, and chocolate bars.
7. That in the center console area I also located two marijuana cigarettes.
8. That PIJESSENS stated the back pack was his, that he purchased all the edibles, and that none of it belonged to his passenger.
9. That PIJESSENS was asked to perform field sobriety tests and performed poorly.
10. That PIJESSENS had been read his Miranda Warnings and asked to perform a Drug Recognition Evaluation. PIJESSENS agreed and Chief of Police Brian Kozak conducted the evaluation with me as a scribe. That it was the opinion of Chief Kozak that PIJESSENS was impaired by a controlled substance.

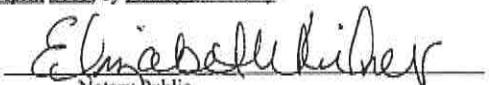
11. That Division of Criminal Investigation Agent Brad Wnuk was contacted and the case was turned over to him. Agent Wnuk interviewed PIESSENS and during the course of the interview PIESSENS admitted again the marijuana in the vehicle belonged to him. He also admitted to buying one hundred dollars worth of marijuana edibles in California and he was delivering it to a friend back in Chicago, Illinois.
12. That PIESSENS was cooperative with myself and Agent Wnuk throughout our contact with him.
13. That PIESSENS was charged with Possession of a controlled substance with the intent to deliver, Possession of a controlled substance greater than 3 ounces, and driving while under the influence of a controlled substance.

FURTHER YOUR affiant saith naught.

DATED THIS 13th day of April, 2015.


Affiant

Subscribed and sworn to before me this 13th day of April, 2015, by Jeremy D. Pittsley.


Elizabeth Kilmer
Notary Public

My Commission Expires: Sept 11 2016.



<p>STATE OF WYOMING)) SS: COUNTY OF LARAMIE)</p> <p>THE STATE OF WYOMING</p> <p>Plaintiff,</p> <p>vs.</p> <p>CHRISTOPHER MICHAEL PIJESSENS, YEAR OF BIRTH: 1985</p> <p>Defendant.</p>	<p>IN THE CIRCUIT COURT FIRST JUDICIAL DISTRICT Criminal Action No. CR 2015 -</p> <p>IN THE DISTRICT COURT FIRST JUDICIAL DISTRICT</p> <p>DOC. _____ NO. _____</p>
<p>INFORMATION</p>	

COMES NOW, Ryan Wright, Assistant District Attorney, First Judicial District, and in the name and by the authority of the State of Wyoming, informs the Court and gives the Court to understand that:

Count I: Possession of Marijuana - Misdemeanor

1. On or about the 13th day of April, 2015;
2. In the County of Laramie and the State of Wyoming;
3. **CHRISTOPHER MICHAEL PIJESSENS;**
4. Did knowingly or intentionally possess under three (3) ounces of a Schedule I non-narcotic controlled substance in plant form, to wit: defendant did knowingly or intentionally possess marijuana, as defined by the Wyoming Controlled Substance Act of 1971, Wyoming Statute § 35-7-1014(d)(xiii), in violation of Wyoming Statute § 35-7-1031(c)(i)(A), the same being a Misdemeanor. (SEE AFFIDAVIT OF PROBABLE CAUSE);

Penalties: 0 - 12 months, and/or \$0-\$1,000 Fine

Count II: DUI - Incapable (as of July 1, 2010)

1. On or about the 13th day of April, 2015;
2. In the County of Laramie and the State of Wyoming;
3. **CHRISTOPHER MICHAEL PIJESSENS;**

4. Did unlawfully drive or have actual physical control of any vehicle within this state while under the influence of alcohol, controlled substance or a combination of alcohol and a controlled substance to a degree which renders him incapable of safely driving, to wit: did unlawfully drive or have actual physical control of any vehicle within this state while under the influence of a controlled substance or a combination of alcohol and a controlled substance to a degree which renders him incapable of safely driving, in violation of Wyo. Stat. §31-5-233(b)(iii)(B), the same being a Misdemeanor. (SEE AFFIDAVIT OF PROBABLE CAUSE);

Penalties: 0 - 6 months and/or \$0 - \$750 fine

Against the peace and dignity of the State of Wyoming. Probable Cause for this Information is based upon the Affidavit of Probable Cause of Trooper Pittsley of the Wyoming Highway Patrol.

Dated this _____ day of August, 2015.

RYAN WRIGHT, # 7-4638
Assistant District Attorney
310 West 19th Street, Suite 200
Cheyenne, WY 82001
(307) 633-4360

STATE OF WYOMING)
COUNTY OF LARAMIE)^{ss}

I, Ryan Wright, Assistant District Attorney of the First Judicial District, in the State of Wyoming, do solemnly swear that I have read the above and foregoing information by me subscribed, that I know the contents thereof, and that I have been reliably informed and verily believe the facts therein stated to be true. So help me God.

RYAN WRIGHT

Sworn to before me and signed in my presence the _____ day of August, 2015, and I do hereby so certify.

NOTARY PUBLIC

My commission expires

TO: CHRISTOPHER MICHAEL PIJESSENS
c/o Joanne Sweeney
1912 Capitol Ave, Ste 500
Cheyenne, WY 82001

CHRISTOPHER MICHAEL PIESSENS, YOU ARE HEREBY NOTIFIED AND ORDERED to appear before this Court at the Laramie County Governmental Complex, 309 West 20th Street, Cheyenne, Wyoming on _____ day of _____, 2015 at _____ AM/PM for a hearing on a the State's Information filed on the 3rd day of August, 2015.

YOU ARE FURTHER ADVISED, that if you fail to appear as stated above a bench warrant may be issued for you immediate arrest.

DATED this _____ of August, 2015

CIRCUIT COURT JUDGE

SHERIFF'S RETURN:

Received _____, 20____, at _____ hrs., and executed by service of
_____, at _____ on
_____, 20____.

NAME _____

TITLE _____

DISTRICT ATTORNEY

SUMMONS INFORMATION SHEET

Defendant: CHRISTOPHER MICHAEL PIJSESENS		SSN:
Address:		City:
DOB: 10/11/1985	Sex: Male	Race: White
Height: 6'0"	Weight: 148	Hair: Blonde Eyes: Hazel
Driver's License No:		Issuing State:
AKA 1:		AKA 2:
Employer:		Address:
Currently Incarcerated: No		Location:

Information provided by: **ROB GAULKE,
LEGAL ASSISTANT**

**DISTRICT ATTORNEY'S OFFICE
FIRST JUDICIAL DISTRICT
310 West 19th Street, suite 200
Cheyenne, WY 82001
(307) 633 4360**