

**NEW CASE LAW FOR COURTS OF  
LIMITED JURISDICTION**

**BY**

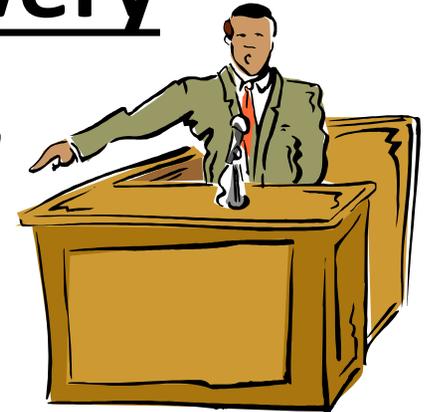
**JAMES BLAKE**

**SCOTTSDALE ASSOCIATE CITY JUDGE**

**September 05, 2019**

# Phoenix City Prosecutors v. Lowery

(Craig), 245 Ariz. 424, (S. Ct.,  
12/03/19).



“We hold that when a defendant commits a crime against his or her spouse and is charged for that crime, the crime exception to the anti-marital fact privilege allows the witness-spouse to testify regarding not only that charge, but also and charges arising from the same unitary event.”

**State v. Reed, 809 Ariz. Adv. Rep. 4,  
(App. Div. 1, 01/22/19).**

“Defendant Richard Allen Reed died while this appeal of a criminal restitution order entered against him was pending. The State then sought dismissal of his appeal pursuant to Arizona Revised Statutes section 13-106 (A), 2018, which states that on a convicted defendant’s death, the court shall dismiss any pending appeal. Because that statute is constitutional as applied, this appeal is dismissed.”

**Crosby-Garbotz v. Fell (State of Arizona)**, 809 Ariz. Adv. Rep. 4, (S Ct., 02/05/19)

This case overturns a court of appeals case regarding criminal collateral estoppel. “We hold that issue preclusion may apply in a criminal proceeding when an issue of fact was previously adjudicated in a dependency proceeding and the other elements of preclusion are met.”



**State v. Weakland, 811 Ariz. Adv. Rep.  
4, (S Ct., 02/25/19)**

Did Butler unsettle the law on Admin. Per Se?

NO “We hold that the good-faith exception applies because application of the exclusionary rule in these circumstances would not

meaningfully deter police misconduct. Butler

did not unsettle the law, and **it is unreasonable**

**to require police to predict a change in the law when our trial and appellate courts failed to do**

**so.”**

# **Diaz v. Bernini (State of Arizona), 811**

Ariz. Adv. Rep. 12, (S. Ct., 02/28/19)

This case involved a breath test. “Under Arizona implied consent statute, a law enforcement officer may obtain a blood or breath sample from a person arrested for driving under the influence (“DUI”) only if the arrestee expressly agrees to the test. We today hold that, apart from any constitutional considerations, the statute itself does not require that the arrestee’s agreement be voluntary.”

## **State v. De Anda, 811 Ariz. Adv.**

**Rep. 15, (S. Ct., 02/28/19)**

In this case, the person arrested for DUI is read the new Admin. Per Se which contrary to statute tells him of the loss of license for refusal prior to asking if he will agree to the tests. Defendant agrees to the test and then says it is not voluntary since Admin. did not follow the statute. “... the officer here did not tell De Anda he was required to submit to the test, and the officer’s identifying the consequences of refusal before asking whether he would submit to the testing did not in itself render De Anda’s consent involuntary.”

**State v. Quijada**, No. 1 CA-CR 18-0247  
PRPC646 Ariz. Adv. Rep. 10, (App. Div. 1,  
filed 03/28/19)

PCR case where restitution is an issue, victim will not cooperate and real question as to actual value. The court will allow victim to be subpoenaed to restitution hearing but will not allow warrant if victim refuses to cooperate. Court is to take that into consideration when deciding restitution amount if any.

**State v. Tagge, No. 1 CA-CR 16-0751, 1  
Ca-Cr 16-0785, filed 05/09/19)**

The Tagge children are in a car at a public parking lot in Mesa smoking joints prior to a concert next to undercover police officers. They are both card holders and feel this is a legal thing to do. Since they are in public and not in a mobile home they are wrong and convicted.

# **State v. Hernandez, No. 2 No. CR 2016-1916001, filed on 05/08/19.**

This case involved a police chase where defendant got away and officer identified him from a photo and no finger prints were taken from the stolen vehicle. Issues were the Id. and request for a Willits instruction. The state won on the Id. Issue but lost on the Willits issue. This case will create a lot of issues if not overturned by the Supreme Court.

**State v. Jones**, Arizona Supreme Court,  
CR 18-0370-PR, filed on 05/28/19.

This is the case that says the marijuana does not have to be limited to the leafy form in order to qualify under the Arizona Medical Marijuana Act. “We hold that the definition of marijuana in 36-2801(8) included resin, and by extension hashish, and that 36-2811(B)(1) immunizes the use of such marijuana consistent with AMMA.”

**State v. Havatone, No 1 Ca-Cr  
17-0547, filed on 06/06/19)**

This is a very old case that has already been to the Arizona Supreme Court. Case involves an accident and defendant is airlifted to Nevada where his blood is drawn. Does Arizona law or Nevada law apply? The blood is either suppressed or allowed depending on which law applies.

**Mitchell v. Wisconsin, United State  
Supreme Court. Filed 06/27/19)**

This case has to do with a DUI , no breath test and defendant is unconscious by the time the police reach the hospital. Blood is drawn and seized without a warrant under Wisconsin implied consent law. By a 5 to 4 decision the court allows this with the defendant having the right to rebut.

Questions?





