



1

ii) Amicus was harassed, threatened with violence and assaulted by Florida police due to the supposed "alert" of a drug-detecting canine. No contraband was found in that matter, because there was none. Amicus was charged with infractions that were blatantly in error, and the resulting case was resolved Bona Fide in Amicus' favor, Amicus was further harassed by the Court and its Bailiff when filing a Bill of Costs in open court. A Bill of Costs was filed with the clerk of that court, but Amicus was never compensated. These facts were brought in Bugoni v. Slosberg (9:2010-CV-80867, Florida Southern District).

iii) Amicus has formal education, and practical experience in Chemistry.

## II) Public Interest

i) The Public, and likewise Amicus as a member thereof, has an Absolute Compelling Interest in enforcing Constitutional Compliance upon all persons engaging in law enforcement.

## IV) New Information

This Brief specifically examines the reliability of a canine as a drug detecting mechanism. It applies certain principles of Chemistry to explain that illegal compounds typically have no odor, and that the legal collateral products associated with them are orders of magnitude more volatile, and therefore likely to be detected. In the analysis presented, it is irrelevant what the supposed capacity of a canine, or any other drug-detecting mechanism to "smell" may be, because the Compounds scheduled as controlled substances under Florida Law will typically not evaporate at normal temperatures, and therefore never leave their source to be detected by any mechanism, regardless of sensitivity. However, legal collateral products associated with contraband drugs readily evaporate, and are sufficiently chemically and biologically reactive to cause strong odors. The constitutionality of FRS 893.03 is also challenged specifically with regard to its prohibition of the entire genus Cannabis, as well as in its language, with regard to Substantive Due Process.

28

1

V) Brief:

This Brief answers the question before the Court in the affirmative for the following reasons:

- 1) Florida Drug Law is unconstitutional, specifically in its prohibition of the genus Cannabis, and facially unconstitutional for failure to meet Substantive Due Process requirements.
- 2) No legal proof exists that canines are capable of smelling at all.
- 3) All claims of such are from humans alone.
- 4) Canines cannot be cross-examined.
- 5) Canines cannot distinguish Cannabis from legal products containing the same naturally occurring odorant compounds.
- 6) Canines cannot distinguished chemically processed drugs from the reagents and solvents used to prepare them.
- 7) Neither THC, nor Cocaine, nor Morphine, nor Methamphetamine salts have any odor whatsoever.
- 8) Most if not all drugs listed under FRS 893.03 have no odor whatsoever.
- 9) The explanation of the above can be found in Organic Chemistry, and is detailed in Amicus' Simplified Treatise on Organic Chemistry.
- 10) An "alert" by a canine is not sufficiently reliable to meet the probability of cause given the totality of circumstances above.

Any attempt to use a detection mechanism to determine the contents of a person's private residence constitutes a search. It is irrelevant whether that mechanism is a canine, or machine, and ultimately irrelevant what the mechanism is supposedly detecting. A search is a search. This brief specifically attacks the reliability of canines as a drug detection mechanism, given the totality of circumstances, and concomitantly the lack of a canine's ability in the instant case, or any case for that matter, to inform as to the probability of cause.

28

The points stated supra are elaborated below, and supported by Amicus' Treatise on Organic

1

Chemistry, and (Exhibits A - L),

1) FRS §§ 893.02(3), 893.03 is unconstitutional with regard to Cannabis. It specifically controls the entire genus "Cannabis" as a Controlled Substance. Cannabis is a plant that grows wild without the intention of, and despite Man. As with any wildly occurring plant it will grow and propagate itself without any action by any person. There is no rational relation to the presence of Cannabis and the probability of cause. The Cannabis plant is capable of growing and producing odiferous compounds without producing any drug scheduled under FRS § 893.03. An example of that circumstance is "Industrial Hemp" (As defined in HR-1831, "Industrial Hemp Farming Act of 2011", and H.R.1009 -- Industrial Hemp Farming Act of 2007), which is indistinguishable by odor from drug-containing Cannabis. FRS § 893.03 schedules numerous specific chemical compounds as controlled substances, including the accepted "drug" components of Cannabis, (TetraHydroCannabinols, FRS § 893.03(1)(c)(37) ), but also schedules the entire Cannabis genus as a controlled substance, FRS § 893.02(3), FRS § 893.03(1)(c)(7). Cannabis contains certain drug components, which are specifically identified as controlled substances under FRS § 893.03 as well as 21 U.S.C. §§ 802, 812. Minus these compounds Cannabis is not substantially different in any way from any other plant. It is more than 90% water, the remainder is mostly cellulose. (Cotton, Wood Fiber, Paper. Nothing illegal). In the case of Cannabis, certain drug-compounds are produced by the plant as well as certain odiferous compounds. The rest of the plant is no different than any other. The odiferous compounds it produces (Terpenes) are legal and common to all herbs and spices, plants of the genus Pinaceae (Pine), Citrus, and other plants as well. The drug-compounds themselves have no odor. Minus the drug compounds, Cannabis is no different from Rosemary, Thyme, Oregano, Bay Leaf, Lemon Grass, Oranges, Lemons, Limes, Grapefruit or any Citrus. It is only the drug-components of Cannabis that potentially meet the criteria for scheduling as a controlled substance. (The notion of herbs, spices, and citrus fruits having a "high potential for abuse" is ridiculous in se and cannot be addressed). FRS § 893.03(1) (Schedule I), proscribes that a substance must

28

1

have no medical use and a high probability for abuse. Both these criteria must be met because simply the fact that something has no medical use cannot be a criteria for control under or by law, or likewise a substance that has "high potential for abuse" may be legal if it has medical value. In FRS § 893.03 the term "abuse" is vague and over broad. Neither "Drug", nor "Abuse" are defined anywhere in FRS Chapter 893, The so-called Florida Comprehensive "Drug Abuse" Prevention and Control Act. By its colloquial meaning "abuse" means "wrongful use". This statute deprives an individual who would use these controlled substances rightfully of the Liberty Interest of using them, because of a presumption of "high probability" of "abuse" by some other party. This presumption constitutes prior restraint. The "clear and present danger" standard is not met. "High Probability" is not synonymous with "clear and present", and "abuse" does not sufficiently define the conduct sought to be proscribed. The provision in FRS § 893.03(1) that Cannabis has "no currently accepted medical use in treatment in the United States" is simply in error because sixteen of the United States, and the District of Columbia, have passed Medical Marijuana legislation. Citizens in Florida are Guaranteed by The United States Constitution the Full Faith and Credit of those Public Acts. Because the law makes illegal a wildly growing plant that may not have any component at all that is schedulable as a controlled substance, and because the law is vague and over broad, in the instant case, the supposed smell of it constitutes no probable cause at all. The alert by a canine to a substance that is contraband only by an unconstitutional law is no probable cause. In the instant case a well trained drug detecting police officer would know about the chemistry of Terpenes, and certainly would know about industrial hemp were the bills mentioned above passed into law. Likewise a Judge in Good Behavior would know about a case such as this that came before the US Supreme Court, addressing the Chemistry of Smell, and the issues of Constitutionality raised in this Brief, and as a result would know that the supposed smell of Cannabis constitutes no probable cause. A canine is oblivious to all this.

28

1

2), 3), 4) No legal proof exists that a canine is capable of smelling at all. How does one prove the perception of another being? It is inference, empirical observation, and anecdotal evidence. Legal proof means that one is capable of swearing to the matter under Oath before the Public. At best a person or persons will attempt to vouch for the supposed training and ability of a canine, but the drug detecting canine can never affirm these in Court. There is no "standard of training" nor "standard of alert" with respect to supposed drug-detecting canines. There is no way for some other party to verify the ability of what amounts to an informant, to detect drugs. A useful analogy is an alcohol breath analyzer. It is a chemical-detection mechanism that can be disassembled, analyzed, and reconstructed. It could be produced by multiple vendors, and take a multitude of designs, its mechanism, could be tested for reliability by any competent party, and if its mechanism upon which the state relies to make a legal decision is valid, all parties should get the same or extremely close results. The lack of such in a canine deprives a person of their Right to Confront Witnesses, and Rights to Discovery and Due Process, and brings into question the reliability of canines as a drug-detecting mechanism. Ultimately, all claims that canines are capable of smelling come from Humans alone. No canine has ever testified that they smelled any kind of contraband.

5) Canines cannot distinguish Cannabis from legal products containing the same naturally occurring odorant compounds. The same chemicals that give Cannabis its smell are in all Citrus fruits and many common herbs and spices. The specific cannabis products outlawed in FRS § 893.03(1)(c)(37) have no odor. The remainder of the plant is ultimately the same as legally occurring variants that produce the same compounds.

6) More important, canines cannot distinguish between chemically processed drugs, and the reagents and solvents used to prepare them. Chemicals such as gasoline, (octane, trimethylpentane), diesel fuel and other hydrocarbons, alcohol, ammonia, hydrochloric and sulfuric acids, and Iodine are used to prepare synthetic drugs because of their wide

28

1

availability, and usefulness to the task. All these compounds are legal, and generally used in motor fuels, car batteries, and various types of cleaners or sanitizers. They are to be found in more places by far than any illicit drug. Again, the drug compounds are odorless, it is the left over solvents and reagents that release odors.

7) As mentioned above, the drug compounds of contraband are odorless. Support for this can be found by examining the chemical composition, and structure, of a particular compound, as well as its Vapor Pressure, which is dependent on among other things, a compound's molecular size and mass. Appendix D of Amicus' accompanying Treatise on Chemistry examines the vapor pressure of these compounds.

8) Concomitantly, most if not all drugs scheduled as controlled substances under FRS § 893.03 are undetectable by odor for all the same reasons stated above.

9) The explanation of the above can be found in the science of Organic Chemistry, and is detailed in Amicus' Simplified Treatise on Organic Chemistry. This treatise explains simply the concepts of Chemistry that apply in this case, and that one must understand in order to see the failure in reliability of a canine as a drug-detecting mechanism. The information presented is material that would be taught in undergraduate-level Organic Chemistry. Very simply, if a compound has no Vapor Pressure, it has no odor. Organic molecules greater than a certain mass will generally not evaporate at normal temperatures, nor have an odor, due to their weight and size. Molecules that are crystals will generally not evaporate at normal temperatures. The drug compounds themselves addressed herein have no odor, and the companion products, Terpenes, hydrocarbon solvents, strong acids, halogens, and ammonia, are all highly volatile at ordinary temperatures, and in the case of strong acids, halogens, and ammonia, are chemically very reactive, which contributes to their strong odor.

28

10) An "alert" by a canine is not sufficiently reliable to meet the probability of cause given the totality of circumstances above. The "totality of circumstances" includes organic

1

chemistry, fraud, or the potential thereof by police, vapor pressure, the smell of solvents, and reagents, and other non-drug compounds, the smell of chemicals that are legal and widely-available, and the inability of a canine to distinguish a drug-compound from its associated and legal companion products.

For these reasons then, a canine is an unreliable informant, and at minimum if their information is to be taken at all in Court, it must be taken in the totality of circumstance to determine the probability of cause. As with many things in the Universe, probability can be evaluated mathematically, and so can the probability of cause be quantified.

The benefit of the "totality of circumstances" test is that it stands a fairly tall hurdle for cause to be shown. The "totality of circumstances" truly includes all of the Cosmos, across all of space-time. Assuming that one can only provide a finite set of supporting circumstances that a warrant shall issue, if the the probability of cause is expressed as a quotient compared to an infinite set of potential contrary circumstances, (i.e. the cosmos as a whole), then no matter how many confirmatory circumstances there may be, they amount to no cause. (In any quotient where the numerator is finite, but the denominator infinite, the result approaches, and effectively equals zero).

Even given a smaller subset of circumstances more likely to be taken *in toto*, it may be difficult to assign an absolute probability of cause to a particular totality of circumstance. (i.e., a hard number like 37 percent, or a range like between twelve and fifteen percent). But, it is possible to assign a relative probability, (i.e., more likely than not).

If the sole information from an alert by a canine is the presence of contraband, then that probability is certainty, one hundred percent. By the addition of just one contrary factor, however, the probability drops to fifty percent, which is the equivalent of chance.

28

1

In such a case, Taking into account just one consideration reduces the likelihood by half, and more significantly takes a certainty and reduces it to chance.

Adding additional contrary circumstances reduces the likelihood even further. Given one supporting circumstance, but ten contrary circumstances, would place the probability at one in ten, assuming that all factors are weighted evenly. The difficulty in assigning an absolute probability arises if not all factors are weighted evenly. Even If the contrary factors are weighted only half as much as a supporting one, then it only requires two of them two balance the supporting factor. Once that balance is reached, however, the probability of cause is at fifty percent, again, the equivalent of chance.

For this reason, the "more likely than not" standard must be applied, or the probability of cause amounts to no more than a police officer entering court, and claiming that a coin-toss came up "heads" and therefore, a warrant should issue.

Given the totality of circumstance, it cannot be held that the sole information conveyed by a canine is the presence of contraband.

The information conveyed could at minimum be:

- 1) No information at all (due to fraud by lying police officers).
- 2) The presence of one or more of more than a dozen legal substances with the same odorant molecules as an illegal plant, cannabis.
- 3) The presence of one of several legal and commonly available compounds that are also used in the criminal preparation of chemically processed drugs.
- 4) The presence of the same polyisoprene sap that is in rubber plants, milkweed, and the several dozen varieties of Poppy that contain no drug-compounds.

28

What the information cannot be, however, is the presence of THC, Methamphetamine salts, Morphine, nor Cocaine, because these compounds have no odor, and only billionths of an

1

atmosphere of Vapor Pressure at natural temperatures.

For the reasons stated herein, and as further elaborated in Amicus' Treatise on Chemistry, and accompanying Exhibits, an alert from a supposed "drug-detecting-canine" cannot be taken as probative of cause in any way, but rather, it amounts to nil more than the canine portion of the proverbial "Dog and Pony Show".

Respectfully Submitted to This Court, This \_\_\_\_\_ Day \_\_\_\_\_, 20\_\_\_\_\_.

---

Mr. Piero A. Bugoni, Amicus

28

1

Certificate of Service:

Copies of this Brief have been sent by United States Mail, on \_\_\_\_\_ to:

Attorneys for Petitioner:

Carolyn M. Snurkowski Associate Deputy Attorney General

Office of the Attorney General, Capital Appeals

The Capitol, PL-01

Tallahassee, FL 32399-1050

Respondent:

Joelis Jardines

c/o Howard K. Blumberg Assistant Public Defender

1320 NW 14th Street

Miami, FL 33125

Adam W. Aston Assistant Solicitor General

Office of Attorney General

P.O. Box 12548

Austin, TX 78711-2548

Timothy A. Baughman

Wayne County Prosecutor's Office

1441 St. Antoine, 11th Floor

Detroit, MI 48226

By Piero A Bugoni.

Signed:

28