State Supreme Court upholds DUI standard for driving while high on marijuana

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A cannabis plant is seen at a Cannativa research lab in Mexico City. (Mauricio Palos/Bloomberg)

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OLYMPIA – Washington drivers can receive a DUI for driving while high, the state Supreme Court ruled on Thursday.

All nine justices voted to uphold Washington's law that regulates cannabis use while driving. Douglas Fraser, who received a DUI in 2017, argued the standard for THC levels in blood was vague and an illegitimate exercise of police power.

In her opinion, Justice Helen Whitener said the statute was constitutional because the THC blood limit in law – a concentration of at least 5 nanograms per milliliter – is "rationally and substantially related to highway safety."

“There is a reasonable assumption that having the limit will deter people who have recently consumed cannabis from driving, thus reasonably and substantially furthering a legitimate state interest,” Whitener wrote in her opinion.

A Washington State Patrol trooper pulled Fraser over on July 11, 2017, near Everett for speeding, driving in the high occupancy vehicle lane while alone, erratically changing lanes, cutting off other drivers and driving aggressively, according to court documents.

When trooper Victor Pendt approached the car, he noticed an employee badge for a local cannabis dispensary, which Fraser then removed. Pendt said Fraser appeared to be sweating slightly, shaking and had very dark gray undereye circles, according to the court’s opinion.

Pendt said Fraser told him he had smoked half a day before the stop and didn’t feel impaired at the time of the stop. Pendt performed various field tests on Fraser, eventually arresting him for driving under the influence.

A blood test taken later showed he had a THC blood concentration of 9.5 nanograms per milliliter, nearly double the legal limit of 5.

In a brief to the court, Fraser argues the THC content level is “a purely arbitrary standard as proof that an individual has engaged in behavior that is harmful to society.”

Fraser argued in court the THC level was vague with no scientific support that all drivers’ ability to operate a vehicle is impaired if they have an active THC blood content of 5 nanograms per milliliter. During the case’s first trial court hearing, Fraser presented expert testimony to back up his argument, including a doctor who said it was difficult to come up with a specific number for THC concentration similar to blood alcohol content limits because the effects of THC can vary by person.

The court agreed it could be hard to generalize a number, but that doesn’t mean the THC limit is vague. In her opinion, Whitener said the statute is not vague because it doesn’t lead to arbitrary enforcement.

“But rather it avoids arbitrary, erratic, and discriminatory enforcement,” she wrote.

Whitener also wrote that there does not need to be a link between impairment and the THC blood level, similar to blood alcohol levels, as long as there is “a reasonable and substantial relationship” between the THC limit and the state’s public safety interests.

THC levels above 5 appear to indicate recent consumption, which is linked to impairment, Whitener wrote. Impaired driving “is the exact evil that this law aims to prevent and the exact public safety the law seeks to promote,” she wrote.

In their opinion, the court said both driving and cannabis consumption are legal, but neither is a right. While people are legally allowed to consume cannabis and drive, they cannot do so if it exceeds the legal limit.

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