

## Tucson Criminal Defense Lawyer James Nesci Discusses Arizona DUI Laws and AMMA

*Tucson Criminal Defense Lawyer James Nesci of Nesci & St. Louis, PLLC recently offered insight on Arizona DUI laws and the Arizona Medical Marijuana Act.*

Tucson, AZ ([PRWEB](#)) November 30, 2015 -- According to Tucson DUI Lawyer [James Nesci](#), across the country, the courts have to deal with new and different issues regarding drug possession and use. Years ago it was simple: possession and use of certain drugs was illegal. But now that we have recreational marijuana and medical marijuana, the legal landscape has become more complicated.

Nesci says that DUI laws are no exception to the increasing complexity. Driving under the influence of drugs was always an afterthought to driving under the influence of alcohol laws, which is why most DUI/Drugs laws conflict with other laws and common sense. For example, in Arizona it is illegal to drive while any drug or its metabolite listed in A.R.S. 13-3401 is present in your body. A.R.S. 13-3401 includes testosterone. That's because the Arizona Legislature was too lazy and/or uninformed to do the research that was necessary to craft meaningful laws. They simply referred to the A.R.S. 13-3401, which defines drugs and said "that's good enough."

Nesci explains that in Arizona, the AMMA (Arizona Medical Marijuana Act) allows certain people to possess and use specified quantities of marijuana. But medical marijuana cardholders are not insulated from DUI charges as are other people using prescription medications. That's because you cannot have a prescription for medical marijuana—you can only have a doctor's recommendation. Thus, cardholders were faced with the choice: stop using medical marijuana or stop driving.

Then, on November 20th, 2015, the Arizona Supreme Court handed down the decision in *Dobson v. McClennan* (No. CV-14-0313-PR) which says that if you are a cardholder and you are charged with DUI A.R.S. 28-1381(A)(1) and DUI A.R.S. 28-1381(A)(3), you now have a defense.

A.R.S. 28-1381(A)(1) makes it illegal to drive while under the influence of alcohol or drugs if you are impaired to the slightest degree by use of the alcohol or drugs.

A.R.S. 28-1381(A)(3) makes it illegal to drive with the active ingredient of marijuana in your body, no matter the amount.

The Arizona Supreme Court wrote: "We today hold that the AMMA does not immunize a medical marijuana cardholder from prosecution under § 28-1381(A)(3), but instead affords an affirmative defense if the cardholder shows that the marijuana or its metabolite was in a concentration insufficient to cause impairment."

Nesci says, in other words, if you are charged with the (A)(3) charge, and the State proves that you were driving with THC in your system, if you can show some credible evidence that it was too little to cause impairment, the State must then show by proof beyond a reasonable doubt that it did cause impairment—which is the same thing as the (A)(1) charge.

He further explains, with so little literature as to what amount causes impairment, and with no real definition of "impairment," these cases have become the most complex that can be tried. Additionally, each trial judge will

have to determine what “some credible evidence” actually means. Every defendant will be at the mercy of the judge’s predilections. Is the judge pro-marijuana-use or hard-core anti-drug? Will the underlying medical condition of the defendant be mistaken for impairment? Will people be acquitted of the (A)(3) charge, but convicted of the (A)(1) charges because the jury did not understand what they were supposed to do?

Nesci says that it’s time to scrap the DUI laws in their entirety and rewrite them with an eye toward simplicity and justice.

[James Nesci](#) is a partner at the premier law firm in Arizona for DUI Defense, Nesci & St. Louis, PLLC. He obtained his J.D. from The University of Arizona College of Law. Nesci has been recognized as one of the “Best Lawyers in America” by Woodward/White. He is also rated AV Preeminent by Martindale-Hubbell, the highest attainable rating an attorney can achieve.

Nesci's publications include: " Nesci's Arizona DUI Defense, The Law and Practice, 4th Edition," "Arizona DUI Defense: The Law & Practice, Third Edition," "MedicoLegal Aspects of Alcohol," and "How to Beat a DUI." For over 15 years, Nesci has been Sustaining Member of The National College for DUI Defense and also serves on the college's Board of Regents.

About Nesci & St. Louis, PLLC:

The law firm of [Nesci & St. Louis, PLLC](#) is located in Tucson, Arizona. The firm exclusively handles criminal law cases including those pertaining to: DUI's, drug offenses, aggravated assault, domestic violence, armed robbery, felony theft, and homicide.

The Arizona criminal defense law firm represents clients located in Maricopa, Cochise, Graham, Pima, Pinal, Santa Cruz, and Yuma counties. Contact Nesci & St. Louis, PLLC today by calling 520-777-0235 or fill out the [online contact form](#) to set-up a free consultation.



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