

FILED

MAR 04 2011

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
BY _____

No. 29188-0-III

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,
Plaintiff/Appellant,

v.

KIMBERLEE ANN MOYER,
a/k/a KIMBERLY ANN MOYER,
Defendant/Respondent.

APPELLANT'S REPLY BRIEF

Gary A. Riesen WSBA #7195
Chelan County Prosecuting Attorney

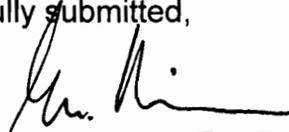
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In the Respondent's brief, the Respondent incorrectly states several times that it was 5 days between the date that Officer Lykken smelled marijuana in Ms. Moyer's residence and the issuance of the search warrant. In actuality, it was less than 3 days. Officer Lykken was in the residence at 2044 hours on 3-15-2009, and advised Detective Mathena on 3-18-2009 at 0930 hours that he had been in Ms. Moyer's house and smelled marijuana. Detective Mathena took that information and obtained a warrant from Judge Small on that same date, 3-18-2009 at 10:58 a.m. The warrant was not served until 2 days later, but the date of service of the warrant is immaterial in deciding whether the information is stale. Here, there is extensive case law cited by the State in its appeal brief to support the fact that the information is not stale and that the smell of marijuana can and does support probable cause for the issuance of a warrant.

For these reasons, the ruling of the trial court should be reversed and the matter remanded for trial.

DATED this 3rd day of March, 2011.

Respectfully submitted,



Gary A. Riesen WSBA #7195
Chelan County Prosecuting Attorney