

64567-6-I

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NO. 64567-6-I

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

JERRI L. CARSON,

Appellant.

BRIEF OF RESPONDENT

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I. ISSUES

1. Officers responded to a neighborhood complaint about marijuana odor and believed they had it localized to a specific house based on smelling marijuana when the wind blew towards them from the residence. When they searched the house pursuant to a judicially-approved warrant they found nothing. The house's occupant acknowledged there was an odor of marijuana in the area of his house and noted the house behind his appeared unoccupied. When officers went to this second house they saw the upstairs windows were open, heard a loud humming noise consistent with ballasts, and smelled a strong odor of marijuana. Was a second judicially approved search warrant supported by probable cause, when the facts of both warrants were before the magistrate, the first house was now eliminated as a source, and the officers had the requisite training and experience to recognize the odor of marijuana?

II. STATEMENT OF THE CASE

The defendant was convicted at stipulated bench trial of one count of manufacturing marijuana, for running a "grow op." 1 CP 13-16 (stipulation, findings & conclusions); 10/27/09 Verbatim Report of Proceedings (Stipulated Trial) 5-6; 2 CP ___ (sub 25, trial

minutes). The defendant agreed to this procedure after losing a suppression motion challenging the adequacy of a search warrant of her residence. See 1 CP 17-21 (Findings of Fact and Conclusions of Law on CrR 3.6 Hearing, attached); 8/21/09 Verbatim Report of Proceedings of CrR 3.5 and 3.6 Hearing (hereafter "CrR 3.6 Hrg RP") 26-28. The procedure preserved the pretrial suppression issue for appellate review while avoiding a fullblown trial. See, e.g., State v. Mierz, 127 Wn.2d 460, 469, 901 P.2d 286 (1995) (stipulation preserves right of appeal on sufficiency of evidence); State v. Turner, 156 Wn. App. 707, ___, 235 P.3d 806, 808 (2010) (same, on pretrial evidentiary issue; subsequent stipulation does not waive error). The defendant was found guilty and sentenced within the standard range. 1 CP 1-11, 16.

The pretrial suppression issue is the sole subject of this appeal.

A. SPECIFIC FINDINGS AT PRETRIAL HEARING.

The trial court entered findings of fact after argument at a suppression hearing (1 CP 17-21, attached). They read as follows:

1. The Undisputed Facts.

- a. On 2/10/09, police responded to the area of 175th St. SW¹ and 36th Ave W., Lynnwood, Washington to a complaint of a Marijuana order [sic] in that area.
- b. Officer Dickenson arrived in the area and noted the smell of Marijuana in front of the 3806 177th PL W, Lynnwood residence.
- c. Detectives Johnson and Eastep went to the address several times, and noticed two surveillance cameras in the front of the residence. They were not able to smell the odor of Marijuana on 2/9/09, 2/12/09, 2/13/09, 2/17/09, or 2/18/09. On these dates the detectives noted either no wind or wind blowing towards the residence. On 2/13/09, Officer Dickenson again smelled the odor of Marijuana when he was near the parking lot of a Korean church south of the 3806 residence.
- d. On 2/24/09, Johnson and Estep [sic] were able to smell the strong odor of Marijuana coming from the 3806 residence during a north blowing wind.
- e. Utility records indicated that usage varied between \$132.54 and \$550.16 for three month cycles over the two previous years. Officers thought this high for a residence that they suspected was occupied by a single resident. This was further supported by the fact that during their surveillance of the residence, the lights in the residence often appeared to be turned off.
- f. Dickenson, Johnson, and Estep [sic] all have training and experience recognizing the odor of Marijuana.
- g. On 2/26/09, a search warrant was obtained for the 3608 residence. A search done on 2/27/09 revealed no Marijuana at that residence. However, the

¹ The numbers are transposed in the findings, reading "157th."

property owner indicated that he also smelled the odor of Marijuana in the area.

h. The resident of 3608 told the officers that the residence behind his house, 17802 38th Pl. W., Lynnwood, Washington, had not been occupied since the previous summer.

i. Johnson and Estep [sic] went to the 17802 residence and noted that the upper windows were opened, and that a front window was broken. The detectives heard a loud humming coming from inside the residence. The detectives also smelled the strong odor of Marijuana coming from the residence.

j. Johnson and Estep [sic] knew from their training and experience that loud humming is associated with ballasts which are used to supply power to Marijuana grows. Three additional narcotics detectives arrived and could hear the humming and smell the Marijuana.

j. A second search warrant was obtained for the 17802 residence.

k. A search of the 17802 residence revealed 258 Marijuana plants and 23.66 grams of harvested Marijuana.

l. The landlord of the property identified Jeri [sic] Carson as the renter of the property. Several documents obtained during the search also indicated that Jeri [sic] Carson was the residence [sic] of the 17802 property.

1 CP 17-19 (attached).

These factual findings were presented as undisputed below,

1 CP 17, and appellant assigns no error to them now. See BOA 1.

B. ADDITIONAL FACTS BEFORE THE SUPERIOR COURT JUDGE AT THE SUPPRESSION HEARING.

The two affidavits were attached to the defendant's suppression motion below and are of record here at 1 CP 32-47. They are attached to the defendant's briefing, and so are not re-appended here.

Additional facts that were before the superior court at the suppression hearing are:

1. Dickenson was a relatively new officer with Lynnwood Police, while Johnson and Eastep are experienced veteran detectives assigned to the South Snohomish County Narcotics Task Force. 1 CP 33, 35, 37.

2. Det. Eastep's first affidavit was attached to his second, and incorporated by reference. 1 CP 45.

3. The same judge signed both warrants. Compare 1 CP 39, 40, with 1 CP 46, 47. The Superior Court judge at the CrR 3.6 hearing believed the signing magistrate was Timothy Ryan, of South Division, Snohomish County District Court. CrR 3.6 Hrg RP 11, 12, 26, 28.

4. The trial judge indicated she was familiar with the Edmonds-Lynnwood area. She believed Judge Ryan was familiar with the area, too. CrR 3.6 Hrg RP 13.

5. On 2/24/09, detectives Johnson and Eastep were directly in front of the residence at 3608 177th PI SW (the first house) when they twice detected a strong odor of marijuana carried on the wind blowing northbound towards them from that residence. 1 CP 37.

6. The 3806 177th PI. SW residence (the first house) sits on the south side of the street (177th PI SW). 1 CP 33. The residence at 17802 38th PI W (the second house, where the “grow op” was found) is situated in the northwest corner of a cul-de-sac, 1 CP 43, behind the 3806 177th PI SW house. 1 CP 45.

7. When police searched the first residence, its resident acknowledged there was an odor of marijuana coming from the area “of his house.” 1 CP 45.

C. TRIAL COURT’S DENIAL OF SUPPRESSION MOTION AND CONCLUSIONS OF LAW.

The trial court denied the motion to suppress. It noted (and defense counsel agreed) that there was no issue about the officers’ ability to detect marijuana. CrR 3.6 Hrg RP 25. Rather, it held the issue before the court was whether the odor was sufficiently

particularized to the defendant's residence. CrR 3.6 Hrg RP 26-27. It found that it was. CrR 3.6 Hrg RP 26-28. That officers were wrong on the first house eliminated it as a possible source and actually helped to focus and localize the inquiry to the second house. Id. The trial court entered conclusions of law, consistent with its oral ruling, as follows:

4. Court's conclusions as to the Basis of Probable Cause for the Second Search Warrant

- a. There were sufficient facts to support probable cause for the crime of Manufacturing a Controlled Substance – Marijuana at the 17802 residence.
- b. The strong odor of Marijuana is evidence of a crime.
- c. The officers went to the 17802 residence that had a broken window. The upper windows of that residence were also opened, and they easily smelled the odor of marijuana, which the officers' training and experience allowed them to recognize, coming from that residence.
- d. The officers also heard humming from that residence which they associated with ballasts which are used to manufacture Marijuana.
- e. The first search warrant of the 3608 address eliminated a house.
- f. The officers were able to pinpoint the odor of Marijuana to the 17802 residence.
- g. Detecting the odor if [sic] Marijuana is a skill, but the ability to pin point the direction of an odor is not a specific skill that requires training.

h. There was a factual basis to warrant a person of ordinary caution that the odor and humming was coming from the 17802 residence. The training and experience of the officers allowed them to identify the odor and humming as being associated with the Manufacturing of Marijuana, and that a search of that residence would reveal items associated with that crime.

1 CP 19-20.

D. ADDITIONAL FACTS FROM STIPULATED POLICE REPORTS ADMITTED AT BENCH TRIAL.

The defendant admitted to living at the subject house. “Appendix A” (stipulated police reports) at numbered discovery² p. 6. There was drug paraphernalia in the home. Id. at numbered discovery pp. 5, 11. Police recovered a total of 258 marijuana plants. Id. at numbered discovery p. 14. They also uncovered what looked like records of drug sales. Id. at numbered discovery pp. 63-65. Also recovered were two PUD electric bills for \$531.00 and \$834.13, respectively. Id. at numbered discovery pp. 69-70. The “grow op” caused considerable damage to the home. Id. at numbered discovery pp. 26-28.

² “Appendix A” was actually an exhibit at the stipulated bench trial. The citation is to the circled handwritten page numbers in the lower right hand corner of each page.

III. ARGUMENT

A. OVERVIEW – POLICE ACTION PURSUANT TO JUDICIAL OVERSIGHT; FULL DISCLOSURE TO THE MAGISTRATE; NO CLAIM OF INABILITY TO DETECT ODOR OF GROWING MARIJUANA; NO DISPUTED FACTS.

It may be helpful to state at the outset what this case is *not* about. First, this was not a warrantless search, where presumptions and inferences are construed against the State. E.g., State v. Hendrickson, 129 Wn.2d 61, 70, 917 P.2d 563 (1996); State v. Potter, 156 Wn.2d 835, 840, 132 P.3d 1089 (2006). Rather, this was a search pre-approved by a judge, where, as discussed more fully below, constructions are in the State's favor, and the burden borne by the defendant. State v. Cole, 128 Wn.2d 262, 286, 906 P.2d 925 (1995); State v. J-R Distribs., Inc., 111 Wn.2d 764, 774, 765 P.2d 281 (1988). Secondly, as counsel agreed below, the officers' ability to recognize the smell of growing marijuana based on their training and experience is not in question. CrR 3.6 Hrg RP 25. Thirdly, no facts found below are disputed. See 1 CP 17; BOA 1. Thus, they are verities on appeal. RAP 10.3(g); State v. Hill, 123 Wn.2d 641, 644, 647, 870 P.2d 313 (1994); State v. Broadaway, 133 Wn.2d 118, 130-33, 942 P.2d 363 (1997).

Lastly, and perhaps most importantly, this is not a case where material facts were *withheld* from the reviewing magistrate. See Franks v. Delaware, 438 U.S. 154, 98 S. Ct. 2674, 57 L. Ed. 2d 667 (1978) (articulating procedure for challenging search warrants allegedly predicated on deliberate falsehoods, or on statements made in reckless disregard of truth); e.g., U.S. v. Jacobs, 986 F.2d 1231, 1233, (8th Cir. 1993) (applying Franks procedure to material omissions of fact: drug dog showed interest in package addressed to defendant, but did not “alert;” second drug dog didn’t even show interest; omitting latter two facts in affidavit showed reckless disregard, and their inclusion ultimately invalidated warrant). Rather, the judge who signed the second warrant had *both* affidavits in front of him, comprising full disclosure of all the officers’ efforts, including their inability to detect an odor on five tries, and including their having searched the first house and finding nothing.

B. THE MAGISTRATE PROPERLY FOUND PROBABLE CAUSE TO SEARCH THE SECOND HOUSE.

1. Standard For Magistrate’s Finding Of Probable Cause.

A magistrate may issue a search warrant only upon a determination of probable cause, based upon facts and circumstances sufficient to establish a *reasonable inference* that criminal activity is occurring or that contraband exists at a certain

location. Probable cause exists when an affidavit supporting a search warrant sets forth facts sufficient for a reasonable person to conclude the defendant probably is involved in criminal activity. In re Personal Restraint of Yim, 139 Wn.2d 581, 594, 989 P.2d 512 (1999); State v. Thein, 138 Wn.2d 133, 140, 977 P.2d 582 (1999); State v. Cole, 128 Wn.2d at 286. Probable cause requires “a nexus between criminal activity and the item to be seized, and also a nexus between the item to be seized and the place to be searched.” Thein, 138 Wn.2d at 140 (quoting State v. Goble, 88 Wn. App. 503, 509, 945 P.2d 263 (1997)).

To determine the existence of probable cause, the issuing magistrate may draw commonsense inferences from the facts and circumstances contained in the affidavit. State v. Helmka, 86 Wn.2d 91, 93, 542 P.2d 115 (1975). Facts that, standing alone, would not support probable cause can do so when viewed together with other facts. State v. Garcia, 63 Wn. App. 868, 875, 824 P.2d 1220 (1992). An affidavit in support of a search warrant should be read as a whole, in a nontechnical rather than hypertechnical manner. State v. Remboldt, 64 Wn. App. 505, 510, 827 P.2d 282 (1992) (citing State v. Vonhof, 51 Wn. App. 33, 41, 751 P.2d 1221 (1988)). “What constitutes probable cause is viewed from the vantage point

of a reasonably prudent and cautious police officer.” Remboldt, 64 Wn. App. at 510.

2. Deferential Standard Of Review; Scope; Policy Underpinnings.

Search warrants are a favored means of police investigation; consequently, when they are challenged, supporting affidavits or testimony are reviewed in a manner which will encourage their continued use. United State v. Harris, 403 U.S. 573, 29 L. Ed. 2d 723, 91 S. Ct. 2075 (1971); United States v. Ventresca, 380 U.S. 102, 108-09, 85 S. Ct. 741, 13 L. Ed. 2d 284, (1965); accord, State v. Chenoweth, 160 Wn.2d 454, 477-78, 158 P.3d 595 (2007).

A magistrate's determination that probable cause exists and a warrant should issue is an exercise of judicial discretion. As such, it is given deference and reviewed only for abuse of discretion. State v. Neth, 165 Wn.2d 177, 182, 196 P.3d 658 (2008); State v. Chenoweth, 160 Wn.2d at 477; In re Yim, 139 Wn.2d at 595; State v. Cole, 128 Wn.2d at 286; State v. Young, 123 Wn.2d 173, 195, 867 P.2d 593 (1994) (“[g]enerally, the probable cause determination of the issuing judge is given great deference”); State v. Remboldt, 64 Wn. App. at 509. A court abuses its discretion when its decision is manifestly unreasonable

or based upon untenable grounds or reasons. State ex rel. Carroll v. Junker, 79 Wn.2d 12, 26, 482 P.2d 775 (1971). When a search warrant is properly issued by a judge, the party attacking it has the burden of proving its invalidity. State v. Garrison, 118 Wn.2d 870, 872-73, 827 P.2d 1388 (1992); State v. Fisher, 96 Wn.2d 962, 967, 639 P.2d 743, cert. denied, 457 U.S. 1137 (1982). “[D]oubts as to the existence of probable cause [will be] resolved in favor of the warrant.” State v. J-R Distribs., Inc., 111 Wn.2d at 774; accord, Young, 123 Wn.2d at 195; State v. Fisher, 96 Wn.2d at 964, 967; Vonhof, 51 Wn. App. at 41.

Appellate review of the probable cause determination is generally limited to the four corners of the affidavit that was before the magistrate. State v. Wolken, 103 Wn.2d 823, 827-28, 700 P.2d 319 (1985) (recognizing that a defendant is entitled to go beyond face of affidavits only in limited circumstances); Remboldt, 64 Wn. App. at 509.

3. There Was Probable Cause to Search the Defendant’s Residence.

Here, officers detected the distinct and “strong” odor of marijuana coming from the house at 17802 38th PI W. 1 CP 18 (Finding of Fact i); 1 CP 45 (second affidavit). This is sufficient, by

itself, to establish probable cause, provided the officer or detective is familiar with the smell of growing marijuana and has relevant training and experience, such as having dismantled indoor “grows.” State v. Cole, 128 Wn.2d at 289; accord, State v. Olson, 73 Wn. App. 348, 356, 869 P.2d 110 (1994). Here, the affidavits set forth in detail the officers’ relevant training and experience. 1 CP 33-34, 43-44 (for det. Eastep); 1 CP 37, 45 (for det. Johnson); 1 CP 35 (for Officer Dickenson). The Superior Court’s findings reflected the same. 1 CP 18 (Finding of Fact f). Training and experience is critical, and is sufficiently established if an affidavit states that the detective is familiar with the odor of growing marijuana and has previously participated in the seizure of indoor “grow” operations. Cole, 128 Wn.2d at 289 (citing Olson, 73 Wn. App. at 356); Remboldt, 654 Wn. App. at 510. Here, it is: Eastep’s and Johnson’s experience included the seizure of marijuana at “grow ops.” 1 CP 33-34, 37, 43-45. Moreover, the loud humming, consistent with that made by ballasts, additionally supports the magistrate’s determination of probable cause. Olson at 356 (while increased power usage does not, standing alone, afford basis for probable cause, it is additional evidence supporting a probable cause determination when coupled with the odor of marijuana).

These facts support a search of the residence at 17802 38th PI W. The analysis can end there.

The defendant disagrees, stating that the affidavits do not sufficiently localize the odor of marijuana to her residence. It is true, as she states, that an assertion of the presence of marijuana must be based on more than a “personal belief.” Cole at 289; Olson at 356; Remboldt, 64 Wn. App. at 510. But a statement in an affidavit, outlining the officer’s training and experience in detecting the odor of marijuana and in having participated in the seizure of “grow ops,” will be sufficient to show more than a “personal belief.” Id. That standard is met here.

The defendant asserts there is an additional, separate “more-than-personal-belief” standard relating to *location*. This is really the core of her argument, but she cites no authority for this proposition. See BOA 6. “Where no authorities are cited in support of a proposition, the court is not required to search out authorities, but may assume that counsel, after diligent search, has found none.” State v. Logan, 102 Wn. App. 907, 911 n. 1, 10 P.3d 504 (2000) (quoting DeHeer v. Seattle Post-Intelligencer, 60 Wn.2d 122, 126, 372 P.2d 193 (1962)). A reviewing court should decline to consider an argument unsupported by any cited legal authority.

RAP 10.3(a)(5); State v. McInally, 125 Wn. App. 854, 865, 867 n.19, 106 P.3d 793 (2005).

Certainly there must be a nexus between the item to be seized and the place to be searched. Thein, 138 Wn.2d at 140; State v. Goble, 88 Wn. App. at 509. Here, there was: once the officers went to the house at 17802 38th Pl W., located behind the 3806 177th Pl. SW residence, they immediately smelled the “strong” odor of marijuana. 1 CP 18 (Finding of Fact i); 1 CP 45 (second affidavit). They were not, as the defendant seems to imply, just casting anywhere about the neighborhood, searching for odors.

Grande, cited by the defendant to support her particularity argument, examined a warrantless search of an automobile and a roadside arrest. State v. Grande, 164 Wn.2d 135, 146-47, 187 P.3d 248 (2008). A warrantless search is presumed unreasonable; but even there, the Supreme Court found the odor of marijuana, coupled with officer training and experience, would have been enough to *search* the car, but not to *arrest* the driver of a car with multiple occupants. Grande, 164 Wn.2d at 146-47. To the extent it applies, Grande’s analysis upholds this warrant, and does so under a stricter standard, where presumptions are against the State.

In Johnson, also cited by the defendant, officers noted high and inconsistent energy usage and smelled marijuana from the street in front of the defendant's house. . State v. Johnson, 79 Wn. App. 776, 904 P.2d 1188 (1995). Given representations of the officers' training and experience, Division III held the odor of marijuana was enough. Johnson, 79 Wn. App. at 781-83. It rejected a particularity requirement similar to that made here, saying that there was nothing in the case law imposing such a requirement. Id. at 782. Rather, a magistrate need only be able to draw a reasonable inference that the odor was connected to the defendant's residence. Id., citing State v. Petty, 48 Wn. App. 615, 622-23, 740 P.2d 879, review denied, 109 Wn.2d 1012 (1987). Johnson would also uphold this warrant.

When all doubts are resolved in favor of the warrant's validity, as they must,³ the officers' training and experience, and detective Eastep's assertion that the strong odor of marijuana came from the 17802 38th PI W. house, provided enough for the magistrate to draw the reasonable inference that, indeed, the odor was connected to that location. Cole, 128 Wn.2d at 289; Olson, 73 Wn. App. at 356.

³ State v. J-R Distribs., Inc., 111 Wn.2d at 774.

To the extent anything more is required (a point not conceded), there were, contrary to defendant's assertions, additional facts on which to base such an inference. Both affidavits were before the magistrate, 1 CP 45, and thus both must be read together. See State v. Vonhof, 51 Wn. App. at 41 (affidavit must be read as a whole). The first house, at 3608 177th Pl. SW, was on the south side of the street. 1 CP 33. Detectives Eastep and Johnson could smell the odor of marijuana only when directly in front of the 3608 177th Pl. SW residence as the wind blew northwards towards them. 1 CP 18, 45. The "grow op" house at 17802 38th Pl. W was *behind* the first house. 1 CP 18, 45. Thus it was reasonable to infer that the odor of marijuana, if not coming from the first house, was coming from someplace *behind it*. And, in fact, officers identified a strong odor of marijuana as coming from a specific house *behind* the one they had just searched. Its upstairs windows were open and a downstairs window was broken. 1 CP 18, 45. The marijuana odor was coupled with a loud humming, like the sound of ballasts. This is more than enough to establish probable cause that the item to be seized was at the 17802 38th Pl. W. house, especially as the first house was now eliminated as the

source. Compare Johnson, 79 Wn. App. at 782-83 (odor from in front of house). Thus, the defendant's argument fails.

IV. CONCLUSION

The judgment and sentence should be affirmed.

Respectfully submitted on September 13, 2010.

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Attorney for Respondent

Appendix: 1 CP 17-21 (Findings & Conclusions)

APPENDIX

**FINDINGS OF FACT & CONCLUSIONS OF LAW
FOR CrR 3.6 HEARING**

1 CP 17 - 21



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SONYA KRASKI
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SNOHOMISH CO. WASH

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SNOHOMISH

The State of Washington,	Plaintiff,
vs.	
JERI L. CARSON,	Defendant.

09-1-00962-1

FINDINGS OF FACT AND
CONCLUSIONS OF LAW FOR
CrR 3.6 HEARING

The undersigned Judge of the above court hereby certifies that a hearing has been held on August 21, 2009. The state was represented by Bob Hendrix, the defendant was present and represented by Jeff Kradel, and the hearing was held in the absence of the jury pursuant to Rule 3.6 of the Criminal Rules for Superior Court and now sets forth:

1. The Undisputed Facts

- a. On 2/10/09, police responded to the area of 157th St. SW and 36th Ave W, Lynnwood, Washington to a complaint of a Marijuana order in that area.
- b. Officer Dickenson arrived in the area and noted the smell of Marijuana in front of the 3806 177th PL W, Lynnwood residence.
- c. Detectives Johnson and Eastep went to the address several times, and noticed two surveillance cameras in the front of the residence. They were not able to smell the odor of Marijuana on 2/9/09, 2/12/09, 2/13/09, 2/17/09, or

ORIGINAL

21

1 2/18/09. On these dates the detectives noted either no wind or wind blowing
2 towards the residence. On 2/13/09, Officer Dickenson again smelled the odor of
3 Marijuana when he was near the parking lot of a Korean church south of the
4 3806 residence.

5 d. On 2/24/09, Johnson and Estep were able to smell the strong odor of
6 Marijuana coming from the 3806 residence during a north blowing wind.

7 e. Utility records indicated that usage varied between \$132.54 and \$550.16 for
8 three month cycles over the two previous years. Officers thought this high for a
9 residence that they suspected was occupied by a single resident. This was
10 further supported by the fact that during their surveillance of the residence, the
11 lights in the residence often appeared to be turned off.

12 f. Dickenson, Johnson, and Estep all have training and experience recognizing
13 the odor of Marijuana.

14 g. On 2/26/09, a search warrant was obtained for the 3608 residence. A search
15 done on 2/27/09 revealed no Marijuana at that residence. However, the property
16 owner indicated that he also smelled the odor of Marijuana in the area.

17 h. The resident of 3608 told the officers that the residence behind his house,
18 17802 38th Pl. W, Lynnwood, Washington, had not been occupied since the
19 previous summer.

20 i. Johnson and Estep went to the 17802 residence and noted that the upper
21 windows were opened, and that a front window was broken. The detectives
22 heard a loud humming coming from inside the residence. The detectives also
23 smelled the strong odor of Marijuana coming from the residence.

24 j. Johnson and Estep knew from their training and experience that loud humming
25 is associated with ballasts which are used to supply power to Marijuana grows.
26 Three additional narcotics detectives arrived and could hear the humming and
smell the Marijuana.

1 j. A second search warrant was obtained for the 17802 residence.

2 k. A search of the 17802 residence revealed 258 Marijuana plants and 23.66
3 grams of harvested Marijuana.

4 l. The landlord of the property identified Jeri Carson as the renter of the property.
5 Several documents obtained during the search also indicated that Jeri Carson
6 was the residence of the 17802 property.

7 2. The Disputed Facts

8 There are no disputed facts.

9 3. Court's Conclusions as to Disputed Facts

10 There are no disputed facts.

11 4. Court's Conclusions as to the Basis of Probable Cause for the Second Search
12 Warrant

13 a. There were sufficient facts to support probable cause for the crime of
14 Manufacturing a Controlled Substance – Marijuana at the 17802 residence.

15 b. The strong odor of Marijuana is evidence of a crime.

16 c. The officers went to the 17802 residence that had a broken window. The
17 upper windows of that residence were also opened, and they easily smelled the
18 odor of Marijuana, which the officers' training and experience allowed them to
19 recognize, coming from that residence.

20 d. The officers also heard humming from that residence which they associated
21 with ballasts which are used to manufacture Marijuana.

22 e. The first search warrant of the 3608 address eliminated a house.

23 f. The officers were able to pinpoint the odor of Marijuana to the 17802
24 residence.

25 g. Detecting the odor if Marijuana is a skill, but the ability to pin point the
26 direction of an odor is not a specific skill that requires training.

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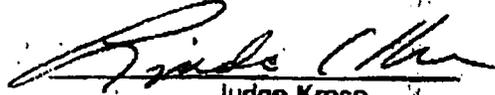
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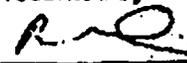
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h. There was a factual basis to warrant a person of ordinary caution that the odor and humming was coming from the 17802 residence. The training and experience of the officers allowed them to identify the odor and humming as being associated with the Manufacturing of Marijuana, and that a search of that residence would reveal items associated with that crime.

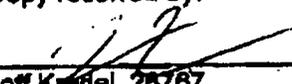
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DONE IN OPEN COURT this 9th day of Sept 2009.


Judge Krese

Presented by:


Bob Hendrix, 28595
Deputy Prosecuting Attorney

Copy received by:


Jeff Kradel, 26767
Defense Attorney

1 h. There was a factual basis to warrant a person of ordinary caution that the
2 odor and humming was coming from the 17802 residence. The training and
3 experience of the officers allowed them to identify the odor and humming as
4 being associated with the Manufacturing of Marijuana, and that a search of that
5 residence would reveal items associated with that crime.

6 i.

7
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9 j.
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15 DONE IN OPEN COURT this 9th day of Sept 2009.

16
17 
18 Judge Krese

19 Presented by:

20 
21 Bob Hendrix, 28595
22 Deputy Prosecuting Attorney

23 Copy received by:

24 _____
25 Jeff Kradel, 26767
26 Defense Attorney