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NO. 64567-6-I

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

STATE OF WASHINGTON,

Respondent,

v.

JERRI CARSON,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR SNOHOMISH COUNTY

The Honorable Michael T. Downes, Judge

BRIEF OF APPELLANT

JENNIFER J. SWEIGERT
Attorney for Appellant

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A. ASSIGNMENTS OF ERROR

1. The court erred in denying appellant's motion to suppress evidence obtained from the search of her home.

2. The trial court erred in concluding the officers' training and experience allowed them to conclude the odor of marijuana was coming from inside appellant's home. CP 19 (Conclusion of Law 4.c.)

3. The court erred in concluding the officers were able to pinpoint the odor of marijuana to appellant's home. CP 19 (Conclusion of Law 4.d.).

4. The trial court erred in finding appellant guilty of manufacturing marijuana.

Issue Pertaining to Assignments of Error

Is a search warrant invalid for lack of probable cause when the affidavit does not state a basis for the officers' belief that the odor of marijuana originated at appellant's home and officers also smelled marijuana in other parts of the neighborhood?

B. STATEMENT OF THE CASE

1. Procedural Facts

The Snohomish County prosecutor charged appellant Jerri Carson with one count of manufacturing marijuana. CP 50. After denial of the motion to suppress the evidence found in her home, Carson was convicted at

a bench trial on stipulated documentary evidence, and the court imposed a standard range sentence. CP 1, 3-4, 13-14. Notice of appeal was timely filed. CP 12.

2. Substantive Facts

Lynwood police received a report of a strong odor of marijuana in the area of 175th St. S.W. and 36th Ave. W. CP 35. Officer Dickinson drove there and reported he smelled marijuana the strongest in front of a home at 3806 177th Place. CP 35. Detectives Johnson and Eastep determined power levels were unusually high for a home occupied by only one person. CP 36. When the detectives went to the home, they could not smell any odor due to the wind. CP 36. On a second visit, they also could smell no odor. CP 36.

The next day Officer Dickinson reported he again smelled marijuana both while driving by the home on 177th and in the public parking lot of a church south of there. CP 36. The detectives visited the 177th home again later that day, but did not detect an odor. CP 36. The next day, with the wind blowing toward the home, they detected no odor. CP 37. The next day, with no wind, they still could not smell marijuana. CP 37. Finally, on February 24, 2009, the detectives determined the wind was blowing in a northwest pattern. CP 37. As they approached the home from the north, and again from the west, they could smell marijuana. CP 37. Additionally, they could smell it as they walked by in front of the house. CP 37. Based on this

information, the detectives obtained a warrant and searched the 177th home. CP 40-41. They found nothing. CP 47.

The homeowner told police he also smelled marijuana in the area. CP 45. He mentioned the house behind his had been unoccupied since the previous summer. CP 45. Based on this information, the detectives paid a visit to 17802 38th Pl. W. CP 45. One front window was broken and the home did not appear lived in. CP 45. They could hear a loud humming they associated with ballasts used to supply power for growing marijuana indoors. CP 45. They could also smell marijuana “coming from the residence.” CP 45. Three other narcotics detectives arrived and could also smell the marijuana and hear the humming. CP 45. Detectives obtained a warrant, searched the home, and found evidence marijuana was being grown there. Ex. 1 at A-2, p. 4-5; Ex. 1 at A-6. When police contacted her, Carson confirmed she lived at the home on 38th. Ex. 1 at A-2, p. 6.

C. ARGUMENT

THE AFFIDAVITS FAILED TO SHOW PROBABLE CAUSE TO SEARCH BECAUSE NO FACTS CONNECTED THE ODOR TO CARSON’S HOME IN PARTICULAR.

Police relied on two affidavits to support their application for a search warrant for Carson’s home. CP 32-46. The first described a strong odor of marijuana in the neighborhood in general, which police first localized to the house on 177th, and then to a church parking lot. CP 35-36.

On their third attempt to locate the source of the odor, detectives concluded the smell was originating from Carson's home. CP 45. But no basis was stated for this conclusion. The affidavit does not say how far from the home they were when they smelled the marijuana or what direction the wind was coming from. It does not say the smell was stronger at Carson's home than at the two other places in the neighborhood where officers detected the odor. Probable cause requires facts indicating evidence will be found "in a particular place." State v. Hatchie, 161 Wn.2d 390, 398 n. 4, 166 P.3d 698 (2007) (quoting Steagald v. United States, 451 U.S. 204, 214 n. 7, 101 S. Ct. 1642, 68 L. Ed. 2d 38 (1981)). Because no facts connected the odor of marijuana to Carson's home in particular, as distinguished from any other home in the neighborhood, the affidavit did not establish probable cause to search Carson's home. Therefore, the court erred in denying Carson's motion to suppress evidence seized in that search.

a. The Odor of Marijuana Is Not Probable Cause to Search Unless the Affidavits Connect the Odor to a Particular House.

Search warrants are valid only if supported by probable cause. State v. Thein, 138 Wn.2d 133, 140, 977 P.2d 582 (1999); U.S. Const. amend. IV; see also Const. art. 1, § 7. Probable cause requires an affidavit setting forth "facts and circumstances sufficient to establish a reasonable inference that the defendant is probably involved in criminal activity and that evidence of

the crime can be found at the place to be searched.” Thein, 138 Wn.2d at 140. Specifically, probable cause to search requires “a nexus between the item to be seized and the place to be searched.” Id. (quoting State v. Goble, 88 Wn. App. 503, 509, 945 P.2d 263 (1997)).

Appellate courts generally review issuance of a search warrant for abuse of discretion and give deference to the issuing judge or magistrate. State v. Neth, 165 Wn.2d 177, 182, 196 P.3d 658 (2008). However, the trial court acts in an appellate-like capacity at a suppression hearing and its review, like the appellate court’s review, is limited to the four corners of the affidavit supporting probable cause. Id. The trial court’s assessment of probable cause is therefore a legal conclusion reviewed de novo. Id.

In determining the validity of a search warrant, the reviewing court considers “only the information that was brought to the attention of the issuing judge or magistrate at the time the warrant was requested.” State v. Murray, 110 Wn.2d 706, 709-10, 757 P.2d 487 (1988). The affidavits must contain specific facts tying the crime to the place to be searched. Thein, 138 Wn.2d at 147-48. An affidavit must contain facts from which an ordinary, prudent person would conclude evidence of the crime could be found at the location to be searched. State v. Stone, 56 Wn. App. 153, 158, 782 P.2d 1093 (1989). “Absent a sufficient basis in fact from which to conclude evidence of illegal activity will likely be found at the place to be searched, a

reasonable nexus is not established as a matter of law.” Thein, 138 Wn.2d at 147.

This nexus requirement means that, although the odor of marijuana generally establishes probable cause, “an odor unconnected to any particular residence might be insufficient to establish probable cause standing alone.” State v. Johnson, 79 Wn. App. 776, 782, 904 P.2d 1188 (1995); see also State v. Grande, 164 Wn.2d 135, 146-47, 187 P.3d 248 (2008) (“the smell of marijuana in the general area where an individual is located is insufficient, without more, to support probable cause for arrest”). Thus, the affidavits in this case must provide a reasonable basis to infer a connection between the odor of marijuana and Carson’s home.

b. Absent a Factual Basis, the Officers’ Mere Personal Belief the Odor Came from Carson’s Home Was Insufficient to Establish the Required Nexus.

To support a probable cause determination, *identification* of a marijuana odor must consist of more than a “mere personal belief;” it must also state the factual, underlying circumstances upon which that belief was premised. Thein, 138 Wn.2d at 147; see also Johnson, 79 Wn. App. at 780 (facts dispelled notion that assertion of probable cause was based merely on personal belief). Similarly, identification of the *source* of that odor should also require a factual basis beyond mere personal belief.

State v. Johnson illustrates one possible factual basis for connecting an odor to an individual home. In that case, the court noted there was a reasonable inference the smell came from the home because the affidavit stated the officers smelled the odor only when on the street directly in front of Johnson's home. 79 Wn. App. at 782. Thus there was some basis for the officers' conclusion that the smell was coming from Johnson's home as opposed to elsewhere in the neighborhood.

Probable cause has also been found when the affidavit specified the officers smelled marijuana coming from the garage by sniffing two inches from the seams. State v. Boethin, 126 Wn. App. 695, 698, 109 P.3d 461 (2008). Similarly, probable cause has been found when the officers smelled marijuana more strongly when the door to a home was opened. State v. Fry, 168 Wn.2d 1, 3-4, 228 P.3d 1 (2010).

In contrast to the above-cited cases, the affidavits in this case state no factual basis whatsoever for the officers' conclusion the smell of marijuana was coming from Carson's home. The affidavit does not establish where the officers were standing when they smelled the marijuana. It does not describe the surrounding neighborhood or establish how far Carson's house is from the first home the police searched or from any other homes in the immediate vicinity. It does not establish that the officers followed the smell from the house on 177th to Carson's house or that the wind was blowing from that

direction. Facts that are not reasonably inferable at the issuance of the warrant cannot form the basis of probable cause. Goble, 88 Wn. App. at 508. Because the affidavit does not state the basis for the officers' belief that the odor was emanating from Carson's house, the affidavit is insufficient to establish probable cause.

The "loud humming sound" the officers heard does not make up for the lack of facts pinpointing the odor because it is an innocuous fact with myriad innocent explanations. Just as a sharp increase in electrical usage is not probable cause to search, nor is a "loud humming sound." See State v. McPherson, 40 Wn. App. 298, 301, 698 P.2d 563 (1985). In McPherson, the court concluded the increase was "somewhat unusual but there are too many other plausible explanations for the increased energy use for that information to point to criminal activity. Therefore, the affidavit for the search warrant did not establish probable cause." Id. This Court should reach the same conclusions regarding the "loud humming sound." CP 45. There are "too many plausible explanations" for it to point to criminal activity.

Without more, the humming sound is insufficient to establish a nexus between the odor and Carson's home. See United States v. Shates, 915 F. Supp. 1483, 1485 (N.D. Cal 1995) ("The agents obtained probable cause to believe that marijuana was being cultivated on the property when they smelled the strong odor of marijuana, heard the sound of a generator, and

verified the direction from which the marijuana odor was coming.”)
(emphasis added). Because the affidavits in this case contain no information on how or if the officers verified their belief the odor was coming from Carson’s home, the search warrant is not supported by probable cause. Therefore this Court should reverse Carson’s conviction and remand with orders to suppress the evidence gained as a result of the invalid warrant. Thein, 138 Wn.2d at 151.

D. CONCLUSION

For the foregoing reasons, this Court should hold the warrant to search Carson’s home was invalid because it was not supported by probable cause. Accordingly, this Court should suppress the fruits of that unlawful search, and reverse Carson’s conviction.

DATED this 17th day of June, 2010.

Respectfully submitted,

NIELSEN, BROMAN & KOCH, PLLC



JENNIFER J. SWEIGERT
WSBA No. 38068
Office ID No. 91051
Attorney for Appellant

APPENDIX A

Affidavit for Search of 177th Place

State v. Jerri Carson

CrR 3.6 Motion to Suppress

I completed approximately six month of training with the Quad Cities Drug Task Force in 2000. I assisted with intelligence, surveillance, narcotics buys and raids.

I have handled several narcotics cases with successful prosecutions and have been involved in the service of over five narcotics search warrants where marijuana grows were located.

Through my training, experience and knowledge obtained through other narcotics investigations and based upon conversations with other experienced narcotics officers, the affiant knows the following to be true:

Individuals cultivating marijuana are quite often involved in the distribution and sales of marijuana. Individuals involved in the cultivation and distribution of marijuana almost always maintain records, money orders and other documents evidencing their unlawful drug trafficking and money laundering activities, in order to document multiple harvests of marijuana and debts and collections involving drugs or money from the sales of drugs. These records are usually maintained on their property, in their vehicles or at their premises.

Individuals involved in the cultivation and distribution of marijuana more often than not maintain telephone records and/or addresses of drug customers and associates regarding their drug transactions and/or sales.

Individuals involved in the cultivation of marijuana sometimes take or cause to be taken photographs and videotape recordings of them, their associates, their property, their marijuana crop and equipment. These photographs and tapes are usually maintained on their property, in their vehicles or at their premises.

Individuals involved in the cultivation and distribution of marijuana often keep paraphernalia for packaging and weighing their illegal drugs. Paraphernalia usually includes but is not limited to scales, packaging material and drying devices.

Items involved in the growing of marijuana are the following: pots, soils, fertilizers, timers, and fans, metal halide light systems, fluorescent lights, reflectors, and ballast's.

Individuals involved in the cultivation and distribution of marijuana often maintain amounts of money, financial instruments, jewelry and other valuables, which are direct proceeds of their illegal drug transactions.

That it is common to find drug traffickers to keep their records, writings and figures in computers along with associated hardware and software;

Individuals involved in the cultivation and distribution of marijuana often have storage units concealing their marijuana grow equipment, assets, proceeds, records and other items used to cultivated and distribute marijuana.

On 02-10-09 at 1400 hours, I received a e-mail from Lynnwood Police Officer J. Dickinson (#1587) regarding a possible marijuana grow at 3806 177th Pl SW in Lynnwood, WA located in Snohomish County.

Dickinson stated on 02-09-09 at approximately 0010 hours he received a complaint from a citizen saying he could smell the strong odor of marijuana in the general area of 175th St SW and 36th Ave W. Dickinson said he drove to the area and could smell the odor of marijuana the strongest in front of 3806 177th Pl SW. Dickinson said the citizen also warned him about surveillance cameras in the front windows. Dickinson said there were no vehicles in the driveway and all the lights were off. Dickinson said he did walk the area and could smell the overwhelming odor of marijuana coming from the residence.

The affiant contacted Dickinson and asked him what knowledge and experience he had with narcotics and especially marijuana. Dickinson said he has been a Police Officer in the City of Lynnwood since May of 2006. He said he has a total of 2 years 8 months police experience. Dickson said he is currently assigned to the patrol division as a crime scene technician. Dickinson said he has received Narcotics Training in the Basic Law Enforcement Academy, Crime Scene Investigation, Drug Recognition, and NIK testing. Dickson said outside of the Basic Law Enforcement Academy he has received 24 hours training in Patrol Drug Interdiction.

Dickson said the drug recognition training he has received includes being shown known samples of marijuana and being taught to observe the unique characteristics of marijuana, including color, texture, and smell of fresh, dried, and burnt marijuana. In addition, he has been directly involved in approximately 23 arrests involving seizures of fresh, un-burnt marijuana in the past two years. In those cases, he said he had the opportunity to identify the substances seized, both by visual identification and by smell. Dickson said he has been involved in several additional cases with other officers who seized fresh un-burnt marijuana. Dickson said through his field experience he has had the opportunity to NIK test suspected marijuana and have received positive confirmation.

Dickson said as a patrol officer he has made approximately 40 arrests for narcotics violations and have assisted other patrol officers in a several arrests that involved narcotics violations including but not limited to possession of cocaine, methamphetamine, heroin, marijuana and drug paraphernalia.

The affiant completed a Snohomish County PUD power check on the residence located at 3806 177th Pl SW in Lynnwood. Kevin Charles McAnaw was listed as the power customer. The power record shows that McAnaw started the account on April 2002.

The power usage is listed below.

	<u>RAW USAGE</u>	<u>AMOUNT PAID</u>
01-16-09	6260	\$501.24
11-13-08	3210	\$254.57

09-15-08	1927	\$148.49
07-16-08	2386	\$183.87
05-15-08	4257	\$330.92
03-18-08	4786	\$383.22
01-23-08	6871	\$550.16
11-14-07	3345	\$265.19
09-14-07	1720	\$132.54
07-17-07	2178	\$167.84
05-16-07	2972	\$230.62
03-21-07	5274	\$422.29
01-19-07	6550	\$524.46

The above power usage appears to be high due to our investigation showing the residence is probably only occupied by McAnaw. Through surveillance on the residence the lights always appear to be off.

On 02-09-09 at 2230 hours, Det. Johnson and I drove by the residence. No vehicles were in the driveway and all the lights were off. The residence is a two story dwelling light tan in color with dark color trim. The residence sits on the south side of 177th PI SW and has two garage doors on the lower east side facing the street. The residence has the numbers 3806 located to the west above the garage doors on the residence.

We got out and walked by the residence on foot, but could not smell any odor of marijuana at the time due to the wind direction. We also noticed surveillance cameras in the center and far east upper windows, which appeared to be pointing towards the driveway.

On 02-12-09 at 0330 hours, Det. Johnson and I again drove by the residence. We again got out of our vehicle and walked by the residence on foot. No vehicles were in the driveway, all the interior lights were off and we were not able to indicate any odor of marijuana, but the front porch light was on.

On 02-13-09 at 1000 hours, I received another e-mail from Officer J. Dickinson saying today at around 0530 hours, he again drove by the residence and got the same fresh marijuana odor. Dickinson said with a southerly wind he again centralized the odor coming from a public parking area of the Korean church located directly south of 3806 177th PI SW.

The affiant requested and received a Department of License photo of McAnaw. I completed a police records check showing McAnaw's address as 3806 177th PI SW. I completed another police records check, which showed McAnaw receiving a traffic ticket on 11-12-08 in a red Ford Escort bearing license 849PCH. I completed a vehicle check through police records showing McAnaw as the current registered owner of a red 1991 Ford Escort bearing license 849PCH coming back to 3806 177th PI SW. I finally completed a criminal history check on McAnaw, which showed no criminal history.

At 1230 hours, Det. Johnson and I did another drive by and still no odor of marijuana indicated and no vehicles were in the driveway.

On 02-17-09 at 2330 hours, Det. Johnson and I drove by the address and still no odor of marijuana, no vehicles in the driveway and no lights on in the residence. The wind was blowing directly towards private property not allowing us to get in its path.

On 02-18-09 at 1215 hours, Det. Johnson and I again drove by the residence and still no odor of marijuana, no vehicles in the driveway and it no lights on in the residence. Today there was no wind.

Surveillance on the residence showed a red Ford escort come and go from the residence. No license plate or suspect information was obtained.

On 02-24-09 at 2115 hours, Det. Johnson and I drove to 3806 177th Pl SW to again check the residence. Upon arrival we determined the wind was blowing in a northwest pattern. We drove westbound on 177th Pl SW from 36th Ave W. As we approached the residence I could easily smell the strong odor of marijuana coming from 3806 177th Pl SW. We continued past, turned around and drove back by the residence. As we drove directly in front of the residence I again could smell the strong distinct odor of marijuana blowing northbound towards me from the residence.

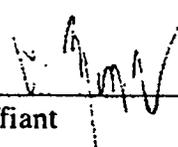
Det. Johnson decided to park his vehicle and have us walk in. We walked the same direction as we drove. We walked westbound on 177th Pl SW from 36th Ave W. As we approached the residence I could easily smell the strong odor of marijuana coming from the residence. We continued past, turned around and walked back by the residence. As we walked directly in front of the residence on the public street I could still smell the strong distinct odor of marijuana blowing northbound towards me from the residence.

Det. Johnson also smelled the strong odor of marijuana coming from 3806 177th Pl SW as we drove by and walked by on foot.

Det. Johnson has been a Police Officer in the City of Lynnwood for over eighteen years. Det. Johnson is currently assigned as a Detective with the South Snohomish County Narcotics Task Force and has been since 1994. Det. Johnson has received training in the following; narcotics enforcement training in the Basic Law Enforcement Academy, a sixteen-hour course for narcotics enforcement for patrol officers, an 80-hour D.E.A. (Drug Enforcement Administration) Basic Academy at the Washington State Justice Training Center, a 40 hour Advanced Drug Investigator class at the Washington State Justice Center, 24 hour International Money Laundering Investigations, 40 hour Analytical Investigative Techniques, An 24 hour Asset Forfeiture class on Parallel Financial and Criminal Investigations at the Everett Police Department and has attended seminars which include training on assets and forfeiture, body wires and listening devices, Mexican drug trafficking, indoor marijuana grows, raid planning, informant handling and officer in charge. The Affiant has assisted in the service of over twenty five narcotics search warrants where marijuana grow operations have been located.

Based on the facts and circumstances I (affiant) believe there is a marijuana grow operation located at 3806 177th Pl SW in Lynnwood, Washington. The affiant wishes to search the residence and all outer building belonging to the residence to show the evidence of Manufacturing a Controlled Substance – Marijuana.

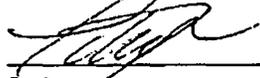
The Affiant believes that my searching the residence located at 3806 177th Pl SW in Lynnwood, Washington. The affiant will locate evidence of the crimes of Manufacturing a Controlled Substance – Marijuana. The affiant believes that he will locate growing marijuana plants, processed marijuana, controlled substances, growing marijuana equipment to include fans, lights, ballasts, vents, timers, fertilizers, light hoods, pots, soils and any other item used to grow marijuana, drug paraphernalia, items used to weigh, package, contain or conceal controlled substances, drug proceeds, records of occupancy, computers with associated hardware and software, records of sales and ledgers and evidence related to drug operations by narcotics traffickers.



Affiant

Detective Chad Eastep
South Snohomish County
Narcotics Task Force #1465

Subscribed and sworn to before me this 26th day of February, 2009



Judge

Issuance of warrant approved:

Adam Cornell – Snohomish County Prosecutor _____
Deputy prosecuting attorney

COURT COPY ()

POLICE COPY ()

JUDGE'S COPY ()

APPENDIX B

Affidavit for Search of 38th Place

State v. Jerri Carson
CrR 3.6 Motion to Suppress

DISTRICT COURT FOR SNOHOMISH COUNTY
SOUTH DIVISION

STATE OF WASHINGTON)
)SS.
COUNTY OF SNOHOMISH)

NO. *SW2009-30*
AFFIDAVIT FOR
SEARCH WARRANT

FILED
FEB 27 2009

Snohomish County District Court
South Division

The undersigned on oath states: That the affiant believes that:
Evidence of the crime of MANUFACTURING A CONTROLLED SUBSTANCE -
MARIJUANA, contraband, the fruits of a crime or things otherwise criminally possessed
and located in, on, or about the following described premises.

1. Search within ten (10) days of this date, the premises, vehicle or person described
as follows:

1. A residence located at 17802 38th Pl W in Lynnwood, Washington. The residence is a
two story dwelling green in color with white colored trim. The residence sits on the
northwest corner of a cul-da-sac. The residence has the bold numbers 17802 located on the
front of the residence.

2. Seize, if located, the following property or person(s):
growing marijuana plants, processed marijuana, controlled substances, growing
marijuana equipment to include fans, lights, ballasts, vents, timers, fertilizers, light hoods,
pots, soils and any other item used to grow marijuana, drug paraphernalia, items used to
weigh, package, contain or conceal controlled substances, drug proceeds, records of
occupancy, computers with associated hardware and software, records of sales and
ledgers and evidence related to drug operations by narcotics traffickers.

3. Promptly return this warrant to me or the clerk of this court; the return must include an
inventory of all property seized.

A copy of the warrant and a receipt for the property taken shall be given to the person
from whose premises property is taken. If no person is found in possession a copy and
receipt shall be conspicuously posted at the place where the property is found.

Search Warrant Affidavit is attached and incorporated herein by reference

That Affiant's belief is based upon the following facts and circumstances:

I (the affiant) have been a Police Officer for over 12 years. I am currently assigned as a
Detective with the South Snohomish County Narcotics Task Force. While attending the
Washington State Criminal Justice Training Center I was introduced to the look and
smell of burnt and non-burnt marijuana and can recognize both by look and smell. I was
shown known samples of marijuana and was taught to observe the characteristics of
marijuana, including color, texture, and smell of fresh, dried, and burnt marijuana. I have
also had an eight hour Drug Recognition training class, sixteen hour Drug Investigation
training class and an eight hour Methamphetamine Identification training class.

I completed approximately six month of training with the Quad Cities Drug Task Force in 2000. I assisted with intelligence, surveillance, narcotics buys and raids.

I have handled several narcotics cases with successful prosecutions and have been involved in the service of over five narcotics search warrants where marijuana grows were located.

Through my training, experience and knowledge obtained through other narcotics investigations and based upon conversations with other experienced narcotics officers, the affiant knows the following to be true:

Individuals cultivating marijuana are quite often involved in the distribution and sales of marijuana. Individuals involved in the cultivation and distribution of marijuana almost always maintain records, money orders and other documents evidencing their unlawful drug trafficking and money laundering activities, in order to document multiple harvests of marijuana and debts and collections involving drugs or money from the sales of drugs. These records are usually maintained on their property, in their vehicles or at their premises.

Individuals involved in the cultivation and distribution of marijuana more often then not maintain telephone records and/or addresses of drug customers and associates regarding their drug transactions and/or sales.

Individuals involved in the cultivation of marijuana sometimes take or cause to be taken photographs and videotape recordings of them, their associates, their property, their marijuana crop and equipment. These photographs and tapes are usually maintained on their property, in their vehicles or at their premises.

Individuals involved in the cultivation and distribution of marijuana often keep paraphernalia for packaging and weighing their illegal drugs. Paraphernalia usually includes but is not limited to scales, packaging material and drying devices.

Items involved in the growing of marijuana are the following: pots, soils, fertilizers, timers, and fans, metal halide light systems, fluorescent lights, reflectors, and ballast's.

Individuals involved in the cultivation and distribution of marijuana often maintain amounts of money, financial instruments, jewelry and other valuables, which are direct proceeds of their illegal drug transactions.

That it is common to find drug traffickers to keep their records, writings and figures in computers along with associated hardware and software;

Individuals involved in the cultivation and distribution of marijuana often have storage units concealing their marijuana grow equipment, assets, proceeds, records and other items used to cultivated and distribute marijuana

On 02-26-09 I obtained a search warrant for marijuana grow at **3608 177th Pl SW** See attached affidavit for details. Attached herein and incorporated by reference

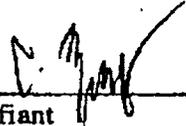
On 02-27-09 at approximately 0900 hours, the South Snohomish County Narcotics Task Force served the warrant on the residence and found no marijuana grow. The homeowner (Kevin C. McAnaw) said he has smelled the strong odor of what he believed as marijuana coming from the area of his house. McAnaw did point to a two-story green residence behind his house saying no one has lived there since last summer.

Det Johnson and I went to the residence (green two-story residence with white trim) at 17802 38th Pl W in Lynnwood, WA. Det Johnson and I noticed the front window was broken. It did not appear anyone was living at the residence and no vehicles were in the driveway. The upper windows were open. Det Johnson and I could hear a loud humming sound coming from inside the residence. From training and experience the loud humming is associated with ballasts which are used to supply power to marijuana grows. Det Johnson and I both could smell the strong odor of marijuana coming from the residence. Three additional narcotic detectives arrived and could also hear the humming and smell the marijuana.

Det. Johnson has been a Police Officer in the City of Lynnwood for over eighteen years. Det. Johnson is currently assigned as a Detective with the South Snohomish County Narcotics Task Force and has been since 1994. Det. Johnson has received training in the following; narcotics enforcement training in the Basic Law Enforcement Academy, a sixteen-hour course for narcotics enforcement for patrol officers, an 80-hour D.E.A. (Drug Enforcement Administration) Basic Academy at the Washington State Justice Training Center, a 40 hour Advanced Drug Investigator class at the Washington State Justice Center, 24 hour International Money Laundering Investigations, 40 hour Analytical Investigative Techniques, An 24 hour Asset Forfeiture class on Parallel Financial and Criminal Investigations at the Everett Police Department and has attended seminars which include training on assets and forfeiture, body wires and listening devices, Mexican drug trafficking, indoor marijuana grows, raid planning, informant handling and officer in charge. The Affiant has assisted in the service of over twenty five narcotics search warrants where marijuana grow operations have been located.

Based on the facts and circumstances I (affiant) believe there is a marijuana grow operation located at 17802 38th Pl W in Lynnwood, Washington. The affiant wishes to search the residence and all outer building belonging to the residence to show the evidence of Manufacturing a Controlled Substance – Marijuana.

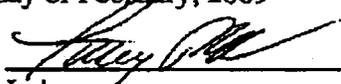
The Affiant believes that my searching the residence located at 17802 38th Pl W in Lynnwood, Washington. The affiant will locate evidence of the crimes of Manufacturing a Controlled Substance – Marijuana. The affiant believes that he will locate growing marijuana plants, processed marijuana, controlled substances, growing marijuana equipment to include fans, lights, ballasts, vents, timers, fertilizers, light hoods, pots, soils and any other item used to grow marijuana, drug paraphernalia, items used to weigh, package, contain or conceal controlled substances, drug proceeds, records of occupancy, computers with associated hardware and software, records of sales and ledgers and evidence related to drug operations by narcotics traffickers.



 Affiant

Detective Chad Eastep
 South Snohomish County
 Narcotics Task Force #1465

Subscribed and sworn to before me this 27th day of February, 2009



 Judge

Issuance of warrant approved:

Adam Cornell – Snohomish County Prosecutor _____
 Deputy prosecuting attorney

COURT COPY ()

POLICE COPY ()

JUDGE'S COPY ()

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE**

STATE OF WASHINGTON)	
)	
Respondent,)	
)	
v.)	COA NO. 64567-6-I
)	
JERRI CARSON,)	
)	
Appellant.)	

DECLARATION OF SERVICE

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 11TH DAY OF JUNE 2010, I CAUSED A TRUE AND CORRECT COPY OF THE **BRIEF OF APPELLANT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

- [X] SNOHOMISH COUNTY PROSECUTOR'S OFFICE
3000 ROCKEFELLER AVENUE
EVERETT, WA 98201

- [X] JERRI CARSON
420 224TH STREET
APT. 102
BOTHELL, WA 98021

SIGNED IN SEATTLE WASHINGTON, THIS 11TH DAY OF JUNE 2010.

x *Patrick Mayovsky*