

**FILED**

SEP 06 2011

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_

28372-1-III

COURT OF APPEALS

DIVISION III

OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT

v.

RYAN J. MILLER, APPELLANT

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APPEAL FROM THE SUPERIOR COURT

OF YAKIMA COUNTY

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APPELLANT'S SUPPLEMENTAL BRIEF

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A. ISSUE

Apart from the evidence found in the unlawful searches of the shed, did the State present evidence from which a jury would have found, beyond a reasonable doubt, that the defendant possessed any of the marijuana growing on his grandmother's farm or in an adjacent cornfield?

B. ARGUMENT

THE ERRONEOUS DENIAL OF THE DEFENSE MOTION TO SUPPRESS EVIDENCE DERIVED FROM THE UNCONSTITUTIONAL SEARCHES OF THE SHED WAS NOT HARMLESS.

The State presented overwhelming evidence that someone was growing marijuana on the Miller property and had stored some of it in bags in an adjacent cornfield. The only evidence connecting Ryan Miller with any of that marijuana, however, was his grandmother's testimony that she had seen him in the shed, had seen marijuana in the shed, and had seen him removing marijuana from the shed. The State relied on the evidence found in the shed to corroborate the grandmother's testimony. And the only evidence that anyone was engaged in manufacturing or delivering marijuana, apart from the quantity of marijuana found in the cornfield, was the evidence acquired in the unconstitutional searches of the shed.

A trial court may not constitutionally admit evidence obtained by an illegal search. *State v. Thompson*, 151 Wn.2d 793, 808, 92 P.3d 228 (2004). Such error is harmless only if the State shows beyond a reasonable doubt that any reasonable jury would have reached the same result without the error. *State v. McReynolds*, 117 Wn. App. 309, 326, 71 P.3d 663 (2003). The State has failed to make such a showing.

The State presented evidence that substantial quantities of fresh marijuana were found in the cornfield adjacent to Ms. Miller's property and marijuana plants were found in various locations around her property. (RP 498, 513-17) The evidence connecting Ryan Miller with the marijuana found in the cornfield and the plants found on Ms. Miller's property consisted of Ms. Miller's testimony that she had seen him in the shed, where evidence of marijuana processing was found, and that she had seen him carrying bags from the shed to his van. (RP 254, 259, 262, 943-44)

Ms. Miller testified that she had seen marijuana plants in the shed, and the State relied on the evidence found in the shed to corroborate her testimony and arguably establish her credibility. (RP 259, 943) After describing the evidence found in the shed in great detail, and illustrating his description with photographs of the interior of the shed, Deputy Tucker explained its significance as evidence that the shed had been used to dry

fresh marijuana plants. (RP 496-517) He described the process of drying marijuana prior to distribution, and explained the necessity of such a drying process before the marijuana found in the bags in the cornfield could be distributed. (RP 505-08; 947, 954)

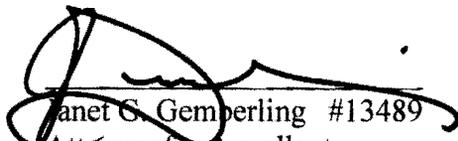
Without the testimony describing the contents of the shed, the photographs of the contents of the shed, and Deputy Tucker's testimony explaining the significance of the evidence found in the shed, the State's case merely showed that Ryan Miller was one of the many members of Ms. Miller's family who may have been responsible for growing marijuana on the property and storing it in the nearby cornfield.

### C. CONCLUSION

Denial of the motion to suppress was not harmless error; the conviction should be reversed.

Dated this 6th day of September, 2011.

GEMBERLING & DOORIS, P.S.

  
Janet C. Gemberling #13489  
Attorney for Appellant

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON,

DIVISION III

STATE OF WASHINGTON,	)	
	)	
Respondent,	)	No. 28372-1-III
	)	
vs.	)	CERTIFICATE
	)	OF MAILING
RYAN J. MILLER,	)	
	)	
Appellant.	)	

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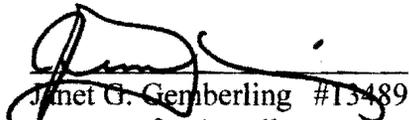
I certify under penalty of perjury under the laws of the State of Washington that on September 6, 2011, I served a copy of the Appellant's Supplemental Brief in this matter by email on the following party, receipt confirmed, pursuant to the parties' agreement:

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I certify under penalty of perjury under the laws of the State of Washington that on September 6, 2011, I sent a copy of the Appellant's Supplemental Brief in this matter by pre-paid first-class mail to:

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Signed at Spokane, Washington on September 6, 2011.

  
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