

**FILED**

**JUN 27 2011**

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

No. 283721

IN THE COURT OF APPEALS OF THE  
STATE OF WASHINGTON

DIVISION III

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STATE OF WASHINGTON,

Respondent,

vs.

RYAN J. MILLER,

Appellant.

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APPEAL FROM THE SUPERIOR COURT  
OF YAKIMA COUNTY, WASHINGTON

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THE HONORABLE MICHAEL McCARTHY, JUDGE

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SUPPLEMENTAL BRIEF OF RESPONDENT

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## I. INTRODUCTION

Appellant Ryan J. Miller timely appealed his convictions for one count of unlawful possession of a controlled substance with intent to deliver, and one count of manufacture of a controlled substance, marijuana, under Yakima County Superior Court cause number 08-1-01505-5.

In his opening brief, he asserts that the trial court erred in denying his motion to suppress, since a warrantless search of a shed in which marijuana leaves were found violated his constitutionally protected expectation of privacy, and second, he had standing to challenge the admissibility of evidence alleged to have been found in his possession.

The State filed a Brief of Respondent. Subsequently, the court requested supplemental briefing as to whether any constitutional error committed by the trial court, in denying the suppression motion, was harmless beyond a reasonable doubt.

## II. STATEMENT OF THE CASE

The factual statements contained in the parties' briefs are incorporated, and will be supplemented, herein. RAP 10.3(b)

## III. ARGUMENT.

1. **The State's evidence shows that, beyond a reasonable doubt, any reasonable jury would have reached the same result even absent the claimed error.**

It is well-settled that the failure to suppress evidence obtained in violation of a defendant's Fourth Amendment rights is constitutional error, and is presumed to be prejudicial. State v. McReynolds, 117 Wn. App. 309, 325, 71 P.3d 663 (2003), *citing* State v. Tan Le, 103 Wn. App. 354, 367, 12 P.3d 653 (2000). However, the State bears the burden of demonstrating that such error is harmless, and 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. Id., *citing* State v. Brown, 147 Wn.2d 330, 341, 58 P.3d 889 (2002).

The Washington State Supreme Court has held that the search of a house and shed was unconstitutional, and the evidence obtained therein inadmissible, but also held that the trial court's error in denying a motion to suppress was harmless "due to other abundant evidence of criminal activity". State v. Myrick, 102 Wn.2d 506, 514-15, 688 P.2d 151 (1984). In that case, the house and shed were not included in a search warrant's description of the area to be searched, and the court rejected the State's claim that the "plain view" doctrine exception to the warrant requirement justified, by itself, the warrantless *seizure* of marijuana plants found within the buildings. However, since the defendant was arrested with large

amounts of freshly-harvested marijuana in his vehicle, the discovery and seizure of the plants which were indoors was “inconsequential”. *Id.*

A similar result was reached in *State v. Smith*, 93 Wn.2d 329, 610 P.2d 869, *cert. denied*, 449 U.S. 873, 66 L. Ed. 2d 93, 101 S. Ct. 213 (1980). There, the court found that while the admission of marijuana, unlawfully seized from a house, was indeed error, the error was harmless in light of the fact that the defendant possessed 178 growing marijuana plants which were outside in a yard. *Id.*, at 352.

The State respectfully submits that the facts here are remarkably similar to those in *Myrick* and *Smith*. While the State reiterates its position that the trial court did not err, if there were error there was abundant evidence produced at trial, which was not seized from either the shed or the camper, upon which any reasonable jury could have found Mr. Miller guilty of the two offenses. The State would have met its burden of demonstrating harmless error beyond a reasonable doubt.

First, Mr. Miller’s grandmother told Deputy Tucker that he was growing marijuana on her property. **(RP 22, 41)** Deputy Tucker observed what appeared to be marijuana plants growing outside behind some chicken coops. **(RP 24)** He saw an apparent marijuana leaf outside the camper, where he previously observed Miller and two other individuals vacuuming. **(RP 26, 112)** Finally, the deputy observed a trail

of marijuana shake leading from the grandmother's property, to seven  
garbage bags of marijuana which had been left in an adjacent field. (RP  
31)

The marijuana leaves which were obtained from within the shed or  
the camper were clearly inconsequential in light of the larger body of other  
evidence admitted.

#### IV. CONCLUSION

Based upon the foregoing arguments, this Court should affirm the  
convictions.

Respectfully submitted this 24<sup>th</sup> day of June, 2011.

  
Kevin G. Eilmes, WSBA No. 18364  
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Attorney for Yakima County

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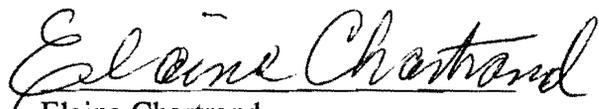
IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION III

STATE OF WASHINGTON,	)	NO. 283721
	)	
Respondent,	)	SWORN STATEMENT OF SERVICE
	)	BY MAIL
vs.	)	
	)	
RYAN J. MILLER,	)	
	)	
Appellant.	)	

I, Elaine Chartrand, state that I am and was at the time of the service of the Supplemental Brief Of Respondent, herein referred to, a citizen of the United States, residing at Yakima, Yakima County, Washington; that I am over the age of twenty-one years and am not a party to the within entitled action.

That on the 24th day of June, 2011, I served upon Janet G. Gemberling, 2920 S Grand Blvd PMB #132, Spokane, WA 99203-2530, Attorney for Appellant, and Ryan J. Miller, 404 West 4<sup>th</sup> Avenue, Apt 2, Toppenish, WA 98948 the appellant herein, a copy of the aforementioned instrument, by putting the same, enclosed in sealed envelopes, postage paid, into the post office.

I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

  
Elaine Chartrand  
June 24, 2011  
at Yakima, WA