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STATE OF WASHINGTON
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Court of Appeals
Division I
Case #: 1041101
State of Washington
4/29/2025 8:00 AM

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

Michael Schermerhorn and Roxanna Larson

Appellants,

v.

Skagit County Interlocal Drug Enforcement Unit,

Respondent.

[In re Matter of Michael Schermerhorn and
Roxanna Larson,
Skagit County Superior Court Case
No. 22-2-00313-1]

PETITION FOR DISCRETIONARY REVIEW

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Representing Co-op138
- Michael Schermerhorn
- Roxanna Larson
- Michelle Larson
- Jennifer Olds

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IX. Table of Authorities

None Cited. We are not attorneys. We are victims of multiple crimes.

X. Exhibits

A. Copy of Denial for Reconsideration

NO. 86120-4-1

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

MICHAEL A.)	
SCHERMERHORN, and)	PETITION FOR
ROXANNA M. LARSON,)	DISCRETIONARY
)	REVIEW
Appellants,)	
vs.)	
)	
SKAGIT COUNTY)	
INTERLOCAL DRUG)	
ENFORCEMENT UNIT)	
(SCIDEU))	
)	
Respondents.)	
)	

INTRODUCTION

COMES NOW, Petitioner's Michael Schermerhorn,
Pro Se, and Roxanna Larson, on behalf of all
members of Cooperative138, Michelle Larson,

Jennifer Olds, Roxanna Larson, and Michael Schermerhorn and requests a Petition for Review to Supreme Court of Appeals due to the incredible lack of accuracy and constitutional law violations pursuant to RAP 13.4(b)(3) and (4) according to the WA State Constitution and our rights under the Constitution of the United States.

I. IDENTITY OF PETITIONER

I am a disabled person who cannot read nor write [CP 21]. I was forcibly, and unlawfully deprived of my presumption of innocence and Due Process, as was Roxanna Larson, Michelle Larson, and Jennifer Olds.

II. DECISION

A decision made of May 4, 2025 by the WA State Court of Appeals Denying Motion for Reconsideration. We request the court review and lawfully investigate failures in acceptance of a

perjured search warrant [*Revised Brief*, EX 1] and the denial of our right to Due Process.

III. ISSUES PRESENTED FOR REVIEW

A. Pursuant to RAP 13.4 (b) (3) – significant question(s) of law under the Constitution of Washington State and involves the Constitution of the United States, whereas we state the violations overlooked as follows:

1. Violation of Due Process;
2. Unlawful Search and Seizure;
3. Manufacturing of evidence
4. Failure to Validate
5. Condoning crimes committed against us

B. Pursuant to RAP 13.4 (b) (4) whereas, there is an issue of substantial public interest, we state as follows:

1. Violations of our Constitutional Rights of U.S.

Citizens and Federal Law:

- a. Due Process
- b. Innocence before Guilt
- c. Illegal Search and Seizure
- d. Abuse of Power
- e. Entrapment
- f. Falsifying and manufacturing evidence
- g. Aiding and Abetting after the Fact

2. Consumer Fraud

3. Kidnapping/Assault/Armed Robbery/Attempted
Murder

III. STATEMENT OF THE CASE

Listed in order of issues in RAP 13.4(b)(3), as follows:

1. Violation of Due Process -

a. In a criminally negligent application for a search warrant followed by a criminally negligent of execution of a search warrant where law enforcement first raided the 49 Willow Lane address, they first blew the doors off our neighbors residence before realizing their mistake. Roxanna Larson was in the front window watching this all transpire as there was a one, two, and four year old child were within five feet of this criminally negligent raid orchestrated in our neighbors first. This information was withheld from the Judges, not investigated, nor were these

officers glaring errors in endangering innocent children and families.

b. Another example of criminal negligence, misinterpretation of evidence and prejudicial oversight, where during the execution of the search warrant, as I was being put in handcuffs, my heart stopped. This constitutes an assault. The courts cannot condone felonies. My doctors asked you to investigate this, several times [*Revised* Brief EX 6]. My doctor has never been contacted nor has any law enforcement agency every investigated an investigation license through the lawful portal of the WA State LCB portal to the Department of Health, the SAW Portal.

c. Failure to collect medical information and medical cannabis licensing through this portal, and this portal only, is a felony, punishable by 90 days

in jail, and a \$5000 fine, each count. There are four separate medical marijuana patients who, as of September 5, 2019, were registered and licensed as cooperative 138.

d. While awaiting our court date on a 14 day Notice to Change location we were raided under false pretenses in violation of our Constitutional Right of Due Process [*Revised* Brief EX 2].

e. The courts acceptance of a false narrative, not investigated as fact, and the dates they are representing in their Unpublished Opinion filed 3-10-2025 WA State Court of Appeals are devoid of the very important donation process of the Medical Marijuana field and patient to patient pass. In violation of that presumption of innocence and the Standard Industry Practice that is used by all Washington State Cannabis Control Board members

of license holders, recreational and medical. The norm works this way, we have medical patients that can receive plants through donation or purchase, either process, the plants come with plants tags which contain bar codes. These bar codes can give further information about the plant's history. During a quarantining of donations that history is examined as is the plant for molds, pests, and herbicides of pesticides. During the quarantining process, if we come across any one of these disqualifying factors, we then remove them from our inventory log, mark them for destruction, and let them die in our waste room. By seizing our licensing, plant tags, and inventory logs, which are all required by law, they have seized or destroyed these documents issued to us by the State of Washington which are the receipts of business we have lawfully conducted with the WA

State LCB recreational and medical. Every single medical cannabis and/or it's analogs, meaning creams, oils, or topical s or suppositories, were all donated lawfully by patient to patient pass. In the 60 days prior to the September 5, 2019 raid we had been robbed 4 times for over \$100,000.00. The community support was incredible, including the oil that was donated by Eugene, Owner of Anacortes Cannabis, who is willing to testify about the donation of contaminated, low grade, cannabis oil, knowing I had a lab that would render it medically safe and usable.

2. Unlawful Search and Seizure

a. Two weeks after Michael Schermerhorn was assaulted by Corporal Leetz and partner, these same officers that assaulted me gave testimony that Frank Black used in his Application for a Search Warrant. We have not been able to cross examine

them for their perjured testimonies, and testimony given under false pretenses. They started this investigation by illegally obtaining a copy of my dead father's license. That prejudiced the investigation. Had they requested information pursuant to RCW 69.51A250(9) they would have found we were properly licensed [*Revised* Brief EX 3] and initiated an investigation under a different foundation. A continuation of the unwarranted narrative is documentable and with the final criminally negligent act of Frank Black to perform a records search through the lawful channels prior to the raid. This failure was so that they could conduct a raid the day we were in court with the LCB. Therefore any information provided by Frank Black and associates in regards to our licenses and registrations need to be stricken from the record as hearsay for neglecting to

provide a lawful investigation because it argues against documents issued to us as receipts and licenses by the State of Washington. By withholding those documents, instead of producing them, gave the Judge the wrong impression when requesting a search warrant against us.

3. Manufacturing of Evidence..

a. In the search warrant application law enforcement stated we did not have medical marijuana licenses, nor did we have a registration and “somehow” it had been pulled. This is manufacturing of evidence and perjury, and has nothing to do with a plant count, where the numbers were inflated under false pretenses and complete disregard for all applicable 502 plant tags. These plants tags are crucial. They tell WSLCB and law enforcement, and Department of Health whose plant this really is, and

how it was processed up to that point. By ignoring, and failing to collect these tags, which is a requirement of the LCB the examination of evidence and collection was the responsible of the Interlocal Drug Task Force. The SCIDEU received Federal Funding and they have violated the use of these funds by the stoppage of my heart due to their abuse of power. This was never investigated nor were Federal guidelines adhered to and application of the law. Their failure to have the correct knowledge and information prior to conducting a raid into our community where they used surplus military hardware, riot shields, and an armored personnel carrier, which they then blew the doors off our neighbors residence. That is an assault, an abuse of power, and a crime. They were in such a rush to violate our constitutional right to Due Process they

raided the wrong location first. During this raid they collected property from our neighbors as well as us. That manufacturing of evidence, has again, has gone uninvestigated. Furthermore, the plant tags would have clearly shown which plants were purchased and which plants were donated to us. In the State of Washington it is legal for Dave Wilms to pick up plants from a licensed 502 plant distributed in Lake Stevens and transport them without violating any plant count laws. Secondly, like all non-profits who accept donations, people with stereotypically what we call Charlie Browns, which are the worst quality and need so much work that they are not profitable and cannot be used in a recreational setting. They can be donated to a medical cooperative, or a medical patient via a patient to patient pass. By doing this no laws are broken, nor is there a manufacturing process

violated. The plant tag clearly states that the manufacturer of this plant was a registered and licensed WSLCB member. Due to the prolific burglaries 40 days prior to the raid of September 5, 2019, we had requested donations as had our doctors. Donations were delivered. We intake into quarantine all donations. During quarantine we decide if want to add to our plant count, destroy, or donate to another medical patient. This culling process extends to all materials donated. As an example, if someone dropped a nuclear bomb in a Goodwill Donation Box you wouldn't charge Goodwill with a crime. During this process we usually have a 4-6 percent capture rate, meaning that over 90% of it is waste, or beyond reclamation. In the furthering of that false narrative of illegal manufacturing you have failed to account for the donations law and principals that fall into

affect for cancer patients and open heart surgery patients. The failure to accurately describe the medical conditions of each member to the Judge gave a false and prejudice impression of our conduct. I find it incredible to believe that anybody could think that we could grow or produce anything to process after being robbed 4 times in 30 days. We had no medicine and were working very hard to make medicine to replace everything that was stolen. In regards to oils and concentrates found by law enforcement they were all contaminated and were lawfully donated from 502 retailers and producer/processors. Law Enforcement simply destroyed or withheld that documentation as well as our licenses and registrations with our inventory catalog. The importance of this destruction of evidence under false pretenses is that we are now

disabled for using this information to defend ourselves using the plant tags, the licenses, the registrations in a court of law to prove our lawful conduct to prove ourselves innocent. This is just one of the many examples of you guys moving the goal line, and failing to use the Rule of Best Evidence.

b. Pursuant to RCW 69.51A.250(1) states medical marijuana patients can maintain up to 15 plants each, and a total of 60 plants. Although we were within our legal rights the stated 60 plants in [Revised Brief EX 1] Search Warrant is incorrect, see [Revised Brief EX 11] Affidavit.

The next step is determining whether the donation meets the critical medical guideline, and this includes all donations. We have the lawful right to donate all excess harvested materials to medical patients, if we have any, after we have fulfilled out own medical

requirements. Due to the constant thefts we were never able to achieve that medical goal.

4. Failure to validate..

a. Pursuant to RCW 69.51A.250(1) law enforcement could have requested an inspection at any time. Instead they used the search warrant under false pretenses in retaliation and to condone felonies that were committed against. The security video footage withheld from the courts, as seen by Det. Mike Hansen, showing Tammer O'Conner and associates committing the very crimes we are accused of. Neither Tammer O'Connor nor Paul Ware had any sort of licensing yet they got away with stealing Schedule I narcotics and our personal property. This is a State and Federal offense. This is entrapment and abuse of power. There is no legal way that Michael Schermerhorn could be alleged to commit the

burglaries that Det. Mike Hansen saw Tammer O'Conner commit [*Revised* Brief, EX 7], and to say so in search warrant application invalidates the legal authority of the search warrant, and calls the rest of the rest of the information into question. Again this can further be demonstrated by the public records requested from the LCB and the Dept. of Health which shows no law enforcement agencies had not made any inquiries into prior to the raid of September 5, 2019 which makes for no such reason to request a search warrant.

5. Condoning crimes committed against us...

a. While leaving the Mayor's office after the third day in a row trying to file a criminal complaint against three Anacortes PD officers who were complicit in the burglaries of over \$100,000 in the five burglaries committed against us in 2019 I was

ambushed under false pretenses, stating I was there to hurt somebody instead of the true reason, I was there to file a criminal complaint against them. All complaints were never accepted. They simply would not intake them, all they way to Interlocal Drug Task Force Captain Tobin Meyer, who gave a 1"x1" Post-it Note to write it on. This is an abuse of power and a misuse of taxpayer money, and commission of fraud.

b. Corporal Leetz and fellow officers who assaulted me on August 20, 2019 has gone uninvestigated. This assault required surgery to my shoulder, hip, and foot. This information was not stated in the search warrant [*Revised Brief* EX 1] nor was it presented to the judges presiding in this case. This is a felony and cannot be ignored or condoned by the courts. By the Courts ignoring this fact, and not forcing an investigation, prior to making a decision,

they have our violated our constitutional rights of Presumption of Innocence, and we challenge them to file criminal charges at any time so that we can sue them in Federal Court.

c. Frank Black, WSP, failed to, along with his co-conspirators, in order to circumnavigate our due process rights and our presumption of innocence, provided false information on a search warrant application so they could conduct a raid the day before we were in court instead of requesting an inspection to see if we were in or out of compliance. Whatever limits which were noted on the licensing and registration posted at the facility were the lawful amounts of cannabis plants that could be at that location, and by taking all of the plants they have violated our presumption of innocence and Due

Process. At the very least, 40 of those plants could legally be there until determined otherwise by the Office of Administrative Hearing, Judge Charles Bryant, that was scheduled for the very next day, September 6, 2019, against the LCB. By collecting the information and falsely portraying it he was able to get a search warrant and execute it.

d. Frank Black contacted our landlords and gave them false information about us that wasn't consistent with the documents issued to us by the State of Washington. He threatened to seize their property and seize our Ukrainian landlord's green card and have him deported if he did not evict us. He also contacted Wayne Meeks of Suburban Propane

and stated in July of 2019 that we had no medical licensing or registration, without ever doing a lawful investigation. That is a crime and needs to be investigated. This was committed before the issuance of a search warrant was ever issued.

Listed in order of issues in RAP 13.4(b)(4), as follows for Federal Violations of our Constitutional Rights:

1. Constitutional Rights Violations including Right to Due Process

Due to a 5000 word count restriction the Federal and State violations are the same as far as acts committed against us by Law Enforcement and Prosecution and are described within the foregoing section.

The Skagit County Interlocal Drug Task Force received Federal Funding and fraudulently used that federal funding that resulted in the stoppage of my heart.

2. Consumer Fraud – Skagit County Prosecution, WA State Attorney General's Office, and all public employees within the State of WA swear an Oath of Office to protect WA State citizens while using the Constitution of the Constitution of the USA as it's number one guiding light. In violation of that tenant they made allegations in writing and verbally, in open court, on no less than 20 occasions, that has violated their pre-employment oath of office. By withholding the video security footage they have stated that Michael Schermerhorn has committed a crime thereby condoning the multiple felonies committed against Michelle Larson, Roxanna Larson, Jennifer Olds, and

Michael Schermerhorn, That aiding and abetting, fraud, and all of us paid taxes in the State of WA, and part of that collection of taxes is for law enforcement and police services. It is quite easy to document the fraudulent use of taxpayers money and resources to cover-up the crimes Tammer O'Connor committed again our cooperative six months before the September 5, 2019 raid. During that six month period there is not one demonstrable instance of us intentionally, or unintentionally break the law, or to circumnavigate it. The life saving medication prescribed to use by WA State doctors and paid for by public health insurance, and has never, ever had a recorded violation. The baselessness of these false allegations had a very important criminal component. Conspiracy to commit fraud by stating we do not have a medical marijuana license or a cooperative

registration while in fact it is demonstrable by public records that on September 5, 2019 not only were we licensed but were registered awaiting our Appeal on a 14-Day notice to change location of our licensed and registered cooperative, which we could address which member actually lived where versus necessary mailing addresses listed, and to address allegations of money laundering and insurance fraud, which is completely false and we wish to be exonerated. The abuse of taxpayers money and fraud also involve the failure to involve a lawful follow-up investigation. It would be unlawful for any LE agent or prosecutor to argue against the documents we have received from the state of WA. They did not state that we had them, the stated we did not have them, two distinct lawful meanings. By stating we didn't have the documents, which we do, that were valid and verifiable, and were

receipts from the State of WA. Their failure to verify and validate these documents prior to conducting a raid violations the protections that the State of WA had granted us. This is further evidence of a captured agency which is not what WA State voters voted for. This agency was able to register five cooperatives over the 1000 that were alive in 2015. That's not what the voters voted on. They have operated 100% fraudulently. At not time did they attempt to protect our health, and need to be restrained by the Federal Government from violating any more of our State and Federal laws, and insurance claims.

3. Kidnapping/Assault/Armed Robbery/Attempted Murder – I have reported this to the FBI. In that filing 20,000 words were needed and you want me to undertake this whole entire argument is less than 5000 words. The ridiculousness of the crimes committed of

us prior to the raid the went uninvestigated, which will prove a conspiracy to circumnavigate our constitutional rights of due process, illegal search and seizure, and our ability of redress. This means that when we go to file criminal charges, first at the Anacortes PD, then at the Mayor's office, and they do not intake my complaints three days in a row in August 2019, and on the third day after leaving the Anacortes Mayor's office three Anacortes PD officers ambush me. The very ones I was trying to complain against at the Mayor's office and two days before at the after-hours Anacortes PD. Each and every time I tried to file a complaint against these officers, including Don Messemer, who made a fake 911 phone call from the Anacortes City Hall while I was literally in the reception area awaiting to file a complaint against those officers. Those same officers

who ambushed me after leaving the Mayor's office and caused me to have surgery on my shoulder, hip and foot, two weeks later conspired with Frank Black to construct a bogus search warrant and execute it fraudulently the day we were in court with the WSLCB and the Attorney General to determine if we had to change location of our registered and licensed cooperative. The weapon in this crime is the bogus search warrant and handcuffs. That conspiracy caused the stoppage of my heart once the handcuffs were placed upon. My heart was restated by paramedics on the way to the hospital. It's important to note at this particular time has any judge or prosecutor acknowledged these very serious facts. Instead they ignore these facts and produce a false narrative which do not include documents issued by

the State of WA in 2019 and use hearsay. That is also a crime.

V. ARGUMENT

While Michelle Larson is going through open heart surgery it is unlawful to allege that her property to manufacture cannabis illegally while she is fighting for her life. This was further verified by arrest protection that was later passed by Washington State Legislation. I testified before Washington State Legislation panel and used this very example of the constitutional violations by the WSLCB.

The Error, is the mistaken conversation with the LCB, that I want to appeal the 14 Day Notice to Change Location, that I was instructed first, to withdraw the application in order to appeal. If that somehow disabled our cooperative registration process it must

be noted that this isn't the first time we've attempted to register our cooperative.

This is entrapment. We were not informed that we would be in violation of any laws by following the instructions of the LCB, the Office of Administrative Hearings, and the WA State Attorney General's Office.

Furthermore, we are called Cooperative 138 by the WSLCB in recognition of our registrations and licensing. This was affirmed by documents issued by the WA State Attorney's Office, and Office of Administrative Hearings, Judge Charles Bryant.

The best demonstration we have here is their failure to produce a Cease and Desist Document in 2019 prior to the raid, or any time thereafter in 2019. There is no other authority, other than the 2019 Public Record.

All attempts of fraud and conspiracy can be proven by their failure to ever conduct a lawful investigation through the WA State Department of Health and the WSLCB. In order to get a search warrant they literally had to lie to Judge Jennifer Howsen to make all of the baseless allegations sound valid. In place of using documents and our video security footage they used false narratives instead of the better evidence they had in their possession to allow the Judge to make a lawfully informed decision. The test for this is quite simple and quite easy – retest all the evidence against the allegations made against us. Those would come in the form of documents issued to us in 2019 from the Office of Administration Hearings, Judge Charles Bryant, the Office of the Attorney General, and all 6 members of the WSLCB who specialize in registration.

While we were in a lawsuit with these guys, Frank Black alleges he got information from the WSLCB that we were illegal [*Revised* Brief EX 4], while we were in a lawsuit with them. We challenged that. The information Frank Black provided Judge Jennifer Howsen was collected 1) illegally, 2) falsely narrated, and the conclusions drawn from the evidence were unlawful. These are all demonstrable by WA State law.

Finally, when they use a bogus search warrant that has four allegations, all allegations must have a supportive investigation and documentation, prior to requesting a search warrant. By alleging that Michael Schermerhorn committed a crime while law enforcement withholds our video surveillance from the Judge which they used to identify Tammer

O'Conner as the one committing the burglary in 2019,
is a crime.

We had demanded complete Discovery and
prosecution withheld the video tape and got a
protection order against us. This has not served
justice nor solved the crimes committed against us,
and only condoned the crimes of Tammer O'Conner
and associates.

VI. CONCLUSION

We were never charged with any crimes. We are
victims of five burglaries and a retaliatory search
warrant that covered them up. We are forced to
defend ourselves because the attorney we were able to
scrape enough money to hire, Rodney Moody,
through his incompetent, unlawful, and unethical

behavior only serviced to aid the prosecution. We are now trying to unwind those series of unlawful events.

For the foregoing reasons Michael Schermerhorn and Roxanna Larson ask that this court grant discretionary review. We ask the courts to order a new trial or investigation into the crimes committed against us, and/or return our property and pay damages.


Anything short of that we wish to move to a higher court.

In conclusion if we are awarded a jury trial to uncover all of the criminal conduct we seek the ability to provide witnesses and cross examine the prosecutions witnesses starting with WSP Frank Black, second SCIDEU Tobin Meyer, thirdly former Anacortes Captain Dave Floyd, then Anacortes PD Captain

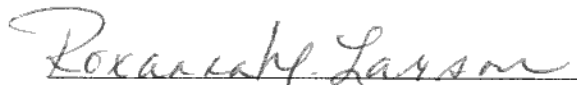
Fuller, former Anacortes PD officer Mike Hansen, all Skagit County prosecutors and investigators involved, Officers of the Skagit County Sheriff involved, and allow the jury to determine the damages. We also ask to be exonerated from all baseless allegations brought against us.

This document contains 4,469 words, excluding the parts of the document exempted from the word count by RAP 18.17.

RESPECTFULLY SUBMITTED, this 28th day of April 2025.



Michael A. Schermerhorn Pro Se
(360) 840-2758

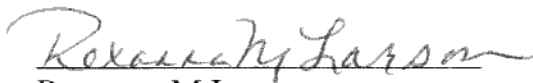

Roxanna M Larson

CERTIFICATE OF SERVICE

I, Roxanna Larson, residing at 915 N 8th Street, Mount
Vernon do hereby swear that a true and correct copy
of Motion for Consideration was submitted via Efile
Portal and email copy to:

Frederick Haist, WSBA 48937
Deputy Prosecuting Attorney
605 3rd Street, Courthouse Annex
Mount Vernon WA 98273
Email: phaist@co.skagit.wa.us

DATED this 28th day of April, 2025


Roxanna M Larson

IX.

TABLE OF AUTHORITIES

STATUTES

1. RAP 13.4(B)(3)
2. RAP 13.4(B)(4)
3. RCW 69.51A.250(1)

We are not attorneys. We are victims of multiple crimes.

X.

EXHIBIT A

- Washington State Court of Appeals Denial of Motion for Reconsideration
Filed 4/4/2025

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

In the Matter of the Forfeiture of
Cannabis Grow Equipment

No. 86120-4-1

MICHAEL A. SCHERMERHORN and
ROXANNA M. LARSON,

ORDER DENYING MOTION
FOR RECONSIDERATION

Appellants,

v.

SKAGIT COUNTY INTERLOCAL
DRUG ENFORCEMENT UNIT,

Respondent.

The appellants, Michael Schermerhorn and Roxanna Larson, filed a motion for reconsideration. The court has considered the motion pursuant to RAP 12.4 and a majority of the panel has determined that the motion should be denied. Now, therefore, it is hereby

ORDERED that the motion for reconsideration is denied.



Judge

MICHAEL SCHERMERHORN - FILING PRO SE

April 29, 2025 - 6:04 AM

Transmittal Information

Filed with Court: Court of Appeals Division I
Appellate Court Case Number: 86120-4
Appellate Court Case Title: In the Matter of: Michael Schermerhorn and Roxanna Larson
Superior Court Case Number: 22-2-00313-1

The following documents have been uploaded:

- 861204_Petition_for_Review_20250429060334D1504063_1336.pdf
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Petition for Review
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A copy of the uploaded files will be sent to:

- fhaist@co.skagit.wa.us
- haist2000@lawnet.ucla.edu

Comments:

Certificate of Service page 36

Sender Name: Michael Schermerhorn - Email: spydeeeemike@gmail.com
Address:
915 N 8th Street
Mount Vernon, WA, 98273
Phone: (360) 840-2758

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In the Matter of the Forfeiture of
Cannabis Grow Equipment

MICHAEL A. SCHERMERHORN and
ROXANNA M. LARSON,

Appellants,

v.

SKAGIT COUNTY INTERLOCAL
DRUG ENFORCEMENT UNIT,

Respondent.

No. 86120-4-I

DIVISION ONE

UNPUBLISHED OPINION

BIRK, J. — Michael Schermerhorn and Roxanna Larson (the Appellants) appeal the hearing examiner’s order of forfeiture of their personal property, arguing the hearing examiner erred in concluding the Appellants were engaged in the illegal manufacturing of medical cannabis. Finding no error, we affirm.

In 2015, the Appellants, along with two other individuals, created Cooperative 138 to produce medicinal cannabis to address their individual medical requirements. At that time, pursuant to the Washington State Medical Use of Cannabis Act, ch. 69.51A RCW, qualifying medical cannabis patients could create and participate in “collective gardens” for the purpose of producing, processing, transporting, and delivering cannabis for medical use. Former RCW 69.51A.085 (2011). Under the former statute, collective gardens were not required to register with the state. Id. Effective July 1, 2016, the legislature enacted RCW 69.51A.250,

which updated the statutory requirements to establish a cooperative to produce and process medicinal cannabis. LAWS OF 2015, ch. 70, §§ 26, 50. Qualifying patients wishing to form a cooperative must register the location with the Washington State Liquor and Cannabis Board (LCB), which, among other restrictions, must not be located within one mile of a cannabis retailer and must be the domicile of one of the cooperative members. RCW 69.51A.250(2), (3)(a), (7).

On April 12, 2019, an Anacortes police officer was dispatched to the Appellants' cooperative site to investigate a reported burglary. Along with the burglary, the police began investigating whether the cooperative had the proper licensing. The police department requested assistance from the Washington State Patrol regarding their investigation into the cooperative's legality.

On May 31, 2019, the Appellants applied to the LCB for a license to register Cooperative 138. On June 6, 2019, the LCB notified the Appellants that their site location did not meet the requirements to be a registered cooperative because it was within one mile of a cannabis retail outlet and none of the cooperative members were domiciled at the site address. The Appellants had 14 days to change the cooperative location to a compliant location, or the application would be withdrawn. The Appellants did not submit a change to a new compliant location, and the LCB sent a letter on June 26, 2019 indicating it was withdrawing the application. The following day, the Appellants sent an e-mail indicating they were appealing the decision. In a letter dated July 12, 2019, the LCB sent the Appellants a statement of intent to deny the cooperative application registration, and provided

information if the Appellants wished to request a hearing. The Appellants submitted a request for a hearing to challenge the withdrawal of the application.

On July 25, 2019, law enforcement contacted the LCB and inquired about the Appellants and Cooperative 138. The LCB responded, stating the Appellants and the location were not licensed, the Appellants' property was associated with a cooperative registration application that was withdrawn on June 26, 2019, and the Appellants were in the process of appealing the withdrawal.¹ On September 3, 2019, the Skagit County district court issued a search warrant for the search of the Appellants' property, finding that there was probable cause to believe that there was evidence of illegal cannabis manufacturing, a violation of RCW 69.50.401.² The search warrant was executed on September 5, 2019, the day before a prehearing conference was scheduled to set the hearing date over the LCB's withdrawal of their license application. The Appellants were found to be in possession of over 60 cannabis plants and various pieces of equipment used for growing. The Skagit County Interlocal Drug Enforcement Unit (the Unit) took

¹ In response to the Appellant's request for a hearing, the LCB filed a motion for summary judgment. On February 13, 2020, an administrative law judge issued an initial order on summary judgment, affirming the LCB's decision to withdraw the cooperative application. In an order dated March 11, 2020, the LCB affirmed the administrative law judge's initial order, and ordered that the application for the cooperative registration was withdrawn.

² "Except as authorized by this chapter, it is unlawful for any person to manufacture, deliver, or possess with the intent to manufacture or deliver, a controlled substance." RCW 69.50.401(1).

custody of the various grow equipment pursuant to proper service of seizure and forfeiture notification.³

In a letter dated September 11, 2019, the Unit notified the Appellants of the seizure and intended forfeiture. The Appellants responded, claimed interest in the seized property, objected to the intended forfeiture, and requested a hearing on the matter. The Unit filed a motion for summary judgment. In their response to the motion for summary judgment, the Appellants argued the forfeiture was not justified because the Appellants were licensed to operate their cooperative, the Appellants did not intend to violate the law, and seizure of the equipment violated the Eighth Amendment of the United States Constitution. The hearing examiner granted the Unit's motion for summary judgment, finding that the Unit established probable cause to seize the property, and the Appellants failed to prove that the property was not used or intended to be used in an illegal drug activity. The hearing examiner found that the Appellants "failed to apply for a permit until May of 2019 . . . [the Appellants] did not live at the warehouse property, and [the

³ RCW 69.50.505(1)(a-b) states,

(1) The following are subject to seizure and forfeiture and no property right exists in them:

(a) All controlled substances which have been manufactured, distributed, dispensed, acquired, or possessed in violation of this chapter or chapter 69.41 or 69.52 RCW, and all hazardous chemicals, as defined in RCW 64.44.010, used or intended to be used in the manufacture of controlled substances;

(b) All raw materials, products, and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of this chapter or chapter 69.41 or 69.52 RCW.

Appellants] operated two separate locations where [cannabis] was grown, stored and processed in excess of that allowed by relevant law.” The hearing examiner ordered that the Appellants’ equipment was forfeited.

The Appellants petitioned for judicial review of the order, arguing the hearing examiner committed legal error by determining they were engaging in an unlawful act. Following oral argument, the superior court affirmed the hearing examiner’s judgment and order of forfeiture and denied the appeal. The Appellants filed a motion for reconsideration, which was denied. The Appellants appealed to this court.

The Administrative Procedure Act (APA), chapter 34.05 RCW, governs our review of administrative decisions in forfeiture proceedings. RCW 69.50.505(5). We review the original forfeiture order entered by the hearing examiner, not the superior court’s decision. City of Sunnyside v. Gonzalez, 188 Wn.2d 600, 607-08, 398 P.3d 1078 (2017). Under the APA, we may grant relief from the hearing examiner’s order based on one of nine reasons listed in RCW 34.05.570(3). The Appellants bear the burden of showing the forfeiture order was erroneous. RCW 34.05.570(1)(a).

“[W]here the original administrative decision was on summary judgment, the reviewing court must overlay the APA standard of review with the summary judgment standard.” Verizon Nw., Inc. v. Wash. Emp’t Sec. Dep’t, 164 Wn.2d 909, 916, 194 P.3d 255 (2008). “Summary judgment is appropriate only where the undisputed facts entitle the moving party to judgment as a matter of law.” Id. We

review the facts in the administrative record de novo and in the light most favorable to the nonmoving party. Id. And we review the examiner's legal conclusions using the APA's "error of law" standard, which allows this court to substitute its view of the law for that of the examiner. Id. at 915; RCW 34.05.570(3)(d).

The Appellants argue law enforcement erred in executing a search warrant to seize the Appellants' property while they were amid the administrative process of obtaining a cooperative license.⁴ During the burglary investigation, the Anacortes police department contacted the LCB to confirm whether the address had an active license to grow cannabis. The LCB responded on May 2, 2019, and stated that the operation appeared to be an "illegal grow operation" and the only way the operation could be legal at that location was "if they were a cooperative and at this point there are no Cooperative licenses that have been issued in Skagit County." The Appellants did not apply to register their cooperative until May 31, 2019, and were subsequently notified their application was withdrawn due to their noncompliant location. The Appellants sought to appeal the withdrawal of their application, however, at no point did they have a valid cooperative license.

Though the Appellants had medical cannabis authorization forms at the time the search warrant was executed, these allowed the Appellants to grow at their domicile up to 15 cannabis plants for personal use. See RCW 69.51A.210 (if

⁴ The Appellants attached numerous exhibits to their opening brief to support their arguments. However, this court's review is confined to the agency record. RCW 34.05.558. The APA's provisions set forth the circumstances in which a reviewing court may receive additional evidence, none of which apply here. See RCW 34.05.562.

determined necessary, the health care professional must specify on the authorization it is recommended that the patient be allowed to grow, in their domicile, up to 15 plants for their personal medical use). The cooperative property was not the Appellants' domicile. At the time the search warrant was obtained and executed, the Appellants did not have a registered cooperative as required under RCW 69.51A.250, nor were they authorized to grow cannabis at that location for their personal use pursuant to their medical cannabis authorization cards, RCW 69.51A.210. The hearing examiner's order that the Appellants' equipment was subject to forfeiture was not erroneous.

The Appellants also argue that (1) there was a conspiracy between law enforcement and the LCB, (2) law enforcement failed to provide correct information in the application for a search warrant, (3) law enforcement failed to contact the Appellants' insurance agent, (4) Schermerhorn was attacked by Anacortes police officers, (5) law enforcement failed to authenticate the Appellants' cannabis recognition cards, and (6) law enforcement failed to serve all four cooperative members before seizing the grow equipment. However, the Appellants provide no analysis or citation to authority on these claims. We will not consider issues that are not supported by argument or citation to authority. RAP 10.3(a)(6); Cowiche Canyon Conservancy v. Bosley, 118 Wn.2d 801, 809, 828 P.2d 549 (1992). And, these arguments would not appear to negate the fact the Appellants lacked the licensure that would have been required for production at the cooperative's

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location to be legal. The production not in conformity with law rendered Appellants' property subject to forfeiture.

Affirmed.

Birk, J.

WE CONCUR:

Seldman, J.

Cohen, J.
