

Search warrant for marijuana manufacturing was legally insufficient

Written by Australian Business

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Article provided by Steven W. Thayer, P.S. Criminal Defense Attorney Visit us at <http://www.swthayer.com>

The Fourth Amendment of the Constitution protects citizens from unreasonable search and seizure. Illegal government searches may occur in all sorts of criminal cases, including those involving the growth or manufacture of marijuana, whether that marijuana is grown indoors, outdoors or was discovered via aerial surveillance.

A recent Washington Supreme Court case, *State v. Lyons*, provides an example of an unlawful search where an informant's tip and the supporting affidavit were legally insufficient.

An informant reports on marijuana manufacturing

In this case, a district court judge issued a search warrant for the defendant's property, based on an affidavit by a police officer who claimed within the last 48 hours an informant had contacted the officer and reported observing marijuana being grown indoors at the defendant's address.

When the police executed the search warrant, they discovered mature and juvenile marijuana plants as well as mushrooms, and the defendant was arrested and charged with manufacturing marijuana, along with other charges.

At trial, the defendant's counsel moved to suppress the evidence seized from his property, arguing that the affidavit for the search warrant failed to state timely probable cause--that is, that it identified when the officer received the informant's information, but it said nothing about the timing of the informant's actual observation.

Although the trial court held that the affidavit was legally insufficient and the search unlawful, on appeal, the Court of Appeals reversed the trial court, saying that the language in the officer's

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affidavit, "[w]ithin the last 48 hours," could be read either to apply solely to when the informant contacted the police, or to apply both to the time of contact and of the informant's observations. The case then proceeded to the Washington Supreme Court for review.

Was the search lawful?

To establish probable cause, an officer's affidavit must set forth sufficient facts to convince a reasonable person of the probability that the defendant was engaged in criminal activity and that the evidence of the criminal activity could be found at the place to be searched. In particular, the affidavit must set forth the underlying circumstances specifically enough that the magistrate can independently judge the validity of both the police officer's and the informant's conclusions. A magistrate cannot determine whether the observations recited in an affidavit are stale unless the magistrate knows the date of those observations.

In this case, the Supreme Court held that it was impossible for the magistrate to determine how much time had passed between the informant's observation, the informant's contact with the police and the police reporting the information for the affidavit. The timing of the unidentified informant's tip to the police alone did not provide the magistrate with a reference point from which to sufficiently infer how recently the information on the marijuana manufacturing was obtained by the informant.

Therefore, because the affidavit for the search warrant did not specify when the confidential informant observed the marijuana growing on the defendant's property, the affidavit did not provide sufficient support for the magistrate's finding of timely probable cause and the search was found to be unlawful.

Convictions can have severe consequences

If you are being charged with the manufacture/growing of marijuana, it's important you seek the advice of an attorney. Obviously, a conviction can have severe consequences, so it is crucial that your attorney reviews all aspects of the circumstances leading to your arrest.

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An attorney with experience in defending and litigating marijuana manufacture/growth cases can work to protect your constitutional rights and ensure that those rights have not been violated.