

# Aerial marijuana bust hits judicial air pocket

By CYNTHIA TANK  
The Columbian

The county's first marijuana arrest through aerial surveillance is causing some first-time problems in court.

The case against a five-member La Center family hit a snag Thursday as defense lawyers argued that a police affidavit used as a basis for a search warrant was "probably the most superficial" they had ever seen.

Curtis, Christopher and Michael McDonald, and Richard and Darlene Wabs, all of Route 1 Box 277, La Center, were charged with possession of marijuana and possession with intent to sell after an Aug. 17 "fly-over" by a Washington State Patrol detective. The Wabs are a married couple; the McDonalds are Darlene's sons.

The case began when the sheriff's office received an anonymous letter from someone who said he or she believed a son had purchased marijuana at a red house west of the View Store. Donald Morrison, one of two WSP narcotics detectives in charge of the state's marijuana eradication program, flew over what he believed to be the house in question on Aug. 17. Morrison was accompanied by county narcotics detective Keith Kilian.

Morrison, trained to recognize

marijuana plants from the air, reportedly saw some of the plants growing outside a greenhouse on the property. Kilian testified Thursday plants also seemed to be pushing their way out of the plastic roof of the greenhouse.

Armed with the anonymous letter and the aerial observation results, Morrison drew up an affidavit for a warrant to search the property, its outbuildings and the residence. Two weeks later, the search warrant was served and officers reported finding about 28 towering marijuana plants in the greenhouse. Inside the residence they found more marijuana and some drug paraphernalia, according to defense lawyers. The marijuana inside the house appeared to be packaged, ready for sale.

As a result, the McDonalds and the Wabs who own the house were all charged.

The affidavit says the aerial observation was made from the recommended altitude of 1,000 feet.

"Superman couldn't see marijuana from that altitude," said Steve Thayer, representing the Wabs.

Thayer also argued that the fly-over did not result in an observation of marijuana in the house, so the search of the house was illegal.

But what impressed Superior Court Judge John Skimas even more was that Morrison's affidavit gives no explanation as to how he knew he was flying over the Wabs house at the time. Skimas also said the fact that the warrant was not served until two weeks after the fly-over was a concern.

The judge gave deputy prosecutor Darvin Zimmerman until Monday afternoon to persuade him that those two arguments should not make the search illegal. He and the defense lawyers agreed that there might be no appellate cases regarding marijuana arrests via aerial surveillance. The state's fly-over program is relatively new.

Commenting on the search of the residence, Skimas said unless Zimmerman could cite a previous case upholding the "if it's outside it's got to be inside" conclusion, "I don't think I'll go with it."

Thayer said officers had no real evidence of marijuana in the greenhouse either.

"There's a legitimate place for searches based on aerial observation," Thayer said, "but it has to be done right."

Thursday's hearing was continued until 1:30 p.m. Monday.