

Judge bans power bills from trial

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VANCOUVER — Only days after the sentencing of a Vancouver man whose conviction on a drug charge was based on information from PUD power bills, a judge ruling on a similar case in Southwest Washington has said utility company information is private and cannot be used in obtaining search warrants.

In Vancouver, Clark County Superior Court Judge John N. Skimas convicted Steven L. Huft of felony possession of marijuana after ruling Clark County Public Utility District records are public. Huft was sentenced last week to 120 days in jail and a \$1,000 fine but is free on an appeal bond.

In a similar case in Wahkiakum County, however, Superior Court Judge Herbert E. Weiland has ruled that the Wahkiakum County PUD's records are private. The case is expected to conclude Tuesday. Because the police obtained the PUD records without a search warrant, and because those records were instrumental in getting a later search warrant, all evidence against Pat Wayne Conrad was thrown out of court.

Both cases involved police inspection of power bills. Based on increased electricity consumption, law enforcement officers suspected high intensity lights were being used for indoor cultivation of marijuana.

In both cases, marijuana was found in the residences. In Vancouver, officers confiscated 90 plants and related equipment; in Cathlamet, the raid netted 92 plants and some opium.

Attorneys in both cases argued that obtaining and using the PUD records was illegal, and that the search warrants thus were tainted. The Wahkiakum County judge agreed.

In the Clark County case, defense attorney Thomas C.

Phelan has appealed to the Washington Supreme Court. A similar appeal is expected in the Wahkiakum County case by prosecutor George F. Hanigan.

Skimas, in the Vancouver case, ruled PUD records are public, and that electric usage weighted the case against Huft. Skimas also invoked a new federal Supreme Court ruling that says even if the warrant was improperly issued, the police had every right to raid the home and collect evidence.

Weiland, in Cathlamet, ruled that viewing the PUD records is an invasion of privacy and that any subsequent search was illegal. He also refused to apply the new federal policy on search warrants.

Conrad's defense attorney, Steven W. Thayer of Vancouver, cited two rulings involving the Snohomish County PUD records. Both of those, one requested and one opposed by the police, drew rulings that the records are private.

In a memorandum decision on the latest case, Weiland said the Wahkiakum County search warrant request, even with the PUD records, "shows a bare minimum of information" to justify a warrant.

Weiland said that simply because one judge issues a warrant, another judge is not bound to accept that warrant and the evidence it produces. Weiland termed the PUD records "a conduit into the home, and the right of privacy in the home should be protected."

Thayer said the warrant should be questioned because it was based on an anonymous tip from someone who knew someone else who claimed to have seen marijuana plants in Conrad's mobile home. He said there was no indication that the observer knew what marijuana plants looked like. Thayer also said the extra electricity might have been used to grow tomatoes.