

Judge throws out marijuana fly-over case

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The Clark County Prosecutor's Office will appeal a Friday ruling by Superior Court Judge John Skimas that could have far-reaching implications for the state's aerial marijuana eradication program.

Skimas ruled that a police officer who flies over an area and spots what he thinks is marijuana does not have probable cause for a search warrant unless he has more information.

The ruling means the conviction of a 20-year-old arrested in Clark County's first marijuana fly-over case will be set aside.

Last August, Clark County sheriff's deputies and WSP detective Donald Morrison — one of two troopers in charge of the state's marijuana eradication program — flew over a La Center home after receiving an anonymous tip that marijuana was being cultivated in a greenhouse behind the barn.

Morrison, who said he has correctly identified marijuana from the air in 27 out of 27 cases across the state, saw the greenhouse and what he believed to be marijuana plants pushing their way out of its plastic roof. He also thought he spotted other marijuana plants growing outside the greenhouse.

Based on Morrison's sighting and the anonymous tip that led police to the La Center house in the first place, District Court Judge Robert Moilanen signed a search warrant. When authorities entered the property, they found 28 towering marijuana plants in the greenhouse. The plants outside the greenhouse, however, turned out to be sunflowers.

Michael McDonald, 20, of Route 1 Box 277, La Center, eventually was convicted of possessing marijuana, with Skimas reserving a ruling on the search warrant legality. Four of his family members also were charged, but were allowed to go through the

county diversion program.

Skimas heard testimony last month from Morrison and from California botanist William Emboden, who specializes in identifying narcotic plants. Emboden told Skimas it is impossible to identify marijuana plants from the air positively.

Skimas said Friday the search warrant was based on insufficient facts. Courts have held that anonymous letters cannot be used as a basis for search warrants, leaving only the fly-over as a legal basis in the McDonald case.

The judge said there was a difference between an officer seeing what he concludes are marijuana plants and seeing what he knows are marijuana plants.

Skimas' ruling does not state that marijuana fly-overs are illegal or unusable. It does state that police must have more solid information besides the view from 1,000 feet.

Defense lawyers Tom Phelan and Steve Thayer were obviously pleased after the ruling Friday.

Phelan said Skimas did not rule that fly-overs were an unconstitutional invasion of privacy, "so that question remains for another day."

Deputy prosecutor Darvin Zimmerman said the McDonald case will be appealed.

Zimmerman said Saturday there is still a chance of convicting McDonald. He said the anonymous tip that led to the fly-over was a letter written by a parent who said his or her son was buying marijuana from someone at the McDonald house.

If that parent or the son would come forward, said Zimmerman, the prosecutor's office might be able to proceed with the case on a charge of selling marijuana.

Zimmerman asked that the letter-writer contact him at the prosecutor's office. He said there would be no repercussions against the boy or his parents.