

Judge throws out search warrant usage in marijuana case

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VANCOUVER — A search warrant obtained through a flyover by the Washington State Patrol and used to charge a 20-year-old man with possession of marijuana has been thrown out by a Clark County judge.

Superior Court Judge John N. Skimas said Friday the combination of the aerial search and an anonymous letter were not sufficient grounds for issuance of the search warrant used to arrest Michael A. McDonald.

The decision, however, was restricted to the McDonald case and does not mean all aerial searches for marijuana are illegal.

State Trooper Donald L. Morrison obtained the warrant after his Aug. 17 flight over McDonald's La Center farm. McDonald pleaded guilty to possession

of marijuana on condition the conviction could be set aside if his attorneys were able to successfully challenge the grounds used to obtain the warrant.

Attorneys Thomas C. Phelan and Steven W. Thayer said they will move to vacate the conviction this week. They also will seek to have all evidence obtained through the search warrant thrown out.

"I thought the magistrate needed more," Skimas said. "There was insufficient factual evidence for issuance of a warrant. He (Morrison) didn't see what he recognized to be marijuana, he saw what he concluded to be marijuana."

In a Feb. 28 hearing in the case, William A. Emboden, a University of California at Northridge biology professor, said it is next to impossible to positively identify marijuana and most plants from an airplane.