

Judge tosses out evidence seized in big pot bust

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Because of a "clerical error," charges will be dropped against a man accused of running the largest indoor pot farm ever found in Clark County.

Monday, Superior Court Judge J. Dean Morgan threw out all the evidence, including about 300 marijuana plants, in the case against John S. Kelley, 35, 25333 N.E. 72nd Ave.

Deputy prosecutor Richard Melnick said his office probably will appeal the ruling. He said the deputy who wrote up the search warrant made a "clerical error" that should not have voided the warrant.

Defense attorney Steve Thayer said the mistake was more than a simple typing accident.

Kelley was arrested at home July 30 after sheriff's deputies armed with a search warrant seized an estimated 300 high-quality sinsemilla marijuana plants with a street value of about \$250,000. The deputies, accompanied by Sheriff Frank Kanekoa, said it was the largest pot farm ever found locally.

In the affidavit that must accompany any search warrant, deputy Charles Christensen described Kelley's property as "a one-story, wood-framed residence, green in color, with an attached carport ... including outbuildings." The outbuildings were a barn and a detached

garage in which deputies suspected the actual operation was being run.

However, in the actual, one-page search warrant signed by District Court Judge C. Brent Nevin, Christensen apparently used the description of the residence in the affidavit, but left out the phrase "including outbuildings."

That meant the warrant actually was only good for the residence, Thayer explained, so evidence seized from the barn and garage could not be used against Kelley. Morgan also ruled that evidence seized from the residence must be thrown out, too, because the affidavit described police suspicions of a growing operation in the outbuildings, not in the house.

That left the prosecution with no evidence at all. Morgan told Thayer to prepare an order dismissing Kelley's charges.

The rules governing search warrants are designed to protect the privacy of all the citizens, not just the criminals, said Thayer.

"Sure, the cop made a mistake in this case in not asking for a warrant to search the barn and other outbuildings," Thayer added. "But what if, the next time, he makes a mistake and includes the address of my house on the face of the warrant? That's not an excuse that I'm likely to accept."