



King County

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FROM: Alan Donohoe

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COMMENTS:

Satterberg's Statement

Search warrant.

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17 July 2008

Statement of Prosecuting Attorney Dan Satterberg on Marijuana Search Warrant of July 15:

We have reviewed the results of the Seattle Police investigation of the medical marijuana storefront in the University District. The Seattle Police Department acted appropriately in response to a citizen complaint about the strong odor of marijuana coming from a commercial space next door. They have conducted a thorough investigation for our review.

We have decided that no criminal charges should be brought against the person renting that commercial space. The Seattle Police Department is returning documents and a computer that were taken in the service of the search warrant. Police gathered these items because they reasonably believed that they showed an effort to distribute marijuana in violation of state law.

We are satisfied that the individual in question is authorized to possess marijuana for medical purposes under Washington State law, and that the amount in his possession was arguably within the "60 day supply" permitted by statute.

Although the exact definition of a 60-day personal use amount is not defined by statute, the Washington State Department of Health is currently working on a specific definition. The amount currently being considered is 24 ounces of cultivated marijuana, six mature plants and 18 immature plants.

The individual responsible for the storefront and his supporters assert that this operation was a collection of patients working together to help other patients access marijuana. Legal access to marijuana is one area where the state law fails to provide helpful guidelines. There is no mechanism for authorized patients to get marijuana without some illegal transaction occurring up the chain of delivery beyond the patient and their provider.

One part of state law prohibits the possession of marijuana while another part authorizes possession and use for medical purposes. Law enforcement officers and prosecuting attorneys are entrusted to interpret and enforce both laws on a case-by-case basis.

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KING COUNTY DISTRICT
SHORCLIFF DIVISION COURT FOR KING COUNTY

STATE OF WASHINGTON)
)
)
COUNTY OF KING)

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Affidavit of
Officer Brian Rees #6890
for Search Warrant Pursuant
To RCW 69.50.401

The undersigned on oath states: I believe that:

- (X) Evidence of the crimes(s) of VIOLATION OF THE UNIFORMED CONTROLLED SUBSTANCES ACT
- (X) Contraband, the fruits of a crime, or things otherwise criminally possessed, and
- (X) Weapons or other things by means of which a crime has been committed or reasonably appears about to be committed, and
- () A person for whose arrest there is probable cause, or who is unlawfully restrained is/are located in, on, or about the following described premises, vehicle or person:

The Premise: 1406 NE 50 St #A, Seattle, King County, Washington. This is a storefront business which is on the north side of NE 50 St, between University Wy NE and 15 AV NE. If traveling eastbound on NE 50 St, from University Wy NE, it is the first door you come to. The door is a full glass door and directly to the east of that door is another glass door that leads to mailboxes and a set of stairs to the second floor.

My belief is based upon the following facts and circumstances:

AFFIANT'S EXPERIENCE

I have been a Seattle Police Officer for approximately 3 years. I have attended a 18 week basic law enforcement academy sponsored by the Washington State Criminal Justice Training Commission. During the course of my professional career I have worked in patrol in the high crime / high narcotics areas of the North Precinct. I am currently assigned to bicycle patrol in the University District. I have been directly involved in well over 50 narcotics investigations. This includes buy/busts, order ups, search warrant service, undercover operations, and patrol investigations. In addition to street experience, I have received formal training in narcotics enforcement. I have attended the 40 hour Anti-Crime Team training which included writing and serving narcotics search warrants, drug traffic loitering, field testing of controlled substances, and narcotics recognition. Based on this training and experience, I am able to recognize the various narcotics, and am familiar as how it is packaged and sold.

Most of the drug investigations I have been involved in have been for possession and sales of marijuana. I am familiar with the look and smell of marijuana. I have acquired knowledge about marijuana growing operations

through training, conversations with subjects involved in the growing and distribution of marijuana, and conversation with other law enforcement officers, agents and detectives familiar with such operations. In my training and experience I have smelled both fresh marijuana and marijuana that has been smoked and can distinguish between the two.

DESCRIPTION OF INVESTIGATION

On 07-15-08, I was working uniformed mountain bike patrol, designated 2-UNION-88. At approximately 1506hrs I was dispatched with my partner, Officer Kennedy, to a complaint from the Barber Shop at 1406 NE 50 ST #B. The complainant stated that she had a strong odor of marijuana that had been coming into their business from what she believed was the business to her west (1406 NE 50 ST #A). I immediately recognized the odor of marijuana, from my training and police experience. I also believed the odor was not consistent with burning marijuana or marijuana smoke. I believed the odor was consistent with marijuana plant or unburnt "buds". The complainant stated that she has been noticing this odor for approximately the last month and that it had been very strong all day today. The complainant also stated that she was allergic to marijuana and that it gave her headaches. She went on to state that she was worried about people trying to break into her business when it was closed thinking that she was storing marijuana inside. A tenant that was directly above the business in question stated she has also been noticing the strong odor of marijuana and believed it was coming from the business below her.

I then went to the front door of the business that the complainant believed the marijuana odor was coming from. Officer Kennedy knocked on the glass door and I observed a male subject, later identified as Mr. Martinez, come to the door. Mr. Martinez unlocked and then opened the door to speak with us. Officer Kennedy verbally identified us as Seattle Police Officers and informed Mr. Martinez that we had received a complaint about the odor of marijuana coming from his business. Officer Kennedy asked if we could come inside so that Mr. Martinez could show us what kind of business this was. Mr. Martinez then voluntarily allowed us inside and showed us around the business. We initially entered a storefront area that contained all kinds of lighting equipment and what appeared to be fertilizer, soil, and duct work. I recognized this equipment as those commonly used for indoor marijuana cultivation.

We continued to follow Mr. Martinez into the main part of the business where there were three other people inside. The three others were sitting at a small table placing labels on to envelopes and one of the females stated that she did not work at the business but volunteered doing secretarial work. As we entered the main part of the business the odor of marijuana grew considerably. In the middle of the room was a glass display counter with filing cabinets behind it. On the counter were pamphlets on "Medical Marijuana Patient

Protection". Some of the filing cabinets were labeled to contain "patient" files. On the floor in a large open container were multiple books and videos on multiple topics about marijuana to include growing, using, and marijuana culture. Mr. Martinez was then asked what type of business he was running and he stated that the premise was a club for what he referred to be medical marijuana patients. We then asked how it was decided who could become a member and he stated that people would come in with a recommendation or prescription for marijuana and that he would issue them a membership card. I continued to look around the premise and entered a small room on the northside of the main room and discovered it to be set up like an office. In one corner I saw a class display case that contained multiple glass smoking pipes and bongs. There was also a desk in the room.

On the top of the desk was an electronic scale that appeared to have marijuana residue on it. I also observed printed labels for medicinal marijuana. Around the room were other glass pipes that smelled of burnt marijuana. On the desk next to the scale was what appeared to be a ledger containing the name of three subjects and the amount and grade (A,B,C) of marijuana they had received. I noticed a strong odor of marijuana coming from the desk. I also observed a locked safe behind the desk.

Back out in the main room I noticed a large Rubbermaid style tub behind the counter. The 18-gallon tub was approximately ¼ full of marijuana leaf and "shake". Also behind the counter was a computer and printer where Mr. Martinez stated he made membership cards for members. While we were there two subjects came into the business and one stated she was a "patient". Both were informed that this was not a good time and they exited the business. Due to the intensity of the odor I believed there was possibly more marijuana than what I had already observed.

I was familiar with this business location because I had previously been inside it when it was a skateboard shop. During that time the front room was where the business occurred and products were displayed. The barber shop complainant stated that she has been in that location for the last eight years and when the new tenant moved into that space they changed the floorplan. She went on to explain how the north wall of the front room protruded much farther into the room than how it was originally. It appeared from walking around the business and walking through adjoining businesses that there was unaccountable space in the business in question. There was not any immediately obvious entrance into any possible hidden rooms. I believe that the unaccounted for space may be storage for additional marijuana or a possible indoor cultivation operation due to the overpowering odor of marijuana inside the premise. All occupants were then asked to step outside so that the premise could be secured pending a search warrant.

I am requesting a search warrant for 1406 NE 50 St #A.

SUPPORTIVE EVIDENCE SUPPORTING SEARCH OR ITS SCOPE

Based upon my background, training and experience as previously detailed in the affidavit, I know:

- That drug traffickers have on their person and/or premises narcotics and/or drug paraphernalia.
- That narcotic traffickers often deliver and sell narcotics in or from vehicles.
- That drug traffickers commonly secure contraband, proceeds of drugs sales, narcotics, weapons, and records of drug transactions in storage lockers for their ready access and to conceal them from law enforcement.
- That narcotics traffickers maintain books, records, receipts, notes, ledgers, airline tickets, money orders, cashiers checks and other papers relating to the transportation, ordering, possession, purchase, sale, transfer and information of controlled substances.
- That the aforementioned books, records, receipts, notes, ledger, etc., are maintained where the narcotics traffickers have ready access to them, i.e., on their persons, in their vehicles, or about their residences.
- That I know that it is common for dealers to secret contraband, proceeds of drug sales, and records of drug transactions in secure locations on their person, within or around their residences, or in the their vehicles, for ready access or to conceal them from law enforcement authorities.
- That I know that persons involved in drug trafficking conceal on their persons, within or around their residences and vehicles cashes of drugs, large amount of currency, financial instruments, precious metals, jewelry, and other items of value and/or proceeds of drug transactions, and evidence of financial transactions relating to obtaining, transferring, secreting, or spending of large sums of money made from engaging in narcotics trafficking activities.
- That I know that narcotics traffickers commonly maintain addresses or telephone numbers in books or papers which reflect names, addresses and/or telephone numbers for their associates in the trafficking organization, these books or papers include such items as address books, slips or paper, telephone messages, in and on correspondence, etc. i.e., shortened and/or code names are sometimes used for weights, buyers, and the names of suppliers and/or customers of the narcotics trafficker.

- That I know that drug traffickers take, or cause to be taken, photographs of them, their associates, their property, cash, and assets and their product. That these traffickers usually maintain these photographs in their possession, particularly in their residences.
- That I know that narcotics traffickers usually keep paraphernalia for packaging, cutting, weighing, and distributing of their product. That paraphernalia includes, but is not limited to, scales, plastic bags and cutting agents.
- I know that narcotics traffickers often keep drugs, money, and weapons in safes and lockboxes.
- That narcotics traffickers frequently utilize such communication devices such as pagers, mobile telephones, telephone answering machines within their drug trafficking business, and that they often utilize electronic equipment such as computers, telex machines, facsimile machines, currency counting machines, computer watches, and related manuals to generate, transfer, count, record, and/or store information about their drug trafficking activities and/or information evidencing their participation in, or gains from, their drug trafficking activities, and /or their financial affairs.
- That drug dealers maintain in their residences financial records which, when analyzed, will show that their accumulation and expenditures of money and assets substantially exceeds any legitimate income, I am aware that the courts have recognized that unexplained wealth is probative evidence of crimes motivated by greed, in particular, trafficking in narcotics.
- That drug dealers maintain in their residences and vehicles and on their persons weapons (including ammunition and holster) to protect themselves from apprehension by law enforcement and from other drug traffickers.
- That drug traffickers commonly secure contraband, proceeds of drugs sales, narcotics, weapons, and records of drug transactions in storage lockers for their ready access and to conceal them from law enforcement.
- That drug traffickers commonly use an alias when renting and purchasing property to conceal their conduct from law enforcement.

- That drug traffickers very often place assets in names other than their own to avoid detection of these assets by law enforcement agencies.
- That even though these assets are in other person's names, the drug dealers continue to use these assets and exercise dominion and control over them.
- That narcotics traffickers commonly "front" (provide on consignment) controlled substance to their clients.
- Records are usually recorded in units of weight and monetary values, associated with pounds, kilos, ounces or other such units of measurement and dollar amounts making it easier to carry on day-to-day business.
- That I know that when drug traffickers amass proceeds from the sale of drugs, that the drug traffickers attempt to legitimize these profits.
- That I know that to accomplish these goals, drug traffickers utilize, including, but not limited to, foreign and domestic banks and their attendant services, securities, cashier's checks, money drafts, letters of credit, brokerage houses, real estate, shell corporations, and business front.
- That I know that it is common for narcotics traffickers to travel, or have their associates travel, to major distribution centers, including Mexico, to purchase narcotics.
- That I know that the methods of transportation include, but are not limited to, commercial airlines, private airplanes, rental automobiles, private automobiles, government and contract mail carriers.
- I understand that the courts have recognized that narcotics traffickers commonly keep evidence of their crimes at their place of residence. See St. v. Gross, 57 Wa. App. 549(1990), U.S. v. Freeman, 685 F. 2d 942, 950 5th Cir. (1992), U.S. v. Dubrofsky, 581 f2d. 208 9th cir.(1978)

The knowledge I have acquired pertaining to marijuana growing operations indicated that there are certain factors that are common to these types of crimes:

- Typically, the person who operates the growing operation is a private individual, suspicious of persons who might be interested in his/her activities;
- Marijuana growers often maintain on hand large amounts of cash in order to maintain and finance their on-going illicit business;
- Marijuana growers may maintain books, records, electronic storage devices, computers, receipts, notes, ledgers, airline tickets, money orders and other papers/documents related to growing, transportation, sale and distribution or ordering of marijuana;
- Marijuana growers often claim to have learned how to cultivate marijuana from the internet and order marijuana growing items from suppliers located on the internet;
- Individuals involved in the manufacturing and distribution of marijuana often use cellular phones, telephonic pagers, telephone answering machines, voice mail systems, and computer generated electronic messaging systems (e-mail) to communicate with suppliers, customers, and accomplices. The persons often code their messages to avoid law enforcement detection. Telephonic pagers, answering machines, voice mail systems, computers, and cellular phones have the capability to store complete messages which officers can retrieve upon seizing a particular item. This stored information can be retrieved without intercepting the prior transmission.
- It is common for marijuana growers to secrete contraband, proceeds of sales and records of transactions in secure locations within their residences and on their property in such areas including, but not limited to, other buildings, outbuildings, garages, carports, vehicles, and yard areas for ready access and to conceal them from police;
- Persons involved in large scale marijuana growing operations often conceal within their residence, caches of drugs, large amounts of cash, financial instruments, precious metals, jewelry, and other items of value, and/or proceeds of drug transactions; and evidence of financial transactions relating to obtaining, transferring, secreting, or spending large sums of money made from engaging in drug trafficking activities;
- Marijuana growers frequently take, or cause to be taken, photographs of themselves, their associates, their property and their illegal product;

- Marijuana growers commonly maintain addresses and/or telephone numbers for their criminal associates in the trafficking enterprise;
- Marijuana growers often utilize a location that is remote or go to a great deal of trouble to disguise a marijuana grow, in order to conceal their activities from the public and the police;
- Some of the ways used to conceal their activities are (but not limited to) fencing their property, using guard dogs, building several growing rooms within a large room, garage, shed or barn, placing some type of container or building underground to house the grow operation, covering windows so that no light escapes the growing area, using filtering systems to mask the strong odor of growing marijuana and diverting power;
- An indoor grow requires the consumption of a large amount of electricity to operate lights, timers and fans. If the grower is not diverting power or using gas, diesel or similarly powered generated generator, electrical consumption is well above normal. Growers often divert, or steal power, by tapping into the electrical line prior to the meter to avoid raising suspicion and to avoid paying the high electricity bills created by running the lights on twelve to eighteen hour cycles on a daily basis;
- The operation of halide and sodium lights normally used to stimulate plant growth creates a great deal of heat and bright white-blue light;
- Indoor marijuana grow operations require a significant investment in equipment, potting soils and fertilizer;
- Marijuana grow operations continue in operation for years, crop after crop, until the intervention of law enforcement;

In addition to the above, as a result of my training and experience, I know that it is common to find:

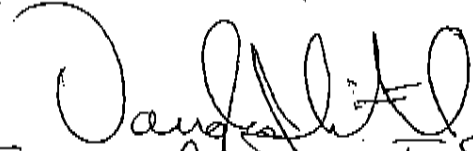
- That marijuana growers attempt to legitimize their profits by laundering money they receive from the sale of their crops. To accomplish this, they utilize domestic banks and their attendant services, securities, cashier's checks, money drafts, letter of credit, brokerage houses, real estate, shell corporations, and business fronts;
- That marijuana growers very often place assets in corporate entities in order to avoid detection of these assets by government agencies;

- That marijuana growers very often place assets in names other than their own to avoid detection of these assets by government agencies;
- That even though these assets are in other persons names, the marijuana growers actually own and continue to use these assets and exercise dominion and control over them;
- That the courts have recognized that unexplained wealth is probative evidence of crimes motivated by greed, particularly narcotics trafficking;
- That marijuana growers often create fictitious documents and fraudulent mortgage schemes to purchase marijuana grow houses. This includes variations on the person's name, address, and marital status.
- That marijuana growers keep records of financial transactions involving unlawful proceeds including deposits, withdrawals, transfers, exchange of currency, payments, and transmissions are located in residences, businesses and banks;
- I know that typical lighting equipment, heaters, fans used in venting odors and humidity, all common to marijuana grow operations require large amount of electricity. Sodium halide lights, usually in 500 or 1000-watt variations are usually used to provide growing light for marijuana plants. These lights generate tremendous heat, and in turn this heat needs to be vented from any structure being used to grow marijuana. Venting heat leaves a "signature" that can be detected by a thermal-imaging device.

3. Promptly return this warrant to me or the clerk of this court; the return must include an inventory of all property seized.

A copy of the warrant and a receipt for the property taken shall be given to the person from whom or from whose premises property is taken. If no person is found in possession, a copy and receipt shall be conspicuously posted at the place where the property is found.

Date/Time: JULY 15 2008
22 35 HOURS

JUDGE 
JUDGE DOUGLAS J. SMITH
KING COUNTY DISTRICT COURT
SHORELINE DIVISION

Printed or Typed Name of Judge

() This warrant was issued by the above judge, pursuant to the telephonic warrant procedure authorized by JCrR 2.10 and CrR 2.3,

on , 20 at .m.

Printed or Typed Name of Peace
Officer, Agency and Personnel
Number

Signature of Peace Officer Authorized
to Affix Judge's Signature to Warrant

KING COUNTY DISTRICT

SHORELINE DIVISION COURT FOR KING COUNTY

STATE OF WASHINGTON)
COUNTY OF KING)

NO.
INVENTORY AND RETURN
OF SEARCH WARRANT

1. I received a search warrant for the premise(s), vehicle(s), or person(s) specifically described as follows:

THE PREMISE: 1406 NE 50 ST # A SEATTLE KING COUNTY
WASHINGTON. THIS IS A STOREFRONT BUSINESS WHICH IS ON
THE NORTH SIDE OF NE 50 ST, BETWEEN UNIVERSITY ST AND
IF IS THE FIRST DOOR YOU COME TO. IF TRAVELING WESTBOUND
ON NE 50 ST FROM UNIVERSITY ST AND. THE DOOR IS A FULL
GLASS DOOR AND DIRECTLY TO THE EAST OF THAT DOOR IS ANOTHER
GLASS DOOR THAT LEADS TO MAILBOXES AND A SET OF STAIRS
TO THE SECOND FLOOR.

2. On the 15 day of JULY, 2008, I made a diligent search of the above-described premise(s), vehicle(s), or person(s) and found and seized the item(s) listed in section #7.

3. Name(s) of person(s) present when the property was seized:

DETECTIVE HUNTINGTON
OFFICER B. ROES

4. The inventory was made in the presence of:

The person(s) named in section #3 from whose possession the property was taken.

Others: _____

5. Name of person(s) served with a copy or description of the place where the copy is posted:

LEFT ON DESK NEAR FRONT DOOR

6. Location where property is currently being retained:

Seattle Police Department Evidence Unit

Other: _____

(Continued on next page)

INVENTORY AND RETURN OF SEARCH WARRANT (continued)

Description and location of property and/or person(s) when seized:

MARIJUANA

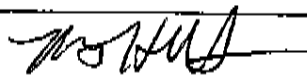
PARAPHERNALIA

PACKAGING / STORAGE MATERIALS

FILES / PAPERS

SONY VASIO LAPTOP COMPUTER

Date: 7-15-2008



Signature of Law Enforcement Officer

SUDBURY PD 6222
Agency and Personnel Number

R. J. HUNTINGTON #6222
Print or Type Name

Inventory and Return
Page 2 of 2

White Copy: Court File
Canary Copy: Police File
Pink Copy: Left at premises searched

3. Promptly return this warrant to me or the clerk of this court; the return must include an inventory of all property seized.

A copy of the warrant and a receipt for the property taken shall be given to the person from whom or from whose premises property is taken. If no person is found in possession, a copy and receipt shall be conspicuously posted at the place where the property is found.

Date/Time: JULY 14, 2008
22 35 Hours

[Handwritten Signature]
JUDGE
JUDGE DOUGLAS J. SMITH
KING COUNTY DISTRICT COURT
SHORELINE DIVISION

Printed or Typed Name of Judge

() This warrant was issued by the above judge, pursuant to the telephonic warrant procedure authorized by JCrR 2.10 and CrR 2.3,
on , 20 at . m.

Printed or Typed Name of Peace
Officer, Agency and Personnel
Number

Signature of Peace Officer Authorized
to Affix Judge's Signature to Warrant