



DPS TRAINING BULLETIN

LEGAL BULLETIN NO. 212
February 17, 1997

PART OF PROBABLE CAUSE FOR SEARCH WARRANT
BASED ON SENSE OF SMELL

Reference: Michael A. McClelland
v.
State of Alaska

Alaska Court of Appeals
Opinion No. 1503
P.2d
December 6, 1996

FACTS:

Two troopers went to McClelland's residence. Their knock was answered by a female who identified herself as Ingrid Jones, McClelland's girlfriend. While the troopers talked to Jones at the door, they smelled the odor of growing marijuana. Both of the troopers later testified that growing marijuana has a distinctive odor and they were familiar with its smell. Jones would not give the troopers consent to search the residence, but she did consent to a search of her vehicle. A small bag of marijuana and a marijuana pipe were removed from Jones' vehicle.

Later, the troopers contacted John Bogue of the Matanuska Electric Association. He told them McClelland's residential electrical usage was "high and suspicious." Based on this, a search warrant was issued and executed for McClelland's residence; a quantity of marijuana was seized.

ISSUE:

May probable cause be established by smell?

HELD: Yes.

REASONING:

1. In this case, two police officers testified they had smelled the odor of marijuana coming from McClelland's residence. Both of the officers testified they were familiar with the odor of growing marijuana and could identify that odor.

2. In addition, the officers also presented testimony (in support

of the warrant) concerning McClelland's high electrical usage and the fact that Jones was in possession of marijuana in her vehicle.

NOTES:

In this case, the court indicated McClelland's high electrical consumption merely corroborated the officers' testimony that they smelled marijuana. Compare/contrast this case with Carter v. State, Legal Bulletin No. 199, where the court concluded that electrical records showing unusual electrical consumption have no inherent incriminatory value.

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