

## Smell Test Stinks

By: Monte E. Hester; 2008

Justice Charles Johnson was the majority author in State v. Grande, Docket Number 81068-1, published on July 17, 2008.

The facts of this case involved a state patrol trooper pulling a vehicle over after observing that it had very dark tinted winders. The trooper engaged the driver in a conversation through the open window during which time a moderate smell of marijuana was recognized. He arrested the driver and the passenger Grande. They were both handcuffed and searched. A marijuana pipe containing a small amount of marijuana was found on passenger Grande. A burnt marijuana cigarette was found in the ashtray, ownership of which was claimed by the driver.

The Supreme Court reviewed a statute raised by the State as authority to arrest the passenger and therefore search the passenger. RCW 10.31.100 provides:

- (1) Any police officer having probable cause to believe that a person has committed or is committing a misdemeanor or gross misdemeanor, involving ... the use of or possession of cannabis ... shall have the authority to arrest the person.

The Court agreed with Grande that the reference in the statute to ‘a person’ creates a requirement of individualized probable cause. The court found that the concept of individualized probable cause before a warrantless arrest is made is consistent with both the United States and Washington State Constitutions as they relate to privacy issues.

The Court stated clearly that a vehicle can be searched based upon smell, but that something more than the smell of marijuana is necessary to establish individualized probable cause as to the passenger. Therefore, the court held that the arrest and subsequent search of the passenger was invalid and any evidence obtained from such a search should have been suppressed.

The case contains an outstanding constitutional analysis of both the Federal and State Constitutions as to privacy and probable cause issues.

End

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