

Friday, March 30, 2007

Where marijuana grows wild, a search warrant is harder to obtain.

Image from public domain. Marijuana is a weed (thus, one of its nicknames) that can grow wild on one's property without the landowner even knowing it, at least if multiple acres are involved. Consequently, in 1978, the Kansas Court of Appeals wisely decided as follows: "As may be seen, there are only two relevant factual allegations in the affidavit [for a search warrant]: (1) the sheriff and others had seen marijuana growing in defendant's corral; and (2) marijuana had recently been harvested by someone in the area near defendant's farm home. From these two facts the magistrate was asked to draw the inference that marijuana was 'probably stored in one of the buildings on the farmstead.' We agree with the trial court that the inference may not properly be drawn."First, the presence of marijuana growing in the corral does nothing to show the presence of cut marijuana in the barn. We take judicial notice of the fact that marijuana grows wild throughout most of Kansas. [Did Dorothy know that?] There is no indication in the affidavit that the growing marijuana was cultivated or that any of it had ever been harvested, or that the corral was in such use that defendant was necessarily charged with knowledge of its presence."Second, the fact that unknown persons had recently harvested marijuana 'in the area near' defendant's home gave no indication that defendant was the harvester. The affidavit says nothing about how near defendant's home the harvesting took place, whether it was accessible to casual passersby, who else lived close to the harvested crop, or who owned the land on which it grew."In short, there was absolutely nothing to tie defendant to the harvested marijuana except a vague allegation of geographical proximity and the presence of growing but unharvested marijuana in his corral. We agree with the trial court that these facts give rise to at best a suspicion, and do not show probable cause."The State also suggests that the defendant did not have standing to raise the search and seizure issue because the farm on which he lived was actually owned by a corporation. This issue is being raised for the first time on appeal and will not be considered. In addition, the sheriff's affidavit itself describes the premises to be searched as 'the farmstead occupied by Jerry Brown,' and the possession charge must necessarily depend on defendant's being in possession of the premises where the marijuana was found. Such possession was enough to give him standing."Affirmed." State v. Brown, 2 Kan. App. 2d 379, 579 P.2d 729, 730-31 (1978). Thanks to a fellow criminal defense listserv member for bringing this pithy and wisely-decided court case to my attention. Jon Katz.

Posted by Jon Katz in Criminal Defense at 01:00