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## Pot smell isn't cause to arrest everyone in a car

**Police need more evidence, state justices say**

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**By LEVI PULKKINEN**  
P-I REPORTER

Supporters of marijuana decriminalization celebrated Thursday's decision by the state Supreme Court restricting police from arresting passengers simply for being in a car smelling of pot.

Justices were unanimous in the decision to overturn a 29-year-old precedent allowing officers to search or arrest passengers after smelling marijuana near a car. They found that simply being in a car smelling of marijuana isn't enough to outweigh the state constitution's robust privacy protections.

Advocates for drug-law reform cheered the ruling as a long overdue step in the right direction.

"As a general statement, it's a step back from the direction that our government has been going as we're veering into a sort of surveillance society," said Alison Holcomb of the American Civil Liberties Union's Washington chapter. "It strikes me as refreshing that the court has reaffirmed the values that our constitution calls for."

The court's decision will not bar authorities from searching a car because it smells of drugs, the court said. But justices indicated that a drug smell might be stronger evidence supporting arrest if there is only one person in a vehicle.

When it comes to passengers, though, the scent of pot alone doesn't give probable cause to arrest everyone in the car. Officers need additional evidence that each individual broke the law.

"Our cases have strongly and rightfully protected our constitution's protection of individual privacy," Justice Charles Johnson wrote for the court. "The protections ... do not fade away or disappear within the confines of an automobile."

The case before the court centered on a 2006 traffic stop in Skagit County. A state trooper arrested both driver Lacey Hurley and passenger Jeremy Grande after smelling marijuana coming from the car.

The trooper searched both of them, discovering a pipe and small amount of pot on Grande. Grande and Hurley were both charged with drug crimes.

In a pretrial hearing for Grande, the district judge found there was not specific probable cause to justify his arrest, and suppressed the evidence. But the Skagit County Superior Court overturned that ruling, pointing to a 1979 appellate ruling that said the smell of pot coming from a car was probable cause to arrest the passengers and driver.

On Thursday, the state Supreme Court said subsequent federal case law has wiped away the legal footing of that 1979 decision.

Grande's attorney, David Zuckerman, said it was "unfortunate" that the previous state case law on drug-smell arrests stayed on the books for so long, particularly since the Supreme Court unanimously rejected its legal reasoning.

"I think it's led to an awful lot of innocent people getting handcuffed by the side of the road just because they happened to be in a car that smells of marijuana," Zuckerman said.

Longtime Seattle pot rights supporter Vivian McPeak said the ruling should help keep innocent individuals from being convicted of drug crimes.

McPeak, founder of Seattle's Hempfest celebration, said it's not uncommon for people to face jail, the loss of property and the stigma of a criminal conviction because they were in a car with a marijuana smoker.

"A lot of people have gone down because of these vehicle offenses," he said. "Being in a car used to be one of those wrong-place, wrong-time kind of situations."

The decision will also protect friends of medical marijuana users from unlawful search, McPeak said.

In Grande's case, the Supreme Court ruled the trooper had probable cause to search the car for more evidence of drug possession. But arresting both people in the car before doing so was wrong, the court said.

That distinction raises the evidentiary bar for officers, said Holcomb, director of the ACLU of Washington-sponsored Marijuana Education Project.

Officers will now be required to continue investigating before arresting or searching passengers, Holcomb said. The court has required that officers show evidence that each individual is involved in the crime -- simple association is no longer enough.

"This is a reminder that the Constitution requires more," she said. "It's not enough to assume that they could be involved in criminal activity."

Law enforcement officials said Thursday's ruling should have a minimal effect on day-to-day policing in the state.

"This is just going to require a little more investigation on the part of our officers on the street, to develop some additional probable cause," said Don Pierce, director of the Washington Association of Sheriffs and Police Chiefs.

Holcomb disagreed, saying that a number of drug prosecutions have been on hold as attorneys waited to hear the outcome of the Grande case.

McPeak said he believes Thursday's decision by the elected justices shows that the political climate with regard to marijuana is changing, at least in Washington. He said such a decision would have been seen as too politically risky even a few years ago.

"We all know everything eventually comes down to politics," McPeak said. "I think that politically there's an environment with more discretion to make decisions like this than there was 10 years ago."

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*This report includes information from The Associated Press. P-I reporter Levi Pulkkinen can be reached at 206-448-8348 or levipulkkinen@seattlepi.com.*

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