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Connelly tosses all evidence in drug case

Rules Edinboro police took too long to make search and acted without probable cause

By GERRY WEISS

Staff writer

An Erie County judge has thrown out all evidence obtained by police through a search warrant in the case against an Edinboro man charged last June with growing marijuana in his home.

Judge Shad Connelly on Wednesday granted the defense's request to suppress evidence seized in two searches of Michael McFadden's home in the 100 block of Terrace Drive, Edinboro.

McFadden's attorney, **William Weichler**, said there were "false and misleading statements" in the affidavit for the search warrant on his client's home.

First Assistant District Attorney Robert Sambroak, the prosecutor in the case, would not comment on Connelly's decision. Sambroak said the Erie County District Attorney's Office has not decided whether it will appeal the ruling.

"If there is no appeal," the prosecutor said Wednesday, "then the case would have to be dismissed."

Police claim 10 marijuana plants were found growing in McFadden's home. Police also claim they discovered a paper bag full of processed marijuana at the McFadden house, along with drug paraphernalia, lights and equipment used to grow plants indoors.

McFadden, 47, faces five criminal charges, including manufacturing a controlled substance and possession of a controlled substance.

**Weichler**, at a hearing held before Connelly on Feb. 28, said the searches conducted by the Edinboro Police Department were illegal because the affidavit for the search warrant contained misleading statements, therefore lacking probable cause for police officers to search McFadden's home.

An Edinboro Police Department patrolman applied for the warrant. Police

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served the warrant on the McFadden home on June 7, the day McFadden was arrested.

Police said they found three empty packs of cigarette rolling papers, marijuana stems and leaves, a partial marijuana cigarette, 10 plastic planting trays and an old fluorescent light in McFadden's garbage on Feb. 21 and May 15, 2000.

Between those dates, police said, McFadden would not place garbage outside his house for weeks at a time.

Connelly wrote Wednesday in his opinion that the June 7 search of McFadden's house was conducted 23 days after the last time police had evidence the defendant might have had marijuana and paraphernalia in his possession.

"Indeed it is certainly possible that someone other than the defendant in or visiting the household may have been the one in possession of the drugs and paraphernalia found in the garbage bags placed outside the residence," Connelly stated.

Connelly said in his ruling that police were "woefully short of probable cause for the June 7, 2000, search" of McFadden's home.

"Under longstanding law for a search warrant to be constitutionally valid, the issuing authority must conclude that probable cause exists at the time the warrant is issued," Connelly wrote. "Such a conclusion may not be made arbitrarily and must be based on facts which are closely related in time to the date the warrant is issued."

Police had also filed criminal charges against McFadden's wife, Denise McFadden, and daughter, Kelly McFadden, 18, but prosecutors later dropped those charges.

On Feb. 9, 2000, McFadden's daughter told an acquaintance that she feared police would find out drugs were being grown at her home, police said. The acquaintance then told Edinboro police about the statement, according to police.

**Weichler** said McFadden's daughter never made that statement.

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