

Sequim man awarded attorney fees by state Supreme Court

By Jesse Major

Tuesday, September 11, 2018 2:14pm | [NEWS](#) [CLALLAM COUNTY](#) [JEFFERSON COUNTY](#)

PORT ANGELES — The state Supreme Court has ruled that a Sequim man who beat criminal marijuana charges is entitled to attorney fees after the Olympic Peninsula Narcotics Enforcement Team attempted to seize his property in 2009.

The Supreme Court ruled in a 6-3 decision in favor of Steven Fager after he and his brother, Timothy Fager, successfully defended themselves against criminal drug charges sought by OPNET and the seizure of Steven Fager's property.

In the majority opinion written by Justice Mary Yu, filed Thursday, the Supreme Court ruled that state law requires courts to award attorney fees to substantially prevailing claimants in civil forfeiture cases.

“When interpreting statutes, our task is always to give effect to the legislature’s intent,” she wrote. “The legislature’s intent ... was ‘to protect individuals against having their property wrongfully taken by the State.’ ”

That means Steven Fager is entitled to “reasonable” attorney fees not only in the civil forfeiture case, but also in the related criminal case he defended himself against.

Steven Fager said Monday financially it’s a small win for him. He estimated he would be awarded \$300,000 in attorney fees.

“It’s going to be a keystone to protect a lot of other people from having their property wrongfully seized,” he said.

“The precedent that it sets is the most important thing of all, to give protection from law enforcement wrongfully seizing your property.”

Steven Fager said OPNET seized about \$500,000 worth of property that his grow operation was on.

He claimed he was growing marijuana for medicinal purposes.

Timothy Fager was a shareholder of the corporation that owned one of the parcels seized, but the Supreme Court ruled he was not a claimant and that he was not entitled to any attorney fees.

Steven Fager unsuccessfully attempted to sue OPNET and its member agencies for \$20 million in federal court. The U.S. Supreme Court declined to hear the case in January.

Clallam County Sheriff Bill Benedict said Monday he’s glad the litigation has finally come to an end.

“Finally, we’re done with it,” Benedict said.

Benedict said that the decision would likely have a lasting effect on how law enforcement agencies approach civil forfeiture cases.

“I think all law enforcement and prosecutors are going to have to take a hard look at making sure those are separate and distinct entities,” he said.

“We’re going to have to take a much harder look about whether we want to use that venue.”

He said since the legalization of marijuana OPNET has had fewer reasons to seize property. Benedict said people involved in the heroin and methamphetamine market typically do not have the sort of assets people involved in the illegal marijuana market had.

He said OPNET has had many civil forfeiture cases since this case, but they usually involve money and vehicles used during drug deals. He said he believes the Fagers' property was the last property OPNET attempted to seize.

Civil Deputy Prosecuting Attorney Brian Wendt said the county is waiting to see how much is owed to Steven Fager. He said there would need to be discussion about what portion of the award each of the agencies involved with OPNET would be responsible for.

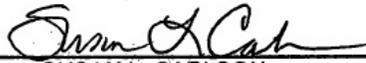
“Once we have that bill in hand, the governments will make the necessary payments,” Wendt said. “We’re disappointed by the ruling, but OPNET will abide by the ruling.”

2009 raid

In October 2009, OPNET agents raided the Fagers' Discovery Bay property and both were charged with possession of marijuana with intent to deliver and defrauding a public utility by allegedly diverting power from the Jefferson County Public Utility District.

There were 275 marijuana plants and more than 10 pounds of processed marijuana, according to court records.

FILE
 IN CLERKS OFFICE
 SUPREME COURT, STATE OF WASHINGTON
 DATE SEP 06 2018
Fairhurst, CA.
 CHIEF JUSTICE

This opinion was filed for record
 at 8 am on Sept 6, 2018

 SUSAN L. CARLSON
 SUPREME COURT CLERK

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

THE OLYMPIC PENINSULA)
 NARCOTICS ENFORCEMENT TEAM;)
 BILL BENEDICT, CLALLAM COUNTY)
 SHERIFF; CLALLAM COUNTY)
 SHERIFF'S OFFICE; and)
 CLALLAM COUNTY,)

Respondents,)

v.)

REAL PROPERTY KNOWN AS)
 (1) JUNCTION CITY LOTS 1 THROUGH)
 12 INCLUSIVE, BLOCK 35,)
 (2) LOT 2 OF THE NELSON SHORT)
 PLAT LOCATED IN JEFFERSON)
 COUNTY, AND ALL APPURTENANCES)
 AND IMPROVEMENTS THEREON, OR)
 PROCEEDS THEREFROM,)

Defendant,)

STEVEN L. FAGER; DBVWC, INC., a)
 Washington corporation; and the LUCILLE)
 M. PROBYL TRUST)

No. 95013-0

EN BANC

Filed: SEP 06 2018

Those charges were dismissed in January 2013 when the late Jefferson County Superior Court Judge Craddock Verser suppressed the warrant that OPNET used to raid the property.

Officers claimed they could smell the Fagers' grow operation from at least 130 feet away, which was the basis of the warrant. Without that warrant, all the evidence seized during the raid was inadmissible in court.

An expert witness for the Fagers told the court that officers could not have smelled the marijuana from that far away.

Benedict said he still stands by the work OPNET did at the time and that he disagrees with the expert who said they could not smell marijuana from that far away.

“As far as I’m concerned they followed the law on everything they did,” Benedict said.

“The judge decided to throw the search warrant out ... and it was based on, in my opinion, on junk science.”

He said the state did not adequately challenge the expert who said officers could not smell marijuana from 130 feet away.

“I tell you what, if you believe that go to Carlsborg and go a half mile downwind from the commercial pot farms that are growing there and tell me you can’t smell it,” he said.

After the criminal charges were dismissed, OPNET filed a motion to dismiss the civil forfeiture case, but would not agree to a dismissal that included an attorney fee award.

“When the criminal case was over we walked from the civil forfeiture proceedings,” Benedict said.

“However, they took that and essentially sued us for attorneys fees for both the civil asset forfeiture as well as the criminal defense.”

Reporter Jesse Major can be reached at 360-452-2345, ext. 56250, or at jmajor@peninsuladailynews.com.



© 2018, Peninsula Daily News and Sound Publishing, Inc.

[Subscribe](#) | [Sign-Up for Peninsula Daily News Newsletters](#) | [Terms of Use](#) | [Privacy Policy](#) | [Contact Us](#)