



## DPS TRAINING BULLETIN

LEGAL BULLETIN NO. 250

July 12, 2001

### USE OF THERMAL-IMAGING DEVICE IS A SEARCH UNDER FOURTH AMENDMENT

**Reference:** Danny Lee Kyllo  
v.  
United States

U. S. Supreme Court  
No. 99-8508  
\_\_\_\_\_ U.S. \_\_\_\_\_  
June 11, 2001

### **FACTS:**

Federal agents suspected that Kyllo, who lived in a triplex, was growing marijuana in his apartment. Because "grow operations" typically use high-intensity lamps, the agents decided to use an Agema Thermovision 210 thermal imager to scan the triplex to see if heat, consistent with the use of high-intensity lamps, was emanating from Kyllo's apartment. They parked their vehicle on a public street across from Kyllo's residence to use the portable imager.

The scan showed that Kyllo's garage roof and side wall were relatively hot compared to the rest of his home and substantially warmer than the neighboring units. Based in part on the thermal imaging (they also had informant tips and high utility bills), the agents were issued a warrant to search Kyllo's residence. The agents found an indoor growing operation involving more than one-hundred plants.

### **ISSUE:**

Does the use of a thermal-imaging device aimed at a private home from a public street to detect relative amounts of heat within the home constitute a "search" within the meaning of the Fourth Amendment?

**HELD:** Yes--it is not "the plain view exception" if unlawful intrusion is made.

**REASONING:**

1. At the very core of the Fourth Amendment stands the right of a man to retreat into his own home and be free from unreasonable government intrusion.

2. Obtaining by sense-enhancing technology any information regarding the interior of the home that could not otherwise have been obtained without physical "intrusion into a constitutionally protected area" constitutes a search--at least where (as in this case) the technology in question is not in general public use.

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