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Case Name: Christopher Chad Parker v. The State of Texas

- OFFENSE: Possession of Marihuana
- COUNTY: Bailey
- COURT OF APPEALS: Amarillo 2005
- C/A CITATION: No Citation Yet
- C/A RESULT: Conviction Affirmed
- CCA. CASE No. PD-0250-05
- DATE OF OPINION: April 12, 2006
- DISPOSITION: Court of Appeals affirmed
- OPINION: Cochran, J. VOTE: 7-2-0
- TRIAL COURT: CC; Hon. Marilyn Cox
- LAWYERS: Chuck Lanehart, Ralph Brock (Defense); Clarissa Cleavinger (State)

§ 31.07 Search & Seizure / Plain View Doctrine: Law enforcement officers were approached by a citizen to advise them that alcohol was being served to minors at a two story house in the 1400 block of Avenue C in Muleshoe, Texas. The officers went to the house, noticed several cars parked in front of the house, but no unusual activity occurring outside. Officer Stevens knocked on the door and another officer noticed someone part the blinds and heard a voice from inside say, "It's the police," and saw a young man run up the stairs. When Appellant opened the door, Officer Stevens could smell a strong odor of burnt marihuana emanating from the home. He advised he would have to come inside because he could smell marihuana. Appellant attempted to close the door, but Stevens put his foot in the door. Appellant then let the officers come inside. As a supervisor was asking Appellants' mother for consent to search the home, Officer Stevens noticed, for the first time, a marijuana cigarette butt and loose marihuana sitting in plain view on top of a pizza box. Appellant filed a Motion to Suppress the marijuana. The trial court found that the marihuana was in plain view once the officers were inside, it was not found during a search of Appellant's home. The Court of Appeals affirmed the conviction, holding that the officers observing a person running up the stairs and smelling the odor of marihuana resulted in probable cause to search; and that, additionally, the officers' need to secure the home pending the application for a search warrant constituted exigent circumstances (see **§**, [Vol. 13, No. 3](#); 01/24/2005).

Holding: The odor of marijuana was merely one factor in Officer Steven's decision to enter appellant's home. The odor was one fact and the entry was based on the sum total of his knowledge of Appellant and the surrounding circumstances existing at that time. The "tip" of ongoing criminal conduct was partially corroborated before any entry and the officers did not immediately arrest everyone inside. We affirm the judgment of the Court of Appeals.

Concurring / Dissenting Opinions: Judges Womack and Holcomb concurred in the result.

Ed Note: The Court also explained the application of [State v. Steelman](#), 93 S.W.3d 102 (Tex.Cr.App. 2002)(see [§§, Vol. 10, No. 43](#); 10/28/2002; Vol. 11, No. 4; 02/03/03), saying it granted review in hope of dispelling any lingering confusion concerning the existence of probable cause to cross the threshold of a home when officers smell the odor of contraband emanating from that residence. The standards for a warrantless entry into a home differ from those for a warrantless arrest. Each action requires the police to jump over two distinct hurdles. In both situations the first hurdle involves the existence of probable cause to believe that some offense has been or is being committed, but differs on whether probable cause points to a person (arrest) or a location (search). The second hurdle differs depending on whether the officer is crossing the threshold of a home without a warrant to investigate an offense, or he is making a warrantless arrest. To arrest, an officer must have both probable cause with respect to the person being arrested, plus statutory authority to make that arrest. Probable cause must point like a beacon to the specific person being arrested. Probable cause to cross the threshold of a private residence may point to the location, but not necessarily a specific person. Probable cause must point like a beacon toward the location but not necessarily any particular person. The second hurdle is that exigent circumstances, those which justify an immediate need to enter a residence without first obtaining a search warrant, must also exist.