

FILED

05 JUL 1990 11:15 AM

Clerk  
Superior Court  
Northern Mariana Islands

By: *[Signature]*  
Deputy Clerk of Court

IN THE SUPERIOR COURT  
OF THE  
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

COMMONWEALTH OF THE NORTHERN )  
MARIANA ISLANDS, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 JUAN B. CASTRO, )  
 )  
 Defendant. )

CRIMINAL ACTION NO. 90-09

DECISION

This matter is before the Court on the Defendant's Motion to Suppress Evidence, pursuant to Comm.R.Crim.Pro. 12. The Defendant and Government waived oral arguments on the motion and requested the Court to render its decision based on the parties' briefs and a video tape of the alleged unauthorized search filed in this matter.

On January 12, 1990, a search warrant was issued authorizing a search of the residence of the Defendant. While police were at the residence executing the search warrant, they observed several well travelled paths leading from the residence into the boonie area adjacent to the residence. Along one of these paths, some distance from the residence, officers found a number of

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cultivated marijuana plants.

The Defendant claims the police exceeded the scope of the search warrant when they searched the boonie area adjacent to his residence because the explicit language of the search warrant authorized a search of the "premises and person described being the house..." As a result, the Defendant alleges that the police, in effect, conducted a warrantless search in violation of Article 1, §3 of the CNMI Constitution. U.S. v. Stanley, 597 F. 2d 866 (4th Cir. 1979).

The Defendant relies on Stanley, supra, for the proposition that the police exceeded the scope of the search warrant when they searched the boonie area adjacent to his residence. Stanley can be easily distinguished from the case at bar. In Stanley, the crux of the Defendant's contention was that the search warrant did not authorize police to search an automobile parked in a common area parking lot outside of the curtilage of the Defendant's residence. The Court agreed and reversed the Defendant's conviction. Id at 870.

The case at bar does not involve the search of a perked car in a common area parking lot but the discovery of cultivated marijuana plants in a boonie area adjacent to the Defendant's residence.

The search warrant's scope extended to the outer limits of the residence's curtilage. It is not necessary for the Court here to determine precisely how far the curtilage extended because the police did not need a search warrant in order to

search the boonie area where the marijuana plants were found. "[T]he special protection accorded by the Fourth Amendment to the people in their 'persons, houses, papers, and effects,' is not extended to the open fields. The distinction between the latter and the house is as old as the common law." Hester v. U.S., 265 U.S. 57, 44 S. Ct. 445 (1924). The term "open fields" may include any unoccupied or undeveloped area outside of the curtilage. Oliver v. U.S., 466 U.S. 170, 104 S. Ct. 1735, 80 L. Ed. 214 (1984). An open field need be neither "open" nor a "field" as those terms are used in common speech and may include a thickly wooded area. Id.

The Court concludes that the area where police discovered marijuana plants may properly be considered open fields and outside the protection of Article i, §3. As such, no search warrant was necessary.

Now therefore, IT IS HEREBY ORDERED that Defendant's Motion to Suppress Evidence is hereby DENIED.

Entered this 5 day of June, 1990.

  
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Alejandro C. Castro, Associate Judge