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

COMMONWEALTH OF THE NORTHERN
MARIANA ISLANDS,)
)
Plaintiff,)
)
vs.)
)
FRANCISCO R. SANTOS,)
)
Defendant.)

CRIMINAL ACTION NO. 90-191

DECISION AND ORDER

Defendant has moved to suppress all evidence obtained pursuant to an allegedly faulty execution of a search warrant at the residence of the Defendant, Francisco R. Santos, on November 22, 1990. On that day, police officers arrived at the home of the Defendant for the purpose of executing a warrant to search the premises for a Sansui amplifier. The officers approached the front door of Defendant's residence. At the hearing, it was revealed that the door itself was open, but a curtain was stretched across the area of entry into the house. One of the officers testified that he opened and looked inside the curtain and noticed the Defendant sleeping. After calling out the Defendant's name and receiving no response, the officers

entered the house and shook him until he awoke. At this time, they notified him they were there to execute a search warrant.

The officers conducted a search pursuant to the warrant. During the search, the officers were unable to find the Sansui amplifier named in the warrant. The officers did, however, become suspicious that certain items present in the house were stolen property. After finishing the search for the amplifier, the officers sought and obtained the Defendant's written consent to confiscate the suspicious items. The police department still maintains possession of these items, some of which have been identified as stolen property.

Defense counsel argues that the officers failed to properly execute the search warrant pursuant to 6 CMC §6203, thus poisoning the subsequent search and invalidating any form of consent the police may have obtained from her client. Defense counsel also argues that the consent obtained from the Defendant was tainted by the fact that the officers threatened or placed pressure upon him to sign the form, thus resulting in involuntary consent. The Court finds it unnecessary to reach the second issue since it finds that the execution of the warrant was improper, thus poisoning the fruits of the officer's subsequent search of the Defendant's home.

Entering a Dwelling to Issue a Search Warrant

In this Commonwealth, 6 CMC 56203 governs the conduct of police officers in entering a residence named in a search warrant. That section states in relevant part:

"... If a building or ship or any part thereof is designated as the place to be searched, the police officer executing the warrant may enter without demanding permission if the officer finds the building or ship open. If the building or ship be closed, the officer shall first demand entrance in a loud voice and state he or she desires to execute a search warrant. If the doors, gates, or other bars to the entrance be not immediately opened, the officers may force an entrance, by breaking them if necessary."

At the outset, it must be noted that a curtain pulled across an entrance to a home provides the same legal protection from invasions of privacy as does a door. *See, Parsely v. Superior Court*, 513 P.2d 611 (Cal. 1973) (cloth covering window held sufficient). Where an individual displays some outward manifestation of desire to protect the contents of his or her home from view to the outside world, the nature of the material used to accomplish that desire does not determine the extent of an individual's privacy. Since the Defendant manifested a reasonable expectation of privacy by closing the curtain across the entrance, the officers did not have the right under §6203 to enter the Defendant's residence without first demanding permission and stating in a loud voice that they were there to execute a search warrant.

The question presented here is not only whether the officer stated his desire to execute the warrant, but where the officer was physically located when he made the statement. If the officer was already inside the home of the Defendant at the time of the announcement, the "breaking" had already occurred and the statute was violated.

The purpose of requiring a police officer to announce his presence and purpose prior to entering a dwelling pursuant to a

search warrant is two-fold. **First**, such a requirement protects the privacy of the residents by allowing them time to respond to the officers demand without having the police cause unnecessary property damage or otherwise invade the personal activities that occur in the sanctity of the home. *Trosper v. Alaska*, 721 P.2d 134 (Alaska App. 1986). Second, the rule protects police officers and third persons from the violence that might arise when confronting possibly armed residents during an unannounced invasion into the home. *People v. Bradley*, 460 P. 2d 129, 134 (Cal. 1969). The consequences could be even more dangerous when awakening a sleeping man who could possibly be armed. *People v. Arias*, 85 Cal. Rptr. 479 (Cal. App. 1979) (officer entering home unannounced where occupants were sleeping with knives).

Under most "announcement" statutes, the definition generally attributed to the term "breaking" is the same definition that was applied to the term in common law burglary actions. *People v. Rosales*, 437 P.2d 489, 492 (Cal. 1968). Nothing more is needed "than the opening of a door or window, even if not locked, or not even Latched." *Id.*

Under this definition, the statute was violated when the officer opened the curtain and observed the Defendant sleeping prior to announcing his presence and purpose. Therefore, the statute was violated because the officer committed a "breaking" prior to making an announcement. The officer's attempt to awaken the Defendant by calling his name from the doorway was ineffective since he did not

announce who he was or what his purpose was, not to mention the fact that the Defendant was asleep and would not have heard it anyway. The statute was further violated when the officers entered the premises and shook the Defendant to awaken him prior to announcing their presence and purpose.

Though the Court could find no case law specifically addressing a situation where an officer with a warrant entered the dwelling of sleeping occupants unannounced, at least two cases have addressed the issue with respect to entering such a home to make an arrest. *People v. Bradley, supra; People v. Arias, supra*. In both of these cases, the Court noted that the officer's failure to somehow alert the sleeping occupant without entering and risking his own life constituted a violation of the statute. The language offered by the *Arias* court is instructive:

... The reality of the potential harm from an occupant being suddenly aroused in his sleep and grabbing a knife for self-defense purposes is evident. The officer, not knowing the actual interior circumstance, could have and should have avoided possible repercussions from such a hazardous situation by simply knocking or otherwise attracting the attention of persons who might be inside... *People v. Arias, supra*, at 483.

It is irrelevant that in retrospect it is known that the Defendant was not armed. Part of the purpose of the statute is to protect police officers in this Commonwealth. Condoning such risky activities under any circumstances would invite a repetition of the dangerous conduct undertaken by the officers in this case.

Since the execution of the warrant in this case was tainted, it is the opinion of this Court that the evidence obtained as the fruit

of this poison is not admissible because the officers never would have been in a position to seek consent for the confiscation of the items had they not been physically present in the house after the flawed execution. Based upon the foregoing,

IT IS HEREBY ORDERED that all evidence procured as a result of the defective execution of the search warrant on November 22, 1990 shall be and is hereby **suppressed**.

Entered this 19 day of April, 1991.


Alexandro C. Castro, Associate Judge