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Humboldt Court

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BONNIE J.
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SUPERIOR COURT OF CALIFORNIA
COUNTY OF HUMBOLDT

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SUPERIOR COURT OF CALIFORNIA, COUNTY OF HUMBOLDT

PEOPLE OF THE STATE OF CALIFORNIA,

CASE NO. CR1205177A,B

Plaintiff,

**RULING ON MOTION TO
SUPPRESS EVIDENCE AND
TO QUASH SEARCH
WARRANT**

vs.

JEANPAUL LORIST AND JULIET MARIE
MASSEY,

Defendants.

The motion to suppress evidence pursuant to Penal Code §1538.5, and to quash search warrant came before the Court for hearing on August 8, 2014. Deputy District Attorney Roger Rees appeared on behalf of the People of the State of California. Manny Daskal appeared as counsel with defendant Jean Paul Lorist, and Benjamin Okin appeared as counsel with defendant Juliet Marie Massey.

Upon consideration of the documents submitted in support of, and in opposition to, the motion, the evidence presented at the preliminary hearing on February 19, 2014 and the oral arguments of counsel, the Court grants the defendants' motion to suppress evidence and to quash search warrant.

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1 On September 17, 2012, Drug Task Force agents, without a search warrant,
2 went to defendants' residence on Tompkins Hill Road, Fortuna, California, as the
3 property's landlord/owner had expressed concern about possible marijuana cultivation.
4 Agents left a walkway to the front door of the residence, cut across or through a carport,
5 and proceeded through a closed and latched gate. Agents observed a marijuana plant
6 growing in the rear yard of the house, and smelled the distinct odor of other growing
7 marijuana.

8 With the information obtained at the Fortuna residence, the Drug Task Force
9 obtained a search warrant for that property. Paperwork and photographs located during
10 execution of that search warrant led to issuance of a second search warrant for property
11 located in Dinsmore, California.

12 It is "an essential predicate to any valid warrantless seizure that the officer did
13 not violate the Fourth Amendment in arriving at the place from which the evidence could
14 be plainly viewed." Horton vs. California (1990) 496 U.S. 128, 136. Officers have a
15 right to be in a particular place if their location either does not infringe on the
16 defendant's reasonable expectations of privacy or is justified by one of the established
17 exceptions to the warrant requirement. People vs. Camacho (2000) 23 Cal. 4th 824,
18 832; Lorenzana vs. Superior Court (1973) 9 Cal. 3d 626, 634.

19 As a general rule, a police officer's presence in a place open to the public or to
20 the occupants and visitors of a building does not violate reasonable privacy
21 expectations. In re Deborah C. (1981) 30 Cal. 3d 125, 135; Lorenzana vs. Superior
22 Court, supra; People vs. Camacho, supra, 23 Cal. 4th at page 833. This rule applies
23 even if "the individual has taken measures to restrict some view of his activities" as long
24 as the officer's lawful vantage point "renders the activities clearly visible." California vs.
25 Ciraolo (1986) 476 U.S. 207, 213.

1 Plain view principles have been held to apply to senses other than sight, such as
2 "plain smell." U.S. vs. Place (1983) 462 U.S. 696, 707; People vs. Gale (1973) 9 Cal.
3 3d 788, 794 (strong odor of marijuana in vehicle).

4 An uninvited entry into the backyard or side yard of a single-family residence has
5 been held to infringe on reasonable privacy expectations given such areas are not
6 implicitly open to the public. People vs. Camacho (2000) 23 Cal. 4th 824, 832-838 (side
7 yard); Lorenzana vs. Superior Court (1973) 9 Cal 3d 626, 634-636; People vs. Winters
8 (1983) 149 Cal. App. 3d 705, 707 (backyard). The result is not altered by the absence
9 of any gate, fence, or shrubbery suggesting that entrance is forbidden. People vs.
10 Camacho, supra.

11 As the initial search of the Fortuna property, without a warrant, was violative of
12 defendants' reasonable privacy expectations, and occurred in the absence of consent
13 and/or exigent circumstances, the warrant for that residence is ordered quashed and
14 evidence seized there is ordered suppressed.

15 Similarly, the warrant served as to the Dinsmore property is ordered quashed,
16 and the evidence seized at that location is ordered suppressed pursuant to the fruit of
17 the poisonous tree doctrine.

18 It is so ordered.

19 Dated: September 4, 2014

JOHN T. FEENEY

John T. Feeney, Judge of the Superior Court

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