

SUPERIOR COURT
OF THE
STATE OF DELAWARE

T. HENLEY GRAVES
RESIDENT JUDGE

SUSSEX COUNTY COURTHOUSE
ONE THE CIRCLE, SUITE 2
GEORGETOWN, DE 19947

April 7, 2008

Edward C. Gill, Esquire
16 North Bedford Street
P. O. Box 824
Georgetown, DE 19947

John W. Donahue, IV, Esquire
Department of Justice
114 East Market Street
Georgetown, DE 19947

RE: State v. Danny Spicer
Defendant ID No. 0710007017

Dear Counsel:

The defense has filed a Motion to Suppress any evidence seized or arising from the execution of a search warrant, as well as evidence seized weeks earlier when the Delaware State Police seized marijuana plants located in two separate fields.

Mr. Spicer has been charged with trafficking in marijuana, manufacturing marijuana, possession with intent to deliver marijuana, etc. as a result of the marijuana found by the police.

On February 21, 2008, in a bench ruling, I found that probable cause existed for the search warrant and denied the suppression motion as to the defendant's residence. Today, I deny the Motion as to the evidence seized from the two fields. I have determined that an evidentiary hearing is not necessary based upon the facts that are not in dispute.

On July 12, 2007, the Maryland State Police were flying over Delaware approximately five (5) miles from the Maryland-Delaware border. Marijuana plants were spotted and later the Delaware State Police were informed. The next day the Maryland State Police assisted the Delaware State Police in locating the marijuana plants which were seized and taken to Delaware State Police Troop 4.

On August 9, 2007, the same thing happened. Maryland State Police, flying over Delaware, spotted marijuana growing in another field and reported it to the Delaware State Police. The next

day, with the help of the Maryland State Police, the Delaware State Police located, pulled the marijuana plants and took them to Troop 4.

Apparently, the Delaware State Police had no idea who was growing the marijuana until a couple of months later. An informant reported that Mr. Spicer was selling marijuana and told the informant the police had found some of his marijuana growing in the fields.

After the execution of the search warrant on October 5, 2007, the Defendant allegedly admitted that the marijuana seized in the summer was his.

The Defendant seeks to have the marijuana seized from the fields suppressed. He alleges that the Maryland State Police had no business flying over Delaware looking for marijuana. He also argues that since the Maryland State Police were flying a Maryland National Guard helicopter, the evidence should be suppressed as a violation of the Federal Posse Comitatus Act of 1878, 18 USC §1385, prohibiting the use of the federal armed services from engaging in the enforcement of state laws.

Mr. Spicer has not alleged he has any ownership interest in the fields where the marijuana was found. Nor has he alleged any leasehold interest. The State alleges ownership in a third party.

Mr. Spicer has not demonstrated he has standing to contest the search and seizure of evidence found in fields owned by other parties. He has not demonstrated that he had any reasonable expectation of privacy in the fields that were searched. Without standing to complain, the Motion to Suppress ends in denial. *Hanna v. State*, 591 A.2d 158 (Del. 1991); *State v. Staten*, 2006 WL 337045 (Del. Super. Feb. 15, 2006); *Rakas v. Illinois*, 439 US 128, 143 (1978); *Oliver v. United States*, 466 U.S. 170 (1984).

Alternatively, if anyone has any complaints about what the Maryland State Police are doing flying over Delaware, it is not Danny Spicer by way of a Motion to Suppress.

The marijuana plants were seized and taken into custody by the Delaware State Police. The fact that the Maryland State Police eyeballed the marijuana and led the Delaware State Police to the location does not taint the seizure of the evidence.

Nor does the Posse Comitatus Act have any relevance. This was not action by the federal military, but the Maryland State Police. Unless federalized, the Maryland National Guard is under the command of the Governor of Maryland. The use of the Maryland National Guard helicopter is irrelevant.

Finally, the exclusionary rule has not been applied to violations of the Posse Comitatus Act. *United States v. Johnson*, 410 F.3d 137 (4th Cir. 2005).

The Motion to Suppress is denied due to the lack of standing of the Defendant, due to the lack of reasonable expectation of privacy in open fields and on the merits as to the Maryland Police being involved in discovering the marijuana.

IT IS SO ORDERED.

Yours very truly,

T. Henley Graves

THG:baj

cc: Prothonotary