

NOT FOR PUBLICATION IN WEST'S HAWAI'I REPORTS AND PACIFIC REPORTER

NO. 26595

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellant,
v.
CHARLES K. MACHADO, Defendant-Appellee

NORMA T. YARA
CLERK, APPELLATE COURTS
STATE OF HAWAI'I

2007 FEB 22 AM 10:45

FILED

APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT
(CR. NO. 03-1-0418)

SUMMARY DISPOSITION ORDER

(By: Lim, Presiding Judge, Nakamura, and Fujise, JJ.)

Plaintiff-Appellant State of Hawai'i (the State) appeals from the "Order Granting Motion to Suppress" (Suppression Order) filed on May 19, 2004, in the Circuit Court of the Third Circuit (circuit court).¹ Defendant-Appellee Charles K. Machado (Machado) was indicted on drug and drug paraphernalia possession charges. The charges were based on evidence seized by Machado's probation officer, Probation Officer Jayson Agra (Probation Officer Agra), during a search of Machado's fanny pack. The circuit court granted Machado's motion to suppress the evidence seized by Probation Officer Agra.

On appeal, the State argues that the circuit court erred in concluding that the State had failed to sustain its burden of showing that the warrantless search by Probation Officer Agra was justified. We disagree and affirm the Suppression Order.

¹ The Honorable Terence T. Yoshioka presided.

A warrantless search is presumptively unreasonable and the State had the burden of showing that Probation Officer Agra's warrantless search was reasonable. State v. Propios, 76 Hawai'i 474, 477, 879 P.2d 1057, 1060 (1994). The State chose not to call Probation Officer Agra as a witness at the suppression hearing and instead agreed to have Machado's suppression motion decided on stipulated facts. We hold that the circuit court did not err in 1) concluding that the State failed to meet its burden of showing that Probation Officer Agra's warrantless search was justified and 2) granting Machado's motion to suppress the evidence seized by Probation Officer Agra.

After a careful review of the record and the briefs submitted by the parties, we affirm the "Order Granting Motion to Suppress" filed on May 19, 2004, in the Circuit Court of the Third Circuit.

DATED: Honolulu, Hawai'i, February 22, 2007.

On the briefs:

Jason M. Skier
Deputy Prosecuting Attorney
County of Hawaii
for Plaintiff-Appellant

Jon N. Ikenaga
Deputy Public Defender
for Defendant-Appellee



Presiding Judge



Associate Judge



Associate Judge