

*** NOT FOR PUBLICATION ***

NO. 22598

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee

vs.

MARK RODRIGUEZ, Defendant-Appellant

APPEAL FROM THE FIFTH CIRCUIT COURT
(CR. NO. 97-0238)

SUMMARY DISPOSITION ORDER

(By: Moon, C.J., Levinson and Nakayama, JJ.,
Intermediate Court of Appeals Associate Judge Watanabe,
assigned by reason of vacancy, and
Acoba, J., concurring separately)

Defendant-appellant Mark Rodriguez appeals from the order of the circuit court of the fifth circuit, the Honorable George M. Masuoka presiding, denying Rodriguez's motion to suppress items of physical evidence, statements, and derivative evidence. On appeal, Rodriguez argues that the lower court erred in denying his motion to suppress because (1) there was neither probable cause nor exigent circumstances to justify the police officer's warrantless entry onto his property, (2) the marijuana plants found in Rodriguez's yard were not in plain view, (3) the consent was not voluntary, (4) if found voluntary, the consent was limited to the interior of his house, and (5) both the seized evidence and his statement constituted fruit of the poisonous tree.

Upon careful review of the record and the briefs submitted by the parties and having given due consideration to the arguments made and the issues raised, we hold that the circuit court erred in denying Rodriguez's motion to suppress, inasmuch as the officer's presence on the curtilage of

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Rodriguez's home was not justified, and, thus, the marijuana plants were not in plain view, and the prosecution failed to meet its burden of showing that the taint of Rodriguez's unlawful seizure dissipated or that there was an independent source that induced Rodriguez to waive his constitutional rights against self-incrimination and to be free from unreasonable searches and seizures. See State v. Meyer, 78 Hawai'i 308, 316, 893 P.2d 159, 167 (1995); State v. Pau'u, 72 Haw. 505, 508-512, 824 P.2d 833, 835-837 (1992); State v. Kender, 60 Haw. 301, 304, 588 P.2d 447, 449 (1978). Additionally, the prosecution failed to show that it was impracticable for the police to obtain a warrant. Therefore,

IT IS HEREBY ORDERED that the circuit court's order denying Rodriguez's motion to suppress evidence is vacated and the case is remanded for further proceedings.

DATED: Honolulu, Hawai'i, March 17, 2003.

On the briefs:

Catherine P. Gutierrez,
Deputy Public Defender,
for defendant-appellant

Craig A. De Costa, Deputy
Prosecuting Attorney,
for plaintiff-appellee

CONCURRENCE BY ACOBA, J.

I concur in the result.