People v. Channing
(June 23, 2000) __ Cal.App.4th __

ISSUE

Was an officer's observation of a marijuana garden on the defendant's property unlawful because the officer was a trespasser?

FACTS

A confidential informant told San Bernardino County sheriff's narcotics officers that marijuana was being grown at a remote mountainous location known as the Bowen Ranch. Deputy John Wickum decided to drive up to the ranch to have a look. Because there were no roads leading to the ranch, Wickum had to park on a dirt road some distance from the ranch and walk the rest of the way.

As he neared the property, Wickum saw several travel trailers parked there. He also saw "multiple marijuana plants" being grown under a green tarp. He then contacted Channing who standing near one of the trailers. When Wickum told Channing that he believed that marijuana was being grown on the property, Channing replied "that he had a constitutional right to grow marijuana."

Based on his observations, Wickum obtained a warrant to search the ranch. During the search, deputies found marijuana plants under the green tarp and in front of Channing's trailer. But the trial court ordered the marijuana suppressed on grounds that Wickum was trespassing on Channing's property when he made the initial observations. The People appealed.

DISCUSSION

The People contended the marijuana was in "plain view" and was, therefore, observed lawfully. The court agreed.

Under the "plain view" rule, officers do not need a warrant to seize evidence if, (1) they had a legal right to be at the location from which they saw the item, (2) they had probable cause to believe the item was contraband or other evidence of a crime, and (3) they had legal access to the evidence.

In *Channing*, the only issue was whether the deputy had a legal right to be at the location from which he saw the marijuana.[(1)] As noted, the deputy was essentially a trespasser; i.e., he was only able to observe the marijuana after walking some distance on Channing's private t property. There are, however, two situations in which an officer who has trespassed on a suspect's property will, nevertheless, be deemed to have a legal right to be there.

"Technical" trespasses

First, there are "technical" trespasses that occur when officers enter private property surrounding a home or business and are walking along a sidewalk, pathway, driveway, porch, or other normal access route. An observation made from such a location is considered lawful because it is impliedly authorized by custom. As the court in *People* v. *Thompson* observed, "The presence of an officer within the curtilage

of a residence does not automatically amount to an unconstitutional invasion of privacy. Rather, it must be determined under the facts of each case just how private the particular observation point actually way. It is clear that police with legitimate business may enter areas of the curtilage which are impliedly open, such as access routes to the house."[(2)]

Furthermore, it is possible that officers may depart somewhat from a driveway, path, or other access route provided the departure was neither substantial nor unreasonable. Again, quoting from *Thompson*, "An officer is permitted the same license to intrude as a reasonably respectful citizen. However, a substantial and unreasonable departure from such an area, or a particularly intrusive method of viewing, will exceed the scope of the implied invitation and intrude upon a constitutionally protected expectation of privacy."[(3)] (NOTE: The California Supreme Court may soon rule on a case, *People* v. *Camacho*, formerly at 68 Cal.App.4th 37, in which the main issue is the extent to which officers may deviate from a normal access route.)

"Open fields"

The second situation in which a trespassing officer may be deemed to be lawfully on the premises for purposes of the "plain view" rule is known as the "open fields" doctrine. Simply put, an officer's observation made from "open fields" is considered lawful regardless of whether the officer was a trespasser.

What is an "open field?" It is essentially any unoccupied or undeveloped private residential property that is outside the curtilage of a home; meaning, an area which, unlike a back yard, is not a place in which the usual activities of home life take place.[(4)]

Although this definition is somewhat vague, officers usually have no trouble applying it because, as the United States Supreme Court observed, "Most of the many millions of acres that are ?open fields' are not close to any structure and so not arguably within the curtilage. And, for most homes, the boundaries of the curtilage will be clearly marked; and the conception defining the curtilage-as the area around the home to which the activity of home life extends-is a familiar one easily understood from our daily experience."[(5)]

In *Channing*, it was clear the deputy observed the marijuana from "open fields" and, therefore, the observation was lawful under the "plain view" rule. Consequently, the court ruled the marijuana was observed lawfully under the "plain view" rule, and the charges against Channing were reinstated.[(6)]

(1) **NOTE:** It was undisputed that the deputy had probable cause to believe the plants were, in fact, marijuana. Furthermore, because the deputy obtained a search warrant and did not immediately seize the marijuana it was undisputed that the warrant gave the deputies legal access to the plants.

(2) (1990) 221 Cal.App.3d 923, 943-4. Quoting from *State* v. *Seagull* (1981) 95 Wn.2d 898. ALSO SEE *People* v. *Superior Court (Stroud)* (1974) 37 Cal.App.3d 836, 840 ["It is common knowledge that a front yard is likely to be crossed at any time by door-to-door solicitors, delivery men and others unknown to the owner of the premises. Although the officers may have been trespassers on the neighbor's front yard, this circumstance does not necessarily require suppression of the evidence."]; *People* v. *Bradley* (1969) 1 Cal.3d 80, 85; *Lorenzana* v. *Superior Court* (1973) 9 Cal.3d 626, 629;

People v. *Edelbacher* (1989) 47 Cal.3d 983, 1015; *People* v. *Thompson* (1990) 221 Cal.App.3d 923, 943-4; *Dean* v. *Superior Court* (1973) 35 Cal.App.3d 112, 118; *People* v. *Superior Court (Irwin)* (1973) 33 Cal.App.3d 475, 481; *People* v. *Gray* (1985) 164 Cal.App.3d 448-9; *People* v. *Johnson* (1980) 105 Cal.App.3d 884, 888-9; *People* v. *Gonzales* (1963) 214 Cal.App.2d 168, 172-3; *People* v. *Rice* (1970) 10 Cal.App.3d 730, 739; *In re Gregory S.* (1980) 112 Cal.App.3d 764, 775; *Oliver* v. *United States* (1984) 466 US 170, 182; *U.S.* v. *James* (7th Cir. 1994) 40 F.3d 850, 862. **COMPARE:** *People* v. *Morgan* (1987) 196 Cal.App.3d 816, 820; *People* v. *Winters* (1983) 149 Cal.App.3d 705, 707; *Jacobs* v. *Superior Court* (1973) 36 Cal.App.3d 489, 492-5. **ALSO SEE:** *People* v. *Brown* (1979) 88 Cal.App.3d 283, 292 [lawful entry into hospital room when nurse consented and patient did not object].

(3) *People* v. *Thompson* (1990) 221 Cal.App.3d 923, 943-4. Quoting from *State* v. *Seagull* (1981) 95 Wn.2d 898.

(4) See *Oliver* v. *United States* (1984) 466 US 170, 177, 181; *United States* v. *Dunn* (1987) 480 US 294, 300; *California* v. *Ciraolo* (1986) 476 US 207, 213-4; *Dow Chemical* v. *United States* (1986) 476 US 227, 235; *People* v. *Freeman* (1990) 219 Cal.App.3d 894, 901-3; *People* v. *Scheib* (1979) 98 Cal.App.3d 820, 825; *People* v. *Stanislawski* (1986) 180 Cal.App.3d 748, 754; *People* v. *Edwards* (1969) 71 Cal.2d 1096, 1101-4; *Dean* v. *Superior Court* (1973) 35 Cal.App.3d 112. **COMPARE** *Burkholder* v. *Superior Court* (1979) 96 Cal.App.3d 421, 429.

(5) *Oliver* v. *United States* (1984) 466 US 170, 182, fn. 12.

(6) **NOTE:** Channing also argued the "open fields" doctrine should not apply because the area observed by the deputy was within the curtilage. This argument was also refuted by the U.S. Supreme Court when it held that officers who are in "open fields" do not need a warrant to conduct surveillance of activities occurring within the curtilage. See *United States* v. *Dunn* (1987) 480 US 294, 304.