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LEGAL LOG

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In an effort to better disseminate information on legal matters that affect law enforcement officers, we are pleased to present to you the LEGAL LOG.

This publication will be made available to you on a regular basis.

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Henry Ray Wengrow
Legal Counsel

"Open Fields" Doctrine reviewed
Oliver v. U.S. and Maine v. Thornton

The United States Supreme Court recently took the opportunity to review the "Open Fields" doctrine which it had established in the case of Hester v. U.S., 265 U.S. 57 (1924). Basically, the doctrine holds that "open fields" are not an area protected by the Fourth Amendment and hence neither a warrant nor probable cause is required before law enforcement officers may enter and conduct search of this type area. An "open field" is an unoccupied or undeveloped area outside the curtilage of a dwelling. The curtilage is that area immediately surrounding a dwelling house which is used in the everyday enjoyment of the dwelling.

The question of whether marijuana seized growing in a protected field should be suppressed due to the owner's having a "reasonable expectation of privacy" in the field was presented to the court in the cases of Oliver v. U.S. and Maine v. Thornton (35 Cr. L 3011, Nos. 82-15 and 82-1273 respectively). The facts in those cases may be briefly summarized as follows:

In Oliver, agents of the Kentucky State Police, acting on information that the defendant was growing marijuana on his farm, went to the farm and, ignoring a "No Trespassing" sign and a locked gate barring entrance to the suspect field, entered and discovered marijuana growing in a secluded area of the field and seized it.

In Thornton, police officers entered a wooded area behind the defendant's house having received a tip that marijuana was being grown there. Once in the wooded area they discovered a fenced-off area posted with "No Trespassing" signs in which it was determined that marijuana was growing. The officers then obtained a search warrant and the marijuana was seized.

In both cases the defendants asserted that the acts of the officers in discovering the marijuana patches constituted "unreasonable searches" under the Fourth Amendment since they had a "reasonable expectation of privacy" in the areas where the marijuana was being grown as evidenced by the "No Trespassing" signs. The "reasonable expectation of privacy" protection is derived from the U.S. Supreme Court's decision in Katz v. U.S. (389 U.S. 347, (1967)) which held, generally, that a warrantless search is not permissible in any area in which an individual has a "reasonable expectation of privacy" whether the area is in the home or elsewhere.

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In Oliver, the Sixth Circuit Court of Appeals disagreed with the defendant's assertion and the lower District Court's ruling that the field was protected and, as such, was not an "open field" in the meaning of Hester v. U.S. The Court of Appeals thus would have allowed evidence of the marijuana's discovery and seizure into evidence.

In Thornton, the Maine Supreme Judicial Court agreed with the defendant that the field was "protected" and not an "open field" and excluded all evidence related to the discovery and seizure of the marijuana.

The U.S. Supreme Court, in analyzing the lower court's decisions, noted that the Fourth Amendment does not protect mere subjective expectations of privacy, but rather those expectations which society is prepared to recognize as reasonable. The high court went on to say that the test to be used in determining whether a "reasonable expectation of privacy" under Katz exists is not whether an individual chooses to conceal an activity which is asserted to be private. The test which must be employed is whether the Government's intrusion infringes upon personal and societal values which are recognized and protected by the Fourth Amendment. The "expectation of privacy", in order to be protected by the Fourth Amendment, must be a legitimate one.

In the cases before it the court held that neither defendant had a "reasonable expectation of privacy" in the fields where the marijuana was found and seized in spite of the presence of "No Trespassing" signs and further efforts to shield the illegal activity from public view. The "Open Fields" doctrine of Hester is interpreted by the court to mean that an individual may not legitimately demand privacy for activities conducted outdoors except in the area immediately surrounding the home. The court concluded further that open fields do not provide a setting in which intimate activities may be conducted under protection of the Fourth Amendment.

In short, the Court's decision, in ruling that the evidence relating to the marijuana's discovery and seizure should be admissable against both Thornton and Oliver means that a defendant may not claim successfully that a law enforcement officer's warrantless search of his open field is in violation of the Fourth Amendment and that any resulting evidence should be suppressed. Instead, the only area outdoors which is protected by the Katz "reasonable expectation of privacy" standard is that area immediately surrounding the home, or the "curtilage". If an activity does not occur within the curtilage then, under the Hester "Open Fields" doctrine it is subject to warrantless search and seizure by law enforcement officers and any resulting evidence is admissable.

Officers should note, however, that Thornton and Oliver were silent in their holding with respect to sanctions which could be employed against an officer who committed a criminal trespass or other violation in exercising a warrantless search pursuant to the "Open Fields" doctrine. One may assume, however, that since the Court pointed out that "the law of trespass...forbids intrusions upon land the Fourth Amendment would not proscribe", an action for criminal trespass would be available against an officer committing a trespass or other similar violation in execution of an "Open Fields" search. Any evidence seized, however, would be admissable.

As such, coordination should be made locally with Solicitors for guidance and policy within the particular Judicial Circuit concerned. Of date, there are no reported cases in South Carolina authorizing prosecution of a law enforcement officer who conducts the type warrantless search set out above.

LEGAL LOG is published monthly by the South Carolina Criminal Justice Academy of which John A. O'Leary is executive director. The academy's legal affairs and legal instruction are handled by James M. Kirby, senior staff counsel, Henry R. Wengrow, general counsel and William C. Smith, staff counsel.