

**COMMONWEALTH OF THE  
NORTHERN MARIANA  
ISLANDS**

**vs.**

**Daniel A. ATALIG**

**DCA No. 86-9011  
CTC No. 81-116  
District Court NMI  
Appellate Division**

**Decided February 13, 1987**

**1. Appeal & Error - Standard of  
Review - Motion to Suppress**

An appellate court views the evidence in a light most favorable to the government when reviewing the denial of a motion to suppress evidence.

**2. Appeal & Error - Standard of  
Review - Motion to Suppress**

On appeal of a denial of a motion to suppress, where there are no findings of fact and no request has been made for such findings, the lower court will be affirmed if there is a reasonable view of the evidence that will sustain it.

**3. Constitutional Law - Search &  
Seizure - Administrative Searches**

Although generally a search of private property without proper consent is unreasonable absent a valid search warrant, administrative searches are excepted from this general rule, including agricultural quarantine inspections.

**4. Constitutional Law - Search &  
Seizure - Administrative Searches**

Where inspection of defendant's packages was conducted pursuant to an emergency quarantine order issued 78 days earlier, the purpose of the quarantine was to prevent fruit flies on Rota from entering Saipan,

and the order was issued by the Director of the Department of Natural Resources, who had the duty to protect the Commonwealth's agriculture and the authority to promulgate regulations to achieve that end, the warrantless search of defendant's boxes did not offend the mandates of the constitutional prohibition against unreasonable searches and seizures.

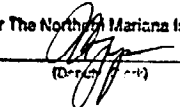
**5. Constitutional Law - Search &  
Seizure - Administrative Searches**  
Consent is not a requirement for an agricultural quarantine inspection.

**6. Constitutional Law - Search &  
Seizure - Administrative Searches**  
Agricultural inspections are proper whether conducted in the place of the quarantine or in a place of entry outside the area of the quarantine.

FILED  
Clerk  
District Court

FEB 13 1987

1 UNITED STATES DISTRICT COURT  
2 FOR THE  
3 NORTHERN MARIANA ISLANDS

For The Northern Mariana Islands  
By   
(D-11-1)

4 APPELLATE DIVISION

5 COMMONWEALTH OF THE NORTHERN )  
6 MARIANA ISLANDS, )  
7 Plaintiff-Appellant, )  
8 vs. )  
9 DANIEL A. ATALIG, )  
10 Defendant-Appellee. )

DCA NO. 86-9011  
CTC NO. 81-116

OPINION

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18 BEFORE: LAURETA and KELLER\*, District Judges, and MUNSON\*\*  
19 LAURETA, District Judge:

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23 \*The Honorable William D. Keller, United States District Judge,  
24 Central District of California, sitting by designation.

25 \*\*The Honorable Alex R. Munson, Chief Justice, Trust Territory  
26 High Court, sitting pursuant to 48 U.S.C. §1694b.

1 Daniel Atalig was charged by information with  
2 possession of marijuana. He made two motions at trial. The  
3 first was for a jury trial and the second was to suppress  
4 evidence obtained against him. Both motions were denied. He  
5 pleaded nolo contendere, reserving the right to appeal the denial  
6 of the two motions.

7 The Appellate Division of the District Court reversed  
8 the trial court's ruling on the jury trial issue and declined to  
9 rule on the propriety of the trial court's ruling on the motion  
10 to suppress the evidence. The Ninth Circuit reversed the  
11 Appellate Division holding that there was no right to a jury  
12 trial. The Supreme Court denied Atalig's petition for writ of  
13 certiorari. The case was remanded to the trial court with  
14 instructions to reconsider the motion to suppress the evidence in  
15 light of the Ninth Circuit's decision in Barusch v. Calvo, 685  
16 F.2d 1199 (9th Cir. 1982). The trial court affirmed its previous  
17 order denying Atalig's motion to suppress the evidence. Atalig  
18 appealed.

19 The issue presented by this appeal is whether a  
20 warrantless search of a person by an agricultural inspection  
21 officer pursuant to an agricultural quarantine measure is valid  
22 within the constraints of the constitutional prohibitions against  
23 unreasonable searches and seizures.

24 For the following reasons we find that the answer to  
25 this question is yes, and we affirm the decision of the trial  
26 court.

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I

FACTS

On June 26, 1981, the Director of the Department of Natural Resources issued a memorandum entitled "Emergency Quarantine." The quarantine placed a prohibition on all shipments of fruits or vegetables from Rota to any other point within the Commonwealth. The discovery of fruit flies on Rota was the justification for this measure. Pursuant to this order, agricultural inspectors on Saipan commenced searching the cargo of every person arriving from Rota.

On September 12, 1981, Atalig arrived at Saipan International Airport on a flight from Rota. He presented two boxes at the customs inspection area to agricultural quarantine inspector Cabrera. Cabrera recognized Atalig as a resident of Rota. Cabrera checked the flight manifest which listed Atalig as having boarded the plane on Rota. Atalig confirmed this, in response to Cabrera's inquiry. Cabrera asked Atalig to open the boxes. Atalig complied. Cabrera found deer meat and five pounds of marijuana inside.

Atalig was charged with possession of marijuana in violation of 63 Trust Territory Code §292(3)(c). He made two motions in the trial court. The first sought a jury trial and the second sought to suppress the evidence obtained at the airport. Both motions were denied. He pleaded nolo contendere and was sentenced to one year imprisonment--- suspended except for the first thirty days--- and a \$1000.00 fine.

1 Atalig appealed the denial of both motions to the  
2 District Court, Appellate Division. The Court found that Atalig  
3 was entitled to a jury trial and reversed the trial court on that  
4 issue. The Court declined to rule on the suppression issue. The  
5 Ninth Circuit reversed the District Court. The Supreme Court  
6 denied Atalig's petition for writ of certiorari. The case was  
7 remanded to the trial court with instructions to reconsider  
8 Atalig's motion to suppress the evidence in light of Barusch v.  
9 Calvo, 685 F.2d 1199 (9th Cir. 1982). The trial court affirmed  
10 its earlier denial of the motion to suppress. Atalig appeals  
11 that order.

12 II

13 STANDARD OF REVIEW

14 [1,2] An appellate court views the evidence in a light most  
15 favorable to the government when reviewing the denial of a motion  
16 to suppress evidence. United States v. Sherman, 430 F.2d 1402,  
17 1404 (9th Cir. 1970) cert. denied, 401 U.S. 908 (1971). Where  
18 there are no findings of fact and no request has been made for  
19 such findings the lower court will be affirmed if there is a  
20 reasonable view of the evidence that will sustain it. United  
21 States v. Montos, 421 F.2d 215,219 n.1 (5th Cir. 1970), cert.  
22 denied, 90 S.Ct. 1262 (1970).

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III

DISCUSSION

[3] Both the United States and the Commonwealth constitutions prohibit government from conducting unreasonable searches and seizures. U.S. Const. Amend. IV; CNMI Const. Art. I, sec. 3; see, Camara v. Municipal Court of the City and County of San Francisco, 87 S.Ct. 1727, 1730 (1967). Generally, a search of private property without proper consent is unreasonable absent a valid search warrant. Camara, 87 S.Ct. at 1731. Excepted from this general rule are administrative searches; for example, agricultural quarantine inspections. United States v. Schafer, 461 F.2d 856 (9th Cir. 1972), cert. denied, 93 S.Ct. 211 (1972).

The facts in Schafer are similar to those herein. There, defendant was subjected to a warrantless agricultural quarantine inspection search before departing Hawaii. The purpose of the search was to discover articles or plant pests that were prohibited from leaving Hawaii. An inspector discovered a grass-like substance he believed to be marijuana inside Schafer's handbag. The inspector called the police, who identified the substance as marijuana. Schafer was arrested and during a subsequent search of his luggage the police found LSD. He challenged the validity of the warrantless search. The district court found that the warrantless search was valid and the Ninth Circuit affirmed.

Borrowing language from Camara, the Ninth Circuit

1 framed the issue as " 'whether the authority to search should be  
2 evidenced by a warrant, which in turn depends in part upon  
3 whether the burden of obtaining a warrant is likely to frustrate  
4 the governmental purpose of the search'." Schafer, 461 F.2d at  
5 858 (quoting Camara, 87 S.Ct. at 1733). The court found that the  
6 inspection was conducted pursuant to a valid regulation. Id. at  
7 858. The purpose of the inspection was to prevent dangerous  
8 diseases and insects from leaving Hawaii. The court determined  
9 that a warrant requirement would frustrate the purpose of the  
10 inspections because of the inordinate delay necessary to obtain  
11 one. Id.

12 The court delineated factors which supported its  
13 decision. First, once the decision to inspect was made there was  
14 no discretion on the part of the individual inspectors regarding  
15 whom to inspect and whom not to inspect. Second, there was no  
16 evidence that the inspections were being conducted for purposes  
17 other than the agricultural quarantine. Id. at 859.

18 [4] The inspection of Atalig's packages was conducted  
19 pursuant to an Emergency Quarantine Order issued 78 days earlier.  
20 The purpose of the quarantine was to prevent fruit flies on Rota  
21 from entering Saipan. The order was issued by the Director of  
22 the Department of Natural Resources, who had the duty to protect  
23 the Commonwealth's agriculture and the authority to promulgate  
24 regulations to achieve that end. Atalig does not argue that the  
25 order was invalid. Nor does he argue that the inspection was  
26 conducted merely as a pretext to carry out a criminal

1 investigation. There is no evidence in the record that that was  
2 its intent. In fact, the trial court specifically found that  
3 Atalig was searched only because he had boarded in Rota. Under  
4 Schafer, the warrantless search of Atalig's boxes does not offend  
5 the mandates of the constitutional prohibition against  
6 unreasonable searches and seizures.

7 Atalig argues that the search was unreasonable and  
8 therefore unconstitutional because he did not consent to it. He  
9 bases this argument on the fact that he was not given notice on  
10 Rota that he would be searched on Saipan. Further, once he  
11 arrived on Saipan he was not informed that he could return to  
12 Rota and avoid the search. He cites United States v. Davis, 482  
13 F.2d 893 (9th Cir. 1973), in support of this argument. Davis  
14 involved the suppression of evidence seized at a pre-boarding  
15 security checkpoint. The Ninth Circuit stated that the  
16 constitutionality of such searches was dependent upon a  
17 passenger's consent to be searched. The court reasoned that  
18 consent could be vitiated, however, should the passenger choose  
19 not to board the aircraft. Id. at 911. At page 910 the court  
20 stated:

21 In this and other relevant respects, the  
22 airport search program is indistinguishable,  
23 for Fourth Amendment purposes, from the  
24 warrantless screening of air passengers and  
25 their luggage for plant pests and disease  
26 approved in United States v. Schafer, 461  
F.2d 856 (9th Cir. 1972)(footnote omitted).

25 A careful reading of Davis illustrates that the  
26 language, "[i]n this and other relevant respects", linking



1 airport screening searches to quarantine inspection searches,  
2 refers to the following factors:

- 3 1. Lack of discretion by inspectors  
4 concerning whom to search.
- 5 2. Frustration of purpose of the search by  
6 a requirement that a warrant first be  
7 obtained.
- 8 3. Adequate statutory and regulatory  
9 foundations for the programs.

10 Thus, the court was not saying that these two types of  
11 administrative searches should be scrutinized using the same  
12 standard, but only that in many respects they were similar.


13 [5] . But Schafer is more akin to the facts herein. In  
14 Schafer there was neither consent nor a search warrant. However,  
15 the court concluded that the agricultural quarantine inspection  
16 search conducted there was valid because it fell within that  
17 class of cases which is excepted from the search warrant/consent  
18 requirement. We infer from the conclusion drawn in Schafer that  
19 consent is not a requirement for an agricultural quarantine  
20 inspection and reject on this ground Atalig's consent argument.

21 [6] Atalig also finds error in the Department of Natural  
22 Resources' decision to conduct inspections on Saipan rather than  
23 Rota. He asserts that it was more logical to have the baggage  
24 checked on Rota than Saipan. This may be true but it does not  
25 render the search on Saipan constitutionally infirm. Agriculture  
26 inspections are proper whether conducted in the place of the  
quarantine or in a place of entry outside the area of the  
quarantine. See, People v. Dickinson, 163 Cal.Rptr. 575, 579


1 (Ct. App. 1980).

2 Schafer instructs that agricultural quarantine  
3 inspections are an exception to the Fourth Amendment's warrant  
4 requirement. We now follow Schafer. For the foregoing reasons,  
5 the trial court's decision is AFFIRMED.

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JUDGE ALFRED LAURETA

  
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JUDGE WILLIAM D. KELLER

  
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JUDGE ALEX R. MUNSON