

JAN 18 2008

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DWIGHT JOSEPH MARTIN,

Defendant - Appellant.

No. 06-10571

D.C. No. CR-03-00193-SOM

MEMORANDUM*

Appeal from the United States District Court
for the District of Hawaii
Susan Oki Mollway, District Judge, Presiding

Argued and Submitted January 14, 2008
San Francisco, California

Before: NOONAN, W. FLETCHER, and IKUTA, Circuit Judges.

Dwight Martin appeals the district court's denial of his motion to suppress evidence obtained pursuant to a police officer's warrantless entry into his home.

Absent exigency or consent, a warrantless search of a home violates the Fourth

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

Amendment, and evidence recovered in such a search must be suppressed. *See United States v. Shaibu*, 920 F.2d 1423, 1425 (9th Cir. 1990). The district court found that Martin had consented to the police entry into his home. We review this factual determination for clear error. *Id.*

Martin's statement to the police officer that "we" need to go into the house to recover the rifle that Martin had fired was sufficient to ground an inference of consent. Further, the totality of the circumstances does not indicate that Martin's agreement was coerced. Therefore, the district court did not clearly err in finding consent.

We AFFIRM.