

**COMMONWEALTH OF THE
NORTHERN MARIANA
ISLANDS**

**vs.
Eung Chan KIM**

**Traffic Case No. 87-1907
Commonwealth Trial Court**

Decided November 18, 1987

1. Criminal Procedure - Motion to Suppress - Hearing

An evidentiary hearing is required on a motion to suppress only when necessary to receive evidence on an issue of fact and the party requesting a hearing bears the burden of showing that there are disputed material facts.

2. Criminal Procedure - Motion to Suppress - Hearing

On a motion to suppress, an evidentiary hearing is not held as a matter of course, but is held only when the defendant alleges sufficient facts which, if proven, would justify relief.

3. Criminal Procedure - Motion to Suppress - Allegations

Factual allegations set forth in a motion to suppress, including any accompanying affidavits, must be sufficiently definite, specific, detailed, and nonconjectural, and not founded upon mere suspicion or conjecture, to enable the court to conclude that a substantial claim is presented.

4. Evidence - Affidavits

An affidavit is no place for ultimate facts or conclusions of law.

5. Evidence - Affidavits

Opinion testimony that would not be admissible, if testified to at trial, may not properly be set forth in an affidavit.

6. Evidence - Affidavits

When ultimate facts or law appear in an affidavit, which also contains the proper subject of affidavit testimony - facts within the personal knowledge of the affiant - the extraneous material should be disregarded and only the facts considered.

7. Criminal Procedure - Motion to Suppress - Hearing

Inherent in the flexible guidelines on a motion to suppress is a judicial recognition that the determination of whether a hearing is required on a motion to suppress is necessarily dependent upon the particular facts which attend a particular request, and the court is properly left with a certain amount of discretion in this regard.

8. Criminal Procedure - Motion to Suppress - Hearing

On a motion to suppress, where the affidavit of the defendant fails to allege any facts which, if proven, would justify relief, the court need not even entertain the motion.

REQUIREMENTS FOR MOTION TO SUPPRESS EVIDENCE

[1,2] An evidentiary hearing is required on a motion to suppress only when necessary to receive evidence on an issue of fact. The party requesting a hearing bears the burden of showing that there are disputed material facts. Matter of Searches and Seizures Conducted, etc., (7th Cir., 1981) 665 F.2d 775, 776.

[3] Evidentiary hearings are not held as a matter of course, but are held only when the defendant alleges sufficient facts which, if proven, would justify relief. U.S. v. Harrelson, (5th Cir., 1983) 705 F.2d 733, 737.

Factual allegations set forth in the defendant's motion, including any accompanying affidavits, must be "sufficiently definite, specific, detailed, and nonconjectural, to enable the court to conclude that a substantial claim is presented." U.S. v. Poe, (5th Cir., 1972) 462 F.2d 195, 197, cert. denied, 414 U.S. 845, 94 S.Ct. 107, 38 L.Ed.2d 83 (1973); (quoting from Cohen v. U.S., (9th Cir., 1967) 378 F.2d 751, 761, cert. denied, 389 U.S. 897, 88 S.Ct. 217, 19 L.Ed.2d 215 (1967)). General or conclusionary assertions, founded upon mere suspicion or conjecture, will not suffice. U.S. v. Migely, (1st Cir., 1979) 596 F.2d 511, 513; 3 C. Wright, Federal Practice and Procedure: Criminal 2d, § 675 (1982).

[4-6] With regard to accompanying affidavits, it should be noted that the affidavit is no place for ultimate facts or conclusions of law. 6 Moore's Federal Practice, Pt.2, ¶ 56.22[1] at 56-1316 (Supp., 1979) and cases cited therein.

Opinion testimony that would not be admissible, if testified to at trial, may not properly be set forth in an affidavit. DePinto v. Provident Sec. Life Ins. Co., (9th Cir., 1967), 374 F.2d 50, 55. More is required of an affiant than legal conclusions. Doff v. Brunswick Corp., (9th Cir., 1967) 372 F.2d 801, 804. When ultimate facts of law appear in an affidavit which also contains the proper subject of affidavit testimony, facts within the personal knowledge of the affiant, the extraneous material should be disregarded and only the facts considered. A.L. Pickens Co. v. Youngstown Sheet and Tube Co., (6th Cir., 1981) 650 F.2d 118, 121.

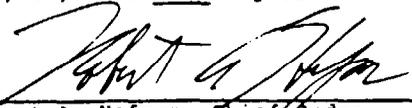
[7] Inherent in the flexible guidelines on a motion to suppress is a judicial recognition that the determination of whether a hearing is required on a motion to suppress is necessarily dependent upon the particular facts which attend a particular request, and the court is properly left with a certain amount of discretion in this regard. U.S. v. Losing, (8th Cir., 1976) 539 F.2d 1174, 1178.

CONCLUSION

[8] The affidavit of the defendant fails to allege any facts which, if proven, would justify relief. In such a case, the court need not even entertain the motion.

Defendant's motion to suppress is denied.

Dated at Saipan, CM, this 18th day of November, 1987.


Robert A. Hefner, Chief Judge