

NOT FOR PUBLICATION

DISSENTING OPINION BY LIM, J.

By his actions, Reynaldo Cuntapay (Cuntapay) exhibited an actual, subjective expectation of privacy in the garage and its washroom. Given our island weather and customs -- in which many Hawai'i families spend their leisure time at home in the garage as other families in less temperate climes might spend their leisure time at home in the parlor -- that expectation is one that our society is prepared to recognize as reasonable. State v. Vinuya, 96 Hawai'i 472, 482-83, 32 P.3d 116, 126-27 (App. 2001). To be sure, no one -- not even a police officer -- enters a Hawai'i garage without consent, and anyone who enters unbidden is informed of the transgression in no uncertain terms. Cuntapay could partake of that societal expectation because he was a social guest in the garage at least once or twice a week, a status far exceeding "one merely legitimately on the premises[.]" Minnesota v. Carter, 525 U.S. 83, 91 (1998) (internal quotation marks omitted) (defendants were in an apartment they had never before visited, bagging cocaine for two-and-a-half hours, and had "paid" the lessee for the privilege), and approaching, if not surpassing, a one-time, "overnight guest[.]" Minnesota v. Olson, 495 U.S. 91, 98 (1990). Indeed, in light of our expansive island interpretation of 'ohana, the frequency of Cuntapay's visits signifies "a degree of acceptance into the household." Carter, 525 U.S. at 90 (footnote omitted). Given that the police had

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neither authority of applicable warrant nor probable cause and any exceptionable circumstance to enter the garage, much less the washroom, cf. Payton v. New York, 445 U.S. 573, 576 (1980) (in the absence of exigent circumstances, and even with probable cause, the police may not make a warrantless and nonconsensual entry into a suspect's home to effect a routine felony arrest), I would affirm, and therefore respectfully dissent.