FOR PUBLICATION

THE SUPERIOR COURT
FOR THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS, Plaintiff, v. CORNIELLE CHURCH, Defendant.	**CRIMINAL CASE NO. 01-0412** **ORDER GRANTING DEFENDANT'S MOTION TO SUPPRESS EVIDENCE**

I. PROCEDURAL BACKGROUND

This matter came before the Court on May 15, 2002, in Courtroom 217 at 9:00 a.m. on Defendant Cornielle Church's [hereinafter Defendant] Motion To Suppress Statements/Evidence. Assistant Attorney General Barry A. Hirshbein appeared on behalf of the Commonwealth [hereinafter Prosecution], and Joe Hill, Esq. appeared on behalf of Defendant. The Court, having considered the arguments of counsel, and being fully informed of the premises, now renders its written decision.

II. FACTS

On September 5, 2001, at approximately 2:00 a.m., two off-duty police officers witnessed a man entering a vehicle after apparently having just committed a robbery. The officers gave chase, in their personal vehicle, and called the Department of Public Safety [hereinafter DPS] to inform them that they were in pursuit. Although the vehicle managed to elude the officers, they were able to get a description and a license plate number.

On September 14, 2001, Defendant was driving up Navy Hill in the suspect vehicle when he was pulled over by a DPS officer. The officer claims he had been authorized to make a "violator's stop," a generic term commonly used by DPS for making a stop when there is reasonable suspicion that a crime has been committed. No warrant had been issued for the car or the Defendant.

1 Defendant claims that he was stopped at approximately 3:38 p.m. while on his way to pick up some
2 transcripts at Grace Christian Academy, which closed at 4:00 p.m. that day. The Prosecution claims a
3 clerical error was made in the police report by recording 15:38 hrs (3:38 p.m.), rather than the actual
4 time of 17:38 hrs (5:38 p.m.). In light of testimony and evidence on record, particularly the DPS Radio
5 Log Sheet for 9-14-01 (Ex.A) attached to the Declaration of [detective] Jeffrey Olopai (May 2,
6 2002), the Court finds that the actual time of the stop was approximately 5:40 p.m.

7 The officer ordered Defendant to turn off his car then asked for his license and registration.
8 Defendant asked the officer why he had been stopped. The officer responded by telling the Defendant
9 to stay calm and wait for the other officers to arrive. Within a few minutes there were two additional
10 officers on the scene parking their cars around the Defendant's vehicle. Shortly thereafter, a police
11 detective arrived on the scene. Defendant got out of his car and made several demands to know why
12 he had been stopped. One of the officers told Defendant that the vehicle he was driving had been
13 identified as one used in the commission of a crime. The Defendant was neither arrested nor
14 immediately charged with any crime. He was not advised of his constitutional rights at the stop, nor led
15 to believe that he was free to leave at any time.

16 A police detective transported Defendant to DPS headquarters in Susupe, while his vehicle was
17 impounded. At DPS headquarters, Defendant sat in a detective's office for approximately forty minutes
18 before he was subjected to an "interview." The detective's declaration states that during this time he
19 was ". . . going back and forth to the impounded vehicle, meeting with [his] supervisor and taking care
20 of other matters relating to the incident." *See* Declaration of Jeffrey Olopai (May 2, 2002) at 2. The
21 detective's testimony revealed that it was his hope that this "interview" would produce some information
22 about the robbery which had taken place on September 5, 2001. He also indicated that he told the
23 Defendant that "[he] knew that the car he was driving had been used in a robbery." *Id.* at 3.

24 Approximately two hours after the stop, around 7:45 p.m., Defendant made an exculpatory
25 statement to the effect that "he was not the one that took the purse." Before the Defendant could say
26 anything else, the detective stopped the interview. The detective then read from a DPS constitutional
27 waiver form while Defendant followed along on an identical form and wrote "yes" to items one through
28 eight and initialed next to his answers. *See* DPS form *Your Constitutional Rights*, Def. Ex. 1. Items

one through eight on the form are statements meant to apprise a suspect of his constitutional rights as set out in *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966), followed by the question, "*[d]o you understand?*" Item nine on the form is a question: "*[k]nowing these rights, do you want to talk to me without having a lawyer present?*" *See Id.* Defendant wrote "yes" to the question, as he had to the previous eight statements and then started to sign the form on the line that indicates evocation of his constitutional rights. At this point, the detective stopped Defendant, pointed to the bottom of the page, and directed him to sign on the line labeled "S*ignature of Person Interviewed*" as opposed to the line directly above it labeled, "S*ignature of Arrested Person.*" *See* DPS form *Your Constitutional Rights*, Def. Ex. 1.

When the form was filled out, Defendant proceeded to cooperate with the detective by making a statement identifying a co-defendant and describing in detail the events of September 5, 2001. After making the statement, he was escorted to the scene of the crime to demonstrate how the events had taken place. He also took the officers to the place where he claims they had disposed of the victim's purse, although it was never located.

Defendant was escorted to his residence at approximately 10:30 p.m. by the police without being arrested. Defendant's car remained impounded at DPS.

Defendant and co-defendant were subsequently charged with robbery, conspiracy, assault and battery, theft, disturbing the peace, resisting arrest, and reckless driving.

III. ISSUE

Whether the Defendant was lawfully detained pursuant to 6 CMC § 6103(d) for an investigative interview, or whether Defendant was in custody and subjected to police interrogation, requiring a knowing, voluntary, and intelligent waiver of his constitutional privilege against self-incrimination.

IV. ANALYSIS

A. Detention Under 6 CMC § 6103(d)

The Commonwealth Criminal Code provides for the temporary detention of persons "who may be found under such circumstances as [to] justify a *reasonable suspicion* that they have committed or intend to commit a felony." *See* 6 CMC § 6103(d) (emphasis added). The Prosecution argues that

under 6 CMC § 6103(d) and 6 CMC § 6105(a)(3), the DPS were justified in stopping and detaining the Defendant for up to twenty-four hours for examination purposes. The Prosecution also states that the Defendant was neither arrested, nor a suspect at the time he was detained.

This argument fails for two reasons. First of all, to say that the Defendant was not a suspect at the time he was stopped is not convincing in light of the evidence. There had been a robbery with a positive identification of a vehicle, including a license plate number, nine days before the stop. There was ample time, and probable cause, for DPS to get a warrant for the vehicle. The Fourth Amendment of the U.S. Constitution protects citizens from unreasonable searches and seizures. The Constitution requires that "the deliberate, impartial judgment of a judicial officer . . . be interposed between the citizen and the police." *See Wong Sun v United States*, 371 U.S. 471, 481-82, 83 S. Ct. 407, 414, 9 L. Ed. 2d 441 (1963). The United States Supreme Court has repeatedly emphasized the importance of prior approval by a judge.or a magistrate, for protection of fourth amendment rights, and has declared "searches conducted outside the judicial process, without prior approval by a judge or magistrate, are *per se* unreasonable under the Fourth Amendment - - subject only to a few specifically established and well-delineated exceptions." *See Katz v. United States*, 389 U.S. 347, 357, 88 S. Ct. 507, 514, 19 L. Ed. 2d 576, 585 (1967) (citations omitted). In this case, DPS simply followed the vehicle and made a so-called "violator's stop" even though it is stipulated that the Defendant had not violated any traffic laws. They immediately seized the vehicle and the Defendant. In other words, DPS had much more than the "reasonable suspicion" required under 6 CMC § 6103(d). Had they followed the proper procedure and presented an impartial judicial officer with an affidavit asserting probable cause, the evidence shows that a warrant would almost definitely have been issued for the vehicle used in the robbery.

Secondly, the Prosecution's reliance on 6 CMC § 6105(a)(3) is misplaced. That section applies to persons who are arrested. The Prosecution and DPS both argue that the Defendant was never arrested, only detained. Therefore, the twenty-four hour time limit set out in 6 CMC § 6105(a)(3) is inapplicable to this case, and certainly not dispositive of the time element issue, as it pertains to the Defendant's waiver of his constitutional rights.

Finally, the purpose 6 CMC § 6103(d) is to authorize DPS to detain persons on the basis of an

immediate perception that a felony has been committed or is about to be committed. Reasonable suspicion falls short of probable cause. It is the immediacy of a situation that gives police the authority to make these kinds of stops under 6 CMC § 6103(d). In most other situations, suspects should be arrested on warrants, supported by probable cause, and apprised of their *Miranda* rights before questioning.

It is interesting to note that the current subsection (d) of section 6103 was derived from 12 TTC § 61(4) which provided that police ". . . may, without a warrant, *arrest and detain* for examination persons . . ." The Commonwealth code now reads, "may, without a warrant, *temporarily detain* for examination persons . . ." *See* 6 CMC § 6103(d) (emphasis added). The only other change to 12 TTC § 61 was the title. It changed from "*Authority to arrest without a warrant*" to "*Authority to Arrest* ***or Detain*** *Without a Warrant*." *See* 12 TTC § 61 and 6 CMC § 6103 (emphasis added). The only clue as to why, or when, such a significant change took place lies within the Commission Comment following the statute, which states: "[i]n subsection (d), the commission substituted 'temporarily detain for examination' in place of 'arrest and detain for examination.' See *Terry v. Ohio*, 392 U.S. 1 (1968)." There is no Commonwealth public law cited that provides an effective date for this change, and the *Terry v. Ohio* case cited, grants only a very narrow exception to the general "probable cause" jurisprudence of the Supreme Court.

> We merely hold today that where a police officer observes unusual conduct which leads him reasonably to conclude in the light of his experience that criminal activity may be afoot and that the persons with whom he is dealing may be armed and presently dangerous, . . . he is entitled for the protection of himself and others . . . to conduct a carefully limited search of the outer clothing . . . to discover weapons which might be used to assault him.

Terry v. Ohio, 392 U.S. 1, 30, 88 S.Ct. 1868, 1884-85, 20 L. Ed. 2d 889, 911 (1968).

Suffice it to say, that the constitutionality of this statute has been questioned before. "[Yan] also raises the following issues . . . (3) whether the court 'erred by failing to dismiss or suppress evidence based upon the unconstitutionality of 6 CMC § 6103'." *See Commonwealth v. Yan*, 4 N.M.I.334, 335 n.1 (1996).

As in *Yan*, there is no occasion in this case to reach the constitutionality of 6 CMC § 6103(d) since the Court finds that DPS should have secured a warrant in the first instance to seize the vehicle.

1 *See Wabol v. Villacrusis*, 4 N.M.I. 314, 319 (1995) (court will not "unnecessarily resolve
2 constitutional issues"). There was ample time for DPS officers between the robbery on September 5,
3 and the stop on September 14, to secure a warrant, supported by probable cause, for the vehicle
4 before it was seized.

5 **B. Defendant Was In Custody When He Entered the Police Vehicle**

6 *Miranda* warnings must be given when a defendant is subject to police interrogation while in
7 custody. *See Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct 1602, 16 L. Ed. 2d 694 (1966). Whether
8 a suspect was in custody for purposes of determining whether the government discharged its duty to
9 apprise the accused of his or her constitutional rights is a question of law. *See United States v. Kahn*,
10 993 F.2d 1368, 1375 (9th Cir. 1993). "In determining whether custody exists, a court must decide
11 whether there was a 'formal arrest or restraint on the freedom of movement of the degree associated
12 with a formal arrest'." *See Commonwealth v. Ramangmau*, 4 N.M.I. 227, 235 (1995) (*citing*
13 *California v. Beheler*, 463 U.S. 1121, 1125, 103 S. Ct. 3517, 3520, 77 L. Ed. 2d 1275, 1279
14 (1983)(per curiam)). The Court in *Ramangmau* stated that the test for custody is "whether a
15 reasonable person in the defendant's position would believe that he or she was in police custody of the
16 degree associated with a formal arrest." *See Id.* at 235 *(citing Connecticut v. DesLaurier*, 646 A.2d
17 108, 111 (Conn. 1994).

18 In the instant case, Defendant was pulled over on the prior identification of a vehicle used in a
19 robbery. Defendant asked why he was stopped, but was told to wait for other officers to arrive.

20 Defendant was moved from his car and told to stand away from it. Finally, there were four
21 officers on the scene and Defendant was asked to get into the car with the police detective. The scene
22 was police dominated, and his vehicle was surrounded by parked police vehicles. The test set out in
23 *Ramangmau* leads this Court to conclude that Defendant's belief that he was in police custody, in light
24 of all the circumstances, was reasonable. The trial court in *Ramangmau* found that the defendant was
25 considered in "custody" when he was asked to get into the police car to go to DPS headquarters. *See*
26 *Ramangmau*, 4 N.M.I. at 235. Based on the forgoing, the Court concludes that when Defendant
27 entered the detective's car he was in police custody.

28 **C. Defendant's Statements Were "Fruit of a Poisonous Tree"**

The proscription on the use of evidence derived from an illegal search and seizure is known as the "fruit of the poisonous tree" doctrine. *See Wong Sun v. United States*, 371 U.S. 471, 484-85, 83 S. Ct. 407, 416, 9 L. Ed. 2d 441, 454 (1963). A court must evaluate whether the illegal search or seizure tended to significantly direct the government toward discovery of the specific evidence being challenged. *See United States v. Cales*, 493 F.2d 1215 (9th Cir. 1974). Fruits of police illegality may not be "poison" if they have "fallen far from the tree," or if some subsequent factor intervenes in the sequence of events. *See Brown v. Illinois*, 422 U.S. 590, 603-04, 95 S. Ct. 2254, 2261-62, 45 L. Ed. 2d 416, 427 (1975).

In the present case, Defendant was taken into custody without a warrant. He was not apprised of his *Miranda* rights until he had been in custody for over two hours. During this time, there is evidence that the police made some improper promises to defendant, to allegedly get his cooperation in their investigation of the robbery. The record shows that Defendant was given back some of his personal belongings from the seized vehicle, including a diving knife. He was told that he would get his car back that night after the interview. Such actions may have engendered trust in the Defendant that the police were "on his side," and were acting in his best interests. There is also evidence that some beer was taken from the seized vehicle which was never returned. Collectively, these facts lead the Court to conclude that there was never attenuation of the primary taint of Defendant's illegal detention, to preclude suppression of Defendant's statements.

Defendant's brief is persuasive in analogizing these facts with those in the *Brown* case:

> Thus, even if the statements in this case were found to be voluntary under the Fifth Amendment, the Fourth Amendment issue remains . . . *Wong Sun* requires not merely that the statement meet the Fifth Amendment standard of voluntariness but that it be "sufficiently an act of free will to purge the primary taint" . . . *Wong Sun* thus mandates consideration of the statement's admissibility in light of the distinct policies and interest of the Fourth Amendment.

Brown v Illinois, 422 U.S. 590, 601-02, 95 S. Ct. 2254, 2261, 45 L. Ed. 2d 416, 426 (1975).

Miranda warnings, by themselves, are not enough to attenuate the taint of an unconstitutional arrest, and the effect of the exclusionary rule would be substantially diluted if Fourth Amendment procedures could be circumvented simply by reading the defendant his rights. *Brown,* 422 U.S. at 602, 95 S. Ct. at 2261. 45 L. Ed. 2d at 426. The Court finds that the Defendant's constitutional right against

unreasonable searches and seizures was violated, and that all evidence secured by DPS while Defendant was in custody shall be excluded.

Evidence on record, and testimony of the witnesses, support suppressing Defendant's statement given while in custody, beginning from the moment he got into the detective's car. It also supports suppression of the physical acts of Defendant when escorting the police to the scene of the robbery, and subsequently, to where the purse was allegedly disposed of.

For the reasons stated above, the Court hereby GRANTS Defendant's Motion to Suppress Statement/Evidence gathered in violation of his Fourth Amendment right against unreasonable search and seizure.

SO ORDERED this 2nd day of July 2002.

/s/ Juan T. Lizama
JUAN T. LIZAMA, Associate Judge