

FOR PUBLICATION

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IN THE SUPERIOR COURT
FOR THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

BY *D*

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS,)	CRIM. CASE NO. 14-0136-C
)	
Plaintiff,)	ORDER GRANTING IN PART
)	DEFENDANT'S MOTION TO SUPPRESS
v.)	EVIDENCE BECAUSE DIVISION OF
)	FISH & WILDLIFE CONSERVATION
VILLAGOMEZ, ANGELO IGNACIO C.)	OFFICERS ONLY HAVE LIMITED
)	POLICE POWERS
Defendant.)	

I. INTRODUCTION

This matter came before the Court for the Defendant's motion to suppress statements on March 25, 2015 at 9:00 a.m. in Courtroom 220. Angelo Ignacio C. Villagomez ("Defendant") was present and was represented by Assistant Public Defenders Eden Schwartz and Michael Sato. The Commonwealth was represented by Assistant Attorney General Clayton Graef.

On March 5, 2015, the Defendant filed his motion to suppress evidence. The Commonwealth filed its opposition to the motion to suppress evidence on March 18, 2015. The Defendant also filed a motion to suppress statements on March 19, 2015, and the Commonwealth filed its opposition on March 25, 2015. This order will only address the motion to suppress evidence. The motion to suppress statements was decided separately on April 29, 2015.

Based on a review of the filings, oral arguments, and applicable law, the Court **GRANTS IN PART** the Defendant's motion to suppress evidence.

1 **II. BACKGROUND**

2 At the March 25, 2015 hearing, Division of Fish and Wildlife (“DFW”)¹ Officer Erwin
3 Flores² testified about the events on the night of December 15, 2014. DFW had received a call from
4 a concerned citizen, reporting that the Defendant had been fishing at Lau Lau Beach with a gill net,³
5 selling the fish, and using the proceeds to buy methamphetamine. The concerned citizen also
6 reported that the Defendant would bring a .22 rifle with him to Lau Lau Beach. Officer Flores
7 investigated this tip by speaking to the concerned citizen and checking DFW records to see if the
8 Defendant had a permit for a gill net, and conducted surveillance on three separate dates: December
9 9, 2014, December 12, 2014, and December 15, 2014. On December 9, 2014 and December 12,
10 2014, Officer Flores observed the Defendant using the gill net at Lau Lau Beach. On December 15,
11 2014, Officer Flores was conducting his third surveillance of the Defendant.

12 On the evening of December 15, 2014, the Defendant had finished fishing at Lau Lau Beach
13 and had loaded his equipment in his truck. Officer Flores was watching in an unmarked DFW
14 vehicle. As the Defendant left the beach, Officer Flores intercepted him on the road heading out
15 from the beach. Officer Flores drove up behind the Defendant in an unmarked vehicle, while two
16 marked DFW vehicles stopped in front of the Defendant and flashed their emergency lights. Officer
17 Flores approached the Defendant’s truck from behind with a flash light, where he saw a gill net
18 with fish in the bed of the truck.

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22 ¹ DFW is a division of the CNMI Department of Lands and Natural Resources.

23 ² Officer Flores is a conservation officer with DFW. DFW conservation officer powers are outlined in 2 CMC § 5103.

24 ³ According to Officer Flores, a special type of permit is required to use a gill net, and the fish caught is typically intended for large community events. Under NMIAC §85-30.1-401(a)(2), gill nets may not be used to fish in the Commonwealth. Under NMIAC §85-30.1-405(e), there may be exemptions allowing the use of prohibited nets “for ceremonial purposes when cultural practices warrant an exemption, such as for a funeral or fiesta. The Secretary must specify the extent and duration of the exemption in writing and this information must accompany the recipient of the exemption at the time the net fishing is undertaken.”

1 Officer Flores approached the driver's side window and asked the Defendant to put his
2 hands on the steering wheel. Officer Flores then told the Defendant that he was under arrest, and
3 pulled him from the cabin of the truck. Officer Flores advised the Defendant of his rights, then
4 secured him in the back of one of the marked DFW vehicles. Shortly thereafter, Officer Flores
5 inspected the interior of the truck's cabin, where he found receipts from two fish markets, some of
6 which were located inside the center console. These receipts showed that fish had been sold to these
7 markets, but not how the fish had been caught or by whom. Officer Flores also found q-tips, a
8 needle/wire, lighters, and a pouch containing a pipe wrapped in a tissue that appeared to have a
9 controlled substance on it. Officer Flores then asked the Defendant, who was still sitting in the back
10 of the marked DFW vehicle, if the pipe belonged to him. Following this, the DFW conservation
11 officers took the Defendant back to the DFW Office at Lower Base. Officer Flores was not in the
12 vehicle with the Defendant during the drive. At Lower Base, DFW Officers searched the
13 Defendant's vehicle.

14 Officer Flores is a conservation officer with DFW. Officer Flores is not a police officer with
15 the Department of Public Safety ("DPS"). Conservation officers are not required to go to the police
16 academy, although they do have some police training. Officer Flores testified that he had received
17 police training in 1999 and 2006, and that he had participated in 150 criminal cases, 32 of which
18 were drug cases. In addition, Officer Flores indicated that conservation officers have **never**
19 confiscated a vehicle or boat, nor do they conduct searches of vehicles or boats for inventory
20 purposes. There is no standard impound policy in place at DFW. Officer Flores also indicated that
21 he did not notify DPS about the controlled substance or potential firearm aspect of this case until
22 after the Defendant had been arrested, advised of his rights at the scene at Lau Lau and at Lower
23 Base, and the vehicle had been searched at Lau Lau and at Lower Base.

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1 Defendant is moving to suppress any evidence seized as the result of any unlawful search of
2 his vehicle on December 15, 2014.

3 4 III. LEGAL STANDARD

5 Unreasonable searches and seizures are prohibited under both the Fourth Amendment of the
6 United States Constitution and Article I, Section 3 of the Commonwealth Constitution. Evidence
7 obtained in violation of the Fourth Amendment must be suppressed. *Mapp v. Ohio*, 367 U.S. 643
8 (1961). Warrantless searches are “*per se* unreasonable under the Fourth Amendment – subject only
9 to a few specifically established and well-delineated exceptions.” *Arizona v. Gant*, 556 U.S. 332,
10 338 (2009) (quoting *Katz v. United States*, 389 U.S. 347, 357 (1967)). One exception is the plain
11 view exception. “Under the plain view exception, an officer may search, and seize, contraband that
12 ‘is left in open view and is observed by a police officer from a lawful vantage point.’”
13 *Commonwealth v. Fu Zhu Lin*, 2014 MP 6 ¶ 27 (quoting *Minnesota v. Dickerson*, 508 U.S. 366, 375
14 (1993)).

15 Another exception is the automotive exception, which states that “[i]f probable cause
16 justifies the search of a lawfully stopped vehicle, it justifies the search of every part of the vehicle
17 and its contents that may conceal the object of the search.” *U.S. v. Ross*, 456 U.S. 798, 824 (1982).
18 However, the warrantless search of a vehicle is “defined by the object of the search and the places
19 in which there is probable cause to believe that it may be found.” *Id.* For example, “[p]robable
20 cause to believe that a container placed in the trunk of a taxi contains contraband or evidence does
21 not justify a search of the entire cab.” *Id.*

22 Probable cause requires “a fair probability that contraband or evidence of a crime will be
23 found in a particular place.” *Illinois v. Gates*, 462 U.S. 213, 238 (1983). Probable cause is examined
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1 under a totality of the circumstances. “[P]robable cause is a fluid concept—turning on the
2 assessment of probabilities in particular factual contexts.” *Id.* at 230-232.

3 The Director of DFW, along with conservation officers, enforce the Fish, Game and
4 Endangered Species Act. 2 CMC § 5101 et seq. Conservation officers working for DFW “are
5 deemed law enforcement officers and shall have the powers of law enforcement officers to carry
6 arms and to make arrests, pursuant to law, for any violation of [the Fish, Game and Endangered
7 Species Act] or of any regulation issued pursuant to this chapter.” 2 CMC § 5103(b). DPS may
8 assist conservation officers “when necessary to the performance of their duties under this chapter,”
9 2 CMC § 5103(d)(1). The Director of DFW may “delegate concurrent jurisdiction to the Director of
10 Public Safety” for the purposes of enforcing the Fish, Game and Endangered Species Act. 2 CMC §
11 5103(d)(2).⁴

12 Inventory searches of vehicles are reasonable when they are completed “pursuant to
13 standard police procedures.” *South Dakota v. Opperman*, 428 U.S. 362, 372 (1976). The inventory
14 search exception is based upon “three distinct needs: the protection of the owner’s property, while it
15 remains in police custody; the protection of the police against claims or disputes over lost or stolen
16 property; and the protection of the police from potential danger.” *Fu Zhu Lin*, 2014 MP 6 ¶ 29 n3
17 (quoting *Opperman*, 428 U.S. at 369). DPS may impound vehicles “driven or operated by motorists
18 who during the operation of said vehicles, violate Title 6 and/or Title 9 of the CNMI Code,”
19 including vehicles involved in the “sale, receipt, possession or concealment of controlled
20 substances.” 6 CMC 2151 (a)(1). There is no corresponding impound statute for DFW.

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23 ⁴ DPS authority is far broader than that of DFW. Duties and responsibilities assigned to DPS are outlined in 1 CMC §
24 2504. Unlike DFW conservation officers, whose duties are expressly limited by statute, DPS duties “include but are not
limited to” the duties outlined under 1 CMC § 2504. The duties outlined in 1 CMC § 2504 range from providing police
protection to “providing for the civil defense of the Commonwealth” to enforcing traffic laws. This contrasts with DFW
conservation officers, who are limited to conservation related authority under 2 CMC § 5103.

1 Conservation officers may seize fish and game acquired in violation of the Fish, Game and
2 Endangered Species Act. 2 CMC § 5109(f)(1). Likewise, “[a]ny gun, trap, net or other equipment,
3 other than a vessel, vehicle, air-craft, or other means of transportation, used to aid” in the
4 possession, taking, or transport of fish and game in violation of the Fish, Game, and Endangered
5 Species Act may be subject to forfeiture to the Commonwealth. 2 CMC § 5109(f)(3).

7 IV. DISCUSSION

8 **1. Conservation Officers’ Authority is Limited to Violations of the Fish, Game, and** 9 **Endangered Species Act**

10 The Commonwealth Legislature has spoken clearly by expressly limiting the powers of
11 conservation officers to enforcing violations of the Fish, Game and Endangered Species Act. 2
12 CMC § 5103(b). Although the DFW Director may enlist the assistance of DPS officers, this does
13 not necessarily mean that DFW conservation officers may in turn act as DPS officers. 2 CMC §
14 5103(d)(1). Officer Flores testified that, although DFW conservation officers receive law
15 enforcement training, conservation officers are not required to go through proper police academy
16 training, which DPS police officers are required to complete.

17 Conservation officers are “deemed law enforcement officers and shall have the powers of
18 law enforcement officers to carry arms and to make arrests.” 2 CMC § 5103(b). These powers,
19 however, are limited to enforcing the Fish, Game and Endangered Species Act. *Id.* Thus, while
20 Officer Flores was correct in investigating the Defendant for using an illegal gill net, conducting a
21 search of the Defendant’s car for controlled substances was beyond the scope of his statutory
22 authority.

23 The Court notes that DPS was not involved in this case at all. DPS was not called to the
24 scene when the Defendant was arrested. All of the officers involved were DFW officers, and all of

1 the vehicles involved were DFW vehicles. Although the tip provided to Officer Flores indicated
2 that there were controlled substance and firearm elements in this case, Officer Flores did not reach
3 out to DPS for assistance.

4 5 **2. The Gill Net in the Bed of Defendant's Truck was in Plain View of Officer Flores**

6 "Under the plain view exception, an officer may search, and seize, contraband that 'is left in
7 open view and is observed by a police officer from a lawful vantage point.'" *Fu Zhu Lin*, 2014 MP
8 6 ¶ 27 (quoting *Dickerson*, 508 U.S. at 375). Officer Flores testified that, after DFW vehicles
9 stopped the Defendant's truck, he approached the Defendant's vehicle from behind. As Officer
10 Flores walked up behind the Defendant's truck, he shone a flashlight into the bed of the truck,
11 where he saw a gill-net with fish. The gill net and fish were in plain view in the bed of the truck
12 while Officer Flores was standing legally on the road. Under the Fish, Game and Endangered
13 Species Act, DFW may seize fish that has been acquired in violation of the act, as well as the net
14 used to take the fish. 2 CMC § 5109(f). Since the gill net and fish were in plain view, and Officer
15 Flores had proper authority to seize the net and fish, this evidence will not be suppressed.

16 17 **3. The Search of the Pouch Containing Alleged Drugs is Unconstitutional**

18 Under the automotive exception, if there is probable cause to search a lawfully stopped
19 vehicle, then "it justifies the search of every part of the vehicle and its contents that may conceal the
20 object of the search." *Ross*, 456 U.S. at 824. This search is limited to the places in the vehicle the
21 items sought may be found. *Id.* Probable cause would require that there is a "fair probability" that
22 evidence of a crime would be found. *Gates*, 462 U.S. at 238. This requires a totality of the
23 circumstances. *Id.* at 230-232. Officer Flores and the other conservation officers stopped the
24 Defendant after observing him fishing with an illegal gill net. Officer Flores observed the

1 Defendant use a gill net on two separate occasions: December 9, 2014 and December 12, 2014. On
2 the night of December 15, 2014, Officer Flores observed the Defendant fish using a gill net. When
3 the conservation officers stopped the Defendant on the road from Lau Lau, Officer Flores saw the
4 gill net and fish in the bed of the Defendant's truck. Based on the tip from the concerned citizen,
5 Officer Flores had probable cause to believe that there would be other fishing supplies, receipts, or
6 materials in the cabin of the truck.

7 The locations that can be searched, however, are based on the places where there is probable
8 cause to believe that the item is located. *Ross*, 456 U.S. at 824. This limits Officer Flores's search to
9 the locations in the cabin of the truck that could contain fishing supplies and evidence of illegal
10 fishing.

11 Evidence within the cabin of the truck in plain view of Officer Flores is admissible, if it was
12 "in open view and is observed by a police officer from a lawful vantage point." *Fu Zhu Lin*, 2014
13 MP 6 ¶ 27. This would include, for instance, receipts and other items on the center console of the
14 truck. This would not include the contents of a pouch, which is purported to contain a pipe wrapped
15 in a tissue. In *Arizona v. Hicks*, an officer searching for the shooters, victims, and weapons from an
16 alleged shooting incident moved a stereo system to record serial numbers, because he suspected that
17 the stereo had been stolen. *Arizona v. Hicks*, 480 U.S. 321, 324 (1987). There, the court found that
18 moving the stereo equipment "did constitute a 'search' separate and apart" from the officer's
19 objective in his initial entry to the apartment. *Id.* at 324-325. "By taking action, unrelated to the
20 objectives of the authorized intrusion, which exposed to view concealed portions of the apartment
21 or its contents, did produce a new invasion of respondent's privacy unjustified by the exigent
22 circumstance that validated entry." *Id.* at 325. This additional search would require its own probable
23 cause. *Id.* at 326-327. Although the pouch itself was visible within the cabin of the vehicle, opening
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1 the pouch to inspect its contents constitutes a separate search. Thus, the contents of the pouch must
2 be suppressed.

3 Based on Officer Flores’s testimony, the conservation officers’ search turned an illegal
4 fishing case into a controlled substance (illegal drugs) case. Officer Flores has proper authority as a
5 conservation officer to search the vehicle for illegal fishing and conduct an investigation related to
6 illegal fishing. 2 CMC § 5103. A conservation officer’s authority is limited by statute solely to
7 conservation issues, and does not extend to drug enforcement. *Id.*

8 9 **4. Conservation Officers Lack Authority to Impound Vehicles**

10 The Commonwealth argues that there is an authority to impound vehicles, under 6 CMC
11 2151. This authority, however, is limited to DPS: “[a]ny property subject to impoundment under
12 this title may be seized by the Department of Public Safety.” 6 CMC 2151(b). While conservation
13 officers working with DFW may seize property, their powers are far more limited—they may seize
14 “[a]ny gun, trap, net, or other equipment, **other than a vessel, vehicle, aircraft, or other means of**
15 **transportation.**” 2 CMC § 5109(f)(3) (emphasis added).

16 For an inventory search to be valid, it must be conducted “pursuant to standard police
17 procedures.” *Opperman*, 428 U.S. at 372. Officer Flores testified that there are no standard
18 impound procedures at DFW. Based on 2 CMC § 5109(f)(3), DFW has no authority to impound
19 any vehicles at all, even if they were involved in a violation of the Fish, Game and Endangered
20 Species Act.

21 The DFW impound of Defendant’s vehicle was beyond the scope of the authority assigned
22 to conservation officers by statute. In addition to being limited to enforcing violations of the Fish,
23 Game and Endangered Species Act, a DFW conservation officer may not impound vehicles
24 involved in violations of that act. Officer Flores testified that he could not recall a time that DFW

1 officers had impounded and searched a vehicle for inventory purposes. Officer Flores also testified
2 that there is no standard impound policy in place at DFW. Any evidence obtained during this
3 inventory search must be suppressed, as DFW had no legal authority to impound a vehicle.
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5 **V. CONCLUSION**

6 Based on the foregoing reasons, the Defendant's motion to suppress evidence is
7 **GRANTED IN PART**. The gill net and fish in the bed of the truck and the receipts and other items
8 in plain view in the cabin of the truck are not suppressed. The contents of the black pouch and any
9 evidence found during the DFW impound search are suppressed.

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11 **IT IS SO ORDERED** this 9th day of May, 2015.

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16 JOSEPH N. CAMACHO
17 Associate Judge
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