

CLERK OF COURT
SUPERIOR COURT
FILED

2019 MAY -3 AM 10:23

BY 
CLERK OF COURT

1 **FOR PUBLICATION**

2
3
4 **IN THE SUPERIOR COURT**
5 **FOR THE**
6 **COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

6 **COMMONWEALTH OF THE**)
7 **NORTHERN MARIANA ISLANDS,**)

7 **Plaintiff,**)

8 **v.**)

9 **ROMAN AGULTO**)

10 **Defendant.**)
11)

CRIMINAL CASE NO. 18-0096

**ORDER DENYING DEFENDANT'S
MOTION TO SUPPRESS**

12 **I. INTRODUCTION**

13 **THIS MATTER** came before the Court on March 14, 2019, at 1:30 p.m. and again on
14 March 20, 2019, at 9:30 a.m. at the Marianas Business Plaza for a hearing on Defendant's Motion
15 to Suppress. Assistant Attorney General Chester Hinds represented the Commonwealth of the
16 Northern Mariana Islands. ("Commonwealth"). Assistant Public Defender Stephanie Boutsicaris
17 represented Roman Agulto ("Defendant"), who was not present.

18 **II. BACKGROUND**

19 The Court heard testimony from DPS Officers Virolanson Sechannidal and Katsutoshi
20 Pangelinan that on Saturday, November 24, 2018, the officers were on routine patrol in Susupe
21 village during the night shift, which lasted from 7:00 p.m. until 7:00 a.m. At about 2:06 a.m., while
22 traveling along Tupak Street, the officers came across Defendant driving and began to drive behind
23
24

1 Defendant. Defendant turned left onto Pachinko Ave.¹ from Tupak Street. When the officers turned
2 onto Pachinko Ave, they found Defendant's vehicle stopped in the middle of the south-bound lane.
3 Officers then momentarily halted behind Defendant's vehicle, Defendant then reversed
4 approximately twenty feet on the highway towards the officers' vehicle, coming close to hitting the
5 vehicle. Defendant then drove a few feet forward, making a west-facing right turn into a residence
6 (shoulder) on Pachinko Ave.

7 The Officers then made a U-turn to follow Defendant. When Defendant sped away, Officer
8 Secharmidal claimed the Defendant rolled the window down and raised both his hands in a
9 shrugging fashion at that time. When Officer Secharmidal heard Defendant rev his engine, he
10 activated his police emergency light and went after him. The Defendant then turned left onto Tupak
11 Street, turned right onto Susupe Street, and finally turned left onto Bakke Street.

12 When the officers found the vehicle along Bakke Street, it was approximately 2:07 a.m.
13 They found Defendant hiding in the bushes, at which point they ordered the individual to come out.
14 Officer Pangelinan secured Defendant in handcuffs. Several other Officers arrived and Officer
15 Denny Jepen searched the immediate area in bushes and found one (1) headlamp, one (1) case that
16 contained small clear zip lock baggies containing crystalline substance, and one (1) glass tube pipe
17 with crystalline substance residue in it sticking out of the case. When asked, Defendant stated it was
18 not his.

19 At approximately 2:10 a.m., Defendant gave consent to Officer Paul Ichihara to search the
20 vehicle. Officer Secharmidal performed the search. At 3:11 a.m., Officer Secharmidal procured a
21 number of zigzags, a headlamp, one (1) grams weight scale, one (1) container, three (3) 20-
22 dollar bills, one (1) q-tip, one-hundred ten (110) clear Ziploc baggies containing crystal like

23

24 ¹ The Officers initially reported it was Tramoha Ave., but before the hearing, Officer Secharmidal revisited the site with Assistant Attorney General Hinds and corrected it to Pachinko Ave.

1 substance, one (1) cut up straw, one (1) clear tube containing white substance on the pipe wall, and
2 one (1) branch of green leafy substance.

3 III. LEGAL STANDARD

4 Article I, section 3 of the Commonwealth Constitution and the Fourth Amendment to the
5 United States Constitution prohibit unreasonable searches and seizures. This protection “extend[s]
6 to brief investigatory stops of persons or vehicles that fall short of traditional arrest.”
7 *Commonwealth v. Fu Zhu Lin*, 2014 MP 6 ¶ 13 (quoting *United States v. Arvizu*, 534 U.S. 266, 273
8 (2002)).

9 To make an investigatory stop, the officer must have a reasonable suspicion that criminal
10 activity “may be afoot.” *Id.* (citing *United States v. Sokolow*, 490 U.S. 1, 7 (1989); accord 6 CMC §
11 6103(d)). Criminal activity, in turn, is either a felony crime, 6 CMC § 6103(d); or a traffic violation,
12 see 9 CMC §§ 1302-04 (indicating police officers may stop individuals for violations of the traffic
13 code). Criminal activity includes traffic infractions. See *Delaware v. Prouse*, 440 U.S. 648, 663
14 (1979).

15 When evaluating whether a traffic stop was justified, a court must determine “whether the
16 officer’s action was justified at its inception.” *United States v. Gonzalez-Lerma*, 14 F.3d 1479, 1483
17 (10th Cir. 1994). One such manner a traffic stop can be justified is where an officer has a
18 reasonable suspicion to believe a traffic violation has been committed. See, e.g., *United States v.*
19 *Bizier*, 111 F.3d 214, 218 (1st Cir. 1997); *United States v. Soares*, 451 F. Supp.2d 282, 286 (D.
20 Mass. 2006).

21 Courts determine reasonable suspicion exists after looking “at the totality of the
22 circumstances to see whether the detaining officer has a particularized and objective basis for
23 suspecting legal wrongdoing.” *Commonwealth v. Arurang*, 2017 MP 1 ¶ 16. (quoting
24 *Commonwealth v. Crisostomo*, 2014 MP 18 ¶ 18 (internal quotation marks and citation omitted)).

1 “Bases for suspicion include inferences and deductions that officers draw from applying their
2 experience and specialized training to the situation at hand.” *Id.* (quoting *Crisostomo*, ¶ 19 (internal
3 citation omitted)). An officer has reasonable suspicion when there is “more than a hunch but much
4 less than a preponderance of the evidence.” *Crisostomo*, 2014 MP 18 ¶ 19 (quoting *Fu Zhu Lin*,
5 2014 MP 6 ¶ 13).

6 The Court in *Arizona v. Johnson* held that in a traffic-stop setting, the first *Terry* condition –
7 a lawful investigatory stop – is met “whenever it is lawful for police to detain an automobile and its
8 occupants pending inquiry into a vehicular violation. The police need not have . . . cause to believe
9 any occupant of the vehicle is involved in criminal activity.” 555 U.S. 323, 327 (2009).

10 IV. DISCUSSION

11 Here, Defendant argues it is unclear which objective observations by Officers Secharmidal
12 and Pangelinan formed the basis of reasonable suspicion that criminal activity may be afoot or a
13 traffic violation may have been committed. Particularly, that it is unclear what specific statutes
14 Defendant was suspected to have violated prior to police contact. Defendant pointed to Officer
15 Pangelinan’s Supplemental Report and testimony, which reported that the officers found it “odd” to
16 find Defendant parked in the middle of the road. Defendant also argued that it was unclear when the
17 officers turned on their overhead emergency lights. Regarding Officer Secharmidal’s Supplemental
18 Report and testimony, Defendant argues it is similarly unclear to determine what behavior that
19 would reasonably cause suspicion that the Defendant had committed a traffic violation.

20 Lastly, Defendant initially argued that he was only charged and cited for the drugs allegedly
21 found upon him after the stop and that no specific traffic statutes were cited in discovery. However,
22 at the hearing for the instant motion, Defendant produced Officer Secharmidal’s traffic citation. *See*
23 Defendant’s Exhibit D. In the traffic citation, Defendant was cited for violations of 9 CMC § 5503:

24

1 Starting Parking Vehicle or Backing, and 9 CMC § 7111(a): Fleeing or Attempting to Elude a
2 Police Officer.

3 The Commonwealth counters that the officers' report and testimony clearly state the basis
4 for the stop was parking on the highway and reversing on the highway. The Commonwealth points
5 to either 9 CMC § 5503: Starting Parked Vehicle or Backing² and 9 CMC § 5603(a): Parking³ as
6 the traffic violations that provide the basis for the stop.

7 The court in *United States v. Hunnicutt* held that the government need not show that a
8 violation actually occurred to justify an initial traffic stop. 135 F.3d 1345, 1348 (10th Cir. 1998).
9 An initial traffic stop is valid under the Fourth Amendment not only if based on an observed traffic
10 violation, but also if the officer has a reasonable articulable suspicion that a traffic violation has
11 occurred or is occurring. *Id.* The sole inquiry is whether the particular officer had reasonable
12 suspicion that the particular motorist violated "any ... of the multitude of applicable traffic or
13 equipment regulations" of the jurisdiction. *Id.* (citing *Prouse*, 440 U.S. at 661).

14 Similar to this matter, the Defendant in *Hunnicutt* argued that his initial stop violated the
15 Fourth Amendment and asserted that the allegation of improper use of lane was a pretext for
16 searching his vehicle. *Id.* Here, Defendant argues that when he backed up towards Officers
17 Secharmidal and Pangelinan's vehicle, it was done with reasonable safety and not in a reckless
18 manner; and that he was not in violation of 9 CMC § 5503. The officers had a reasonable suspicion

19
20 ² 9 CMC § 5503 provides that: No person may start a vehicle stopped, standing, or parked on a highway, nor may any
21 person back a vehicle on a highway unless and until the movement can be made with reasonable safety.

22 ³ 9 CMC § 5603(a) provides:

23 No person may park or leave standing any vehicle, either attended or unattended, upon the main
24 traveled portion of any highway outside of a business or residential district, when it is practicable or
possible to leave the vehicle standing off the main traveled portion of the highway. In no event may
any person park or leave standing any vehicle, whether attended or unattended, upon any highway
unless a clear and unobstructed width of not less than 15 feet upon the main traveled portion of the
highway opposite the standing vehicle is left for the free passage of other vehicles on the highway or
unless a clear view of the vehicle may be obtained from a distance of 300 feet in each direction upon
the highway.

1 that they had observed a violation of 9 CMC § 5503, when Defendant backed up his car and came
2 close to hitting the officers' vehicle, even if Defendant believes his backing up was done with
3 reasonable safety. Police officers are required to act reasonably, not perfectly, under the Fourth
4 Amendment. *Arurang*, 2017 MP 1 ¶ 18 (citing *Illinois v. Rodriguez*, 497 U.S. 177, 186 (1990)).

5 The Court finds that the officers' performance throughout this investigation and case has
6 been lackluster. First, the officers had the opportunity to file a Supplemental Report to correct the
7 street names in their initial reports, but did not do so. Additionally, Officer Secharmidal stated he
8 misplaced Defendant's traffic citation and failed to put the citation in the system, yet Defendant was
9 able to produce a copy of the citation on the second day of the hearing. The Court observed the
10 sloppy reporting and investigating by Officers Secharmidal and Pangelinan is likely attributable to
11 the officers' age and inexperience.⁴

12 Notwithstanding these investigative shortcomings by the officers involved with this case,
13 the Court finds that the officers' testimony as to the stop of Defendant is believable - that Defendant
14 parked in the highway in the middle of the southbound lane; and then backed up in the same lane;
15 constitute possible traffic violations and the officers had a "particularized and objective basis for
16 suspecting legal wrongdoing." *Arurang*, 2017 MP 1 ¶ 16. This in turn served as reasonable
17 suspicion that a traffic violation occurred and that the officers' actions were justified at its
18 inception. The traffic citation issued by Officer Secharmidal to Defendant, in which Defendant was
19 cited for violations of 9 CMC § 5503 and 9 CMC § 7111(a), supports the Officer's testimony. *See*
20 Defendant's Exhibit D.

21 The Court further finds that Defendant's conduct in driving from the middle of the road
22 (Pachinko Ave.) and making a west-facing right turn into a residence, then rolling down his
23

24 ⁴ When asked by the Court, Officer Secharmidal indicated he has been an officer for less than two years and this was
the first time he had served as a witness in a criminal case.

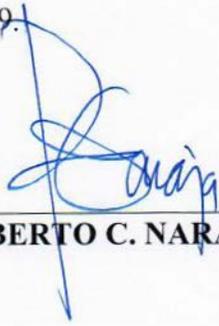
1 window and raising his hands in a shrugging fashion before revving his engine and driving away,
2 constitutes reasonable justification to further investigate whether criminal activity was afoot.
3 Additionally, to top it all, the Court finds speeding away after Officer Secharmidal activated his
4 police emergency lights, and not stopping for it, further constitutes reasonable suspicion that
5 criminal activity was afoot that could serve as the basis for the investigatory stop.

6 Accordingly, on review of the totality of the circumstances, the Court finds that there were
7 multiple traffic violations that could have possibly served as the basis for the investigatory stop, but
8 particularly, from Officers Secharmidal and Pangelinan's testimony, the stop was supported by
9 reasonable suspicion of a traffic infraction – a possible violation of Starting Parked Vehicle or
10 Backing (9 CMC § 5503). The officers' investigatory stop could also be supported by reasonable
11 suspicion of a possible violation of Parking (9 CMC § 5603), though it was not cited in Officer
12 Secharmidal's traffic citation. Therefore, Officers Secharmidal and Pangelinan's stop of Defendant
13 was justified.

14 **V. CONCLUSION**

15 For the aforementioned reasons, Defendant's motion to suppress is **DENIED**.

16 **SO ORDERED** this ^{3rd} day of May, 2019.

17
18 
19 _____
20 **ROBERTO C. NARAJA, Presiding Judge**