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

(COMMONWEALTH OF THE NORTHERN,)
(MARIANA ISLANDS,)
Plaintiff,)
vs.)
(MINWANG A/K/A LINDA WANG,)
Defendant.)

CRIMINAL CASE NO. 97-187
AGIU CASE NO. 97-029
DPS NO. 96-140

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

I. INTRODUCTION

This matter came before the Court on December 17, 1997 at 1:30 p.m. in Courtroom D on Defendant's motion for disclosure of confidential informant, motion to controvert, and motion to suppress. Assistant Attorney General Robert J. Steinborn appeared on behalf of Plaintiff. Defendant MinWang appeared through her counsel, Timothy Farrell, Esq. After an evidentiary hearing, the Court ruled on all the motions in open court, except the motion to suppress which the Court took under advisement. This Court, having reviewed the memoranda, declarations, and exhibits, having heard and considered the arguments of counsel, and being fully informed of the premises, now renders its decision on the Motion to Suppress.

FOR PUBLICATION

1 Defendant's employ, he frequently drove customers and their prostitutes to the Joy Motel. *Motion to*
2 *Suppress, Exhibit "C"*.

3 On March 21, 1997, Investigators Alfred Teregeyo and Mareham conducted outside visual
4 surveillance of Linda House and the Gift Shop. Their surveillance revealed activity taking place between
5 Linda House female employees and several Japanese male tourists. *Id.* This information corroborated the
6 information provided by Mr. Liu.

7 On or about March 25, 1997, Mr. Joe Ada of the CNMI Department of Labor and Immigration
8 contacted Investigator Mareham and indicated that while on the premises of the Gift Shop to inform
9 Defendant Wang of the Liu labor hearing, he observed and examined a photo album containing photos of
10 various Chinese females. *Id.* This was the same type of album described by Mr. Liu.

11 Based on the information provided by Mr. Liu and the visual surveillance, Investigator Mareham
12 filed an affidavit on April 11, 1997, requesting a warrant for the use of an audio interception device. The
13 affidavit indicated that a confidential informant using the code name "Sparky" would be taking part in the
14 investigation and would be using the wire device at Linda House and the Gift Shop to record
15 conversations between himself, Defendant Wang, and other Linda House employees.^{6/} *Id.* On April 11,
16 1997, Superior Court Judge Miguel Demapan issued the warrant. *Id. at Exhibit "B"*.

17 On May 3, 1997, Investigator Mareham and the confidential informant conducted a wire recording
18 at the Gift Shop. A Chinese female (sister of Defendant Wang) and an unidentified male showed the
19 informant a photo album of women from which to choose for the evening. The informant was told that
20 he could spend the night with his choice of women either at his hotel or at the Linda House employee
21 barracks located at the Joy Hotel. A price range was quoted of between \$100.00 to \$300.00, depending
22 upon the amount of time spent with the woman. Once again, the information received confirmed Mr. Liu's
23 statements to Investigator Mareham. *Id. at Exhibit "F", pg.102.*

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26 ^{6/} The confidential informant referred to in investigator Mareham's affidavit as "Blackman" is actually
27 the same person as "Sparky". Due to racial concerns, the confidential informant's name was changed
28 to "Sparky". However, the reference to "Blackman" inadvertently remained in the affidavit.

1 Based on the information received from the first wire warrant, Investigator Mareham filed a
2 second affidavit on May 8, 1997, requesting a thirty-day extension of the first wire warrant. *Id. at Exhibit*
3 *"E"*. A second wire warrant (which extended the first warrant) was issued on May 8, 1997, by Superior
4 Court Judge Timothy H. Bellas. *Id. at Exhibit "D"*.

5 On May 31, 1997, the second wire warrant was executed at Linda House. The results of the
6 second wire warrant through translation indicated again that Defendant Wang and her employees
7 propositioned the confidential informant, suggesting that for \$120.00 to \$250.00, he could "drink, talk,
8 touch breast." *Id. at Exhibit "F", pg. 103*.

9 From the information gathered via the audio warrants, Investigator Mareham filed an affidavit of
10 probable cause requesting the issuance of arrest and search warrants for Linda House and the Gift Shop.
11 *Id.* On June 17, 1997, a search warrant was issued by Judge Bellas. *Id. at Exhibit "G"*. Subsequently,
12 on June 20, 1997, the search warrant was executed at Linda House and the Gift Shop wherein over 100
13 items were seized.²¹ *Id. at Exhibit "H"*.

14 **m. ISSUES**

- 15 1. Whether there was probable cause to issue the wire warrants?
- 16 2. Whether the provisions of Title **III** of the Omnibus Crime Control and Safe Streets Act [18 U.S.C. §
- 17 § 2510 et seq.] were violated in issuing the wire or search warrants?
- 18 3. Whether the search warrant was sufficiently particular?
- 19 4. Whether Defendant Min Wang has standing to vicariously assert the constitutional rights of her co-
- 20 defendant employees?

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26 ²¹On June 20, 1997, officers from the Attorney General's Investigation Unit and Department of Public
27 Safety also searched the premises of the Joy Motel, room #308, located in Garapan. On June 26, 1997,
the same officers searched the offices of the M & H Corporation located in Chalan Piao.

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3 **IV. ANALYSIS**

4 **4. THE WIRE WARRANTS**

5 **1. Reliance on information from Changda Liu**

6 Defendant Wang asserts that probable cause was lacking to issue the first wire warrant because
7 Investigator Mareham relied upon the information provided by Changda Liu in his affidavit without any
8 indicia of credibility on Mr. Liu's part. According to Defendant Wang, because the information was
9 provided by a "bitter former employee" and a "criminal element", this necessitated a higher degree of
10 corroboration to establish probable cause prior to issuing the first wire warrant and its subsequent
11 extension. However, the Court disagrees.

12 As noted by the U.S. Supreme Court, probable cause exists as long as the probable "veracity" and
13 "basis of knowledge" of persons supplying hearsay information and the results of independent police
14 investigation make it reasonably likely, based on the totality of the circumstances, that the information is
15 correct. Illinois v. Gates, 462 U.S. 213, 238, 103 S.Ct. 2317, 2332, 76 L.Ed.2d 527 (1983). As such, an
16 officer may rely upon information received through an informant, rather than upon his direct observations,
17 so long as the informant's statement is reasonably corroborated by other matters within the officer's
18 knowledge. Jones v. United States, 362 U.S. 257, 269, 80 S.Ct. 725, 735 (1960).

19 As outlined above, Mr. Liu explained to Investigator Mareham in great detail the prostitution
20 activities he witnessed while in Defendant Wang's employ, as well as the existence of illegal employees.
21 *Motion to Suppress, Exhibits "C", "E", and "F"*. With this information, Investigators Mareham and
22 Teregeyo conducted outside surveillance of Linda House and the Gift Shop which revealed considerable
23 activity taking place between the female Linda House employees and a number of male Japanese tourists.
24 Shortly after the surveillance, Joe Ada of the CNMI Labor Office went to the Gift Shop wherein he saw
25 and perused an album containing a number of photos of Chinese women. Even if the corroborated
26 elements of Mr. Liu's information involved "innocent behavior" as asserted by Defendant Wang, the value
27 of such information is not diminished. U.S. v. Brown, 49 F.3d 1346, 1349 (8th Cir.1995). In fact, innocent
28 behavior frequently will provide the basis for a showing of probable cause. Gates, 462 U.S. at 243-244.

1 Therefore, based on a Gates totality of the circumstances test, including Mr. Liu's information and its
2 subsequent corroboration, there was probable cause to issue the first wire warrant.

3 Although initially cited by Plaintiff, Defendant Wang asserts that a portion of the decision in
4 People v. Fortune, 930 P.2d 1341 (Colo.1997), is relevant to the instant case in that it pertains to
5 informants from a criminal milieu. In Fortune, the Colorado Supreme Court noted that in instances where
6 information originates from a person from the criminal environment *acting out of self-interest*, this
7 requires evidence of adequate circumstances to justify the officer's belief in the informer's credibility or
8 the reliability of his information. Id. at 1345.^{8/} However, even if Mr. Liu was employed by Defendant
9 Wang and arguably from a "criminal environment", there is no evidence before the court to show that he
10 acted out of self-interest by "contact[ing] the police on his own accord to further his own labor case." On
11 the contrary, Officer Mareham was contacted by a representative at the Department of Labor and
12 Immigration who, in turn, directed Mr. Mareham to Mr. Liu regarding Defendant Wang's criminal activity.
13 Even assuming that Mr. Liu's motives were suspect, the U.S. Supreme Court has indicated that an
14 informant's questionable motives fail to outweigh his eyewitness accounts of criminal activity. Gates, 462
15 U.S. at 234. As noted by the Gates court:

16 "[E]ven if we entertain some doubt as to the informant's motives, his explicit and detailed
17 description of alleged wrongdoing, along with a statement that the event was observed firsthand,
entitles his tip to greater weight than might otherwise be the case." Id.

18 If anything, it would appear Mr. Liu falls within the simple definition of an identified "citizen-
19 informer": one who witnesses a crime and is identified. Fortune, 930 P.2d at 1345; see also, 2 W. R.
20 LaFave, Search and Seizure 93.4, at 205 (3d.ed.1996). It is commonly held that the information provided
21 from such a source is presumed to be reliable and the authorities are not required to establish the
22 credibility or the reliability of such information. United States v. Decoteau, 932 F.2d 1205, 1207 (7th Cir

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25 ^{8/}Where a previously unknown informant provides information, the informant's lack of track record
26 requires "some independent verification" to establish the reliability of the information. United States v.
27 Robertson, 39 F.3d 891, 893, cert. denied, 115 S.Ct. 1812, 131 L.Ed.2d 736 (1995). Independent
28 verification occurs when the information (or aspects of it) is corroborated by the independent
observations of police officers. Gates, 462 U.S. at 241-245. As discussed above, Mr. Liu's information
was corroborated by Investigator Mareham and others on at least two separate occasions.

1 1991). As such, the corroborated information of Mr. Liu provided ample probable cause to issue the first
2 wire warrant and its extension without the necessity to establish Mr. Liu's credibility or reliability.

3 **2. 18 U.S.C. § 2510 et seq.**

4 In her motion to suppress, Defendant Wang relies upon several provisions of Title III of the
5 Omnibus Crime Control and Safe Streets Act of 1968, [18 U.S.C. §§2510-2520] to assert that the "body
6 bugs" used by the authorities were too obtrusive in light of lesser alternatives. In addition, Defendant
7 Wang contends that several provisions of the Act were violated by both the arresting authorities and the
8 instant court. As such, the evidence obtained via the first wire warrant and its subsequent extension must
9 be suppressed. The Defendant's reliance on this statute is inappropriate.

10 The purpose of 18 U.S.C. 2510 et seq. is to provide law enforcement officials with tools necessary
11 to combat crime without unnecessarily infringing upon the right of individual privacy. United States v.
12 Carneiro, 861 F.2d 1171, 1176 (9th Cir.1988). This statutory framework provides a uniform basis of
13 circumstances and conditions under which the interception of wire or oral communications may be
14 authorized. United States v. Cafero, 473 F.2d 489, cert. denied, 417 U.S. 918 (3rd Cir.1973).

15 18 U.S.C. § 2511, which prohibits the interception and disclosure of wire or oral communications,
16 provides, in pertinent part:

17 (1) Except as otherwise specifically provided in this chapter [18 U.S.C. § 2510 et seq.] any person
18 who--

19 (a) intentionally intercepts, endeavors to intercept, or procures any other person to intercept or
20 endeavor to intercept, any wire, oral, or electronic communication;

21 (b) intentionally uses, endeavors to use, or procures any other person to use or endeavor to use any
22 electronic, mechanical, or other device to intercept any oral communication when--

23 (i) such device . . . transmits a signal through, a wire, cable, or other like connection used in wire
24 communication; or

25 (ii) such device transmits communications by radio . . .

26 Shall be punished as provided in subsection (4) or shall be subject to suit as provided in subsection
27 (5)."

28 18 U.S.C. § 2511(a), (b)(i),(ii).

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1 More importantly, however, 18 U.S.C. § 2511(2)(c) goes on to provide that:

2 "It shall **not** be unlawful under this chapter [18 U.S.C. § 2510 et seq.] **for a person acting under**
3 **color of law** to intercept a wire, oral, or electronic communication, **where such person is a party**
4 **to the communication or one of the parties to the communication has given prior consent to**
5 **such interception.**" (emphasis added).

6 18 U.S.C. § 2511(2)(c).

7 It is commonly held that the strict requirements of 18 U.S.C. § 2510 et seq. do not apply to the
8 recording of consensual interceptions. United States v. Vancier, 466 F.Supp. 910 (SD NY 1979); see also,
9 United States v. Ransom, 515 F.2d 885, reh. denied, 520 F.2d 944, cert. denied, 424 U.S. 944 (1975);
10 United States v. King, 536 F.Supp. 253, 266 (CD Cal.1982). In fact, warrants are not even required to
11 record conversations between defendants and informants or government agents when either the informant
12 or the government agent is party to or consented to recording of the conversation. United States v.
13 Caceres, 440 U.S. 741, 744, 99 S.Ct. 1465, 59 L.Ed.2d. 733 (1979); see also, United States v. Aguilar,
14 883 F.2d 662, 697, cert. denied, 498 U.S. 1046, 111 S.Ct. 751, 112 L.Ed.2d. 771 (1991); United States
15 v. Howell, 664 F.2d 101, 105 (5th Cir.1981). Because the instant informant consented to the recording of
16 his conversations with Defendant Wang, the provisions of the Omnibus Act are inapplicable to the instant
17 facts and are thus of no avail to Defendant Wang.

18 **3. Specificity and/or particularity of the wire warrants**

19 As an alternative argument, Defendant Wang insists that the first wire warrant and its subsequent
20 extension must fail for their lack of specificity and/or particularity. However, in light of the decisions cited
21 above (see, i.e., United States v. Caceres), the Court rejects Defendant Wang's argument as moot.

22 **B. THE SEARCH WARRANT**

23 **1. Specificity of the warrant**

24 Much like her argument to suppress the first wire warrant and its extension, Defendant Wang
25 contends that the search warrant was invalid in that it failed to describe with reasonable precision the place
26 to be searched and the items to be seized. As such, all evidence obtained pursuant to the search warrant
27 must be suppressed.

1 In the case at bar, the warrant description was sufficiently particular.^{10/} The verbal description
2 contained in the warrant described the business enterprises and apartment complex with particularity and
3 was reasonable for the locations intended. Linda House and the Gift Shop had also been under previous
4 surveillance. Next, the warrant was executed by Investigator Mareham, who had participated in applying
5 for the warrant and personally knew which premises were intended to be searched. Finally, the premises
6 intended to be searched were those actually searched. Under these circumstances, there was virtually no
7 chance that the executing officer would have any trouble locating and identifying the premises to be
8 searched, or that he would mistakenly search another location.

9 **b. Things to be seized**

10 In keeping with the constitutional requirement that a search warrant "particularly" describe the
11 things to be seized, the United States Supreme Court has required description with sufficient particularity
12 to leave "nothing . . . to the discretion of the officer executing the warrant." Marron v. United States, 275
13 U.S. 192, 196, 48 S.Ct. 74, 76, 72 L.Ed 231(1927). In practice, it is demanded only that the executing
14 officers be able to identify the person or thing with reasonable certainty. Re Grand Jury Subpoenas, 926
15 F.2d 847 (9th Cir.1991); see also United States v. Storage Spaces Designated Numbers 8 & 49, 777 F.2d
16 1363, 1368 (9th Cir.1985)(warrant need only be "reasonably specific, rather than elaborately detailed." in
17 its description of objects of search). The degree of specificity varies depending on the circumstances and
18 the type of items involved. United States v. Spilotro, 800 F.2d 959, 963 (9th Cir.1986).

19 The Ninth Circuit case of United States v. Washington, 797 F.2d 1461 (9th Cir.1986), is helpful and
20 relevant to the instant case. In Washington, the defendant appealed his conviction of 12 counts of
21 prostitution by contending, among other things, that the search warrant was overbroad and thus failed to

24 ^{10/}The search warrant of June 17, 1997, described the premises to be searched as follows:
25 "Linda House Karaoke and Gift located in Western Garapan (hotel street). Joy Motel Garapan
26 behind Duty free shop, Lifofoi apartment south of SNE apartment in Garapan, M & H
corporation in Chalan Piao north of Hopwood Junior high school."

27 The search warrant of June 20, 1997, described the premises to be searched as follows:
28 "Joy Motel Room number 308."

1 satisfy the constitutional requirement of particularity. The warrant, in pertinent part, stated that the agents
2 were authorized to seize

3 "records, notes, documents indicating Ralph Washington's involvement and control of prostitution
4 activity, including but not limited to, photographs, handwritten notes, ledger books . . .". Id. at
1472.

5 The Washington court held that the phrase "involvement and control of prostitution activity" was
6 narrow enough to satisfy the particularity requirement of the Fourth Amendment as it "effectively tells the
7 officers to seize only the items indicating prostitution activity." Id.

8 The instant warrant, which also provides for the seizure of prostitution-related evidence, contains
9 language similar to the Washington warrant:

10 "There now exist evidence of the commission of a crime consisting of documents relating to
11 prostitution, Photo album, records of personnel whose pictures appear in the photo album, payroll
12 records . . . and any documents tending to show that prostitution takes place on the premises and
13 that Illegal Aliens are harbored and or employed by M & H Corporation dba Linda House Karaoke

14 "Motion to Suppress, Exhibit "G".

15 In accord with the Washington decision, this Court finds that the language contained within the
16 instant warrant is sufficient to satisfy the particularity requirement of the Fourth Amendment. The
17 warrant's language provides the same guidance to the executing agents as the Washington warrant
18 provided and thus, effectively told the officers to seize items related only to prostitution and/or the
19 harboring of illegal aliens.

20 **C. CONFESSIONS OF DEFENDANT WANG'S EMPLOYEES**

21 It is Defendant Wang's contention that the videotaped confessions of her co-defendant employees
22 must be suppressed because they were obtained in violation of their Miranda rights and the Vienna
23 Convention.^{11/} Without getting involved in a complex and unnecessary discussion over the applicability of
24 the Vienna Convention and treaty rights, this Court rules that Defendant Wang is without standing to assert
25 the constitutional rights of her co-defendant employees.

26 ^{11/}The government received videotaped confessions from five of defendant's employees, namely Lu
27 Hong, Xia Wen, Liu Ying, Yu Fang Jie, and Jin Ping. See Motion to Suppress, Exhibit "F", pp. 103-104.

1 The United States Supreme Court has noted that the Fifth Amendment privilege against self-
2 incrimination is an "intimate and personal one", which protects "a private inner sanctum of individual
3 feeling and thought and proscribes state intrusion to extract self condemnation." Couch v. United States,
4 409 U.S. 322, 327 (1973). As such, standing to object to violations of the Fifth Amendment in the 9th
5 Circuit has been limited to those against whom the violation was committed. Bvrd v. Comstock, 430 F.2d
6 937, 938, cert denied, 401 U.S. 945, 91 S.Ct. 960, 28 L.Ed.2d. 228 (1971). As noted in Bvrd :

7 "[T]he purpose of such [Miranda] warnings would have been to safeguard the co-defendant's
8 privilege against self-incrimination, a right personal to her. Petitioner may not complain of the
9 violation of his co-defendant's right . . .". Id.

10 As such, this court rules that Defendant Wang has no standing to assert any 5th Amendment
11 violations on behalf of her co-defendant employees. Therefore, Defendant Wang's motion to suppress the
12 confessions is denied.

12 V. CONCLUSION

13 For all the reasons stated above, Defendant's Wang's Motion to Suppress is DENIED.

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16 So ORDERED this 29 day of January, 1998.

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19 TIMOTHY H. BELLAS, Associate Judge
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