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For Publication

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

**COMMONWEALTH OF THE NORTHERN  
MARIANA ISLANDS,**

**Criminal Case No. 02-0064**

Plaintiff,

v.

**ORDER GRANTING MOTION TO  
SUPPRESS RECORDING**

**JESUS A. DELEON GUERRERO,**

Defendant.

THIS MATTER was last before the Court on May 19, 2004, on Defendant's motion to suppress recorded statements. Appearing were Matthew T. Gregory on behalf of Defendant and Janine R. Udoi on behalf of the Commonwealth. Having heard the arguments of counsel and reviewed the pleadings, the Court is prepared to rule.

**FACTUAL CONSIDERATIONS**

Defendant is charged with two drug-related offenses. Part of the evidence against him is recordings of two conversions allegedly held between Defendant and a confidential informant. The confidential informant was acting as a cooperating source for the CNMI/DEA Drug Task Force at the time. The first of these conversations occurred over the telephone, with the informant allegedly speaking to Defendant. This conversation allegedly led to a trip to the residence of Defendant, where the informant allegedly purchased a controlled substance from Defendant. This incident was also recorded by the informant, whom the police had wired. The Commonwealth does not argue that either recording was made pursuant to a warrant. The Court must now consider whether these recordings should be suppressed.

1 **LEGAL CONCLUSIONS**

2 Defendant bases his motion to suppress the recordings on a provision of our Commonwealth  
3 Constitution, Article I, Section 3(b), which prohibits “wiretapping, electronic eavesdropping or other  
4 comparable means of surveillance [ ] except pursuant to a warrant.” N.M.I. Const. art. I, § 3(b). In  
5 this case, the Commonwealth concedes that it did not have a warrant, so it seems on the surface that  
6 the Commonwealth has no real grounds for opposing this motion to suppress. Nonetheless, the  
7 Commonwealth points to the ANALYSIS OF THE CONSTITUTION OF THE COMMONWEALTH OF THE  
8 NORTHERN MARIANA ISLANDS (Dec. 6, 1976), which states that the Section 3(b) warrant  
9 requirement contained in Article I, Section 3(b) does not apply to a “recording with consent.” *Id.*  
10 at 9. In this case, the Commonwealth had the consent of one party to the conversation, the  
11 confidential informant. The Commonwealth argues that this consent is legally sufficient to avoid  
12 the warrant requirement.

13 That one-party consent is enough to waive the requirement for a wiretapping warrant is clear  
14 law in federal courts of the Ninth Circuit. The Commonwealth cites numerous cases where the U.S.  
15 Court of Appeals for the Ninth Circuit has allowed warrant-less wiretaps to be used as evidence  
16 where only one party to the conversation had consented.<sup>1</sup> In addition, the Commonwealth notes that  
17 the majority of states, 36 of them, have laws allowing the police to monitor and record conversations  
18 with the consent only of one person. (Thirteen other states have taken a more protectionist position  
19 and have specifically required, by statute, that all parties consent). The C.N.M.I. does not have a  
20 statute governing whether one or two party’s consent is necessary, but the Commonwealth argues  
21 that the C.N.M.I. should follow the majority rule, unless a C.N.M.I. statute states otherwise.

22 As to the Commonwealth’s argument that its position is supported by Fourth Amendment  
23 jurisprudence, the Court notes that this case law is relevant only if the rights afforded by Article I,  
24 Section 3 of the Commonwealth Constitution do not extend beyond those afforded by the Fourth  
25 Amendment to the U.S. Constitution. The C.M.N.I. can extend greater rights and protections to its  
26 citizens than are afforded by the U.S. Constitution. *Sirilan v. Castro*, 1 CR 1082, 1108-09 (Dist. Ct.

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28 <sup>1</sup> The Commonwealth cites *United States v. Jernigan*, 582 F.2d 1211, 1212 (9th Cir. 1978); *United States v. King*, 472 F.2d 1, 4 (9th Cir. 1972); and *United States v. Puchi*, 441 F.2d 697, 699-700, (9th Cir. 1971).

1 App. Div. 1984). Therefore, the Court must look to the language of the U.S. and Commonwealth  
2 Constitutions to determine whether the latter provides greater protection. The language of the  
3 Fourth Amendment to the U.S. Constitution and Article I, Section 3 and 3(a) of the Commonwealth  
4 Constitution are essentially identical. Both provide that the people have a right to be free from  
5 unreasonable search and seizure and impose specific requirements (in identical language) for  
6 obtaining a search warrant. However, N.M.I. Const. art. I, § 3(b) goes further, specifically requiring  
7 a warrant for wiretapping and other electronic surveillance. It seems clear that the C.N.M.I.  
8 founders intended to afford greater protection against this form of government intrusion.

9 As to the Commonwealth's argument that single-party consent should be sufficient, absent  
10 a statute providing otherwise, the Court finds this unconvincing. There seems to be no compelling  
11 reason that the Court should adopt the less restrictive standard simply because the legislature has  
12 not spoken. (Indeed, 36 states have apparently felt it necessary to make this standard law before it  
13 could be safely applied). Conversely, the strong and specific language of our Commonwealth  
14 Constitution seems to demand that the Court construe Section 3(b) in the way that affords residents  
15 maximum protection against electronic intrusion. Therefore, the Court must and does conclude that  
16 the warrant requirement of Section 3(b) cannot be waived by the consent of only one or some of the  
17 parties to a communication. All parties must consent. In the instant matter, no warrant was obtained  
18 and Defendant did not consent. The recordings must be suppressed.<sup>2</sup>

#### 19 CONCLUSION

20 Defendant's motion to suppress must be and is GRANTED. Neither the tapes nor any  
21 transcripts derived therefrom may be presented as evidence. The Court will consider at a later times  
22 and only upon motion from the defense, which other evidence, if any, must be suppressed as the fruit  
23 of the improper surveillance.

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26 <sup>2</sup> Another section of this Court, in *Commonwealth v. Shimabukuro*, Crim. No. 02-0254 (N.M.I Super. Ct. Dec.  
27 10, 2003) (Order Granting Motion to Suppress), also suppressed a recording made with one-party consent on essentially  
28 the same grounds. In so doing,, that court rejected a nearly identical argument by the Commonwealth. The Court suggests that the Commonwealth would be better served by actually acquiring warrants, than by continuing to advance excuses and justifications for not doing so.

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On another matter: The pre-trial conference set for May 26, 2004 and the jury trial set for June 14, 2004 are hereby VACATED. The pre-trial conference SHALL be held on July 14, 2004 at 9 a.m. and the trial shall commence on July 19, 2004 at 9 a.m.

SO ORDERED this 27th day of May 2004.

/s/  
JUAN T. LIZAMA, Associate Judge