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**FOR PUBLICATION**

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

**COMMONWEALTH OF THE NORTHERN  
MARIANA ISLANDS,** )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
**MAYNARD HILBERT AND** )  
**KINNY RECHERII,** )  
Defendants. )  
\_\_\_\_\_ )

**CRIMINAL CASE NO. 03-0355B**

**ORDER GRANTING IN PART AND  
DENYING IN PART MOTION TO  
SUPPRESS STATEMENTS AND  
PHYSICAL EVIDENCE AND  
ORDER DENYING MOTION FOR  
SEVERANCE OF TRIALS**

This matter came on for hearing on Defendant Kinny Recherii’s *Motion to Suppress Statements and Physical Evidence* and *Motion for Severance of Trials*. Defendant Maynard Hilbert joins in the motions. The Commonwealth opposes both motions. The Commonwealth was represented by Assistant Attorney General Joseph L.G. Taijeron, Jr. Recherii was represented by Public Defender Masood Karimipour and Hilbert was represented by Vicente T. Salas, Esq. After reviewing the moving papers and hearing arguments by all counsels, the Court enters the following decision.

**FACTUAL BACKGROUND**

On September 29, 2003, at 10:53 p.m. conservation officers from the Department of Lands and Natural Resources, Division of Fish and Wildlife patrolling Tank Beach saw a pickup truck parked under a sign prohibiting fishing. The officers, James Tanaka and Joe Tomokane, went down to the beach area and saw Hilbert and Recherii (hereinafter “Defendants”) with fishing equipment. The Defendants claim that the officers merely saw them walking across the beach. The Government papers imply that the officers saw them actually fishing in the forbidden area and waited until they got ashore before they were approached. The Defendants assert that at this point the officers immediately accused them of violating Public Law 12-46 and considered them in custody and not free to leave. The officers asked the men what they were doing and Hilbert allegedly replied that “they were fishing in the area and that they were unaware of Public Law 12-46.” The officers then

1 took the equipment and cooler and found fish, crab and lobster. The two Defendants were then  
2 turned over to the Department of Public Safety for booking and detention.

### 3 DISCUSSION

4 The underlying charges in this case revolve around provisions of Public Law 12-46, codified  
5 at 2 CMC §§ 1640, *et seq.* Section 1 of Public Law 12-46 sets forth the purpose behind enacting the  
6 law.

7 Statement of Purpose. The purpose of this bill is to designate Bird Island and  
8 Forbidden Island as sanctuaries for the conservation of wildlife and marine life.  
9 Designation of Bird Island and Forbidden Island as sanctuaries is in the public  
interest as it promotes the concept of conserving and protecting our natural  
resources. . . .

10 The Forbidden Island Sanctuary shall have boundaries beginning from the  
11 cliff line of Lau Lau Bay Golf Course, Chikeru, encompassing all of Forbidden  
Island and extending to and inclusive of Tank Beach. This sanctuary extends one  
thousand feet from the low tide line seaward.

12 2 CMC §1640. Section 5 of the Public Law sets forth activities prohibited within the designated  
13 sanctuaries as the following:

14 Prohibited Activities. Destruction, harassment and/or removal of plants,  
15 wildlife including birds, turtles, fish and marine species of any kind, fishing in any  
16 form, operation of jet skis, walking on exposed sections of the reef, harvesting or  
removal of fish, shellfish or marine life in any form is prohibited within the confines  
of these areas designated as a sanctuary.

17 2 CMC § 1644.

#### 18 **A. Motion to Suppress Physical Evidence**

19 Defendants first argue that fishing at Tank Beach, *per se*, is not a crime - only fishing in the  
20 specific area prohibited by Public Law 12-46 is. The crux of the argument here is that carrying  
21 fishing equipment in and of itself on Tank Beach is not a crime and, therefore, the conservation  
22 officers had no reason to suspect the men of fishing in a restricted area. The Defendants further  
23 argue that stopping somebody merely walking across a sanctuary carrying fishing equipment should  
24 not give officers cause to think that the individuals were doing something illegal. That it would be  
25 the same thing as seeing someone driving in a car and thinking that they were drunk or speeding just  
26 because they were driving the car.

27 Defendants next argue that their detention was in violation of 6 CMC § 6103(d) because  
28 “officers . . . may, without a warrant, temporarily detain for examination persons who may be found

1 under such circumstances as justify a reasonable suspicion that they have committed or intend to  
2 commit a felony.” 6 CMC § 6103(d). This differs from the law of most states in that most states  
3 allow such “Terry” stops on suspicion of commission of any crime, not just a felony. Here, because  
4 the infraction for which they were charged is a misdemeanor, Defendants contend that the detention  
5 was illegal. The Court agrees that this was a separate investigatory stop for a crime that was only  
6 a misdemeanor. As such, it does not appear to be allowed by law. However, this situation is also  
7 governed by 2 CMC §§ 5101, *et seq.* Specifically 2 CMC § 5103(c) states that:

8           In consideration of the privilege of fishing or hunting in the Commonwealth,  
9 regardless of whether a permit is required for that purpose, any person engaged in  
10 fishing or hunting or having in his or her possession fish or game taken in the  
11 Commonwealth, shall, upon request and upon being shown proper identification,  
12 permit a conservation officer to inspect any fish or game taken by or under control  
13 of the person and any tackle weapon, device substance, bait, boat, blind, weir, net,  
14 trap, or other article used in such fishing or hunting.

12 If a conservation officer is not allowed to inspect fish and game, this provision would be  
13 meaningless.

14           Construing a law in a way that renders it meaningless is clearly not a good rule of statutory  
15 construction. In order to protect ecological sanctuaries, the Legislature carved out a way for  
16 conservation officers to patrol and protect them. This Court concludes that 2 CMC § 5103(c) gives  
17 the two conservation officers the authority to question the men and inspect their belongings, without  
18 being in violation of 6 CMC § 6103. Therefore, the Court finds that the physical evidence will not  
19 be suppressed.

20 **B. Motion to Suppress Statements**

21           In both the original Motion and the Reply Motion, Defendants argue that the statement they  
22 made to the officers should be suppressed because they were not given proper Miranda Warnings  
23 and the detention at the beach constituted a custodial interrogation. Miranda warnings must be given  
24 when a defendant is subject to police interrogation while in custody. *Miranda v. Arizona*, 384 U.S.  
25 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966). Whether a suspect was in custody for purposes of  
26 determining whether the government discharged its duty to apprise the accused of his or her  
27 constitutional rights is a question of law. *See United States v. Kahn*, 993 F.2d 1368, 1375 (9th Cir.  
28 1993). In determining whether custody exists, a court must decide whether there was a “formal arrest

1 or restraint on the freedom of movement of the degree associated with a formal arrest.”  
2 *Commonwealth v. Ramangmau*, 4 N.M.I. 227, 235 (1995) (citing *California v. Beheler*, 463 U.S.  
3 1121, 1125, 103 S. Ct. 3517, 3520, 77 L. Ed. 2d 1275, 1279 (1983)). The Court in *Ramangmau*  
4 stated that the test for custody is “whether a reasonable person in the defendant’s position would  
5 believe that he or she was in police custody of the degree associated with a formal arrest.” *Id.* (citing  
6 *Connecticut v. DesLaurier*, 646 A.2d 108, 111 (Conn. 1994)).

7 Defendants have made a valid point that they were in custody when the alleged statement  
8 was made. The manner in which questions were asked by the officers could also have been  
9 construed as interrogational rather than custodial. However, once Defendants have contended that  
10 they were in custody during the questioning, the burden shifts to the Government to refute the  
11 assertion. Here, the Government failed to carry that burden. During the motions hearing the  
12 Government did not provide the Court with any basis on which to make a determination that the  
13 Defendants were not in custody and that their Miranda rights had not been violated. For this reason,  
14 the Court finds that any statements made by Defendants while in the custody of the conservation  
15 officers must be suppressed.

16 **C. Motion for Severance**

17 “Generally speaking, defendants jointly charged are to be jointly tried.” *United States v.*  
18 *Escalante*, 637 F.2d 1197, 1201 (9th Cir. 1980). However, at the discretion of the trial judge, a  
19 severance may be ordered when it appears that a defendant may be prejudiced by a joint trial with  
20 co-defendants. *Id.* The party seeking severance has the burden of “proving ‘clear,’ ‘manifest,’ or  
21 ‘undue’ prejudice from the joint trial. Such a party must show more than that a separate trial would  
22 have given him a better chance for acquittal. He must also show violation of one of his substantive  
23 rights by reason of the joint trial.” *Id.* (citations omitted); see also *United States v. Sherlock*, 865  
24 F.2d 1069, 1078 (9th Cir. 1989). Defendants have based their argument for separate trials on the  
25 fact that the statements made by one Defendant could prejudice the other of his confrontation rights.  
26 In this case, the Court has granted the motion to suppress the statements made and, therefore, has  
27 removed the complained of prejudice necessitating Defendants to be tried separately.

28 **CONCLUSION**

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Defendants' Motion to Suppress Physical Evidence is **DENIED**, Defendants' Motion to Suppress Statements is **GRANTED** and Defendants' Motion for Severance is **DENIED**.

**IT IS SO ORDERED**

**ENTERED** this 16th day of May 2005.

/s/  
KENNETH L. GOVENDO, Associate Judge