For Publication

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

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS, Plaintiff, v. **MANUEL T. VILAGA**, Defendant	**CRIMINAL CASE NO. 04-0352C** **ORDER DENYING DEFENDANT'S MOTION TO SUPPRESS EVIDENCE**

I. INTRODUCTION

THIS MATTER came before the Court for a hearing on March 31, 2005, at 10:00 a.m. in courtroom 220A to consider Defendant Manuel T. Vilaga's MOTION TO SUPPRESS EVIDENCE. Defendant Vilaga was represented by Steven P. Pixley, Esq., and the Commonwealth was represented by Assistant Attorney General John H. Eaton. Having considered the evidence, the arguments of counsel, the materials submitted and the applicable statutory and case law, the Court now denies Defendant's Motion for the reasons that follow.

II. FACTUAL AND PROCEDURAL HISTORY

The Defendant in this case is a Customs official who is charged with one count of bribery (6 CMC § 3201), one count of theft by deception (6 CMC § 1603), and one count of extortion (6 CMC § 1604(a)(1)). On the dates alleged, Defendant Vilaga was working as a Customs Inspector at the Saipan International Airport. On October 16, 2004, Ms. Zhou Yaping ("Ms.

Zhou"), a Chinese national, arrived at the airport on a flight from the People's Republic of China. Ms. Zhou approached the Customs area with her baggage. Upon an inspection of Ms. Zhou's baggage, Customs officials found various items that they considered to be contraband, which they confiscated. Ms. Zhou was permitted to leave the airport, but without these particular items.

On October 18, 2004, Ms. Zhou appeared at the Airport Office and was interviewed by Customs Inspectors Dennis M. Reyes and Poland Masaharu. During this interview, Ms. Zhou stated that she had spoken with Vilaga on the morning of the baggage inspection, and that she had asked him how much the items retained by customs officials would cost her if she had to pay taxes. Defendant Vilaga allegedly informed Ms. Zhou "that this was a big problem and that she could end up in jail." Defendant Vilaga gave Ms. Zhou his mobile telephone number and informed her to call him later in the afternoon. Ms. Zhou later enlisted the help of a friend who was more fluent with the English language, Ms. Ge Dong Fang ("Ms. Ge"), who placed calls to Defendant Vilaga on Ms. Zhou's behalf. Defendant Vilaga is alleged to have told Ms. Ge in one telephone conversation that Ms. Zhou "had a big problem" and that he needed to speak with Ms. Zhou in person. Ms. Zhou, accompanied by Ms. Ge and another friend, later met with Defendant Vilaga at J's Restaurant in Gualo Rai, Saipan, at which time Ms. Zhou asked Defendant Vilaga what she could do to get the confiscated items returned to her. Defendant Vilaga told Ms. Zhou that "only he [could] release the items."

A warrant authorizing the use of an audio interception device "for furtherance of the investigation" was issued on October 22, 2004. The warrant specifically authorized the use of an audio interception device for up to thirty days "relating to conversations between Ms. Zhou Yaping and Mr. Manuel T. Vilaga of the CNMI Customs Office who is involved in conspiring to commit theft by deception and bribery …." On October 28, 2004, Customs inspectors met with

Ms. Zhou and Ms. Ge for the purpose of recording a telephone conversation between Ms. Ge and Vilaga. At approximately 5:30 p.m. that day, Ms. Ge placed a telephone call to Defendant Vilaga that was recorded by the inspectors, in which Vilaga allegedly advised Ms. Ge that she and Ms. Zhou should meet him in the parking lot of the Shark's Fin Restaurant, located in Chalan Kanoa, Saipan. At approximately 5:45 p.m., Ms. Zhou and Ms. Ge proceeded to meet with Defendant Vilaga in the Shark's Fin Restaurant parking lot, where inspectors recorded a conversation that took place in Defendant Vilaga's vehicle in which Defendant Vilaga allegedly informed Ms. Ge and Ms. Zhou that Ms. Zhou would have to pay him $265 to recover the items confiscated by Customs, $200 of which would be used to pay Vilaga's Customs supervisor, and $65 of which would be applied toward taxes on the items. Upon being informed that Ms. Zhou did not have $265 at that time, Defendant Vilaga allegedly instructed Ms. Zhou and Ms. Ge to have the money ready by the following afternoon, and to call him when it was ready.

Shortly after the initial meeting in the restaurant parking lot, at about 6:00 p.m., Customs inspectors recorded a second telephone conversation between Ms. Ge and Defendant Vilaga, in which Ms. Ge informed Defendant Vilaga that Ms. Zhou had acquired the $265, at which time Defendant Vilaga allegedly agreed to meet with them again in the parking lot of the Shark's Fin Restaurant. At approximately 6:25 p.m., Ms. Zhou and Ms. Ge again met and spoke with Defendant Vilaga inside his car, at which time Ms. Ge allegedly handed $263.00 to Defendant Vilaga and told him that it was all they had. This meeting was also recorded. Defendant Vilaga allegedly accepted the money. Almost immediately after Ms. Zhou and Ms. Ge exited Vilaga's car, officers arrived on the scene. They had been monitoring Vilaga's car from across the street. The officers approached the driver's side of the car, and knocked on the driver's door. The officers advised Vilaga to step out of the car, and he was subsequently arrested and taken to the Attorney General's Investigation Unit ("AGIU") office on Capitol Hill for questioning.

Defendant Vilaga's car, a 2000 Toyota Camry, was driven to the Investigation Office by law enforcement officers without Vilaga's permission. At Capitol Hill, the car was searched, and various items of property were seized, including the $263 Defendant Villaga allegedly received from Ms. Ge.

By his Motion, Defendant Vilaga moves to suppress **(1)** the statement taken at the AGIU's office on October 28, 2004 following Defendant Vilaga's arrest; **(2)** the introduction of items seized from Defendant Vilaga's car; and **(3)** all tape-recorded conversations between Defendant Vilaga and Ms. Ge. First, Defendant Vilaga argues that his statement to law enforcement officers should be suppressed because he specifically informed officers that he did not wish to speak with them without the presence of an attorney. Second, he argues that the objects seized from his car must be suppressed, because they were obtained without a warrant, and he had a reasonable expectation of privacy within the confines of his motor vehicle, and because no exigent circumstances existed to justify the warrantless search. Third, he argues that the intercepted telephone conversations between himself and Ms. Ge Dong Fang must be excluded, since Ms. Ge's name is not listed in the warrant authorizing use of an audio interception device.

Jurisdiction is vested in this Court pursuant to N.M.I. Const. art. IV, § 2.

III. ANALYSIS

A. Defendant Vilaga's Statement to Law Enforcement Officers is Admissible, Because It Was Made Voluntarily, and Because Vilaga's Waiver of His *Miranda* Rights was Properly Effected.

The privilege against self-incrimination in criminal cases is rooted in the Fifth Amendment to the U.S. Constitution,[1] as well as Article I, Section 4(c) of the Commonwealth Constitution. In *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966) and subsequent cases, the U.S. Supreme Court affirmed that *involuntary* statements made by a criminal defendant are not admissible at trial. *Miranda* also requires "that an accused be adequately apprised of his or her rights to remain silent and to the presence of retained or appointed counsel during custodial interrogation." *Commonwealth v. Cabrera*, 4 N.M.I. 240, 244-45 (1995) (*citing Miranda*, 384 U.S. at 444, 86 S. Ct. at 1612, 16 L. Ed. 2d at 706-07 (other citation omitted)). Here, Defendant Vilaga claims that his custodial statements to investigators must be excluded, because they were involuntary and the product of coercion. In an affidavit submitted in support of the Motion to Suppress, Defendant Vilaga declares that, prior to giving his statement, he "advised Dennis Reyes and the other law enforcement officials that [he] did not want to talk to them without having a lawyer present." Def.'s Ex. 4 to Motion at ¶5. Defendant Vilaga also contends that his statement was the product of coercion.

In the U.S. Supreme Court case of *Edwards v. Arizona*, 451 U.S. 477, 101 S. Ct. 1880, 68 L. Ed. 2d 378 (1981), a defendant sought to suppress a confession that he made to police after initially invoking his right to remain silent. After being arrested and read his *Miranda* rights, the defendant requested an attorney, and police officers stopped questioning him. The next day, detectives from the same police department met with the defendant to conduct a second interrogation, at which time he confessed to the commission of certain crimes. The Supreme Court held that the use of the defendant's confession against him violated his Fifth and

[1] The Fifth Amendment of the U.S. Constitution applies in the Commonwealth via the Covenant. *See* COVENANT TO ESTABLISH A COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS IN POLITICAL UNION WITH THE UNITED STATES OF AMERICA, 48 U.S.C. § 1801 note, *reprinted in* CMC at lxxxi, § 501(a) ("Applicability of Laws").

Fourteenth Amendment rights, because the defendant had asserted his right to counsel and his right to remain silent, and the police, without furnishing him with counsel, returned and secured a confession. The Court held that:

> when an accused has invoked his right to have counsel present during custodial interrogation, a valid waiver of that right cannot be established by showing only that he responded to further police-initiated custodial interrogation even if he has been advised of his rights. We further hold that an accused, . . . having expressed his desire to deal with the police only through counsel, is not subject to further interrogation by the authorities until counsel has been made available to him, **unless the accused himself initiates further communication, exchanges, or conversations with the police**.

Id. at 484-85, 101 S. Ct. at 1884-85, 68 L. Ed. 2d at 386 (emphasis added). Thus, an accused who has invoked his right to counsel may not be interrogated again by police until counsel is made available to him, but if an accused himself initiates further communication with police after having previously requested the presence of a lawyer, the accused's statements may be used against him, provided that those statements were made *voluntarily*.

> To determine the voluntariness of a [statement] under the Fifth Amendment, a court must inquire **whether, considering the totality of the circumstances,** *Arizona v. Fulminante*, 499 U.S. 279, 111 S. Ct. 1246, 113 L. Ed. 2d 302 (1991), **law enforcement officials have coerced the accused**. *Commonwealth of the N. Mariana Islands v. Mendiola*, 976 F.2d 475, 484 (9th Cir. 1992), *rev'g* 1 N.M.I. 587 (1991).[74]
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> [74]**The government must show, by a preponderance of the evidence, both that the [statement] was voluntary and that the waiver of an accused's *Miranda* rights was properly effected.** *Colorado v. Connelly*, 479 U.S. 157, 167-69, 107 S. Ct. 515, 522-23, 93 L. Ed. 2d 473, 484-85 (1986).

Cabrera, 4 N.M.I. at 252 and n.74 (emphasis added).

Conflicting testimony was presented at the hearing on the subject of whether Defendant Vilaga actually waived his *Miranda* rights prior to making a statement, and whether Defendant Vilaga's statement was involuntary (*i.e.*, the result of coercion). Defendant Vilaga testified that he requested a lawyer initially, but that he decided to make a statement after Officer Frank

Kapileo recited the possible charges and fines that Vilaga could face. Vilaga's Affidavit in support of the Motion states that he only decided to speak with officers after being "threatened" that he would be "locked up" and required to post $20,000 in bail unless he "talked." Def.'s Ex. 4 to Motion at ¶6. Officer Reyes testified that Defendant Vilaga initially refused to make a statement until a lawyer was present and indicated this in writing on a form presented to him. Later, Vilaga changed his mind and manifested this fact by filling out and signing the same form but instead stated that he understood his rights and did not want a lawyer present. Officer Kapileo testified that officers stopped talking to Defendant Vilaga after he initially requested a lawyer, but that Vilaga kept speaking to them. Officer Kapileo stated that officers then informed Vilaga that they could not discuss anything with him because he had invoked his right to counsel. Officer Kapileo further testified that Defendant Vilaga was advised that he could make a free telephone call, that he was not in handcuffs, and that he was given water to drink. Officer Kapileo also testified that officers did not threaten Vilaga, and that they did not make any offers to him.

Based on the testimony and materials presented, this Court finds that the Commonwealth has satisfied its burden to show by a preponderance of the evidence that Defendant Vilaga's statements were voluntarily made, and that Defendant Vilaga's waiver of his *Miranda* rights was properly effected. The two consent forms signed by the Defendant demonstrate that Vilaga knowingly waived his *Miranda* rights in writing, and the Court is convinced, based on the testimony at the hearing, that officers did not offer to make any deals with Vilaga in exchange for his cooperation, that Vilaga was not coerced or pressured into making his statement, and that Vilaga offered his statement voluntarily. This Court further holds that the undisputed fact that the officers informed Defendant Vilaga of the possible charges and penalties against him does not in itself demonstrate "coercion." *See United States v. Tutino,* 883 F.2d 1125, 1138 (2d Cir.

1989) (*citing United States v. Pomares*, 499 F.2d 1220, 1222 (2d Cir. 1974)) (holding that, once a defendant has been advised of his rights, law enforcement officers may discuss with him the evidence against him and the reasons why he should cooperate, and that such discussion is not inherently "coercive"). Accordingly, this Court holds that Defendant Vilaga's statements are admissible, and denies the portion of Defendant Vilaga's Motion to Suppress that seeks the suppression of Vilaga's statements made to officers at the AGIU office following his arrest.

B. The Seizure of Items From Defendant Vilaga's Car Did Not Violate Either the U.S. or CNMI Constitution.

The Fourth Amendment to the U.S. Constitution and Article I, Section 3 of the CNMI Constitution both provide that the right of people to be secure in their persons against unreasonable searches and seizures shall not be violated.[2] Defendant Vilaga argues that the seizure of various items from his car, following his arrest, violated his right to be free from unreasonable searches and seizures, because he did not consent to the officers' warrantless search, and because he did not authorize law enforcement personnel to drive his vehicle to the Capitol Hill office.

As a general rule, "'searches conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable under the Fourth Amendment -- subject only to a few specifically established and well-delineated exceptions.'" *United States v. Ross*, 456 U.S. 798, 825, 102 S. Ct. 2157, 2173, 72 L. Ed. 2d 572, 594 (1982) (*quoting Katz v. United States*, 389 U.S. 347, 357, 88 S. Ct. 507, 514, 19 L. Ed. 2d 576, 585 (1967)). Over the years, the U.S. Supreme Court has recognized three exceptions to the warrant requirement that have often been applied to permit warrantless searches of a vehicle: (1) the search incident to arrest

[2] The Fourth Amendment of the U.S. Constitution is also applicable to the Commonwealth via the Covenant. *See* n.1, *supra*.

exception; (2) the automobile exception; and (3) the plain view exception.[3] This Order will address each of these exceptions and their application to the facts of this case.

1. The Search Incident to Arrest Exception to the Warrant Requirement

The Commonwealth portrays the search and seizure in this case as a valid search incident to arrest, a familiar exception to the warrant requirement. In the case of *New York v. Belton*, 453 U.S. 454, 101 S. Ct. 2860, 69 L. Ed. 2d 768 (1981), the U.S. Supreme Court applied this exception to permit a policeman's seizure of a package of cocaine from a defendant's jacket, which the policeman had retrieved from the passenger compartment of a car following the defendant's arrest for unlawful possession of marijuana. Based on the prior decision of C*himel* v. *California*, 395 U.S. 752, 89 S. Ct. 2034, 23 L. Ed. 2d 685 (1969), the *Belton* Court held that, in the context of a contemporaneous search incident to arrest, anything within the immediately surrounding area of a person arrested may be searched. *Belton*, 453 U.S. at 457, 101 S. Ct. at 2862, 69 L. Ed. 2d at 773. As the *Belton* Court noted, "Such searches have long been considered valid because of the need 'to remove any weapons that [the arrestee] might seek to use in order to resist arrest or effect his escape' and the need to prevent the concealment or destruction of evidence." *Id*. The *Belton* Court held that the area of a vehicle that is within an arrestee's control for the purposes of a contemporaneous search incident to arrest includes not only the passenger compartment, but also the contents of any containers found in the passenger compartment. *Belton*, 453 U.S. at 460, 101 S. Ct. at 2864, 69 L. Ed. 2d at 775 (*citing United*

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[3] The Court notes that the Commonwealth does not argue that the search and seizure in this case falls within the impoundment procedures exception to the warrant rule addressed in *Colorado v. Bertine*, 479 U.S. 367, 107 S. Ct. 738, 93 L. Ed. 2d 739 (1987) and *South Dakota v. Opperman*, 428 U.S. 364, 96 S. Ct. 3092, 49 L. Ed. 2d 1000 (1976). That exception recognizes that the impoundment and subsequent inventory search of a vehicle are valid under the Fourth Amendment, so long as they are conducted pursuant to standardized procedures administered in good faith, and not for the sole purpose of investigation. *Bertine*, 479 U.S. at 372, 107 S. Ct. at 741, 93 L. Ed. 2d at 746; *see also, eg., United States v. Chargualaf*, No. 96-10246, 1997 U.S. App. LEXIS 12039, at *2 (9th Cir. 1997).

States v. Robinson, 414 U.S. 218, 94 S. Ct. 467, 38 L. Ed. 2d 427 (1973); *Draper v. United States*, 358 U.S. 307, 79 S. Ct. 329, 3 L. Ed. 2d 327 (1959)).

In the earlier case of *Preston v. United States*, 376 U.S. 364, 84 S. Ct. 881, 11 L. Ed. 2d 777 (1964), the U.S. Supreme Court held that a search of a vehicle that was towed to a garage some time after a defendant's arrest did not fall within the "search incident to arrest" exception to the warrant rule, because the search was not contemporaneous in time or place to the arrest itself. "**Once an accused is under arrest and in custody**," the Court observed, "**then a search made at another place, without a warrant, is simply not incident to the arrest."** *Preston*, 376 U.S. at 367, 84 S. Ct. at 883, 11 L. Ed. 2d at 780-81 (emphasis added) (*citing Agnello v. United States*, 269 U.S. 20, 31, 46 S. Ct. 4, 5, 70 L. Ed. 2d 145, 148 (1925)). The Court held that, because the defendants had been arrested and taken into custody by the time the search occurred, there was no longer any danger, at the time of the search, that the defendants might use weapons located in the car or that they might destroy any evidence located in the car. Accordingly, the Court held that the policy justifications that underlie the contemporaneous search incident to arrest as an exception to the warrant requirement were inapplicable. *Id*. at 367-68, 84 S. Ct. at 883-84, 70 L. Ed. 2d at 780-81.[4]

The Commonwealth, however, offers the case of *United States v. Vasey*, 834 F.2d 782 (9th Cir. 1987) for the proposition that a search incident to arrest "does not have to be contemporaneous with the arrest and is not confined to the area within the defendant's reach." Pl.'s Opp'n at 4, line 1. This description blatantly misstates the holding in *Vasey*. In that case,

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[4] In the more recent decision of *Knowles v. Iowa*, 525 U.S. 113, 116, 119 S. Ct. 484, 487, 142 L. ed. 2d 492, 498 (1998), the U.S. Supreme Court recognized "the two historical rationales for the 'search incident to arrest' exception: (1) the need to disarm the suspect in order to take him into custody, and (2) the need to preserve evidence for later use at trial." (C*iting United States v. Robinson*, 414 U.S. 218, 234, 94 S. Ct. 467, 476, 38 L. Ed. 2d 427, 439-40 (1973); *Chimel v. California*, 395 U.S. 752, 762-63, 89 S. Ct. 2034, 2040, 23 L. Ed. 2d 685, 694 (1969) (other citations omitted)). The Court held that, where a search does not further either of these underlying rationales, it cannot fall within the search incident to arrest exception to the warrant requirement. *Id*.

the Ninth Circuit Court held that a search violated the Fourth Amendment precisely *because the search was not contemporaneous with the arrest*. *Id.* at 787 (stating, "The search [] falls outside the *Belton* prophylactic rule because it was not conducted contemporaneously with the arrest."). Also, the *Vasey* Court, rather than expanding the scope of searches conducted incident to an arrest as the Commonwealth suggests, expressly held that the warrantless search in that case was also unconstitutional because it violated the "fundamental grabbing area principle established in *Chimel."* *Id.* at 786.

Defendant Vilaga was arrested at approximately 6:25 p.m. on October 28, 2004. Some time after the arrest, Defendant Vilaga's vehicle was driven by law enforcement officers from Chalan Kanoa to Capitol Hill, where it was then searched for evidence. Based on the *Preston* decision discussed above, the search of Defendant Vilaga's car, which took place after Defendant Vilaga's arrest and after the car was removed from the location of the arrest, was not a search incident to arrest because it was not contemporaneous in time or location to the arrest itself. Based on a copy of a handwritten list of items seized, it appears that all of the items taken from Defendant Vilaga's vehicle were taken at once, and based on the testimony presented, it also appears that the search was conducted entirely in Capitol Hill, rather than at the scene of the arrest. Accordingly, this Court must find that the search and seizure of objects from Defendant Vilaga's vehicle does not qualify as a search and seizure incident to arrest.

2. The Automobile Exception to the Warrant Requirement

The U.S. Supreme Court has in certain instances applied a general exception to the warrant requirement for searches of automobiles. Where a law enforcement officer has probable cause to believe that an automobile that is readily mobile contains items that are illegal for the occupants of the vehicle to possess (*i.e.*, contraband), the officer may conduct a search of the vehicle without a warrant. *See, e.g, Maryland v. Dyson*, 527 U.S. 465, 119 S. Ct. 2013, 144 L.

Ed. 2d 442 (1999); *Pennsylvania v. Labron*, 518 U.S. 938, 116 S. Ct. 2485, 135 L. Ed. 2d 1031 (1996); *Carroll v. United States*, 267 U.S. 132, 45 S. Ct. 280, 69 L. Ed. 543 (1925). Unlike a search incident to arrest, the scope of a search pursuant to the automobile exception is not limited to the passenger compartment of the car, but may extend to the trunk or other areas that might contain contraband. *See Ross*, 456 U.S. at 823, 102 S. Ct. at 2172, 72 L. Ed. 2d at 593 (stating, "The scope of a warrantless search based on probable cause is no narrower -- and no broader -- than the scope of a search authorized by a warrant supported by probable cause."). An officer need not find exigent circumstances in order to search an automobile; the fact that an automobile is readily mobile, and can thus quickly be moved out of the locality or jurisdiction in which a warrant would need to be sought, has been held sufficient to justify a search that is made without a warrant.[5] *See Dyson*, 527 U.S. at 466, 119 S. Ct. at 2014, 144 L. Ed. 2d at 445 (stating, "the 'automobile exception' has no separate exigency requirement").

In this case, an officer testified that he saw money laying on the car seat when Defendant Vilaga first stepped out of his vehicle. The Defendant testified that the office could not have seen the cash because he shut the door immediately, and his windows are tinted and so it is impossible to see through the windows at night. Given the fact that three officers, Officers Reyes, Masaharo, and Camacho, all approached the vehicle at the same time, it is reasonable to believe that one of them had the opportunity and the expectation to look inside the car to find the cash that they knew Ms. Zhou had just given to the Defendant. Although Defendant Vilaga's vehicle was not searched until some time *after* his arrest, law enforcement officers continued to have probable cause to believe that the vehicle contained "contraband:" specifically, the money

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[5] The automobile exception has been justified not only on the basis of a vehicle's ready mobility, but also on the basis of the pervasive regulation of the use of automobiles and the reduced expectation of privacy that has resulted from it. *See Labron, supra*, 518 U.S. at 940, 116 S.Ct. at 2487 (*citing California v. Carney*, 471 U.S. 386, 391-92 (1985)).

Defendant Vilaga allegedly received through the commission of the crimes of bribery, theft by deception, and extortion. Furthermore, Defendant Vilaga's car remained "readily mobile" for purposes of the automobile exception despite the fact that the vehicle was no longer in Defendant Vilaga's possession at the time of the search. *See Chambers v. Maroney*, 399 U.S. 42, 90 S. Ct. 1975, 26 L. Ed. 2d 419 (1970) (holding that a search of a vehicle that was taken to a police station subsequent to the defendants' arrest fell within the automobile exception to the warrant requirement); *see also California v. Acevedo*, 500 U.S. 565, 570, 111 S. Ct. 1982, 1986, 114 L. Ed. 2d 619, 627 (1991) (affirming that, "if the police have probable cause to justify a warrantless seizure of an automobile on a public roadway, they may conduct either an immediate or a delayed search of the vehicle."). For these reasons, Defendant Vilaga's Motion to Suppress evidence seized from his automobile is denied.

3. The Plain View Exception to the Warrant Requirement

Another relevant exception to the warrant requirement is known as the "plain view" exception. The U.S. Supreme Court has held that "an object that comes into view during a search incident to arrest that is appropriately limited in scope under existing law may be seized without a warrant." *Horton v. California*, 496 U.S. 128, 135, 110 S. Ct. 2301, 2307, 110 L. Ed. 2d 112, 122 (1990) (*citing Chimel*, 395 U.S. at 762-63, 89 S. Ct. at 2040, 23 L. Ed. 2d at 694). The "plain view" exception has also been applied "where a police officer is not searching for evidence against the accused, but nonetheless inadvertently comes across an incriminating object." *Id.* (*citing Harris v. United States*, 390 U.S. 234, 88 S. Ct. 992, , 19 L. Ed. 2d 1067 (1968); *Frazier v. Cupp*, 394 U.S. 731, 89 S. Ct. 1420, 22 L. Ed. 2d 684 (1969) (other citations omitted)). In order for a search to fall within the plain view exception, the following criteria must be satisfied:

(1) The object must be in plain view,

(2) the officer must not violate the Fourth Amendment in *arriving at the place* from which the evidence may be plainly viewed,
(3) the item's incriminating nature must be "immediately apparent," and
(4) the officer must have "a lawful right of *access* to the *object itself*.

Horton, 496 U.S. at 136-37, 110 S. Ct. at 2308, 110 L. Ed. 2d at 123 (emphasis added) (*citing Coolidge v. New Hampshire*, 403 U.S. 443, 466, 91 S. Ct. 2022, 2038, 29 L. Ed. 2d 564, 583 (1971), *Arizona v. Hicks*, 480 U.S. 321, 326-27, 107 S. Ct. 1149, 1153, 94 L. Ed. 2d 347, 355 (1987).

At the time of Defendant Vilaga's arrest, as well as at the time of the search of Vilaga's automobile, at least some of the items that were ultimately seized from the car were within plain view, including the $263 in cash that Defendant Vilaga allegedly received from the cooperating witnesses. As discussed above, at neither the time of the arrest nor the time of the search did officers violate the Fourth Amendment in arriving at the place(s) from which the items were within plain view. The incriminating nature of the money in Defendant Vilaga's car was immediately apparent to the officers, and the officers had a lawful right of access to that evidence. Because this Court holds that the broader *automobile* exception applies to all of the evidence seized by law enforcement officers, however, it need not consider whether each and every item seized from Defendant Vilaga's car was in "plain view" at the time of his arrest, or whether the incriminating nature of items other than the money was immediately apparent.

C. The Tape-Recorded Conversations Between Defendant Vilaga and Ms. Ge Are Not Excludable.

Defendant Vilaga seeks suppression of all intercepted telephone conversations between himself and Ms. Ge Dong Fang. Vilaga argues that law enforcement officers exceeded the scope of the warrant authorizing the use of an audio interception device by recording Ms. Ge, whose name is not included in the warrant. Defendant Vilaga contends that, by recording Ms. Ge, the officers violated the Fourth Amendment to the U.S. Constitution and Art. I, § 3 of the N.M.I.

Constitution, which mandate that no warrants shall issue except those particularly describing the "things to be seized."

The use of electronic devices to capture an oral conversation constitutes a "search and seizure" within the meaning of the Fourth Amendment. *Berger v. New York*, 388 U.S. 41, 51, 87 S. Ct. 1873, 1879, 18 L. Ed. 2d 1040, 1048 (1967). However, Defendant Vilaga does not direct the Court to any legal authority that directly supports his argument with respect to the recording of Ms. Ge's voice.[6] Defendant Vilaga also does not explain how the recording of a cooperating witness' voice could operate as a seizure of something of *Vilaga's*. If anything was seized beyond the scope of the warrant, it was the sound of a cooperating witness' voice, not the sound of Vilaga's voice, and it is clear that Vilaga has no Constitutional interest in the audio interception and recording of Ms. Ge's voice. Accordingly, this portion of Defendant Vilaga's Motion is denied.

IV. CONCLUSION

For the foregoing reasons, Defendant Vilaga's Motion to Suppress Evidence is DENIED in its entirety.

SO ORDERED this 17th day of June 2005.

/s/
RAMONA V. MANGLONA, Associate Judge

[6] The cases cited on this issue in Defendant Vilaga's memorandum in support of the Motion are inapposite. Neither case concerns the scope of a warrant permitting a *wiretap*, but rather, they relate to warrants describing *objects* to be searched and seized. *See Marron v. United States*, 275 U.S. 192, 48 S. Ct. 74, 72 L. Ed. 231 (1927); *United States v. Dubrofsky*, 581 F.2d 208 (9th Cir. 1978).