

1 **FOR PUBLICATION**

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

7 **COMMONWEALTH OF THE**
8 **NORTHERN MARIANA ISLANDS,**

9 **Plaintiff,**

10 **v.**

11 **FU ZHU LIN,**

12 **Defendant.**

CRIMINAL CASE NO. 11-0313A

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

13
14 **I. INTRODUCTION**

15 **THIS MATTER** came before the Court on the defendant's motion to suppress
16 evidence on February 14, 2013, at 1:30 p.m. in Courtroom 202A. Daniel T. Guidotti, Assistant
17 Public Defender, appeared on behalf of the defendant, Fu Zhu Lin ("Defendant"). Margo A.
18 Brown, Assistant Attorney General, appeared on behalf of the Commonwealth of the Northern
19 Mariana Islands ("the Commonwealth").

20 Based on the papers submitted and arguments of counsel, the Court hereby **DENIES**
21 Defendant's motion to suppress evidence.

22 **II. BACKGROUND**¹

23 Defendant is charged with one count of Illegal Possession of a Controlled Substance in
24 violation of 6 CMC § 2142(a) for being in possession of crystal methamphetamine. On
25 December 24, 2011, Sergeant Anthony I. Macaranas and Officer Rodolfo S. Hermosilla seized
26 a small baggie containing crystal methamphetamine from Defendant's companion, Mei Ying

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28 ¹ The following facts are derived from Defendant's motion to suppress evidence.

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DATE: 02/25/13 *gmm*

1 Qi, after the officers observed Defendant passing the item to Ms. Qi. This event occurred at a
2 sobriety checkpoint in Chalan Piao.

3 Defendant was driving a scooter with Ms. Qi as his passenger when they were randomly
4 waived into the sobriety checkpoint by an officer.² Upon entering the checkpoint, Defendant
5 encountered another officer, known as the “greeter.” The greeter’s job is to briefly inspect the
6 vehicles and their occupants for signs of “intoxicated drivers, people not wearing seat belts, and
7 other traffic violations, including motorists who have expired or missing vehicle registration
8 stickers on their license plates.”³ (Aff. of Officer Hermosilla ¶ 4.) If the greeter suspects a
9 violation of Commonwealth law, the greeter directs the vehicle to a citation area for further
10 inquiry by a different officer, known as the “citer.”

11 Here, the greeter observed an expired 2005 registration sticker on the license plate of
12 Defendant’s scooter. Based on this observation, the greeter formed reasonable suspicion of a
13 possible registration violation and then directed Defendant and Ms. Qi to the citation area.
14 There, Defendant and Ms. Qi met Sgt. Macaranas and Officer Hermosilla.⁴ Neither Sgt.
15 Macaranas nor Officer Hermosilla observed, or had any interaction with, Defendant or Ms. Qi
16 prior to meeting them in the citation area.⁵

17 While in the citation area of the sobriety checkpoint, Officer Hermosilla asked
18 Defendant for his license and registration. Defendant failed to produce a driver’s license or
19 identification, and provided the officer with only an expired registration card for the scooter.

21 ² According to Sergeant Macaranas’ testimony at the hearing, about every third vehicle was waived into the
22 checkpoint, which varied only depending on the level of traffic.

23 ³ The record is sparse as to what the greeter’s inspection entailed, but it does not appear that the greeter ever asked
24 motorists for their license and registration or engaged in any communication at all with the motorists.

24 ⁴ Sgt. Macaranas was in charge of the operations of the checkpoint and supervised the other officers there. Officer
Hermosilla worked at the checkpoint as the citer.

25 ⁵ Defendant’s suppression motion challenges only the greeter’s grounds for forming reasonable suspicion in
26 directing Defendant to the citation area for further inquiry. Defendant does not challenge the constitutionality or
27 lawfulness of any actions occurring thereafter. Curiously, the greeter was not called to testify and did not submit
28 any affidavit in this matter. Only Sgt. Macaranas and Officer Hermosilla testified at the hearing even though all
of their involvement took place after the point in issue, and thus, their observations are largely irrelevant. For
instance, Sgt. Macaranas’ observations of the beer latched to the back of the scooter and Defendant’s improper
helmet are irrelevant. There is no evidence that the greeter took these items into account in directing Defendant to
the citation area.

1 Officer Hermosilla wrote a traffic citation and then arrested Defendant for driving a motor
2 vehicle without a driver's license. Sgt. Macaranas then conducted a pat-down search of
3 Defendant for weapons and drugs and noticed Defendant hand something to Ms. Qi who
4 immediately concealed the item in her blouse. The officers retrieved the item, which later
5 tested positive for crystal methamphetamine.

6 **III. LEGAL STANDARD**

7 It is within the Court's broad discretion to grant or deny a motion to suppress evidence.
8 *See Commonwealth v. Campbell*, 4 NMI 11, 16 (1993). The defendant has the initial burden to
9 produce evidence that the defendant was subject to an unlawful search and seizure that bore the
10 challenged evidence. *United States v. De la Fuente*, 548 F.2d 528, 536-37 (5th Cir. 1977).⁶ If
11 the defendant supports its suppression motion with evidence, such as an affidavit, the burden
12 shifts to the government to prove by a preponderance of the evidence that the search and
13 seizure was lawful. *See id.*; *State v. Breeden*, 293 S.E.2d 788, 792 (N.C. 1982).

14 **IV. DISCUSSION**

15 Defendant seeks to exclude all evidence obtained pursuant to Defendant's brief
16 detention in the citation area of the sobriety checkpoint. Defendant concedes that the initial
17 stop at the checkpoint was lawful, but argues that it became unconstitutional at the moment the
18 greeter directed Defendant to the citation area for further inquiry without reasonable suspicion
19 of a violation of Commonwealth law. Although Defendant did not offer any affidavits,
20 exhibits, witnesses or other evidence to support his motion, the parties stipulated during oral
21 argument that the burden shifted to the Commonwealth. Based on this stipulation and the
22 affidavits submitted by the Commonwealth and relied upon by Defendant in bringing his
23 motion, the Court shifted the burden of proof to the Commonwealth. *Cf. Epsom v. State*, 743
24 S.W.2d 311, 312 (Tex. Ct. App. 1987).

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27 ⁶ The Commonwealth Constitution's provision on "searches and seizures" is analogous to its federal counterpart,
28 the Fourth Amendment of the U.S. Constitution. *See* NMI Const., art. I, § 3; U.S. Const, amend. IV. Therefore,
the Court may look to state and federal courts' interpretation of the Fourth Amendment for guidance. 7 CMC §
3401.

1 **A. DEFENDANT WAS SUBJECT TO AN INVESTIGATORY DETENTION REQUIRING REASONABLE**
2 **SUSPICION**

3 The Fourth Amendment protection against unreasonable searches and seizures applies
4 in the Commonwealth of the Northern Mariana Islands. *See Commonwealth v. Pua*, 2009 MP
5 21 ¶ 19, n. 14. The context of the search and seizure determines the “reasonableness” standard.
6 *O’Connor v. Ortega*, 480 U.S. 709, 719 (1987). Both Defendant and the Commonwealth made
7 only a cursory analysis of the context of the search and seizure in question. Both parties relied
8 on *United States v. Lopez-Soto*, 205 F.3d 1101, 1105 (9th Cir. 2000) in characterizing
9 Defendant’s detention as an “investigatory traffic stop” that required “reasonable suspicion.”
10 (Def.’s Mot. to Suppress at 4); (Commw’s Opp’n Mot. at 3.) The parties’ reliance on *Lopez-*
11 *Soto* in characterizing Defendant’s seizure is misplaced since the case is easily distinguishable.
12 Nevertheless, the parties ultimately reached the correct “reasonable suspicion” standard.

13 In *Lopez-Soto*, a police officer drove up behind a motorist and pulled him over based on
14 a suspected registration violation. 205 F.3d at 1103. The Ninth Circuit found it was “an
15 investigatory traffic stop” that required reasonable suspicion. *Id.* In the case at bar, no officer
16 targeted Defendant on the highway and pulled him over; rather, the seizure occurred when
17 Defendant was randomly waived into a well-marked sobriety checkpoint.⁷ The Supreme Court
18 distinguished roving-patrol stops, like that in *Lopez-Soto*,⁸ to checkpoint stops like in the case
19 at bar, citing the following:

20 The circumstances surrounding a checkpoint stop and search
21 are far less intrusive than those attending a roving-patrol
22 stop. Roving patrols often operate at night on seldom-
23 traveled roads, and their approach may frighten motorists.
24 At traffic checkpoints the motorist can see that other
25 vehicles are being stopped, he can see visible signs of the
26 officers’ authority, and he is much less likely to be
27 frightened or annoyed by the intrusion.

27 ⁷ “[A] Fourth Amendment ‘seizure’ occurs when a vehicle is stopped at a checkpoint.” *Mich. Dep’t of State Police*
v. Sitz, 496 U.S. 444, 450 (1990).

28 ⁸ Although the stop made in *Lopez-Soto* was an “investigatory traffic stop” as opposed to a “roving-patrol stop,”
both types of stops share the same characteristics that distinguish them from a fixed checkpoint stop.

1 *United States v. Martinez-Fuerte*, 428 U.S. 543, 555 (1976) (citation omitted). Due to the far
2 less intrusive nature of a checkpoint stop, “stops and questioning at issue may be made in the
3 *absence of any individualized suspicion* at reasonably located checkpoints.” *Id.* at 562
4 (emphasis added).

5 The determination of whether a seizure at a checkpoint was lawful under the Fourth
6 Amendment requires a two-part inquiry. First, the Court must determine whether the
7 checkpoint itself was constitutional. *Sitz*, 496 U.S. at 450. Second, the Court must determine
8 whether the checkpoint was carried out in a constitutional manner. *See Illinois v. Lidster*, 540
9 U.S. 419, 427-28 (2004).

10 Sobriety checkpoints are constitutional as long as (1) motorists are randomly and briefly
11 stopped, and (2) the checkpoints are set up for safety purposes as opposed to general crime
12 control purposes. *City of Indianapolis v. Edmond*, 531 U.S. 32, 47 (2000); *Sitz*, 496 U.S. at
13 455. Here, Defendant was stopped at a well-marked sobriety checkpoint. The purpose of the
14 checkpoint was to check for intoxicated drivers and other traffic violations such as registration
15 violations. These are proper purposes for a checkpoint. *Sitz*, 496 U.S. at 455; *see Delaware v.*
16 *Prouse*, 440 U.S. 648, 658 (1979). Also, the checkpoint was random; every third motorist, or
17 every fifth or tenth motorist depending on traffic, was briefly detained at the checkpoint. The
18 sobriety checkpoint was constitutional.⁹

19 The second part to the inquiry, whether the checkpoint was carried out in a
20 constitutional manner, focuses on the degree of discretion afforded to the officers conducting
21 the checkpoint. *United States v. Galindo-Gonzales*, 142 F.3d 1217, 1221 (10th Cir. 1998) (“In
22 concluding that these fixed checkpoint stops do not violate the Fourth Amendment, the
23 Supreme Court has focused on the lack of discretion afforded the individual officers, the
24 standardized procedures employed, and the minimal intrusion imposed on motorists.”) (citing
25 *Sitz*, 496 U.S. at 453). If the officers follow a neutral and generally applied procedure for all
26 detainees at the checkpoint, there is likely no constitutional violation. *See id.*

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28 ⁹ Defendant conceded during oral argument that the checkpoint was constitutional.

1 For instance, and contrary to Defendant’s representations made during oral argument,
2 officers may request all motorists stopped at a checkpoint for their license and registration
3 absent any suspicion of wrongdoing. *See Prouse*, 440 U.S. at 663 (noting in dicta that
4 requesting license and registration of all oncoming traffic at roadblock-type stops may be
5 permissible); *People v. Estrada*, 386 N.E.2d 128, 132 (Ill. Ct. App. 1979) (identifying several
6 jurisdictions that permit “roadblocklike, systematic checks for licenses”). However, if the
7 officers exercise discretion in varying their types of questions and methods of inspection at the
8 checkpoints, this will likely be unconstitutional absent particularized suspicion of criminal
9 activity. *United States v. Huguenin*, 154 F.3d 547, 562 (6th Cir. 1998) (holding that the
10 officers needed reasonable suspicion for questioning motorists at a sobriety checkpoint because
11 of “[t]he excessive discretion left in the hands of the officers” due to the absence of a standard
12 set of questions asked).

13 Here, the degree of discretion varied at different stages of the checkpoint, corresponding
14 to different levels of suspicion needed. In the first stage, an officer randomly waived
15 Defendant into the checkpoint based on a neutral and generally applied procedure in which the
16 officer waived every third vehicle or so into the checkpoint. Due to this minimal degree of
17 discretion, no particularized suspicion was necessary to waive Defendant into the checkpoint.
18 At the second stage, the greeter also carried out a neutral and generally applied procedure,
19 whereby, the officer briefly inspected the vehicles and occupants for violations of
20 Commonwealth law in apparently the same manner. No particularized suspicion was necessary
21 to perform this standardized procedure.

22 At the third stage, the greeter either directs the vehicle back onto the road if no
23 violations are observed, or directs the vehicle to the citation area if there is reasonable suspicion
24 of a violation of Commonwealth law. Since the greeter must exercise discretion in directing a
25 vehicle to the citation area, the ensuing prolonged inquiry transforms into an “investigatory
26 detention” under *Terry v. Ohio*, 392 U.S. 1, 21-22 (1968). *People v. Bruni*, 940 N.E.2d 84, 88
27 (Ill. Ct. App. 2010). This investigatory detention, or “*Terry* stop,” is justified when the greeter
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1 can point to “specific and articulable facts” that give rise to reasonable suspicion of illegal
2 activity. *Terry*, 392 U.S. at 21.

3 In conclusion, Defendant was properly stopped at the sobriety checkpoint and briefly
4 inspected by the greeter absent any particularized suspicion, but reasonable suspicion was
5 required at the moment the greeter subjected Defendant to an investigatory detention by
6 directing him to the citation area for further inquiry. *See United States v. Brugal*, 209 F.3d 353,
7 (“[T]he Supreme Court has recognized that an initially permissible checkpoint seizure may
8 transform into an impermissible one by further intrusions not based upon individualized
9 suspicion or consent.”) (citations omitted).

10 **B. REASONABLE SUSPICION EXISTED TO SUBJECT DEFENDANT TO AN INVESTIGATORY**
11 **DETENTION**

12 Defendant insists that “it is *not* a violation of Commonwealth law to operate a motor
13 vehicle with an expired registration sticker.” (Def.’s Mot. to Suppress at 6.) “Thus,
14 [Defendant’s] failure to have a current registration sticker affixed to his scooter could not give
15 rise to a reasonable suspicion that [Defendant] was operated [sic] his scooter in violation of
16 Commonwealth law.” (*Id.*) Consequently, Defendant’s investigatory detention in the citation
17 area was unconstitutional, and all evidence obtained thereafter should be suppressed. (*Id.* at 7.)

18 Title 9 of the Commonwealth Vehicle Code provides the statutes relevant to the instant
19 matter. “Every owner of a motor vehicle or bicycle shall, before operating any such motor
20 vehicle or bicycle on any highway of the Commonwealth, register it with the bureau.” 9 CMC
21 § 2101(a). Also, owners shall display the registration number and year on the license plates of
22 their vehicles. 9 CMC § 2106. “It is unlawful and a misdemeanor for any person to operate
23 upon a highway any motor vehicle which is not registered in the Commonwealth.” 9 CMC §
24 2212(a). The ambiguity in these statutes, which Defendant hangs his arguments on, is that the
25 statutes do not require vehicle owners to possess “current” registration, nor make it a
26 punishable offense to display an expired registration sticker. Therefore, Defendant contends
27 that he was required to register his vehicle only once, and needed not affix a current registration
28 sticker to his scooter’s license plate.

1 “This Court’s objective, in interpreting statutes which reflect an ambiguity, is to
2 ascertain and give effect to the intent of the legislature.” *Marine Revitalization Corp. v. Dep’t*
3 *of Land & Natural Res.*, 2011 MP 2 ¶ 11 (quoting *Faisao v. Tenorio*, 4 NMI 260, 266 (1995)).
4 In order to ascertain the legislative intent, the Court looks to the purpose of the statutes and the
5 overall statutory framework.

6 The purposes of the vehicle registration requirement are to ensure vehicle owners have
7 minimum motor vehicle liability insurance, 9 CMC § 2101(d), and all operating vehicles have
8 satisfactorily passed a safety inspection. 9 CMC §§ 2111, 3101. Defendant’s interpretation
9 that the Commonwealth Vehicle Code (CVC) requires only one registration would not serve
10 either of the two purposes of the referenced vehicle registration statutes. Motor vehicle liability
11 insurance expires, usually annually, and it may be cancelled or revoked.¹⁰ The fact that
12 Defendant may have had liability insurance in 2005 when the scooter appeared to be last
13 registered certainly does not mean Defendant maintained minimum motor vehicle liability
14 insurance in 2011 when he was detained. Similarly, the fact that the scooter was presumably
15 inspected and deemed safe in 2005 upon its last purported registration does not necessarily
16 mean the scooter was safe in 2011.

17 The CNMI has a vital interest in ensuring the safety of all operating vehicles and that
18 victims in a vehicle accident will be justly compensated. Requiring vehicles to have a current
19 registration sticker affixed to their license plates allows police officers to easily verify whether
20 the owner has minimum motor vehicle liability insurance and that the vehicle recently
21 underwent a safety inspection. Requiring vehicle owners to register their vehicles only once
22 would undermine the Legislature’s intent of ensuring that the vehicles are safe and the owners
23 are adequately insured.

24 Defendant’s argument that there is no requirement for vehicle owners to possess
25 “current” registration is also undermined by the statutory framework of the CVC, which
26 discusses registration renewal. For instance,

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28 ¹⁰ “No motor vehicle liability insurance policy may be canceled until at least 30 days after written notice of
termination of the policy has been given to both the person insured and the bureau.” 9 CMC § 8205(d).

1 All privately-owned motor vehicles shall be registered
2 annually during the same calendar month in which the
3 vehicle was registered during the previous year. Every motor
4 vehicle owner shall be responsible for renewal of vehicle
5 registration on or before the last day of the month in which
6 registration is required under this section.

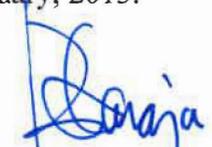
7 9 CMC § 3101. Also, the application for registration or *renewal of registration* must contain
8 satisfactory evidence of minimum vehicle liability insurance for the vehicle. 9 CMC § 2101(d)
9 (emphasis added). Every vehicle registration expires annually. 9 CMC § 2107 (titled
10 “Registration: Expiration and Renewal”). There is little guidance from the Supreme Court on
11 the vehicle registration statutes, but the Court did affirm a conviction for a defendant’s “failure
12 to carry a *valid* vehicle registration card.” *Commonwealth v. Yao*, 2007 MP 12 ¶ 1 (emphasis
13 added). “Valid” and “current” are not exactly synonymous, but the holding does infer that the
14 mere act of registering a vehicle once may not be sufficient under the CVC.

15 In review of the purposes and language of the registration statutes under the CVC, the
16 Court finds that all motorists must possess current registration for their vehicles while operating
17 their vehicles on the highways in the CNMI. Also, a current registration sticker must be affixed
18 to the vehicle’s license plate to allow police officers to quickly and easily verify whether the
19 vehicle is currently registered. Defendant’s failure to display a current registration sticker on
20 his scooter’s license plate violated 9 CMC § 2106 and provided the greeter reasonable
21 suspicion that Defendant was in violation of 9 CMC §§ 2101(a), 3101. Therefore, Defendant’s
22 investigatory detention in the citation area was supported by reasonable suspicion of a violation
23 of Commonwealth law, and was in compliance with the CNMI and U.S. Constitutions.

24 IV. CONCLUSION

25 For the foregoing reasons, the Court hereby **DENIES** Defendant’s motion to suppress
26 evidence.

27 **IT IS SO ORDERED** this 25th day of February, 2013.

28 

ROBERT C. NARAJA, Presiding Judge