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

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS,)	Criminal Case No. 94-35F
)	
Plaintiff,)	
)	
v.)	DECISION AND ORDER ON
)	DEFENDANT'S MOTION TO
LUCIA C. SABLAN,)	SUPPRESS EVIDENCE
)	
Defendant.)	
_____)	

This matter came before the Court on June 6, 1994, on the Motion of Defendant Lucia C. Sablan to suppress evidence found in the vehicle she was driving. Specifically, Defendant alleges that this search violated her rights under the Fourth Amendment to the U.S. Constitution, article I, section 3 of the Commonwealth Constitution and Title 6, section 6201 of the Commonwealth Code because the items were seized without a warrant; and thus, were the fruits of 'an illegal search and seizure. Conversely, the Government argues that a search warrant was not necessary because the facts indicate that this case falls under the "automobile exception."

FOR PUBLICATION

1 I. FACTS

2 On the morning of March 19, 1994, while Lea Gaspar was
3 working at Poker and Games Kingdom (Cabrera Center), she was
4 attacked and robbed by a female assailant. Government's
5 Opposition to Motion to Suppress at 2. At approximately 9:39
6 a.m., a witness informed the police that a robbery was in progress
7 and provided a description of the assailant along with a license
8 plate number. Unnumbered Exhibit to Defendant's Motion in Limine
9 to Preclude In-Court Identification (Mar. 19, 1994). A few
10 minutes after a police bulletin was released, officer Juan Limes
11 spotted a vehicle and a driver on Middle Road, San Jose, fitting
12 the eyewitness description. *Id.* The officer followed the vehicle
13 until it pulled over in a residential area. The driver, later
14 identified as the Defendant, exited the vehicle. When the officer
15 approached the Defendant she appeared to be sick. At 9:55 a.m.,
16 a witness arrived at the scene and identified the Defendant and
17 the vehicle. *Id.* At 10:00 a.m., the Defendant was advised of her
18 Miranda rights, arrested, and was subsequently taken to DPS. *Id.*
19 An officer waited at the scene of the arrest with the vehicle
20 until the crime scene technician (CST) arrived at 1:20 p.m. *Id.*
21 At 1:23 p.m., the CST took photographs of the vehicle, and at 1:25
22 p.m. he discovered the evidence which is now the subject of the
23 Defendant's motion to suppress.^{1/} Thereafter, "the vehicle was

24 _____
25 ^{1/} During the hearing on this motion, defense counsel stated
26 that according to the documents provided by the Government there
27 was only one search of the vehicle and it was conducted at DPS.
28 However, supplemental police reports indicate that there were two
searches of the vehicle; one at the scene and the other at DPS.
These supplemental police reports were submitted to the Court by
the Defendant in support of her motion in limine. Moreover, the
Government indicated in its opposition to suppress the evidence
(continued...)

1 taken to DPS central for follow up processing," id., where the
2 vehicle was impounded and another search was conducted.
3 Government's Opposition to Motion to Suppress at 4.
4

5 II. ISSUE

6 A: Whether the searches of the vehicle were incident to the
7 arrest of the Defendant, and were therefore valid warrantless
8 searches.
9

10 B: Whether the police conducted the searches pursuant to a
11 regularized set of police procedures so that the searches were
12 valid inventory searches.
13

14 C: Whether there were sufficient probable cause and exigent
15 circumstances for the police to conduct a warrantless search under
16 the Fourth Amendment to the United States Constitution.
17

18 D: Whether there were sufficient probable cause and exigent
19 circumstances for the police to conduct a warrantless search under
20 article 1, section 3 of the Commonwealth Constitution.
21

22 III. ANALYSIS

23 Under the principles of the Fourth Amendment to the U.S.
24 Constitution, police cannot conduct a search without first
25 obtaining a warrant from a neutral magistrate. *New York v.*
26 *Belton*, 101 S.Ct. 2860, 2862 (1981). Courts however, have
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28 ^{1/}(...continued)
that two searches were conducted. Therefore, this Court will
address the validity of both searches.

1 recognized the need for exceptions to this requirement based on
2 "exigencies of the situation." *McDonald v. United States*, 69
3 S.Ct. 191, 193 (1948); cited in *New York v. Belton*, 101 S.Ct. at
4 2862. Unless it is shown that an exception applies, the
5 presumption is that all warrantless searches are unreasonable.
6 The government has the burden of proving by a preponderance of the
7 evidence whether a search comes within an exception. *CNMI v.*
8 *Pangelinan*, 3 CR 357 (1988); *United States v. Jeffers*, 72 S.Ct. 93
9 (1951).

10 Courts have upheld the validity of warrantless searches of
11 automobiles in the following instances: 1) searches incident to
12 lawful arrests; 2) inventory searches; and 3) the existence of
13 probable cause and exigent circumstances under the automobile
14 exception.

15
16 **A: Search Incident to an Arrest**

17 In *New York v. Belton*, the Supreme Court established a rule
18 for determining the validity of warrantless searches of vehicles
19 incident to lawful custodial arrests. 101 S.Ct. at 2864. The
20 majority stated "that when a policeman has made a lawful custodial
21 arrest of the occupant of an automobile, he may, as a
22 **contemporaneous** incident of that arrest, search the passenger
23 compartment of that automobile." (emphasis added) *Id.*^{2/} In
24 applying the *Belton* bright-line test, lower courts have clarified
25 the term "contemporaneous." In doing so, courts examine: 1) the
26 temporal proximity of the search to the arrest; and 2) the

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^{2/} The majority further stated that this rule extends to the
examination of the contents of containers within the passenger
compartment. *Id.*

1 arrestee's proximity to where the search is being conducted.

2 In *United States v. Vasey*, 834 F.2d 782, 786 (9th Cir. 1987),
3 the Ninth Circuit Court of Appeals acknowledged that the *Belton*
4 test does have limits. The *Vasey* court held that the search was
5 invalid and not contemporaneous to the arrest where it was
6 conducted thirty to forty-five minutes after defendant was
7 arrested, handcuffed and placed in the in back of the police car.
8 *Id.*; see *United States v. Lorenzo*, 867 F.2d 561 (9th Cir. 1989)
9 (confirming the validity of the *Vasey* decision); *United States v.*
10 *Monclavo-Cruz*, 662 F.2d 1285 (9th Cir. 1981) (search of purse
11 conducted over an hour after arrest not contemporaneous); *United*
12 *States v. McCrady*, 774 F.2d 868 (8th Cir. 1985) (search valid and
13 incident to arrest because conducted immediately after arrest);
14 but see *United States v. White*, 871 F.2d 41 (6th Cir. 1989)
15 (criticizes *Vasey* then distinguishes it on the basis of time
16 between the arrest and the search).

17 Furthermore, to determine whether the search is
18 contemporaneous to the arrest, courts have analyzed the proximity
19 of the arrestee to the place of the search. Courts have held that
20 where a defendant has been removed from the place of the arrest,
21 the search may no longer be contemporaneous. See *United States v.*
22 *Lugo*, 978 F.2d 631 (10th Cir. 1992) (not within *Belton* because
23 defendant no longer at the scene of arrest when search conducted);
24 *State v. Fry*, 388 N.W.2d 565 (Wis. 1986) (to be contemporaneous,
25 defendant must remain at the scene); but see *State v. White*, 871
26 F.2d 41, 44 (6th Cir. 1989) ("even after arrestee has been
27 separated from his vehicle or its contents, . . . such a search is
28 valid"); *United States v. Karlin*, 852 F.2d 968 (7th Cir. 1988),

1 cert. denied, 109 S.Ct. 1142 (1989) (contemporaneous and incident
2 to arrest even after defendant arrested, handcuffed and placed in
3 police car).

4 In light of the holdings of Ninth Circuit and numerous other
5 jurisdictions, neither of the searches are "contemporaneous" under
6 the *Belton* bright-line test. The first search, at the scene of
7 the arrest, was conducted three and one-half hours following the
8 arrest. Moreover, the first search was conducted after the
9 Defendant was taken to DPS. Therefore, the search was not
10 contemporaneous because the Defendant was not in close proximity
11 to the location of the search. Thus, the first search was not
12 incident to the arrest, and failed to satisfy the *Belton* bright-
13 line test.

14 The second search was subsequently conducted at DPS. Clearly
15 this search was not contemporaneous to the arrest because it was
16 performed over three and one-half hours after the arrest and out
17 of the presence of the Defendant. Therefore, this search cannot
18 be categorized as a search incident to an arrest, and *Belton* is
19 not applicable.

21 B: Inventory Search

22 The U.S. Supreme Court noted that the U.S. Constitution
23 permits routine inventory searches.^{3/} *South Dakota v. Opperman*,
24 96 S.Ct. 3092 (1976). In order for police to perform a valid
25 inventory search, a regularized set of procedures is necessary to
26

27 ^{3/} "Inventory searches have two purposes: To protect the
28 vehicle and the property in it, and to safeguard the police or
other officers from claims of lost possessions." *United States v.*
Ducker, 491 F.2d 1190 (5th Cir. 1974).

1 protect against arbitrariness. Id. at 371-2. The government must
2 show that an established reasonable procedure exists and that the
3 search in question conformed to that procedure in order for an
4 inventory search to be upheld under Opperman. Id. Nowhere in its
5 brief nor during the hearing did the Government indicate that the
6 police followed an established inventory procedure when searching
7 the vehicle in which the evidence was found. Therefore, under the
8 inventory search exception, neither search is valid because the
9 Government failed to sustain its burden of proof.

10
11 **C: Automobile Exception**

12 **1: Under the United States Constitution**

13 The United States Supreme Court has held that police may
14 perform warrantless searches under the "automobile exception" to
15 the Fourth Amendment where both probable cause and exigent
16 circumstances exist. *Carroll v. United States*, 45 S.Ct. 280
17 (1925). The Supreme Court identified two factors which justify
18 this exception: 1) an automobile's inherent mobility; and 2) a
19 diminished expectation of privacy. Id. The Court held that
20 because automobiles can "be quickly moved out of the locality or
21 jurisdiction in which the warrant must be sought," the mere
22 mobility of the vehicle at the time it is stopped creates exigent
23 circumstances. Id. The existence of exigent circumstances are
24 determined at the time the vehicle is seized.^{4/} *Chambers v.*
25 *Maroney*, 90 S.Ct. 1975, reh. denied 91 S.Ct. 23 (1970).

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28 ^{4/} In *Ross v. United States*, the Court extended the
automobile exception to included containers when the search was
supported by probable cause and exigent circumstances. 102 S.Ct.
2157 (1982).

1 Therefore, vehicle searches performed after exigent circumstances
2 have lapsed are valid as long as the police could have
3 legitimately searched the automobile at some point. EVELYN M. ASWAD,
4 ET. AL. 82 THE GEORGETOWN LAW JOURNAL 671 (1994); Chambers, 90 S.Ct. at
5 1975 (because exigent circumstances existed at the time the
6 vehicle was stopped, later warrantless search at the station house
7 valid); California v. Acevedo, 111 S.Ct. 1982 (1991) ("if police
8 have probable cause to justify a warrantless seizure of an
9 automobile on a public roadway, they may conduct either an
10 immediate or a delayed search of the vehicle").

11 Based on the facts presented to this Court, the Government
12 sustained its burden of proving that the officers had probable
13 cause to have reasonably believed the truck the Defendant was
14 driving contained the fruits and instrumentalities of the assault
15 and the robbery under the Fourth Amendment to the United States
16 Constitution.

17 Additionally, under the U.S. Supreme Court line of cases, the
18 mere mobility of the truck at the time it was stopped created
19 exigent circumstances. Because the truck was mobile when it was
20 stopped, under federal case law, any subsequent warrantless search
21 is valid. Therefore, the later searches performed over three and
22 one-half hours after the arrest and at the station house are valid
23 under the United States Supreme Court's interpretation of the
24 Fourth Amendment.

25
26 **2: Under the Commonwealth Constitution**

27 Jurisdictions have held that their state constitutions afford
28 greater protection from unreasonable automobile searches than does

1 the U.S. Constitution. State v. Brown, 721 P.2d 1357 (Or. 1986)
2 (decide cases independent of federal law); State v. Opperman, 247
3 N.W.2d 673, 675 (N.D. 1976) (search not valid under state
4 constitution although valid under U.S. Constitution); State v.
5 Jackson, 688 P.2d 136, 140-1 (Wash. 1984) (prior reliance on
6 federal precedent and federal constitutional provisions does not
7 preclude taking a more expansive view of state constitutions);
8 State v. Lauric, 794 P.2d 460 (Utah 1990) ("increasing number of
9 state courts are relying on an analysis of the search and seizure
10 provisions of their own constitutions to expand or maintain
11 constitutional protection beyond the scope mandated by the fourth
12 amendment").

13 Many state courts have found it proper to utilize a case by
14 case analysis to determine exigent circumstances. In Oregon, if
15 an automobile is mobile at the time it is stopped and probable
16 cause exists, the police may make an "**immediate** warrantless
17 search." (emphasis added). State v. Brown, 721 P.2d 1357 (Or.
18 1986). "Exigent circumstances do not last forever," and "a
19 deferred warrantless search must be commenced as promptly after
20 the seizure as is reasonable in the circumstances." State v.
21 Quinn, 623 P.2d 630, 635-36 (Or. 1981) (overnight delay not
22 immediate but recognize police may need to first perform other
23 tasks); State v. Zibler, 788 P.2d 484 (Or. App. 1990) (forty-five
24 minutes immediate because no showing of deliberate delay or that
25 "police were doing anything other than necessary and appropriate
26 steps in the interim").

27 To determine exigent circumstances in Utah, the state must
28 show a justification for the warrantless search; proof that "the

1 procurement of a warrant would have jeopardized the safety of the
2 police officers or that the evidence was likely to have been lost
3 or destroyed." State v. Larocco, 794 P.2d 460, 469 (Utah 1990)
4 (search unreasonable because police could have easily obtained
5 warrant).

6 The Hawaii courts have held that to establish exigent
7 circumstances, the government must show it had reason to believe
8 there was a foreseeable risk the vehicle may be moved or evidence
9 may be lost before a warrant could be obtained. State v. Ritte,
10 710 P.2d 1197 (Hawaii 1985) (already arrested at the time of
11 search, truck was in residential area, and truck was in police
12 custody so no exigent circumstances found).

13 The Washington courts have held that to determine exigent
14 circumstances which justify a warrantless search, a totality of
15 the circumstances test must apply. State v. Ringer, (Wash. 1983)
16 (no exigent circumstances because no showing that to obtain a
17 warrant was impractical); State v. Patterson, 774 P.2d 10 (Wash.
18 1989) (the existence of exigencies in addition to potential
19 mobility will justify a warrantless search and no one factor is
20 conclusive).

21 In Colorado, courts look to whether the circumstances create
22 a practical risk of the vehicle's unavailability if the search is
23 postponed to obtain a search warrant. People v. Edwards, 836 P.2d
24 468 (Colo. 1992) (ready mobility of the vehicle with other
25 circumstances created practical risk of unavailability).

26 Similarly, "when the circumstances of a case are such that
27 the provisions of the U.S. Constitution as they have been
28 interpreted by the United States Supreme Court do not reflect the

1 values of the people of the Commonwealth, we will not hesitate to
2 look to the Commonwealth's Constitution for the protections and
3 guaranties placed therein by and for the people." *Sirilan v.*
4 *Castro*, 1 CR 1082, 1111 (N.M.I. District Court 1984). Article 1,
5 section 3 of the CNMI Constitution and the analysis to that
6 section indicate that a case by case analysis should be utilized
7 to determine whether a warrantless search and seizure of an
8 automobile is reasonable. Article I, section 3 of the
9 Commonwealth Constitution states:

10 The right of the people to be secure in their persons,
11 houses, papers and belongings against unreasonable searches
and seizures shall not be violated.

12 a) No warrants shall issue except upon probable cause
13 supported by oath or affirmation and particularly
describing the place to be searched and the persons or
things to be seized. (emphasis added).

14 "The term papers and other belongings includes automobiles and
15 other vehicles." Analysis of the Constitution of the Commonwealth
16 of the Northern Mariana Islands § 3 (Dec. 6, 1976). Furthermore,
17 "not every search . . . requires a warrant. When probable cause
18 exists and there **is** no adequate opportunity to obtain a warrant,
19 police officers may make searches . . . without violating this
20 section." (emphasis added). *Id.* at § 3 (a).

21 In light of this reading of the Commonwealth Constitution,
22 this Court finds that the U.S. Supreme Court decisions creating a
23 per se automobile exception cannot be rationalized with the
24 "principle that warrants-when-practicable is the best policy,"
25 WAYNE R. LAFAVE, 3 SEARCH AND SEIZURE § 7.2 (a) (2d ed. 1987). Rather,
26 this Court finds persuasive the state court decisions which hold
27 that a case by case analysis finding the "principle that warrant-
28 when-practicable is the best policy" because it affords greater

1 protection to its citizens against unreasonable search and
2 seizures than does the Fourth Amendment.

3 Furthermore, this Court finds that the characteristics of the
4 islands of Rota, Saipan and Tinian compel this Court to interpret
5 the Commonwealth search and seizure provision as providing greater
6 constitutional protection than the U.S. Constitution. First,
7 because of the size and geographical make-up of the islands, it is
8 very difficult to move vehicles out of the jurisdiction in which
9 a warrant is sought. Moreover, although the U.S. Supreme Court
10 has held that there is a diminished expectation of privacy with
11 respect to automobiles, the CNMI Constitution provides that
12 automobiles are a constitutionally protected area. Analysis of
13 the Constitution of the Commonwealth of the Northern Mariana
14 Islands § 3 (Dec. 6, 1976). Therefore, in the Commonwealth, there
15 is still a reasonable expectation of privacy with respect to
16 automobiles which must not be ignored. Accordingly, this Court
17 finds it necessary to provide those traveling the CNMI roads with
18 greater protection from unreasonable automobile search and
19 seizures than provided by the Fourth Amendment.

20 Thus, under the Commonwealth Constitution, police may conduct
21 a warrantless search of an automobile as long as there exist: 1)
22 probable cause; 2) exigent circumstances; and 3) no adequate
23 opportunity to obtain a warrant. To determine whether these three
24 factors exist, this Court must look to the totality of the
25 circumstances. The inherent mobility of the automobile may
26 justify a warrantless search, but it is one factor which must be
27 considered.

28 As noted above, the Government sustained its burden of

1 proving that the police had probable cause to believe the truck
2 contained the fruits and instrumentalities of the assault and the
3 robbery. However, under the totality of the circumstances, this
4 Court finds that the Government failed to prove the existence of
5 exigent circumstances and the inability to obtain a warrant.
6 First, because the truck was not searched immediately after the
7 Defendant was arrested and the Government offered no legitimate
8 reason as to why the first search was delayed three and one-half
9 hours, the inherent mobility of the truck alone does not qualify
10 to create exigent circumstances. Moreover, the police were in
11 sight of the truck from the time the Defendant was stopped and
12 until the first search was conducted. Therefore, there was no
13 threat that someone would drive away with the truck or take
14 evidence from within. Finally, the Government has failed to show
15 why the police did not attempt to obtain a warrant from a neutral
16 magistrate during the three and one-half hours between the arrest
17 and the search. Thus, since the Government failed to show exigent
18 circumstances beyond the mere inherent mobility of the truck and
19 why there was no adequate opportunity to obtain a warrant, the
20 searches of the truck were unreasonable. Therefore, the searches
21 are not valid under article 1, section 3 of the Commonwealth
22 Constitution.

1 IV. CONCLUSION

2 This Court finds that both searches of the truck the
3 Defendant was driving were not valid searches incident to the
4 arrest of the Defendant. Nor were they valid inventory searches.
5 Moreover, this Court finds that the searches of the truck were
6 unreasonable under article 1, section 3 of the Commonwealth
7 Constitution. Therefore, the Defendant's motion to suppress the
8 evidence found as a result of the searches is hereby GRANTED.

9
10 So ORDERED this ____ day of November 1994.

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14 EDWARD MANIBUSAN, Associate Judge