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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. 19-0048
)	
Plaintiff,)	
)	
v.)	ORDER DENYING DEFENDANTS’ MOTION TO SUPPRESS
)	
DERIK JONATHAN REYES and ROBERT CAMACHO TORRES,)	
)	
Defendants.)	
)	

I. INTRODUCTION

THIS MATTER came before the Court on October 8, 2020, at 9:00 a.m. in the Northern Mariana Islands Supreme Court Courtroom, Guma Hustisia. The Court heard arguments on Defendant Robert C. Torres’ (Torres) Motion to Suppress, brought under Com. R. Crim. P 12(b)(3); and Co-Defendant Derik Jonathan Reyes’ (Reyes) Motion to Join in the Motion to Suppress brought under Com. R. Crim. P 12(f). Torres was represented by Attorney Mark A. Scoggins. Reyes was represented by Assistant Public Defender Karie E. Comstock. Assistant Attorney General Steven C. Kessell represented the Commonwealth of the Northern Mariana Islands (“the Commonwealth”). Both Defendants are charged with a single count of possession of a controlled substance in violation of 6 CMC § 2142.

II. BACKGROUND INFORMATION AND FACTS

This case involves the driver of a vehicle and his occupant who were stopped by CNMI Department of Public Safety Officer Maverick Saures (Officer Saures) on July 19, 2019. A video

By order of the Court, Associate Judge Wesley M. Bogdan

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1 recording of part of the stop was recorded by Torres, which was played and entered into evidence
2 during the Suppression Motion’s hearing, a somewhat unusual circumstance in this jurisdiction
3 because video recordings via police officer body cams are not typically available for use in this
4 Court’s experience. This phone recording of a portion of the traffic stop is important and verifies
5 testimony during the hearing (and as set out in the CNMI’s Declaration of Probable Cause and
6 Complaint (DPCC)) at times—and then also contradicts some of the testimony and the DPCC in
7 others.¹

8 As to the general circumstances of what happened the night in question, the parties are in
9 basic agreement that: At approximately 3:15 a.m. on July 12, 2019, Officer Saures pulled over a
10 vehicle for driving without headlights in Garapan. The vehicle that was pulled over was driven and
11 owned by Reyes, with Torres in the front passenger seat. The Defendants do not challenge or contest
12 that Officer Saures had reasonable suspicion for the initial traffic stop. Within a few minutes of the
13 stop, three other Public Safety Officers backed up Officer Saures at the location in separate police
14 cars. Those individuals were Officer Sylvan Rangamar, Officer Joshua Manglona, and Officer
15 Anthony Aleyupo.

16 The sequence of events that followed the initial stop and what exactly was said during this
17 time is important in ways critical to the legal arguments made regarding the Fourth Amendment’s
18 prohibition against unreasonable search and seizures. Torres’ cell phone recording, which contains
19 both audio and video components, begins with Officer Saures talking to the Defendants at some
20 unknown point during the traffic stop, but is nonetheless extremely helpful to this Court in reaching
21 the decision herein. A transcription of the recording’s audio is set out below as submitted by the
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23 ¹ Accordingly, this Court encourages lawmakers and the Commonwealth Government officials to consider the use of
24 body cams in the CNMI as the images recorded have in this case proven a valuable tool and very helpful to a better
understanding of exactly what happened the night in question as explained in this Order.

1 parties through agreement after the hearing. However, the Defendants' physical movements inside
2 the car—which had to have included turning on and aiming the cell phone camera, minor body and
3 hand movements, and a small amount of shifting around in their seats—can only be seen when
4 actually watching the video. The Court includes below its own description of two significant
5 observation seen on the video played twice during the Suppression Hearing.

6 =====

7 Officer: You don't, you don't mind we have a look in the casing? In the casings back here?

8 D. Reyes: Uh, it's a GoPro and an air gun.

9 Officer: Okay. You don't mind we're going to look at it?

10 D. Reyes: I mind.

11 Officer: You mind?

12 D. Reyes: I mind.

13 Officer: The thing is because it's a, if it's an actual firearm, okay, regardless if it's a pellet
14 gun, air gun, or whatever it is, okay, we have to look at it. All right? Okay? Rob?

15 R. Torres: So I'll give it, I'll pass it to you.

16 Officer: No, no, no, no, no, no, no. Keep your hand on the, brother, keep your hands on
17 the dashboard, please.

18 Voice: [Unintelligible]

19 R. Torres: What's going on here, man?

20 Officer: Brother, because of the casing here in the back

21 R. Torres: Yeah

22 Officer: It's giving us reasonable grounds to actually look and see if it, if it's, it's a not a
23 real, a real gun or if it's not an illegal possession

1 R. Torres: So can we take it and give it to you?
2 Officer: No but that's [unintelligible] ...
3 R. Torres: No I'm asking you can we take it and give it to you?
4 Officer: That's the reason why, brother, I'm telling you guys to get down.
5 R. Torres: I don't want to get down but I can give it to you [unintelligible] but I can
6 give it to you no problem.
7 Officer: Take those out. Just put it on top of the car.
8 D. Reyes: Can you put it here on the hood so we can see?²
9 Officer: Okay ... [Unintelligible].
10 Voice: [Unintelligible].³
11 Officer: Now you guys have to get down from the vehicle.
12 Voice: [Unintelligible] ... Step out.
13 Officer: Exit the vehicle.
14 R. Torres: Why? I mean am I under arrest what's going on?
15 Voice: [Unintelligible]
16 R. Torres: I don't know. [Unintelligible]
17 Voice: I know it's not.
18 R. Torres: [Unintelligible]
19 Voice: Okay step out of the vehicle now. Don't make it hard.

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22 ² It is at approximately this moment that the video shows unidentified police officers walking toward the front of the automobile and placing the two small bags they had taken from the backseat onto the hood and opening the two cases.

23 ³ At this moment in the video, unidentified police officers can be seen walking back toward and surrounding the automobile in which Reyes and Torres were still seated.

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1 **III. LEGAL STANDARD**

2 The Constitution of the Northern Mariana Islands, like the Constitution of the United States
3 of America, protects an individual’s right “to be secure in their persons, houses, papers and
4 belongings against unreasonable searches and seizures shall not be violated.” NMI CONST. art. 1 § 3.
5 Cases interpreting the Fourth Amendment of the United States Constitution are persuasive precedent
6 when interpreting this provision of the Constitution of the Northern Mariana Islands. *Commonwealth*
7 *v. Lin*, 2014 MP 6 ¶ 12. This protection against unreasonable searches and seizures is also applicable
8 to a driver and/or owner of an automobile and its passengers, though with differing legal
9 considerations. Still, the most basic touchstone is well understood and provides that *all searches*
10 conducted “outside the judicial process, without prior approval by judge or magistrate [i.e., search
11 warrants], are per se unreasonable under the Fourth Amendment—subject only to a few specifically
12 established and well-delineated exceptions.” *Arizona v. Gant*, 556 U.S. 332, 338, 129 S. Ct. 1710,
13 173 L. Ed. 2d 485 (2009) (quoting *Katz v. United States*, 389 U.S. 347, 357, 88 S. Ct. 507, 19 L. Ed.
14 2d 576 (1967) (emphasis added).

15 Relevant here, the “automobile exception” is one yielding to the general rule requiring a
16 warrant before searching a motor vehicle. The United States Supreme Court held in *United States v.*
17 *Ross* that “[i]f there is probable cause to believe a vehicle contains evidence of criminal activity,
18 [officers may] search . . . any area of the vehicle in which the evidence might be found.” *Gant*, 556
19 U.S. at 347 (citing *United States v. Ross*, 456 U.S. 798, 820-21, 102 S. Ct. 2157, 72 L. Ed. 2d 572
20 (1982)). To be clear, “*Ross* allows searches for evidence relevant to offenses other than the offense
21 of arrest, and the scope of the search authorized is broader.” *Id.* Warrantless searches of automobiles
22 under the automobile exception are allowed for two reasons.

1 First, the ready mobility of a motor vehicle makes it impracticable for law enforcement
2 officers to secure a search warrant. *California v. Carney*, 471 U.S. 386, 390-91, 105 S. Ct. 2066, 85
3 L. Ed. 2d 406 (1985). Second, individuals have a diminished expectation of privacy in motor vehicles
4 because motor vehicles are subject to pervasive governmental regulation. *Id.* at 391. To ensure the
5 respect of the Fourth Amendment’s prohibition against unreasonable searches, the Supreme Court
6 has sustained the long-standing rule that "evidence seized during an unlawful search could not
7 constitute proof against the victim of the search." *Wong Sun v. United States*, 371 U.S. 471, 484, 83
8 S. Ct. 407, 9 L. Ed. 2d 441 (1963); *see also Commonwealth v. Crisostomo*, 2014 MP 18 ¶ 22. This
9 exclusionary rule is the principal remedy to deter violations of the Fourth Amendment and
10 encompasses both the "primary evidence obtained as a direct result of an illegal search or seizure"
11 and "evidence later discovered and found to be derivative of an illegality." *Utah v. Strieff*, 136 S. Ct.
12 2056, 2061, 195 L. Ed. 2d 400 (2016) (quoting *Segura v. United States*, 468 U.S. 796, 804, 104 S.
13 Ct. 3380, 82 L. Ed. 2d 599 (1984)).

14 IV. DISCUSSION

15 Defendants Torres and Reyes allege that law enforcement officers violated their constitutional
16 rights under the Fourth Amendment and that they both have standing to bring the instant Motion to
17 Suppress. In particular, Defendants argue that the removal from the back seat and search of the hand
18 gun and GoPro cases by law enforcement officers before their arrest unconstitutionally infringed on
19 their rights against unreasonable searches and seizures, and that all evidence collected during that
20 search and subsequent searches should be suppressed as “fruit of the poisonous tree.” *See Nardone*
21 *v. United States*, 308 U.S. 338, 341, 60 S. Ct. 266, 84 L. Ed. 307 (1939) (Frankfurter, J.). The
22 Commonwealth argues that the investigatory stop was proper and that the search of the cases in
23 Reyes’ car was constitutionally permitted for various reasons discussed below. Additionally, the

1 Commonwealth—at least initially—maintained that Torres, as a mere passenger in the vehicle,
2 lacked standing to challenge the searches of the cases.

3 **A. Ability of Reyes to Join the Motion to Suppress**

4 Accordingly, one preliminary issue this Court needs to briefly address is Reyes' Motion to
5 Join in Torres' Motion to Suppress. The Court had set a deadline for all motions to be filed on or
6 before July 30, 2020. Reyes failed to file his Motion to Join until August 11, 2020—nearly two weeks
7 after the Court's deadline. After the Commonwealth initially objected to the late-filing, counsel for
8 Reyes claimed she did not know that a separate motion to join was necessary.

9 Putting aside the fact that this explanation does not account for the legal distinctions between
10 owners/drivers of automobiles—and their passengers—with respect to the Fourth Amendment,
11 ultimately this Court is not called-on to analyze and resolve whether the late filing of Defendant
12 Reyes' Motion to Join precludes him from joining in this Motion to Suppress. This is because the
13 Commonwealth, in its Opposition Memorandum and at the start of the suppression hearing, withdrew
14 their objection and accepted that Reyes should be permitted to join in order to expedite the resolution
15 of this case and to avoid the creation of potential appellate issues. The Court accordingly grants
16 without objection from the Commonwealth Reyes' Motion to Join in the Motion to Suppress.

17 **B. General Provisions Concerning Motor Vehicles**

18 Generally speaking, passenger and motor vehicle searches have played a prominent role in
19 Fourth Amendment jurisprudence. *See United States v. Rodgers*, 656 F.3d 1023, 1024 (9th Cir. 2011).
20 The Supreme Court has consistently held that probable cause is necessary to conduct a warrantless
21 search of a vehicle. *See, e.g., Carney*, 471 U.S. at 390; *Carroll v. United States*, 267 U.S. 132, 160-
22 62, 45 S. Ct. 280, 69 L. Ed. 543, T.D. 3686 (1925). In more recent years, the Court has clarified that
23 "[i]f there is probable cause to believe a vehicle contains evidence of criminal activity," the search

1 may extend to any area where evidence might be found during an investigatory stop. *See Gant*, 556
2 U.S. at 347 (citing *Ross*, 456 U.S. at 820-21).

3 **1. The Investigatory Stop**

4 The legal standards governing investigatory traffic stops provide that police officers may stop
5 a car to investigate individuals only where there is "reasonable suspicion" of illegal activity. *See*
6 *United States v. Montero-Camargo*, 208 F.3d 1122, 1129 (9th Cir. 2000) (en banc); *see also Terry v.*
7 *Ohio*, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968). Here, Officer Saures testified without
8 objection from the Defendants that the initial stop was premised on the fact that Reyes was driving
9 his vehicle without turning on the headlights. The Court accepts therefore that reasonable suspicion
10 to stop Reyes' vehicle was present and as mentioned above, neither Defendant challenges the initial
11 stop. *See Commonwealth v. Arurang*, 2017 MP 1 ¶ 17.

12 **2. The Continuing Investigation**

13 The more critical issues relate to the continuing investigation which occurred during the traffic
14 stop. The first words of dialogue captured on the video played during the suppression motion hearing
15 reveals Officer Saures standing at the drivers-side window asking for Reyes' consent to search the
16 cases in the backseat saying: "You don't mind if we have a look at the casing . . . In the casings back
17 here?"⁴ Saures testified in the hearing that he asked this question because shortly after the stop was
18 initiated he saw the two cases in the backseat. The Commonwealth also argues—in its Response to
19 the Motion to Suppress—that supporting Officer Rangamar had shown his flashlight into the vehicle
20 and also saw two black cases. In any respect, one case was marked "Colt Governm. 1911" and the
21 other case, of approximately the same size and shape, was originally used to hold GoPro camera
22 equipment, but the night in question contained something else.

23 _____
24 ⁴ The video recording at this moment shows Officer Saures gesturing towards the backseat.

1 Reyes objected to the search saying “I mind” and then voluntarily informed Officer Saures
2 that one of the bags contained only an air gun. Officer Saures then responded by explaining that
3 because “it's a [gun], if it's an actual firearm, okay, regardless if it's a pellet gun, air gun, or whatever
4 it is, okay, we have to look at it” (emphasis added). Reyes then offered to hand the gun case to Officer
5 Saures. Officer Saures declined that proposal and responded: “That's the reason why, brother, I'm
6 telling you guys to get down.” By ‘get down’ the Court understands Officer Saures to have meant to
7 exit the vehicle.

8 It is at approximately this point during the stop that Reyes responded that he didn't want to
9 get down, but again—he could give the handgun case to Officer Saures and then as seen in the video
10 the support officers on the scene either reached in or opened the door to the backseat and removed
11 both cases from the back seat. The taking of the cases happened out of the camera's direct view and
12 exactly how the decision was made to take the cases was not well clarified during the hearing.
13 Nonetheless, from what can be seen on the video—these assisting officers retrieved the bags and then
14 walked to the front of Defendant's automobile, placed the cases on the hood of the patrol car in a
15 fairly well-lit area in the camera's distant view and proceeded to open and search the GoPro case and
16 found illegal drug paraphernalia. The officers walked back toward the Defendants who were then
17 ordered to exit the vehicle and placed under arrest. The Defendants argue in essence that the
18 continuing investigation during the traffic stop was unconstitutional.

19 3. Contraband Discovered During Lawful Protective Search

20 Contrary to the Defendants' legal arguments, a period of detention during a traffic stop may
21 be permissibly extended where new grounds for suspicion of possible criminal activity continue to
22 unfold. *United States v. Mayo*, 394 F.3d 1271, 1276 (9th Cir. 2005). Here, as the Defendants
23 acknowledged during the stop, some type of weapon was in the passenger compartment, creating a
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1 concern for safety and reasonable suspicion of possible criminal activity with respect to the
2 transportation of a firearm within the passenger compartment of a motor vehicle under a recently
3 enacted public law. *See* Public Law 19-42, the SAFE Act (Special Act for Firearms Enforcement).
4 As a result, this Court finds that the extended duration of the stop was permissible. *Mayo*, 394 F.3d
5 at 1276.

6 This Court must however carefully consider and this case turns, in this Court's opinion, on
7 the physical retrieval and search of the two cases in the backseat following the Defendant's challenge
8 to Officer Saures' efforts to have them get out of the car. As described above, while Officer Saures
9 and the Defendants were in an exchange of words about handing one of the cases to Officer Saures—
10 and getting out from the vehicle, the support officers removed two cases from the backseat. The
11 Defendants argue the support officers should not have just taken and searched the two bags, while
12 the Commonwealth asks this Court to deny the Motion to Suppress because the investigating Officers
13 had to search the cases for safety concerns after learning some type of firearm was in the passenger
14 compartment of the automobile. Presenting an issue of first impression in this jurisdiction, the Court
15 looks to the United States Supreme Court for guidance.

16 The Supreme Court held in *Michigan v. Long* that *Terry* stop-and-frisks also encompass
17 protective searches of vehicles for weapons, if they are limited to places where weapons may be
18 placed or hidden. 463 U.S. at 1049-50; *see also Maryland v. Buie*, 494 U.S. 325, 332, 110 S. Ct. 1093,
19 108 L. Ed. 2d 276 (1990). The Court held that such searches are permissible when law enforcement
20 possesses "a reasonable belief based on specific and articulable facts which, taken together with the
21 rational inferences from those facts, reasonably warrant the officers in believing that the suspect is
22 dangerous and the suspect may gain immediate control of weapons." *Id.* at 1050 (internal citation and
23 quotation marks omitted). The Court reasoned that such searches are permissible even when an arrest
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1 is not made to ensure that the defendant is not able to obtain weapons from the vehicle after being
2 allowed to reenter his car. *Id.* at 1052. This suggests that at some point during a traffic stop when the
3 investigating officers believe that weapons are present that the occupants of such a stopped vehicle
4 have been ordered out of the vehicle—which did not happen here. But this Court does not believe
5 this distinction is fatal to the Commonwealth’s position under the totality of the circumstances
6 presented.

7 Protective searches under *Terry* and *Long* must be “genuinely protective,” not based on
8 evidentiary purposes, and limited in scope to searches “reasonably designed” to discover weapons.
9 *Terry*, 392 U.S. at 29; *United States v. Hussain*, 835 F.3d 307, 313 (2nd Cir. 2016). *Terry* and *Long*
10 maintain that the primary issue is determining “whether a reasonably prudent man in the
11 circumstances would be warranted in the belief that his safety or that of others was in danger.” *Long*,
12 463 U.S. at 1050 (citing *Terry*, 392 U.S. at 21). “The determination is made with reference to the
13 ‘collective knowledge of the officers involved, and the inferences reached by experienced, trained
14 officers.’” *United States v. Burkett*, 612 F.3d 1103, 1107 (9th Cir. 2010) (quoting *United States v.*
15 *Hall*, 974 F.2d 1201, 1204 (9th Cir. 1992)). In assessing the legality of a protective vehicle search,
16 courts look to the totality of the objective circumstances surrounding the search. *Ohio v. Robinette*,
17 519 U.S. 33, 39, 117 S. Ct. 417, 136 L. Ed. 2d 347 (1996). Moreover, courts recognize that traffic
18 stops are “especially fraught with danger to police officers.” *Rodriguez v. United States*, 135 S. Ct.
19 1609, 191 L. Ed. 2d 492 (2015) (citation and quotation marks omitted).

20 In this case, the Court believes the officers’ retrieval and search of the bags was genuinely
21 protective in nature following being informed by the Defendants that some type of a weapon was
22 nearby the Defendants in the vehicle, and given the fact that the cases—one of them being a gun
23 case—were observed in plain sight. Under these circumstances, police would understandably have
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1 reasonable suspicion to justify the search of the “Colt” gun case and a similarly sized GoPro case
2 situated next to it for their safety and due to the reasonable inference that a possible criminal offense
3 had or was being committed related to the transportation of a firearm within the passenger
4 compartment of a motor vehicle. *See* 6 CMC § 10206(b)(1) (“If transportation of the firearm is by a
5 vehicle, the firearm shall be unloaded, and neither the firearm nor any ammunition being transported
6 shall be readily accessible or directly accessible from the passenger compartment of the transporting
7 vehicle.”) (emphasis added).

8 Further, as heard in the dialog portion of the taped recording, it appears that Officer Saures
9 had at some point—almost certainly before the recording began—already ordered the occupants to
10 keep their hands where they could be seen and that they were going to have to exit the vehicle. The
11 Court notes that Defendants were not especially cooperative in this regard because as Reyes did
12 appear to maintain his hands on the steering wheel during this portion of the stop, and Torres
13 managed to turn on his cell phone camera and aim it in the direction of Officer Saures and both
14 Defendants can be heard talking back and somewhat challenging police authority.

15 Accordingly, this Court finds that the totality of the circumstances described above establish
16 that it was reasonable for the investigating Officers to be concerned for their safety and to retrieve
17 and search the bags. By removing the hand gun from the area where the Defendants were seated—
18 which they did not yet know for a fact that it was an air gun—the search of the bags was genuinely
19 protective and done in such a way as to deescalate and avoid direct conflict with the Defendants. To
20 be clear, as the GoPro case appeared to be of the same approximate size as the gun case and was
21 located next to it in the backseat, the search of that case for protective reasons was also justified.

22 In such circumstances, Officer Saures was warranted in believing he and/or the other Officers
23 were in a possibly dangerous situation or that a criminal offense was being committed until a search
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