

FSM SUPREME COURT TRIAL DIVISION

FEDERATED STATES OF MICRONESIA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 SUNIEL K. SHARMA d/b/a Jash International )  
 Maritime Law & Business Management )  
 (Unit of Ascent Navals Thailand) a/k/a )  
 Micronesia International Ship Registry, )  
 LUKNER WEILBACHER, RENWICK )  
 WEILBACHER, and MARTIN JANO, )  
 )  
 Defendants. )  
 \_\_\_\_\_ )

CRIMINAL CASE NO. 2020-501

ORDER DENYING SUPPRESSION

Larry Wentworth  
Associate Justice

Hearing: June 13, 20, 2022  
Decided: July 27, 2022

APPEARANCES:

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## HEADNOTES

### Criminal Law and Procedure – Arrest and Custody

It is well settled that the constitutional and statutory right to be advised of one's rights are owed to "one arrested," or to "any person arrested," and an "arrest" is the placing any person under any form of detention by legal authority. FSM v. Sharma, 23 FSM R. 617, 620 (Pon. 2022).

### Criminal Law and Procedure – Arrest and Custody; Criminal Law and Procedure – Interrogation and Confession

A person is considered "arrested" when one's freedom of movement is substantially restricted or controlled by a police officer exercising official authority based on the officer's suspicion that the detained person may be, or may have been, involved in commission of a crime, and any evidence obtained as a result of the failure to inform an accused of his or her rights when required to by 12 F.S.M.C. 218 is rendered inadmissible against the accused by 12 F.S.M.C. 220. FSM v. Sharma, 23 FSM R. 617, 620 (Pon. 2022).

### Criminal Law and Procedure – Arrest and Custody; Criminal Law and Procedure – Interrogation and Confession

Police officers are not required to inform a person of his or her rights under 12 F.S.M.C. 218, or the Constitution, when the officers only view that person, not as a suspect, but as a potential witness in the matter of someone else's suspected criminality; or when the officers never substantially restrict or control the person's freedom of movement. FSM v. Sharma, 23 FSM R. 617, 620 (Pon. 2022).

### Criminal Law and Procedure – Interrogation and Confession

Government agents' routine questioning does not require a rights warning to be given beforehand because the purpose of this type of procedural questioning is not to compel the person being questioned to incriminate himself. FSM v. Sharma, 23 FSM R. 617, 620 (Pon. 2022).

### Criminal Law and Procedure – Interrogation and Confession

The requirement to inform a person of his or her rights to silence and to counsel applies only to a custodial interrogation. A custodial interrogations occurs when government agents (police) question a detained person about the crime that he or she is suspected of having committed. FSM v. Sharma, 23 FSM R. 617, 620 (Pon. 2022).

### Criminal Law and Procedure – Interrogation and Confession

When a person was not detained, or in custody, or arrested when he was questioned, and he was not questioned about a crime he was suspected of having committed but about crimes another was suspected of having committed, the police were not required to inform him of his rights and to obtain a waiver of those rights from him before questioning him, and any statement he made is admissible and will not be suppressed. FSM v. Sharma, 23 FSM R. 617, 620 (Pon. 2022).

### Criminal Law and Procedure – Interrogation and Confession

Under the fruit of the poisonous tree doctrine, a confession which is the direct fruit of a prior illegal confession is likewise inadmissible. FSM v. Sharma, 23 FSM R. 617, 621 (Pon. 2022).

Constitutional Law – Declaration of Rights; Criminal Law and Procedure – Interrogation and Confession;  
Criminal Law and Procedure – Right to Silence

The protection offered by the FSM Constitution against compulsory self-incrimination is traceable to the U.S. Constitution's fifth amendment, and when a provision of the FSM Declaration of Rights is patterned after a provision of the U.S. Constitution, U.S. authority may be consulted to understand its meaning. FSM v. Sharma, 23 FSM R. 617, 621 n.1 (Pon. 2022).

Criminal Law and Procedure – Interrogation and Confession

When the police are questioning someone who can reasonably only be considered a witness, and have developed enough evidence so that the police may reasonably suspect that that person has committed a crime, the questioning should stop then and not resume unless the interviewee has been informed of his or her rights and validly waived them, or the person has had an adequate consultation with chosen counsel and counsel is present for the resumed interview. FSM v. Sharma, 23 FSM R. 617, 621 (Pon. 2022).

Criminal Law and Procedure – Interrogation and Confession

When a written statement was not made during a custodial interrogation, and the declarant was not even in police presence or being questioned by police when he wrote it and he was not under any compulsion or pressure or threat to provide the written statement. The written statement was voluntarily made and not the product of a custodial interrogation or its functional equivalent. Being "unaware" that the statement provided would or could later be used against him, is, by itself, an insufficient ground to suppress any statement. FSM v. Sharma, 23 FSM R. 617, 622 (Pon. 2022).

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COURT'S OPINION

LARRY WENTWORTH, Associate Justice:

On June 13, 2022, the court heard defendant Renwick Weilbacher's December 21, 2020 Motion to Suppress and defendant Lukner Weilbacher's October 18, 2021 Motion to Suppress. On June 20, 2022, the court heard defendant Martin Jano's June 1, 2022 Motion to Suppress and the closing arguments for all three defendants' suppression motions. The motions are denied. The reasons follow.

I. ALLEGATIONS

In a 502-count Information, the government alleges that the lead defendant, an Indian national using the name Captain Suniel Kunmar Sharma, created an illegal, open international ship registry in the FSM government's name, called the Micronesia International Ship Registry ("MISR"). The FSM asserts that this ship registry is contrary to FSM law, which only allows a closed, national vessel registration system. The FSM further alleges that Lukner Weilbacher, as the Secretary of Transportation, Communication and Infrastructure, helped Sharma circumvent the FSM vessel registration law and thus allow MISR to obtain authorization from the International Maritime Organization ("IMO") to register MISR's vessel registration numbers with the IMO, and that Renwick Weilbacher was enlisted to assist in this scheme.

The FSM also alleges that Sharma and Martin Jano approached the FSM Department of Justice about allowing MISR to conduct ship registration activities in the FSM's name, but the Department of Justice rejected the proposal as contrary to FSM law. The FSM further alleges that, nevertheless, MISR, through various websites, advertised ship registration services and registered over 100 foreign vessels under the FSM flag and collected about \$627,000 in registration fees for these fraudulent registrations. Sharma and Jano are then alleged to have offered the FSM \$100,000 as its "share" of the MISR ship registration scheme revenue, but the FSM also rejected that as contrary to FSM law.

II. MOTIONS TO SUPPRESS

A. *Lukner Weilbacher's October 18, 2021 Motion to Suppress*

Lukner Weilbacher moves to suppress his statements taken during questioning on November 8, 2019, and the documents he provided then. He contends that that evidence and his statements were taken without him having been advised of his rights or having waived those rights and that he did not know that his statement would later be used against him and therefore it was the fruit of the poisonous tree. He further contends that the government must prove that he knowingly, intelligently, and voluntarily waived his rights to silence and to counsel. Lukner Weilbacher does not contend that he was under arrest or detained when he was questioned. He acknowledges that he was not "arrested."

The government states that Lukner Weilbacher was never under arrest, nor was he detained, and that he was free to leave at any time and did so after investigating officers finished asking questions. The government contends that, when Lukner Weilbacher was questioned, he was only considered to be a witness since they were trying to obtain evidence against Sharma, and therefore there was no requirement that he be informed of his rights and that he waive those rights before being questioned.

It is well settled that the constitutional and statutory right to be advised of one's rights are owed to "one arrested," 12 F.S.M.C. 218(6), or to "any person arrested," 12 F.S.M.C. 218(7), and an "arrest" is the "placing any person under any form of detention by legal authority," 12 F.S.M.C. 101(1). FSM v. Mumma, 21 FSM R. 387, 402 (Kos. 2017). A person is "considered 'arrested' within the meaning of 12 F.S.M.C. 218 when one's freedom of movement is substantially restricted or controlled by a police officer exercising official authority based upon the officer's suspicion that the detained person may be, or may have been, involved in commission of a crime." FSM v. Edward, 3 FSM 224, 232 (Pon. 1987). Thus, any evidence obtained as a result of the failure to inform an accused of his or her rights when required to by 12 F.S.M.C. 218 is not admissible against the accused. FSM v. Louis, 15 FSM R. 348, 352 (Pon. 2007). Any evidence obtained in violation of 12 F.S.M.C. 218 is rendered inadmissible by 12 F.S.M.C. 220. FSM v. Menisio, 14 FSM R. 316, 319 (Chk. 2006).

Police officers, however, are not required to inform a person of his or her rights under 12 F.S.M.C. 218, or the Constitution, when the officers only view that person, not as a suspect, but as a potential witness in the matter of someone else's suspected criminality; or when the officers never substantially restrict or control the person's freedom of movement. Louis, 15 FSM R. at 353. Thus, government agents' routine questioning does not require a rights warning to be given beforehand because the purpose of this type of procedural questioning is not to compel the person being questioned to incriminate himself. Mumma, 21 FSM R. at 403.

In short, the requirement to inform a person of his or her rights to silence and to counsel applies only to a custodial interrogation. A custodial interrogations occurs when government agents (police) question "a detained person about the crime that he or she is suspected of having committed." BLACK'S LAW DICTIONARY 895 (9th ed. 2009).

Based on the presentations before the court, Lukner Weilbacher was not detained, or in custody, or "arrested" when he was questioned, and he was not questioned about a crime he was suspected of having committed but about crimes Sharma was suspected of having committed. The police were therefore not required to inform Lukner Weilbacher of his rights and to obtain a waiver of those rights from hm before questioning him. Accordingly, Lukner Weilbacher's statement is admissible and his motion to suppress is denied.

B. *Renwick Weilbacher's December 21, 2020 Motion to Suppress*

Renwick Weilbacher moves to suppress the "Record of Interview" and "Witness Statement" both

taken from him on July 21, 2016. He contends that those items are the fruit of the poisonous tree and should be suppressed because he was not advised of his rights when his first interview was conducted.

Under the fruit of the poisonous tree doctrine, “a confession which is the direct fruit of a prior illegal confession is likewise inadmissible.” 2 JOSEPH G. COOK, CONSTITUTIONAL RIGHTS OF THE ACCUSED § 5.37, at 183 (2d ed. 1986) (collecting U.S. cases).<sup>1</sup> Thus, if the government improperly obtained Renwick Weilbacher’s statements from the first interview and that led to the statements being obtained in his second interview, both statements should be suppressed.

The government contends that Renwick Weilbacher’s statements are admissible because, after taking a witness statement from him, it realized that he was now a suspect and then advised Renwick Weilbacher of his rights and after that advice of rights, he voluntarily, knowingly, and intelligently waived those rights and consented to a further interview, during which the police took a further statement.

Based on the evidence presented, the following occurred. Starting at 3:35 p.m. on July 21, 2016, FSM Police Captain Kasner Aldens interviewed Renwick Weilbacher and took his “witness statement” about his interactions with Sharma. The police questions and Renwick Weilbacher’s answers were hand-written on the FSM National Police “witness statement” form. At the bottom of each page of the four-page statement, Renwick Weilbacher signed and dated it under a printed inscription that stated that the undersigned swore or affirmed that the information provided in the statement was true.

After this interview ended, Captain Aldens and Officer Johnny Agrippa advised Renwick Weilbacher of his constitutional rights. A dated advice of rights form was executed and was signed by Renwick Weilbacher. The space on the form to note the time of day is empty. Starting at 5:06 p.m., more formal and further questioning of Renwick Weilbacher ensued. This questioning included a further reminder that Renwick Weilbacher could remain silent if he wanted to and that he should think carefully about what he said because whatever he said might be used in court if he went to court. This second statement was transcribed as a five-page typewritten “Record of Interview,” signed and dated by Renwick Weilbacher on the last page.

The police seem to have acted correctly. When the police are questioning someone who can reasonably only be considered a witness, and have developed enough evidence so that the police may reasonably suspect that the interviewee has committed a crime, the questioning should stop then, and not resume unless the interviewee has been informed of his or her rights and validly waived them, see Moses v. FSM, 5 FSM R. 156, 159 (App. 1991) (for defendant to waive his right to silence and to counsel defendant must do so knowingly and intelligently), or the interviewee has had an adequate consultation with chosen counsel and counsel is present for the resumed interview, cf. FSM v. Buchun, 23 FSM R. 201, 209. (Yap 2021) (attorney’s presence, after adequate time for consultation, insures that statements made in the government-established atmosphere are not the product of compulsion).

Accordingly, neither Renwick Weilbacher’s July 21, 2016 “Witness Statement” nor his July 21, 2016 “Record of Interview” will be suppressed. Renwick Weilbacher’s motion to suppress is therefore denied.

### C. *Martin Jano’s June 1, 2022 Motion to Suppress*

Martin Jano moves to suppress his written statement that he says was obtained by the government on or about November 8, 2019. He contends that his statement should be suppressed as the fruit of the

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<sup>1</sup> The protection offered by the FSM Constitution against compulsory self-incrimination is traceable to the U.S. Constitution’s fifth amendment, and when a provision of the FSM Declaration of Rights is patterned after a provision of the U.S. Constitution, U.S. authority may be consulted to understand its meaning. FSM v. Kansou, 12 FSM R. 637, 643 (Chk. 2004).

poisonous tree because he was of the belief that his interview was for information-gathering purposes only; because he was unaware that the information would later be used against him; and because he was never advised of his rights and therefore never waived them.

The government contends that Jano was never “arrested,” that he voluntarily gave the written statement that he now seeks to suppress, and that therefore the government could not have, and did not need to, inform Jano of any rights before receiving his written statement. The government asserts that, under these circumstances, Jano’s written statement is admissible.

According to the evidence presented, Captain Aldens spoke with Jano twice during his investigation of Sharma. The first time was when Jano accompanied Sharma, who by then was a suspect or person of interest, to a meeting with Captain Aldens and then FSM Assistant Attorney General Clayton Lawrence and Officer George Skilling. Jano said then that he was present, not as Sharma’s attorney, but merely to assist Sharma. After some discussion during their second meeting, Captain Aldens asked if Jano could explain things to him in writing. Jano left the interview and later wrote, under his own letterhead, his statement. There is no evidence that Jano was under any compulsion or threat or pressure to do so at the time. He then provided this written statement to the FSM investigators.

It is this written statement that Jano now seeks to suppress. This written statement was not made during a custodial interrogation. Jano was not even in police presence when he wrote the statement. Nor was he being questioned by police when he wrote it. He was not under any compulsion or pressure or threat to provide a written statement about MISR. After leaving the second meeting with Captain Aldens, Jano could conceivably have just forgotten or not gotten around to preparing a written statement for the police. The written statement was thus voluntarily made and not the product of a custodial interrogation or its functional equivalent. Being “unaware” that the statement provided would or could later be used against him, is, by itself, an insufficient ground to suppress any statement. Jano’s motion to suppress must therefore be denied.

### III. CONCLUSION AND SCHEDULE

Accordingly, the defendants’ motions to suppress are hereby denied. NOW THEREFORE IT IS HEREBY ORDERED that:

- 1) the parties’ counsel will meet at the clerk’s office at 2:00 p.m., October 3, 2022, or any mutually agreeable earlier time, to mark their exhibits and to stipulate, to the extent practicable, to their authenticity;
- 2) the court will take the pleas of defendants Lukner Weilbacher, Renwick Weilbacher, and Martin Jano on October 4, 2022, at 10:00 a.m.; and, if any not guilty pleas are entered, then
- 3) trial will start at 11:00 a.m.

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